
(1984) 02 DEL CK 0048

In the Delhi High Court

Case No : Civil Writ Appeal No. 2491 of 1983

Balwindar Singh

APPELLANT

Vs

Delhi Administroy and Others

RESPONDENT

Date of Decision : 08-02-1984

Acts Referred:

Citation : AIR 1984 Delhi 379 : (1984) 2 ILR Delhi 845 : (1984) RLR 302

Hon'ble Judges : Prakash Narain, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : S.M. Ashri and Y.K. Sabharwal, for the Appellant;

Judgement

Prakash Narain, J.

(1) A large number of petitions have been filed in this" Court which raise the identical questions of law. In some petitions rule nisi has been issued while in some others notice to show cause why rule nisi be not issued has been ordered. There are still some more which had been directed to stand over. We ordered listing of a good many petitions on the same day so that we may have the benefit of hearing as many counsel as possible on behalf of the petitioners.

(2) By and large, the facts of all the cases are that same and the points" of law raised are identical. We, Therefore, proceed to notice the facts of this case and in the light of those facts decide the question of law.

(3) "THE petitioner owns a Video set (commonly known as V. C. R.\V .C. P.) and also a Television set. He has taken out commercial licenses for the Video set and the television set as opposed to licenses for domestic purposes. He has also paid the higher license fee postulated for taking out a commercial license. According to him, he has hired a commercial shop bearing No. 770 in Jheel Khuranja, Delhi where he has installed the aforesaid television and video sets. He uses these two for displaying films and charges entrance fee of Rs. 2 per show per head inclusive of entertainment tax. The sitting capacity of the shop is 25. According to him some viewers sit on benches while others sit on the floor.

(4) According to the petitioner he conducted the shows from September 25, 1983 to September 13, 1983. He admits that he is liable to pay entertainment tax as held by the Supreme Court in a group of petitions, by its judgment dated September, 5, 1983 in M/s. Geeta Enterprises and others v. State of U.P. & Others (1). Petitioner says that he earns his livelihood by running the above video shows but he is being restrained from doing so on account of the alleged illegal interference by the respondents who are insisting that he must take out a license under the Cinematograph Act, 1952 before he can exhibit films in his premises. Accordingly, the petitioner prays for issue of a writ of prohibition to the respondents from interfering in the video shows that he is holding. He further contends that the provisions of the Cinematograph Act, 1952 would not be applicable to the displaying or exhibiting of video cassette films and the relevant provisions relied upon by the respondents would also be ultra virus his fundamental rights guaranteed by Article 19 of the Constitution of India.

(5) The respondents have filed an affidavit sworn by Shri R. P. Mishra, Deputy Commissioner of Police(licensing)Police Head Quarters, New Delhi by way of return. He contended that the penal provisions of the Cinematograph Act are attracted to exhibiting of video films in the manner in which the petitioner is exhibiting the same. Inasmuch as, it is averred, the petitioner is exhibiting video films in contravention off Section 10 of the Cinematograph Act, the respondents are entitled to take all necessary legal action as is available to them for the said alleged violation. They pray that the rule be discharged and petition dismissed.

(6) On behalf of the petitioner the first contention is that inasmuch as the petitioner holds commercial licenses for both the video and the television, he can make commercial use of the same, which will include exhibiting of films.

(7) The commercial licenses of the petitioner have been issued under the Indian Telegraph Act, 1885. These licenses have been issued on the conditions printed in the licenses themselves. Printed condition No. I lays down that this license permits the use of the Wireless Receiving Apparatus described therein in business premises, public places, rooms used jointly for residential and business purposes, or for gain, or for the benefit of passengers or for advertisement in public vehicles on roads or railways for receiving programmes and messages transmitted for general reception. Condition 12 reads as under;

NOTWITHSTANDING anything contained in condition. 11, the licensee or any other person either on behalf or by the permission or with the cognizance of the licensee shall not reproduce or publish in the press or disseminate by other similar means, programmes and messages received by means of the licensed apparatus.

(8) Condition 13 reads as under : "This" license does not authorise the licensee to do any act which is:

(A) Xxx Xxx Xxxx

(B) contrary to any rule made by a competent authority regulating musical or other performance or noise in the area in which the licensed apparatus is established."

(9) It is the common case that the licenses which the petitioner holds are under the Indian Telegraph Act. Therefore, first we have to see what is the effect of holding such license.

