(2010) 11 MAD CK 0067

In the Madras High Court

Case No : Writ Petition No. 18841 of 2003

The Licensee/Proprietor Naga A/c. Theatre APPELLANT

Vs

The District Collector RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 7, 8, 9
Tamil Nadu Entertainments Tax Act, 1939 — Section 15, 8A, 9
Tamil Nadu Entertainments Tax Rules, 1939 — Rule 32C

Citation : (2010) 11 MAD CK 0067

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : N. Thiagarajan, for the Appellant; S. Anitha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The Petitioner has filed the present Writ of Certiorari praying to call for the records of the Respondent made in his

proceedings in Roc. No. 43772/01-1 dated 22.06.2003 for suspending the ''C'' Form license of the Petitioner''s Theatre called Nag A/c. Theatre

at Indigo for 5 days viz., 15.07.2003 to 19.07.2003 and to quash the same.

2. The Learned Counsel for the Petitioner urges before this Court that the impugned order of the Respondent in Roc. No. 43772/01-1 dated

22.06.2003 in suspending the ''C'' form license of the Theatre for 5 days 15.07.2003 to 19.07.2003 is an illegal and arbitrary one and also that the

Respondent''s impugned order dated 22.06.2003 is illegal one because of the fact that he has failed to decide the issue whether the act of

compounding of an offence made in the present case comes within the ambit of Section 9(1) of the Tamil Nadu Cinemas (Regulations) Act, 1955 and in the absence of such determination, he has no jurisdiction to suspend the license, as per Sub-section thereto.

3. According to the Learned Counsel for the Petitioner, the Petitioner has paid a compounding fee of Rs. 1,000/- for the irregularity viz., not

writing the Daily Collection Report and as a matter of fact, there has been no evasion and the factor of not writing/preparing Daily Collection

Report in time is not an irregularity visualized under the Tamil Nadir Cinemas Regulation Act, 1955 and the Rules thereto.

4. The Learned Counsel for the Petitioner vehemently contends that in the present case, the act of compounding has not been done as per Section

15 of the Tamil Nadir Entertainments Tax Act and as such, the Respondent/ District Collector''s order in suspending the ''C'' Form License by

applying Section 9(1) of the Tamil Nadir Cinemas Regulation Act, 1955 is a clear case of non application of mind, which has resulted in

miscarriage of justice.

5.A plea is taken on behalf of the Writ Petitioner that the purported violation in regard to the non preparation of Daily Collection Report in time is a

violation of Rule 32 C(1) of the Tamil Nadir Entertainments Tax Act and as such, the Respondent/District Collector ought not to have taken action

as per Section 9(1) of the Tamil Nadir Cinemas Regulation Act, 1955 and in short, there are no provision in the Tamil Nadir Cinemas Regulation

Act, 1955 for punishing a Licensee in regard to the non completion of the Daily Collection Report within the time limit and hence, the order of the

Respondent is to be interfered with by this Court to prevent an aberration of justice.

6. Proceeding further, it is the contention of the Learned Counsel for the Petitioner that the impugned order of the District Collector in suspending

the ''C'' Form License for 5 days is in violation of the principles of natural justice, although the Petitioner has asked for personal hearing in his

explanation sent through his counsel before passing the final order, no such opportunity has been provided to the Petitioner by the Respondent and

in any event, the suspension of ''C'' Form License for 5 days viz., 15.7.03 to 19.7.03 is an excessive, unwarranted and arbitrary one and therefore,

the same is to be set aside by this Court in the interest of justice.

7. The Learned Counsel for the Petitioner in support of the contention that when

an individual has compounded the offence nothing more is further

required to be done cites the Division Bench judgment of this Court 2000 2 L.W.255, (W.P.20224/94) Sri Kamatchi Theatre, by its Licensee K.

Ramakrishnan, Devathampatti, Madurai District v. The District Collector, Madera, (W.P.12640/94) T. Muthian, Licensee, New Cinema Theatre,

Cuddlier v. The Collector, South Arcot Vallalar District, Cuddalore, (W.P.228/96)Theate Pavalam Rep. by its Parnter K.S. Sethupathy v. The

Appellate Authority Cum-asst. Commissioner, Chepauk, Madras-5 and Anr., wherein it is held as follows:

The expression ""composition"" or ""compounding of offence or irregularity"" means accepting the acquiescence of irregularity committed or the

violation of the statutory provision and by compounding the offence, the person who is permitted to compound, admits the irregularity or violation.

