
(1962) 11 MAD CK 0041
In the Madras High Court

Wellington Talkies

APPELLANT

Vs

Collector of Tiruchirapalli

RESPONDENT

Date of Decision : 27-11-1962

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 28

Citation : (1963) ILR (Mad) 572 : (1963) 76 LW 274 : (1963) 1 MLJ 215

Hon'ble Judges : S. Ramachandra Iyer, C.J

Bench : Single Bench

Judgement

S. Ramachandra Iyer, C.J.—These petitions filed under Article 226 of the Constitution raise the trite question, one on which there has been an uniformity of opinion expressed in this Court, whether the power vested in the licensing authority under the terms of the licence issued under the Madras Cinemas (Regulation) Act, 1.955, to cancel or suspend the licence can be exercised not merely for a contravention of the terms thereof but to breaches of the provisions of the Act and the Rules made there under.

2. u/s 10 of the Act the Government is empowered to make Rules inter alia providing for the terms, conditions and restrictions, subject to which a licence may be granted under the Act. The Rules which prescribed the conditions applicable to, and the procedure for obtaining, a licence, provide a standard form for the licence, it being left to the licensing authority to add thereto appropriate additional conditions. The relevant portion of a licence is as follows:

This licence is granted subject to the provisions of the Madras Cinemas (Regulation) Act, 1955, and the Rules made thereunder. It is also subject to the following conditions. The terms and conditions of the licence, as inserted, may be modified or added to at any time during the currency of the licence.

Clause 16.--This licence shall be subject an collation or suspension for the breach of any of these conditions or of the special conditions specified on the reverse.

Apart from the provisions referred in Clause 16, the Act also provides for a sanction for breach of the Rules or conditions of the licence. We shall reproduce them.

Section 8 : Penalties--If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used, in contravention of the provisions of this Act or of the Rules made thereunder, or of the conditions and restrictions upon or subject to which any licence has been granted under this Act, he shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues.

Section 9 : Power to revoke licence.--Where the holder of a licence has been convicted of an offence u/s 7 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952) or Section 8 of this Act, the licence may be revoked by the licensing authority by an order in writing.

To the latter section, Act IV of 1961 has introduced two Sub-sections which it is unnecessary now to reproduce as the present case is governed by the unamended provision.

3. The petitioner in the first of the two petitions is the proprietor of the Wellington Talkies, a permanent cinema theatre, in Tiruchirappalli. He was found to contravene the Rules framed under the Act in having allowed more than the prescribed number of persons into the theater during the time of the show on 24th January, 1960. The Collector of Tiruchirappalli has, after a due enquiry, suspended his licence for a period of one month.

4. In the other petition, which likewise relates to a permanent cinema theatre in Tirunelveli, named Palace De Wales, the petitioner was found on 2nd June, 1960, to have committed a similar offence and his licence was directed to be suspended for a period of fifteen days.

5. Sri R.M. Seshadri, who appears for the petitioner in the first of the two petitions, has challenged the validity of the order on two grounds : (1) that Condition 16 to the licence which confers a power of cancellation or suspension cannot in terms apply to the breach of a rule committed by the owner of a theatre--the infringement in the instant case being only a breach of a rule. (2) Condition 16 itself is void, being ultra vires, as it proceeds to confer a power to impose a punishment for which the Act under Sections 8 and 9 provides a penalty.

6. The validity of the first of the two contentions depends upon the construction to be placed on Condition 16. The Preamble to the licence states that it is granted subject to the provisions of the Act and the Rules made thereunder. One view is that the terms of the Preamble and the Rules under the Act should be deemed to have been incorporated as part of the conditions, and that therefore,

the breach of the rule would amount to a breach of a condition and that that would be subject to the power of cancellation contained under Condition 16. This view has been accepted by Rajagopala Iyengar, J., in W.P. No. 758 of 1955 and approved on appeal by Rajamannar, C.J. and Panchapakesa Ayyar, J., though after some initial hesitation in W.A. No. 126 of 1956. Both the members of the present Bench, while sitting alone, have taken a similar view. Recently Jagadisan and Srinivasan, JJ., while confirming in W.A. No. 170 of 1962 the same view expressed by Veeraswami, J., have approved and followed the earlier cases. We feel no hesitation in holding that on the terms of the licence the provisions of the Rules under the Act must be deemed to have been made a part thereof and that a breach of any of the rules will entail the administrative punishment which the Collector is competent to impose under the terms of the licence.

