A THE SOUTH INDIAN FILM CHAMBER OF COMMERCE, MADRAS ETC.

v.

ENTERTAINING ENTERPRISES, MADRAS AND ORS. ETC.

DECEMBER 16, 1994

B

[N. VENKATACHALA AND K.S. PARIPOORNAN, JJ.]

Tamil Nadu Exhibition of Films on Television Screen through Video Cassette Recorders (Regulation) Act, 1984:

C *Sections 9 (2) and 10 (2)—Held Constitutionally valid and within the legislative competence of State Legislature.*

Constitution of India, 1950: Seventh Schedule—List I—Entry 49—'Copyright'—List II - Entry 33— 'Cinemas'—Provisions contained in Section 9(2) of Tamil Nadu Exhibition of Films on Television Screen D *through Video Cassette Recorders (Regulation) Act, 1984 held ancillary to the subject of Act which in pith and substance is 'Cinema'.*

With a view to regulating the exhibition of films on television screen through Video Cassette Recorder, the Tamilnadu State Legislature enacted Tamilnadu Exhibition of Films on Television E **Screen through Video Cassette Recorders (Regulation) Act, 1984. Section 9(2) of the Act requires every person keeping a Video Library licensed under the Act, possessing cinematography films, to produce in respect of each film whenever demanded by the concerned officers of Government a letter of consent from the first owner of the copyright of such film under the Copyright Act, 1957 or its assignee thereunder.** F **Section 10(2) of the Act requires every person keeping Video Library licensed under the Act not to sell, let to hire, distribute, exchange or put into circulation a cinematography film which is not certified by the authority under Cinematograph Act, 1952 as suitable for public exhibition and does not contain the prescribed mark or if contains a** G **mark, the film is not altered or tampered with after affixure of such mark. The respondents, who were keeping Video Cassette Libraries, challenged the constitutional validity of the Act on the ground of want of legislative competence on the part of State legislature. The High Court upheld the validity of the Act holding that the subject matter of the Act was in pith and substance covered by the subject 'Cinema'** H **mentioned in Entry 33 of List II of the Seventh Schedule to the**

Constitution. However, it struck down Sections 9(2) and 10(2) of the Act. In striking down Section 9(2) the High Court held that though the State legislature purported to enact it on the subject 'cinema', a subject in the State List, in fact it has gone beyond the permitted limit because it covers the subject 'Copyright', which was a subject falling in the Union List. Further, in view of the fact that the non-possessing by a licensee of Video Library of a letter of consent from the owner or assignee of copyright of such film to be dealt with by him since makes him liable for a cognizable offence and of a higher punishment not provided for in the Copyright Act itself, the provision in section 9(2) requiring the keeping of such consent letter cannot be regarded as an incidental or ancillary provision made on the subject of 'cinema', lying within the competence of the State Legislature.

In striking down Section 10(2), the High Court held that having regard to the fact that the provisions of the Cinematograph Certification Rules, 1983 do not contemplate the certification of a video film for private exhibition in the residence of the members of the video library, the requirement of the production of a certificate in respect of the video films hired out by a video library to its members under Section 10(2) was not only invalid but also unworkable.

Against the decision of the High Court, appeals were preferred in this Court.

Allowing the appeals, this Court

HELD: 1. Sections 9(2) and 10(2) of the Tamilnadu Exhibition of Films on Television Screen through Video Cassette Recorders (Regulation) Act, 1984 are constitutionally valid. [686 A]

2. The provision in Section 9(2) of the Act being an ancillary provision on the subject of the Act which in pith and substance is 'cinema', lay within its legislative competence of the State legislature and hence is constitutionally valid. When under the Act a person who is given a licence to keep a Video Cassette Library for purposes of carrying on his business of selling, letting to hire, distribution, exchange or putting into circulation in any manner whatsoever of video films recorded on Video Cassette tape, it is required by section 9(2) of the Act to keep a letter of consent from the first owner of the copyright in any of such films or from the assignee thereof, so that he may not carry on such business infringing the copyrights of the owner or assignee in

A such films under the Copyright Act, such section enacted covering a matter which is incidental to regulation of business of video films, cannot fall outside the competence of the State Legislature. [682F, B, C]

