

and for "the terms and conditions subject to which property may be transferred to a displaced person under section 10, respectively". In my opinion, sub-section (2) of section 40 and the other clauses of sub-section (2), referred to above, do confer a power on the rule-making authority to frame a rule like rule 34 of 1955 Rules. The said rule appears to have been framed for the benefit of the displaced persons so as to increase the amount of compensation. The various provisions in Act No. 2, particularly, sections 4, 5, 8 and 40, lay down sufficient guiding principles for regulating the exercise of rule-making power. A further safeguard has been provided in sub-section (3) of section 40 requiring every rule to be laid before each House of Parliament. In these circumstances, it must be held that the rule is neither contrary to the parliamentary intention nor *ultra vires* the Act, nor void on ground of unauthorised delegation.

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Regarding the challenge to the finding of the Rent Control Tribunal about the *bona fide* personal requirement by the landlord, in my opinion, it is a pure finding of fact arrived at after proper consideration of the material on the record. I find no cause to interfere with the said finding in exercise of my power under section 39 of Act No. 1.

It is then said on behalf of the appellant that out of the three portions of the house in occupation of different tenants, the landlord had already obtained possession of one portion with another tenant and taking that into consideration the finding of the Tribunal regarding *bona fide* need should be reversed. It is not disputed that that portion consists of a room 7' × 5.3'. That would hardly change the position.

In the result the appeal must fail and is dismissed, but there will be no order as to costs. Tenant will have two months' time to vacate.

K. S. K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

M/S RASDEEP TOURING TALKIES,—Petitioners

versus

THE DISTRICT MAGISTRATE, KARNAL AND ANOTHER,—

Respondents

Civil Writ No. 2595 of 1965

Punjab Cinemas (Regulation) Act (XI of 1952)—S. 9—Punjab
Cinemas (Regulation) Rules (1952) framed thereunder—Rule 3
(iv)—Whether *ultra vires* Article 19(1)(g) of the Constitution.

1965

November, 15th.

Held, that Rule 3(iv) of the Punjab Cinemas (Regulation) Rules, 1952, is unconstitutional and void. It offends against Article 19(1)(g) of the Constitution of India and is not saved by clause (6) of that Article. The restriction placed by this sub-rule is extremely harsh and absolutely unreasonable and tends to thwart rather than advance the purposes of the Act which are to regulate entertainment, amusement and recreation by exhibition of cinematograph films, consistent with public health and safety and public tranquility.

Petition under Articles 226 and 227 of the Constitution of India, praying that an appropriate writ, order or direction be issued striking down rule (3)(iv) of the Punjab Cinemas (Regulation) Rules, 1952, made under the Punjab Cinemas (Regulation) Act, 1952, as unconstitutional and being violative of the fundamental rights contained in Articles 14 and 19(1)(g) of the Constitution of India, and further quashing the order of respondent No. 1, dated the 16th July, 1965.

K. S. THAPAR AND R. M. VINAYAK, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, WITH P. R. JAIN AND G. C. MITTAL, ADVOCATES, for the Respondents.

ORDER

Narula, J.

NARULA, J.—Both these writ petitions (Civil Writ Nos. 2595 and 2634 of 1965) raise one common question of law as to the constitutionality and validity of rule 3(iv) of the Punjab Cinemas (Regulation) Rules, 1952, hereinafter called the Punjab Rules, framed under section 9 of the Punjab Cinemas (Regulation) Act, 1952 (Punjab Act 11 of 1952), hereinafter referred to as the Punjab Act. Before dealing with the abovesaid important question of law, I would give a brief resume of the relevant facts of Civil Writ No. 2595 of 1965 only, which facts have led to the filing of this petition under Articles 226 and 227 of the Constitution.

Rasdeep Touring Talkies is a partnership firm carrying on business of a touring cinema in the Punjab. The petitioner's case is that it does not do any other business and has no other source of livelihood. It is admitted that the two petitioners in the two respective cases had been granted temporary licences under the Punjab Rules for various places for different periods during 1964-65.

