IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 20.12.2018

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition No.19311 of 2008
and
M.P.No.2 of 2008

The Licensee
Kaveri Theatre
Coimbatore. .. Petitioner

Versus

1. The State of Tamil Nadu
represented by its Secretary to Government
Home (Cinema) Department
Fort St. George, Chennai - 9.

2. The Appellate Authority and
Joint Commissioner (Cinema)
Land Administration Department
Chepauk, Chennai - 5.

3. The District Collector
Coimbatore. .. Respondents

Writ petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the third respondent made in his proceedings R.O.C.No.54005/2007/E2 dated 21.12.2007 and modified by the second respondent in L3 C.A.No.1/2008 dated 08.02.2008 and confirmed by the first respondent in G.O.(D) No.814 Home (Cinema) Department dated 11.07.2008 and to quash the same.

For Petitioner : Mr.N.Sathyamoorthy

For Respondents : Mrs.Thangavadhana Balakrishnan
Additional Government Pleader

ORDER

This Writ petition is filed praying for issuance of a Writ of Certiorari calling for the records of the third respondent made in his proceedings ROC No.54005/2007/E2 dated 21.12.2007 and modified by the second respondent in L3 C.A.No.1/2008 dated 08.02.2008 and confirmed by the first respondent in G.O.(D) No.814 Home (Cinema) Department dated 11.07.2008 and to quash the same.

2. The petitioner would submit that he has been running a Cinema Theatre in the name and style of 'Kaveri Theatre' in Karpagam Complex, Sanganur Village at Coimbatore District wherein a movie, namely "Azhagia Tamil Magan" was released for Deepawali Festival.

3. The petitioner would further submit that the third respondent/Collector has passed an order dated 21.12.2007 suspending 'C-Form' licence of the petitioner's theatre for a period of seven days stating that on receipt of information that the tickets have been sold at a higher rate than the rate fixed by the Government in the petitioner's theatre, the Tahsildar, Coimbatore along with the Revenue Divisional Officer, Coimbatore and Village Administrative Officer had inspected the said Theatre premises; during the said inspection, they had found that one person was selling the tickets at a fixed rate of Rs.150/- per ticket irrespective of its classes and hence, they had seized all the 51 tickets available with him and conducted an enquiry; on enquiry, it was seen that the said person was working as a Gate Keeper at Yamuna Theatre, which is also one of the Theatres situated in the said complex; In the enquiry, the petitioner had submitted that the person, who sold the tickets, was not an employee in the petitioner's Theatre, but was working as a Gate Keeper at Yamuna Theatre and this petitioner has got nothing to do with the said person, whoever sold the tickets; the Enquiry Officer submitted his report to the Collector, namely, third respondent herein and the Collector has issued a show cause notice under Section 9(2)(b) of the Tamil Nadu Cinema Regulation Act, 1955 and the petitioner had also given explanation to the Collector and denied the charges levelled against him; After careful consideration of the explanation and the enquiry report, the Collector has ordered for suspension of 'C-Form' licence of the petitioner's theatre for a period of seven days.

4. The learned counsel for the petitioner would also contend that the Collector/third respondent, without properly appreciating the facts and other legal aspects putforth by the petitioner in his explanation, had erroneously passed an order by his proceedings in ROC No.54005/07/E2 dated 21.12.2007, suspending the 'C-Form' licence of the petitioner's theatre for a period of seven days under the Section stated supra.

5. The learned counsel for the petitioner would further contend that aggrieved by the said order of suspension of 'C'

Form Licence, the petitioner has filed an Appeal before the second respondent in L3.C.A.No.1 of 2008 and the said authority also rejected the arguments of the petitioner's counsel, but modified the order of the third respondent/Collector reducing the suspension period from 7 days to 3 days. Assailing the correctness of the said order, the petitioner had filed an appeal before the Secretary to Government, the first respondent herein, but the first respondent also, without giving reasons and without discussing various factual and legal positions and other points raised by the petitioner, confirmed the order of the second respondent and passed the impugned order. Challenging the said order, since the petitioner had no other alternative remedy has filed this Writ Petition.

6. The learned counsel for the petitioner would also contend that the statements alleged to have been obtained by the enquiry officer from the audience of the theatre were not referred to in the show cause notice and such statements have not get to any proof known to law and those statements are not at all produced by the respondents. An opportunity of perusing/hearing was not given to the petitioner, while the documents are relied upon by the respondents while passing the orders against the petitioner herein. The explanations given by the petitioner and the petitioner's contentions that they were selling out reservation tickets in bulk, from the ticket counters of the petitioner theatre, few days prior to the release of the movie and the movie was released on 08.01.2007 and the petitioner has also issued 5, 10 and 15 tickets to the audience, who booked in advance for their family members and there was a family dispute in existence with the neighbouring theatre owners and the neighbouring theatre owners, with malafide intention, have used the Gatekeeper to buy and sell the tickets at the higher rates and making the petitioner to face big hardship, were not considered by the respondents while passing the orders.

