

(1991) 03 MAD CK 0063

In the Madras High Court

Case No : Writ Petition No's. 4264, 4843 etc. and 5996 of 1990

N. Venkatesan and 35 others

APPELLANT

Vs

The Deputy General Manager, Tele-Communications, Erode
and Others

RESPONDENT

Date of Decision : 07-03-1991

Acts Referred:

Cinematograph Act, 1952 — Section 10

Constitution of India, 1950 — Article 19(1)(g)

Tamil Nadu Entertainments Tax Act, 1939 — Section 14

Tamil Nadu Exhibition of Films on Television Screen Through Video Cassette Recorders
(Regulation) Act, 1984 — Section 10(2), 10(2), 15, 17, 18

Telegraph Act, 1885 — Section 21, 3, 3(1), 4, 7

Citation : (1991) 03 MAD CK 0063

Hon'ble Judges : S. Ramalingam, J

Bench : Single Bench

Advocate : G. Subramaniam, B. Kumar, R. Gandhi and K. Ravichandra Babu, for the Appellant; R. Krishnamurthy and R. Muthukumaraswamy for Impleaded Parties and Mr. V. Sridevan, Government Pleader, Messrs. K. Balasubramaniam, Government Advocates J.R.K. Bhavanantham, K. Sridhar, Addl. Govt. Pleader N. Bhaskaran, V. Jeevagan, P.R. Raman, P.S. Raman, P. Selvaraj, R.S. Venkatachari, M. Sekar, P. Suryaprakasam, Acting Central Government Standing Counsel, for the Respondent

Judgement

S. Ramalingam, J.—In these batch of writ petitions wherein the prayer is for the issue of a Writ of Mandamus to for bear the respondents from. In any way interfering with the petitioners" right and lawful avocation of Cable Television, i.e., relaying Video. Cassette films/programmes through cables to the private subscribers for private viewing only in their households. The Director General of Police, the Tele communications Department, the District Collectors representing the State and the Commercial Taxes Department are the respondents.

2. The averments in the affidavit of the petitioners are as follows: The petitioners are Cable Television Operators. They are piping through cable, Vide-Cassette

programmes to their subscribers to be viewed by them in their respective houses. According to them, this activity is a lawful trade or business and it does not require any licence or permission under any provision of law. They also claim that they have a fundamental right under Art 19(1)(a) of the Constitution of India to exhibit films which is a form of expression and also under Art. 19(1)(g) of the Constitution to carry on any trade or business. They claim to have obtained permission from Municipalities and Panchayats to lay underground cables crossing public thoroughfares. Besides showing films of entertainment value, they also show Video films on tailoring, cooking, handicrafts etc. They emphatically state that they are not using Dish Antenna; nor are they receiving signals through Satellite. They would also plead that they do not re-exhibit Doordarshan programmes. According to them, there is no exhibition of films for public viewing and the members of the household alone are entitled to view the films transmitted through cables and no outsider would be permitted to view such films. They state that they applied to the licensing authority under the Tamil Nadu Cinemas (Regulation) Act but they were informed that no licence is contemplated for Cable Television under the said Act. They applied to the Telecommunications Department for a licence but they were informed that a licence is needed only for working a Dish Antenna or for laying of cables across the public roads and therefore the petitioners are not required to take out a licence under the Indian Telegraph Act as long as their cables do not cross public roads.

3. It is their further case that the Video Cassettes which are used by them are only authorised copies and they have been cleared by the Censor Board. In paragraph 18 of their affidavit, the petitioners state as follows:

The petitioners further state that notwithstanding above, certain Video-Cassette library owners and Cinema theatre operations under apprehension that a Cable T.V. may reduce their earnings have been agitating that the Cable T.V. has to be stopped. It is at the instance of such theatre owners Video library owners, Police have been acting in a manner that amounts to a serious abuse of law and harassment. There have been instances in which the Cable T.V. Operators have been arrested and kept in the Police lock up for a prolonged period of time The petitioner states that inspired advertisements are being given which warned the subscribers as though they are committing an offence under the Act if they subscribe or become members to view the Video Cassette programmes through Cable Television. It is because of this, the petitioners herein are compelled to safeguard their rights and to prevent the police harassment.

