

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN  
AND  
THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.A Nos.232 and 940 of 2014,  
M.P.Nos.1,1 and 2 of 2014

M/s.ADLABS Jeeva Rukmani Screen 1 & 2 Theatres  
Rep. by its Managing Director,  
Kamarajar Salai, Puducherry.

....Appellant in  
W.A.No.232/2013

1.The Union Territory of Puducherry,  
Rep. by Secretary to Government,  
Revenue Department, Puducherry.

2.The District Magistrate - Cum - Licensing Authority  
Government of Puducherry, Puducherry.

3.The Special Officer,  
Department of Revenue and Disaster Management,  
Government of Puducherry, Puducherry.

....Appellants in  
W.A.No.940 of 2014

Vs

1.The Union Territory of Puducherry,  
Rep. by Secretary to Government,  
Revenue Department, Puducherry.

2.The Film Division,  
Rep. by its Branch Manager,  
Ministry of Information and Broadcasting,  
Government of India,  
Shastri Bhavan, No.35, Haddows Road,  
Chennai.

3.The District Magistrate - Cum - Licensing Authority  
Government of Puducherry,  
Puducherry.

4.The Special Officer,  
Department of Revenue and Disaster Management,  
Government of Puducherry, Puducherry.

5.M/s.Indovision Media  
No.517/518, 4th Floor,  
Orchad Road Mall,  
Survey No.169, Royal Palms,  
Aarey Milk Colony,  
Goregaon (East) Mumbai -65.

...Respondents in  
W.A.No.232/2014

1.Balaji Theatre Rep. by its Managing Partner,  
R.Perumal  
No.118, Kamarajar Salai,  
Puducherry.

2.The Film Division rep. by its  
Branch Manager,  
Ministry of Information and Broadcasting  
Government of India, Shastri Bhavan,  
No.35, Haddows Road, Chennai.

3.India Infotainment Media Corporation,  
B108 Radium Apartments,  
Shreya's Colony, Gorejaon (East)  
Mumbai - 400 063.

...Respondents in  
W.A.No.940/2014

Prayer:- Writ Appeals filed under clause 15 of the Letter Patent  
against the order dated 29.11.2013 and 31.10.2013 in  
W.P.No.9347 of 2012 and W.P.No.20546 of 2009 respectively.

W.P.No.9347/2012

Writ petition filed under article 226 of the constitution of India praying for a writ of certiorari mandamus to call for the records of the 3rd respondent in this proceedings No.3883/DM/D1/90-II, dated 07.03.2012, quash the same, insofar as it relates to the conditional clause that the licence should procure approved films to be issued by the films Division along with its no due certificate for the annual renewal of licence within the temporary permit period without fail and consequently, direct the 3rd respondent herein to issue form C licence under Pondicherry Cinemas Regulation Act without insisting the petitioner-Theatre to procure films only from the film division (2nd respondent alone).

W.P.No.20546/2009

Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 3rd respondent to issue Form-C licence under Pondicherry Cinemas Regulation Act without insisting the petitioner to procure films only from the 2nd respondent alone.

For Appellants

W.A.No.232/2014 : Mr.D.Ravichander

W.A.No.940/2014 : Ms.V.Usha

Addl.Govt.Pleader (Puducherry)

For Respondents

W.A.No.232/2014 : Ms.V.Usha

Addl.Govt.Pleader (Puducherry)

for R1, R3 and R4

Mr.Rathinasabapathy, SPCCG for R2

R5-No Appearance

W.A.No.940/2014 : Mr.D.Ravichander for R1

Mr.Rathinasabapathy, SPCCG for R2

C O M M O N J U D G M E N T

K.K. SASIDHARAN, J.

The intra court appeal in W.A.No.232 of 2014 is directed against the order dated 29 November 2013 in W.P.No.9347 of 2012 dismissing the writ petition filed by the appellant, challenging the order dated 7 March, 2012 on the file of the District Magistrate-cum-Licensing Authority, Puducherry, directing renewal of license under the Pondicherry Cinemas (Regulation) Act, 1964, subject to condition that the licensee should produce Approved Films Certificate issued by the Films Division along with its No Due Certificate for annual renewal of the licence within the Temporary Permit period.

2. The intra court appeal in W.A.No.940 of 2014 is at the instance of the Union Territory of Puducherry. The challenge is to the order dated 31 October 2013 in W.P.No.20546 of 2009, whereby and where under, a Writ of Mandamus was issued directing the respondents therein to issue Form-C Licence under Pondicherry Cinemas (Regulation) Act, without insisting the Theatre to procure films from the Films Division, Government of India.

