
(1983) 07 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 707 and 877/83

Manoranjan Hotel Disco and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-07-1983

Acts Referred:

Cinematograph Act, 1952 — Section 1, 2, 3, 7
Petroleum Act, 1934 — Section 2, 29, 4
Rajasthan Cinemas (Regulation) Act, 1952 — Section 3, 4, 5, 6, 7
Telegraph Act, 1885 — Section 3, 7
Wireless Telegraphy Act, 1933 — Section 10

Citation : (1983) RLW 691 : (1983) WLN 338

Hon'ble Judges : D.L. Mehta, J

Bench : Single Bench

Judgement

D.L. Mehta, J.—A common question is involved in both the writ petitions so it will be convenient to dispose them of by a single order.

2. This writ petition is directed against the order passed by the Collector and District Magistrate, Jodhpur dated 2-3-1983 vide Ex. 3. The Collector has directed that exhibition of video cassette is against the provision of Cinema Regulation Act. He has further directed that the exhibition should be stopped within 24 hours.

3. Petitioner's submission is that he is running a restaurant having a capacity of 90 persons at a time and in the Restaurant soft drinks, snacks and South Indian dishes are served to the customers. The customer is not supposed to take away the material supplied by us out side the Hotel. They also provide certain things for the entertainment and comfort of the customers and the amount that is being realized by them is virtually the service charges. Their further submission is that the petitioner displays videocassette recorder and displays feature films, cultural films, some time the cassette of Hindi & English movies are also displayed. Petitioner has further submitted that the videocassette recorder that is being used by the petitioner is licensed under the Indian Telegraphs Act as TV No. 5.

He has produced the copy of the licence marked Ex. 1. Petitioner's submission is that video cassette recorder is nothing but an advanced and more developed shape of television which is capable of receiving signs, signal, images, writing sound of any nature by radio waves. Petitioner has submitted that the provisions of Indian Telegraph Act, 1885 applies and for this reason he has obtained licence under the Act of 1885.

4. Petitioner has challenged the order Ex. 3 on the following grounds.

(i) Provisions of Indian Cinematograph Act, 1952 as well as the Cinema Regulation Act of 1952 does not apply

(ii) That the aforesaid notice and the order Ex. 3 is vague, in as much as it has not been pointed out as to which of the provisions of the Act of 1952 have been violated.

(iii) The principle of audi alteram partem has been violated as the order has been passed without giving him an opportunity of explaining that the provisions of the Act of 1952 or the provisions of Cinema Regulations Act, 1952 does not apply in the case of the petitioner.

5. Petitioner further submits that the order passed by the learned District Magistrate is without jurisdiction.

6. The State Legislature is not competent to put any restriction on video cassette recorder or exhibition of the cassettes. He further submits that entry No. 60 of the schedule 7 list I is having an over riding effect on entry No. 33 of schedule 7 list II and the provisions of the Regulation Act of 1952, cannot be invoked to restrict the trade and commerce which the petitioner is running. On behalf of the respondents a reply has been filed to the stay petition and it was stated that the provisions of the Cinematograph Act, 1952 as well as Rajasthan Cinema Regulation Act of 1952 are applicable. An application was moved by Mr. M. Mridul on behalf of the Jodhpur Cinema Exhibitors Association under Rule 380 of the High Court of Judicature for Rajasthan Rules, 1952. A prayer was made that the Association may be made a party to the writ petition and to array as one of the respondents and the Association be permitted to file reply to the writ petition submitted before the Court. Mr. Mridul was allowed to appear as an intervener in this case. A prayer was made for the disposal of this petition at this stage and it was accepted.

