

(2005) 12 MAD CK 0029

In the Madras High Court

Case No : Writ Petition No. 40335 of 2005 and W.P.M.P. No. 43256 of 2005

The DMK Party

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 20-12-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 14(2), 19(1), 19(2)
Tamil Nadu Entertainments Tax Act, 1939 — Section 14(1)
Video Cassette Recorder (Regulation) Act, 1984 — Section 19(1), 3, 5B
Video Cassette Recorders and Cable Television Network (Regulation) Act, 1984 —
Section 5, 6, 7

Citation : (2005) 12 MAD CK 0029

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : R. Viduthalai for P. Kumaresan, for the Appellant; R. Muthukumarasamy, A.A.G. Assisted by R. Vijayakumar, Government Advocate, for the Respondent

Judgement

A. Kulasekaran, J.—This writ petition is listed today for admission and I heard the learned Senior counsel appearing for the petitioner and

the learned Additional Advocate General for respondents.

2. The prayer in this Writ Petition is for a Writ of Mandamus forbearing the respondents herein from preventing the screening of the Tamil film

"VETRI NAMATHE" produced by T.K.S. Elangovan and certified by the Central Board of Film Certification, Government of India vide

Certificate No. VIS/ 1/346/2005, Chennai dated 09-12-2005.

3. The petitioner, Dravida Munnetra Kazhagam is a political party, represented by its General Secretary Mr. K. Anbazhagan. One T. K.S.

Elangovan has produced a short Tamil propaganda film titled " Vetri Namathe" on behalf of the petitioner party, which was censored by the

Central Board of Film Certification vide Certificate No. VIS/ 1/346 /2005, Chennai dated 09-12-2005. The petitioner party headquarters

instructed the District Secretaries throughout the State to screen the said film through mobile vans equipped with projectors and screens in

residential and busy localities without obstructing the free flow of traffic. It is stated that the District Collectors and District Superintendent of Police

are preventing the petitioner party from exhibiting the said short film in most of the Districts for which they have no right, hence, the present writ

petition is filed praying this Court to issue writ of Mandamus to forbear the respondents from exhibiting the said film.

4. Mr. Viduthalai, learned Senior counsel appearing for the petitioner submits that when the Central Board of Film Certification issued certificate, it

is not open to the respondents to prevent the petitioner from exhibiting the short film without any valid reasons and such an attempt is violative of

Article 19(1)(a) of the Constitution of India; that the freedom of speech and expression is a fundamental right to every citizen, which could not be

curtailed by any one. The learned Senior counsel, relying on the supplementary affidavit filed by the petitioner submits that the authorised persons

have made applications to the various District Collectors for the grant of licence with regard to the place of exhibition of the film in accordance with

the provisions of the Tamil Nadu Exhibition of Film on Television screen through Video Cassette Recorder (Regulation) Act and Rules, 1984 (

hereinafter called as Act and Rules), but the District Collectors have chosen to pass different types of order, either prohibiting the screening of the

film or imposing conditions which are irrelevant; that some of the District Collectors failed to pass any orders. The learned Senior counsel also

produced certain orders issued by the District Collectors in support of his argument. The learned Senior counsel also relied on the decision of the

Honourable Supreme Court reported in Life Insurance Corporation of India and Union of India and another Vs. Prof. Manubhai D. Shah and

Cinemart Foundation, wherein in Paragraph Nos. 5, 21, 22 and 23, it was held thus:- ""5. Speech is God's gift to mankind. Through speech a

human being conveys his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus a natural right which a human being

acquires on birth. It is, therefore, a basic human right. ""Everyone has the right to freedom of opinion and expression; the right includes freedom to

hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers

proclaims the Universal Declaration of Human Rights (1948)....

21. As already pointed out earlier this Court in *S. Rangarajan Vs. P. Jagjevan Ram and Others*, emphasised that the freedom conferred on a

citizen by Article 19(1)(a) includes the freedom to communicate one's ideas or thoughts through a newspaper, a magazine or movie. Although

movie enjoys that freedom it must be remembered that movie is a powerful mode of communication and has the capacity to make a profound

impact on the minds of the viewers and it is, therefore, essential to ensure that the message it conveys is not harmful to the society or even a section

of the society. Censorship by prior restraint, therefore, seems justified for the protection of the society from the ill-effects that a motion picture may

produce if unrestricted exhibition is allowed. Censorship is thus permitted to protect social interests enumerated in Article 19(2) and Section 5B of

the Act. But such censorship must be reasonable and must answer the test of Article 14 of the Constitution. In this decision the fundamental

difference between the U.S. First Amendment and the freedom conferred by Section 19(1)(a) subject to Article 19(2) has been highlighted and we

need not dwell on the same.

