

PETITIONER:
MINERVA TALKIES, BANGALORE & ORS. ETC.

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS. ETC.

DATE OF JUDGMENT 06/01/1988

BENCH:
SINGH, K.N. (J)
BENCH:
SINGH, K.N. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1988 AIR 526 1988 SCR (2) 511
1988 SCC Supl. 176 JT 1988 (1) 36
1988 SCALE (1) 10
CITATOR INFO :
R 1992 SC1519 (4,6)

ACT:
Karnataka Cinemas (Regulations) Rules framed under section 19 of the Karnataka Cinemas Regulations Act of 1964 Whether rule 41-A has been made "for purposes of the Act" and places unreasonable restrictions on the right to carry on business of exhibiting cinematograph films in violation of Article 19(1) (g) of the Constitution.

HEADNOTE:
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These appeals and writ petitions involved two questions of law-(i) whether Rule 41-A of the Karnataka Cinemas (Regulations) Rules (the Rules) framed by the State Government under section 19 of the Karnataka Cinemas Regulations Act of 1964 (the Act) had been made "for purposes of the Act", and (ii) whether Rule 41-A placed unreasonable restrictions on the appellants' right to carry on their business of exhibiting cinematograph films, in violation of Article 19(1)(g) of the Constitution.

The appellants/petitioners held licences for exhibiting cinematograph films in their cinema theatres under the Act and the Rules in Form prescribed by the Rules. Normally, the Cinema owners were holding four shows in a day, but later on, they increased the shows to five in a day starting from 10 a.m. and ending at 12 a.m. This caused a number of problems. The State Government in exercise of its powers under section 19 of the Act framed Rule 41-A directing that no licensee would exhibit more than four cinematograph shows in a day. The appellants challenged the validity of the Rule 41-A placing restrictions on their right to exhibit cinematograph films before the High Court by writ petitions. The appellants contended before the High Court that the restriction imposed by Rule 41-A on the licensees requiring them to exhibit more than four shows in a day was beyond the rule-making power, as the Rule did not carry out the purposes of the Act, and that the Rule placed unreasonable restrictions on their fundamental right to carry on the business of exhibiting cinematograph films.

There was difference of opinion between the two learned

Judges constituting the Bench of the High Court, which heard the petitions. K.S. Puttaswamy, J. held *intra vires* that the impugned rule was *ultra vires*

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vires as it was beyond the rule-making power of the Government under section 19 of the Act, and that it placed unreasonable restrictions on the appellants' right to carry on their business guaranteed under Article 19(1)(g) of the Constitution. Narayan Rai Kudoor, J. upheld the validity of the Rule, holding that the impugned Rule carried out the purposes of the Act, viz., the regulation of the exhibition of cinematograph films, and the restriction placed by it was reasonable. Since there was difference of opinion between the two learned Judges, the matter was placed before M. Rama Jois, J., who agreed with the opinion of N.R. Kudoor, J., holding that the State Government had the power to frame the Rule and the Rule did not place any unreasonable restriction on the appellants' right to carry on business of exhibiting cinematograph films, and that it was not *ultra vires* the Act and did not violate appellants' fundamental rights under Article 19 of the Constitution. Consequently, all the writ petitions were dismissed. Aggrieved by the decision of the High Court, the appellants filed appeals in this Court. Some of the aggrieved cinema owners filed writ petitions in this Court, challenging the validity of Rule 41-A.

Dismissing the appeals and the writ petitions, the Court,

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HELD: The question whether Rule 41-A was validly framed to carry out the purposes of the Act could be determined on the analysis of the provisions of Act. The title of the Act and the preamble clearly indicate that the main purpose of the Act is to regulate the exhibition of the cinematograph films in places in respect of which a licence for that purpose may be issued. The extent of control and regulation is evidenced by the provisions of the Act. The ultimate purpose of these provisions is to ensure safety and convenience of the general public visiting the licensed premises for witnessing the cinematograph films exhibited therein. [518D,H; 519A-B; 520F]

Section 19 of the Act confers power on the State Government to frame rules for carrying out the purposes of the Act. The preamble and the provisions of the Act provide for the regulation of the exhibition of the cinematograph films, which is the primary object of the Act. The Act confers wide powers on the State Government for the regulation of the exhibition of the cinematograph films which include power to regulate hours during which cinematograph films may be exhibited, the seating arrangements for the members of the public, and any other allied matters pertaining to public safety, health, sanitation and incidental matters. Rule 41-A which limits the numbers of shows in a day, regulates the exhibition of the cinematograph films and carries out the

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purposes of the Act. It was, therefore, referable to the State Government's general power under section 19(1) of the Act. Rule 41-A was further referable to clauses (a) and (d) of section 19(2) of the Act. Clause (a) confers power on the State Government to frame rules prescribing terms, conditions and restrictions subject to which a licence may be granted. The State Government may lay down conditions and impose restrictions prescribing hours during which the films might be exhibited and also the number of shows in the licensed premises. Clause (d) confers power on the State

