UNION OF INDIA AND ORS. A

v.

MOTION PICTURE ASSOCIATION AND ORS. ETC. ETC.

JULY 15, 1999

[SUJATA V. MANOHAR, K. VENKATASWAMY B
AND R.C. LAHOTI, JJ.]

Constitution of India—Arts 19(1)(a), 19(2),—Freedom of speech and expression—Scope—Requirement to show short film, educational, scientific, documentary film or a film carrying news or current events, along with other C *films—Whether showing of compulsory films is violative of rights of exhibitors under Art 19(1)(a) of the Constitution—Held, No—Cinematograph Act, 1952; West Bengal Cinemas (Regulation) Act. 1964, notification No. 7277-F dated 20-9-1957 issued thereunder; U.P. Cinemas (Regulation) Act, 1955; Delhi Cinematograph Rules, 1981.*

D

Constitution of India—Art 19(1)(g), 19(6)—Freedom to carry profession—Exhibiting cinematograph films in cinema theatres—Lincensing of cinema halls—Requirement to exhibit short Films, educational, scientific, documentary film, or news film carrying current events, along with other films—Whether violative of rights of exhibitions under Art 19(1)(g) of the E *Constitution—Held No.*

Cinematograph Act, 1952—West Bengal Cinemas (Regulation) Act, 1954—U.P. Cinemas (Regulation) Act, 1955—Delhi Cinematograph Rules, 1981—Constitutional validity to—Exhibition of cinematograph films—Licensing—Requirement to exhibit a scientific, educational or documentary F *film or news film—Whether violates fundamental right to free speech and expression and right to profession of the exhibitors—Held, No—Constitutional validity of the provisions upheld.*

The respondents, Associations of organisations engaged in the business G **of distribution and exhibition of motion pictures in the area of Delhi, U.P. and in West Bengal challenged the validity of certain provisions of the West Bengal Cinemas (Regulation) Act, 1964 and a notification No. 7277-F dated 20-9-1957 issued thereunder; the Cinematograph Act, 1952; the U.P. Cinemas (Regulation) Act, 1955 and the Delhi Cinematograph Rules, 1981. According to the impugned provisions of these legislation, in each cinema theatre the** H

A exhibitor of films is required to show a short film which may be educational or scientific, a documentary film, or a film carrying news or current events, along with the other films. The duration of such films is limited and only a small proportion of this total viewing time is devoted to the showing of such films. Each exhibitor is required to enter into an agreement with the Films Division for the supply of such films for exhibition and the exhibitor is B required to pay to the films Division a rental amounting to 1% of his net weekly collection for the supply of the films. The respondents challenged these provisions as violative of their rights under Art 19(1)(a) and 19(1)(g) of the Constitution. The exhibitors alleged that the condition in the licence requiring them to show these films even for a short duration is now C economically onerous and violates their right to carry on their chosen business under Art. 19(1)(g); that the charge of one percent on the net recoveries is a compulsory exaction in the form of a tax; and that a 'must carry' provision in a statute, rule or regulation, is equally an infringement of the right of free speech, except to the extent permitted under Art 19(2) of the Constitution. The High Court upholding the statutory provisions, held D that the condition in the agreement for charging a rental for the supply is unconstitutional, directing the Films Division to supply such films to each exhibitor at his place of exhibition and that no charges should be levied for the supply of these films. Condition 15 of the licence issued under the Cinematograph Act was struck down as redundant. The High Court declined E to consider the validity of the provisions under Art 19(1)(a), there being no averments to that effect.

These appeals had been filed by the Union of India and the writ petition was filed by the exhibitors against the findings recorded by the High Court. The questions raised for consideration were whether the purpose of F compulsory show in the impugned provisions is to promote the fundamental freedom of speech and expression and dissemination of ideas, or whether it is to restrain this freedom; and whether the expense incurred in showing these films is high or unreasonable.

G Allowing the appeals while dismissing the writ petition, this Court

HELD : 1.1. The social context of any such legislation cannot be ignored. When a substantially significant population body is illiterate or does not have easy access to ideas or information, it is important that all available means of communication, particularly audiovisual communication, H are utilised not just for entertainment but also for education, information,

propagation of scientific ideas and the like. The best way by which ideas can reach this large body of uneducated people is through the entertainment channel which is watched by all illiterate and literate alike. To earmark a small portion of time of this entertainment medium for purpose of showing scientific, educational or documentary films, or for showing news films has to be looked at in this context of promotion of dissemination of ideas, information and knowledge to the masses so that there may be an informed debate and decision making on public issues. Clearly, the impugned provisions are designed to further free speech and expression and not to curtail it. None of these provisions require the exhibitor to show propaganda film or a film conveying views which he objects to. In the present case, the contents of the compulsory films are specified in legislation concerned.[888-G-H; 889-A-C]

1.2. Undoubtedly the exhibitors, in order to fulfil the conditions of the licence, are required to enter into an agreement with the Films Division, Government of India. This is not because of any statutory compulsion but because of the fact that the Films Division is the only organisation which produces such short films in sufficient quantities for regular distribution to the cinema exhibitors. The requirement for approval of such films is to ensure that the film, in fact, comply with the requirements specified in the statute. These provisions, therefore, do not violate Article 19(1)(a) of the Constitution. They are not in restrain of free speech and expression. Therefore, Article 19(2) is not attracted. [889-E-F-H; 890-A]

Express Newspapers Pvt. Ltd. & Ors. v. *Union of India,* [1986] 1 SCC 133; *S. Rangarajan* v. *P. Jagjivan Ram & Ors.,* [1989] 2 SCC 574; *Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors.* v. *Union of India & Ors.,* [1985] 1 SCC 641; *K.A. Abbas* v. *Union of India & Anr.*, [1970] 2 SCC 780; *Life Insurance Corporation of India* v. *Prof. Manubhai D. Shah,* [1992] 3 SCC 637 and *Secretary, Ministry of Infromation & Broadcasting, Govt. of India & Ors.* v. *Cricket Association of Bengal & Anr.*, [1995] 2 SCC 161, relied on.

