

(1986) 08 BOM CK 0032

In the Bombay High Court

Case No : Writ Petns. No's. 5004 and 2171 of 1984

Video Master and etc.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-08-1986

Acts Referred:

Cinematograph Act, 1952 — Section 4, 4(1), 5A, 5B, 6A
Constitution of India, 1950 — Article 14

Citation : AIR 1986 Bom 428 : (1986) 3 BomCR 68 : (1986) 88 BOMLR 525 :
(1986) MhLj 794

Hon'ble Judges : Sugla, J; Dharmadhikari, J

Bench : Division Bench

Advocate : J.M. Baphna, Madhubala Sharma and R.H. Akrani, O.B. Chinoy, S.P. Kanuga, N.H. Gurusahani and S.H. Gurusahani, W.N. Yande, Addl. Govt. Pleader, for the Appellant; M.V. Paranjape, V.D. Govilkar and R.V. Desai, for the Respondent

Judgement

Dharmadhikari, J.—As both these writ petitions involve common questions of law and fact, they were heard together and are being disposed of by this common judgment.

2. The petitioners in Writ petition No. 5004 of 1984 M/s. Video Master, is a partnership firm carrying on business of buying films for processing and making video gramcassettes, discs, tapes, in relation to feature films, documentaries, educational, art and cultural films for sale and/or for private exhibition on video play back equipment. After acquiring necessary rights the petitioners also market the same under the brand names like Time, Gold Action. The petitioner-firm possesses the requisite licence granted by the Government of India to process, transfer, and duplicate films on video cassettes. The petitioner-firm is also distributing the pre-recorded video cassette tapes made by Esquire Distributing and Servicing (P) Ltd. It is the case of the petitioner-firm that it has purchased the video rights in certified feature films released in India for public exhibition by the Cinematograph Board for the purpose of processing and distributing the

same. The owner of certified films delivers free of charge a certified film in 35 mm or 8 mm and in colour to, enable the petitioner to transfer, process, record, copy duplicate tape etc. on the video gramcassette discs tapes. Thus in substance the petitioner-firm is carrying on business in video films.

3. By these writ petitions, the petitioners are challenging the order of the respondents requiring them to submit the video tapes made from the certified films for re-examination and re-certification and collecting fees on that count.

4. Shri Chinoy, learned Counsel appearing for the petitioners contended that the Cinematograph Act only requires that a film, must be examined and certified before its public exhibition. The said Act does not require that the same movie should be re-examined and re-certified when it is faithfully reproduced on another material i.e. when a movie recorded on celluloid strip is reproduced on video cassette disc or tape and vice versa. He then contended that as per the provisions of the Act, certification is required only for the public exhibition of the film and not for the private home viewing of the film on V. C. R. Therefore, by interpretative process authorities cannot import or bring within the scope of the Act something which is wholly outside its purview. He also contended that the provisions of Rule 21 read with the relevant forms cannot be read torn from its context. These provisions will have to be read with Section 4 of the Act, and so read it is quite clear that the authorities cannot insist on re-examination of the film which is already censored and certified.

5. The petitioners are also challenging the table of fees in para III-A of Rule 36 of the Rules. According to the petitioners fixation of different fees for the examination of celluloid film and the video film, is wholly arbitrary and irrational. For no rational reason double fee is charged for examination of the film recorded on video cassette discs tapes. The discrimination between the fee charged has no rational basis or justification. The provision is made only to extract more money from the petitioners and the persons similarly situated, without any rational and reasonable basis. It is the case of the petitioners that the said rule has been framed in mala fide exercise of the powers at the behest of the producers and distributors of the celluloid films. In substance it is the case of the petitioners that the said rule is framed in colourable exercise of powers conferred by Section 8 of the Act and is also ultra vires of Art. 14 of the Constitution of India. The petitioners have also challenged Rule 36(2) prescribing a fee of Rs. 10/- for duplicate copy of the certificate. According to the petitioners this fee has no reasonable and rational nexus with the services rendered. Therefore it lacks quid pro quo. Hence the fee prescribed is wholly illegal. It is the case of M/s. Video Master that on that count alone the respondents have extracted a sum of Rs. 71,300/- from them contrary to the provisions of law, and therefore, the said amount is liable to be refunded. The petitioners are also claiming refund of the excess amount paid for the re-certification of the video films.

