

Raja Video Parlour and others

Vs

State of Punjab and others

Civil Appeals Nos. 3280-82, 3283-87 and 3288 of 1993

(P. B. Sawant, S. C. Agrawal JJ)

14.07.1993

JUDGEMENT

S. C. AGRAWAL, J.

1. Leave granted.

2. Heard learned counsel for the parties.

3. These appeals are directed against the judgment of the High Court of Punjab and Haryana dated August 5, 1992 dismissing the writ petitions filed by the appellants wherein they had challenged the orders refusing to grant or renew the licence for exhibition of video films through video cassette recorder (VCR), video cassette player (VCP) and a video projector on a separate screen in the video parlours run by them. The appellants have also challenged the validity of the proviso to sub-rule (3) of Rule 10 and Rule 5(3) of the Punjab Exhibition of Films on Television Screen through Video Cassette Player (Regulation) Rules, 1989 (hereinafter referred to as 'the Rules') made by the Government of Punjab in exercise of the powers conferred on it by Punjab Cinemas (Regulation) Act, 1952 (hereinafter referred to as 'the Act').

4. The appellants are running video parlours wherein they exhibit pre-recorded video cassettes of cinematograph films with the aid of a VCR/ VCP and a video projector on a large screen of the size of (sic) inches or 120 inches. The premises in which they conduct the said business are having a capacity of more than 50 seats. In the Punjab Cinemas (Regulation) Rules, 1952 that were framed by the Government of Punjab in exercise of the powers conferred by the Act, there was no special provision for grant of licence for such public exhibition of films. On January 10, 1986, the Government of Punjab issued executive instructions for grant of licences for public exhibition of films on video under the Act and the Punjab Cinemas (Regulation) Rules, 1952 wherein it was stated that the Government have decided to frame Acts/ rules to regulate the video films through VCR's and while this process would take some time, the Government, in the meanwhile, have decided to take immediate remedial measure to provide for licensing of commercial exhibition of films through VCRs. By the said instructions, the District Magistrates were advised to issue licences to the applicants for public exhibition of films on video under the Cinematograph Act, 1952. In accordance with those instructions, temporary licences were granted to the appellants. Under those licences, the seating capacity for the premises used for public exhibition of films was in the range of 150-200.

5. By notification dated January 13, 1989 the President of India promulgated the Rules providing for regulation of the exhibition of films on Television screen through VCPs. Rule 2 makes the Rules

applicable to all the existing places where films are exhibited on television screen through video cassette players on payment for admission to such places and also to the places which shall be used for the said purpose after the commencement of the Rules. In Rule 4 it is laid down -

"4. Licensing - No person shall exhibit films on television screen through video cassette players on payment for admission basis in any place unless he has obtained a licence under and in accordance with the terms and conditions of a licence to be granted under these rules.

Provided that a person who, immediately before the commencement of these rules, holds a licence under any instructions issued by the State Government shall be required to obtain a licence within one month from such commencement or on the expiry of the licence, whichever period is earlier."

6. Part II (Rules 5 to 11) prescribes the procedure for granting licences. In sub-rule (3) of Rule 5, it is provided that the licence shall be granted for a Video Cassette Player in respect of a premises having seating capacity up to fifty seats only. Similarly in the proviso to sub-rule (3) of Rule 10, it is laid down that no licence shall be granted for a building under these rules, if such building is worth accommodating more than fifty spectators at a time.

