

(1984) 11 PAT CK 0024

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 4958 of 1984

H.R. Club

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-11-1984

Acts Referred:

Bihar Cinemas (Regulation) Act, 1954 — Section 3

Citation : AIR 1986 Patna 182 : (1986) 34 BLJR 198 : (1986) PLJR 116

Hon'ble Judges : S.S. Sandhawalia, C.J.;S.K. Jha, J

Bench : Division Bench

Advocate : B.P. Rajgarhia and Pawan Kumar, for the Appellant; R.B. Mahto, A.A.G. and Mahesh Prasad, No. 111, Jr. Counsel to the Add. A.G., for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—Would the exhibition of films by means of a video cassette recorder in the premises of a club (registered under the Societies Registration Act, 1860) come within the licensing provisions of Section 3 of the Bihar Cinemas (Regulation) Act, 1954, is the significant question in this writ petition.

2. The facts are not in dispute the H. R. Club, a Fatuha, is a society registered under the Societies Registration Act, and it is averred that the same is primarily being run for the benefit of its members and others and it has installed a video cassette recorder for the entertainment of its members, without charging anything expressly for the film shows. However, the Officer-in-charge, Fatuha police station, directed the petitioner to stop the exhibition of films by means of the video cassette recorder on T.V. screen, under threat of penal action apparently on the ground that the premises were not duly licensed under the Bihar Cinemas (Regulation) Act, 1954 (hereinafter called the "Act"). It is the petitioner's claim that the exhibition of these films in the club without any specific charge therefore does not attract any of the provisions of the Act or of

the Central Cinematograph Act, 1952.

3. In the counter-affidavit filed by the Executive Magistrate, it is averred that the club being a registered society is, in itself, an indication that it is something in contradistinction to the word "domestic". It is pointed out that the membership of the club is open to any person and it charges fees from its members which would cover the charge for the showing of video films. It is the claim that the performances are made by public announcement and the exhibition of the cinema shows is of a nature which cannot possibly be equated with those in a residence restricted to family members only. It is categorically averred that the exhibition of these films amounts to public display by means of a pre-recorded cassette film on the large screen of a T.V. set in the club. In terms, the stand taken on behalf of the respondents is that the showing of these films would amount to an exhibition within the meaning of Section 3 of the Act and any other" construction would tend to defeat the very purpose of the same.

4. Perhaps, at the very outset it may be noticed that the larger question whether a VCR when used for playing back pre-recorded cassette films would fall within the ambit of the Act, now stands settled by the recent Division Bench judgment in C. W. J. C. No. 13 of 1984 (reported in 1985 Pat LJ 326) and analogous cases decided on the 14th Sept. 1984 *Hotel Mangalam v. State of Bihar*. Therein the primary and, indeed, the solitary issue before the Bench was whether the exhibition of films through a video cassette recorder on a television screen would come within the definition of "cinematograph" under, Section 2(6) of the Bihar Cinemas (Regulation) Act. 1954 and would consequently be subject to the licensing provisions of Sections 3, 4 and 5 thereof. On behalf of the petitioners ingenious and ancillary submissions not considered in the earlier precedents were examined therein and rejected. Primarily following the consistent weight of precedent in the High Courts of Madhya Pradesh, Bombay, Himachal and Delhi and relying on *Restaurant Lee v. State of Madhya Pradesh* AIR 1983 MP 146 the answer to the primal question arising in the case was plainly rendered in the affirmative. In the light of the above, the narrower issue that now arises is whether such an exhibition in the premises of a club would equally come within the scope of Section 3 of the Act.

