

(1993) 05 RAJ CK 0012
In the Rajasthan High Court
Case No : C.W.P. No. 522 of 1993

Shiv Cable TV System

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-05-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Rajasthan Entertainments and Advertisements Tax Act, 1957 — Section 4, 6
Telegraph Act, 1885 — Section 10, 17, 3, 4
Wireless Telegraphy Act, 1933 — Section 3, 5

Citation : AIR 1993 Raj 197 : (1993) 1 RLW 621

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Advocate : S.L. Jain and M.K. Garg, for the Appellant; S.K. Vyas, Additional Government Advocate, S.G. Ojha, Dy. Govt. Advocate and Hament Choudhary, A.G.A, for the Respondent

Final Decision : Allowed

Judgement

B.R. Arora, J.—These sixteen writ petitions raise a common question of law and, therefore, they are being disposed of by this common judgment.

2. The petitioners are cable-operators who have installed TV Equipments commonly known as Disc (Dish) Antenna, to receive signals from ASIASAT (Star TV, BBC, ZEE TV, PRIMA, SPORTS, ATN etc.) and are further transmitting these signals as well as the pre-recorded cassettes through cable system to the TV viewers in their houses, who are their subscribers. These petitioners are operating at the district Headquarters of Sri Ganganagar as well as in the town of Anopgarh, Kananpur etc. and other towns of the district Sri Ganganagar. The Collector, Sri Ganganagar, on 26-12-92, issued letters to all the Assistant Collectors cum Sub-Divisional Magistrates of Sri Ganganagar district informing them that illegal transmission of TV programme through unauthorised cable system is being undertaken by the cable operators in the area which is adversely affecting the cultural and social atmosphere. He, therefore, directed the Assistant

Collectors cum Sub-Divisional Magistrates of all Sub-Divisions of Sri Ganganagar district to stop the transmission of TV programme through cable system if the same is being operated in their respective Sub-Divisions. The Assistant Collectors cum Sub-Divisional Magistrates of the respective Sub-Divisions thereafter issued letters to the Station House Officers concerned to take appropriate action against the cable operators and to stop the transmission through the cable system. The petitioners have challenged the action of the Collector cum District Magistrate, Sri Ganganagar, the Assistant Collectors cum Sub-Divisional Magistrates of various Sub-Divisions of Sri Ganganagar district as well as the Station House Officers concerned by these writ petitions and have prayed that the respondents may be restrained from interfering in the business of the petitioners of relaying the TV programme through disc antenna and cable system.

3. It is contended by the learned Counsel for the petitioners that the Collector or the Assistant Collector cum Sub-Divisional Magistrate or the Station House Officer under the Indian Telegraph Act, 1885, the Rules made thereunder or under the Indian Wireless Telegraphy Act, 1933, or the Rules made thereunder, has no jurisdiction to interfere in the business of the petitioners operating the TV cable system in the area. It is further contended by the learned Counsel for the petitioners that no law has been enacted by the respondents providing guidelines to grant licences relating to cable TV net-work and, therefore, the petitioners cannot be restrained from operating their business and any restriction put by the respondents amounts to infringement of their right of doing business of one's choice granted under Article 19(1)(g) of the Constitution of India. Their further case is that the letter issued by the Collector cum District Magistrate, Sri Ganganagar, does not show under which law the letter has been issued and the directions have been given to the Assistant Collector cum Sub-Divisional Magistrates and further to the Station House Officers concerned. It is further argued that directions have been issued by the Collector without giving any opportunity of hearing to the petitioners, which is in violation of the principle of natural justice. The learned counsel for the respondents as well as the learned counsel for the theatre-owners, on the other hand, have supported the order/letter issued by the Collector and submitted that no person can operate a cable net-work without obtaining the valid licence as required under the Telegraph Act, 1885, read with Wireless Telegraphy Act, 1933. As the petitioners have not obtained the licence as required under these Acts, they therefore cannot operate the cable net-work. Their further submission is that these cable operators are also liable to make payment of the Entertainment Tax which they are not paying and, therefore, the District Magistrate is the authority who can exercise jurisdiction in such matters and the orders have been rightly issued.