Government to frame rules regulating the exhibition of cinematograph films for the purpose of securing public safety. Any rule regulating the exhibition of the cinematograph films if reasonably connected with public safety would be justified under the said provision. Rule 41-A adds a condition to the licence that exhibition of films would be limited to four shows in a day. No licensee could claim to have unrestricted right to exhibit cinematograph films for all the 24 hours of the day. Such a claim would be against public interest. The restriction to limit the number of shows to four in a day placed by rule 41-A was regulatory in nature which clearly carried out purposes of the Act. [520G-H;521A-F]

The provisions of the Act have laid down the policy for regulating the exhibition of the cinematograph films in the licensed premises and also for regulating the construction of the building, auditorium, galleries, balconies, projection rooms, seating accommodation and other allied matters related to public health and safety, etc., and all other matters relating to the exhibition of films. Validity of none of the other rules has been challenged by the appellants/petitioners although those provisions placed a number of restrictions on their right of exhibiting cinematograph films. The restrictions placed by Rule 41-A are similar to the restrictions already placed on their right to exhibit cinematograph films. It is incidental to the general power of regulating the exhibition of cinematograph films, and it is connected with the regulation of the exhibition of the cinematograph films. [522C-D,H;523A]

The question arises whether rule 41-A placed unreasonable restrictions on the appellants' right to carry on business of exhibiting cinematograph films in violation of Article 19(1)(g) of the Constitution. The appellants/petitioners have not challenged the validity of the Act. Therefore, they claim no unrestricted right to exhibit cinematograph films. They have been carrying on the business exhibiting films under a licence in form which contained the terms and conditions prescribed by the Act and the Rules framed thereunder. Rule 41-A added one more condition to it, requiring the licensee not to exhibit more than four

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shows in a day. The freedom to practise any profession, or to carry on any occupation, trade or business, guaranteed by Article 19(1)(g), is not absolute, it is subject to clause (6) of Article 19, which permits imposition of reasonable restrictions by law, if it is necessary in the interest of the general public. Any law imposing reasonable restrictions on the exercise of the right guaranteed by Article 19(1)(g) would be valid if it is in the interest of the general public. Restriction contemplated in Article 19(6) may in certain circumstances extend to total prohibition, as held by this Court in *Narender Kumar v. Union of India*, [1960] 2 SCR 375. The material placed before the State Government as also this Court, clearly demonstrated the necessity for curtailing the holding of five shows to four to remove the public grievance, as the representation filed on behalf of the public highlighted the hazards to public safety and the inconvenience caused to the members of the public visiting the cinema halls. Rule 41-A was framed to meet the public need and to secure public safety by placing minimum possible restrictions on the licensees. The Court found no merit in the contentions of the appellants/petitioners that Rule 41-A was neither necessary nor reasonable as the purpose for which it was framed could have been achieved if the relevant

authorities carried out their duties in making inspections and securing the compliance of the existing rules, and that the impugned Rule did not prescribe the duration of four shows or the intervals between them and each one of the reasons set out by the State to justify the impugned Rules, could be fully achieved by the enforcement of the existing Rules. [523B-E; 525A-C]

In holding five shows, the licensees did not exhibit approved documentaries and slides and adequate measures could not be taken to ensure public safety and health. The Court had no doubt that the existing Rules could not meet the situation and the State Government was justified in framing Rule 41-A placing limit on the appellants'/petitioners' right to exhibit cinematograph films to four shows which was in the public interest. The appellants/petitioners had no unrestricted fundamental right to carry on business of exhibiting cinematograph films. Their right to carry on business was regulated by the provisions of the Act and the Rules framed thereunder. These provisions were necessary to ensure public safety. Public health and other allied matters. The Rule 41-A does not prohibit exhibition of the cinematograph films, instead, it regulates it by providing that instead of five shows only four shows should be exhibited in a day. The Rule does not take away the licensees' right to carry on business of exhibiting cinematograph films; it merely regulates it. No rule or law could be declared unreasonable merely because there was reduction in the income of a on account of the regulation of the business. Rule 41-A does not place any unreason-

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able restriction on the appellants'/petitioners' fundamental right guaranteed to them under Article 19(1)(g) of the Constitution. It carries out the purpose of the Act in regulating the exhibition of the cinematograph films in the licensed premises. Rule 41-A is inter vires the Act. [525G-H; 526C, 527A-B]

The Court was in agreement with the majority opinion of the High Court.

Narender Kumar v. Union of India, [1960] 2 SCR 375, referred to.

Shelvarajan v. State of Mysore, [1963] 1 Mysore Law Journal 28, disapproved.

Vishnu Talkies v. State of Bihar, AIR 1975 Patna 26 and D.K. V. Prasad Rao v. State of Andhra Pradesh, AIR 1984 A.P. 75, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 54 to 73A of 1985 etc.

