

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**(Division Bench)**

Writ Appeal No.1288/2017

Prashant Jaiswal	.....Appellant
Versus	
State of Madhya Pradesh & another	..... Respondents

**CORAM :**

**Hon'ble Shri Justice Hemant Gupta, Chief Justice**  
**Hon'ble Shri Justice Anurag Shrivastava, Judge**

**Appearance:**

Shri Naman Nagrath, Senior Advocate with Shri Anvesh Shrivastava, Advocate for the appellant.

Shri Shivendra Pandey, Government Advocate for the respondents/State.

Whether Approved for Reporting : **Yes**

**Law Laid Down:**

The M.P. Cinemas (Exhibition of Films by Video Cassette Recorder) Rules 1983 have lost relevance in the present day developments in the technology. Now the display is digital through an apparatus, which receives signal either on the basis of satellite link or on broadband optical fiber connection. The display via satellite or optical fiber broadband is password protected and has time line for display. Whereas, in terms of Rule 2(c) of the above said Rules, it is exhibition of recorded film by the owner of the VCR and the tape at his choice in respect of place and the number of shows. Therefore, the Rules are now redundant when display of movies either in a hall of less than 200 or in terms of Madhya Pradesh Cinemas (Regulation) Rules, 1972, the mechanism of display is the same.

**Significant Paragraph Nos.:** 13 and 14

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**Reserved on : 20.2.2018**

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## **ORDER**

(Passed on this 28<sup>th</sup> day of February, 2018)

**Per : Hemant Gupta, Chief Justice:**

The challenge in the present appeal is to an order passed by the learned Single Bench on 13.12.2017 whereby the challenge to a show cause notice issued by the Collector on 21.11.2017 remained unsuccessful.

02. The appellant is running a business of display of movies in a hall which is commonly called "Cineplex" in the name and style of M/s Movie Magic Cineplex at District Damoh. The appellant moved an application under Rule 9 of the M.P. Cinemas (Exhibition of Films by Video Cassette Recorder) Rules 1983 (for short the VCR Rules) for grant of licence. Such licence was renewed upto 31.12.2016. The petitioner thereafter again applied for renewal of licence till December 2017, but a show cause notice was issued to the appellant on 21.11.2017 for the reason that the appellant to seek licence violates the provisions of Madhya Pradesh Cinemas (Regulation) Act, 1952 (for short the Act of 1952). The appellant was directed to seek renewal of the licence under the provisions of Madhya Pradesh Cinemas (Regulation) Rules, 1972 (for short the Rules of 1972). It is the rejection of an application for renewal of licence which was challenged in the writ petition. The said writ petition was dismissed vide the order impugned in the present writ appeal.

03. Learned Single Bench held that exhibition by means of cinematograph in terms of the Act is possible in two ways i.e. in terms of Rules of 1972 and the VCR Rules. Display of a movie in terms of Rules of 1972 is by satellite link, whereas the VCR Rules contemplates display of film through video cassette recorder or player. It was found that it is not disputed that the appellant is showing the movie by means of a satellite link in a hall, though he is having the licence of showing the films through video cassette recorder. Thus the claim of the appellant for licence was found to be rightly rejected.

04. Learned counsel for the appellant vehemently argued that a Committee was constituted by the State Government consisting of Shri Sanjay Tiwari, Assistant Excise Commissioner, District Indore and Dr. Promod Kumar Jha, Assistant Excise Commissioner, District Ujjain. It was communicated to the Excise Commissioner on 2.2.2016 that definition of Cinema appearing in Rule 2(c), (d) and (e) of the VCR Rules does not warrant any amendment as the video cassette recorder or player means the display of recorded film. It was communicated that earlier, the original film was recorded on a magnetic tape which could be displayed on electronic device and now on DVD/Pen drive/Hard disk and such apparatus are included in the expression "video cassette recorder or player". However, it was suggested that Rule 6(b) is required to be deleted as it will not affect the public safety. It is contended that in terms of such recommendations, the

State Government amended the VCR Rules on 18.1.2017 whereby the Clause (a) of Rule 6 was omitted.

