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C.A.No. 6460 OF 1998
ITEM No. 104
Court No. 3
SECTION XII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 6460 OF 1998

N. MANI
.....
APPELLANT (S)

VERSUS

SANGEETHA THEATRE & ORS.
.....
RESPONDENT (S)
(With office report)

Date : 16/03/2004
This/These Appeal(s) was/were mentioned today.

CORAM :
HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE BRIJESH KUMAR
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s) Mr. V. Prabhakar, Adv.
Mr. R.S. Krishna Kumar, Adv.
Ms. Revathy Raghavan, Adv.

For Respondent (s)
For RR No. 1 Mr. S. Nanda Kumar, Adv.
Mr. M. Yogesh Kanna, Adv.
Mr. R. Suresh, 1 Adv.
Mr. S. Venkatesh Perumal, Adv.
Mr. L.K. Pandey, Adv.

For RR Nos. 2 & 3 Mr. Subramonium Prasad, Adv.
UPON hearing counsel, the Court made the following
O R D E R
The appeal is allowed in terms of the signed order.

KALYANI
(RADHA R. BHATIA)
COURT MASTER

(SIGNED ORDER IS PLACED ON THE FILE.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6460 OF 1998

N. MANI
.....
APPELLANT (S)

VERSUS

.....

RESPONDENT (S)

O R D E R

The question of granting exemption to touring cinema within the purview of sub-rule (2) of Rule 14 of the Tamil Nadu Cinemas (Regulations) Rules, 1957 is in issue in this appeal.

The appellant owns and operates a touring talkies by the name of Sri Karthikeya Touring Talkies. The State of Tamil Nadu has enacted The Tamil Nadu Cinemas (Regulation) Act, 1955 with the object of regulating exhibition by means of cinematographs in the State of Tamil Nadu. Section 10 of the Act empowers the Government to make rules to carry out the purposes of the Act.

Section 11 of the Act reads as under:-

"11. POWER TO EXEMPT:- The Government may, by order in writing exempt, subject to such conditions and restrictions as they may impose any cinematograph exhibitions or any place where a cinematograph exhibition is given from any of the provisions of this Act or of any rules made thereunder."

In exercise of the power conferred by the Act, the State of Tamil Nadu has framed the Tamil Nadu Cinemas (Regulation) Rules, 1957. Rule 14 thereof reads as under:

"14. (1) There shall be no restriction to the grant of licences to permanent and touring cinema on the basis of population in any place, except towns with a population of 50,000 and above in which no touring cinemas will be allowed, if there are three or more permanent cinemas. (2) The restrictions in respect of distance between cinemas shall be as specified below.

A touring cinema in any place shall not be allowed within a distance of 1.609 Km. of nearest permanent cinema located in the same local area or in the adjacent village, panchayat or town or in the City of Madras. 'Local area' for this purpose means the area within the jurisdiction of a Municipal Council or a Panchayat Board or a revenue village.

The distance between any two touring cinemas shall be not less than 0.402 Km.

There shall be no restriction in regard to the distance between one permanent cinema and another permanent cinema."

XXXXXXXXXX XXX

The Rule was amended by Government Order No. 1326 dated September 6, 1995 which reads as under :-

"In the said Rules:-

(1) In rule 14, for sub-rules (1) and

(2) the following sub-rules be substituted, namely:-

(1) There shall be no restriction to the grant of licence to permanent and travelling cinemas on the basis of population.

(2) A travelling cinema in any place should not be allowed within a distance of 1.609 km of the nearest permanent cinema located in the same local area or in the adjacent local area.

Explanation:

For the purpose of this clause, "Local Area" means the areas within the jurisdiction of a local authority:

Provided that the Government may for reasons to be recorded in writing permit a travelling cinema within the distance specified in this clause from the nearest permanent cinema.

Provided further that a travelling cinema may be allowed to complete its full term of five years even if a permanent cinema comes up within the distance specified in this clause;

(b) The distance between any two travelling cinemas shall not be less travelling than 0.402 km.

Provided that the Government for reasons to be recorded in writing may permit a travelling cinema within the distance specified in this clause from the nearest travelling cinema.

(c) There shall be no restriction in regard to the distance between one permanent cinema and another permanent cinema."

[Text of the Amendment taken from 1996-II MLJ 603 at 605]

It appears that the appellant's touring cinema was granted exemption on April 4, 1988 by reference to Section 11 of the Act which exemption came to an end with effect from October 28, 1994. On the same day, the appellant moved a fresh application seeking a similar exemption. During the pendency of the application on September 6, 1995 the G.O. No. 1326 above said came to be issued making an amendment in the Rules. It also appears that between April 4, 1988 and September 6, 1995 a permanent theatre owned by respondent No.1 had come up into existence which attracted the applicability of Rule 14 and the appellant's touring cinema could not have operated unless and until granted an exemption. Vide order dated October 30, 1995, the Government of Tamil Nadu passed an order exempting the appellant from the operation of Rule 14 and exercising the power under the proviso as inserted on 6th September, 1995. The State Government directed licence in 'C' Form to be issued to the applicant.

Feeling aggrieved by the order dated October 30, 1995, the respondent No. 1 filed a writ petition in the High Court which was dismissed. Respondent No. 1 preferred an appeal which has been allowed by the Division Bench and the exemption order dated October 30, 1995 has been directed to be quashed. Feeling aggrieved by the order of the Division Bench, the appellant has filed this appeal by special leave.

A perusal of the order of the High Court shows that the principal reason which has prevailed with the High Court in setting aside the order dated October 30, 1995 is that there is no reference made therein to Section 11 of the Act. In our opinion, the Division Bench of the High Court was not right in forming the opinion which it has done. The power to grant permission has been specifically conferred on the Government by the proviso inserted to Rule 14 by G.O. No. 1326 dated September 6, 1995. It is note-worthy that in an earlier round of litigation initiated by the respondent No. 1 the constitutional validity of the G.O. No. 1326 dated September 6, 1995 was upheld. Merely because Section 11 of the Act was not specifically referred to in the order dated October 30, 1995 that could not have been a ground for setting aside the permission dated October 30, 1995.

It is well-settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. The appeal is allowed. The impugned judgment of the Division Bench is set aside and that of the learned Single Judge is restored.

.....J
(R.C. LAHOTI)

.....J
(BRIJESH KUMAR)

.....J
(ARUN KUMAR)

NEW DELHI;
MARCH 16, 2004.