

**(1988) 12 KAR CK 0024**

**In the Karnataka High Court**

**Case No :** Writ Petition No's. 12395-401 of 1979, 20045, 22149 of 1980,  
13832-41, 12709-12, 14751-64 and 15878 of 1987

Kapoor Investments (P) Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

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**Date of Decision :** 14-12-1988

**Acts Referred:**

Constitution of India, 1950 — Article 19 (1) (g), 301  
Karnataka Cinemas (Regulation) Act, 1964 — Section 19 (1) (2), 5 (2)  
Karnataka Cinemas (Regulation) Rules, 1971 — Rule 7A

**Citation :** (1989) ILR (Kar) 183

**Hon'ble Judges :** Prem Chand Jain, C.J.; Shivashankar Bhat, J

**Bench :** Division Bench

**Advocate :** K. Srinivasan, S.M. Hegde and B.G. Sridharan and Vasan Associates,  
for the Appellant; M.R. Achar, Government Advocate, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Prem Chand Jain, C.J.—The petitioners have challenged the validity of the Karnataka Cinemas (Regulation) (Amendment) Rules, 1979, (hereinafter referred to as "Amendment Rules"), by which in Form-F of the Karnataka Cinemas (Regulation) Rules, 1971, (hereinafter referred to as "the Rules"), under the heading "conditions of the licence," after condition 12, the following condition has been inserted:-

"12A. The licensee shall, exhibit Kannada film for a period of not less than twelve weeks in a year."

Another condition i.e., 13A in Form-G has also been incorporated; but in these petitions we are not concerned with that condition.

2. The petitioners are owners or lessees of cinema theatres holding licences to exhibit cinematograph films. The petitioners have all along been exhibiting only first run pictures. The Government of Karnataka, by Notification No. HD 69 CNA

dated 6-7-1979 published in the Karnataka Gazette dated 7-7-1979, amended the Rules. According to the said notification, Form-F prescribed under the Rules has been amended by including the aforesaid condition 12A. In these petitions, the petitioners have pleaded that the Amendment Rules are beyond the competence of the State Government, that the Amendment Rules are ultra vires Section 5(2) of the Karnataka Cinemas (Regulation) Act, 1964, (hereinafter referred to as "the Act"), that the Government through Rules cannot impose conditions and restrictions subject to which the licence is to be granted as the imposition of conditions and restrictions is within the exclusive jurisdiction of the Licensing Authority, that the Licensing Authority has no jurisdiction to impose conditions embodied in the Rules while regranting the licence as the petitioners have got a vested right to run the cinema under the conditions and restrictions imposed on them while granting the licence, that condition No. 12A introduced by the Amendment Rules cannot be deemed as a condition imposed by the Licensing Authority, and that the Amendment Rules are violative of Article 19(1) (g) of the Constitution.

3. The petitions are contested on behalf of the respondents who have filed their statement of objections wherein it is averred that the exhibitors of cinematograph films were exhibiting films which they thought would fetch maximum profits and they were systematically omitting to exhibit Kannada films though the majority of the people of Karnataka were desirous of having the benefit of exhibition of Kannada films, that the official language of the State being Kannada the majority of the people who speak Kannada want to see and enjoy Kannada films which depict Kannada culture, literature and art, that contrary to the wishes and interests of the majority of the people in the State a few exhibitors were solely bent upon making profits excluding the exhibition of Kannada films which were not in the interest of the general public, that whenever Kannada film producers or distributors approached the exhibitors, the exhibitors imposed unreasonable conditions and made it impossible for the producers of Kannada films and distributors of the same to see that Kannada films are shown to the Members of the public, that the Kannada speaking people of Karnataka were having a feeling that they were deprived of seeing Kannada films and learning about their own culture, art or literature, that therefore several Members raised their voice stating that in the State of Karnataka sufficient encouragement and scope were not given to the Kannada art, literature, films, dramatics and fine arts, that there was a demand that unless the State comes to the rescue of the Kannada people the fine arts, particularly in Kannada, would not prosper, that there was a special demand that cinema theatres should be made to exhibit Kannada films for the benefit of the majority of the people of the State of Karnataka and this demand, was found to be very reasonable by the State Government as the official language of the State is Kannada and exhibition of Kannada films would promote and spread Kannada literature, fine arts, dramatics and other cultural activities, and that it is well-known that the medium of cinematograph is not only for entertainment of the people but also to educate

them and with this object in mind the State Government has framed the Amendment Rules. It is further averred that the restriction imposed by the Amendment Rules is in public interest, that the Rule is intended to benefit the majority of the people of the State, that the assumption of the petitioners that by exhibiting Kannada films they would incur financial loss is unfounded, that Kannada films can be exhibited without any difficulty for 12 weeks in a year, and that by requiring exhibition of Kannada films for 12 weeks in a year it cannot be said that the producers or distributors of Kannada films want imposition of unreasonable demand on the exhibitors. It is also averred that the restriction imposed by the Amendment Rules is not unreasonable nor would it affect trade and commerce, that the Government had enough material to frame the Rules and objections were called before effecting amendments and there was no opposition from the Members of the public and on the contrary certain demands were made that adequate provision should be made to encourage exhibition of Kannada films in the interest of the majority of the people of the State, and that the Amendment Rules have been made validly by the State Government and they are not ultra vires Section 5(2) of the Act and these petitions are without any merit and deserve to be dismissed.

