

(1978) 12 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petns. No's. 7457 to 7469 of 1976, 11426 and 12008 of 1978

Muruli Touring Talkies and etc.

APPELLANT

Vs

State of Karnataka and etc.

RESPONDENT

Date of Decision : 20-12-1978

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g)

Karnataka Cinemas (Regulation) Rules, 1971 — Rule 107 (1) (a), 107 (1) (b), 27 (1) (b), 27 (1) (j), 96 (5)

Citation : AIR 1979 Kar 162

Hon'ble Judges : M. Rama Jois, J

Bench : Single Bench

Judgement

1. All these writ petitions have been presented by the touring cinema owners challenging certain provisions of the Karnataka Cinemas (Regulation) Rules, 1971 (hereinafter referred to as "the Rules") on the ground that they are violative of Arts. 14 and 19(1)(g) of the Constitution. As common questions of law and facts arise for consideration, they are being disposed of by this common order.

2. The provisions of the Rules challenged are as follows:--

(I) sub-rules (2) of the R. 98 which compels touring cinema owners to stop their touring cinemas at least for a period of one month if they intend to continue their cinemas on the same site, which reads as follows:

"98. Grant or Refusal of license

(1) ** ** *

(2) No licence in respect of a site shall be granted or regranted continuously for a period exceeding one year unless one month has lapsed after the expiry of said period of one year."

(ii) Sub-rule (5) of the 96 which compels the touring cinema owners to take fresh No Objection Certificate (hereinafter referred to as "NOC") after the expiry of

one year of licence of touring cinema on each occasion, reads as follows:--

"96. Procedure on Application-

(5)(i) The licensing authority may, on application made to it in this behalf, if satisfied, after inspection or such inquiry as it may consider necessary, that the site continues to conform to the provisions of Cls. (h), (I), (j) and (k) of sub-rule (1) of R. 27 and of R. 107 dispense with the requirements of sub-rule (1), the notice under sub-rule (2) and the procedure specified in sub-rule (3) for grant of No Objection Certificate for the second year in respect of a camp site licensed for a touring cinema during the previous year.

Provided that no such exemption shall be granted in respect of a camp site which had been licensed for a period of two years excluding the break period of two specified in sub-rule (2) of R. 98 immediately preceding the date of the application.

(ii) the licensing authority may on application made to it for grant of a No Objection Certificate to run a touring cinema in any jatra, mela or other similar occasion for a period of one week before the commencement of such jatra, mela or other similar occasion and for one week after the closure thereof, if satisfied after inspection or such inquiry as it deems fit that the site for which the application has been made conforms to provisions of Cls. (h), (i), (j) and (k) of sub-rule (1) of R. 27 and of R. 107, grant the Certificate applied for dispensing with the procedure specified in this rules for the grant of No Objection Certificate."

(iii) R. 107 which prohibits the location of a touring cinema within a distance of 1. 6 kilometres from the location of a permanent cinema and also which prohibits the location of a touring cinema in towns and cities having a population of fifteen thousand or more and within a distance of 1.6 kilometers from the limits of such towns and cities, reads as follows:-

"107. Restrictions on the grant of Touring Cinema Licences:--

(1) No licence for a touring cinema shall be granted-

(a) in respect of a site situates within the distance of 1. 6 kilometers from a permanent cinema or 800 meters from another touring cinema;

(b) in towns and cities having a population of fifteen thousand or more and within a distance of 1.6 kilometers from the limits of such towns and cities.

Explanation:-For the purposes of this rule, "distance" shall be reckoned along the shortest pathway, lane, street, or road connecting the two cinemas and generally used by members of the public.

(2) Subject to sub-rule (1), there shall be no other restrictions to grant licences for touring cinemas."

3. Sriyuths v. Krishna Murthy, H. B. Datar and M. R. Achar, learned counsel

appearing for the petitioners and Sri Doddakalegowda, learned Government Advocate appearing for the State and Sriyuths K. K. Venugopal, R. U. Goulay and S. G. Bhat, learned counsel appearing for the interveners-Permanent cinema owners, addressed arguments in support of their respective contentions.

4. The contentions urged for the petitioners are as follows:--

(i) R. 96(5) of the Rules which insists on the requirement of NOC after the expiry of one year's licence for a touring cinema on each occasion for the location of the touring cinema on the same site in respect of which a NOC was granted earlier, is violative of Articles 14 and 19(1)(g) of the Constitution.

(ii) Clause (a) of sub-rule (1) of R. 107 of the Rules which prohibits the grant of a licence to a touring cinema on a site located within 1.6 kilometers from the location of a permanent cinema theatre is violative of Arts. 14 and 19(1)(g) of the Constitution and, therefore, S. 19(2) of the Act which empowers the rule making authority to frame such a rule making authority to frame such a rule is also void as offending Arts. 14 and 19(1)(g) of the Constitution.

(iii) In any event, R. 96(5) of the Rules which insists on the observance of the procedure prescribed in sub-rules (1) to (4) of the said rule for grant of NOC for every third year amounts to an unreasonable restriction on the fundamental right to carry on business granted under clause (g) of Art 19(1) of the Constitution.

(iv) Clause (b) of sub-rule (1) of R. 107 of the Rules which prohibits grant of licence to a touring cinema in cities and towns having a population of fifteen thousand or more and within a distance of 1.6 kilometers from the limits of such cities and towns is violative of Art. 19(1)(g) of the Constitution.

(v) R. 98(2) of the Rules which compels a touring cinema owner to stop cinema for a month every year is violative of Art. 19(1)(g) of the Constitution.

4-A. Before dealing with the contentions urged for the petitioners, it is necessary to set out the salient features of the Karnataka Cinemas (Regulation) Act, 1964 (hereinafter referred to as "the Act") and the Rules. The Act was enacted by the Legislature for regulating exhibition by means of cinematographs and licensing places in which cinematograph films are exhibited in the State of Karnataka. S. 4 of the Act provides that no person shall give a cinematograph exhibition elsewhere than any place licenced under the Act. The place is defined by S. 2(4) of the Act as, inter alia, houses, buildings, tents, enclosures. S. 5 of the Act provides for taking a license for exhibiting a cinematograph by a person who intends to do so. S. 6 of the Act prohibits (sic) the matters which should be taken into consideration for the grant of licence, which reads as follows:--

"6 Matters to be considered by Licensing Authority-

The licensing authority shall, in deciding whether to grant or refuse a licence, 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 other particular localities to be afforded by the opening of a new place of cinematograph exhibition and shall also take into consideration any representations made by persons already giving cinematograph exhibitions in or near the proposed locality or by any local authority or police authority within whose jurisdiction the place proposed to be licensed is situated or by any association interested in the giving of cinematograph exhibition."