It may be for ever so many reasons, or it may be to avoid embarrassment or the situation, to purchase peace. By mere compounding, such an

individual is not exonerated, nor a blank shield or protection cover is thrown against him for the commission or omissions for which compounding is

permissible under law. Therefore, it follows when once the licensee compounds the offence u/s 15 of the Act, it would mean that the licensee had

committed or is reasonably suspected of having committed an offence and on his application, is permitted to compound the offence. In other

words, it is a clear verdict by confession to avoid penal consequences.

Also, in the aforesaid decision, at pages 256 and 257, it is laid down as follows:

Section 15 of the Entertainments Tax Act is an enabling provision which enables the authorities to compound such person who has committed an

offence or reasonably suspected of having committed an offence against the provisions of the Act or the Rules made hereunder. By compounding

the offence, by invoking Section 15 of the Act, the licensee or the person authorized by him admits the commission or omission of those offences

or violations of statutory provisions for which a penalty or fine or imprisonment is provided for, as the case may be. In other words, it is an

admission of the guilt and on payment of certain compounding fee, the accused person is to be proceeded, which would not ipso facto mean that

he has been cleared of the accusations or the offences committed by him. Para 52 In other words, it is an admission of the guilt which has led to the passing of an order of permission to compound, and there is nothing further to be tried or to be gone into after the licensee had been permitted

to compound an offence u/s 15 of the Entertainment Tax Act. It is a verdict by confession and, therefore, the consequences follows. Para 56 The

admission of facts on the part of the licensee and his application for compounding would amount to his admitting the offence or violation or

commission of an offence under the Entertainments Tax Act which, by itself, is a ground for taking action u/s 9(1) of the Cinemas (Regulations)

Act. ""As such, we are of the view that the approach of S.S Subramani,J., has to be sustained and we are of the considered view and with respect

we hold that the view taken by Dinakaran,J., directing an enquiry to be held even after compound of offence is not warranted and such an

approach would defeat the very statutory provision, as according to us, in our view compounding would mean confession of the incident or

violation or offence.

8. Continuing further, in the decision aforesaid at page 257, it is held thus:

The situation in the present case is in no way different. As already pointed out, there has been compounding of the offences u/s 15 of the

Entertainments Tax Act and based upon that compounding, further action is taken u/s 9(1) and therefore, as provided in Section 9(2), a show

cause notice alone is sufficient, and it is not necessary to hold a detailed enquiry as has been held by Dinakaran,J. ""We agree and approve the view

taken by Dinakaran,J. In other words, we hold that when once the licensee is permitted 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. We also make it clear that when the Petitioners themselves had concedingly admitted the irregularities

by compounding the offences, nothing more is required to hold that the Petitioner 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 Cinemas (Regulations) Act and the

authority is well justified in passing an order after issuing the show cause notice.

9. The Learned Counsel for the Petitioner also cites the order of this Court in W.P. No. 18401 of 1998 dated 24.11.1998, The Licensee,

Meenakshi Theatre, Kumbakonam Taluk, Thanjavur District v. The Govt. of Tamil Andu, Rep. by its Secretary to Govt. (Home) Cinema, Dept. ,

Fort st. George, Madras-9 and 2 Anr., wherein it is held as follows:

... In the result, I set aside the order of the Revisional Authority and I direct the First Respondent to consider the question as to whether there are

circumstances to compound the offence u/s 8A of the Act 30 of 1997. For the said limited purpose, the matter is remitted back to the Revisional

Authority the First Respondent herein, which shall pass fresh orders on the same with a notice to the Petitioner.

He also cites the Division Bench order of this Court dated 13.11.2002 in W.A.3426 of 2002 wherein this Court has inter alia observed as follows:

... Having regard to the above fact, we lift the suspension on condition of the Appellant depositing Rs. 20,000/- (Rupees Twenty Thousand only)

with the Special Tahsildar (Adi Dravidar Welfare) Palani by tomorrow evening. If the above amount is paid, then the Appellant shall be entitled to

continue the screening of the films from 15.11.2002 without reference to any suspension period.

10. Also, the Learned Counsel for the Petitioner brings to the notice of this Court that order in W.P. No. 22816 of 2004 dated 12.08.2004

wherein it is held as follows:

... Having regard to the facts brought to my notice; the unreported judgment dated 26.08.2003 passed by a Learned single Judge of this Court in

W.P. No. 23734 of 2003 and another unreported judgment dated 13.11.2002 passed by a Division Bench of this Court in W.A. No. 3426/2004,

while holding that the violation alleged against the Petitioner stands fully established, I am inclined to reduce the suspension period from 15 days to

7 days. The suspension order will come into effect from 16.08.2004 and will expire on 22.08.2004, both days inclusive. The writ petition stands

disposed of accordingly. Consequently, W.P.M.P. No. 27588/2004 is closed.