Solar eclipse fair is held at Kurukshetra in Karnal District after about four years and sometimes after longer periods. The last such fair was held in 1961. The number of pilgrims and other persons who visit Kurukshetra on the occasion of such a fair runs into lakhs. The State

authorities make all kinds of arrangements for the pilgrims and other visitors to the fair, including that for their recreation and entertainment. Counsel for the petitioners states that a regular recreation block is created and reserved for such purposes. At the fair which took place in 1961 at least six touring cinemas were given temporary licences and the case of the petitioner is that it was one of them. According to the petitioner, all the six temporary cinemas were put up side by side in one block. The seating capacity of each such cinema, according to the petitioner, was about 2,000. It is, however, significant to note that it is the admitted case of both sides that there was no permanent cinema in Kurukshetra at that time.

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The next solar eclipse fair is due to be celebrated at Kurukshetra on November 23, 1965. By now, however, a permanent cinema known as "Rudra Talkies" is housed in that town. On July 10, 1965, the petitioner applied to the District Magistrate, Karnal, for a temporary licence for exhibition of cinema films at Kurukshetra for the period November 10 to December 9, 1965 (one month). By memorandum, dated July 17, 1965, copy Annexure 'A' to the writ petition, the petitioner was informed of the rejection of its application for the temporary licence in the following words:—

"Reference your application, dated 10th July, 1965, on the above subject.

2. Under rule 3(iv) of the Punjab Cinemas (Regulation) Rules, 1965, licence to touring talkies can only be granted for a place where there is no permanent cinema.

As there is already a permanent cinema at Kurukshetra, the permission applied for, it is regretted, cannot be granted."

On October 11, 1965, this writ petition was filed to set aside the abovesaid order of the District Magistrate, Karnal, dated July 17, 1965, on the ground that rule 3(iv) of the Punjab Rules, on which the rejection of the petitioner's application is based, is *ultra vires* Article 19(1)(g) and Article 14 of the Constitution. The petitioner impleaded only the District Magistrate, Karnal, and the State of Punjab as respondents to the case. Messrs Rudra Talkies, the proprietors of the newly built permanent cinema in the town in

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question, submitted Civil Miscellaneous Application No. 4043 of 1965 under Order 1 rule 10 of the Code of Civil Procedure for being impleaded as a respondent on the ground that they are a necessary and a proper party to this case, as any orders adverse to their interest are likely to affect them seriously. P.C. Pandit J., before whom the said application came up at motion stage, on October 25, 1965, observed that the application of Rudra Talkies would be decided by the Bench hearing the main case. Messrs Rudra Talkies may or may not be a necessary party to this petition, but in any case they are a proper party. I, therefore, asked Mr. G. C. Mittal, their counsel, if he wanted to file any separate written statement in reply to the writ petition. He said that he did not want to do so. He did, however, address arguments to support the Senior Deputy Advocate-General Mr. L. D. Kaushal.

Before coming to the main question which calls for decision in this case, I may notice a few admitted facts which are relevant. These are—

- (1) That since 1961 a permanent cinema belonging to the partnership firm of the added respondent has been constructed and licensed in Kurukshetra ;
- (2) that the seating capacity of the said permanent cinema is 476 ;
- (3) that the permanent cinema pays Rs. 300 per annum as licence fee and 17 Paise per unit for electric consumption, but each touring cinema has to pay Rs. 520 as licence fee and 37 Paise per unit for electric consumption;
- (4) that the only ground on which licence under rule 3(i) of the Punjab Rules has been refused to the petitioners is the one covered by rule 3(iv) of the said Rules; and
- (5) that as per affidavit, dated November 10, 1965, filed by the petitioner (copy of which was given to the respondents, but they did not want to file any reply thereto), the petitioner and the proprietors of some other touring cinemas approached the Punjab Government (Deputy Secretary, Home Department) in the first week of October,

1965 to represent their case for the grant of temporary cinema licences on the refusal of the licences to them by the District Magistrate, Karnal, but the Deputy Secretary expressed his inability to accede to their request.