It is contended that a common expression "Cineplex" is used for display of movies through VCR/Player in a hall of capacity of less than 200. The provisions of display of such movies are not as rigorous as contemplated in Rules of 1972 in respect of sitting arrangements and open spaces etc. It is also contended that the Rules of 1972 have been amended on 2.11.2010 which are now applicable to the multiplex/multi dimensional amusement centre, meaning thereby that a multiplex with minimum of two cinema houses. Therefore, the scope of Rules of 1972 is distinct than the scope of VCR Rules.

05. Learned counsel for the appellant relies upon a Division Bench judgment of this Court reported as **1986 MPLJ 641 (Central Circuit Cine Association Bhusawal and others Vs. State of Madhya Pradesh)**. In the aforesaid case, the challenge was made to validity of the Rules of 1972 on the ground that the said legislation violate the guarantee of equality conferred by Article 14 of the Constitution. It was contended that the Rules of 1972 are more stringent and onerous regarding film exhibition by means of cinematograph whereas the VCR Rules are comparatively lenient in respect of exhibition of films through Video Cassette Recorder on television screen. This Court up-held the legality of VCR Rules. The Court held as under :-

“9. It will thus appear that while the entertainment through exhibition of films has been subjected to entertainment duty, the

difference in levying of such entertainment duty in these two cases is on a very sound footing and in no case can be said to be unreasonable. Interest of cinematograph exhibitors has been amply safeguarded. It will not only be inconvenient but also unjust to charge entertainment duty on every admission to the entertainment by video cassette recorder. The challenge to the constitutionality of the M.P. Entertainments Duty and Advertisements Tax (Amendment) Act, 1983 must, therefore fail.

10. For the reasons aforesaid, we are of opinion that no valid challenge can be made to the constitutionality of the M.P. Cinemas (Exhibition of Films by Video Cassette Recorder) Licensing Rules, 1983 and the M.P. Entertainments Duty and Advertisements Tax (Amendment) Act, 1983 (No. 34 of 1983). The two enactments do not suffer from the alleged vice of infringing of Article 14 of the Constitution. They are valid pieces of legislation.”

06. Learned counsel for the appellant also relies upon a Division Bench judgment of this Court reported as **1983 MPLJ 543 (Restaurant Lee, Jagdalpur and others Vs. State of M.P. and others)** and another Division Bench judgment of this Court reported as **1989 MPLJ 312 (Anand Jaiswal Vs. district Magistrate, Shahdol)**. Learned counsel also relies upon the judgment of Supreme Court reported as **(1993) 3 SCC 696 (Shankar Video and another Vs. State of Maharashtra and others)**.

07. Learned counsel for the appellant also relies upon the additional submissions submitted on behalf of the appellant on 15.1.2018, wherein it has been stated as under :-

“8. That the appellant entered into an agreement with UFO Moviez India Limited for hiring of the digital cinema system and as per the agreement Cinema Hall of the appellant has been displaying Motion pictures from the year 2014.

9. That, it is relevant to point out that a DCI-complaint digital cinema requires a digital projector and a powerful computer called a “server”. Movies are supplied to the theatre as a digital file called a Digital Cinema Package. For a typical feature film, this file will be anywhere between 90GB and 300 GB of data and may arrive as a physical delivery on a conventional computer hard drive or via satellite or fibre-optic broadband Internet. As of 2013, physical deliveries of hard drives were most common in the industry.

Regardless of how the DCP arrives, it first needs to be copied on to the internal hard drives of the serve, usually via a USB port, a process known as “ingesting”. DCPs can be and in the case of feature films almost always are, encrypted, to prevent illegal copying and piracy. The necessary decryption keys are supplied separately, usually as email attachments and then “ingested” via USB, Keys are time limited and expire after the end of the period for which the title has been booked. They are also locked to the hardware (server and projector) that is to screen the film, so if the theatre wishes to move the title to another screen or extend the run, a new key must be obtained from the distributor. These are to prevent piracy of films. The appellant for better understanding of digital cinema filed herewith a copy of a write up explaining features of digital cinema as Annexure/A-4.

10. A perusal of the features of digital cinema shows that movies are supplied to the theatre as a digital file and these digital files are encrypted to prevent illegal copying. The decryption keys are supplies separately and are then ingested via USB which then enables screening of the film. Therefore, the mode of dispensation is by and large still the same with the only difference being that it is now down electronically. So, instead of VCR/VCP's now with new technology, the film can be supplied to the appellant either on a hard disk, pen drive or can be downloaded on the server system, but cannot be displayed unless a password or code is made available via satellite or internet etc. It is only for this reason that this technology is termed as through satellite link.”

