

(1986) 08 RAJ CK 0047

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 2141, 2229, 2807, 3011 and 3107 of 1984, 827 to 831, 1145, 1157, 1164, 1204, 1223, 1300, 1451 to 1453, 1600, 1817, 1830, 2252, 2326, 2699, 2726 and 2824 of 1985 and 15, 16, 41, 43, 65, 84, 98, 131, 132, 731 and 1310 of 1986

Ghoomar Cafe and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-08-1986

Acts Referred:

Cinematograph Act, 1952 — Section 16, 3, 4, 5, 5A
Constitution of India, 1950 — Article 19, 5C

Citation : (1986) 2 WLN 748

Hon'ble Judges : Ashok Kumar Mathur, J

Bench : Single Bench

Judgement

Ashok Kumar Mathur, J.—All the writ petitions mentioned in the Appendix "A" are disposed of by this common order as common questions of law and fact are involved in these writ-petitions.

2. For the convenient disposal of these petitions, the facts of the case in S.B. Civil Writ Petition No. 2141 of 1984 Ghoomar Cafe v. State of Rajasthan are taken into consideration. The petitioner is carrying on his business as a sole proprietor in the name of Ghoomar Cafe at Ghas Mandi Road, Jodhpur. The petitioner is having a V.C.R. and T.V. in respect of which he has regularly paying the licence fee for the commercial use of the same. He further submits that he is using V.C.R. and T.V. for the entertainment of his customers. He submits that he is paying entertainment-tax in respect of the above V.C.R. and T.V. under the Rajasthan Entertainment and Advertisement Tax Act, 1957. He further submits that he displays the Video Cassette Films duly certified under the Act. He submits that he has been given threatenings by the non-petitioner of seizing the V.C.R. and T.V. He further submits that the respondents are unauthorisedly interfering with the business of the petitioner for one reason or the other.

3. Mr. Kewal Chand has brought to my notice the letter of the State Government dated 10-2-1986 addressed to all the Collectors in Rajasthan. It has been directed that the question of use of V.C.R. and V.C.P. for commercial purposes should not be interfered with and the Rajasthan Cinema Regulations Act, 1952 has not been amended so as to make the T.V. and V.C.R. holders to have a licence for exhibition of films Therefore, in the absence of legal requirement licence should not be insisted upon and T.V. and V.C.R. should not be seized. It was further mentioned that the Government is seriously contemplating to bring the legislation on the subject. Copy of the letter"dated 10-2-1986 is reproduced as under:

GOVERNMENT OF RAJASTHAN

HOME (Group-V). DEPARTMENT

No. F. 1/7(17) Home-V/85 Jaipur Dated 10th February, 1986 To,

The District Magistrate,

Dholpur,

Sub : Grant of licence for VCRs/VCPs

Sir,

I am directed to refer to your letter No F. 22(2) Judl/85/3094, dated 11-9-1985 on the above subject, and to say that since the Rajasthan Cinema Regulations Act, 1952 has not been amended, strictly speaking no licence is required from exhibition of films through VCRs/VCPs legally. However, the District Magistrate, for administrative reasons and in public interest, are issuing such licences of their own in usual form with such additional conditions as may be necessary to regulate exhibition in larger "ublic interest. In the absence of legal requirement to have a licence, the VIDEOS cannot be seized for this reason. The State Government is shortly coming with "THE RAJASTHAN VIDEO FILMS (REGULATION) ACT", which provides for regulation of exhibition on VIDEOS.

However, it may be noted that there are two other provisions - (1) the amended Cinematograph (Certification) Rules, 1983 whereby only the films certified as such for exhibition in VIDEOS BY THE BOARD OF FILM CERTIFICATION for Videos can be exhibited; and (2) the compliance of the Copy Right (Amendment) Act, 1984 under which action can be taken against those contravening the provisions of the aforesaid Rules and Act.

Thus it may be clarified that while a VIDEO found exhibiting films without a licence cannot be seized, action of seizure as per law can be taken if it is found exhibiting unidentified films and where the compliance under amended Copy Right Act has not been done.

Yours" faithfully,

Sd/-

(S.C. Pagoda)

Deputy Secretary to the Govt.