W.A.No.232 of 2014

3. The appellant submitted application for Temporary Permit for execution of films under the Pondicherry Cinemas (Regulation) Act. The licensee was expected to exhibit approved films taken from the Films Division, Government of India. The Films Division would make available the films on payment of 1% on the net recovery. The Licensing Authority by considering the application submitted by the appellant and taking into account the Circular issued by the Government of India renewed the license with a condition to produce Approved Films Certificate issued by the Films Division along with No Due Certificate. The appellant challenged the said condition before the Writ Court.

4. The learned single Judge taking into account the order passed by the Government of Puducherry dated 1 July, 2002 and Section 7 of the Puducherry Cinemas (Regulation) Act, dismissed the writ petition. The said order is under challenge at the instance of the licensee of the Jeeva Rukmani Theatre at Puducherry.

W.A.No.940 of 2014

5. The first respondent filed a writ petition in W.P.No.20546 of 2009 before the writ court, praying for a Writ of Mandamus, directing the District Magistrate-cum-Licensing Authority, Government of Puducherry to issue Form-C Licence under Pondicherry Cinemas (Regulation) Act, without insisting the procurement of films from the Films Division, Government of India. The writ petition was filed without challenging the provisions of Pondicherry Cinemas (Regulation) Act, 1964, the order dated 1 July 2002 and the Circular issued by the Government of India making it mandatory to exhibit films procured from Films Division on payment of the prescribed amount. The writ petition was allowed and a Mandamus was issued to renew the license. Feeling aggrieved by the order dated 31 October, 2013, the Government of Union Territory of Puducherry is before this Court.

Submissions:

6. The learned Counsel for the appellant in W.A.No.232 of 2014 contended that the Hon'ble Supreme Court in Union of India and others v. Motion Picture Association and others [(1999) 6 SCC 150] indicated that it would suffice in case film is taken from exhibitors rather than taking it from Films Division, Government of India. According to the learned Counsel, the District Magistrate erred in directing the appellant to exhibit the films taken from the Films Division.

7. The learned Additional Government Pleader (Puducherry) appearing on behalf of the appellants in W.A.No.940 of 2014 and for the respondents 1, 3 and 4 in W.A.No.232 of 2014 contended that the writ petition filed by the first respondent in W.P.No.20546 of 2009 ought to have been dismissed on the ground of non-challenging the order issued by the Government of Puducherry. According to the learned Additional Government Pleader, the Government of Puducherry in exercise of its power under Section 7 of the Puducherry Cinemas (Regulation) Act, issued an order directing the licensees to exhibit compulsorily one short film on environment to be supplied by the Ministry of Information and Broadcasting during any one show every day. There was a further condition that the licensees must compulsorily exhibit "Approved Films" as made available to them by the Films Division. The Additional Government Pleader further contended that such conditions were approved by the Supreme Court in Motion Picture Association (cited supra) and as such, the learned single Judge was not correct in issuing a Mandamus. The learned Additional Government Pleader supported the order passed by the learned single Judge in W.P.No.9347 of 2012.

Discussion:

8. The only question that arises for consideration is as to whether the District Magistrate cum Licensing Authority, Government of Puducherry, was correct in directing the licensees to compulsorily exhibit one short film on environment and "Approved Films" taken from the Films Division. Since this condition was incorporated in the license issued to the appellant in W.A.No.232 of 2014, it is all the more necessary to consider the legality and correctness of the said condition.

9. The issue raised by the parties is no longer res integra in view of the decision of the Hon'ble Supreme Court in Union of India and others v. Motion Picture Association and others [(1999) 6 SCC 150].

a) The associations of organisations engaged in the business of distribution and execution of motion pictures in the area of Delhi and Uttar Pradesh, challenged the notification issued under the Cinematograph Act, 1952, imposing certain conditions on the power of the Licensing Authority to grant license for the execution of cinematograph films.

b) Before the Supreme Court, the Associations of Organisations contended that the provisions which compel them to show educational or scientific, documentary film, or a film carrying news or current events even for a short duration of 15 or 20 minutes would violate their fundamental rights guaranteed under Article 19(1)(g) of the Constitution. The Associations further contended that charge of 1% on the net recoveries for

taking film from the Films Division is a compulsory extraction in the form of a tax and as such, such imposition is in violation of Article 265 of the Constitution.

c). The Hon'ble Supreme Court considered the entire issue at length and ultimately held that the restriction imposed under Section 12(4) of the Cinematograph Act, 1952 and the notifications issued directing the licensees to exhibit films procured from the Films Division on payment are reasonable restrictions and not a restraint under Article 19(1) or 19(2) of the Constitution.

d) The observation contained in the following paragraphs would make the position clear:-