1.3. In the present case, the restrictions sought to be imposed are specific and tailored to fit the public purpose behind the restrictions. The length of the film to be shown, the duration for which it is to be shown and the nature of the films which are to be shown, are specified and are designed to further the public purpose of disseminating information and knowledge so that the general public can be educated on a number of issues of national or general importance to enable them to function effectively in the democratic

framework of this country with adult franchise. These restrictions, therefore, have to be upheld as reasonable. [891-D-E]

1.4. The reasonableness or otherwise of restrictions on their right to carry on business will have to be examined in the context of the purpose sought to be served by imposing such restrictions. The rights of the exhibitors under Art. 19(1)(g) are subject to reasonable restrictions under Article 19(6). There is a public purpose in requiring the exhibitors to show such films. Requiring an entertainment medium like cinema theatre to show for a short duration of its programme, films which educate and impart information cannot be considered as an unreasonable restriction on the right to carry on business. When there is adult franchise without literacy, it becomes all the more important that information and ideas reach the adult population. [892-E-G]

1.5. Looking to the purpose for which films are shown, the expense incurred also cannot be considered as unreasonable. The Films Division incurs an expenditure of more than Rs. 12 crores per year only for taking out adequate prints, while their recovery in form of rental is only Rs. 7 to 8 crores per year. Therefore, the Films Division is charging a very small amount considering the expenditure outlay in producing and distributing these films. In these facts and circumstances, the rental of one per cent cannot be considered as excessive. [893-H; 894-A-B]

1.6. The Film Division has a distribution network spread throughout the country to serve 13000 cinema theatres. It has ten distribution branches throughout the country. The Film Division packs the films, seals them and sends them by train to the cities, towns, and villages wherever the cinema theatres are located. Therefore, there is no special inconvenience caused to the exhibitors for securing these films. The arrangements for supply and distribution which have been in existence unchallenged for the last 30 years until the present proceedings were instituted cannot be considered as unsatisfactory or unreasonable. [894-C-D]

1.7. The charge termed in the agreement as rental for the films covers charges for preparing the prints of the films for distribution, and for packing them for delivery. These are clearly services rendered by the Film Division for which it is paid one per cent of the net collection as a rental. The total cost for preparing prints, packing them and distributing them is higher than the total recovery made by the Film Division by way of rental from all the exhibitors. There is a clear nexus between the services rendered and the payment to be made. The payment, therefore, is in a nature of a fee rather

than a tax though there may not be an exact quid pro quo. This is clearly an agreed fee charged for rendering services. It cannot be viewed as a compulsory exaction or a tax. There is a statutory obligation which is cast on the exhibitors to exhibit certain films. To carry out this statutory obligation, if the exhibitors enter into an agreement with the Films Division and agree to pay a certain amount of rental for procuring the films from the Film Division to comply with the statutory obligations, the levy must, since it is correlated with the Films Division discharging certain obligations under the contract, be viewed, at the highest, as a fee and not as a tax. It is an agreed payment, and is not unreasonable. [895-A-B; F-H]

District Council of the Jowai Autonomous Distt., Jowai **v.** *Dwet Singh Rymbai etc.,* **AIR (1986) 1930;** *Commissioner, Hindu Religious Endowments, Madras* **v.** *Sri Lakshmindra Thirtha Swamiar of Sir Shirur Mutt,* **AIR (1954) SC 282 and** *Ahmedabad Urban Development Authority* **v.** *Sharadkumar Jyantikumar Pasawalla & Ors.,* **AIR (1992) SC 2083, relied on.**

1.8. Conditions 15 and 22 of the licence do not overlap, but refer to different sizes and types of short films, shorter films or lantern slides. The High Court was, therefore, not right in holding that Condition No. 15 is redundant since it is covered by Condition No. 22. Both conditions, however, must be read in the light of Section 12(4) of the Cinematograph Act, 1952 and only films and lantern slides which fall within the description of such films under Section 12(4) can be so required to be shown. [896-F-G]

R.M. Seshadri **v.** *The District Magistrate, Tanjore & Anr.,* **[1955] 1 SCR 686;** *Chief Commissioner, Ajmer* **v.** *Brij Niwas Das,* **[1963] 2 SCR 145 and** *Minerva Talkies, Bangalore & Ors.* **v.** *State of Karnantaka & Ors.,* **[1988] Suppl. SCC 176, relied on.**

Neal R. Wooley, Etc. **v.** *George Maynard,* **[1977] 430 US 705 and** *Turner Broadcasting System, Inc.* **v.** *Federal Communications Commission,* **[1997] 512 US 622, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3766-67 of 1999 Etc. Etc.

From the Judgment and order dated 31.8.95 of the Delhi High Court in C.W.P. No. 4408 and 4703 of 1993.

R.N. Trivedi, Additional Solicitor General, N.N. Goswami, Dr. R.K. Dhawan,

A V.A. Mohta, S.K. Dholakia, (A.K. Goel, Additional Advocate General for State of U.P.), S.K. Dwivedi , A. Subba Rao, Hemant Sharma, (S.W.A. Qadri), B.V. Balram Das, Ashok Jain, Umesh Kumar Bohre, pradeep Aggarwal, Sushil K. Jain, Pradeep Misra, Ms. Sangeeta Kumar, Vijay Kumar, H.K. Puri, Ujjawal Banerjee and Rathin Das for the appearing parties.

