(1998) 10 MAD CK 0003

In the Madras High Court

Case No : Writ Petition No. 3576 of 1992

Shanthi Theatre — APPELLANT

Vs

The State of Tamil Nadu — RESPONDENT

Date of Decision : 30-10-1998

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 9, 9(1), 9(2), 9(2)(a), 9(3)
Tamil Nadu Entertainments Tax Act, 1939 — Section 14, 15

Citation : (1998) 10 MAD CK 0003

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : R. Muthukumarasamy, for the Appellant; V. Selvanayagam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.D. Dinakaran, J.—Heard. In the above Writ Petition, the petitioner has prayed for issue of a Writ of Certiorari, calling for the records of

the second respondent made in D.Dis.(L) C.A.167/89 dated 20.12.1991 and the third respondent made in R.Dis.70350/89 M.5 dated 22.6.1989

and quash the said proceedings of the second and third respondents dated 20.12.1991 and 22.6.1989 respectively.

2. The petitioner has filed the above Writ Petition against the proceedings of the second respondent made in D.Dis.(L) C.A. 167/89 dated

20.12.1991, dismissing the appeal preferred by the Writ Petitioner challenging the proceedings of the third respondent made in R.Dis.70350/89

M.5 dated 22.6.1989, on the ground that the said appeal is not maintainable u/s 9A of the Tamil Nadu Cinemas (Regulation) Act, 1955, and

consequently, confirming the proceedings of the third respondent dated 22.6.1989, suspending the ''C form licence to the petitioner-theatre by exercising the powers u/s 9(1) of the Tamil Nadu Cinemas (Regulation) Act, 1955. According to the petitioner, the Commercial Tax Enforcement

Wing, Madras, inspected the petitioner-theatre, namely, Shanthi Theatre at Korattur, Saidapet Taluk on 4.5.1988 and 6.5.1988, and noticed the

following defects:

i. On 4.5.88, the Writ Petitioner''s (theatre management sold the tickets of Rs.2.50 for Rs.4/-; and

ii. On 6.5.88, the Writ Petitioner''s theatre management admitted three persons without tickets.

3. The prescribed authority, by exercising power u/s 15 of the Tamil Nadu Entertainment Tax Act, 1939, passed an order by way of composition

of such offence and imposed a fine of Rs.250/- as compounding fee in respect of the above defects.

4. In addition, the petitioner was given a show-cause notice on 10.11.1988 by the licensing authority, viz., the third respondent herein, under the

provisions of the Tamil Nadu Cinemas (Regulation) Act, 1955, proposing to suspend the ''C'' Form licence for the theatre for ten days, to which,

the petitioner offered his explanation on 28.11.1988, stating that the petitioner = theatre was not selling the tickets on Rs.2.50p. at the rate of

Rs.4/-, adding that even if any third party, after the purchase of the tickets from the petitioner theatre at the rate of Rs.2.50p. and re-sells the same

for a higher price, namely, Rs.4/-, the same is not binding on the petitioner; and that the said three persons said to have been admitted on 6.5.1988

in the theatre, are the employees under the petitioner themselves.

5. Taking note of the order passed by the prescribed authority u/s 15 of the Tamil Nadu Entertainments Tax Act, 1939, namely, compounding the

offence, referred to above, the third respondent, namely, the Collector, u/s 9(1) of the Tamil Nadu Cinemas (Regulation) Act, 1955, even without

considering the explanation offered by the petitioner dated 28.11.1988, suspended the licence of the petitioner from 4.9.1989 to 15.9.1989, by his

proceedings dated 22.6.1989, against which, the petitioner preferred an appeal before the second respondent, who, by his order dated

20.12.1991, dismissed the appeal in limine as not maintainable, as the appeal provided u/s 9-A is available only against the order u/s 9(2) of the

Tamil Nadu Cinemas (Regulation) Act, 1955.

6. In pursuance of the dismissal of the above appeal by the second respondent by his proceedings dated 28.12.1991, the third respondent

proposed to give effect to his earlier order dated 22.6.1989, suspending the ''C'' Form licence for ten days. Hence, the above Writ Petition. Mr.

