

(2010) 11 DEL CK 0250

Delhi High Court

Case No: Writ Petition (C) No"s. 2543 and 6481 of 2007, 362 of 2008 and 10552 of 2009

Super Cassettes
Industries Ltd. and
Another

APPELLANT

Vs

Board Of Film
Certification and Others

 R.K. Movies Vs
Union of India (UOI)
and Others

Dharmendar Kapoor Vs
Central Board of Film
Certification and Others

 Vaishnao
Electronics Vs Censor
Board of Film
Certification and Others

RESPONDENT

Date of Decision: Nov. 24, 2010

Acts Referred:

- Cinematograph Act, 1918 - Section 5
- Cinematograph Act, 1952 - Section 10, 14, 2, 3, 4
- Cinematograph Certification Rules, 1983 - Rule 21, 21(3), 21(4), 22(9), 24(9)
- Constitution of India, 1950 - Article 19(1), 19(2), 245
- Copyright Act, 1957 - Section 14, 2, 3, 51, 52A
- Delhi Cinematograph (Exhibition of Films by Video Cassettes Recorder/Player) Rules, 1986 - Rule 2, 3
- Penal Code, 1860 (IPC) - Section 120B, 292
- Prevention of Cruelty to Animals Act, 1960 - Section 21

Citation: (2011) 46 PTC 1

Hon'ble Judges: Dr. S. Muralidhar, J

Bench: Single Bench

Advocate: Amit Sibal, Rahul Ajatshatru and S. Shanker, in W.P. C No. 2543 of 2007, Rakesh C. Agrawal, Ashok Sethi and Puneet Agarwal, in W.P.C Nos. 250, 5557, 5772, 5774, 5776, 6396, 6602, 6603, 6604, 6703, 6704, 7499, 7500, 7501, 7928, 7929, 7930, 8382 and 8842 of 2008, 1, 7429 and 10552 of 2009 and 547, 1860 and 3806 of 2010, D.N. Grover, in W.P. C No. 6481 of 2007, Rajeev Sharma, in W.P. C Nos. 6976 of 2007 and 362 of 2008, Dhanesh Relan, in W.P.C Nos. 5822, 6558, 6914, 7018, 7431 and 7482 of 2008 and S.K. Chaturvedi, in W.P. C No. 7973 of 2008, for the Appellant; Zubeda Begum and Sana Ansari for R-3 in W.P. (C) No. 2543 of 2007, A.S. Chandhiok, A.S.G. of India and Pankaj Batra, for R-1 and R-2 in W.P.(C) No. 10552 of 2009, A.S. Chandhiok, A.S.G., Atul Nanda and Sugandha for UOI in W.P.(C) No. 6481 of 2007 and Vikas Pahwa for CBI in W.P.(C) Nos. 2543 and 6481 of 2007, 5557, 5772, 5776, 5822, 6396, 6558, 6602, 6603, 6604, 6703, 6704, 6914, 7018, 7431, 7482, 7499, 7500, 7501, 7928, 7929, 7930, 7973, 8382 and 8842, 9, 547 and 7429 of 2009 of 2008 and 10552 of 2009, Anjum Javed, for CBFC and GNCTD in W.P.(C) Nos. 5774, 5776, 5822, 6396, 6558, 6602, 6603, 6604, 6703, 6704, 6914, 7018, 7431, 7482, 7499, 7500, 7501, 7928, 7929, 7930, 7973, 8382 and 8842 of 2008 and 9, 547 and 7429 of 2009, Sushil D. Salwan, Additional Standing Counsel and Aditya Garg, for GNCTD, S.P. Sharma, for R-3 in W.P.(C) No. 6558 of 2008, Ruchi Sindhwani and Megha Bharara for R-2 and R-5 in W.P. (C) Nos. 6603 and 6604 of 2008, A.S. Chandhiok, A.S.G. and B.V. Niren, for UOI in W.P.(C) No. 1860 of 2010, Ravinder Agarwal, CGSC and Nitish Gupta for R-1 and R-6 and Zubeda Begum and Sana Ansari, in for R-3 in W.P.(C) No. 3806 of 2010, for the Respondent

Final Decision: Disposed Off

Judgement

S. Muralidhar, J.

The Petitioners in thirty-five of these thirty-six writ petitions are producers, manufacturers, and sellers, and also replicators for music companies holding copyright in audio-visual materials including devotional and religious songs in many regional languages, recorded on video compact discs ("VCDs") and digital video discs ("DVDs"), which the Petitioners have labeled as "only for private viewing". The common question that arises in these petitions is whether these audio-visual recordings on DVDs and VCDs which the Petitioners sell in the market, but with the label that it is meant only for private viewing, requires certification by the Central Board of Film Certification ("CBFC") u/s 5A of the Cinematograph Act, 1952 ("CG Act") The only exception is Writ Petition (C) No. 6481 of 2007 by Dharmendar Kapoor which prays for directions to the Respondents to strictly enforce the CG Act and the CR Act against those making and selling such audio-visual material in DVDs and VCDs.

2. The above question which is common to all these petitions arises in the context of raids conducted by the police on the shops from where DVDs and VCDs similar to the ones being manufactured and sold by the Petitioners were seized and prosecution launched against several persons for violation of Section 52A(2)(a) of the Copyright Act, 1957 ("CR Act"). The contention of the Petitioners is that since they are themselves the manufacturers and sellers and, therefore, the holders of the copyright in respect of the

material in these DVDs and VCDs, they were not required to obtain certification u/s 5A of the CG Act, and consequently they cannot be prosecuted u/s 52A(2)(a) of the CR Act.

3. The prayers in these writ petitions, except W.P. (C) No. 6481 of 2007, are more or less of a declaratory nature. The Petitioners seek a declaration that their films sought to be sold in the form of DVDs and VCDs and which are meant for private viewing do not require certification by the CBFC u/s 5A CG Act. Such a declaration is sought with a view to avoiding prosecution under the CR Act. The facts in each of the other petitions differ slightly as regards the precise DVDs and VCDs being sold by each of the Petitioners. Illustratively, the facts in Writ Petition (C) No. 2543 of 2007 are set out.

4. Petitioner No. 1 is Super Cassettes Industries Ltd. ("SCIL") having its registered office at New Delhi. Petitioner No. 2 is its share holder. The CBFC is Respondent No. 1 in the present petition. Respondent No. 2 is the Union of India ("UOI") through the Ministry of Information & Broadcasting, Government of India ("I&B Ministry"). Respondent No. 3 is the Commissioner of Police, New Delhi.

5. SCIL was initially registered as a private limited company in the year 1983 having late Mr. Gulshan Kumar and his father, Mr. Chanderbhan Dua as its Directors. In 1988 it became a deemed public limited company. It is stated that SCIL, since its inception, has been engaged in the business of manufacturing and marketing audio and video cassettes (blank and recorded), compact discs ("CDs"), televisions, tape recorders, CD players and other electrical goods. It is stated that SCIL has also built state-of-the-art facilities in its recording studios. SCIL is the proprietor of T-SERIES brand of music cassettes, CDs, VCDs and DVDs. SCIL claims to own copyright in a vast repertoire of cinematograph films and sound recordings, including over 20,000 Hindi non-film songs and around 50,000 songs in regional languages, adding up to tens of thousands of hours of music. SCIL claims to own exclusive copyright in video films of different varieties including audio-visual songs of hundreds of feature films, music videos of private artists, performance of devotional songs and discourses along with visual picturisation, performance of Indian classical music with visual picturisation, other video films such as animated films and compilations of excerpts from feature films.