7. The Cinematograph Act, 1952 (herein after to be referred to as "Act of 1952") has been enacted by the Legislature after repealing the Cinematograph Act of 1918 (here in after to be referred to as "the Act of 1918") as it stood was a mixed context dealing with two separate matters viz. (a) examination and certification of films as suitable for public exhibition and (b) regulation of cinemas including their licensing. Under 7th Schedule of the Constitution "Sanctioning of Cinematograph films for exhibition has been included in Entry 60 of the Union list and Cinemas subject to the provisions of Entry 60 of the List. I

in Entry 33 of the State List Some of the Sections of the Cinematograph Act. therefore concern the Central Government and some of them the State Government and others both the Central and State Governments. In the absence of a clear demarcation of the respective provisions of the Act with which the Central and State Governments are concerned, various difficulties were arising in the administration of the Act. To meet out the difficulty so arisen the Cinematograph Act of 1952 has been enacted. In Section 1 it provides that parts I, II and IV extend to the whole of India and part III extends to Union territories only. This has been done to meet out the requirement of the Constitution specially Entry 60 of List I and Entry of List II. To meet out the vacuum the Rajasthan Cinema Regulations Act No. XXX of 1952 was enacted.

8. Section 2 of the Cinematograph Act of 1952 defines "Cinematograph", which reads as under.

"Cinematograph" includes any apparatus for the representation of moving pictures or series of pictures.

9. u/s 2 "film" has been defined, which reads as under.

"film" means a cinematograph film

10. Section 3 of the Rajasthan Cinema Regulation Act 1952 reads as under.

3. Cinematograph exhibitions 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 the licence.

11. In this very Act in Section 2 "Cinematograph" has been defined which reads as under.

2(a) "cinematograph" includes any apparatus for the representation of moving pictures or series of pictures.

The definition given in the Cinematograph Act of 1952 and the Rajasthan Cinema Regulation Act, 1952 so far as "cinematograph" word is concerned, is the same. "Film" has not been defined under Rajasthan Cinema Regulation Act of 1952. Learned Counsel for the petitioner submits that exhibition of video cassettes on T.V. Sets do not fall, within the purview of the definition of "cinematograph". He further submits that exhibition of cassette on videoes not fall within the purview of the word "film" as used in Section 2 of the Cinematograph Act of 1952.

12. Television & video cassette recorder & exhibition of cassettes on Television are two different things. In the matter of television there is no control of the television holder as he can only see or exhibit the programme relayed from the relaying station. Screening of films or exhibition of films by means of various cassettes cannot be equated with the television simpliciter. The control in the matter of exhibition of films or programmes so far as video cassette recorder exhibition is concerned, lies in the hands of the video cassette & T.V. holders. It

is not relayed as it is relayed ordinarily in cases of television. The occupier of the building who is having video cassettes and the T.V. will have the full control over all instruments, apparatus and he can see or exhibit any film, cassette or programme of his choice. Thus, there is a broad distinction between the two that one is relayed and the person having a T.V. has to satisfy with the programme relayed. He is having no control over the relaying station, whereas the cassettes holder and television holder can exhibit the film or films of his choice at the time convenient to him and in a way as he likes. For this reason the video cassette recorder and the television programmes cannot be considered on equal footing.

13. The first distinction which the learned Counsel for the petitioner wanted to raise is that video cassette recorder is not a apparatus but is an instrument. He submits that under the Telegraph Act of 1885 "telegraph" has been defined in Section 3, which reads as under.

Telegraph means any appliance, instrument, material or apparatus.

...

14. Apparatus is wider in scope and it includes instrument and appliances combined together. Even assuming that video cassette recorder is an instrument even then for the purpose of decision of this case, it cannot be said that it is an instrument simpliciter. If the video cassette recorder is used without the aid of television screen then the non-petitioners are not having any grievance at all, it is the combination of the television sets particularly the screen and the video cassette in video sets, which is the cause of grievances. Thus, I do not find any force in the submissions made by the learned Counsel for the petitioner that it is an instrument and it is not an apparatus. Even otherwise the definition as given in Section 2 of the words "Cinematograph" is only inclusive and not exhaustive. In the definition the word "includes" has been used with the intention that any matter which is ancillary to any apparatus can be considered as inclusive for the purpose of considering the definition of "cinematograph". In the Telegraph Act, the definition is exhaustive. The VCR and TV sets of the petitioners are licenced under the Licensing of Wireless Receiving apparatus Rules, 1965, and the Indian Telegraphy (Possession) Rules, 1965, which have been respectively made u/s 7 of the Indian Telegraph Act, 1885, and Section 10 of the Indian Wireless Telegraphy Act, 1933. At the time where the Constitution was framed, Television was not introduced in India. With the introduction of television, the Parliament in its wisdom passed the Amendment Act, 1961 to amend the definition of "Telegraph" in the Indian Telegraph Act, 1885 & the definition "Wireless communication" in the Indian Wireless Telegraphy Act, 1933, to put the matter beyond controversy that these definitions are wide enough to cover transmission and receiving of visual images by television.

