
(1986) 04 MAD CK 0009
In the Madras High Court
Case No : W.A. No. 854 of 1985

V. Dhandayuthapani

APPELLANT

Vs

S.P. Krishnamurthi and Others

RESPONDENT

Date of Decision : 23-04-1986

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 114
Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 11
Tamil Nadu Cinemas (Regulation) Rules, 1957 — Rule 14(2)

Citation : AIR 1988 Mad 78 : (1987) 100 LW 527

Hon'ble Judges : M.N. Chandurkar, C.J.; Venkataswami, J

Bench : Division Bench

Advocate : V.P. Raman, for Jayanthi Natarajan and P.S. Raman, for the Appellant; Govt. Pleader and E. Padmanabhan, for the Respondent

Judgement

Chandurkar, C.J.—The only question which arises in this appeal is whether the State Government has power to review its own order made

under S. 11 of the Tamil Nadu Cinemas (Regulation) Act, 1955 (hereinafter referred to as the Act). By an order dated 3-7-1985. The appellant,

who carries on the business of running a touring cinema talkies, was exempted from the provisions of R. 14(2) of the Tamil Nadu Cinema

(Regulation) Rules, 1957 (hereinafter referred to as the Rules). The first respondent was also granted a "no objection certificate" in 1980 for

locating a permanent theatre in Survey No. 2/1 Singarampettai village, Uthangarai taluk, Dharmapuri Dist. and in pursuance of that certificate,

respondent No. 1 put up a permanent theatre and was also granted a "C" form licence. The first respondent had thus been exhibiting pictures in his

permanent theatre since 29-8-1983.

2. The licence of the present appellant was due to expire on 1-4-1984. He,

therefore, made an application for exemption with regard to the distance specified in R. 14(2) of the rules. The State Government by an order dated 11-1-1983 rejected the request of the appellant for the grant

of an exemption after getting reports. from the Collector and considering the representations of the Commissioner of Land Administration.

3. After his application for exemption rejected on 11-1-1985 the appellant once again renewed the request by his application dated 26-2-1985.

This application purported to be one for the review of the order dated 11-1-1985. The case sought to be made out in the review application was

that if the appellant was allowed to continue to exhibit films in his touring talkies, additional revenue could be earned by the Government and that

there was sufficient scope for the additional cinema theatre to be there. This request was granted at on 3-7-1985 even though the Collector and

the Commissioner of Land Administration were against the granting of the exemption. Indeed, the order granting the exemption specifically states

that these authorities had recommended rejection of the application for review. The justification shown in the order for reviewing the earlier order-

of rejection of the application for granting exemption was that there was scope for functioning of both the permanent theatre and the touring cinema

talkies, and both these theatres would fetch good revenue to the Government besides providing entertainment to the people of that locality

satisfactorily.

4. This order of exemption was challenged by the respondent No. 1, herein by a Writ petition under Art. 226 of the Constitution of India.

5. The learned Judge allowed the writ petition holding that there was no further or fresh materials before the State Government for the grant of

exemption in favour of the appellant, when, on the basis of the same material, the Government had declined to grant such an exemption to him on

an earlier occasion. However, the learned Judge seems to have taken the view that the power of the State Government under S. 14 of the Act was

not exhausted or dried up once it was exhausted. The learned Judge referred to the decisions in *Kailasam v. Secretary to Govt. of Tamil Nadu*

Home (Cinema), (1981) 94 Mad LW 578 : AIR 1982 NOC 85 and *Palanivelu Gounder v. State of Tamil Nadu*, (1983) 2 M U 200, which took

the view that the power under S. 11 of the Act is not exhausted with the passing

of a single order by the Government and merely because an earlier order is passed subject to certain conditions and limitations, it could not be taken that the power under S. 11 to exempt is restricted by the condition imposed in the order and held that these decisions would apply to the instant case. The teamed Judge also took the view that there was no need tot the conferment of powers of review on the Government in order to enable it again to exercise the powers of exemption under S. 11 of the Act. However, in view of the fact that the learned Judge found that there was no fresh material to enable the State Government to exercise its powers of review, the order of exemption. made in favour of the appellant was quashed and the writ petition was allowed. This order is now challenged by the appellant.

