

(1984) 09 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No's. 13, 2709, 2914, 2991, 2992, 511, 3004, 3003 of 1984 and 4861 of 1983

Hotel Mangalam and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 14-09-1984

Acts Referred:

Bihar Cinemas (Regulation) Act, 1954 — Section 2(b), 3, 4, 5

Citation : (1985) PLJR 326

Hon'ble Judges : S.S. Sandhawalia, C.J.; S. Ali Ahmad, J

Bench : Division Bench

Advocate : Balbhadra Prasad Singh, B.P. Rajgarhia, Pawan Kumar, N.K. Agrawal, Nawal Kishore Sharma, Nalini Kant Prasad Singh, Bankey Singh and Yugal Kishore, for the Appellant; Ram Balak Mahto, (Addl. A.G.) with Mr. Mahesh Prasad No. III, J.C. to Addl. A.G. in C.W.J.C. Nos. 13 and 511 of 1984, Mr. Ramanand Kumar, S.C. II, with Mr. Satish Chandra Jha, J.C. to S.C. II, in C.W.J.C. No. 2914 of 1984, Mr. K.N. Keshav, G.P. No. 4, with Mr. Gopal Krishna Prasad, J.C. in C.W.J.C. Nos. 3004 and 3003 of 1984, Mr. Kamalapati Singh, G.P. No. 5 with Mr. Ishwari Singh, J.C. in C.W.J.C. No. 4861 of 1983, for the Respondent

Judgement

S.S. Sandhawalia, C.J.—Would the exhibition of films through a Video Cassette Recorder on a television screen come within the ambit of the definition of "cinematograph" u/s 2(b) of the Bihar Cinemas (Regulation) Act, 1954 and is consequently subject to the licensing provisions of sections 3, 4 and 5 thereof is the focal point in this set of nine connected writ cases. Admittedly the common matrix of facts may be noticed with relative brevity from Hotel Mangalam v. State of Bihar and others (C.W.J.C. No. 13 of 1984). The petitioner is operating a hotel-cum-restaurant in the name and style of Hotel Mangalam in which he has installed a Video Cassette Recorder (hereinafter referred to as "V.C.R.") for the entertainment of his customers and it is averred that this is done without charging anything specifically therefor. However, somewhat suddenly the officer-in-charge of the police station having jurisdiction over the area came to the hotel

premises and directed its proprietor to stop the exhibition of films through the V.C.R. failing which stringent legal action would be initiated against him. On further enquiry it transpired that the Sub divisional Officer had issued instructions that no video shows were to be permitted in Jhanjharpur Bazar. It is then averred that the petitioner being a law abiding citizen had stopped the exhibition on the verbal orders of the police authorities. However, in assailing the authority for the issuance of such orders, it is the stand of the writ petitioner that the exhibition of films through the V.C.R. on a television set does not come within the definition of "cinematograph" and consequently the same is not at all covered by the Bihar Cinemas (Regulation) Act, 1954 hereinafter referred to as "the Act"). It is pleaded that the Act is only applicable to public cinema halls and has nothing to do with the operation of the V.C.Rs., which are commonly used in restaurants, hotels and in private houses.

2. The uniform stand taken on behalf of the respondent State is that the V.C.R. is an apparatus which comes fairly and squarely within the wide ranging definition of "cinematograph" as laid down in section 2(b) and consequently the exhibition of films straightaway attracts the licensing provisions of section 3, 4 and 5 of the Act and Bihar Cinemas (Regulation) Rules, 1974, framed under the Act.

3. Now a stone-wall of recent precedent, against them directly in *Restaurant Lee and Others Vs. State of Madhya Pradesh and Others*, ; *Dineshkumar Hanumanprasad Tiwari Vs. State of Maharashtra*, and Civil Writ Petition No. 2419 of 1983 of the Delhi High Court (against which SLP No. 2767 of 1984 stands dismissed in limine on the 1st of March, 1984), and by way of analogy in *Parkash Chand Anand, Mandi and Others Vs. State of Himachal Pradesh*, and *Geeta Enterprises and Others Vs. State of U.P. and Others*, have tendered the learned counsel for the writ petitioners a somewhat lukewarm in pressing their basic stand that the exhibition of films through V.C.R. is beyond the scope of the definition of "cinematograph". It, therefore, suffices to briefly repel the half-hearted submissions raised on behalf of the writ petitioners, rather than to traverse all over again the well-trodden ground in the authorities noticed above.