From the Judgment and order dated 9.10.1984 of the Karnataka High Court in W.P. Nos. 16170, 16171, 16172, 16173, 13198, 15052, 16283, 16285-86, 16331, 16334, 16335, 16597, 16598, 17116, 17612 of 1981, 39414 of 1982, 17183 of 1981, 42082 of 1982, 3833 of 1983 and 15053 of 1981

A.K. Sen. Padmanabha Mahle, Miss C.K. Sucharita, N.D.B. Raju, M. Rangaswamy, K.R. Nagaraja, B. Krishna Prasad, Miss Malini Poduval and R.B. Datar for the Appellants.

B.R.L. Iyenger, M. Veerappa and Navin Singh for the Respondents.

The Judgment of the Court was delivered by

SINGH, J. These appeals and writ petitions involve two questions of law; (i) whether Rule 41-A of the Karnataka

Cinemas (Regulations) Rules (hereinafter referred to as the Rules) framed by the State Government under Section 19 of the Karnataka Cinemas Regulations Act of 1964 (Karnataka Act 23 of 1964) (hereinafter referred to as the Act) has been made "for purposes of the Act", and (ii) whether Rule 41-A places unreasonable restrictions on the appellants' right to

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carry on their business of exhibiting cinematograph films in violation of Article 19(1)(g) of the Constitution.

The appellants/petitioners hold licences for exhibiting cinematograph films in their cinema theatres under the Act and the Rules in Form prescribed by the Rules. The Rules and conditions contained in the Licence (Form F) do not prescribe any restriction on the number of shows of films which a licensee can exhibit in his theatre. Condition No. 11 of the licence, however, provides that: "No cinematograph exhibition shall continue after such time not later than 1.00 a.m." Normally, the cinema owners were holding four shows but later on, they increased it to five shows in a day starting from 10 a.m. to 12 noon, 12 noon to 3 p.m., 3 p.m. to 6 p.m., 6 p.m. to 9 p.m., 9 p.m. to 12 a.m. Thus the cinematograph films were being exhibited continuously from 10 a.m. to mid-night, which caused a number of problems. The State Government in exercise of its power under Section 19 of the Act framed Rule 41-A directing that no licensee shall exhibit more than four cinematograph shows in a day. Rule 41-A is as under:

"41-A. Number of shows permissible in a day: No licensee shall exhibit more than four cinematograph shows in a day. "

In pursuance of Rule 41-A the appellants were directed to exhibit cinematograph films for four shows only in a day. The appellants challenged validity of the aforesaid rule placing restriction on their right to exhibit cinematograph films before the High Court of Karnataka by means of writ petitions under Article 226 of the Constitution. The appellants contended before the High Court that the restriction imposed by Rule 41-A on the licensees requiring them not to exhibit more than four shows in a day was beyond the rule making power, as the Rule did not carry out the purposes of the Act. It was further contended that the Rule placed unreasonable restriction on their fundamental right to carry on the business of exhibiting cinematograph films. The respondent State submitted before the High Court that the State Government realised that on account of exhibition of five shows in a day, in a cinema theatre, it was not possible for the licensees to keep the theatres hygienically clean and reports were received that for want of time the licensees were not exhibiting approved films and slides required under the provisions of the Act. The State Government found that exhibition of five shows in a day was not conducive to the health of the cine-goers and therefore it framed Rule 41-A limiting the shows. It was contended that the rule was

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intended for the regulation of the exhibition of cinematograph films in the licensed premises, and was within the scope and purposes of the Act. It was further pleaded before the High Court that the impugned Rule 41-A was not violative of Article 19 of the Constitution as it placed a reasonable restriction in the interest of general public as contemplated by Article 19(6) of the Constitution.

A Division Bench of the High Court heard the parties at length, but there was difference of opinion between the two learned Judges constituting the Bench of the High Court.

K.S. Puttaswamy J. held that the impugned rule was ultra vires as it was beyond the rule making power of the Government under Section 19 of the Act. He further held that the rule placed unreasonable restrictions on the appellants' right to carry on their business guaranteed to them under Article 19(1)(g) of the Constitution. The learned Judge held that the restriction placed by the Rule 41-A was neither in the interests of the general public nor it was reasonable. Narayan Rai Kudoor; J. in a separate judgment upheld the validity of the Rule holding that the impugned Rule carried out the purposes of the Act, namely, the regulation of the exhibition of cinematograph films and the restriction placed by it was reasonable and in the interests of the general public. Since there was difference of opinion between the two learned Judges the matter was placed before M. Rama Jois, J., who agreed with the opinion expressed by N.R. Kudoor J. Rama Jois J. held that the State Government had power to frame Rule 41-A under Section 19 of the Act and the Rule did not place any unreasonable restriction on the appellants' right to carry on business of exhibiting cinematograph films. The learned Judge ruled that the impugned Rule was not ultra vires the Act and it did not violate appellants' fundamental rights under Article 19 of the Constitution. In view of the majority opinion, all the writ petitions were dismissed. Aggrieved by the decision of the High Court the appellants have challenged the correctness of the High Court Judgment in these appeals. Some of the aggrieved cinema owners have also filed writ petitions before this Court under Article 32 of the Constitution challenging validity of Rule 41-A. The appeals and writ petitions raise common questions of law, and they are being disposed of by a common order.