15. There is a broad distinction between the two Acts namely, in a Cinematograph apparatus is used in which movies or pictures or series of pictures may be exhibited, whereas in the matter of television, instrument or

the apparatus is used for transmission or reception of signs, signals, writing images and sounds or intelligences of any nature by wire, visual or other electromagnetic omissions, are production for the purpose of exhibition of the movies, pictures or series of pictures is a must in the Cinematograph Act.

16. After giving considered thought f hold that apparatus used in the Video cassette recorder and television squarely falls within the definition of Cinematograph, as defined in Section 2 of the Indian Cinematograph Act, 1952.

17. Section 3 of the Rajasthan Cinemas (Regulation) Act, 1952 provides that save as otherwise provided in this Act no person shall give an exhibition by means of a cinematograph elsewhere than is a place licensed under this Act or otherwise than in compliance with any conditions and restrictions imposed by the licence. Thus, the exhibition by means of the Cinematograph Act needs a licence under the Rajasthan Cinemas (Regulation) Act, as provided u/s 3 of the Regulation Act of 1952.

18. Section 7 of the Regulation Act of 1952 provides that the State Government in respect of the whole or any part of Rajasthan and the District Magistrate in respect of the district within his jurisdiction may, if it or e is of opinion that any film which is being publicly exhibited is likely to cause breach of the peace, by order suspend the exhibition of such film.

19. Section 8 of the Regulation Act of 1952 provides for the penalties for contravention of this Act and rules made there under. If the owner or person in charge of a cinematograph uses the same or allows to be used, in contravention of the Regulation Act of 1952, the punishment has been provided u/s 8 of the Act. This clearly shows that the possession of the cinematograph apparatus is not punishable if it is not used at all or if it is used in a way which is in conformity with the provisions of the Regulation Act.

20. The Cinematograph Act, 1952 provides u/s 4 that any person desiring to exhibit any film may make an application to the Board for a certificate in respect thereof. Similarly, Section 4 is incorporated in relation to the export of any film for exhibition outside India. Section 4 provides the mode of examination of the applications submitted u/s 4.

21. Section 5 further provides about the examination by Revising Committee. Section 5 provides about the Certification of films by the Board. Section 58 provides about the principles for guidance in certifying films.

22. Section 6 provides that any person who delivers any certified him to any distributor, exhibitor or exporter shall, in such, manner as may be prescribed notify to the distributor, exhibitor, or exporter as the case may be, the title the length of the film, the number and the nature of the certificate granted in respect thereof and the conditions, if any, subject to which it has been granted.

23. Section 7 of the Act provides about the penalties for contraventions of the provisions of the Cinematograph Act. Any film other than a film which has been

certified by the Board can only be exhibited or permitted to be exhibited and any contravention thereof is punishable u/s 7 of the Act.

24. Section 7A provides where a film in respect of which no certificate has been granted under this Act is exhibited or a film certified as a suitable for so public exhibition restricted to adults is exhibited to any person who is not an adult or a film is exhibited in contravention of any of the provisions contained in this Act.

25. Does a VCR when used for playing back pre-recorded cassettes of movies fall within the ambit of the Rajasthan Cinemas (Regulation) Act, 1952? In other words where the magnetic tapes for playing back pre-recorded cassettes of movies when used by means of VCR for the purpose of exhibition falls within the purview of the Regulation Act of 1952.

