

Ram Kishan and Another Vs. State of M.P. and Another

Ram Kishan and Another Vs. State of M.P. and Another

SooperKanoon Citation : sooperkanoon.com/502406

Court : Madhya Pradesh

Decided On : Nov-30-2000

Reported in : AIR2001MP176; 2001(2)MPHT14

Judge : Mr. Dipak Misra, J.

Acts : Madhya Pradesh Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983 - Rules 10 and 13; [Constitution of India](#) - Articles 19(1), 226 and 227; Madhya Pradesh Cinema Regulation Act, 1952; Madhya Pradesh Entertainments Duty and Advertisements Act, 1936 - Sections 3

Appeal No. : Writ Petition No. 3282/2000

Appellant : Ram Kishan and Another

Respondent : State of M.P. and Another

Advocate for Def. : Shri Ajay Raizada, Government Adv.

Advocate for Pet/Ap. : Shri Aditya Adhikari, Adv.

Disposition : Writ petition allowed

Judgement :

ORDER

Dipak Misra, J.

1. Invoking the extra-ordinary jurisdiction of this Court under Articles 226 and 227 of the [Constitution of India](#) the petitioners have prayed for issue of a writ in the nature of certiorari for quashment of the orders dated 9-8-1999 passed by the District Magistrate, Seoni, vide Annexure P-5 and P-6.

2. The facts as have been unfolded are that the petitioner No. 1 is engaged in the business of screening of films through a VCR and projecting the films on a large screen by means of an electronic apparatus. The Video Parlour owned by the petitioner No. 1 is named as Neeraj Video Centre. The petitioner No. 1 has been granted licence bearing licence No. 1/94 to run the Video Parlour. The said licence is granted on annual basis and he had the licence till the year 1999. The petitioner No. 2 was given a licence bearing No. 7/VCR/Lic/99 for screening of films through VCR/VCP which was valid till the year 1999. These licenses are granted under the provisions of the M.P. Cinema Regulation Act, 1952 (Act No. 17/52). It has been averred that the application for renewal of the licenses of the petitioner are pending before the District Magistrate, Seoni. It has been asserted that both the petitioners were granted specific permission to exhibit the films by projection on a large screen by means of electronic device. It is further case of the petitioners that the electronic apparatus which they utilised is called 'Intel System' which is a complete apparatus by itself and there is no separate projector which is separated from this apparatus. While the petitioners were carrying on their business of exhibiting the films by using the Intel apparatus, the District Magistrate, Seoni issued two orders, vide Annexures P-5 and P-6 indicating that exhibition of films on a large screen is not permissible in law, as enunciated by this Court in the case of Anand Jaiswal v. District Magistrate, Shahdol (M.P. No. 3673/87). Passing of the said orders is the cause of the grievance of the petitioners. It is averred in the writ petition that Intel is a modern sophisticated apparatus and it does not have a projector to exhibit and no separate screen is necessary. In the writ petition a few paragraphs from the decision rendered in the case of Anand Jaiswal (supra) have been quoted.

3. A counter affidavit has been filed by the answering respondents contending, inter alia, that the films are being exhibited through a projector by using a separate screen and hence, the ratio laid down in the case of Anand Jaiswal (supra) does

not cover the factual scenario and, therefore, the orders passed by the State Government are not susceptible.

4. I have heard Mr. Adhikari, learned counsel for the petitioners and Mr. Ajay Raizada, learned G.A. for the State. Mr. Adhikari has taken me through the entire judgment rendered in the case of Anand Jaiswal (supra). This Court in the aforesaid case was dealing with the Intel System in Paragraph 7. The Division Bench referred to the facts of the case which are as under :--

'7. In Misc. Petition No. 1161/88 the petitioner has established a Video Parlour 'Video Classic' at Raipur and applied for a licence. The petitioner has installed 'Enter PJ-10 Video Projection System, manufactured by the Entel Communications Products Pvt. Ltd., Madras. The set is similar to that in M.P. No. 3940/87 except that it is of Indian origin, having 3 separate tubes red, green and blue throwing colour picture on a smaller screen of size 6' x 4'. But the District Magistrate has granted licence for a screen of 50 to 60 cms only. Therefore, the petitioner has filed his petition.'