R. Muthukumarasamy, learned counsel for the Writ Petitioner, invited my attention to Sections 9(1)and 9-A of the Tamil Nadu Cinemas

(Regulation) Act, 1955, and Section 15 of the Tamil Nadu Entertainments Tax Act, 1939 and contends that even though the second respondent,

by his proceedings dated 20.12.1991 dismissed the appeal preferred by the Writ Petitioner against the proceedings of the Collector dated

22.6.1989 as not maintainable u/s 9-A of the Tamil Nadu Cinemas (Regulation) Act, 1955, the petitioner is still entitled to challenge the original

order of the Collector dated 22.6.1989, as the same is deemed to be final and subject to the judicial review.

7. Mr. R. Muthukumarasamy further contends that the order of the Collector cancelling the ''C'' Form for 10 days made in his proceedings dated

22.6.1989, is liable to be quashed for the non-application of mind by the Collector, third respondent to the explanation dated 28.11.1988, offered

by the petitioner to the show-cause notice dated 10.11.1988. Mr. R. Muthukumarasamy, further contends that the licensing authority, namely the

third respondent has erred in imposing a punishment of suspending the licence for 10 days by exercising the power u/s 9(i) of the Tamil Nadu

Cinemas (Regulation) Act, 1955, importing the reasons that weighed with the prescribed authority while exercising its powers u/s 15 of the Tamil

Nadu Entertainments Tax Act, 1939.

8. Per contra, Mr. V. Selvanayagam, learned Government Advocate, placing reliance on the counter affidavit filed on behalf of the respondents,

contends that the prescribed authority, having passed an order compounding the offence punishable u/s 15 of the Tamil Nadu Entertainments Tax

Act, 1939, and the petitioner, having paid the compounding lee of Rs.250/- as per the orders of the prescribed authority u/s 15 of the Tamil Nadu

Entertainments Tax Act, 1939, contend that the third respondent Collector is entitled to rely on the order of compounding the offence by the

prescribed authority for holding that the petitioner has committed the said defects noticed by the Commercial Tax Enforcement Wing on 4.5.1988 and 6.5.1988 and the Writ Petitioner is not entitled to take any exception against the defects pointed out by the authority at the time of inspection

on 4.5.1988 and 6.5.1988, as the Writ Petitioner himself had paid the compounding fee of Rs.250/-, without challenging the same.

9. I have bestowed my careful consideration to the submissions of both sides.

10. In this regard, I am obliged to refer Sections 9and 9-A of the Tamil Nadu Cinemas (Regulation) Act, 1955, and Section 15 of the Tamil Nadu

Entertainments Tax Act, 1939, which read as follows:

Section 9 of the Tamil Nadu Cinemas (Regulation) Act, 1955:

Power to revoke licence or suspend.- (1) Where the holder of a licence or any person employed by him has been convicted of an offence under

clause (a) or sub-clause (i) of clause (b) or clause (c) of Sub-Section (1) of Section 14 of the Tamil Nadu Entertainments Tax Act, 1939 (Tamil

Nadu Act X of 1939) or has been permitted to compound such offence u/s 15of the said Act or has been convicted of an offence u/s 7of the

Cinematograph Act,] 952, (Central Act XXXVII of 1952), or Section 8of this Act, the licence may be revoked or suspended by the licensing

authority by an order in writing"".

Section 9-A of the Tamil Nadu Cinemas (Regulation) Act, 1955:

Appeal against revocation or suspension of licence. --(1) Any person aggrieved by the decision of the licensing authority revoking or suspending a

licence under Sub-Section (2) of Section 9may, within such time as may be prescribed, appeal to such authority as the Government may specify in

this behalf and such authority may make such order in the case as it may think fit.

(2) The Appellate Authority referred to in Sub-Section (1) may stay the execution of any such decision, pending the exercise of its powers under

Sub-Section (1) in respect thereof.

Section 15 of the Tamil Nadu Entertainments Tax Act, 1939:

Power to compound offences. - The prescribed authority may accept from any person who has committed or is reasonably suspected of having

committed an offence against this Act or the Rules made thereunder, by way of composition of such offence -

(a) Where the offence consists of the evasion of any tax payable under this Act, in addition to the tax so payable, a sum of money not exceeding

one thousand and five hundred rupees or thrice the amount of the tax payable, whichever is greater, and

(b) in other cases, a sum of money not exceeding one thousand rupees.

