

(1983) 04 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 556 of 1983

Restaurant Lee and Others

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 28-04-1983

Acts Referred:

Telegraph Act, 1885 — Section 7

Wireless Telegraphy Act, 1933 — Section 10, 2(1)

Citation : (1983) ILR (MP) 606 : (1983) 28 MPLJ 543

Hon'ble Judges : G.P. Singh, C.J.; K.K. Adhikari, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; R.P. Verma, S.L. Saxena, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.

This order shall also dispose of Miscellaneous Petitions 676, 677, 678, 679, 689, 835, 902, 923, 968, 995, 998, 1008, 1011, 1012, 1013, 1014, 1154 and 1180, all of 1983. The petitioners in all these petitions except M. P. No. 1180 are proprietors of cafes and restaurants in different parts of Madhya Pradesh. They have their association bearing the name Madhya Pradesh Video Vyawasai Sangh. This association is the petitioner in M. P. No. 1180. The petitioners have installed in their restaurants Video Cassette Recorder (VCR) and Television (TV) sets. With the help of these the customers coming to their restaurants are shown motion pictures at particular timings. These timings of the "show" and the pictures are advertised in bigger towns in daily newspapers or on boards. In smaller towns the advertisement is by word of mouth. The customer is ostensibly charged ranging between Rs. -/8/- to Rs. 1.50 for tea or coffee or similar other drinks and/or some snacks. Entry in some cases is by purchase of coupons or tickets. In other cases payment is made against a bill. The motion pictures shown are prerecorded on cassettes of magnetic tape which are relayed by the VCR on TV

screen. The VCR and TV sets of the petitioners are licensed under the Licensing of Wireless Receiving Apparatus Rules, 1965 and the Indian Wireless Telegraphy (Possession) Rules, 1965 which have been respectively made u/s 7, Telegraph Act, 1885, and Section 10, Wireless Telegraphy Act, 1933. The licences held by the petitioners are commercial licences as distinguished from domestic licences. On these facts which were admitted by the learned counsel for the parties during the course of arguments, the common question that arises in these petitions is whether the use of VCR and TV sets by the petitioners in their restaurants in the manner stated above contravenes the provisions of the Madhya Pradesh Cinemas (Regulation) Act, 1952 and the Madhya Pradesh Entertainment Duty Act, 1936.

With the consent of the learned counsel appearing for the parties, return filed by the respondents i.e. the State of Madhya Pradesh and the district authorities in Misc. Petition No. 556 of 1983 has been accepted as return in all the petitions. The Central Circuit Cine Association, Bhusawal, was allowed to intervene in M. P. No. 556 of 1983 and it has filed a separate return.

Before proceeding to discuss the contention raised in these petitions, it is convenient to notice first the relevant statutory provisions. To begin with the Constitution; Parliament has exclusive power to legislate with respect to "Posts and Telegraph, telephones, wireless, broadcasting and other like forms of communication" under Entry 31 of List I of Schedule VII. Parliament has also exclusive power on the subject of "Sanctioning of Cinematograph films for exhibition" under Entry 60 of List I. The State Legislature, on the other hand, has exclusive power to legislate on the subjects of public Order and public health under Entries (1) and (6) of List II. It has also exclusive power with respect to "theatres and dramatic performances, cinemas subject to the provisions of Entry 60 of List I, sports, entertainments and amusements" under Entry 33 of List II. Further, it has also exclusive power under Entry 62 of List II to impose "taxes on luxuries, including taxes on entertainments, amusements, betting and gambling." At the time when the Constitution was framed, television was not introduced in India. With the introduction of television Parliament enacted the Telegraph Laws (Amendment) Act, 1961 to amend the definition of "telegraph" in the Telegraph Act, 1885 and the definition of "wireless communication" in the Wireless Telegraphy Act, 1933 to put the matter beyond controversy that these definitions are wide enough to cover transmission and reception of visual images by television. Section 4 of the Telegraph Act which controls the establishing, maintaining and working of telegraphs enacts that the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs. The first proviso to Section 4 says 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." "Telegraph" is defined by Section 3(1) to mean "any appliance, instrument material or apparatus used for, 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 omissions radio waves or