After the said facts Their Lordships referred to a passage from Television Theory & Servicing written by Clyde N. Herrick. After referring to the rules in the judgment Their Lordships referred to the decision rendered in the case of Anand Jaiswal v. State, AIR 1987 MP 96. It is pertinent to quote a passage from the said decision :

'A screen of a television receiver set being a component of a picture tube is an integral part of the apparatus called the T.V. receiver. The licensee possessing a licence granted under the M.P. Cinema (Exhibition of Films by Video Cassette Recorder) Licencing Rules, 1983, can use a television set with a picture tube having a screen of any dimension unless conditions subject to which the licence is granted restrict use of a screen beyond a given dimension. So long as the licensing rules are silent about the dimensions of the screen of the picture tube, the holder of a valid licence under the rules can always use a television receiver with a picture tube having screen of any dimension. If the licencing authority means to restrict the use of a screen beyond certain dimensions, the rules have to be so amended or the condition has to be incorporated in the licence itself. As long as it is not done, the licensee shall be free to use a picture tube with the screen of

any dimension. The licensee in view of the existing rules and licensing conditions, is certainly not entitled to use a separate screen apart from the screen of the picture tube of a television receiver with a view to enlarge the image.

The petitioner licensee holding a valid licence would therefore, be liable to pay entertainment duty only as prescribed under Section 3 of the M.P. Entertainments Duty and Advertisements Act, 1936 (No. 30 of 1936) as amended by the M.P. Entertainments Duty and Advertisements (Amendment) Act, 1983.'

After referring to the aforesaid decision Their Lordships observed that use of such a system should be subjected to the same terms and conditions which exist for exhibition of cinematographic films and the petitioner cannot be permitted to display films which are on par with cinematographic films in terms of sizes, audio-visual, quality etc. Their Lordships in Paragraph 11 of the judgment expressed thus:--

'11. The petitioner has annexed a brochure issued by Soni Corporation of Japan in respect of its universal Video Projector 1020 CM. These new projectors deliver razor-sharp, true-to-life pictures on giant 100 or 72 inch screens. The universal projector is the system utilising all the new technology of the communication age, providing unbelievable picture quality. Although the projectors are extremely sophisticated, being compact, light weight and readily set up for operation, they are incredibly easy to use. Further, the projector can be used on slide screens and even on white wall with no loss in definition though for clarity screen is used. It is portable weighing about 26 Kg. about the same weight as of a TV set of 51 cms. Similar VCR projectors are being assembled and manufactured in India by different manufacturers including Electronics Corporation of India Limited which is a Government of India Enterprise which can be exhibited on screens 100 inches or so. The projector contains 3 guns which are necessary components of a television which fires 3 colours in line electron beams producing a narrow flow of red, green and blue colour electrons, which passing through the lens combine and turn while before converging on the screen. In a conventional T.V. set, T.V. tube contains one gun and not 3 guns which fire three electron beams, from three apertures producing a narrow flow of red, green and blue colour electrons which converge

on the screen and after passing through the lens, form a picture. In order to get a larger image of the picture, instead three guns have been used each with independent lens through which red, green and blue electrons beams combine and turn white before converging on the screen and give a larger image. These three guns inside the projector form part of the television. Picture is visible when the screen is placed at a specified distance from the projector. If the entire thing has to be inbuilt, then the projector would be almost the size of a room, with being 100" and it would have been a very cumbersome instrument and very different to transport and operate. That is the reason why the screen is not inbuilt and it is physically separated and kept in the form of a screen which can be folded so that it can be carried to any place and operated easily, otherwise the very purpose of Video Cassette Recorder would be defeated. It is true that instead of using screen, if the projector is kept at a requisite distance from the wall, pictures would form on the wall also though clarity may not be as good as on the screen which is specially built for the purpose. So even if the petitioner, instead of using the screen, uses wall of the room, that wall will form integral part of the system on which pictures would form. Now if the screen is moved closer or the Projector is brought closer to the wall, there would be no picture formation. Formation of pictures would be only at a specified distance. Though the screen is separate in the sense that it is not inbuilt with the VCR projector, but it is an integral part of the system and without it there can be picture formation.'