11. No doubt, the prescribed authority is empowered to compound the offence u/s 15 of the Tamil Nadu Entertainments Tax Act, 1939, and to

accept from any person, who has committed or is reasonably suspected for having committed an offence under the Tamil Nadu Entertainments Tax

Act, 1939, or the Rules made thereunder, by way of compensation for such offences which enables the licensing authority, namely, the third

respondent, by exercising his powers u/s 9(1) of the Tamil Nadu Cinemas (Regulation) Act, 1955, to revoke or suspend the licence by an order in

writing, where the holder of such licence had been permitted to compound such offence u/s 15 of the Tamil Nadu Entertainments Tax Act, 1939,

but no licence shall be revoked or suspended u/s 9(1) of the Tamil Nadu Cinemas (Regulation) Act, 1955, even on the ground that the licensee

had been permitted to compound the offence u/s 15 of the Tamil Nadu Entertainments Tax Act, 1939, unless the, licensee had been given a

reasonable opportunity of showing cause against such revocation or suspension, as per Section 9(2)(a) of the Tamil Nadu Cinemas (Regulation)

Act, 1955.

12. Of course, the licensing authority has to give reasons in writing for such revocation or suspension of licence, as contemplated u/s 9(3) of the

Tamil Nadu Cinemas (Regulation) Act, 1955. Therefore, it is clear that the prescribed authority is conferred with powers u/s 15 of the Tamil Nadu

Entertainments Tax Act, 1939 to compound the offence, which the licensee had committed, or is reasonably suspected of having committed an

offence under the Tamil Nadu Entertainments Tax Act, 1939, whereas, the powers conferred on the licensing authority viz., the third respondent

u/s 9 of the Tamil Nadu Cinemas (Regulation)-Act, 1955, contemplates the licensing authority to give reasonable opportunity of showing cause to

the proposed revocation and suspension and to give reasons in writing for such revocation and suspension, which, otherwise, necessitates to

consider the explanation offered by the licensee to hold an enquiry in that regard, and then pass final orders with reasons before revoking or cancelling the licence with definite findings on the explanation offered by the licensee to the show-cause notice. Hence, the power conferred on the

prescribed authority u/s 15 of the Tamil Nadu Entertainments Tax Act, 1939, is not similar to that of the power conferred on the licensing authority

u/s 9 of the Tamil Nadu Cinemas (Regulation) Act, 1955. Section 15 of the Tamil Nadu Entertainments Tax Act, 1939, authorises the prescribed

authority to compound the offence even on the basis of reasonable suspicion. But, u/s 9(1) of the Tamil Nadu Cinemas (Regulation) Act, 1939, the

licensing authority is not authorised to revoke or suspend the licence, merely on the basis of such reasonable suspicion; on the other hand, the

licensing authority is under a statutory obligation to give a reasonable opportunity to the licensee to show cause against the revocation and

suspension; hold an enquiry; consider the explanation and pass orders, after giving a finding based on reasons for such revocation and suspension,

if so required. In other words, the mere compounding of the offence by the prescribed authority u/s 15 of the Tamil Nadu Entertainments Tax Act,

1939, cannot, by itself, be a ground for the licensing authority to revoke or suspend the licence, while exercising the power u/s 9(1) of the Tamil

Nadu Cinemas (Regulation) Act, 1955, particularly when the licensee had offered his explanation.

13. In the instant case, admittedly, the petitioner has offered his explanation dated 28.11.1988 to the show-cause notice dated 10.11.1988 for the

defects noticed by the Commercial Tax Enforcement Wing on 4.5.1988 and 6.5.1988. Eventhough the same was compounded by the prescribed

authority u/s 15 of the Tamil Nadu Entertainments Tax Act, 1939, the licensing authority had failed to apply its mind on the above explanation of

the petitioner dated 28.11.1988, and further erred in revoking the licence for ten days, merely importing the reasons that the prescribed authority

had compounded the offence punishable u/s 15 of the Tamil Nadu Entertainments Tax Act, 1939, and therefore, the same is totally erroneous,

unreasonable and vitiated for want of authority in law and for non-application of mind. Hence, I am obliged to set aside the order dated 22.6.1989

of the licensing authority, namely, the Collector, the third respondent herein, and accordingly, the same is quashed. In the result, the Writ Petition is

allowed; No costs.

