
(1989) 02 CAL CK 0039
In the Calcutta High Court
Case No : Matter No. 5466 of 1988

Coalbelt Cinema Exhibitors Association	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 20-02-1989

Acts Referred:

Cinematograph Act, 1952 — Section 5A
Copyright (Amendment) Act, 1984 — Section 52A, 63A, 64
Copyright Act, 1957 — Section 2, 30, 4, 52A, 52A
West Bengal Taxation Laws (Second Amendment) Act, 1987 — Section 1, 1(2), 7

Citation : (1993) 1 ILR (Cal) 369

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Balai Roy and R.N. Chatterjee, for the Appellant; Monish Sen, for the Respondent

Final Decision : Allowed

Judgement

Susanta Chatterji, J.—The Petitioners have prayed for an appropriate Writ of Mandamus to command the Respondents and in particular the State Respondents to take action against the Video Piracy in accordance with the West Bengal Cinemas Act, 1954, as amended by the Government Notification No. 6018-IC dated April 2, 1987, and West Bengal Taxation Law (Second Amendment) Act, 1987, as notified by the Government Notification No. 2250-FT, 2251-FT and 2252-FT, all dated July 3, 1987, and the Copyright (Amendment) Act, 1984, and also to command the State Respondents to seize all the unauthorised Video Cassettes and to secure that the provisions of the West Bengal Taxation Laws (Second Amendment) Act, 1987, the West Bengal Cinemas Regulation Act, 1954, and the Rules framed there under and the Copyright Act, 1982, be effective strictly in accordance with the said Statute and for all other consequential reliefs for enforcement of the provisions of Section 4 of the Copyright Act against video owners running video shows in hotels, restaurants, coffee houses, and shops and showing video shows. It is stated in details that the Petitioner No. 1 Coalbelt

Cinema Exhibitors Association is a Registered Association of Cinema Exhibitors under the Societies Registration Act and the Petitioners Nos. 2 to 7 are the owners/licensees of various Cinema Houses. It is further stated that the instant case relates to unauthorised video shows being shown by the owners of the Video Parlours situate in the district of Burdwan. The Petitioner No. 1 has its 35 (thirtyfive) members and a great number of persons are affected and since they cannot come and join as parties, leave was obtained to move the petition under r. 11 of the Calcutta High Court Rules to maintain the writ application in a representative capacity. It is further stated that a large number of writ petitions were moved in this Court in the year 1985 and Suhas Chandra Sen J. in Civil Order No. 94 (W) of 1985 held inter alia that West Bengal (Regulation) Act, 1954, clearly applied to the Petitioners' exhibition of films through videos. The definition of the word "Cinematograph" was wide enough to include videos and it was further held that without amending the West Bengal Cinemas (Regulation and Public Exhibition) Rules, 1956, and the prescribed conditions of the licences, it will be unreasonable to require the exhibitors of video films to take licence under the said West Bengal Cinemas (Regulation and Public Exhibition) Rules, 1956. It was, however, made clear that the State will be at liberty to make suitable amendments in the Rules and also the conditions of the licence and thereafter may require the Petitioners to obtain necessary licence/s for organizing video shows. It is also placed on record that in due compliance of the said judgment and observation and directions as contained thereof, the Government of West Bengal, Department of Information and Cultural Affairs, published in the Calcutta Gazette (Extraordinary) Part-I No. 174B-dated April 2, 1987 and issued a public Notification bearing No. 6018-ICA dated April 2, 1988, in exercise of the power conferred by Section 9 of the West Bengal Cinemas (Regulation and Public Exhibition) Rules, 1956, was made. The case of the Petitioners is that after the amendment of the said Rules it is clear that no person can take step of exhibition of films through video tapes for commercial purposes without obtaining necessary licence for video tapes and no film can be exhibited through videos unless the said film is certified by the Central Board of Film Circulation or Exhibition through the medias of videos and televisions and further no film which has not been certified by the Central Board of Film Certificate shall be retained, displayed or stored for commercial purposes for video shows and, in the case of special cinematograph exhibition, it can be done only for a limited purpose upon a prior sanction of the Commissioner of Police or the District Magistrate and upon the declaration thereof as contained in the Government Order No. 6019-ICA dated April 2, 1987. It is further stated that by Notification No. 2252-FT dated July 3, 1987, the Government of West Bengal, Finance Department (Taxation), declared inter alia that in exercise of the power conferred by Sub-section (3) of Section 4A of the West Bengal Entertainment-cum-Amusement Tax Act, 1982 (West Bengal Act VI of 1982) and in supersession of the department Notification No. 1304-FT dated April 1, 1986, the Government specified that the Luxury-cum-Entertainment and Amusement Tax under Clause (B) of the said Sub-section shall be Rs. 750 per week per set or sets or holder of

