The Indian Law Reports

Before :—*R. S. Mongia, J.*

M/S JYOTI VIDEO THEATRE, JIND,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 8982 of 1989.

7th May, 1991.

(1) *Punjab Cinemas (Regulation) Act,* 1952 *as applicable to Haryana—Punjab Cinemas (Regulation) Rules,* 1952—*Rl.* 3(*iv*)—*Punjab Entertainment Duty Act,* 1955—*S.* 3-*A as amended by Haryana Act* 3 *of* 1989—*Punjab Entertainment Duty Rules,* 1956—*S.* 8-*A as substituted on* 31*st March,* 1989—*Definition of word 'Cinematograph' includes V.C.R.—Requirement to obtain licence under Act, therefore, is essenital—Stringent requirements for grant of such licence, however, deprecated—Different yard-sticks adopted for V.C.R. and regular cinemas for purposes of entertainment duty is legal.*

Held, that the Entertainment Duty Act and the Rules made thereunder only deal with the entertainment duty leviable on different types of entertainments. Whether a 'V.C.R.' is a 'cinematograph' or not, has to be seen under the 1952 Act and the Division Bench in the above noted case had rightly come to the conclusion that a V.C.R. is a Cinematograph and falls within the definition of the said word under the 1952 Act. There can be different types of duties on different types of Cinematographs and there was nothing wrong in having a different yard-stick for the V.C.R. as far as levy of entertainment duty is concerned by insertion of S. 3-A in the Entertainment Duty Act and Rule 8-A in the Entertainment Duty Rules. Consequently, I find no merit in the submission of the learned counsel that the Video Parlours cannot be subjected to the 1952 Act and the Rules made thereunder or that they have no requirement to obtain a licence.

(Para 9)

Held further, that the conditions for the grant of licence for the regular Cinemas as mentioned in Rule 3(ii) read with part III of the 1952 Rules are very rigorous and stringent and the same yard-stick for grant of licence should not be made applicable to Video Parlours which are smaller than the regular cinemas and are mode of providing cheaper entertainment. It will be for the Licencing Authority to apply the Rules in such a manner to see that Video Parlours are not denied the licences because they cannot fulfil all

to grant licence for future to the petitioner in this case in view of Rule 3(iv) of the 1952 Rules. There is an additional ground of challenge to this order in this writ petition.

(3) There is an Act known as Punjab Entertainment Duty Act, 1955 (hereinafter referred to as the Entertainment Duty Act), which is applicable in the State of Haryana also, under which the State Government is authorised to levy duty on various types of entertainments. Under 1955 Act, the erstwhile State of Punjab had framed Rules known as the Punjab Entertainment Duty Rules, 1956, which are applicable to the State of Haryana also (hereinafter called the Entertainment Duty Rules). These rules have been amended from time to time by the State of Haryana. In the year 1984, by Haryana Act 10 of 1984, Section 3-A was inserted in the Entertainment Duty Act. Section 3-A as introduced in 1984, reads as under:—

> "3A. *Duty on Video shows.*—Notwithstanding anything to the contrary contained in this Act, the proprietor of a video set exhibiting shows on payment shall be liable to pay entertainment duty at a rate, not exceeding the amount of one lakh rupees per annum, which the Government may prescribe, after taking into account the population of the area where the video set is installed for exhibition. The duty shall be payable in advance in the manner prescribed."

(4) On 29th June, 1984, the State of Haryana in the Excise and Taxation Department, exercising powers under Section 20 read with Section 3-A of the Entertainment Duty Act, amended Entertainment Duty Rules and Rule 8-A was inserted in the said Rules. Rule 8-A reads as under :—

> "8-A. *Payment of Duty on video shows.*—(1) The proprietor of a video set, exhibiting video shows on payment at any place within the State of Haryana shall make an application in Form PED-I to the Entertainment Tax Officer Incharge of the District concerned and shall deposit sum equivalent to duty payable by him for the quarter as provided in sub-rule (2) in the Treasury as security and attach with his application the treasury receipt showing the deposit thereof.