4. Before considering, the submissions made by the learned counsel for the parties, it is necessary to look into the relevant provisions of law, which are necessary to decide the controversy involved in these writ petitions. The Indian Telegraph Act, 1885, deals with the law relating to the telegraphs in India. Section 3(1) of the Indian Telegraph Act defines "Telegraph" as means telephone

or any 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 electro-magnetic emissions, radio waves or Hertzian waves, galvanic, electric optical or magnetic means. Sub-section (4) of Section 3 defines the words "telegraph line" which means a wire or wires used for the purpose of a telegraph with any casing, coating, tube or pipe enclosing the same, and any appliances and apparatus connected therewith for the purpose of fixing or insulating the same. Section 4 of the Indian Telegraphs Act, 1885, provides that within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs. A proviso has been appended to Section 4, which provides 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. Sub-section (2) of Section 4 gives powers to the Central Government to delegate all or any of its powers by notification in official gazette, to the Telegraph Authority. Section 7 deals with the power of the Central Government to make rules for the conduct of the "Telegraphs". Section 8 deals with the revocation of the licences. Section 10 deals with the power of the "Telegraph Authority" to place and maintain telegraph lines and poles. Section 20 provides that if any person establishes, maintains or works a "Telegraph" within India in contravention of the provisions of Section 4 or otherwise than as permitted by the rules, he shall be punished, if the telegraph is wireless telegraph, with imprisonment which may extend to three years or fine, or both, or in any other case to the fine which may extend to Rs. 1000/-. In exercise of the powers conferred by Section 7 of the Indian Telegraph Act, the Central Government made the Rules, namely, "The Licencing of Wireless Receiving Apparatus Rules, 1965". Rule 4 of these rules deals with the application for licence and Rule 5 provides the form for the licence. Rule 6 provides the period of validity of the licence while Rule 7 provides the licence fee. Sub-rule (d) of Rule 2 defines the words "licencing authority" which means the telegraph authority as defined in the Act, namely, the Director General of Post and Telegraphs.

5. The other Act which is necessary to be referred for resolving the present controversy is the Indian Wireless Telegraphy Act, 1933. Sub-section (2) of Section 2 defines the words "wireless telegraphy apparatus", which 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 any such apparatus, appliance, instrument or material commonly used for other electrical purpose, unless it has been specifically designed or adapted for wireless communication or form part of the same apparatus, appliance, instrument or material specifically so designed or adapted, nor any article determined by rule made u/s 10 not to be wireless telegraph apparatus. Sub-section (1) of Section 2 defines the words "wireless communication" which means 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 or Hertzian waves, without the use of wires or other continuous electrical conductors between the transmitting and the receiving apparatus. Section 3 of the Wireless Telegraphy Act provides that no person shall possess "wireless telegraph apparatus" except under and in accordance with the licence issued under the Act. Section 5 of the Act, 1933 deals with the licence to be issued by the telegraph authority constituted under the Telegraph Act, 1885. Section 6 deals with the offences and penalties and provides that whoever possesses wireless telegraph apparatus in contravention of the provisions of Section 3, shall be punished. Section 10 deals with the powers of the Central Government to make rules the Central Government, in exercise of the powers conferred by Section 10 of the Indian Wireless Telegraphy Act, 1933, made the Rules, namely, the Indian Wireless Telegraphy (Possession) Rules, 1965. According to Sub-rule (e) of Rule 2, "Licencing Authority" means the Telegraph Authority as defined in the Indian Telegraph Act, namely, the Director General of Post and Telegraphs. Rule 3 deals with the licencing requirement and Rule 5 deals with the exemption from licence. Rule 6 deals with the application for licence; Rule 7 deals with the form of licence. Rule 8 deals with the period of validity of the licence while rule 9 deals with the licence fee. The Central Government exercising its powers conferred by Section 7 of the Indian Telegraph Act, 1885, and, also, u/s 10 of the Indian Wireless Telegraphy Act, 1933 framed rules in the year 1985, for granting exemption for the licence for radio, TV, VCR etc. Rule 2 of the Exemption Rules states that Radio, TV and VCR sets shall not be wireless telegraph apparatus for the purpose of Indian Wireless Telegraphy Act, 1933. Rule 3 states that the licencing requirement under the Licencing of Wireless Receiving Apparatus Rules, 1965, and the Indian Wireless Telegraphy (Possession) Rules, 1965, and Commercial Broadcast Receiver (Dealers) Rules, 1965, will not apply in the case of working Radio, TV or VCR. Rule 4 of the Exemption Rules states that notwithstanding anything contained in Rules 2 and 3, no television set or VCR used or capable of use for reception of transient images of fixed and moving object, by the use of special antenna of any type and associated front and converter direct from satellite operating in "Broadcasting Satellite Service" or "Fixed Satellite Service", shall be deemed to be wireless telegraphy apparatus for the purpose of Indian Wirless Telegraphy Act, 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 Act, 1885, or the Indian Wireless Telegraphy (Possession) Rules, 1965, or the Commercial Broadcasting Receivers (Dealers) Rules, 1965, as the case may be.