"26. The reasonableness or otherwise of restrictions on their right to carry on business will have to be examined in the context of the purpose sought to be served by imposing such restrictions. There is no dispute that the rights of the exhibitors under Article 19(1)(g) are subject to reasonable restrictions under Article 19(6). There is a public purpose in requiring the exhibitors to show such films. We have already stated that where a large percentage of population is illiterate and has very limited access to knowledge, information and ideas, it is important that such knowledge and information is disseminated to this vast volume of population in a manner which will ensure that ideas and information are in fact conveyed to them and they can assimilate and debate these ideas before accepting or rejecting them. Requiring an entertainment medium like cinema theatre to show for a short duration of its programme, films which educate and impart information cannot be considered as an unreasonable restriction on the right to carry on business. When there is adult franchise without literacy, it becomes all the more important that information and ideas reach the adult population.

27. Next we have to examine whether the expense incurred in showing these films is high or unreasonable. According to the exhibitors, their machinery, their show time, their theatres are used for the duration of these films and, therefore, they have to incur a certain amount of expense for showing these films. This expense, in our view, cannot be considered as a high or unreasonable expense. There may be many conditions of a licence which may require expense

to be incurred by the licensee. For example, a condition in the licence which requires a cinema-theatre owner to provide for firefighting equipment would also require him to incur expenses. But that does not mean that such a requirement is unreasonable. Similarly, looking to the purpose for which such films are shown, the expense incurred also cannot be considered as unreasonable.

31. The exhibitors also contend that the charge of one per cent on the net recoveries is a compulsory exaction in the form of a tax. Neither the Act nor the provisions of the licence stipulate payment of any such tax. Hence imposition of this amount is in violation of Article 265 of the Constitution. It is true that neither the relevant Act nor the notification nor the rules nor the terms and conditions of the licence stipulate the payment of any rental. This amount is required to be paid under an agreement which the exhibitors individually enter into with the Films Division for the supply of these films. It is a payment under the terms of a contract between the two parties. It cannot, therefore, be viewed as a tax at all. The exhibitors contend that because they are required to enter into these agreements, any payment under the agreement is a compulsory exaction and is, therefore, tax. We do not agree. Under the terms of the agreement, the Films Division has to supply certain prints to the theatre owners at stated intervals. The Films Division is required to maintain a distribution network for this purpose. It is required to pack these films and is required to allow the exhibitors to retain these films in their possession for a certain period. The films are to be returned to the Films Division thereafter. The charge is termed in the agreement as rental for the films. It covers charges for preparing the prints of the films for distribution, and for packing them for delivery. These are clearly services rendered by the Films Division for which it is paid one per cent of the net collection as a rental. As stated earlier, the total cost of preparing prints, packing them and distributing them is much higher than the total recovery made by the Films Division by way of rental from all the exhibitors. There is a

clear nexus between the services rendered and the payment to be made. The payment, therefore, is in the nature of a fee rather than a tax though there may not be an exact quid pro quo. Nevertheless the element of quid pro quo is very much present."

10. The Government of Puducherry issued an order dated 1 July 2002 taking inspiration from the judgment in Motion Picture Association (cited supra) that all the licensees must compulsorily exhibit short film on environment to be supplied by the Ministry of Information and Broadcasting during any one show every day. There was a further direction that the licensees must compulsorily exhibit "Approved Films" as made available to them by the Films Division. The order was issued in exercise of the powers conferred under Section 7 of the Puducherry Cinemas (Regulation) Act, 1964.

11. There was no challenge to the Government Order dated 1 July 2002 in W.P.No.9347 of 2012 or W.P.No. 20456 of 2009.

12. The appellant in W.A.No.232 of 2014 challenged only the license issued by the District Magistrate imposing condition. The condition was imposed pursuant to the order dated 1 July 2002. The order dated 1 July 2002 was issued taking into account the judgment of the Supreme Court in Motion Picture Association (cited supra). The learned single Judge was therefore perfectly correct in dismissing the writ petition filed by the appellant in W.A.No.232 of 2014.