Mr. A.K. Sen, learned counsel for the appellants/petitioners contended that the provisions of the Act do not confer any power on the State Government to regulate the number of shows, and the restrictions imposed by the impugned Rule 41-A limiting the number of shows to four did not fall within the purview of Section 19 of the Act.

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He further urged that the restriction placed by Rule 41-A was unreasonable and violative of appellants fundamental right to carry on their business under Article 19(1)(g) of the Constitution. According to the learned counsel the restriction placed by the Rule was unreasonable because the mischief it sought to meet by placing the restriction was not established and its impact was excessive which caused undue hardship to the cinema owners, as by the reduction of the number of shows from 5 to 4 there was corresponding reduction in the income of the cinema owners. Shri B.R.L. Iyengar, learned counsel for the State of Karnataka, submitted that the purpose of the Act was to regulate exhibition of cinematograph films in licensed premises and the power of regulation of exhibition of cinematograph films was wide enough embracing the power to limit the number of shows. He referred to Sections 14 and 19(2)(d) in support of his submission that the impugned rule 41-A carried out the purposes of the Act. The learned counsel further urged that the restriction placed by the impugned Rule was reasonable and made in the public interest and there was no violation of appellants right guaranteed by Article 19 of the Constitution.

The question whether Rule 41-A is validly framed to carry out the purposes of the Act can be determined on the analysis of the provisions of the Act. The declared will of

the legislature and the policy and purpose of the Act are discernable from the title, preamble and the express provisions of the Act. The legislative will is declared by the Preamble of the Act which seeks to deal with the subject of enactment. Generally, preamble to an Act, briefly indicates the object of the legislation. It may not be exhaustive, but still it discloses the primary purpose of the legislation. If the express provisions of the Act are plain and unambiguous, it is always advisable to find out the purpose of the legislation from those provisions, but if the provisions are ambiguous and the courts face the difficulty in deducing the purpose of the Act from the express provisions of the Act it is permissible to refer to the title and preamble of the Act to find out the legislative object, and the purpose of the Act. In the instant case the title of the Act is "The Karnataka Cinemas (Regulation) Act 1964" and its preamble declares that it is "An Act to provide for regulating exhibition by means of cinematographs and the licensing of places in which cinematograph films are exhibited in the State of Karnataka." It further provides that "whereas it is expedient to provide for regulating exhibition by means of cinematograph and the licensing of places in which cinematograph films are exhibited in the State of Karnataka and for other allied matters," the Act is being enacted. The title of the Act and the preamble clearly indicate that the main purpose of the Act is to

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regulate the exhibition of cinematograph films in places in respect of which a licence for that purpose may be issued. The extent of control and regulation is evidenced by the provisions of the Act. Section 4 of the Act provides that no person shall exhibit cinematograph films in a place except in accordance with the licence issued under the Act. Section 5 provides for making of application in writing to the licensing authority for the grant of licence. Section 6 requires the licensing authority to consider matters specified therein in granting or refusing a licence, with special reference to the interest of the public generally. Section 7 provides for limiting the number of places that can be licensed in any area. Section 8 provides that the licensing authority shall not grant a licence unless it is satisfied that the rules made under the Act have been substantially complied with and adequate precautions have been taken in the place in respect of which the licence is to be granted providing for the safety, convenience and comfort of the persons attending exhibitions therein. Section 7 confers power on the licensing authority to limit the number of places that can be licensed in an area. Section 10 provides for appeal against the decision under Sections 5 and 9. Section 11 provides for regulating the construction or reconstruction of a building for the use of exhibition of cinematograph films after obtaining the permission of the licensing authority. Section 12 confers power on the State Government to issue directions from time to time to any licensee to exhibit (a) such film or class of films having scientific or educational value; (b) films dealing with news and current events; and (c) documentary films indigenous films, or such other films having special value to the public. Subsection (2) further provides that any directions issued by the State Government under Section (1), shall be deemed to be additional conditions and restrictions subject to which the licence has been granted. Section 13 confers power on the licensing authority to issue directions to any licensee to exhibit in each show such

slides of public interest as may be supplied by that authority. Section 14 confers power on the State Government to issue orders and directions of general character in respect of matters relating to licence subject to the provisions of the Pact and Rules to licensing authorities, such orders and directions for the exhibition of cinematograph films, and every licensing authority is bound to give effect to such orders and directions. Section 15 confers power on the State Government or the licensing authority to suspend exhibition of films if it is of opinion that any film, which is being or is about to be publicly exhibited is likely to cause a breach of the peace. Section 16 provides for penalties and Section 17 confers power to revoke or suspend a licence. Section 18 confers power on the State Government to call for and revise orders passed by the licensing

