

(1988) 08 MP CK 0042

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3673 of 1987

Anand Jaiswal

APPELLANT

Vs

District Magistrate, Shahdol (M.P.)

RESPONDENT

Date of Decision : 19-08-1988

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Madhya Pradesh Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983 — Rule 10
Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 — Section 3

Citation : AIR 1989 MP 143 : (1989) JLJ 562 : (1989) MPLJ 312

Hon'ble Judges : Y.B. Suryavanshi, J;C.P. Sen, J

Bench : Division Bench

Advocate : Deepak Verma and P.N. Pathak, Y.S. Dharmadhikari, for the Appellant; Anoop Choudhary, Dy. A.G., for the Respondent

Judgement

C.P. Sen, J.

This Order will dispose of Misc. Petition No. 3940/1987 Ashok Chhabaria v. The Commissioner (Revenue), Bilaspur and Anr., Misc. Petition No. 501/1988 Mahesh Kumar Sahu v. Commissioner (Revenue), Bilaspur and other, and Misc. Petition No. 1161/1988 Video Classic and Anr. v. The State of M.P. and Anr. In M.P. No. 3673/1987, the cancellation of the video licence is on the ground that a large screen has been used. In M.P. No. 3940/1987, while the District Magistrate had cancelled the video licence on the same ground, in appeal the Commissioner has restored the appeal but restricted the size of the screen to size of normal T.V. screen. M.P. No. 501/1988 is preferred by a cinema operator against the order of the Commissioner restoring the licence. In M.P. No. 1161/88 the District Magistrate while issuing the licence has restricted the size of the screen to 50 to 60 cms.

The petitioner in M.P. No. 3673/87 is an exhibitor of films through Video Cassette Recorder (V.C.R.) in his Video Parlour known as Arti Videotorium at Burhar. It is a

tahsil town, having a population of about 20,000. There are two cinema houses nearby. The petitioner has constructed the Videotorium having sitting capacity of 160 persons and it has been furnished with chairs and also made the room acoustic. The petitioner has installed VPH 1020 QM Model Universal Video Projector and a V.C.R., having imported the Video Projector at a cost of rupees one lac from Hongkong after paying customs duty of Rs. 59,113/- on 16-2-1984. All the components taken together include optical part of projection system, picture tubes and projection lens. The Projector can exhibit picture of the size of 100" measured diagonally. The petitioner's equipment consists of (i) Video Projector, (ii) Television Screen of 100", (iii) Video Cassette Recorder which reproduces the films recorded in a cassette on the screen through Video Projector, and (iv) Tuner which is used when transmitting T.V. Programmes. The Projector is hung at a distance from the screen behind the spectators from the ceiling. The Projector includes various control systems. Then it is hung from the ceiling it can be operated through remote control. The screen has to be kept at a distance specified from the Projector and when connected to the V.C.R., it transmits picture on the screen which can be operated with the help of the controls in the Projector itself and also through remote control from a distance. According to the petitioners, the Video Projector is part and parcel of T.V, Video Cassette Recorder and the screen. The entire components form one unit. The Projector is a necessary component of Television which fires three colours from three guns in line electron beams, producing a narrow flood of red, green and blue colour electrons which, while passing through the lens combine and turn white before converting on the screen. This Video Projector is an improvement to the conventional T.V. and Video Cassette Recorder which are now common in many household. The petitioner claims to have invested about four lacs of rupees in Videoterim.

The petitioner in M.P. No. 3673/1987 applied for all licence under R. 10 of M.P. Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983, (hereinafter referred to as V.C.R. Rules of 1983) and a licence was granted to him on 26-9-1984 valid for one year. Thereafter the petitioner has been exhibiting films through this Video Projector on 100" screen. However, the petitioner was given a show cause notice and then his licence was suspended on 23-8-1985 on the ground that exhibition of films on such large screen through V.C.R. is not permissible under the Rules. The petitioner challenged the order in writ petition M.P. No. 2657/1985 which was allowed on 24-10-1986 and the order of suspension was quashed Anand Jaiswal Vs. State of Madhya Pradesh and Others, . Thereafter the licence of the petitioner was not being renewed and, therefore, he filed MCC No. 743/86 for taking action for contempt against the respondents for not renewing the licence in spite of the order passed in the writ petition which is still pending. This perhaps annoyed the authorities and the petitioner's licence was again suspended on 28-5-1987. The petitioner challenged the order in M.P. No. 1386/87 and obtained stay. However, this writ petition was disposed of on 7-5-1988 since the period of licence had expired. The