26. Video recording is the technique for recording the picture as the information in a television, picture by non optical means. The legislative wing has not anticipated the controversy, which has arisen because of the development of the science. We are having video receiver, video detector, video amplifier.

27. Video-telephones is a communication devices for the simultaneous transmission of voice and televised image of the caller and receiver of the call.

28. In video amplifier, device used to amplify signals of wide band width, such as as those used in television system and radar.

29. In Encyclopaedia Britannica at P. 490, the magnetic tape recording has been considered, which reads as under:

Magnetic tape recording, method of pre-serving electrical signals as magnetic patterns on a thin plastic tape coated with finely powdered iron oxide or another magnetic material. The electrical signals may be either audio, video, or data.

In recording on magnetic tape, the signal passes through a recording head as the tape is drawn past, leaving magnetic imprint on the tape. When the recorded tape is drawn past the reproducing head (frequently the same as the recording head), a signal is induced that is the equivalent of the recording signal. The signal is amplified, processed, and fed to the appropriate equipment, which may be a sound system audio recording), a television receiver or transmitter (video recording), or a computer (data recording). Tapes are easily erased (demagnetized) for reuse. Tape speeds for sound recording vary from less than 2 inches (5 centimeters) per second to as much as 15 inches (37.5 centimeters). Video signals occupy a much wider band width than do sound signals, requiring a much higher relative speed between the tape and the head. In one system, the increased speed is achieved by mounting four heads on a rapidly rotating wheel in such a manner that the heads scan the tape transversely at high speed while the tape moves forward at relatively low speed.

Pre-recorded tapes in the form of cassettes (q.v.) and cartridges for home sound systems were in widespread use in the early 1970s, and similar arrangements for

home video recording and playback were under development.

30. In Encyclopaedia of Britannica Vol. 18 at P. 124, the art of television has been described, which reads as under;-

The art of television : In the 1950s & 1960s radio was overtaken by television. At first television was considered to be little different as a medium from the film. But although television was a hungry user of film, it needed film in forms that differed from those required by the theatres.

The difference between film and television as art forms stemmed from the physical and financial conditions governing production, distribution, and exhibition. The relationships between the media and their public were also quite different. The initial difference lies in the cameras and their function in production. The film camera supplies a record on celluloid in the form of a two dimensional image, which, suitably edited, can be subsequently projected into a screen. The television camera accepts and makes available for immediate transmission a two dimensional image that remains unrecorded and passes with the event like the image in a mirror (though this image can, by using additional equipment, be recorded on film or videotape). The film camera is associated with a lengthy effort of photographing, cutting, editing and dubbing an elaborate process of selection and assembly that may involve months of work. Although television images may also be stored and edited through videotape, the essential television form is the immediate transmission to the public of events occurring at the moment-political and social events, news summaries, commentary, and discussion.

The basic Art of television is the control of this immediate flow of images. They can be pre-selected in so far as the cameras may be set up at chosen vantage points; after that, however, the director must select among the images they give him. The director-editor uses his skill to secure an immediately effective flow of images from the multiple view points his cameras and their lenses collectively represent. In the film the same end, is achieved by the quite different process of fragmenting and recording the action piecemeal, thus creating a succession of images that can be subsequently put together by editing and dubbing.

Those who first struggled with the practical, aesthetic of television attempted to see the medium on one hand as a kind of visual radio, and on the other, as a form of "diluted cinema", a other poor case in of the theatrical film. This was in part because they came either from radio or from film making, and saw the medium in relation to their previous occupations. Writers, directors and performers from radio tended at first to reduce the television image to a "talking head", with the addition of occasional still pictures, film clips, or cut-ins from other broadcasting stations. This was especially the case in countries in which television initially lacked adequate financing (such as France) and directors could not afford costly pictorialization. On the other hand, personnel coming from film making were appalled at the speed with which they were required to prepare and

mount their television programmes.