6. Shri Gurusahani, learned Counsel appearing for the petitioners in writ petition No. 2171 of 1984, adopted the arguments advanced by Shri Chinoy and placed

strong reliance upon the decision of the Madras High Court in *Entertaining Enterprises, Madras and Others Vs. State of Tamil Nadu and Another*,

7. On the other hand Shri Paranjape, learned Counsel appearing for the respondents contended before us, that there is vast difference in the characteristics of a celluloid film and video film. The audience of these two films is also distinct and different. So far as the movie recorded on celluloid film is concerned, the audience can be controlled whereas in the case of video film such a control is an impossibility. Further when an application for examination is made qua a celluloid film the positive print of the film is submitted to the Board of Film Censors for certification in the prescribed manner. In case the Board orders deletions in the film, the applicant surrenders the positive and negative to the Board for its record. Further the Laboratory maintains the number of prints taken out by the applicant for record purposes and the prints so taken are subject to the payment of Excise Duty. Hence the number of prints of celluloid films taken out has its record and can be checked at any time. Further the celluloid film is made from a story which is divided in various sequences, These sequences are again divided into various shots and dialogues to be spoken by characters. These shots and dialogues are written earlier and then duly recorded. Negative films are loaded in a camera and before shooting an indication is made as to the shot number and date of shooting. Sometimes the same shot is repeated and shot numbers of such repeated shots also figure in the negative. The negatives used for shooting also contain edge numbers printed by suppliers of the films. This can be read by naked eye. The shots on the negative are edited by an editor. Sounds are recorded on a sound negative. Thereafter a master negative of the film is made into various rolls with corresponding sound negative with sound effects. In the Laboratory a final print is made by Chemical process and then a print is submitted for certification. Thus no human element is involved in making a positive print. Whereas a video film can be made on a tape either from a master copy or what is known as U-Matic tape which is 3/4" in width, and used for recording the picture and sound or by shooting with a video camera from a screen with a mechanical device. The video tape can be played and seen on television. There is no negative and the images on the tape cannot be seen by a naked eye. The tape contains no footage or shot number. The video tapes can be erased and can be rerecorded on the same tape by a mechanical device. A video film can be easily made and no huge investment is required for making it. It can be played at any place without any appreciable investment. The viewers cannot be controlled nor can its exhibition be checked as video copies can be easily made. Human element is involved at every stage. Thus, there is substantial difference between these two types of films. Hence it is absolutely necessary that there should be some check for its public exhibition. Rule 30 of the Rules is framed for regulating this business. The said rule is framed for the purpose of carrying into effect the provisions and the objects of the Act. Hence it cannot be said that it is ultra vires of the provisions of the Act or Article 14 of the Constitution. So far as the fee prescribed by Rule 36 of the Rules is concerned, it

is contended by Shri Paranjape that it has a rational nexus with the services rendered and therefore it is neither excessive nor unreasonable.

8. Miss Madhu Sharma, Shri J. M. Baphna and Shri R.H. Akhani, learned counsel appearing for the Interveners, and Shri Yande the learned Assistant Government Pleader, adopted the arguments advanced by Shri Paranjape and contended that the rules framed are regulatory in nature and therefore are perfectly legal and valid.

9. This Act was enacted so as to make a provision for the certification of Cinematograph films for exhibition and for regulating exhibition by means of Cinamatographs. In this context a reference could usefully be made to the observations of the Supreme Court in *Raj Kapoor Vs. Laxman*, which read as under :-