petitioner's licence was not being renewed for a year at a time as required under the Rules but for 2 months and 3 months. The last renewal being up to 10-11-1987. Since no order of renewal was passed thereafter, the petitioner filed M.P. No. 3591/87 which is pending in this Court, the petition having been admitted on 20-11-1987 and the petitioner permitted to exhibit films on payment of entertainment duty. In the meanwhile, the District Magistrate vide his order dated 17/19-11-1987 cancelled the licence of the petitioner holding that the rules do not contemplate display of video films by Video Projector on a large screen. The petitioner has challenged the order of cancellation on the ground that this Court having allowed the earlier writ petition *Anand Jaiswal v. State* (supra) holding that the petitioner is entitled to renewal of his licence, the District Magistrate had no authority to cancel the same when the System is the same which is being used since 1984. The petitioner had given the details of his Television set i.e. the V.C.R. Projector in the earlier petition and the licensing authority was fully aware of the nature of the system and the screen that was being used and so the District Magistrate erred in holding that the present system of the petitioner was not subject-matter of dispute before the High Court. Under V.C.R. Rules of 1983, there is no restriction about size of the screen that can be used nor there is any restriction imposed in his licence about the size. The District Magistrate after finding that the petitioner is not using a separate screen but is using a separate system altogether, should not have cancelled the licence as in view of the earlier decision of this Court that the screen forms integral part of T.V. i.e. V.C.R. Projector and so the licence has to be renewed. The District Magistrate erred in holding that because of the large size of the screen, the petitioner is required to take a licence under M.P. Cinemas (Regulation) Rules. 1972.

The respondents in its return contends that the petitioner was granted licence for exhibition of films under Rule 10 but in the garb of this licence, the petitioner cannot be allowed for unvirtually a cinema theatre. It is not disputed that the petitioner is exhibiting video films with the help of Video Projector Television Screen of 100 inches and Video Cassette Recorder. The terms and conditions of exhibiting video films under the Rules are comparatively liberal and the taxation lighter than what is applicable to display of cinematographic films, in cinema halls. The respondent has passed the correct order on fully considering the matter and since the screen did not form integral part of T.V. set but was a separate screen altogether, it is not covered under the licence. The petitioner is not using a normal T.V. set as envisaged under the Rules. It is evident that the system Used by the petitioner is not capable of receiving normal television programme broadcast by Door-Darshan. Attention has also been drawn to the Circular of the State Government dated 28-12-87 that several Video Parlours are exhibiting films by magnifying the picture by Projector on the screen, while the films can only be exhibited on television set with inbuilt picture tubes and so the Parlours should be inspected to see whether any Projector is being used and to stop the same and in future while issuing or renewing licences, the size of the

screen should be specified.

There are two interveners in the petition, one is Central Circuit Cine Association, Bhusawal, which is a representative body of Film Trade constituted by exhibitors and distribution of the State of M.P., Vidharbh, Khandesh and Rajasthan. The other intervener is owner of a cinema hall at Burhar. According to the interveners, the petitioner's licence has been cancelled on the ground that the screen which is being used does not form part and parcel of the Set and the petitioner is using a separate and large screen for exhibiting video films. That for some time past, the entire Film Trade of the State of M.P. is gravely concerned and upset by the advent of a new menace, of unfair, illegal and throttling competition by Video Film exhibition in Videotoriums, Hotel and Restaurants on large screens which is absolutely illegal and violates the provisions of several enactments and the rules framed thereunder, besides affecting the safety, "convenience and welfare of the public in general. Cinema is one of the most important means of mass-media with millions of viewers and many millions in investment. On account of showing films with the help of V.C.R. drastic amendments have been made in Cinematograph Act of 1952, Copyright Act and V.C.R. Rules of 1987. While on each ticket the cinema hall owner has to pay 50 to 60 per cent as entertainments duty, Video Parlour is only charged a small sum for each show and not per ticket, with the result the cinemas are not in a position to compete with Video Parlours and they are placed in a very disadvantageous position. The petitioner has been unauthorisedly exhibiting films on large screens and his licence was suspended earlier and ultimately cancelled. A raid was also conducted by the Excise Department and it was found that the petitioner was using an independent and separate screen measuring 100". The earlier decision is of no help to the petitioner since he is using a separate screen. The petitioner can only exhibit films on screen of 51 cms. to 60 cms. On account of the petitioner's videotorium, the residents are facing difficulties, it being in close vicinity to Ramjanki Mandir. Therefore, the petition deserves to be dismissed.