6. The case of the Petitioner SCIL, which is also that of the other Petitioners, is that the films manufactured or produced by them, containing devotional and religious songs, are not being sold for "public exhibition" within the meaning of the CG Act. The Petitioners' case is that since they are being sold for private home viewing, they do not require certification by the CBFC. It is stated that with each DVD and VCD sold by the Petitioners a set of warnings are printed on the cover/jacket containing the VCD or DVD. A sampling of the said warnings is:

WARNING: This video is for your personal and private use only. Any commercial use including renting in public will need licence from Super Cassettes Industries Limited, under the Copyright Act, 1957.

WARNING: Any unauthorised copying of the film, causing the film to be seen and heard in the public, making any record of the sound track in the film, communicating the film by broadcasting, usage, publishing, adapting, synchronization or by means of wireless diffusion or wire selling or letting for hire, distributing, exhibiting, importing or exporting any unauthorized copy shall constitute infringement of the producer's copyright in this cinematograph film and any such act or attempt shall be an offence punishable with fine and imprisonment under Chapter XII of the Copyright Act, 1957.

Warning: All rights reserved. For non-commercial private home viewing only and on a single viewing device at any time. The contents are not to be transmitted on any cable or like television, transmission system or distribution to more than one television device or dwelling. Unauthorised copying, duplication, reproduction, hiring, renting lending broadcasting and public performance or exhibition or screening (including clubs, bars, hospitals, nursing homes, retail establishments, oil rigs, prisons, schools and/or in public transport, airports, railways and bus station) is strictly prohibited. Any unauthorised use, copying or violation of the above terms shall constitute an offence under the Copyright Act, 1957 (as amended) and shall be liable for prosecution.

7. It is stated that on or around 7th December 2006, teams of police officers conducted raids at the business premises of several individuals and firms dealing in the sale of video films including audio-visual materials produced by SCIL. A considerable stock of VCDs and DVDs was seized on the ground that the persons stocking them failed to produce the necessary documents including the certification of the CBFC u/s 5A of the CG Act. FIR No. RC SIB 2006 E 0010 dated 8th December 2006 was registered u/s 120B IPC read with Section 52A CR Act and Sections 63, 65 and 69 CR Act. Several retailers were named as the accused persons. SCIL claims that the present petition has been filed under the apprehension that there may be more such raids in which the DVDs and VCDs produced by SCIL and sold in the retail market for private viewing may be seized for want of certificates issued by the CBFC u/s 5A CG Act. It is stated that an FIR on similar grounds was lodged on 14th July 2006 in the Dabri Police Station, South-West District, Delhi upon the complaint of one Mr. Avadh Sharma, a member of the Delhi Advisory Panel of the CBFC.

8. SCIL states that thereafter large stocks of VCDs and DVDs were returned to it by its retailers and stockists since a panic was created as a result of the raids. SCIL claims to have suffered return of stock of value of Rs. 161 crores between 1st November 2006 to 14th February 2007 apart from loss of reputation and goodwill. In the circumstances, W.P. (C) No. 2543 of 2007 was filed on 3rd April 2007. While directing notice to issue in the writ petition, the following order was passed by this Court:

Issue notice to the Respondent No. 1, returnable on 19th July 2007.

The issue involved in this petition is whether the manufacture and sale of DVDs and VCDs pertaining to certain audio-visual materials including devotional songs etc. which

do not fall within the standard "understanding of feature films or documentaries" would still require certification from the Board of Film Certification under the Cinematograph Act, 1952. The Petitioner is a manufacturer of various DVDs and VCDs which include feature films and films designed for public viewing as well as films which, according to the Petitioner, are not designed for public viewing. Insofar as those audio visual materials, which are designed for public viewing are concerned, the counsel for the Petitioner clearly states that a Film Certification would be necessary and it has been applying for the same and obtaining the same from time to time. Insofar as the audio-visual material which is not designed for public viewing is concerned, the Petitioner is of the view that the same does not require certification for the purposes of manufacture and sale. In case, any person, after having purchased or rented the said material, uses it for public exhibition then it would be his liability and not the liability of the manufacturer. There is a difference of understanding between the Petitioner and the Respondents on this aspect. According to the learned Counsel for the Respondents, all audiovisual materials, which are capable of public viewing, require certification. Since, this matter requires consideration, the Respondents are directed to file their counter affidavits within four weeks and the Petitioner shall file the rejoinder affidavit within four weeks thereafter. In the meanwhile, the Respondents may continue with their investigation but shall not take any coercive step with regard to the audio-visual materials which are meant for private viewing.

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9. The above interim order has continued since then.

10. The facts in each of the other petitions and the reliefs sought are more or less similar. As already noticed only in W.P. (C) No. 6481 of 2007, by Mr. Dharmendar Kapoor, the relief sought is for a direction to the Respondents to strictly enforce the provisions of the CG Act and the CR Act.

Submissions of counsel for Petitioners

11. Mr. Amit Sibal, learned Counsel appearing for SCIL submitted that u/s 52A(2)(a) of the CR Act, the certificate for public exhibition issued by the CBFC u/s 5A CG Act is required to be displayed only when the video film in question is publicly exhibited. Where it is meant for private viewing, Section 52A(2)(b) and 52A(2)(c) get attracted and it is nobody's case that the details thereunder are not being displayed. The anxiety only is that despite these films being meant for private viewing not requiring certification u/s 5A CG Act, raids have been conducted and DVDs and VCDs seized for want of a CBFC certificate. According to Mr. Sibal, showing a film in a public place, to which the public is admitted, constitutes "public exhibition" within the meaning of the CG Act. Analysing various provisions of the CG Act including Sections 3, 4, 5-A, 7 and 10, Mr. Sibal submitted that only such films that are meant for public exhibition are required to be certified by the CBFC. He submits that the mere display of the jacket or the cover containing the VCD or DVD as the case may be in a shop selling such VCDs or DVDs

does not amount to public exhibition.

12. In order to underscore the distinction between the different expressions "sale", "distribution" and "exhibition", Mr. Sibal referred to Section 51 CR Act which sets out the circumstances in which the copyright in a work shall be deemed to be infringed. It is submitted that Section 51(b) CR Act provides that when any person makes for sale or hire, or sells or lets for hire, or by way of trade displays or offers for sale or hire or distributes either for the purpose of trade or to effect prejudicially the owner of the copyright or by way of trade "exhibits in public" or imports into India any infringing copies of the work, then there is deemed infringement of the copyright. Infringing copy u/s 2(m)(ii) CR Act means "in relation to a cinematographic film, a copy of the film made on any medium by any means" if such reproduction, copy or sound recording is made or imported in contravention of the provisions of the Act. Mr. Sibal pointed out that "exhibition" of a film in public would not include sale, display or distribution of such DVD or VCD containing the film in a shop since these have been identified as different acts of infringement. It is submitted that if such DVDs or VCDs would be used to distribute among the public, material that is otherwise objectionable and not fit for viewing, Section 292 IPC would take care of all such contingencies and every person involved in the manufacture, sale and distribution of such material would be liable thereunder. It is submitted that the object of introducing Section 52A CR Act was to protect against piracy and sale for commercial gains of cinematographic films on a mass scale by persons other than the producers of such films. Section 52A CR Act was not intended to prosecute the owners of the copyright themselves.