hertzian waves, galvanic, electric or magnetic means". The Telegraph Act does not control mere possession of wireless telegraphy apparatus. Mere possession is controlled by wireless Telegraphy Act. Section 3 of which provides that no person shall possess wireless telegraphy apparatus except under and in accordance with the licence issued under the Act. Section 5 deals with licences. This section provides that the telegraph authority constituted under the Telegraph Act shall be the authority competent to issue licences to possess wireless telegraphy apparatus under the Act. "wireless communication" is defined in Section 2(1) of the Wireless Telegraphy Act. to mean "any transmission, omission or reception of signs, signals, writing, images and sounds or intelligence of any nature by means of electricity, magnetism or radio waves or hertzian waves without the use of wires Or other continuous electrical conductors between the transmitting and the receiving apparatus. "Wireless telegraphy apparatus" is defined by Section 2(2) to mean "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 telegraphy apparatus." As earlier stated, the Central Government has made the Licensing of Wireless Receiving Apparatus Rules. 1965 in exercise of its powers u/s 7 of the Telegraph Act. Rule 5 of these rules provided that licences shall be issued to persons in such form as may be prescribed by the licensing authority in accordance with the purposes for which they are required. Rule 11 says that a licence shall in addition to these rules be subject to the conditions contained in the licence. The conditions governing licences are contained in Chapter IV of Wireless Licensing Manual issued by the Indian Posts and Telegraphs Department. It appears that there are two types of licences, domestic and commercial. A domestic licence permits the use of the wireless receiving apparatus for receiving programmes and messages transmitted for general reception but the apparatus cannot be used in business premises or in a room jointly used for residential and business purposes or for gain. The commercial licence permits the use of the wireless receiving apparatus in business premises, public places, rooms used jointly for residential and business purposes, or for gain, or for the benefit of passengers or for advertisement in public vehicles on roads or railways "for receiving programmes and messages transmitted for general reception". (Page 32 of the Manual).

To ensure proper control of cinematograph exhibition with particulars regard to the safety of those attending them and to prevent the presentation to the public of improper or objectionable films, the Central Legislature enacted the Cinematograph Act. 1918. Section 3 of this Act prohibited exhibition by means of a cinematograph elsewhere than in a place licensed under the Act. Section 7 dealt with certification of films for public exhibition. As seen above, under the scheme of the Constitution the power to legislate on matters covered by the 1918 Act has been distributed between Parliament and the State Legislatures. The subject of "sanctioning of cinematograph films for exhibition" falls under the exclusive Union List and the subject or "cinema" under the exclusive State List. Parliament, therefore, enacted the Cinematograph Act, 1952 which in its

application to the whole of India excepting the Union Territories, deals only with certification of cinematograph films for exhibition. The Madhya Pradesh State Legislature, in its turn, enacted the Madhya Pradesh Cinemas (Regulation) Act, 1952 which deals with regulation of cinemas and their licences. Section 2(a) of this Act defines "cinematograph" to include "any apparatus for the representation of moving pictures or series of pictures." Section 2(b) defines "place" to include "a house, building, tent, and any description of transport, whether by sea, land or air". Section 3 of the Act enacts that "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." Section 4 makes the District Magistrate the Licensing Authority. Section 5 provides that the licensing authority shall not grant a licence unless it is satisfied that (a) the rules made under the Act have been substantially complied with: and (b) adequate precautions have been taken in the place in respect of which the licence is to be given to provide for the safety of persons attending exhibitions therein. Section 6 empowers the State Government, in respect of the whole State and the District Magistrate in respect of the district or town within his jurisdiction to suspend the exhibition of any film if it or he is of opinion that any film which is being publicly exhibited is likely to cause a breach of the peace. Section 7 deals with penalties for user of a cinematograph or a place in contravention of the provisions of the Act. In exercise of the powers conferred by Section 9 the State Government has made the Madhya Pradesh Cinemas (Regulation) Rules, 1972. These regulations deal with the requirements of obtaining a licence for a cinema. "Cinema" is defined by Rule 3 (c) to mean "any place wherein an exhibition by means of cinematographs is given."

Entertainment duty is levied by the State under the provisions of the Madhya Pradesh Entertainment Duty Act, 1936 which is a law falling under Entry 62 of List II. Section 2(b) of the Act defines "entertainment" to include any exhibition, performance, amusement, game or sport to which persons are admitted for payment. The duty is payable as provided in Section 3 of the rate of 50% in respect of every payment for admission to the entertainment.

The first contention of the learned counsel for the petitioners is that the definition of "cinematograph" in Section 2(a). M. P. Cinemas (Regulation) Act, 1952 on its own terms will not cover VCR and TV sets. It is argued that this construction must also be adopted for the reasons that the subject of VCR and TV is entirely covered by the Telegraph Act, and the Wireless Telegraphy Act which are legislations falling within Entry 31 of List I and that the field being entirely covered by the Central Act if the State Act is construed to include these appliances it will go beyond the legislative competence of the State Legislature.

