
(2010) 05 UK CK 0035
In the Uttarakhand High Court

Harish Malhotra, Proprietor Haridwar Cable T.V.Network,
Control Room

APPELLANT

Vs

District Magistrate and District Entertainment Tax Officer

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 2(aa), 3(b)

Citation : (2010) 05 UK CK 0035

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties and perused the record.

2. By means of this writ petition, the petitioner has sought the following relief:

I. To issue a writ or order in the nature of certiorari quashing the impugned order dated 30-4-2010 (Annexure No. 8 to this writ petition) passed by respondent No. 1 and to issue writ of mandamus directing the respondent No. 1 to grant the licence for transmitting local/private channels as per law for the same.

II To pass any order in favour of petitioner and against the respondents which this Hon"ble Court may deem fit and proper in the facts and circumstances of the present case.

III. To award the cost of the present writ petition to the petitioner.

3. By the order dated 30-4-2010, the District Magistrate, Haridwar directed the petitioner to deposit the licence fee, etc. along with required documents as mentioned in the order impugned in the present writ petition.

4. According to the petitioner, he is running a cable network in Haridwar under the Rules and Regulation of TRAI and Cable Television Network Act and he is main cable operator downlinking the signals from satellite and distributing the same through cable network system under the name of Haridwar Cable Network.

The petitioner started two private channels whereby the petitioner transmits the live programmes of Haridwar and various other programmes of interest held at Haridwar and also transmits Hindi songs and movies on the said two channels and also transmits the information to be given to general public and all the songs and movies are shown after taking copyrights of the same. These channels were run from 1-4-2009.

5. The respondent No. 2 informed the petitioner that for transmitting these channels the petitioner is required to obtain separate permission and licence and there is fee of Rs. 1000/- per week. The petitioner applied for obtaining licence for running private channel and also prayed that he is ready to complete all the formalities and to pay the fees and taxes. On 18-2-2010, the respondent No. 1 passed an order that as the application of the petitioner would be violative of Rule 11(1) and 11(2) of Uttarakhand Video Rules of Exhibition, therefore, the permission was refused.

6. Aggrieved by the order dated 18-2-2010, the petitioner preferred a Writ Petition bearing W.P.M.S. No. 226 of 2010 Harish Malhotra v. District Magistrate, Haridwar and Anr. In that petition, this Court passed an order on 13-4-2010 to the following effect:

Accordingly, the petitioner is directed to apply for licence and shall deposit the licence fee and other taxes under the Uttaranchal Act within a period of 15 days from today. Subject to above, the petitioner is permitted to run the video channel also. However, it is made clear that in case of failure to comply the aforesaid direction, this order shall stand revoked.

With the above observation, the writ petition is disposed of finally.

7. The grievance of the petitioner is that the impugned order dated 30-4-2010 passed by the respondent No. 1 is not in conformity with the order dated 13-4-2010 passed by this Court.

8. Learned Counsel for the petitioner has contended that the learned District Magistrate is wrongly charging fee under Rule 17(1) and Rule 17(2) of the U.P. Cinemas (Regulation of Exhibition by means of Video) Rules, 1988, as these Rules are not applicable in the case of the petitioner. He further contended that the said Rules apply to Video Libraries and to exhibition by means of Video in a permanent building with seating capacity not exceeding 125 and such exhibition in all temporary building and the television sets of the consumer/subscribers are not covered under the definition as given in Section 2(aa) read with Section 3(b) of the Uttar Pradesh Cinemas (Regulation) Act, 1955.

9. For a just decision of the writ petition, a reference to definition Clause (aa) of Section 2 of the Uttar Pradesh Cinemas (Regulation) Act, 1955 is necessary, which reads as under:

2(aa) "exhibition by means of video" means and exhibition in public on payment for admission of moving pictures or series of pictures by playing or replaying a

pre-recorded cassette by means of video cassette player whether on the screen of a television set or videoscope or otherwise;

10. Section 3 of the said Act deals with licence. Section 3 reads as under:

3. Licence.- Save as otherwise provided in this Act, no person shall

(a) give an exhibition by means of cinematograph, or

(b) give an exhibition by means of video, or

(c) keep a video library, elsewhere than in a place licensed under this Act, or otherwise than in compliance with the conditions and restrictions imposed by such licence.

11. From a conjoin reading of Sub-section (aa) of Section 2 and Section 3(b) of the aforesaid Act, it is obvious that Section 3(b) shall be read with reference to Section 2(aa) of the Uttar Pradesh Cinemas (Regulation) Act, 1955.

12. Rule 17 of the U.P. Cinemas (Regulation of Exhibition by means of Video) Rules, 1988 deals with the fee for grant of licence or renewal of licence. Sub-rule (2) of Rule 17 reads as under:

(2) In case there is any such arrangement where exhibition is given by means of video on a number of different television screens, video screens or video scopes, an additional licence fee of Rs. 100/- or part thereof, shall be levied for each such screen, fed by the said apparatus, by whatsoever name it may be called.

13. Admittedly, under the U.P. Cinemas (Regulation) Act, 1955, the District Magistrate is the licensing authority. By the impugned order dated 30-4-2010 the District Magistrate, Haridwar, after considering the provisions of Section 2(aa) read with Section 3(b) of the U.P. Cinemas (Regulation) Act 1955 and also taking into consideration Rule 17(1) and 17(2) of the Rules framed under the said Act, has directed the petitioner to deposit the requisite fees along with documents within the stipulated time.

14. It is also pertinent to mention here that the petitioner had filed a writ petition bearing W.P.M.S. No. 226 of 2010 Harish Malhotra v. District Magistrate Haridwar and Anr. before this Court and in paragraph No. 13 thereof, the petitioner has indicated that similar controversy was resolved by this Court by order dated 29-8-2006 passed in Writ Petition No. 375 (M/S) of 2006, Maxmode Cable Television Network v. State of Uttaranchal and Ors. by a Division Bench of this Court. In that petition, the petitioner was directed to deposit the licence fee and other taxes under the Uttaranchal Act. Thus, in the earlier petition, the petitioner himself was conscious that the Rules framed under the U.P. Cinemas (Regulation) Act 1955 are applicable to the petitioner, but in the present writ petition, the argument of the learned Counsel for the petitioner is that the said Rules are not applicable.

15. Besides, in view of the specific provisions of Section 3(b) read with Section

2(aa) of the U.P. Cinemas (Regulation) Act, 1955 and as per Sub-rule (2) of Rule 17 of the Rules framed under the said Act, the argument of the learned Counsel for the petitioner that the Rules are not applicable to the petitioner cannot be accepted for the simple reason that under Rule 17(1) licence fee of Rs. 2400/- per year or part thereof is leviable on Video Cinema and under Rule 17(2), additional licence fee of Rs. 100/- per year or part thereof is chargeable for each television screen, fed by means of video, by whatsoever name it may be called. It appears that while passing the impugned order the District Magistrate has considered the relevant provisions of the U.P. Cinemas (Regulation) Act, 1955 and the Rules framed thereunder. In my view the case of the petitioner is fully covered under definition clause of Section 2(aa) of the Uttar Pradesh Cinemas (Regulation) Act, 1955 and for that purpose, the petitioner has been rightly asked to obtain licence u/s 3(b) and to pay the requisite fee as prescribed under Rule 17 of the Rules framed under the said Act.

16. For the reasons and discussion above, I do not find any perversity or manifest error of law in the impugned order dated 30-4-2010 (Annexure-8 to the petition) passed by the respondent No. 1. The writ petition being devoid of merit is liable to be dismissed at the threshold.

17. The writ petition is dismissed summarily.