7. The petitioner would also contend that at this modern world, running of the theatre itself is highly competitive since the modern digital and electronic media, like TV, VCR, VCP and other other electronic devices are showing all the entertainments and the general public also choose/prefer these media to watch movies and watching movies in theatres is reduced to a considerable rate. The learned counsel for the petitioner prays for setting aside the suspension of 'C' Form Licence.

8. The third respondent/District Collector has filed a counter denying all the averments raised by the petitioner and submitted that the gate keeper, whoever sold the ticket for Rs.150/- has purchased the tickets from the counter of Kaveri Theatre at the rate of Rs.50/- for each ticket rated Rs.35/- and

at the rate of Rs.40/- for each ticket rated Rs.10/- and was selling them to the public at the rate of Rs.150/- per ticket irrespective of classes and the gatekeeper has also given a statement to that effect before the Tahsildar, Coimbatore (North).

9. The third respondent would further submit that as the irregularities amounted to the violation of Tamil Nadu cinema (Regulation) Act, 1955, the Collector had issued a notice to the licensee of the Theatre Mr.S.P.Palaniappan calling upon him for his explanation as to why the 'C' Form License issued to the theatre should not be cancelled for the above irregularities. On giving an opportunity to the petitioner to appear before the Licensing authority for personal hearing, the petitioner appeared before the licensing authority and gave a statement that in view of Diwali Release of the movie 'Azhagia Tamil Magan' on 08.11.2007, tickets were sold from the counter of the theatre at the rate fixed by the Government as advance reservation and those who bought tickets for the family members were issued with 5 tickets and more in bulk and only after the inspection, he had come to know about tickets being sold at higher rates and Mr.Mani was selling the tickets at higher rates on the tickets and that the licensees of other two theatres in the complex, who had family disputes with him, had instigated the irregularities committed by the said Mani. They have not satisfied with the explanation given by the petitioner and the 'C' Form license has been cancelled for a period of 7 days by the Collector on 21.12.2007. On appeal, the Appellate Authority after going through the entire records passed the order dated 08.02.2008 reducing the period of suspension from 7 days to 3 days. On Revision, the Government, after careful consideration of the Revision Petition, with reference to the relevant records and based on the statements, vide order dated 11.07.2008 had uphold the orders passed by the Additional Commissioner (Cinema), Chennai.

10. The learned Additional Government Pleader appearing for the respondents would contend that the explanation given by the petitioner that the person, who sold the ticket at higher rates, was not an employee of Kaveri Theatre and it was sold in the open area, was not acceptable. Since the tickets were sold in bulk along with the counterfoils of Kaveri Theatre and also higher rates have been stamped on the tickets, the petitioner's plea of ignorance was not accepted by the respondents herein. The irregularities committed by the licensee was proved by the bulk booking in advance and the tickets were sold along with counterfoils. The learned Additional Government Pleader would also submit that only after going through the entire materials and records and on consideration of all the aspects of the issue, the authorities have passed the impugned orders, which

needs no interference and the loss to the Government or the public does not prevent implementing the orders made under the law by the Government and hence, seeks for dismissal of the Writ Petition.

11. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

12. Section 9 of the Tamil Nadu Cinema (Regulation) Act, 1995 has given power to the licensing authority to revoke or suspend the licence. Section 9A provides Appeal against revocation or suspension of licence and Section 9B has empowered Powers of revision by Government. The above Sections are extracted hereunder:-

> "9. Power to revoke or suspend licensee.-
>
> [(1)] [where the holder of a licence or any person employed by him has been convicted of an offence under clause (a) or; sub-clause (i) of clause (b) or clause (c) of sub-section (1) of section 14 of the Tamil Nadu Entertainments Tax Act, 1939 ([Tamil Nadu] Act X of 1939), or has been permitted to compound such offence under section 15 of the said Act, or has been convicted of an offence under section 7 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952), or section 8 of this Act, the license may be revoked or suspended by the licensing authority by an order in writing.]
>
> [(1-A) Where the holder of a licence has been convicted for three times in the aggregate under any one or more of the following provisions, namely:-]
>
> (a) section 8 of this Act, for contravention of the condition and restriction of a licence.[* * *]
>
> (b) sub-clause (i) of clause (b) of sub-section (1) of section 14 of the Tamil Nadu Entertainments Tax Act, 1939 (Tamil Nadu Act X of 1939).
>
> [The licensing authority shall, by an order in writing, revoke the licence.]
>
> (2) If the licensing authority is satisfied, either on a reference made to it in this behalf or otherwise, that-

(a) a licence granted under this Act has been obtained my misrepresentation or fraud as to an essential fact, or

[(aa) the licensee has failed to pay any amount due under the Tamil Nadu Entertainments Tax Act, 1939 (Tamil Nadu Act X of 1939), or]

(b) the licensee has, without reasonable cause, failed to comply with any of the provisions of this Act or of the rules made thereunder, or any of the conditions or restrictions upon or subject to which the licence has been granted.

then without prejudice to any other penalty to which the [licensee may be] liable under this Act, the licensing authority may [* * *] revoke or suspend the licence.

