

(2013) 04 AHC CK 0265

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (Tax) No's. 404, 813, 52367, 1040, 611, 639, 680, 817, 870, 961, 1017, 41838, 1143, 1144, 1170, 1215, 1227, 1322, 1360 of 2012, 223 of 2013 and 1289 of 2012

All India Local Television Channel Owners Welfare Trust and
Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Cable Television Networks (Regulation) Act, 1995 — Section 2(g)
Cinematograph Act, 1952 — Section 2(a), 2(c)
Telecom Regulatory Authority of India Act, 1997 — Section 2
Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 13, 5, 5(3), 5(4), 7

Citation : (2013) 5 ADJ 138

Hon'ble Judges : Ashok Bhushan, J;Abhinava Upadhyay, J

Bench : Division Bench

Advocate : H.M.B. Sinha, Shashi Nandan, Manish Goyal, Ajay Kumar Singh, Ashish Kumar Singh, M.N. Singh, Amol Ranjan, K.D. Tiwari, S.C. Srivastava, Prashant Pandey, Arvind Srivastava, Shodan Singh, Narendra Kumar Giri, for the Appellant; A.C. Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—All these writ petitions have been filed by Cable Television Networks challenging the demand/leviability of additional license fee under Rule 17(2) of the U.P. Cinemas (Regulation of Exhibition by means of Video) Rules, 1988 as amended by 4th Amendment Rules 2011. The petitioners in this bunch of writ petitions fall in following three categories:

- (i) Local Television Channels
- (ii) Multi System Operators (MSO)
- (iii) Cable Operators.

The first two writ petitions and some other writ petitions have been filed by Local

Television Channels. The writ petitioners namely; All India Local Television Channel Owners Welfare Trust and Shiv Shakti Media And Communication Pvt. Ltd. are local Television Channels. The third writ petition of M/s. Meerut Cable Network Pvt. Ltd. is the writ petition filed by Multi System Operators (MSO). In writ petition filed by Aavesh Garg and others, the petitioner No. 1 is a local Television channel and petitioner Nos. 2 to 8 are cable operators. Writ petition No. 1040 of 2012, Hathway Digital Saharanpur Cable & Data Com. Pvt. Ltd. has been filed by Multi System Operator which is also running a local Television channel B. For U. All the above writ petitions fall in one or other categories as noticed above. For deciding this bunch of writ petitions, it is necessary to note the facts of few writ petitions belonging to above three categories.

2. Writ petition No. 404 of 2012 has been filed by All India Local Television Channel Owners Welfare Trust. The petitioner has challenged the order dated 26.12.2011 issued by District Magistrate, Gorakhpur by which the local channels have been refused to be regularised for non deposit of additional licence fee. The petitioner submitted an application before the District Magistrate on 19.12.2011 stating that registration fee for cable Television Network of Rs. 500/- as required by Central Government is deposited and under U.P. Cinemas (Regulation of Exhibition by means of Video) (Fourth Amendment) Rules, 2011 fee of Rs. 2400/- per annum as required by Rule 17(1) is also deposited. The Entertainment Tax Department is demanding additional fee under Rule 17(2) whereas by Amendment Rule 17(2) has been deleted. Local channels did not receive any money from viewers and local channels highlights the local problems, local news programmes through MSO. The entertainment tax is also realized from the MSO. After receiving the letter dated 19.12.2011 from the petitioner, the District Magistrate replied the said letter by order dated 26.12.2011. It has been stated that under 2011 Rules, there is provisions of issue of licence under Rule 17(1) on payment of fee of Rs. 2400/- per annum and according to Rule 17(2) at the rate of per Television screen is Rs. 100/- per annum is charged as additional licence fee. It has been stated in the order that after payment of licence fee of Rs. 2400/- and Rs. 100/- the additional licence fee per Television screen any cable networks shall be permitted to run local channel. The application of the petitioner was disposed of. The petitioner feeling aggrieved have filed the writ petition making following prayers:

(a) Issue a writ certiorari to quashing the impugned order dated 26.12.2011 passed by the District Magistrate Gorakhpur i.e. respondent No. 3 (Annexure-1 to the writ petition).

(b) Issue a writ order or direction in the nature of mandamus commanding the respondents to not to create any let or hindrance in the exhibition of local channels by means of Cable Television Network by not compelling them for depositing the additional license fee than what is provided in Rule 17(ii) of the U.P. Cinema (Regulation of Exhibition by Means of Video) Rules, 1988.

(c) Issue a writ order or direction in the nature of mandamus commanding the

respondents not to give effect to the impugned order dated 26.12.2011 passed by the respondent No. 3.

3. Writ petition No. 813 of 2012 has been filed by two local channels namely; M/s. Shiv Shakti Media and Communication Pvt. Ltd., petitioner No. 1 is operating local channel namely S. Television, and the petitioner No. 2 is running a Family Channel in city of Varanasi. The petitioners obtained a registration certificate from Head Post Master, Varanasi. The petitioners' case is that for the purpose of telecast of their programmes they have to hire MSO provide cable Television signals which are limited to the city. The petitioner entered into an agreement with the respondent No. 5, MSO, who is service provider. The petitioners further claim to have obtained license under 1988 Rules and have deposited fee of Rs. 2400/- per annum. The Rule 1988 were amended by 4th Amendment Rules, 2011 dated 31.3.2011. According to the amendment, the term license sought to include exhibition of video through cable television network or television signal receivers agency. The petitioners' case is that 4th Amendment Rules, 2011 further amended Rule 17 and provision of imposition of licence fee was done away with. The District Magistrate, Varanasi passed an order dated 20.4.2011 directing all MSOs/Control room operators/local channels operators to obtain licence by making an application and after obtaining licence, the channels be exhibited failing which establishment shall be sealed. The petitioners have also referred to the order dated 3.4.2012 of the Entertainment Tax Commissioner, U.P. addressed to all the District Magistrates informing that apart from licence fee of Rs. 2400/- per VCP per year additional licence fee at the rate of Rs. 100/- per Television screen is required to be realised. Notice dated 17.4.2012 were issued to two MSOs of Varanasi asking them to give information of number of connections failing which on the basis of informations collected in the office, the additional licence fee under Rule 17(2) shall be determined. Following prayers have been made by the petitioners of writ petition No. 813 of 2012:

(a) issue a writ, order or direction in the nature of certiorari calling for the records of the case and quashing the order of respondent No. 2 dated 3.4.2012, imposing additional license fee of Rs. 100/- per television screen per financial year (Annexure-1 to the writ petition).

(b) issue a writ, order or direction in the nature of certiorari calling for the records of the case and quashing the notice of assessment dated 17.4.2012, issued by the respondent No. 4 to the respondent No. 5 (Annexure-2 to the writ petition).

(c) issue a writ, order or direction in the nature of mandamus, commanding the respondents not to interfere in the running of the channel by the petitioners upon due payment of Rs. 2400/- as license fee prescribed by Rule 17 of the U.P. Cinemas (Regulations of Exhibition by means of Video) (4th Amendment) Rules, 2011.

(d) Issue any other writ, order or direction as this Hon'ble Court may deem fit

and proper in the facts and circumstances of the case.