"The scheme of the latter is deliberately drawn up to meet the explosively expanding cinema menace if it were not strictly policed. No doubt, the cinema is a great instrument for public good if geared to social ends and can be a public curse if directed to anti-social objectives. The freedom of expression, the right to be equally treated and the guarantee of fair hearing before heavy investments in films are destroyed belong to Indian Citizens under the Constitution. But all freedom is a promise, not a menace and, therefore, is subject to socially necessary restraints permitted by the Constitution. Having regard to the instant appeal of the motion picture, its versatility, realism, and its co-ordination of the visual and aural senses, what with the art of the cameraman with trick photography, vistavision and three dimensional representation, the celluloid art has greater capabilities of stirring up emotions and making powerful mental impact so much so the treatment of this form of art on a different footing with pre-censor ship may well be regarded as a valid classification, as was held in *K.A. Abbas Vs. The Union of India (UOI)* and Another, May be, art cannot be imprisoned by the bureaucrat and aesthetics can be robbed of the glory and grace and free expression of the human spirit if governmental palate is to prescribe the permit for exhibition of artistic production in any department, more so in cinema pictures. So it is that a special legislation viz., the Act of 1952, sets up a Board of Censors of high calibre arid expertise, provides hearings, appeals and ultimate judicial review, pre-censorship and conditional exhibitions. In short, a special machinery and processual justice and a host of wholesome restrictions to protect Sate and society are woven into the fabric of the Act."

The controversy raised before us will have to be considered in the light of these observations.

10. At this stage it will be worthwhile if a reference is made to the relevant provisions of the Act. The expression "Cinematograph" is defined by Section 2(c) of the Act which includes any apparatus for the representation of moving pictures or series of pictures. It is not disputed before us that the video film is covered by the said expression, and, therefore, will be governed by the provisions of the

Cinematograph Act, 1952. The expression "place" is defined by Section 2(e) of the Act which includes a house, building, tent and any description of transport, whether by sea, land or air. The "certificate" means the certificate granted by the Board u/s 5-A of the Act; Then comes Section 4 which is the crucial section. The said section reads as under :

"4. Examination of films-- (1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having the film examined in the prescribed manner : --

(i) sanction the film for unrestricted public exhibition :

(Provided that, having regard to any material in the film if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or;)

(ii) sanction the film for public exhibition restricted to adults; or

(iia) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or)

(iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or)

(iv) refuse to sanction the film for public exhibition.

(2) No action under (the proviso to Clause (i), Clause (ii), Clause (iia), Clause (iii), or Clause (iv) of Sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter)."

From the bare reading of the section it is quite clear, that any person desiring to exhibit any film has to apply in a prescribed manner for a certificate in respect of the film. The expression "exhibit" as used in Sub-section (1) of Section 4 cannot be read in isolation but will have to be read with other provisions of the Act as well as the Rules. The expressions used in Sections 4(1)(i), 4(1)(ii), 4(1)(iia), 4(1)(iii), 4(1)(iv), 5A, 5B, 7 and other provisions of the Act, is "public exhibition". Therefore the examination and certification of the film is necessary if it is meant for public exhibition only and not otherwise. This is what in terms has been held by the Madhya Pradesh High Court in *Restaurant Lee v. State of Madhya Pradesh*, AIR 1983 M P 146 . Relying upon the meaning assigned to expression "Exhibition" in Oxford Dictionary, the Madhya Pradesh High Court held that what is contemplated by the said expression is a display to which public is admitted i. e. public exhibition. Similar view is taken by the Delhi High Court in *Balwindar Singh Vs. Delhi Administration and Others*, *Shri Paranjape*, learned

Counsel appearing for the respondents has, therefore, rightly conceded before us that the word "exhibition" as used in Section 4(1) of the Act will mean "public exhibition" and will not cover private exhibition of the film. Therefore by way of illustrations, it is conceded by Shri Paranjape that the following cases are not covered by Section 4 of the Act:

- (1) A private household preparing a video film for itself or exhibiting a duly certified video film to bona fide members of the family, friends and relatives;
- (2) A club preparing a video film itself for its bona fide members without intending or doing public exhibition in any form;
- (3) A club collecting video films (duly certified) for its own bona fide members without intending or actually doing public exhibition in any form;
- (4) A club collecting funds and purchasing duly certified video film for exclusive use of its bona fide members, without intending or actually doing any public exhibition in any form; and;
- (5) Exhibition of films to restricted audience such as family members, or their friends or their relatives in their residence.