6. Mr. V. P. Raman, appearing on behalf of the appellant has contended that the learned Judge was not right when he took the view that there was no fresh material before the State Government. In support of his argument reliance was placed on the material submitted to the Government in the review application itself in which details with regard to the audience and income for the period during which both the permanent and the touring theatres were functioning were given. He has also contended that the learned Judge seems to have considered the scope of the powers of review of the State Government in the light of the analogous provision for review under O. 47, C.P.C. The argument is that while O. 47, R. 1, C.P.C. expressly refers to fresh material furnishing sufficient justification for review under the Civil Procedure Code, no such limitation was to be found anywhere in the provisions of the Act and, therefore, on a consideration of the same material, the State Government was entitled to arrive at a fresh and an entirely different conclusion. Thus, according to the learned counsel, the learned Judge having held that there was a power of review, he was in error in setting aside the order made by the State Government on an erroneous assumption that unless there was fresh material, review of the previous order was not permissible.

7. Undoubtedly, t6e learned Judge has taken the view that there is a power of review under the provisions of S. 11 of the Act. It is, therefore, necessary to refer to S. 11 and the construction which has been placed upon S. 11 by this Court in the two decisions referred to above. The rules

have been made by the State Government in exercise of the rule-making power in S. 10. Section 11 which specifically deals only with power to

exempt reads as follows : -

Power to exempt : The Government may, by order in writing, exempt, subject to such conditions and restrictions as they may impose, any

cinematograph exhibition or class of- cinematograph exhibitions or any place where a " cinematograph, exhibition is given from. any of the

provisions of the Act or of any rules made thereunder.

Under R. 14(l) of the Rules, it is provided that 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 cinemas will be allowed, if there are three or

more permanent cinemas.

The effect of this sub-rule (1) of R. 14 is that the grant of licences to permanent and touring cinemas is to be liberal except that in towns with a

population of 50,000 and above and if there are three or more permanent cinemas, licences to a touring cinema cannot be granted. St" "b-rule (2)

regulates the distance between a touring cinema and a permanent cinema. This is, therefore, in the nature of a restriction. Rule 14(2) reads as

follows-

(2) The restrictions in respect of distance between. Cinemas shall be as specified below: -

A touring cinema in any place shall not be allowed within a distance of 1.609 Km of the nearest permanent cinema located in the same local area

or in the adjacent village, panchayat or town or in the city of Madras.

"Local area⁷ for this purpose means the area within the jurisdiction of a municipal council or a panchayat Board or a Revenue village.

The distance between any two touring cinemas shall be not less than 0.402 KM.

There shall be no restriction in regard to the distance between one permanent cinema and other permanent cinema.

Sub-rules (3) and (4) provide for the manner of measuring the distance between two cinemas.

8. The effect of R. 14(2) is that the minimum distance between the touring cinema and the permanent cinema, whether it is in the same village or in

the town, has to be 1.609 KM while the distance between any two touring cinemas has to be 0.402 km, or more. In the present case, the

appellant's touring cinema was within a distance of 1.609 km from the permanent cinema (owned by respondent No. 1). That is why he sought an exemption.

9. Now so far as the provisions of the Act are concerned, it has to be noticed that the distance between the two cinemas is one of the restriction

from which an exemption may possibly be granted. The power to exemption under S. 11 is not a power which could be exercised only in respect

of the distance rule. It is a power which can be exercised for granting of exemption from any of the provisions of the Act or the Rules made

thereunder. The Act itself placed several restrictions on the powers of the licensing authority. It prescribes several conditions also subject to which

a licence for exhibition of films can be granted. The power of review which is now sought to be canvassed has to be considered not merely in the

context of the grant of exemption in respect of the distance rule, but if there is a power of review, then that power can be exercised in respect of

any orders made by the State Government under the different provisions of the Act. Since we are inclined to take the view that the learned Judge

does not seem to be right when he held that it was not necessary for any express provision with regard to the power of review, we put to the