In paragraph 19, it is stated as follows:

The petitioner also states that they have no objection to take out any licence or permission and subject themselves to such regulatory procedure if any laid down by the competent authority under any of the statutory provisions. But their fundamental right of dissemination of knowledge with a right to carry on an

avocation cannot be prohibited or forbidden.

4. Kovai, Periyar, Nilgiris District (Compounding) Cinema Theatre Owners Association represented by its President, Mahalakshmi Talkies rep. by its Proprietor, South India Film Chamber of Commerce represented by its Honorary Secretary, Abirami Touring Talkies. Dindigul. The South Indian Video Chamber of Commerce represented by its President, the Tamil Nadu Film Exhibitors Association represented by its General Secretary, the Coimbatore Film Distributors Association represented by its President, Salem Dharmapuri District Film Distributors Association represented by its President and Sridevi Home Box Office, a proprietary firm, Madras-34 represented by its President have got themselves impleaded as respondents in these batch of writ petitions.

5. While the petitioners state that as Cable T.V. Operators they are not violating the provisions of any enactment, the contesting respondents state that the petitioners by operating Cable T.V. are violating the provisions of the Tamil Nadu Exhibition of Films on Television Screen through Video Cassette Recorders (Regulation) Act, 1984 (hereinafter referred to as the Tamil Nadu Act 7 of 1984), the Indian Telegraph Act. 1885, the Cinematograph Act, the Tamil Nadu Cinemas (Regulation) Act, 1955, the Copyright Act and the Tamil Nadu Entertainment Tax Act.

6. Tamil Nadu Act 7 of 1984: The explanatory statement of the Tamil Nadu Act 7 of 1984 is as follows:

It has been brought to the notice of the Government that cinematograph films are exhibited on Television screen through Video Cassette Recorder resulting in loss of entertainment tax. The Government have decided to regulate the exhibition of films through Video Cassette Recorders. The Government have also decided to regulate the keeping of Video Libraries. The Ordinance seeks to provide that no person shall give any exhibition of film on Television screen through Video Cassette Recorder elsewhere than in licensed places or keep any Video Library except under and in accordance with a licence granted under the Ordinance. The licensing authority will be the Commissioner of Police in the City of Madras and the Collectors in the Districts. No license will, however, be necessary for purposes of any exhibition of films on Television screen through Videos Cassette Recorder for domestic purposes, to the family members of the household only.

Any person giving an exhibition of film on Television screen through Video Cassette Recorder or keeping any Video Library without a licence under the Ordinance shall be punishable with imprisonment which may extend to one year and shall also be liable to fine. The offence is made cognizable. Films exhibited in contravention of the provisions of the Ordinance are liable for confiscation.

In the case of a person giving an exhibition of film on Television screen through Video Cassette Recorder or keeping any Video Library immediately before the date of the commencement of the Ordinance, he should obtain a licence within a

period of four weeks from the date of such commencement.

The Ordinance contains other incidental and ancillary provisions.

7. S. 2(1) of the Act defines "Cinematograph" as including any apparatus for the representation of moving pictures or series of pictures. S. 2(5) defines "place" as inclusive of a house, building, tent and any description of transport, whether by water, land or air. A "Video Cassette Recorder" is defined in S. 2(6) as meaning a cinematograph for the purpose of giving cinematograph exhibition of film recorded on Video cassette tape. S 3 of the Act on which the main arguments were advanced is as follows:

S. 3. Exhibition of film to be licensed?(1) (a) Save as otherwise provided in this Ordinance no person shall give an exhibition of film on Television screen through Vide Cassette Recorder?

(i) except under and in accordance with a licence granted under S. 6 read with S. 5 of this Ordinance; and

(ii) elsewhere than in a place for which permission has been granted under S. 7 read with S. 5 of this Ordinance.

