

(1994) 12 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6021 of 1990

Ravada Simhadraaidu, President, Mandal Praja Parishad,
Devarapalli Mandal

APPELLANT

Vs

The Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 23-12-1994

Acts Referred:

Andhra Pradesh Cinemas (Regulation) Rules, 1970 — Rule 11B(2), 8A(2), 8B(1), 9B
Constitution of India, 1950 — Article 14, 226

Citation : (1995) 1 ALT 62

Hon'ble Judges : P. Ramakrishnam Raju, J

Bench : Single Bench

**Advocate : P.V. Sessaiah and P. Anjaneya Sarma, for the Appellant; G.P. for
Respondent Nos. 1 and 2 and M.R.K. Choudary, for the Respondent**

Final Decision : Allowed

Judgement

P. Ramakrishnam Raju, J.—This is a public interest litigation. The petitioner is the President Mandal Praja Parishad of Devarapalli Mandal in Visakhapatnam District. He is questioning G.O.Rt. No. 807 dated 22-3-1990 issued by the Government permitting the third respondent to run morning and matinee shows in Sri Lalitha Touring Talkies, Devarapalli which is situated 60 yards away from the Junior College.

2. The third respondent made an application to construct a Touring Talkies in Survey No. 151/2 of Devarapalli village to the Licensing Authority, Joint Collector, Visakhapatnam. The second respondent granted permission to construct Touring Talkies on 27-9-1984 subject to the condition that the third respondent should not exhibit morning and matinee shows as the Junior College is situated within 60 yards from the proposed construction. The third respondent has accordingly, constructed the Talkies and obtained "D" form licence permitting exhibition of night shows only. In the licence granted by the second respondent, it is made clear that the third respondent shall not exhibit morning or matinee shows.

Eversince, the third respondent has been exhibiting night shows only. While so, he made an application to the second respondent seeking permission to exhibit morning and matinee shows in the Talkies. The second respondent had conducted enquiry and recorded the statements of the petitioner and the college authorities. He, accordingly, rejected the request of the third respondent by his proceedings dated 24-1-1989. Aggrieved by the said order, the third respondent preferred an appeal before the Government. The 5 first respondent allowed the appeal and permitted the third respondent to exhibit morning and matinee shows. Hence this writ petition.

3. The third respondent in his counter affidavit states that the permission sought for to construct a Touring Talkies in S.No. 151/2 at Devarapalli was rejected in the first instance on the ground that the proposed Talkies is within a distance of 60 yards away from the Government Junior College. The Principal of the College has given no objection certificate. Therefore, there is no justification for the second respondent in imposing the condition not to exhibit films during day time. Therefore, imposition of such restriction by the Joint Collector requiring the petitioner not to exhibit film in Touring Talkies during day time is arbitrary, illegal and void. The petitioner has no locus standi to question the exhibition of films. As the Government has rightly interfered with the order of the Joint Collector imposing illegal restriction in "D" form licence, the writ petition is not maintainable.

4. Sri P.V. Sessaiah, the learned Counsel for the petitioner submits that inasmuch as no appeal was filed by the third respondent questioning the order dated 27-9-1984 issued by the second respondent imposing a restriction not to screen morning or matinee shows, even at the time of granting permission for construction of a Touring Talkies and since the third respondent has not challenged that order and as it has become final, the third respondent cannot now seek for a review of the said order in the absence of changed circumstances.

5. Sri M.R.K. Choudary, the learned Counsel for the third respondent submits that such a condition cannot be imposed, and, therefore, the same is invalid. According to the learned Counsel, Rule 9-B of the Andhra Pradesh Cinemas (Regulation) Rules, 1970 was amended on 31-12-1983 by G.O.Ms. No. 620 and as the permission was granted subsequent to this Government Order, the amended Rules apply to this case. According to the learned Counsel under Rule 8-A, application for issuance of a No Objection Certificate for construction of a Cinema Building can be made. Under Rule 8-B, the said No Objection Certificate will be granted. Rule 9-A provides for making application for grant of permission to construct a Cinema Building. Under Rule 9-B permission can be granted for construction of a Cinema Building. According to the learned Counsel strictly speaking, under Rule 8-A(2)(a)(iii) the surrounding roads and buildings like schools, hospitals, places of worship and the like, which exist upto a distance of 182 metres of the site, shall be marked in the site plan. In this case, existence of Government Junior College which and, so the objection on this count is

untenable. In this sub-rule the words "and the like", clearly show that not only schools, but also all like institutions would come within the purview of this clause. Therefore, this objection cannot be countenanced.

