

MANU/BH/0054/1986

Equivalent Citation: AIR1986Pat317

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Writ Jurn. Case No. 1146 of 1985 (R)

Decided On: 14.10.1985

Appellants:**Rajiv Ranjan Sharan**
Vs.

Respondent:**State of Bihar and Ors.**

Hon'ble Judges/Coram:

S.S. Sandhawalia , C.J., S. Ali Ahmad and U.P. Singh , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: S.B. Gadodia, B.S. Lal and M.S. Mittal, Advs.

For Respondents/Defendant: S.K. Chattopadhaya, Govt. Pleader No. 1 and Gopal Choudhary, Jr. Counsel to Govt Pleader No. 1

JUDGMENT

S.S. Sandhawalia, C.J.

1. can the High Court by an interim order sanctify the carrying on of an activity for which a licence is a legal prerequisite during the pendency of an application for such licence, is the significant question necessitating this reference to the Full Bench at the threshold stage of admission.

2. The issue aforesaid arises in a somewhat unusual context. It is common ground that earlier there had been a spate of writ petitions within this jurisdiction on behalf of persons seeking to operate video cassette records without a licence for the entertainment of their customers in hotels, restaurants and other public places. However, by virtue of the Division Bench judgment in Hotel Mangalam v. State of Bihar 1985 Pat UR 326 it is now settled law that the exhibition of films through a video cassette recorder on a television set comes within the expression "cinematograph" under Section 2(b) of the Bihar Cinemas (Regulation) Act, 1974 (hereinafter to be referred to as 'the Act') and is consequently subject to the licensing provisions of Sections 3, 4 and 5 of the said Act. Subsequently, an ancillary question was sought to be raised whether such an exhibition can be permitted without a licence in a club. This was also answered in virtually identical terms by the Division Bench in C.W.J.C. 4958/1984 (H. R. Club Fatwah v. State of Bihar) disposed of on 12-11-84 : (reported in MANU/BH/0037/1986 : AIR 1986 Pat 182), In the wake of the aforesaid judgments a large number of pending writ petitions, on, this point, in this High Court, both at Patna and at the Ranch' Bench, were consequently dismissed. However, in C.W.J.C. No. 767 of 1985(R) (Jai Prakash Khalanka v. State of Bihar), a Division Bench, while actually dismissing and disposing of the writ petition, on the 18th July, 1985, proceeded to observe as under :

"It does not stand to reason as to why the Deputy Commissioner, Dhanbad, respondent 1 has not granted licence to the petitioner if all the formalities

have already been complied by him in that regard for the issuance of valid licence. Respondent 1 is, therefore, directed to grant the licence to the petitioner if all the formalities already adhered to within a period of one month from today. In the meantime the respondents as well as the other competent authorities shall not obstruct the petitioner from exhibiting the Video shows through Video for which licence has already been applied for."

Once the aforesaid interim direction was made it seems that the same has been routinely followed by the other Benches at Ranchi. The end result by virtue of these interim orders is that the exhibition of video cassette recorders is being indiscriminately allowed to continue in public places despite the admitted fact that a licence therefore is a prerequisite under the Act and the Rules framed thereunder and no such licence has yet been granted by the authorities.

3. Emboldened by the aforesaid situation the present writ petition has been filed by the petitioner, who is the owner of the restaurant styled as "M/s. Raju Coffee House". The primer relief sought herein is that the respondents-State be enjoined from interfering with the operation of the V. C. R. in the petitioner's restaurant till the application purported to have been filed for the grant of a licence therefore is disposed of. This case originally came up before a Division Bench presided over by my learned brothers S. Ali Ahmad, J. and Abhiram Singh, J. and before them the learned counsel for the petitioners virtually laid claim to a vested right to get an interim order for continuing to operate the V. C. R. in the petitioner's restaurant in spite of the admitted position that no licence therefore has as yet been granted. This was rested primarily on the basis of somewhat similar directions made in some of the earlier writ petitions, referred to above. Unable to agree with any such claim to such right the Bench observed as follows :--

"We feel some difficulty in accepting the prayer of the petitioner. To operate a Video Cassette Recorder without a licence is an offence under the Act and if we say that the petitioner should continue Video show on commercial basis without a licence, then the offence will be committed under the cover of the order passed by this Court. This is something which we cannot conceive. But in large number of cases such orders have been passed. We, therefore, consider it desirable that this matter, which is of public importance, should be considered by a larger Bench."

This is how the matter is now before us. It is, perhaps, apt to notice at the outset that because of the nature of the claim made on behalf of the writ petitioner though the matter is technically one of admission and the grant of interim relief but nevertheless we heard the learned counsel for the petitioner at great length as also Mr. Chattopadhyaya for the respondent-State in reply.