B The Judgment of the Court was delivered by

MS. SUJATA V. MANOHAR, J. Delay condoned.

Leave granted in special leave petitions.

C This group of appeals is filed by the Union of India, the State of West Bengal and the State of Uttar Pradesh against a judgment and order dated 31.8.1995 of the Delhi High Court in C.W.P. No. 4408 and 4703 of 1993; while the writ petition is filed by the Eastern India Motion Picture Association against the Union of India and others. This group of appeals and the writ petition raise a common question of law as to the validity of certain provisions D of (1) the West Bengal Cinemas (Regulation) Act. 1954 and a notification No. 7277-F dated 20.9.1957 issued thereunder, (2) the Cinematograph Act, 1952, (3) the U.P. Cinemas (Regulation) Act, 1955 and (4) the Delhi Cinematograph Rules, 1981.

E The respondents in the appeals are Associations of organisations engaged in the business of distribution and exhibition of motion pictures in the area of Delhi and U.P. commonly known as the Delhi-Uttar Pradesh Circuit and in West Bengal.

In part III of the Cinematograph Act, 1952 which applies only to the F Union Territories including Delhi, Section 12 imposes certain restrictions on the powers of the licensing authority to grant a licence for the exhibition of cinematograph films. Section 12 Sub-section (4) provides as follows :-

The Cinematograph Act :

G "12(4) : The Central Government may, from time to time, issue directions to licenses generally and 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 H such directions have been issued those directions shall be deemed to

be additional conditions and restrictions subject to which the licence had been granted." A

(underlining ours)

Under Section 16 which also forms a part of Part III of the Cinematograph Act, 1952, the Central Government is empowered by notification in the official gazette, to make rules, inter alia, "(a) prescribing the terms, conditions and restrictions, if any, subject to which licences may be granted under this Part." Pursuant to the rule-making power so granted, rules have been framed by the Central Government known as the Delhi Cinematograph Rules of 1981. Under these rules various conditions for the grant of a licence to exhibit a cinematograph film are stipulated. Conditions 15 and 22 are as follows : B C

"*Condition No. 15 :* The licensee shall, when and so often as the Administrator may require, exhibit free of charge or on such terms as regards remuneration as the Administrator may determine, *films and* lantern slides provided by the Administrator;

Provided that the licensee shall not be required to exhibit at one entertainment films or lantern slides the exhibition of which will take more than fifteen minutes in all or to exhibit films or alides unless they are delivered to him at least twenty four hours before the entertainment at which they are to be shown is due to begin. D

Condition No. 22 : The licensee shall cause to be exhibited at each performance given at the licensed place one or more approved films, the total length of which may not be exceeding 600m (2000 feet) of approved films of 35 m.m. size or the corresponding footage of approved films of 16m.m. size, and shall comply with any direction which the Administrator or the licensing authority may give by general or special order as to the manner in which the approved films shall be exhibited in the course of any performance. E F

Explanation 1 : "Approved film" means cinematograph film approved by the Central Government.

Explanation 2 : For the purpose of computing the corresponding footage of films of 16m.m. size, in relation to films of 35m.m. size, 120m. (400 feet) of films of 16m.m. size shall be deemed to be equivalent to 300 m. (1000 feet) of films of 35m.m. size." G

Under Notification No. XXXM(16)/81 dated 11th January, 1982 issued H

A under Section 5(4) of the Uttar pradesh Cinemas (Regulation) Act, 1955, directions have been issued to the licensees which are as follows :

Directions :

"1. The licensees shall so arrange the exhibition of cinematograph
B films that approved films are exhibited at every performance open to the public. The ratio of approved films to be exhibited at such performances shall in relation to other films be one to five or the nearest approximation thereto.

Definition—For the purposes of these directions, an "approved"
C film means (i) a film produced in India and approved by the Central Government after considering the recommendations of the Film Advisory Board, Bombay, to be scientific films, films intended for educational purposes, films dealing with news and current events or documentary films, (ii) Indian News Reviews produced in India and approved by the Central Government after considering the
D recommendations of the Chief Producer, Films Division, Bombay, to be films dealing with news and current events.

2. Nothing contained in these directions shall be construed as requiring licensee-

E (a) to exhibit at any performance more than (2000 feet) approximately 610 metres of approved films of 35m.m. size or the corresponding length of approved films of 16 m.m. size; or

(b) to exhibit any approved film for more than two weeks continuously; or

F (c) to re-exhibit any approved film which has been shown for two continuous weeks; or

(d) to exhibit approved films to the full extent indicated hereinbefore in the event of sufficient number or length of approved films not being available for the time being.

G

3. For the purpose of computing the corresponding length of films of 16m.m. size in relation to films of 35 m.m. size, approximately 122 metres (400 feet) of 16m.m. film shall be deemed to be equivalent to approximately 305 metres (1000 feet) of 35m.m. films."

H Under Section 5(3) of the West Bengal Cinemas (Regulation) Act, 1954,

it is provided as follows :

"5(3) : The State Government may from time to time, issue directions to licensees generally or in the opinion of the State Government circumstances so justify, to any licensee in particular, for the purpose of regulating, the exhibition of any film or class of films and in particular the exhibition of scientific films, films intended for educational purposes, films, dealing with news and current events, documentary films or films produced in India, and where any such directions have been issued, those directions shall be deemed to be additional conditions and restrictions subject to which the licence has been granted."