Section 7 of the Act empowers the licensing authority to limit the number of places in any area in respect of which licence under the Act may be granted. S. 8 provided that the licensing authority shall not grant licence except in accordance with the provisions of the rules framed under the Act. S. 11 of the Act makes it obligatory for the person, who intends to use any place for the exhibition of cinematograph films or who, wants to use any site for construction of a building thereon for exhibition of cinematograph films and to install any machinery in any building where cinematograph films are proposed to be exhibited. The next and last important provisions to which I may refer is S. 19 which confers rule-making power. While sub-section (1) authorises the State Government to frame rules to carry out the purposes of the Act, sub-cl. (c) and (g) of S. 19(2) provide for the making of the rules in respect of certain specified matters which are relevant for this case and read as follows:--

"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-

(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;

(g)(i) the procedure to be followed by persons in respect of applications for permission under 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 building or the plans for the construction or re-construction 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 under S. 11 and any other matters incidental thereto;

5. Now coming to the rules, the rules classified cinemas into four categories:--

(1) Permanent cinemas;

(2) Drive-in-cinemas;

(3) Semi-permanent cinemas; and

(4) Touring cinemas.

The permanent cinemas are required to be located in permanent buildings in accordance with the conditions and specifications contained in the rules to which I shall refer as and when necessary. The semi-permanent cinemas are required to be located in some permanent structures in accordance with the requirements and specifications set out in the rules. The touring cinemas as contemplated by the rules are those which are located in any building which includes a booth, tent or similar temporary structure and which can be taken from place to place. The drive-in-cinemas in all respects are similar to permanent cinemas, but the only distinction is that these are required to be located in an open place, so that the visitors may be able to see the cinema while sitting in motor cars. Having made this classification, the rule making authority has prescribed, some of the rules as common to all the cinemas and some of the rules as applicable to each category of cinema having regard to its special features, to which also I shall make reference as and when it becomes necessary. But the important rules which are specifically made applicable only to touring cinemas and the validity of which is challenged in these writ petitions are already set out earlier.

6. Now I shall proceed to consider the contentions urged for the parties. I shall first take up for consideration the attack made by the petitioners against sub-rule (2) of R. 98 which compels the touring cinema owners to stop their cinema shows for at least a period of one month after the expiry of one year's licence if they intend to continue the cinema on the same site. The contention of the petitioners is that this is an unreasonable restriction imposed on the fundamental right of the petitioners to do business guaranteed under Arts. 19(1)(g) of the Constitution and the same is not a restriction to serve any public interest for which alone the State is empowered to impose reasonable restrictions on the exercise of the right to do business under clause (6) of Art 19. They particularly stressed that on account of the prohibition contained in sub-rule (2) of R. 98, the touring cinema owners are compelled to stop their business for a period of one month during which period they have no other alternative than to bear the

establishment and other expenditure apart from losing the income. The learned Government Advocate however submitted that the validity of the above rule with reference to the attack that it violates Art. 19(1)(g) of the Constitution has been upheld by the decision of this Court in *Sri Laxmi Touring Talkies and Others Vs. The State of Karnataka and Others*, The learned counsel for the petitioners stated that the above matter is pending in writ appeal. Though the matter is pending in writ appeal, the said judgment is binding on me. Therefore, I reject the contention urged for the petitioners following the judgment in *Sri Laxmi Touring Talkies*" case without expressing my opinion on the contention urged for the petitioners as the matter is under consideration before the Division Bench.

7. I shall now deal with the contention of the petitioners with reference to sub-rule (5) of R. 96 of the Rules. R. 96 of the Rules prescribed the procedure for the grant of NOC for locating a touring cinema on any given site. Sub-rule (1) of R. 96 provides that on receipt of an application for grant of NOC the licensing authority should notify the application in at least two local newspapers and call for objections to such an application within 15 days from the date of publication. Sub-rule (2) of R. 96 also provides for the putting up of a board of specific size on the site indicating that NOC has been asked for in respect of the said site. Sub-rule (3) of R. 96 prescribes for consultation with the local authorities. Sub-rule (4) provides for the granting or refusing NOC after considering the objections received from the members of the public or the local authorities, as the case may be. Sub-rule (5) makes it obligatory for the touring cinema owners to secure NOC for locating touring cinemas even in respect of the same site after expiry of one year's licence on each occasion. However, in respect of the second year, according to this sub-rule, the elaborate procedure prescribed under sub-rules (1) to (4) referred to above is dispensed with and the licensing authority authorised to grant NOC after ensuring that the requirements of cls. (h) to (j) or sub-rule (1) of R. 27 are complied with. Clause (b) of sub-rule (1) of R. 27 which prescribes the area in which alone a permanent and semi-permanent cinemas are to be located and cls. (b) to (j) of that sub-rule, which are applicable to all the three types of cinemas at the time of grant of NOC read as follows:--

"27. Conditions for the grant of No Objection Certificate

(1) No Objection Certificate shall not be granted under this Chapter in respect of any cinema unless:

(b)(i) the cinema site is situated in a predominantly commercial area or in the proposed commercial zone in any outline Development Plan or Comprehensive Development Plan prepared for the area by a competent authority under S. 4(c) of a Karnataka Town and Country Planning Act, 1961 or the Local Authority concerned:

Provided that where an outline or comprehensive Development has not been prepared existing predominantly commercial areas shall be taken into consideration.

(ii) in case of rural areas having no commercial area, it lies in the outskirts of such area:

(h) the cinema site is situated at a place where it is not likely to cause traffic difficulties.

(I) the cinema site is at a distance of not less than:-

(a) fifty metres from

(i) any existing petrol bunk or place licensed for a petrol bunk and other places of fire resort; or

(ii) any place of community worship, cremation ground, graveyard or cemetery in use; or

(iii) any recognised educational institution or any residential institution attached to such education institutions; or

(iv) any public hospital or a private nursing home; or

(v) any recognised orphanage; or

(vi) any thickly populated residential area or an area used generally for residential purposes as distinguished from business purposes; and

Provided that the licensing authority may, if the proposal is to construct a sound proof cinema building, at its discretion, in public interest, considering the suitability of the place, for reasons to be recorded in writing after inspection of the proposed site, relax, subject to such conditions as it may consider necessary to impose in each case, all or any of the conditions specified in items (i) to (vi).

Provided further that considering the facts and circumstances of each case different conditions may be imposed in different cases.

(b) one hundred meters from any protected monument, defence installations, national parks, museums, and buildings in which main telephone or telegraph or wireless or telecommunication installations are located;

(j) the cinema site is in an elevated place or is free from dampness having proper drainage arrangements; and

(k) the cinema site is having space for shelter cycle stand for a minimum of fifty cycles."