6. The controversy in the present case centres round on two questions, firstly, whether the petitioners can use the disc (dish) antenna and the cable net-work for receiving and transmitting the programme of ASIA-SAT (STAR, BBC, ZEE etc.) as well as the transmission of pre-recorded cassette through cable net-work without obtaining any licence under the Indian Telegraph Act, 1885, and the Indian Wireless Telegraphy Act, 1933, and the Rules made thereunder, and, secondly, whether the District Magistrate or the Assistant Collector cum Sub-

Divisional Magistrate or the Station House Officer has any jurisdiction to interfere in the operation of cable net-work by the petitioners? Cable TV is fastest growing system in the country. Its purpose is to bring programme to the places which cannot receive the TV signals through the air. The cable net-work system brings the TV programme to the homes by means of a cable rather than by direct relay and makes available more TV channels through a single cable connection. It also provides satellite derived various programmes besides feature films and other programme readily available in video cassette. In the last one year, there is phenominal increase in the cable TV net-work and disc (dish) antenna systems in the upper-middle class in big cities. The cable TV network has also made in-roads in small towns and rural areas making available the ready-made and best World Net-Work Programme. The petitioners have installed disc antenna and cable net-work for receiving of signs, writings, images etc. broadcast by the ZEE TV, STAR TV, BBC, CNN etc. directly from the satellite and to transmit the waves through cable to the various TV viewers in the nearby vicinity who are their customers. Cable operators charge some amount from the customers for fixing the cable net-work device and thereafter charge monthly charges/fee for transmission of the programmes. They are also transmitting these images, signs etc. from pre-recorded cassette. The petitioners after receiving the programmes directly from the satellite by disc (dish) antenna are thus using the cable line connecting the TV sets in the houses of their TV viewers who are their subscribers, to transmit the programme broadcast by the ZEE TV, STAR TV, BBC, PRIME, SPORTS etc. and from the prerecorded cassettes and as such the cable network installed by the petitioners by which they are transmitting the programme, clearly falls within the definition of the words "Telegraph" and "Telegraph Line" and for which licence is necessary. Under the Telegraph Act, 1885, the Central Government has exclusive privilege of establishing, maintaining and working of "Telegraph" and "Telegraph Line" provided a licence is granted by the Central Government to any person for the establishment, maintenance and work of the "Telegraph" within any part of the country. The transmission or distribution of TV programme by the petitiones through cable network as well as transmission of pre-recorded cassette thus require licence under the Indian Telegraph Act read with Indian Wireless Telegraphy Act, 1933.

7. Now, coming to the disc (dish) antenna installed by the petitioners for receiving the TV signals and transmitting signals through cable to the TV viewers, who are their subscribers. The TV signals from a transmitter is fed into a home television set through a receiving antenna. The antenna is used to propagate into space or to capture from space, radio or electromagnetic waves. Antennas are necessary to transmit or receive television signals. The antenna collects television signals from the transmitter through the satellite for the receiver to produce a picture. Satellite works like a relay tower in space. It receives coded TV signals from a special earth station, amplify them and send them to another earth station. A simple indoor antenna and an antenna mounted on the roof can pick-up strong enough signals within a few kilometres of the