22. ..In India, therefore, our Constitution recognises the need to place reasonable restrictions on grounds specified by Article 19(2) and Section

5B of the Act on the exercise of the right of speech and expression. It is on this reason that this Court has recognised the need for prior restraint

and our laws have assigned a specific role to the censors as such is the need in a rapidly changing societal structure. But since permissible

restrictions, albeit reasonable, are all the same restrictions on the exercise of the fundamental right under Article 19(1)(a), such restrictions are

bound to be viewed as anathema, in that, they are in the nature of curbs or limitations on the exercise of the right and are, therefore, bound to be

viewed with suspicion, thereby, throwing a heavy burden on the authorities that seek to impose them. The burden would, therefore, heavily lie on

the authorities that seek to impose them to show that the restrictions are reasonable and permissible in Law.

23. From the above discussion it follows that unquestionably the respondent had

a right to convey his perception of the gas disaster in Bhopal through the documentary film prepared by him. This film not only won the Golden Lotus award but was also granted the "U" certificate by the censors. Even according to the petitioners the documentary is an appraisal of what exactly transpired in Bhopal on the date the gas leak occurred. The petitioners, therefore, concede that the film faithfully brings out the events that took place at Bhopal on that fateful night. Therefore, the respondent cannot be accused of having distorted the events subsequent to the disaster. How then can it be alleged that it is not fair and balanced or lacks in moderation and restraint? It is nowhere stated which part of the film lacks moderation and/or restraint nor is it shown how the film can be described as not fair and balanced. Merely because it is critical of the State Government, perhaps because of its incapacity to cope with unprecedented situation, is no reason to deny selection and publication of the film.... If the norm for appraisal was the same as applied by the censors while granting the "U" certificate, it is difficult to understand how Doordarshan could refuse to exhibit it. It is not that it was not sent for being telecast soon after the disaster that one could say that it is outdated or has lost relevance. It is even today of relevance and the press has been writing about it periodically. The learned Additional Solicitor General was not able to point out how it could be said that the film was not consistent with the accepted norms set out earlier. Doordarshan being a State controlled agency funded by public funds could not have denied access to the screen to the respondent except on valid grounds. We, therefore, see no reason to interfere with the High Court order.

5. Citing the above said judgment, the learned Senior counsel for the petitioner submits that the freedom of speech and expression has to be broadly construed, which includes right to propogand one's view and to answer criticism levelled against this view through print or electronic media, however subject to Article 19(2) of the Constitution. The apprehension of the learned Senior counsel for the petitioner is that some of the District Collectors may cause delay wantonly without passing orders and others pass different types of orders or pass order of rejection when necessary application is filed seeking permission to exhibit the movie and prayed this Court to grant the relief sought for in this writ petition.

6. Mr. Muthukumarasamy, learned Additional Advocate General appearing for the respondents submits that mere certification by the Central

Board of Film Certification will not confer any right to the petitioner to exhibit the short film at places wherever they wish, ignoring the provisions of

the said Act and Rule. The learned Additional Advocate General brought to the notice of this Court the relevant provisions of The Tamil Nadu

Exhibition of Films on Television Screen Through Video Cassette Recorders and Cable Television Network (Regulation) Act, 1984 which runs as

follows:-

2. Definition.- In this Act, unless the context otherwise requires - ... (4) "licensing authority" means, in relation to the City of (Chennai) the

Commissioner of Police and elsewhere, the Collector of the district (5) "place" includes a house, building, tent and any description of transport,

whether by water, land or air;