A VCR is designed to record sound and pictures in both black and white and colour on magnetic tape and then to replay them when required. VCRs contain a tuner to enable the machine to record signals received from the antenna. The

material recorded can then be played back on an ordinary domestic TV set. One can record one show using the VCRs tuner while watching another station using the TV's tuner. VCRs have a digital clock and associated with it a timer so that a show can be recorded when one is in bed or away from the house. VCRs also play back tapes recorded on other machines and non-recorded cassettes of movies. (The Complete Handbook of Video by David Owner Marck Dunton, page 181. When a VCR is used for recording TV broadcast, programme with the help of its tuner on a Video tape, its use makes it come within the definition of "telegraph" in Section 3(1) Telegraph Act and the definition of "wireless telegraphy apparatus" as contained in Section 2(b). Wireless Telegraphy Act. But VCRs which do not have the RF tuner and monitors and are incapable of receiving broadcast programme do not fall within the above definitions and do not need any licence under the said Acts. This matter was examined by the Director General of Posts and Telegraphs who issued a letter No. 16-I/81-BRL dated 31st October, 1981 to the Director, Army Postal Services, and all Heads of Postal Circles explaining this position and laying the guidelines. The Telegraph Act and the Wire-less Telegraphy Act amongst other deal with transmission and reception of radio and TV broadcasts. A VCR is not an apparatus for transmission of broadcasts. It can be used when fitted with RF tuner sections and/or monitors for reception of broadcast programmes and, therefore, such VCRs need broadcast receiver licence. Neither the Telegraph Act nor the Wireless Telegraphy Act cover a VCR when it is merely used for playing back pre-recorded tapes on the TV screen. In these petitions we are not concerned with the use made of VCR and TV sets as receivers of broadcast from TV stations. Indeed, most of the petitioners have their restaurants at places which are not covered by any television station for in our State we have television stations only at Raipur. Bhopal and Indore. In these petitions we are only concerned with the use made of VCR and TV sets for playing back pre-recorded cassetts of movies. Such a use of these appliances is not covered by the aforesaid two Central Acts and the learned counsel is not right in his submission that the entre filed in relation to VCRs and TVs is covered by those Acts.

The question then is: Does a VCR when used for playing back pre-recorded cassettes of movies fall within the ambit of the M. P. Cinemas (Regulations Act? We have already seen that "cinematograph" is defined in Section 2(a) of this Act to include any apparatus for the representation of moving pictures or series of pictures. The definition is wide in terms. It is not restricted to projectors ordinarily used in cinemas for showing photographic film. The inclusive definition is quite general and wide to include any apparatus for the representation of moving pictures or series of pictures. Now when a VCR is used for playing pre-recorded cassettes of moving on the TV screen, it, is certainly used, as an apparatus for the representation of moving pictures or series of pictures and comes within the definition of "cinematograph". Similarly. the activity of the petitioners of exhibiting movies by playing pre-recorded cassettes in VCRs in their restaurants comes within the ban contained in Section 3 of the Act. Section

3 as already seen, prohibits the exhibition by means of a cinematograph elsewhere than in a place licensed under the Act. A "place" is defined by Section 2(b) to include a house, building, etc. The restaurants of the petitioners come within the definition of "place". One of the meanings of "exhibit" is "to show publicly for the purpose of amusement or instruction." "Exhibition" means a public display, i.e. a display to which public is admitted [See Oxford English Dictionary. Vol. III. pages 408-409. and the Random House Dictionary. Unabridged Edition, page 499]. It is in this sense that the word "exhibition" as used in Sec. 3 has to be understood. For example, if a VCR is used for playing a pre-recorded cassette of a movie in one's own residence and the show is restricted to the family members or friends and the public is not admitted the show will not be an exhibition coming within the prohibition of Section 3. The petitioners, however, show the movies with the help of VCR and TV sets in their restaurants where public is admitted. This clearly amounts to exhibition by means of a cinematograph bringing the activity within the ban of Section 3. The petitioners cannot indulge into this activity unless they obtain a licence for their restaurants under the Act.

The Madhya Pradesh Cinemas (Regulation) Act has been enacted in exercise of the powers conferred on the State Legislature by Entry 32 of List II which specifically includes "cinemas". The argument that this entry should be restricted to exhibition of motion pictures from photographic films cannot be accepted. Even ordinarily in making a movie now-a-days the sound which till late 1950s was always recorded photo-graphically is almost universally recorded on magnetic films or tapes (see Chamber's (Encyclopaedia. New Revised Edition. Vol. III, page 584). Further, film makers also use video tapes for checking a shot before the film is processed.