5. On a perusal of the aforesaid paragraph it becomes graphically clear that though screen is separate in the sense it is not inbuilt but it is an integral part of the system. Thus, in the view of Their Lordships, while the petitioners use the Intel System they actually not use a projector on a large screen. At this juncture, I think it apposite to refer to Paragraph 13 of the aforesaid judgment wherein Their Lordships addressed themselves to the restrictions of the use of size of the screen in a Video Parlour. To quote :--

'13. It has also to be considered as to whether it is open to the Government to restrict the size of the screen in Video Parlours when the rules do not permit any limit on the size of the screen. This Court in *Anand Jaiswal v. State* (supra) has held that so long as the licence rules are silent about the dimensions of the screen

of the picture tube, the holder of a valid licence under the rules can always use a receiver with a picture tube having screen of any dimension. If the licensing authority means to restrict the use of screen beyond certain dimensions, the rules have to be amended or the condition has to be incorporated in the licence itself. It appears that the State Government on receiving information that wide screens are being used in Video Parlours issued a Circular to District Magistrate on 30-7-1987 that size of the screen be specified while granting or renewing a video licence. By a subsequent letter dated 28-12-1987 the District Magistrates were directed that Video Parlours should only be permitted to use inbuilt screens for exhibiting film i.e. the screens of the sizes of T.V. sets. In M.P. No. 3940/87, the Commissioner in appeal has asked the petitioner to use the screen of the size of a T.V., set and in M.P. No. 1161/1988 the District Magistrate while issuing the licence restricted the size of the screen to 50 to 60 cms. In M.P. No. 3673/87 the petitioner during July, 1987 applied to the District Magistrate for permission to exhibit films as he had already deposited entertainment duty upto September, 1988 and the District Magistrate had granted permission provided the petitioner uses screen of the size of 27' only. As seen, the rules do not limit the size of the screen for exhibiting films through VCR and due to technological advances, VCR can now exhibit films on screens of unlimited dimensions. Here in these first two petitions, the petitioners, since the inception of their Video Parlours, are using the screens of the width of 100' and 120' respectively. So how the State Government by executive fiat restrict the size of the screens and this is infringement of Article 19(1)(g) of the Constitution as the petitioners are being prevented from carrying on their trade and business. So these two circulars are bad and have to be struck down. It is another thing if the State Government are to fix entertainment duty depending upon the size of the screen of the VCR.'

6. If Paragraphs 11 and 13 are read conjointly there remains no iota of doubt that in a videotorium pictures can be exhibited by use of Intel as there is no use of projector or screen as it is understood in common parlance and there is no separate projector or separate screen as understood in ordinary language of the film.

7. Mr. Raizada, learned State counsel has drawn the attention of this Court to the language used in the Annexures P-5 and P-6 to make a distinction. Submission of Mr. Raizada is that the petitioners have been restrained from utilising separate projector and a large screen. In reply it is put forth by Mr. Adhikari that the petitioners are not using separate projectors or separate screen but only the apparatus which is a sophisticated system. Mr. Adhikari also undertakes that the petitioners shall not use anything else except the Intel apparatus.

8. In view of this it is directed that if the petitioners are utilising or using the apparatus of Intel the orders passed vide Annexures P-5 and P-6 shall not be effective as far as they are concerned.

9. Resultantly, the writ petition stands allowed. However, there shall be no order as to costs.

10. Writ Petition allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com