In M.P. No. 3940/1987, the petitioner has been running Regal Video at Pendra in district Bilaspur, it is a town having population of about 12,000. The petitioner has constructed a hall of the size 58" X 17" for exhibiting films through V.C.R. He has installed a Hova-Heam, Model 1-A Colour Television, manufactured by Kloss Video Corporation, Messachusettas, U.S.A. There are three different electron guns, red, green and blue. When the television is operated, the aforesaid three guns produce a colour image on a cloth screen of the size 10" X 7", when kept at the specified distance and connected to the V.C.R. and cassette is played. The petitioner was granted a licence in July, 1984 for a capacity of 90 persons and for two daily shows. According to the petitioner, he has invested two lacs in the venture and has been exhibiting films on the screen of 10" X 7" from July, 1985 and it was renewed for the year 1986 also. But on 14-12-1986 there was a surprise checking by the S.D.O. at 1.30 p.m. and he noted that there were 98 persons in the matinee show on a wide screen and there is a Girls' School 100

yards away. The District Magistrate then issued a show cause notice and suspended the licence on 29-12-1986. It was alleged that there were 8 spectators more than the permitted capacity, only two shows from 6 p.m. to 9 p.m. and 9 p.m. to 12 p.m. were permitted but he was holding matinee show also on a wide Screen and there is disturbance to a Girls' School nearby. The petitioner replied that there were 90 spectators inside the hall who were not counted but the S .D.O. inferred on the basis of the tickets issued, 8 tickets were for the next show, only two shows were held daily, on Sundays the timings being 12 p.m. to 3 p.m. and 3 p.m. to 6 p.m. The school hours are from 10.30a.m. to 4.30 p.m, when there is no show, school is closed on Sundays. The size of the screen cannot be restricted as has been held by this Court in Anand Jaiswal Vs. State of Madhya Pradesh and Others, . The petitioner challenged the suspension order in M.P. No. 794 of 1987 and the order was quashed on 27-4-1987. However, the District Magistrate cancelled the licence on 26-5-1987 holding that there were 8 spectators in excess, Girls' School nearby was disturbed and wide screen was being unauthorisedly, used in breach of the Rules and the licence conditions. The petitioner preferred appeal u/s 5(3) of M.P. Cinemas (Regulation) Act, 1952. The Commissioner partly allowed the appeal by restoring the licence but restricting the size of the screen to the size of a T.V. Screen. It was held that there was no overcrowding and there was no disturbance to the Girls' school as shows were in the evening except on Sundays. Therefore, the petitioner has filed this petition. Here also the Central Circuit Cine Association, Bhusawal, and one Mahesh Kumar Sahu owner of a cinema hall at Pendra, have intervened. The said Mahesh Kumar Sahu has also filed a separate Misc. Petition No. 501/1988 challenging the order of the Commissioner in restoring Video licence of the petitioner. The petitioner can hold shows on the timings shown in the licence and at no other time.

