
(1970) 01 MAD CK 0026
In the Madras High Court

S.P. Shanmugham Chettiar, Managing Director, Jai Hind
Talkies (Paramakudi) Private Ltd.

APPELLANT

Vs

P.S. Somasundaram and Others

RESPONDENT

Date of Decision : 12-01-1970

Acts Referred:

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

Citation : (1970) ILR (Mad) 509 : (1970) 83 LW 440 : (1970) 2 MLJ 245

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—The Writ appellant, S. P. Shanmugham Chettiar, is the proprietor of Jai Hind Talkies and Ravi Theatres in Paramakudi. The first respondent, Somasundaram, wanted to put up a temporary cinema in S. No. 16, Kattuparamakudi, situated in the main bazaar street, Paramakudi Town. This site selected by him is two furlongs from Ravi Theatres and four furlongs from Jai Hind Talkies. Rule 14 (2) of the rules framed under the Madras Cinemas Regulation Act states that a touring cinema shall not be allowed within a distance of 1.606 kms. (1 mile) of the nearest permanent cinema located in the same local area or in the adjacent village, panchayat or town or in the city of Madras. "Local area" for this purpose is defined as "the area within the jurisdiction of a municipal council or panchayat board or revenue village." Section 11 of the Madras Cinemas Regulation Act (Madras Act IX of 1955) gives power to the State Government, by order in writing to exempt, subject to such conditions and restrictions as they may impose, any cinematograph exhibition or class of cinematograph exhibitions, or any place where a cinematograph exhibition is given, from any of the provisions of that Act or of any of the rules made thereunder. The first respondent applied to the local government and got exemption from the rule about minimum distance granted to him by it under the power aforesaid. He did so even before he applied for the licence for his touring cinema and even before applying for a "No objection " certificate. But for such exemption, the rule of minimum distance under Rule 14 (2) above, would have

become applicable to him and it would have automatically prevented him from locating his cinema in the site abovementioned. At this stage, Shanmugham Chettiar, proprietor of the permanent Theatre abovementioned applied to this Court under Article 226 of the Constitution for the issue of a writ of certiorari for quashing the proceedings of the second respondent, the Government of Tamil Nadu, in G.O.Ms. No. 363 dated 13th June, 1969, granting exemption to Somasundaram in respect of the site abovementioned. The learned Judge, Ramaprasada Rao, J., considered in detail the several grounds relied on by the Petitioner for his relief and negatived them. He dismissed the writ petition. Shanmugham Chettiar has filed this appeal under the Letters Patent.

2. The first question urged by the learned Counsel for the petitioner turns on a very small point and can be disposed of easily. He refers to the clause "cinematograph exhibition is given" found in Section 11 of the Act. According to him, the words "is given" imply that before exemption is granted, the touring cinemas should have actually commenced exhibiting pictures in the place. According to him, the words "is given" must be given their grammatical meaning in the present continuous tense. The learned Judge was of the opinion that there was no substance in this objection. We are inclined to agree. 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. The words can also be considered as conveying the meaning in the future tense, proposed "to be given." It is very unlikely that any cinema proprietor would start giving the exhibitions in a site which is objectionable from the point of view of Rule 14 (2), and take the risk of applying to get exemption afterwards, or face a prosecution if he fails to get such exemption. In practice, one can visualise that intending operators will apply and try to get exemption in advance of commencing actual exhibition. It is also well known that words on a statute used in the present tense can also be used to convey the meaning in the future tense, depending on the context in which they occur in the statute. Our view as stated above, is supported by a Bench of this Court in W.A. No. 269 of 1968, an unreported decision, where it is observed:

For the Government to exempt u/s 11, it is not, as we read the section, a necessary condition that a cinematograph exhibition should actually be taking place, or in order to give an exemption in relation to any place, there should be at the time a cinematograph exhibition given.

3. The next argument which played a greater part both before the learned Judge and also before us is that the Government in the present case did not issue a speaking order while granting the exemption. It is urged that the order is invalid because no reasons have been disclosed. The learned Judge while dealing with this objection has observed that when granting the exemption, the Government as an executive authority was exercising a quasi-judicial function. It has therefore a duty to hear objections of people who may be interested. In the

present case, the Government have called for objections and they gave opportunity to affected persons including the owners and proprietors of permanent theatres in the neighbourhood" like the writ appellant, to make representations contra. It was after considering such objections, and also after taking into account relevant circumstances, including the needs of the cinema-going population of the locality, that the impugned order was passed. The connected file shows that the Government had called for reports from local revenue officials in the light of the objections, and only after considering those reports and after satisfying themselves about the real need for the grant of the exemption, that it was granted. In such circumstances, the learned Judge held that the order could not be held to be bad, notwithstanding that ex facie it did not record reasons.