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authority. Section 19 confers power on the State Government to make rules after previous publication, to carry out the purposes of the Act. The relevant provisions of Section 19 are as under:

"19. Powers to make rules-(I) The State Government may, by notification, after publication, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for- (a) the particulars to be given in an application for a licence and the terms, conditions and restrictions, subject to which a licence may be granted under this Act and the fees to be paid in respect of such licence;

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(d) the regulation of cinematograph exhibitions for securing public safety;

(e) regulating the means of entrance and exit at places licensed under this Act; and providing for prevention of disturbance there at;

(3) Subject to any modification made Section 22, every rule made under this Act shall have effect as if enacted in this Act."

Section 22 provides for placing the rules before each House of the State Legislature, which has power to modify, amend or annul the same. The aforesaid provisions of the Act seek to regulate the exhibition of cinematograph films in a licensed premises. The ultimate purpose of these provisions is to ensure safety, and convenience, of the general public visiting the licensed premises for witnessing the cinematograph films exhibited therein.

Section 19 of the Act confers power on the State Government to frame rules for carrying out the purposes of the Act. Sub-section (2) of Section 19 requires the State Government to frame rules in respect of the matters specified in clauses (a) to (h). While Section 19(1) confers general power on the State Government to make rules to carry out the purposes of the Act, sub-section (2) specifies particular matters in respect of which rules may be made. The power conferred under subsection (2) is not exhaustive instead it is illustrative and it does not restrict or affect the general power of the State Government under

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sub-section (1) to make rules for carrying out the purposes of the Act. A The power conferred by Section 19(1) contemplates the framing of any rule which may have bearing on the regulation of exhibition of cinematograph films. The rule so made must be related to the purposes of the Act. The

preamble and the provisions of the Act provide for the regulation of the exhibition of cinematograph films which is the primary purpose of the Act. Under Section 19(1) the Legislature has conferred wide powers on the State Government to make rules embracing all the legitimate activities connected with the exhibition of cinematograph films which include rules for incidental matters like period of show, admission to the cinema hall, interval between two shows including the number of shows which a licensee may hold in a day. No person has right to exhibit cinematograph films in a place except under a licence in accordance with its conditions and restrictions imposed by such licence. The State Government has general power to issue directions to any licensee or licensees under Section 12 with regard to the exhibition of films. Section 14 further confers powers on the State Government to issue orders and directions of general character which it may consider necessary in respect of any matter relating to the exhibition of the cinematograph films. Such directions issued by the State Government are binding on the licensee. These directions may be in the form of rules or instructions directing the licensee to limit the number of shows if the State Government considers it necessary to do so, in the public interest. The Act confers wide powers on the State Government for the regulation of the exhibition of the cinematograph films which includes power to regulate hours during which cinematograph films may be exhibited, the seating arrangements for the members of the public, and any other allied matters pertaining to public safety, health, sanitation and incidental matters. Rule 41-A which limits the number of shows in a day regulates the exhibition of the cinematograph films, and it carries out the purposes of the Act. It is, therefore, referable to the State Government's general power under Section 19(1) of the Act. Rule 41-A is further referable to clauses (a) and (d) of Section 19(2) of the Act. Clause (a) confers power on the State Government to frame rules prescribing terms, conditions and restrictions subject to which a licence may be granted, in exercise of that power. The State Government may lay down conditions and impose restrictions prescribing hours during which films may be exhibited and also the number of shows in the licensed premises. Similarly clause (d) confers power on the State Government to frame rules regulating the exhibition of cinematograph films for the purpose of securing public safety. Any rule regulating the exhibition of the cinematograph films if reasonably connected with public safety would H

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be justified under the aforesaid provision. Rule '11-A adds a condition to the licence that exhibition of films will be limited to four shows in a day. No licensee can claim to have unrestricted right to exhibit cinematograph films for all the 24 hours of the day. Such a claim would obviously be against public interest. Rights to exhibit cinematograph films is regulated by the provisions of the Act in the interest of the general public. The restriction to limit the number of shows to four in a day placed by Rule 4 I-A is regulatory in nature which clearly carries out the purposes of the Act.