(b) Where, in respect of any place, a licence has been granted under this Ordinance or exhibition of film on Television screen through Video Cassette Recorder, no business other than the exhibition of film on Television screen through Vide Recorder shall be carried on in such place, by any person and at any time.

(2) Nothing contained in clause (a) of sub-S.(1) shall apply to any exhibition of film on Television Screen through Video Cassette Recorder for domestic purposes to the family members of the household only.

(3) No person shall be eligible for applying for a licence under this section, if he has been convicted of an offence under clause (a) of sub-S.(1) of Cl.(b) of sub-S. (1) of S. 14 of the Tamil Nadu Entertainment Tax Act 1939 (Tamil Nadu Act 10 of 1939) unless a period of two years has elapsed since his conviction.

8. It is the case of the respondents that the petitioners would come under S. 3(1) of the Act as they have not obtained a licence under S. 6 read with S. 5 and as no permission under S. 7 read with S. 5 had been obtained, they are prohibited from giving exhibition of film on television screen through Video Cassette Recorder. In other words, they would state that a person can give an exhibition of film on Television Screen through Video Cassette Recorder only if he had obtained a licence as contemplated under S. 3 and in so far as the petitioners have not obtained any such licence, their action in giving exhibition of the film would attract the penal provisions under the Act, namely, S. 15.

9. It is not in dispute that the petitioners use a Video Cassette Recorder. A Video Cassette is played in this Video Cassette Recorder. The out coming signals are transmitted through cables to different households called "subscribers" and these

signals are received by the subscribers through the Television apparatus maintained by them. This combined system of employing a Video Cassette Recorder, a Video Cassette, a Network system of cables and the receiving apparatus, namely, a Television set results in exhibition of films on Television Screen through Video Cassette Recorder, But, what is contended on behalf of the petitioners is that they are saved or protected by sub-S.(2) of S. 3 which may once again be extracted.

3(2):?Nothing contained in clause (a) of sub-S.(1) shall apply to any exhibition of film on Television Screen through Video Cassette Recorder for domestic purposes to the family members of the household only.

10. It is the case of the petitioners that the exhibition of film on Television screen through Video Cassette Recorder is for domestic purposes to cater to the needs of the family members of the household only and is not for exhibition in a public place. It is further contended that merely because the cable network covers a plurality of houses, it would not cease to be domestic viewing; nor would it become any exhibition to the public. The petitioners rely on the decision in *Entertaining Enterprises, Madras and Others Vs. State of Tamil Nadu and Another*, .

11. In the above mentioned decision, there was a challenge to the validity of Tamil Nadu Act 7 of 1984. The main argument there was that a Video Cassette would also come under the definition of "cinematograph" and that "cinematograph" would come only under Entry 97 of List I of the VII Schedule of the Constitution and under the legislative entry "cinemas" in List 2, Law cannot be made governing Video Cassettes. This argument was not accepted by the Court and it was held that the word "cinemas" is comprehensive enough to include Video Cassettes also. It was also held that Regulations relating to the running of places for exhibition of films on Television screen through Video Cassette Recorders as well as grant of licences for the running of Video Libraries could be made by the State under Entry 33 of List 2 and also under Entry 26 of List 2.

12. S. 9(2) and S. 10(2) of the Tamil Nadu Act 7 of 1984 were challenged. S. 9(2) states that every person keeping a Video Library licensed under that Act shall, in respect of each film in his possession, produce when demanded by an officer authorised by the Government in this behalf, a letter of consent from the person who is the first owner of the copyright of the cinematograph film under S. 17 of the Copyright Act, 1957 (Central Act XIV of 1957) and in case such copyright has been assigned under S. 18 of the said Act, from the assignee of such copyright. S. 10(2) of the Act states that no person licensed under that Act for keeping a Video Library shall sell, let to hire, distribute, exchange or put into circulation in any manner whatsoever any film other than a film which has been certified as suitable for public exhibition by the authority constituted under S. 3 of the Cinematograph Act, 1952. This Court struck down both S. 9(2) and S. 10(2) of the Act. It was held that when a householder on hiring a Video Cassette

from a Library feeds it into a Video. Cassette Recorder in his house and views the film on the Television screen, no question of public exhibition is involved and what takes place is only a private viewing within the precincts of a home and consequently, in respect of such films, no question of violation of the Copyright Act or Cinematograph Act arises.