In Misc. Petition No. 1161/88 the petitioner has established a Video Parlour "Video Classic" at Raipur and applied for a licence. The petitioner has installed "Enter PJ-10 Video Projection System, manufactured by the Entel Communications Products Pvt. Ltd., Madras. The set is similar to that in MP. No. .3940/87 except that it is of Indian origin, having 3 separate tubes red, green and blue throwing colour picture on a smaller screen of size 6" X 4". But the District Magistrate has granted licence for a screen of 50 to 60 cms. only. Therefore, the petitioner has filed this petition.

Movies are being exhibited in cinema halls by projecting films through Projector in towns and cities for quite sometime now and it has become an established system of entertainment to the public. Television is a recent form of entertainment and with the opening of Television stations at various places, people now can see T.V. Programmes and films while sitting at home. Regular television broadcasting began in United States in 1941 and in Europe in the year 1950 after the second great world war. Television was introduced in India about 15 years back, that too confined to a few cities only. Now there are television stations all over India covering practically every part of it. Video Cassette

Recorder is a recent development and with its help films can be seen at home through television in pre-recorded cassettes.

"A black and white television system comprises a transmitter and a receiver, as the transmitter utilizes a television camera, which breaks the image up into tiny picture elements. These picture elements are changed into electric currents, which are suitably processed and fed to a transmitting antenna. From the antenna, the television signal is radiated in the form of electromagnetic waves. At the receiving location, the incoming electromagnetic waves strike the receiving antenna. In turn, the waves are changed into signal currents which are fed to the television receiver. These signal currents are suitably processed and finally produce a visible image on the screen of a picture tube."

Television theory and Servicing" - Clyde N. Herrick.

"A VCR is designed to record sound and pictures in both black and white and colour on magnetic tape and then to replay them when required. VCRs contain a tuner to enable the machine to record signals received from the antenna. The material recorded can then be played back on an ordinary domestic T.V. set. One can record one show using the VCR's tuner while watching another station using the TV's timer."

The complete Handbook of Video by David Owner, Marck Dunton,.

The Cinematograph Act, 1952, is an act made by Parliament to make provision for the certification of cinematograph films for exhibition and for regulating exhibitions by means of cinematographs. u/s 2(c) "cinematograph" includes any apparatus for the representation of moving pictures or series of pictures. M.P. Cinemas (Regulation) Act, 1952, was enacted to make provision for the regulation of cinemas, including their licensing. u/s 2(a) "cinematograph" includes any apparatus for the representation of moving pictures or series of pictures. Under this Act, M.P. Cinema (Regulation) Rules, 1972, have been framed.

This Court in *Restaurant Lee v. State* AIR 1983 M P 146, has held that when Video Cassette Recorder and television sets are being used for commercial purposes, the same have to be done under a licence under M.P. Cinemas (Regulation) Act, 1952, as the word "cinematograph" is wide enough to include VCR and television, though all the rules framed under M.P. Cinemas (Regulation) Rules, 1972, may not be applicable to such Video Parlours. After this decision, the State Government framed V.C.R. Rules of 1983 which were published in gazette on 16-9-1983. Under Rule 8 no place shall be opened or allowed to remain open for use as a cinema without obtaining a licence which is to be issued under Rule 10. Licence can be refused if it is likely to cause obstruction, inconvenience, annoyance risk, danger or damage to the public or passers by under Rule 11. Under Rule 32 duration of a licence has to be for one year on such terms and conditions and subject to such restrictions as the licensing authority may determine and under Rule 13 licence can be renewed on payment

