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**(1986) 10 MP CK 0033**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 2657 of 1985**

Anand Jaiswal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

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**Date of Decision :** 24-10-1986

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Madhya Pradesh Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983 — Rule 10, 13, 18  
Madhya Pradesh Entertainments Duty and Advertisements Tax Act, 1936 — Section 3

**Citation :** AIR 1987 MP 96 : (1988) ILR (MP) 4 : (1987) JLJ 215 : (1987) 32 MPLJ 308 : (1987) MPLJ 308

**Hon'ble Judges :** K.K. Adhikari, J; B.C. Verma, J

**Bench :** Division Bench

**Advocate :** Y.S. Dharmadhikari, for the Appellant; M.V. Tamaskar, A.A.G., for the Respondent

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## Judgement

B.C. Varma, J.

The order in this petition shall also govern the disposal of Miscellaneous Petition No. 2944 of 1984 (Sushil Kumar Sharma v. State of M.P. and Anr.), Miscellaneous Petition No. 1319 of 1985 (Sushil Kumar Sharma v. State of M.P. and Anr.), Miscellaneous Petition No. 3784 of 1985 (Santosh Kumar Jain v. State of M.P. and Anr.), Miscellaneous Petition No. 3785 of 1985 (Vishwaraj Singh Thakur v. State of M.P. and Anr.), Miscellaneous Petition No. 5 of 1986 Sanjay Singh Parihar & Brothers v. State of M.P. and 2 others), Miscellaneous Petition No. 68 of 1986 (Pyaralal v. State of M.P. and Anr.), and Miscellaneous Petition No. 977 of 1986" (Sanjay Singh Parihar and 2 others v. State of M.P. and 5 others) as in all common question of law arises for decision.

The petitioner in all these cases are exhibitors of films through Video Cassette Recorder (V.C.R.). They have been issued due licenses to exhibit films through V.C.R. on a television screen under Madhya Pradesh Cinemas (Exhibition of Films

by Video Cassette Recorder) Licencing Rules, 1983. Noticing that the petitioners are exhibiting films on a wider screen than the one ordinarily found fixed in a television set, directions Have been issued to the petitioners not to exhibit films on wider screens by playing pre-recorded cassettes on a V.C.R. Licences have either been suspended or not renewed and the exhibition of films on wider screen has been stopped. In Miscellaneous Petition No. 2657 of 1985, the exhibition of films on a wider screen through V.C.R. has been stopped and licencing has not been renewed.

In Miscellaneous Petition No. 68 of 1986, the petitioner has been granted licence to run the exhibition on 27"" screen only and his application for grant of licence for exhibition on 72"" wide screen has not been disposed of. He seeks a direction for permission to run the exhibition on a 72"" wide screen. In Misc. Petition No. 2944 of 1984 and 1319 of 1985, the licence issued has been cancelled because the place of exhibition of film adjoins the Tahsil Office and causes inconvenience in the working of that office. In Misc. Petition Nos. 3784 of 1985, where the petitioner was found exhibiting films on a 72" wide screen, entertainment duty at an enhanced rate as chargeable in cases of exhibition of films in big cinema halls through the projector, has been demanded and the apparatus has been seized. Consequently, the exhibition of films has been stopped. In Misc. Petition No. 5 of 1986 and 977 of 1986, the apparatus has been seized because the petitioners there used 15" wide screen and neither issued tickets nor maintained account register. The exhibition of films thus has been stopped.

