

(2000) 11 MAD CK 0011
In the Madras High Court

Theatre Mathi

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 20-11-2000

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 3

Citation : (2001) 1 MLJ 301

Hon'ble Judges : K. Govindarajan, J

Bench : Division Bench

Judgement

K. Govindarajan, J.—In all these writ petitions, the petitioners have challenged the Government Order in G.O.Ms.No. 1311, Home

Department, dated 9.9.1996 in exercise of powers conferred u/s 3 of the Tamil Nadu Cinemas (Regulation) Act, 1955 (hereinafter called "the

Act"), amending the Rule 92 of the Tamil Nadu Cinemas (Regulation) Rules, 1957 (hereinafter called "the Rules"), by substituting new Sub-rule to

Rule 92(1) to the existing Sub-rule (1) of Rule 92 of the Rules.

2. The petitioners are all permanent cinema theatre licensees. When they sought for renewal of their licence by making application under Rule 92,

the authorities have not entertained the application for renewal on the ground that the petitioners have not produced evidence from the concerned

local authority to the effect that there is no property tax due in respect of the site and building of the cinema theatre, and so the petitioners have

filed the above writ petitions challenging the said Government Order dated 9.9.1996 insofar as it relates to Rule 92(1)(v) of the Rules.

3. The Tamil Nadu Cinemas (Regulation) Act, 1955 was enacted to provide for regulation of exhibition by means of cinematograph in the State of

Tamil Nadu. As per Section 3 of the Act, no person shall give an exhibition by means of cinematograph elsewhere than in a place licensed under

this Act or otherwise than in compliance with any conditions and restrictions imposed by such licence. If a person wants to construct and

reconstruct a building for the purposes of exhibition of cinematograph films, he should make an application in writing to the licensing authority u/s 5-

A of the Act read with Rule 35 of the Rules, for permission. After complying with the requirements as set out in the Rules, he can make an

application for licence in writing to the licensing authority on the basis of the certificates obtained, as referred to in Rule 40 of the Rules. On receipt

of the said application for licence together with the said certificates, the licensing authority shall issue to the applicant a licence in Form "C for the

period covered by Chief Electrical Inspector's certificate and structural soundness certificate. As per Rule 40(3) and (4) of the Rules, the

certificates issued by the Electrical Inspector and the Executive Engineer are valid only for a period of three years and so the licence in Form "C

issued to a person is also valid only for three years as contemplated under Rule 40(3) and (4) of the Rules.

4. Under Rule 92 of the Rules, the said person shall make an application one month prior to the expiry of the said licence for renewal. Before the

substitution made under the impugned Government Order, the applicant should send his application with a declaration referred to in Item (2) in

Rule 41, in Part II which reads as follows:

92. (1) Every application for the renewal of the licence shall be made one month before the expiry of the existing licence.

Such application shall be accompanied by-(i) a declaration referred to in item (in Rule 4) in Part II.

(ii) a treasury receipt for the payment of fees at the prescribed rates.

(iii) Evidence of having insured the cinema building, machinery, etc. against fire hazards (and as evidence of having insured the audience with an

insurance company against the insurer's liability for payment of compensation to the victims of fire or other accidents inside the auditorium).

(iv) A certified copy of the deed referred to in item (in Rule 41) in Part II and a sworn affidavit by the applicant to the effect that the said deed is

valid till date.

(v) Permission from the Commissioner, Hindu Religious and Charitable Endowments, Madras, for the leasing out of the land to the applicant, if

such land is within the jurisdiction of the Hindu Religious and Charitable Endowments Department.

