
(1992) 03 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12351 of 1989

Parvinder Singh and Others

APPELLANT

Vs

Executive Officer, Municipal Committee and Others

RESPONDENT

Date of Decision : 06-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Radio, Television and Video Cassette Recorder Sets (Exemption from Licence Requirement) Rules, 1985 — Rule 4
Telegraph Act, 1885 — Section 4

Citation : (1992) 102 PLR 498

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : Jaishree Thakur, for the Appellant; Charu Tuli, AAG and Viney Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Harjit Singh Bedi, J.—The petitioners are partners in the partner-hip concern calling Messrs Network Corporation (India) which is running its business at H. No. 18-C Model Town, Phagwara. The firm was set up for the business of showing T. V. programme from pre-recorded Video Cassettes through a cable network and for that purpose the necessary infrastructure was created. It has been averred in the petition that the normal television programmes are broadcast through airwaves by Doordarshan, but cable TV is a facility by which the subscribers are given connections to the television sets of individual subscribers through cables from a common studio. It has been further averred that as the cable, which was to carry signals from the VCR to the T.V. sets, was required to transgress a public street, the firm applied to respondent No. 1, the Executive Officer, Municipal Committee, Phagwara, for permission to dig the road for the purpose of taking the cable from one side of the road to the other. The permission was initially accorded but while the work was under progress, respondent No. 1 issued a notice to the firm (Annexure P-2 to the petition) asking it to stop laying the cable

and to get permission in writing from the District Magistrate, Kapurthala, for continuing with its business. It has been further averred that though no licence/permission was required under the law for doing its business, the firm nevertheless, applied to the District Magistrate, Kapurthala, for the requisite permission. Instead of granting the licence to the firm, respondent No. 2 i.e. the Addl. District Magistrate Kapurthala, addressed a communication to the Joint Secretary to Government of Punjab, Department of Home Affairs and Justice, on 14th September, 1989, Annexure P-3 to the petition, asking for guidance as to how the application made by the firm was to be dealt with. The petitioners have approached this Court for seeking the quashing of Annexure P-2 on the ground that there was no rule nor regulation requiring them to take a licence before carrying on the business of exhibiting pre-recorded cassettes on T.V. through cables.

2. Vide orders of this Court dated 12.12 1989 the Secretary Department of Telecommunications, Government of India, New Delhi, as also the Municipal Committee, Phagwara, were impleaded as respondents 4 and 5. Separate written statements have been filed—one on behalf of respondent No. 1, another by respondents 2 and 3 and yet a third by respondent No. 4. The stand basically taken is that the petitioner-firm was required to obtain a licence before exhibiting its programmes through cable TV as provided by Section 4 of the Indian Telegraph Act, 1885 (hereinafter called the Act of 1885), the Indian Wireless Telegraphy Act, 1933 (hereinafter called the "Telegraphy Act") and the relevant rules published thereunder.

3. The pleadings of the parties being somewhat sketchy, I had initially toyed with the idea of adjourning the case to get better particulars, but the State counsel Mrs. Cham Tuli, Assistant Advocate-General, Punjab, has produced before me a judgment of Andhra Pradesh High Court reported as Ramakrishna Dish Antenna System Vs. The Deputy Superintendent of Police, Markapur and Others, which clearly endorses the stand taken by the respondents.

4. It is to be understood that as per the pleadings the business of the firm is confined to exhibiting programmes through pre-recorded cassettes and there is no allegation from any side that any dish antenna for receiving telecasts from Doordarshan or from a satellite is being used. In view of this admitted position, this judgment is confined to the limited question as to whether a licence is required for the purpose of exhibition on a commercial basis pre-recorded cassettes through a VCR connected to a TV through a cable.