(10) Sections of the Wireless Telegraphy Act, 1933 lay down that save as provided by section 4, no person shall possess wireless telegraphy apparatus except under and in accordance with license issued under this Act. Section 4 is not relevant for our purpose. Section 5 lays down that the telegraph authority constituted under the Indian Telegraph Act, 1885, shall be the authority competent to issue licenses to possess wireless telegraphy apparatus postulated by this Act, and may issue licenses in such manner, on such conditions and subject to such payments, as may be prescribed. Sub-section (2) of Section 2 defines wireless telegraphy apparatus and reads as under:

"WIRELESS telegraphy apparatus" means any apparatus, appliance, instrument or material used or capable of use in wireless communication, and includes any article determined by rule made u/s 10 to be wireless telegraphy apparatus, but does not include any such apparatus, appliance, instrument or material commonly used for other electrical purposes, unless it has been specially designed or adapted for wireless communication or forms part of some apparatus, appliance, instrument or material specially so designed or adapted, nor any article determined by rule made u/s 10 not to be wireless telegraphy apparatus." Section 10 of this Act gives power to make rules.

(11) Section 3(1) of the Indian Telegraph Act, 1885 defines the term "telegraph" and reads as under:

"TELEGRAPH" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions. Radio waves or Hertzian waves, galvanic, electric or magnetic means.

(12) Section 4 creates a monopoly for establishing telegraphs in the Central Government but lays down that the Central Government may grant a license, on such conditions and in consideration of such payments as it thinks fit to any person to establish, maintain or work a telegraph within any part of India.

(13) Reading the provisions of the Telegraph Act and the Wireless Telegraphy Act, it is admitted, the licenses which the petitioner holds have been issued to him. As a reading of the above provisions themselves would show that what is permissible to the petitioner is to use his video and television in premises other than the premises meant purely for residential purpose or commercial or residential-cum-commercial premises for receiving programmes and messages transmitted for general reception. He is not permitted to reproduce or publish in

the press or disseminate by other similar means, programmes and messages received by means of the licensed apparatus. Furthermore, the mere possession of commercial licenses issued to the petitioner does not entitle him to do anything or act in any manner contrary to any rule made by a competent authority regulating musical, instrument or other performance or noise in the area in which the licensed apparatus is established. The argument, Therefore, that possession of the commercial license entitles the petitioner to run a mini cinema cannot be accepted. He can receive messages on his television or receive the films transmitted by the video on the television. He can do no more, if there are any rules which prohibit him from doing so. This brings us to the consideration of the provisions of the Cinematograph Act and the contention made in regard thereto.

(14) Clause (c) of Section 2 of the Cinematograph Act, 1952 defines the term "cinematograph" as including any apparatus for the representation of moving pictures or series of pictures. Clause (e) of Section 2 defines the term "place" as including a house, building, tent and any description of transport, whether by sea, land or air. The term "prescribed" means as prescribed by the rules made under this Act. Section 7 of this Act provides for certain penalties for contravention of the provisions of Part-11 of this Act which deals with certification of films for public exhibition in any place, the place being the place as defined by the Act. Section 10 of this Act, which is in Part-11 (which deals with regulation of exhibitions by means of Cinematographs") reads as under :

CINEMATOGRAPH exhibition to the licensed save as otherwise provided in this Part, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this" Part or otherwise than in compliance with any conditions and restrictions imposed by such license.

(15) Section 11 provides for the licensing authority. Section 12 lays down that the licensing authority shall not grant a license under this Part, unless it is satisfied that the rules made under Part-11 have been substantially complied with and adequate precautions have been taken in the place where the films are to be exhibited and the place in respect of which the license is to be given, to provide for the safety of persons attending exhibitions of films. Section 13 gives power to the Central Government or local authority to suspend exhibition of films" in certain cases. Section 16 gives power to frame rules.

(16) We may also read the relevant rules made under the Cinematograph Act before dealing with the contentions raised. Delhi Cinematograph Rules, 1981 were promulgated on December 31, 1981 in exercise of the powers conferred by Section 16 of the Cinematograph Act, 1952. Clause(iv) of Rule 2 reads as under:

licensed premises" means the entire plot of land initially sold/purchased/leased for construction of a cinema building, and any shopping, commercial complex constructed as part of the cinema building and shall include the space set aside for parking of vehicles, and passage of people and vehicles" to a public

thoroughfare.

PARA-II and Part-III of the rules respectively deal with procedure in granting license and inspections of the places in respective of which the licenses are sought or given or intended to be given

(17) The first contention on behalf of the petitioner is that the video and the television cannot jointly and severally be regarded as cinematograph within the meaning of Section 2(c) of the Cinematograph Act. They conceded that the television may fall within the meaning of Section 3(1) of the Telegraph Act but contended that a video is not even a telegraph. We are not in agreement with learned counsel for the petitioner. A video is an appliance which is capable of use for transmission of signs, signals, images and sounds and, Therefore, would fall within the ambit of the term "telegraph". A television likewise is an appliance capable of use for reception of signs, signals, writing, images and sounds and so would fall within the definition of telegraph. Likewise, both the articles would be cinematograph whether jointly and severally within the meaning of Section 2(c) of the Cinematograph Act. The definition is an inclusive definition and not an exhaustive definition. We reject the argument that the two are not apparatus. These are jointly and severally apparatus for the representation of moving pictures or series of pictures. Therefore, the provisions of the Cinematograph Act are clearly attracted. If that be so, then the question that arises for consideration is whether the video and television can be used for the purpose for which the same are admittedly being used.

