

(1975) 11 AP CK 0010
In the Andhra Pradesh High Court
Case No : Writ Petition No. 5107 of 1975

S. Subba Rao

APPELLANT

Vs

Puli Veeraghavaiah and Others

RESPONDENT

Date of Decision : 10-11-1975

Acts Referred:

Andhra Pradesh Cinemas (Regulation) Act, 1955 — Section 12
Andhra Pradesh Cinemas (Regulation) Rules, 1970 — Rule 7(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1976 AP 309 : (1976) 1 APLJ 347

Hon'ble Judges : Gangadhara Rao, J

Bench : Single Bench

Advocate : P. Shiv Shankar, for the Appellant; A. Panduranga Rao and Govt. Pleader for Home, for the Respondent

Judgement

1. The petitioner is the proprietor of the permanent theater. Sri Seetharama Talkies, Kuchipudi, Divi Taluk, Krishna District, and he is having a valid license to exhibit pictures in that theatre. While so, the District Revenue Officer, granted permission on 30th March, 1974 to the first respondent to construct a temporary theatre. Under Rule 7 (2) (c) of the Andhra Pradesh Cinemas (Regulation) Act 1955 (herein referred to as the rules and the Act, respectively) the distance between a permanent theatre and a temporary theatre should be one kilometer. But in this case, the distance between the petitioner's theatre and the proposed site for construction of a temporary theatre by the first respondent, was only 400 meters. So, the petitioner filed writ petition No. 5828 of 1974 in this court challenging the permission given by the District Revenue Officer in favour of the first respondent. That writ petition was allowed by this court on 3-2-1975 and the permission granted in favour of the first respondent was quashed. Against that judgment the first respondent preferred Writ Appeal No 98 of 1975 and it was also dismissed by this Court on 7th February, 1975. After the disposal of the writ petition, the Tahsildar, Avanigadda issued proceedings on 4-2-1975 asking the petitioner (first respondent) to stop exhibition of shows. Against that order

the first respondent preferred an appeal to the Government on 19th March, 1985. But, it transpires that meanwhile the Government issued G.O.Rt. 154 dated 27-1-1975 granting exemption in favour of the first respondent from the provisions of Rule 7 (2) (c) of the Rules, relating to distance. On 30-7-1975 the Government issued a notice to the petitioner stating that the question to grant of exemption in favour of the first respondent from the operation of Rule 7 (2) (c) of the Rules relating to distance between a temporary cinema and a permanent cinema, was under consideration of the Government and the petitioner was requested to send his representation, if any, within thirty days from the date of receipt of that notice. Thereupon, the petitioner submitted a representation on 5-8-1975 to the Government, requesting them to furnish him with a copy of the appeal petition and the other connected papers pertaining to the proposed grant of exemption from the distance rule. On 16-8-75 the Government furnished the petitioner with a copy of the appeal petition, but stated that they do not consider it necessary to furnish any other papers. The petitioner, then wrote to the Government on 11-1-1975 (sic) to furnish him with copies of the petition if any, filed by the first respondent for exemption and also other papers on the basis of which the Government proposed to grant exemption. The Government gave a reply on 27-9-1975 stating that inasmuch as the copy of the appeal petition filed by the first respondent was furnished to the petitioner, his further request for furnishing other papers was vague and it could not be complied with. It is at that stage, the petitioner has filed this writ petition questioning the notice dated 30-7-75 issued by the Government.

2. Sri P. Shiv Shanker, the learned counsel for the petitioner, has raised before me two contentions. First, the appeal filed by the first respondent on 19-3-1975 before the Government against the order of the Tahsildar is barred by limitation, for it was not filed within thirty days, and there is no provision in the Act, to condone the delay in filing the appeal. Therefore, the entertainment of the appeal by the Government is bad. Secondly, the notice issued by the Government to the petitioner on 30-7-195 to show cause as to why exemption should not be granted in favour of the first respondent from the operation of Rule 7 (2) (c) of the Rules, relating to distance, is bad, finally because the Government have no power to issue such a notice suo motu u/s 12 of the Act and secondly, because the said notice does not mention any grounds or particulars on the basis of which the Government proposed to grant exemption to the first respondent, so as to enable the petitioner to submit his explanation.

3. In this writ petition, it is not necessary for me to decide the first contention, for, as I see, the Government have not given any notice to the petitioner with regard to the appeal filed by the first respondent against the order of the Tahsildar. That appeal is still pending before the Government. The petitioner compensation take objection before the Government that the appeal is barred by limitation. Therefore, I do not propose to decide that question and leave it open.

4. To appreciate the second contention, it is necessary to refer to Section 12 of

the Act and Rule 7 (2) (c) of the Rules.