11. Conversely, it is the contention of the Learned Government Advocate for the Respondent that the officials of the Enforcement Wing of the

Commercial Taxes Department on 14.04.2002 at 07.20 p.m. has inspected the Petitioner''s Theatre by surprise and though the Movie has started

at 6.05 on that day, the Daily Collection Report has not been closed till 07.20 p.m. after a lapse of one hour and 15 minutes in violation of the provisions of the Tamil Nadu Entertainments Tax Act 1939 and a Statement to this effect has been obtained by the Entertainment Tax Officials

from the Licensee and in fact, the Licensee has admitted the offence and paid a compounding fee of Rs. 1,000/-to the Commercial Taxes

Department.

12. The Learned Government Advocate appearing for the Respondent contends that on receipt of a Report from the Commercial Taxes

Department, a show cause notice has been issued to the Licensee in the proceedings Roc. No. 43772/01-13/C1 dated 12.6.2002 requiring him to

explain as to why action should not be taken action against him as per Section 9(1) of the Tamil Nadu Cinemas Regulation Act, 1955, etc., and the

Petitioner''s written explanation dated 19.07.2002 has been found to be an unacceptable one and the Respondent/Collector has been perforced to

suspend the ''C'' Form license as per his order dated 22.06.2003 for 5 days from 15.7.2003 to 19.7.2003.

13. Added further, it is the submission of the Learned Government Advocate for the Respondent that after the act of the Petitioner in compounding

offence with the Commercial Taxes Department, the Respondent/District Collector on receipt of Report from the Commercial Taxes Department

is to take action as per Section 9(1) of the Tamil Nadu Cinemas Regulations Act, 1955 and accordingly, the Respondent/District Collector has

taken necessary action in the instant case on hand, which cannot be found fault with by the Petitioner in any manner whatsoever.

14. It is the stand of the Respondent/District Collector that non preparation of the Daily Collection Report is a serious offence as per the relevant

provisions of the Tamil Nadu Entertainments Tax Act, 1939 and once the Petitioner/Licensee has been permitted to compound the offence it will

be sufficient for the Respondent/District Collector to issue a show cause notice as per Section 9(2) of the Tamil Nadu Cinemas Regulation Act,

1955 and as such, there is no need to afford an opportunity of personal hearing to the Petitioner and as such, the writ petition is devoid of merits.

15. This Court has heard the Learned Counsel for the Petitioner as well as the Learned Government Advocate for the Respondent and noticed

their contentions.

16. It is to be noted that Section 7 of the Tamil Nadu Cinemas Regulations Act,

1955 speaks of the power of the Government or the District

Collector to suspend exhibition of film in certain cases. As a matter of fact, Section 8 A of the Act confers powers on the Licensing Authority to

compound the offence. Section 9 of the Act specifies the power to revoke or suspend the license.

17. It is to be borne in mind that the right to take administrative action under the condition of a license can in no way be affected by the penal

sections specified in the Tamil Nadu Cinemas Regulations Act, 1955 in respect of violation of any of the provisions of the Act and Rules. Sections

8 and 9 of the Tamil Nadu Cinemas Regulations Act, 1955 pertains to prosecution entailing the termination of license as well, and the sanction

provided as per Condition 16 of the licensee issued under the Act or Rule as an administrative punishment intended to enforce.

18. Be that as it may, when the licensee has admitted the guilt and compounded the offence with any further enquiry, an order as per Section 9(1)

of the Tamil Nadu Cinema Regulations Act, 1955 viz., suspending or cancelling the ''C'' Form license can be issued. In the instant case on hand, a

show cause notice as per Section 9(2) of the Act has been issued to the Petitioner and when the Authority as per Section 9(1) of the Act is

empowered to cancel or suspend the ''C'' Form license, the issuance of show cause notice is of little avail when the cancellation is based on the

mere compounding of offence by the licence and when no further enquiry is visualised, then the issuance of show cause notice will only be futile, an

empty formality to be adhered to, in the considered opinion of this Court.

19. It is not out of place for this Court to make a significant mention that as per Section 9(1) of the Tamil Nadu Cinemas Regulations Act, 1955

compounding of an offence is not a ground to revoke or suspend license as per decision 1999 MLJ 263 (madras), The Licensee, Bhuvaneswari

Talkies, Gudiyatham v. Appellate Authority, Joint Commissioner i, Local Administration Department, Madras 8.