5. The decision of the controversy would hinge on the provisions of the Act of 1885 and the Telegraphy Act. Sections 3(1) and 4 of the Act of 1885 (as amended in 1934) which are relevant are reproduced below :-

"3(1) Telegraph means telephone or other instrument appliance 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

electromagnetic emissions, radio waves or Hertzian waves, galvanic, electric optical or magnetic means

S. 4: Exclusive privilege in respect of telegraphs, and power to grant licence.-(I) Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs :

Provided that the subject to such rules as may be made under this Act, 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.....XX.....XX....."

Section 7 grants power to the Central Government to make rules where sub-clause (aa) of Section 7(2) provides for the nature of enquiry required to be held before the grant or refusal of a licence. The other sections provide for various penalties in case the rules are violated. Sections 2(1), 2(2) and 5 of the Telegraphy Act defines wireless communication as follows :-

"2(1) "Wireless communication" any transmission, emission or reception of signs, signals, writing, images and sounds or intelligence of any nature by means of electricity, magnetism, or Radio waves of Hertzian waves without the use of wires or other continuous electrical conductors between the transmitting and the apparatus :

2(2) "wireless telegraphy apparatus" means any apparatus, appliance, instrument or material used or capable of use in wireless communication, and includes any article determined by rule made u/s 10 to be wireless telegraph apparatus but does not include.....XXX....."

Section 5. Licences :-The Telegraph authority continued under the Indian Telegraph Act, 1885 (13 of 1885), shall be the authority competent to issue licences to possess wireless telegraphy apparatus under this Act, and may issue licenses in such manner, on such conditions and subject to such payments as may be prescribed."

Section 6 thereof provides for offences and penalties in case the provisions of that Act are violated. It will be noticed that the Act of 1885 as amended in 1984, defines telegraph and a very wide definition has been given in order to take within its ambit the various developments in the field of electronics and broadcasting. It is also pertinent to refer to the notification No. G. S. R. 150 (E) issued by the Government of India in exercise of the powers conferred by Section 7 of the Act of 1885 and Section 10 of the Telegraphy Act, by which the rules called "Radio, Television and Video Cassette Recorder Sets (Exemption from licensing requirements) Rules, 1985, were notified. Rules 2 and 3 provide for exemption from securing a licence for the utilisation of the Radio, television and VCR, but rule 4 introduce into the said rules vide notification No. G.S R. No. 926/86 dated 25.10.86 has taken away the exemption in certain cases and is reproduced hereunder :-

"4 Notwithstanding anything contained in Rules 2 and 3, any television set used or capable of being used for the reception of transient images of fixed and moving objects, by the use of special antenna of any type and associated front and converter, direct from satellites operating in Broadcasting Satellite service or fixed Satellite Service, shall be deemed to be wireless telegraphy apparatus for the purposes of the Indian Wireless Telegraphy Act, 1933 (17 of 1933) and no person shall establish, maintain or work or possess, or deal in. such sets without a licence from the Central Government u/s 4 of the Indian Telegraph Act, 1885(13 of 1885) or the Indian Wireless Telegraphy (Possession) Rules, 1965 or the Commercial Broadcast Receiver Licensing (Dealers) Rules, 1965, as the case may be."

It will be seen from a reading of the sections and rule 4 afore-quoted, that licences are required to be obtained with respect to a telegraph or wireless telegraphic apparatus not only which receives or transmits signals in the manner provided in the statute, but which is also capable for being used for the aforesaid purposes. As a matter of fact, it has not been denied that the TV and VCR are covered by "the definition of Telegraph given in Section 3(1) and the Act of 1885 and Wireless Telegraphy apparatus in the Telegraphy Act. It will be seen, therefore, that though rules 2 and 3 of the 1885 have exempted only VCRs and T Vs from the requirements of taking licences, yet vide rule 4 the exemption has been taken away with regard to a television sets or video cassette recorders which are capable of being used for the reception of images through a special antenna. Viewed in this perspective there can be no manner of doubt that the equipment being used by the petitioner-firm is capable of being used for the reception of images through a special antenna and, as such, a licence under the Act of 1885 and the Telegraphy Act is required in the forms set out.

6. In view of what has been stated above, I find no merit in this petition and the same is dismissed with no order as to costs.