4. Writ petition No. 52367 of 2012 M/s. Meerut Cable Network Put. Ltd v. State of U.P., is a writ petition filed by MSO/Service Provider which provides cable television channels to the local Network. The petitioner's case is that the petitioner is operating cable network distributing cable network signals to the different cable network operators. The petitioner claims to have been issued a licence under the 1988 Rules. The petitioner claims to have obtained licence for video libraries and Television signals receiver agency. The petitioners' case in the writ petition is that 1988 Rules were amended by 4th Amendment Rules, 2011 dated 31.3.2011 by which provisions for additional licence fee under Rule 17(2) was deleted. The order dated 20.4.2011 passed by the District Magistrate, Varanasi has been referred to by which all the MSOs were directed to obtain licence by making appropriate application. The petitioner's case is that licence fee of Rs. 2400/- having been deposited, the petitioner is entitled to run the MSO. However, no fresh licence is being granted and additional licence fee at the rate of Rs. 100/- per screen per financial years is being demanded. Reference to the order dated 3.4.2012 of Entertainment Tax Commissioner addressed to all the District Magistrates has been made by which additional licence fee at the rate of Rs. 100/- per Television screen is required to be realised. The petitioner has also annexed copy of the order dated 23.4.2012 issued by the District Magistrate by which amount of licence fee and additional licence fee for the period 2010-11, 2011-12 and 2012-13 amounting to Rs. 1,44,52,200 is demanded. The petitioner submitted representation and the District Magistrate thereafter had issued an order dated 15.9.2012 Annexure-2 to the writ petition by which a demand of Rs. 96,42,000/- was made in pursuance of which citation has also been issued by Tahsildar dated 27.9.2012 for recovery as arrears of land revenue. The petitioner has claimed in the writ petition following reliefs:

- i. issue a writ, order or direction in the nature of certiorari quashing the citation dated 27.9.2012 (Annexure 1 to the writ petition), issued by Tehsildar, Tehsil Sadar, Meerut, Orders dated 15.9.2012 (Annexure 2 to the writ petition) and 25/16.6.2012 (Annexure 3 to the writ petition) passed by District Magistrate, and order dated 3.4.2012 (Annexure 4 to the writ petition) issued by respondent No. 2.
- ii. issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere in the running of the channel by the petitioner upon due payment of Rs. 2400/- as license fee prescribed by Rule 17 of the U.P. Cinemas (Regulations of Exhibition by Means of Video) (4th Amendment) Rules, 2011.

5. Writ petition No. 1289 of 2012, Aavesh Garg and seven others v. State of U.P. and others, is a writ petition filed by a local Television Channel (petitioner No. 1) and cable operators (petitioners No. 2 to 8). The petitioner No. 1 is running a local Television channel namely; "City Cinema" in district Bijnore and petitioner Nos. 2 to 8 are cable operators exhibiting local Television channels Abhi Tak News

in district Bijnore through their Television Cable network. District Entertainment Officer issued a letter to Entertainment Inspector for ensuring that cable Television networks in the district should be asked to pay licence fee at the rate of Rs. 2400/- per annum and additional licence fee per screen at the rate of Rs. 100/-. The petitioners No. 2 to 8 moved applications for obtaining licence for exhibiting local Television channel through cable Television network and further to accept the licence fee as per 4th Amendment Rules, 2011. The petitioner's case is that by 4th Amendment Rules, Rule 17(2) has been deleted so as to exempt Television Cable Operators from payment of Rs. 100/- per screen. The petitioners in the writ petition have prayed for following reliefs:

(1) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 14.9.2012 (Annexure 1 to the writ petition) issued by respondent No. 4 in so far as it pertains to the petitioners only.

(2) issue a writ, order or direction in the nature of mandamus directing respondent No. 3 to consider and decide the application 10.10.2012, 12.10.2012, 17.10.2012, 18.10.2012, 19.10.2012, 20.10.2012 (Annexure 2 to the writ petition) of the petitioners in accordance with amended Rule 17 of the U.P. Cinema (Regulation of Exhibition by means of Video) (4th Amendment) Rules, 2011, within some stipulated period which this Hon'ble Court pleases to fix.

(3) issue a writ, order or direction in the nature of mandamus directing respondent No. 3 to accept the License fee as per Amended Rule 17 of the U.P. Cinema (Regulation of Exhibition by means of Video) (4th Amendment) Rules, 2011 of the petitioners.

(4) issue a writ, order or direction in the nature of mandamus directing respondent No. 3 to grant License to the petitioners for exhibiting their local channels by means of Cable Television Network.

6. We have heard Sri Shashi Nandan, learned Senior Advocate assisted by H.M.B. Sinha, Sri Manish Goyal, Sri Ajay Kumar Singh, Sri M.N. Singh and other learned counsel appearing for the petitioners. Sri A.C. Tripathi, learned Standing Counsel has appeared for the State.

7. The main submission advanced by learned counsel for the petitioners that is by 4th Amendment Rules, 2011 Rule 17(2) which provided for deposit of additional licence fee at the rate of Rs. 100/- per Television Screen has been deleted hence, the action of the respondents asking the petitioner to deposit additional licence fee is contrary to the Rules and unjustified. It is submitted that Rule 17 has been substituted by 4th Amendment Rules, 2011 and in the Amended Rule which has been substituted, there is no mention of Rule 17(2) and the newly substituted Rule 17 does not contain any provision for payment of additional licence fee. The second submission which has been pressed by learned Counsel for the petitioner is that additional fee is chargeable only in case of exhibition by video. There being no exhibition by video additional fee is not chargeable. It is further submitted that the Cable Television Networks

(Regulations Act), 1995 and the Telecom Regulatory Authority of India Act, 1997 are the Parliamentary legislations covering the field. The cable service having been notified as Telecommunication Service, the cable network has gone outside the purview of State Legislature and there is no legislative competence in the State since the field is already occupied by Parliamentary enactments. It is further submitted that the Cable Television Networks (Regulation) Amendment Act, 2011 dated 30.12.2011 in clause (g) in sub clause (i) of Section 2 the words "through video cassette recorders or video cassette players" having been omitted, the entire field is covered by Parliamentary enactments and no additional licence fee can be demanded from the petitioner. The petitioner lastly contended that there is no mechanism with the respondents to fix the liability of payment of additional fee. Whether additional licence fee is payable by local TV. channels or MSO or cable operators has not been provided for. Local Television channels are not exhibiting anything on any Television screen. They only send signals to the MSO hence, the local Television channels cannot be held liable for payment of any additional licence fee.

8. Counter-affidavit, Supplementary counter-affidavit have been filed by respondents. Rejoinder-affidavit and Supplementary Rejoinder-affidavit have also been filed by the petitioners. Pleadings being compete in writ petition No. 404 of 2012, the said writ petition is being treated as leading writ petition.

9. Sri A.C. Tripathi, learned Standing Counsel refuting the submissions of learned Counsel for the petitioners, submitted that the additional licence fee is payable by MSOs, Local T.V. channels and cable operators by virtue of Rule 17(2). It is submitted that by 4th Amendment Rules, dated 31.3.2011 Rule 17(2) has not been deleted. It is submitted that by amendment in place of Rule 17(1) a new sub-rule has been substituted and Rule 17(2) as existing earlier is still in tact and the submission of learned counsel for the petitioners that Rule 17(2) has been deleted by 4th Amendment Rules is misconceived and incorrect. It is further submitted that definition of word "video" has been amended. By U.P. Cinemas Regulations Amendment Act, 2009 (U.P. Act No. 27 of 2009) the definition of word "video" has been extended to cover the service provided by the petitioner within the ambit of video. It is submitted that petitioners claim to have obtained licence under Rule 17(1) by Payment of License fee of Rs. 2400/- they cannot be heard in saying that they are not liable to pay additional licence fee under Rule 17(2). The Rule 17(1) being applicable on the petitioners, Rule 17(2) is also fully attracted. Sri Tripathi further submits that the provisions of the Cable Television Networks (Regulation) Act, 1995 and Telecom Regulatory Authority of India Act, 1997 are legislations operating in the different fields. U.P. Cinemas Regulation Act, 1995 and the Rules framed there under i.e. 1988 Rules are fully in the domain of the State Legislature and the enactment is still within the legislative competence of the State and the submission that it has gone beyond the purview of the State Legislation is misconceived and erroneous. It is submitted that local channels are exhibiting programmes through MSO which includes showing the films, recorded programmes, advertisement etc. and they are fully covered by

Rule 17(2) of 1988 Rules. State has not yet made any assessment against most of the petitioners and the writ petitions filed by all the petitioners except two writ petitions filed by MSOs, are premature. Two MSOs who have been assessed and from whom additional licence fee has been demanded has remedy of filing appeal before the State Government hence, their writ petitions also need not to be entertained.

10. Learned Counsel for the parties have placed reliance on various judgments of this Court, Apex Court and other High Courts, which shall be referred to while considering the submissions in detail.

11. From the submissions of learned Counsel for the parties as noted above and the pleadings on the record, following are the issues which arise for consideration in this bunch of writ petitions.

A. Whether by 4th Amendment Rules, 2011 dated 31.3.2011, Rule 17(2) of 1988 Rules has been deleted and is no more in operation?