4. Now the solitary argument raised by Mr. Balbhadra Prasad Singh (apparently in view of host of contrary precedents), who spearheaded the somewhat blunted challenge on behalf of the writ petitioners, was that the issue of exhibition through V.C.R. was in essence one of *casus omissus* in the statute and this could not be supplied merely by a process of strained interpretation. The stand was that in the original Cinematograph Act of 1918 and its substitution by the later Cinematograph Act of 1952 and later by other State Acts including Bihar Cinemas (Regulation) Act 1954 the very concept of an exhibition of films through V.C.R. was not visualised and consequently could not have been intended to be provided for. The submission was that the Legislature could not intend to license something which they did not imagine. Our attention was sought to be drawn to rule 3 of Bihar Cinemas (Regulation) Rules, 1974 (hereinafter called "the Rules"), which provides the procedure for the grant of permission for constructing a

permanent Cinema house for the purpose of license, and Appendix A thereto requiring the necessary particulars therefor, for highlighting the stand that by the very nature of things this can apply to regular and permanent cinema houses and not to the minuscule use of V.C.Rs. in a small hotel or restaurant. A similar submission was raised on the basis of rule 4 providing restriction in regard to the location of the cinema house and in particular sub-rule (c) thereof requiring space, for parking of cars etc., which according to the learned counsel was wholly incongruous in the, context of exhibition of films through V.C.R. On these premises the ultimate submission was that the Act cannot be extended to meet a case for which provision had clearly not been made therein. Reliance was placed on in *The Regulation and Control of Aeronautics in Canada* 54 (1932 AC 54).

5. The submission aforesaid brings considerable credit to the ingenuity of the learned counsel but is nevertheless untenable. The learned Additional Advocate General Mr. R.B. Mahto for the respondents rightly highlighted the fact that it was neither mandatory nor inevitable that each and every provision for licensing a permanent cinema house would be made applicable for the purpose of licensing exhibition of films through V.C.R. it was pointed out that the Regulations provide for the grant of temporary licenses and also of the licensing in temporary buildings etc., which would not require the stringent provisions for a permanent cinema house having a regular license and housed in a permanent building as defined in rule 2(v) of the Rules. Reliance was also rightly placed on section 10 which vests the power in the State Government to exempt any cinematographic exhibition from any of the provisions of the Act or the Rules made thereunder. Equally it deserves notice that in the judgment in *re The Regulation and Control of Aeronautics in Canada* (supra) relied upon by the learned counsel for the writ petitioners it seems to have been held by a process of extended interpretation that aerial navigation was within the ambit of the British. North America Act which was enacted in 1867 and this could hardly be visualised at that stage; The contention on the rule of *casus omissus*, therefore, must fail.

6. Apart from the above, I am unable to agree with the learned counsel for the petitioners that a purposeful schematic interpretation should not be given to the Act. One is reminded of the oft quoted words of Denning, L.J., in *Sea ford Court Estate Ltd. v. Aa(sic)* [(1949) 2 King's Bench 481]:

A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that or have been guilty of some or other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it, and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and

life" to the intention of the legislature. That was clearly laid down by the resolution of the judges in Heyden's case [(1584) 3 Co. Rep. 7a], and it is the safest guide today. Good practical advice on the subject was given about the same time by Plowden in his second volume *Eyston v. Studd* [(1574) 2 Plo 465]. Put into homely metaphor it is thus: A judge should ask himself the question: If the makers of the Act had themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it is woven, but he can and should iron out the creases.

I am inclined to take the view that the issue of interpretation here is one of merely ironing out the creases and not changing the very fabric of the statute. However, a more direct and categorical answer to the contention of the learned counsel is provided by the authoritative decision in *The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others*, :

But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity.

The primary submission on behalf of the writ petitioners must, therefore, be repelled.

7. Mr. Rajgarhia, the learned counsel for one of the writ petitioners, has raised the ancillary submission that since the writ petitioner in C.W.J.C. No. 4861 of 1983 had secured commercial licenses for its television set and Video Cassette Recorder under the Indian Telegraphs Act it would be exempt or outside the licensing provision of the Act and in any case there was a frontal conflict betwixt the two statutes.