4. The petitions had come up for hearing before a learned single Judge of this Court. Finding that an important question of law was involved in these cases it was thought proper to refer the cases to be decided by a Bench of this Court and consequently the same were referred u/s 9 of the Karnataka High Court Act, 1961, on 21-9-1987. That is how we are seized of the matter.

5. During the pendency of these Writ Petitions, the Government of Karnataka, vide Notification No. HD 367 CNA 85 dated 25-2-1987, amended the Rules by introducing Rule 7A which is in the following terms:-

**"7A. COMPULSORY SCREENING OF KANNADA FILMS:**

The following classes of licences shall exhibit Kannada films for a period specified hereunder. -

(a) permanent/semipermanent/Drive-in Cinemas for a period of not less than 12 weeks in a year.

(b) touring cinemas for one fourth of the period for which the licence is granted."

The aforesaid rule is in pari materia with the amendment made in Form-F i.e., insertion of condition 12A, and its validity has been challenged on the same grounds as the validity of the said amendment.

6. It was contended by Mr. Srinivasan, learned Counsel that Rule 7A of the Rules is beyond the competence of the rule making authority. What was sought to be argued by the learned Counsel was that the object of the Act is to provide for regulating exhibitions by means of cinematographs and the licensing of places, that the purpose of the Act is not to regulate the exhibition of cinematograph films, that u/s 19(1) of the Act the State Government can make rules to carry

out the purposes of the Act, that as regulating the exhibition of cinematograph films is not the purpose of the Act, Rule 7A is bad in law as the State Government is not competent to make a Rule in this respect.

7. On the other hand, it was submitted by Mr. Achar, learned State Counsel, that the Rule has been validly enacted by the State Government, which was competent to make such a rule and that the impugned Rule has been made keeping in view the interests of the Kannada speaking population in the State. Mr, Sridharan, learned Counsel appearing for the petitioner in Writ Petition No. 15878/87, adopted the argument of Mr. Achar and in support thereof also made his submissions.

8. Before finding out as to which of the arguments is more plausible and convincing it is necessary to notice certain provisions of the Act and the Rules made thereunder.

9. The Preamble states that the Act is 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 and for other matters. Section 2 provides definitions. "Cinematograph" is defined thus:-

"2(1) "Cinematograph" includes any apparatus for the representation of moving pictures or series of pictures."

Section 4 provides that, 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. Section 5 is in the following terms:-

**"5. LICENCE FOR EXHIBITION OF CINEMATOGRAPH FILMS:**

(1) Any person, who intends to give exhibition by means of a cinematograph in a place shall make an application in writing to the Licensing Authority for a licence therefore together with such particulars as may be prescribed."

Section 6 states that the Licensing Authority shall, in deciding whether to grant or refuse a license, have regard to the following matters, namely:-

"(a) the interest of the public generally;

(b) the suitability of the place where the cinematograph exhibitions are proposed to be given;

(c) the adequacy of existing places for the exhibition of cinematograph films in the locality; and

(d) the benefit to any particular locality or localities to be afforded by the opening of a new place of cinematograph exhibition."

Section 7 gives power to the Licensing Authority to limit number of places in any area in respect of which licence under the Act may be granted. Section 8 imposes

certain restrictions on the powers of the Licensing Authority. u/s 9 it is provided that every licence under the Act shall be personal to the person to whom it is granted and no transfer or assignment thereof whether absolute or by way of security or otherwise shall be valid unless such transfer or assignment is made with the approval in writing of the Licensing Authority. u/s 10 a provision is made for filing an appeal against the decisions made under Sections 5 and 9. In Section 11 it is provided that construction or reconstruction of buildings or use of places for exhibition of cinematograph films is to be made only after obtaining permission of Licensing Authority. Section 12 which gives power to the State Government to issue directions is in the following terms:-

"12. POWER OF STATE GOVERNMENT TO ISSUE DIRECTIONS.-

(1) The State Government may, from time to time, issue directions to any licensee or to licensees generally, requiring the licensee or licensees to exhibit-

- (a) such film or class of films having a scientific or educational value;
- (b) such films dealing with news and current events;
- (c) such documentary films, indigenous films, or such other films having special value to the public as may have been approved by the State Government in that behalf from time to time."