3. The High Court faulted in its conclusion that the provision in section 9(2) of the Act enacted by the State Legislature was not an B ancillary provision enacted, in pith and substance, on the subject of 'cinema' lying within its legislative competence. In taking into consideration the cognizable nature of the offence and a severe penalty impassible for the offence of not keeping a letter of consent obtained from the first owner of the copyright of the film or assignee thereof, for reaching the conclusion that the State Legislature has no legislative C competence to legislate on the subject of 'cinema' has taken into consideration matters which were not germane to the consideration of the question of legislative competence of a legislature on a subject. [683 D, A, B]

4. It is, however, difficult to think that when a regulatory legislative D measure is enacted by a legislature on a subject within its competence requiring a person to obtain a licence for doing certain business concerned with the subject, imposes certain restrictions upon such person to make him conduct the business concerned for which he is granted the licence, lawfully, could be regarded as a legislative provision which is not ancillary to the main subject of the regulation, E when once the subject of regulation is found within the pith and substance of the concerned legislature's competence. [683 C]

5. The High Court's view that Section10(2) of the Act is invalid and unworkable is not based upon a proper construction of sub-section(2) of section 10 having regard to its setting in section 10. When sub-F section(2) appears in its setting in section 10 after the said sub-section (1) which deals with the licensees under the Act who are required to give exhibition of certified films on televisions through Video Cassette Recorders and when while dealing with the person keeping a Video Library sub-section (2) says that no person keeping a Video Library shall sell, let to hire, distribute, exchange or put into circulation in any G manner whatsoever any film other than a film which has been certified as suitable for public exhibition by the authority constituted under section 3 of the Cinematograph Act, 1952 and which, when exhibited, displays the prescribed mark of that authority and has not been altered or tampered with in any way since such mark was affixed thereto, the legislative intendment in imposing such restriction on the Video H Library or a person keeping a Video Library cannot be anything other

than imposing it in respect of films which are intended for public exhibition. If that be the effect of the provision and its requirement, question of invalidating it on the ground that it applies to films with licensed persons keeping Video Library for films other than those meant for public exhibition, cannot arise. [685 G, 675 D, 685 D to F]

CIVIL APPELATE JURISDICTION: Civil Appeal No. 2627 of 1984 Etc. Etc.

From the Judgment and Order dated 21.6.84 of the Madras High Court in W.P. No. 1587 of 1984.

M.N Krishnamani, K.V. Mohan, P.R. Seetharaman (NP) C.V. Subba Rao (NP), A. Mariarputham, Mrs. Aruna Mathur, for Arputham Aruna and Co., Tripurari Ray for Vineet Kumar, for the appearing parties.

The Judgment of the Court was delivered by

VENKATACHALA, J. On a certificate granted by the High Court of Judicature at Madras in respect of its common Judgment dated 21st June, 1984 rendered in Writ Petition No. 1587 of 1984 and connected matters, the present appeals are filed assailing the sustainability of that judgment insofar as it relates to the striking down of Section 9(2) of the Tamil Nadu Exhibition of Films on Television Screen through Video Cassette Recorders (Regulation) Act, 1984— "the Act" requiring every person keeping a Video Library licensed under the Act, possessing cinematograph films, to produce in respect of each film whenever demanded by the concerned officer of Government a letter of consent got from the first owner of the copyright of such film under the Copyright Act, 1957 or its assignee thereunder, as that enacted by the Tamil Nadu State Legislature— "the State Legislature", without being possessed of the required legislative competence and of Section 10(2) of the Act requiring every person keeping Video Library licensed under the Act not to sell, let to hire, distribute, exchange or put into circulation a cinematograph film which is not certified by the authority under Cinematograph Act, 1952 as suitable for public exhibition and does not contain the prescribed mark or if contains a mark, the film is not altered or tampered with after affixure of such mark, as that enacted by the State Legislature, is invalid and unworkable.

Before taking up for consideration the contentions urged in these appeals against the striking down by the High Court sections 9(2) and 10(2) of the Act, it would be advantageous to advert to the scheme of the Act, as could be found from the Preamble and the provisions of the Act.