From the provisions of the aforesaid rules, it may be seen that the conditions imposed in the aforesaid rule in public interest. The learned counsel for the petitioner also fairly conceded that the conditions imposed in the aforesaid rule are in public interest and, therefore, it can be insisted upon.

8. But the objection raised in their 1st contention is that having once certified that a given site conforms to R. 27(1)(h) to (j) and after granting NOC there is

absolutely no justification for insisting on the securing of NOC after expiry of one year. The learned counsel for the petitioners argued that while Art. 14 admits of the State making reasonable classification for purposes of legislation having due regard to the object sought to be achieved, it prohibits dissimilar treatment to similarly situated persons. Therefore, they submitted that in order that a legislative provisions should not violate the injunction against the State incorporated in Art. 14, the classification must be a reasonable and not artificial. In support of this submission they relied on the decision of the Supreme Court in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, The relevant portion reads as follows (at p. 11):--

"37. Classification, however, is fraught with the danger that it may produce artificial inequalities and therefore, the right to classify is hedged in with salient restraints; or else, the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterized by different and distinct attainments. Classification, therefore, must be truly founded on substantial differences which distinguish persons grouped together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved."

They also relied on the decision of the Supreme Court in *S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty.*, On the basis of the above decisions it was submitted that in the matter of grant of NOC permanent and semi-permanent cinemas and touring cinemas are all similarly situated and, therefore, R. 96 (5) which insists on obtaining of NOC after every year of licence, is clearly discriminatory as under R. 111R NOC issued to a semi-permanent cinema holds good for 10 years, and under R. 36 NOC issued to a permanent cinema holds good for ever and, therefore, the rule is liable to be struck down as violative of Art. 14 of the Constitution.

9. Let me now examine as to whether the classification of cinemas into three categories has any rational basis. In this behalf, in the first instance, I shall refer to a Full Bench decision of this Court in *W. A. No. 810 of 1974 (Kant)* and connected appeals. In that case the question referred to Full Bench was as to whether R. 107(1)(b) of the Rules as it stood then which prohibited the granting of a touring cinema licence in towns having a population of 25, 000 or more was beyond the power conferred on the rule-making authority. In that case the Full Bench considered the object and purpose of the rules and upheld the classification as falling within the object and purposes of the Act. The relevant portion of the said order reads as follows:-

"10. It now remains to consider the board scheme of the Rules. The Government has classified the cinemas into four categories, namely: permanent cinemas, drive-in cinemas, semi-permanent cinemas and touring cinemas. Rr. 25 to 29 in Chap. IV of Part II regulate the grant of "No Objection Certificate" and licence for permanent cinemas. Rr. 111-A to 111-D in Chapter XII-A of Part IV-A provide for grant of "No Objection Certificate" and licence drive-in-cinemas; Chapter XII of

Part IV provides for grant of licence to touring cinemas; and Chap. XII-B of Part IV-B provides for grant of licence to semi-permanent cinemas. A perusal of these rules indicate that they are not uniform in nature and scope, and indeed they cannot be as they are intended to apply to different cinemas.

The grant of licence to a touring cinema in towns and cities having a population of 25, 000 and more is prohibited by the impugned rule. Likewise, the grant of NOC for location of semi-permanent cinema in towns and cities the population of which is 50, 000 or above, is prohibited by R. 111-G of the Rules. No such restriction, however, has been imposed for location of any permanent cinema or drive-in-cinema. This is quite understandable. The people are not prevented from constructing permanent cinema or drive-in-cinema in any place. But who will go to small towns or tiny hamlets to invest lakhs and lakhs of rupees in the construction of permanent cinemas ? It is of common knowledge that a construction of permanent cinema requires a substantial capital and certainly demands a corresponding return. Such cinemas quite naturally are clustered in cities or in urban areas. To deny them licence in cities and ask to go to villages where there is hardly any scope for such large investment may be prima facie unreasonable.

11. How then to serve the rural areas by cinematograph exhibitions? This question may be approached against the background of the general description of the State of Karnataka, which has been neatly given in the "Document of International Bank for Reconstruction and Development, International Development Association", published of 7th March, 1973. From the statistics given therein at page 3, it is clear that the State has an area of about 1, 92, 000 kilometers; it has a coastline of about 300 kilometres; population is about 29.3 million (provisional figures of 1971 population census). That represents some 5.5 percent of the total population of India. About 76 per cent of the population live in rural areas, that is, in 29, 500 villages. The remaining 24 per cent live in the State's 245 towns and about one-half (12%) remain in the 11 principal centres of over 1, 00, 000 people. Some 6.7 million persons are engaged in agriculture, representing 65 per cent of the total working population. For administrative purposes, the State is divided into four divisions-19 districts and 175 taluks (Administrative Units). The economy of the State is fairly diversified with agriculture contributing some 61 per cent to GNP.

12. The above statistics reveal that about 76 per cent of the population live in rural areas, and 65 per cent of the total working population are engaged in agriculture. Today cinematograph exhibitions constitute mass-media whose importance and significance is not inconsiderable, and properly utilised can be a powerful instrument in the dissemination of information and can be instrument of social reconstruction. Conceptionally, cinema is not a mere source of entertainment. Motion pictures can be a means of educational value. Indeed films of the films division of Government are intended to be educative and informative in the social, cultural, economic and political fields. In order to serve

the interest of the public generally and to benefit by and large every sector of the people-as enjoined by S. 6 of the Act-the rule making authority appeals to have classified the cinemas into the said four categories of which the touring cinema constitutes one. It is evidently intended that the large mass of rural populace should also have access to and the benefit of this source of information and recreation. In the very nature of the description of "touring cinema", it is primarily meant for touring or moving from place to place. To make it conveniently mobile R. 98 defines "building" and "touring Cinema" as follows:--

"R. 89.

(1) "Building" including any booth, tent or similar structure ;

(2) " Touring cinema" means, -

(i) an outfit comprising the cinema apparatus and plant and the accessories taken from place to place in the State of Karnataka for giving cinema exhibitions: or

(ii) an outfit comprising cinema apparatus and plant taken from place to place in the State of Karnataka for conducting shows in any local theatre or hall."

The description of the "building" and the definition of "touring cinema" clearly indicate that a proprietor of a touring cinema is not required to make heavy investment. He could exhibit cinematographs in a tent or like structure. He could conveniently shift the structure and the outfit from one place to another, if he cannot attract people at a given place.

