
(1982) 11 MAD CK 0028
In the Madras High Court

R. Palanivelu Gounder

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 22-11-1982

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 11

Citation : (1983) 2 MLJ 200

Hon'ble Judges : P.R. Gokulakrishnan, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, J.—The appellant herein filed Writ Petition No. 7144 of 1982 on the file of this Court praying for the issue of a writ of

certiorari or any other appropriate writ, order or direction in the nature of writ calling for the records relating to the proceedings of the first

respondent herein in G.O. Ms. No. 2205 Home (Cinemas), Department, dated 23rd August, 1982, and to quash the same. G.O. Ms. No. 2205

(Home) (Cinemas) Department, dated 23rd August, 1982, was in respect of the grant of exemption to the second respondent herein. By the said

Government Order, in exercise of the powers conferred by Section 11 of the Tamil Nadu Cinemas (Regulation) Act, 1955 (Tamil Nadu Act IX of

1955--hereinafter referred to as the Act), the Governor of Tamil Nadu exempted Devi Thirai Arangam of Belukurichi Village, Namakkal taluk,

Salem district from the provisions of Sub-rule (2) of Rule 14 of the Tamil Nadu Cinemas (Regulation) Rules, 1957 (hereinafter referred to as the

Rules) to enable the second respondent herein to run the touring cinema for the remaining period of the second term as per Rule 109(1) of the said

Rules. The learned single Judge, (Sathiadev, J.) who heard the main petition dismissed the same, and it is as against that order, the writ petitioner

has come forward with the present appeal.

2. Mr. N. Ganapathi, learned Counsel for the appellant submitted three points. (1) Section 11 of the Act which enables the grant of exemption is

ultra vires the Constitution. (2) When the second respondent has subjected himself to a commitment that he will stop his cinema as and when any

of the four semi-permanent theatres for which no objection certificates had been granted started functioning, the exemption cannot be granted

under Rule 44(2) of the Rules. (3). The words "is given" occurring in Section 11 of the Act can cover a place where the party is exhibiting a picture

and not a place where it was stopped. The learned single Judge of this Court has carefully considered all these objections and dismissed the writ

petitions

3. Mr. N. Ganapathy, learned Counsel for appellant did not seriously press the constitutional validity of Section 11 of the Act. Even then we are in

complete agreement with the reasoning of the learned single Judge of this Court, and the learned Judge has correctly held that Section 11 is not

ultra vires the Constitution relying on the earlier decisions in P.J. Irani Vs. The State of Madras, , and the Bench decision of this Court. T.N.

Rathnam v. T. Krishnan and Ors. W.P. Nos. 893 and 961 of 1961.

4. The next contention of Mr. N. Ganapathi is based on the interpretation of the words ""is given"" in Section 11 of the Act. According to the

learned Counsel, the words "" is given"" as referable to a cinema which is in force and the like and cannot contemplate exercise of power in respect

of a licence which has expired or yet to be granted. In S.P. Shanmugham Chettiar, Managing Director, Jai Hind Talkies (Paramakudi) Private Ltd.

Vs. P.S. Somasundaram and Others, , a Bench of this Court had occasion to consider the words ""is given"" occurring in Section 11 of the Act. The

Bench has specifically held as follows:

In our opinion, the context of Section 11 as well as practical exigencies, would make it clear that the words ""is given"" must be construed only as

the draftsman's device of expressing a state of affairs which will include the future as well as the present tense.

Mr. N. Ganapathy wants as to reconsider this decision of this Court. After a careful reading of the section we are in complete agreement with the

interpretation made by the Bench of this Court as quoted supra.

5. Lastly, Mr Ganapathy argued that when the second respondent had subjected himself to a commitment that he would stop his cinema as and when any of the four semi-permanent theatres for which no objection certificates has been granted started functioning the exemption cannot be granted under Rule 14(2) of the Rules. It is clear from the facts of this case that before the exemption was granted, the position was that the touring cinema could not function within the prohibited distance. Rule 14(2) deals with the prohibited distance between one cinematograph exhibition" and the other. Definitely the second respondent touring cinema will be within the prohibited distance. At the time when the no-objection certificate was granted to the second respondent-touring cinema, the authorities have given no objection certificate to four semi-permanent theatres which were under construction. Naturally, the Collector, when he granted the no objection certificate, has to take undertaking as stated above, or, otherwise, he will be going against the provisions of Rule 14(2) of the Rules. But subsequently to the granting of the exemption u/s 11, on 23rd August, 1982, which is much later in point of time, there is no question of binding the party with the alleged undertaking, since the prohibited distance principle will no more apply in the present case owing to the exemption granted under Rule 14(2).

6. In *N. Kailasam v. Secretary to Government of Tamil Nadu Home (Cinema)* (1981) 94 L.W. 578 a Division Bench of this Court, to which 1 was also a party has held that power u/s 11 of the Act does not get exhausted with the passing of a single order by the Government, and it is a continuing power and under this section, the State Government has power to grant exemption in relation to the rules framed under the Act. The Bench also held that simply because an earlier Government Order specified certain limitations in putting up construction, it does not mean that the Government's power u/s 11 is restricted owing to the conditions imposed in the Government order. The Bench also held that the power u/s 11 is a continuing power and does not get itself exhausted with the passing of a single order in respect of the individual. The said reasoning will apply with more force to the facts and circumstances of the present case. When even a Government order can be exempted u/s 11 of the Act, we are afraid, the argument as if the second respondent must abide by the undertaking given by him, will not hold good. For all these reasons, we do not find any

substance in the appeal and it is accordingly dismissed.