
(1993) 07 AHC CK 0030

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 13556, 29544, 32957 of 1991 and Writ Petition No. 29291 of 1992

Sitar Video

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 16-07-1993

Acts Referred:

Constitution of India, 1950 — Article 19(1)(a), 19(1)(g), 19(2), 19(6), 226
Uttar Pradesh Cinemas (Regulation of Exhibition by Means of Video) Rules, 1988 — Rule 11, 11(1), 11(2), 14, 15
Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 13, 2
Uttar Pradesh Cinematograph Rules, 1951 — Rule 27

Citation : AIR 1994 All 25

Hon'ble Judges : V.K. Khanna, J; R.R.K. Trivedi, J

Bench : Division Bench

Advocate : Sri Dinesh Dwivedi, for the Appellant; S.C. and Rakesh Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

R.R.K. TRIVEDI, J.—In all the aforesaid petitions, vires of Uttar Pradesh Cinema (Regulation of Exhibition by Means of Video) Rules, 1988 (hereinafter referred to as the Video Rules) has been questioned in some way or the other and all the petitions can be conveniently disposed of together. Learned counsel for the parties have agreed that the writ petitions may be disposed of finally at this stage. Writ Petition No. 13556 of 1991 shall be the leading petition.

2. Before dealing with the issues which are subject matter of determination in the aforesaid writ petitions, it would be appropriate to mention in the brief the facts giving rise to the aforesaid petitions.

Writ Petition No. 13556 of 1991

3. In this petition, petitioner's case is that for running Video Cinema, Shri Abhai Prakash who claims to be proprietor, constructed a permanent building in

Sakaldiha Bazar, which is outside the territory of Nagar Maha Palika, Varanasi and has a population of more than ten thousand. An application was filed on 22-12-1987 praying for a licence to exhibit films by means of Video. This application was considered under Uttar Pradesh Cinematograph Rules, 1951. By an order dated 27-1-1988 licence was granted for a period of six months under the aforesaid Rules, i.e. for the period beginning 28th January, 1988 to 27th July, 1988. The licence so granted was further renewed for another period of six months ending on 27th January, 1989. The aforesaid Video Rules were made and enforced with effect from 1st Sept. 1988. Petitioner again applied for renewal of the licence and the licence was renewed for further period of six months, i.e. for the period 9th October, 1989 to 8th April, 1990. The licence was further granted for two months, i.e. for the period 11th July, 1990 to 9th Sept. 1990 on the application of the petitioner. However, thereafter the renewal application was rejected by the licensing authority by order dated 25-9-1990 on the ground that a licence for permanent cinema, i.e. Saraswati Chhavi Grin has been granted and since the premises of the petitioner is situate within about one Kilometer, licence cannot be granted in view of the provisions contained in Rule 11(2) of the Video Rules. This order of the licensing authority was challenged before this Court in Writ Petition No. 25350 of 1990 which was dismissed by order dated 1-2-1991 on the ground of alternative remedy of appeal available to the petitioner before the State Government. Thereafter, the order was challenged in appeal unsuccessfully as appeal of the petitioner was dismissed by the State Government by order dated 11-4-1991, aggrieved from which the present petition has been filed. In this petition counter and rejoinder affidavits have been exchanged. Petitioner has mainly challenged the provisions of and prohibition contained in Rule 11 of the Video Rules against granting licence for a Video Cinema where the cinema in a permanent building is already running.

Writ Petition No. 29544 of 1991.

4. This petition is connected with the first petition. This Court by another order dated 24-9-1991 passed in Civil Misc. Writ Petition No. 13556 of 1991 directed the licensing authority to consider the petitioner's application to grant licence to the petitioner under Rule 14 of the Video Rules in accordance with law within a period of two weeks from the date of presentation of the certified copy of the order. The licensing authority obtained reports from Assistant Entertainment Tax Commissioner and from Sub Divisional Magistrate and after considering the aforesaid reports, by order dated 9-10-1991 refused to grant licence under Rule 14. The aforesaid order has been challenged in this petition.

Writ Petition No. 32957 of 1991

5. This petition has been filed through Shri Ram Pravesh Singh who claims himself to be proprietor of the Video Hall. It has been stated that in order to stand on his own legs, he decided to set up a travelling Video Cinema in town Chakia which is a Tahsil headquarter and is a town area with population of ten thousand according to 1991 Census. It has also been stated that the town is