13. The petitioner's learned counsel placed strong reliance upon the observations contained in the above judgment on the question of home viewing as contrasted from public exhibition to contend that even when the signals are received by a householder through cable network system, what takes place is only home viewing and therefore S. 3(2) of Tamil Nadu Act 7 of 1984 would come to the aid and no licence under S. 3 of the said Act is needed. The learned counsel relied on the decision in *Restaurant Lee v. State* AIR 1983 M.P. 146. The petitioners in that case had installed in their restaurants Video Cassette Recorder and Television sets and with the help of these, the customers coming to their restaurants were shown motion pictures by playing back pre-recorded cassettes of movies at particular timings. S. 3 of the Madhya Pradesh Cinemas (Regulation) Act states that no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under that Act or otherwise than in compliance with any conditions and restrictions imposed by such licence. The Court held that such public exhibition of video films without a license violative of the M.P. Cinemas (Regulation) Act. But it was observed as follows:

S. 3, as already been prohibits the exhibition by means of a cinematograph elsewhere than in a place licenced under the Act. A "place" is defined by S. 2 (b) to include a house, building, etc. The restaurants of the petitioners came 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 S. 3 has to be understood. For examine, 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 S. 3.

14. Mr. G. Subramaniam, learned Senior Counsel for the petitioners, therefore, would contend that in the instant case also the movie is seen in one's own residence and the audience is restricted to the family members and therefore it is only a home viewing protected by S. 3(2) of Tamil Nadu Act 7 of 1984.

15. Mr. Krishnamurthy, the learned Senior Counsel for some, of the impleaded parties and the learned Government Pleader would submit that the judgment in *Entertaining Enterprises, Madras and Others Vs. State of Tamil Nadu and Another*, has been stayed by the Supreme Court. He would further plead that the validity of Tamil Nadu Act 7 of 1984 was challenged before this Court but the validity of the Act has been upheld inclusive of S. 3(1) and (2) and only Ss. 9(2)

and 10(2) have been struck-down and consequently, S 3(1) of the Act is operative and in so far as the petitioners exhibit films without authority, they are liable to be punished under S. 15 read with S. 17 of the Act. He would state that the observations of the Division Bench of this Court in *Entertaining Enterprises, Madras and Others Vs. State of Tamil Nadu and Another*, holding that there is only home viewing and not any public exhibition in the case of a customer borrowing a Video Cassette from library and seeing the film in his own house may not amount to public exhibition will not be applicable to the facts of the present case because in the present case a third party, namely, a Cable T.V. Operator puts into transmission the signals which amounts to exhibition and what is so exhibited by him is seen in several households which have the facility of a cable connection and therefore it is not a simple case of a person seeing a film sitting in his own house through a V.C.R. and T.V. installed in his house. He contends that Video Libraries come under S. 4 of Tamil Nadu Act 7 of 1984 whereas cable network system would come under 5.3 of the said Act. He would plead that in running a Video Library, no exhibition per se of a film is made. If a Video Cassette is merely lent or circulated to members it would not amount to exhibition by the Video Libraries. Since a Video Library does not exhibit, the running of a Video Library would not come under S. 3 of the Act but is governed only by S. 4. He seeks to distinguish the decision in *Entertaining Enterprises, Madras and Others Vs. State of Tamil Nadu and Another*, by stating that unlike a Cable Network System which would come under S. 3, a Video Library not being an exhibitor and the only place where the exhibition takes place being within precincts of the house of a person and there being no public viewing or public exhibition, the Division Bench judgment, referred to above, is inapplicable to the instant case. He would rely on the decision of a single Judge of the Bombay High Court in *Garware Plastics & Polyester Ltd. v. M/s. Telelink* AIR 1989 Bom 331. The facts noticed in that case were as follows.