B. Whether exhibition of programmes of local Television channels and transmission of signals by MSO/cable operators can be termed to be an exhibition by video attracting the applicability of Rule 17(2) of 1988 Rules?

C. Whether in view of the amendments made in cable Television Networks (Regulation) Act, 1995 and the Telecom Regulatory Authority of India Act, 1997, Cable Television network has gone out of purview of the State Legislature and the State Legislature has no competence to frame/operate any rule pertaining to demand/realisation of any additional fee under 1988 Rules?

D. On whom the liability to pay additional license fee, if any can be fastened i.e. Local Television Channels or MSO or Cable Operators?

Rule 17(2) whether still operative:

12. Principal submission advanced by learned Counsel for the petitioner is that by 4th Amendment Rules 2011, Rule 17 has been substituted by a new Rule and in the substituted Rule 17, there is no mention of Rule 17(2) which clearly means that Rule 17(2) is no more operative. Rule 17 of 1988 Rules as originally enacted was as follows:

17. Fees.-(1)--The fee for grant or renewal of licence shall be as follows:

(2) In case there is any such arrangement where exhibition is given by means of video on a number of different television screens, video screen or video scopes, an additional licence fee of Rs. 50 per year or part thereof, shall be levied for each such screen, feeded by the said apparatus, by whatsoever name it may be called.

Rule 17 was amended by 1st Amendment Rule 1989. Clause 4 of the 1st Amendment Rules provided as follows "Amendment Rules 10, 11, 13, 14 and 17.--In the said rules for the existing Rules 10, 11, 13, 14 and 17 following Rules

shall be substituted namely:

17. Fees.-(1)--The fee for grant or renewal of licence shall be as follows:

(2) In case there is any such arrangement where exhibition is given by means of video on a number of different television screens, video screen or video scopes, an additional licence fee of Rs. 50 per year or part thereof, shall be levied for each such screen, fed by the said apparatus, by whatsoever name it may be called.

13. Rule 17 was again substituted by Amendment Rules dated 18.10.1994. The relevant clause of Amendment dated 18.10.1994 is as follows:

17. Fees.-(1)--The fee for grant of renewal of licence shall be as follows:

(2) In case there is any such arrangement where exhibition is given by means of video on a number of different television screens, video screen or video scopes, an additional licence fee of Rs. 100 per year or part thereof, shall be levied for each such screen, fed by the said apparatus, by whatsoever name it may be called.

14. By U.P. Cinemas (Regulation of exhibition by means of Video) (Fourth Amendment) Rules, 2011, Rule 17 was amended by clause 7 of the Amendment Rules. Clause 7 of the Amendment Rules provided as follows:

7. In the said rules, for existing Rule 17 set out in column I below, the rule as set out in column II shall be substituted, namely:

The key words in clause 7 of the 4th Amendment Rules is "...for existing Rule 17 set out in column I below, the rule as set out in column II shall be substituted, "Column I only mentions Rule 17 (1), Rule 17(2), does not find mention in column I. Columns I and II mentioned in the Amendment clause 7 refers "Existing rule" and "Rule as hereby substituted" respectively. Both the columns thus clearly spell out the Rule which is substituted. Learned Counsel for the petitioner submitted that in column II Rule 17 is mentioned without any sub-clause, which means that earlier Rules 17(1) and 17(2) have been substituted by new Rule 17. On a first blush, above arguments appears to be attractive but on a closure scrutiny, it is clear that existing Rule 17(2) is not affected by 4th Amendment Rules. For above construction, three main reasons are as follows:

(a) According to clause 7 for existing Rule 17 set out in column I below, the rule as set out in column II shall be substituted. Thus, substitution of the Rule is limited to existing Rule 17 as set out in column I. Column I set out only Rule 17(1), thus obviously the substitution as mentioned in column II shall be confined to substitution of Rule 17(1) alone.

(b) Rule 15 has also been amended by 4th Amendment rules. Same phrase has been used for substitution of Rule 15 i.e. "...for existing rule 15 set out in column I below, the rule as set out in column II shall be substituted, "Existing Rule 15 has two sub clauses (1) and (2). Both the sub clauses (1) and (2) were

mentioned in column I which were substituted by new Rule 15(1), 15(2) and 15(3). Thus, were all the sub clauses were sought to be substituted by new sub clauses, all were mentioned in column I. To the contrary with regard to Rule 17 both sub clauses (1) and (2) were not mentioned in column I and only Rule 17(1) were mentioned in column I.

(c) In Rule 15(3), which has been substituted makes specifically mention of said sub-rule (1) of Rule 17. It is useful to quote sub clause (3) of Rule 15 as substituted by amendment Rules, which is to the following effect:

15(3) Where the licence of a travelling video cinema in a local area is renewed/ extended on the expiry of a period of one year under sub-rule (2) or a new licence is granted in continuation in that local area, the application for such renewal or grant of new license shall be accompanied with license fee prescribed under sub-clause (b) of clause (iv) of sub-rule (1) of Rule 17.

15. The amended Rule 15 (3) is brought out by the same 4th Amendment Rules by which Rule 17 is sought to be substituted. Rule 15(3) mentions sub-clause (b) of clause (iv) of sub-rule (1) of Rule 17. Sub clause (b) of clause (iv) has been substituted by 4th Amendment Rules which is mentioned in column II. Thus, the Amended Rule 17 which is mentioned in column II is referred to as sub-rule (1) of Rule 17. This demolishes the argument of learned Counsel for the petitioner that in new substituted Rule 17, there is no clause (1) or subclause (2). The intent of the Legislature is clear that what is substituted is Rule 17(1) by 4th Amendment Rules which re-enforces the view that sub-rule (2) of Rule 17 still exists in the Statute Book.

16. At this juncture, it is useful to recall certain well recognised principles of statutory interpretation for finding out the true import of 4th Amendment Rules in context of Rule 17. Lord Denning in *Seaford Court Estates Ltd. v. Asher*, [1949] 2 All ER 155, following principles for construction of Statute:

when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament..... and then he must supplement the written word so as to give "force and life" to the intention of the legislature.....A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

17. The above principle reiterated by Lord Denning was quoted with approval by the Apex Court in *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, . The Apex Court in *Sangeeta Singh Vs. Union of India (UOI) and Others*, , again elaborately noted the principles of statutory interpretation in paragraphs 5 to 12 which are quoted as below:

5. It is well-settled principle in law that the Court cannot read anything into a

statutory provision or a stipulated condition which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. Similar is the position for conditions stipulated in advertisements.

6. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See *Institute of Chartered Accountants of India Vs. Price Waterhouse and Another*,). The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in *Crawford v. Spooner*, 1846 (6) Moore PC 1, Courts, cannot aid the Legislatures' defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See *The State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another*, . It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See *Stock v. Frank Jones (Tipton) Ltd.*, 1978 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in *Vickers Sons and Maxim Ltd. v. Evans*, (1910) AC 445 (HL), quoted in *The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah*,).

7. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See *Lenigh Valley Coal Co. v. Yensavage*, 218 FR 547). The view was re-iterated in *Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama*, .

8. In *D.R. Venkatachalam and Others Vs. Dy. Transport Commissioner and Others*, , it was observed that Courts must avoid the danger of a priori determination of the meaning of a provision based on their own pre-conceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

9. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. See *Commissioner of Sales Tax, Madhya Pradesh Vs. M/s. Popular Trading Company, Ujjain*, . The legislative casus omissus cannot be supplied by judicial interpretative process.

10. Two principles of construction one relating to *casus omissus* and the other in regard to reading the statute as a whole # appear to be well-settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J. in *Artemiou v. Procopiou*, (1966 1 QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislature and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in *Luke v. IRC*, (1963 AC 557, where at p. 577 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges").