outside the jurisdiction of Nagar Palika, Varanasi. The Hall consists of a pucca building, constructed of bricks and metals with a tin shed roof. The building has been taken on rent from one Sidheshwari Prasad Singh. Other details by measurements of the building have also been mentioned. Ram Pravesh Singh moved an application on 22-3-1988 for grant of licence for exhibiting films by Video. On this application licence was granted for a period of six months, i.e. for the period from 30-3-1988 to 29-9-1988 by order dated 29-3-1988. The licence is Annexure 1 to the Writ Petition. It is noteworthy that a licence was granted in the name of Anand Video Hall and it was in the name of Ram Chandra Singh. In para 4, it has been stated that at that time, name of petitioner's Video Hall was kept as Anand Video Hall and the licence was for total 300 seats. On 23-10-1989 another application was filed for grant of licence in the name of Payal Video Hall though it was in respect of the same building and place. The sets mentioned in the application were 125. The application is Annexure II to the writ petition. On this application by an order dated 30-12-1989 licence was granted for six months, i.e. for the period 25-12-1989 to 24-6-1990. Before the expiry of the aforesaid period, an application was filed on 8-6-1990 (Annexure 4 to the writ petition) praying for renewal of the licence for another six months. This application was rejected by an order dated 23-8-1990 on the ground that a cinema running in a permanent building is situate within one kilometer and in view of prohibitions contained in Rule 11(2) of the Video Rules, licence cannot be granted. A writ petition was filed in this Court on which an interim order was passed on 4-1-1991, Annexure 5 to the writ petition, to consider the application of the petitioner for video cinema and to examine the facts afresh.

The application was rejected by the licensing authority on 25-1-1991, annexure VII to the writ petition, on the ground that the building does not comply with the conditions of Rule 4 of Video Rules and further in view of the prohibition contained in Rule 11 the licence cannot be granted. The petitioner has challenged the order dated 9-1-1991 passed by the District Magistrate, Varanasi though the licence was refused to the petitioner by order dated 25-1-1991, The petitioner has also challenged the vires of Rules 11(1) and 11(2) of the Video Rules.

Writ Petition No. 29291 of 1992

6. This petition has been filed in the name of Anand Video Hall and Shri Jai Prakash Srivastava has been mentioned as proprietor. It has been stated that the Hall is situate in Chauri Bazar, Varanasi that the petitioner in order to make out revenue for himself decided to set up a cinema business. However, on account of shortage of funds he decided to run a travelling video hall at the first instance. For this purpose, he constructed a building on his own land in Chauri Bazar, Varanasi. The building complies with the requirements of Rule 4 of the U. P. Video Rules, 1988. In para 7 of the writ petition it has been mentioned that petitioner constructed a pucca building on his own land and it has adequate place for exit and entrance. It also contains all the safety requirements prescribed under the Rules and the Act. It has been constructed over 765 sq. yards land which is duly

owned by the petitioner. Since the petitioner's building does not substantially comply with the requirements of the Rules, it does not qualify as permanent building within the meaning of the Rules. However, the kind of building which the petitioner has constructed is categorised by the State Government as a semi permanent building. It has been further stated that petitioner applied for grant of a temporary licence under the Video Rules which was allowed by the District Magistrate/licencing authority, respondent No. 2, by order dated 15-7-1991. The licence has been filed as Annexure I to the writ petition, which was for a period of six months and was further extended for six months in continuation expiring on 14-7-1992. Application was again filed for renewal of the licence. However, renewal was refused by order dated 14-8-1992, annexure 5 to the writ petition, on the ground that under Rule 15 (2) of Video Rules, licence for travelling Video cinema cannot be granted for a period beyond one year. Aggrieved by the aforesaid order, this petition has been filed. Petitioner has challenged the validity of Rule 15 and has prayed for quashing of the order dated 14-8-1992.

7. Main arguments were heard in the first writ petition in which counter and rejoinder affidavits have been exchanged and the parties have agreed that on the basis of the arguments already heard in the first petition, all the petitions may be decided. For petitioners we heard Shri Rakesh Dwivedi. On behalf of the respondents we heard learned Advocate General, appearing along with learned Standing Counsel and Shri S. C. Budhwar, senior counsel appearing with Shri Ashok Mehta.

8. Learned counsel for petitioners submitted that petitioners have a fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution which covers the exhibition of films and as the provisions contained in the Video Rules of 1988 prohibit, curtail or abridge the aforesaid fundamental right, the Rules have to satisfy the conditions of the provisions contained under Article 19(2) of the Constitution and any restriction in exercise of the aforesaid fundamental right beyond the limits provided by clause (2) of Article 19 will be ultra vires and the Rules shall be liable to be struck down. It has been further submitted that petitioners have also a fundamental right to practice any profession or to carry on any occupation, trade or business under Article 19(1)(g) and the right of the petitioners to carry on the business of exhibition of films is protected under Article 19(1)(g) of the Constitution and the Video Rules have to satisfy the test of Clause (6) thereof also. Any restriction put by the Rules in exercise of the aforesaid right which is not in public interest cannot be sustained. Thus the challenge against the Video Rules of 1988 is on the ground of Articles 19(1)(a) and 19(1)(g) of the Constitution. Learned counsel for petitioners has submitted that distance restriction contained in Rule 11 (2) is wholly arbitrary and unreasonable and cannot stand the test of provisions contained in Article 19(2) and Art. 19(6). Learned counsel has submitted that this distance restriction is not necessary in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States or for public order, decency or morality or in relation to contempt of Court,