08. On the other hand, learned counsel for the State argued that the communication dated 2.2.2016 referred to by the appellant is interdepartmental communication. Such communication was not issued for information of the general public and was also against the statutory rules framed, therefore, such communication will not override the VCR Rules. It is contended that as of now the display of movies either by "Cineplex" such as by the appellant in halls of less than 200 sitting capacity or the halls having any capacity, the mode of display of cinema is the same. The Rules of 1972 contemplates that the structure has to be fire proof, the height of tiers, construction of the auditorium, entry and exit doors, and public thorough fare etc. Therefore, the argument that instead of magnetic tape the appellant is using digital file which can be downloaded from internet or on a conventional computer hard disk or via satellite or fiber optic broadband internet, is not the same as the VCR reader or a Player. It is contended that movie displayed by VCR is owned by the cineplex owners and not necessarily from the authorised sources. Still further, the VCR or VCP are outdated technology and are not in use. The technology is to download digital files, which are controlled by password and have a time span to display. The downloaded movie is not always owned with the cineplex owners but has the licence to use medium for a limited time. Therefore, as on now, the technology in use in both under Rules of 1972 and VCR Rules is the same. Thus, the appellants are required to take licence under the Rules of 1972 which serves the public interest better.

At this stage, certain provisions from the Act; Rules of 1972 and the VCR Rules are relevant to be extracted :-

### **Madhya Pradesh Cinemas (Regulation) Act, 1952 -**

**“2. Definitions.-** In this Act, unless there is anything repugnant in the subject or context, -

(a) “cinematograph” includes any apparatus for the representation of moving pictures or series of pictures;

(b) “place” includes a house, building, tent and any description of transport, whether by sea, land or air;

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

### **Madhya Pradesh Cinemas (Regulation) Rules, 1972 -**

**“2. Definitions.-** In these rules, unless the context otherwise requires, -

(c) “Cinema” means any place wherein an exhibition by means of cinematograph is given;

**106. Fees.- (1)** The fee for a licence or renewal of a licence inclusive of the inspection by the Executive Engineer/Sub-Divisional Officer concerned or by the Medical Officer of Health having jurisdiction over the area in which the cinema is situated shall be as follows:-

[(a) For permanent, semi permanent or Touring Cinema :-

No. of seats (1)	Rate of Licence fee per year (2)	Remark (3)
Upto 200	Rs. 500.00	
201 to 500	Rs. 1000.00	
Above 501	Rs. 1500.00	

Maximum 5 years for Permanent Cinema and maximum two years for Semi-Permanent or Touring Cinema, may be licenced:

Provided that where the certificate has been obtained from the Joint Executive Engineer/Sub-Divisional Officer in respect of the lightening conductors as provided in sub-rule (8) of rule 100, the licence fee shall be raised by Rs.250.00 (Rupees two hundred fifty)]”

**The M.P. Cinemas (Exhibition of Films by Video Cassette Recorder) Rules 1983 -**

“**2. Definitions.-** In these rules, unless the context otherwise requires, -

(c) “Cinema” means any place wherein a public exhibition of film by means of Video Cassette Recorder/Player is given for a commercial purpose.

(d) “Film” means a cinematograph film;

(e) “Video Cassette Recorder/Player” means a cinematograph for the purpose of giving cinematograph exhibition of recorded film.

**6.Conveniences for public health and safety.-** (a) the distance between the existing permanent, semipermanent or touring cinemas and the Cinemas to be constructed here-in-after shall not be less than 100 meters.