11. It is then true that, "when the words of a law extend not to an inconvenience rarely happening, but due to those which often happen, it is good reason not to strain the words further than they reach, by saying it is *casus omissus*, and that the law intended *quae frequentius accidunt*." "But," on the other hand, "it is no reason, when the words of a law do enough extend to an inconvenience seldom happening, that they should not extend to it as well as if it happened more frequently, because it happens but seldom" (See *Fenton v. Hampton*, (1858) XI Moore, P.C. 347. A *casus omissus* ought not to be created by interpretation, save in some case of strong necessity. Where, however, a *casus omissus* does really occur, either through the inadvertence of the legislature, or on the principle *quod semel aut bis existit proetereunt* legislators, the rule is that the particular case, thus left unprovided for, must be disposed of according to the law as it existed before such statute -- *Casus omissus et oblivioni datus dispositioni communis juris relinquitur*, "a *casus omissus*," observed Buller, J. in *Jones v. Smart* (1 T.R. 52), "can in no case be supplied by a Court of law; for that would be to make laws." The principles were examined in detail in *Maulavi Hussein Haji Abraham Umarji Vs. State of Gujarat and Another*, .

12. The golden rule for construing all written instruments has been thus stated: "The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further" (See *Grey v. Pearson*, (1857 (6) H.L. Cas. 61). The latter part of this "golden rule" must, however, be applied with much caution. "if," remarked Jervis, C.J., "the precise words used are plain and unambiguous in our judgment, we are

bound to construe them in their ordinary sense, even though it lead, in our view of the case, to an absurdity or manifest injustice. Words may be modified or varied where their import is doubtful or obscure. But we assume the functions of legislators when we depart from the ordinary meaning of the precise words used, merely because we see, or fancy we see, an absurdity or manifest injustice from an adherence to their literal meaning" (See *Abley v. Dale* 11, C.B. 378).

18. Learned Counsel for the petitioner has contended that *causus omissus* cannot be supplied by the Court. In this context, it is also relevant to note that *causus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. The above principle has been laid down in *Sangeeta Singh's case* (supra). In AIR 2003 SC 2103, the same principles of statutory interpretation were laid down in paragraph 14, which is quoted below:

14. Two principles of construction—one relating to *casus omissus* and the other in regard to reading the statute as a whole—appear to be well-settled. Under the first principle a *casus omissus* cannot be supplied by the Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a *casus omissus* should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in *Artemiou v. Procupio*, 1996 1 QB 878, "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result" we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. [Per Lord Reid in *Luke v. I.R.C.*, 1966 AC 557, where at p. 377 he also observed: "this is not a new problem, though our standard of drafting is such that it rarely emerges".] Therefore, the High Court's conclusions holding proceedings under the U.P. Act to be in order are indefensible.

19. Another judgment which laid down principle of statutory interpretation of a taxing statute is also need to be noted. A Constitution Bench of the Apex Court in *Mathuram Agrawal Vs. State of Madhya Pradesh*, , laid down following in paragraph 12:

12. Another question that arises for consideration in this connection is whether sub-section (1) of Section 127-A and the proviso to sub-section 2(b) should be construed together and the annual letting values of all the buildings owned by a

person to be taken together for determining the amount to be paid as tax in respect of each building. In our considered view this position cannot be accepted. The intention of the Legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e., the subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter.

20. The statutory principle as noted above, thus clearly lays down that *causus omissus* may not be readily inferred in a statute nor *causus omissus* is to be supplied by the Court. As noted above, the present is not a case of any *causus omissus*. The legislative intent in bringing amendment in Rule 17 by 4th Amendment is clear and explicit. As noted above, by 4th Amendment Rule only Rule 17(1) was substituted by new set of Rules which is mentioned in column II and sub-rule (2) of Rule 17 remain unchanged and unaffected. In view of the foregoing discussions, the submission of learned Counsel for the petitioners that Rule 17(2) is no longer on the Statute Book, cannot be accepted. Rule 17(2) is still in force and the respondents have every right to demand additional licence fee in accordance with Rule 17(2).

21. During hearing of the writ petitions, learned counsel for the parties were at variance about the actual wordings of clause 7 of Fourth Amendment Rules, 2011. Some of the writ petitioners have filed photocopy of the Fourth Amendment Rules, 2011 published in Lucknow Law Times in which clause 7 of the Rules begins with following words "7. Amendment of Rule 17. In the said rules, for existing Rule 17, the following rule shall be substituted, namely-17....." We had directed the learned Standing Counsel to produce the copy of the Gazette. Learned Standing Counsel has placed before the Court the copy of the U.P. Gazette Extra-ordinary dated 31.3.2011 in which the notification dated 31.3.2011 was published containing U.P. Cinemas (Regulation of Exhibition by Means of Video) (Fourth Amendment) Rules, 2011. We have quoted the clause 7 of the Amendment Rules 2011 which read as follows:

7. In the said rules, for existing Rule 17 set out in column I below, the rule as set out in column II shall be substituted, namely:...

22. After original Gazette having been produced, the confusion created by the publication of the Fourth Amendment Rules, 2011 was removed and we

proceeded on the basis of Fourth Amendment Rules as published in U.P. Gazette Extraordinary. The incorrect publication of clause 7 of the Fourth Amendment Rules, 2011 in the Lucknow Law Times embolden many of the petitioners to contend that by clause 7, Rule 17(2) has been deleted which we have already dealt above.

Definition of "Video" as amended:

23. The second submission, which has been pressed by learned Counsel for the petitioners is that for applicability of Rule 17(2), there has to be exhibition by means of video. It is submitted that in 1988 Rules exhibition by means of video means an exhibition in public on payment for admission of moving pictures or series of pictures by playing or playing pre-recorded cassette or any other similar devices by whatsoever name it may be called. The word "video" has not been defined in Rules 1988. The definition contained in Rules 1988 is definition of "Traveling Video Cinema" and "Video Cinema". In the U.P. Cinema Regulations Act, 1955, the definition Section 2(aa) was added by U.P. Act No. 21 of 1986 w.e.f. 1.9.1988 defining "exhibition by means of video" in the following words:

2 (aa) exhibition by means of video means an exhibition in public on payment for admission of moving pictures or series of pictures by playing or replaying and "a pre-recorded cassette or any other device, by whatever name called by means of a video cassette player or any other apparatus, by whatever name called.

24. There has been constant and continuous technological advancement from time to time. The means and mode of providing entertainment, exhibiting cinemas had gone to sea change from the date when U.P. Cinemas (Regulation) Act, 1955 was enacted. To cope up with technological advancement and to take cognisance of transmission of encrypted and crypted signals transmitting audio and visual images, amendment was also brought by U.P. Cinema (Regulation) (Amendment) Act, 2009, U.P. Act No. 27 of 2009. The prefatory note of the said amendment provides as follows:

STATEMENT OF OBJECTS AND REASONS.-- The Uttar Pradesh Cinema (Regulation) Act, 1955 has been enacted to regulate public exhibition of film through cinematography or video.

2. With a view to covering modern means of entertainment achieved due to advancement of technology, as bringing them in the purview of license, and to prevent illegal activities of film/video, it has been decided to amend the Uttar Pradesh Cinema (Regulation) Act, 1955 (U.P. Act No. 3 of 1955 to provide for,-

(a) introducing provision for adopting new electronic projection systems in the cinema halls of the State.

(b) defining the words multiplex, television signal receiver, television signal receiver agency and video;

(c) covering DTH service by bringing television signal receiver agencies under the

purview of license;

(d) inspection of television signal receiver agencies;

(e) enhancing penalty on copyright offenders in relation to cinematograph or video exhibition and the punishment for the breach of laws and rules made under the said Act.

The Uttar Pradesh Cinema (Regulation) (Amendment) Bill, 2009 is introduced accordingly.

25. The definition in Section 2(aa) also changed. The amendments brought in Section 2(aa) were as follows:

(a) in clause (aa),-

(I) for the words "any apparatus" the words "any apparatus or electronic digital projection system or any other emerging analogous technology" shall be substituted.

(ii) The following explanation shall be inserted at the end, namely;-

Explanation.-- Digital projection system is a set of electronic apparatus used for digital cinema exhibition receiving digital print delivery through hard disc or through satellite or otherwise.

26. The definition of "Video" was inserted by new clause (g) to the following effect:

(g) "Video" means any system, by whatever name called, or recording on, or reproducing from video cassette or any other device by whatever name called or transmitting through any recording medium or directly the moving visual images with or without sound.