defamation or incitement to an offence, The restriction is thus wholly without authority as against the exercise of right to freedom of speech and expression, no restriction could be put which has no connection with the grounds mentioned in Article 19(2). The grant of licence to the petitioners has been refused solely on the ground that there exists a permanent cinema, i.e. Saraswati Chhavi Grih within a distance of one kilometer. Learned counsel has made a fervent appeal that the exhibition of films by means of video provides a low cost entertainment to the poor section of the society and the impugned Rules are directed against and hit mainly the poor section. It has also been submitted that there is no provision contained in the Constitution prohibiting healthy competition in the business. The exhibition of films by means of video is a consequence of a development in the technology and its benefit cannot be denied to the Society in the name of saving industry of cinema or exhibition of cinema through permanent buildings. It has been submitted that there is no prohibition against grant of licence to permanent cinema with reference to distance. Learned counsel has invited our attention to the several cinemas running in adjoining buildings in main cities of the State, namely Allahabad, Lucknow and Varanasi etc. It has been sub-mitted that distance restriction contained in Rule 11 (2) is per se arbitrary and unreasonable as it is neither in the public interest or necessary for maintaining the public order. The learned counsel has submitted that competition of the ideas must be given a free flow. The old technology if cannot stand the competition, it may be wiped out from the market and it shall be replaced by the new technology.

9. Comparing the exhibition of the films with the circulation or distribution of the newspapers amongst the public, learned counsel for petitioners has sought to establish that the exhibition is an essential part or a necessary link for exercise of the right of freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution, as for circulation of the ideas amongst the public, the circulation of the newspapers is necessary, same way the exhibition of films is also necessary. It has been submitted that the right guaranteed under Article 19(1) shall extend to all the necessary links necessary for exercise of this right and to make the ideas expressed or produced through films to reach to the general public. The rights so guaranteed may arise at different points and if the impugned Rules create any restriction at any point, it will have to satisfy the same test. Learned counsel submitted that though the right guaranteed under Article 19(1)(a) mainly protects production of films, it may be available to the exhibitor also as they form a necessary, link for propagating or circulating the idea contained in the film. Alternatively it has been submitted that if the Rule or Statute violates even a third party's fundamental right, it can be challenged before the Court. Citing various provisions of the Copyright Act, 1957, learned counsel for petitioner has sought to corroborate the submissions that the exhibitor will be entitled for the same protection under Article 19(1)(a) as the producer. Learned counsel has submitted that in the counter affidavit filed on behalf of the State the only justification for the Rules shown is the protection of

permanent cinemas which is not covered either under Article 19(2) or 19(6) of the Constitution. Learned counsel has submitted that the Rules are ultra vires and liable to be struck down. Learned counsel has placed reliance on several cases decided by Hon''ble Supreme Court and foreign judgments and also Articles published in various Journals and Books which shall be referred to at the appropriate places.

10. Learned Advocate General Shri V. K. S. Chaudhary, (as he then was), on the other hand, has submitted that the right guaranteed under Article 19(1)(a) i.e. the right to freedom of speech and expression is not available to the petitioner who is only exhibitor of the film. For his submissions, learned Advocate General has relied on the definition provided in Section 2(aa) of U.P. Cinemas (Regulation) Act, 1955 and has submitted that exhibition by means of video has been defined which means an exhibition of films in public on payment for admission which is solely a commercial activity and is not related with the right to freedom of speech and expression. It has been submitted that Video Rules of 1988 have been framed u/s 13 of the aforesaid Act of 1955 which only deal with the trade or business and contain provisions for regulating the trade or business which is in the public interest and the Rules do not curtail any right of the petitioners guaranteed under Article 19(1)(a) of the Constitution. The learned Advocate General has also referred to various provisions contained in U.P. Entertainments and Betting Tax Act, 1979 in support of his submission that the act of exhibition by petitioners is only a commercial activity. Reliance has also been placed on the observations of Hon''ble Supreme Court in the case. Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, .

11. Shri S. C. Budhwar, learned counsel for respondent No. 3, has submitted that Rule 11 of the Video Rules of 1988 has been enacted by the State in exercise of the power to make the facility of video available in rural areas and it has been done to achieve the object provided in the Directive Principles of State under Article 38(2) which provides that the State shall endeavour to eliminate one-qualities in status, facilities and opportunities, not only amongst individuals but also amongst group of people residing in different areas or engaged in different vocations. Learned counsel has submitted that as in urban areas the facility and opportunity to have the ideas through cinemas is already available, the object behind the Rules appears to be that this facility should be provided to the rural areas by exhibiting films through videos. Learned counsel has further submitted that as the Rules are giving effect to the policy of the State towards securing the principles laid down in Part IV of the Constitution, they are protected under Article 31C of the Constitution. Learned counsel has further submitted that the policy of the legislature may be inferred from Rules 11 (1) and 11(2) of Video Rules and the local area defined under Rule 2(1). Learned counsel has submitted that the idea is that the facility should go to uncatered areas to develop and cultivate permanent viewership. The restriction by the State is justified and there was no necessity of keeping such positive restrictions so far as urban areas are concerned. It has also been submitted that the restriction is necessary in the