of necessary fee. Rule 18 empowers the licensing authority to suspend or cancel any licence for contravention of any of the rules after giving show cause notice. Rule 19 prescribes limitation of 30 days for preferring an appeal against the order refusing to grant, a licence u/s 5(3) of "M.P. Cinema" (Regulation) Act, 1952. Rule 20 clarifies that nothing in the M.P. Cinemas (Regulation) Rules, 1972, shall apply to cinemas to which those rules apply. Consequently, there was amendment in M.P. Entertainments Duty and Advertisements Tax Act, 1936, by amending Act No. 34 of 1983 which was published in the gazette on 29-10-1983. Under the amended Section 3, entertainment duty payable for admission in a cinema hall is not payable for admission into a video parlour for which separate rates of duty have been prescribed for every show and not per seat, depending upon the population of the town. VCR Rules, 1983 and the Amending Act No. 34/1983 were subject-matter of challenge before this Court in Central Circuit Cine Association, Bhusawal and Others Vs. State of Madhya Pradesh, Bhopal, and this Court held that VCR Rules of 1983 and the Amending Act No. 34/1983 cannot be said to be unconstitutional and the classification appears to be quite reasonable. Looking to the size of the cinema building where film is exhibited on a large screen through a projector and the sound is made through powerful loudspeakers, the large number of visitors, crowd usually collecting outside the theatre, the number of vehicles and big posters hung round the walls, and the cinema premises, it is not unreasonable to see that schools, hospitals, temples or other like places are not within the close vicinity of such cinema theatre. It is quite reasonable not to have such a restriction on the cinema where exhibition of films is done by video cassette recorder because that would require a smaller television screen installed in a small room and the film is exhibited by playing a pre-recorded cassette.

Therefore, it is evident that exhibition of films through VCR in video parlour is governed under VCR Rules of 1983 and regarding payment of duty under Entertainments Duty Act, 1936 as amended by Amending Act No. 34/1983. The VCR Rules exclude application of other rules to video parlours and the Amending Act prescribes separate entertainment duty on the basis of per show and not per seat. Now, we have to consider whether, the system used by the petitioner is something other than exhibition of films through VCR and television. Admittedly, the petitioner is using the same system since his Video Parlour was established in 1984 and first licence was issued. He has not, changed the system. He is using the same Video Projector, television screen of 100" and video cassette recorder. This Court in Anand Jaiswal Vs. State of Madhya Pradesh and Others, held : --

"A screen of a television receiver set being a component of a picture tube is an integral part of the apparatus called the T.V. receiver. The licensee possessing a licence granted under the M.P. Cinema (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983, can use a television set with a picture tube having a screen of any dimension unless conditions subject to which the licence is granted restrict use of a screen beyond a given dimension. So long as the licensing rules are silent about the dimensions of the screen of the picture tube,

the holder of a valid licence under the rules can always use a television receiver with a picture tube having screen of any dimension. If the licensing authority means to restrict the use of a screen beyond certain dimensions, the rules have to be so amended or the condition has to be incorporated in the licence itself. As long as that is not done, the licensee shall be free to use a picture tube with the screen of any dimension. The licensee in view of the existing rules and licensing conditions, is certainly not entitled to use a separate screen apart from the screen of the picture tube of a television receiver with a view to enlarge the image.

The petitioner licensee holding a valid licence would therefore, be liable to pay entertainment duty only as prescribed u/s 3 of the M.P. Entertainments Duty and Advertisements Act. 1936 (No. 30 of 1936) as amended by the M.P. Entertainments Duty and Advertisements (Amendment) Act, 1983."

This decision was in respect of this petitioner and regarding the very same system and this Court directed the respondents for grant of renewal of licence to the petitioner. So thereafter it was not open to the District Magistrate to cancel the licence by saying that the petitioner is using a separate screen when the screen itself is an integral part of the system. The District Magistrate has observed in the impugned order that in view of the decision, the licensee can use a television set with a picture tube having a screen of any dimension and the petitioner's system gave the same large image and audio visual clarity which is obtained in cinema projection. According to the District Magistrate, the petitioner is using a separate system altogether which is outside the scope of the licensing rules. Such a system is not contemplated under the rules nor sanctioned by the Court. So use of such a system should be subjected to the same terms and conditions which exist for exhibition of cinematographic films. The petitioner cannot be permitted to display films which are on par with cinematographic films in terms of sizes, audiovisual quality etc. while remaining, at the same time, exempt from the high level taxation. The liberal terms and conditions and the comparatively lighter taxation for the display of video films are due to the fact that the sizes and quality of the picture obtained on a television screen is in no way comparable to that of cinema. So according to the District Magistrate, logic would thus lead to conclude that the rules do not contemplate display of video films by video projector on a large screen. It is clear from the order that the petitioner is not using a separate screen and the screen that is being used is an integral part of the system.