27. The definition of "Video" which has now been added in U.P. Cinemas (Regulation) Act, 1955 has widely enlarged the meaning of video. The key words in Rule 17(2) are where exhibition is given by means of video on a number of different Television screens. The amended definition of "Video" shall also include transmitting through any recording medium or directly the moving visual images with or without sound in a Television screen. The submission raised on behalf of the local Television channels is that they do not send any video to the MSO nor they use any video and local Television channels also send encrypted signals to the MSO. The submission raised on behalf of the local Television channels have been refuted by Sri A.C. Tripathi, learned Standing Counsel has submitted that local Television channels prepare their own programmes which include pre-recorded events, programmes, advertisement etc. which cannot be possible without pre-recording the events. It is submitted that local Television channels uses video. It is not necessary for us to enter into the issue as to whether the local Television channels prepare video or not. The definition of video as inserted by amendment 2009 is wide enough to include any system by whatsoever name

called for recording or any other devices by whatever name called the moving visual images with or without sound. Even if, the submissions of local Television channel is accepted that they are transmitting encrypted signals transmission of moving visual images with or without sound is fully covered within the definition of video. Thus, submission of learned Counsel for the petitioner cannot be accepted that their exhibition is not exhibition by means of video. In this context, it is useful to recall the judgment of the Apex Court in *M/s. Laxmi Video Theaters and Others Vs. State of Haryana and Others*, . In the said case the Court was considering the definition of expression "Cinematograph" under the Cinematograph Act, 1952. The issue under consideration was as to whether Act 1952 was also applicable on the VCR/VCP which was developed in the year 1970. The Apex Court held that definition must be given a meaning which takes into account the subsequent scientific developments in the field. Following was laid down in paragraphs 8 and 9:

8. We are in agreement with this view. The definition of the expression "cinematograph" contained in Section 2(c) of the Cinematograph Act, 1952 and Section 2(a) of the Act is an inclusive definition which includes any apparatus for representation of moving pictures or series of pictures. The said definition cannot be confined in its application to an apparatus for representation of moving pictures or series of pictures which was known on the date of the enactment of the said provision. It must be given a meaning which takes into account the subsequent scientific developments in the field in accordance with principle of statutory construction laid down in *The Senior Electric Inspector v. Laxmi Naryana Chopra and others*. In that case it has been held-

...In a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them" (pp. 156-157) (of SCR): (at p. 163 of AIR).

9. The VCR/VCP were developed in 1970s and achieve the same purpose as the traditional media for exhibition of moving pictures. There is nothing in the Act which excludes the applicability of the Act to VCR/VCP.

28. In view of the foregoing discussions, we are of the view that the submission of learned Counsel for the petitioners to the effect that Rule 17(2) is not applicable since their exhibition is not by means of video, cannot be accepted.

Legislative competence of the State: Learned Counsel for the petitioner referring to certain provisions of Cable Television Networks (Regulation) Act, 1995 and the

provisions of the Telecoms Regulatory Authority of India Act, 1997 contended that "cable Television networks" is now regulated by above mentioned parliamentary enactments and after amendments made in the aforesaid enactments as shall be hereinafter noted, the State has no competence to charge any licence fee/additional licence fee. It is useful to note the relevant entries of 7th schedule of the Constitution of India before we proceed further to examine the contentions. In List I Union List Entry 31 and Entry 60 are relevant which are to the following effect:

31. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

60. Sanctioning of cinematograph films for exhibition.

In List II of the 7th schedule Entry 33 and Entry 62 which are relevant are quoted below:

33. Theatres and dramatic performances; cinemas subject to the provisions of entry 60 of List I; sports, entertainments and amusements.

62. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

29. The U.P. Cinema Regulations Act, 1955 is an enactment which is referable to Entry 33. The Parliamentary enactments namely; Cable Television Networks (Regulation) Act, 1995 and Telecom Regulatory Authority of India are Parliamentary enactments referable to Entry 31 of List I. Both the enactments operate in different fields. Before a Division Bench of this Court, vires of certain rules of the U.P. Cinemas (Regulation of Exhibition by means of Video) (Fourth Amendment) Rules, 2011 were challenged. One of the submissions was also raised that the State has no legislative competence to enact the said legislation. The provisions of Indian Telegraph Act, 1885 and the Cable Television Networks (Regulation) Act, 1955 were referred to. The writ petition was filed by several distributors of Set Top Boxes, Dish Antennas, Recharge Vouchers of Direct to Home Services. The writ petition being writ petition No. 702 of 2011, Sharad Traders and others v. State of U.P. and others, was dismissed on 21.10.2011 by a Division Bench repelling the submissions of legislative competence. Following was laid down in paragraphs 42 and 46:

42. The telegraphy with its technological advances, giving it an increased capacity to reach home directly, has enormous potential of entertainment, on which the exclusive power of regulation has been given to the State Government under Entry 33 in the State list, including theaters and dramatic performances, cinemas, subject to the provisions of Entry 60 of List 1 (providing for sanctioning of cinematograph films for exhibition namely censorship), sports entertainment and amusements. The State Government has the legislative power in such case to regulate entertainment by advanced telegraphy and also to levy tax on it under Entry 62, which provides for tax on luxuries, including tax on entertainments,

amusements, betting and commercial.

46. On these settled principles of law, we are of the view that the challenge to both legislative competence of the State Government to make amendments in the U.P. Cinema (Regulation) Act, 1955 and the U.P. Cinemas (Regulation of Exhibition by means of Video) (4th Amendment) Rules, 2011, is without any substance. The State Government has legislative competence to regulate the entertainment. The DTH services, as the latest technological advance, in the field of telegraphy, can be, and is used for entertainment, which is subject to regulation under Entry 33 of the State list. The amendments clearly fall within the legislative competence of the State Government. There is no repugnancy between the two laws. A repugnancy arises as it was held in *M/s. Hoechst Pharmaceuticals Ltd and others (Supra)*, when the law made by Parliament and a law made by the State Legislature, occupy the same field with respect to anyone of the matters enumerated in the concurrent list, and there is direct conflict between the two laws. We further hold that the license fees, for taking out a license by the Television Signal Receiver Agency under the U.P. Cinema Regulation Act, 1955 as amended by UP Act No. 27 of 2009, from the place from where he is running the business, and where he keeps his books of accounts, apparatus and equipments, under Rule 18 of the U.P. Cinemas (Regulation of Exhibition by Means of Video) (4th Amendment) Rules, 2011 on Form IV, is not a compensatory fees, which may require the State Government to justify its levy on the principles of *quid pro quo*. It is a license fee for taking out license, with an object to regulate entertainment.

30. To buttress their submissions learned Counsel for the petitioner has referred to notification dated 9.1.2004, issued by the Ministry of Communication and Information Technology in exercise of powers conferred by the proviso to clause (k) of sub-section (1) of Section 2 of the Telecom Regulatory Authority of India Act, 1997. By the said notification, the Central Government notified the broadcasting Services and Cable Services to be telecommunication Services. As noted above, notifying the cable services as a telecommunication services is in exercise of power given under the Parliamentary enactment which is referable to List I Entry 31 and is entirely different field. Rules 1988 and 4th Amendment Rules, 2011 do not infringe on any Parliamentary legislation including the Telecom Regulatory Authority of India Act, 1997 and the Cable Television Networks (Regulation) Act, 1995.

31. Much emphasis has been laid down on the Cable Television Networks (Regulation) Amendment Act, 2011 (U.P. Act No. 21 of 2011). The prefatory note of the amendment Act records the Statement of Objects and Reasons for amendment which are to the following effect:

Prefatory Note-Statement of Objects and Reasons.-- The Cable Television Networks (Regulation) Act, 1995 was enacted for the purpose of regulating the operations of cable television networks in the country so as to bring uniformity in their operations, avoid undesirable programmes from being made available to

viewers as well as to enable the optimal exploitation of the technology which had the potential of making available to the subscribers a vast pool of information and entertainment

2. The Telecom Regulatory Authority of India (TRAI), in its recommendations dated 5th August, 2010 on "Implementation of Digital Addressable Cable Systems in India" had, inter alia, recommended that "digitalisation with addressability be implemented on priority in cable TV services in Non-CAS areas" and, accordingly, recommended a time-frame comprising four phases for switch over from analog system to the digital addressable system (DAS) in the cable TV sector. In view of the above-mentioned recommendations of the TRAI, the Central Government decided to introduce digitalization with addressability in the cable TV services in a phased time bound manner on a pan India basis, leading to complete switch off of analog TV services by the 31st December, 2014.