13. Mr. Sibal pointed out that Section 4 CG Act envisages different kinds of certificates granted by the CBFC upon examination of the film only where such film is meant for public exhibition. This according to him was plain from a reading of Section 5 as well. u/s 14 CG Act there are penalties for violation of Section 10 regarding exhibition of a film at a place other than a place licensed for public exhibition. If the mere display in a shop of the cover or jacket containing the VCD or DVD were to be construed as "public exhibition" then no films could be stocked in a shop because it was open to the entry of all persons irrespective of the age group. Every such shop then would have to be licensed as fit for "public exhibition" which could in turn lead to absurd results not envisaged by the CG Act. It is submitted that exhibition has a relation to the place and there can be no "public exhibition" when a person purchases a DVD from a shop and goes home and watches it by playing it on the DVD/VCD player in the private confines of his or her home. It is submitted that if public is freely admitted even to one's home then it may be construed as "public exhibition". This would depend on the facts and circumstances of each case. By analogy, a reference is made to Section 21 of the Prevention of Cruelty to Animals Act, 1960 which also indicates that "exhibition" has to be at a place where the public is admitted. Referring to Section 10 CG Act, it is submitted that a certified film can be exhibited only at such place which is licensed as fit for "public exhibition" by the State Government. In this connection, Mr. Sibal referred to the decisions in [Balwinder Singh Vs.](#)

[Delhi Administory and Others](#), and *Restaurant Lee v. State of Madhya Pradesh* AIR 1983 MP 146 as well as the decision of the Supreme Court in [State of A.P. Vs. Nagoti Venkataramana](#), which, according to Mr. Sibal, was mistakenly understood as permitting the police to launch prosecution even where the VCDs/DVDs were meant for private viewing.

14. Mr. Sibal submitted that the requirement of censorship of films meant for private viewing was not envisaged either by the CG Act or the CR Act. To insist on certification of such films would be an unauthorised and impermissible restriction on the freedom of speech and expression under Article 19(1)(a) read with Article 19(2) of the Constitution of India. That freedom was not only for producers of films but also of the buyers and viewers of films. It is submitted that inasmuch as the CG Act itself is subject to various restrictions relatable to Article 19(2), it cannot be expanded to include censorship of audio-visual material meant for private viewing. Since both the CR Act as well as the CG Act contained penal provisions inasmuch they provided for prosecution and punishments for offences committed thereunder, the provisions of both statutes had to be construed strictly. The rule of purposive construction could not be imported to require censorship even of films meant for private viewing. Mr. Sibal submitted that if there was a departure from the plain meaning which lead to either absurdity or repugnance then such departure could not be permitted. On the interpretation sought to be placed by the Respondents the provisions of Sections 7A and Section 10 CG Act would become unworkable. A reference is also made to the observations of the Supreme Court in [State of Madras Vs. V.G. Row](#), . Mr. Sibal submitted that on the plain meaning of the provisions of the CG Act, there was no legal basis for requiring certification by the CBFC of films meant for private viewing. It is submitted that in recognition of the possible difficulties that may be encountered in requiring all kinds of films to be certified, the I&B Ministry had itself issued an order on 24th September 2007 exempting certain films from the requirement of certification. It is submitted that it would be impractical for all VCDs and DVDs meant for private viewing to be submitted to the CBFC for certification.

15. In this connection, reference was made to a letter dated 27th October 2006 written by the CBFC to the South Indian Music Companies Association in which it was stated as under:

As you are fully aware, as per the Cinematograph Act 1952, any audio-visual material meant for public viewing is to be certified by CBFC. This means any film either in celluloid or in video format intended to be shown to public either in a licensed theatre or any public place and the audio visual material available for sale across the counters need to be submitted to CBFC for certification. Moreover, with the later amendments introduced in 1983, any film certified in one professional format, when it is transferred into other formats and also celluloid film in one language when dubbed into other languages need to be submitted for certification if they are intended for broadcasting either in cable network or television channels at a later date.

As on date, only those audio visual materials which are meant for exclusive telecast in different TV channels does not come under our purview. The responsibility of such material was left to the individual broadcasting house under self regulation.

We are happy to know that a sudden spurt of awareness in this regard has taken place and we are approached for certification for huge amount of audio visual materials. Despite our best efforts to expedite by way of increasing the available infrastructure, as you are fully aware, it will take some more time to create the needed infrastructure as per the increase in workload.

16. It is pointed out that SCIL itself has had to wait for several months to get its video films certified.

17. Supplementing the submissions of Mr. Sibal, Mr. Ashok Sethi learned Counsel appearing for some of the Petitioners in the connected writ petitions, referred to the Cinematograph Act, 1918 ("CG Act 1918"), Section 5 of which provided for the certification of a film as well as conditions of the licence for exhibition of films. According to Mr. Sethi the provisions of the CG Act 1918 were rearranged in the CG Act enacted in 1952. He referred to the Statement of Objects and Reasons ("SOR") of the CG Act 1918 where the emphasis was on the safety of the place of exhibition and for the requirement of certification only where the film was meant for "public exhibition". It is submitted that Section 10 CG Act which was in Part III could not be read independent of Sections 4 and 5A CG Act which occurred in Part II and that both Parts II and III of the CG Act were intrinsically linked. The unworkability of the provisions was emphasised if every film meant for private viewing and sold as such was required to be certified by the CBFC. Referring to Section 7 CG Act read with Rule 37 of the Cinematograph (Certification) Rules, 1983 ("CCR") which permits the Chairman, any member of the CBFC, any advisory panel, a regional officer, any other officer or member of the staff of the Board in discharge of their duties to enter any place licensed for "public exhibition" and to be provided with a seat of the highest rate or next lower class to view the film without charging the admission fee or entertainment tax, Mr. Seth submitted that these provisions would not be workable in a situation where the film is sold across the counter in DVDs or VCDs specifically indicating that they are "only for private viewing". Mr. Seth next referred to Rule 21 CCR which talks of making an application for the examination of a film and submitted that an application is required to be made only when such film is meant for public exhibition and not otherwise.

18. Mr. Sethi referred to Section 3 CR Act read with Section 2(ff) CR Act for understanding the word "publish" occurring in Section 52A CR Act. He submitted that it is only when the work is exhibited for viewing by the public at a place to which the public was invited that a public exhibition of such a film can be said to take place. A reference was also made to the decision in Video Master v. Nishi Productions 1998 PTC (18) in the context of satellite broadcasting and a distinction drawn between that situation and the situation in hand, which according to Mr. Seth cannot amount to "public exhibition". Mr.

Seth then referred to the SOR of the amendment made in 1984 to the CR Act which introduced Section 52A where the entire focus was on controlling video piracy.

19. The submissions of Mr. Sibal and Mr. Seth were further supplemented by Mr. Rajeev Sharma, learned Counsel appearing for some of the writ Petitioners in the connected writ petitions.

Submissions of counsel for Respondents

20. The submissions on behalf of the UOI and CBFC were advanced by Mr. A.S. Chandhiok, learned Additional Solicitor General ("ASG"), Mr. Atul Nanda and Mr. Pankaj Batra, learned Advocates. The submissions on behalf of the Government of National Capital Territory of Delhi ("GNCTD") were advanced by Ms. Zubeda Begum and Ms. Sana Ansari, learned Advocates and on behalf of the CBI by Mr. Vikas Pahwa, learned Advocate.

21. It was submitted, on behalf of the Respondents, that the key to understanding the entire issue is in Section 4 of the CG Act, which mandates that every person desirous of exhibiting a film should apply to the CBFC for a certification in respect of that film. It is submitted that mere "desire" to exhibit a film is sufficient for such film to require certification by the CBFC. It is submitted that the minute a film is made irrespective of its length or its content and is offered for sale to the public, it manifests the desire of the maker of the film to publicly exhibit such film. It is submitted that the mere fact that copies of such VCDs or DVDs would be made available at a price is sufficient to attract the entire gamut of the provisions of the CG Act that require certification of such films. It is added that such films still require certification. It is submitted that a purposive construction has to be placed on the expression "public exhibition" keeping in view the changing context where even though the film is not exhibited in a cinema hall, it is still possible to be viewed by the members of the public sitting in the privacy of their homes. If a film watched by several members of the public in the privacy of their homes is held to be exempt from certification then there will be a real danger of films being made to bypass the guidelines formulated by the CBFC u/s 5B of the CG Act and there would be no control on the dissemination of objectionable material through VCDs and DVDs. It is submitted that the emphasis is not only on piracy of cinematograph films, which is indeed a serious problem, but also to ensure that films which are meant for restricted public viewing, are not placed in the public domain without passing through the procedure of certification.