3. Exhibition of film to be licensed: (1) (a) Save as otherwise provided in this Act, no person shall give an exhibition of film on Television screen

through Video Cassette Recorder - (i) except under and in accordance with a licence granted u/s 6 read with Section 5 of this Act; and (ii)

elsewhere than in a place for which permission has been granted u/s 7 read with Section 5 of this Act. (b) where, in respect of any place, a licence

has been granted under this Act for exhibition of film on Television screen through Video Cassette Recorder, no business other than the exhibition

of film on Television screen through Video Cassette Recorder shall be carried on in such place, by any person and at any time. (1-A) Save as

otherwise provided in this Act, no person shall give an exhibition of film through the Cable Television Network except and in accordance with a

licence granted u/s 6 read with Section 5 of this Act. (2) Nothing contained in clause (a) of Sub-section (1) shall apply to any exhibition of film on

television screen through Video Cassette Recorder for domestic purposes to the family members of the household only. (3) No person shall be

eligible for applying for a licence under this Section, if he has been convicted for an offence under clause (a) or Sub-section (i) of clause (b) of

Sub-section (1) of Section 14 of the Tamil Nadu Entertainments Tax Act, 1939 (Tamil Nadu Act X of 1939) unless a period of two years has

elapsed since his conviction.

5. Grant and refusal of licence.- (1) Every application for a licence or permission under this Act shall be in writing and contain,- (a) the name of the

applicant: (b) the place at which the exhibition is to be given or the Cable Television Network is to be operated or the Video Library is to be kept:

(c) the number of seats to be installed, in the case of exhibition of film (cc) the number of connections to be given through cables; and (d) such

other particulars as may be prescribed, and shall be made to the licensing authority (2) Every licence or permission under this Act shall be granted

in such form and subject to such terms, conditions and restrictions and on payment of such fee (not exceeding one thousand rupees) as may be

prescribed.

6. Restrictions on powers of licensing authority.- (1) The licensing authority shall, in deciding whether to grant or refuse a licence for exhibition of

film on Television screen through Video Cassette Recorder or through Cable Television Network have regard to the following matters namely.- (a)

the interest of the public generally; (b) the status, antecedents and previous experience of the applicant (c) the suitability of the place where the

exhibition of film on Television Screen through Video Cassette Recorder is proposed to be given (d) the adequacy of existing places for the

exhibition of film on Television screen through Video Cassette Recorder in the locality; (e) the benefit to any particular locality or localities to be

afforded by the opening of a new place of exhibition of film on Television screen through Video Cassette Recorder; (f) the possession by the

applicant, of other places, if any, licensed under this Act, whether in the same locality or elsewhere, and whether at the time of applying for the

licence or at any previous time; and shall also take into consideration any representations made by persons already giving exhibition of

cinematograph film or film on Television Screen through (Video Cassette Recorder or through Cable Television Network) 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 exhibition of cinematograph film or film on Television screen through (Video Cassette Recorder or through Cable

Television Network) (2) The licensing authority shall, in deciding whether to grant or refuse to grant or renew or refuse to renew a licence for

keeping any Video Library, have regard to the interest of the public generally and such other matters as may be prescribed. (3) The licensing

authority shall not grant a licence under this Act if it is satisfied- (a) that the rules made under this Act have been substantially complied with; and (b)

in the case of an application for the grant of a licence for exhibition of film, that adequate precautions have been taken in the place, in respect of

which the licence is to be granted, to provide for the safety, convenience and comfort of the persons attending exhibitions therein (4) The licensing

authority may, by order in writing, refuse to grant a licence for exhibition of film (on Television screen through Video Cassette Recorder or through

Cable Television Network) or refuse to grant or renew a licence for keeping any Video Library, if such authority is satisfied that- (a) the applicant

has not complied with the provisions of this Act or the rules made thereunder in respect of the application for the grant of a licence; or (b) the

applicant has made wilful default in complying with or knowingly acted in contravention of, any requirement of this Act or the rules made

thereunder or the terms and conditions of, and restrictions upon, any licence granted under this Act; or (c) in the case of an applicant for a licence

for exhibition of film (on Television screen through Video Cassette Recorder or through Cable Television Network) such applicant has been

convicted of an offence under the Cinematograph Act, 1952 (Central Act XXXVII of 1952) or the Tamil Nadu Cinemas (Regulation) Act, 1955

(Tamil Nadu Act IX of 1955) or the Tamil Nadu Entertainments Tax Act, 1939 (Tamil Nadu Act X of 1939)

5. The licensing authority may, after consideration of the matters set forth in Sub-section (1), limit the number of places in any area in respect of

which licences to exhibition of film on Television screen through Video Cassette Recorder (or through Cable Television Network) under this Act

may be granted.