**14. Fee. -** The fee for a licence or renewal of a licence shall be as follows:-

	Rs.
Not exceeding 50 seats	150
Exceeding 50 seats but not exceeding 200 seats	300

**14-A. -** The fees for issue of duplicate Licence for all types of hall shall be Rs.50/- (Rs.Fifty) only.”

09. The provisions of the Act and the Rules of 1972 were examined first by the Division Bench of this Court in a judgment dated 28.4.1983 in the case of **Restaurant Lee** (supra). The Court held neither the Telegraph Act nor the Wireless Telegraphy Act cover a VCR when it is merely used for playing back pre-recorded tapes on the TV screen. It was held that VCR

when used for playing back pre-recorded cassettes of movies fall within the ambit of the Act. The Court held as under :-

“12. The dangers to which people would be exposed if the petitioners are allowed to run their restaurants as mini cinemas without any regulation are obvious. There would be risk to the safety and health of persons visiting those restaurants. Overcrowding outside and inside the restaurants when a popular movie is being exhibited would create problems of public order. Further, many of the proprietors would be tempted to indulge in exhibiting pirated and blue films. Newspaper reports confirm these apprehensions [see Indian Express of 8th April, 1983]. We are, therefore happy to reach the conclusion that the petitioners for exhibiting movies in their restaurants from pre-recorded cassettes require a licence under the Cinemas (Regulation) Act.”

10. It appears that VCR Rules came to be published on 7.10.1983 after the said judgement. It is thereafter, the Division Bench in the case of **Central Circuit Cine Association** (supra) considered the discriminatory nature of the two set of rules i.e. VCR Rules and the Rules of 1972. The Court held as under :-

“6.....learned counsel for the petitioners pointed out that while the cinema under the 1983 Rules can be located anywhere, the cinema under the 1972 Rules has to be located at a particular place and under many restrictions. We, however, find that even in these 1983 Rules, a certificate of Superintendent of Police regarding public safety and convenience has to accompany the application for grant of license. Rule 3 of the 1972 Rules, of course, requires a person desirous of erecting a Cinema or converting existing premises into a cinema to give a public notice and also notice to the authority of his intention to do so. Notice of existence of schools, hospitals, temples or other like places up to a distance of 200 meters is required to be given. Objections are then invited and the application and report of the licensing authority are sent to the State Government which may grant a no objection certificate or may

refuse to grant such certificate. Now, looking to the size of the cinema building where film is exhibited on a large screen through a projector and the sound is made through powerful loudspeakers, the large number of visitors, crowd usually collecting outside the theatre, the number of vehicles and big posters hung round the walls, and the cinema premises, it is not unreasonable to see that schools, hospitals, temples or other like places are not within the close vicinity of such cinema theaters. It is quite reasonable not to have such a restriction on the cinema where exhibition of films is done by video cassette recorder because that would require a smaller television screen installed in a small room and the film is exhibited by playing a pre-recorded cassette. This is usually done in a comparatively small room of the usual capacity of 50 to 100 persons. The sound usually does not travel beyond the room. It is more or less similar to playing a cassette recorder on a television film at home in a house not on commercial basis. Under these circumstances, the conditions imposed for grant of no objection certificate under Rule 3 of 1972 Rules need not be necessary for grant of no objection certificate under 1983 Rules. However, even the 1983 Rules require the applicant for grant of license to obtain a certificate from the Superintendent of Police regarding public safety and convenience. This necessity of a certificate from the Superintendent of Police serves similar purpose as is sought to be achieved by grant of no objection certificate from the Government under the 1972 Rules. To us there does not appear to be much distinction in this behalf in these two Rules and even if there is any, as argued by the learned counsel for the petitioners, the differentia is intelligible in view of the method of exhibition of film and the place of such exhibition.”

11. In another Division Bench judgment in the case of **Anand Jaiswal** (supra) the challenge was to an order passed by the authorities that large screen has been used while screening the movie through the video recorder. The Court has held as under:-