22. It is submitted on behalf of the Respondents that what constitutes "public exhibition" or "private exhibition" has been explained in several judgments including [Video Master and etc. Vs. Union of India \(UOI\) and Others](#), ; [Deep Snack Bar and Others Vs. State of Haryana and Another](#), ; [H.R. Club Vs. State of Bihar and Others](#), ; [Dilip Singh Vs. State of Rajasthan and Others](#), and [Garware Plastics and Polyester Ltd. and Others etc. Vs. Telelink and Others etc.](#), . It is submitted that the main prayer in the petition is only for a declaration that the Petitioners' films are exempt from certification u/s 5A CG Act. It is

submitted that no such declaration can be given in respect of these films in the abstract since they are anyway meant for sale to the public and therefore meant for "public exhibition". It is submitted that merely indicating on the jacket or cover of the DVD or the VCD that it is meant for private viewing will not prevent the subsequent "public" exhibition of such film. Moreover, the warning published on the jacket is only under the CR Act. There was no warning about the impending prosecution of the purchaser, the producer and/or the seller of the film for violation of the CG Act.

23. As regards the place of exhibition, it is submitted by the learned Counsel for the Respondents that the licensing thereof is a separate process for which there are statutes and/or rules made by different States. These were made by the States in exercise of the legislative powers under Article 245 read with Entry 33, List-II of the Constitution. The fact that a certified film cannot be shown at any place other than the place licensed as fit for "public exhibition" in terms of the statute and rules of the State concerned cannot ipso facto mean that unless such film is intended to be shown in a cinema hall, it is not required to be certified by the CBFC under Sections 4 and 5A of the CG Act. Mr. Chandhiok referred to Rule 24(9)(f) CCR which contemplates that a certificate may even be refused when CBFC is of the view that the "film is not suitable for unrestricted or restricted public exhibition". It is submitted that all kinds of films have to be submitted for certification. For the purposes of Section 52A(2)(a) CR Act, once a film is "published" and therefore communicated to the public, it would be a film that requires certification u/s 5A CG Act since such a film would be a film that is capable of being publicly exhibited. According to Mr. Chandhiok putting a film in the public domain whether by sale or otherwise will amount to "public exhibition".

24. Although an apprehension was expressed that uncensored films might contain objectionable material and, therefore, should not be allowed to be distributed in the form of DVDs and VCDs, as was being done by the Petitioners, learned Counsel for the Respondents candidly stated that there was no information on whether any part of the films produced by any of the Petitioners before this Court contained any objectionable material. It is however submitted that some of the Petitioners, including SCIL, have themselves been submitting films for certification including films similar to the ones described in these petitions which contained only devotional songs.

The statutory schemes of the CG Act and the CR Act

25. In the background of the above submissions, the issue that arises for consideration is whether the DVDs or VCDs made or produced by the Petitioners, and sought to be sold or offered for sale with the label that they are meant for private viewing only, require prior certification by the CBFC u/s 5A CG Act? To determine this question the legislative schemes of both the CG Act and the CR Acts have to be examined.

26. The CG Act is a successor legislation to the CG Act 1918. The SOR of the CG Act 1918 indicated that it was meant to control exhibition of cinematographs "with particular

regard to the safety of those attending them and to prevent the presentation to the public of improper and objectionable films". A further object was to counter the "special danger from fire which attends cinematograph exhibits as has been illustrated by terrible catastrophes due to this cause in other countries...and to secure in the interest of safety of spectators, a proper regard to the structural conditions of the premises utilised". Consequently, under the CG Act 1918 an authority was set up for granting licences intended to ensure that adequate precautions are taken for the safety of persons attending the exhibitions and also to ensure that certificate is revised in case of improper and objectionable films. The CG Act, enacted in 1952, is largely a rearrangement of the provisions of the CG Act 1918. u/s 2(c) CG Act "cinematograph" has been defined as including "any apparatus for the representation of moving pictures or series of pictures." Section 2(dd) CG Act defines "film" to mean "a cinematograph film". As far as the present petitions are concerned, there can be no manner of doubt that the films produced by the Petitioners and proposed to sold in VCDs and DVDs answer the description of "film" under the CG Act. It may be noticed that "cinematograph film" is also defined u/s 2(f) of the CR Act, 1957 to mean "any work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording and "cinematograph" shall be construed as including any work produced by any process analogous to cinematography including video films".

27. On the basis of both definitions under the CG Act and the CR Act, DVDs and VCDs produced, manufactured and marketed by the Petitioners in these cases whether containing video recordings of religious songs or otherwise would answer the definition of "cinematographic film".

28. u/s 3 CG Act, the Central Government constitutes the CBFC for the purposes of "sanctioning films for public exhibition". Section 4 CG Act which deals with examination of films by the CBFC reads as under:

4. Examination of films-(1) Any person desiring to exhibit any film shall in the prescribed manner make an application to the Board for a certificate in respect thereof, and the Board may, after examining or having, the film examined in the prescribed manner

(i) sanction the film for unrestricted public exhibition; Provided that, having regard to any material in the film, if the Board is of the opinion that it is necessary to caution that the question as to whether any child below the age of twelve years may be allowed to see such a film should be considered by the parents or guardian of such child, the Board may sanction the film for unrestricted public exhibition with an endorsement to that effect; or;

(ii) sanction the film for public exhibition restricted to adults; or

(iia) sanction the film for public exhibition restricted to members of any profession or any class of persons, having regard to the nature, content and theme of the film; or

(iii) direct the applicant to carry out such excisions or modifications in the film as it thinks necessary before sanctioning the film for public exhibition under any of the foregoing clauses; or

(iv) refuse to sanction the film for public exhibition.

(2) No action under the proviso to Clause (i), Clause (ii), Clause (iia), Clause (iii) or Clause (iv) of Sub-section (1) shall be taken by the Board except after giving an opportunity to the applicant for representing his views in the matter.

29. The kinds of certificates that can be issued after the CBFC has examined a film u/s 4, is set out u/s 5A which reads as under:

Section 5A - Certification of films

(1) If, after examining a film or having it examined in the prescribed manner, the Board considers that-

(a) the film is suitable for unrestricted public exhibition, or, as the case may be, for unrestricted public exhibition with an endorsement of the nature mentioned in the proviso to Clause (i) of Sub-section (1) of Section 4, it shall grant to the person applying for a certificate in respect of the film a "U" certificate or, as the case may be, a "UA" certificate; or

(b) the film is not suitable for unrestricted public exhibition, but is suitable for public exhibition restricted to adults or, as the case may be, is suitable for public exhibition restricted to members of any profession or any class of persons, it shall grant to the person applying for a certificate in respect of the film an "A" certificate or, as the case may be, a "S" certificate,

and cause the film to be so marked in the prescribed manner:

Provided that the applicant for the certificate, any distributor or exhibitor or any other person to whom the rights in the film have passed shall not be liable for punishment under any law relating to obscenity in respect of any matter contained in the film for which certificate has been granted under Clause (a) or Clause (b).

(2) A certificate granted or an order refusing to grant a certificate in respect of any film shall be published in the Gazette of India.

(3) Subject to the other provisions contained in this Act, a certificate granted by the Board under this section shall be valid throughout India for a period of ten years.

When does "public exhibition" take place of a cinematograph film?

