

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION No. 27257 of 2011

Between:

M/s. Sagara Picture Palace, rep. by its
Managing Partner, Challapalli, Krishna Distict.

.. Petitioner

and

The Government of India, Ministry of
Information & Board Casting Films Division,
rep. by its Branch Manager, Vijayawada
and another

.. Respondents

DATE OF JUDGMENT PRONOUNCED: 17.08.2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | Yes/No |
| 3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27257 of 2011

ORDER:-

Heard learned counsel for the petitioner, learned standing counsel for Central Government appearing for the 1st respondent and learned Government Pleader for Revenue appearing for the 2nd respondent. With the consent of the parties, the writ petition is heard finally and disposed of at the admission stage itself.

The present writ petition is filed seeking issuance of writ of mandamus declaring the letter No.DCM/KRI/2011-12/VEE dated 16.09.2011 issued by the 1st respondent and also the consequential distraint order dated 23.09.2011 issued by the 2nd respondent as illegal and arbitrary.

The averments in the affidavit filed in support of the writ petition are as under:

The deponent, by name Ch. Durga Sagar, is the Managing Partner of the petitioner theater which was constructed more than 30 years back and was paying the taxes regularly. The petitioner was screening the films and short films as per A.P. Cinema Regulation Act and Rules. It is stated that in the year 1995, the Films Division stopped supply of approved

films on the ground that the Hon'ble High Court of Delhi delivered a judgment against the Films Division holding that the exhibitors need not pay any amount to the Films Division for screening of Indian news reels. Aggrieved by the said judgment, the Films Division filed an appeal before the Hon'ble Supreme Court which was allowed on 15.07.1999. Thereafter, the theatre owners filed a batch of writ petitions and this Court passed interim orders directing the Films Division not to insist on the payments for the period from 1995 to 1999. Subsequently, all the writ petitions were dismissed. Challenging the same, W.A.No.298 of 2001 and batch came to be filed before this Court which were disposed of on 21.08.2001, by observing that the liability of the theater owners has to be determined on resolution of the dispute as to whether the short films have been supplied to them or not. It is further observed that such dispute has to be determined in an appropriate forum and not in a writ proceeding and that the State cannot refuse to renew the cinema autograph licence of the theater owners unless conditions precedent therefor are satisfied. Later on, the petitioner theater is said to have filed W.P.No.13747 of 2003 which was disposed of on 23.04.2008 in terms of the judgment dated 21.08.2001 passed by a Division Bench of this Court in W.A.No.298 of 2001 and batch and W.P.No.6578 of 2001 and batch. While things stood thus, the 1st respondent issued a letter No.DCM/KRI/2011-12/VEE dated 16.09.2011 to the District Collector marking a copy to the petitioner stating that in view of dismissal of W.P.No.13747 of 2003 and as the petitioner failed to pay the outstanding dues, the District Collector, Krishna was directed to issue necessary

instructions to the concerned authority to make recovery of the dues of Rs.1,29,230/- under the Revenue Recovery Act.

It is contended that the 1st respondent did not supply the short films from 1995 onwards, and therefore, the petitioner is not liable for any amount towards rentals for screening of short films and that the 1st respondent without issuing any demand notice to the petitioner and without giving any opportunity to submit an explanation, erred in issuing the above letter to the District Collector. Thereafter, the 2nd respondent issued a distraint order vide Rc.A.327/2011 dated 23.09.2011 directing the petitioner to pay the amount on or before 29.09.2011. The 2nd respondent is also said to have threatened to seize the petitioner theatre if the amount is not paid within the stipulated time. Questioning the action of the respondents, the writ petition is filed.