16. The persons who obtained video cassettes of cinematograph films from the market show video films over a Cable T.V. network which they have set up in various houses, apartments or localities for a fee which they call "maintenance charges". Any person whose T.V. set is connected to such a Cable T.V. network can, by payment of certain charges have the benefit of viewing in his home T.V. set video films shown by the operators on their Cable T.V. network. The point that came up for consideration was whether by showing video films over Cable T.V. network to various subscribers, the operators were broadcasting video films to the public and thereby infringing the copyright of the film producers. It was contended by the Cable T.V. Operators that by means of a Cable T.V. network a film is shown only inside the private homes of various subscribers, that it may be watched by the members of the subscriber's household or his guests and that such a viewing cannot be considered as broadcasting to the public. The Court noticed the fact that the Cable T.V. operators did not have any authorisation from the owners of the copyright in cinematograph films to broadcast their films. Relying on the observation of McCardie, J., in *Messenger v. British Broadcasting*

Company Ltd. 1927 (2) K.B. 543, the single Judge of the Bombay High Court held that instead of gathering the audience in a theatre, the Cable T.V. Operators, by modern technology are showing the film to that audience in their homes which would amount to communication to the public. In other words, they "broadcast" or "exhibit". It was further held that the viewers are residents in different apartments or houses who are in no way connected with each other except by Cable. It may be that in some of the homes members of the household will watch the film together. But this does not mean that the entire audience taken together are members of a common household or are family members. They can only be viewed as a portion of public. It was also held that an audience which pays for watching the film cannot be considered as a domestic audience of the person broadcasting the film.

17. The above judgment of a single Judge of the Bombay High Court was taken up in Appeal but it was affirmed by a Division Bench of that High Court in Appeal Nos. 165 and 179 of 1989 dated 4-6-1990. The Bench also posed the question whether by showing a video film over a Cable T.V. Network to various subscribers the Cable T.V. Network owners are broadcasting video films to the public. The answer to this question was in the affirmative stating that to hold otherwise would be to ignore the substance of the matter and the object and intendment of the Act.

18. The question for consideration in the instant case is whether the Cable T.V. System is protected by sub-S.(2) of S. 3 of Tamil Nadu Act 7 of 1984. Though at the time when this enactment was made Cable T.V. System was probably not in contemplation of the law makers, yet, if the words employed by them in the enactment are capable of being understood as applicable to a developed technology of Cable T.V. System and if the words of the section are clear and unambiguous, then, no special rule of inter pretension or construction is attracted. The words employed in the section have to be given their full meaning, scope and ambit. S. 3(1) is negatively worded and by so wording it, it is made more emphatic. It begins by stating that "no person shall give an exhibition of film on Television screen through Video Cassette Recorder" unless he has obtained a licence under that Act. This enactment being comprehensive dealing with every facet of exhibition of film on Television through Video Cassette Recorder, the newly innovated system of transmission of messages through cables to a Television set by playing a Video Cassette in Video Cassette Recorder would necessarily come within the purview of Tamil Nadu Act 7 of 1984. Therefore, unless one is given the benefit of sub-S.(2) of S. (3) of the Act, the employment of such a Cable Network System would attract the penal provisions under the Act.

19. The case of the petitioners in this context is that the members of a household are viewing the film on their own television screen which is received through a Video Cassette Recorder and therefore it should be held that such exhibition is for domestic purpose to the family members of the household.

20. In *Balwinder Singh Vs. Delhi Administration and Others*, a Division Bench held as follows:

S. 10 of the Cinematograph Act prohibits any one to give an exhibition by means of cinematograph elsewhere than in a place licensed under Part III of the Act and then also in accordance with and in compliance with any conditions and restrictions imposed in the licence. The crucial words in the section are "shall give an exhibition". Giving of an exhibition will be different from viewing a programme received on a television set by public transmission or with the aid of an apparatus like a video. The distinction between viewing and exhibiting is obvious. A person who sees a film views it. A person who makes it possible for others to see a film exhibits it or gives an exhibition of the film. A person is permitted to give an exhibition only in a licensed premises and that also in accordance with the conditions of the said licence. He cannot give an exhibition anywhere he likes though he may be the owner of the premises or a tenant of the premises. A family owning television and a video does not give an exhibition. It views a film or the transmission on an apparatus (A.I.R. 1983 MP 146 and AIR 1984 Bom. 24) Rel. on.

