A DEEPAK THEATRE, DHURI

v.

STATE OF PUNJAB AND ORS.

DECEMBER 6, 1991

B [K. RAMASWAMY, M. FATHIMA BEEVI AND YOGESHWAR DAYAL, JJ.]

Constitution of India, 1950:

Article 19(1) (g)—Cinema Theatres—Classification of seats and pre-
C *scription of admission rates—Power of licensing authority under Punjab Cinemas (Regulation) Act, 1952—Whether ultra vires and violative of.*

Punjab Cinemas (Regulation) Act, 1952/Punjab Cinemas Rules:

Sections 5, 9/Rule 4—Licensing authority—Powers to classify seats and
D *prescribe admission fee—Constitutional validity of.*

The appellant has been exhibiting cinematograph films on a licence granted to him under Section 5 of the Punjab Cinemas (Regulation) Act, 1952. The licensing authority classified the seats for admission into four
E **classes and fixed the rates of admission to the four classes. Appellant filed a Writ Petition before the High Court challenging the power of the licensing authority in classifying the classes and contending that it offended its right to carry on business under Artiele 19(1)(g) of the Constitution of India. The appellant also challenged Rule 4 of the Punjab Cinemas Rules and condition 4A of the Conditions of Licence.**

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A learned Single Judge declared the regulation *ultra vires* of the power and offending Article 19(1)(g) of the Constitution. On a Letters Patent Appeal, the Division Bench of the High Court reversed the judgment and upheld the power of the Licencing Authority. It also held that the regulation did not offend Article 19(1)(g) of the Constitution. Ag-
G **grieved against this decision, the appellant preferred the present appeal by special leave.**

Dismissing the appeal, this Court,

HELD : 1. Section 5 of the Punjab Cinemas (Regulation) Act, 1952
H **read with Rule 4 of Punjab Cinemas Rules and condition 4A of the licence**

is a regulatory measure to fix the rates of admission and classification of the seating in the interest of the general public. It is within the power of the licensing authority. They do not impinge upon the fundamental right guaranteed under Article 19(1)(g) of the Constitution to trade, avocation or business of the licensee under the Act. It is a reasonable restriction under Article 19(6) of the Constitution, imposed in the public interest. [250 D, E]

2. It is settled law that the rules validly made under the Act, for all intents and purposes, be deemed to be part of the statute. The conditions of the licence issued under the rules form an integral part of the statute. The power to regulate may include the power to license or to refuse the licence or to require taking out a licence and may also include the power to tax or exempt from taxation, but not the power to impose a tax under the rule-making power unless there is a valid legislation in that behalf. Therefore, the power to regulate a particular business or calling implies the power to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary to conduct the business in a proper and orderly manner. It also includes the authority to prescribe the reasonable rules, regulations or conditions subject to which the business may be permitted or conducted. A co-joint reading of Sections 5 and 9 of the Act, Rule 4 and condition 4A gives the power to the licensing authority to classify seats and prescribe rates of admission into the cinema theatre. [245 H; 246 A-C]

3. Access to and admission into theatre is a facility and concomitant right to a cine goer public. Classification of seats and fixation of rates of admission according to paying capacity of a cine goer is also an integral power of regulation. Power to fix rates of admission includes power to amend and revise the rates from time to time. The statute vests that power in the licensing authority subject to control by the State Government. The fixation of the rates of admission has thus become an integral and essential part of the power and regulation of exhibition of cinematograph. [247 H; 248 A]

Minerva Talkies, Bangalore v. *State of Karnataka & Ors.*, [1988] (Supp.) SCC 176, relied on.

D.K.V. Prasad Rao v. *Government of A.P.*, AIR 1984 AP 75, referred to.

4. The right to fix the rates of admission is not an unbridled power or right but by implication is subject to the regulation under the Act, rules and conditions of the licence. The owner/licensee has no unrestricted power or freedom to fix rates of admission at his whim. Therefore, fixation

A **of rates of admission, though has, its inception in the womb of private contract, but clothed with a public interest, could be regulated under the Act, rules and conditions of the licence.**

Minerva Talkies, Bangalore **v.** *State of Karnataka & Ors.*, [1988] **(Supp.) SCC 176;** *Narendra Kumar* **v.** *Union of India,* **[1960] 2 SCR 375,**
B **relied on.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2280 of 1981.