7. The High Court construed the Rules to mean that they apply only to exhibition of films on the screen of television sets seen through VCPs. According to the High Court, the in built television screen is normally of 21" or 27" size while the size of the separate screen on which cinematograph films can be exhibited by VCR with the help of video projector is 100" or 120" or even more. The High Court, therefore, examined whether a television set can have a split screen. For that purpose, the High Court decided to obtain the opinion of an expert and examined Shri S. B. L. Sachan, Assistant Professor, T. V. Engineering, Technical Training Institute, Chandigarh who opined that TV screen is an integral part of the TV and cannot be separated out and that there is a fundamental difference between the TV screen and projection screen and that they are not identical. He also stated that the TV projection system is totally different from the cinema projection and that TV projection can also pick up TV signals but the way of converting the signals into picture form as compared to television is different. On the basis of the said statement, the High Court concluded that TV screen is an integral part of the television and that it cannot be separated out and that the television screen and the projector screen are fundamentally different and that while the television works on the principles of electron scanning, the projection system works on projection of lights and that the two are totally different systems for display of pictures inasmuch as the television screen is not replaceable by projection screen and projection screen is not replaceable by projection (television) screen. According to the High Court the Rules specifically provide for exhibition of films through pre-recorded cassettes on VCPs on television screen and that cloth screen or wall used for the exhibition of film through projection system cannot be said to be television screen. The High Court, therefore, held that though under the Rules, the appellants were entitled to exhibit films on television screen from pre-recorded video cassettes with the help of VCPs, they were not entitled to exhibit films with the help of projector on a projection screen. The High Court has also examined the question regarding the validity of R. 5(3) and proviso to sub-rule (3) to Rule 10 imposing a maximum limit of fifty persons in the matter of seating capacity of the premises used for public exhibition of films. The High Court has held that the said restriction on seating capacity is a reasonable restriction having regard to the size of the television screen (at present 27"), health of the persons visiting the parlours and public safety. The High Court has, further, observed that having regard to the advanced technology for exhibiting cinematograph films from pre-recorded video

cassettes by playing on VCP with the help of projection system on screens of varying sizes, the Government would be well advised to appropriately amend the video rules or notify fresh rules for exhibition of cinematograph films with the help of projection system from pre-recorded cassettes and till such time, the video rules are amended or new rules notified, the Government may consider granting permission to the appellants for exhibition of cinematograph films by using projection system on such terms or conditions, as it may deem fit, including charging of taxes, entertainment duty etc. and keeping in view, of course, public health and ensuring public safety.

8. We have heard Shri Harish N. Salve ad Shri Govind Mukhoty in support of these appeals. On behalf of the appellants, it has been urged that since the High Court was of the view that the Rules were not applicable to exhibition of cinematograph films on pre-recorded cassettes through VCPs and projection system on a separate screen, the High Court was in error in dismissing the writ petitions filed by the appellants and that the High Court should have set aside the orders passed by the authorities rejecting the applications for grant / renewal of licences submitted by the appellants inasmuch as in absence of the Rules, there was no restriction on the power of the licensing authority to grant / renew a licence under Section 4 of the Act. The submission was further that under Section 5 of the Act the power of the licensing authority to grant the licence can be restricted by rules framed under the Act and since the Rules are not applicable in the present case, there was no restriction on the power of the licensing authority to grant a licence and that the grant / renewal of the licences has been wrongly refused by the licensing authorities on the basis of the Rules which have been found to be not applicable.

9. In *M/s. Shankar Video v. State of Maharashtra*, C.As. arising out of SLP(C) Nos. 13015 / 92 and 15302/ 92 in which judgment has been pronounced today (reported in 1993 AIR SCW 2432), we have considered the question whether exhibition of pre-recorded cassettes of films through VCR/ VCP and a television projector on a separate large screen can be regarded as exhibition of moving pictures given by means of VCR/ VCP through the medium of television so that the place where such exhibition is given may constitute a video cinema under relevant provisions of the Maharashtra Cinemas (Regulations) Rules, 1966. In that case, we have considered the salient features of the television technology with special reference to a television receiver and in that context we have examined the mode of functioning of the television projector with a separate screen and have come to conclusion that a TV projector with a separate screen operates as a TV receiver and performs the same functions as a TV and on that view we have held that exhibition of pre-recorded cassettes through VCR/VCP and a TV projector would amount to exhibition of moving pictures or series of pictures given by means of VCR/ VCP through the medium of television. In that case, we have also noticed the points of difference between a television set having an inbuilt screen and a TV projector with a separate screen to which reference has been made in the judgment of the High Court and we have found that the said differences are not such as to alter the nature of the system on which the TV projector works and it does not cease to be a television receiver. Once a TV projector is held to be a TV receiver, the separate screen of the TV projector has to be regarded as a television screen.