30. Much of the argument of the present case has turned around the expression "public exhibition" that occurs in Sections 3, 4 and 5A of the CG Act. That expression has not been defined under the CG Act. It has not been defined under the CR Act either. The only provision where the expression has been defined is Rule 2(xvi) of the Delhi Cinematograph (Exhibition of Films by Video Cassettes Recorder/Player) Rules, 1986 ("Delhi Rules 1986"). Rule 2(xvi) defines the said expression to mean "exhibition of films for consideration and includes exhibitions organised by club/society/association for its members". The above definition indicates that any exhibition of a film for consideration would amount to a "public exhibition". The expression "public exhibition" in the CG Act has to be therefore understood in the context of the CCR and other provisions of the CG Act and CR Act. This approach follows the observation of the Supreme Court in [Reserve Bank of India Vs. Peerless General Finance and Investment Co. Ltd. and Others](#), : "Interpretation must depend on the text and context. They are the bases of interpretation. One may well say if the text is texture, context is what gives it colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual." The other principle of interpretation invoked is that the intention of the legislature must be found by reading the statute as a whole. The Supreme Court has adopted this in several decisions including [Poppatlal Shah Vs. The State of Madras](#), ; [Philips India Ltd. Vs. Labour Court, Madras and Others](#), and Mohan Kumar Singhania v. Union of India AIR 1992 SC 1.

31. Rule 21 CCR provides for the procedure for applying for a certificate for a film meant for public exhibition. Form I appended to the CCR is the form of application "for certificate for public exhibition of a film produced in India". Form I-A is the form of application for certification "for public exhibition of a video film produced in India". Form II is for "public exhibition of a film imported into India". Under Rule 22(9), after the examination of the film by each member of the Examining Committee, the CBFC can issue a "U" certificate when a film is suitable for unrestricted public exhibition, a "UA" certificate when they find it suitable for unrestricted public exhibition but with an endorsement of caution that the question as to whether any child below the age of twelve years may be allowed to see the film should be considered by the parents or guardian of such child, or opine that the film is suitable for public exhibition only to adults, i.e., for "A" certificate, or that the film is suitable for public exhibition restricted to members of any profession or any class of persons having regard to the nature, content and theme of the film, i.e., fit for "S" certificate. The Examining Committee may also require or modify certain portions of the film as a pre-condition for grant of any of the above certificates. Under Rule 22(9)(f) the Examining Committee could also decide that the film is not suitable for either unrestricted or restricted public exhibition.

32. The CCR identifies at least three categories of films. Rule 2(ix) defines a "feature film" to mean "fictionalized story film exceeding 2000 metres in length in 35 mm or corresponding length in other gauges or on video". Rule 2(xi) defines "long film" as "exceeding 2000 metres in length in 35 mm or corresponding length in other gauges or on

video". Rule 2(xvi) defines a "short film" to be a film "with length up to and including 2000 metres in length in 35 mm or corresponding length in other gauges or on video".

Therefore, there can at least be four kinds of video films that require certification. All of these do not have to be feature films or commercial films. A close examination of the Forms I, I-A etc. indicate that the applicant is required to answer in Column 2 "whether the video film is a newsreel/documentary/scientific/educational/feature/advertisement film or video film". This is indicative of the numerous categories of films not restricted to feature films. Depending on whether a film is a "short film" or a "long film" the composition of the Examining Committee changes under Rule 22. Further, under Rule 21(4) certain relaxation is granted as regards the time to furnish the documents prescribed under Rule 21(3) where the film is a newsreel/documentary or other short film. There is nothing to indicate that a film consisting only of religious or devotional songs and meant for public exhibition would not require certification under the above provisions.

33. u/s 4 CG Act any person desiring to exhibit any film is expected to make an application to the CBFC for a certificate. On examining such film the CBFC can only grant a certificate either approving it for restricted or unrestricted "public exhibition" in the manner set out in Section 4 or refuse the application. In the context in which they occur, it must be held that the words "any person desiring to exhibit any film" in Section 4 CG Act should be understood as "any person desiring to publicly exhibit any film". What then amounts to "public exhibition" of a film is a question that requires an answer. The question also assumes significance in the context of the present cases in view of Section 52A which was inserted in the CR Act by an amendment with effect from 8th October 1984. The SOR of the said amendment acknowledges that "because of the recent video boom in the country, there are reports that uncertified video films are being exhibited on a large scale and a large number of video parlours have also sprung up all over the country and they exhibit such films recorded on video tapes by charging admission fees from their clients". It was also stated that the amendment to the CR Act was "to combat effectively the piracy that is prevalent in the country." Consequently the amendments, inter alia, were "to specifically make the provisions of the Act applicable to video films and computer programmes" and "to require the producers of records and video films to display certain information in the record, video films and containers thereof." Section 52A CR Act reads as under:

52A Particulars to be included in sound recording and video films-(1) No person shall publish a sound recording in respect of any work unless the following particulars are displayed on the sound recording and on any container thereof, namely:

- (a) the name and address of the person who has made the sound recording;
- (b) the name and address of the owner of the copyright in such work; and
- (c) the year of its first publication.

(2) No person shall publish a video film in respect of any work unless the following particulars are displayed in the video film, when exhibited, and on the video cassette or other container thereof, namely:

(a) if such work is cinematograph film required to be certified for exhibition under the provisions of the Cinematograph Act, 1952 (37 of 1952), a copy of the certificate granted by the Board of Film Certification u/s 5A of that Act respect of such work;

(b) the name and address of the person who has made the video film and a declaration by him that he obtained the necessary licence or consent from the owner of the copyright in such work of making such video film; and

(c) the name and address of the owner for the copyright in such work.

34. u/s 52A(2) CR Act no person shall publish a video film in respect of any work unless certain particulars are displayed when exhibited, and on the video cassette or other container. The word "publish" has to be understood as the extension of the definition of the word "publication" defined u/s 3 CR Act which reads as under:

3. Meaning of publication for the purposes of this Act, "publication" means making a work available to the public by issue of copies or by communicating the work to the public.

35. This in turn takes us to the phrase "communication to the public" which has been defined u/s 2(ff) CR Act as under:

communication to the public means making any work available for being seen or heard or otherwise enjoyed by the public directly or by any means of display or diffusion other than by issuing copies of such work regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available.

Explanation-For the purposes of this clause, communication through satellite or cable or any other means of simultaneous communication to more than one household or place of residence including residential rooms of any hotel or hotels shall be deemed to be communication to the public.

36. It appears that the publishing of a video film in respect of any work would take place when such work is made available to the public for being seen, heard or otherwise enjoyed by means of display or diffusion "regardless of whether any member of the public actually sees, hears or otherwise enjoys the work so made available." The explanation to Section 2(ff) CR Act which was inserted also by the 1984 amendment and later further amended in 1995 makes it clear that exhibition through satellite TV or cable or simultaneous communication to more than one user including residential rooms of any hotel or hostel shall be deemed "to be communication to the public." This is a marked change from the understanding of what could tantamount to "exhibition to the public". It is no longer confined to a place where the public is admitted like a cinema hall but it would

include residential rooms of any hotel or hostel. Consequently, a whole new dimension has been added to the legislative understanding of "public exhibition".

37. A broadcast of films played on a DVD or a VCD through a cable television network adds another dimension to the issue. In *Garware Plastics and Polyesters Ltd. v. Telelink*, where the question was whether the showing of video films over a cable TV network amounted to communication of such film to a section of the public, it was held that one of the tests to determine whether a film can be said to be shown to the public is by determining the character of the audience. A second test was determining the nature of the relationship between the owner of the copyright and the audience. Applying the latter test, it was held that an audience which pays for watching the film "cannot be considered as domestic viewers of the owner of the copyright...they must be considered as members of the public." It was held that viewers of a cable TV network who receive a broadcast through a dish antenna to which TV sets are connected, may be watching it in the privacy of their homes but would still be considered as a section of the public.

