
(1996) 07 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No. 666 of 1993 and W.M.P. No. 15167 of 1995

V. Balraj

APPELLANT

Vs

The State of Tamil Nadu and others

RESPONDENT

Date of Decision : 09-07-1996

Acts Referred:

Entertainment Tax Act, 1939 — Section 5(4)
Tamil Nadu Cinemas (Regulation) Rules, 1957 — Rule 14

Citation : AIR 1997 Mad 187 : (1997) 1 CTC 726

Hon'ble Judges : Jayarama Chouta, J

Bench : Single Bench

Advocate : N.C. Ramesh, for the Appellant; V.M.G. Varadharajan, Govt. Advocate and C. Selvaraju, for the Respondent

Judgement

1. This Writ Petition is filed by one Balraj petitioner herein praying to issue a writ of Certiorari, calling for the records of the 1st respondent in

G.O.Ms. No. 1695 Home (Cinema-I) Department dated 14-10-1992 rejecting the Revision Petition filed by the petitioner against the order of the

second respondent in C.A. No. 162 of 1989 dated 5-8-1991 upholding the order of the Collector of Tiruchirapalli in RC.D1/ 9712B/88 dated

26-5-1989 rejecting the petitioner's request for the grant of a No objection certificate to locate a permanent theatre in S.F. No. 109/6 of

Agaramsigoor Village in Perarnbalur Taluk, Tiruchirapalli District and to quash the said order of the first respondent in G.O. Ms. No. 1695 Home

(Cinema-I) Department dated 14-10-1992.

2. In support of the writ petition one S. Renganathan the Manager of Sri A. Balraj has sworn to an affidavit in which he has stated that the

petitioner was granted No Objection Certificate for locating a Permanent Cinema

in S.F. No. 109/8 of Agaramsigoor village in Perambalur Taluk, Tirchira-palli District in Collector's Proceedings RC.D.1.62231/77 dated 17-ff-1978. Pursuant thereto the construction of the building in accordance with approved plans, was commenced and substantial work was made with the main walls coming up to about 12 feet height expending nearly Rs. 3,00,000/-. But due to an unfortunate calamity in the family and other unavoidable circumstances, the building could not be completed and the No Objection Certificate lapsed.

3. The petitioner therefore applied to the Collector of Tiruchirapalli on 10-9-1988 for the grant of fresh No Objection Certificate for the same site with the incomplete building standing thereon.

4. The Superintendent of Police stated that there is no objection for the grant of No Objection Certificate. The Commercial Tax authorities stated that the petitioner is not in arrears of tax and that, he has not been convicted for any offence under the Entertainment Tax Act. The Tehsildar after inspection reported that the site is in the lawful possession of the petitioner and satisfied all the requirements of the Rules.

5. The affidavit further reads that the fourth respondent herein, who is a trade rival running a Permanent Cinema called ""Sri Varadharaja Palace"" in the village objected to the grant on frivolous and untenable grounds. The Collector rejected the application submitted by the petitioner by his proceedings in RC.DI/97128/88 dated 26-5-1989 on the sale and erroneous ground that there is no scope for another cinema in the area.

6. Against the said order of the Collector, the petitioner preferred an appeal before the Joint Commissioner-1 of Land Administration, Madras, the second respondent herein. The second respondent has also rejected the said appeal and the revision preferred before the Government-first respondent did not give a good result in favour of the petitioner. Against the said orders, the present writ petition has been filed for the relief which has been mentioned earlier.

7. A number of grounds have been raised in the affidavit to set aside the orders passed by the respondents I to 3.

8. On behalf of the fourth respondent one V. Ramanathan, the licensee of Sri Varadharaja Palace has sworn to a counter-affidavit. In the said counter-affidavit he has denied all the allegations contained in the affidavit as

well as amended affidavit except those that are specifically admitted herein. After narrating all the facts in detail which led to filing of this writ petition, the dependent has further stated that No Objection Certificate applied for by the petitioner for location of permanent theatre at Agaremseefur was considered by the authorities taking into consideration of the existing theatres as well as No Objection Certificate granted by the authorities within the radius of 8 k.m., within the radius of 8 k.m., there are about 40 villages coming both in Tirchirapalli and South Arcot Vallalar Districts and the total population was only about 93,000. For this area of 8 k.m. and population of 93,000 at that time when he applied in the year 1989, there were five permanent theatres and another No Objection Certificate in favour of One Thangaraj who has now started the theatre in the name and style of Periyasamy Theatre. He has denied all the allegations that the provision was in existence of 1978 and the petitioner was granted No Objection Certificate. After denying all the other allegations made by the petitioner, this respondent submitted that this writ petition has no merit and liable to be rejected.-