By a Notification No. 7277-F dated 20.9.1957 issued by the West Bengal Government under Section 5(3) of the above Act. The State Government has given certain directions for the issue of licenses for the exhibition of films. These are as follows :

"Directions : A licensee shall so regulate the public exhibition of films by means of a cinematograph that, at every such exhibition, there shall be exhibited notified films of such length as bears to the length of other films exhibited approximately the ratio of one to five :

(a) to exhibit at any such public exhibition more than 2,000 ft. of notified films of 35 m.m. size or 800 ft. of notified films of 16m.m. size; or

(b) to exhibit any notified films for more than two weeks continuously; or

(c) to re-exhibit any notified film which has been shown for two continuous weeks; or

(d) to exhibit notified films beyond the limit upto which notified films are available for exhibition for the time being, or to exhibit any notified films when such films are not available for the time being.

Provided further that of the total time taken in the exhibition of notified films at every such exhibition, not less than half shall be allotted to the exhibition of films approved by the Central Government after considering the recommendations of the Films Advisory Board,

A Bombay, if films of the latter description are available.

Explanation : In these directions "notified film" means a film which is produced in India in which is—

(i) a scientific films, or

B (ii) a film intended for educational purpose, or

(iii) a film dealing with news and current events, or

(iv) a documentary film,

C certified or exempted from certification, as the case may be, under Part II of the Cinematograph Act, 1952 (XXXVII of 1952), which is notified by the State government in the "Calcutta Gazette" for exhibition for the purpose of Sub-section (3) of Section 5 of the West Bengal Cinemas (Regulation) Act, 1954 (West Bengal Act XXXIX of 1954);

D Provided that any of the films as referred to above, which is approved by the Central Government after considering the recommendations of the Film Advisory Board, Bombay, shall be deemed to be a notified film for the purpose of this notification."

All these provisions are similar in nature, and have been in force for E some decades. They are hereinafter referred to as the "impugned provisions". Thus, under Section 12(4) of the Cinematograph Act, 1952 the Central Government may issue directions to the licensees that scientific films, films intended for educational purposes, films dealing with news and current events, documentary films or indigenous films have to be exhibited by the licensee along with the other films which the licensee is exhibiting. The length and the F duration of such films is regulated by conditions 15 and 22 of the licence which require only a film of a short length being thus shown along with the other films. Similarly, under the West Bengal Cinemas (Regulation) Act, 1954 also Section 5(3) requires an identical class of films which are required to be shown along with the other films which the respondents exhibit in their G cinema theatres. The notification of 20th of September, 1957 specifies the duration of such films and its length, making it clear that the length of such films which are required to be exhibited will not exceed the ratio of 1:5. The length of these films is also specified. The licence conditions refer to "approved films" or "notified films" which are defined.

H As a result, in each cinema theatre the exhibitor of films is required to

show a film which may be educational or scientific; a documentary film, or a film carrying news or current event, along with the other films. The duration of such film is strictly limited and only a small proportion of the total viewing time is devoted to the showing of such films. Since short films in these categories are normally produce by the films division of the government of India; each exhibitor is required to enter into an agreement with the films division for the supply of such films for exhibition . Under the terms and condition of the agreement between the exhibitor and the film division; the exhibitor is required to pay to the films division a rental amounting to 1% of his net weekly collection for the supply of the films. This rental has remained the same for the past several decaders and is a rental which is fixed as a result of negotiations with the Films Federation of India.

These Impugned provisions have been in force or several decades. The respondents however; in 1993 challenged these provisions as violative of their rights under Articles 19(1)(a) and 19 (1) (g) of the constitution. The Delhi High Court; by the impugned judgment has held that the condition in the agreement between Films Division and the exhibitor, for charging a rental for the supply of the said films is unconstitutional. The Delhi High Court has also held that the provision by which the exhibitor is required to collect a film from the Film Division is also onerous and, therefore, invalid. It has also struck down condition 15 of the licence issued under the Cinematograph Act; 1952 as redundant. Therefore, while upholding the statutory provisions, the court has directed that such films should be supplied by the Films Division to each exhibitor at his place of exhibition and that no charges should be levied for the supply of these films. Aggrieved by these finding, the present appeals have been filed. The writ petition which is filed by the Eastern India Motion pictures Association, has challenged the validity of the same provision under Article 19(1) (a) of the constitution, since the Delhi High Court declined to consider the validity of these provisions under Article 19 (1) (a), without any averments to that effect.

The exhibitors contend that the above provisions which compel them to show a scientific, educational or documentary film or a news film, even for a short duration of fifteen to twenty minutes per show, violate their fundamental rights to free speech and expression under Article 19(1)(a) of the Constitution. They also contend that Article 19(2) which permits a reasonable restraint on this freedom on the grounds of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an

A offence, does not cover this kind of compulsion to show educational, scientific and documentary films or other kinds of films specified in the above provisions.