The petitioner has annexed a brochure issued by Soni Corporation of Japan in respect of its Universal Video Projector 1020 CM. These new projectors deliver razor-sharp, true to life pictures on giant 160 or 72 inch screens. The Universal Projector is the system utilizing all the new technology of the communication age, providing unbelievable picture quality. Although the Projectors are extremely sophisticated, being compact, lightweight and readily set up for operation, they are incredibly easy to use. Further, the Projector can be used on

slide screens and even on white wall with no loss in definition though for clarity screen is used. It is portable weighing about 26 Kg, about the same weight as of a T.V. set of 51 cms. Similar VCR Projectors are being assembled and manufactured in India by different manufacturers including Electronics Corporation of India Limited which is a Government of India Enterprise which can be exhibited on screens of 100" or so. The Projector contains 3 guns which are necessary components of a television which fires 3 colours in line electron beams producing a narrow flow of red, green and blue colour electrons which, when passing through the lens combine and turn white before converging on the screen. In a conventional T.V. set, T.V. tube contains one gun and not 3 guns which fire three electron beams from three apertures producing a narrow flow of red, green and blue colour electrons which converges on the screen and after passing through the lens, forms a picture. In order to get a larger image of the picture, instead three guns have been used each with independent lens through which red, green and blue electron beams combine and turn white before converging on the screen and give a larger image. These three guns inside the Projector form part of the television. Picture is visible when the screen is placed at a specified distance from the Projector. If the entire thing has to be inbuilt, then the Projector would be almost the size of a room, with being 100" and it would have been a very cumbersome instrument and very difficult to transport and operate. That is the reason why the screen is not inbuilt and it is physically separated and kept in the form of a screen which can be folded so that it can be carried to any place and operated, easily, otherwise the very purpose of Video Cassette Recorder would be defeated. It is true that instead of using screen, if the Projector is kept at a requisite distance from the wall, pictures would form on the wall also though clarity may not be as good as on the screen which is specially built for that purpose. So even if the petitioner, instead of using the screen, uses wall of the room, that wall will form integral part of the system on which pictures would form. Now if the screen is moved closer or the Projector is brought closer to the wall, there would be no picture formation. Formation of pictures would be only at a specified distance. Though the screen is separate in the sense that it is not inbuilt with the VCR Projector, but it is an integral part of the system and without it there can be no picture formation.

It does appear that the cinema hall owners are at a disadvantage as they have to pay higher rate of duty by way of entertainment duty per seat up to 60%, while for entry in video parlour, duty is per show and not per seat. But then cinema hall has a larger capacity and a wider screen while video parlour has a smaller screen and less capacity. It is neither practicable nor desirable as in the case of the petitioner's video parlour having a capacity of 160 that they should see films through the VCR on a screen of 51 Cms to 60 Cms as has been claimed by the intervenes. It has been rightly pointed out by the petitioner that Video Cassette Recorder device has come to stay. It has become very popular and there are innovations every day. According to the petitioner, manufacturers of Video Cassette Recorder and television sets in Japan claim that they can show picture

to the entire city through the media of VCR and the screen. The size of the screen can extend to 2000". Such screens have been installed at places where international games are performed just as in Seoul Olympics. There is no restriction on the size of the screen. In Seoul Olympics screen of the size 38 meters X 14 meters has been installed at a cost of 3 million dollars. Cinematograph or exhibition of films through V.C.R. is mode of entertainment of modern times which has spread to the interior villages. It is a material source of income of persons, who possess it. The material resource has got to be utilised for common good. The policy of the Government is to see that villagers become self-sufficient in every aspect including media of entertainment. It is neither practicable nor possible that there should be cinema halls in every village. In fact, T.V. and Video Cassette Recorder are the media of entertainment for the villagers. Certainly, running of Videotorium at a place will not cause more inconvenience or annoyance to the residents-as may be caused by a cinema hall. To see that the video parlours do not become a nuisance interfering with the studies, it is open to the licensing authority and, in fact, the video parlours are not permitted to give any matinee show and they are restricted to two shows, one in the evening and the second in the night. Objections of the interveners are understandable that these video parlours have become their keen competitors. Already cinema halls are badly affected due to advent of T.V. sets in homes and further by video parlours where a person can go and enjoy latest film which is not expected to be exhibited in a cinema hall in a small town for years to come. Merely because the cinema exhibitors are adversely affected by T.V. and V.C.R., that cannot be a ground for stalling the exhibition of films through V .C .Rs in Video Parlours. After development of T.V. and V.C.R., the cinema exhibitors cannot expect the same audience which they were earlier getting in their cinema halls. There is no reason why video parlours should not be encouraged so that the cheapest form of entertainment is extended to the remote villages. As and when video parlours are established, it would be open to the Government to revise entertainment duty on finding that these parlours are running quite successfully.