21. Adapting the above reasoning, it can be seen that in the instant case the person who gives the exhibition is the Cable T.V. Operator, and the person who views the exhibition is a subscriber in his own house. S. 3(2) of Tamil Nadu Act 7 of 1984 saves only such of those exhibitions made in a household to the family members for domestic purposes. In other words, the exhibition must take place within the precincts of the house and the exhibition must be viewed only by members of that family. The subsection does not contemplate an exhibitor who is an outsider employing instruments in a place outside the house of the subscriber who by such exhibition transmits signals through Cables.

22. In the decision in *Garware Plastics and Polyester Ltd. and Others etc. Vs. Telelink and Others etc.*, the Court rightly held that a Cable T.V. Operator broadcasts within the meaning of the copyright Act and unless such broadcast is authorised, he will be violating the provisions of the Copyright Act. The defence advanced on the ground that the viewing is by the members of the household in a home and therefore there is no broadcast was repelled as the word "broadcast" is defined to mean communication to the public by any means of wireless diffusion, whether in any one or more of the forms of signs, sounds or visual images or by wire and includes a rebroadcast. When such broadcast is made of signals to be received as visual images on a Television screen it is familiarly described as "telecast".

23. Here what the Cable T.V. Operator does is to exhibit a film through V.C.R. to several households who are members of the public, the only connection between them being the "Cable network" sub-S.(2) of S. 3 does not cover such an innovation of a Cable Network System; nor was it ever intended to cover the same. The conclusion is that the petitioners by transmitting signals/images by employing a V.C.R. and Cable Network System are not saved by sub-S.(2) of S. 3

but are governed by S. 3(1) of Tamil Nadu Act 7 of 1984 and therefore they are debarred or prohibited from employing such means for transmission of signals.

24. Indian Telegraph Act, 1885:-The respondents also contended that the petitioners are committing violation of S. 4 of the Indian Telegraph Act by employing an apparatus for transmission of signals without obtaining a licence under S. 4 of the Indian Telegraph Act.

25. It is also necessary to refer to the decision in Ramakrishna Dish Antenna System Vs. The Deputy Superintendent of Police, Markapur and Others, . The question that arose for consideration there was whether the user of a Dish Antenna or a Cable Network required licences under the Indian Telegraph Act 1885, read with Wireless Telegraph Act 1933. The Court referred to the Radio, Television and Video Cassette Recorder Sets (Exemption from Licence Requirement) Rules, 1985 made under S. 7 of the Indian Telegraph Act and S. 10 of the Wireless Telegraphy Act. R.2 of the Radio, Television and Vide Cassette Recorder Sets (Exemption from Licensing Requirements,) Rules states that radio, television and video cassette recorder sets shall not be wireless telegraphy apparatus for the purposes of the Indian Wireless Telegraphy Act, 1933. However, R.4 requires a licence to be obtained in case where a Dish Antenna is used. It was in that context, the Court held as follows:

So far as the common T.V. and V.C.R. owned by all the persons are concerned, they are to be used merely for receiving the images broadcast by the Doordarshan. If their use is confined only to receive these images and the common T.V., V.C.R., are in no way connected to the Dish antenna, they squarely fall under R. 2 and 3 of the Radio, Television and Video Recorder sets (Exemption from Licensing Requirements) Rules, 1985 and there is no need to to obtain any licence under the Indian Telegraph Act. 1885 or the Indian Wireless Telegraph Act of 1933 or the Licensing of Wireless Receiving Apparatus Rules, 1985 or the Indian Wireless Telegraphy (Possession) Rules. 1965 or in case of dealers, the Commercial Broadcast Receiver Licensing (Dealers) Rules, 1965.