13. Such being the facilities for touring cinemas, can it be said that a rule limiting its operation only in towns or cities having less than 25, 000 people is invalid or ultra vires of the Act. We do not think so. The Act does not provide for the classification and establishment of permanent cinema, drive-in cinema, semi-permanent cinema and touring cinema. It is only under the rules framed under the Act, that these four categories have been provided for. The classification of cinemas into the said four categories is not inconsistent with the purposes of the Act. No doubt, as observed in *Sri Laxmi Touring Talkies and Others Vs. The State of Karnataka and Others*, : *Sri Laxmi Touring Talkies and Others Vs. The State of Karnataka and Others*, the Act is intended to regulate and not to prohibit or discourage any one of the said cinemas. But asking touring cinemas to confine their cinematograph exhibitions in towns or cities having less than 25, 000 population does not amount to prohibiting or discouraging the said cinemas. The rule in question does not prohibit touring cinemas from exhibiting cinematograph, but only carves out places or localities for exhibitions perhaps having regard to the element of mobility and the smallness of investments involved. The rule is evidently to carry out the purposes of the Act, viz., to serve the interest of the public generally and to extent the benefit of cinematographs to places having less than 25, 000 population."

It is no doubt true that in the said judgment, the validity of the rule was not

challenged. However, the basis for classification of cinemas into three categories was upheld as falling within the object and purpose of the Act. The said reasoning equally applies to find out as to whether the classification between three kinds of cinemas made in the rules is a reasonable one. In addition to the reasons given in the aforesaid judgment, I find that there are a few more basis to hold that the classification is reasonable. In this behalf, I shall only refer to a few important provisions in the rules applicable to the three types of cinemas which are necessary to find out whether the classification made by the rule-making authority is good.

(I) Requisition: Permanent cinemas:

R. 27(1)(a) to (g) applies to permanent cinemas and not for touring cinemas. Cl (a) of sub-rule (1) of the said rule provides that if the total number of seats in the proposed cinema building is more than six hundred seats, the area of the site must be 1, 350 square metres with one side of not less than 23 metres Abutting the road and if the total number of seats in the proposed cinema is six hundred or less, the area should be at least 1, 000 square metre with one side of not less than 23 metres abutting the road. According to Clause (b) the site for a permanent cinema must be located in a predominantly commercial area or in the proposes commercial zone in any outline Development Plan or Comprehensive Development Plan prepared for the area by a competent authority under the Karnataka Town and Country Planning Act, 1961 or the Local Authorities concerned and in the case of rural areas where there is no commercial area, the site should lie in the outskirts of such area. According to Clause (d), the cinema building must have a front set back as prescribed in the Karnataka Highway Rules, 1968, when it lies outside the limits of any local authority. Clause (e) provides that cinema sites must have suitable means of entrance and exit for the public and should have sufficient parking space for cars as prescribed in the said rule. According to Clause (g), the clear distance between the cinema building and inner limits of the compound wall and between cinema building and all other buildings in same compound shall not be less than eight metres at the entrance side and four and half metres at the other side. According to R. 44, the cinema building is required to be enclosed with proper external or party walls of brick, stone, concrete and R. C. C. In accordance with the thickness prescribed in the said rule. R. 45 prescribes the specification about the building material. R. 46 prescribes specification about the construction of auditorium. R. 48 prescribes the standard for projection room. R. 49 prescribes the condition regarding sitting accommodation. R. 50 prescribes the size of the passage, corridors etc., for permanent cinema building. R. 51 prescribes the condition regarding doors. R, 52 prescribes the conditions regarding size and number of windows and ventilators. R. 54 prescribes that every cinema should be provided with sufficient number of water closets and urinals within the main building for men and women separately. R. 74 provides that every permanent cinema situated in a place provided with telephone services should have telephone and R. 75 prescribes the maintaining of fire fighting apparatus. R. 77 prescribes rules regulating the

maintenance of cleanliness in permanent cinemas.

(ii) Requisition: Semi-permanent cinemas:

By virtue of R. 111-E, the semi-permanent cinema building is a non luxury cinema building constructed for permanent use. Items (b), (c), (d) and (e) of sub-rule (1) of R. 28, which are applicable to permanent cinemas are made applicable to semi-permanent cinemas. According to rule 111-G NOC for the location of semi-permanent cinemas cannot be granted in towns and cites the population of which is 50, 000 or more or in places where the total number of existing permanent cinemas and semi-permanent cinemas exceed the number of permanent cinemas prescribed under sub-rule (2) of R. 27. According to R. 111-S, the front portion of the semi-permanent cinemas premises shall be masonry construction of sufficient height and the remaining portion may be barbed wire fencing or any other locally available suitable material so as to prevent outside public from causing any inconvenience to the persons with the premises. R. 111-T prescribes the nature of the building material that should be used for the construction of a semi-permanent cinema building. According to the said rule, a semi-permanent cinema building as far as possible should be constructed with building materials locally available such as stone, brick, lime, mud, A. C. Sheets. It also prescribed that the doors and windows may be of A. C. Sheet panels or wooden and that external walls may be of either brick in lime or mud and the height of eaves shall be not less than 2. 6 metres or with dwarf walls below and canvas or that it covering below the roof. R. 111-K of the Rules prescribes the size of the site and the distance from the public road. The said rules reads as follows:--

"111-K. Conditions regarding the site for the grant of No Objection Certificate.-

No Objection Certificate shall not be granted under this Chapter unless-

(a) the cinema site is of a minimum area of-

(i) if the total number of seats in the proposed cinema building is more than 600, 1350 sq.-m. With one side of not less than 20 metres abutting the road;

(ii) if the total number of seats in the proposed cinema building is between 450 and 600, 1000 sq.-m. With one side of not less than 18 metres abutting the road and

(iii) if the total number of seats is less than 450, not less than 800 sq. m. with one side of not less than 15 metres abutting the road ;

(b) the clear distance between the cinema building and the inner limited of the compound wall is not less than 10 meters at the entrance side and 5 metres at the other sides.

(c) the cinema site is located in commercial area or in the outskirts of the town or village. According to Rule 111-R a licence for running a semi-permanent cinema theatre may be granted for two years at a time and the period of grant

and regrant is limited to a period of six years, at the end of which the building is required to be inspected in detail by the Executive Engineer as also the Electrical Inspector or Deputy Electrical Inspector to Government, who has to furnish a certificate as to the soundness of the building for being licensed for a period beyond six years, but the maximum period of licence that could be granted is fixed at ten years. The owner is however given the opportunity to convert the building into a permanent theatre, in which case a licence under R. 36 could be granted if the required conditions are satisfied.