9. I heard the learned Advocate Mr, N. O. Ramesh, for the petitioner, Mr. V.M.G. Varadharajan, Government Advocate for the respondents 1 to 3 and Mr. C. Selvaraju, learned counsel for the fourth respondent and perused the records. Even-though number of grounds have been raised in the writ petition, the learned counsel for the petitioner submitted that the strongest point in his favour urged by him is found in ground-I in the affidavit. He submitted that G.O. Ms. No. 2033 Home (Cinema-1) Department dated 19-9-1988 which prescribed every 25,000 population one cinema, has not come into force and has not been amended. The G.O.Ms, specifically stated that the Government have decided the Tamil Nadu Cinemas (Regulation) Rules, 1957 (hereinafter called as "The Rules") may be amended to make the provisions in the said rules for the grant of No Objection Certificate on population basis. Para 5 of the said G.O. Ms. also states that the Commissioner of Land Administration Madras is requested to send necessary draft amendments to the Tamil Nadu Cinemas (Regulation) Rules, 1957. But till now the rules have not been amended. Rule 14(1) states that ""there shall be no restriction to the grant of licence to permanent and travelling 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.

10. Elaborating this argument, he submitted that when the petitioner submitted his application for No Objection Certificate on 10-9-1988 the population was not a criterion for granting licence to permanent theatre. In this connection he has invited my attention to Rule 14(1) which reads as follows:---

There shall be no restriction to the grant of licences to permanent and touring cinema 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.

The said rule was amended and came into force on 9-7-1993. The amended rule reads as follows :--

In the Rule 14 for sub-rules (1) and (2) the following rules shall be substituted namely :--

(1) there shall be no restriction to the grant of licence to permanent and travelling cinemas on the basis of population.

amended Rule 14(1)(a)

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 25,000.

Explanation:

Area for this purpose would mean area within 8 kilometres radius from the proposed site for which No Objection Certificate is sought and the population of all the villages falling within that 8 kilometres radius shall be taken into account.

(b) No touring cinema shall be allowed in towns with population of 50,000 and above if there are three or more permanent cinemas.

11. The learned advocate pointed out that he has filed an application for No Objection Certificate on 10-9-1988 which was rejected on 26-5-

1989 and the appeal preferred by the petitioner was dismissed on 5-8-1991, and the revision before the first respondent was rejected on 14-10-

1992. The amended Rule 14(1) came into force only on 9-7-1993. He also

further brought to my notice the G. P. amending the said amending

Rule 14(1) which came into force on 6-9-1995. The amended rules reads as follows:--

In Rule 14 for sub-rules (1) and (2) the following rules shall be substituted namely:--

There shall be no restriction to the grant of licence to permanent and travelling cinemas on the basis of population.

12. Placing reliance on the rules, he"; submitted that even at the time of filing the application before the competent authority or even now the

population of the locality was not a criterion and hence all the authorities i.e., respondents I to 3 have considered the application of the petitioner

for grant of No Objection Certificate from the point of view of population. He submitted that on this ground alone this writ petition is entitled to be

allowed.

13. He also pointed out that the authorities below were not justified in placing reliance on the guidelines found in G.O.Ms. No. 2033 dated 19-9-

1988 to consider the No Objection Certificate which has no statutory force. In this connection, he has invited my attention to a decision of a

Division Bench of this Court reported in the The Licensee, Jayaram Touring Vs. V. Sudhakar and others, . The Bench has observed as follows (at

p. 359 of AIR):

..... Further, the procedure that provide 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 force of the rules. That being the position, it is not

possible to hold that the G.O.Ms. 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".

14. Placing reliance on this decision, the learned Advocate for the petitioner submitted that the respondents 1 to 3 were not justified in rejecting his application filed for No Objection Certificate.

15. On the other hand, the learned Advocate appearing for respondent No. 4 took me through orders which have been passed by the respondents

1 to 3 and submitted that the said orders did not suffer from any legal infirmity and authorities were justified in considering the No Objection

Certificate keeping in mind the guidelines laid down in G.O.Ms. No. 2033 dated 19-9-1988, population being the criterion for giving No

Objection Certificate for the Cinema theatre.

16. The learned Government advocate supported the contention of the fourth respondent and pointed out that the application for No Objection

Certificate should be considered with reference to the rule which was in existence at the time of submitting the said application. He also supported

orders passed by the authorities below.

17. After hearing the rival contentions and perusing the orders of the authorities, I am of the opinion that the authorities below were not justified in

rejecting the application of the petitioner for No Objection Certificate on the ground of population. When the application was filed in the year

1988, the Rule 14(1) did not refer to population in the case of permanent cinema theatre. Even when the revision petition was dismissed by the

Government on 14-10-1992, even the existing Rule 14(1) was not amended. It was amended only on 9-7-1993. Further again in the year 1995,

when we are dealing with this matter the criterion of population has been removed. "

18. Under these circumstances, the authorities were not justified in rejecting the No Objection Certificate applied by the petitioner.

19. For the reasons stated above, I allow this writ petition and set aside the orders passed by the authorities below and direct the third respondent

to grant No Objection Certificate applied by the petitioner within a period of two months from the date of receipt of copy of this order. There will

be no orders as to costs. Consequently, W.M.P. No. 15167 of 1995 does not survive and accordingly dismissed.

20. Order accordingly.