interest of entire motion picture industry. Rules are also necessary to preserve the interest of the State with regard to collection of revenue as if the exhibition of films by means of video is left uncontrolled, the revenue shall be severely depleted. Thus the Rules are in public interest. The learned counsel has pointed out various disadvantages which may be faced by the public in general if the exhibition of films by means of video are left uncontrolled. It has been submitted that preferential treatment given by the State to exhibition of films by cinema in permanent buildings does not suffer from any illegality as the same is in public interest and there is a valid classification having reasonable nexus with the object sought to be achieved by Video Rules of 1988. The object sought to be achieved is to prevent the mushroom growth of the Video cinema halls which may cause irreparable harm to the society in various ways. Learned counsel has placed reliance in a case *Deepak Theatre, Dhuri Vs. State of Punjab and others*, . Learned counsel has further submitted that the petitioners cannot be allowed to challenge the provisions contained in Rule 11(1) of the Video Rules as the petitioners applied for grant of a travelling video cinema licence. It has been submitted that the petitioners' challenge of the provisions of Rule 11(1) cannot be thus entertained. Learned counsel has further submitted that there is no fundamental right to carry profession or business at a place of choice and in regulating the business and trade place may be earmarked or defined by the State. The petitioners have no fundamental right to exhibit films by video in local areas as defined under the Rules. The learned counsel has placed reliance in cases: *Sodan Singh v. New Delhi Municipal Committee* AIR 1989 SC 1988 , *T.B. Ibrahim Vs. Regional Transport Authority, Tanjore*, , *Janardhana Raja v. Collector of Northern Arcot Distt. Vellore* AIR 1984 SC 201 , *State of Karnataka and another Vs. Javeed Hyder*, , *Sujatha Touring Talkies and Others Vs. State of Karnataka and Others*, , *Shri Laxmi Touring Talkies v. The State of Karnataka* AIR 1975 Kar 37.

12. We have heard learned counsel for parties at length and we have also the advantage to look into the original record with regard to Sitar Video and Payal Video Hall which was handed over to us by the learned Standing Counsel. After considering various arguments raised before us, in our opinion, the following questions are to be determined by this Court for deciding whether the relief claimed by petitioners in the writ petitions may be given or not. The questions are:

- (i) Whether the right to exhibit films by means of video by petitioners is a fundamental right guaranteed under Article 19(1)(a), i.e. right to freedom of speech and expression?
- (ii) Whether the right to exhibit films is a fundamental right guaranteed under Article 19(1)(g) and the petitioners have right to carry on the trade or business of exhibiting films?
- (iii) If answer of the aforesaid two questions comes in favour of petitioners, whether the impugned Video Rules of 1988 can be justified under Article 19(2)

and 19(6) of the Constitution?

(iv) Whether the restrictions contained in the impugned Video Rules are prohibitory and restrictive in nature and arbitrary and unreasonable and violative of the fundamental rights of the petitioners guaranteed under article 19(1)(g) read with Article 14?

(v) Whether the impugned Video Rules, 1988 have been made by the legislature with an idea to fulfill the objects set by the Directive Principles of the State and are thus protected under Article 31C of the Constitution.

(vi) Whether the impugned orders refusing to grant the licence to the petitioners otherwise suffer from any error of law on which basis the petitioners may be entitled for the relief under Article 226 of the Constitution.

13. In our opinion, the most important question for determination in the writ petitions is as to whether the right to exhibit films as claimed by the petitioners is fundamental right guaranteed under Article 19(1)(a) of the Constitution. Had this right been claimed by the producer of the films, there could have been no difficulty to answer the question that the right to exhibit films is a fundamental right contemplated under the aforesaid Article. However, in the present petitions the right has been claimed by the petitioners to exhibit films as a commercial activity for earning profits. The freedom of speech or expression makes the right to express ones opinion by words of mouth, writing, printing, picture or in any other manner by which such opinion may be understood by others. It would thus include the freedom of communication and the right to propagate or publish opinion. The communication of ideas could be made through any medium including the movie. The question is whether the petitioners want to exhibit the movie with an object to express their own opinion or even the producer's opinion for purpose of arousing any public opinion or for propagating any idea. In our considered opinion the petitioners have no such object to achieve in exhibiting the films.

14. Learned counsel for petitioner placed reliance on the cases K.A. Abbas Vs. The Union of India (UOI) and Another, , Raj Kapoor Vs. Laxman, , Odyssey Communications Pvt. Ltd. Vs. Lokvidayan Sanghatana and Others, , Ramesh Dalal Vs. Union of India (UOI) and Others, and S. Rangarajan Vs. P. Jagjevan Ram and Others, .

15. We have gone through all the aforesaid cases. However, in all the aforesaid cases it was right of the producer which was under consideration before Hon"ble the Supreme Court and we do not find anything in the aforesaid cases on which basis it may be said that the right to exhibit films as claimed by the petitioners is a right contemplated under Article 19(1)(a) of the Constitution. Learned Counsel has also placed reliance on some foreign decisions, namely Freedmen v. Maryland (1966) 380 US 51 and Beman v. Post Master General (1966) 381 US 301 and also cited Books "Selected Words of Maotse Tung" at page 408 and "Selected Essays on Constitutional Law" article "Freedom of Expression" at page

4.