5. Learned counsel for the writ petitioner primarily took his cue from one of the many dictionary meanings of the word "exhibition" as being a public display or show for purposes of amusement or instruction. Emphasis was sought to be laid entirely on the concept of a public as distinct from a private place and it was contended that the premises of a club being one where the right of entry was restricted, it could not be deemed as a public place and, consequently, a public display therein would not be an exhibition. On the analogy of a private home, it was submitted that a similar exhibition in a club premises would also be outside the scope of the Act and would not, therefore, require licensing. Reliance was placed on *Commissioner of Income Tax Vs. Bankipur Club Ltd.*, and on Stroud's Judicial Dictionary for the proposition that a club would not *stricto sensu* be a

public place.

6. Since the controversy herein must inevitably revolve around the language of the statute, it is apt to quote; the relevant provisions of Sections 2 and 3 of the Act:

"2. Definitions. -- In this Act, unless there is anything repugnant in the subject or context.--

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(b) "cinematograph" includes any apparatus for the representation of "moving pictures or series of pictures";

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(d) "place" includes a house, building, tent and any description of transport, whether by water, land or air;.....

xxxxxxxxxxxxxx"

3. Cinematograph exhibition to be licensed.--Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act or otherwise than in compliance with any conditions and restrictions imposed by such licence."

7. Now, undoubtedly, the key-word herein is "exhibition" as employed in Section 3 and the core of the question is whether the showing of films by means of a V.C.R. in the premises of a club to its members or guests in unlimited numbers would amount to an exhibition within the meaning of Section 3 or not. To my mind, the issue of interpretation herein is one of the basic angles of approach because it is well-settled that a word or phrase having many shades of meaning would take its hue from the context in which it is inlaid and the larger purpose of the statute itself. Herein, what perhaps first calls for a pointed notice is the fact that the underlying object of the Act is its concern for public safety and public health. The legislative entries, which warrant this legislation, are apparently entries 1, 6, 32 and 33 of List II of the 7th Schedule to the Constitution. The States have exclusive power to legislate on the subject of public order and public health under entries 1 and 6. More specifically entries 32 and 33 of List II would bring cinema shows and their licensing within the ambit of the State's legislative competence. It could not be disputed before us that the two paramount considerations of licensing and regulation of cinema shows are both public health and public safety. The interpretation of the statute has, thus, to be viewed within these parameters.

8. The Act does not define a club and even otherwise a legally precise strait-jacketed definition of the term may be difficult to attempt. A working definition may be noticed from the Halsbury's Laws of England, Fourth Edition, Vol. 6, p. 56:

"A club, except a proprietary club or an investment club, may be defined as a society of persons associated together, not for the purposes of trade, but for social reasons, the promotion of politics, sport, art, science or literature, or for any other lawful purpose; but trading activities will not destroy the nature of a club if they are merely incidental to the club's purposes....."

For our purposes what has then to be noticed is that the Societies Registration Act, under which the petitioner club is registered, does not place any numerical limit on the number of the members of a society registered thereunder. It was stated at the Bar that even the bye-laws of the petitioner club permitted a membership up to 1000 persons and this again was not an inflexible limitation and could expressly be enlarged by the club itself. Equally, it was not denied that in the petitioner club generally the spouse of a member and their families or, in any case, dependent children are usually, if not invariably, extended certain benefits appurtenant to membership including that of viewing the entertainments in the club premises. The issue would, therefore, be whether a performance, to which all the aforesaid persons may well have the right of access, would be an exhibition or not.

9. I am inclined to take the view which was forcefully canvassed by Mr. R. B. Mahto, the learned Additional Advocate-General, appearing on behalf of the State, that the question herein must not be viewed from the narrower and the pedantic angle by giving a label to the place whether the same is a public or a private one. The (illegible) of the matter is not a quibble on these two words but, indeed, is the question of the larger number of people who may come to view the display. To put it tersely, the anvil for the test is the numbers in human terms and not the nature of the place where they choose to assemble. To repeat, the question is not whether a particular place is to be deemed or labelled as a public or a private one but whether larger groups of the community or a large section of the public may at a particular time be viewing or participating in the performance and the display and thereby come within the ambit of the word "exhibition" as employed in Section 3. The paramount consideration is not the situs but the quantum of the public watching or participating.