Undoubtedly, free speech is the foundation of a democratic society. A free exchange of ideas, dissemination of information without restraints, dissemination of knowledge, airing of differing view points, debating and B forming one shown views and expressing them, are the basic indicia of a free society. This freedom alone makes it possible for people to formulate their own views and opinions on a proper basis and to exercise their social, economic and political rights in a free society in an informed manner. Restraints on this right, therefore, have been jealously watched by the courts. Article C 19(2) spells out the various grounds on which this right to free speech and expression can be restrained. Thus in *Express Newspapers pvt. Ltd. and Ors.* v. *Union of India & Ors.,* [1986] 1 SCC 133 (at page 195), this Court stressed that, "Freedom of thought and expression, and the freedom of the press are not only valuable freedoms in themselves but are basic to a democratic form of Government which proceeds on the theory that the problems of the D Government can be solved by the free exchange of thought and by public discussion of the various issues facing the nation ..... This right is one of the pillars of individual liberty freedom of speech, which our constitution has always unfailingly guarded ..... however precious and cherished the freedom of speech is under Article 19(1)(a), this freedom is not absolute and unlimited at all times and all circumstances but is subject to the restrictions contained E in Article 19(2)." In *S. Rangarajan* v. *P. Jagjivan Ram and Ors.,* [1989] 2 SCC 574 (at page 592), this Court again observed : "The democracy is a government by the people via open discussion. The democratic form of government itself demands of its citizens an active and intelligent participation in the affairs of the community ..... The democracy can neither work nor prosper unless F people go out to share their views." The importance of freedom of speech and expression including freedom of the press has been repeatedly stressed by this Court in a number of decisions (See in this connection (*Indian Express Newspapers (Bombay) Private Ltd. and Ors* v. *Union of India and Ors.,* [1985] 1 SCC 641, *K.A. Abbas* v. *The Union of India and Anr.,* [1970] 2 SCC G 780, *Life Insurance Corporation of India* v. *Prof. Manubhai D. Shah,* [1992] 3 SCC 637.

In *Secretary, Ministry of Information & Broadcasting, Govt. of India and Ors.,* v. *Cricket Association of Bengal and Anr.,* [1995] 2 SCC 161, this Court, after citing Article 10 of the European Convention on Human Rights, H went on to state (at page 213), "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."*

It is contended that just as a restraint on free speech is a violation of Article 19(1) [except as permitted under article 19(2)] compelled speech, often known as a "must carry" provision in a statute, rule or regulation, is equally an infringement of the right to free speech, except to the extent permitted under Article 19(2). However, whether compelled speech will or will not amount to a violation of the freedom of speech and expression, will depend on the nature of a "must carry" provision. If a "must carry" provision furthers informed decision-making which is the essence of the right to free speech and expression, it will not amount to any violation of the fundamental freedom of speech and expression. If, however, such a provision compels a person to carry out propaganda or project a partisan or distorted point of view, contrary to his wish, it may amount to a restraint on his freedom of speech and expression. To give an example, at times a statute imposes an obligation to print certain information in public interest. Any food product must carry on its package the list of ingredients used in its preparation, or must print its weight. These are beneficial "must carry" provisions meant to inform the public about the correct quantity and contents of the product it buys. It enables the public to decide on a correct basis whether a particular product should or should not be used. Cigarettes cartons are required to carry a statutory warning that cigarette smoking is harmful to health. This is undoubtedly a "must carry" provision or compelled speech. Nevertheless, it is meant to further the basic purpose of imparting relevant information which will enable a user to make a correct decision as to whether he should smoke a cigarette or not. Such mandatory provisions although they compel speech cannot be viewed as a restraint on the freedom of speech and expression.

In *Neal R. Wooley, etc.* v. *George Maynard,* [1977] 430 US 705, the United States Supreme Court considered a New Hampshire state law which

A compelled the state motto "Live Free or Die," to be embossed on car licence plates. A follower of Jehovah's Witnesses objected to carrying the motto on his car licence plate. The Court held that the state's requirement that non-commercial vehicles licence plates be embossed with the state motto invaded First Amendment rights and could not be justified as facilitating the identification of passenger vehicles or as promoting an appreciation of history, B individualism, and state pride. In the more recent case of *Turner Broadcasting system, Inc.* v. *Federal Communications Commission,* [1997] 512 US 622, the US Supreme Court examined Sections 4 and 5 of the Cable Television Consumer protection and Competition Act of 1992 which required cable operators to carry the signals of specified numbers based on cable system size of local C commercial television stations and local non-commercial educational television stations. On the basis of the material brought on record after remand, the majority came to the conclusion that the "must carry" provisions were consistent with the First Amendment, because the purpose of the "must carry" provision was to preserve the benefits of free over-the-air local broadcast television, promoting wide-spread dissemination of information D from a multiplicity of sources and promoting fair competition in the television programme market. Breyer J. in his partly concurring judgment balanced the restraints which such a compulsory carriage clause would impose because it would interfere with the protected interests of the cable operators to choose their own programming, against an important First Amendment interest in E favour of the provision viz. promoting the widest possible dissemination of information from diverse and antagonistic sources to facilitate public discussion and informed deliberation. The latter being basic democratic government purposes which the First Amendment seeks to achieve, they outweighed objections relating to interference with the cable operators' right to choose their own programme.

F

Although the First Amendment right under the U.S. Constitution is not subject to reasonable restraint as in Article 19(2), the raison de'tre of a constitutional guarantee of free speech is the same. We have to examine whether the purpose of compulsory speech in the impugned provisions is to G promote the fundamental freedom of speech and expression and dissemination of ideas, or whether it is to restrain this freedom, the social context of any such legislation cannot be ignored. When a substantially significant population body is illiterate or does not have easy access to ideas or information, it is important that all available means of communication, particularly audiovisual communication, are utilised not just for entertainment but also for education, H information, propagation of scientific ideas and the like. The best way by

which ideas can reach this large body of uneducated people is through the entertainment channel which is watched by all-literate and illiterate alike. To earmark a small portion of time of this entertainment medium for the purpose of showing scientific, educational or documentary films, or for showing news films has to be looked at in this context of promoting dissemination of ideas, information and knowledge to the masses so that there may be an informed debate and decision making on public issues. Clearly, the impugned provisions are designed to further free speech and expression and not to curtail it. None of these statutory provisions require the exhibitor to show a propaganda film or a film conveying views which he objects to. In fact, the exhibitors have not raised any objection to the contents of the films which they are required to show. They, however, contend that one of the important requirements for upholding such compulsory speech in the United States is that such speech should be content-neutral. While in the present case, the contents of the compulsory films are specified in the legislation concerned. In the context of Article 19(1) what we have to examine is whether the categories of films so required to be carried promote dissemination of information and education or whether they are meant to be propaganda or false or biased information. The statute quite clearly specifies the kinds of films which promote dissemination of knowledge and information.