16. We have considered the aforesaid cases and the Books relied on by the learned counsel for petitioners and, in our opinion, they can also not be helpful to petitioners in present cases, the prime reason for which is that the frame-work of our Constitution basically differs from the First Amendment to the U.S. Constitution. The First Amendment to the U.S. Constitution guarantees the freedom of speech and press in absolute terms and it admits no restriction. However, in our Constitution protection to fundamental right is qualified as clear from the provisions contained in Art. 19(2). To appreciate this difference, observations of Dauglas, J. in *Kingsley Corporation v. Regents of the University of Newyork* reported in 3 Led. 1512 (1522) while considering the question of censorship by prior restraint may be quoted with advantage :

"If we had a provision in our Constitution for "reasonable" regulation of the press such as India has included in hers, there would be room for argument that censorship in the interests of morality would be permissible. Judges sometimes try to read the word "reasonable" into the First Amendment or make the rights it grants subject to reasonable regulation.... But, its language in terms that are absolute is utterly at war with censorship.."

17. Same way, C. J. late Shri Hidayat-Ullah, in the case of K..A. Abbas mentioned above after considering various American and British decisions, expressed the view that they cannot be decisive and certain for interpreting fundamental right with regard to freedom of speech and expression in our country. Hon. Supreme Court in case of *Pathumma and Others Vs. State of Kerala and Others*, clearly observed that the Supreme Court need no refer to the American cases nor rely on the American Constitution for the purpose of examining the seven freedoms contained in Art. 19 because the social conditions and the habits of our people are different. We are in respectful agreement with the aforesaid observations and in our opinion the American decisions cited by the learned counsel and strongly relied on cannot provide a proper and good guidance for determining the question involved in the present petitions.

18. Learned Counsel for petitioners, however, laid much emphasis on his submission that the exhibition of the films should be considered same way as the circulation or distribution of newspapers is concerned. Learned counsel placed reliance in cases of *Romesh Thappar Vs. The State of Madras*, , *Indian Express v. Union of India* AIR 1957 SC 578 (sic), *Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI)*, , *Bennett Coleman and Co. and Others Vs. Union of India (UOI)* and Others, and *Indian Express Newspapers v. Union of India* .

19. We have thoroughly considered this aspect of the case also. However, in our opinion, right to exhibit movies cannot be compared with the circulation or distribution of the newspapers in the market for various reasons. Hon"ble Supreme Court in the case of K.A. Abbas considered this aspect of the case. An article written by Shri K.A. Abbas himself entitled as "Creative Expression" was

also quoted with approval which may be reproduced below:

"But even if we believe that a novelist or a painter or a musician should be free to write, paint and compose music without the interference of the State machinery, I doubt if anyone will advocate the same freedom to be extended to the commercial exploitation of a powerful medium of expression and entertainment like the cinema. One can imagine the results if an unbridled commercial cinema is allowed to cater to the lowest common denominator of popular taste, specially in a country which, after two centuries of political and cultural domination, is still suffering from a confusion and debasement of cultural values." "Freedom of Expression cannot and should not, be interpreted as a licence for the cinemagnates to make money by pandering to, and thereby propagating shoddy and vulgar taste."

20. After considering the aforesaid article and the special nature of the film media, the Hon"ble Supreme Court in para 22 of the judgment observed as under :

"Further it has been almost universally recognised that the treatment of motion pictures must be different from that of other forms of art and expression. This arises from the instant appeal of the motion picture its versatility, realism (often surrealism), and its co-ordination of the visual and aural senses. The art of the cameraman, with trick photography vista-vision and three dimensional representation thrown in, has made the cinema picture more true to life than even the theatre or indeed any other form of representative an. The motion picture is able to stir up emotions more deeply than any other product of art. Its effect particularly on children and adolescents is very great since their immaturity makes them more willingly suspend their disbelief than mature men and women. They also remember the action in the picture and try to emulate or imitate what they have seen. Therefore, classification of films into two categories of "U" films and "A" films is a reasonable classification. It is also for this reason that motion pictures must be regarded differently from other forms of speech and expression. A person reading a book or other writing or hearing a speech or viewing a painting or sculpture is not so deeply stirred as by seeing a motion picture. Therefore, the treatment of the latter on a different footing is also a valid classification."

21. In case of S. Rangarajan Vs. P. Jagjevan Ram and Others, , the observations of Hon"ble Supreme Court are to the like effect. "It can, therefore, be said that the movie has unique capacity to disturb and arouse feelings. It has as much potential for evil as it has for good. It has an equal potential to instill or cultivate violent or good behaviour. With these qualities and since it caters for mass audience who are generally not selective about what they watch, the movie cannot be equated with other modes of communication. It cannot be allowed to function in a free market place just as does the newspapers or magazines."

