
(1958) 02 MAD CK 0013
In the Madras High Court

S.K. Umapathi

APPELLANT

Vs

A.V. Panchaksharam Pillai and Another

RESPONDENT

Date of Decision : 05-02-1958

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 5

Citation : (1958) 71 LW 424 : (1958) 1 MLJ 352

Hon'ble Judges : Balakrishnan Ayyar, J;Balakrishna Aiyar, J

Bench : Division Bench

Judgement

Balakrishnan Ayyar, J.—Umapathi, the petitioner herein, is the Manager, of the Vijayalakshmi Touring Talkies in Modakur. On 9th

November, 1956, he applied to the Collector of Tanjore for the issue of a "no-objection" certificate under the Madras Cinemas Regulation Act,

1955, in order that he might erect a touring cinema in R.S. No. 540/2 of Modakur village. The rules framed under the Act require that there should

be open space not less than 60 feet wide on all sides of a cinema-shed. As R.S. No. 540/2 did not satisfy this requirement, the Collector rejected

the application of Umapathi. His appeal to the Board having failed he went up in revision to Government. In G.O. Ms. No. 1639 (Home) dated

14th June, 1957, the Government granted exemption to the Vijayalakshmi Touring Talkies from the operation of the 60 feet rule. Fortified by this

exemption, Umapathi applied again on 19th June, 1957, to the Collector of Tanjore for the issue of a "no-objection" certificate and on 21st June,

1957, the Collector granted the certificate to him. Meantime, that is to say, on 26th April, 1957, Panchaksharam Pillai, the first respondent herein,

and the Manager of the Sri Ayyappan Talkies had applied for a "no-objection" certificate in order to construct a touring cinema in R.S. No.

461/1 of Modakur village. Now, as R.S. No. 461/1 is less than four furlongs away from R.S. No. 540/2 in respect of which a licence has been

granted to Umapathi, the Collector rejected the application of Panchaksharam Pillai. He, therefore, came to this Court in W.P. Nos. 502 and 513

of 1957. This Court held that since on 21st June, 1957, the Collector had before him both the applications of Umapathi and Panchaksharam Pillai

he should have considered the relative merits of the applicants and thereafter passed an order on the merits of the case and that he was wrong in

having rejected the application of Panchaksharam Pillai on the ground that a licence had already been granted to Umapathi. An appeal taken

against the orders in W.P. Nos. 502 and 513 of 1957 failed. The licence which the Collector had granted to Umapathi was for a period of three

months only and expired on 25th September, 1957. Both Umapathi and Panchaksharam Pillai filed fresh applications for the issue of a license for

their respective sites for the period subsequent to 25th September, 1957. The Collector heard the advocates on both sides and on 19th October,

1957, passed an order granting a license to Panchaksharam Pillai and in consequence rejected the application of Umapathi. Umapathi now seeks

to canvass the propriety of these orders in these writ petitions.

2. Section 5 of the Madras Cinemas (Regulation) Act directs that in deciding whether to grant or refuse to grant a license the licensing authority

shall have regard to various matters specified therein. One of these matters is ""the previous experience of the applicant"". By virtue of the license

which Umapathi obtained on 21st June, 1957, he had as against Panchaksharam Pillai the advantage of three months " experience. But the

Collector considered that as that experience had been obtained on the strength of a license which the High Court held had been irregularly issued

that circumstance could not be counted in his favour. As regards the suitability of the two sites he found that both were suitable. He expressed the

view:

Thus I find that I cannot make a proper selection among the applicants by applying the provisions of Section 5 of the Act but I must select and

select one applicant only.

and he preferred Panchaksharam Pillai for these two reasons. R.S. No. 461/1 which was the site selected by Panchaksharam Pillai satisfied in its

own right the requirement of the 60 feet rule whereas the site R.S. No. 540/2 could only be considered to satisfy the rule by virtue of the exemption which the Government had granted. The Collector was also of the opinion that running temporary cinemas was a paying business for which there was keen competition and that it was only fair and reasonable that opportunities are conferred on as many applicants as possible instead of restricting the same to a few applicants repeatedly.

3. Mr. G.R. Jagadisa Aiyar, the learned Advocate for the petitioner, contended that Section 5(b) of the Madras Cinemas (Regulation) Act which directs the licensing authority to take into consideration the previous experience of the applicant does not say that the experience should have been obtained in a particular manner and that, therefore, the Collector was wrong in ignoring the prior experience of Umapathi merely because it had been obtained on the strength of a license which this Court held had been irregularly granted. This criticism of Mr. Jagadisa Aiyar is well founded as it is supported by the decision in Writ Appeal No. 121 of 1956. But at the same time it must not be overlooked that the experience which Umapathi had obtained was only relatively short, a point which the Collector has noticed in his order.

4. Mr. Jagadisa Aiyar next stated that, as a matter of actual fact, Umapathi has much longer experience and that the Collector should have held an enquiry into this aspect of the matter since the statute requires him to take into account the previous experience of the applicant. Now when a candidate applies for any post, one would normally expect him* to state what his qualifications and attainments are and, if he has any previous experience which might influence the selecting authority in his favour to give particulars thereof. One does not expect the selecting authority to go round investigating matters of this kind on its own. This investigation would normally be confined to ascertaining whether the claims put forward by the applicant are true and good. In like manner if Umapathi had prior experience which he wanted the Collector to take into account, it was for him to have mentioned what that experience was and the particulars relating to it. It is not as though the parties to this dispute had no legal assistance when the matter was taken to the Collector because that officer mentions in his order that he heard the Advocates on both sides. If, therefore,

Umapathi had prior experience which he wanted the Collector to take into account it was for him to have placed the relevant material before the

Collector and if he failed to do so he has only to thank himself. Mr. Jagadisa Aiyar insisted that the Collector should have made his own enquiries.