38. Where a film is made on a VCD or DVD and such VCD or DVD is distributed either free of cost or by way of sale to the public, it would tantamount to publication of such video film within the meaning of Section 52A(2) CR Act. When such film which is distributed or sold is "exhibited" then it should contain the certificate as required u/s 52A(2)(a), i.e., the certificate of the CBFC u/s 5A CG Act. In other words, if someone enters a shop selling VCDs and DVDs, purchases a film on VCD or DVD and then takes it to the residence and plays it on the DVD or VCD player, such person should be able to first see the certificate issued by the CBFC u/s 5A CG Act. If such person is not able to view such certificate on the VCD or DVD then a violation of Section 52A CR Act takes place. In other words, in the whole chain of producing, manufacturing, publication and communication of that film by distributing the film or making it available to the public by way of sale till the stage of exhibition of such film at a subsequent stage, the person making the film or the person making available such film to the public would be liable both under the CG Act and the CR Act. Every person purchasing such VCD or DVD would be a member of the public who is likely to exhibit the film subsequent to the purchase. The maker and distributor of the film is expected to anticipate such exhibition of the film by the purchaser.

39. The insertion of Section 52A in the CR Act in fact fortifies what Section 5A CG Act requires. In the context in which the Petitioners have brought forth these petitions, the question as to the interpretation of Section 5A CG Act has to necessarily be answered with reference to Section 52A(2) CR Act. The two provisions, although of different statutes, reinforce each other since they collectively seek to deal with the same "mischief", viz., the rampant piracy of certified films and the circulation among the public of films that are not certified fit for, unrestricted or restricted, public viewing. A film which is made available to the public either by distribution or by sale would be a film that is sought to be publicly exhibited within the meaning of Section 4 CG Act. When such film is submitted to the CBFC for certification, the CBFC would examine whether in light of the

guidelines issued u/s 5B CG Act such film is suitable for restricted or unrestricted "public exhibition". In the context of the films of the kind produced by the Petitioners and offered for sale through VCDs and DVDs, the CBFC is while examining the films for certification not really concerned about the place where such film is ultimately going to be exhibited.

40. There is merit in the contention of the Respondents that the provisions under Part II CG Act (of which Sections 3, 4, 5 and 5A CG Act form part) constitute a separate scheme with a separate penalty clause (Section 7 CG Act) whereas Section 10 CG Act (relating to the place of exhibition) is in Part III which has a separate penalty clause (Section 14 CG Act). As will be noticed later, the so called "absurdity" as pointed out by the counsel for the Petitioners that might result if the Petitioners DVDs are required to be certified has been taken care of, at least as far as the NCT of Delhi is concerned, by a separate set of statutory Rules.

41. The contention of the Petitioners that Section 52A CR Act is not meant for owners of copyright in films and only applies to those seeking to deal with copyrighted films, misses the intent of the legislature consciously linking the statutory requirement of certification u/s 5A CG Act with the requirement u/s 52A CR Act. The maker of a film who desires that it should be publicly exhibited, and where such film is not exempted from certification u/s 9 CG Act, has to necessarily submit such film for prior certification to the CBFC u/s 4 read with Section 5A CG Act. To the extent that this requirement also forms part of Section 52A(2) CR Act, the Petitioners cannot possibly contend that they do not have to comply with the requirement of obtaining certification u/s 5A CG Act. As far as the requirements u/s 52A(2)(b) and 52A(2)(c) are concerned that information is to be displayed irrespective of whether the video film is exhibited publicly or not.

42. The CR Act underwent significant changes, first in 1984 and then in 1995, partly by way of acknowledging the technological advances in the medium through which films are exhibited. By the insertion of Section 52A CR Act, these changes inevitably influenced the notion of "public exhibition" for the purposes of Sections 4 and 5A CG Act as well. This is reinforced by the fact that, for a violation of Section 5A read with Section 4 CG Act straightway two consequences would get attracted. One is the prosecution u/s 7 CG Act and the other the prosecution u/s 68A of the CR Act which reads as under:

Penalty for contravention of Section 52A Any person who publishes a sound recording or a video film in contravention of the provisions of Section 52A shall be punishable with imprisonment which may extend to three years and shall also be liable to fine.

43. The submission that Section 14(d) read with Section 51 CR Act alone is relevant for deciding whether infringement in respect of a cinematograph film has taken place does not hold good in the context of Section 52A CR Act. It is possible to harmoniously interpret Section 52A CR Act with Sections 4 and 5 of the CG Act to achieve the desired object.

44. The mere labelling by the film maker or distributor that the film is meant for private viewing will not exempt the film from prior certification u/s 5A CG Act. Once it leaves the shop where the film is purchased, neither the maker of the film nor its seller, has any control on whether it is viewed by one person or by a hundred, or whether it is viewed in a place to which the public is invited or in the private confines of a home. Therefore, the interpretation of the words "public exhibition" has to necessarily be contextual keeping in view the essential purpose of the CG Act and the insertion of Section 52A in the CR Act. In view of the amendments to the CR Act as impacting on the CG Act, what constitutes "public exhibition", both for the purposes of Section 52A CR Act and Section 5A CG Act, is no longer confined to exhibition in a cinema hall. Even if there is no audience gathered to watch a film in a cinema hall but there are individuals or families watching a film in the confines of their homes, such viewers would still do it as members of the public and at the point at which they view the film that would be an "exhibition" of such film.

45. In the context of the present petitions, at the point where a member of the public, to whom the Petitioners' films on DVD or VCD is made available, plays it on an equipment and views such film, whether in the confines of a private space or otherwise, prior certification of that film in terms of Section 5A CG Act would become necessary, since for the purposes of Section 52A(2) of the CR Act the film is exhibited at that point. If at that point upon viewing of such film it is found not to display the certificate of the CBFC u/s 5A CG Act, then a violation of Section 52A CR Act can be said to occur. Since the maker or distributor of the film, at the stage of offering it for sale or otherwise making it available to the public, is aware of the impending viewing of the film in the above manner, it would be incumbent on such film maker or distributor, in terms of Section 52A CR Act read with Section 5A CG Act, to ensure that the film has the prior certification of the CBFC. In other words, the maker or the distributor of a film made available to the public by sale or otherwise is expected to anticipate the exhibition of such film by such member of the public subsequently and to ensure therefore that the film bears a certificate u/s 5A CG Act. The above legal position is evident from the plain language and on a contextual interpretation of the relevant provisions of the CG Act and the CR Act.

Mere display of cover containing DVD not "public exhibition"

46. This Court is unable to accept the extreme position taken by some of the learned Counsel appearing for the Respondents that the mere display of the container in a shop amounts to public exhibition of such film. Such an interpretation will indeed lead to absurd results including certification of such a shop being fit for "public exhibition" by the authority constituted for that purpose under the relevant rules or statutes of the State governments. The mere display in a shop of the container containing the VCD or DVD will not amount to public exhibition. However, it will amount to publication of such film within the meaning of Section 52A CR Act read with Section 3 and Section 2(f) of the CR Act. It will amount to offering for sale a DVD and VCD to the public either for consideration or otherwise. The exhibition itself may take place at a subsequent point in time. However, when such exhibition takes place and the film does not bear the certificate u/s 5A of the

CG Act then the violation of Section 52A(2)(a) CR Act would stand attracted.

47. It is a moot point whether a person who purchased the film without verifying the existence of certificate u/s 5A CG Act would also be liable when such film is exhibited in the confines of his or her home. However, none of the Petitioners here are the end-users or end-viewers of such films. As far as the present Petitioners are concerned having manufactured and produced such films and having made such films available to the public, they have "published" such films within the meaning of Section 52A CR Act.