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The field seems to be now clear to deal with the question of the *vires* of rule 3(iv) of the Punjab Rules, which is the solitary question canvassed before me at the hearing of these petitions. The contention of Shri K. S. Thapar, learned counsel for the petitioners, may be summed up in the following words :—

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Rule 3(iv) of the Punjab Rules imposes a restriction on the fundamental right of the petitioners to carry on their lawful business or vocation guaranteed to them under Article 19(1)(g) of the Constitution, and the impugned restriction is not saved by Article 19(6) as the restriction is neither reasonable nor in the interests of the general public. The restriction is also hit by Article 14 of the Constitution.

In order to appreciate the submissions of the learned counsel appearing on both sides in this case, the history, scheme and purposes of the legislation relating to exhibition of cinematograph have first to be seen. So far as general public is concerned, the purposes and advantages of exhibition of cinematograph films can be said to be recreation, education, information, advertisement, propaganda and publicity. So far as the persons engaged in exhibiting films are concerned, their main aim, excepting the case of governmental publicity departments, is to make money out of the cinema shows as from any other business or vocation. Prior to 1918 provisions affecting exhibition of cinematograph films were found in various enactments and had not been consolidated into any one Act. By 1918 cinema shows had gained in popularity and the Legislature, therefore, passed the first comprehensive Act relating to this subject in that year (the Cinematograph Act, 1918, Act No. 2 of 1918). This Act was modified by various amending Acts, including Act 33 of 1919, Act 38 of 1920, Act 39 of 1949, Act 69 of 1949, and Act 3 of 1951. The 1918 Act, so amended, was ultimately replaced by the Cinematograph Act, 1952, Act No. 37 of 1952, hereinafter called the Central

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Act. The Central Act has been partially amended by Acts of 1953, 1957, 1959 and 1960. Part I of the Central Act deals with preliminary matters. Part II of the Central Act covers the subject of 'Certification of Films for Public Exhibition', Part IV of the Act consists of only section 18, by which the 1918 Act was repealed with certain reservations. All these Parts, i.e., Parts I, II and IV of the Central Act, extended to the whole of India (except the State of Jammu and Kashmir), but Part III of the Act extends to the Union territories only and does not apply to the other States. This Part (Part III) deals with "Regulation of exhibitions by means of cinematographs." It has not been made applicable to the States, because the subject covered by it is within the exclusive legislative field of the States. In the Seventh Schedule of the Constitution "Sanctioning of cinematograph films for exhibition" has been included in Entry 60 of List I—Union List, and "Cinemas subject to the provisions of Entry 60 of List I" is included in Entry 33 of List II—State List. "Theatres and dramatic performances" are also included in Entry 33 of List II in the Seventh Schedule of the Constitution. The various State Legislatures, therefore, passed separate Acts conforming to Part III of the Central Act. The Legislature of this State passed the Punjab Act, which was brought into force by a deeming provision with effect from July 28, 1952, i.e., the date with effect from which the Central Act came into force. The provisions of sections 10 to 17 contained in Part III of the Central Act have been lifted verbatim, subject to necessary modifications, in sections 3 to 10 of the Punjab Act. According to the Statement of Objects and Reasons contained in Bill No. 35 of 1951 (which Bill was passed as the Central Act in 1952), difficulties had arisen in the administration of the 1918 Act as amended for want of clear demarcation of the respective provisions of the Act with which the Central and State Governments were concerned. The purpose of the 1952 Act was to resolve the confusion by re-enacting the provisions of the 1918 Act, as subsequently amended, separating the provisions relating to the sanctioning of films for exhibition (a Union subject) from the provisions relating to licensing and regulation of cinemas, which is a State subject.