Undoubtedly, the exhibitors, in order to fulfil the conditions of the licence, are required to enter into an agreement with the Films Division, Government of India. This is not because of any statutory compulsion but because of the fact that the Films Division is the only organisation which produces such short films on sufficient quantities for regular distribution to the cinema exhibitors. The requirement of approval of such films is to ensure that the films, in fact, comply with the requirements specified in the statute. None of the provisions referred to make it mandatory for the exhibitors to procure such films only from the Films Division. The reason why they do so is because of a lack of adequate alternative sources.

The exhibitors contend that before their licence is renewed, it is necessary for them to obtain a "no objection" certificate from the Films Division. The purpose of this is to ensure that the statutory requirements have been complied with by the licensee in the previous year. If, however, any licensee is in a position to procure such approved films from any other source, there is nothing in the statutes which prohibits him from doing so. These provisions, therefore, do not violate Article 19(1) (a) of the Constitution. They are not in restraint of free speech and expression. Therefore, Article

A 19(2) is not attracted.

The main challenge of the exhibitors to these provisions is, however, under Article 19(1)(g) of the Constitution. In fact, this was the only challenge before the Delhi High Court. The basic purpose of the impugned laws which deal with licensing of cinema halls, and prescribing conditions subject to
B which such licences can be granted, is to regulate the business activity of the exhibitors of cinematograph films. Obtaining a licence for running such cinema theatres is for the purpose of regulating this business. This purpose has a direct nexus with Articles 19(1)(g) and 19(6) of the Constitution. The source of legislation under this head can be traced to Entry 33 of List II which
C entitles the States to legislate on "theatres and dramatic performances; cinemas subject to the provisions of Entry 60 of List 1, sports, entertainments and amusements." That is why State Laws have been framed for regulating the terms and conditions on which a licence for exhibiting films at cinema theatres can be obtained. part III of the cinematograph Act, 1952 which applies to Union Territories is also in the exercise of the legislative powers under Entry
D 33 of List II. Since Delhi was a Union Territory and is now National Capital Territory since 1991 by virtue of the Constitution 69th Amendment Act, 1991, Parliament has the power to legislate under this Entry also. [see Article 246(4) and the relevant provisions of Article 239(AA)]. Entry 60 List I on the other hand deals with "sanctioning of cinematograph films for exhibition." Censorship
E provisions, for example, would come under Entry 60 of List I and these would directly relate to Article 19(1) (a) and Article 19(2) of the Constitution. The basic purpose of these impugned provisions is, therefore, to regulate the business of exhibiting films in cinema theatres under Entry 33 List II.

In the case of *R.M. Seshadri* v. *The District Magistrate, Tanjore and*
F *Anr.*, [1955] 1 SCR 686, this Court was required to examine under Article 19(1)(g) the conditions attached to a licence to exhibit cinematograph films in cinema theatres requiring the licensee to exhibit at every performance one or more approved films of such duration as the Provincial Government or the Central Government may, by general or special order, direct. The Court said
G that neither the length of the films nor the duration for which the film had to be shown were prescribed. No maximum limit was placed on the time to be taken in showing such films. Looking to the unguided discretion given to the Government in this regard, the restrictions placed were unreasonable and arbitrary and could not be considered as reasonable restrictions under Article 19(6). The Court expressly excluded from its considerations the question
H whether educational or instructional films could be thus shows.

In *Brij Niwas Das* v. *Chief Commissioner, Ajmer,* ILR (1958) Raj. 1076, the Rajasthan High Court upheld conditions in the licence which required that educational and instructional slides should be shown for a duration of 15 minutes, and approved films should be shown for a duration which was 1/5th of the total time. Looking to the specific provisions, the Court upheld these provisions under Article 19(1)(g) read with Article 19(6). The Court also upheld Section 12(4) of the Cinematograph Act, 1952. The Court, however, said that the requirement in one of the impugned conditions that films produced in India should be shown in this fashion without specifying the categories of such films was not valid. The Chief commissioner, Ajmer came in appeal before this court. This Court by its judgment and order reported in *Chief Commissioner, Ajmer, Brij Niwas Das,* [1963] 2 SCR 145, held the condition applicable to films produced in India as also valid, the purpose being to promote indigenous films.

Time and place constraints on cinema halls have also been upheld as regulatory provisions in *Minerva Talkies, Bangalore & Ors.* v. *State of Karnataka & Ors.*, [1988] Supp. SCC 176. In the present case, the restrictions sought to be imposed are specific and tailored to fit the public purpose behind the restrictions. The length of the film to be shown, the duration for which it is to be shown and the nature of the films which are to be shown, are specified and are designed to further the public purpose of disseminating information and knowledge so that the general public can be educated on a number of issues of national or general importance to enable them to function effectively in the democratic framework of this country with adult franchise. These restrictions, therefore, have to be upheld as reasonable.

