

(1995) 02 MAD CK 0056
In the Madras High Court
Case No : W.A. No. 1220 of 1994

The Licensee, Jayaram Touring	Vs	APPELLANT
V. Sudhakar and others		RESPONDENT

Date of Decision : 13-02-1995

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 10, 5, 6

Citation : AIR 1995 Mad 357 : (1995) 2 CTC 73

Hon'ble Judges : K.A. Swami, C.J.;Raju, J

Bench : Division Bench

Advocate : Mr. R.D. Indrasenan, for the Appellant; Mr. K. Govindarajan, M/s. Shivaprakasam, G. Subbiah, Mr. R. Mutukumaraswamy, Govt. Pleader, for the Respondent

Judgement

K. A. Swami, C.J.—The only point for consideration in this appeal is whether G.O.Ms. No. 2033 dated 19-9-1988 can be construed or

can be held to have the force of the rule framed under the Tamil Nadu Cinemas (Regulation) Act, 1955 (hereinafter referred to as the "Act") and

the Tamil Nadu Cinemas (Regulation) Rules, 1957 (hereinafter referred to as "the Rules"). By the aforesaid Government Order, the State

Government has decided as follows:

The Government have examined the matter carefully, in consultation with Commissioner of Land Administration and Commissioner of Commercial

Taxes, Madras. The Government have decided that Tamil Nadu Cinemas (Regulation) Rules, 1957 may be amended to make provision in the said

rules for the grant of No Objection Certificate on population basis. The Government, however, consider that while this may be reasonable in the

rural areas, in Municipal Towns, areas of high labour or working class population

this may appear to be inadequate. The norm of 25000

population does not also take into consideration the fairly large visiting population in pilgrim towns. The Government, therefore, direct that No

Objection Certificates for construction of new cinema theatre including semi permanent and touring cinemas be issued on the basis of one theatre

for a population of every 25000 in areas other than pilgrims towns, tourists centres, municipalities, townships and municipal corporations.

To decide the population the geographical limits of municipalities, townships or municipal corporations, might be taken into account. As regards

villages a group of villages constituting a population of 25000 might be taken into account while assessing the adequacy of the cinema theatres.

The Commissioner of Land Administration Madras is requested to send necessary draft amendments to the Tamil Nadu Cinemas (Regulation)

Rules, 1957.

This Government Order has not been published in the Gazette. A very look at the aforesaid Government Order would go to show that the State

Government took a decision to prescribe certain conditions for grant of No Objection Certificates to new cinema theatres. Accordingly, the State

Government directed the Commissioner of Land Administration, Madras to send necessary draft amendments to the Rules. The Commissioner for

Land Administration sent draft amendments to the Rules and Rule 14(1) came to be amended with effect from 9-7-1993 by G.O.Ms. No. 1044.

To be precise, R. 15(1) came to be substituted by Rule 14(1)(a) and (1)(b). Rule 14(1) as it stood prior to the amendment read as follows:

There shall be no restriction to the grant of licences to permanent and touring cinemas on the basis of population in any place, except towns with a

population of 50,000 and above in which no touring cinema will be allowed, if there are three or more permanent cinemas.

Thus, for granting No Objection Certificate for a permanent or a touring cinema, population was not the basis in places except towns with a

population of 50,000 and above, wherein no touring cinema was allowed if there were already three or more permanent cinemas. But, as stated

above, Rule 14(1) came to be amended by G.O.Ms. No. 1044 dated 9-7-93 and sub-rule (1)(a) of Rule 14 provides thus "in areas other than

pilgrim towns, tourist centres, municipalities, townships and municipal

corporations, the adequacy of existing places for the exhibition of cinematograph films shall be decided on the basis of one theatre for a population of every 25000". Sub-rule(1)(b) of Rule 14 further provides that,

no touring cinemas shall be allowed in towns with a population of 50000 and above if there are three or more permanent cinemas". This

amendment to sub-rule (1) of Rule 14 is pursuant to the decision of the State Government taken as per G.O.Ms. No. 2033 dated 19-9-1988.