(iii) Requisition: Touring cinemas:

As against the elaborate conditions as regards the size and the nature of construction and other conditions prescribed for permanent and semi-permanent cinemas, as far as touring cinemas are concerned no such elaborate conditions are prescribed. R. 89 of the Rules which is found in the Chapter relating to the touring cinemas reads as follows:

"89. Definitions:-In this Chapter-

(1) "building" includes any book, tent or similar structure;

(2) "touring cinema" means-

(i) an outfit comprising the cinema apparatus and plant and the accessories taken from place to place in the State of Karnataka for giving cinema exhibitions ; or

(ii) an outfit comprising cinema apparatus and plant taken from place to place in the State of Karnataka for conducting shows in any local theatre or hall."

R. 91 which prescribes conditions regarding building reads as follows:--

"91. Conditions Regarding Building:--

(1) The building shall be provided on all its sides with an open space which in no part thereof shall be less than ten metres in width.

(2) The building shall have a road frontage on the public thoroughfare upon which the site of such building abuts.

(3) There shall be suitable means of entrance and exit for the public in such frontage.

(4) The eaves of the building shall have a height of not less than two and half metres.

Rule 93 provides that a licence shall not be granted if the building is constructed in whole or in part of a material which, in the opinion of the licensing authority, is so inflammable as to be a source of danger to public or is dangerous otherwise to any other nearby building. But according to R. 94, every building constructed of inflammable materials, there shall be on each side, an aperture of at least two

metres high and five and half metres wide which may be closed by that cities fixed on split bamboo frame and fastened by twine on the inside. According to R. 98(2) no licence may be granted to a touring cinema continuously for a period exceeding one year unless there is a break of one month for running a touring cinema on the same site. According to R. 99 the duration of licence of a touring cinema is one year. R. 103 of the Rules which provides for the accommodation and Rule 108 which regulates the number of seats read as follows:--

"103. Accommodation in Auditorium:--

The number of persons that may be accommodated in the auditorium shall be the number arrived at by calculating at the rate of twenty five persons per ten square metres of floor area, after making the exclusions referred to in rule 108.

108. Seats:-- No building shall accommodate more than twenty persons per ten square metres of space available for sitting or standing. Allowance shall be made in respect of the area occupied by the entrances, gang-ways and stages before calculating the area available, provided the licensing authority may, at any time and from time to time, vary the number of persons to be admitted to the premises or any part thereof."

Rule 109 prescribes that the eaves of the building for a touring cinema should at least be two and a half metres height.

10. The above provisions clearly indicate that having regard to the nature of construction, facilities to be provided, the investment involved, in addition to the reason furnished in the judgment of the Full Bench that the classification made by the rule-making authority is reasonable one. In this behalf it should be pointed out that the Legislature in enacting S. 19(2)(c) of the Act authorising the prescription of distance for the location of a touring cinema from permanent cinema and other provisions of the Act which empowers the rule-making authority to frame rules has taken into account the situation which existed on the date of the commencement of the Act, namely, that cinematograph exhibitions were being conducted in permanent cinema buildings, temporary structures or tents or booths, which could be installed and dismantled easily, by cinematograph exhibitors having due regard to their capacity to invest and the expected return of profits on their investment having regard to the population of the locality in which they were located. It should also be pointed out that there is always a presumption in favour of the classification made by the legislature and the burden is heavy on the part of the persons challenging the classification is unreasonable.

11. It is having due regard to the aforesaid factors that the rule making authority has prescribed that in respect of a permanent cinema NOC once granted is final. It is obvious that a NOC granted for a permanent cinema cannot be of a temporary duration. Because having regard to the conditions prescribed in the rules, a permanent cinema owner has to invest huge sums of money for the construction of a permanent cinema building running to several lakhs of rupees

and he cannot be expected to stop his business and dismantle the building after the expiry of the fixed period of licence. According to R. 28 of the rules, after NOC is granted for construction of a permanent cinema building, the concerned party is required to commence construction of the building within 12 months from the date on which NOC is granted, however, making provisions for extending the period of another six months. After the construction of the building, provision has been made for the grant of licence under R. 36 and the duration of the licence for exhibiting cinematograph films in permanent cinema buildings is fixed at three years by R. 37. The provisions of R. 27 (h) to (k) referred to earlier are also made applicable to a permanent cinema at the time of grant of NOC. Rule 85 of the rules provides for the regrant of the licence after the expiry of the initial period of licence for a permanent cinema. Compliance to every requirement under the Rules except NOC is insisted at the time of regrant. Thus it may be seen, the NOC issued for the construction of a cinema building is somewhat similar to the licence given by a local authority for the construction of a building. When a licence is given for the construction of a building by the local authority some period is always fixed for the construction of the building. That only means that the building must be constructed within the said period and not that building can remain for the said period. Similarly in the nature of things, the NOC granted for a permanent cinema building after ensuring compliance of all the requirements of the rules entitles the party concerned to put up a permanent cinema building in accordance with the specifications prescribed in the Rules. Thereafter, he is only required to comply with the other requirements if for only reason the building fall short of any such requirement on each occasion when he applies for regrant. Similarly the conditions imposed for semi-permanent cinema though they are less rigorous. The most important aspect that distinguishes a permanent cinema and a semi-permanent cinema from a touring cinema is that sub-clause (b) of sub-rule (1) of R. 27 is made applicable for the location of a permanent and semi-permanent cinemas which is not made applicable to a touring cinema. According to the said clause the cinema site is required to be located in a predominantly commercial area or in the proposed commercial area or in the proposed commercial zone in any outline Development Plan or Comprehensive Development Plan prepared for the area by the competent authority under the Karnataka Town and Country Planning Act, 1961, or by the local authority concerned. Even in areas where no such plan has been prepared, they are required to be located in the existing predominantly commercial areas and in the case of rural area where there are commercial areas, then it is required to be located in the outskirts of such area. As far as the touring cinema is concerned, this rule is not made applicable and consequently it is permitted to be located in any vacant buildings or place available in towns or villages where a person intends to establish a touring cinema. Therefore in the nature of things, it is impossible to grant a permanent NOC for running a touring cinema on any given site. For instance, a NOC can be granted to a touring cinema on a given site even if there is a proposal for the construction of a school building nearby, so that after the school building actually comes up, it would be open for the

authority to refuse the grant of NOC. If the contention of the petitioners is accepted and a permanent NOC is granted to a touring cinema, it would defeat the purposes of R. 27(1)(h) to (k) of the Rules. It is exactly for the reason that the restriction regarding the location of the site incorporated in R. 27(1)(h) of the Rules is not made applicable to a touring cinema, the rule making authority has made it obligatory for the touring cinema owner to take NOC after every years of licence so as to ensure periodical check up as to whether the site continues to conform to the requirements of cls. (J) to (k) of R. 27(1).

