**PUNJAB AND HARYANA HIGH COURT**

Deep Snack Bar

Vs

State of Haryana

Civil Writ Petition No. 4807 of 1983

(R.N. Mittal and M.M. Punchhi, JJ.)

20.03.1984

**JUDGMENT**

**R.N. Mittal, J.**

1. This judgment will dispose of C.W.P. Nos. 4666, 4914, 5006, 5110, 5122, 5148, 5182, 5190, 5291. and 5292 of 1983 relating to Sirsa district, Nos. 4807 to 4809 and 4924 of 1983 relating to Sonepat district No. 4828 of 1983 relating to Jind district and No. 5075 of 1983 relating to Kurukshetra district, which involve common questions of law and fact. The facts in the judgment are being given from C.W.P. No. 4807 of 1983.

2.The petitioners are running restaurants, snacks bars and soft drink corners in district Sonepat. They have installed V.C.Rs. in their business premises. It is alleged that they are providing entertainment to their customers on taking service charges which is an ancillary purpose. The V.C.Rs. are licensed under the Indian Telegraph Act, 1885.

3. The District Magistrate, Sonepat, respondent No. 2, exercising powers alleged to be conferred on him under the Haryana Cinemas Regulation Act, 1952 (hereinafter referred to as the Haryana Act), issued a general order dated 3rd October, 1983 (copy Annexure P.1), prohibiting exhibition of cinematograph by means of video sets in places other than licensed under that Act in Sonepat district. It is further provided therein that any contravention in respect thereof would be dealt with under Section 7. On 3rd October, 1983, a Munadi was made in the town of Sonepat and It was proclaimed that no person would display or exhibit any video film at any public place without obtaining the license from the District Magistrate, Sonepat. After the Munadi the local police came to the petitioners' places and served on them the order Annexure P.1. This order has been challenged by the petitioners through the writ petition.

4. The respondents have contested the writ petition and pleaded that the District Magistrate, Sonepat, was justified to issue the order in accordance with the provisions of the Haryana Act.

5. The main question that arises for determination is whether by using V.C.Rs. and T.V. sets in restaurants etc. for the entertainment of the customers, the owners contravene the provisions of the Haryana Act.

6. In order to determine the question, it is relevant to refer to the objects and, reasons for which the Haryana Act was enacted. Prior to the Haryana Act, the Cinematograph Act, 1918, (a Central Act), was applicable to the State. It dealt with two separate matters, firstly, examination and certification of films as suitable for public exhibition, and secondly, regulation of cinemas including their licensing. After the promulgation of the Constitution of India, the matters regarding 'sanctioning of cinematograph films for exhibition' were included in entry No. 60 of List I (Union List) of Seventh Schedule and matters regarding cinemas subject to the provisions of entry 60 of List I in entry No. 33 of List II (State List). Some of the Sections of 1918 Act related to the Central Government, some to the State Governments and some to both the Central and State Governments. However, there was no clearcut demarcation of the said provisions with the result that difficulty had been experienced in administering it. Therefore, the said Act was repealed and the Cinematograph Act, 1952 (hereinafter referred to as the Central Act), was enacted by the Government of India in which the provisions relating to the Union List and State List were separated. The Central Act consists of four parts; Part I deals with preliminary matters, Part II with certification of firms for public exhibition, Part III with regulation of exhibition by means of cinematographs and part IV with repeal. Sub-section (2) of Section 1 of the Central Act provides that Parts I, II and IV extend to whole of India and Part III to the Union. Territories only. The Central Act was enforced on 28th July, 1952. The Government of India suggested to the States that they should undertake legislation thereon on the lines of Part III of the said Act. In pursuance of that suggestion, the Punjab State, as it then existed, enacted the Punjab Cinemas (Regulation) Act, 1952. After the reorganisation of the Punjab State, the Act became applicable to the State of Haryana. On being adopted by the State of Haryana, it is now called as Haryana Cinemas (Regulation) Act, 1952. It is thus evident that the Haryana Act and Central Act operate into different spheres. The former deals with licensing of Cinematograph exhibitions and the latter with certification of films for public exhibitions. Now it is appropriate to refer to the contentions of the learned counsel for the petitioners.

7. Mr. Hooda vehemently contends that the Haryana Act refers to licensing of the premises where exhibition is given of films by means of a projector. A film, according to the Cinematograph Film Rules, 1948, means a motion picture or sound recordIng film having a initro-cellulose base. In a V.C.R., a magnetic tape known as cassette is used for the purpose of exhibition, which does not have nitro-cellulose base. The cassette can be erased and re-used whereas a film cannot be re-used. In the circumstances, a cassette cannot be equated with a film and the V.C.R. not with a projector. He urges that, therefore, the projector is a cinematograph but not a V.C.R.