A Object sought to be achieved by the State legislature by enacting the Act, as declared in its preamble, is the regulation in the State of Tamil Nadu of the exhibition of films on Television screen through Video Cassette Recorders.

'Video Cassette Recorder' is defined in clause (6) of section 2 as B meaning a cinematograph for the purpose of giving cinematography exhibition of film, recorded on Video cassette tape. 'Video Library' is defined in clause (7) thereof as meaning a place by whatever name called where the business of selling, letting to hire, distribution, exchange or putting into circulation in any manner, whatsoever, of film for purposes of exhibition is carried on.

C

Coming to regulatory provisions in the Act, while sub-section (1) of section 3 requires that no person shall give an exhibition of film on Television screen through Video Cassette Recorder except under a licence granted under section 6 read with section 5 of the Act, and in a place other than one for which permission has been granted under section 7 read with D section 5 of the Act - such place not being allowed to carry on any other business at any time, sub-section (2) thereof lifts the restriction imposed as to exhibition of films under sub-section (1) to exhibition of film on Television screen through Video Cassette Recorder to the family members of the household only. Further, while section 4 thereof requires that no person shall keep any Video Library except under and in accordance with, a E licence granted under the Act and under the stated circumstances obtains separate licenses and renewals of the licenses so obtained, section 6 thereof requires licensing authority not to grant a licence for exhibition of film if it goes against public interest and if it is not satisfied that adequate precautions have been taken in place for which licence has to be granted to Provide for the safety, convenience and comfort of the persons attending F exhibitions therein or as the case may be visiting the Video Library. Thereafter, while section 7 thereof refers to the powers of the licensing authority to permit construction and reconstruction of buildings, installation of machinery, etc, for exhibition of film, section 8 thereof reserves to the Government power to issue orders or directions of a general nature as they G consider necessary in respect of any matter relating to licenses for the exhibition of film on Television screen through Video Cassette Recorder or the keeping of Video Library, to licensing authorities. Coming to section 9(1), it enjoins every person licensed under section 6 read with section 5 of the Act giving exhibition of films on Television screen through Video Cassette Recorder to produce when demanded by an officer authorized by H the Government in this behalf, a letter of consent for such exhibition from

the person who is the first owner of the copyright of the cinematograph film under section 17 of the Copyright Act, 1957 (Central Act XIV of 1957), and in case such copyright has been assigned under section 18 of the said Act, from the assignee of such copyright. But, section 9(2), which is struck down by the High Court in the judgment under appeals reads:

> "Every person keeping a Video Library licensed under this Act, shall in respect of each film in his possession, produce when demanded by an officer authorized by the Government in this behalf, a letter of consent from the person who is the first owner of the copyright of the cinematograph film under section 17 of the Copyright Act, 1957 (Central Act XIV of 1957) and in case such copyright has been assigned under section 18 of the said Act, from the assignee of such copyright."

Then, coming to section 10(1) it enjoins that no person licensed under this Act to give an exhibition of film on Television screen through Video Cassette Recorder shall exhibit or permit to be exhibited any film other than a film which has been certified as suitable for public exhibition by the authority constituted under section 3 of the Cinematograph Act, 1952 (Central Act, XXXVII of 1952), and which, when exhibited, displays the prescribed mark of that authority and has not been altered or tampered with in any way since such mark was affixed thereto. But, section 10(2), which is also struck down by the High Court in its judgment under appeals reads :

> "No person licensed under this Act for keeping a Video Library shall sell, let to hire, distribute, exchange or put into circulation in any manner whatsoever any film other than a film which has been certified as suitable for public exhibition by the authority constituted under section 3 of the Cinematograph Act, 1952 (Central Act, XXXVII of 1952), and which, when exhibited, displays the prescribed mark of that authority, and has not been altered or tampered with in any way since such mark was affixed thereto."

When we come to other sections of the Act, while section 11 empowers the Government or licensing authority to suspend exhibition of film in certain cases, section 12 of the Act refers to their power to revoke or suspend licenses. While section 13 of the Act, refers to appellate authority before which a person aggrieved by an order of the licensing authority refusing to grant or renew a licence or an order of revocation or suspension

A of a licence or a decision refusing to approve any transfer or assignment of a licence under the Act can appeal against, section 14 of the Act, refers to the powers of revision exercisable by Government in such matters.