12. In the light of the above discussion, I am of the opinion that the classification of cinemas into three categories, namely, Permanent cinemas, semi-permanent cinemas and touring cinemas is reasonable. The decision of the Supreme Court in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, on which the petitioners rely, does not in any way advance the case of the petitioners. The principle laid down in that case is in order that the classification should be beyond reproach on the ground that it is violative of Art. 14, it must be a reasonable one. In the same case having laid down the aforesaid principle, the Supreme Court upheld the classification of Engineers on the basis of qualification, namely, degree and diploma into two categories. Similarly, the decision of the Supreme Court in *S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty.*, is also not helpful because whether the classification made by the State is reasonable or not must depend on facts of each case. In the said case, the Supreme Court pointed out that for the purposes of levy of Income Tax the income of the Government servants cannot stand on a footing different from that of the employees in statutory corporation or in well-recognized firms. On this ground, the exception given on the basis of their social status or economic resources as Government servants, was said to be not different from that of another holding a similar position in a corporation or that of a successful medical practitioner, lawyer etc., The Supreme Court pointed out that for the purpose of valid classification what is required is not some imaginary difference but a reasonable and substantial distinction having regard to the purpose of the law.

13. In the present case, having regard to the object and purpose of the Act which is to regulate exhibition of cinematograph films, it cannot be said that permanent cinemas, semi-permanent cinemas and touring cinemas are in the same position. The classification as already pointed out is based on relevant consideration and has nexus to the objects sought to be achieved which are clearly set out in Section 6 of the Act, namely, the suitability of the place where cinematograph exhibitions are proposed to be given, the adequacy of existing buildings for exhibition of cinematograph films and the benefit to any particular locality or localities to be afforded by the opening of new places for cinematograph exhibition. I therefore find it difficult to uphold the contention of the petitioners that the impugned rules which insist on the requirement of NOC after every year's of licence of a touring cinema is violative of Art. 14 of the Constitution.

14. Learned counsel for the petitioners next contended that R. 107(1)(a) of the Rules which provides that no licence for touring cinema shall be granted in respect of the site situated at 1.6 kilometres from a permanent cinema is clearly discriminatory. They argued that the above rule is meant to favour permanent cinemas and discriminate against touring cinemas. I do not find any force in the above submission. The rule is designed in public interest to avoid traffic congestion and also to regulate the adequacy of existing place for the exhibition of cinematograph films in the locality, which is one of the matters required to be ensured under S. 6(c) of the Act. In this behalf I may also refer to R. 27(2) of the Rules which provides that in places having a population of 10,000 or more, the number of cinemas permitted shall be determined on the basis of one cinema for every 20,000 population or a fraction thereof exceeding 10,000 in the case of metropolitan area in the case of other places on the basis of one cinema for every 10,000 or a fraction thereof exceeding 5,000. Further under R. 27(b) of the Rules, the distance between the location of two cinema houses in cities having a population of 5 lakhs and above, is prescribed which reads as follows:--

"27. (2)(b) Location of cinemas shall not be permitted within a distance of four hundred metres from each other in towns and cities having a population of five lakhs and above"

The distance between two cinema houses and the fixation of number of cinemas on the basis of the population are all designed in public interest and are regulatory in character and are not meant to discriminate one against the other. For this reason only S. 19(2)(c) of the Act specifically authorises the rule making authority to prescribe the distance from a permanent cinema beyond which licence in respect of touring cinema may be granted. When I invited attention of the learned counsel for the petitioners to this section (1)(a) which fixes the distance between permanent cinema and touring cinema having been framed under the specific authority given to the State Government under S. 19(2)(c) of the Act, the validity of the rule cannot be questioned, the learned counsel for the petitioners filed an application for urging additional grounds challenging the validity of Section 19(2)(c) of the Act itself. It was argued for the petitioners that S. 19(2)(c) of the Act is also liable to be struck down for the same reason on which the petitioners have challenged the validity of R. 107(1)(a) of the Rules. They also further submitted that fixation of such distance between two permanent cinemas is not at all contemplated in the Act and, therefore, S. 19(2)(c) of the Act should be held as discriminatory against touring cinema owners. As pointed out earlier S. 6 of the Act provides for matters which should be considered for granting a cinema licence. According to the said section, the suitability of the place where the cinematograph exhibitions are proposed to be given and the adequacy of existing place of exhibition of cinematograph films in locality are matters which should be the guiding factors for the grant of a licence for cinematograph exhibitions. The said provision confers power on the State Government also empower the Government to make a rule fixing the number of permanent cinemas to be located in any place as also the distance between two

cinema houses. As already pointed out, R. 27(2) has been incorporated in the Rules for regulating these matters. Hence, I negative the contention urged for the petitioners that S. 19(2)(c) of the Act and R. 107(1)(a) of the Rules are, violative of Article 14 of the Constitution.

15. The next limp of the argument urged on behalf of the petitioner in attacking R. 96(5) of the Rules which insists on the requirement of fresh NOC after every year of licence for a touring cinema and S. 19(2)(c) of the Act R. 107(1)(a) which prescribes the distance between a permanent cinema and a touring cinema, is on the ground that these provisions amount to unreasonable restrictions on their fundamental right guaranteed under Article 19(1)(g) of the Constitution and therefore the restrictions imposed by the said rules are beyond the reasonable limits permitted by clause (6) of that Article. In support of this submission, they relied on the decisions of the Supreme Court in *Rashid Ahmed Vs. The Municipal Board, Kairana*, and *Mohammad Yasin Vs. The Town Area Committee, Jalalabad* and *Another*, on the basis of these decisions the learned counsel of the petitioners tried to make out that R. 96(5), S. 19(2)(c) of the Act and R. 107(1)(a) amount to infringement of their fundamental right to do business guaranteed under Art. 19(1)(g) of the Constitution. The learned counsel appearing for the respondents and intervenors per contra contended that the restrictions under R. 96(5) and S. 19(2)(c) of the Act and R. 107(1) of the Rules are regulatory in character and, therefore, there is no substance in the contention urged for the petitioners.

16. The question that the State cannot infringe the fundamental right of the citizens guaranteed under Art. 19(1)(g) of the Constitution is well settled by the decisions of the Supreme Court. But the question for consideration in these cases is whether the right has been impugned ? Before proceeding to find out the answer to the question it should be pointed out that clause (g) of Art. 19(1) confers fundamental right to carry on business. But clause (6) of this Article empowers the State to impose reasonable restrictions in the interest of general public. Therefore, it is clear that the right of the individual guaranteed under Art, 19(1)(g) is not an absolute right, but it must yield to reasonable extent when restrictions are imposed by the State in public interest. The Supreme Court has laid down the criteria that should be adopted by the courts to find out as to whether the restrictions imposed in a given case are reasonable or not in number of cases. It is sufficient to refer to the case of *State of Madras Vs. V.G. Row*, the relevant portion of which reads as follows (at p. 200):--

"..... It is important in this context to bear in mind that 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 to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all

enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the Judges participating in the decision should play an important part, and the limit to their interference with the legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have in authorising the imposition of the restrictions, considered them to be reasonable."