learned counsel for the appellant to satisfy us as to whether a power of review is implicit in a statutory authority in the absence of any express

conferment of this power on an authority which is vested with statutory functions. The State Government or the authority having power to grant a

licence under the Act are vested with the power to exercise certain exercise certain powers specifically provided for by the Act itself. While acting

under the provisions of the Act, every action by the licensing authority or the State Government must be traceable to a statutory provision or to the

vesting of such a power by the statute. If any action is not traceable to a statutory provision under the Act, then such an action would be ultra vires

the power vested in the State Government, or the licensing authority under the Act. It is well established that the right of appeal or the right to ask

for a review of an earlier order by a statutory authority does not vest in the litigant or a person, unless it is so expressly provided for. The right of

appeal and the right to ask for a review are creatures of the statute and if a statute did not provide either for an appeal or for a review, then the

licensing authority or the State Government will not be entitled to exercise any powers in the nature of an appeal or in the nature of a review. The

question does not seem to be open to any doubt. In *Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji*, the Supreme

Court was dealing with a matter of Saurashtra Land Reforms Act. Certain functions of the State Government under S. 63 of the above Act, were

delegated to the Commissioner. In certain revenue matters, applications were filed before the State Government to set aside the orders of the

Special Mamlatdar and the Deputy Collector and" remanded the cases to Mahalkari to rehear and decide the cases on merits. On remand, the

matters were dealt with by Mahalkari, in appeal by the District Deputy Collector and in revision by the Tribunal. The Tribunal rejected the revision

application taking the view that it has no jurisdiction to entertain it, as the State Government had earlier considered the matter. The tenants filed a

revision petition to the State Government. The State Government sent the revision petition to the Commissioner to hear the parties and submit a

report. The Commissioner reported that the orders of the District Deputy Collector should be set aside. After hearing the parties, the Government

set aside the orders of the District Deputy Collector. Since in the meantime the State of Gujarat came to be formed, the Commissioner set aside

the order passed by the Saurashtra Government earlier taking the view that the Government had no competence to make the order. This order of

the Commissioner was challenged in a writ petition and the High Court took the view that the Commissioner was not right in his conclusion that the

State Government should not have passed the earlier order. The High Court also quashed the order of the Tribunal and directed the Tribunal to

dispose of the matter in accordance with law. This order of the High Court was challenged in the Supreme Court. Observing that the

Commissioner was functioning as the delegate of the State Government and that the order passed by the Commissioner amounted to a review of

the order made by the Saurashtra Government, the Supreme Court held as follows-

It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No

provision in the Act was brought to our notice from which it could be gathered that the Government had power to review its own order. If the

Government had no power to review its own order, it is obvious that its delegate could not have reviewed its order.

These observations apply with full force to the case before us. There is nothing in the Act which empowers the Government to review its orders

made expressly under the provisions of the Act.

The two decisions on which the learned Judge has relied on do not seem to go as far as to hold that irrespective of whether the statute expressly

provides for a power of review or not, the State Government under the Act has an inherent power of review. In *Kailasam v. Secretary to Govt. of*

Tamil Nadu Home (Cinema), (1981) 94 MLW 578 : AIR 1982 NOC 85 the facts were that the person who had applied for a no objection

certificate to put up a semi permanent theatre and was granted a no objection certificate, ought to have completed the construction of the semi

"permanent theatre in the site for which no objection certificate was given on" or before, 29th March 1978. That person not having completed the

construction within the prescribed time, again, applied to the State Government for extension of time. On 14th December 1977, the appellant had

applied to the Collector for the grant of a no objection certificate to put up a permanent theatre in Survey number referred to by him. When the third

respondent had asked for extension of time, the appellant put in objections on the ground that the State Government had no power to grant such

extension.