(6) The licensing authority shall not grant a licence unless it is satisfied that adequate precautions have been taken in the place, in respect of which

the licence has to be granted to provide for the safety, convenience and comfort of the persons attending exhibitions therein of, as the case may be,

visiting the Video Library.

(7) In granting or refusing to grant a licence under this Act, the licensing

authority may consult such authority or officer as may be prescribed.

(8) Subject to the foregoing provisions of this Section, the licensing authority may grant licences under this Act to such persons and on such terms

and conditions and subject to such restrictions as it may determine. When the licensing authority refuses to grant any licence, it shall do so by an

order communicated to the applicant, giving the reasons in writing for such refusal: Provided that no order prejudicial to the applicant shall be

passed under this Sub-section unless the applicant has been given a reasonable opportunity of being heard.

(9) Every licence under this Act shall be personal to the person to whom it is granted and no transfer or assignment thereof, whether absolute or by

way of security or otherwise shall be valid unless approved in writing by the licensing authority.

7. Licensing authority to permit constructions and re-construction of building, installation of machinery, etc., for exhibition of film - (1) Any person

who intends -

(a) to use any place for the exhibition of film on Television screen through Video Cassette Recorder, or (b) to use any site for constructing a

building thereon for the exhibition of film on Television screen through Video Cassette Recorder, or (c) to construct or re-construct any building for

such exhibition of film, or (d) to install any machinery in place where such exhibition of films are proposed to be given, shall make an application in

writing to the licensing authority for permission thereof together with such particulars as may be prescribed and any provision contained in the

enactments specified below or in the rules made under, any of them in so far as it relates to any of the matters specified above shall not apply to

any application made under this Section;-

(i) The Tamil Nadu Places of Public Resort Act, 1888 (Tamil Nadu Act II of 1888)

(ii) The (Chennai) City Police Act, 1888 (Tamil Nadu Act III of 1888)

(iii) The (Chennai) City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919)

(iv) The Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971);

(v) The Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981)

(vi) The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920); and

(vii) The Tamil Nadu Panchayats Act, 1958 (Tamil Nadu Act XXXV of 19 58)

(2) The licensing authority shall thereupon after consulting such authority or officer as may be prescribed, grant or refuse permission and the

provisions relating to licenses for exhibition of film on Television screen through Video Cassette Recorder shall, so far as may be, apply to

permission under this Section.

7. Section 3 of the Act says that no person shall give an exhibition of the film on Television screen through Video Cassette Recorder except in

accordance with the licence granted u/s 6 read with Section 5 of the Act. Elsewhere than in a place for which permission has been granted u/s 7

read with Section 5 of this Act Section 5 confers power to the licensing authority to issue licence on application made by the applicant. The said

application shall be in writing containing the name of the applicant, place where the exhibition is to be given and such other particulars as may be

prescribed shall be submitted to the licensing authority. The licensing authority shall grant licence or permission in such forms and subject to terms

and conditions and restrictions and on payment of such fee as may be prescribed. Section 6 imposes certain restrictions on powers of licensing

authority. Section 7 also gives power to the licensing authority on receipt of application for permission for construction and reconstruction of

building, installation of machineries etc., for exhibition of films.

8. The learned Additional Advocate General relying on the above provisions of the Act submits that mere certification given by Censor Board

alone is not sufficient to exhibit the short film. The exhibition shall be subject to conditions of the said Act. It is also pointed out that the prayer

sought for by the petitioner, as it stands, cannot be granted since necessary application has to be filed by the petitioner before the concerned

District Collectors mentioning the place, time and date where the exhibition is proposed.

9. The learned Senior counsel appearing for the petitioner fairly admits that exhibition of the short film is subject to the provisions of the Act. He

pointed out some orders passed by the District Collectors, Superintendent of Police and also the order of suspension of permission granted earlier

and contended that some of the District Collectors, though received the applications are causing delay in passing orders and all the said factors are

an indirect attempt to curb the fundamental right of the petitioners guaranteed under Article 19(1)(a) of the Constitution of India. The above

submission of the petitioner is denied by the learned Additional Advocate General appearing for the respondents by stating that whenever an

application is received by the District Collector, the same will be considered expeditiously, not later than ten days.