Section 15, which deals with penalties, while by sub-section (1) thereof makes every person who contravenes or attempts to contravene or abets the B contravention of the provisions of section 10 punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues, by sub-section (2) thereof makes every person who contravenes or attempts to contravene or abets the contravention of C any of the provisions of the Act other than section 10 or any rule made thereunder or of the terms and conditions of, and restrictions upon, any licence granted under the Act punishable with imprisonment which may extend to one year and shall also be liable to fine. Section 16 of the Act while provides for offences by companies, section 17 of the Act deals with the power to enter, search and seize. Section 18 of the Act deals with D confiscation of films exhibited or kept in contravention of the provisions of the Act and the rules made thereunder. Section 19 states that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under the Act. Section 20 of the Act states that any offence punishable under the Act shall be a cognizable offence. While section 22 deals with power of the Government to make E rules for carrying the purpose of the Act, the remaining sections in the Act deal with ancillary or incidental matters.

Thus, from the above preamble and the provisions of the Act, it becomes obvious that the State Legislature by enacting the Act has evolved a comprehensive legislative scheme aimed at regulating in the whole State F of Tamil Nadu of the exhibition of cinematograph films on Television screen through Video Cassette Recorders by requiring persons who want to give exhibition of such films outside their households and persons who want to keep Video Libraries, to obtain licenses as provided for thereunder and by making such licensees liable for penalties for breaches of G restrictions imposed upon them, as envisaged thereunder.

When the respondents in the present appeals, who were keeping Video Cassette Libraries in several places of the State of Tamil Nadu challenged before the High Court the constitutionality of the various provisions of the Act as being *ultra vires* on the ground of want of legislative competence on H the part of the State Legislature, a thorough examination of that challenge

made by that Court, led it to the conclusion that the Act in 'pith and substance' being 'cinema', the subject which finds its place in Entry 33 of List II to the Seventh Schedule of the Constitution was within the legislative competence of the State Legislature. However, the High Court, insofar as the provision in section 9(2) of the Act is concerned, reached the conclusion that it had been enacted, by the State Legislature on 'copyright', the subject in List-I of Seventh Schedule to the Constitution, by going beyond the permitted limit of encroachment and hence *ultra vires*. The conclusion reached by the High Court in that regard, as recorded by it, reads thus :

> "We are of the view that Section 9(2) is not a mere incidental encroachment on the entry 'Copyright' falling in List I, but it amounts to an addition to the provisions of the Copyright Act and therefore it falls outside the permitted limit of encroachment and as such it should be taken to be *ultra vires*."

The said conclusion of the High Court, has since been assailed in the present appeals, as the one wrongly reached by the High Court, the sustainability of that conclusion warrants our examination in the light of rival contentions raised before us.

Section 9(2) of the Act, which according to the High Court covers the subject of copyright in List-I of Seventh Schedule of the Constitution— Union List, is enacted by the State Legislature traversing outside the permitted limit of encroachment on the subject of 'copyright' purported to enact on the subject of 'cinema' in List-II of Seventh Schedule— State List, lying within its competence, is reproduced by us already while adverting to the scheme of the Act. That sub-section, as could be seen therefrom requires of every person keeping a Video Cassette Library licensed under the Act to produce in respect of each film in his possession, when demanded by an officer authorized by the Government in that behalf, a letter of consent from the person, who is the first owner of the copyright of the cinematograph film under section 17 of the Copyright Act, 1957 and in case such copyright has been assigned under section 18 of that Act, from the assignee of such copyright. The High Court, placing reliance on the definition clause (f) of section 2 of the Copyright Act, 1957 has, as a matter of fact, held in its judgment under appeals that a copyright should be taken to have been created in respect of a video film under the Copyright Act, 1957, negativing the contention raised before it, to the contrary. The High Court also does not say that every person carrying on the business of

