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**Court : Karnataka**

**Decided On : Jun-10-1996**

**Reported in : ILR1996KAR3432; 1996(7)KarLJ826**

**Judge : P. Vishwanatha Shetty, J.**

**Acts : [Constitution of India](#) - Article 226; Karnataka Cinema Regulation Rules, 1971 - Rule 3(18), 111(G) and 111J**

**Appeal No. : WPs 15833 and 9582/94**

**Appellant : Siddegowda and ors.**

**Respondent : The District Magistrate, Mandya and ors.**

**Advocate for Def. : R.K. Hatti, HCGP for R-1, ;R.U. Goulay and ;K.N. Subba Reddy, Adv. for R-2**

**Advocate for Pet/Ap. : B.G. Sridharan, Adv. for A.C. Balaraj, Adv.**

**Disposition : Petition dismissed**

**Judgement :**

ORDER

**P. Vishwanatha Shetty, J.**

1. The No-objection Certificate issued by the 1st respondent in exercise of the power conferred on him under the provisions of the Karnataka Cinema Regulation Act, 1964, and the Karnataka Cinema Regulation Rules, 1971, (hereinafter referred to as the 'Act' and the 'Rules') to the 2nd respondent-C. Hemanthakumar, has been challenged in both these petitions. The copy of the same has been produced as Annexure-C and D in W.P.No. 15833/94 and as Annexure-O and P in W.P.No.9582/94. Since common grievance has been made by the petitioners in these petitions, they are taken up for final hearing and disposed of by this common order.

2. The petitioners in Writ Petition No. 15833/1994 claim to be permanent residents of Thaggahalli Village, Mandya Taluk, Mandya District. It is their contention that the distances between their residential buildings and the site bearing' No. 123/6 of Thaggahalli village, where the 2nd respondent has proposed to put up a cinema theatre is about fifteen feet; and since the 2nd respondent has already established a rice mill with all equipments and a drying yard and also a sugarcane crusher in the land bearing Survey No. 123/6, if the 2nd respondent is permitted to put up a cinema theatre on the said site, it will result in severe injury to them, and resulting in health hazard; and since there was no publication in the local news paper inviting objections by the 1st respondent as required under Rule 111-J of the Rules, the petitioners could not file their objections before the 1st respondent objecting for the grant of no-objection certificate to the 2nd respondent According to them, the publication inviting objections in a daily news paper known as 'Kolal' is no publication at all in the eye of law as only a few copies of the said newspaper are printed; and though the application filed by the 2nd respondent was published in 'Deccan Herald', the petitioners who do not know English language were not aware of the said publication made in 'Deccan Herald'.

3. The 1st petitioner in Writ Petition No. 9582/94 has been carrying on business by establishing a touring talkies in Thaggahalli village itself. The 2nd petitioner is also carrying on business in touring cinema in a place known as Mangala village which is a neighbouring village of Thaggahalli village. According to the petitioners, the cinema theatre of the 2nd petitioner is situated within a distance of about one hundred and forty meters from the site where the 2nd respondent had proposed to

establish his cinema theatre. The petitioners-3 to 5 in this petition (W.P.No.9582/94) claim to be having their residential premises very close to the proposed cinema theatre. It is the case of these petitioners that they have filed their objections before the 1st respondent objecting to the grant of no-objection Certificate to the 2nd respondent on various grounds, and the 1st respondent without any justification in disregard of Rule 27(1)(e) of the Rules granted the no-objection Certificate to the petitioners.