6. The next contention raised by the learned Counsel is that under Rule 8-B(I)(c), the authority can grant No Objection Certificate applied for either absolutely, or subject to such conditions as it thinks fit to impose. These conditions must have a nexus to the objects sought to be achieved by this Rule. Therefore, according to the learned Counsel any condition regarding the construction of the building alone can be imposed and not any extraneous condition for exhibiting the shows. I do not think that I can accede to this contention since the words "subject to such conditions as it thinks fit to impose" are wide enough to bring within its sweep any condition regarding exhibition of shows also. The application made for No Objection Certificate is for construction of a Theatre which is meant for exhibiting the shows. Therefore, the purpose of construction of the theatre is only for exhibition of shows. Imposition of restriction of exhibition of shows at the time of granting permission to construct the theatre cannot be said to be irrelevant or beyond the scope. Therefore, in my view, this contention has no force. Even then the learned Counsel for the petitioner contends relying on Sub-rule (2) of Rule 11(b) that such conditions must be consistent with the provisions of these Rules as the authority may deem it in the interest and health and safety of public. According to the learned Counsel the words "in the interest of the health and safety of the public" would only refer to the viewers and not the general public. The words "in the interest of health and safety of public", no doubt are employed in the context of granting licence in form "D" for running the theatre, and, so, in the first flush it may appear that what is taken care of is the interest of the health and safety of the viewers in the theatre, but on a deeper probe one cannot escape the conclusion that the words "health and safety of the public" are general in nature which apply not merely to the public that visit the theatre, but also the general the learned Counsel that the authority has exceeded its power while imposing such a condition. After all when the Junior College is situated within a distance of 60 yards, imposing a restriction not to exhibit morning and matinee shows while the classes are in progress, cannot be said to be a condition which has no situated within close proximity of a College, there would be disturbance to the students due to sounds of the theatre and also kindless the desire in the boys to avoid classes and visit the theatre.

7. The learned Counsel next contends that under Rule 7(2)(d) a distance of 6.5 metres is prescribed between a Cinema building and other building and no prohibition is made under this Rule which provides for restrictions on grounds of population and distance. Therefore, according to the learned Counsel absence of such a restriction under Rule 7 read with Rule 8(A) is conspicuous and it merely enjoins a duty to disclose the distance between public institutions, places like Schools, hospitals and places of worship etc., but the authorities have no power to refuse permission merely because the theatre is situated within a distance of 182 metres away from the Junior College. Even while granting permission for

construction of the Cinema Building on 27-9-1984, the second respondent had made it clear that permission is granted subject to the conditions stipulated by the Inspecting Officers for cinematograph exhibition. Therefore, several Inspecting Officers who have inspected the premises have recommended certain restrictions in view of the Cinematograph Rules as well as public safety. Therefore, there is nothing wrong in imposing such a condition while granting permission to the third respondent. Further more, the third respondent has constructed the Cinema Building subject to the conditions imposed by the second respondent without demur. No" only that he has also sought for permission to exhibit films and obtained permission on 27-1-1987 for exhibiting the films and started exhibiting films i.e., only night shows for some time. Later, he made an application for deletion of the said condition. The Joint Collector made a personal inspection on 20-1-1989 and found that the theatre is situated at a distance of 60 yards from the Junior College, and, therefore, refused relaxation prayed for. The condition imposed in the order dated 27-9-1984 has become final, since the said order was not challenged. Therefore, the Collector has rightly in my view refused to relax the condition, but the Government | interfered with the said order stating that if the distance is 60 yards, the Joint Collector would not have issued No Objection Certificate and construction permission, and the Joint Collector having permitted the construction and issued "D" form licence should not have restricted the shows. The premise on which the order of the Government is based is wrong. Although, the distance between the Junior College and the Theatre is 60 yards, the Joint Collector permitted the construction subject to exhibiting night shows only. The said condition was reiterated even while granting "D" form licence. Therefore, the Government while finding fault with the Collector in one breath for having granted permission for Theatre which is situated at a distance of 60 yard, relaxed the condition imposed by the Collector for exhibiting morning and matinee shows. This cannot be permitted. Even assuming that the grant of permission for construction of a Theatre is bad, as found by the Government, the Theatre was already over, and, therefore, exhibiting morning and matinee shows alone can be restricted in the interest of the students of the college. Therefore, the order of the Government interfering with the order of the Joint Collector is unwarranted. Therefore, the contention of the learned Counsel that under Rule 9-B, the authority has no power to impose condition of this nature which is arbitrary cannot be accepted. In fact there are no bona fides on the part of the third respondent who had constructed the Theatre in pursuance of the order dated 27-9-1984 subject to conditions imposed under the said order cannot question it subsequently. If he had not accepted the permission granted subject to conditions, he ought not have constructed the Theatre. He might not have filed an appeal challenging the said condition at that time for the fear that no permission would be granted if he had insisted the same. What could not be obtained directly cannot be permitted indirectly. Therefore, the third respondent is not justified in applying for relaxation when there are no change of circumstances.

8. The learned Counsel for the third respondent lastly submitted that another temporary Theatre was permitted without observing the distance rule which is also permitted to run both the morning and matinee shows which is discriminatory. If any Theatre is permitted illegally, it cannot be a ground for the third respondent to perpetrate the said illegality. It is for the authorities to take appropriate action if the said illegality is brought to their notice.

9. For the above reasons, the impugned Government Order - G.O.Rt. No. 807, dated 22-3-1990 is quashed and the writ petition is accordingly allowed, but in the circumstances without costs.