video cassette recorder sets who makes any performance or exhibition of film through such set or sets in a hotel (other than having lodging facilities), shop, restaurant or business place and is not liable to pay tax under Sub-section (1) of the said Section 1 and such tax payable for a week shall be paid within 7 (seven) days from the end of each week. The said notification have to come into force on July 10, 1987. By another notification bearing No. 2250-FT dated July 3, 1987, the Government declared that in exercise of power under Sub-section (2) of Section 1 of the West Bengal Taxation Laws (Second Amendment) Act, 1987 the appointed day is as on July 20, 1987. By another notification No. 2251-FT dated July 3, 1987, the Government further notified that the provisions of Section 7 of the said Act in so far as the provisions relates to Section 4A(3)(b) of the West Bengal Entertainment-cum-Amusement Act, 1982, as amended. It is stated that the Copyright Act was amended by Act No. 65 of 1984 under the name and style of Copyright (Amendment) Act, 1984. In the said amended Act and in Section 2 in the explanation clause it has been provided that for the purpose of Copyright Act, Video Films shall also be deemed to be work produced by a process analogous to Cinematography, Section 52A of the said Copyright (Amendment) Act provides further that no person shall publish a record in respect of work unless the following particulars are displayed on the record and in container thereof, namely:

- (a) The name and address of the person who has made the record.
- (b) The name and address of the owner of the Copyright in such work.
- (c) The year of its first publication.

Sub-section (2) of the said Section provides that no person shall publish a video film in respect of any work unless the following particulars are displayed in the video film when exhibited on the Video Cassette or other container thereof only, namely:

- (a) If such work is a cinematograph film required to be certified for exhibition under the Cinematograph Act, a copy of the certificate granted by the Board of Film Certification u/s 5A of the Act in respect of such work.
- (b) The name and address of the person who has made the Video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the Copyright in such work for making such Video film.
- (c) The name and address of the owner of the Copyright in such work.

Section 63A of the Amended Act provides the penal consequences for violation of the said Copyright Act for exhibiting video films to public in contravention of Section 52A and Section 64 of the said Amended Act provides inter alia that.

Any Police Officer not below the rank of Sub-Inspector may, if he specifies that an offence u/s 3 in respect of the infringement of Copyright work has been or is being or is likely to be committed, seize without warrant all copies of work and all

plates used for the purpose of making infringed copies of the work wherever found and all copies and plates so seized shall, as soon as practicable, be produced before the Magistrate.