Similarly, film camera is indispensable in many branches of television production. Despite their technological differences film and television are aesthetically very closely linked and will continue to have very close relationship and this relationship naturally extends into the technical field (Encyclopaedia Britannica, Macropaedia. Vol. 18 (15th edition) p. 125). The language used in a Constitution or a modern statute is couched in general terms and it should be construed to include new scientific inventions not known at the time of passing of the Constitution or the Statute. It was on this principle that the Supreme Court in *The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others*, held that electric lines used for purposes of wireless telegraph are telegraph lines within the meaning of Section 34(2) of the Electricity Act, 1910 and Section 3(4) of the Telegraph Act, 1885 even before the latter was amended by the Telegraph Laws (Amendment) Act, 1961. On the same principle it has been held that radio and TV broadcasting are included in the expression "postal telegraphy, telephonic and other like services" u/s 51(5) of the Commonwealth of Australia Constitution Act, 1900 ((*R. v. Brislan: ex parte Williams*, (1936) 54 CLR 262 (Aus) and *Jones v. The Commonwealth* (1964) 112 CLR 206). Indeed, it is on this principle of construction that Entry 31 of List I is construed to include TV

broadcasting which was not introduced in India when the Constitution was enacted Further, unless we include within "cinema" and "cinematograph" showing of a movie from pre-recorded cassette of magnetic tape it may be impossible to apply the law of censorship to such movies for the power of censorship conferred on Parliament by Entry 60 of List I is restricted to "sanctioning of cinematograph films for exhibition " The movies that the petitioners exhibit from VCR and TV are shot on photographic films. The cassettes of magnetic tape of these movies are either sold by producers or pirated in violation of the law of copyright. These cassettes are used in VCRs for showing the movies. We are clearly of opinion that exhibition of movies from VCR and TV in this manner in the petitioners' restaurants falls within the ambit of "cinema", in Entry 32 of List II and is governed by the regulatory provisions of the Cinemas (Regulation) Act.

The problem can be viewed from another angle. A look at Section 5 of the Cinemas (Regulation) Act and the regulations made thereunder will show that what the Act seeks to protect is public order and public health. For example, the licensing authority is enjoined by Section 5 not to grant a licence under the Act unless it is satisfied that the rules have been substantially complied with and adequate precautions have been taken in the place in respect of which the licence is to be given to provide for the safety of persons attending exhibition therein." The regulations made provide, for proper entrance, exits, seating, ventilation, sanitary convenience etc.. to ensure the safety and health of persons who come for seeing the movies. In *The State of Rajasthan Vs. G. Chawla and Dr. Pohumal*, the Supreme Court upheld the validity of the Ajmer (Sound Amplifiers Centre") Act, 1953 under Entries 1 and 6 of List II holding the Act to be a law relating to control of the use of amplifiers in the interests of health and tranquility. The Supreme Court held that amplifiers are instruments of broadcasting and even of communication and fell within Entry 31 of the Union List but it observed: "The manufacture, or the licensing of amplifiers or the control of their ownership or possession, including the regulating of the trade in such apparatus is one matter but the control of the "use" of such apparatus though legitimately owned and possessed, to the detriment of tranquillity health and comforts of others is quite another". The two Central Acts do not contain any provision for licencing of places where a movie may be exhibited with the help of VCR., The requirement of licensing of such places under the provisions of the Cinemas (Regulation) Act apart from coming under Entry 32 of List II also falls within Entries 1 and 6 of List II which deal with public order and public health on the principles laid down in *Chawla's* case.

The learned counsel for the petitioners laid stress that the petitioners held commercial licences for the VCRs installed in their restaurants which entitle them to use these sets for purposes of exhibiting motion pictures on pre-recorded cassettes. This argument is also devoid of any substance. The commercial licence merely permits the use of VCR and TV in business premises "for receiving programmes and messages transmitted for general reception". The licence does not permit the use of VCR and TV for playing pre-recorded cassettes of movies.