[(c) taking into account the matters mentioned in clauses (a) to (f) of subsection (1) of section 5, the licence should be revoked or suspended.]

[Provided that the licensing authority shall not revoke or suspend the licence under clause (aa) unless an officer of the Commercial Tax Department not below the rank of an Assistant Commissioner of Commercial Taxes certifies that the licensee has failed to pay the amount referred to in that clause.]

[(2-A) No licence shall be revoked or suspended under sub-section (1) or subsection (2) unless the licensee has been given a reason able opportunity of showing cause against such revocation or suspension.]

( 3) Where the licensing authority revokes or suspends any licence under subsection (2), it shall do so by an order communicated to the licensee giving the reasons in writing for such revocation or suspension.

[9A. Appeal against revocation or suspension of licence. -

(1) Any person aggrieved by the decision of the licensing authority revoking or suspending a licence under sub-section (2) of section 9 may, within such time as may be prescribed, appeal to such authority as the Government may specify in this behalf and such

authority may make such order in the case as it may think fit.

(2) The appellate authority referred to in sub-section (1) may stay the execution of any such decision, pending the exercise of its powers under sub-section (1) in respect thereof.]

[9B. Powers of revision by Government. -

(1) The Government may, on their own motion or on application, call for and examine the record of the appellate authority in respect of any proceeding under section 5(7) or section 9-A(1) to satisfy themselves as to the legality of such proceedings or the correctness, legality or propriety of any decision passed or order made therein; and, if in any case, it appears to the Government that any such proceedings, decision or order should be modified, annulled, reversed or remitted for re-consideration, they may pass orders accordingly:

Provided that every application to the Government for the exercise of the powers under this section shall be preferred within such time as may be prescribed and shall be accompanied by such fee as may be prescribed.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Government may stay the execution of the decision or order pending the exercise of their power under sub-section (1) in respect thereof.] "



13. On going through the impugned orders, particularly, the order of the revisional authority/Government, first respondent herein, it could be seen that there was no reason given by the revisional authority regarding the suspension of 'C' Form License. The order of the Government/revisional authority contains the petitioner's contention alone. The order of the Government/ revisional authority does not contain under what circumstances, the revision petition was rejected. There is no details regarding what are the records perused and what are the arguments rendered by the counsel on both sides. There is no sufficient reason given by the revisional authority to confirm the order of the second respondent in reducing the punishment

awarded by the third respondent, but it contains that there is no cause for reducing or cancelling the said punishment awarded and hence, as per Rule 9(b)(1) of the Tamil Nadu Cinema (Regulation) Act, 1955, the revision petition is rejected and the order of the Assistant Commissioner is confirmed. Hence, the impugned orders of the respondents are liable to be set aside.

14. In this modern world, all the theatres are running in loss, since TV and other entertainments have become popular and theatre going persons have been reduced considerably. Hence, in view of the above and also the impugned orders are not reasoned orders, the same are set aside and suspension is recalled.

15. The petitioner has categorically stated that the person, who sold the tickets was not working in the petitioner's theatre and he was working in the other theatre. Even though the petitioner plead ignorance of such sale of the tickets and the petitioner was not directly involved in such sale, the same cannot be accepted since the petitioner has not prevented such sale of bulk tickets in by the said person as black tickets, that too with the counterfoils of Kaveri Theatre and higher rates have been stamped on the tickets. Since the petitioner has not prevented such sale by the said person, the said punishment was awarded. When such being the case, as the petitioner himself does not involve in such act of selling the tickets in black market, this Court is of the view that the the punishment of suspension of 'C' Form licence is not appropriate since mere suspension of 'C' Form licence of the theatre is not beneficial to either the Government or theatre or general public. Hence, instead of imposing punishment of suspension of 'C' Form licence to the petitioner, this Court is of the opinion that imposition of fine of Rs.5000/- to the petitioner is appropriate and would be beneficial to the Government, so that the petitioner will be vigilant in future regarding selling of black tickets in the said premises. The said amount should be deposited to the Collector, Coimbatore, third respondent herein, within a period of four weeks from the date of receipt of a copy of this order.

16. With the above observations and directions, this Writ Petition is allowed and the impugned orders are set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government
   The State of Tamil Nadu
   Home (Cinema) Department
   Fort St. George, Chennai - 9.

2. The Appellate Authority and
   Joint Commissioner (Cinema)
   Land Administration Department
   Chepauk, Chennai - 5.

3. The District Collector
   Coimbatore.

+1 cc to The Government Pleader, SR.No.89930

Order in
Writ Petition No.19311 of 2008

PM(CO)
CSL/12.02.2019