transmitters. At greater distance a more elaborate antenna mounted on the height is needed. The problem of receiving television signals at distances beyond the normal service range have been solved to a great extent by a special type of receiving antenna. These antennas are designed to have a very high gain or efficiency so that, in effect, they amplify weak signals. These antenna are directional in character, having a high efficiency for signals received from one direction and comparatively low efficiency for signals arriving from other directions. These antennas are called disc (dish) antenna because of its shape. The petitioners have installed these disc antenna connected with cables which receive TV signals directly from the satellite and transmit the signals through cables. Cables carry the TV signals to the houses of the subscribers and fed into a home television set. The TV set uses the signals to make copies of the pictures and sounds from the television scenes in reproducing the television programmes a TV set uses antenna, amplifier and reparators and picture tube. The petitioners have installed this disc antenna for reception of transient images of fix and moving objects directly from the satellite and is a wireless telegraph apparatus which is directly covered under the definition of "Telegraph" given u/s 2 of the Indian Wireless Telegraphy Act, 1933 and under the Indian Wireless Telegraphy Act, no person can establish, maintain or work or possess such set without licence from the Central Government granted u/s 4 of the Indian Telegraph Act. Even as per Rule 4 of the Exemption Rules, no exemption has been granted to any TV set or VCR which is used or capable of use for reception of transient images of fixed or moving objects, by the use of special antenna of any type and associated front end converter directly through satellite. The exemptions under rules 2 and 3 of the Exemption Rules have been granted to Radio, TV and VCR and it has been stated that they shall not be treated as wireless telegraphy apparatus for the purpose of Indian Wireless Telegraphy Act, 1933, but so far as the installation of the special antenna for receiving TV signals and transmitting the same through the cables is concerned, it falls within the term "wireless telegraphy apparatus". The disc antenna as well as the cable net-work installed by the petitioners, therefore (both) require licence under the Indian Telegraph Act read with Indian Wireless Telegraphy Act, 1933. The transmission of prerecorded cassette through cable net-work also requires licence under these Acts.

8. The next question which requires consideration in the present case is that though the Acts make a provision for the necessity of obtaining a licence for the purpose of wireless telegraph apparatus but no Rules or guidelines have been provided by the Central Government for the grant of the licence. The Central Government has now taken up the challenge imposed by the invasion of foreign-satellite TV Programme through disc antenna and is planning to draft concrete modelities in the cable net-work to lay down guidelines under the law and to firmly deal with any deviation from it. The possibility of outright prohibition of disc antenna in the country at this stage seems to be remote and this disc antenna and cable net-work have to stay in the country. Even the Committee, set

up by the Central Government on TV Net-work and Disc Antenna system has recommended that disc antenna should not be banned but the distribution of these programmes through cable TV should be restricted. The setting-up of a cable TV Authority of India is also under consideration of the Central Government, which will monitor the cable TV net- work. The Cable TV net-work needs regulation through some measure of licence to counter the threat posed by it. The sudden and rapid mushrooming of satellite and Cable TV during recent past, in the absence of regulatory provision, has seriously affected political, cultural and social environment. The States of Bihar and Maharashtra have imposed tax on cable TV net-work. The disc antenna and cable TV system have to stay in India, further finds support from the statement of the Hon''ble Information and Broadcasting Minister, made in the Parliament on March 24, 1993, informing the House that since April 1993, the TV viewers can watch five channels on "Doordarshan" and with the five channels, he hopes to give reply to the cultural invasion by the foreign-satellite TV channel that has been giving its programme to India. The Hon''ble Minister further stated that the Government proposes to use the spare time available on transponders of INSAT 1-B and INSAT 2-A to introduce the variety of TV services to cater to the diverse needs of the country and under the proposed extension, the TV signals will be up-linked through the transponders of Indian Satellite and can then be received through disc antenna distributed by the cable operators. The Hon''ble Minister further stated that a large number of cable operators have installed the equipment to receive signals from ASIASAT (STAR TV, BBC, ZEE TV etc.). The reception from the Indian Satellite System can be received by the same antenna by changing its direction. Individuals can also have their own disc antenna. The statement given by the Hon''ble Minister for Information and Broadcasting thus clearly shows that this disc (dish) antenna and cable net-work have to stay in India but the Modelity and guidelines for the grant of licence has not yet been finalised which is under active consideration before the Central Government. Air waves are public property. The government must, therefore, frame regulations for the grant of licences that serves the public interest. Though no rules have been framed nor guidelines or modelities have been drawn, but the law requires that the disc antenna, which is a wireless telegraph apparatus and the cable net-work which falls within the definition of "Telegraph" and "Telegraph line" require licence under the Indian Telegraph Act and the Indian Wireless Telegraph Act, 1933 and nobody can instal the disc antenna or can operate the cable network without obtaining the valid licence and if he works in contravention of the provisions of the Indian -Telegraphy Act or the Indian Wireless Telegraphy Act then he offends the provisions of the Acts as the receiving of the waves by disc antenna directly from the satellite and transmitting the same without licence offends the provisions of Indian Telegraph Act, 1885, as well as the Indian Wireless Telegraphy Act, 1933. It will not make any difference whether the disc antenna receives programme from INSAT 2-A or from INSAT 1-D or from ASIASAT.