22. In our opinion, the aforesaid judgments of the Hon"ble Supreme Court in two

of the leading cases on the subject are conclusive that the exhibition of the films cannot be compared with other mediums of expression. The exhibition of films in itself independently constitutes an industry or business which has no link with the production of films. The situation is entirely different so far as newspapers and magazines are concerned. The circulation of newspapers and magazines continues with the publisher but the film after being produced goes out of the hand of the producer for being exhibited by the persons who are totally unconnected having no links with the producer. Exhibition of the films thus is a purely commercial activity with a motive of profit so far as the present petitioners are concerned. What we have said above should not be understood to cover all kinds of exhibition of films. There may be cases where exhibition of the films may be with an object to propagate some idea, political or social, amongst the masses and not for any gain which may not be termed as a commercial activity.

23. Learned counsel for petitioners, however submitted that the right to freedom of speech and expression should be seen and protected at every link which is necessary to make the idea or opinion expressed to reach to the masses. If the submissions of the learned counsel are accepted, the right guaranteed under Article 19(1)(a) shall cover all steps and stages necessary for production and exhibition of a film and same right may be claimed by several persons engaged in the production of the film as well as those who are engaged in exhibition of the film. In our opinion, the sacred right guaranteed under Article 19(1)(a) cannot be stretched to such an extent as suggested by the learned counsel. It protects the right of those who have an idea or opinion for the people and also to those who are interested in propagating such ideas amongst the masses with an object of goodness for the masses. It may have several forms. The submissions of the learned counsel can- not be accepted.

24. Hon'ble Supreme Court in case of Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, while considering the right guaranteed under Article 19(1)(a) with regard to the advertisement clearly held that the advertisement being a commercial activity does not fall within the concept of the freedom of speech as the object is not propagation of ideas --social, political or economic. The relevant extract of para 17 of the judgment may be reproduced here:

"An advertisement is no doubt a form of speech but its true character is reflected by the object for the promotion of which it is employed. It assumes the attributes and elements of the activity under Art. 19(1) which it seeks to aid by bringing it to the notice of the public. When it takes the form of a commercial advertisement which has an element of trade or commerce it no longer falls within the concept of freedom of speech for the object is not propagation of ideas -- social, political or economic or furtherance of literature or human thought; but as in the present case the commendation of the efficacy, value and importance in treatment of

particular diseases by certain drugs and medicines. In such a case, advertisement is part of business even though as described by Mr. Munshi its creative part, and it was being used for the purpose of furthering the business of the petitioners and had no relationship with what may be called the essential concept of the freedom of speech. It cannot be said that the right to publish and distribute commercial advertisements advertising an individual's personal business is a part of freedom of speech guaranteed by the Constitution...."

25. The view we have expressed above is fully corroborated by the observations of Hon'ble Supreme Court. Learned counsel for the petitioners, however, submitted that if the provisions are prohibitory in nature and are affecting the right guaranteed under Art. 19(1)(a) even though the right of third party, namely producer may have been affected, but it shall be open to the petitioners to challenge the vires of the Rules. For this submission learned counsel for the petitioners has placed reliance in cases -- *Dwarkanadas Shrinivas of Bombay Vs. The Sholapur Spinning and Weaving Co. Ltd. and Others*, , *Shri Krishna Rangnath Mudholkar Vs. Gujarat University and Others*, , *Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd.*, and *Rajendra Prasad v. State of U. P.* 1978 ALJ 724.

26. We have considered the aforesaid judgments and in our opinion, the facts and circumstances of the cases were entirely different and cannot be applied in the present case. Hon'ble Supreme Court in *re, Dr. Satya Narayana Sinha* clearly observed that ordinarily the right which is the foundation for exercising jurisdiction under Art. 32 or Art. 226 is the personal or individual right. When it is made by a stranger, the court considers whether the public interest demands its intervention. In either case it is a matter which rests ultimately in the discretion of the court. We have considered the case with this angle and we do not find that in the facts of the present case the public interest demands to test the legality of the impugned Rules with reference to Article 19(1)(a) of the Constitution.

27. Learned counsel has also placed reliance on various provisions of the Copyright Act, 1957 and tried to persuade us to hold that the petitioners as exhibitor also exercised right to freedom of speech and expression under Article 19(1)(a). We have examined the various provisions of the Act, 1957. However, we are unable to infer from the provisions any such right in favour of petitioners. The object and purpose of the Copyright Act, 1957 and extending the right of author to assignees hirers is with different purpose and object.

28. For the reasons mentioned above, our conclusion is that right to exhibit films which the petitioners want to exercise is not covered by Article 19(1)(a) of our Constitution and thus it does not appear necessary for us to consider the validity of the impugned Video Rules of 1988 in terms of Article 19(2) thereof.