The preamble of the Punjab Act shows that it was enacted to make provision for regulating exhibitions by means of cinematographs in the State. Section 3 of the

Act prohibits the exhibition by means of a cinematograph elsewhere than in a place licensed under the Act or otherwise than in compliance with any condition or restriction imposed by such licence. The normal authority to grant licences under the Act is conferred by section 4 on the District Magistrate. Section 5 of the Punjab Act reads as follows:—

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"5(1) The licensing authority shall not grant a licence under this Act unless it is satisfied that—

- (a) the rules made under this Act have been complied with, and
 - (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.
- (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.
- (3) Any person aggrieved by the decision of the licensing authority refusing to grant a licence under this Act may, within such time as may be prescribed, appeal to the Government or to such officer as the Government may specify in this behalf and the Government or the officer, as the case may be, may make such order in the case as it or he thinks fit.
- (4) The Government may, from time to time, issue directions to the licensees generally or to any licensee in particular for the purpose of regulating the exhibition of any film or class of films, so that scientific films, films intended for educational purposes, films dealing with news and current events, documentary films or indigenous films secure an adequate opportunity of being exhibited, and where any such directions have been issued, those directions shall be deemed to be additional conditions subject to which the licence has been granted."

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Section 7 provides for penalties for violation of any provisions of the Act or of the rules. Under section 8 a licence can be suspended, cancelled or revoked. Section 9 gives the State Government authority to frame rules under the Act *inter alia* for prescribing the terms, conditions and restrictions, if any, subject to which licences may be granted under the Punjab Act. Rules can also be framed providing for the regulation of cinematograph exhibitions for securing the public safety. Section 10 of the Punjab Act reads as follows:—

“10. The Government may, by order in writing, exempt, subject to such conditions as it may impose, any cinematograph exhibition or class of cinematograph exhibitions as also the premises or site used or intended to be used for cinematograph exhibition from any of the provisions of this Act or of any rules made thereunder.”

Section 11 provides for the repeal of the 1918 Act to a certain extent and subject to certain exceptions.

In exercise of powers conferred by section 9 of the Punjab Act, the Punjab Rules were framed by the State Government in 1952. The rules are divided into various parts. Part I deals with preliminary matters, such as the name of the rules, the date of their enforcement (November 1, 1952), and the interpretation clauses. Part II deals with procedure for granting licences. Rule 3 occurs in this part. Sub-rule (i) of this rule provides for two classes of licences, i.e., one for a period of three years and the other temporary. A licence for a period of three years has to be granted in accordance with the provisions contained in Part III of the Punjab Rules in respect of a building permanently equipped for cinematograph exhibitions. This is provided by sub-rule (ii) of rule 3. Sub-rule (iii) of that rule provides for grant of temporary licence and was in the following words when framed in 1952:—

“Subject to the provisions of the rules in Part IV, a temporary licence may be granted in respect of any place, for exhibition, by means of a touring cinematograph only. A temporary licence may be given in the first instance for a

period of two months. This period may, however, be extended up to a maximum period of six months, and a licence may be granted to one or more than one applicant, but so that the aggregate period during which any touring cinematograph or cinematographs function at any one place shall not exceed six months in a calendar year. A fee of Rs. 10 may also be levied for the second or a subsequent licence.

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Explanation.—For the purpose of this sub-rule the expression 'place' means the area comprised within the territorial limits of any local authority not being a District Board or of a village, and includes the area within five miles of such limits.

Sub-rule (iv), as framed in 1952, was as follows:—

"Licences to touring cinematograph should only be granted for the places where there are no permanent cinemas.

In case where it is proposed to instal a touring cinematograph in a building, the provisions of rules in Part III of the Punjab Cinemas (Regulation) Rules, 1952, should be strictly complied with by the licensees."

By Punjab Government notification, dated August 8, 1955, the following was substituted as sub-rule (iv) of rule 3:—

"A licence to a touring cinematograph shall only be granted for a place where there is no permanent cinema.

Explanation.—For the purpose of this sub-rule the expression 'place' shall mean the area within two miles of the territorial limits of the village or town in which a permanent cinema is situated.