9. The next contention, raised by the learned counsel for the petitioners is that

restraining the petitioner is from operating the cable net-work amounts to depriving the petitioners from doing their business which is clearly in violation of the provisions of Article 19(1)(g) of the Constitution of India. The Central Government has the exclusive discretion to install, maintain and work the telegraphs and any person can be granted licence to instal the telegraph and wireless telegraphy apparatus on a licence being granted to him by the Central Government. The restriction imposed by the Act to install, operate and work a telegraph without any licence cannot be said to be, in any way, unreasonable, rather it is most reasonable as it is required to be made in order to check unlawful activities and malicious propoganda made by the foreign countries through the TV programmes broadcast by the TV stations situated outside the country. The contention raised by the learned counsel for the petitioners is, therefore, devoid of any force and deserves to be ignored.

10. The other contention raised by the learned counsel for the petitioners is that before issuing the orders Annexure 1, no opportunity of hearing was given to the petitioners by the respondent No. 1. In this aspect, suffice it to say that before installation of the disc antenna or the cable net-work, obtaining a licence under the Indian Telegraph Act as well as under the Indian Wireless Telegraphy Act is a must, which is not obtained by the petitioners and the petitioners have installed the cable net-work and disc antenna without any lawful authority and, therefore, the petitioners are not entitled for any right of personal hearing before the issuance of the order and there is no question of infringement of any principle of natural justice in the present case.

11. The last question, which requires consideration is whether the Collector and District Magistrate or the Assistant Collector cum Sub-Divisional Magistrate has powers under the Indian Telegraph Act, 1885, or under the Indian Wireless Telegraphy Act, 1933, to restrain the petitioners from operating the cable net-work and disc antenna receiving and transmitting the programmes broadcast by ZEE TV, STAR TV, PJUS, SPORTS, TIMES, BBC, ANN etc. to the TV viewers by giving connections to them through cable net-work? Under the Indian Telegraph Act 1885, as well as under the Indian Wireless Telegraphy Act, 1933, it is only the Director General of Post and Telegraphs who has powers under the Acts to grant licence and to take action. The Collector cum District Magistrate or the Assistant Collector cum Sub-Divisional Magistrate has no power either under the Indian Telegraph Act, 1885, or under the Indian Wireless Telegraphy Act, 1933, or under the Rules framed thereunder, to proceed against the cable operators or to take any action against them or to issue directions like Ex. 1 and Ex. 2 issued by the respondents in these writ petitions. The directions issued by the Collector cum District Magistrate, Sri Ganganagar, directing all the Assistant Collector cum Sub-Divisional Magistrates and the consequential directions issued by the Assistant Collector cum Sub-Divisional Magistrates to the Station House Officers concerned, prohibiting the petitioners to operate the cable net-work, are wholly without jurisdiction. Regarding charging of the entertainment tax under the Rajasthan Cinema (Entertainment Tax) Act, suffice it to say that the tax is

payable on all payments for admission to entertainment only. The petitioners are merely receiving the TV programme directly from by disc antenna transmitting the same as well as the programme from the pre-recorded cassettes through cable to the TV viewers at their residence who are their customers. They are not admitting the TV viewers for their entertainment nor are they charging anything for admission to the entertainment. The provisions of the Act are, therefore, not attracted in the case of the petitioners and they are not liable to pay any entertainment tax and, therefore, the Collector and District Magistrate or the Assistant Collector cum sub-Divisional Magistrate has no authority to take any action against the petitioners. The orders Annexure 1 and Annexure 2, issued by the respondents, therefore, deserve to be quashed and set aside.

12. In the result, I allow these sixteen writ petitions set-aside the orders Annexure I and Annexure 2 issued by the Collector and District Magistrate, Sri Gananagar, as well as Jhe Assistant Collector cum Sub-Divisional. Magistrate and hold that the respondents are not competent to take any action against the petitioners under the Acts restraining the petitioners to operate their disc antenna and the cable net-work, but, however, it may be observed that the petitioners can instal the disc antena or operate their cable net-work receiving and transmitting the programme of ZEE TV, STAR TV, BBC, SPORTS, ANN etc. or the transmission of pre-recorded cassette through cable net-work only after obtaining licence from the competent authority under the Indian Telegraph Act, 1985, under the Indian Wireless Telegraphy Act, 1933.