Discussion of case law

48. The decisions, extensively cited by counsel on both sides, touch upon some of the aspects of the issue but none of them in fact deal with the context in which the issue arises in these petitions. In the State of A.P. v. Nagoti Venkataramana the Respondent was running a video library and 90 cassettes of various cinematograph films in Telugu, Hindi and English were seized from him. The entire discussion in the judgment is on piracy. It appears that the Respondent there was distributing or giving on hire video films which were infringing copies of cinematograph films which were perhaps certified but copies of which were made without permission of the owner. It was in this context that the Respondents submitted that "unless the owner is identified and he comes and gives evidence that he had a copyright of the video film which was sought to be in violation of Section 52A or Section 51 of the Act, there is no offence made out by the prosecution and that, therefore the conviction and sentence of the Respondent is not valid in law." It is in the context of a third party trying to sell or give on hire pirated copies of cinematograph films without the permission of the owner thereof that it was held that there was a violation of Section 52A of the CR Act which was punishable u/s 68A of the CR Act. There was no discussion of any provision of the CG Act. In the considered view of this Court, the said decision is of no assistance in determining the central issue that arises in the present petitions.

49. In Balwinder Singh, the Petitioner owned a video set, and a TV set for both of which he possessed a licence. He hired a commercial space and installed a TV and video set. He used the space for displaying films and charged entrance fee of Rs. 2/- per show per head inclusive of entertainment tax. The sitting capacity of the shop was 25. Some viewers sat on benches while others sat on the floor. It was in the above context that the Delhi High Court was called upon to examine if there was a violation of Section 10 CG Act which reads as under:

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

50. In para 18 it was observed as under: (AIR, p. 383)

(18) Section 10 of the Cinematograph Act, which we have read earlier, prohibits anyone to give an exhibition by means of Cinematograph elsewhere than in a place licensed under Part-III of the Act and then also in accordance with and in compliance with any conditions and restrictions imposed in the license. The crucial words in the section, in our opinion, are "shall given an exhibition". Giving of an exhibition will be different from viewing a programme received on a television set by public transmission or with the aid of an apparatus like a video. The confusion which the Petitioner sought to create was that projecting films with the aid of video and television would amount to viewing and not exhibiting. The distinction between viewing and exhibiting is obvious. A person who sees a film views it. A person who makes it possible for others to see a film exhibits it or gives an exhibition of the film. A person is permitted to give an exhibition only in a licensed premises and that also in accordance with the conditions of the said license. He cannot give an exhibition anywhere he likes though he may be the owner of the premises or a tenant of the premises.

51. The Division Bench of this Court in the above decision was making a distinction between the words "give an exhibition" and "view". It was stated that when it is made possible for others to see a film, an exhibition is given of that film. All this was in the context of where such an exhibition could be given. It was held that it had to be a place certified or licensed as being fit for such exhibition u/s 10 CG Act.

52. Likewise, in H.R. Club the films were being shown on TV screen by the Petitioner which was a society registered under the Societies Registration Act, 1860. A Division Bench of the Punjab & Haryana High Court held that it would attract Section 3 of the Bihar Cinemas (Regulation) Act, 1954 which was identical to Section 10 CG Act. Para 10 of the said decision, which are relevant, read as under: (AIR, pp 184-85)

10. It may next be pin-pointed that the Act does not use the word "public" or "private" with regard to the place or the same appellation with regard to the word "exhibition". Therefore, to impose or unduly emphasise the public or private nature of the premises would not be well warranted in the context of the Act. On behalf of the Respondents it was argued with plausibility that even in a private home if there is a display of saris or even of flowers which is thrown open to large sections of people then in common parlance too it may well come within the ambit of an exhibition of saris or flowers. This would consequently be the more so when viewed in the context and the purposes of the Act. Therefore, where larger groups of the community or larger sections of the public may have access to view a performance, the same would become an exhibition irrespective of the nature of the place where it is held. If the purpose of the regulation is to safeguard public health, public safety or public order then it is irrelevant where the section of the public has collected -- be the place one with a wholly unrestricted right of entry or a private one with severe restrictions thereto. It was submitted -- and, in my view, rightly -- that if a thousand people or more are viewing the showing of a film on the V.C.R. -- T.V. screen, it is irrelevant whether the same is being done in a cinema hall or a club hall. In either case it would be an exhibition for the purposes of the Act and in either case the

considerations of public health and public safety would be identical. Viewed from another angle, the question is not of any inherent right of access but the factum of access and collection of a large number of persons in a place. Once that is so, the display or performance becomes an exhibition under the Act irrespective of the fact whether the place is public or private, whether right of access is unrestricted or controlled or whether the same is commercial for payment or merely by aesthetic invitation. Consequently, to view the matter from a narrow myopic angle of the place being technically a public or a private one may well tend to defeat the larger purposes of the Act and the requirements or regulation and licensing in the interest of public health and safety.

53. In *Restaurant Lee*, a Division Bench of the Madhya Pradesh High Court was called upon to examine if seeing of a film through VCR on a TV screen and collecting a payment from the customer would attract Section 3 of the Madhya Pradesh Cinema (Regulation) Act, 1952 which was identical to Section 10 CG Act. In para 8 it was observed as under (AIR, p. 150):

8. ...One of the meanings of "exhibit" is "to show publicly for the purpose of amusement or instruction." "Exhibition" means a public display, i.e. a display to which public is admitted [See Oxford English Dictionary Vol. III, pages 408-409 and the Random House Dictionary Unabridged Edition page 499]. It is in this sense that the word "exhibition" as used in Section 3 has to be understood. For example, if a VCR is used for playing a pre-recorded cassette of a movie in one's own residence and the show is restricted to the family members or friends and the public is not admitted the show will not be an exhibition coming within the prohibition of Section 3. The Petitioners, however, show the movies with the help of VCR and TV sets in their restaurants where public is admitted. This clearly amounts to exhibition by means of a cinematograph bringing the activity within the ban of Section 3. The Petitioners cannot indulge into this activity unless they obtain a licence for their restaurants under the Act.

54. In *Dilip Singh*, it was held that running of a video parlour by a person who exhibited films and movies on TVs and VCRs would attract the provisions of the Rajasthan Cinemas (Regulation) Act, 1952. This judgment again had to deal with the place of exhibition.

55. It must be observed that the requirement for obtaining certification for a film that is sought to be publicly exhibited by distribution or sale of VCDs or DVDs was not a question that arose for consideration in any of the above cases. These cases were really concerned with certification of a place where such film was going to be exhibited. In the context of those cases, the places where such films were exhibited were either a shop (like in *Balwinder Singh*), or a restaurant (like in *Restaurant Lee*), or a video parlour (like in *Dilip Singh*) or a club (like in *H.R. Club*). On the other hand, the present petitions are concerned with the purchasing of a VCD or DVD from a shop and later being taken home and being viewed on a TV screen by an individual. Since this context did not directly arise in the facts of the cases, the observations made that such an exhibition would amount to

public exhibition should be held to be observations made in obiter.

56. A different approach appears to have been taken by the Bombay High Court in *M/s. Video Master Bombay*. The factual context was however also different. The Petitioners there were challenging the orders of the Respondents requiring them to submit the video tapes made from certified films and collecting fees on that account. It was observed after discussing the provisions of the CG Act that "the examination and certification of the film is necessary if it is meant for public exhibition only and not otherwise".