The specific reference to the provisions which regulate the right guaranteed under clause (g) of Art. 19(1), the Supreme Court in the case of P.V. Sivarajan Vs. The Union of India (UOI) and Another, stated as follows:--

"Control and regulation of any trade though reasonable within the meaning of Art. 19, sub-Art. (6), may in some cases lead to hardship to some persons carrying on the said trade or business if they are unable to satisfy the requirements of the regulatory rules or provisions validly introduced ; but once it is conceded that regulation of the trade and its control are justified in the public interest, it would not be open to a person who fails to satisfy the rules or regulations to invoke his fundamental right under Art. 19(1)(g) and challenge the validity of the regulation or rules in question. In our opinion, therefore, the challenge to the validity of the rules on the ground of Art. 19 must fail."

Let me apply the above principles to find out whether the impugned provisions are violative of Art. 19(1)(g) of the Constitution. The right which the petitioners claim in this case is a right to do the business of cinematograph exhibition. In the nature of things, the exercise of the said right involves the construction of a suitable building or tent for the purpose of cinematograph exhibition. Such a place constructed for cinematograph exhibition naturally becomes a place of public entertainment where large number of people gather. Therefore, the public interest demands that sufficient provisions should be made for their safety seating accommodation, sanitation, protection against fire accident and against traffic hazards, every one of which is undoubtedly in public interest. The location of cinema house must also be such which should not have the effect of disturbing peace, which is essential in a residential locality, in front of a hospital, or a place of worship or an educational institution or a cemetery. It is having regard to these factors that rule 27 has been framed by the rule making authority. As pointed out earlier, the learned counsel for the petitioners also agreed that the restrictions imposed on the location of a cinema site, particularly in cls. (h) to (k) of R. 27(1) of the Rules are designed in public interest. Further, as pointed out earlier, while R. 27(1)(b) which is applicable to permanent cinema houses and which is also made applicable to semi-permanent cinema houses, by R. 111-F of the Rules specifically provides for the location of a cinema house only predominantly commercial areas in towns and cities covered by development plans under the Karnataka Town and Country Planning Act and even in cases of

towns and cities for which no such development plan has been prepared, the permanent and semi-permanent cinema house can be located only in commercial areas. Even in the case of rural areas, it is specifically prescribed that the licence for a permanent and semi-permanent cinema house should be granted on a site which is located in the outskirts of such places. As stated earlier, as far as touring cinema is concerned, R. 27(1)(b) is not made applicable and only R. 27(1)(h) to (j) are made applicable. This is obviously for the reason that if a particular vacant place in a given town or village is for the present suitable for the location of a touring cinema and does not attract any of the restrictions set out in cls. (h) to (k) of R. 27(1), the rules provide that a touring cinema licence may be granted. A site which is suitable in a given year may not be necessarily suitable for location of a touring cinema next year or after a few years. As touring cinemas are required to be located in towns and cities having lesser populations, development activities such as construction of residential houses, hospitals, schools or places of worship are bound to come up and as and when such development takes place, a site which was once suitable for locating a touring cinema becomes unsuitable having regard to the development that has taken place in the vicinity. In this behalf I may give an illustration. Take for instance, a vacant site is available which is suitable for location of a touring cinema, but in a site adjacent or opposite to it steps have already been taken by any private society, local authority or Government for construction of a school or hospital and a building for such purpose is likely to be completed within 3-4 years. According to the rules, licence for a touring cinema can be granted on such a site for the present and after such institution comes up, the further granting of the licence can be stopped. If the argument advanced for the petitioners is accepted, the interest of a touring cinema owner has to prevail over the public interest, that is exactly opposite of what is required to be achieved by the State in exercise of its regulatory power under clause (6) of Art. 19 of the Constitution. Therefore, a periodical check up as to whether the location of a touring cinema continues to conform to the requirements of S. 27(1)(h) to (k) as also R. 107(1)(a) of the Rules is absolutely necessary, such a check up is possible only if the period of NOC is limited. It is for this reason, under the scheme of the Rules it is provided that the maximum period of licence that could be secured by a touring cinema owner on the basis of a NOC in respect of a site is one year and, therefore, he is required to take a fresh NOC, the only purpose of which, as is discernible from R. 96(5) of the Rules is to ensure that the site continues to conform to the requirements of R. 27(1)(h) to (k) and R. 107(1)(a) of the Rules. Therefore the conditions imposed under R. 96(5) which insist on the securing of a fresh NOC after the expiry of every year of licence are only for the purpose of ensuring compliance to R. 107(1)(a) and R. 27(1)(h) to (k) which are designed in public interest. S. 19(2)(c) of the Act which authorises the framing of the R. 107(1)(a) is also designed in public interest. All these provisions are only regulatory in character, and impose reasonable restrictions on the exercise of the right guaranteed to the petitioners under Art. 19(1)(g) of the Constitution. Having regard to the nature of the business which results in public gathering at the place

of exhibition of cinematographs, all the conditions imposed are not only reasonable, but also have clear nexus to the object, namely, public interest.

17. The decisions relied on for the petitioners are not in any way helpful to substantiate the contentions urged for the petitioners. In the case of Rashid Ahmed Vs. The Municipal Board, Kairana, a restriction on the right to do business was imposed without the authority of law which had also the effect of creating monopoly in favour of an individual to the exclusion of the right of others to do business. The Supreme Court held that such an action taken by the local authority clearly violated the right guaranteed under Art. 19(1)(g) of the Constitution and was not saved by Cl (6) of Art. 19. In the case of Mohammad Yasin Vs. The Town Area Committee, Jalalabad and Another, the local authority virtually brought about the stoppage of wholesale dealers' business and also imposed the licence fee without the authority of law. Therefore, the Supreme Court held that there was a clear violation of Clause (g) of Art 19(1) of the Constitution. In the present case, as already pointed out, the petitioners are permitted to carry on and are carrying on their business, but certain reasonable restrictions have been imposed on the location of a touring cinema, which are pre-eminently designed in public interest. Therefore, I am unable to agree with the contention urged for the petitioners that the impugned provisions are violative of Art. 19(1)(g) of the Constitution.