4. We are inclined to agree with the view taken by the learned Judge mentioned above. It is no doubt true that the order of the Government does not give reasons. But the relevant order, G.O. Ms. No. 363, dated 13th June, 1969, which is the impugned order while setting out prior correspondence which were taken into consideration refers to the objections of Somasundaram, dated 31st January, 1969 and 22nd December, 1968 and the report of the Board of Revenue dated 23rd April 1969. This will be sufficient index to show that the Government had before them" as the relevant material for basing its decision, the report from the Board of Revenue! We called for the connected file of the Government, which was also summoned by the learned Judge and made available to the writ petitioner at the time when the writ petition was heard. The Board of Revenue, in its Report dated 23rd April 1969, has enclosed a copy of the letter of the Collector of Ramanathapuram and recommended the grant. The Collector, in his turn, sent a report on 1st April 1969, in which he had referred to the several objections from the permanent cinema proprietors to the proposed site. The crucial point that was mentioned by the Collector in his report, is that Paramakudi Municipality is in the shape of a long and narrow quadrilateral, 3 1/2 miles long and 4 furlongs wide. Its narrow width is due to the fact that there is a big supply channel on one side and the Vaigai river on the other side. The result of this peculiar geographical shape of the municipal area is that no suitable vacant site is available for locating cinemas within the municipal limits beyond one mile from the permanent theatres. There were other data to show that the population of the municipality, after taking into account the floating population, which visited the town because of its being a business centre, would justify the functioning of touring cinemas in addition to permanent cinemas, and that on prior occasions, two touring cinemas had given their exhibitions in the place besides the two permanent cinemas. It appears to us that these reasons which appear to be prima facie valid, were relied on by the Government when they decided to accept and act on the Board of Revenue's recommendation which in turn forwarded the Collector's recommendation giving facts and figures justifying the grant of exemption.

5. There is ample authority for the view that even though the order of the

Government by itself may not be a speaking order, the High Court while dealing with the matter in writ proceedings for the issue of certiorari can refer to the connected file as well as the affidavits supplied by the Government for determining whether the order in question had been passed for valid reasons by the executive authority or whether it had passed it arbitrarily and on irrelevant considerations. In *P.J. Irani Vs. The State of Madras*, , the question arose whether the State Government had properly exercised its power u/s 13 of the Madras Buildings (Lease and Rent Control) Act, 1949, to exempt any building or class of buildings from all or any of the provisions of the Act. The order of the Government was not a speaking order. It was submitted to the Supreme Court that the High Court was in error in calling for the reasons which induced the Government to pass the order of exemption. The Supreme Court, at page 1738 observed that they did not consider this submission wellfounded. They upheld the procedure by which the High Court at the appellate stage permitted the Advocate-General to file a memorandum setting out the reasons why the exemption was granted by the Government. The High Court had considered these reasons submitted in the memorandum, and found that they were not reasons which were countenanced by the policy or the purpose of the Act and that therefore the order of exemption was invalid. It appears therefore to us that there is nothing irregular when the order of the Government in such a case is not a speaking order, for the Government Pleader to supply to the Court by affidavits information as to the actual reasons which were before the Government when it passed the order and which are contained in the contemporaneous file which preceded the grant of the exemption. That is what has happened in this case and we are of opinion that there is no legal authority for holding the order to be invalid because it does not set out the reasons.

6. We have mentioned earlier to the reference in the order of the Government to the report of the Board of Revenue. That itself will also be a justification for the Court when dealing with the matter in certiorari proceedings to call for the relevant report and treat it as part of the record which can be scrutinised for the purpose of determining whether there is an error apparent on the face of the record and which requires the proceedings to be quashed. There is authority for this procedure, in *Re Gilmore's Application* (1957) 1 All.E.R. 796. In that case, the written adjudication of a Medical Appeal Tribunal did not disclose on its face the facts on which the Tribunal based their adjudication. The adjudication contained an extract from the report of a specialist. That report had set out the full facts. It was observed by the Court that by giving the extract from the specialist's report, that report had become a part of the record, and a study of that full report showed that the Tribunal could not have reasonably come to the conclusion they did, and on this ground the Court was prepared to quash the decision of the Tribunal on the ground of error patent on the face of the record.

7. The authorities contra cited by the learned Counsel, which make the passing of a speaking order with reasons therefore necessary, deal with entirely different matters. They relate to decisions in a statutory appeal or a revision before the

executive authority. In those cases, it was held necessary for the executive authority exercising the appellate or revisional power to canvass the reasons pro and con and record them as part of its order. The Supreme Court held that the failure to record reasons in such cases would vitiate those orders. Such orders can be distinguished from orders granting exemption or the like, which though they might be passed by an execution authority in a quasi-judicial capacity, are not decisions in the exercise of appellate or revisional powers. The decisions of the Supreme Court cited in this connection by the learned Counsel for the appellant can be briefly referred to. *Bharat Raja Vs. The Union of India (UOI) and Others*, and *State of M.P. v. Seth Narsing Das* (1969) 2 S.C.R. 848, are cases where the Government were required to pass orders in revision under the Mineral Concession Rules, 1960. In *Bharat Raja Vs. The Union of India (UOI) and Others*, the Supreme Court pointed out that the entire scheme of the rules posits a judicial procedure and the Central Government is required as a tribunal to dispose of the revision. Against the decision of the Central Government, which is functioning as a Tribunal, the Supreme Court can entertain an appeal under Article 136 of the Constitution. After stating the position thus and after an elaborate discussion of the authorities, the Supreme Court at page 1613 gave its conclusion thus:

After all, a tribunal which exercises judicial or quasi-judicial powers can certainly indicate its mind as to why it acts in a particular way and when important rights of parties of far-reaching consequence to them are adjudicated upon in a summary fashion, without giving a personal hearing where proposals and counter-proposals are made and examined, the least that can be expected is that the tribunal should tell the party why the decision is going against him in all cases where the law gives a further right of appeal.