13. The first respondent in W.A.No.940 of 2014 adopted a short-cut method. There was no challenge in the writ petition filed by the first respondent in W.P.No.20546 of 2009 to the Government Order dated 1 July 2002. The license issued to the first respondent contained a condition to exhibit films. The condition was also not under challenge. The first respondent, without challenging the Government Order or license issued with a specific condition filed the writ petition only for a Mandamus. The learned single Judge issued a writ of Mandamus. The Licensing Authority was not expected to renew the license without complying with the condition imposed on the licensee, by order dated 1 July 2002. There is no legal right to the first respondent to direct the Licensing Authority to issue a license without complying with the statutory requirements. Similarly, there was no duty cast on the Licensing Authority to renew the license without complying with the requirements as indicated in the order dated 1 July 2002. We are therefore of the view that the learned single Judge was not correct in allowing the writ petition filed by the first respondent in W.P.No.20546 of 2009

14. There is a subsequent development relating to the fee payable to the Films Division for supply of Approved Films. The appellant in W.A.No.232 of 2014 and the first respondent in W.A.No.940 of 2014 filed writ petitions before this Court primarily on the ground that they have to pay 1% of amount to the Films Division for procuring Approved Films. The Films Division, Ministry of Broadcasting by its letter dated 7 July 2016 made it clear that the Government took a decision to waive 1% rent levied by the Films Divisions for supply of Approved Films to cinema theatres with effect from 1 July 2016, In view of the subsequent developments, the first respondent in W.A.No.940 of 2014 filed an affidavit dated 22 June 2017 agreeing to abide by the condition of procuring films from the Films Division of India.

Disposal:

15. In view of the reasons aforesaid, we confirm the order passed by the learned single Judge in W.P.No.9347 of 2012. We set aside the order passed by the learned single Judge in W.P.No.20546 of 2009. However, we make it clear that this judgment would not give a right to the Government of Puducherry or the Films Division, Government of India, to collect 1% of the amount for the earlier period.

16. In the up shot, we dismiss the intra court appeal in W.A.No.232 of 2014. We allow the connected intra court appeal in W.A.No.940 of 2014. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Secretary to Government,  
The Union Territory of Puducherry,  
Revenue Department, Puducherry.

WEB COPY

2.The District Magistrate - Cum - Licensing Authority  
Government of Puducherry, Puducherry.

3.The Special Officer,  
Department of Revenue and Disaster Management,  
Government of Puducherry, Puducherry.

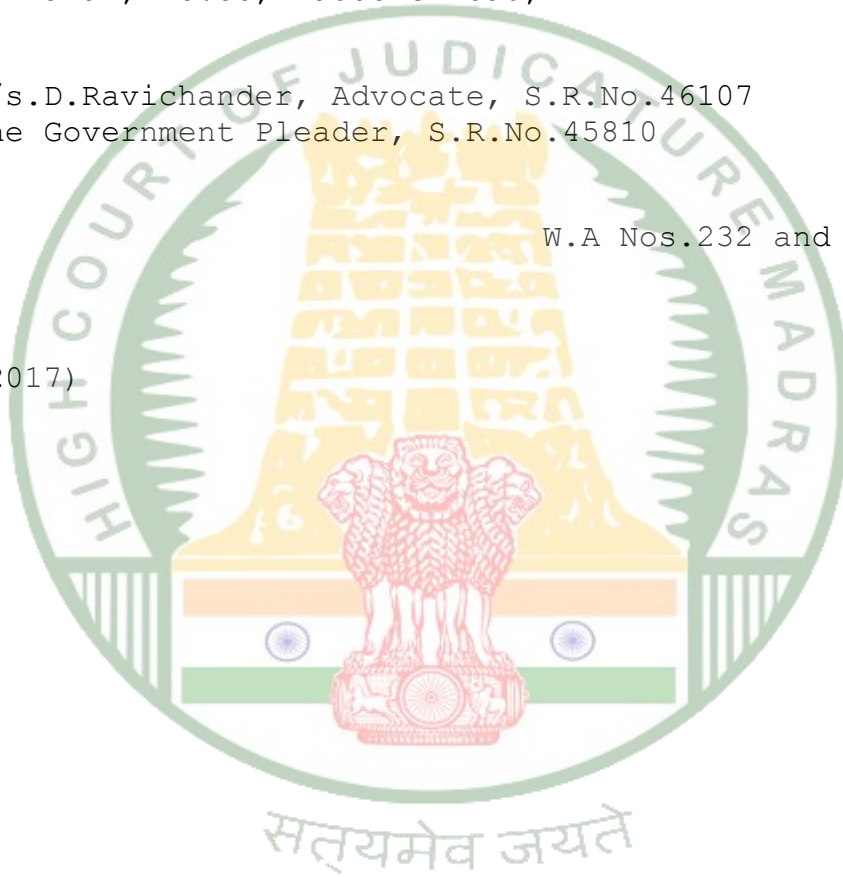
4.The Branch Manager,  
The Film Division,  
Ministry of Information and Broadcasting,  
Government of India,  
Shastri Bhavan, No.35, Haddows Road,  
Chennai.

+1cc to M/s.D.Ravichander, Advocate, S.R.No.46107

+1cc to the Government Pleader, S.R.No.45810

W.A Nos.232 and 940 of 2014

KS(CO)  
CU(30/08/2017)



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