Although in all these cases, licences were issued under the M.P. Cinema (Exhibition of Films by Video Cassette Recorder) Licencing Rules, 1983, the licences granted have been suspended or revoked or not renewed and entertainment duty at, different rates under different criteria has been demanded and the apparatus has been seized principally because the exhibitors/ petitioners are using screens wider than the ordinary 27" screen which is found fixed in the television set. The basis for all the impugned actions against the petitioners seems to be that the permission granted for exhibition of films on a television screen through the V.C.R. does not permit exhibition on a screen wider than the ordinary 27" screen ordinarily used in a television set. Use of a wider screen is said to be contravention of the terms of licence granted for exhibition of films under the 1983 Rules. However, in Miscellaneous Petitions Nos. 2944 of 1984 and 1319 of 1985, the basis of action is the location of building in which the exhibition of films is done. The petitioners contend that neither rules nor the licencing conditions provide for the dimensions of the screen on which the film is to be exhibited on a television set, screen being a part of such television set. So long as the rules do not prohibit or limit dimensions of the screen to be used on a television set, the licencing authority cannot refuse licence if other conditions are satisfied for such a grant and cannot prohibit exhibition of films on a wider screen of any dimension.

Having regard to the safety of persons attending cinematograph exhibitions and

with a view to prevent presentation of improper or objectionable films, the Parliament has enacted the Cinematograph Act, 1952 dealing with certification of cinematograph as "subject of sanctioning of cinematograph films for exhibition" falls specifically under the Union List. Further, the Madhya Pradesh State Legislature has enacted the M.P. Cinemas (Regulation) Act, 1952 which deals with regulation of cinemas or their license as "cinemas" falls exclusively under Entry 33 of List II of the Constitution. Section 2(a) of this Act defines "cinematograph" to include any apparatus for the representation of moving pictures or series of pictures and Section 2(b) defined "place" to include a house, building, tent and any description of transport, whether by sea, land or air. This definition of "cinematograph" in M.P. Cinemas (Regulation) Act was considered by a Division Bench of this Court in *Restaurant Lee and Others Vs. State of Madhya Pradesh and Others*, and was held to be wide enough to include any apparatus for representation of moving pictures or series of pictures. The definition was held to be general and to include V.C.R. when used for playing prerecorded cassettes of movies on a television screen being an apparatus for representation of moving pictures or series of pictures. Further, the activity of exhibiting movies by playing pre-recorded cassettes in V.C.R. was held to be within the ban created by Section 3 which requires that save as otherwise provided in the Act no person shall give an exhibition by means of a cinematograph elsewhere than a place, licensed under the Act, or otherwise than in compliance with any conditions and restrictions imposed by such licence. Keeping in view the various provisions contained in Sections 4, 5, 6 and 7 of the M.P. Cinemas (Regulation) Act, 1952, providing for the appointment of the licencing authority, the grant of licence, precautions for safety of persons attending exhibitions and for suspending licences for exhibition of any film, for user of a place for the purpose, the M.P. Cinemas (Regulation) Rules, 1972 have been framed by the State Government in exercise of power conferred by Section 9 of the Act. These Rules deal with the regulation of licences for a cinema. Further the M.P. Entertainment Duty and Advertisements Tax Act, 1936 provides for charging of entertainment duty for admission to the entertainment by exhibition of films. The decision in *Restaurant Lee's case* (supra) led the State Government to frame the M.P. Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983 and also led to the amendment of the Entertainments Duty and Advertisements Tax Act by enacting the M.P. Entertainments Duty and Advertisements Tax (Amendment) Act, 1983 (No. 34 of 1983). By the first is regulated the exhibition of films by Video Cassette Recorder on a television set by playing a pre-recorded cassette and by the later is regulated the charging and collection of entertainment duty on such exhibitions.

It has been the common ground before us that the exhibition of films through V.C.R. on a television set is governed by the Licensing Rules, 1983. It will, therefore be useful to notice certain provisions of those Rules. Rule 2(c) defined "cinema" to mean any place wherein a public exhibition of film by means of Video Cassette Recorder is given for a commercial purpose. A "Film" u/s 2(d) means a