In *State of M.P. v. Seth Narsingh Das* (1969) 2 S.C.R. 848, the same principle was adopted by insisting upon a speaking order giving reasons in similar circumstances. One other case cited in this case is an unreported decision of the Supreme Court in *Travancore Rayons Ltd. v. Union of India* C.A. No. 2252 of 1966 which also dealt with the revisional jurisdiction of the Central Government u/s 36 of the Central Excise and Salt Act. There too the need for the Government acting under a revisional jurisdiction to give reasons in their order was stressed. The first respondent's Counsel also referred to the decision in *Som Datta v. Union of India* (1969) M.L.J. 447 : (1969) 1 S.C.J. 835. That case dealt with an order passed by the Central Government under the Army Act, confirming a decision of the Court Martial u/s 164 of the Act, which defined the powers of the confirming authority. The Supreme Court held that in such a case it is not necessary for the confirming authority to write a speaking order. In our opinion, this decision must be interpreted in the light of the Army Act, which contains special provisions defining the power of interference by the Central Government. The principle of this decision cannot be extended to the present case. In our opinion, the principle laid down in the first three cases just cited above cannot be extended to a case like the present, where the Government is not exercising a

statutory power of revision or appeal, but is only exercising the power to grant exemption from a certain provision of the Act, for which no doubt it has to act in a quasi-judicial manner. But it is only acting as an executive authority in granting the exemption and not as a statutory tribunal exercising the power of revision or appeal. The principle laid down in *P.J. Irani Vs. The State of Madras*, , will apply in such cases. Our attention was drawn to the case in *Ramanathan Chettiar v. Board of Revenue* ILR (1964) Mad. 151 : (1963) 2 M.L.J. 320. Veeraswami, J., as he then was, dealt with a case which arose under the Rice Milling Industry Regulation Act (Madras Act XXI of 1958) and the grant of a licence under that Act by the licensing authority. The learned Judge held that while it was desirable that the authority in such cases should give its reasons, failure to give reasons will not invalidate the order. It is open to the Court to call for the records so that it may be satisfied whether the power had been exercised justly and reasonably and not arbitrarily, more especially when the Act has provided no appeal against such orders.

8. The further point was raised by the learned Counsel for the appellant that Section 11 giving the power of exemption is ultra vires because no guidelines are laid down for the grant of exemption. It will therefore give room for arbitrary exercise of power on the part of the Government. We are unable to accept this contention. There is ample authority for the view that in such cases the Government should adopt the policy outlined in the preamble to the Act as well as in the other portions of the Act and the rules. If the power had been exercised in conformity with the policy thus spelt out, it cannot be considered that the section itself, which grants the power of exemption, is vitiated. On the other hand, what is permissible is to find out whether in each individual case the power has been exercised reasonably in conformity with the principles and policy of the legislation, or arbitrarily in violation of the principles. Jagadisan, J., in *W.P. Nos. 893 and 961 of 1961* observed with reference to the same section that the policy and object of the Act can be gathered from its scheme and the provisions thereof including the preamble. The vesting of an unregulated statutory power in the hands of the executive of the Government cannot be declared to be void and struck down as unconstitutional, as it is implicit that the exercise of such power should be guided by the declared objects and the avowed purposes of the Act. Any abuse of the power by the mala fide, exercise of it by the custodian of the same does not vitiate the power but only vitiates the act which can easily be set aside by the Court. In *P.J. Irani v. State of Madras* ILR (1964) Mad. 151 : (1963) 2 M.L.J. 320 already cited, dealing with the constitutionality of Section 13 of the Madras Building (Lease and Rent Control) Act, the Supreme Court observed at page 1732:

Enough guidance is afforded by the preamble and operative provisions of the Madras Buildings (Lease and Rent Control) Act, 1949, for the exercise of the discretionary power vested in Government u/s 13 to exempt any building or class of buildings from all or any of the provisions of the Act so as to render the impugned section not open to attack as a denial of the equal protection of the

laws. But any individual order of exemption passed by the Government can be the subject of judicial review by the Courts for finding out whether (a) it was discriminatory so as to offend Article 14 of the Constitution, (b) the order was made on grounds which were germane or relevant to the policy and purpose of the Act, and (c) it was not otherwise mala fide.

The same reasoning can be adopted in this case and we hold that Section 11 cannot be struck down as ultra vires and unconstitutional.

9. The appeal fails and is dismissed with costs. Counsel's fee Rs. 200.