11. Thus admittedly Section 4 applies when a person desires to use the film for public exhibition. In that case he is required to apply for certification of the film in the prescribed manner. The word "desiring" as used in Section 4(1) is pertinent. It is the desire or intention which is relevant for deciding the question. The film which is meant for sale and distribution to the public in general is nothing but a public exhibition of the film. Therefore any film which is meant for public exhibition will require examination and certification in accordance with the procedure prescribed by the Act. The material on which such a film is produced will not be very much relevant. This position is also not disputed before us.

12. However, the main question involved in these writ petitions, is as to whether only because a video copy of a already certified movie is prepared from the celluloid film, a re-examination and Re certification of video copy of the film is necessary. According to the respondents such a certification is necessary. We do not find any scope for such an interpretation either in Section 4 or the Rules. It is an admitted position that a duplicate true copy of the duly certified celluloid film does not require any re-certification. Under Rule 28 a provision is made for deposit of a copy of certified film. Explanation to Rule 28(1) then makes it clear that a video copy of the film shall be treated as a copy of the film for the purpose of the said sub-rule. If the celluloid copy of the certified film does not require re-examination or re-certification then in our view only because it is a duplicate copy on video tape it cannot be treated on a different footing. Rule 21 of the Rules prescribes a form of application for examination of the film. Explanation to the said rule clarifies the position by saying that for the purpose of certification for public exhibition, every revised version or shorter version of a film shall be deemed to be a fresh film. Therefore if the video copy of the film is either a

revised version or shorter version of the original film, then obviously it will be deemed to be a fresh film. This is the position even with the celluloid film or its copy. If the movie is initially recorded on a video film then also it will require examination and certification. However, only because it is a duplicate, though exact copy of the certified celluloid film, it cannot be treated on a different footing.

13. In this context it is pertinent to note that Rule 32 of the Rules provides for re-examination of the certified film, if any complaint is received by the Board in that behalf. Obviously this provision will also apply to the video films. But only because a true copy or the duplicate copy is a video copy of the certified film it cannot be subjected to the procedure prescribed by Rule 21, over again. Thus an application for examination and certification will not be necessary if it is an exact video copy of already examined and certified film. However, if it is a revised version or shorter version of the film then it will be deemed to be a fresh film, and in that case, application for examination of film will be necessary.

14. It is no doubt true that at one stage it was sought to be argued by Shri Paranjape that if the movie is certified for public exhibition restricted to adults only then the video copy of the said film should be subjected to re-examination, since there is no control over the audience or the place of exhibition. However, it was not possible for him to substantiate this argument with reference to the provisions of the Act or the Rules or the actual practice followed by the concerned authorities. Rather it was conceded that there is no scope for such an interpretation as the law stands as of today. In this context it cannot be forgotten that ultimate censorship power vests in the people and parents and they are expected to exercise it if they want to protect their children from video menace.

15. Then comes the challenge to Rule 30 of the Rules which reads as under : --

"Rule 30--Compliance with Section 6-A :- (1) The manner of notification to the distributor or exhibitor for the purpose of Section 6-A, shall be by delivery of a duplicate copy of the certificate (containing both Parts I and II thereof) with each copy of the certified film to be distributed or exhibited :

(Provided that in the case of video film, a copy of Part I of the certificate showing the serial number, the category and other details should be pasted on every video cassette as well as on its case).

(2) The provisions of Sub-rule (1) shall apply in relation to an amendment of certificate in respect of a film as it, applied in relation to the certificate itself.

(3) The duplicate copy of the certificate of a film referred to in Sub-rule (1) shall accompany the film and be prominently exhibited in the theatre on all days on which the film is exhibited therein."

According to the learned counsel appearing for the petitioners, in the case of video film, the insistence that the copy of the Part I of the certificate showing the serial number, category, and other details should be pasted over the video

cassettes as well as on its case, is wholly arbitrary and is beyond the scope of the Act and the Rules. It is the case of the petitioners that the department does not insist on such pasting so far as the celluloid film is concerned and insistence in the case of video film alone is, therefore, arbitrary, discriminatory and is also without the authority of law. We find it difficult to accept this contention of the petitioners. Apart from the fact that piracy has become a global problem due to rapid advancement in technology, it also affects the Government in terms of tax evasion. It is the case of the respondents that because of the recent video boom, there are reports that uncertified video films are being exhibited on a large scale. A large number of video parlors have also sprung up all over the country and they exhibit such films by charging admission fees.