Television differs most from film in its relationship to the audience. The film is an event designed for a theatre with an audience specially assembled for the performance. Television, on the other hand resembles a private performance in the home. The attitude of a person sitting perhaps alone and often for hours on end before a comparatively small picture screened in the familiar surroundings of his living room is quite different from that of a person who has gone out to share the special audience experience of a theatre. The tension is more slack concentration is constantly threatened by irrelevant interruption. Whereas one is absorbed by a good film in a theatre to the exclusion of all else, one merely "watches" television. The television audience is pre-occupied not so much with an individual item as with the free flow of item after item. Television is like a talking picture magazine, go in on daily and nightly, asking little, giving out along with its entertainment a quantity of easily assimilated information ranging from formal news coverage to informal, gossip discussions of the lighter affair of the day.

Television also differs from film with respect of its visual impact in the movie theatre a highly magnified image fills the central part of the field of vision in an otherwise darkened hall, exciting curiosity and response to a degree far beyond that obtained by the very small television screen in a relatively unmarked living room. The great, fully loaded images of the big screen from Griffith's *Intolerance* of 1916 to the *Russian War and Peace* of 1968, have involved the investment of large sums of money in what is called "production value" the accumulated content of those images with their crowds of people and their elaborate sets. Skilled viewers in the movie theatre perceive and appreciate an astonishing amount of detail, in television, however, one has only to watch a film produced for big screen theatre to realize the limitations of the small TV screen, in which the actors' speakers, or commentators must occupy most of the visual field.

The personal essay Some television directors, especially in Britain have been able to establish highly individual styles. They have used camera and tape on live, unrehearsed subjects in ways that take advantage of new technical developments. Videotape offers more freedom than film, since tape can be erased and reused" tape also can operate with less light than film (to make night shots possible) and can combine coverage from a number of cameras operating in turn on a single, immediately recording.

Learned Counsel for the petitioner has thus, tried to make out a case that Videotape offers more freedom than film, since tape can be erased and reused, tape also can operate with less light than film to make night shots possible and can combine coverage from a number of cameras operating in turn on a single, immediate recording. Thus he wants to emphasize that there is a broad distinction between the film and the Video-tape used in VCR. Tapes are magnetic which can be erased or reused. He submits that magnetic tapes cannot be equated with the films as provided under the Regulation Act of 1952 and the

Cinematograph Act of 1952.

31. Learned Counsel for the petitioner has also referred to the Encyclopedia of Britannica Vol. 12 at P. 497. The relevant part of which is read as under

The motion picture is the newest of the generally recognized "fine arts". It is the product of photographic and technological developments that culminated by 1900 in practical devices for the recording of a moving image and its projection onto a flat surface. During its early development, the motion picture was discounted by many critics for its subservience to commercial interests for the immediacy of its appeal to the uninstructed for its mechanical techniques, and for its apparent lack of an identifiable artist as its primary creator, after the middle of the 20th century, however, increasing attention was devoted to it as a form of artistic endeavor that is as legitimate as the theatre, literature, music" or the visual arts.

Throughout its history, the motion picture steadily became more complex Even the silent film was capable of a wide range of expression, the possibilities of which were far from exhausted when it was superseded by sound films in the late 1920s, subsequently, combining a half dozen separate recordings. Colours and wide screens added new breadth, and improvements in lenses, film stock, and processing techniques permitted trick effects of all kinds.

A number of factors immediately come to mind in connection with the motion picture experience. For one thing, there is something mildly hypnotic about the illusion of movement that holds the attention and may even lower critical resistance. Also, the accuracy of the motion picture image is compelling because a non-human, scientific process makes it. And, the motion picture gives what has been called a strong sense of being present; the film image always appears to be in the present tense. There is also the concrete nature of film; it appears to show actual people and things.

No less important that any of the above are the conditions under which the motion picture ideally is seen, where everything helps to dominate the spectator. He is taken from his everyday environment, and partially isolated from others, comfortably seated in an air-conditioned auditorium. There, the darkness concentrates his attention and prevents comparison of the image on the screen with the objects or people around him. For a while, he lives in the world the motion picture unfolds before him.