10. Article 19(1)(a) of the Constitution of India guarantees to all citizens the right to freedom of speech and expression, however, it got to be read

with Article 19(2) of the Constitution of India which lays down certain constitutionally permissible limitations on the exercise of that right. If any

limitation on the exercise of fundamental right under Article 19(1)(a) does not fall within the four corners of Article 19(2), it is invalid. The said right

is similar to the right of a citizen to publish his views through visual and print media. Followed *Odyssey Communications Pvt. Ltd. Vs. Lokvidayan*

Sanghatana and Others, wherein in para-5 it was held thus:-

5. It can no longer be disputed that the right of a citizen to exhibit films on the Doordarshan subject to the terms and conditions to be imposed by

the Doordarshan is a part of the fundamental right of freedom of expression guaranteed under Article 19(1)(a) of the Constitution of India which

can be curtailed only under circumstances which are set out in clause (2) of Article 19 of the Constitution of India. The right is similar to the right of

a citizen to publish his views through any other media such as newspapers, magazines, advertisement hoardings etc., subject to the terms and

conditions of the owners of the media. We hasten to add that what we have observed here does not mean that a citizen has a fundamental right to

establish a private broadcasting station, or television centre. On this question we reserve our opinion. It has to be decided in an appropriate

case....

11. To understand the basic principles of freedom of speech and expression and the need for such freedom in a democratic polity, we may follow

the decision of the Supreme Court of the United States of America. We cannot, no doubt be solely guided by the decision of the Supreme Court

of United States of America but in order to understand the basic principles of the

freedom of speech and expression and the need for the freedom

in a democratic country, we may take them into consideration. Followed (Indian Express Newspaper (Bombay) Pvt Ltd v. Union of India)

wherein in para-42 it was held thus:-

While examining the constitutionality of a law which is alleged to contravene Article 19(1)(a) of the Constitution, we cannot no doubt, be solely

guided by the decisions of the Supreme Court of the United States of America. But in order to understand the basic principles of freedom of

speech and expression and the need for that freedom in a democratic country we may take them into consideration. The pattern of Article 19(1)(a)

and of Article 19(1)(g) of our Constitution is different from the pattern of the First Amendment to the American Constitution which is almost

absolute in its terms. The rights guaranteed under Article 19(1)(a) and Article 19(1)(g) of the Constitution are to be read along with Clauses (2)

and (6) of Article 19 which carve out areas in respect of which valid legislation can be made. It may be noticed that the newspaper industry has not

been granted exemption from taxation in express terms. On the other hand Entry 92 of List 1 of the Seventh Schedule to the Constitution

empowers Parliament to make laws levying taxes on sale or purchase of newspapers and on advertisement published therein.

12. The right to freedom of speech and expression carries with it the right to publish and circulate one's ideas, opinions and views with complete

freedom of publication subject to such restrictions as can be legitimately imposed under Clause (2) of Article 14 of the Constitution of India.

Followed Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI), wherein in Para No. 25 it was held thus:-

25. A bare perusal of the Act and the Order thus makes it abundantly clear that the right of a newspaper to publish news and views and to utilise

as many pages as it likes for that purpose is made to depend upon the price charged to the readers. Prior to the promulgation of the Order every

newspaper was free to charge whatever price it chose, and thus had a right unhampered by State regulation to publish news and views. This liberty

is obviously interfered with by the Order which provides for the maximum number of pages for the particular price charged. The question is

whether this amounts to any abridgment of the right of a newspaper to freedom

of expression. Our constitution does not expressly provide for the freedom of press but it has been held by this Court that this freedom is included in "freedom of speech and expression" guaranteed by clause (1)

(a) of Article 19 (see Brij Bhushan and Another Vs. The State of Delhi, . This freedom is not absolute for Clause (2) of Article 19 permits restrictions being placed upon it in certain circumstances....