Thereafter in para 11 it was observed as under (AIR, p. 432):

11. Thus admittedly Section 4 applies when a person desires to use the film for public exhibition. In that case he is required to apply for certification of the film in the prescribed manner. The word "desiring" as used in Section 4(1) is pertinent. It is the desire or intention which is relevant for deciding the question. The film which is meant for sale and distribution to the public in general is nothing but a public exhibition of the film. Therefore any film which is meant for public exhibition will require examination and certification in accordance with the procedure prescribed by the Act. The material on which such a film is produced will not be very much relevant. This position is also not disputed before us.

57. However, that was not the main question that arose in *M/s. Video Master Bombay*. The discussion then turned to Rule 30 of the CCR which requires pasting of a duplicate copy of Part I of the certificate on the film of which a copy was made. This requirement was stated to have served the statutory purpose of controlling and regulating the public exhibition of the video films. The Bombay High Court accepted the contention of the Petitioners there that if the film of which a copy was made was already certified then the photocopy of such certified film "cannot be subjected to the procedure prescribed by Rule 21, over again." It was concluded that "thus an application for examination and certification will not be necessary if it is an exact video copy of already examined and certified film." In the present petitions, the question is not whether the Petitioners would require a certification if they seek to distribute video copies of an already certified film.

58. It may be noticed that the order dated 24th September 2007 issued by the I&B Ministry u/s 9 CG Act to a certain extent accounts for the above decision in *M/s. Video Master Bombay*. The said order reads as under:

No. 807/3/2007-F(C)

Government of India

Ministry of Information & Broadcasting

New Delhi-1, the 24th September, 2007

In exercise of the powers conferred by Section 9 of the Cinematograph Act, 1952 (37 of 1952), the Central Government hereby grants exemption from the provisions relating to certification of films, contained in Part II of the said Act and the Rules made thereunder, to the exhibition of the following categories of films:

(i) Recordings of sports events telecast live in India.

(ii) Recordings of animation programmes telecast in India.

(iii) Purely educational programmes/films for levels of CBSE school curriculum upto class V, except in sex education.

(iv) Songs compilations from films certified as "U" subject to the condition that the compiler will indicate the certificate number and category in respect of each such song included in the compilation.

(v) Video cassettes, CD or DVD copies of films already certified for theatrical release, provided that a legible copy of the certificate is inserted in the video cassette/DVD/CD. The outer surface of the video cassette, CD or DVD should also clearly mentioned the category of certification viz. "U", "UA", "A" or "S".

(vi) Classical music performances.

(vii) Indian classical dance performances.

(viii) Recordings of programmes telecast by Doordarshan.

2. This exemption will take effect immediately and will operate until further orders.

59. It appears that when difficulties were anticipated in requiring certification of any and every film, the Government itself exercised the powers u/s 9 CG Act to issue such order.

Effect of the Delhi Rules 1986

60. It may be noticed here that the Delhi Rules 1986, which were adverted to earlier, has also to a certain extent, accounted for the observations made in some of the above judgments. Rule 3 thereof reads as under:

3. No place shall be opened or allowed to remain open for use as a video cinema unless the owner, tenant or occupier thereof shall have obtained a cinematograph licence, therefore u/s 10 of the Cinematograph Act, 1952 provided that no such licence shall be necessary for exhibition of film on television screen through video cassette recorder for domestic purposes to the family members of the household.

(emphasis supplied)

61. An apprehension was expressed by some of the Petitioners that once a VCD or a DVD film is purchased with certification u/s 5A CG Act, it cannot be viewed by such purchaser even within the confines of his home without violating Section 10 CG Act. This has been taken care of by the above provision. Rule 3 of the Delhi Rules 1986 specifically states that viewing on a TV screen through a VCR for domestic purposes by the family members of a household does not require a licence u/s 10 CG Act.

Summary of conclusions

62. The upshot of the above discussion is that:

(a) Once a film is made or produced in a DVD or VCD or any other format and is made available or distributed to the public or offered for sale to the public, it will amount to publication of such film within the meaning of Section 52A(2)(a) of the CR Act.

(b) In the context of the present petitions, at the point where a member of the public, to whom the Petitioners' films on DVD or VCD is made available, plays it on an equipment and views such film, whether in the confines of a private space or otherwise, prior certification of that film in terms of Section 5A CG Act would become necessary, since for the purposes of Section 52A(2) of the CR Act the film is exhibited at that point.

(c) The maker or the distributor of a film made available to the public by sale or otherwise is expected to anticipate the exhibition of such film by such member of the public subsequently and to ensure therefore that the film bears a certificate u/s 5A CG Act.

(d) Whether such film, if it contains purely religious or devotional songs, should be exempted from the certification is a matter for the Government of India to take a decision on in exercise of its powers u/s 9 CG Act. However, absent such exemption u/s 9 CG Act, it must be held that the films being produced and manufactured by the Petitioners, even if they contain purely religious or devotional songs as claimed by them, would require prior certification by the CBFC u/s 5A CG Act. The absence of such certificate in the film itself when it is exhibited will attract the violation of Section 52A(2)(a) CR Act.

Consequences of the above interpretation

63. There are, of course, consequences to this interpretation of the provisions of the CG Act and the CR Act. It will mean that the certification work of the CBFC will increase manifold. However, this by itself cannot mean that the requirement of obtaining certification is an unreasonable one for the purposes of Article 19(1)(a) read with Article 19(2) of the Constitution. The scope of these petitions does not involve examining the constitutional validity of any of the provisions of the CG Act or the CR Act. The Court has to interpret the provisions as it finds them.

64. This Court had required the CBFC to provide information on how many non-feature films on VCDs and DVDs were submitted to it for certification during the last five years.

The information submitted by a letter dated 24th September 2010 of the CBFC shows that in the last five years the number of music/films and other VCDs and DVDs certified by the CBFC, Delhi during the last five years were as under:

Year	No. of Music/Films and other VCDs & DVDs certified by the CBFC, Delhi
2006	1283
2007	3228
2008	968
2009	687
2010	355
(Till 24th Sept. 2010)	
Total	6521

65. The drop in the number of films submitted for certification since 2007 could be attributed to the interim orders passed by this Court in these petitions. Previous to the raids that were conducted in December 2006, there appears to have been no effort to prosecute the manufacturers or distributors of DVDs and VCDs containing purely religious matter for violation of Section 4 read with Section 5A of the CG Act and Section 52A(2)(a) of the CR Act. This can only be attributed to the understanding of the CBFC and the UOI through the I&B Ministry as well as the State Governments, including the GNCTD, that such films, which contain only religious songs did not require certification. In one sense these petitions were also test cases for the Respondents as the legal position was not very clear. In view of the above factual position, Mr. Chandhiok learned ASG fairly stated that whatever the decision of this Court, the UOI would apply it only prospectively.

Consequential directions

66. As far as the Petitioners before this Court who are manufacturers and/or distributors or sellers of cinematograph films, each of them will adhere to the law as explained in this judgment and any film which is hereafter made by them will, before being sold or offered for sale or distributed by them to the public in DVD, VCD or any electronic or other format, be first submitted to the CBFC for certification. It is for the CBFC to decide whether it wants to increase its machinery to ensure that such certification takes place expeditiously. It is also meanwhile for the UOI to decide whether a film containing only religious or devotional material would require to be exempted from certification u/s 9 of the CG Act and on what terms. As far as the CBI is concerned it can proceed with the prosecutions already launched in accordance with law. However, in view of the statement by the learned ASG, the present judgment will apply prospectively and will not be used by the CBI to register any fresh cases in respect of the films already produced and offered for sale or distributed to public by any of the Petitioners. The CBI and the law

enforcement machinery of the GNCTD will be free to proceed against any of the Petitioners if they act hereafter in contravention of the law.

67. The writ petitions, including W.P. (C) No. 6481 of 2007, are disposed of in the above terms. The interim orders are vacated. All the pending applications are disposed of.