“13. It has also to be considered as to whether it is open to the Government to restrict the size of the screen in Video Parlours when the rules do not permit any limit on the size of the screen. This Court in *Anand Jaiswal Vs. State*, (supra) has held that so long as the licence rules are silent about the dimensions of the screen of the picture tube, the holder of a valid licence under the rules can always use a receiver with a picture tube having screen of any dimension. If the licensing authority means to restrict the use of a screen beyond certain dimensions, the rules have to be amended or the condition has to be incorporated in the licence itself. It appears that the State Government on receiving information that wide screens are being used in Video Parlours issued a Circular to District Magistrates on 30.7.1987 that size of the screen be specified while granting or renewing a video licence by the subsequent Circular dated 25.12.1987 the District Magistrates were directed that Video Parlours should only be permitted to use inbuilt screens for exhibiting film i.e. the screens of the sizes of T.V. sets. In M.P. No. 3940/87, the Commissioner in appeal has asked the petitioner to use the screen of the size of a T.V. set and in M.P. No.1161/1988 the District Magistrate while issuing the licence, restricted the size of the screen to 50 to 60 cms. In M.P. No.3673/87 the petitioner during July 1987 applied to the District Magistrate for permission to exhibit films as he had already deposited entertainment duty up to September 1988 and the District Magistrate has granted permission provided the petitioner uses screen of the size of 27" only. As seen, the rules do not limit the size of the screen for exhibiting films through VCR and due to technological advances VCR can now exhibit films on screens of unlimited dimensions. Here in these first two petitions, the petitioners, since the inception of their Video Parlours, are using screens of the width of 100" and 120" respectively. So how the State Government by executive fiat restrict the size of the screens and this is infringement of Article 19(1)(g) of the Constitution as the petitioners are being prevented from carrying on their trade and business. So these two circulars are bad and have to be struck down. It is another thing if the State Government are to fix entertainment duty depending upon the size of the screen of the V.C.R.”

12. In **Shankar Video's** case (supra) the question examined by the Supreme Court was whether the exhibition of a film recorded on a video cassette on a large screen can be recorded as video cinema in terms of the Maharashtra Cinemas (Regulation) Rules, 1966. The Court held as under :-

“13. At this stage we may also refer to the manner in which a VCR or VTR functions. It performs two functions - (i) it can record on a magnetic tape in a video cassette the broadcast relayed by a television transmitter and (ii) it can play a pre-recorded video cassette to show the moving pictures recorded therein on a television screen. It consists of three basic components - (i) a tuner which receives electromagnetic signals transmitted over the television band of the public air-waves and separates them into audio and visual signals; (ii) a recorder, which records such signals on a magnetic tape; and (iii) an adapter, which converts the audio and visual signals on the tape into a composite signal that can be received by a television set. The separate tuner in the VCR/VCP enables it to record a broadcast off one station while the television set is tuned to another channel permitting the viewer to watch two simultaneous broadcasts, one live and recording the other for later viewing. [See : Sony Corpn. of America v. Universal City Studios Inc. 78 L Ed 2d 574, 580]. A VCP cannot record a programme but it can play a pre-recorded video-cassette so as to convert the audio and visual signals on the tape into a composite signal that is received by a television receiver. With the aid of a VCR/VCP the pre-recorded cassette of a cinematograph film can be exhibited on the screen of a television receiver.

17. The *Chamber's Science and Technology Dictionary* defines Video Projection System as "an optical presentation of a TV picture on a separate open screen in contrast to the direct viewing of a CRT image, generally used for showing a large picture to an audience."

19. From the technical data given in the brochure issued by the manufacturers of ENTEL Video Projection System, that has been placed on record it appears that it contains a built-in tuner and built-

in stereo amplifier. It can receive the signals from the TV broadcasting station e.g. Door Darshan programmes through the antenna and it can also be connected directly to the video camera or to the video cassette recorder or the computer. Instead of one picture tube containing three electron guns, as in a television set, in the video projection system, there are three separate Cathode-Ray Tubes for the three primary colours, namely, red, blue and green which project the visual images through a series of lenses on the screen placed on a wall. The video projector can be fixed either on the ceiling or it can be placed on the floor. It would thus appear that like a television set the video projector is also a television receiver since it can receive T.V. signals transmitted from a television transmitter on a particular channel through the antenna and the tuner and after separating the audio and video signals it reproduces the sound on the speaker and the pictures on the screen. Apart from receiving T.V. programmes it can also be put to other uses in the same way as a television set in the sense that it can be connected to a VCR/VCP for the purpose of exhibiting a cinematograph film recorded on a video cassette. It can also be connected to the computer as well as to the video camera.....