(2) In addition to the security, the proprietor shall pay the entertainment duty quarterly in advance at the following slab rates :—

For premises located in City/ Town/Village having population	Rate of duty payable per quarter.
(i) Less than 10,000	Rs. 10,000.00
(ii) From 10,000 to 24,999	Rs. 15,000.00
(iii) 25,000 to above	Rs. 25,000.00

Explanation : the census figures of the year 1981 shall be the basis for determining the population of any place.

(3) The entertainment duty shall be payable on the first working day of the month preceding the quarter to which it pertains. The Treasury receipt showing the deposit of entertainment duty shall be submitted by the proprietor to the Entertainment Tax Officer concerned on the next working day of such month.

(4) The Entertainment Tax Officer Incharge of the district shall be competent to forfeit the whole or part of the security in the event of failure of the proprietor to pay the duty as prescribed in the sub-para (3).

(5) If the proprietor intends to close the entertainment, he shall give one month's notice, in writing to the Entertainment Tax Officer, incharge of the district."

(5) It may be noticed that by Haryana Act No. 3 of 1989, Section 3-A of the Entertainment Duty Act was substituted by a new Section with effect from 17th March, 1989 which reads as under :—

"3-A. *Duty on video shows.*—(1) Notwithstanding anything to the contrary contained in this Act the proprietor of a video set exhibiting shows on payment having seating capacity of less than one hundred persons shall be liable to pay entertainment duty at a rate not exceeding two lacs rupees per annum as may be prescribed by the

through the Media of V.C.R. In any case, he submitted that the conditions for the grant of licence for running a regular Cinema were very stringent and could not be made applicable to Video parlours, which were small scale establishments providing entertainment at cheaper rates to comparatively lower strata of the Society. The learned counsel also argued that once by the substitution of Section 3-A in the year 1989 in the Entertainment Duty Act, the seating capacity had been made the basis of levying entertainment duty, the population of the town or the village where the Video Parlour was located, had no bearing, and consequently, Rule 8-A of the Entertainment Duty Rules, substituted on 31st March 1989 was arbitrary and liable to be quashed. Additional point relating to C.W.P. No. 8982 of 1989 was also raised, to which reference would be made later.

(7) As far as the first point is concerned, as to whether a 'V.C.R.' is a 'Cinematograph' or not, the learned counsel for the petitioners fairly conceded that this point is covered against him by a Division Bench judgment of this Court in *M/s Deep Snack Bar, Sonepat, and others* v. *State of Haryana and another* (1). The Division Bench, while dealing with the question whether a 'V.C.R.' is included in the definition of 'Cinematograph', as given in the 1952 Act observed :—

> "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. Cl. (a) of Section 2 defines the word 'cinematograph' as follows :—
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> (a) 'Cinematograph' includes any apparatus for the representation of moving pictures or series of pictures. 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

(1) A.I.R. 1984 Punjab and Haryana 377.

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 into 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 file is screened. Consequently, we are of the opinion that V.C.R. is included in the definition of the word 'cinematograph'."

(8) The learned counsel for the petitioners, however, submitted that in view of the amendment of the Entertainment Duty Act, by which Section 3-A was inserted by the State of Haryana in the year 1984 as also insertion of Rule 8-A in the Entertainment Duty Rules of 1956, the intent of the Legislature was to treat the V.C.R. differently than the cinematograph, as V.C.R. was not a cinematograph. According to the learned counsel, had this notification introducing Section 3-A in the Entertainment Duty Act and Rule 8-A in the Entertainment Duty Rules, been there earlier, the decision of the Division Bench in the above noted case would have been different. He further submitted that State of Himachal Pradesh had separately defined Video exhibition in the Himachal Pradesh Entertainment Duty Act, for taking Video Exhibition out of larger class of Cinematograph for the purpose of levy of entertainment duty and separate Rules had been framed for the grant of licence to the Video Parlours. According to him, this would go to show that there is a conflict as to whether a V.C.R. is a Cinematograph or not.

