

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.11614 of 2003

and WPMP Nos.14602 and 14603 of 2003

&

WVMP.No.478/05

Central Theatre
rep by Mr.N.Balasubramanian
Annur Village
Avinashi Taluk
Coimbatore District.

.. Petitioner

Vs

1.The State of Tamil Nadu
rep. by Secretary to Government
Home Department (Cinema)
Fort St.George
Madras 600 009.

2.The Additional Commissioner (Cinema)
Land Administration, Chepauk
Chennai 600 005.

3.The District Collector
Coimbatore.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, calling for the records of the 3rd respondent dated 02.07.2002 in his reference Na.Ka.31435/2001/U2 as confirmed by the orders of the 2nd respondent and 1st respondent in their orders dated 14.09.2002 and 24.02.2003 vide ref. G.O.Ms.No.182 (Cinema) respectively and quash the same.

For petitioner : Mr.V.Ramesh

For respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

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ORDER

This writ petition has been filed seeking a writ of certiorari calling for the records of the 3rd respondent dated 02.07.2002 in his reference Na.Ka.31435/2001/U2 as confirmed by the orders of the 2nd respondent and 1st respondent in their orders dated 14.09.2002 and 24.02.2003 vide ref. G.O.Ms.No.182 (Cinema) respectively and quash the same.

2. For the sake of convenience, the parties will be referred to by their name.

3. N.Balasubramanian, owner of "Central Theatre", Coimabtoe is the petitioner before this Court. According to the petitioner, the District Collector suspended the "C" Form licence for a period of six months, by order dated 02.07.2002, aggrieved by which, the petitioner filed an appeal under Section 9-A of the Tamil Nadu Cinemas (Regulation) Act, 1955, before the Joint Commissioner, (Cinema), which was dismissed on 14.09.2002. Challenging the said order, the petitioner filed a revision petition under Section 9-B of the Act before the Government, which came to be dismissed on 24.02.2003, Challenging which the petitioner is before this Court.

4. Learned counsel for the petitioner submitted that the revision petition filed before the Government was heard by the Deputy Secretary to Government, Home Department, whereas, the impugned order dated 24.02.2003 dismissing the revision petition has been passed by the Secretary to the Government, which is illegal. In support of his plea, he has placed strong reliance on the judgement of this Court in M/s Mani's Theatre rep. by its Proprietor Mr.N.Jannathan v. The Principal Secretary to Government, HOME (Cinema) Department and another [2009 Writ L.R. 390], wherein, this Court has held as follows:

"16.The learned counsel for the petitioner would submit that in many other cases, in which he has appeared, though, he advanced arguments either before the Deputy Secretary or the Joint Secretary, the orders were passed only by the Principal Secretary without hearing the parties and thus it is the practice of the first respondent.

17.As I have already stated, the said procedure is not only irregular but it is opposed to law. One of the fundamental maxims, "Audi Alteram Partem" came to be considered in depth by the Hon'ble Supreme Court in Swadeshi Cotton Mills v. Union of India (AIR 1981 SC 818) wherein in paragraph Nos.25 and 30 it has been held as follows:-

"25.But two fundamental maxims of natural justice have now become deeply and indelibly ingrained in the common consciousness of mankind, as pre-eminently necessary to ensure that the law is applied impartially, objectively and fairly. Described in the form of latin tags these twin principles are: (i) audi alteram partem and (ii) nemo

judex in re sua. For the purpose of the question posed above, we are primarily concerned with the first. This principle was well-recognised even in the ancient world. Seneca, the philosopher, is said to have referred in Medea that it is unjust to reach decision without a full hearing. In Maneka Gandhi's case MANU/SC/0133/1978 Bhagwati, J emphasised that audi alteram partem is a highly effective rule devised by the Courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. Hence its reach should not be narrowed and its applicability circumscribed.

30. The maxim audi alteram partem has many facets. Two of them are: (a) notice of the case to be met; and (b) opportunity to explain. This rule is universally respected and duty to afford a fair hearing in Lord Loreburn's oft-quoted language, is "a duty lying upon every one who decides something", in the exercise of legal power. The rule cannot be sacrificed at the altar of administrative convenience or celerity; for, "convenience and justice"-as Lord Atkin felicitously put it-"are often not on speaking terms" General Council of Medical Education v. Spackman (1943) AC 627 at p.638."