8. The aforesaid submission cannot be better answered than in the words of G.P. Singh, C.J., speaking for the Division Bench, in *Restaurant Lee's* case (*supra*):

The learned counsel for the petitioners laid stress that the petitioner's held commercial licences for the VCRs installed in their restaurants which entitle them to use these sets for purposes of exhibiting motion pictures on prerecorded cassettes. This argument is also devoid of any substance. The commercial licence merely permits the use of VCR and TV in business premises "for receiving programmes and messages transmitted for general reception. The licence does not permit the use of VCR and TV for playing pre-recorded cassettes of movies. As already seen such a use of these appliances is outside the Central Acts and the rules made thereunder. It was also argued that on a matter covered by the Central Acts the State Act cannot operate. This argument which proceeds on the basis of the doctrine of occupied field has no applications here. The Central Acts

do not cover the topic of licensing of VCR and TV for exhibiting motion pictures from pre-recorded cassettes nor do they cover the topic of licensing of places where such an activity is carried on. The State Act viz., the Madhya Pradesh Cinema (Regulation) Act which covers licensing of such places thus operates in a field which is unoccupied by the Central Acts.

9. It was then said with some superficial plausibility that if the stand of the respondent State were to be accepted then every television set simpliciter would also come within the somewhat widely couched definition of "cinematograph" and thus require licensing under the Act. In this context what deserves notice is that a television set simpliciter cannot by itself exhibit a film or represent moving picture or series of pictures. It only reflects or receives what is broadcast elsewhere. The source of exhibition is the station and when the same is not broadcasting the television receiver cannot exhibit anything. However, when a V.C.R. is coupled with a T.V. screen it becomes an independent get and apparatus for representation of moving picture or series of pictures. This aspect of the matter has also been adequately considered with and dealt in *Restaurant Lee's* case (supra) with which reasoning I would entirely agree it, therefore, suffices to briefly quote the following observation therefrom:.

The Telegraph Act and the Wireless Telegraph Act amongst other deal with transmission and reception of radio and TV broadcasts. A VCR is not an apparatus for transmission of broadcasts. It can be used when fitted with RF tuner sections and/or monitors for reception of broadcast programmes and, therefore, such VCRs need broadcast receiver licence. Neither the Telegraph Act nor the Wireless Telegraphy Act cover a VCR when it is merely used for playing back pre-recorded tapes on the TV screen. In these petitions we are not concerned with the use made of VCR and TV sets as receivers of broadcast from TV stations. Indeed, most of the petitioners have their restaurants at places which are not covered by any television station for in our State we have television stations only at Raipur, Bhopal and Indore. In these petitions we are only concerned with the use made of VCR and TV sets for playing back pre-recorded cassettes of movies. Such a use of these appliances is not covered by the aforesaid two Central Acts and the learned counsel is not right in his submission that the entire field in relation to VCRs and TVs is covered by those Acts.

10. Lastly another supposed anomaly allegedly from the respondents' stand was that this would render even the exhibition of a film through V.C.R. in the privacy of a home also subject to licensing which could hardly be the intent of the Legislature. This submission has only to be noticed and rejected. What section 3 of the Act requires to be licensed is an exhibition by means of cinematograph in a place, The word "exhibition" would obviously mean a public display which presupposes a place where it has the right of ingress and egress. Seriously a private home hardly equates to that requirement. Herein again the observation in *Restaurant Lee's* case (supra) is equally pertinent:--

Section 3, as already seen, prohibits the exhibition by means of a cinematograph elsewhere than in a place licensed under the Act. A "place" is defined by section 2(b) to include a house, building etc. The restaurants of the petitioners come within the definition of "place". One of the meanings of "exhibit" is "to show publicly 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. For example if a VCR is used for playing a pre-recorded cassette of a movie in one's own residence and the show is restricted to the family members or friends and the public is not admitted the show will not be an exhibition coming within the prohibition of section 3. The petitioners, however, show the movies with the help of VCR and TV sets in their restaurants where public is admitted. This clearly amounts to exhibition by means of a cinematograph bringing the activity within the ban of section 3. The petitioners cannot indulge into this activity unless they obtain a licence for their restaurants under the Act

It was very fairly conceded at the Bar that there was no precedent in support of the view canvassed on behalf of the writ petitioners and the weight of the precedents was wholly on the other side without exception. No meaningful challenge could either be raised to the decisions referred to above nor any convincing attempt was made to distinguish the same.

11. Learned counsel for the parties agreed that since the issues of fact and law are common, this judgment would govern all of them. As the representative submissions sought to be raised on behalf of the writ petitioners fail, all the writ petitions are hereby dismissed. In the circumstances there will be no order as to costs.