3. For the implementation of DAS, certain amendments were required to be made in the aforesaid Act mandating all cable operators to provide programmes of all channels, including free-to-air (FTA) channels, in an encrypted form through DAS in a phased manner at specified areas from specified dates to be notified by the Central Government. It is also mandatory that any such notification should give at least six months time to the cable operators for being able to instal the necessary digital equipments for migration and educate the subscribers in this area. In order to protect the interest of consumers, it has been proposed to empower TRAI to specify a package of free-to-air channels, called basic service tier, which shall be offered by every cable operator to the consumers. It is also necessary that every cable operator should offer channels in the basic service tier on a la carte (individual) basis to consumers at a tariff fixed by TRAI.

4. It has also been considered necessary to carry out certain amendments in the Act for rectifying certain deficiencies noticed during the operation of the Act for the last fifteen years. These, inter alia, include systemization of registration of cable operators, providing right of way to cable operators and permission by public authorities, compulsory transmission of certain channels, inspection of cable network services, prescription of interference standards by the Central Government and empowering the TRAI to specify basic service tier and its tariff.

5. As Parliament was not in session, and immediate steps were required to notify the sunset dates for analog cable TV services urgently, it became necessary to amend the Cable Television Networks (Regulation) Act, 1995 by way of promulgation of an Ordinance. Accordingly, the President was pleased to promulgate the Cable Television Networks (Regulation) Amendment Ordinance, 2011 on the 25th day of October, 2011.

6. The Bill seeks to replace the aforesaid Ordinance.

32. In the Cable Television Networks (Regulation) Act, 1995 Section 2(g) has defined programme in following words:

(g) "programme" means any television broadcast and includes-

(i) exhibition of films, features, dramas, advertisements and serials through video cassette recorders or video cassette players;

(ii) any audio or visual or audio-visual live performance or presentation, and the expression "programming service" shall be construed accordingly;

33. By Amendment Act, 2011 in subclause (ii) to clause (g) of Section 2as quoted above, the words "through video cassette recorders or video cassette players" have been omitted. The submission which has been pressed by learned Counsel for the petitioners is that by omission of words "through video cassette recorders or video cassette players" the exhibition by video has now gone out of purview of the Cable Television Networks (Regulation) Act, 1995.

34. The provisions of Section 2(g) quoted above defines "programme" as any television broadcast including exhibition of films, features, drama, advertisement and serials through video cassette recorders or video cassette players. By deletion of the words "through video cassette recorders or video cassette players", the definition of programme has become wider. It is to be noted that Section 2(g) defines programme as any television broadcast including those mentioned in sub-clauses (i) and (ii). The definition being inclusive definition is wide enough? By amendment brought in Section 2(g) By Amendment Act, 2011, the definition of programme has been made more wide and not confined to through video cassette recorders or video cassette players. We fail to see that how the above amendment advances the case of the petitioner or takes them out of purview of Rule 17(2). The submission is wholly misconceived.

35. The Apex Court in South Indian Film Chamber of Commerce, Madras and Others Vs. Entertaining Enterprises, Madras and Others, , had occasion to consider the Act namely; Tamil Nadu Exhibition of Films on Television Screen through Video Cassette Recorders (Regulation) Act, 1984. The provisions of the Section 9(2) and Section 10(2) were struck down by the High Court as beyond legislative competence. An appeal was filed against the judgment. The Apex Court had to examine the legislative competence of the State to enact the said Act. The Apex Court noted in detail the relevant Constitutional entries and held that State enactment was on the subject of cinema in List II of the 7th Schedule of the Constitution and it did not entrench upon the Parliamentary enactment, Copyright Act, 1957. Following was laid down in paragraphs 13 and 14:

13. Hence, we are constrained to hold that the High Court faulted in having reached the conclusion that the provision in Section 9(2) of the Act enacted by the State Legislature was not an ancillary provision enacted, in pith and substance, on the subject of "cinema" lying within its legislative competence. Consequently, we hold that the provision in Section 9(2) of the Act being an ancillary provision on the subject of the Act which in pith and substance is "cinema", lay within its legislative competence and hence is constitutionally valid.

14. Now, we shall turn to Section 10(2) of the Act which the High Court has held to be invalid and unworkable. The High Court for reaching the said conclusion has stated thus:

Having regard to the fact that the provisions of the Cinematograph Certification Rules, 1983 do not contemplate the certification of a video film for private exhibition in the residence of the members of the video library, the requirement of the production of a certificate in respect of the video films hired out by a video library to its members u/s 10(2) is invalid. As pointed out already, the certification is contemplated in the certification rules only if the applicant for certification intends to use the video film for public exhibition and not when he does not intend to do so. Thus, the insistence on certification under the impugned Act and the rules framed thereunder is not valid. A video film for their own use and not for public show or exhibition cannot approach the Censor Board for a Certificate, for, the owner of the library does not intend to use the video tapes for public exhibition. In this view of the matter, we have to hold that Sec. 10(2) of the Act is not only invalid but unworkable.

36. Another judgment of the Apex Court which is relevant in the present case is *The State of West Bengal and Others Vs. Purvi Communication Pvt. Ltd. and Others*, . West Bengal Entertainment-cum-Amusement Tax Act, 1982 came for consideration. Legislative competence of the State to levy tax on entertainment amusement in Entry 62 of List II was under challenge. It was contended that field is covered by Television Cable Networks (Regulation) Act, 1995, a Parliamentary enactment. In paragraphs 3 and 4 of the judgment in the above case, the Apex Court had occasion to consider the function of MSO and a cable operator. It is useful to quote paragraphs 3 and 4 of the judgment which are to the following effect:

3. Respondent No. 1 carries on business as a Multi System Operator (hereinafter referred to as "MSO") and is engaged in receiving and providing TV signals to individual cable operators of various localities. The respondents are receiving communication signals known as TV signals broadcast by various satellite channels and are distributing the same to the sub-cable operators. The process involved in the business consists of establishment of state of the art control rooms and spreading the cable network. The said network signals are being given to various sub-cable operators with whom the respondents have franchise agreement. According to the respondents, there is a significant and qualitative difference between the functions performed by them and the activities of sub-cable operators who are franchisee of the respondent-company. According to the respondents, the object of the MSO is to capture signals from various satellites and to put all of them in proper format/frequencies so that all those signals can travel together in cables without encroaching upon and interfering with other signals for the reception and distribution by the so-called sub-cable operators. The signals are transmitted through the satellites by the various broadcasters from their earth uplinking stations at various parts of the world.

4. Respondent No. 1 entered into Franchise Agreement with the individual cable operators of various localities and on the basis of the said agreement, respondent No. 1 transmits the said TV signals to the said individual sub-cable operators against a price. The individual sub-cable operators on the basis of the monthly subscription provide the said TV signals to the individual subscribers of the locality.