* * * * *

By Punjab Government notification, dated July 16, 1958, the copy of sub-rule (iii) of rule 3 was amended so as

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“Subject to the provisions of sub-rule (iv) and the rules in Part IV, a temporary licence may be granted in any town or village for exhibition by means of touring cinematograph for an aggregate period not exceeding six months in one calendar year:

Provided that for a town or village in any of the districts of Amritsar, Ferozepur and Gurdaspur or for a town or village with a population of more than ten thousand according to the latest official census in any other district the aggregate period may be extended by another six months in the same calendar year. Provided further that in calculating the aggregate period in respect of any town or village the period for which a licence to the same or other touring cinematograph has been granted within five miles of the outer limits of such town or village shall be taken into account.”

Rule 4 provides for the form of licences, while rule 5 speaks of the contents of an application for the grant of a licence. Rules 9 to 13 deal with inspections and rules 14 to 16 deal with alterations and repairs to buildings and payment of fees, etc. Then follows Part III of the rules which deals with matters relating to buildings licensed for a period of three years for cinematograph exhibitions. In this case we are not concerned with that part of the Punjab Rules. It is Part IV of the Punjab Rules (containing rules 72 to 84-A) which has been framed for ‘Exhibition by means of touring cinematographs in places licensed temporarily for that purpose.’ These rules provide for the cinematographs apparatus having been certified, for the same being produced for inspection, for the same being used in a fire-proof enclosure, for the same being operated by a qualified operator and for no inflammable article being taken into, or allowed to remain in the enclosure containing apparatus, etc. These rules also enjoin on a temporary licensee the duty to provide for fire appliances, to keep the films in securely closed fire-resisting receptacles, to provide adequate means of exit and to provide free access to exits even between the seats. Rule 84-A, the last rule in Part

IV, was added by an amendment of the Punjab Rules in 1957 and prohibits the licensing of a touring cinematograph within a radius of a furlong from a place of worship, a cremation ground, a graveyard, a cemetery, certain educational institutions, certain public hospitals, orphanages or thickly populated residential areas. It also provides that the touring cinematograph shall not in any way offend against the traffic laws. We are not concerned with the rest of the rules for the purpose of deciding this case.

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Stage is now set to consider the various submissions made by the learned counsel for the parties in this case. Mr. K. S. Thapar, the learned counsel for the petitioners, has argued that the restriction imposed by the impugned rule is unreasonable, because it tends to create a monopoly in favour of the persons, who are running the permanent cinema. This, he says, should be avoided so as to remain in line with the directive principles of State policy contained in Article 39(c) of the Constitution which reads as follows:—

“39. The State shall, in particular, direct its policy towards securing—

- (a) * * * * *
- (b) * * * * *
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.”

He has relied on the following observations of a Division Bench of this Court (I. D. Dua and D. K. Mahajan, JJ.) in *Messrs. Partap Rosin and Turpentine Factory v. The State of Punjab and another* (1), to support his invoking of Article 39 of the Constitution in aid:—

“On the merits, to begin with, it has been contended on behalf of the petitioners that according to Article 39 of the Constitution it is the duty of the State to direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common object and that the operation of the economic

(1) I.L.R. (1965)2 Punj. 32=1965.P.L.R. 921.

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system does not result in the concentration of wealth and means of production to the common detriment. It has been pointed out that the manner in which the State in the case in hand has deprived the petitioners and others engaged in doing resin business and in giving virtually the monopoly to the Co-operative Society is violative of the directive principles enshrined in this Article. We are not impressed by this contention, for the simple reason that directive principles of State policy in Part IV of the Constitution are not enforceable by any Court and, therefore, on this ground alone, the action of the State cannot be struck down as unconstitutional. Reference to *G. M. Reddy v. State of Andhra Pradesh* (2) is unavailing to the petitioners, because all that was held there is that a rate-payer as such is interested in the conservation and proper application of municipal funds and, therefore, may have a *locus standi* to restrain a public body from acting in violation of statutory rules and misusing its powers, thereby causing detriment to public revenue. I must, however, make it clear that I do not mean to convey the idea that the directive principles have been included in our Constitution as mere idle words intended to serve purely as decorative phrases: On the other hand, they are, in my opinion, an important and integral part of our Constitution designed to conform to and run as subsidiary to the fundamental rights enshrined in the Constitution. The Courts are not expected to ignore these principles of State policy when interpreting statutory provisions, because Legislature must be presumed to bear in mind and be governed by these principles while enacting laws and not to violate or lose sight of them."