Under Section 13 power is given to the Licensing Authority to issue directions. Section 14 gives power to the State Government to issue orders and directions of general character in respect of matters relating to licences. Section 15 gives power to the State Government or Licensing Authority to suspend exhibition of films in certain cases. Section 16 makes a provision for imposing penalties. Section 17 gives power to the Licensing Authority to revoke or suspend a licence. Section 18 makes a provision for the exercise of revisional powers by the State Government. Section 19 which gives power to the State Government to make rules, reads thus:-

"19. POWERS TO MAKE RULES. (1) The State Government may by notification, after previous 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 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;
- (b) the conditions on the basis of which the number has to be determined u/s 7;
- (c) the limitation of the period for which licences in respect of any place may be granted for touring cinemas, and prescribing the distance from a permanent cinema beyond which licences in respect of any place for touring cinemas may be granted;

- (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 thereat;
  - (f) the conditions subject which an appeal may be preferred u/s 10 and Sub-section (2) of Section 17 and the fees to be paid in respect of such appeals;
  - (g) (i) the procedure to be followed by persons in respect of applications for permission u/s 11;
  - (ii) the documents and plans to be submitted, together with such application, and the fees to be paid on such application;
  - (iii) the matters to be considered by the Licensing Authority before approving the site for the construction of the buildings or the plans for the construction or reconstruction of building or the installation of machinery;
  - (iv) the terms, conditions and restrictions subject to which the Licensing Authority may accord approval in respect of the matters referred to in Sub-clause (iii);
  - (v) the action to be taken in cases of contravention of the terms, conditions and restrictions subject to which such approval was accorded;
  - (vi) the procedure to be followed by the Licensing Authority before granting or refusing permission u/s 11 and any other matters incidental thereto;
  - (h) the procedure for approval of films for the purpose of Section 12;
  - (i) regulating or prohibiting the sale of any ticket or pass for admission by whatever name called to a place licensed under this Act.
- (3) Subject to any modification made u/s 22, every Rule made under this Act shall have effect as if enacted in this Act."

Section 20 gives power to the State Government to exempt any cinematograph exhibition or class of cinematograph exhibition or any place where a cinematograph exhibition is given from any of the provisions of the Act or of any rules made thereunder. Section 22 makes a provision for laying the rules and the orders issued u/s 20, before the Legislature.

10. Having set out the relevant provisions of the Act, we shall now proceed to consider the validity of the impugned rule which purports to have been framed in exercise of the power conferred on the State Government u/s 19(1) of the Act. That Section empowers the State Government to make rules to carry out the purpose of the Act.

11. As is evident, the main thrust of the argument of the learned Counsel for the petitioners is that the impugned Rule cannot be said to carry out any of the purposes of the Act and such a rule could not competently be framed by the

State Government. According to the learned Counsel, a rule cannot be made beyond what is provided for. While developing his argument the learned Counsel drew our attention to the definition of "cinematograph" and submitted that exhibition of films does not fall in that definition. According to the learned Counsel, the State Government can make rules regulating the means, that is, the cinematographs, by which the films are to be exhibited, and the licensing of places wherein cinematograph films are exhibited; but the State Government cannot make any rule by which a licensee could be asked to exhibit films of a particular type. In support of his contention the learned Counsel made reference to Section 12 which makes a provision empowering the State Government to issue directions to a licensee or to licensees generally requiring them to exhibit (a) such film or a class of films having a scientific or educational value; (b) such films dealing with news and current events; and (c) such documentary films, indigenous films or such other films having special value to the public. On the strength of the said provision, Mr. Srinivasan sought" to make out a case that wherever the Legislature had intended to give power to the State Government to issue directions requiring a licensee or licensees to exhibit a particular type of film, a provision in that regard has been made. The learned Counsel also submitted that only with regard to three categories of films which have been referred to in the aforesaid Section, the Government could issue a direction and not with regard to each and every film. Thus, what was emphatically argued before us by the learned Counsel was that the purpose of the Act is not to regulate the exhibition of films but to regulate cinematographs and the licensing of places.

12. The first question that arises for consideration is whether the object of the Act is only to provide for regulating the cinematographs and the licensing of places? Mr. Srinivasan, learned Counsel, in order to substantiate his argument, had placed strong reliance on the Preamble which reads thus:

"Whereas it is expedient to provide for regulating exhibitions by means of cinematographs and the licensing of places in which cinematograph films are exhibited in the State of Karnataka and for other matters hereinafter appearing."

On the basis of the language of the Preamble, Mr. Srinivasan had sought to argue that the purpose of the Act was only to regulate cinematograph and not the exhibition of films. As to when recourse can be had to Preamble, it is observed in *Burrakur Coal Co., Ltd. Vs. The Union of India (UOI) and Others*, thus:

".... It is one of the cardinal principles of construction that where the language of an Act is clear, the Preamble must be disregarded though, where the object or meaning of an enactment is not clear, the Preamble may be resorted to, to explain it. Again, where very general language is used in an enactment which, it is clear must be intended to have a limited application, the Preamble may be used to indicate to what particular instances the enactment is intended to apply (a). We cannot, therefore, start with the Preamble for construing the provisions of an Act, though we would be justified in resorting to it, nay, we will be required

to do so, if we find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application."