5. By the impugned order, the licensee is asked to produce some more documents. For convenience and for better appreciation, the same is reproduced as follows:

Amendment:

In the said Rules, in Rule 92 for Sub-rule (1) the following sub-rule shall be substituted, namely:

(1) Every application for the renewal of the licence shall be made one month before the expiry of the existing licence. Such application shall be

accompanied by:

(i) a declaration reference to in item (2) in Rule 41 in Part II;

(ii) a treasury receipt for the payment of fees at the prescribed rates;

(iii) evidence of having insured the cinema buildings, machinery, etc., against fire hazards;

(iv) evidence from the Commercial Tax Authorities that there is no tax due under the Tamil Nadu Entertainment Tax Act, 1939 (Tamil Nadu Act X

of 1939) and the Tamil Nadu Local Authorities Finance Act, 1961 (Tamil Nadu Act 52 of 1961).

(v) evidence from the local authority that there is no property tax due in respect of the site and building of the cinema theatre under the Madras

City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919) or the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of

1920) or the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994) or the Madurai City Municipal Corporation Act, 1971 (Tamil

Nadu Act 15 of 1971) or the Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981) or the Tiruchirapalli City

Municipal Corporation Act, 1994 (Tamil Nadu Act 27 of 1994) or the Tirunelveli City Municipal Corporation Act, 1994 (Tamil Nadu Act 28 of

1994) or the Salem City Municipal Corporation Act, 1994 (Tamil Nadu Act 29 of 1994) as the case may be;

(vi) a certified copy of the deed referred to in item (5) in Rule 41, in Part II and a sworn affidavit by the applicant to the effect that the said deed is

valid till date; and

(vii) permission from the Commissioner, Hindu Religious and Charitable Endowments, Madras, for the leasing out of the land to the applicant, if

such land is within the jurisdiction of the Hindu Religious and Charitable Endowments Department.

6. Insofar as the present cases are concerned, the petitioners are aggrieved only with respect to Rule 92(1)(v) of the Rules, which compels the

licensee to produce evidence from the local authority to the effect that there is no property tax due in respect of the site and building of the cinema

theatre for the purpose of renewing the licence.

7. The learned Counsel appearing for the petitioners has submitted that the object of the Act is only to provide regulation of exhibition by means of

cinematograph in the State of Tamil Nadu. The Government has no power to make such a rule so as to enable the local bodies to collect the

property tax with respect to the building in question. According to him, such a provision is not having any nexus to the object to be achieved by the

Act, and so it is ultra vires of the Act. He has also submitted that the said Rule impugned in the writ petition is nothing but arbitrary and

unreasonable and so it is violative of Article 14 of the Constitution. It is his further submission that complying with such condition is impossible as

the petitioners have either raised objection for increase of the property tax or filed suit or revision challenging the same. According to him, when the

dispute is pending between the parties, the petitioners cannot expect the concerned local body to give no due certificate with respect to the

property tax for the purpose of applying renewal of licence in "C" Form.

8. The learned Additional Advocate General has submitted that the Government is having power to issue direction or order under Sections 3 and 4

of the Act, in the interest of public and also to regulate the exhibitions by means of cinematograph. According to him, the payment of property tax

is also a matter relating to licence. He has also submitted, to substantiate the same, that by collection of such tax by the local bodies, the benefit

goes to the public. It is his further submission that there should not be any encumbrance on the property where cinemas are shown. As the public

are having access to such building, the interest of the public is also involved. He has also relied on the decision in Deepak Theatre, Dhuri Vs. State

of Punjab and others, .

9. Now the question to be decided is whether the conditions mentioned in Rule 92(1)(v) of the Rules can be sustained, and whether such a Rule is

in consonance with the object of the Act and to implement the scheme of the Act.

10. Rules made under any Act must be consistent with the scope and object of the Act. On the other hand, Rules are only to implement the scope

of the Act effectively. The purpose of the Rule is to provide for procedural matter or matters which are subsidiary to the provisions of the Act.

They may be in some cases explain the provisions of the Act. The courts have held that when the delegate is giving the power of making Rules and

Regulations in order to fill in the details to carry out and subserve the purposes of the legislation the manner in which the requirements of the statute

are to be met and the rights therein created to be enjoyed. It is an exercise of delegated legislation. So, Rules are not made to supplant provisions

of the Act but to supplement provisions of them.