8. We have duly considered the argument but regret our inability to accept it. The word "film" has not been defined in the Haryana Act but it has been defined in the Central Act. However, for interpreting the provisions of Haryana Act, its definition from the Central Act cannot be taken into consideration. Clause (a) of Section 2 defines the word "cinematograph" as follows :-

> "(a) 'Cinematograph' includes any apparatus for the representation of moving pictures or series of pictures;
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> From a reading of the definition of the word "cinematograph" it is evident that it is an inclusive and not an exhaustive definition. It is further evident that any instrument or machinery by which the motion pictures are represented can be called a cinematograph.

> The definition does not talk of film and, therefore, it is not necessary that the representation should be from a film. It can be from anything including a cassette. The V.C.R. like projector is used for representation of motion pictures, though technology for representation in both of them is different. However, the definition does not take consideration the technology by which the moving pictures are represented. In this age of scientific advancement, the Legislature is presumed to know that definition can be given extended meaning. There is, therefore, no reason to restrict the meaning of the word apparatus in the definition to a projector by which a film is screened. Consequently, we are of the opinion that V.C.R. is included in the definition of the word "cinematograph". Even if the definition of the word "film" given in the Central Act is taken into consideration the result will not be different. It is defined in that Act as, "film means a cinematograph film". From the definition, it is clear that from whatever material the moving pictures are represented through cinematograph would be a film. If the definition is considered in that context, it would include a cassette used for projecting moving pictures with the aid of V.C.R. The counsel for the petitioners has also referred to the definition of the word "film", as given in the Cinematograph Film Rules : 1948. These Rules have been framed under the Petroleum Act, 1934, for the purposes of preventing accident by fire or explosion while storing and transporting films having nitro-cellulose base. In our view, the definition of the word "film" in the said Rules is of no assistance to interpret the word "cinematograph".

9. The matter is not *res integra.* Similar cases were dealt with by the Madhya Pradesh High Court and Bombay High Court in *Restaurant Lee and others v. State of Madhya Pradesh and others*[1]*,* and *Dinesh Kumar Hanumanprasad Tiwari v. State of Maharashtra*[2]*,* respectively. In the former case, a Division Bench was interpreting the provisions of M.P. Cinemas (Regulation) Act, wherein the definition of word "Cinematograph" is the same as in the Haryana Act. The following observations may be read with advantage :

> "..... 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 films. 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".

This case was followed by the Bombay High Court in Dineshkumar Hanumanprasad Tiwari's case (supra), where the learned Judge was interpreting Bombay Cinemas (Regulations) Act, 1953. It was observed that "we can't forget that we are living in the age of science and technology. It is true that the fundamental rule of construction is what is the intention of the Legislature. But in a fast developing society, it would not be correct to confine the intention of Legislature to the meaning attributable to the word used at the time of enactment. In a scientific age, the Legislature must be presumed to be aware of an enlarged meaning of the word which it may attract with the advance of science and technology. There is no reason as to why the word

"apparatus" used in the definition of "cinematograph" be given restricted meaning so as to mean only a sheet or ribbon of celluloid or the like prepared with the coating for ordinary photographs. On the other hand, any apparatus, as long as it is capable of being used for representation of moving pictures or series of pictures notwithstanding whether it is used with the aid of magnetic tapes, would be an 'apparatus' within the meaning of the word "cinematograph" as defined under the Act. It is then observed that the definition of "cinematograph" is wisely couched in widest possible terms and as long as any apparatus which answers the description given in the definition of "cinematograph" must be held as cinematograph and any place wherein exhibition is given by means of cinematograph, must fall within the mischief of cinema. The learned Judge also dealt with the definition of the word "film" as given in Rule 3(g) of the Cinematograph Rules, 1948. After noticing the definition, it was observed that it would not be proper to hold that cinematograph films should be construed in the same way as defined under Rule 3(g) of the Cinematograph Film Rules, 1948. We respectfully agree with the above observations.