All that the petitioners claim is that while deciding whether a particular restriction imposed by a statute is reasonable or not, the Court must lean against its reasonableness if the impugned provision contravenes the directive principles of the State contained in Part IV of the Constitution, although the Court cannot be called upon to enforce

those provisions. In *Mannalal Jain v. State of Assam and others* (3), it was held that where the State authority had granted licences under clause 5 of the Assam Foodgrains (Licensing and Control) Order, 1961, only to Co-operative Societies and a licence had been denied to Mannalal Jain on the ground that a monopoly must be created in favour of Co-operative Societies, there was a discrimination as against Mannalal Jain, which was not justified by the provisions of clause 5 of the said Order. Their Lordships of the Supreme Court observed that sub-clause (e) of clause 5 *supra* enabled the licensing authority to give preference to a Co-operative Society in certain circumstances, but it did not create a monopoly in favour of a Co-operative Society. The *vires* of the clause were, therefore, upheld, but the passing of the order itself on the footing of creating a monopoly in favour of Co-operative Societies (a purpose not contemplated by the clause) was held to amount to discrimination and to denial of the guarantee of equal protection of laws and was, therefore, struck down as violating the rights of Mannalal Jain guaranteed under Articles 14 and 19(1)(g) of the Constitution. In the instant case there is no provision in the Punjab Rules about preference being given to one class of persons or the other in the matter of grant of temporary or other licences. There is, therefore, no question of discrimination. Even otherwise, discrimination in favour of Co-operative Societies was upheld by the Supreme Court in *Mannalal Jain's case*. What was really struck down in that case was the particular order as it was outside the scope of the statutory provision contained in clause 5(c) of the Assam Order.

The only other judgment on which the learned counsel for the petitioners has relied in support of the alleged unreasonableness of the impugned provision is the judgment of Grover, J. in *Haji Ismail v. The Municipal Committee, Malerkotla* (4), wherein it was held that the bye-laws framed by the municipal committee of Malerkotla were *ultra vires* the provisions of the Municipal Act to the extent that they limited the premises where fruit and vegetables could be sold, wholesale or by auction, to the Subzi Mandi or to any other place specially demarcated by the municipal committee. The learned Judge had held in that case in this connection as follows:—

“It is next contended that the impugned bye-laws have the effect of creating a monopoly in favour of the

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(3) A.I.R. 1962 S. C. 386.

(4) 1962 P.L.R. 322.

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four lessees to whom the plots in Subzi Mandi were auctioned. * * * * * By making bye-laws, which would have the effect of entrusting such business to only one or more persons to the exclusion of the general public, the result would essentially be to create a monopoly of a nature that could not be sustained under Article 19(6). The learned counsel for the committee maintains that there is no denial of a right to a person to enter into a trade or business if that right is offered to the highest bidder at a public auction, which is open to all persons, but then the condition precedent for the applicability of this principle is that such a regulation should be necessary having regard to the nature of trade or business. There is no analogy between the business, which is being carried on by the petitioner and the business like selling liquor or conducting public utility services in respect of which it has been recognized that creation of monopolies would not be unreasonable."

On the strength of the above judgment it is argued by Mr. Thapar that the impugned rule also seeks to create a monopoly of earning profits by exhibition of cinematograph in the hands of permanent cinema-owners wherever they exist and deprive the touring cinema-owners of their livelihood. It is then argued by the learned counsel that discrimination has been made in favour of the permanent cinema-owners. I have not been able to appreciate the argument based on discrimination in this case. Permanent cinema-owners and touring cinema-owners are two distinct classes, whose business has to be regulated, and has in fact been provided for being regulated by separate set of rules. A touring cinema-operator cannot claim equality in all respects with a person, who has sunk a fortune in making and providing a permanent cinema house conforming to all the complexities and rigidities of the prescribed rules in that behalf. I have, therefore, no hesitation in repelling the argument based on discrimination.