25. For the reasons mentioned above we are unable to endorse the view of the High Court that exhibition of moving pictures given by means of VCR/VCP and a video projector does not fall within the ambit of the definition of 'video cinema' contained in Rule 2(f-6) of the Rules. In our view the video projector functions as a television receiver and an exhibition of moving pictures given with the aid of a video projector amounts to giving such exhibition through the medium of television. It must, therefore, be concluded that Video Projectors used by the appellants fall within the ambit of the definition of "video cinema" contained in Rule 2(f-6) of the Rules and the High Court was not justified in taking a view to the contrary.”

13. As per the definition of word “cinematograph” in Section 2(a) of the Act, it includes any apparatus for the representation of moving pictures or series of pictures. It has rightly not been disputed and in the light of the

judgment in **Restaurant Lee's** case (supra), the display of movies through video cassette recorder or player is an apparatus but by virtue of VCR Rules, they are being dealt with separately. We find that VCR was a display mechanism of videos including movies recorded on a magnetic tape owned by the VCR owners. Such display of movies may be in violation of the copy right laws but it was always recorded, could be played at any number of times and for duration. It is exhibition of a recorded film in terms of Rule 2(c) of VCR Rules. The magnetic tape is now substituted by another devices but what is now displayed is digital files through either optical fiber mechanism or satellite link with a restriction of play on the the basis of password and for a limited duration. It is not a freeware as was available for display by VCR/VCP mechanism.

14. As per the additional submissions of the appellant, the appellant has been displaying motion pictures in pursuance to the agreement with UFO movies for hiring of the movies. As per the appellant, physical deliveries of hard drive which may range between 90 GB to 300 GB were common in the industry till 2013. It is thereafter, the movies are being supplied either through satellite or fiber optic broadband internet and is password protected to prevent illegal copying and piracy. When asked to explain as to which technology, the cinemas covered by the Rules of 1972, use, there was no answer as to whether the technology used by such cinemas are different than what is being used by the appellant. The display mechanism of the VCR is replaced by downloading of file through fiber optic broadband internet or a satellite. Thus, the display is now digital through an apparatus, which

receives signal either on the basis of satellite link or on broadband optical fiber connection. The display via satellite or optical fiber broadband is password protected and has time line for display. The downloaded files are encrypted to prevent illegal copying. Whereas, in terms of Rule 2(c) of the abovesaid Rules, it is exhibition of recorded film by the owner of the VCR and the tape at his choice in respect of place and the number of shows. Furthermore, such player is not exhibition of recorded film available with the owner of Cineplex, but it is based upon a downloaded file which has limited use in time and restriction of the users. The recorded film was owned recording of a person which could be used at his choice and in the manner which he deems appropriate, whereas, display of movies downloaded via satellite or optical fiber broadband is not open to be displayed at the place of the choice and the number of shows which liberty a VCR owner had in terms of VCR Rules. The technology in electronics keep changing very fast. What was prevalent in 1980's has become obsolete now. With the complete change in technology, the method and quality of display of movies has undergone complete change, therefore, the VCR Rules framed in 1983 have lost relevance in the changed environment of advance technology. The technology has changed to such an extent that even a smart phone can be used as an apparatus for digital display of a movie, therefore, the difference in nature of display of movies stand obliterated. Therefore, irrespective of medium of display, the fact remains that it is a digital display through an apparatus which receives signal either on the basis of satellite link or the broadband internet connection. The downloading of the file is dependent

upon the condition of the licence. Therefore, the VCR Rules are now redundant when display of movies either in a hall of less than 200 or in terms of Madhya Pradesh Cinemas (Regulation) Rules, 1972, the mechanism of display is the same. If the appellant is able to download and use the digital file in the manner, the VCR recordings were being displayed, the appellant will be guilty of violation of copy rights provisions as well.

15. The argument that the report of the Committee was accepted when Rule 6 (a) was omitted is again not tenable. The communication dated 2.2.2016 is interdepartmental communication. It has not been made public either by way of circular or by way of a Rule. Therefore, any interpretation given by the officers of the department in interdepartmental communication cannot be treated to be a decision of the State Government. Therefore, communication dated 2.2.2016 cannot override the statutory rules.

16. In view of the aforesaid, we do not find any illegality in rejecting the application for renewal of the licence for display of movies through video cassette recorder or player.

17. Accordingly, we do not find any merit in the present writ appeal. The same is accordingly **dismissed**.

(Hemant Gupta)  
Chief Justice

(Anurag Shrivastava)  
Judge