10. Now, it is to be seen whether any provision of the Haryana Act is contravened in case the V.C.Rs and T.V. sets are used in the restaurants for screening movie pictures. Section 3 of the Haryana Act, *inter alia,* provides that save as otherwise provided in the Act, no person shall give an exhibition, by means of elsewhere than in a place licensed under the Act. The penalty for contravention of Section 3 has been provided in Section 7. The main object of the Central and Haryana Act is to safeguard public health and safety. The word "exhibition" in this context means screening of a movie for profit at a public place. If a movie is screened in a restaurant for the benefit of the customers, that will amount to giving exhibition. The reason is that the owner is doing so with a profit motive and any customer is entitled to enjoy the movie. However, if a movie is screened in a residential house for the benefit of family members, relations or friends, that will not amount to giving exhibition. While granting licences for cinemas, the provisions of the Punjab Cinema (Regulation) Rules, 1952, which have been framed taking into consideration public health, public safety, morality, etc., are required to be followed. The rule provide that the building should not be within a particular distance from places of worship, hospitals, thickly populated residential areas, orphanages, recognised education institutions such as colleges, high schools, residential institutions attached to educational institutions. It is evident that in granting licences special safeguards have been provided for the students. In case such mini cinemas are allowed to operate in the vicinity of educational institutions, that will cause a great harm to the student community. After taking into consideration the aforesaid circumstances, we are of the view that by using V.C.Rs. and T.V. sets in restaurants for entertainment of customers, the owners contravened the provisions of the Haryana Act. The view which we have taken finds support from Restaurant Lee's case and Dineshkumar Hanumanprasad Tiwari's case (supra).

11. Faced with that situation, Mr. Hooda argues that the V.C.Rs and the T.V. sets are licensed under the Indian Telegraphs Act, 1885 and the petitioners have obtained licences under the rules framed under the said Act read with Wireless Telegraphy Act, 1933. Therefore, he submits that they have a right to screen the pictures in the restaurant for the benefit of their customers.

We are not impressed with the submission of the learned counsel. It is true that the petitioners have obtained licences under the said Acts. However, the licences have been issued subject to certain conditions mentioned in the licences. Conditions 10 and 13 are relevant, which are

reproduced below :-

10. The licence permits the use of the wireless receiving apparatus described herein in business premises, public places, rooms used jointly for residential and business purposes, or for gain, or for the benefit of the passengers or for advertisement in public vehicles on roads or railways for receiving programmes and messages transmitted for general reception.

13. This licence does not authorise the licensee to do any act which is -

> (a) an infringement of any copyright which may exist in the matter received by means of the licensed apparatus, or
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> (b) contrary to any rule made by a competent authority regulating musical or other performance or noise in the area in which the licensed apparatus is established.

From a reading of Condition 10, it is evident that the wireless receiving apparatus can be used at the places mentioned therein for receiving programmes and messages transmitted for general reception and not for receiving other programmes. It implies that these cannot be used for exhibiting movies by means of V.C.Rs. Condition 13(b) prohibits the licensee to do any act which is contrary to any rule made by a competent authority regulating musical or other performance or noise in the area in which the licensed apparatus is installed. It is clear from the condition that the licensee is required to comply with other laws regulations the screening of movies when he screens moving pictures by the aid of V.C.Rs and T.V. sets in spite of the fact that he has obtained a commercial licence. As such he is bound to follow the provisions of the Haryana Act while he screens moving pictures by means of V.C.Rs. and T.V. sets in a restaurant. We are fortified in this view by the observations in Restaurant Lee's case (supra) wherein it was held that the commercial licence merely permits the use of V.C.R. and T.V. in business premises transmitted for general reception. The licence does not permit the use of V.C.R. and T.V. for playing pre-recorded cassettes of movies.

12. Mr. Hooda made reference to *Attorney General v. Vitagraph Company Ltd.*[3], wherein it was observed that the showing of films on a screen by dealers or their agents, to intending purchasers or hirers only, does not amount to giving an exhibition within the meaning of Cinematograph Act, 1909. The facts of that case were that the defendants were the agents for the sale or letting out of cinematograph films manufactured by an American company. They had installed in a room an apparatus for screening films. They advertised in a trade paper that intending purchasers or hirers could see the films in that room. They did not invite the public to see the films on those occasions. The above observations were made in the said circumstances. However, in the present case, the circumstances are different. Here all persons who are ready to pay for the eatables and some additional charges to the petitioners can enjoy the movies. The business of restaurant is not dependent on exhibiting films through V.C.Rs. and T.V. sets. On the other hand, these are used for the purpose of attracting customers and also entertaining them. In that case, it was not possible for the defendants to carry on the business without the exhibition of films. Therefore, we are of the view that the above observations were made in a different context and are of no assistance in deciding the present case.

13. The impugned order Annexure P.1 has been issued by respondent No. 2, who is the licensing authority under Section 4 of the Haryana Act, bringing it to the notice of the general public that giving exhibition of cinematograph by means of video sets than in a place licensed under the Act was in contravention of Section 3 of the Haryana Act and in case a person gave such an exhibition, he would be dealt with under Section 7. It is clear from the order that it is an intimation to the public in general and users of V.C.Rs and T.V. sets in particular that if any one contravenes the provisions of Section 3, he shall be prosecuted under Section 7. It is true that there is no provision in the Haryana Act under which a District Magistrate can issue such an order. However, it cannot be denied that a person contravening the Haryana Act, can be prosecuted under Section 7. If before taking action against a person, it is brought to his notice that if he commits the breach any further, he will be dealt with in accordance with law, no fault can be found with such an action. Therefore, there are no grounds to quash the order.