Therefore some control over such public exhibition is absolutely necessary. Hence, a special provision is made in Section 7, so far as the video films are concerned. Proviso to Section 7(1) of the Act provides that a person who exhibits or permits to be exhibited in any place a video film in contravention of the provisions of Sub-clause (i) of Clause (a) shall be punishable with imprisonment for a term which shall not be less than three months, but which may extend to three years and with fine which shall not be less than twenty thousand rupees but which may extend to one lakh rupees, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues. Of course a power has been conferred upon the Court for imposing lesser penalty for adequate and special reason to be mentioned in the judgment. Section 7(A) confers a power of seizure upon the authorities concerned. Rule 30 is regulatory in nature and has been framed to provide for effective control. Therefore it can safely be termed as reasonable as it has been framed for the purpose of carrying into effect the provision of Part II of the Act. What is contemplated by Rule 30, is the pasting of duplicate copy of Part I of the certificate, showing the serial number, the category and other details on the video cassette as well as on its case. This helps as a check and counter check on unauthorised public exhibition of the films. Therefore the provision is wholly regulatory and does not travel beyond the scope of the Act. Some debate was raised before us as to what is the meaning of expression "duplicate copy" as used in Rule 30. In the context in which the expression is used, it can only mean an exact true copy of the original certificate. The contention that if such a pasting is not necessary for celluloid film, then the provision is discriminatory, has also no force. The video film or its exhibition cannot be equated with the celluloid film and its exhibition in every respect. In this context it is pertinent to note that different forms of certificate are prescribed for video and celluloid films. The expression "No. of cassettes" used in forms, relating to the video films is corresponding to word "Reel" as used in forms for celluloid films. If the film is divided in different parts or episodes then it might require more than one cassette. Thus the information incorporated in the certificate is also distinct and different. Therefore having regard to the distinction between methods and the manner of processing, exhibition and copying of these two types of films,

advisably a special provision has been made in that behalf, for the video films. We do not find that there is anything unreasonable in it. It is well known that so far as the video films are concerned it serves a broad and variegated audience to whom the portrayal of the same act will have different meanings. Therefore it calls for greater awareness and responsibility on the part of those responsible for media content. Failing which some form of Government restraint and control will be necessary to prevent the merchants from poisoning the minds of the susceptible. If the merchants are allowed to have unrestricted canto the most powerful image making device, like, video films and sell and exhibit them, regardless of the destructive side effects, the whole purpose of the Censor will lose its efficacy. Video films cover wider area and field. This seems to be the reason as to why severe penalty is provided for unauthorised exhibition of video films in Section 7 of the Act. Therefore to bring into effect the object and purpose behind Section 4 of the Act, a provision has been made in Rule 30 of the Rules, so far as video films are concerned. This provision is in the interest of general public as well as purchaser and holder of video film cassette.

16. Affixing of a duplicate copy on the cassette and the case, serves a salutary purpose of controlling and regulating the public exhibition of video films. To some extent it also helps the Government to check the tax evasion and piracy, which purpose cannot be termed as wholly irrelevant. Hence it is not possible for us to accept the contention of petitioners that Rule 30 is either unreasonable or ultra vires of the Act.

17. Then comes the challenge to Rule 36 of the Rules which lays down a table of fees to be charged for examination of the film. Parts I, II and III of the said table deal with the fees for examination of celluloid films of different dimensions. Part III-A lays down the fees for video films. If the fees laid down therein are compared with the fees prescribed for the celluloid films, it is apparent that the fee prescribed for examination of the video films is practically the double. No apparent reason is shown for this. This is what the respondents have to say in this behalf :

"Fees are proper and reasonable. The strain of seeing films for examination on video screen of 19-23 inches is more than viewing it on the big screen".