Similarly in *Tribhuban Parkash Nayyar Vs. The Union of India (UOI)*, it is stated as follows:

"....A Preamble is a key to open the mind of the legislature but it cannot be used to control or qualify precise and unambiguous language of the enactment. It is only when there is a doubt as to the meaning of a provision that recourse may be had to the Preamble to ascertain the reasons for the enactment and hence the intention of the Parliament, If the language of the enactment is capable of more than one meaning then that one is to be preferred which comes nearest to the purpose and scope of the Preamble. In other words, Preamble may assist in ascertaining the meaning but it does not affect clear words in a statute. The Courts are thus not expected to start with the Preamble for construing a statutory provision nor does the mere fact that a clear and unambiguous statutory provision goes beyond the Preamble give rise by itself to a doubt on its meaning,"

In the instant case, learned Counsel for the petitioners sought to build his argument mainly on the language of the Preamble assuming that the provisions of the Act do not specifically provide for a power in the Government to enact the impugned rule and for the purpose of dealing with his contention we too are proceeding on that premise.

13. The Preamble says that it is expedient to provide for regulating exhibition by means of cinematographs and the licensing of places. So, what is required is to regulate exhibition by means of cinematograph. Looking at the wordings of the Preamble, it is quite clear that the word "regulate" is the heart of the Preamble. In Oxford Dictionary, the term "regulate" has been defined thus:

"To control, to govern, to protect by rules or regulations to . subject to guidance or restrictions, to adopt to circumstances or surroundings."

Again the word "exhibition" immediately succeeding the word "regulate" has considerable significance. In Shorter Oxford English Dictionary, the word "exhibition" has been defined thus:

"Exhibition: \*\* \*\* The action of exhibiting, submitting for inspection, displaying, or holding up to view \*\* something that is exhibited \*\* A public display (of words of art, manufactures, etc.,) also, the place of display. \*\* \*\*"

In Encyclopaedia Britannica, the definition is in the following terms:

"EXHIBITORS: An exhibition or exposition is an organised display of works of art, science and industry for stimulating public interest, promoting manufactures, expanding trade and illustrating the progress and accomplishments of one or a wide variety of productive activities."

From the plain reading of the Preamble keeping in view the prominence of the words "regulate" and "exhibition" it is quite evident that the Legislature has made this Act with a view to control or govern the exposition of films through cinematographs at the licensed places.

14. Mr. Srinivasan while contending that the Act is only meant to regulate cinematographs is completely overlooking the significance and importance of the words "regulation" and "exhibition". If the contention of the learned Counsel is accepted, then the Preamble should have read: Whereas it is expedient to provide for regulating cinematograph and the licensing of places in which cinematograph films are exhibited in the State of Karnataka. Moreover, the word "regulate" does not fit in with the word "cinematograph" only. It goes with the word "exhibition" and the word exhibition only goes with films. It cannot go with cinematographs. Thus, we find no substance in the contention of Mr. Srinivasan, learned Counsel that the Preamble clearly indicates that the purpose of the Act is to regulate cinematographs and the licensing of places.

15. Having dealt with the contention of the learned Counsel on the basis of the language of the Preamble, it is still necessary to test the plausibility of the argument of the learned Counsel in the light of the provisions of the Act. Although in the earlier part of the Judgment we have noticed the relevant provisions, which broadly indicate as to how the regulation of exhibiting cinematograph starting from construction and ending with the appeals including the imposition of terms, conditions and restrictions subject to which licensees are to carry their trade or business thereunder, are controlled, yet it would be useful to notice again some of the relevant provisions.

Section 3 of the Act specifies the Authority which grants licence. u/s 4, a person is to give exhibition by means of a cinematograph only at a place for which licence is given under the Act and also subject to any conditions and restrictions imposed by such licence. u/s 5, provision is made for obtaining a licence for exhibition of cinematograph films. Section 6 details the matters which the Licensing Authority shall have regard to before granting or refusing a licence. In this Section, one of the matters that has to be taken into consideration is the interest of the public generally. 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 gives power to 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 Sub-section (2) is not exhaustive; instead it is illustrative and does not restrict or affect the general power of the State Government under Sub-section (1) to make rules for carrying out the purposes of the Act. The power conferred by Sub-section (1) contemplates the framing of any rule which may have bearing on the regulation of an exhibition of cinematograph films. The rule so made must be related to the purpose of the