4. Now as before the Division Bench so before us Mr. Gadodia, learned counsel for the petitioner, has with considerable vehemence reiterated his earlier stand that the petitioner is entitled to an identical right for the interim relief of continuing the operation of the V. C. R. shows in his restaurant indefinitely till the pendency of an application for a licence before the licensing authority, It was submitted that in this interregnum the absence of any licence was irrelevant to the issue. On the other hand, the main stand ably advocated on behalf of the respondent-State by Mr. Chattopadhyaya is that the petitioner herein is seeking to do indirectly what he cannot be permitted to do directly without a licence under the cloak of an interim order of this Court. It was pointed out that an exhibition by means of a V. C. R. in a public

place without a licence is an offence under Section 7 of the Act. Therefore, it was contended that the High Court cannot (and indeed should not) lend itself as an umbrella for the commission or continuation of an activity which, without a licence, is criminal under the statute.

5. Now even on a plain look at the Act which came into force way back in 1954 as also the Bihar Cinematograph Rules (which seems to be even earlier in origin having been made under Section 8(2)(a) and (c) of the Cinematograph Act, 1918) would indicate that these provisions are not modulated to the grant of licence for the V. C. R. exhibitions in hotels, restaurants or other public places. Indeed at the time of the enactment of the statutory provisions, the V. C. R. could hardly be in the imagination of the law-makers. Consequently, the learned counsel for the respondent-State was on a firm ground in contending that it is only after the fresh framing of the requisite rules under the Act that the licensing power with regard to the grant of licence for V. C. R. can possibly be exercised. Admittedly, no such rules have as yet been framed. As to the desirability of such licences, the stand of the respondent-State as yet was somewhat ambivalent. Mr. Chattopadhyaya stated that it is possible that, on a deeper and fuller consideration of the matter, the State may not even choose to licence the exhibition of V. C. R. for commercial purposes in hotels, restaurants and other places of entertainment. Numerous factors had come to light which may reasonably inhibit the State for opening of the Pandora's Box of troubles by the unrestricted exhibition of V. C. R's in public places for commercial exploitation. It was said that already the misuse of the same for the purpose of exhibiting obscene films (what is euphemistically called blue films) has come to the notice of the State. Equally there are other considerations of the leakage of revenue and the difficulties of adequate supervision of every licensed public place which posed problems entirely different from that of the cinema halls which so far are usually licensed under the Act. Consequently the matter as yet awaits the fuller consideration and the decision of the respondent-State and it has not yet chosen to frame any rules and, perhaps, may decide against the licensing of V. C. Rs. Thus obviating the need of any such statutory provisions on that premise it was contended by Mr. Chattopadhyaya that no mandamus can possibly be issued to the State to either necessarily legislate and frame rules for the licensing of the V. C. Rs. nor can the Court direct that a licence be necessarily granted to a particular applicant.

6. The dual stand of the respondent-State, to my mind, must inevitably prevail. It is settled beyond cavil that the power to, legislate is vested in the State and it is in its discretion. There is no right in a citizen to claim or enforce that the State should legislate on a particular subject. Equally, it does not lie within the jurisdiction of a Court of Law to direct that certain legislation must be enacted or brought on the statute book and thereafter enforced. Consequently, there is no statutory duty cast upon the State to legislate or any corresponding right in the citizen to enforce such a duty which could be granted by a writ of mandamus. It, therefore, would follow that no direction can possibly be made against the State for forthwith framing the rules under the Act for the purpose of necessarily licensing the exhibition by means of V. C. Rs. The claim of the writ petitioner that the State be directed to enact the statutory provisions and meanwhile allow him to continue the exhibition of V. C. Rs must, therefore, fail on this score.

7. Shifting his stand a little Mr. Gadodia had been attempted to argue that even under the existing provisions a licence albeit temporary in nature can or may be granted to the applicants. A reference may be made to Rules 42 and 43 of the Bihar Cinematograph Rules which would indicate that these are not stricto sensu attracted

to the exhibition of V. C. Rs. Be that as it may, even assuming that under the existing provisions itself a licence could be granted the same again does not warrant a Court of Law to direct that it must be so granted. No citizen has a fundamental or inherent right to carry on an activity which requires a licence under the valid provisions of a statute. The very concept of licensing power in the State implies a discretion to grant or refuse a licence. It was sought to be argued on behalf of the petitioner that if the statutory requisites are satisfied the petitioner would be entitled to a licence and the same cannot be refused. It is not possible to accede to any such proposition. If refusal is barred to the licensing authority then the very character of a licence would be abrogated and it would then become a vested right of the applicant. Therefore, for the Court to mandate the grant of a licence, to a particular person would be flouting the intention of the legislature which assumes discretion in the licensing power and would be a usurpation of the function of the licensing authority.