A counter came to be filed on behalf of the 1st respondent denying the averments made in the writ petition. It is stated that supply of approved short films to the petitioner for compulsory screening before and after November 1995 was in force continuously and all the documents pertaining to the said supply are available with the 1st respondent. It is also stated that the matter, which pertains to collection of rental charges from cinema exhibitors @ 1% on the net collection, was subjudice before the Hon'ble Supreme Court of India, and as such, the 1st respondent kept the execution of agreement and collection of weekly rent in abeyance, till final disposal of a Civil Appeal pending before the Hon'ble Supreme Court. But

however, the 1st respondent kept the supply of approved short films to the petitioner for compulsory screening in force. It is contended that the 1st respondent supplied approved short films to the petitioner continuously up to 19.07.2010 and discontinued the same from 20.07.2010 on the request of the petitioner vide its letter written in July, 2010 stating that they made arrangements for producing approved films from M/s. A.P.S.T.T.D.C. Limited, Hyderabad. In view of the above, it is stated that the letter written by the 1st respondent asking the District Collector to issue necessary instructions to the concerned authority to make recovery of the dues cannot be said to be illegal and vague.

No counter came to be filed on behalf of the 2nd respondent. However, on oral instructions, it is submitted by the learned Government Pleader for Revenue that there is no material before them to show any supply of short films.

A perusal of the material placed before the Court would show that the impugned order dated 16.09.2011 came to be passed on the ground that W.P.No.13747 of 2003 filed by the petitioner was dismissed. But the same appears to be incorrect for the reason that the said writ petition was disposed of in terms of the judgment dated 21.08.2001 passed by a Division Bench of this Court in W.A.No.298 of 2001 and batch and W.P.No.6578 of 2001 and batch wherein it was observed as under:

“An agreement can be expressed or implied. If short films have been supplied to the appellants, they irrespective of the legal position are liable to pay the

amount in question to the films division. Even if the conditions of the licence as contended by the appellants were found to be invalid, they would still be liable in terms of Sections 65 and 70 of the Indian Contract Act. In fact, on their own showing the appellants had also been paying the said amount after the decision of the Supreme Court. We, therefore, are of the opinion that the liability of the appellants has to be determined on resolution of the dispute as to whether short films had been supplied to them or not. Such dispute has to be determined in an appropriate forum and not in a writ proceeding. It is needless to say that the State cannot refuse to renew the cinematograph licences of the appellants unless conditions precedent therefore are satisfied. “

From the above, it is clear that the petitioner is liable to pay the amount to the Films Division provided they supplied the short films till 15.07.1999. But no material is placed before the Court to show that the short films were supplied to the petitioner till the date of filing of the present writ petition or till 15.07.1999. In spite of number of opportunities being given, the learned standing counsel for the 1st respondent failed to produce the material to show that they have supplied the short films to the petitioner, as contended in the counter. On the other hand, the argument of the learned counsel for the petitioner stands fortified, for the reason that in the year 2003 itself, the petitioner filed W.P.No.13747 of 2003 questioning the proceedings bearing No.403/02-03/VS dated 19.01.2003 issued by the Branch Manager, Films Division, Vijayawada, and also the memo No.36170/Gen-A2/2001-6 dated 03.05.2002 issued by the Joint Collector, Krishna at Machilipatnam. The said writ petition was disposed of in terms of the judgment dated 21.08.2001 passed by a Division Bench of this Court in

W.A.No.298 of 2001 and batch and W.P.No.6578 of 2001 and batch. Therefore, the argument of the learned standing counsel for the 1st respondent that W.P.No.13747 of 2003 was dismissed and that the petitioner is liable to pay the amount as calculated cannot be accepted. Apart from that, it is to be noted that in the absence of any material being produced before the Court, the calculation of the amount arrived at cannot also be accepted at its face value. In fact, the learned standing counsel for the 1st respondent is not in a position to explain as to how the due amount of Rs.1,29,230/- was arrived at.

For the reasons aforesaid and in the absence of any material being produced by the learned standing counsel for the 1st respondent in spite of taking number of adjournments, this Court is of the view that the impugned proceedings are liable to be set aside.

Accordingly, the Writ Petition is allowed, by setting aside the letter No.DCM/KRI/2011-12/VEE dated 16.09.2011 issued by the 1st respondent and also the consequential distraint order issued by the 2nd respondent vide Rc.A.327/2011 dated 23.09.2011. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall also stand closed.

C. PRAVEEN KUMAR, J

17th August, 2015
cbs

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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