32. Learned counsel for the petitioner further submits that a projector is must for projecting the films, whereas in the VCR system, the projector as provided under the Cinematograph Rules and Regulation Act is not there

33. He further submits that even if it is assumed that there is a exhibition, then the exhibition is limited to two persons and not to the different and that too of the Video cassette and not of the film.

34. He has also referred to me a number of rules specially Rules 19, 21, 23,

25(5), 34, 46 and 47, which cannot be complied with in VCR.

35. He has also referred to the book of Popular Science Vol. 5.P.278. The relevant part of which is reproduced as under.

When electronic scanning was developed in the 1920's, an all-important forward step was taken. In 1923, Valdimir K. Zworykin, a Russian-American inventor, applied for a patent on the iron scope, a radically new television tube incorporating the principle of electronic scanning. In this device (Figure 3), light reflected from an object passed through a glass lens and through the glass wall of the iconoscope tube. It fell on a mosaic made up of hundreds of thousands of silver particles, coated with selenium to make them light-sensitive. The particles were deposited on an insulating sheet of mica. When light struck these particles, electrons were emitted from them and each particle would acquire a positive electric charge proportional in strength to the amount of light falling upon it. In the back of the mosaic, a layer of conducting material was deposited to form a signal plate.

A television programme is based on the moving images recorded by a specially designed camera-- one containing the pick up tube in which scanning takes place. At first, the iconoscope tube was used for this purpose.

The Central Government in exercise of the powers conferred by Section 4 and Sub-section (1) of Section 29 of the Petroleum Act, 1934 (here in after to be referred to as "the Act of 1934") enacted the Cinematograph Film Rules, 1948, Rule 3(g) reads as under.

"Film" means motion picture or sound recording film having a nitrocellulose base whether in the form of exposed or unexposed film, positives, negatives, scraped or used film.

36. Learned Counsel for the petitioner submits that the Cinematograph Rules, 1948 defines the film under Rule 3(g), as referred to above. He submits that the definition is exhaustive and it is must for the film itself being nitrocellulose based.

37. He further submits that the Government has used the word " Cinematograph Rules 1948 and has defined the film under Rule 3(g). He submits that the Video Tapes are not having nitrocellulose base in any of the forms, as provided under Rule 3(g) of the Cinematograph Rules, 1948.

38. He further submits that in the judgment of the Madhya Pradesh High Court in Miscellaneous Petition No, 556 of 1983, Restaurant Lee, Jagdalpur and Ors. v. State of Madhya Pradesh and Ors., decided on February 28, 1983, this important definition has not been considered at all.

39. The Petroleum Act of 1934 puts a restriction on the storage, transportation and corporate of any petroleum, as defined in Section 2 of the Act of 1934.

40. He further submits that the Cinematograph Rules, 1948 have been enacted u/s 4 reads with Section 29 of the Act of 1934. Nitrocellulose base words falls

within the definition of Petroleum as it is inflammable mixture. He submits that the definition given under the Cinematograph Rules, 1948 should be accepted as a definition for the purpose of Cinematograph Act of 1952 of the Rajasthan Cinema (Regulation) Act no where defines the "film". Cinematograph Act of 1952 defines the film u/s 2 of the Act which reads as under:

"films" means a cinematograph film.

41. In Webster's New Twentieth Century Dictionary Unabridged Second Edition at P. 686 the word "film" has been defined as under:

film, n. (ME fylme; As. fylmen, a film, membrane.)

(i) A thin skin ; a pellicle ; a membrane; a delicate coating or outer later, partially obscuring that which lies beneath; as, a film or gelatin; a film of lace.

(ii) A sheet or roll of flexible cellulose material covered with a substance sensitive to light and used in taking photographs.

(iii) A thin veil, haze or blur, as over the eyes. (iii) A motion picture.

(v) A delicate thread, as of a cobweb. Film camera; a photographic came-a arranged to carry a real of film: distinguee from a plate camera, which carries a limited number of sensitized plates.

Film cutter, one who cuts and arranges the strips of film into one continuous chain.

Film pack, several sheets of photographic film in a frame that fits in the back of a camera.