A selling, letting to hire, distribution, exchange or putting into circulation in any manner whatsoever of such film for the purpose of exhibition, can carry on such business without the consent from the person, who is the first owner of such copyright or its assignee according to the provisions of the Copyright Act, 1957. Therefore, when under the Act a person who is given a licence to keep a Video Cassette Library for purposes of carrying on his B business of selling, letting to hire, distribution, exchange or putting into circulation in any manner whatsoever of video films recorded on Video Cassette tape, if is required by section 9(2) of the Act to keep a letter of consent from the first owner of the copyright in any of such films or from the assignee thereof, so that he may not carry on such business infringing the copyrights of the owner or assignee in such films under the Copyright C Act, such section enacted covering a matter which is incidental to regulation of business of video films, cannot fall outside the competence of the State Legislature. But, what the High Court has said is that the non-keeping of the letter of consent by the person keeping the Video Cassette Library in respect of a film, has since been made a cognizable offence under another provision of the Act, while the same is not a congnizable D offence under the Copyright Act, and yet by another provision of the Act makes him liable for a higher punishment than that awardable under the Copyright Act, 1957— the provision in section 9(2) of the Act has to be regarded as that enacted by the State Legislature on the subject of copyright itself, which is a subject on which Parliament alone under List-1 is competent to legislate. Then, according to the High Court the non-E possessing by a licensee of Video Library of a letter of consent from the owner or assignee of copyright of such film to be dealt with by him since makes him liable for a cognizable offence and of a higher punishment not provided for in the Copyright Act itself, the provision in section 9(2) requiring the keeping of such consent letter cannot be regarded as an F incidental or ancillary provision made on the subject of 'cinema', although the Act is in pith and substance the subject of 'cinema' lying within the competence of the State Legislature.

We are of the opinion, as rightly contended for on behalf of the appellants before us that the fact the provisions in the Act make the non-G possessing of the letter of consent from the holder of copyright of the film or assignee thereof for doing business in such films a cognizable offence or an offence punishable, can be no ground for holding that the State Legislature in requiring the keeping of a consent letter from the copyright holder or his assignee for doing business in the film which is necessary for carrying on the such business lawfully can be said to make the State H Legislature to lose the legislative competence which it had on the subject of

'cinema' in List-II of Seventh Schedule to the Constitution. The High Court, in our view, in taking into consideration the cognizable nature of the offence and a severe penalty impossible for the offence of not keeping a letter of consent obtained from the first owner of the copyright of the film or assignee thereof, for reaching the conclusion that the State Legislature has no legislative competence to legislate on the subject of 'cinema' has taken into consideration matters which were not germane to the consideration of the question of legislative competence of a legislature on a subject. It is, however, difficult to think that when a regulatory legislative measure is enacted by a legislature on a subject within its competence requiring a person to obtain a licence for doing certain business concerned with the subject , imposes certain restrictions upon such person to make him conduct the business concerned for which he is granted the licence, lawfully, could be regarded as a legislative provision which is not ancillary to the main subject of the regulation, when once the subject of regulation is found within the pith and substance of the concerned legislature's competence.

Hence, we are constrained to hold that the High Court faulted in having reached the conclusion that the provision in section 9(2) of the Act enacted by the State Legislature was not an ancillary provision enacted, in pith and substance, on the subject of 'cinema' lying within its legislative competence. Consequently, we hold that the provision in section 9(2) of the Act being an ancillary provision on the subject of the Act which in pith and substance is 'cinema'. lay within its legislative competence and hence is constitutionally valid.

Now, we shall turn to section 10(2) of the Act which the High Court has held to be invalid and unworkable. The High Court for reaching the said conclusion has stated thus:

> "Having regard to the fact that the provisions of the Cinematograph Certification Rules, 1983 do not contemplate the certification of a video film for private exhibition in the residence of the members of the video library, the requirement of the production of a certificate in respect of the video films hired out by a video library to its members under Section 10(2) is invalid. As pointed out already, the certification is contemplated in the certification rules only if the applicant for certification intends to use the video film for public exhibition and not when he does not intend to do so. Thus, the insistence on certification under the impugned Act

A and the rules framed thereunder is not valid. A video film for their own use and not for public show or exhibition cannot approach the Censor Board for a Certificate, for, the owner of the library does not intend to use the video tapes for public exhibition. In this view of the matter, we have to hold that Sec. 10(2) of the Act is not only invalid but unworkable."