cinematograph film and "Video Cassette Recorder (VCR)" in Section 2(e) is defined to mean a cinematograph for the purpose of giving cinematograph exhibition of recorded film. Section 3 creates a prohibition and says that no cinema shall be licensed under the Act (M.P. Cinemas Regulation Act, 1952) unless the cinema conforms to the rules laid down in. Licensing Rules, 1983. Rule 4 regulates the entrance and exit to the cinema, Rule 5 regulates the seat arrangement in the cinema, and Rule 6 provides for sanitary conveniences. Rule 8 says that no places shall be opened or allowed to remain open for use as a cinema unless the person being the owner, tenant or occupier thereof shall have obtained, a licence. Rule 9 requires an application containing certain particulars for grant of a licence, Rule 10 provides for grant of licence by the authority in Form II appended to those Rules and Rule 11 provides for refusal of a licence if the cinema is likely to cause obstruction, inconvenience, annoyance, risk, danger or damage to the public or passers by in the vicinity of the cinema. According to Rule 12, the term of licence is for one year from the date of its issue or renewal as the case may be. Rule, 13 permits the authority to renew the licence and Rule 14 provides for fee for a licence or for a renewal of a licence, Rule 18 then permits the licencing authority to suspend or cancel the licence granted under the Rules" for contravention of any of the Rules. It, however, says that before taking any action under Rule 18, the licensing authority shall give the licensee an opportunity to show cause against the action. Sub-rule (2) of Rule 18; says that notwithstanding anything contained in Sub-rule (1), the cinema licence shall be liable to immediate suspension or cancellation by the licensing authority if in the opinion of the licensing authority the place is insufficient or is causing danger to the safety or health or inconvenience to the public. The licence is contained in Form II appended to those rules and it lays down conditions and restrictions under which the licence is to be granted. The general condition (condition No. 9) puts the licensee under an obligation to comply with any direction or instruction (including any direction for temporarily causing the cinema premises) issued for preventing any obstruction, inconvenience, annoyance, risk, danger or damage to the audience in the cinema premises or the public or the residents or passers by in the vicinity of cinema premises or for the maintenance of public safety and the prevention of the disturbance therein. By force of the M.P. Entertainments Duty and Advertisements Tax (Amendment) Act, 1983, the duty is chargeable per show and not per person admitted to the entertainment and bears a proportion to the population of the town and varies from place to place where there is or is no cinema.

Since in the cases in hand, licenses have either been suspended, not renewed or not granted because the licences used or proposed to use unusually wider screen of 72" or 15" on the television set instead of ordinary smaller television screen, the design of V.C.R. and television must be noticed.--

"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 electron (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 & Servicing" - Clyde N. Herrick.

It may be noted that the picture and the sound signals are transmitted by a single antenna and are also received by a single antenna. The picture signal originates in a television camera and terminates in a picture tube. Similarly, the sound signal originates in a microphone and terminates in a loudspeaker. The antenna transmits these signals to the receiver set where the R.F. section processes the incoming signal from the antenna. This R.F. section is called the front end or the head end of the television receiver. From antenna, the signals pass to R.F. section, then to I.F. section then to Video section and finally to magnetically deflected picture tube. A picture tube consists of a cathode for electron emission, a control grid for varying the intensity of the electron beam and electrodes for accelerating and focussing the beam. The electron beam finally strikes a fluorescent screen. A colour television receiver can be regarded as a conventional black-and-white receiver, plus a chroma section and a colour picture tube. It can reproduce a colour image received from a colour television camera. It will thus be seen that the screen being a feature of the picture tube is an integral part of the television receiver. A V.C.R. is designed to record sound and pictures both black and white and colour on magnetic tape and then to replay them when required. The material can be played back on an ordinary domestic T.V. set. They also play back tapes recorded on other machines and pre-recorded cassettes of movies.

Once it is clear that a screen on 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 Madhya Pradesh 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. We would like to make it clear that 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.