37. Repelling the submission that State has no legislative competence following was laid down in paragraphs 35, 36 and 41:

35. The Cable Television Networks (Regulation) Act, 1995, a central legislation has been enacted to regulate the operation of cable television networks in the country and for matters connected therewith. This enactment does not, in our opinion, fetter the legislative power or competence of the State to levy tax on luxuries including taxes on entertainments, amusements, betting and gambling falling under Entry 62 of List II of Seventh Schedule to the Constitution. The power of regulation or control under the said central enactment is separate and distinct from the power of taxation by the State legislature under Entry 62 of List II being a specific power, the power of taxation cannot be cut down or fettered by the general power or regulation as exercised by the Parliament in enacting the said 1995 Act. Under the Legislative field exclusively reserved for the State Legislature, the levy of tax by more than one statute on different taxable objects and taxable persons is not prohibited by the Constitution of India. The Bengal Amusement Act, 1922 and the West Bengal Entertainment and Luxurious (Hostel and Restaurants) Act, 1972 are two statutes which have been enacted under the same legislature field i.e. Entry 62 of list II of Seventh Schedule to the Constitution of India, and the two statutes apply admittedly to levy of tax on amusements, entertainments and luxuries in their respective area but the area of application of the said 1982 Act is different as would evident from the provisions of 1922 Act and the 1972 Act as aforesaid. The said 1982 Act was, for the first time, enacted by the State Legislature in 1982 and its area of application was initially confined to levy and collection of tax from the holders of television set or sets u/s 4 of that Act. Thereafter, u/s 4A of that Act, inserted by the West Bengal Taxation Laws (second Amendment) Act, 1983, the area of its application was extended to levy and collection of tax from the holders of video cassette recorder. The purpose of sub-section 4(a) of Section 4A of the Act is to levy and collection of tax from any person who provide cable service directly to consumers or transmits to a sub-cable operator through a cable television network and otherwise controls or is responsible for the management and operation of a cable television network and such person has been defined as "Cable Operator" being a taxable person exclusively for the purpose of levy and collection of entertainment tax only when a cable operator so defined receives through any electrical, electronic and mechanic device the signal of any performance, film or any other programme telecast and provides cable service directly to consumers or transmits signals to a sub-cable operator through a cable television network and otherwise controls or is responsible for the management and operation of a cable

television network. The person who has been defined as cable operator exclusively for the purpose of levy and collection of entertainments tax has a direct and proximate nexus with the amusements and entertainments to the viewers at every home or place inasmuch as he is the person directly connected with presentation of entertainments to the subscribers. A person is also a "cable operators" for the purpose of sub-section 4(a) of Section 4A of the said 1982 Act when he receive the signal of any performance, film, or any other programme telecast and transmits such signal to a sub-cable operator through cable television network or otherwise control or is responsible for the management and operation of cable television network against payment received or receivable by him. Therefore, a cable operator is the source of entertainment to the individual subscribers because, it is he who receives the signal of performance, film, and any programme which transmitted or given to a large number sub-cable operator (although they call them as cable operator). The viewers enjoy, or are entertained by such performance, film, or programme because of receiving and transmitting video or audiovisual signals through coaxial cable or any other device by the respondents. No entertainment can be presented to the viewers unless a cable operator transmits the video and audio signals to a sub-cable operator for instantaneous presentation of any performance, film or any programme on their Television screen. The sub-cable operators are mere franchisees who receives signals for transmission to the viewers only on payment of price promised or paid in terms of agreements entered by and between them. This is clear from the below set out terms of the Franchise Agreement:

GRANT

The NETWORK hereby grants to the FRANCHISEE and the FRANCHISEE accepts the right to receive signals through a Feeder Line for further instant transmission/communication in the TERRITORY on the terms and conditions set out in this agreement.

PRICE

The price payable by the FRANCHISEE for access to the signals provided by the NETWORK shall be as follows:

- (a) Rs. 25/- per subscriber per month to be paid before the 7th day of the month.
- (b) The FRANCHISEE will keep an interest free deposit of Rs. 50/- per subscriber with the NETWORK.
- (c) The price mentioned in (a) above is liable to change depending upon the market conditions and by mutual understanding between the parties of the area.

TERMS AND CONDITIONS

- (a) The NETWORK shall not provide any connections direct to home in the territory where the FRANCHISEE is operating. (b) The FRANCHISEE would provide a list of subscribers within seven days of signing this agreement with full

name, address and other information of relevance as required by the NETWORK. Subsequently any change in the subscriber list would be communicated to the NETWORK within seven days. The FRANCHISEE would submit complete information and not withhold the name of subscribers or declare less number of subscribers to the NETWORK.

(d) The FRANCHISEE is authorised to receive and immediately re-transmit and/or communicate the signals of the NETWORK. Recording and then retransmission of the signals by the FRANCHISEE is not allowed. However for any such intentions the FRANCHISEE will have to take written permission from the NETWORK.

(j) The FRANCHISEE shall not transmit or restraint any signals to his subscribers which are not transmitted by the NETWORK without the prior written consent of the NETWORK.

(m) The FRANCHISEE shall be liable to pay all applicable taxes, charges etc. levied or imposed by the Government or which may be imposed in future by the Govt. or any other statutory or regulatory body of the region.

36. Therefore, the respondents as a cable operator have direct and proximate nexus with the entertainments provided by them through their cable television network and, as such, they are the taxable person in respect of their gross receipts in relation to any month for providing entertainments to the individual viewers. Therefore, the respondents have a direct and proximate nexus with the entertainments presented to the viewers inasmuch as in terms of the respondent's agreement vide clause 4(d) "Recording and then retransmission of the signals by the franchisee is not allowed". That apart, the name of every subscriber having connection with the respondent's network must be on their records and the franchisee must furnish information of business honestly and completely to the respondents pursuant to clause 4(c) of the said agreement. In the event, any charge received from a subscriber is not paid to the respondent, the franchisee shall pay a sum equivalent to three times of the amount that the franchisee has saved by not paying the requisite amount to the respondents in respect of such subscriber.

41. We also see no substance in the submission that the impugned legislation impinges on the field occupied by the central legislation. The aforesaid central legislation has been enacted to regulate the operation of cable television network in the country and matters connected therewith or incidental thereto whereas the State Legislation is for levy of entertainment tax on entertainment within the legislative field exclusively assigned to the State Legislature under Entry 62 of List II of Seventh Schedule of the Constitution. Thus the objects sought to be achieved by two different Acts enacted under two different legislative fields exclusively assigned to the respective Legislatures are entirely distinct and separate. The Cable Television Networks (Regulation) Act, 1995 of the Union Legislature does not denude the State Legislature for levying entertainment tax on entertainment.

38. In view of the foregoing discussions, we are of the view that it cannot be said that field which is covered by Rules 1988 as amended by 2011 Amendment is covered by any Parliamentary enactment. The State has full legislative competence to enact the Act which is referable to Entry 33 List II and does not entrench on any Parliamentary enactment.

39. The last issue to be considered is as to which of the three entities i.e. Local Television channel, MSO, Cable Operators has liability to pay additional licence fee. The local Television Channels submits that they have no liability to pay additional licence fee since they are not exhibiting anything directly on the Television screen of the subscribers. MSO contended that they are only transmitting the signals to the cable operators, who alone are exhibiting in Television screen of subscribers. Cable Operators say that they are only agents of MSO or local Television channels who are liable to pay. Noticing the aforesaid submissions this Court, while hearing the writ petition had passed an order on 22.2.2013 directing the learned Standing Counsel to obtain instructions and file a supplementary counter-affidavit. Learned Standing Counsel has filed a supplementary counter-affidavit explaining the stand of the respondents in the above context. In paragraphs 12 and 13 following have been explained by the State:

12. That the method/manner of charging additional licence fee for perusal of this Hon"ble Court is being explained/detailed herein below:

(I) Local Channel (A): If a local channel is being exhibited by means of a video under a franchisee agreement with M.S.O.-by the M.S.O. through the Local Cable Operators connected to its Network. Then the Number of T.V. Screens fed by the said Cable Operators are counted and are multiplied by 100 and the Additional licence fee is levied on the MSO referred above running the said local channel (A).

(II) The next category can be of a case of Local channel (A) exhibited by the local Channel owner himself through its own cable TV Network then in such case the Cable Connections/Subscribers of the said Cable Network will be counted and multiplied by 100 and the local channel Network referred above will be liable to pay the additional licence fee.

(III) The 3rd category can be the Proprietor/Licencee of a Cable TV Network itself running its own Local Channel or Channel of others connected to N number of subscribers with the cable connections, in that case the total number of subscribers/TV Screens connected to said Network after being counted are multiplied by 100 and the additional licence fee is levied accordingly on the said Network.

13. That, above stated facts go to show that additional licence fee levied on one MSO by counting his total number of cable connections for exhibiting a particular local channel is not levied again on the Cable Operators connected to the MSO through which the said channel is being exhibited. The said methods shows that additional licence fee once paid by or levied on a particular person/or licensee be

it an MSO or a Cable Operator or a Cable TV Network is not levied on any other person of the categories referred above.