10. It may next be pin-pointed that the Act does not use the word "public" or "private" with regard to the place or the same appellation with regard to the word "exhibition". Therefore, to impose or unduly emphasise the public or private nature of the premises would not be well warranted in the context of the Act. On behalf of the respondents it was argued with plausibility that even in a private home if there is a display of saris or even of flowers which is thrown open to large sections of people then in common parlance to it may well come within the ambit of an exhibition of saris or flowers. This would consequently be the more so when viewed in the context and the purposes of the Act. Therefore, where larger groups of the community or larger sections of the public may have access to view a performance, the same would become an exhibition irrespective of the nature of the place where it is held. If the purpose of the regulation is to

safeguard public health, public safety or public order then it is irrelevant where the section of the public has collected -- be the place one with a wholly unrestricted right of entry or a private one with severe restrictions thereto. It was submitted -- and, in my view, rightly -- that if a thousand people or more are viewing the showing of a film on the V.C.R. -- T.V. screen, it is irrelevant whether the same is being done in a cinema hall or a club hall. In either case it would be an exhibition for the purposes of the Act and in either case the considerations of public health and public safety would be identical. Viewed from another angle, the question is not of any inherent right of access but the factum of access and collection of a large number of persons in a place. Once that is so, the display or performance becomes an exhibition under the Act irrespective of the fact whether the place is public or private, whether right of access is unrestricted or controlled or whether the same is commercial for payment or merely by aesthetic invitation. Consequently, to view the matter from a narrow myopic angle of the place being technically a public or a private one may well tend to defeat the larger purposes of the Act and the requirements or regulation and licensing in the interest of public health and safety.

11. The view I am inclined to take receives support by way of analogy from *Harms (incorporated) Ltd. and Chappell and Co. v. Martans Club Ltd.* (1927) 1 Ch 526 - wherein it was held that a musical performance at the Embassy Club before an audience of 150 members and 50 guests must be deemed as a performance in public. The broad tests were enumerated by Lord Har. worth M. R. in the following terms : --

"In dealing with the tests which have been applied in the cases, it appears to me that one must apply one's mind to see whether there has been any injury to the author. Did what took place interfere with his proprietary rights? As to that, profit is a very important element. Next, you must consider whether there has been admission of any portion of the public, with or without payment, and when you are considering that you mean by any portion of the public you will find in *Duck v. Pates* (1884) 13 QBD 843 that according to Brett M. R. it means the public who would go either with or without payment the class of persons who would be likely to go to a performance if there was a performance at a public theatre for profit. Then one has also to consider whether or not the performance is a domestic one so as to exclude the notion of "public" -- domestic in the sense that it was private and domestic, a matter of family and household concern only. Then again you must consider where the performance took place, hearing in mind that the place need not be one which is kept habitually for the exhibition of dramatic entertainments."

Reference may also be instructively made to the observations of Lord Parker, C.J., in *Panama (Piccadilly) Ltd. v. Newberry* (1962) 1 All ER 769.

12. In fairness to Mr. Rajgarhia, reference must be made to his reliance on *Commr. of Income Tax v. Bankipur Club Ltd.* 1981 Tax LR 626 (supra). Therein it has only been held that in an incorporated club the sale of liquor by the club to

its members only was governed by the principle of mutuality and was, consequently, not taxable. I am unable to see how this authority in any way advances the case of the writ petitioner.

13. To finally conclude, the answer to the question posed at the outset is rendered in the affirmative, and it is held that an exhibition of films by means of video cassette recorder on a T.V. screen in the premises of a club registered under the Societies Registration Act would well come within the ambit of the Act.

14. Once it is held as above, it is plain that the respondents would be well within their rights in regulating the exhibition of films by the petitioner club. The writ petition is without merit and is, consequently, dismissed. There will, however, be no order as to cost.

S.K. Jha, J.

15. I agree.