4. Thus, in view of the above letter the grievance of the petitioner is substantially redressed. However, learned Counsel for the parties insisted upon the question of validity and proper interpretation of Rule 30 of the Cinematograph (Certification) Rules, 1983 as amended in 1984. Therefore, I have to examine this aspect. The Rules have been framed u/s 16 of the Cinematograph Act, 1952. Rule 30 as amended is reproduced as under:

30. Compliance with Section 5A(1) The manner of notification to the distributor or exhibitor for the purpose of Section 5A, shall be by delivery of a duplicate copy of the certificate (containing both parts I and II thereof) with each copy of the certified film to be distributed or exhibited:

Provided that in the case of video film, a copy of Part I of the certificate showing the serial number, the category and other details should be pasted on every video cassette as well as on its case, (added by GSR 83(E), dated 28-2-1984)

(2) The provisions of Sub-rule (1) shall apply in relation to an amendment of a certificate in respect of a film as it applied in relation to the certificate itself;

(3) The duplicate copy of the certificate of a film referred to in Sub-rule (1) shall accompany the film and be prominently exhibited in the theatre on all days on which the film is exhibited therein.

Before I deal with the aforesaid argument of the learned Counsel I would like to discuss the scheme of the Cinematograph Act, 1952 (here in after referred to as "the Act") and the Rules made thereunder. Section 3 of the Act deals with the formation of a Board of Film Censors. For the purpose of sanctioning films for public exhibition the Central Government may, by notification in the official gazette, constitute a Board to be called the Board of Film Certification. Section 4 deals with examination of film and it provides that any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate. Section 5 provides the constitution of Advisory panels. These panels are meant to assist the Board for efficient discharge of its function under the Act. Section 5C lays down that if after examining a film in the prescribed manner the Board may certify that the film is suitable for restricted or unrestricted public exhibition. If the film is not suitable for unrestricted public exhibition then necessary directions can be given to suitably amend the same. Section 5B lays down the guiding principles for certifying the films, Section 5B reads as under:

5-B. Principles for guidance in certifying films-

(1) A film shall not be certified for public exhibition if, in the opinion of the authority competent to grant the certificate, the film or any part of it is against the interests of the sovereignty and integrity of India the security of the State, friendly relations with foreign States, public order, decency or morality, or

involves defamation or contempt of court or is likely to incite the commission of any offence;

(2) Subject to the provisions contained in Sub-section (1), the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

Section 5C provides an appeal against the decision of the Board. Section 6 confers revisional powers on the Central Government. Section 6A requires that necessary information and documents are to be given to the distributors of exhibitors regarding the film so certified. Section 7 deals with penalties for contravention of the provisions by any incumbent. Section 8 empowers the Central Government to frame rules for the proper compliance of the provisions of this Act.

5. By virtue of the provisions of Section 8 of the Act, the Cinematograph (Certification) Rules, 1983 have been framed by the Central Government. Rule 21 is relevant for our present purpose which requires that every application for certifying a film for exhibition is to be made in writing. Rule 21 reads as under:

21. Application for examination of films. - (1) Every application to certify a film for public exhibition shall be made in writing in Form 1 or Form 1-A or Form II or Form II-A as the case may be set out in the Second Schedule according as the film is produced in or imported into India; (2) The application shall be addressed to the Board and delivered to the regional officer concerned as per the First Schedule;

Provided that where films are imported into India, the Chairman may direct or permit applications in respect of any films or class of films to be delivered to a regional officer other than the regional officer to whom such applications would have been delivered but for this proviso, namely:

(i) where the Chairman is satisfied that immediate action for examination of a film is necessary, or

(ii) where examination of a film with the assistance of persons well acquainted with the language of the film is not possible at the place where, but for the provisions of this proviso, it would have been delivered for examination; or

(iii) for such other reasons as may be specified by the Chairman in writing ;

(3) Every such application shall be accompanied by-

(a) the fee prescribed under Rule 36 ;

(b) eight copies in the case of feature films and five copies in the case of other films, of the synopsis of the film, together with full credit titles and or the full text of the songs if any with reel number one copy of complete shooting script as prescribed and a statement showing the reelwise length of the film;

Provided that where the film is in a language other than English or any Indian Language, the applicant shall furnish eight typed or printed copies of the translation in English or Hindi of the synopsis and of the full text of the songs, if any, and one copy of the translation in English or Hindi of dialogues:

Provided further that in the case of a film referred to in the preceding proviso, the regional officer may direct the applicant to furnish also eight typed or printed copies of the translation in English or Hindi of the full text of the dialogue, speeches or commentary;

(c) if the application is made for the purpose of a fresh certificate under Sub-rule (2) of Rule 29, the original certificate or duplicate certificate ; and

(d) if the application is made by a person other than the producer or copyright holder of the film an authorisation in writing on a stamped paper of appropriate value to be notified by the Chairman from the producer or copyright holder of the film.