There is, however, much to be said on the question of unreasonableness of the stringent restriction imposed by sub-rule (iv) of rule 3 of the Punjab Rules on the power vested to grant temporary licences under sub-rule (i) of

that rule. It has been held by the Calcutta High Court in *Netram Agarwalla v. The State* (5), that the provisions of the Cinematograph Act (in that case the 1918 Act) are designed to regulate exhibition by means of cinematograph and the purpose is largely recreative or educational. Even, otherwise, it is clear from a reference to the provisions of the Central Act, the Punjab Act and the Punjab Rules that the object of statutory interference in the business of exhibition of cinematograph is at least two-fold. Firstly and mainly the object is to safeguard the interests of health and public safety. Historical notice can be taken of the fact that vast fires had broken out in many parts of the world due to loose handling of cinematograph films. State is also bound to make provision for keeping cinema houses away from religious and educational institutions and places of solemnity, like hospitals, graveyards and cemeteries. In the nature of things provision has also to be made to ensure the smooth running and flow of traffic in towns and cities where cinema houses have to be licensed either on regular or on temporary basis. The only other object of this class of legislation appears to be that which is covered by the provisions of certification of films and centralisation of censorship, i.e., to safeguard against undesirable, obscene or provocative pictures being shown to the public which may prove injurious to the health or morality of the nation or may tend to subvert peace and tranquility. Any rules framed by the appropriate authorities for attaining the above-mentioned and other auxiliary objects of this class of legislation would be reasonable, even if they impose restrictions on the normal fundamental right guaranteed under Article 19(1)(g) of the Constitution to carry on any occupation, trade or business. But it appears that there is no rational connection between the objects of the Central Act and the Punjab Act or even the Punjab Rules and looking to the possible economic loss to a person, who has set up a permanent cinema. Still there seems to be no other basis for providing a rule of the type which is impugned in these cases. I am not doubting the scope of the legislative competence under Entry 33 of the Second List contained in the Seventh Schedule of the Constitution. The relevant part of the Entry consists of one word 'cinemas'. The remaining part of the Entry deals with 'entertainments and amusements.' The regulation

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of cinemas, which may in suitable cases and in suitable matters include absolute prohibition, must have some relationship with providing of entertainments and amusements and the objects of the legislative enactments. To test the reasonableness of the impugned restriction we may envisage the circumstances of the instant case. Lakhs of people are expected to be in Kurukshetra for a short time on a temporary visit. Admitted previous history shows that at least half a dozen cinema houses, each one of them having several times more seating capacity than the present permanent cinema, had to be licensed to provide entertainment and amusement to the visitors. No complaint of any kind against the said arrangement has been shown to have been brought to the notice of the authorities. It is impossible to imagine that one cinema, howsoever nice it may be, having a seating capacity of about 470 persons, could meet the requirements of the very large number of people, who might like to have the recreation of looking to a cinematograph exhibition. Of course it is no duty of the Government to provide such amusement to the visitors. But if a private citizen carrying on such business wants to provide the same, the State can only insist on his fulfilling the conditions contained in Part III of the Punjab Rules relating to touring cinemas and cannot frame a rule which takes away from the licensing authority the power to issue a licence, even if all the conditions of the rules are fulfilled, merely because a permanent cinema has been set up in the town. This restriction appears to me to be extremely harsh and absolutely unreasonable in the circumstances of this case. It tends to thwart rather than advance the purposes of the Act which, as I have said above, are to regulate entertainment, amusement and recreation by exhibition of cinematograph films, consistent with public health and safety and public tranquility.