4. The statement of objections have been filed in both the petitions by the 2nd respondent. In the statement of objections it is denied that there is no publication in local news paper made by the 1st respondent as required under Rule 111-J of the Rules. It is stated that since the original publication made in 'Kolalu' on 30th September, 1993, was considered not a due publication' by the 1st respondent, the 1st respondent, got a second paper publication made in Kannada daily known as 'Pouravani' dated 1st October, 1993, and also in a English daily known as 'Deccan Herald' on the same date, notifying the establishment of the cinema theatre on the site in question and inviting objections from the general public; and therefore, the objections raised by the petitioners that there was no due publication in a local news paper as required under Rule 111-J of the Rules is totally incorrect. It is his further case that the District Magistrate has called for objections from various authorities like Tahsildar, Mandal Panchayat, Thaggahalli village, the authorities of Public Works Department, Police, Director of Town planning, Health Officer; and all these authorities after conducting spot inspection of the site in question had recommended for the grant of no-objection certificate required by the 2nd respondent, and after considering their recommendation and after considering the objections filed by the objections in Writ Petition No. 9582/1994, had granted the no objection Certificate as per his, order dated 16th March, 1994; and subsequent to the grant of no objection Certificate, the 2nd respondent has constructed a cinema theatre investing huge amounts by raising loan and if at this stage the order impugned is quashed, the 2nd respondent will be put to irreparable injury and hardship; and there are absolutely no bonafides in the claim made by the petitioners in these petitions.

5. Sri Sridharan, Learned Counsel for the petitioners in both the petitions, submitted that the order impugned is liable to be quashed primarily on three grounds: Firstly, he submitted that the petitioners in Writ Petition No. 15833/1994 were denied of an opportunity to file their objections as there was no publication made inviting the objections from the members of the general public as required under Rule 111-J of the Rules.

6. Secondly, he submitted that the licensing authority had passed the order in a mechanical manner and without inspecting the spot, and on account of that the petitioners in both the petitions are put to irreparable injury and hardship.

7. Thirdly, he submitted that the report found in the records shows that the total population of Thaggahalli village is 19,419 and on the basis of the population available only two cinema theatres could be established in the area in question and since already there are two touring cinema theatres which have now been permitted to be converted as semi-permanent cinema theatres, the grant of permission for one more cinema theatre is contrary to Rule 27(ii)(b) of the Rules.

8. Sri R.U. Goufay, Learned Counsel for the 2nd respondent in both the petitions, supported the order impugned. He submitted that the contention that there was no due publication made in the local news paper inviting objections is incorrect. He submitted that since the 1st respondent was of the view that the publication in a local news paper known as 'Kolalu' could not be treated as a proper publication as there were objections raised with regard to the said publication, he subsequently invited objections to the application filed by the 2nd respondent by getting it published in two news papers known as 'Pouravani' and 'Deccan Herald' dated 1st October, 1993, which have wide circulation in the area and also in the State. He further submitted that the Petitioners-1 and 2 in Writ Petition No. 9582/ 1994 being the rival cinema operators have no locus standi to file the said Writ Petition along with other petitioners in the said Writ Petition and the petitioners in Writ Petition No. 15833/1994 were set up by the said petitioners to file these petitions. He submitted that when the petitioners in Writ Petition No. 9582/1994 could not secure an interim order and this Court only directed notice on the interim prayer made by the petitioners, the petitions in Writ Petition No. 15833/ 94 were

instigated to file the said Writ Petition; and therefore, the conduct of the petitioners in both the petitions disentitles them for any equitable relief at the hands of this Court and the petitioners will not be put to any inconvenience or hardship if the 2nd respondent is allowed to establish the cinema theatre pursuant to the building which he has already put up. He also submitted, since the petitioners in Writ Petition No. 15833/1994 had not filed any objections they have also no locus standi to challenge the order impugned. It is the contention of Sri Goulay that Chapter XII B of the Rules is a self-contained one and the reliance placed by the Learned Counsel for the petitioners Sri Sridharan on Rules. 27 of the Rules is misconceived; and Rule 27 of the Rules has no bearing with regard to the licence to be granted for a semi-permanent cinema theatre, except regarding the limitation provided with regard to the population.

9. Sri R.T. Hatti, learned High Court Government Pleader supported the order impugned and made his submissions with reference to the records. He submitted that all the authorities from whom the reports have been called for by the 1st respondent after conducting necessary enquiry and after spot inspection have recommended for grant of no objection certificate to the 2nd respondent; and the 1st respondent after considering their recommendations and after considering the objections filed by such of those petitioners and after making necessary enquiry has found that the site in question is suitable to be established for the purpose of establishing a cinema theatre and had passed an order granting no objection certificate to the 2nd respondent and as such it is not a fit case for interference by this Court in exercise of its jurisdiction under Articles 226 and 227 of the [Constitution of India](#).