18. As held by the Hon'ble Supreme Court, the principle audi alteram partem should be meticulously observed by quasi judicial authorities. When the statute has empowered an authority with certain quasi judicial powers, the same should be exercised properly to achieve the object of the enactment of the legislature. If there is any practical difficulty in implementing the same, as claimed by the learned Special Government Pleader, it may be addressed to the legislature so as to make a specific provision in the Act itself excluding the application of the principles of natural justice. But, in the instant Act, there is an express provision under Section 9 (B)(2) making the principles of natural justice applicable. So long as there is a procedure prescribed in a statute or Rule providing for opportunity of representation, the authority under the Act is obliged to follow the said procedure

scrupulously. Any deviation in this regard will render the ultimate order as invalid. In the case on hand, the first respondent has not at all followed the prescribed procedure as indicated above and on this ground alone, the impugned order is liable to be quashed."

5. The learned Special Government Pleader had strongly refuted the contention in order to show that the revision petitioner was not heard by the Deputy Secretary, but by the Secretary to the Government.

6. Mr.V.Ramesh, learned counsel placed reliance on the hearing notice dated 25.11.2002 that was issued by the Under Secretary to Government to the Advocate for the petitioner, wherein it is stated as follows:

"A personal hearing of the Revision Petition in C.A.No.71/2002 submitted by you is scheduled to take place at 3.00 P.M. on 23.12.2002 in the chamber of the Deputy Secretary to Government, Home Department (Second Floor of the Main Building). You are requested to attend the hearing in person or through your counsel. Failure on your part to attend the hearing will be construed that you have no explanation to offer and the case decided based on the available records."

From the above it is clear that the petitioner has been heard by the Deputy Secretary in his chamber at second floor of the Main Building and not by the Principal Secretary, who has passed the order.

7. In view of the aforesaid judgment, the order dated 24.02.2003 deserves to be set aside. Accordingly, the writ petition is allowed and the order dated 24.02.2003 alone is set aside and the matter is remanded back to the Principal Secretary for fresh disposal in accordance with law. In the meantime, for a period of six months from today, there shall be a stay of the order passed by the District Collector. The revisional authority is directed to dispose of the revision petition within a period of six months from the date of this order. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Secretary to Government
The State of Tamil Nadu
Home Department (Cinema)
Fort St.George
Madras 600 009.

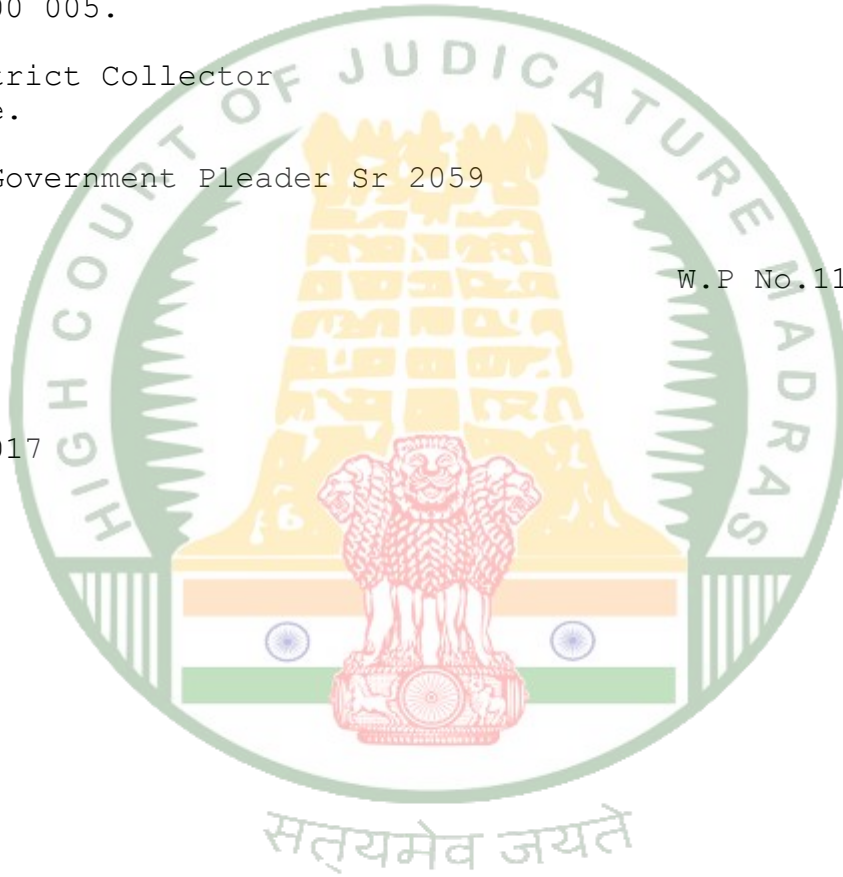
2.The Additional Commissioner (Cinema)
Land Administration, Chepauk
Chennai 600 005.

3.The District Collector
Coimbatore.

+1 cc to Government Pleader Sr 2059

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