The only other ground on which the learned counsel has impugned the rule in question is that even the second condition precedent for bringing it within the exception contained in Article 19(6) of the Constitution is not fulfilled inasmuch as it is argued that the restriction in question is not in the interest of the general public. There is no doubt that even one person can be treated as 'general public' within the meaning of Article 19(6) of the Constitution in suitable cases. In spite of the contents of the application of Rudra Talkies, I am not convinced that

the interest of the proprietors of the permanent cinema would materially suffer by temporary licences being issued to touring cinemas for the days of the fair. It is open to the authorities to insist that the touring cinemas would be housed at a reasonable distance from the permanent cinema. Normally no one would go to the touring cinema if a seat is available for him in the permanent cinema house. But even if it may be assumed that the income of the permanent cinema would conceivably be lesser in case any temporary cinema is allowed to be set up during the eclipse fair than it would be otherwise, it is no part of the State duty to provide for such an economic monopoly in any trade being created. On the other hand, such a provision would appear to be directly against the directive principles of State policy contained in Article 39 of the Constitution. Such monopoly has no doubt been held to be in the interest of general public so far as enterprises in the public sector such as State Roadways, etc., are concerned. But to allow monopoly to a private citizen against a large number of other citizens has not been shown to have been encouraged by any constitutional provision. The rule would have been valid if it had merely provided that in granting or refusing a licence under rule 3(i) the District Magistrate shall have regard to the need for provisions for a touring cinema at any particular place during any particular period in view of the number of the permanent cinematograph exhibition facilities available at that place. I would also have sustained the impugned rule if a proviso to the following effect had been added to rule 3(iv):

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“Provided that this restriction shall not apply to the case of a temporary need for a period of not more than 4 weeks at any particular place due to influx of a large number of temporary visitors to that place.”

Mr. L. D. Kaushal, the learned Senior Deputy Advocate-General, has argued that the Court must raise a presumption of constitutionality and has further urged that the prohibition contained in rule 3(iv) of the Punjab Rules is not absolute, but is subject to the power conferred on the State Government under section 10 of the Punjab Act to exempt any particular cinematograph exhibition or place from the operation of the said rule.

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In this case the petitioners have been to the Punjab Government also as stated in an earlier part of this judgment and no relaxation under section 10 of the Punjab Act has been allowed. Sub-rules (i) and (iv) of rule 3 of the Punjab Rules have not been made subject to the provisions of section 10 of the Act and it does not *prima facie* appear that section 10 constitutes an exception to the absolute prohibition contained in rule 3(iv) of the Punjab Rules. There is no doubt that a presumption of constitutionality must attach to every statutory provision, but it is clear in this case that rule 3(iv) of the Punjab Rules offends against Article 19(1)(g) of the Constitution and is not saved by Clause (6) of that Article. Mr. Kaushal has referred to the judgment of the Supreme Court in *P. V. Sivarajan v. The Union of India and another* (6), wherein it was held that classification of traders was clearly rational and was founded on an intelligible *differentia* distinguishing persons falling under one class from those falling under the other. I have already held above that there is no force in the contention of the learned counsel for the petitioners relating to alleged discrimination and I do not think the judgment of the Supreme Court in that case can be of any assistance to uphold the validity of the impugned rule on the other grounds urged by Mr. K. S. Thapar in these cases.

I, therefore, allow this writ petition with costs and set aside the impugned order of the District Magistrate, Karnal, refusing to grant the temporary licence in question to the petitioners, on the solitary ground that a permanent cinema exists in Kurukshetra and hold that rule 3(iv) of the Punjab Cinemas (Regulation) Rules, 1952, is unconstitutional and void and that the petitioners are entitled to have their applications for grant of temporary licence under rule 3(i) of the said rules disposed of in complete disregard of sub-rule (iv) of rule 3, but in accordance with all other provisions of the Punjab Act and the Punjab Rules. The District Magistrate, Karnal, would now dispose of the applications of the petitioners for the grant of temporary licence for the Kurukshetra eclipse fair in accordance with law, keeping in view the above observations.

K.S.K.