11. If the Rule making power is conferred without specifying the purpose as such, but generally for carrying out the purposes of the Act, the legal

effect is to confer a plenary power on the delegate to make Rules subject to the overall requirement that the Rules made ought to have a nexus with

the purposes of the Act, which can be ascertained from the provisions of the Act. Even when broad Rule making power is conferred, the Rules still

remain to be struck down by the courts. If the courts find them to be against general tenor or underlying the purpose of the object of the Act.

12. While construing the validity of Rule 441 of Telegraph Rules, 1885, the learned Judge of this Court, in the decision in Velur D. Narayanan Vs.

General Manager, Madras Telephones, Madras and another, , has held as follows:

The power to make rules is expressly limited to framing of rules consistent with the provisions of the Act. Any rule which operates to exclude

matters from the purview of the Arbitrator u/s 7-B, contrary to the provisions of the Telegraph Act would be clearly ultra vires.

The learned Judge in the abovesaid decision has further held as follows:

14. Rule 441 of the Telegraph Rules has to be read with Section 7B of the Act. When so read, it is clear that the charges mentioned in the bill sent

to the subscriber will constitute conclusive proof that the charges mentioned therein has been incurred, unless in the statutory arbitration it is found

that the charges levied are excessive or incorrect. If the rules were to be construed as precluding arbitrator from examining the correctness or

otherwise of the charges levied in the bill sent to the telephone subscriber, the rule would be clearly ultra vires of the powers conferred on the

Central Government u/s 7(i) of the Act. If it is possible to construe, the rule in a manner which is consistent with the provisions of the Act and

thereby save it from being declared as ultra vires such a construction should be preferred.

13. u/s 10(1) of the Act the Government has power "to make Rules to carry out the purposes of the Act. u/s 10(2) of the Act without prejudice to

the generality of the power given u/s 10(1) of the Act, the Government may make Rules relating to the subjects mentioned under the said sub-

Section. Though the Government has power to do so, the said power is given to the Government by legislature only to make Rules to substitute

provisions of the Act. Merely because power is given to make Rules, the Government cannot use that power to make Rules, which does not have

any nexus to be achieved for the purpose of enforcing the object of the Act.

14. While construing the scope of Andhra Pradesh Unaided Private Medical and Dental Colleges (Establishment, Management and Admission)

Rules, 1992, the Apex. Court has, in the decision in Nedurimilli Janardhana Reddy v. Progressive Democratic Students Union J. T. (1994) 6 S.C.

170, held as follows:

A survey of the provisions of the Act relating to the status, powers and functions of the competent authority and of the provisions of the Rules

shows that the Rules are not as indeed they cannot be, made to supplant the provisions of the Act but to supplement them and they have to be

read as such.

15. While dealing with the Rules framed under Punjab Cinemas (Regulation) Act, 1952, the Apex Court in the decision in Deepak Theatre, Dhuri

Vs. State of Punjab and others, , rejecting the submissions made on behalf of the theatre owners that classification of seats into four classes and

fixed rates of admission to the respective classes by the licensing authority, exercising powers under Rule 4 of the Punjab Cinemas (Regulation)

Rules and condition 4A of the licence on that score, the Apex Court has found that though the right to fix rates of admission is a business incident,

the theatre owner having created an interest in the general public by constructing the cinema theatre to exhibit cinematograph film therein, it has become necessary for the State to step in and regulate the activity of fixation of maximum rates of admission to different classes as a welfare weal, and ultimately held as follows:

power to fix rates of admission includes power to amend and revise the rates from time to time. The statute vests that power in the licensing

authority subject to control by the State Government. The fixation of the rates of admission has thus become an integral and essential part of the

power and regulation of exhibition of cinematograph.