Film star ; an actor or actress having a leading part in motion pictures.

Sound film ; a motion-picture film which carries a sound track. Film, v.t.; films, pt., pp., filming; per. 1. to

(ii) To take a photograph of,

(iii) To make a motion picture of, as, they filmed the story.

42. Learned Counsel for the petitioner submits that taking the definition of the film, the magnetic tape as used in the VCR cannot be considered as film at all.

43. He has also referred to the meaning of "tape" as defined in this very Dictionary at P. 1864 which reads as under;-

"Tape, n. (ME. tape, tape; AS. tape, a fillet.)

(i) A strong, narrow, woven strip or cotton, linen, etc. used to bind seams in garments, tie bundles, etc.

(ii) A narrow strip or band of steel, paper, etc.

(iii) A strip of cloth stretched between posts as the finishing line of a race track.

(iv) A thin plastic ribbon coated with a suspension of ferromagnetic iron oxide particles, used as a storage medium for recording electrical signals, as from sound, video material, digital computer data, etc. in full, magnetic tape.

(v) Shortened form of adhesive tape" friction tape, ticker tapes, tape measure, etc.

44. He submits that tape and pin cannot be equated with the normal meaning as defined in Rule 3(d) of the Rules of 1948, should be given to the word "film" as used in Cinematograph Regulation Act and Rules made there under.

45. Learned Counsel for the respondents submitted that it is not necessary that it should be nitrocellulose based as understood with the rapid growth of science. The magnetic tape should also be considered as film. It has further been submitted that the definition given under the Rule of 1948 is a definition given under the Petroleum Act and it should not be applied for the purpose of interpreting the definition of the word "film."

46. Learned Counsel for the respondents further submitted that though the Rules of 1948 have been given the title of Cinematograph Film Rules, 1948, but the purpose is completely different. Under the Petroleum Product Act, the definition has been given for the purpose that if any film, which is stored or transported or exported, should be governed by the provisions of the Petroleum Act. They further submit that there may be different varieties based on different nature of their production.

47. Learned Counsel for the respondents further submit that the interpretation should be given to the word "film" in a wider way and it should include any image, picture, movie, screening and television set also. I do not agree with the submissions made by the learned Counsel for the respondents and I think that the proper meaning of the word of "film" should be that given under the Cinematograph Rules, 1948. This definition is exhaustive in nature and it excluded any other wider interpretation other than given under Rule 3(g) of the Rules of 1948.

48. Taking the aid of the definition as provided under the Rules of 1948, I hold that the Cinematograph films should be construed in the same way as is defined u/s 3 of the Rule 1948 In VCR, magnetic tapes are used which are not nitrocellulose base and for this reason, I hold that the magnetic tapes, as used in the VCH for the purpose of exhibition, does not fall within the purview of Cinematograph Act of 1952 as well as Cinema Regulation Act J 952.

49. The next question, which is before me is about the use of the film.

50. Learned Counsel for the petitioner submits that he is using the Video tapes only for the purpose of entertainment by way of ancillary means to his customers and is only taking the charges. He further submits that it cannot be termed as an exhibition. I do not agree with the submissions made by the learned Counsel for the petitioner.

51. I hold that the Video cassettes are exhibited to the public, which is public place.

52. The next question is about the violation of the principles of natural justice. I agree with the learned Counsel for the petitioner that the Collector should have passed the order, after giving an opportunity of hearing. A full hearing has been given by this Court for a days together and the question of fact is not involved and for this reason, no prejudice is caused to the petitioner. I do not think it advisable to remand the case on this ground.

53. I hold that the petitioner cannot exhibit the film as defined under Rule 3(g) of the Cinematograph Rules, 1948 by any means, including the VCR. However, the petitioner is entitled to exhibit the Video cassettes, which are based on magnetic tapes and which do not fall within the purview of Rule 3(g) of the Cinematograph Rules.

54. With this direction, I set aside the order (Annexure 3) of the Collector, and accept the writ petition. The parties are left to bear their own