

Madras High Court

P.K.S. Mani Iyer, Managing ... vs The State Of Tamil Nadu ... on 11 March, 1986

Equivalent citations: (1987) 1 MLJ 31

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ORDER Shanmukham, J.

1. The petitioner is conducting cinematographic exhibition in Gandharvakottai in Pudukottai Dt. He objected to the issuance of 'No Objection certificate' to respondents 4 and 5 for locating a touring cinema in Survey No. 2/1 of Akkachupatti village, the third respondent, the licensing authority, overruled all the objections put forward by the petitioner and granted No Objection Certificate to respondents 4 and 5. Aggrieved against the said order, the petitioner preferred an appeal to the second respondent. The second respondent set aside the order of the Collector and remanded the matter to the Collector. The petitioner, aggrieved against the said order, preferred a revision petition to the Government. The said revision petition, is still pending consideration, by the Government but then the Government dismissed the petitioner's application for stay of the order passed by the appellate authority, pending his revision. It is the refusal on the part of the Government to grant stay that is challenged in this writ proceeding.

2. The learned, Counsel for the petitioner would submit in the forefront that if stay is not granted the very revision petition itself would become infructuous. In this context, the Learned Counsel referred to Section 9(A)(3) of the Tamil Nadu Cinemas (Regulations) Act and also to an unreported decision of Palaniswami, J., in S. Kuppuswami Chettiar v. Dt. Revenue Officer, South Arcot, Cuddalore and Anr. W.P. 1702 of 1969. Section 9(B)(1) confers power on the Government to entertain a revision and to pass such orders as it thinks fit. Section 9(B)(3) enables the Government; to stay the execution of the decision or order pending the exercise of their power under Sub-section (1) of Section 9(B) of the Act. It is needless to state that the said power is a discretionary one, of course, to be exercised judiciously. In this case, the Government felt that there was no need to grant interim stay.

3. The Learned Counsel for the petitioner laid great stress on the fact that the reasoning of the Government in rejecting the stay application of the petitioner is rather erroneous. According to the Learned Counsel, the Government was under the impression that the appeal is still pending on the file of the Appellate Authority but, when once the matter is remitted to the licensing authority, the same cannot be pending on the file of the Appellate Authority and therefore, the reasoning is bad. I am unable to agree with such an interpretation put forward by the Learned Counsel. The order has to be read as a whole. No doubt, the expression 'has not passed final orders in your appeal, may not be proper. But immediately after the same, the Government has pointed out that the Appellate Authority has remanded the case back to the Collector for proper examination and fresh disposal. Therefore, what the Government meant when it said 'has not passed final orders on your appeal' is that the rights of the parties have not been finally settled by the Appellate Authority because the matter was only remanded to the Collector for proper examination and fresh disposal of the same.

4. As regards the unreported decision of Palaniswami, J., that was a case where pending disposal of the appeal by the Government against the suspension of licence for running the rice mill, the

Government -refused to grant stay. The learned Judge pointed out that if the suspension of the licence was not stayed, the owner of the rice mill would have to stop running the rice mill. Therefore, the learned Judge held that the Government ought to have exercised the discretion in favour of the appellant rice mill owner. The facts in this case, however, are entirely different. Here only a No Objection certificate has been issued by the Collector and on appeal the matter has been remanded to the Collector for fresh consideration and the matter is now pending before the CollectOrder

5. I must add that in such cases this Court shall not exercise powers under Article 226 of the Constitution, particularly, when the rights of the parties are not finally settled. Accordingly, the writ petition is dismissed in limine.