But once the common T.V. and V.C.R. are connected to the Disc (Dish antenna, the amplifier and the cable system, they lose the benefit of the above exemption under R. 2 and 3 and squarely fall under R.4. Inasmuch as it is not disputed that the Disc antenna (Dish antenna) receives or is capable of receiving not merely the waves transmitted by the Transmitter but also the waves transmitted by the satellite, the common T.V., V.C.R. are to be deemed, under R.4, to be "Wireless Telegraphy Apparatus" for the purposes of the Indian Wireless Telegraphy Act, 1933 (17 of 1933) because no person can establish, maintain or work or possess or deal in such T.V. or V.C.R. sets without a licence from the Central Government under S. 4 of the Indian Telegraph Act, 1865 or the Indian Wireless Telegraph Act, 1933 or the Wireless Telegraphy (Possession) Rules. 1965 he is a dealer, the licence under the Commercial/Broadcast Receiver Licensing (Dealers) Rules, 1965. Further even if a licence is obtained by users under Form B or by dealers in Form C, they have to give an undertaking in Form A (a) that they shall not

transmit the T.V. programme by means of such T.V., V.C. Rs. for monetary or other gain and (b) that they shall not transmit the T.V. programmes. As per condition No. 1 and Condition No. 11 of Form B, the license is only for receiving the waves or images but not for transmitting them.

26. Dealing more specifically with Cable T.V. Network System without a Dish Antenna, the Court held as follows:

So far as the transmission of prerecorded cassette is concerned, this is again done by use of the commonly owned V.C.R. and T.V. and the cable net work. Under R. 2 and 3 of the Exemption Rules of 1985 above referred to what are exempt are only the V.C.R. and T.V. used for personal use without any further transmission. But, once the cable net work is used for transmission of these images, sounds from pre-recorded cassettes, though R.4 of the exemption rules does not come into play so far as images received by using the Disc antenna, still the common T.V., V.C.R. come under "Wireless Telegraph Apparatus" under the Indian Telegraph Act, 1933 because no person can establish, maintain or work or possess such sets without licence.....

26a. S. 3(1) of the Indian Telegraph Act, 1885 defines "telegraph" as follows:

"Telegraph" means any appliance, instrument, material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature by wire, visual or other electro-magnetic emissions. Radio waves or Hertzian waves, galvanic, electric or magnetic means.

S. 4 of the Indian Telegraph Act states that within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs. The proviso states that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India.

27. In the decision referred to above, the Andhra Pradesh High Court, after holding that a Cable Network System employs an apparatus or instrument capable of transmission of images by wire, further held that without a licence under the proviso to S. 4 of the Indian Telegraph Act, no person can operate a Cable T.V. system. The Court further held that the exemption under R. 2 and 3 of the Radio, Television and Video Cassette Recorder Sets (Exemption from Licensing Requirements) Rules, 1985 would be available only to an individual for combining the V.C.R. and T.V. in his own house for viewing by the members of his family films and other programmes. In paragraph 27, the Court held as follows:

So far as the transmission of pre-recorded cassettes is concerned, this is again done by use of the commonly owned V.C.R. and T.V. and the cable network. Under R. 2 & 3 of the Exemption Rules of 1985 above referred to, what are exempt are only the V.C.R. and T.V. used for personal use without any further transmission.

In other words, the learned Judge held that for transmitting images through wire

by an apparatus which may be called "telegraph", a licence under S. 4 of the Indian Telegraph Act is a must and a Cable T.V. Operator would be violating the said section if he does not obtain such a licence.

28. In trying to distinguish the above decision, Mr. G. Subramaniam, learned Senior Counsel for the Petitioners, would contend that once the V.C.R./T.V. set is not deemed to be a wireless apparatus by reason of the Radio, Television and Video Cassette Recorder Sets (Exemption From Licensing Requirements), Rules, 1985, S. 4 of the Indian Telegraph Act is not attracted. He would submit that the observation of the Andhra Pradesh High Court in paragraph 27 of the judgment in Ramakrishna Dish Antenna System Vs. The Deputy Superintendent of Police, Markapur and Others, that the V.C.R. and T.V. Network are exempt only so long as they are used for personal use but such exemption would cease to apply when there is a further transmission is in correct. R.2 of the Radio, Television and Video Cassette Recorder Sets (Exemption from licensing Requirements) Rules, 1985 states that the radio, television and video cassette recorder sets shall not be wireless telegraphy apparatus for the purposes of the said Act, namely, Indian Wireless Telegraphy Act, 1933.

