

(1963) 03 MAD CK 0003
In the Madras High Court
Case No : Writ App. No. 67 of 1963

V. Shanmugam

APPELLANT

Vs

K. Elumalai Gounder and others.

RESPONDENT

Date of Decision : 18-03-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1963) 03 MAD CK 0003

Hon'ble Judges : Ramachandra Iyer, C.J; Venkataraman, J

Bench : Division Bench

Advocate : G. Ramanujam and J. Kanakaraj, for the Appellant; T. Chengalvarayan, T. N. Anantanayaki and The Addt. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal from the judgment of Veeraswami, J., declining to issue a writ of certiorari on an application taken out by the appellant to quash the order of the Board of Revenue, which reversed the order of the Collector and granted a "no objection" certificate under the Madras Cinemas (Regulation) Act, 1955, to the respondent. The appellant and the respondent were rival applicants, for a "no objection" certificate in respect of their sites in Mettupalayam in Coimbatore Dt., for locating and running a touring cinema. The appellant's application was the earlier one, but in our view, nothing turns on that circumstance. It is admitted that the site proposed by the appellant, namely, S. No. 194 is situate within four furlongs from that proposed by the respondent, namely, S. No. 196/B-1 and B-2. The local authority as well as the police appear to have recommended the appellant's application, though we do not find any authority

under the Act for such recommendation. What all S. 5 of the Act says is that the licensing authority will take into consideration any representations made by any local authority or police. In the present case, it was not a mere representation but it was a recommendation of the appellant's application. But what is stranger still is that when the respondent approached these authorities for a similar recommendation or report, that was not given to him on the ground that they had previously granted the same in favour of the appellant. There is no provision in the Act which enables the local authority and the police to recommend applications at their choice. What they are entitled to is to make representations in respect of the applications and this they should have done in regard to both the applications. It appears that the appellant's family was consistently running a touring cinema taking a temporary licence in the name of one or other member of the family. Originally, the father of the appellant was having the licence. Later, the appellant's brother, Kandaswami, obtained the licence for location of a cinema in S. No. 194 itself. When that licence was about to expire, the appellant stepped in with his application for running the cinema on that identical piece of land. This naturally led to an objection on the part of the respondent who stated that the appellant's family was trying by means of applications in the names of different members of the family to monopolise the running of a cinema in Mettupalayam for a considerable time. The Collector took the view that as the appellant was having a separate mess from the other members of the family, he should be regarded as a divided member and therefore there was no justification for the complaint that the family was monopolising the licence. But a mere separation in mess cannot mean that the members of a family are divided. But whatever that may be, when the matter was taken on appeal from the order of the Collector, which granted the "no objection" certificate to the appellant, the Board of Revenue considered the matter afresh and came to the conclusion that the attempt of the appellant was to retain the licence in the same family and that it would amount to a monopoly. Taking the view that the respondent too should have a chance in doing the business on the same lines, the Board set aside the order of the Collector and granted a "no objection" certificate to the respondent. This was challenged in proceedings under Art. 226 of the Constitution before

Veeraswami, J., but the learned Judge has dismissed the application.

2. In this appeal Mr. Ramanujam appearing for the appellant contends first that on the facts it could not be said that there was a monopoly.

Secondly, that even assuming that the appellant's family was attempting to monopolise the cinema business in Mettupalayam, that would not be a

relevant consideration for the authorities to take under S. 5 of the Act. But so far as the first point is concerned, we are of opinion that what the

Board of Revenue meant by the word "monopoly" was merely that one family is trying to retain the licence successively for various periods of time

by adopting the subterfuge of filing applications in the names of several members of the family to the exclusion of others. That there is justification

for this view is clear from the fact that the property on which the touring cinema was located by the different members of the family is the same,

namely, S. No. 194. It may be as Mr. Ramanujam points out that the question of monopoly would assume importance only when an old entrant

wants to obtain a second "no objection" certificate in addition to the existing one. But, as we said earlier, what the Board of Revenue appears to

have thought was that in the interests of the public it is necessary that a new entrant should have as much chance of running the cinema as the older

one. This consideration is one which will come within Cl. (a) of S. 5 of the Act, which says that the licensing authority shall consider the interest of

the public generally. The question whether the old operator or any member of his family should have the licence or a new entrant should get the

same, is certainly one in the interest of the public generally. For the Dew entrant is as much a member of the public as anybody else. We cannot

therefore accept the contention of Mr. Ramanujam that the consideration which weighed with the Board of Revenue was not within the ambit of S.

5 of the Act but outside it.

3. Even so we are of opinion, as indeed the learned Judge has held, that it would be open to the Tribunal concerned to take other relevant factors

into consideration while judging as to whom there should be a grant of a "no objection" certificate. In our view, the fact that the respondent was a

new entrant cannot be regarded as an irrelevant consideration. There is therefore no justification for interference with the view taken by the Board.

4. It is then argued that there has been no consideration by the authorities as to

the site proposed by the respondent, S. No. 196-B. 1 and B. 2 being fit for the location of a touring cinema and in respect of the same there has been no report by the local authority or the police. As we pointed out at the beginning, it is only if a representation is filed by such authority or the police, that the licensing authority will have to consider it. If the authority and the police chose not to make representations it is not obligatory on the licensing authority to call for such reports or dismiss the application on the ground that such reports were not there. Further, it appears from the order of the Collector itself that the merits of both the applicants were equal. We are therefore, of opinion that the Board of Revenue was entitled to set aside the order of the Collector which was based on an incorrect assumption of law, namely, that mere separation in mess would constitute partition in a joint Hindu family. The appeal therefore fails and is dismissed with costs.