It is stated that from the above provisions of the Amendment of the Copyright Act, 1984, the West Bengal Cinemas Regulations Act, 1954, and the West Bengal Cinemas Regulations and Public Exhibition Rules, 1956, and the West Bengal Taxation Laws (Second Amendment) Act, 1987, the exhibition of videos to public, more particularly in hotel, shop, restaurant or business places is restricted only to those who obtained prior licence under the West Bengal Cinemas Regulations Act, 1984, on regular payment of entertainment tax as specified therein and as amended from time to time and they are prohibited from exhibiting any video film in contravention of Section 52A of the Copyright (Amendment) Act, 1984. It is stated that notwithstanding the amendment of the above laws a large number of Video Parlours have grown up in the district of Burdwan and also in other parts of West Bengal who have been indulging in exhibition of cinema films through Videos and Televisions for commercial purposes without obtaining prior licence from the District Magistrate, Burdwan, and the other appropriate authorities as mentioned in the West Bengal Cinemas Regulation Act, 1954, and the Rules framed there under as amended and without paying any tax as per the aforesaid West Bengal Tax Laws (Second Amendment) Act, 1987, West Bengal Act VI of 1987 and in utter violation of the provisions of the said Act. The Petitioners so far have collected a list of video owners who have been exhibiting video films in violation of the said amended Act. The names and particulars so far collected by the Petitioners of the Video Parlours which is Annex. "B" to the petition. It is further stated that they collected Video Cassette/Video tapes which are being illegally shown to the public for commercial purposes where it has been specifically provided in a column as "warning" as follows: This pre-recorded Video Cassette is for non-viewing (non-commercial and non-theatrical) use only. It is further stated that notwithstanding the aforesaid facts and circumstances, the video owners have also subsequently grown up and even constructed small buildings and/or accommodation alike small cinema houses and they are at present exhibiting cinema films through videos which are not certified by the Board of Film Certification, Bombay, and not permitted by the copyright owners for commercial exhibition. As stated above, the video cassettes which are exhibited have been declared by the Central Board of Film Certification for cinema shows as strictly for home viewing only and even they have been giving exhibition of strictly adult pictures without having any certification from the Central Board of Film Certification. As a result of which the Petitioners who are having licence for cinema exhibition and who are running cinema exhibition business according to law have been put to great jeopardy by virtue of such illegal and unauthorised video film exhibitions for commercial purposes. The video owners have been attracting large number of public and the Petitioners have been losing their businesses day by day. The position now is that the persons who have been running cinema exhibition business in accordance with

the law will be thrown out from their businesses by the persons who have no regard for law and who have been openly flouting the provisions of the law by holding unauthorised and illegal video exhibitions for commercial purposes. It is stated that in addition thereto, with a view to flout the law of the land and to deprive the Government revenue, another device has been adopted by the video owners by introducing Cable Television Video shows which means that by having illegal cable connection from video set to television set in houses, they have been giving cinema shows in the surrounding areas of the owners of home televisions and thus they have been earning huge money thereof for which they are not approaching the Licensing Authorities for the purpose, although such type of device is totally prohibited under the law and there is no provision in law to exhibit films for commercial purposes in such manner.

2. Several private Respondents have been added as Respondents and they have filed affidavits-in-opposition by placing on record that as per provision of Section 30 of the Copyright Act, the copyright in any existing work or in the prospective owner of the copyright in any future work may grant any interest in the rate by licence in writing signed by him or by his duly authorised agent. The producers of the films have the primary ownership of copyright and by virtue of agreement entered into by such purchasers or their agents with the makers of video films and such video films being permitted by such makers of video films to be shown through videos, the infringement on the part of the video owners does not arise. It is also added that even assuming but without admitting that the video owners including the added Respondents have at all infringed the Copyright Act, they can be said to have infringed such Copyright Act only in the case when they exhibit such films by way of trade exhibits in public. None of the added Respondents exhibits such video films for any trade or business purpose and as such there is no violation. The added Respondents have not made any copy of the film from the original and they only exhibit the films through video cassette players and such acts on the part of the added Respondents do not amount to any infringement of the Copyright Act. The video owners including the added Respondents do not publish records in respect of any work but only exhibit the films through their video cassette players and as such they are not required to comply with the provisions of Section 52A of the Copyright Act. Only the makers of the video films can be required to act in compliance with Section 52A of the Copyright Act. According to them, as per Section 61 of the Copyright Act in every civil suit or further proceeding requiring infringement of Copyright Act instituted by exclusive licensee, the owner of the Copyright Act shall be made the Defendant and shall have the right to dispute the claim of the exclusive use. The Petitioners cannot obtain reliefs without impleading the owners of the copyright of the films and the owners of such copyright have not been impleaded, and the Petitioners cannot get of reliefs. The Petitioners at best can file civil suits for breach of the Copyright Act and no writ petition is maintainable.