13. The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is

necessary for self-expression, which is an important means of free conscience and self-fulfilment. It enables the people to contribute to debates of

social and moral issues. It is the best way to have a truest model of anything, since, it is only through it that the widest possible range of ideas can

circulate. It is the only vehicle of political discourse so essential to democracy. The right to communicate includes right to communicate through any

media that is available, whether print or electronic or audio visual such as advertisement, movie, article, speech etc., that is why freedom of speech

and expression includes freedom of press. The freedom includes the freedom to communicate or circulate one's views without interference to as

large a population in the country as well as abroad as is possible to reach. The fundamental right can be limited only by reasonable restrictions

under Law made for the purposes mentioned in Article 19(2) of the Constitution of India. The burden is on the authorities to justify the restrictions.

Public Order is not the same thing as public safety and hence, no restriction can be placed on the right to freedom of speech and expression on the

ground that public safety is endangered. Followed Secretary, Ministry of Information and Broadcasting, Govt. of India and others Vs. Cricket

Association of Bengal and others, wherein in para-11 it was held thus:-

11. We may now summarise the law on the freedom of speech and expression under Article 19(1)(a) as restricted by Article 19(2). The freedom

of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-

expression which is an important means of free conscience and self-fulfilment. It enables people to contribute to debates on social and moral

issues. It is the best way to find a truest model of anything, since it is only through it, that the widest possible range of ideas can circulate. It is the

only vehicle of political discourse so essential to democracy. Equally important is the role it plays in facilitating artistic and scholarly endeavours of

all sorts. The right to communicate, therefore, includes right to communicate through any media that is available whether print or electronic or

audio-visual such as advertisement, movie, article, speech etc. That is why freedom of speech and expression includes freedom of the press. The

freedom of the press in terms includes right to circulate and also to determine the volume of such circulation. This freedom includes the freedom to

communicate or circulate ones opinion without interference to as large a population in the country, as well as abroad, as is possible to reach. This

fundamental right can be limited only by reasonable restrictions under a law made for the purposes mentioned in Article 19(2) of the Constitution.

The burden is on the authority to justify the restrictions. Public order is not the same thing as public safety and hence no restrictions can be placed

on the right to freedom of speech and expression on the ground that public safety is endangered. Unlike in the American Constitution, limitations on

fundamental rights are specifically spelt out under Article 19(2) of our Constitution. Hence no restrictions can be placed on the right to freedom of

speech and expression on grounds other than those specified under Article 19(2).

14. Reasonable restrictions has to be determined in a objective manner and from the standpoint of the interests of the general public and not from

the point of view of the person upon whom the restrictions are imposed or upon abstract considerations. Followed Mohd. Hanif Quareshi and

Others Vs. The State of Bihar, wherein in Para-21 it was held thus:-

21. Clause (6) of Article 19 protects a law which imposes in the interest of the general public reasonable restrictions on the exercise of the right

conferred by Sub-clause (g) of Clause (1) of Article 19. Quite obviously, it is left to the Court, in case of dispute, to determine the reasonableness

of the restrictions imposed by the law. In determining that question the Court, we conceive, cannot proceed on a general notion of what is

reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the

restrictions are imposed. The right conferred by Sub-clause (g) is expressed in general language and if there had been no qualifying provision like

Clause (6) the right so conferred would have been an absolute one. To the

person who has this right any restriction will be irksome and may well be regarded by him as unreasonable. But the question cannot be decided on that basis. What the Court has to do is to consider whether the restrictions imposed are reasonable in the interests of the general public....

15. No legislature can disobey the constitutional prohibition by employing an indirect method. Followed 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, wherein in para-7, it was held thus:-

7. It is unnecessary to decide in the present case whether in its scope it extends to the determination of the constitutionality of an enactment with

reference to the various Sub-clauses of clause (1) of Article 19. A more appropriate approach to the question is, in our opinion, contained in the

dictum of Mahajan, J. (as he then was) in Dwarka Prasad Laxmi Narain v. State of Uttar Pradesh. There he held that ? in order to decide whether a

particular legislative measure contravenes any of the provisions of Part III of the Constitution it is necessary to examine with some strictness the

substance of the legislation in order to decide what the legislature has really done. Of course the legislature cannot bypass such constitutional

prohibition by employing indirect methods and therefore the court has to look behind the form and appearance to discover the true character and

nature of the legislation.