Act. By making a provision like 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. The Legislature could not envisage all the eventualities. It is well nigh impossible or practicable to specify, particularise or enumerate with precision all the conditions in the Act. Necessity to provide for incidental matters to facilitate successful operation of exhibition of cinematograph films may arise from time to time having regard to the prevailing situation and changing circumstances. That is why the rule making Authority has been given a general power u/s 19(1) to make rules if it becomes necessary to carry out the purposes of the Act. As we have already observed, the Preamble gives a clear indication that the Act is also meant to regulate the exhibition of films. u/s 5(2) it is specifically provided that any person who intends to give exhibition by means of cinematograph in a place shall make an application in that regard and the Licensing Authority may after carrying out the formalities, grant licence to such person and on such terms and conditions and subject to such restrictions as it may determine. Even this Section clearly indicates that the licence is granted for exhibition of films by means of cinematograph in a place. The Licensing Authority while granting licence under this Section, is empowered to impose such terms and conditions as it may determine. The provisions and scheme of the Act clearly indicates that it not only regulates the exhibition of films, but also provides for regulation of all other allied matters which are incidental, or necessary to the exhibition of cinematograph film in a licenced premises. If we agree with Mr. Srinivasan then the effect of the suggested construction would be that the exhibitors after obtaining a licence would be free to exhibit any type of film at any time and that the authority under the Act cannot impose any restrictions in this regard. In our view, such could never be the intention of the legislature and by putting such an interpretation the whole purpose of the Act would be frustrated.

16. In the instant case the stand of the respondent is that the exhibitors of cinematograph films were exhibiting films which they thought would fetch maximum profits and they were systematically omitting to exhibit Kannada films though the majority of the people of Karnataka were desirous of having the benefit of exhibition of Kannada films, that the official language of the State being Kannada the majority of the people who speak Kannada want to see and enjoy Kannada films which depict Kannada culture, literature and art, that contrary to the wishes and interests of the majority of the people in the State a few exhibitors were solely bent upon making profits excluding the exhibition of Kannada films which were not in the interest of the general public, that whenever Kannada film producers or distributors approached the exhibitors the exhibitors imposed unreasonable conditions and made it impossible for the producers of Kannada films and distributors of the same to see that Kannada films are shown to the members of the public, that the Kannada speaking people of Karnataka were having a feeling that they were deprived of seeing Kannada films and learning about their own culture, art or literature, that therefore several

members raised their voice stating that in the State of Karnataka sufficient encouragement and scope were not given to the Kannada art, literature, films, dramatics and fine arts, that there was a demand that unless the State comes to the rescue of the Kannada people the fine arts, particularly in Kannada, would not prosper, that there was a special demand that cinema theatres should be made to exhibit Kannada films for the benefit of the majority of the people of the State of Karnataka and this demand was found to be very reasonable by the State Government as the official language of the State is Kannada and exhibition of Kannada films would promote and spread Kannada literature, fine arts, dramatics and other cultural activities, and that it is well known that the medium of cinematograph is not only for entertainment of the people but also to educate them. The stand of the State Government clearly brings out that the incorporation of the impugned Rule was necessitated in public interest. The source of power to make such a Rule flows from Section 19, keeping in view the intendment of the Legislature, as reflected in the Preamble and also from the provisions and scheme of the Act, the Regulations and Rules made thereunder. In an unreported Judgment of the Supreme Court in *Minerva Talkies, Bangalore and Others Vs. State of Karnataka and Others*, the appellants challenged the Vires of Rule 41-A which was framed by the State Government, putting a restriction on the licensee not to exhibit more than four cinematograph shows in a day. The Writ Petitions filed in this Court were dismissed and the validity of the Rule was upheld. In the appeals before the Supreme Court it was contended on behalf of the appellants that the provisions of the Act do not confer any power on the State Government to regulate the number of shows and the restriction 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. The aforesaid contention, after noticing the relevant provisions of the Statute, was repelled by the Supreme Court thus:

"7, 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 Sub-section (2) is not exhaustive instead it is illustrative and it does not restrict or affect the general power of the State Government under Sub-section (1) to make rules for carrying out the purposes of the Act. 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. u/s 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 u/s 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 4 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 u/s 19(1) of the Act. Rule 41A 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 be justified under the aforesaid provision. Rule 41-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. Right 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 41-A is regulatory in nature which clearly carries out the purposes of the Act."

It was also observed in para 8 thus:

"8. 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....."

In *D.K.V. Prasada Rao and Others Vs. Government of Andhra Pradesh*, the vires of Rule 12(3) which fixed the rates of admission was upheld by the Andhra Pradesh High Court and that Judgment has been referred to by the Supreme Court in *Minerva Talkies* case.

17. In view of our aforesaid discussion we hold that Rule 7A framed by the State Government carries out the purpose of the Act and is not beyond the competence of the State Government and has been made in the interest of general public. We also find that the Act regulates the exhibition of films also. The view of ours finds full support from the Judgment of the Supreme Court as well as that of the Andhra Pradesh High Court referred to above.

18. It was also sought to be argued by Mr. Srinivasan that under the Act the authority to impose conditions in the licence is only the Licensing Authority and that the State Government could not frame a rule which has resulted in circumscribing the power of Licensing Authority. This contention of the learned Counsel again has no merit. Section 5(2) of the Act itself circumscribes the power of the Licensing Authority which has to be exercised subject to the provisions of the Act and the Rules made thereunder.