3. Having heard the Learned Counsel appearing for the respective parties, this Court finds that a large number of writ petitions were filed before this Court after

the amendment of the Rules and issuance of the notifications following the judgment delivered by me. this Court has already disposed of a large number of such with petitions by delivering another comprehensive judgment in the case of Chittaranjan Kolay v. State of West Bengal and Ors. 1989 (II) C.L.J. 175. this Court held inter alia that the provision requiring all exhibitors of video shows to obtain a licence is unexceptional. So far as exhibitors of video shows in restaurant and coffee houses are concerned, the imposition of Rs. 750 per set is the highest. The State Government has the discretion to impose a lesser rate. This provision is not ultra vires. But imposition of flat rate without taking into account the position of the hotel, restaurant and coffee house irrespective of the places either in the rural area or in the urban area, or without taking into notice of the dimension of the business and various other factors of location, volume of business, nature of customers and quantum of income is contrary to law. this Court, however, found that the portion of the impugned notification regarding imposition of flat rate of taxes from of July 7, 1987, was unjust and made by way of colourable exercise of right and the same was found to be unreasonable. Regard being had to the facts and circumstances of the present case, this Court finds that Section 52A of Copyright Act, 1957, lays down that no person can publish a record in respect of any work unless the following particulars are displayed on the record on any container thereof, viz.:

- (a) The name and address of the person who has made the record ;
- (b) the name and address of the owner of the copyright in such work ; and
- (c) the year of its publication.

Section 52A(2) also lays down that no person shall publish a video film in respect of any work unless the following particulars are displayed in the video film when exhibited, and on the video cassette or other container thereof, viz.:

- (a) If such work is a cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952 (37 of 1952), a copy of the certificate granted by the Board or Film Certification u/s 5A of that Act in respect of such work ;
- (b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary licence or consent from the owner of the copyright in such work for making such video film ; and
- (c) the name and address of the owner of the copyright in such work.

The Copyright Act of 1957 is a complete code. Section 63 in Chap. XIII provides that any person who knowingly infringes and (sic) abates the infringement of -

- (a) the copyright in a work, or
- (b) any other right conferred by this Act [shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years end with fine which shall not be less than fifty thousand rupees but which

may extend to two lakh rupees:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months or a fine of less than fifty thousand rupees]. Explanation - Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work shall not be an offence in some other section. Section 64 confers power upon Police authorities to seize infringed copies. Any Police officer, not below the rank of a Sub-inspector, may, if he is satisfied, that an offence u/s 63 in respect of the infringement of copyright in any work has been, is being, or is likely to be committed, seize without warrant all copies of the work and all plates used for the purpose of making infringing copies of the work, whenever found, and all copies and plates so seized shall, as soon as practicable, be produced before a Magistrate. Section 64(2) provides that any person having an interest in any copies of a work or plates seized under Sub-section (1) may, within fifteen days of such seizure make an application to the Magistrate for such copies or plates being restored to him or the Magistrate.

4. Looking at such provisions of law and considering the facts of the present case, this Court is of the view that there is no bar and/or impediment for the Petitioner to obtain the reliefs in the manner as sought for. There cannot be any video shows at random by infringing the provisions of the West Bengal Cinemas Regulation Act as amended by the Government notification dated April 2, 1987, and the West Bengal Taxation Law (Second Amendment) Act, 1987 and the Notifications Nos. 2250-FT, 2251-FT and 2252-FT all dated July 3, 1987, and the Copyright Act, 1984, as amended subject to order of this Court in the case of Chittaranjan Kolay v. State of West Bengal 1989 (II) C.L.J. 175. The State Authorities cannot remain silent by permitting the exhibition of video shows in gross violation of the existing Acts as indicated above and the judgment of this Court in the case of Chittaranjan Kolay and Ors.

5. For the foregoing reasons the writ petition is allowed issuing an appropriate writ of mandamus commanding the State Respondent to take effective steps against unauthorised running of the video shows and of unauthorised video cassettes and to secure that the provisions of West Bengal Taxation Laws (Secxond Amendment). Act of 1987, and all Rules made there under and the Copyright Act and Rules are not violated. The State Respondents are directed to take immediate steps against the video owners who are carrying on the business in contravention of the provisions of the Copyright Act and without obtaining certificate from the Central Board of Film Certification for video shows for commercial purpose inclusive hotels, restaurants, coffee houses and shops and to take appropriate steps against such offenders in accordance with law. There will be no order as to costs.