14. For the aforesaid reasons, we do not find any merit in the writ petition.

15. No additional argument has been raised in C.W.Ps Nos. 4666, 4914, 5006, 5110, 5122, 5148, 5182, 5190, 5191, 5192 of 1983, relating to Sirsa District and C.W.P. No. 4808, 4809 and 4924 of 1983 relating to Sonepat District. In C.W.P. No. 4828 of 1983, relating to Jind District, no order was passed by the District Magistrate. The petitioners allege that the respondents are threatening to take action against them in case they exhibit the films by means of V.C.Rs. and T.V. sets. The above observations are also fully applicable to this case as well. Consequently, there is no merit in these petitions too.

16. Briefly, the facts in C.W.P. No. 5075 of 1983 are that the petitioner is carrying on the business of restaurant at Shahbad Markanda, District Kurukshetra. It has installed a V.C.R. for exhibiting movies for the entertainment of its customers on receiving service charges from them. It is said that the Assistant Excise and Taxation Officer (Respondent No. 3) came to the premises of the petitioner on 3rd October, 1983, and directed it to furnish security under the Punjab Entertainment Duty Act read with the Cinematograph Act for payment of entertainment duty. The petitioner paid Rs. 1,000 as security as demanded by him. He also directed the petitioner that if it exhibited the video film a penalty of Rs. 5,000 would be imposed on it. It is further alleged that feeling aggrieved against the order of Respondent No. 3, it moved an application before the District Excise and Taxation Officer, Thanesar, on 10th October, 1983, but he did not pass any order on its application. It also approached the Deputy Commissioner on 24th October, 1983, for granting him permission to display the movies on V.C.Rs., but he too did not pass any order on it. Consequently, the writ petition has been filed by the petitioner for appropriate relief.

17. The writ petition has been contested by the respondents. In the written statement, it has been stated that the Assistant Excise and Taxation Officer, Shahbad inspected the premises of the petitioner and found that seventy persons were enjoying the show. Some persons were standing and some were sitting on the floor. No tea or eatables were being served there. The statement of the proprietor of the petitioner was recorded by him wherein he admitted that he was charging Rs. 5 per head for exhibiting film "Betab". As such shows were liable to entertainment duty under Section 3 of the Punjab Entertainment Duty Act, 1955, he asked the proprietor to deposit Rs. 1,000 as security as prescribed under Section 5 of the Act in order to safeguard the interests of the revenue. The screening of the motion pictures in this situation, it is said, amounts to entertainment as defined in Section 2(d) of the said Act. A person admitted to entertainment is

liable to pay the prescribed entertainment duty and the person who screens movies for entertainment of his customers is required to deposit security to ensure the payment of entertainment duty. Thus, it is pleaded, the petitioner did not comply with the said provisions and also with some other provisions of the said Act.

18. The main question that arises for determination in this petition is, whether exhibition of motion pictures in a restaurant by means of V.C.R. and T.V. sets falls within the definition of the word "entertainment" as defined in Section 2(d) of the Punjab Entertainment Duty Act, 1955. The learned counsel for the petitioner has very fairly admitted that the question is now covered by a decision of the Supreme Court in *M/s Geeta Enterprises and others v. State of U.P. and others*[4], It was observed therein that the word "entertainment" has been used in Section 2(3) of the Uttar Pradesh Entertainment and Betting Tax Act, 1937, in a very wide sense so as to include within its ambit, entertainment of any kind including one which may be purely educative. Sub-section (3) itself by using the word, "entertainment" as "any exhibitional, performance, amusement, game or sport to which persons are admitted for payment" has extended the scope of entertainment to expressly include any kind of amusement, game or sport. By operating the video, the operator of the video pays 50 paise per 30 seconds for playing the games, sports and other kind of performance which are shown on the machine and which can be watched by interested spectators. It is further observed that, therefore, such an exhibition falls within the purview of the word "entertainment" as envisaged in sub-section (3). The definition of the word "entertainment" in the Punjab Entertainment Duty Act is similar to that as was given in the U.P. Act, which was interpreted in the aforesaid case. Consequently, we are of the opinion that exhibition of motion pictures in a restaurant by means of V.C.R. and T.V. sets falls within the definition of the word "entertainment" as given in the abovesaid Act.

19. For the aforesaid reasons, all the writ petitions are dismissed, but without any order as to costs.

**M.M. Punchhi, J.**

20. I agree.

Petitions dismissed.

Cases Referred.

1AIR 1983 Mad Pra 146
2AIR 1984 Bom 34
31915(1) Chancery Div 206
4AIR 1983 SC 1098