The provisions of the Act have laid down the policy for regulating the exhibition of cinematograph films, in the licensed premises, and also for regulating the construction of building, the auditorium, galleries, balconies, projection rooms, seating accommodation and other allied matters related to public health and safety etc. and all

other matters related to exhibition of films. The Act does not regulate exhibition of films only. Instead, it provides for regulation of all other allied matters which are incidental, or necessary to the exhibition of cinematograph film in a licensed premises. Necessity to provide for incidental matters to facilitate successful operation of exhibition of cinematograph film, may arise from time to time having regard to the prevailing situation and changing circumstances. The legislature has therefore conferred, general power on the State Government to frame rules regulating the incidental matters also. The Rules contain provisions regulating construction of building, electric installation, galleries, balconies, fire-safety and other allied matters. Rule 49 and 50 regulate seating accommodation inside the hall or the auditorium requiring the licensee to make provision for entrance, exit, isles and placement of seats with further provision that there would be an exit after every sixth row of seats. Rule 50 requires the licensee to provide for passages, corridors and their use and ventilation. Rule 54 provides for water closets and urinals and water facilities. Rule 55 provides for regulation of ticket booths, reservation of seats and other incidental matters, so that there may not be over-crowding near the ticket booths. Rules 77 to 83 contained in Chapter X of the Rules provide for maintenance of cleanliness and prevention of over-crowding in the C; cinema hall. It is not necessary to refer to the entire set of Rules regulating matters incidental to the exhibition of cinematograph films. Validity of none of these Rules has been challenged by the appellants/ petitioners although they place a number of restrictions of their right of exhibiting cinematograph films. The restrictions placed by the Rule 41-A is similar to the restrictions already placed on their right to exhibit cinematograph films. It is incidental to the general power of

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regulating the exhibition of cinematograph films, and it is connected with the regulation of exhibition of cinematograph films.

The question arises whether Rule 41-A places unreasonable restrictions on the appellants' right to carry on business of exhibiting cinematograph films in violation of Article 19(1)(g) of the Constitution. The appellants/petitioners have not challenged the validity of the Act. Therefore they have no unrestricted right to exhibit cinematograph films. They are carrying on the business under a licence containing the terms and conditions prescribed by the Act and the Rules framed thereunder. The licence issued under Form contains a number of terms and conditions which a licensee is required to comply with, including condition No. 11 which provides that no exhibition of cinematograph film shall continue after 1.00 a.m.. Rule 41-A adds one more condition to it, requiring the licensee not to exhibit more than four shows in a day. Article 19(1)(g) guarantees freedom to practise any profession, or to carry on any occupation, trade or business. The freedom so guaranteed is not absolute. It is subject to clause (6) of Article 19 which permits imposition of reasonable restrictions by law, if it is necessary in the interest of the general public. Any law imposing reasonable restrictions on the exercise of the right guaranteed by Article 19(1)(g) would be valid if it is in the interest of the general public. Restrictions occurring in Article 19(6) may in certain circumstances extend to total prohibition as held by this Court in *Narender Kumar v. Union of India*, [1960] 2 SCR

375. A law placing restrictions on the citizens' right to do business must satisfy two conditions set out in clause (6) of Article 19, firstly, the restrictions imposed by the law must be reasonable, and, secondly, the restrictions must be in the interests of the general public. If these two tests are satisfied the law placing restriction on the citizens' right guaranteed under Article 19 must be upheld. While considering the validity of Rule 41-A it is necessary to ascertain whether the restrictions placed by the said rule are reasonable and the same are in the interests of the general public.

In its return the State Government has stated that a number of complaints had been received by the State Government against the licensees exhibiting five shows in a day. These complaints disclosed that licensees had not been exhibiting approved films and slides as directed by the authorities under Sections 12 and 13 for want of time as the licensees were interested in exhibiting the main film within the short period at their disposal for completing each show. On receipt of reports from various authorities the State Government found that the licensees were not exhibiting the approved films and slides as required

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by the existing Rules and directions issued from time to time. It was also brought to its notice that the holding of continuous five shows from 10 a.m. caused great inconvenience to the incoming and outgoing cine-goers and endangered public safety. After the end of one show the next show followed shortly within 15 minutes, and on account of shortage of time in between the two shows there was little time left for cleaning the cinema halls and there was also rush by the cine-goers to occupy the seats. The licensees generally started exhibiting approved films and slides before the cine-goers could occupy their seats with the result they could not have the benefit of the same. The reports further disclosed that the absence of interval between the shows resulted in denial of fresh air, ventilation and cleanliness in the cinema halls. The State Government was satisfied that these maladies had primarily arisen on account of five shows being shown in a day. It accordingly published the draft rule proposing to place the limit of four shows in a day, and invited objections. A number of objections were filed before the State Government to the proposed rule, by the cinema exhibitors and members of public. In their objections the exhibitors stated that five shows did not cause any inconvenience to the public and the restrictions proposed to be placed were not in the interests of the general public representations were made by the members of the public, submitted that continuance of five shows, one after the other from 10 a.m. On a day to 1 a.m. Of the next day were resulting in; (a) heavy rush at theatres between any two shows as a result of which entering into and coming out of the theatres had become highly inconvenient and hazardous. (b) stampede giving room for pick-pocketing, (c) lack of adequate time to clean the auditorium and lavatories resulting in unhygienic conditions (d) lack of time for exchange of fresh air to foul air, (e) commencement of show even before cine-goers can enter the auditorium and take their seats. (f) not exhibiting approved films, news-reels etc. for want of time, (g) switching of air-conditioners coolers, fans, exhaust fans to save electricity causing lot of discomfort, and (h) creating problems of conveyance and traffic jam, over-loading of buses etc. After considering the objections, the State Government was satisfied that the restriction as proposed

placing the limit of four shows in a day was necessary in the interests of the general public. The State Government thereupon promulgated Rule 41-A placing the limit of four shows. The material placed before the State Government has been placed before the Court also. It clearly demonstrates the necessity for curtailing the holding of five shows to four shows to remove the public grievance. The representation filed on behalf of the public high-

lighted the hazards to the public safety, and inconvenience caused to the members of the public visiting the cinema halls for entertainment.