16. From the abovesaid decision, it is clear that the Rule framed exercising powers u/s 10 of the Act, if it is alien to the object to be achieved under

the Act, cannot be sustained in law and it has to be declared as ultra vires to the Act itself. Coming to the present cases, the object of the Act is to

regulate the exhibition by means of cinematograph in the State of Tamil Nadu. By making the impugned Rule, the petitioners are compelled to

produce evidence from the local authority to the effect that there is no property tax due in respect of the site and building of the cinema theatre. On

the other hand, the theatre owners are compelled to pay the entire property tax for the purpose of renewing the licence as a pre-condition for

making application for renewal of licence, which cannot be construed as the same is made to regulate the exhibition by means of cinematograph.

17. Though certain averments have been made by the petitioners regarding the difficulty in getting such evidence from the local authority on the

basis of pendency of their objections to levy of property tax, suits and appeals, I am not inclined to go into the same, as I am deciding the issue

only by testing the validity of the Rule itself.

18. The said Rule is made only to enable the local authority to collect property tax with respect to the site and building in which the cinematograph

films are exhibited. For the said purpose, sufficient provisions have been made in the respective Acts and Rules made thereunder. Elaborate

procedure has been contemplated and the local authority can recover the said tax from the defaulters under the Acts and Rules made thereunder.

19. Now it has to be found out whether such payment of property tax is related to the object to be achieved under the Act. The learned Additional

Advocate General relying on the decision in Deepak Theatre, Dhuri Vs. State of Punjab and others, , has submitted that Rules can be made under

the Act in the interest of public. According to him, Rule 92(1) of the Rules enables the local authority to collect property tax and thereby the public

will be benefited, and it shall be taken as the said Rule has been made in the interest of public. He has also submitted that the theatre is being used

to exhibit films for the public and so the Government must see that the said building is not suffered with any encumbrance. I am not able to accept

the said submission. Even in the said decision in AIR 1992 S.C. 1519, the Apex Court has upheld the Rules and powers of the authorities in

making classification and fixation of rates on the basis that the said fixation of rates has become an integral and essential part of the power and

regulation of exhibition of cinemas. So, the said decision cannot have any assistance to sustain the argument on behalf of the petitioners as the

impugned Rule has been made for the purpose of collecting the property tax. Payment of property tax is nothing to do with the regulation of

exhibition by means of cinematographs and it will not in any way affect the interest and facilities to be given to the cine-going public. The object as

alleged by the learned Additional Advocate General to bring the said Rule cannot be countenanced, as the said object is nothing to do with the

regulation of exhibition by means of cinematograph.

20. It is relevant to mention here that even if a person applies for fresh licence, there is no restriction either to pay arrears of property tax or

continue to pay the arrears during the currency of licence. Only at the time of renewal, the said condition asking to get evidence for payment of

property tax from the local authority has been imposed. The applicants for getting licence have to give details about the payment of tax dues

payable by him to the Government in the relevant forms. Even the said particulars are required only for the purpose of deciding the antecedents of

the applicants and it was not made as a pre-condition to make an application under the Act.

21. The learned Additional Advocate General relying on Sections 3 and 5(4) of the Act has submitted that the Government can make any

condition and restriction in the licence and issue such orders and directions of a general character in respect of any matter relating to licence for the

exhibition of cinematograph films to licensing authorities, and every licensing authority should give effect to such orders and directions. But the

impugned Rule is not made under those provisions. Even such powers given under Sections 3 and 5(4) as relied on by the learned Additional

Advocate General should be only to enforce the object of the Act. Merely because such powers have been given, exercising such powers the

Government cannot issue any orders or directions or impose any conditions or restrictions in the licence which are alien to the object of the Act, to

be implemented.

22. So, as stated already, the scheme and object of the Act are not to collect property tax and so the impugned Rule 92(1)(v) of the Rules issued

under G.O.Ms.No. 1311, Home Department, dated 9.9.1996 cannot be sustained in law and the same has to be declared as ultra vires and

unenforceable. Consequently, these writ petitions are allowed accordingly. No costs. The connected W.M.Ps. are closed.