According to the exhibitors, even if the nature of the film, its duration and length are specified, their right to carry on their business of exhibiting motion pictures is nevertheless adversely affected because at every show, they are required to exhibit for a duration of 15 to 20 minutes these educational scientific films, etc, thus cutting into their business time. They also contend that they are subjected to inconvenience because they are required to procure these films expending time and money. Moreover, under the terms of their agreement with the Films Division, they are also required to pay one per cent of their net weekly collection as rental for the films so procured. They contend that when such films are shown over television, the Government is required to pay for the showing time while in their case they are required to pay a rent to the Films Division. These are all unreasonable restrictions on their right to carry on business.

A According to the exhibitors, although these provisions have been in force for almost three decades and they have regularly complied with these provisions by exhibiting educational, scientific films etc. of the Films Division for the stipulated duration in their shows, they are now seeking to challenge these provisions because according to them, the business of exhibiting cinematograph films is no longer as profitable as it used to be. They contend B that with the arrival of the electronic media, popular attraction for watching movies in cinema theatres has dwindled. People like to watch entertainment programmes over television or with the help of a video or through internet in their homes. They do not flock to cinema theatres as they used to. As a result, the cost of showing the short films of the Films Division can no longer C be borne by them. The condition, therefore, in the licence requiring them to show these films even for a short duration, is now onerous and violates their right to carry on their chosen business under Article 19(1)(g). In this context they further submit that the restrictions imposed cannot now be considered as reasonable because the exhibitors, in view of their reduced profit making, cannot bear the expenses relating to the showing of these films, including the D rental.

The reasonableness or otherwise of restrictions on their right to carry on business will have to be examined in the context of the purpose sought to be served by imposing such restrictions. There is no dispute that the rights E of the exhibitors under Article 19(1)(g) are subject to reasonable restrictions under Article 19(6). There is a public purpose in requiring the exhibitors to show such films. We have already stated that where a large percentage of population is illiterate and has very limited access to knowledge, information and ideas, it is important that such knowledge and information is disseminated to this vast volume of population in a manner which will ensure that ideas F and information are in fact conveyed to them and they can assimilate and debate these ideas before accepting or rejecting them. Requiring an entertainment medium like cinema theatre to show for a short duration of its programme, films which educate and impart information cannot be considered as an unreasonable restriction on the right to carry on business. When there G is adult franchise without literacy, it becomes all the more important that information and ideas reach the adult population.

Next we have to examine whether the expense incurred in showing these films is high or unreasonable. According to the exhibitors, their machinery, their show-time, their theatre are used for the duration of these films and, H therefore, they have to incur a certain amount of expense for showing these

films. This expense, in our view, cannot be considered as a high or unreasonable expense. There may be many conditions of a licence which may require expense to be incurred by the licensee. For example, a condition in the licence which requires a cinema theatre owner to provide for fire-fighting equipment would also require them to incur expenses. But that does not mean that such a requirement is unreasonable. Similarly, looking to the purpose for which such films are shown, the expense incurred also cannot be considered as unreasonable.

The exhibitors have also not submitted any facts and figures to support their plea that these requirements of exhibiting a Films Division and/or educational, scientific films etc. are economically onerous. The appellants on the other hand, in the affidavit filed on behalf of the Films Division, have given detailed figures showing that in addition to the cost of production of these films, the expenses incurred by them in taking out prints for distribution to about 13000 cinema theatres in the country, for packing and supplying these films to them and for maintaining distribution centres for supplying these films, are heavy. They have submitted that as against the cost so incurred by them, the rental which is charged fetches them a much lower income.

The appellants, in their affidavit in reply, have pointed out that the recovery of one per cent of the net collections as a rental from the cinema owners for the supply of approved films has been in force since 1.4.1958. This rental was decided after discussions with the Films Federation of India which is the apex body of the various sections of the film industry, and it was so fixed after considering various suggestions and representations that were received from a number of cinema organisations. The Films Division of the Union of India is incurring heavy expenditure towards production of about 125 films every year. It takes out about 400 prints of each film for distribution to the cinema theatres. The cost of production, negative/positive prints, raw stock, processing, printing, laboratory charges have all increased substantially during the last 35 years. In addition, the Films Division maintains a chain of distribution network for supply of approved films to as many as 13000 cinema theatres spread over the various parts of the country. The films are dubbed in 15 languages to serve the interest of every region. About 50000 film prints are to be retained in circulation at any given point of time. Maintaining such a large network of distribution of approved films throughout the year requires heavy expense to be incurred. As against all these costs, the lowest minimum rental of one per cent is being imposed and it cannot be considered as

A unreasonable or excessive. It is also pointed out that the Films Division incurs an expenditure of more than Rs. 12 crores per year only for taking out adequate prints, while their recovery in the form of rentals is only Rs. 7 to 8 crores per year. Therefore, the Films Division is charging a very small amount considering the expenditure outlay in producing and distributing these films. In these facts and circumstances, the rental of one per cent B cannot be considered as excessive.

The cinema theatre owners have also alleged inconvenience in procuring the films. The Films Division in its affidavit has pointed out that it has a distribution network spread throughout the country to serve 13000 cinema C theatres. It has ten distribution branches throughout the country. The Films Division packs the films, seals them and sends them by train to the cities, towns and villages wherever the cinema theatres are located. In fact, the owners of the theatres used to pay the freight charges prior to the judgment of the High Court. Therefore, there is no special inconvenience caused to the exhibitors for securing these films. The arrangements for supply and distribution D have to be examined from the point of view of what is practically feasible. We do not think that the arrangements which have been in existence unchallenged for the last 30 years until the present proceedings were instituted can be considered as unsatisfactory or unreasonable.