18. The third contention which constitutes the strong objection of the petitioners to sub-rule (5) of R. 96 is about the insistence of the elaborate procedure prescribed under sub-rules (1) to (4) of R. 96 for the grant of NOC for every alternate year to locate a touring cinema on a given site. Their grievance is that the insistence of such elaborate procedure is bound to result in taking of much time and consequently they will be forced to stop their cinemas until they secure a NOC and fresh licence on the basis of such NOC. The submission made on behalf of the petitioners, without prejudice to their contentions relating to the requirement of NOC more than once, which I have already dealt with, is that the summary procedure prescribed under R. 96(5) for the second year could also be followed even in respect of subsequent years without insisting on the following of a detailed procedure prescribed in sub-cl. (1) to (4) of R. 96. They argued that so long the public interest sought to be protected by cl. (h) to (j) of sub-rule (1) of R. 27 is ensured, whether the same is ensured by following the elaborate procedure as prescribed for the first year or by following the summary procedure as prescribed for the subsequent year, satisfied the interest of the public and, therefore, the insistence on the elaborate procedure during every alternate year clearly amounts to an unreasonable restriction on the right of the petitioners to carry on business and the same is not saved by Clause (6) of Art. 19 as such a procedure is not going to advance public interest, but would only cause loss and hardship to the touring cinema owners.

The fourth contention urged for the petitioners is that R. 107(1)(b) of the Rules which prohibits the location of touring cinema in cities and towns having a

population of fifteen thousand or more and 1.6 kilometres from the limits of such cities and towns is patently an unreasonable restriction of the right to carry on the business guaranteed under Art. 19(1)(g) of the Constitution. In support of the submission, the petitioners have also filed a list of about 40 towns in the State in which population is fifteen thousand or more and in which places there are neither permanent cinemas nor semi-permanent cinemas, which was not controverted by the respondents. On this basis, they argued that there was absolutely no justification to prohibit the location of touring cinemas in cities and towns having a population of fifteen thousand or more even though there are no permanent or semi permanent cinemas. Such a restriction, they argued, is not a restriction, but a prohibition which is not permitted by Clause (6) of Art. 19 of the Constitution and assuming that it is a restriction it is not going to serve the public interest, but on the other hand it is going to defeat the public interest as the people of such places would be deprived of the benefit of cinematograph exhibition until a permanent or semi-permanent cinema is located. At the time of hearing of the case, after hearing the contention urged by the learned counsel for the petitioners, I pointed out to the learned Government Advocate that there is considerable force in the aforesaid two contentions urged for the petitioners. Then the learned Government Advocate requested for adjournment of the cases which was granted. On the next date of hearing, he submitted that the State Government has agreed to amend R. 96(5) and R. 107(1)(b) of the Rules suitably bearing in mind the contentions urged for the petitioners. He also submitted that he would be filing a memo in this behalf, which he has filed on 15-12-1978, which reads as follows:

"The undersigned submits as follows:

1. The Government undertakes to suitably amend R. 107(1)(b) so as to enable grant of licence for Touring Talkies in such places with a population of 15, 000 and more where there are no permanent theatres. Pending this amendment, if the District Magistrates have already issued licences to Touring Talkies, then the provisions of the present amendment will not be insisted upon the cancelling such licences.

2. As regards R. 96(5), the Government undertakes to amend suitably so as to bring it in conformity with the Full Bench Judgment of the High Court of Karnataka in Writ Petition No. 798 of 1975. The Full Bench has directed that "if regrant is sought for a period of one year from the date of original grant, then, the licensing authority must examine the question whether the site where the Touring Cinema has been located satisfy the requirement of the Karnataka Cinemas (Regulation) Rules, 1971". In effect the Full Bench have emphasized the necessity of obtaining a No Objection Certificate even for the second year. Therefore, R. 96(5) will be so amended as to make compulsory to obtain a fresh NOC not only for third year, but for the second year also. It is necessary to publish or notify the request of any applicant who has applied for obtaining NOC. How this request for NOC is to be published whether through newspapers or any

other convenient method-will be again examined by the Government at the time of amending R. 96(5)."

In view of the statement made in the memo, it follows the respondents should only be directed not to enforce R. 96(5) to that extent and R. 107(1)(b) and it is unnecessary for me to pronounce on the validity of the aforesaid two contentions.

19. In the light of the above discussion, my conclusions on the four contentions urged for the petitioners are as follows:

(i) R. 96(5) of the Rules which insists on the requirements of NOC after the expiry of one year's licence for a touring cinema on each occasion for the location of a touring cinema on the same site in respect of which a NOC was granted earlier is not violative of Arts. 14 and 19(1)(g) of the Constitution.

(ii) Clause (a) of sub-rule (1) of R. 107 of the Rules which prohibits the grant of a licence for a touring cinema on a site located within 1.6 kilometres from the location of a permanent cinema is also not violative of Arts. 14 and 19(1)(g) of the Constitution and similarly S. 19(2)(c) of the Act which empowers the rule making authority to frame R. 107 (1)(a) of the Rules is also not violative of Arts. 14 and 19(1)(g) of the Constitution.

(iii) As regards contention No. 3, namely, that R. 96(5) of the Rules which insists on the observance of the procedure prescribed in sub-rules (1) to (4) of the said rule for the grant of NOC for every alternate year amounts to an unreasonable restriction on the fundamental right to carry on business guaranteed under Cl (1) (a) of Article 19 of the Constitution and Clause (b) of sub-rule (1) of R. 107 of the Rules which prohibits the grant of a licence to a touring cinema in cities and towns having a population of 15, 000 or more and within 1.6 kilometres from the location of a permanent cinema theatre is also violative of Art. 19(1)(g) of the Constitution, it is unnecessary for me to decide the question in view of the memo filed on behalf of the State Government.

20. For the reasons aforesaid, I make the following order:

(1) Rule made absolute.

(2) The writ petitions in so far they relate to the challenge to R. 96(5) of the Rules to the extent it insists on the requirement of NOC after expiry of every year of licence for locating a touring cinema on the same site and R. 107(1)(a) of the rules are dismissed.

(3) In view of the memo filed on behalf of the State, the respondents are directed not to enforce R. 96(5) of the rules in so far it prescribes elaborate procedure enumerated in sub-rules (1) to (4) of the said rule to be followed in respect of grant of NOC for touring cinemas for every alternate year and R. 107(1)(b) of the Rules which prohibits location of a touring cinema in cities and towns having a population of 15, 000 or more and 1.6 kilometres from the outskirts of such cities and towns until the aforesaid rules are suitably amended

as undertaken in the memo.

(4) No Costs.

21. Order accordingly.