Section 10 of the Act empowers the State Government to frame rules to carry out the purpose of the Act. Section 10(1)(a) further provides that

the rules so made shall be published in the Gazette. The G.O.Ms. No. 2033 dated 19-9-1988 has not been published in the Gazette. It is the

contention of the appellant that S. 5(4) and S. 6(1) and (2) of the Act empowers the State Government to issue directions from time to time for the

purpose of carrying out the object of the Act. Those provisions are as follows:

5. Restrictions on powers of licensing authority:--

(4) The Government may issue such orders and directions of a general character as they may consider necessary in respect of any matter relating

to licences for the exhibition of cinematograph films, to licensing authorities; and every licensing authority shall give effect to such orders and

directions.

6. (1) Power of Government to issue directions -- The Government may, from time to time, issue directions to any licensee or to licensees

generally, requiring the licensee or licensees to exhibit such film or class of films having a scientific or educative value, such films dealing with news

and current events, such documentary films indigenous films, or such other films having special value to the public, as may have been approved by

the Government in that behalf from time to time; and where any such directions have been issued, those directions shall be deemed to be additional

conditions and restrictions subject to which the licence has been granted :

Provided that no direction issued under this section shall require the licensee to exhibit any such film or films exceeding six hundred metres at, or for

more than one-fifth of the entire time taken for, any one show.

(2) The Government may, in the interest of the General Public in the State of Tamil Nadu who speak mainly Tamil which is the official language of

the State, issue directions, from time to time, to any class of licensee or to licensees generally to exhibit Tamil films for a period of not more than 9

months in a year; and where any such directions have been issued such directions shall be deemed to be additional conditions and restrictions

subject to which the licences have been granted"".

It may be pointed out here that there is no doubt that the aforesaid provisions do empower State Government to issue directions from time to time

whenever it is considered necessary in respect of the matters relating to licences for the exhibition of cinema films to the licensing authorities and the

every licensing authority is required to give effect to those directions. Sec. 6(1) of the Act empowers the State Government to issue directions to

the licensees requiring them to exhibit such films or class of films having a scientific or educative value. Sec. 6(2) of the Act empowers the State

Government to issue directions in the interest of general public in the State of Tamil Nadu who speak only Tamil, which is the official language of

the State, to any class of licensee or to licensees generally to exhibit Tamil films for a period of not more than nine months in a year. Therefore, it is

relevant to notice that Sec. 6(1) and (2) do not help the appellant in this regard because they empower the State Government to issue directions to

any class of licensee or to licensees generally. It is only Sec. 5(4) of the Act, which empowers the State Government to issue directions or orders

of a general character as the State Government may consider necessary in respect of any matter relating to licences for the exhibition of

cinematograph films to the licensing authorities. It also further states that every licensing authority shall carry out those directions and orders. But, it

is necessary to point out that sub-sec. (4) of Sec. 5 of the Act cannot be interpreted to empower the State Government to issue any directions or

orders in respect of the matter which has already been dealt with by the rules, in other words, in respect of the matters, which are occupied by the

rules. Further, the procedure that provides for framing of the Rules is to publish them in the Gazette and also to place them before the legislature,

within a particular period, so that the legislature, if chooses, can also propose amendments to those rules. Notification of the Rules in the Gazette

has been made a condition precedent for coming into the force of the rules. That being the position, it is not possible to hold that the G.O.Ms. No.

2033, dated 19-9-1988 had the effect of the rule framed under the Act. Moreover, the said Government Order itself did not intend that it should

be construed as an enforceable direction or order, such could not have been the intention of the State Government also for the reason that by

virtue of a provision like Section 5(4) of the Act, no directions, whether specific or general, could be issued to fetter the exercise of a quasi-judicial

power by the Statutory Authority entrusted with the power of granting licences under the Act in accordance with the provisions of the Act and the

rules made thereunder. It only incorporated the decision of the State Government to amend the rules in terms mentioned therein and directed the

Commissioner of Land Administration to send necessary draft amendments to the Rules. That being the position, the licensing authority has

completely misconstrued the order and enforced it, which he should not have done.

2. For the reasons stated above, we find no infirmity in the order of the learned single Judge. Accordingly, the writ appeal has to fail and the same

is dismissed. No costs.

3. Order accordingly.