10. The High Court has construed the words 'television screen' in the Rules to mean the screen of a television set and on that basis, the High Court has held that television screen only means the inbuilt television screen and does not include a separate screen. We do not find any warrant for reading the word 'set' after 'television' in the words 'television screen' in the Rules. The words 'television screen' in the Rules are wide enough to cover a screen of the TV projector once the same is held to be a television receiver. We are, therefore, unable to agree with the view of the High Court that the Rules apply only to exhibition of cinematograph films through a VCP on the screen of a television set and they do not apply to such exhibition through a TV projector on a separate large screen. We are of the

opinion that the Rules are applicable to exhibition of films on a separate screen through video cassette players and television projectors.

11. On that view of the matter, the contention urged on behalf of the appellants that since the Rules were not applicable, there was no restriction on the power of the licensing authority to grant/ renew the licences of the appellant cannot be upheld and orders refusing to grant/renew the licences are not liable to be quashed on that basis. From the said orders, it appears that the grant/ renewal of licences was refused by the authorities on two grounds, (i) the Rules do not contemplate grant of a licence in cases where a TV projector is used; and (ii) the licence can be granted only for premises with a seating capacity up to 50 persons. The first ground given for rejection of the licence cannot be upheld since we have found that the Rules cover TV projectors. As regards the second ground based on the limitation with regard to seating capacity, the submission of the learned counsel for the appellants is that the said condition imposed in sub-rule (3) of Rule 5 and the proviso to sub-rule (3) of Rule 10 is unconstitutional inasmuch as it imposes an unreasonable restriction on the right to carry on trade and business granted under Article 19(1)(g) and is not saved by Article 19(6) of the Constitution. It has been submitted that the limit about the maximum seating capacity cannot be arbitrarily fixed at the figure of fifty and that such limit, in order to be reasonable, must be dependant on the size of the screen. In this regard, reference has been made to corresponding provisions contained in Rule 5 of the Delhi Cinematograph (Exhibition of Films by Video Cassette Recorders) Rules, 1986 and Rule 5(a) of the U. P. Cinemas (Regulation of Exhibition by means of Video) Rules, 1988 wherein the maximum seating capacity has been fixed depending on the size of the television or a video screen. The High Court has upheld the maximum limit of fifty persons in Rule 5(3) and Rule 10(3) proviso of the Rules as a reasonable restriction on the view that the Rules are applicable to exhibition of films through a television set only and the size of the screen of the television set is normally up to 27". The said justification for upholding the validity of these provisions is no longer available since the Rules have been found to be applicable to TV Projectors with a separate screen which are much larger in size than the 27" screen in a TV set. The provisions contained in Rule 5(3) and the proviso to Rule 10(3) fixing a maximum seating capacity of fifty irrespective of the size of the screen have, therefore, to be struck down as imposing an unreasonable restriction on the right of the appellant guaranteed under Article 19(1)(g) of the Constitution. Since both the grounds on which the grant/renewal of licences was refused cannot be sustained the said orders refusing to grant/renew the licences to the appellants are set aside. The matter of grant/ renewal of the licences to the appellants shall be reconsidered by the licensing authority in accordance with law and till then the interim orders passed by this Court permitting the appellants to operate their video parlours or video halls would continue.

12. The appeals are accordingly allowed and the judgment of the High Court dated August 5, 1992 holding that the Punjab Exhibition of Films on Television Screen through Video Cassette Players (Regulation) Rules, 1989 are not applicable to exhibition of films on a separate screen through a TV projector and that the appellants are not entitled to exhibit cinematograph films with the help of VCP and the TV projector is set aside and it is declared that the said Rules are applicable to such exhibition of films on separate screen through the TV projector. The orders refusing to grant/renew the licences to the appellants are set aside and the licensing authority is directed to reconsider the matter of grant /renewal of such licences in accordance with law and till then interim orders passed by this Court permitting the appellants to operate their video parlours or video halls would continue. No orders as to costs. Appeal allowed.

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