This at once raises the question : in what form was he to make the enquiry ? Was that enquiry to be made in the presence of the competing

candidate or was the Collector to call for a report from his subordinate officers ? If he decided to call for a report from his subordinate officers and

those reports were adverse to Umapathi, was Umapathi to be given a chance to contradict them ? And if so in what manner ? On the other hand, if

the report was favourable to Umapathi, how was Panchaksharam Pillai to controvert that ? The Act does not provide for any of the matters. The

Collector cannot be blamed for refusing to embark on such an enquiry. As I said before, if Umapathi had previous experience and he wanted the

Collector to take that into account he should have placed the relevant circumstances before the Collector.

5. A second reason which the Collector assigned for finally preferring Panchaksharam Pillai is that it appeared to him to be fair and. reasonable

that opportunities should be conferred on as many applicants as possible. In allowing himself to be influenced by such a consideration, said Mr.

Jagadisa Aiyar, the Collector was taking into account a circumstance which was not germane to the matter which he had to decide and when an

authority does that, its decision ought to be interfered with. In support of this view he referred to Reg v. Bowman L.R. (1898) 1 Q.B.D. 663 Reg

v. Cotham L.R. (1898) 1 Q.B.D. 802 and Roberts v. Hopwood L.R. (1935) A.C. 578. Anticipating the objection that even if these

considerations were ruled out the order of the Collector can be supported for the other reason he had given, Mr. Jagadisa Aiyar stated that where

a number of reasons have been given for making a particular order and all these seem to have operated on the mind of the licensing authority and it

is not possible to say that the reason which is irrelevant did not influence his decision, the decision itself must be set aside. Vide Dwaraka Das v.

State of J. and K. (1957) S.C.J. 133 and also Satya Narayan Transport Co. Ltd. Vs. Secretary, State Transport Authority, West Bengal and

Others, where it is stated:

If a statutory body is actuated by any extraneous and irrelevant consideration in giving effect to the provisions of the statute under which such

statutory body is created, then such an act will be regarded as one done in excess of jurisdiction.

See also *R. v. Fulhan, etc. Rent Tribunal* (1953) 2 All E.R. 4 the learned Chief Justice observed:

If it can be shown that an inferior tribunal has come to its decision by taking into account matters which it ought never to have taken into account

and are virtually extraneous to what they have to decide, that is a ground for granting certiorari.

The first observation to make on this criticism of Mr. Jagadisa Aiyar is that Section 5 of the Madras Cinemas (Regulation) Act merely enunciates

certain considerations which the licensing authority is bound to take into account. It does not exhaustively enumerate all the considerations which

the licensing authority may take into account. If, therefore, a licensing authority may take into account, circumstances not covered by the categories

enumerated in Section 5 that, by itself,, will not be a ground for interfering with its decision. At the same time, I have to observe that when a

licensing authority takes into consideration matters not expressly enumerated in the statute it enters into territory where controversy may become

inevitable. Considerations which may seem to be fair and just to one school of thought may appear to be revolutionary to another and reactionary

to a third. Nevertheless it does seem a little difficult to say that the consideration which the Collector took into account is an inequitable or

unreasonable one. The view " Let everybody have a chance, is one which will be found to commend itself to a large section of thought. In fact, this

idea is given effect to on the administrative side of this Court. Usually care is taken to see that in the matter of Commissions, receiverships and the

like, there is a fair distribution of this kind of work, they are not repeatedly given to the same individual. In the questionnaire prepared by this Court

for the inspection of Subordinate Courts, a question is included which requires inspecting officers to ascertain whether commissions and the like are

fairly distributed. This has been so for several years and one can hardly find fault with the Collector for having taken into account a consideration

which has had the approval of this Court for so many decades. But at the same time I recognise that there is force in the criticism of Mr. Jagadisa

Aiyar that one consideration which is set out in the order of the Collector is irrelevant to the question he had to decide.

6. It is clear that the Collector found it difficult to choose between these two persons because their relative merits were substantially equal. But, as

he said, he had to make a selection. Now one reason which the Collector gave for preferring Panchaksharam was that the site R.S. No. 461/1 for

which he asked for a license satisfied in its own right the requirement of the 60 feet rule whereas R.S. No. 540/2 did not and an exemption from

the rule had to be obtained. If he had rested his conclusion on that ground it would have been difficult to interfere with his order. If an appointing

authority were to prefer a person who has passed an examination to another who has been exempted from passing the examination, it would be

difficult to say that his preference was wrong. The fact that he gave another reason which is irrelevant to the question he had to decide does not

detract from the strength of the other reason.

7. The jurisdiction of this Court under Article 226 of the Constitution is a correctional jurisdiction. Though its discretion must be judicially exercised

the Court has still a discretion to interfere or not to interfere and where it is clear that the authority whose order is sought to be impeached has

applied its mind fairly, honestly and impartially, and reached a conclusion which cannot be said to be unjust or improper, this Court will be very

slow to interfere.

8. I do not see sufficient reason to disturb the decision of the Collector. These petitions are dismissed with costs in W.P. No. 914 of 157.

Advocate's fee one set Rs. 100.