It has also to be considered as to whether it is open to the Government to restrict the size of the screen in Video Parlours when the rules do not permit any limit on the size of the screen. This Court in Anand Jaiswal Vs. State of Madhya Pradesh and Others, has held that so long as the licence rules are silent about the dimensions of the screen of the picture tube, the holder of a valid licence under the rules can always use a receiver with a picture tube having screen of any dimension. If the licensing authority means to restrict the use of a screen beyond certain dimensions, the rules have to be amended or the condition has to be incorporated in the licence itself. It appears that the State Government on receiving information that wide screens are being used in Video Parlours issued a Circular to District Magistrate on 30- 7-1987 that size of the screen be specified while granting or renewing a video licence By the subsequent Circular dated 20-12-87 the Dist. Magistrates were directed that Vidio Parlours should only be

permitted to use inbuilt screens for exhibiting film i.e. the screens of the sizes of T.V. sets. In M.P. No. 3940/87, the Commissioner in appeal has asked the petitioner to use the screen of the size of a T.V. set and in M.P. No. 1161/1988 the District Magistrate while issuing the licence, restricted the size of the screen to 50 to 60 cms. In M.P. No. 3673/87 the petitioner during July 1987 applied to the District Magistrate for permission to exhibit films as he had already deposited entertainment duty up to September 1988 and the District Magistrate has granted permission provided the petitioner uses screen of the size of 27" only. As seen, the rules do not limit the size of the screen for exhibiting films through VCR and due to technological advances VCR can now exhibit films on screens of unlimited dimensions. Here in these first two petitions, the petitioners, since the inception of their Video Parlours, are using screens of the width of 100" and 120" respectively. So how the State Government by executive fiat restrict the size of the screens and this is infringement of Article 19(1)(g) of the Constitution as the petitioners are being prevented from carrying on their trade and business. So these two circulars are bad and have to be struck down. It is another thing if the State Government are to fix entertainment duty depending upon the size of the screen of the V.C.R.

Section 5(3) of M.P. Cinemas (Regulation) Act, 1952, provides for appeal against refusal to grant a licence under the Act. Rule 19 of V.C.R. Rules, 1983, provides for limitation of 30 days for preferring an appeal. According to us, refusal to grant a licence will include a refusal to grant a renewal and appeal lies against refusal to renew a licence. But there is lacuna in the Act inasmuch as there is no appeal provided against cancellation of a licence. So no appeal lay against cancellation of the licences of these two petitioners. As such, the Commissioner had wrongly entertained the appeal in M.P. No. 3940/87, he could not have also partly allowed the appeal when he had no jurisdiction to entertain the appeal. No appeal is also provided against imposition of any condition in the licence. As such, these petitions cannot be thrown out on the ground that there is alternative remedy of appeal.

With the result, M.P. Nos. 3673 and 3940 of 1987 and 1161 of 1988 are allowed, the circulars dated 30-7-1987 and 2042-1987 restricted the size of the Video screens are struck down, the cancellation of videolicences by District Magistrates in M.P. No. 3673 and 3940 of 1987 are quashed and the District Magistrates are directed to renew the licences, while in M.P. No. 1161 of 1988 the condition restricting the size of the screen to 50 to 60 cms. is also quashed. M.P. NO. 501 of 1988 is dismissed. There shall be no order as to costs. The outstanding security amount be refunded to the petitioners.