(18) Section 10 of the Cinematograph Act, which we have read earlier, prohibits any one to give an exhibition by means of Cinematograph elsewhere than in a place licensed under Part-III of the Act and then also in accordance with and in compliance with any conditions and restrictions imposed in the license. The crucial words in the section, in our opinion, are "shall give an exhibition". Giving of an exhibition will be different from viewing a programme received on a television set by public transmission or with the aid of an apparatus like a video. The confusion which the petitioner sought to create was that projecting films with the aid of video and television would amount to viewing and not exhibiting. The distinction between viewing and exhibiting is obvious is A person who sees a film view it. A person who make-it possible for others to see a film exhibits it or gives an exhibition of the film. A person is permitted to give an exhibition only in a licensed premises and that also in accordance with the conditions of the said license. He cannot give an exhibition anywhere he lives though, he may be the owner of the premises or a tenant of the premises

(19) Learned counsel for the petitioner then contended that if the above is the interpretation of Section 10 of the Cinematograph-Act then even domestic use of a video or a television or both by a family in their house would be violative of Section 10. There is a fallacy in this argument. The words used in Section 10 are "give an -exhibition". A family owning television and or a video does not give an exhibition. It views a film or the -transmission on an apparatus. We are in

respectful agreement with the view taken by a Division Bench of the Madhya Pradesh High Court in this regard in *Restaurant Lee and others v. State of Madhya Pradesh and others* Air 1983 M. P. 146(2). In para-8 of the report the learned; Chief Justice, who-delivered the judgment observed as under:

ONE of the meanings" of "exhibit" "is "to show publicity for the purpose of amusement or instruction." "Exhibition" means" a public display, i.e". a" display to which public is " admitted (See Oxford English Dictionary Vol. Iii, pages 408-409 and the Random House Dictionary, Unabridged Edition page 499). It is in this sense that the word "exhibition" as used in" Section 3 has to be understood.

(20) We play note that Section 3 of the M..P. Cinemas (Regulation) Act, which their Lordships, were. Construing is in *pari materia* with the provision of Section 10 of the Cinematograph Act.

(21) The learned Single Judge of the Bombay High Court in *Dinesh kumar Hanuman prasad Tiwari v. State of Maharashtra* Air 1984 Bom 24(3) has also taken the same -view. We respectfully agree.

(22) Therefore, on a conspectus of all the provision and the authorities it is obvious that though the petitioner holds a commercial license for the video and the television, which be owns, and by virtue of those licenses he can use the two apparatus jointly and severally in his shop as distinguished from domestic license which would have permitted him to use the same only in his residence, he can use them only to receive transmissions or messages. He cannot give a public exhibition of the same unless the place where he wants to exhibit a film is duly licensed under the Cinematograph Act and the rules framed there under.

(23) It was then urged that Section 10 would in the above view of the matter, be vocative of Article 19 of the Constitution of India as the petitioner is being prohibited from. carrying on a lawful trading activity. Apart from the fact that the conditions on which commercial licenses have been issued to the petitioner, only permit reception and not exhibition, in our view, no provision of Article 19 can be said to be violated. Clause (g) of Article 19 no doubt guarantees to the petitioner right to practice any profession, or to carry on any occupation, trade or business ,but reading Article 19(6) it is obvious that a reasonable restriction can be imposed on the exercise of the right of occupation, trade or business that the petitioner wishes to carry on. some such restrictions are found in the Cinematograph Act, 1952. The restrictions imposed by Section 10 and the rules framed in Part-III are in the interest of general public, as the restrictions take care of health, sanitation, crowing, safety etc. There is no challenge to the restrictions as imposed by the Act and he rules. We, Therefore, hold that the restrictions are reasonable and petitioner cannot complaint of .violation of Article 19(1)(g) of the Constitution of India.

(24) Referring to the Delhi Cinematograph Rules, 1981 it was urged that is impossible for the petitioner to comply with the requirements for running a

cinema and, Therefore, he can never get the licenses under the Cinematograph Act read with the rules. It may be so but the petitioner cannot claim any fundamental right in running a mini cinema regardless of public interest as envisaged by the rules for sanitation, safety etc. Strict compliance with the rules is not envisaged. What is envisaged by Section 12 of the Cinematograph Act is a substantial compliance with the rules." It is not the case of the petitioner that there is any effort made in complying with any rule by him. Indeed his case is that if he holds a commercial license under the Telegraph Act he can run his mini cinema with the help of a video and television. We find no force at all in this contention.

(25) The result is that the rule is discharged and the petition is dismissed. There will, however, be no order as to costs.