(9) There is no merit in the above-mentioned submission of the learned counsel for the petitioner. The Entertainment Duty Act and the Rules made thereunder, only deal with the entertainment duty leviable on different types of entertainments. Whether a 'V.C.R.' is a 'cinematograph' or not, has to be seen under the 1952 Act and the Division Bench in the above noted case had rightly come to the conclusion that a V.C.R. is a Cinematograph and falls within the definition of the said word under the 1952 Act. There can be different types of duties on different types of Cinematographs

and there was nothing wrong in having a different yard-stick for the V.C.R. as far as levy of entertainment duty is concerned by insertion of Section 3-A in the Entertainment Duty Act and Rule 8-A in the Entertainment Duty Rules. This was precisely done in the Himachal Pradesh, as is evident from the reported judgment in *Parkash Chand Mandi and others* v. *State of Himachal Pradesh* (2). There the regular cinemawalas had raised objection as to why video Parlours were being charged lesser duty than them, though Video Parlours were also Cinematographs. It was under these circumstances that the Himachal Pradesh High Court held that defining separately Video exhibition for the purpose of entertainment duty was perfectly legal. In the case in hand, the Video Parlours have been treated differently than the regular Cinemas for the purpose of entertainment duty by insertion of Section 3-A and Rule 8-A in the Entertainment Duty Act and the Rules respectively. Consequently, I find no merit in the submission of the learned counsel that the Video Parlours cannot be subjected to the 1952 Act and the Rules made thereunder or that they have no requirement to obtain a licence.

(10) I may deal here with the point that the conditions of the grant of licence for the regular Cinemas as mentioned in Rule 3(ii) read with Part III of the 1952 Rules are very rigorous and stringent and the same yard-stick for grant of licence should not be made applicable to Video Parlours which are smaller than the regular cinemas and are mode of providing cheaper entertainment. In part III of the 1952 Rules, apparently very stringent requirements are there for building a Cinema House before it can be considered for the grant of a licence. It will be really too harsh to apply all the measures mentioned in Part III to a Video Parlour. The Himachal Pradesh Government, and I am told, some other State Governments have come forward to make special rules for the grant of licence for video parlours. When 1952 Act and the Rules were framed thereunder, the technological advancement in the exhibition of films, perhaps could not be visualised. It will be for the State Government and its Legislatures to rise to the occasion and keep pace in the legislative field with the technological and scientific advancement and bring out a proper legislation for the grant of licences to the video parlours. Till the Legislature does not amend the law, it will be very difficult for me to lay down as to what should be the criteria for the grant of licence for the Video Parlours once I have held that the V.C.R.

(2) A.I.R. 1984 H.P. 47.

is a Cinematograph. It will be for the Licensing Authority to apply the Rules in such a manner to see that Video Parlours are not denied the licences because they cannot fulfil all and the same requirements as are required for the Cinemas as envisaged by the 1952 Rules.

(11) The learned counsel for the petitioner submitted that prior to 1989 substitution of Section 3-A of the Entertainment Duty Act and Rule 8-A of the Entertainment Duty Rules, the entertainment duty leviable was on the basis of the population of the village/town where the Video Parlour was situated, irrespective of the number of seats of Video Parlour. After the substitution of the above-mentioned Section and the Rule, it had been provided that Video Parlours of the capacity upto 99 seats would be charged according to the population of the town/village where such video parlour is located and as far as video parlour with 100 seats or above is concerned, the entertainment duty would be equal to that paid by a regular Cinema irrespective of its location. The arguments proceeded that once the number of seats have been made the basis for levying entertainment duty, the location of the video parlour in a town or village having particular population should become meaningless. According to the counsel, all video parlours having seating capacity upto 99 seats, irrespective of their location in a town or village having particular population, should be levied entertainment duty at the same rate and the duty leviable should be the same as is charged from a video parlour which is located in a town or village having population less than 10,000 people.