19. We have already held that the rule has been validly framed by the State Government. Such a Rule automatically becomes a condition of a licence and any terms and conditions which are imposed by the Licensing Authority would be besides the condition that is required to be complied with under the Rules. It is beyond our comprehension that the Legislature could ever intend to give an exclusive power to the Licensing Authority to impose such terms and conditions as it may determine. Such an intention is not even spelt out from Section 5(2) of the Act or any other provision of the statute. In this view of the matter, we find no substance in the contention of the learned Counsel that the condition of the type envisaged in Rule 7A could only be imposed by the Licensing Authority.

20. It was also submitted by Mr. Srinivasan, learned Counsel, that the petitioners have a Fundamental Right to carry on their trade or business in exhibition of films, that they have absolute power to exhibit films of their choice, that the impugned rule has unreasonably trenchanted upon their fundamental free right to business and exhibiting of the films of their choice, and that such a rule is violative of Article 19(1)(g) of the Constitution. Mr. Srinivasan further contended that the impugned rule is also violative of Article 301 of the Constitution.

21. In the earlier part of the Judgment, we have already held that the source of

power is not lacking and it is within the power of the rule making authority to make a rule requiring an exhibitor to exhibit Kannada films. As is evident, the petitioners' right to exhibit films has been acquired under a "Statute and the exercise of that power is subject to the limitations imposed under the said Statute or regulation or rule. But the limitations imposed have to be reasonable and not arbitrary. It is by now well settled that Article 19(1)(g) of the Constitution reserves to every citizen Fundamental Right to practice any profession or to carry on any occupation, trade or business. And in case such a right is impaired or controlled or limitations are put thereon, then it is for the authority putting such limitation or restriction to satisfy that the restriction is reasonable in the interest of the general public, and not arbitrary.

22. Judicial authority in regard to interpretation of Article 19(1)(g) of the Constitution and Article 19(6) is abundant; but suffice to refer to the decision of the Supreme Court. In *Bishambhar Dayal Chandra Mohan and Others Vs. State of Uttar Pradesh and Others*, wherein the question raised was the scope and executive power of the State under Article 162 of the Constitution in relation to regulation and control of trade and commerce in foodstuffs. What had been done was that the State of U.P. had issued a notification in exercise of the power conferred by Section 3 read with Section 5 of the Essential Commodities Act, 1955, providing that no wholesale dealer, commission agent or a retail dealer shall have in stock wheat more than 250 quintals, 250 quintals and 22 quintals respectively, and the validity of that notification was challenged on the ground that the restriction infringes the Fundamental Right to carry on trade or business guaranteed under Article 19(1)(g) of the Constitution read with Article 301. On what is the right available under Article 19(1)(g) and the principle underlying Clauses (5) and (6) of Article 19 of the Constitution, in para-33 at page 46 it is observed thus:-

"Under Article 19(1)(g) of the Constitution, a citizen has the right to carry on any occupation, trade or business and the only restriction on this unfettered right is the authority of the State to make a law imposing reasonable restrictions under Clause (6). The principle underlying in Clauses (5) and (6) of Article 19 are now well settled and ingrained in our legal system in a number of decisions of this Court, and it is not necessary to burden this Judgment with citations. The expression "reasonable restriction" signifies that the limitation imposed on a person enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable in all cases. The restriction which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in that quality."

In para-32 at page-45, the matter with regard to the limitation which the Fundamental Right under Article 19(1)(g) or Article 301 of the Constitution has, is considered thus:-

"The Fundamental Right to carry on trade or business guaranteed under Article 19(1)(g) or the freedom of inter-state trade, commerce and intercourse under Article 301 of the Constitution, has its own limitations. The liberty of an individual to do as he pleases is not absolute. It must yield to the common good. Absolute or unrestricted individual rights do not and cannot exist in any modern State. There is no protection of the rights themselves unless there is a measure of control, and regulation of the rights of each individual in the interests of all. Whenever such a conflict comes before the Court, it is the duty to harmonise the exercise of the competing rights. The Court must balance the individual's right of freedom of trade under Article 19(1)(g) and the freedom of inter-State trade and commerce under Article 301 as against the national interest. Such a limitation is inherent in the exercise of those rights."