From the Judgment and Order dated 3.4.1981 of the Punjab and Haryana High Court in L.P.A. No. 913 of 1980.
C

A.K. Goyal for the Appellant.

G.K. Bansal for the Respondent.

The Judgment of the Court was delivered by
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K. RAMASWAMY, J. The appellant has been exhibiting cinematograph films at Dhuri, on a licence having been granted by the District Magistrate, Sangrur, the 2nd respondent, under S.5 of the Punjab Cinemas (Regulation) Act, 1952, for short 'the Act' and the Rules. By proceeding dated February 26, 1975 the 2nd respondent classified the seats for admission into
E four classes and fixed the rates of admission to the respective classes. The appellant impugned as *ultra vires* of the power of licensing authority in this behalf and also contended that it offends its right to carry on the business under Art. 19(1)(g) of the Constitution. It equally questioned rule 4 of the Punjab Cinemas Rules and condition 4A of the condition of the licence on that score.
F The learned single Judge declared the action to be *ultra vires* of the power and offend Art. 19(1)(g). On appeal in L.P.A. No. 913/80 dated April 3, 1981 the division bench reversed the judgment and upheld the power of the licensing authority. It also held that the regulation does not offend the right under Art. 19(1)(g) of the Constitution. This appeal arises on leave under Art. 136 of the Constitution.

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The licensing authority by proceeding dated February 26, 1975 classified the seats into Box, First Class, Second Class/Ladies and Third Class and prescribed the rates of admission of Rs. 2.75, Rs. 1.75, Rs. 1.30 and Rs. 0.80 P. respectively. On obtaining interim stay of the order, the appellant, pending the writ petition unilaterally enhanced the rates of admission. The question is
H whether the 2nd respondent has power under the Act. The preamble of the Act

provides that "an act to make provision for 'regulating' exhibition of cinematographs in the Punjab". The purpose of the Act, therefore, is to regulate the cinema trade or business in exhibiting the cinematograph in the theatre being run on the licence duly obtained from the licensing authority. Section 5 gives power to the licensing authority thus :-

> "5. Restrictions on powers of licensing authority:-
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> (1) The licensing authority shall not grant a licence under this Act unless it is satisfied that -
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> (a) the rules made under this Act have been complied with, and
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> (b) adequate precautions have been taken in the place, in respect of which the licence is to be given to provide for the safety of the persons attending exhibitions therein.
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> (2) Subject to the foregoing provisions of this section and to the *control of the Government*, the licensing authority may grant licences under this Act to such persons as it thinks fit, *on such terms and conditions as it may determine.*"

Section 9 confers power on the State Government to make rules by notification published in the official gazette to prescribe terms, conditions and restrictions, if any, subject to which licence may be granted under the Act. Rule 4 reads thus :

> "Licences, whether for a period of three years on temporary, shall be in form A annexed to these rules and shall be subject to the conditions and restrictions set forth therein and to the provisions by these rules".

Condition 4-A of the Licence granted under the rules provides *"classification of the seats"* and the *"prices thereof" for different parts of the licensed building/place*, approved by the licensing authority as indicated therein and *"shall not amend or alter the same in any way without the prior approval of the licensing authority"*. The licensing authority will enter the number of persons to be admitted into the several parts of the Auditorium having special regards to the provisions of Rule 24.

(emphasis supplied)

It is settled law that the rules validly made under the Act, for all intents

A and purposes, be deemed to be part of the statute. The conditions of the licence issued under the rules form an integral part of the Statute. The question emerges whether the word regulation would encompass the power to fix rates of admission and classification of the seats. The power to regulate may include the power to license or to refuse the licence or to require taking out a licence and may also include the power to tax or exempt from taxation, but not the B power to impose a tax for the revenue in rule making power unless there is a valid legislation in that behalf. Therefore, the power to regulate a particular business or calling implies the power to prescribe and enforce all such proper and reasonable rules and regulations as may be deemed necessary to conduct the business in a proper and orderly manner. It also includes the authority to prescribe the reasonable rules, regulations or conditions subject to which the C business may be permitted or conducted. A conjoint reading of S.5, S.9, rule 4 and condition 4A gives, therefore, the power to the licensing authority to classify seats and prescribe rates of admission into the cinema theatre.