(12) I find no merit in this submission as well. The entertainment duty can be on more than one basis also. A video parlour having more than 100 seats can well be equated with a regular cinema and, consequently, there is nothing wrong to treat such a video parlour for the purpose of entertainment duty at par with a regular cinema. It can be presumed that normally no video parlour of more than 100 seats would be constructed in a village or town having merely a population of less than 10,000 people. A video parlour of less than 100 seats would be cheaper than a video parlour having capacity of more than 100 seats located in a town or village having a population of 25,000 or above. The latter would certainly be expected to entertain more people and have larger clientele than a video parlour located in a town or village having population of less than 10,000. So a video parlour having more than

99 seats and a video parlour having 99 seats are two separate classes and could be differently treated. The location of video parlour in a town or village having particular population has direct nexus with the quantum of duty leviable.

(13) An additional point was raised in C.W.P. No. 8982 of 1989 that a temporary licence could not be refused on the basis of Rule 3(iv) of the 1952 Rules, i.e. on the ground that since already a permanent cinema is in existence no temporary licence can be granted. The argument was that Rule 3(iv) of the 1952 Rules has been struck down by a Single Bench of this Court in *Rasdeeo Touring Talkies* v. *District Magistrate, Karnal and another* (3). Rule 3(iv) of the 1952 Rules, before it was struck down, read as under :—

> "3(iv) No licence to a touring cinematograph shall be granted for a place where there is a permanent cinema :
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> Provided that such a licence may be granted for such a place for a period not exceeding in the aggregate three months, on special occasions such as fair and religious gatherings or to meet a particular temporary need.
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> *Explanation* :—For the purpose of this sub-rule the expression 'Place' shall mean the area within two miles of the territorial limits of the village or town in which a permanent cinema is situated.
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> In case where it is proposed to instal a touring cinematograph in a building, the provisions of the rules, in part III of the Punjab Cinemas (Regulation) Rules, 1952, should be strictly complied with by the licensees."

When the above Rule had come up for consideration before a learned Single Judge in *Rasdeep Touring Talkies' case* (supra), it was held by the learned Judge that simply because a permanent cinema had been established at a particular place, a temporary licence could never be granted, seems to be wholly arbitrary, and, therefore, was struck down. The learned Judge, however, observed as under :—

> "The rule would have been valid if it had merely provided that in granting or refusing a licence under Rule 3(i) the

(3) A.I.R. 1967 Punjab 219.

District Magistrate shall have regard to the need for provision for a touring cinema at any particular place during any particular period in view of the number of the permanent cinematograph exhibition facilities available at that place. I would also have sustained the impugned rule if a proviso to the following effect had been added to Rule 3(iv) :

Provided that this restriction shall not apply to the case of a temporary need for a period of not more than 4 weeks at any particular place due to influx of a large number of temporary visitors to that place."

After *Rasdeep Touring Talkies' case* (supra), Rule 3(iv) of the 1952 Rules was amended to bring in line with the suggestion of the learned Single Judge, which has been reproduced above. The amended Rule 3(iv) of the 1952 Rules, reads as under :—

"3(iv) No licence to a touring cinematograph shall be granted for a place where there is a permanent cinema :

Provided that such a licence may be granted for such a place for a period not exceeding in the aggregate three months, on special occasion such as fair and religious gatherings or to meet a particular temporary need."

(14) In this view of the matter, I find that the Authorities were justified in refusing the temporary licence to the petitioner as a permanent cinema is already in existence in the town in question. If and when petitioner applies for a permanent licence, the same would be considered on merits keeping in view the observations made in this judgment.

(15) For the foregoing reasons, I find no merit in these writ petitions, which are dismissed. However, I may make it clear that the Authorities will keep the observations made in the judgment in view while granting temporary/permanent licence to a video parlour under 1952 Act and 1952 Rules. There will be no order as to costs.

J.S.T.