7. The matter can be looked at in another way as well. The licence being granted subject to the Rules, the due compliance with the Rules will be a condition precedent to the Continuance of the licence. When, therefore, there is a breach of the Rules the Collector who suspends the licence can be regarded as only declaring that the licence is no longer good, the basis of its existence having failed. On this principle he can order a permanent suspension of the licence; a fortiori a temporary suspension. A licence is intended, amongst others, to regulate the manner in which the cinema is to be run. If the cinema is to be run according to the Rules, it is necessary that there should be a power to impose administrative sanctions.

8. Sri R.M. Seshadri contends that in such a case the authorities will have to resort only to the slow-footed process of a criminal prosecution and not to forthwith cancel or suspend the licence. Such a view, if accepted, will undoubtedly lead to inconvenience and anomaly. It must be remembered that, the power conferred under Condition 16 is a sanction against breach of a condition of the licence. It is a preventive process in addition to its being a corrective one. Let us elucidate it by an example. Suppose a cinema proprietor fails to provide the necessary precautions against possible fire. That such precautions should be taken has been prescribed by the Rules. If the argument that failure to comply with the Rules should only result in a prosecution were to be accepted, the result will be that the proprietor can with impunity neglect to take the necessary precautions, exposing the innocent public to the mischief by fire, the only sanction against him being a prosecution under the Act probably months afterwards. This of course would not have been the intention of the Legislature. Secondly, it is rather anomalous to hold that for lesser offences like those contained in the conditions of the licence there should be not merely a penalty u/s 8 but also a further punishment under Condition 16 of the licence, while in regard to more serious breaches of the law there should only be a criminal penalty available. Reason, therefore requires that a breach of the rule should be dealt with by the Collector even as a contravention of the Conditions of the licence by proceeding to act under Condition 16 thereof. The Preamble to the Rules itself suggests that the Rules form part of the Conditions.

9. The next contention of Sri R.M. Seshadri is that as Condition 16 encroaches and covers the same area as is covered by Sections 8 and 9 of the Act, it should be declared ultra vires. The learned Counsel contends that as Condition 16 confers a power on the authority which a Legislature alone is competent to give (i.e., power to impose a penalty) that condition should be regarded as invalid because it came into existence merely as a result of the rule-making authority. That contention is supported by the decision of a learned Judge of the Andhra High Court in *Kamaraju v. State of Andhra* (1957) 2 A.W.R. 235. But, with great respect to the learned Judge, we would like to point out that action taken under Condition 16 is not really a penal one, but a mere administrative consequence. As stated earlier, such an action by the licensing authority, is tantamount to a declaration that the pre-requisite conditions as to the subsistence of the licence having been broken it no longer exists. Apart from that consideration there is a well-known distinction in law between penalties in the nature of a punishment and mere civil action or administrative punishment.

10. In *Helvering v. Mitchell* 82 L.Ed. 917. Brandies, J., repelling a similar contention, observed:

Congress may impose both a criminal and a civil sanction in respect to the same act or omission-The remedial character of sanctions imposing additions to a tax has been made clear by this Court in passing upon similar legislation. They are provided primarily as a safeguard for the protection of the revenue and to reimburse the Government for the heavy expenses of investigation and the loss resulting from the tax payer's fraud.

