

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 25TH DAY OF MARCH 2014/4TH CHAITHRA, 1936

WP(C).No. 21907 of 2014 (K)

PETITIONER:

ANTHAPILLY PLANTATION,
C.N-10, CHURCH NAGAR, ANGAMALY
ERNAKULAM, PIN 683 572
REPRESENTED BY DIRECTOR SASI KUMAR K.S.,
S/O.KANJILIL SANKARAN KUTTY,
RESIDING AT KALABHAVAN, NANDANAM, VENGOOR,
KIDANGOOR P.O, ANGAMALY ERNAKULAM, KERALA 683 572

BY ADV. SRI.P.CHANDRASEKHAR

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT OF KERALA,
DEPARTMENT OF LOCAL SELF GOVERNMENT
SECRETARIAT, TRIVANDRUM.
2. ANGAMALY MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, ANGAMALY PO, PIN.683 572.
3. THE SECRETARY,
ANGAMALY MUNICIPALITY, ANGAMALY,
ERNAKULAM DISTRICT PIN.683 572

R2,R3 BY ADV. SRI.V.M.KURIAN, SC, ANGAMALY MUNICIPALITY
R1 BY ADV. SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
25-03-2014, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 - TRUE COPY OF THE CERTIFICATE FROM FILM DIVISION IN RESPECT OF CARNIVAL CINEMA, ANGAMALY.

EXT.P2 - TRUE COPY OF THE CONSENT TO OPERATE ISSUED BY THE KERALA STATE POLLUTION CONTROL BOARD.

EXT.P3 - TRUE COPY OF THE LICENSE FOR EXHIBITION FOR EXHIBITION OF CINEMATOGRAPH SHOWS ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER UNDER KERALA CINEMA (REGISTRATION) ACT 1958.

EXT.P4 - TRUE COPY OF THE STATEMENT CONTAINING THE PRESENT CINEMA TICKET FARES AND THE PROPOSED FARES OF CARNIVAL CINEMAS, ANGAMALY.

EXT.P5 - TRUE COPY OF THE LIST CONTAINING THE DETAILS OF THE FACILITIES PROVIDED BY THE PETITIONER IN CARNIVAL MULTIPLEX CINEMA THEATRE.

EXT.P6 - TRUE COPY OF THE JUDGMENT DATED 17-7-1996 IN OP NO.7196/1996 OF THIS HONOURABLE COURT.

EXT.P7 - TRUE COPY OF THE NOTICE NO.R.2-5841/14 DATED 25-4-2014 OF THE 2ND RESPONDENT.

EXT.P8 - TRUE COPY OF THE ORDER NO.R2/8275/12 DATED 23-6-2014 OF THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS : NIL

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 21907 of 2014 (K)

Dated this the 25th day of March, 2015.

JUDGMENT

The petitioner, which is the owner of a group of multiplex theatres at Angamaly, initially obtained from the 3rd respondent Ext.P3 licence for three Screens, valid from 16.08.2012 to 15.08.2015. After running the theaters for a while charging the entry fee (ticket fair) as has been mandated by the licencing authority, it submitted Ext.P4 proposal along with a representation for enhancement of the admission fee. When the 3rd respondent placed the matter before the Council of the second respondent, it rejected the same through Ext.P8. Aggrieved thereby, the petitioner has filed the present writ petition.

2. The learned counsel for the petitioner has initially contended that Ext.P3 licence, despite having a specific reference to fixing of the maximum ticket fair, has not actually spelt out the amounts. As such, based on the prevailing market practice, the

petitioner has charged the viewers. Later, the Council of the respondent Municipality has rejected the proposal for enhancement, according to the learned counsel, without any basis. He contends that the respondent Municipality is not competent to fix the ticket fair; it is, however, only an authority that has to formally approve the rates proposed by the theatre owner. At any rate, in the end, the learned counsel, confronted with the problem of alternative remedy, has submitted that Rule 29 of the Kerala Cinema Regulation Rules, 1988 ('the Rules' for brevity) stipulates one authority to be the appellate authority, while Ext.P3 statutory format through which licence was granted has specified some other authority. In the face of the seeming conflict as to the proper appellate authority, the petitioner, according to the learned counsel, does not have any other option than approaching this Court invoking the public law remedy under Article 226 of the Constitution of India.

3. Per contra, the learned Standing Counsel for the respondent Municipality has submitted that though Ext.P3 licence does not contain the maximum admission fee that can be charged, in fact through separate proceedings it has been notified the admission fees.

Drawing my attention to the statement filed by the respondent Municipality, the learned Standing Counsel would contend that in view of the space constraint in Ext.P3 statutory licence format, it is the practice of the respondent Municipality to indicate through separate proceedings the maximum permissible admission fees for the different classes of the cinemas. According to him, it is not in dispute that the petitioner has to this day followed the prices thus fixed by the respondent Municipality.

4. The learned Standing Counsel has also contended that in the face of any conflict between the Rule and a condition imposed in a licence form, it is the rule that shall prevail. According to him, the petitioner should approach the appellate authority under Rule 29 of the Rules.

5. The learned Government Pleader, referring to the affidavit filed by the first respondent, as has been directed by this Court earlier, has submitted that in terms of Rule 29, the Government through a notification has specified that the Revenue Divisional Officer is the appellate authority.

6. Heard the learned counsel for the petitioner, the learned

Government Pleader and the learned Standing Counsel for the respondent Municipality, apart from perusing the record.

7. It is not in dispute that there is apparent conflict between Rule 29 of the Rules and clause 4 of the licence conditions in Ext.P3 concerning the appellate authority. There is sufficient force in the contention of the learned Standing Counsel that though Ext.P3 licence has been issued in a statutory format, the very format cannot be treated as part of the legislation, even of subordinate nature. Accordingly, in the event of any conflict between the conditions imposed in any statutory format and a stipulation in any Rule or Regulation, the latter, it is axiomatic to hold, shall prevail.

8. As can be seen from the statute, the licence is granted in form No.E, which is drawn as per Rule 14 of the Rules, which per se does not speak about the adjudicatory arrangements concerning any issue arising out of the enforcement of either the Act or the Rules. On the other hand, Rule 29 specifically deals with the appellate forum concerning any orders passed by the authorities under the Act or the Rules, as the case may be. It does not, therefore, require much cogitation to hold that it is the Rule that shall prevail.

9. In the facts and circumstances, this Court declares that the condition No.4 in Ext.P3 licence cannot be sustained in the face of Rule 29 and consequently, the petitioner is at liberty to file a statutory appeal, if it desires, before the Revenue Divisional Officer of the Division concerned and agitate the issue. It is needless to observe that once such an appeal is filed, the appellate authority is expected to consider the issue expeditiously.

With the above observations, this writ petition stands disposed of. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