The State Government by order dated 25th July 1978 in the exercise of its powers under Sec. 11 of the Act extended the period of two years and

directed the third respondent to complete the construction by 20th March 1980. This order granting extension of time was challenged by the

appellant stating that Sec. 11 did not empower the State Government to extend the time. That writ petition was admitted and interim stay was

granted. However, that stay was vacated on 5th Feb., 1979. The third respondent was not able to complete the construction even by 20th March

1980. Hence, he again prayed for an extension of time. The appellant therein took the same objection. The State Government however granted the

extension. The State Government, without giving any opportunity to the appellant

passed an order of extension. The learned single Judge upheld the order granting extension of time observing that there was no provision requiring the appellant to be heard. One of the contentions raised in appeal by the appellant challenging the order of dismissal of his petition was that the State Government had no power to grant under Sec. 11 of the Act any extension of time granted -originally in the no objection certificate. Negating this contention and construing Sec. 11 of the Act, the Division Bench observed as follows-

The State Government has power to grant exemption in relation to the rules framed under the Act. Simply because the previous Government Order dated 25th July 1978 specified certain limitations in putting up construction, it does not mean that the Government's power under S. 14 is restricted owing to the conditions imposed in the G.O. referred to above. The power under, Sec. 11 is a continuing power and does not get itself exhausted with the passing of a single order in respect of an individual. The order impugned is an independent order and that has been passed in exercise of the power conferred under S. 11 of the Act." The Division Bench, therefore, held that the Government by their order dated 18th July 1980 had exempted the place in S. No. 183/1 from the condition of no objection certificate in form B for the year from 29th March 1980 to 28th March 1981, exercising the powers under Sec. 11 of the Act and that the exemption granted was only in respect of a no objection certificate in order to construct the semi permanent theatre on the proposed site.

10. Now to say that a power under Sec. 11 of the Act does not get exhausted once it is exercised is not the same thing as saying that the State, Government is entitled to exercise a power of review in respect of an order which is passed under Sec. 11 of the Act, the power of exemption which has to be exercised under Sec. 11 of the Act undoubtedly can be exercised from" the time to time. But the extent of that power cannot extend as far as to review the earlier order, and the observations made by the Division Bench in *Kailasam v. Secretary to Govt. of Tamil Nadu* Home (Cinema) (1981) 94 MLW 578 : AIR 1982 NOC 85 must be read in the light of the fact that the exemption sought was after the expiry of the period of exemption originally granted. It was, therefore, a fresh exercise of

power of exemption when the earlier exemption had already come.

To an end this does not mean the same thing as reviewing the earlier order, because the exemption which was granted in Kailasam's case, (1981)

94 MLW 578 : AIR 1982 NOC 85 was a second exemption after the first exemption had expired. In Palanivelu Gounder v. State of Tamil Nadu,

(1983) 2 M U 200, Kailasam's case, (1981) 94 MLW 578 : AIR 1982 NOC 85 has been followed. From the facts in Palanivelu's case, (1983)

2 MU 200 it does not appear that the question as to whether there was a power of review once a valid order under Sec. 11 is already made fell

for consideration.

11. Accordingly, we are inclined to take the view that in so far as the provisions of the Act are concerned, the State Government cannot exercise-

any power of review in respect of the orders passed by it in exercise of a statutory power. Therefore, the question as to whether the power could

be exercised in the absence of any fresh material brought to the State Government does not arise for consideration.

12. Mr. V. P. Raman. Appearing on behalf of the appellant at the end of his argument expressed an apprehension that the only remedy now open

to him was to challenge the original order denying exemption under R. 14(2) by a writ petition, but that it is likely that that writ petition may not be

entertained on the ground of delay. It is obvious that the only remedy which is open to the appellant is to challenge the order refusing a claim for

exemption., It is not possible for us to say anything with regard to the view which the learned Judge before whom the writ petition may come up

will be entitled to take on facts before him as to whether a delayed writ petition should be entertained by him or not. This is a matter within the

exclusive jurisdiction of the court before whom the writ petition if and when filed, comes up for admission.

13. In view of which we have taken though on a different ground, we must uphold the order of the learned Judge allowing the writ petition. This

appeal is accordingly dismissed. The appellant shall pay the costs of this appeal. Counsel's fee Rs. 250.

14. Appeal dismissed.