29. Mr. Suryaprakasam, learned counsel appearing for the Tele communications Department relying on R.472 of the Indian Telegraph Rules states that any person may without a licence establish, maintain and work a telegraph (not being a wireless telegraph) within the limits of a single building, compound or estate provided that no telegraph line pertaining to the telegraph shall pass over or under a public road. He states that the question of regulating the employment of a Cable T.V. network is under the contemplation of the Ministry and suitable rules would be made expeditiously regulating the Cable T.V. Network System. In view of this statement, it is not necessary, for the present, to enquire whether the petitioners have violated or are violating the provisions of the Indian Telegraph Act. Similarly, it is also not necessary at this juncture to decide the question whether the petitioners are guilty of violating the provisions of the Copyright Act. This question requires investigation into the fact whether the petitioners are exhibiting films for which assignment of the copyright had been obtained or not and that would depend upon the films that are actually exhibited by the Cable T.V. Network Operators and no blanket order Could be issued stating that the petitioners are either guilty of violation of the provisions of the Copyright Act or are immune from the provisions of the Copyright Act. Suffice it to state that if the Cable Network Operators exhibit films for which they do not have a lawful right under the copyright Act, then, they would certainly be violating the provisions of that Act.

30. Having come to the conclusion that by operating a Cable T.V. Network System, the petitioners are not protected by sub-S.(2) of S. 3 of Tamil Nadu Act 7 of 1984, the only conclusion is that the petitioners are not entitled to the relief which they have sought by way of a mandamus. The writ petitions are consequently dismissed. However, taking a pragmatic view of the matter,

especially in the light of the allegations made in the affidavits that the petitioners have invested a huge amount of money in installing and in working the Cable T.V. Network System, there will be an order in these writ petitions directing the status quo to be maintained as it was during the pendency of these writ petitions for a period of eight weeks from this date: In the meanwhile, it is for the petitioners to apply for exemption under S. 21 of Tamil Nadu Act 7 of 1984 which application, if made, would be considered and disposed of by the Government expeditiously.

31. When a specific question was put to the learned Government Pleader as to whether the Government is contemplating the making of regulations to govern the grant of licences to the Cable T.V. Network Operators, the learned Government Pleader informed the Court that he will write to the Government about the need or necessity to make appropriate provisions in the Tamil Nadu Act 7 of 1984, for that purpose. This statement is recorded.

32. W.P. No. 4525 of 1990 is filed by the Kawai Periyar, Nilgiris District (Compounding) Cinema. Theatre Owners Association represented by its President K.C. Thangamuthu for a mandamus to direct the police to take action against the Cable T.V. Operators for the alleged violation of the provisions of the Tamil Nadu Exhibition of Films on Television Screen through Video Cassette Recorders (Regulation) Act, 1984 (Tamil Nadu Act 7 of 1984).

33. Mrs. Nalini Chidambaram, the learned Senior Counsel for the petitioner in this writ petition (W.P. No. 4325 of 1990) would contend that the running of Cable T.V. Network System is violative of Tamil Nadu Act 7 of 1984 and therefore, respondents 1 to 4 in the writ petition should be directed to take action for prosecuting the said operators. In view of the fact that the batch of writ petitions filed by the Cable T.V. Network Operators have been dismissed with the above observation and as it has been found that the running of Cable T.V. Network is violative of Tamil Nadu Act 7 of 1984, it is for respondents 1 to 4 in this writ petition (W.P. No. 4325 of 1990) to initiate such action as deemed necessary under the provisions of that Act after a period of eight weeks in case the Cable T.V. Network operators do not obtain exemption under S. 21 of the Act in the mean while. The writ petition ordered on the above terms. There will be no order as to cost in all the writ petitions.