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Rule 41-A was framed to meet the public need, and to secure public safety by placing minimum possible restrictions on the licensees.

Mr. Sen appearing for the appellants/petitioners urged that Rule 4 I-A was neither necessary nor reasonable as the purpose for which the Rule 4 I-A was framed could have been achieved if the relevant authorities carried out their duties in making inspections and securing the compliance of the existing Rules. He urged that the impugned Rule does not prescribe the duration of four shows or the intervals between them and each of one of the reasons set out by the State to justify the impugned Rules, could be fully achieved by the enforcement of the existing Rules. We find no merit in these submissions. Indisputably, the licensees had only 15 hours in a day for the exhibition of films as condition number 11 of the licence prohibits exhibition of films beyond 11 a.m. Ordinarily, no show of cinema takes place earlier to 10 a.m. If five shows are permitted within a span of 15 hours commencing from 10 a.m. of a day to 11 a.m. of the next day, it would be impossible to find reasonable time to comply with the requirement of cleanliness and exhibition approved films and slides. The appellants'/petitioners' own case is that one show of cinematograph film consumes two to two and a half hours' time. They further admit that approved documentary films and slides are exhibited for about ten minutes, and in addition to that the licensees exhibit slides and commercial shots for about ten minutes and there is an interval of ten minutes in the middle of each show. It is further admitted that on the conclusion of one show there was interval of fifteen minutes before the commencement of the next show. Thus according to the appellants/petitioners own case one show takes about three hours and if fifteen minutes interval between one show and other is credited, the total period of time required for five shows would come to sixteen hours. The appellants/petitioners have been commencing their first show at 10 a.m. and they assert that they have been completing five shows before 11 a.m. the next day in accordance with the conditions of the licence. The licensees had fifteen hours at their disposal for holding five shows from 10 a.m. to 11 a.m. the next day but in actual practice they require at least sixteen hours minimum time for holding five shows. It was therefore physically impossible to comply with the Rules and the licensees were bound to rush through, to complete five shows by 11 a.m. These facts are eloquent enough to demonstrate that in holding five shows the licensees could not exhibit approved documentaries and slides and adequate measures could not be taken to ensure public safety and health. If five shows are held continuously from 10 a.m. to 11 a.m. the next day with an interval of fifteen minutes between one show and the other, there would be acute H

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shortage of time for exhibiting approved films and slides

and the licensee would certainly be in hurry to exhibit the main film. In fifteen minutes interval, it was not possible to get the hall cleaned or to allow fresh air set in, as during that period cine goers would rush in to take their seats for witnessing the next show. If your shows are held in a day there will be no shortage of time and the licensees would have sufficient time to comply with the various statutory obligations as prescribed by the Act and Rules to ensure public safety, health and convenience.. In this view we have no doubt in our mind that the existing Rules could not meet the situation and the State Government was justified in framing Rule 41-A which serves public interest. As regards the grievance that the State Government has not prescribed any time gap between the shows it has been asserted in the counter affidavit filed on behalf of the State that the Government intended to issue further detailed directions regulating the time gap between the shows and also for curtailment of noon show or the mid-night show but before these directions could be issued the validity of Rule 41-A was challenged and no further action could be taken in the matter. Learned counsel appearing on behalf of the State Government stated before us that further instructions in the matter would be issued by the State Government. Having regard to the facts and circumstances as discussed earlier we have no doubt in our mind that the restriction placed by Rule 41-A placing limit on the appellants'/petitioners' right to exhibit cinematograph films to four shows is in the public interest.

The appellants'/petitioners' contention that restriction under Rule 41-A is unreasonable is founded on the premise that Rule 41-A is not regulatory in nature instead it totally prohibits exhibition of cinematograph films for one show and its impact is excessive as it reduces appellants'/petitioners' income to the extent of one-fifth. The appellants/petitioners have no unrestricted fundamental right to carry on business of exhibiting cinematograph films. Their right to carry on business is regulated by the provisions of the Act and the Rules framed thereunder. These provisions are necessary to ensure public safety, public health and other allied matters. As already discussed Rule 41-A has placed limit on the number of shows which a licensee can hold in a day. The Rule does not prohibit exhibition of cinematograph films instead it regulates it by providing that instead of five shows only four shows should be exhibited in a day. In *Narender Kumar v. Union of India*, this Court held that a law made in the public interest prohibiting a business would be valid as the 'prohibition' is only a kind of 'restriction'. The expression "restriction" includes "prohibition" also. Rule 41-A, however, does not take away the licensees' right to carry on

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business of exhibiting cinematograph films. It merely regulates it. No rule or law can be declared to be unreasonable merely because there is reduction in the income of a citizen on account of the regulation of the business. In our opinion, Rule 41-A does not place any unreasonable restriction on the appellants'/petitioners' fundamental right guaranteed to them under Article 19(1)(g) of the Constitution.