8. Again the statutory provisions on the point seem to make the position even clearer. Section 3 of the Act which mandates the licensing of cinematograph exhibition is in the following terms:

"3. Cinematograph exhibition to be licensed. Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act or otherwise than in compliance with any conditions and restrictions imposed by such licence."

Sections 4 and 5 of the Act provide for the licensing authority and the restrictions of his powers. The penal provision is contained in Section 7 of the Act which is in the following terms : --

"7. Penalties. (1) If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used in contravention of the provisions of this Act or of the rules made thereunder, or of the conditions and restrictions upon or subject to which any licence has been granted under this Act, he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues.

(2) The exhibition of a film contrary to any order or direction under this Act or rules made thereunder, in the area to which such order or direction relates, shall be deemed to be a contravention of the conditions under which a licence has been granted and shall be punishable as provided in section (1).

(3) If any person is convicted of an offence punishable under this Act committed by him in respect of any film, the convicting Court may further direct that the Film shall be forfeited to the State Government."

9. By virtue of the Division Bench judgment in Hotel Mangalam v. State of Bihar LJR 1985 Pat 326 (supra), it is now beyond the pale of controversy that a licence is pre-requisite for an exhibition by means of a V. C. R. That being so, such an exhibition without a valid licence would plainly come within the net and mischief of Section 7 of the Act and would be an offence. Inevitably, therefore, any interim order or other direction permitting the exhibition by means of V. C. R. without a licence would be contrary to and offending against the statute itself. It was rightly contended that the mere pendency of an application for a licence cannot give any right or claim to the

applicant to carry on such activity even before its grant. If it would be so then a person applying for an arms licence may claim a right to carry arms without the grant of such a licence and against the provisions of the Arms Act. Similarly, a person applying for a liquor licence shall be entitled to indulge in such trade on the claim of the mere pendency of an application for such licence. This could not be the intention of the legislature. However, this is now conclusively buttressed by recent binding authority which is noticed hereinafter.

10. In the case of *Chingleput Bottlers v. Majestic Bottling Co.*, MANU/SC/0026/1984 : AIR 1984 SC 1030 the Madras High Court issued a writ of mandamus ordering the Commissioner to grant the licence to M/s. Majestic Bottling Company. Whilst reversing the said judgment and strongly deprecating such action, their Lordships observed as under : --

"Even assuming that the Commissioner recommended the grant of a licence to them under Rule 7, the State Government were under no compulsion to grant such prior approval. The grant or refusal of such licence was entirely in the discretion of the State Government. The High Court had no jurisdiction to issue a writ of mandamus to the Commissioner to grant a licence to Messrs Majestic Bottling Company contrary to the provisions of Rule 7 of the Rules..... It is regrettable that the High Court should have short circuited the whole procedure upon a wrongful assumption of its own powers. The view taken by the High Court is manifestly erroneous. Otherwise, the statutory requirement of such prior approval of the State Government under Rule 7 would be rendered wholly otiose."

State of U. P. v. Raja Ram Jaiswal, MANU/SC/0020/1985 : AIR 1985 SC 1108 directly covers the point and was a similar matter under the U.P. Cinemas (Regulations) Act. Whilst setting aside the order of the High Court directing the grant of cinema licence it was observed as follows : --

"The High Court could have quashed the order of remand if it was satisfied that the order suffers from an error apparent on the record. But there its jurisdiction would come to an end. The High Court cannot then proceed to take over the functions of the licensing authority and direct the licensing authority by a mandamus to grant a licence. To that extent the judgment of the High Court is set aside."

Lastly, in the case of *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd.*, MANU/SC/0169/1984 : AIR 1985 SC 330, Chinnappa Reddy, J. speaking for the Court categorically disapproved as unwarranted a tendency to grant interim orders with a great potential for public mischief and, inter alia, instanced them as under : --

"We have come across cases where buses and lorries are being run under orders of Court though they were either denied permits or their permits had been cancelled or suspended by Transport Authorities. We have come across cases where liquor shops are being run under interim orders of Court."

10A. In the light of the above it seems plain that the order and direction given in *Jai Prakash Khalanka v. State of Bihar* (supra), cannot possibly be sustained. It is apparent that the matter was neither adequately debated before the Bench nor the true ramification of the directions considered. With the greatest respect, therefore, the said judgment must be overruled. Inevitably later judgments expressly following

the same or of the same tenor are equally not good law.

11. To conclude, the answer to the question posed at the outset is rendered in the negative and it is held that the Court cannot by an interim order sanctify the carrying on of an activity for which a licence is a legal pre-requisite during the pendency of an application for such licence.

12. In the light of the earlier discussion and once it is held as above it is plain that nothing survives in this writ petition which is accordingly dismissed.

S. Ali Ahmad, J.

13. I agree.

U.P. Singh, J.

14. I agree.

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