40. In paragraph 13, it has been categorically stated that additional licence fee if realised from a licensee be a MSO or a cable operator or cable Television network, the same is not levied on any other person. Additional licence fee is thus, levied or realized from only one of the three participants, who are connected with exhibition on the Television screen. As noticed above, some of the writ petitions are the writ petitions by local Television channels who are also MSO e.g. writ petition No. 1040 of 2012 Hathway Digital Saharanpur Cable & Data Com. Pvt. Ltd. has been filed by MSO who is also running a Television channel "B for U". It is further submitted by learned Standing Counsel that apart from two MSOs i.e. M/s. Meerut Cables and one more, no assessment has been made of additional license fee against any of the petitioners. Notices have been issued eliciting information regarding details of subscribers so as to assess licence fee which can be demanded or realised. In so far as MSO who has been assessed and against whom the orders have been passed for realisation of additional licence fee, learned Standing Counsel submits that they have right of appeal under Rule 23 of 1988 Rules read with subsection (3) of Section 5 of U.P. Cinemas (Regulation) Act, 1955 to the State Government.

41. From the pleadings of the parties, it is clear that MSO and cable operators are indirectly and directly connected with subscribers. Some local Television channels are also transmitting their programmes to the Subscribers. The issue as to whether MSO is liable or cable operator is liable for payment of entertainment cum amusement tax had come for consideration before the Apex Court in State of West Bengal v. Purvi Communication Pvt. Ltd. (supra). One of the issues before the Apex Court was "Who will be considered the giver of the entertainment the Cable operator or the sub-cable operator? Answering the said issue following was laid down in paragraphs 43 and 51:

43. We do not find any reason to consider the sub-cable operator as the only giver. Even though the sub-cable operator may be the giver of the entertainment in as much as he has a direct connection with the viewer, still in cases like the present where he does not select the show, or make the show ready, or does not put the show on and the exhibition is done by the cable operator through mere franchisees it cannot be said that the cable operator is not the giver. It is true that the cable used to get in touch with the TV set of the consumer has been provided by the sub-cable operator, but that fact alone by itself cannot make the sub-cable operator, the only exhibitor or the giver, of the entertainment. In a world of indirect links between individuals made possible by the electronic age, the indirect meeting between the cable operator and the consumer through a technical link has been made possible.

51. If we are looking at the means of providing entertainment, both the cable operator and the sub cable operator play equally significant role in providing such means of entertainment, namely, transmission of signals received from the

satellites in one sense the cable operator plays a more pivotal role than the sub cable operator since the signals are received by him through his devices and transmitted while a sub cable operator makes provision for continued instantaneous transmission of the signals.

42. Apex Court laid down in the aforesaid case that both the cable operators (MSOs) and the sub cable operator (Local cable operator) play equal significant role in providing means of entertainment namely transmission of signals received from Satellite. In view of the aforesaid pronouncement by the Apex Court, neither the MSO nor the cable operator can escape from liability of payment of additional licence fee. In so far as local Television channels are concerned, their liability to pay additional licence fee shall depend on facts of each case. For fastening liability on local Television channels, it has to be established that they are transmitting their programmes directly or indirectly to the Television screen. In this bunch of writ petitions, liability against the petitioners have not been finally determined except on two MSOs hence, it is not necessary for us to enter or adjudicate the liability of individual petitioner for payment of additional licence fee. In this case, it is for the authorities, who are entrusted with determining the liability of additional licence fee to take into consideration all relevant facts and thereafter fix the liability of additional licence fee, keeping in view the observations made as above.

43. So far as only against two MSOs assessment orders have been passed i.e. writ petitioners of writ petition No. 1040 of 2012 and writ petition No. 52367 of 2012, with regard to rest of the petitioners no final assessment has been made. In context of aforesaid two writ petitions, learned Standing Counsel has submitted that they have right to appeal under rule 23 of 1988 Rules read with Section 5(3) of U.P. Cinemas (Regulation) Act, 1955. Learned Counsel for the petitioners refuted the submissions and contended that they have no right of appeal against the assessment of additional licence fee. For considering the aforesaid contention, it is useful to refer to Rule 23 of 1988 Rules which provides for Procedure of Appeal, Rule 23 of the 1988 Rules is quoted as below:

23. Procedure for appeal.-

(1) An appeal under sub-section (3) of Section 5 or sub-section (4) of Section 7 of the Act may be preferred to the State Government within 30 days from the date of service of the order.

(2) A copy of the ground of appeal alongwith its enclosures shall also be supplied simultaneously to the officer against whose order the appeal is preferred, who shall supply necessary records and such other information to the Government as may be require alongwith his comments.

(3) The State Government may grant a temporary stay subject to such conditions as it may deem fit, and send a copy of its order to the Entertainment tax Commissioner as well as to the District Magistrate concerned.

44. Rule 23(1) refers to sub-section (3) of Section 5 or sub-section (4) of Section 7 of U.P. Cinemas (Regulation) Act, 1955. Present is not a case of Section 7 hence, Section 5 is relevant. Sections 5(3), Section 5(4) which are relevant are quoted below:

5 (3) Subject to the foregoing provisions of this section and to the control of the State Government and the interests of the general public, the licensing authority may grant licences under this Act on such terms and conditions and subject to such restrictions as it may determine and on payment of such fees as may be prescribed.

5 (4) Any person aggrieved by the decision of a licensing authority refusing to grant a licence under this Act may, within such time as may be prescribed, appeal to the State Government and State Government may make such order in the case it thinks fit.

45. Learned Counsel for the MSO has submitted that appeal is provided only in Rule 5(4) when licensing authority refuses to grant a licence. Sub-section (3) of Section 5 provides that licensing authority may grant license under this Act on such terms and conditions and subject to such restriction as it may determine and on payment of such fees as may be prescribed. Phrase "payment of such fees as may be prescribed" are wide enough to include the payment of additional licence fee contemplated under Rule 17(2) of 1988 Rules. From the facts as noted above, the petitioners have stated that they shall be granted licence only when they pay the additional licence fee, which action of the respondents clearly fall in the action of refusal to grant licence due to non-payment of additional licence fee. Thus, the condition of payment of additional licence fee is covered by sub-section (3) of Section 5 and Rule 23 grants a right of appeal against any such decision of licensing authority. When the licensing authority has determined the license fee and made assessment and demand from the MSOs, they have right of appeal under Rule 23 of 1988 Rules read with Section 5(3) of 1955 Act. We are thus of the view that MSOs against whom assessment orders have been passed, have a statutory right of appeal. The issues raised require adjudication of facts hence, the statutory appeal is the appropriate remedy for the MSOs against whom assessment orders have been passed.

46. In the results of the foregoing discussions, we are of the view that writ petitions are to be decided with following conclusions and observations:

(i) Rule 17(2) of 1988 Rules as amended by 4th Amendment Rule 2011 is still operative and in force.

(ii) The exhibition on the Television screen of subscribers by MSO, cable operators or local Television channels is exhibition by means of video within meaning of Rule 17(2) of 1988 Rules.

(iii) Amendments made in U.P. Cinemas (Regulation) Act, 1955 and the Rules framed u/s 13 are within the legislative competence of the State.

(iv) The liability of payment of additional licence fee is to be imposed on MSO, Local cable operators and the local Television channels after taking into consideration the facts of each case and it is open for the State to fasten liability of realization of additional licence fee on any one of the above three, which is held responsible for exhibition on different Television screens. However, additional licence fee can be realized only once.

(v) The petitioners against whom assessment of additional licence fee has been made within the meaning of Rule 17(2) of 1988 Rules, have remedy of filing appeal to the State Government under Rule 23 read with sub-section (3) of Section 5 of U.P. Cinemas (Regulation) Act, 1955.

(vi) The writ petitions having been pending in this Court for consideration, we are of the view that liberty be given to those petitioners against whom assessment orders have already been passed to file a statutory appeal under Rule 23 of 1988 Rules within a period of one month from today and in event the appeals are filed against the assessment orders, the same shall be entertained without raising any objection of limitation.

With the observations and directions as above, all the writ petitions are dismissed subject to liberty to file a statutory appeal within 30 days to those petitioners against whom final assessment orders for payment of additional licence fee has already been passed. The parties shall bear their own cost.