In Miscellaneous Petition No. 2657 of 1985, the petitioner held a valid licence under the 1983 Rules and was exhibiting films on a television set through the V.C.R. He applied for renewal of the licence. It has been refused to him vide order dated 7-10-85. This order has followed certain instructions of the State Government contained in letter dated 10-4-85 in the Department of Culture, referred to in the said order of the District Magistrate/Licencing Authority. The reason for refusal to renew the licence is said to be that on inspection it was found that the petitioner was exhibiting films through a projection unit. From the return filed, it does not appear that the petitioner is using any separate screen to enlarge the film produced on the television screen of the picture tube. What is said is that the petitioner has employed a Japanese technics which projects 51 c.m. picture from an ordinary television to 8" 4" width, i.e. 100" by way of enlarged projection, It is not clear if by this is meant the use of a screen other than the screen as part of the picture tube. The petitioner has specifically alleged in his petition that no separate screen is being used but the picture is exhibited on the screen of a television itself. If that is so, we do not see why the petitioner's licence should not be renewed, other conditions being satisfied. We have shown that the respondent does not allege use of a separate screen to enlarge the picture. It, therefore, cannot be said that the petitioner has ever violated the conditions of the licence. He is, therefore, entitled to the grant of renewal of the licence. We will allow this petition, quash the order of the District Magistrate/Licencing Authority dated 7-10-85 (Document No. 10) and direct the respondent to renew the licence. We may, however, make it clear that this shall not permit the petitioner to use a separate screen to enlarge the picture produced on the screen of the picture tube.

In Miscellaneous Petition No. 68 of 1986, the petitioner's application for grant of licence to exhibit films through the video projector of 72" wide television screen has not been disposed of probably because of some letter of the State Government dated 10-4-85. The Licencing Authority/District Magistrate is directed to dispose of that application in the light of this decision within a period of two months.

The petitioners in Miscellaneous Petitions Nos. 3784 and 3785 both of 1985 are exhibiting films under a valid licence with a television set with a 72" wide screen. It is the case of the petitioners that these screens are part of the picture tube and they are not using any separate screen to enlarge the picture tube. The return and the impugned orders also do not give any indication that the petitioners are using any separate screen. The orders also show that the television screen is 72" wide. For this reason the Excise authorities, viz., the respondent No. 2 in both the cases, have opined that the petitioners must pay entertainment duty on exhibition of films as is payable by those exhibiting films through the projectors on a wide screen in cinema theaters where entertainment duty is levied on a certain proportion of the fee charged from every person

visiting the cinema, A direction has been issued by the respondent No. 2 that unless the fee is so paid, no film can be exhibited. A demand for certain amount has also been raised. This action on behalf of the respondent No. 2 proceeds on misapprehension that a larger television screen cannot be used under the licence granted under the 1983 Rules to exhibit films on a television set through V.C.R. In view of our finding aforesaid that in a television receiver set the picture tube can have a screen of any dimension and so long as the licence granted does not put any restriction upon the use of a television with a screen beyond a given dimension, the exhibition continues to be one on a television set by playing a prerecorded cassette on a V.C.R. For that the petitioners do hold a valid licence. They are, therefore, 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 in its petitions to the entertainment by V.C.R. It is not the case of the respondents that the petitioners in these two applications are not paying entertainment duty as required on entertainment by V.C.R. In our opinion, the demand made in these two petitions for payment of entertainment duty on admission of each person to this exhibition by the petitioners is entirely illegal and wholly unjustified. The petitions have, therefore, to be allowed. The orders (Annexure P-4 in both the cases) demanding entertainment duty for each admission at certain rates and raising a demand for payment of entertainment duty at that rate for past exhibition and also directing stoppage of exhibition until the duty is so paid are hereby quashed.

The petitioners in Miscellaneous Petitions Nos. 5 and 977 of 1986 held a licence No. 18/VCR/84 from the Licencing Authority (District Magistrate) to exhibit pictures on a television set through the V.C.R. The screen of the television set is 15" wide. The excise authorities raided the premises where the exhibition used to take place, seized the apparatus and stopped the exhibition of film for various reasons. According to the authorities, the screen used is not in accordance with the licence granted and as it is wide enough the petitioners are liable to pay entertainment duty per visitor of the show at certain proportion of the fee charged from such visitors. After the seizure the machinery etc. have been put in the Suprudnama of the petitioners. Precisely for this reason the licence is not being renewed although necessary application has been made for it. The petitioners' case is that the screen is a part of the television set and since the licence does not restrict use of screen beyond certain dimension, the exhibition was within the terms of the licence and could not be stopped. Precisely for this reason it is alleged that the entertainment duty demanded is not justified and one paid by the petitioners per show was proper. The seizure is said to be without authority. As in other cases, in these two cases also the return does not show that the screen used is not part of the television set. That being so, the exhibition of films under the licence could not be stopped nor could the apparatus and other articles be seized. We are also of the opinion that the entertainment duty demanded is also illegal. The petitioners are liable to pay the

