

(2000) 03 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 14100 of 1993

The Licensee, Krishna Theatre

APPELLANT

Vs

The Collector of Madurai District

RESPONDENT

Date of Decision : 13-03-2000

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 9(1), 9(2)

Citation : (2000) 03 MAD CK 0022

Hon'ble Judges : Jagadeesan, J

Bench : Single Bench

Advocate : N. Thiagarajan, for the Appellant; V. Rengaraju, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Jagadeesan, J.—The Petitioner is the licensee of a permanent cinema theatre viz., "Krishna Theatre" in Palanichettipatty. The said theatre

was subjected to surprise inspection by the Sub-Collector, Periyakulam on 27.11.92. At 4.30 P.M. on enquiry the Inspecting Officer found that

the Petitioner had collected excess fare from some of the spectators and 346 persons had occupied in the first class; while the accounts revealed

that only 35 tickets were sold. Apart from this, certain other violations of the licence conditions have also been noticed. The conduct of the licensee

amounted to clear evasion of Entertainment Tax and the Petitioner had compounded the offence by paying Rs. 1,500/- as compounding fee.

2. On the basis of the compounding of the violations committed by the licensee, the Respondent herein passed an order u/s 9(1) of the Tamil Nadu

Cinema (Regulation) Act, suspending the C-Form licence for 30 days in his proceedings dated 9.7.93. As against which the present writ petition

has been filed.

3. The learned Counsel for the Petitioner vehemently contended that Section 9(2) of the Cinema (Regulation) Act contemplates the issue of show-

cause notice before ever the order of suspension of licence is being made. As the Respondent has failed to issue show-cause notice to the

Petitioner, the impugned order violates the principles of natural justice as well as the statutory requirement and on this short ground the impugned

order is liable to be set aside.

4. The Respondent has filed counter affidavit wherein it is stated that the suspension of the C-Form, licence under the impugned proceedings was

passed only on the basis of the admission made by the Petitioner regarding the violation of the licence conditions. The fact that the licensee has paid

the compounding fee and thereby compounded the offence would clearly establish that the Petitioner had violated the conditions of the licence

which consequentially resulted in the suspension of the C-Form licence and as such there is no need to issue any show-cause notice. The show-

cause notice is necessary only if the Petitioner has got any explanation to offer against the proposed action. When the proposed action itself is the

consequence of an admission on the part of the Petitioner, the issue of show-cause notice is unnecessary.

5. I carefully considered the contentions of both the counsel. There is no dispute in this case with regard to the surprise inspection made by the

sub-Collector and the violations noticed by the Inspecting Officer. There is no further dispute that the Petitioner had paid a sum of Rs. 1,500/-

towards compounding fee and compounded the offence i.e., the violations committed by him.

6. In fact, a Division Bench of this Court consisting of myself and E. Padmanabhan, J. had an occasion to consider the question as to whether any

enquiry is contemplated pursuant to the show-cause notice issued u/s 9(2) of the Cinema Regulation Act; where the show-cause notice is issued on

the basis of the compounding of the offence by the licensee in the case of Muthian v. The Collector, South Arcot Vallalar District W.P.12640/94

etc., dated 11.11.1999). After considering several judgments we have held that when once the licensee had opted to compound the offence, which

means that there exists a pre-existing conviction or order of composition which

does not require any further enquiry and it would be sufficient to issue: a show cause notice as provided in Sub-section (2) of Section 9 of the Cinema (Regulation) Act. But, however, the issue of show-cause notice do not warrant any further enquiry to be conducted. As the licensees themselves had concedingly admitted the irregularities by compounding the offences, nothing more is required to hold that the licensees or their managers or agents or attorneys have violated the licensing conditions and no further enquiry is warranted for an action being taken u/s 9(1) of the Tamil Nadu Cinema (Regulations) Act and hence the authorities are justified in passing an order after issuing the show-cause notice.

7. Of course, the case before the Division Bench were concerning with the orders of suspension of C-Form licence after issue of show-cause notice as contemplated u/s 9(2) of the said. But in this case admittedly no show-cause notice has been issued before ever the impugned order of suspension of C-Form licence. Had the Petitioner been served with the show-cause notice, on the basis of the Division Bench Judgment, the Writ Petition could have been dismissed. As no show-cause notice was issued, the additional question as to whether any show-cause notice itself is necessary has to be considered in this case.

8. As already pointed out, when the licensees have admitted their guilt and compounded the offences without any further enquiry, the order u/s 9(1) of the Cinema Regulation Act i.e., suspending or cancelling the C-Form licence can be made. When that be the case, whether the non-issue of show-cause notice as contemplated u/s 9(2) of the said Act would amount to violation of principles of natural justice. This Court opines that it will not; because when the authority u/s 9(1) of the said Act is empowered to suspend or cancel the C-Form licence, the issue of show-cause notice is of no consequence. The issue of Show-cause will not confer any right on the licensee to give any explanation afresh enabling the authority to hold a fresh enquiry. When the cancellation of the licence is based on the mere compounding of the offence by the licensee and when no further enquiry had been contemplated, the issue of show-cause notice will be only an empty formality to be complied with.

9. In fact, the Supreme Court in a recent judgment in Dharmarathmakara Raibahadur Aroot Ramaswamy Mudaliar Educational Institution Vs. The

Educational Appellate Tribunal and Another, has held as follows.

Giving of opportunity or an enquiry of course is a check and balance concept that no one's right be taken away without giving him/her opportunity

or without enquiry in a given case or where the statute requires. But this cannot be in a case where allegation and charges are admitted and no

possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations?.... In a case where the facts

are almost admitted, the case reveals itself and is apparent on the face of the record, and inspite of opportunity no worthwhile explanation is

forthcoming as in the present case, it would not be a fit case to interfere with the termination order.

So the principle of issue of show-cause notice is necessary in order to give an opportunity to the aggrieved to submit the explanation before ever

any final order is to be passed. But when the final order is to be passed is on the basis of the admission of the aggrieved himself, then there is no

need to issue any show-cause notice, as the final order is based only on the admission made by the aggrieved and not by any other fresh material

within the knowledge of the punishing authority. Based on the principles laid down by the Apex Court in the above case, there is absolutely no

necessity to issue the show-cause notice as contemplated u/s 9(2) of the said Act for the completion of the empty formality before ever any order

is to be passed u/s 9(1) of the said Act; where such order is based on the compounding of the offences or violations by the licensee. Hence the

non-issue of the show-cause notice by "the Respondent before ever the impugned order of suspension was passed will not vitiate the impugned

order either on the ground of violation of the principles of natural justice or otherwise. Hence there is absolutely no merit in the Writ Petition.

10. However, taking into consideration of the lapse of time of more than six years, I am of the view that the period of suspension of "C Form

licence of the Petitioner can be reduced to ten days and accordingly reduced. with the above modification with regard to the period of suspension,

the Writ Petition is dismissed. There will be no order as to costs.