Section 12 of the Act reads as follows :

"Where i the opinion of the Government reasonable grounds exist for doing so, the Government may, by order in writing exempt, subject to such condition and restrictions as it may impose, any cinematography exhibition or class of cinematography exhibitions from any of the provisions of this Act or of any rules made thereunder."

Rule 7 (2) (c) of the Rules reads as follows :

"Subject to sub-rule (5) of this Rule the locality of cinema buildings in terms of distance from each other or from any other building shall be as specified below :

(a) xx xx

(b) xx xx

(c) 800 meters between a permanent theatre and a temporary theatre."

5. It is argued that since the petitioner (first respondent?) has not filed any petition before the Government u/s 12 of the Act, claiming exemption under Rule 7 (2) (c) of the Rules, the Government have no power to issue the impugned notice. It is also argued that the Government cannot, suo motu issue the notice under that section.

6. So far as Section 12 of the Act is concerned, it is silent as to whether the Government could exercise the power to exempt, on an application made by a party or suo motu. Therefore, I am of the opinion, that the Government can exercise the power under that section either suo motu or on an application made by a party in fact, a reading of that section shows that the Government can exercise the power under that section suo motu. In this case, it is not disputed that the Government have issued the notice on their own accord, but not on the application filed by the petitioner (first respondent?) So, I do not consider that the Government cannot issue it suo motu.

7. The next question is whether the notice is illegal because it does not give any reasons or particulars.

8. u/s 12 of the Act, the Government could grant exemption from any of the provisions of any rule. Therefore, the Government has power to grant exemption with respect to Rule 7 (2) (c). But, u/s 12 of the Act, the Government could grant such an exemption provided, in the opinion of the Government, reasonable grounds exist for doing so. So, it means that there must be grounds and they must be reasonable to grant an exemption. The fact that reasonable grounds should exist in the opinion of the Government means that the matter is left to the subjective satisfaction of the Government; but that subjective satisfaction must be based on an objective consideration of the material before them.

9. As stated by the Supreme Court in M.A. Rasheed and Others Vs. The State of

Kerala, :--

"Where powers are conferred on public authorities to exercise the same when "they are satisfied" or when "it appears to them" or when "in their opinion" a certain state of affairs exists; or when powers enable public authorities to take such action as they think fit" in relation to a subject-matter, the Courts will not readily defer the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon which the validity of the exercise of the power is predicated.

"Where reasonable conduct is expected the criterion of reasonableness is not subjective, but objective. Lord Atkin in *Liversidge v. Anderson*, 1942 AC 206 at p. 228-229 said "if there are reasonable grounds the Judge has no further duty of deciding whether he would have formed the same belief, any more than if there is reasonable evidence to go to a jury, the Judge is concerned with whether he would have come to the verdict." The same of establishing unreasonableness however, rests upon the person challenging the validity of the acts.

"Administrative decisions in exercise of powers even if conferred in subjective terms are to be made in good faith on relevant consideration. The courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the facts in a material respect. The standard of reasonableness to which the administrative body is required to conform any range from the courts' own opinion of what is reasonable to the criterion of what a reasonable body might have decided. The Courts will find out whether conditions precedent to the formation of the opinion have a factual basis."

Therefore, the subjective satisfaction of the Government is certainly subject to scrutiny by courts.

10. It is not disputed by learned Government Pleader or the counsel for the first respondent that if the Government wants to grant exemption with regard to distance under Rule 7 (2) (c) of the Rules, they should give a notice to the other theatre owners who are thereby affected. In fact, in this case the Government have given such a notice on 30-7-75. But, it simply says that the question of granting exemption in favour of the first respondent from the operation of Rule 7 (2) (c) of the Rules is under consideration of the Government and the petitioner was requested to send his representation, if any, within thirty days from the date of receipt of that notice. No grounds or particulars on the basis of which the Government proposed to grant exemption in favour of the first respondent, are mentioned in that notice. If so, how could the petitioner show cause against the grant of exemption in favour of the first respondent? So, the so called notice is, in effect, not a notice at all. It is also fairly conceded by the learned counsel for the first respondent that the Government should have given particulars on the basis of which they proposed to grant exemption in favour of the first respondent.

11. I, therefore, hold that the notice dated 30-7-1975 given by the Government to the petitioner is defective for it does not give any particulars on the basis of

which they proposed to grant exemption in favour of the first respondent, so that the petitioner could submit an effective representation to that notice. Hence, I quash the notice dated 30-7075 issued by the Government to the petitioner. But, it does not preclude the Government to issue a fresh notice to the petitioner giving necessary particulars so that the petitioner could submit his explanation.

In the result, this writ petition is allowed. But in the circumstances of the case, without costs. Advocate's fee Rs. 100.

12. Petition allowed.