10. Now, let me first examine the contentions raised by the petitioners in Writ Petition No. 15833/94. The contention urged in this petition by the Learned Counsel for the petitioners is that since there was no publication as required under Rule 111-J of the Rules, the petitioners in the said petitions could not file their objections objecting for grant of no objection to the 2nd respondent and on account of that their property right is seriously affected in as much as the 2nd respondent is allowed to put up a cinema theatre within a short distance of fifteen feet from their residential premises. It is not disputed at the hearing of these

petitions that paper publication has been made in a Kannada local daily known as 'Pouravani' dated 1st October, 1993, and also in 'Deccan Herald' daily on the same date. Therefore, there is no merit in the contention of the petitioners that there was no publication in the local daily as required under Rule 111-J of the Rules. Though the petitioners have referred to the publication made in 'Deccan Herald', they were not aware of the same, as the publication in 'Deccan Herald' was made in English. However, in the entire petition there is no whisper about the publication made in the Kannada local daily known as 'Pouravani'. If the petitioners could come to know about the publication made in 'Deccan Herald' and also in 'Kolalu' which according to the petitioners had only a few copies printed, it is difficult to believe that the petitioners had not come to know about the publication made in 'Pouravani'. I am inclined to take the view that the petitioners who were fully aware of the publication made in 'Pouravani' and having failed to file their objections for grant of no objection Certificate to the second respondent, have suppressed the said fact and filed this petition presumably with a view to obtain an ex parte interim order from this Court. The conduct of the petitioners also will have to be viewed in the background of the submission made on behalf of the 2nd respondent with reference to the date of filing of Writ Petition No. 15833/1994 and Writ Petition No. 9582/1994. Writ Petition No. 9582/1994 was filed before this Court on 2nd April, 1994, and in the said Writ Petition this Court on 5th April, 1994, directed the learned High Court Government Pleader to take notice for Respondent-1. However, no expert interim order was granted, though a prayer was made in the said Writ Petition. Thereafter, Writ Petition No. 15833/94 came to be filed before this Court on 6th June, 1994. In Writ Petition No. 9582/94, Petitioners-1 and 2 are the rival cinema operators. Therefore, I find considerable force in the contention of Sri Goulay the learned Counsel for the 2nd Respondent, that the petitioners-1 and 2 in Writ Petition No. 9582/94 have set-up the petitioners in Writ Petition No. 15833/94. It is not possible to believe that the petitioners had no knowledge about the said paper publication. As indicated earlier, the petitioners have deliberately suppressed the said fact and made an attempt to mislead this Court with a view to obtain an expert interim order. Such an attempt deserves to be deprecated by this Court, and in those circumstances this Court should refuse to examine the claim of the parties on merits. This approach is necessary to

maintain the purity of administration of justice and to reiterate the message to the litigant public that the parties who invoke the extraordinary jurisdiction of this Court under Articles 226 and 227 of the [Constitution of India](#) must approach this Court with clean hands and should not be guilty of any latches or inaccurate statement bordering on suppression of facts. Therefore, this petition is liable to be dismissed solely on the ground that the conduct of the petitioners disentitles for any equitable relief from this Court.

11. However, at the hearing of the petitions, Sri Sridharan, Learned Counsel for the petitioners, submitted that though the publication has been made in both the papers and the petitioners are not conversant with English language and therefore the paper publication made is only an empty formality and it cannot be termed as proper publication as required under the Rules; and the object of issuing paper publication and inviting objections is to give an opportunity to the persons who are likely to be affected on account of the establishment of a cinema theatre to file their objections; and since the paper publications have been made in English it must be considered that no due publication was made as required under Rule 111-J of the Rules.