In the light of the principles enunciated by the Supreme Court with regard to the interpretation of Article 19(1)(g) and 19(6) of the Constitution, it is now to be seen whether the impugned provision has put unreasonable restrictions on the right of the exhibitors to carry on their occupation or business of exhibiting cinematograph films. In W.Ps.Nos. 12395 to 12404/79, the petitioners have averred that 43 Kannada films in 1976, 49 in 1977, 54 in 1978 and 29 in 1979 (upto June-79) were certified by the Censor Board; that, on an average, 50 Kannada films are released every year for screening; that there are 94 cinema theatres in Bangalore and if each theatre has to screen Kannada films for 12 weeks in a year, taking into consideration the fact that normally Kannada film is exhibited for three weeks, 376 Kannada films have to be released every year for screening, which, considering the production at present, is an impossibility; that in the event of the imposition of the impugned condition the petitioners would be forced to subject themselves to such conditions and restrictions that might be imposed by the producers/distributors of Kannada films for screening their films in their (petitioners) theatres; and that the effect of the amended rule is to place one set of traders i.e., producers or distributors in an advantageous position to the detriment of the interests of the petitioners.

In the reply filed on behalf of the respondents the stand taken is that the calculations made by the petitioners are imaginary, that 94 cinema theatres in Bangalore were not screening Kannada films simultaneously, that exhibitors can exhibit films in their languages and have ample option to exhibit Kannada films in their theatres at their convenience, that on an average each film is printed in ten copies and in all 500 copies of Kannada films will be available for screening in a year, and that if the exhibition is spread throughout the year it will not be difficult for the exhibitors to exhibit Kannada films 12 weeks in a year in their theatres.

23. As we look at the pleadings of the respondents, we find that except by making a bald assertion that the mathematical calculation of the petitioners is

imaginary, they have not cared to specifically deny the categorical averment made in the Writ Petition, with the result that the authenticity of the averments made in para-16 of the Writ Petition has to be accepted. It is not denied that there are 94 cinema theatres in Bangalore and each theatre is required to exhibit Kannada film for 12 weeks. Therefore, unless a reasonably large number of Kannada films are produced which are qualitatively capable of attracting a reasonable audience, the compulsion to exhibit Kannada films at least for a period of three months in a year will result in causing great loss to the petitioners and such a compulsion will be an onerous burden on the exercise of Fundamental Right to engage oneself in the trade of exhibiting films. It may be pertinent to observe that in the whole of the statement of objections, the State Government has not brought out at all as to how the period of 12 weeks has been chosen for imposing a restriction on the exhibitors to exhibit Kannada films. It is well known that in a particular locality there may be several theatres e.g., Majestic area or Cantonment Area, and it is Inconceivable that a particular film can be exhibited twice or thrice over through different theatres in the same locality without such theatres incurring loss.

24. Further, under the impugned rule the exhibitors are compelled to exhibit Kannada films for a period of 12 weeks i.e., three months in a year, and for that purpose they will have to secure films from the producers/distributors. The producers/distributors will be placed in an advantageous position and would have better opportunity to bargain with the owners of the theatres in providing them with Kannada films for exhibition; they would be able to command their own terms as the exhibitors would have no choice to decline their terms because, if they do so they would not be able to exhibit Kannada films as required under the impugned rule and a violation of the same can result in cancellation of their licence.

25. Moreover, the rule making authority has not made any provision for grant of exemption in the event of non-availability of Kannada films for exhibition. The petitioners are left with no remedy if they are not able to secure variety in Kannada films for exhibition and they would be compelled to exhibit one and the same film whether liked or disliked and whether there is audience or no audience.

26. Further, in the absence of any material on record, we fail to understand as to how a period of 12 weeks in a year has been provided for exhibiting Kannada films. As to what is the rationale behind fixing 12 weeks in a year, remains unexplained. We agree with the learned State Counsel that the impugned rule has been made in public interest and a very laudable object is sought to be, achieved in the interest of the State. But without ascertaining and finding out (as no material in this regard has been placed on the record) whether all the theatres in the State would, fairly and without incurring loss, be able to exhibit Kannada films for 12 weeks in a year, a provision is made for exhibition of Kannada films for 12 weeks, which, on the face of it, appears to be wholly arbitrary and unreasonable. The learned State Counsel had very emphatically

argued that the object of the impugned rule is to propagate Kannada language and culture. May be so, but the question is whether such an object is reflected or has been achieved by the impugned rule? Whether by such a rule, maintenance of minimum standard in Kannada films would be achieved? The answer has to be in the negative as there is no material available in this regard on the record. u/s 5 of the Act the Licensing Authority grants licence for exhibition of cinematograph films on such, terms and conditions and subject to such restrictions as may be determined by the Licensing Authority. The State Government should have just made a rule making it imperative on the exhibitors to exhibit Kannada films. But the fixation of the period should have been left with the Licensing Authority which on consideration of the relevant factors and the conditions in the area could have imposed a condition on the exhibitors to exhibit Kannada films for a particular period. In the areas thickly populated with Kannada speaking people the exhibitors could be asked to exhibit Kannada films for longer periods. But there may be areas where the population of Kannada speaking people may be less, and it may not be beneficial to exhibit Kannada films in those areas for longer periods; e.g., in Gulbarga District most of the population is Urdu speaking and if in that area the exhibitor is required to exhibit Kannada films for 12 weeks in a year there can be no gainsaying that there may not be much audience and the exhibitors are bound to suffer heavy loss.