B

The High Court, as could be seen from the excerpted portion of its judgment under appeals, has concluded that Section 10(2) of the Act is invalid and unworkable. That conclusion, as becomes clear therefrom, is based on its view that Section 10(2) requires a person keeping a Video Library of films which are not meant for public exhibition, cannot sell, let C to hire, distribute, exchange or put into circulation in any manner whatsoever any of them unless certified as suitable for public exhibition by the authority constituted under section 3 of the Cinematograph Act, 1952 and which, when exhibited, displays the prescribed mark of that Authority and has not been altered or tampered with in any way since such mark was affixed thereto.

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The said view, as contended on behalf of the appellants before us, is not based upon a proper construction of sub-section (2) of section 10 having regard to its setting in section 10. The contention was, if sub-section (2) of section 10 has to be properly understood having regard to its setting in section 10 of the Act, it could only relate to those films which are not E meant for public exhibition and if so understood, the conclusion reached by the High Court that the sub-section is invalid and unworkable becomes unsustainable. There is, in our opinion, substance in the contention advanced on behalf of the appellants. Section 10 as a whole reads thus :

"10. Licensee to exhibit only certified films —(1) No person F licensed under this Act to give an exhibition of film on Television screen through Video Cassette Recorder shall exhibit or permit to be exhibited any film other than a film which has been certified as suitable for public exhibition by the authority constituted under section 3 of he Cinematograph Act, 1952 (Central Act XXXVII of 1952), and which, when G exhibited, displays the prescribed mark of that authority, and has not been altered or tampered with in any way since such mark was affixed thereto.

(2) No person licensed under this Act for keeping a Video Library shall sell, let to hire, distribute, exchange or put into H circulation in any manner whatsoever any film other than a

film which has been certified as suitable for public exhibition by the authority constituted under section 3 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952), and which, when exhibited, displays the prescribed mark of that authority, and has not been altered or tampered with in any way since such mark was affixed thereto."

The heading of section 10, as could be seen therefrom, indicates that the provision in the sub-sections thereunder are intended to apply to only licensees who want to exhibit certified films. Under sub-section (1), as becomes clear therefrom, no person— licensed under the Act could give an exhibition of films through Video Cassette Recorder or permit to be exhibited any film other than a film which has been certified as suitable for pubic exhibition by the authority constituted under section 3 of the Cinematograph Act, 1952 and which, when exhibited, displays the prescribed mark of that authority and has not been altered or tampered with in any way since such mark was affixed thereto. In fact, the High Court does not say that the said provision is in any way constitutionally invalid. When sub-section (2) appears in its setting in section (1) which deals with the licensees under the Act who are required to give exhibition of certified films on televisions through Video Cassette Recorders and when while dealing with the persons keeping a Video Library sub-section (2) says that no person keeping a Video Library shall sell, let to hire, distribute, exchange or put into circulation in any manner whatsoever any film other than a film which has been certified as suitable for public exhibition by the authority constituted under section 3 of the Cinematograph Act, 1952 and which, when exhibited, displays the prescribed mark of that authority and has not been altered or tampered with in any way since such mark was affixed thereto, the legislative intendment in imposing such restriction on the Video Library or a person keeping a Video Library cannot be anything other than imposing it in respect of films which are intended for public exhibition. If that be the effect of the provision and its requirement, question of invalidating it on the ground that it applies to firms with licensed persons keeping Video Library for films other than those meant for public exhibition, cannot arise, as rightly contended for on behalf of the appellants. Hence, the view taken by the High Court that section 10(2) is invalid and unworkable, cannot be sustained.

Thus, the view of the High Court that section 9(2) was invalid and *ultra vires* being enacted by State Legislature without the required legislative competence and its view that section 10(2) was invalid and unworkable because it applied to films other than those which are meant for

A public exhibition and hence both of them were liable to be struck down, require to be interfered with, in that , in our opinion, section 9(2) and Section 10(2) of the Act are constitutionally valid.

In the result, we allow these appeals and dismiss the writ petitions in the High Court out of which the present appeals have arisen. However, in
B the circumstances of the present appeals, we make no order as to costs.

T.N.A. Appeals allowed.