29. Now, coming to the second question as to whether the right to exhibit films claimed by the petitioners is a fundamental right guaranteed under Article 19(1) (g) of the Constitution, there is no difficulty in accepting that the exhibition of

films for profit or gain is a business guaranteed under Article 19(1)(g) and the impugned Rules must stand the test of Article 19(6) of the Constitution which provides that the reasonable restrictions on the exercise of the right conferred under Art. 19(1)(g) may be imposed in the interest of the general public. Now, it has to be seen whether the restrictions provided by the Video Rules of 1988 in exhibiting films are reasonable and in public interest.

30. Before entering into the discussion about the reasonableness of the restrictions, it would be appropriate to examine the provisions contained in Video Rules, 1988. These Rules have been made in exercise of the powers u/s 13 of the U.P. Cinemas (Regulation) Act, 1955. These Rules as provided under Rule 1(2) apply to exhibition by means of Video in a permanent building with seating capacity not exceeding 125 and such exhibition in all temporary buildings. A Note has been appended below this Rule which may be reproduced hereunder:

"Note.-- Exhibition by means of Video in a Video Cinema with seating capacity exceeding 125 seats shall mutatis mutandis be governed and regulated by the Uttar Pradesh Cinematograph Rules, 1951 with such relaxation as may be granted by the State Government."

31. Thus, from Rule 1(2) and the Note appended thereto it is clear that the Rules are applicable only for exhibition of films in a permanent or temporary building with a seating capacity not exceeding 125. Section 2 provides definitions of various words used in the Rules. Rule 3 puts a restriction that no person shall be granted licence unless the licensing authority is satisfied that the provisions of the Act and the Rules have been complied with. Rule 4 provides for the requirement of a permanent building. Rules 5, 6, 7, 8 and 9 provide for seating, ventilation, sanitation, arrangement for drinking water, electric installation etc. Rules 10 to 14 contain provisions with regard to grant of licence. Rule 23 provides provision for appeal against refusal of licence. Rest of the provisions are not relevant for the present case. The challenge of the petitioners is confined to Rules 11 and 15 which are being reproduced below :

11. Other conditions for grant of licence.-

(1) Licence shall not be granted for a video cinema if it is situated:--

(i) within the limits of a local area already having a cinema in a permanent building or where the same is under construction;

(ii) within the radius of 500 meters of the outer limits of a local area with population exceeding 5 lacs and having a cinema in a permanent building;

(iii) within the radius of 1000 meters of the outer limits of a local area with population exceeding 50,000 but not exceeding 5 lacs and having a cinema in a permanent building;

(iv) within the radius of 1500 meters of the outer limits of a local area with population up to 50,000 and having a cinema in a permanent building;

(v) within 500 meters of another video cinema;

(vi) in a restaurant or any other establishment, by whatever name called, engaged in serving or catering meals, snacks, hot or cold drinks etc.

(2) A travelling video cinema shall not be licenced within the radius of 2 kms. of cinema in a permanent building."

"15. Validity of licence.-- (1) Except in the case of travelling video cinema a licence for exhibition by means of video may be granted or renewed by the licensing authority for a period not exceeding three years at a time.

(2) A licence to a travelling video cinema for a particular place shall initially be granted for a period not exceeding six months which may be extended for a further period not exceeding six months."

32. The distance restrictions provided under Rules 11(1) and 11(2) have been vehemently challenged by the learned Counsel for petitioners as arbitrary, unreasonable and not in public interest. It may be very important to mention here that all the petitioners applied for grant of the licence for exhibiting films in temporary buildings and so far as the applications of the petitioners are concerned only Rule 11 (2) is relevant. Rule 11(1) provides for the exhibition of films by video in permanent buildings. Learned Counsel challenged both Rules 11(1) and 11(2). However, since petitioners have never applied for grant of licence for exhibiting films from a permanent building, we do not propose to consider the challenge with regard to Rule 11(1). The licence has been refused to the petitioners of Sitar Video Hall and Payal Video Hall u/s 11(2) which provides that a travelling video cinema shall not be licensed within a radius of two kms. of a cinema in a permanent building. The reasonableness of this restriction has to be considered. It cannot be disputed that the State Government is entitled to legislate and enact laws to control the exhibition of films for purposes of entertainment and amusement. The learned Counsel, however, submitted that the burden is on the respondent-State to show that the restriction provided by Rule 11 is in public interest. Learned Counsel has placed reliance in a number of cases; namely, Saghir Ahmad Vs. The State of U.P. and Others, ; Mohammed Faruk Vs. State of Madhya Pradesh and Others, ; Bachan Singh Vs. State of Punjab, and Bachan Singh, Sher Singh and Another and Ujagar Singh and Another Vs. State of Punjab and Others, . There cannot be any dispute so far the legal position is concerned that the burden is on the State to show the reasonableness of the restriction imposed in exercise of fundamental right. Learned Counsel has referred to the counter-affidavits filed and has submitted that there is nothing to justify that the restriction imposed by Rule 11 is reasonable and in the public interest.