16. The restrictions imposed for exercise of a fundamental right is subject to the judicial review. Followed Chintaman Rao Vs. The State of

Madhya Pradesh, wherein in para-7 it was held thus:-

7. The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an

excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is the

choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of

reasonableness and unless it strikes a proper balance between the freedom guaranteed in Art 19(1)(g) and the social control permitted by Clause

(6) of Article 19 it must be held to be wanting in that quality.

17. The expression reasonable restriction seeks to strike a balance between the freedom guaranteed by any of the Sub-clauses of clause (1) of

Article 19 and the social control permitted by any one of the clauses 2 to 6. Any limitation imposed on a person in the enjoyment of right should

not be arbitrary or on an excessive nature. Followed P.P. Enterprises and Others Vs. Union of India (UOI) and Others, wherein in para-8 it was

held thus:-

8. A person has a right to carry on any occupation or trade or business and the only restriction on this unfettered right is the authority of the State

to make a law imposing reasonable restrictions under Clause (6). The expression "reasonable restrictions" signifies that the limitation imposed on a

person in enjoyment of that right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. No cut and

dry test can be applied to each individual statute impugned, nor an abstract standard or general pattern of reasonableness can be laid down as

applicable in all cases. The Court in each case has to strike a proper balance between the freedom guaranteed by Article 19(1)(g) and the social

control permitted by Clause (6) of Article 19. By the impugned order the Central Government has only put an embargo on the dealers on keeping

sugar in excess of the quantity specified. It was passed only with a view to prevent hoarding and black-marketing and to ensure equitable

distribution and availability of sugar at fair prices in the open market.

18. In this case, the exhibition of the short film produced on behalf of the petitioner is admittedly governed by the Act.

19. It is alleged by the petitioner that though uniform applications have been made to the District Collectors, each District Collector has chosen to

pass different types of order, either prohibiting the screening of the film or imposing restrictions, which are contrary to the provisions of Article

19(1)(a) of the Constitution of India. It is also stated that some of the District Collectors are causing delay in disposing of the applications or pass

invalid orders either by ignorance or otherwise. The learned Senior counsel for the petitioner also pointed out some of the orders passed by the

District Collectors and prayed that necessary directions may be issued to the respective District Collectors to pass appropriate orders in terms of

the Act and Rules.

20. Fundamental rights/freedoms contained in Article 19(1) of the Constitution of India are those great and basic rights which are recognised as the natural rights inherent in every citizen. Clause (1) (a) of Article 19 confers invaluable right to freedom of speech and expression. Freedom of speech and expression is at the foundation of all democratic institutions. Freedom of speech and expression includes freedom of propagation of ideas. Laws or measures that are calculated or intended to curtail or prevent the dissemination of opinion would be illegitimate and liable to be struck down as unconstitutional. The freedom of speech and expression must be broadly construed to include the freedom to circulate one's views by words of mouth, in writing or through audio visual instrumentalities. Thus, it includes the right to propagate one's views through print media as well as through radio and television. It is the primary duty of the Courts to uphold the right to freedom of speech and expression and invalidate all laws, administrative or executive, which interfere with this fundamental right.

21. The above referred judgments, which are collected from large number of decisions of this nature indicate the freedom of speech and expression as indispensable in the operation of the democratic system. No doubt, Article 19(1)(a) of the Constitution has to be read with Article 19(2) of the Constitution which lays down certain constitutionally permissible limitations for exercise of that right. If any limitation on the exercise of fundamental right under Article 19(1)(a) of the Constitution does not fall within the four corners of Article 19(2), it is invalid. If, either legislature or executive bypass such constitutional prohibition by employing direct or indirect methods, it is the duty of the Court to look behind the form and appearance to discover the true character and the nature of the interference. Casual or lethargic approach of the executive in dealing with right of freedom of speech and expression or imposing invalid restrictions on it has to be condemned. However, imposing reasonable restrictions which are proximate to the object to be achieved is permissible.

22. Considering the facts and circumstance of the case and the argument of the learned Senior counsel appearing for the petitioner as well as the learned Additional Advocate General for the respondents, the petitioner is at liberty to submit application before the respective District Collector seeking permission for exhibiting the Tamil film "Vetri Namathe" by specifying

the place of the Village, Town or City and also the time and date

and on receipt of such application, the respective District Collector is directed to pass orders in accordance with law preferably within ten days.

23. The writ petition is disposed of. No costs. Connected WPMP is closed.