Article 19(1)(g) of the constitution accords fundamental rights to carry on any profession, occupation, trade or business, but would be subject to D reasonable restrictions on the exercise of the said right imposed by a law, in the interest of the general public. This court in *Minerva Talkies, Bangalore* v. *State of Karnatka & Ors.*, [1988] (Supp) SCC 176 considered that the right to carry on business of exhibiting cinematograph films by the provisions of the Karnataka Cinemas Regulation Act and the rules framed thereunder. It was held that the Government have power to limit the exhibiting number of shows E in a day. These provisions are necessary to ensure public safety, health and other allied matters. The rules do regulates exhibition of cinematograph film by providing that, instead of five shows, only four shows should be exhibited in a day. No rule or law can be declared to be unreasonable merely because there is reduction in the income of the citizen on account of the regulation of the F business. The Rule 41-A of the rules therein empowering to regulate number of shows in a day does not impose any unreasonable restriction on the appellant's fundamental rights guaranteed under Art. 19(1)(g) of the Constitution. This court also held that the State Govt. may lay down conditions and impose restriction prescribing hours during which the films may be exhibited and also the number of shows in the licensed premises. Any rule, if reasonably G connected with the public safety would be justified under the aforesaid provision. No licensee can claim to have unrestricted right to exhibit films for all the twentyfour hours of the day, which would be against the public interest. The restriction to limit the number of shows by rule 41-A is regulatory in nature which clearly carries out the purpose of the Act. In paragraph 14, this Court upheld the ratio of the Andhra Pradesh High Court in *D.K.V. Prasad Rao* v. H *Government of A.P.*, AIR 1984 AP 75. Therein Rule 12(3) of the Andhra

Pradesh Cinemas (Regulation) Rules, 1970 fixing maximum rates of admission to different classes in a cinema theatre was challenged on the ground that the rule was beyond the power of the State Government under the A.P. Cinemas (Regulation) Act 1955 and that it placed unreasonable restriction on the fundamental rights of the petitioner therein violating Art. 19 of the Constitution. The division Bench (to which one of us K. Ramaswamy, J.was a member) rejected both the contentions and upheld the rule 12(3). While approving the ratio therein this Court laid down :-

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

Witnessing a motion picture has become an amusement to every person; a reliever to the weary and fatigue; a raveller to the pleasure seeker; an importer of education and enlightenment enlivening to news and current events; disseminator of scientific knowledge; perpetrator of cultural and spiritual heritage, to the teeming illiterate majority of population. Thus, cinemas have become tools to promote welfare of the people to secure and protect as effectively as it may a social order as per directives of the State Policy enjoined under Article 38 of the Constitution. Mass media, through motion picture has thus become the vehicle of coverage to disseminate cultural heritage, knowledge, etc. The passage of time made manifest this growing imperative and the consequential need to provide easy access to all sections of the society to seek admission into theatre as per his paying capacity. Though the right to fix rates of admission is a business incident, the appellant having created an interest in the general public therein, it has become necessary for the State to step in and regulate the activity of fixation of maximum rates of admission to different classes, as a welfare weal. Thereby fixation of rates of admission became a legitimate ancillary or incidental power in furtherance of the regulation under the Act. Access to and admission into theatre is a facility and concomitant right to a cine goer public. Classification of seats and fixation of rates of admission according to paying capacity of a cine goer is also an integral power of regulation. Power to fix rates of admission includes power to amend and revise the rates from time to time. The statute vests that power in the licensing

A authority subject to control by the State Government. The fixation of the rates of admission has thus become an integral and essential part of the power and regulation of exhibition of cinematograph.

In *Narendra Kumar* v. *Union of India*, [1960] 2 SCR 375 this Court held that prohibition of right to carry on business is possible by putting reasonable
B restrictions under Art. 19(6) of the Constitution. In *Minerva Talkies'* case (supra) this court held that reduction in income of the business by operation of the regulation is not a ground to declare the law to be unreasonable.