33. On behalf of the State two counter-affidavits have been filed, one by Shri Om Prakash Gupta, Entertainment Tax Inspector which is of the date 6-9-1991 and another is by Shri Bhagwan Prasad Srivatava, Assistant Entertainment Tax Commissioner, which is of the date 2-5-1992. We have perused both the counter-

affidavits. In counter-affidavit dated 2-5-1992 in paras 6 to 9, it has been stated that Rule 11(2) does not impose any restriction on the fundamental right of the petitioners and the Rules have been made in the interest of general public. Various facts have been stated that travelling video cinema in which the petitioners want to exhibit film as does not contain the necessary facilities like permanent cinemas and the exhibition of the films from permanent cinema cannot be equated with the travelling video cinema. The safety and convenience of viewers is the main thrust on which basis the reasonableness of the Rules has been stated.

34. We have considered the submissions of the learned Counsel at length. A perusal of Rule 2(g) shows that temporary building means a building which is not a permanent building and includes both, tent or a similar structure. Licence for the travelling video cinema may be granted in respect of a temporary building. It cannot be denied that the temporary building cannot contain all the facilities and safety measures which are generally required in a permanent building for exhibiting films. The large number of viewers come in shifts and convenience and safety of such people coming for entertainment and pleasure is a relevant consideration. In a temporary building all these safety measures and facilities and convenience cannot be provided and if the State has made Rules to restrict such exhibitions from temporary buildings frequently and for longer period, we do not think that the restrictions contained are in any way unreasonable and not in public interest. Hon"ble Supreme Court in case of *Pathumma and Others Vs. State of Kerala and Others*, , has laid down the guidelines for testing reasonableness. If the restrictions imposed by the Rules for exhibition of films by travelling video cinema are considered in that light they cannot be said to be unreasonable. Licences for travelling video cinema are granted for a short term so that they may cater to the need of those who may not go to the cities on account of long distances and may thus have the facility of entertainment on cheap rates nearer to the place of their residence. In our opinion, the distance restriction provided under R. 11(2) serves with twin purposes, firstly, it prevents the mushroom growth of such cinemas inside the populated areas and already having cinemas running from permanent building and, secondly, it provides facility of entertainment to those who are not able to cover long distances. Considered both ways, in our opinion, the restrictions put are reasonable. If the exhibition of films from such temporary buildings is left uncontrolled, the dangerous consequences to society in general may be well imagined. Out of anxiety to earn money such exhibitions may be started from every place having no regard to the propriety of the place for the purpose. It shall also create a serious law and order situation, as the law-enforcing authorities may not be able to cover all such places and the viewers shall be exposed to such places for purpose of entertainment having no necessary facilities and safeguards. In our opinion, the restrictions imposed by the Rules are reasonable and in public interest. It may also be observed at this place that the rules apply only to exhibition of films through video at places with seating capacity not exceeding

125. The petitioners are not thus facing the total prohibition of the business. It is open to them to apply for a licence to exhibit films from a building with a seating capacity of more than 125 and in that case the impugned Rules will not be applicable to them. Thus the restriction is not complete but it is only partial and regulatory. In law, there is a presumption with regard to the constitutionality of the Rules. We have thoroughly considered the various aspects of the case and we do not find anything on which basis it may be said that the restrictions contained in the Rules, specially Rules 11 and 15, are unreasonable and not in public interest.

35. On behalf of the petitioners it is also submitted that the Rules are discriminatory and violative of Article 14 of the Constitution. It is submitted that the impugned Rules tend to discriminate to the exhibition of films by means of video and the intention appears to curb the growth of the new technology. However, we are not impressed with the submissions made. The petitioners who want to exhibit films by means of temporary Video Cinema from a different class and, as already observed earlier, the exhibition of films from unhygienic and unsafe places cannot be permitted frequently and for longer period. The Rules create a reasonable classification for putting restrictions contemplated thereunder which has a definite nexus with the purpose to achieve i.e. safety and convenience of the viewers.

36. We have perused the impugned orders rejecting the licence of the petitioners and, in our opinion, as we have upheld the vires of the Video Rules of 1988, the applications of petitioners have been rightly rejected for grant of travelling video cinema licence. The licences to the Sitar Video Hall and Payal Video Hall have been rejected on the ground that there is already a cinema in a permanent building and in view of the restrictions contained in Rule 11(2), the licences could not be granted to them. Similarly, licence has been refused to Anand Video Hall as it has already availed the maximum period of one year under Rule 15(2) and no further licence could be granted. A Division Bench of this Court in case of *Rajbir Singh v. State of U. P.* (1992) 19 ALR 528, has already considered the validity of such restriction with reference to Rule 27 of the U. P. Cinematograph Rules, 1951 and has upheld the same. The restriction has been held to be justified. We are in respectful agreement with the view expressed by the aforesaid Division Bench. Thus, otherwise also, we do not find the petitioners entitled for any relief in these petitions.

37. As the contention of the petitioners challenging the vires of the Video Rules of 1988 has not been accepted and the orders refusing to grant licences have not been found otherwise bad in law, it does not appear necessary to examine the submission of the learned Counsel for the respondents with regard to Article 31C of the Constitution.

38. For the reasons recorded above, these petitions have no force and are accordingly dismissed. There will be no order as to costs.

39. Petitions dismissed.