entertainment duty only per show as provided under the Entertainments Duty Act as amended by the Amendment Act of 1983. The licencing authority also does not say that the petitioners have contravened any other terms of the licence and, therefore, in our opinion, the petitioners are also entitled to the renewal of their licence. We would, therefore, allow both the petitions and direct the respondents to release the seized articles forthwith and quash the demand made for payment of additional entertainment duty as also other directions contained in Annexure 6 filed in M.P. No. 5 of 1986. It is further directed that the petitioners' licence shall be renewed, other conditions being satisfied. We will, however, make it clear that the licencing authority shall be at liberty to enquire if the petitioners use any device or instrument not being the integral part of television set to enlarge the picture before renewing the licence.

In Miscellaneous Petitions Nos. 2944 of 1984 and 1319 of 1985, the petitioners were granted a licence in the prescribed form under the M.P. Cinema (Exhibition of Films by Video Cassette Recorder) Licencing Rules, 1983. The premises used for running exhibition of films are adjacent to the Tahsil office. It appears that on certain complaints the exhibition of film was stopped because according to the licencing authority, it created nuisance and obstructed the peaceful working of the Tahsil office. A notice to show cause was issued to the petitioner to file his reply. On receiving the reply the licencing authority (District Magistrate) cancelled the licence vide order dated 9-10-84 (Annexure A-10 in M.P. No. 2944 of 1984). The petitioner filed this petition (M.P. No. 2944 of 1984) and obtained ad interim writ on 17-10-84 staying the operation of the impugned order. Meanwhile the period of the licence expired and the petitioner applied for its renewal. The renewal was also refused on similar grounds and the petitioner was required to file M.P. No. 1319 of 1985 for a direction to the licencing authority to renew the licence. The petitioner's grievance is that the licence has been cancelled without proper enquiry, and that there is no material for the authorities to reach that conclusion. Rule 18 of the licencing rules requires that the licencing authority may suspend or cancel any licence granted under these rules for contravention of the rules provided that the licencing authority shall give the licensee an opportunity to show cause before taking any action under the rules. This opportunity to show cause is not an empty formality but requires the licencing authority to permit the licensee to place all the materials in the shape of oral and documentary evidence in support of the contention raised in reply to the show cause notice. This also includes reasonable opportunity to the licensee to test any material with the licencing authority which the licencing authority proposes to use against the licensee. Apparently, in the present case, nothing of the kind was done and soon after reply to the show cause notice was received, the impugned order directing cancellation of the licence was passed. The return shows that the licencing authority has relied upon certain complaints made by the Tahsil office and also some inspection done by or on behalf of the licencing authority. Obviously this material was not shown to the petitioner nor; that the petitioner given any opportunity to controvert the same. It is, therefore, clear

that while cancelling the licence provisions of Rule 18 were not followed and for that reason alone the order cancelling the licence has to be quashed. Consequently, Miscellaneous Petition No. 2944 of 1984 succeeds and is allowed. The order cancelling the petitioner's licence is quashed and it is directed that the petitioner shall be given due opportunity to substantiate his defence and to show cause against the proposed action to cancel the licence. The licencing authority is further directed to consider the petitioner's application for grant of renewal of the licence only after passing a final order on the proposed action to cancel the petitioner's licence. For that reason, Miscellaneous Petition No. 1319 of 1985 also succeeds and is allowed and the order Annexure 15 is hereby quashed.

There shall be no order as to costs in all the petitions. Security amount be refunded to petitioners.