Thus right or power of the owner of a theatre from the inception of its construction till exhibition of cinematograph is controlled by the regulations
C under the Act, the rules and conditions of the licences issued in this behalf. There is no compulsion to construct a cinema theatre, but by undertaking to construct a theatre to exhibit cinematograph films therein, the owner created a right in the cine going public, to have an easy access to the theatre. Thereby the private property of the owner is effected with public interest. It, thereby, ceases to be *juris privati* and is clothed with public interest. When used in a manner
D detrimental to public interest or welfare it would affect the community at large. By using the owner's property as theatre he/it submits himself or itself to the regulations for common good. The public acquire, thereby, direct and positive interest in exhibition of cinematograph films. Undoubtedly, in a private contract hedged with no public interest, the state has no power to regulate its trade but is subject to general law. The right to fix the rates of admission is not
E an unbridled power or right but by implication is subject to the regulation under the Act, rules and conditions of the licence. The owner/licence, has no unrestricted power or freedom to fix rates of admission at his whim. Therefore, fixation of rates of admission, though has, its inception in the womb of private contract, but clothed with a public interest to be regulated under the Act, rules
F and conditions of the licence. The division Bench in *Prasada Rao's* Case, therefore, held:-

> " It is clothed with a public interest as cine going public acquired direct and positive interest to have easy access of admission into the theaters. Thereby the business ceased to '*juris privati*' and the
G business tends to a common charge and became a thing of public interest and use. The business became a sort of public office nearing monopolisation. The legislature seeks to avoid this tendency in the interest of the public welfare. It becomes absolutely necessary to over-ride the private rights of persons and property so as to effectuate the public order for the general welfare of the
H citizens."

Thus classification of seats and fixation of rules of admission have direct and inevitable effect on the public welfare. For its effectuation the division bench in *Prasada Rao's* case further held that fixation of the rates of admission has become an absolute necessity to avoid (a) arbitrary exercise of the power of the licensee to fix his own rates of admission; (b) to avoid unhealthy business competition to drive out co-competitors from the field, by more powerful monied persons, and thereby tend to avoid near monopoly; (c) to avoid keeping the people at the whim and vagery of the licensee in fixing the rates of admission; (d) to provide a reasonable facility for the public; (e) prevents the licensees from charging varied rates of admission based on fluctuating fortuitous factors ensuring consequential curb on unjust enrichment; and (f) in the general public welfare. The fixation of rules of admission does not have the inevitable effect to drive out of the licensee from the trade or business. In other words, it assures the orderly exercise of right to trade on business or avocation or occupation. It does not impinge upon unreasonable restrictions on the fundamental right of the trade or business in exhibiting the cinematograph.

The Division Bench in the Judgment under appeal held that:

> "There can be little doubt that the whole purpose of this section is to make available to the public cinema tickets at reasonable rates and to prevent any inflated prices thereof and the black marketing therein. If the statute could be no solicitious that a violation of these conditions resulting obviously in the sale of tickets at inordinately higher prices to the public should be made a cognizable offence, can it possibly be said that the fixation of the price of cinema, tickets and their fair availability to the public in general is an object beyond the scope and ambit of the statute. It appears axiomatic to us that exhibition and licence of every business or calling would include within it the power to fix reasonable prices in accordance with the provisions thereof unless there are specific restrictive words to the contrary which are conspicuous by their absence in the present Act and the Rules framed thereunder."
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> ".....the original order of the licensing authority in 1971 was expressly made in the interest of the weaker sections of the society for whom a slightly lower classification of seats was sought to be made at the rate of 80 paises. Similarly, the subsequent order of the licensing authority in 1976 was again directed towards the availa-

A bility of cinema tickets at fair prices to cinema goers. It would thus be apparent that both the assailed orders were sought to be made in the interest of the public and in particular the relatively weaker section thereof."

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"..... We have taken the view that the fixation of the prices of cinema tickets is integral to and a necessary adjunct of the larger power to 'regulate' and 'licence' the cinematograph trade. At best, such a power is a reasonable restriction in the interest of the general public to carry on such a business. That being so, we are C unable to appreciate the contention that merely because the Act and the Rules thereunder cloths the licensing authority with power to fix prices which had been exercised by imposing condition No. 4, then the same would become necessarily unconstitutional."

D In the above view we hold that s. 5, read with Rule 4 and condition 4A of the licence is a regulatory measure to fix the rates of admission and classification of the seating in the interest of the general public. It is within the power of the licensing authority. They do not impinge upon the fundamental right to trade, avocation or business of the licensee under the Act. It is a reasonable restriction imposed in the public interest. Accordingly, we do not find any ground, warranting interference. The appeal is dismissed, but with no E orders as to costs.

G.N. Appeal dismissed.