As already seen such a use of these appliances is outside the Central Acts and the rules made thereunder. It, was also argued that on a matter covered by the Central Acts the State Act cannot operate. This argument which proceeds on the basis of the doctrine of occupied field has no application here. The Central Acts do not cover the topic of licensing of VCR and TV for exhibiting motion pictures from pre-recorded cassettes nor do they cover the topic of licensing of places where such an activity is carried on. The State Act viz. the Madhya Pradesh Cinema (Regulation) Act which covers licensing of such places thus operates in a field which is unoccupied by the Central Acts. It was also argued that the regulations made under this Act are unsuited to restaurants as they are designed for big cinema halls. This argument also cannot be accepted. It is clear to us that even if some of the provisions of the regulations are not applicable those relating to ventilation, sanitation and precautions for safety of persons coming for the show are clearly applicable. In any case Section 5(1)(b) of the Act which required the licensing authority to see before granting a licence that adequate safety precautions have been taken would be clearly applicable.

The dangers to which people would be exposed if the petitioners are allowed to run their restaurants as mini cinemas without any regulation are obvious. There would be risk to the safety and health of persons visiting those restaurants. Overcrowding outside and inside the restaurants when a popular movie is being exhibited would create problems of public order. Further, many of the proprietors would be tempted to indulge in exhibiting pirated and blue films. Newspaper reports confirm these apprehensions: (see Indian Express of 8th April, 1983). We are, therefore happy to reach the conclusion that the petitioners for exhibiting movies in their restaurants from pre-recorded cassettes require a licence under the Cinemas (Regulation) Act.

The learned counsel for the petitioners also submitted that even if the petitioners were contravening the provisions of the Cinemas (Regulation) Act the respondents had no authority to order the petitioners to stop exhibiting movies from the VCR. In our opinion, there is no merit in this argument. The authorities concerned are only pointing to the petitioners that they are contravening the provisions of the Act as their restaurants are not licenced. If the petitioners do not stop exhibiting the movies. the authorities would be constrained to take penal action under the Act.

Now coming to the question relating to the applicability of the M. P. Entertainment Duty Act. 1936, the argument of the learned counsel for the petitioners is that as the petitioners do not charge any payment for admission to the entertainment and as they only charge for tea, coffee or snacks supplied to the customers, the Act has no application to them. We have already noticed the definition of entertainment contained in Section 2(b) and the provisions of Section 3 which is the charging section. Payment for admission is a prerequisite for imposition of entertainment duty. But it can hardly be disputed that the exhibition of films with the help of VCR and TV in restaurants is an entertainment

if the customers are admitted for payment. The question whether the customers are admitted for payment is a question of fact. It may be that ostensibly there is no charge for admission to see the film but from this alone it cannot be said that persons are not admitted for payment, by the petitioners. If the amount that the petitioners charge is such that it can be said that, the customers are really paying for seeing the film in the restaurant and not for consuming tea, coffee or snacks, it would follow that the customers are admitted for payment and the requirement of the definition in Section 2(b) would be satisfied. If, on the other hand, the customers essentially pay for the drinks and snacks consumed by them it may not be possible to say that they are admitted for payment to the entertainment within the meaning of Section 2(b). The question is mainly one of fact. It is, however, clear-that by charging any amount for tea, coffee or snacks and by not charging separately for viewing the film exhibited in the restaurants the petitioners cannot evade the provisions of the Act. For example, if a restaurant owner charges Rs. 7 for a cup of coffee or tea. it may be obvious that the charge made is essentially and substantially for viewing the film and the charge for coffee is merely a cloak to evade the Act. The authorities whose duty is to enforce the provisions of the Act will examine these questions and the case of each petitioner will have to be separately considered by them. We cannot, therefore, make a general declaration that the petitioners are outside the provisions of the Act.

It was argued by the learned counsel appearing for the intervener that the petitioners exhibit the movies in violation of the Copyright Act, 1957. Sections 13 and 14 of the Act provide for copyright in cinematograph films which means the exclusive right to do or authorise the doing of inter alia the following acts: (i) to make a copy of the film, (ii) to cause the film in so far as it consists of visual image to be seen in public and in so far as it consists of sounds to be heard in public. The Government also holds a right known as the "broadcast reproduction right" which is similar to copyright in any programme which is broadcast by radio diffusion. If newspaper reports are correct the All India Film Producers Council had in April 1980 banned the sale of domestic video rights which has led to increase of video piracy at an alarming rate and some rethinking is going on in the film industry on that point (N. I. Patrika. 20th April. 1983). Be that as it may the question whether the petitioners are violating the copyright, or broadcast reproduction right cannot be answered in the abstract. If in any particular case such rights are violated or are likely to be violated the aggrieved party can take recourse to such remedies as may be open under the law.

The petitions fail and are dismissed but without any order as to costs. Security amount, if any, be refunded to the petitioners.