To say the least, this reason suffers from over simplification. Even Shri Paranjape found it difficult to support the said reason. The second reason given is that sometimes the video film is required to be viewed twice. In our view only because sometimes the video film is required to be viewed twice, it cannot be termed to be a sound reason for prescribing double rate of fees in all cases. Even in a case of celluloid film such a second viewing might become necessary in a given case. But an exception is not a rule. The procedure prescribed for examination and certification of celluloid film and video film is identical. Section 8 authorises the Central Government to make rules for the purposes of carrying out effectively the provisions of the Act. Section 8(2)(c) confers a power upon the Central Government to frame rules, prescribing the manner of making an

application to the Board for a certificate and the manner in which a film has to be examined by the Board and the fees to be levied therefor. Therefore the fee is prescribed for granting a certificate after examination of the film. Only because the material on which the video film is made is different, the examination of the film cannot differ. No additional expenditure is incurred on that count. Therefore in our view prescription of double fees for the video film under Rule 36 violates the equality clause as enshrined in Article 14 of the Constitution. To say the least it amounts to hostile discrimination. Therefore to that extent the fees prescribed for examination and certification of video films will be void and bad in law. Hence the fees even for the examination of the video film will be the same as that for the celluloid film.

18. Under Rule 36 for issuance of such duplicate copy of the certificate and pasting it on the video film and the case, a charge of Rs. 10/- is prescribed. Rule 36(2) lays down that a fee of Rs. 10/- shall be paid for duplicate copy of the certificate. This charge of fee was also challenged by the petitioners on the ground that it has no nexus with the services rendered nor there is any quid pro quo between the services rendered and the fees charged. As to why a fee of Rs. 10/- is being charged is explained by the respondents in para 13 of their affidavit. According to the respondents administrative expenses are increasing from year to year. Fresh equipments are also required to be purchased. An Air Conditioned centre is required for storage of video films deposited by the applicants. The cassettes are registered by giving serial numbers. They are signed by the authorised officer. This procedure is prescribed in the interest of general public and helps detection of unauthorised cassettes and also the interpolation. Copies are made and authenticated, along with the number of the copies of the video films. A register is maintained of such copies and serial number is given to each copy. The copy is also signed by the authorised officer and it is this authenticated copy which is to be affixed on the cassette and its case. This requires considerable expenditure. As a matter of fact charge of rupees ten is wholly nominal and cannot be termed as excessive. From the affidavit of the respondents it is quite clear that services are being rendered by the department, for which the fee is being charged. As observed by the Supreme Court in the City Corporation of Calicut Vs. Thachambalath Sadasivan and Others, , "the traditional concept of quid pro quo is undergoing a transformation and that though the fee must have relation to the services rendered, or the advantages conferred, such relation need not be direct, a mere casual relation may be enough. It is not necessary to establish that those who pay the fee should receive direct benefit of the services rendered for which the fee is being paid. If one who is liable to pay receives general benefit from the authority levying the fee, the element of service required for collecting fee is satisfied. It is not necessary that the person liable to pay must receive some special benefit or advantage for payment of the fee". Apart from this principle, in the present case the person is receiving advantage of the services rendered. If this is so, then it cannot be said that the fee of Rs. 10/- as charged is any way excessive and has

absolutely no nexus with the services rendered. Therefore we do not find any substance in this contention also.

19. However, a complaint was made that though xerox copies of the certificate are supplied by the applicants, and they also do the work of pasting the copies on the video cassette and the case, still the authorised officer takes a long time for authenticating it, by putting up seal and signature. This not only results in undue loss, but creates several complications and problems. In our view this problem can be solved if the authorities follow proper procedure. If the applicant, who has a necessary authority, files an affidavit giving all the details and also stating therein, that video copy presented by him is an exact copy of the film already examined and certified, then it might solve his problem to some extent. In that case it may not be necessary for the authorities to view or compare each copy over again. But this is merely a suggestion made at the time of hearing, and we hope that the authorities will take it into consideration while laying down the procedure; so that the whole thing is not sabotaged by unscrupulous persons and the corruption at all levels is stamped out.

20. In all fairness the petitioners have not pressed for refund of the amount already paid for re-examination or re-certification of video copies of the already certified films, since they were more interested in getting the legal position clarified.

Hence Rule is made partly absolute. However, in the circumstances of the case, there will be no orders as to costs.

Interim Orders to continue for a period of six weeks.