E The exhibitors also contend that the charge of one per cent on the net recoveries is a compulsory exaction in the form of a tax. Neither the Act nor the provisions of the licence stipulate payment of any such tax. Hence imposition of this amount is in violation of Article 265 of the Constitution. it is true that neither the relevant Act nor the notification nor the rules nor the terms and conditions of the licence stipulate the payment of any rental. F This amount is required to be paid under an agreement which the exhibitors individually enter into with the Films Division for the supply of these films. It is a payment under the terms of a contract between the two parties. It cannot, therefore, be viewed as a tax at all. The exhibitors contend that because they are required to enter into these agreements, any payment under the agreement is a compulsory exaction and is, therefore, tax. We do not G agree, Under the terms of the agreement, the Films Division has to supply certain prints to the theatre owners at stated intervals. The Films Division is required to maintain a distribution network for this purpose. It is required to pack these films and is required to allow the exhibitors to retain these films in their possession for a certain period. The films are to be returned to the H Films Division thereafter. The charge is termed in the agreement as rental for

the films. It covers charges for preparing the prints of the films for distribution, and for packing them for delivery. These are clearly services rendered by the Films Division for which it is paid one per cent of the net collection as a rental. As stated earlier, the total cost of preparing prints, packing them and distributing them is much higher than the total recovery made by the Films Division by way of rental from all the exhibitors. There is a clear nexus between the services rendered and the payment to be made. The payment, therefore, is in the nature of a fee rather than a tax though there may not be an exact *quid pro quo*. Nevertheless the element of *quid pro quo* is very much present.

The exhibitors relied upon a number of cases which distinguish a tax from a free. We will only refer to some of them. In the case of *District Council of the Jowai Autonomous Distt., Jowai & Ors.* v. *Dwet Singh Rymbai etc.*, AIR (1986) SC 1930, this Court held that a compulsory exaction for public purposes would amount to a tax while a payment for services rendered would amount to a fee. On the facts in that case, the Court said that there was no element of *quid pro quo* which will justify the imposition of royalty as a fee. In *Commissioner, Hindu Religious Endowments, madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,* AIR (1954) SC 282, this Court as far as back in 1954, laid down the distinction between a tax and a fee. This Court has described a tax as a compulsory exaction for public purposes which does not required the tax-payer's consent; while fee is a charge for specific service to some, and it must have some relation to the expenses incurred for the service. In *Ahmedabad Urban Development Authority* v. *Sharadkumar Jyantikumar Pasawalla & Ors.*, AIR (1992) SC 2038, this Court has said that an express authorisation for the levy of a fee is necessary. In the present case, however, the rental is charged by the Films Division by virtue of an agreement between the Films Division and the individual exhibitor. This is in consideration of the Films Division supplying films to the exhibitor, packing the film and arranging for its delivery. This is clearly an agreed fee charged for rendering services. It cannot be viewed as a compulsory exaction or as a tax. There is a statutory obligation which is cast on the exhibitors to exhibit certain films. To carry out this statutory obligation, if the exhibitors enter into an agreement with the Films Division and agree to pay a certain amount of rental for procuring the films from the Films Division to comply with the statutory obligation, the levy must, since it is co-related with the Films Division discharging certain obligations under the contract, be viewed, at the highest, as a fee and not as a tax. It is an agreed payment, and is not unreasonable. The High Court has rightly negatived the contention of the respondent

A exhibitors.

The High Court has struck down Condition 15 of the licence issued under the Delhi Cinematograph Rules as being too wide, and unnecessary in view of Condition 22 of the licence. Under Condition 15, the licensee is required to exhibit films or lantern slides, the exhibition of which will take not B more than 15 minutes in all, as required by the administrator. Such exhibition may be free of charge or on such terms as regards remuneration as the administrator may determine. The High Court has held that the kind of films and lantern slides required to be exhibited under Condition 15 are not specified and hence this condition is too wide and not related to the object of placing such a restriction. Condition 15, however, has to be read along with Section C 12(4) of the Cinematograph Act, 1952, since Delhi Cinematograph Rules, 1981 are issued under the Cinematograph Act, 1952; and any conditions imposed on the licence cannot go beyond the purposes specified in Section 12(4) Condition 15, therefore, has to be read in conjunction with Section 12(4) of the Cinematograph Act under which only scientific films, films intended for D educational purposes, films dealing with news and current events, documentary films or indigenous films can be so required to be exhibited. The films referred to in Section 15 must also be of this kind. Lantern slides also take colour from the same provision and lantern slides compulsorily required to be shown must also fall in the categories mentioned in Section 12(4). When it is so read Condition 15 will have a direct nexus with the object sought to be achieved, E and it can be upheld as a reasonable restriction. We accordingly so hold. Condition No. 22 refers to exhibition of approved films the total length of which may not exceed 600m of 35mm or a corresponding size of approved films of 60mm. These are somewhat longer films as compared to lantern slides and films referred to in Condition 15. Therefore, Conditions 15 and 22 do not F overlap, but refer to different sizes and types of short films, shorter films or lantern slides. The High Court was, therefore, not right in holding that Condition No 15 is redundant since it is covered by Condition No. 22. Both conditions, however, must be read in the light of Section 12(4) of the Cinematograph Act, 1952 and only films and lantern slides which fall within the description of such films under Section 12(4) can be so required to be shown.

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In the premises, the appeals are allowed and the impugned judgment of the High Court in so far is it strikes down the rental and directs the Films Division to deliver the films to the exhibitors is set aside. The writ petition is dismissed. There will, however, be no order as to costs.

H R.A. Appeals allowed and petition dismissed.