20. At this juncture, this Court recalls the decision of this Court Ganesh Talkies v. The District Collector, North Arcot Ambedkar District 2000 (1)

MLJ 658 (Madras) wherein for the irregularities committed by the Petitioner therein, the Tax Authorities compounding the offence and the

Petitioner paying the fine amount subsequent to the notice as per Section 9(1) of the Tamil Nadu Entertainments Tax Act X of 1939 and the

Petitioner''s License being cancelled for 30 days is held to be a proper one by this Court.

21.A Licensee is permitted to compound an offence as per Section 15 of the Tamil Nadu Entertainment Tax Act X of 39 can be proceeded with,

as opined by this Court.

22. A closure reading of Section 9(1) of the Tamil Nadu Cinemas Regulations Act No. IX of 1955 indicates that even after compounding the

offence as per Section 15 of the Tamil Nadu Entertainment Tax Act 1939, the License for the cinema may be revoked or suspended and indeed,

the compounding of an offence is neither a premium nor lever to revoke or suspend the license, in the considered opinion of this Court. Suffice it

for this Court to point out that even after a licensee is permitted to compound an offence as per Section 15 of the Tamil Nadu Entertainment Tax

Act X of 39, a Licensee can be proceeded with as per decision 2000 MLJ 168 Madras, Proboth Chandra Ghosh V. Urmila Dassi.

23. In regard to the compounding of an offence, it is bounded by this Court that the compounding of an offence is only a confession of an Act

/offence and when a show cause notice has been issued as per Sub-Section 2 of Section 9 of the Tamil Nadu Cinema Regulations Act, 1955 in a

case where a Licensee compounding an offence as per provisions of the Tamil Nadu Entertainments Tax Act then there is no question of providing

either reasonable opportunity of hearing or a personal hearing because of the simple fact there is nothing to be gone into after a licensee

compounding the offence and in short, the Act of compounding an offence by the Writ Petitioner is nothing but a tacit confession, which is not a

favourable circumstance in his favour.

24. In regard to the contention that in the present case compounding has not been made as per Section 15 of the Tamil Nadu Entertainments Tax

Act 1939 viz., the non preparation of Daily Collection Report in time, it is to be pointed out that Rule 32 C(1) of the Tamil Nadu Entertainments

Tax Rules, 1939 enjoins that the Proprietor of the Cinema Theatre is to keep a correct and complete account in Form II in duplicate in respect of

all shows held everyday, etc., and that the entries shall be written up and the account closed within ninety minutes of the time notified for the commencement of the show and this account and tickets remaining in stock shall be shown to the Inspecting Officer along with other connected

records when demanded etc., and in the instant case, the Commercial Taxes Department officials of the Enforcement Wing inspected the Licensee

the Petitioner''s Theatre on 14.04.2002 at 07.20 p.m. by making a surprise visit and has found that the Daily Collection Report has not been

closed and the Collector upon receipt of the Report from the Commercial Taxes Department that the Petitioner has compounded the offence has

taken action as per Section 9(1) of the Tamil Nadu Cinema Regulations Act, 1955 and the same is in order and therefore the contra view taken by

the Writ Petitioner that non preparing/writing Daily Collector Report in time is not a violation under the the Tamil Nadu Cinema Regulations Act,

1955 cannot stand a moment scrutiny in the eye of law.

25. Apart from the above, this Court points out that when the Petitioner has compounded the offence by paying a sum of Rs. 1,000/- then there is

a pre existing conviction and therefore, the same requires any another enquiry and the ends of justice will be made if a show cause notice as per

Section 9(2) is issued to the Petitioner and in the instant case on hand, a show cause notice has been issued before passing the suspension of

license as per Section 9(1) of the Act and the concerned Authority is well within its purview to pass the appropriate order after issuing show cause

notice and in the present case before us, the order of the Respondent in proceeding Roc. No. 43772/01-1 dated 22.06.2003 in suspending the

''C'' Form License of the Petitioner''s Theatre viz., Naga A/c. Theatre, Dindigul District from 15.07.2003 to 19.07.2003 is a valid one and the

same does not suffer from material irregularity or with patent illegality and in any event, on an overall assessment of the facts and circumstances of

the case, in an integral fashion, it cannot be said to be an excessive or arbitrary one but the same is minimal and prudent one to turn a new leaf in

the near future, in the considered opinion of this Court. Viewed in that perspective, the impugned order of the Respondent which is not to be

interfered with and resultantly, the writ petition fails.

26. In the result, the writ petition is dismissed leaving the parties to bear their own costs.