(4) If, in the case of a newsreel, documentary or other short film the regional officer is satisfied that the applicant is not able to furnish the documents specified in Sub-rule (3) along with the application for reasons beyond his control, the regional officer may direct that such documents may be furnished within such period after the examination of the film as he may specify or that the submission of such documents may be dispensed with.

(5) No such application shall be accompanied by any documents other than those mentioned in Sub-rule (3).

(6) Not with standing anything contained in the foregoing sub-rules, in the case of a film which is imported-

(a) the applicant shall furnish the original or a certified copy of the import licence together with the customs clearance permit and with the customs clearance papers;

(b) where there is a doubt or dispute about the validity or genuineness of the documents referred to in Clause (a), the Board may before the application is considered refer such documents for ascertaining their validity or genuineness to the authority which issued the same;

(c) The Board shall not take any steps for certification of a film in a case where any matter regarding the validity of the documents referred to in Clause (b) is pending before any court or any public authority until the disposal of such matter by the court or authority, and

(d) such film shall not be examined by the Board for certification for public exhibition in India unless the Board is satisfied that the film is validly imported in accordance with the import policy of the Government.

Explanation - For the purpose of certification for public exhibition, every revised

version or shorter version of a film shall be deemed to be a fresh film.

Rule 30 which was amended in the year 1934 which I have already quoted above requires that how information should be given to the distributors and exhibitors regarding the so-called certification. Rule 30 is for purposes of complying with the provisions of Section 5A. Rule 30 was amended and a proviso was added which is the subject-matter of controversy and which reads as under:

Provided that in the case of video film, a copy of Part I of the certificate showing the serial number, the category and other details should be pasted on every video cassette as well as on its case.

6. By virtue of this proviso now every video film which is produced by the producer has to obtain a certificate as required under Rule 2 in Form IV-A. Form IV-A reads as under:

FORM IV-A V/U (See Rule 35(1)) GOVERNMENT OF INDIA Central Board of Film Certification Certificate for video film for restricted public exhibition PART I (Video film) (Running time) (Number of cassettes) (Certificate No.) (Date of issue) (Date of expiry)
CHAIRMAN PART II

Particulars of exhibitions and modifications subject to which the certificate has been granted.

(1) This certificate has been issued in accordance with Rule 35 of the Cinematograph (Certification) Rules, 1983 framed under the Cinematograph Act, 1952;

(2) This certificate is valid only in respect of the video film;

(3) Name of applicant;

(4) Name of producer.

Date:

7. Previously there was no provision for video films. Video films produced by the producers were not required to undergo any certification. But by virtue of the provisions of rule 30 now every video film produced by the producer is required a certification as contained in Form IV-A. In fact, before the advent of this new technology in the cinematograph field there was no provision for such video films. This electronic advancement is a new feature of this century and, therefore, necessary rules were amended so as to provide provision for certification for a video film produced for exhibition on T.V. For this proviso to Rule 30 was added. Now, by virtue of this every video film which has been produced has to obtain a certificate and the same will be in Form IV-A. Part I of Form IV-A contains the details of the video cassettes for exhibition and at the same time it shall be pasted on the cover of the video cassette.