The fact that the Revenue Act of 1928 contains two separate and distinct provisions imposing sanctions and that these appear in different parts of the statute, helps to make clear the character of that here invoked. The sanction of fine and imprisonment prescribed.... for wilful attempts "in any manner to evade or defeat any income tax" introduced into the Act under the heading "Penalties" is obviously a criminal one. The sanction of 50 per centum addition "if any part of any deficiency is due to fraud with intent to evade tax", prescribed by Section 293(b) introduced into the Act under the heading "Additions to the Tax", was clearly intended as a civil one.

This view that a statute can contain both a civil as well as a criminal sanction has been accepted and provided for in several enactments in this country.

11. In *Sivagaminatha v. Income Tax Officer* (1955) 2 M.L.J. 477 : ILR (1956) Mad. 415 this Court upheld the Validity of the penalty imposed u/s 28 of the Income Tax Act on the ground that it is a different kind of penalty than a criminal one for which also there was a provision in the Act.

12. In *Thomas Dana v. State of Punjab* (1959) S.C.J. 699 : (1959) M.L.J. 474 the Supreme Court laid down a similar rule with respect to the Sea Customs Act. Sinha, J., as he then was, observed:

Those penalties, the Collector had been empowered to impose in order not only to prevent, a recurrence of such infringements, but also to recoup the loss of revenue resulting from such infringement. A person may be guilty of certain acts which expose him to a criminal prosecution for a criminal offence, to a penalty under the law intended to collect the minimum revenue under the Taxing Law, and/or, at the same time, make him liable to damages in torts. For example, an assessee under the Income Tax law may have submitted a false return with a view to defrauding the Revenue. His fraud being detected, the Taxing Officer may realise from him an amount which may be some multiple of the amount of tax sought to be evaded. But the fact that he has been subjected to such a penalty by the Taxing Authorities, may not avail him against a criminal prosecution for the offence of having submitted a return containing false statements to his knowledge.

A case very near to the present one formed the subject-matter of consideration in *Steurat and Brothers Inc. v. Bowles* 88 Law. Ed. 1350. In that case a Ration Order provided for Administrative suspension orders. There was also a penalty imposed for contravention of the order. Douglas, J., dealing with a suspension order, imposed under the terms of the regulations said:

The character of the violations thus negatives the charge that the suspension order was designed to punish petitioner rather than to protect the distribution system and the interest of conservation.

Thus, there is a vital distinction between a case of a penal provision and a suspension of a licence made with a view to enforce the conditions thereof, the quality of the latter action being entirely different from the penal character of the former.

13. Recently we had occasion in W.A. No. 163 of 1959 to consider the essential distinction between a penalty of a civil nature imposed by statute and a criminal sanction provided by the same statute for the same offence. Applying the principle recognised in the cases referred to above it can be stated that while the provisions of Sections 8 and 9 relate to a criminal prosecution, the conviction therein entailing a further consequence of termination of the licence as well, the sanctions provided by Condition 16 of the licence, is a nice administrative punishment intended with a view to enforce a due adherence to the Rules under the Act and also the Conditions of the licence. It cannot therefore be said that the rule-making authority, in imposing Condition 16 really covered the same field as the penalty imposed u/s 9. The power to inflict an administrative punishment by way of cancellation is always inherent in a revocable licence. Indeed, such a provision for the determination of the licence itself in case of breach of its conditions is necessary even in the interest of the Public.

14. Sri R.M. Seshadri then draw our attention to the amendments introduced in Sections 9 and 10 to Section 9-A and contended that as the Legislature had by the amendment made it that a breach of the Rules would be amenable to a

suspension of the licence by the Collector, the present statutory provision should be regarded as a legislative interpretation that under the previous one the Collector had no such power. We are unable to agree with that contention. As we have stated above, under the law, even as it originally stood, Condition 16 of the licence will cover not merely a breach of the actual condition set forth in the licence but also a breach of the provisions in the Act as well as the Rules. The insertion of Sub-clauses (2) and (3) to Section 9 and the introduction of Section 9-A can therefore be held to be more or less declaratory in nature.

15. The petitions fail and are dismissed with costs. The rule nisi is discharged.