12. No doubt as contended by Sri Sridharan, the contents of the paper publication published in both the papers referred to above are in English. However, I am unable to accept the contention of the Learned Counsel for the petitioners that the publication of notice inviting objections made in English would affect the no objection Certificate granted to the 2nd respondent, for two reasons: Firstly, two of the petitioners in this petition have signed their vakalath in English. Therefore, it cannot be said that all the petitioners are not conversant with the English language, as claimed by the Learned counsel for the petitioners; secondly, Rule 111-J of the Rules does not specify the language in which the paper publication is required to be made. It only contemplates two things, namely, (i) objections must be called for in a local news paper and (ii) the said news paper must have wide circulation in the area. Under these circumstances, I am of the view that merely because the notice inviting objections has been published in English, it would not violate the provisions of Rule 111-J of the Rules.

13. Now, the further question that would arise for consideration in this petition is that since the petitioners in these petitions have failed to file their objections, whether it is permissible for them to challenge the impugned order.

14. Sri Goulay in support of his submission that the petitioners who have not filed objections are not entitled to maintain these petitions, relied upon a decision of the Supreme Court in the case of JASBHAI MOTIBHAI DESAI v. ROSHAN KUMAR, HAJI BASHIR AHMED AND ORS., : [1976]3SCR58 and a decision of this Court in the case of B.N. SAMPATH IYENGAR v. DISTRICT MAGISTRATE, MYSORE, 1981(1) KLJ 339. In the case of Jasbhai Motibhai Desai'(supra), at paragraph 41 the Supreme Court has observed thus:

'41. The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under Rule 4, The appellants did not avail of this option. He did not lodge any objection in response to the notice, the due publication of which was not denied. No explanation has been given as to why he did not prefer any objection to the grant of the No-Objection-Certificate before the District Magistrate or the Government Even if he had objected before the District Magistrate, and failed, the Act would not give him a right of appeal. Section 8A of the Act confers a right of appeal to the State Government, only on any person aggrieved by an order of licensing authority refusing to grant a license, or revoking or suspending any licence under Section 8. Obviously, the appellant was not a 'person aggrieved' within the contemplation of Section 8A.'

In the case of Sampath Iyengar (supra), this Court has taken the view that, the persons who are not objectors before the District Magistrate cannot challenge the order granting No-objection Certificate under Article 226 of the [Constitution of India](#). The relevant portion of the said observation reads as follows:

'In as much as persons who were not objectors before the District Magistrate could not have challenged the order granting 'No objection Certificate' under Article 226 of the Constitution, it cannot be said that they are entitled to urge the very same grounds as respondents. Therefore, the contentions raised on behalf of

Respondents-3 and 4 who were not objectors cannot be considered.'

Admittedly, no right of appeal is provided under the Rules even to objectors against the no objection Certificate granted. The right of a citizen to carry on his profession or business is regulated by the provisions of the Act and Rules framed thereunder. When the Act and the Rules do not provide a right of appeal to the objectors against the order granting no-objection Certificate, I am of the opinion, it is not permissible to the persons who have not filed the objections to challenge the no-objection Certificate issued, before this Court by invoking its jurisdiction under Article 226 of the [Constitution of India](#). Therefore, Writ Petition No. 15833/1994 is liable to be dismissed on this ground also.

15. Further, in this case admittedly the Petitioners-3 to 5 in Writ Petition No. 9582/1994 though they are not the rival objectors and claim to be neighbouring residents residing very close to the site in question, have filed their objections, when that is the case, I do not find any justification for the petitioners in Writ Petition No. 15833/ 1994 not to file their objections, if any. The record maintained by the first respondent shows that in the site in question the 2nd respondent had notified the proposal of establishing the theatre. Therefore, it is also not possible to believe that they had no notice about the application filed by the 2nd respondent for grant of no-objection Certificate. Though the petitioners in their petition have asserted that their houses are situated within about fifteen metres from the site where the cinema theatre is proposed to be established, the same has been denied in the statement of objections filed on behalf of the 2nd respondent and it is asserted that their residential premises are situated at a distance of more than fifty Mtrs. The relevant portion of the statement of objections reads as follows:

'Petitioner No. 1 - Siddegowda in W.P.No. 15833/1994 is not doing any cinema business and his house is more than 500 feet away from the cinema site. Petitioner No. 2 - Sri Kalegowda's residence is also more than one K.M. Similarly, the residential house of Petitioner No. 3 is also more than 300 feet. The residence of petitioner No. 4 Sri Ramesh is also more than half K.M. from the cinema theatre. Petitioner No. 3 Siddegowda is also resides more than 500 feet. Sri Madegowda - Petitioner No. 6 also resides more than 500 feet away. Regarding

Petitioner No. 7 he has no residential house. But however, claims to have a site, which is one K.M. away from the cinema site in question, Similarly, petitioner No. 8 who resides more than 1000 feet from the cinema site.'

16. These are disputed questions of facts. The 1st respondent after conducting necessary enquiry has found the site in question is suitable for the purpose of establishing a cinema theatre. Therefore, I am of the view that the petitioners having failed to submit their objections cannot now be permitted to challenge the order impugned and grant of no objection certificate on any ground. Therefore, the Writ Petition No. 15833/1994 filed by the petitioners is liable to be dismissed both on the ground it is not maintainable and also on merits.

17. With regard to the contention of Sri B.C. Sridharan that the 1st respondent did not conduct spot inspection and the order impugned came to be passed in a mechanical manner is concerned. I am unable to accept the said submission also. As noticed earlier, the objections were called for as required by Rule 111-J of the Rules and the various authorities have recommended for grant of no objection certificate. This is clear from the records made available by Sri Hatti, learned High Court Government Pleader. The 1st respondent after considering their objections has passed the order impugned. The Tahsildar who has sent his report has stated that he has conducted the spot inspection, the Doctor on behalf of the Health Department has stated that he has conducted the spot inspection and found the site in question is suitable from the health point of view. The Mandal Panchayat which is fully aware of the local situation has also recommended for grant of no objection certificate. The Executive Engineer of the PWD has also recommended for grant of no objection certificate. In this situation even assuming the 1st respondent has not conducted spot inspection as claimed by the petitioners is true, the order impugned cannot be quashed. When the right of a citizen to carry on business under Article 19(1)(g) of the Constitution is granted and the said right is regulated under the provisions of the Act and the Rules framed thereunder; and when the District Magistrate after considering the objections and the recommendations of various authorities has granted no-objection certificate, this Court should not except in exceptional cases of grave injury or hardship to the petitioner or it is totally against the public interest, interfere against the grant of no-

objection certificate. Therefore, I do not find any merit in this submission of Sri Sridharan.

18. So far as the contention of Sri Sridharan that the population of the village in question being only 19,419 is concerned, it is not permissible for the 1st respondent to grant no-objection certificate to the 2nd respondent, it was pointed out by the learned Counsel for the 2nd respondent that the theatre run by the 2nd petitioner is only a touring cinema. The prohibition contained in Rule 111-G with reference to the population relates to the existence of semi-permanent or permanent cinema. Therefore, I am of the opinion that the no objection certificate granted by the 1st respondent as per the impugned order does not violate Rule 111-G of the Rules. Further, the population as found now is on the basis of the census taken in the year 1991. Rule 3(18) of the Rules provides for addition of five percent every year to the existing population. If this is taken as the basis, it is permissible as on this date to establish a third cinema theatre. Therefore, there is no prejudice caused to the petitioners in Writ Petition No. 9582/1994. Looking at it from any point of view, I am of the opinion that there is no justification to interfere against the no objection certificate issued by the 1st respondent.

19. Further, though the petitioners cannot claim equity as a matter of right before this Court, this Court cannot totally ignore the fact that the 2nd respondent has already completed the construction of cinema theatre by investing huge money, and at this stage, if the orders impugned are quashed, it would result in serious injury to the 2nd respondent.

20. For all the reasons stated above, I do not find any merit in these petitions, and therefore, the same are liable to be dismissed and accordingly they are dismissed. Rule issued is discharged.

21. Sri Hatti, learned High Court Government Pleader, is given four weeks time to file memo of appearance.