In *R.M. SESHADRI v. DISTRICT MAGISTRATE, TANJORE* AIR 1954 SC 717 the District Magistrate in pursuance of two notifications issued by the State of Madras had imposed two conditions on the licensee which read as under:-

"(a) The licensee shall exhibit at each performance one or more approved films of such length and for such length of time, as the provincial Government or the Central Government may by general or special order, direct,

(b) The licensee shall comply with such directions as the Provincial Government may by General or Special order give as to the manner in which approved films shall be exhibited in the course of any performance."

The owner of a permanent cinema theatre challenged the legality of the aforesaid conditions and filed a petition praying for their deletion. The petition was rejected by the High Court. On appeal before the Supreme Court, the appellant who had argued his case personally raised two contentions viz., that the notifications and conditions are beyond the competence of the Government of Madras and the District Magistrate, and that in any event the conditions do not, as being outside the scope of the Cinematograph Act, amount to reasonable restrictions imposed in the interest of the general public. The appeal was allowed on the second contention and the relevant observations read as under:

"Without going into the question whether it is within the contemplation of the Act that educational and instructional films should be shown and whether the holder of a cinema licence may be compelled to exhibit such films as falling within the scope of the Act, the question still arises for consideration is whether the

impugned conditions amount to "reasonable restrictions" within the meaning of Article 19(6). Approved films are those films which are either produced by the Government or are purchased from the private producers. As the private producers do not possess any machinery for marketing their films the Government purchases them from such producers and charges hire from the Cinema licensees for showing such films.

Condition 4(a) compels a licensee to exhibit at each performance one or more approved films of such length and for such length of time as the Provincial Government or the Central Government may direct. Neither the length of the film nor the period of time for which it may be shown is specified in the condition and the Government is vested with an unregulated discretion to compel a licensee to exhibit a film of any length at its discretion which may consume the whole or the greater part of the time for which each performance is given. The exhibition of film generally takes 2 hours and a quarter. Now if there is nothing to guide the discretion of the Government it is open to it to require the licensee to show approved films of such great length as may exhaust the whole of the time or the major portion of it intended for each performance. The fact that the length of the time for which the approved films may be shown is also unspecified leads to the same conclusion, in other words, the Government may compel a licensee to exhibit an approved film, say for an hour and a half or even 2 hours. As the condition stands, there can be no doubt that there is no principle to guide the Licensing Authority and a condition such as the above may lead to the loss or total extinction of the business itself. A condition couched in such wide language is bound to operate harshly upon the cinema business and cannot be regarded as a reasonable restriction. It savours more of the nature of an imposition than a restriction. It is significant that the condition does not profess to lay down that the approved films must be of an educational or instructional character for the purpose of social or public welfare. We think, therefore, that condition 4(a) as it stands at present amounts to an unreasonable restriction on the right of the licensee to carry on his business and must be declared void as against the Fundamental Right of the appellant under Article 19(1)(g)."

27. In the instant case as the condition of 3 months stands, there can hardly be any doubt that such a condition may lead to the loss or total extinction of the business itself. Fixing up of three months is bound to operate harshly upon the exhibitors and cannot be regarded as a reasonable restriction. As observed in the above quoted Judgment, the condition savours more of the nature of an imposition than a restriction. In our view, the more appropriate course would have been to have left to each Licensing Authority to fix a particular period for the exhibition of Kannada films as a condition in the licence. The Licensing Authority would also be in a better position to fix a particular period taking into consideration all the relevant factors. In this view of the matter we find that the impugned Rule 7A and condition-12 to the extent they provide a period of 12 weeks for screening Kannada films, is arbitrary and unreasonable and is violative of Article 19(1)(g) of the Constitution and has to be struck down.

28. No other point requires consideration in these petitions.

29. To sum up, our conclusions are:-

(1) That the Preamble does not indicate that the purpose of the Act is to regulate cinematographs and the licensing of places only.

(2) That the provisions and the scheme of the Act clearly indicate that it not only regulates the exhibition of films but also provides for regulation of all other allied matters which are incidental or necessary to the exhibition of cinematograph films in a licensed premises.

(3) That Rule 7A framed by the State Government carried out the purpose of the Act and is not beyond its competence and has been made in the interest of general public.

(4) That a rule like Rule 7A framed by the State Government automatically becomes a condition of a licence and that it is not the exclusive power of the Licensing Authority alone to impose such terms and conditions as it may determine; and

(5) That Rule 7A and Condition-12 to the extent they provide a period of 12 weeks for screening Kannada films is arbitrary and unreasonable and is violative of Article 19(1)(g) of the Constitution.

30. Consequently, we allow these petitions to this extent that Rule 7A of the Rules and condition-12A in Form-F, to the extent they provide a period of 12 weeks for screening Kannada films, is struck down as violative of Article 19(1)(g) of the Constitution.

31. In the circumstances of the case, we make no order as to costs.