Learned counsel for the appellants/petitioners place reliance on a decision on the Mysore High Court in *Shelvarajen v. State of Mysore*. [1963] I Mysore Law Journal 28 in support of his contention that Rule 41-A does not regulate the exhibition of cinematograph films instead it is prohibitory in nature and the restriction so placed is

not in the interests of the general public. Puttaswamy, J. also relied upon on the aforesaid decision of the Mysore High Court in upholding the appellants' contention. In *Shelvarajen v. State of Mysore* the petitioner was exhibitor of travelling cinema show. His application for renewal of licence for a further period of four months had been rejected by the licensing authority on the ground that under Rule 67 of the Hyderabad Cinemas Rules 1953 framed under the Hyderabad Cinemas (Regulation) Act 1952 no licence for a travelling cinema show could be issued more than once during the same year for the same place. The petitioner therein challenged the validity of Rule 67 of the Hyderabad Cinema Rules 1953 on the ground that the Rule did not carry into effect the provisions of the Act and also on the ground that the Rule violated fundamental right guaranteed by Article 19(1)(g) of the Constitution. The High Court struck-down Rule 67 on the ground of it being made in excess of statutory power conferred on the State Government. The High Court held that the Act contained no prohibition against making of an application for licence more than once and it did not confer power for refusing to entertain of considering the application merely on the ground that during the same year, the applicant had been once granted licence for that purpose. We do not agree with the view taken by the Bench, in that case. as in our opinion Rule 67 regulated the grant of licence in respect of travelling cinemas. We do not consider it necessary to pursue the matter further as in the instant case Rule 41-A carries out the purposes of the Act in regulating the exhibition of cinematograph films in licensed premises. In *Vishnu Talkies v. State of Bihar*, AIR 1975 Patna . A Division Bench of the Patna High Court considered the validity of Condition 8-B of the licence which required a licensee to hold only four shows in a day and it further directed that no other show in any circumstances without obtaining the prior permission of the licensing authority would be

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allowed. The validity of condition No. 8-B was challenged on the ground that it was excessive and beyond the purview on the provisions of the Act and that it placed unreasonable restriction on the fundamental right of the petitioners therein to carry on their business. A Division Bench of the Patna High Court after analysing the provisions of the Bihar Cinema (Regulation) Act, held that the condition imposed in the licence was sustainable in view of Section 5(2) of the Bihar Act. Section 5(2) of the Bihar Act conferred power on the licensing authority to grant licence under the Act on such terms and conditions and subject to such restriction as it may determine. Condition No. 8-B was prescribed by the State Government in exercise of its powers under Section 5(2) of the Bihar Act. The Bench held that the restriction placed, was in the public interest which was reasonable and therefore it was saved by Article 19(6) of the Constitution. We are in agreement with the view taken by the Patna High Court.

In *D.K.V. Prasad Rao v. State of Andhra Pradesh*, AIR 1984 A.P. 75 validity of Rule 12(3) of Andhra Pradesh Cinemas (regulation) Rules 1970 fixing maximum rate of admission to different classes in a cinema hall for witnessing the cinematograph films was challenged on the ground that the rule was beyond the purview of the provisions of the Andhra Pradesh Cinemas (Regulation) Act 1955 and that it placed unreasonable restriction on the fundamental right of the petitioners therein in violation of Article 19 of the Constitution. A Division Bench of the

Andhra Pradesh High Court rejected both the contentions. The Court held that since the purpose of Andhra Pradesh Cinemas (Regulation) Act was to regulate the exhibition of cinematograph films the State Government could frame rules to carry out those purposes. The Court observed that the power to regulate includes the power to restrain, which embraces limitations and restrictions on all incidental matters connected with the right to trade or business under the existing licence. Rule 12(3) regulated entry to different classes to the cinema hall and it was within the rule making power of the State Government to frame such rule. The court further held that fixing limit of rate of admission was an absolute necessity in the interest of the general public and the restriction so placed was reasonable and in public interest. On these findings the court upheld the validity of the rule. We are in agreement with the view taken by the Andhra Pradesh High Court.

In the result, we are of the opinion that Rule 41-A is intra vires the Act as it carries out the purposes of the Act and it does not place

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any unreasonable restriction in violation of Article 19(1)(g) of the A Constitution. We are in agreement with the majority opinion of the High Court. Accordingly, the appeal as well as the writ petitions are dismissed with costs.

S. L.

Appeals & Petitions dismissed.

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