8. In this background I have to examine the argument of the learned Counsel that whether this amended proviso is beyond the scope of Sections 5A, 5B or whether it is violative of Articles 19(1)(a) or 19(1)(g) of the Constitution of India. I have already reproduced the relevant provisions of the Act and the Rules. I am not impressed by the argument of the learned Counsel that the amended provisions of Rule 30 is beyond the scope of Sections 5A and 5B. Section 5A only lays down that every film is required to be certified whether it is fit for public exhibition or not, Section 5B contains the guidelines that in what respect the Censor Board should examine for its public exhibition. Thus, by virtue of these two provisions the exhibition of the films has been controlled for the benefit of the public order, decency or morality and public discipline. It is the exhibition which has been restricted. The film may be a celluloid film to be exhibited in a cinema or it be a T.V. film to be exhibited on T.V. What is restricted is the exhibition of the films. Learned Counsel submits that no specific provision has been made in the Act but the Rules have been amended, therefore, it is beyond the scope of Sections 5A and 5B. But as mentioned above it is the public exhibition of the film which has been restricted. It has not been provided under Sections 5A and 5B that it is only a celluloid film. The film may be celluloid film or it may be a T.V. The emphasis is on the public exhibition of the films. In traditional concept the film was considered to be a celluloid film. But with the advancement of modern technology the film would mean a T.V. film as well and therefore, if any film may be exhibited in the cinema or may be exhibited on T.V. screen then both have to be properly certified whether such films are fit for exhibition or not. Thus, it cannot be said that the amended proviso to Rule 30 is beyond the scope of the provisions of Sections 5A and 5B of the Act. The amended proviso to Rule 30 can be read harmoniously with Sections 5A and 5B and every T.V. film which is produced by the producer has to obtain a certificate from the Censor Board as required under Rule 21. Similarly, learned Counsel submitted that it violates the provisions of Articles 19(1)(a) and 19(1)(g) of the constitution. This submission of the learned Counsel is also without any basis. It is always open to lay down reasonable restriction for the benefit of the public at large. The validity of the provisions of Sections 5A and 5B has already been upheld by their Lordships of the Supreme Court in *K.A. Abbas Vs. The Union of India (UOI)* and *Another*, . Thus, the T.V. films which are produced by the producers are required to undergo necessary certification in terms of Sections 5A and 5B read with Rule 21 and such certification cannot be said to violate freedom of business of the petitioner and as such it cannot be said that the certification of the video films is violative of Articles 19(1)(a) and 19(1)(g) of the Constitution.

9. Next question which has been raised by the learned counsel for the petitioners is that once a celluloid film has been duly certified that it is fit for public exhibition by the Censor Board and that film is reproduced on T.V. film then it does not require recertification of the same under the amended proviso to Rule 30. Mr. Joshi, learned Counsel for the respondents submits that every T.V. film is required certification and it should be in Form 1V-A as reproduced above. He

further submits that this will be in consonance with the Copyright Act also. I am not impressed by the argument of the Mr. Joshi and I am of the view that the celluloid films which are converted into T.V. films for exhibition on T.V. does not require re-certification. Once a celluloid film has already been produced and same has been duly certified by Censor Board then it will be an idle formality to send that T.V. film to the Censor Board for re certification. Once the celluloid film has been certified then that film still carry the certificate & that certificate can be exhibited & same can also be pasted on the video cassette case as required in form IV-A. That will be a sufficient compliance of the amended proviso to Rule 30. Mr. Joshi emphasised that if it is resubmitted for re-certification then, it will be in consonance with the Copyright Act. I am not impressed by the argument of Mr. Joshi. If any person commits piracy and unauthorisedly converted the celluloid film in a T.V. film then for such piracy the affected party can always bring an action against that person under the Copyright Act. But the amended proviso cannot be interpreted by taking recourse to the provisions of the Copyright Act. In fact, the Copyright Act and the Cinematograph Act, 1952 have different areas of operation. Under the Cinematograph Act what is checked is that the films which are being exhibited should not harm the public order, decency and morality and other considerations which are contained in Section 5B. This Act is for the benefit of the public at large that the films which are being exhibited for the enjoyment of the public at large should not be such which may evoke unfriendly relations with foreign states and may not be against the public order, decency and motility etc. As against this the Copyright Act has a different purpose and which saves the producers from piracy. Thus while interpreting the amended proviso to Rule 30 the considerations of the Copyright Act cannot be invoked. The considerations of Copyright Act are absolutely different from the considerations contained in the Cinematograph Act and the rules made thereunder.

10. Thus. I hold that it is only video films which are produced are required to undergo a necessary certification as contained in Rule 2I. But the old duly certified celluloid films are required to undergo re-certification. However, the old films which are produced on T.V. films will definitely display the certificate obtained from the Censor Board and it has also to be shown on the video cassette case in Form IVA.

11. In the result, the writ petitions are disposed of in the light of the observations made above.

12. The parties are left to bear their own costs.