

M.J. SIVANI AND ORS.

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v.

STATE OF KARNATAKA AND ORS.

APRIL 17, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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*Constitution of India—Arts 19 (1)(g), 19(6) and 21—Right to trade or business or avocation—Power to impose reasonable restrictions—Test of reasonableness—Nature of business and its indelible effect on public interest are important elements—Trade or business attended with danger to community—May be totally prohibited—Whether regulation of video games violates fundamental right to trade or business or avocation or right to livelihood—Held, No—Discretion conferred on licensing authority under the Licencing and Controlling of Places of Public Amusements (Bangalore City) Order, 1989—Not arbitrary, uncanalised or without any guidelines.*

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*Tamil Nadu Gaming Act, 1930—Madras City Police Act—Gaming—Definition of—Whether video game is a game within definition of 'gaming'—Whether video games require to be regulated.*

*Licensing and Controlling of Places of Public Amusements (Bangalore City) Order, 1989—Para 4—Refusal to grant licence—Requirement to record reasons—Personal hearing to be granted when.*

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*Delegated Legislation—Partly good and partly bad legislation—Cannot be struck down as a whole unless invalid part is inextricably interconnected with the valid.*

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**The Commissioner of Police, Bangalore, exercising the power under the Licencing and Controlling of places of Public Amusements (Bangalore City) Order, 1989, called upon the appellants to obtain licences under that order. The appellants challenged his power and jurisdiction by filing writ petitions. Dismissing the petitions, the single Judge of the High Court held that video games is a game covered by Bangalore Order, the appellants were required to get licence thereunder to play the video games and it did not violate their fundamental right under Arts. 19(1)(g) and 21 of the Constitution. The Division Bench while upholding the view of the single Judge held that the Madras City Police Act, 1988 and the orders of the**

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- A Tamil Nadu Government is GOMS No. 166-O dated 18-1-1993 and the allied, placed reasonable restrictions on the right to carry on video games and it did not violate Arts. 19(1)(g) and 21; that video games are games requiring licence under the Act and the Orders; that the survey of working of the video games by a committee of high level police officer and a practicing advocate found the mal-practices committed in conducting the games; that
- B the ban imposed on the named games as games of chance and permitting the rest of the games to be games of skill was in public interest; that the conditions of licence are not arbitrary or unreasonable and therefore, the action of the Commissioner was within the power under the Act or the order. These appeals by special leave had been filed against the Division
- C Bench judgment of the High Court.

D The point raised in these appeals was whether the video games attract the relevant orders and is a game within the definition of 'gaming' defined under the Tamil Nadu Gaming Act, 1930 or the Madras City Police Act or of the Mysore Act Etc.

E The appellants contended that it does not involve collection, soliciting, receiving or distribution of winning of prizes nor does it involve wagering, there is no element of betting or wagering in the business conducted by the appellants while operating video games, the definition of gaming, therefore did not get attracted to video gaming; that the space occupied by the machines used for video gaming being very small, it was neither like a theatre nor a public place, therefore, it is not a common gaming house defined under the respective Acts; that the games conducted in the respective shops of the appellants did not involve of any money

F transaction except collection of non refundable charges for tokens for playing game, the player was rewarded on winning as many number of tokens as he could obtain by skill and such token he so gained gave him another chance to play and the tokens were not exchangeable for any cash or money, the games were conducted only for amusement and to pass off the time, the essential requirement to bring any game within the definition

G of gaming was completely lacking, the video games were, therefore, neither illegal nor unjustified, the appellants were not required to obtain any licence from the concerned licencing authority; that the Commission lacks in power u/s 31 to make the regulation; that the notification was made applicable to an area of specified seating capacity and since the places in

H which the video games were played were of a small dimension which did

not have minimum or maximum seating capacity envisaged in para 3(2) of the Bangalore Order 1989, it had no application to video games; that the Commissioner had no power to levy licence fee since the place had no required number of seating capacity; that the appellants from Tamil Nadu were running video games within a space of 46-1/2 sq., mt., therefore, they were not required to obtain any licence u/s 34 of the Madras City Police Act; that the condition regarding parking and prevention of the students from attending the video games was arbitrary; that the High Court having served para 3(2) of the order being inapplicable to the video games, the whole order must be struck down as being inseparable; that the applications for licence being rejected without hearing the appellants, it was violative of the principles of natural justice and that the authorities were refusing to grant licence enblock and the action, therefore, was arbitrary.

Dismissing the appeals and the writ petitions, this Court

**HELD : 1.1.** Where in a certain game, certain operations are to be performed enable the gamester to play the game, the persons taking part in such operations must be deemed to be 'gaming' or actually assisting in the gaming. "To game", therefore, is to play any game, whether of skill or chance, for money or money's worth. It is playing of game for money or money's worth whether the game be lawful or not. No game can be game of skill alone. In any game in which even great skill is required, chance must play a certain part. Even a skilled player in a game of mere skill may be lucky or unlucky, so that even in a game of mere skill chance must play its part. But it is not necessary to decide in terms of mathematical precision the relative proportion of chance or skill when deciding whether a game is a game of mere skill. When in a game the element of chance strongly preponderates, it is not practicable to decide whether particular video game is a game of skill or of mixed skill and chance. It depends upon the facts, in each case. [340-H, 341-A to C]

*State of Andhra Pradesh v. K. Satyanarayana*, AIR (1968) SC 825, relied on.

*Black's Law Dictionary* 6th Ed. and *Stroud's Judicial Dictionary*, 5th Ed., Vol. 1, referred to.

1.2. The appellants had fundamental right to trade or business or

A avocation but it is subject to control by Art. 19(6) of the Constitution of India which empowers to impose by law reasonable restrictions on the exercise of the right in general public interest. In applying the test of reasonableness, the broad criterion is whether the law strikes a proper balance between social control on the one hand and the right of the individual on the other hand. The court must take into account factors like nature of the right enshrined, underlying purpose of the restriction imposed, evil sought to be remedied by the law, its extent and urgency, how far the restriction is or is not proportionate to the evil and the prevailing conditions at that time. The court can not proceed on general motion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or a class of persons on whom the restrictions are imposed. In order to determine reasonableness of the restriction, regard must be had to the nature of the business and the prevailing conditions in that trade or business which would differ from trade to trade. No hard and fast rules concerning all trades etc. could be laid. The State, with a view to prohibit illegal or immoral trade or business injurious to the public health or welfare, is empowered to regulate the trade or business appropriate to the conditions prevailing in the trade/business. The nature of the business and its indelible effect on public interest etc., therefore, are important elements in deciding the reasonableness of the restriction. No one has inherent right to carry on a business which is injurious to public interest. Trade or business attended with danger to the community may be totally prohibited or be permitted subject to such conditions or restrictions as would prevent the evils to the utmost. [344-B to F]

1.3. The licencing authority, is conferred with discretion to impose such restriction or Order having statutory force or conditions emanating therefrom as part thereof as are deemed appropriate to the trade or business or avocation by a licence or permit, as the case may be. Unregulated video game operations not only pose danger to public peace and order and safety, but the public fall a prey to gaming where they always stand to lose in playing the games of chance. Unless one resorts to gaming regularly, one can hardly be reckoned to possess skill to play the video game. Therefore, when it is a game of pure chance or manipulated by tampering with the machines to make it a game of chance, even acquired skills hardly assist a player to get extra tokens. Therefore, even when it is a game of mixed skill and chance, it would be a gaming prohibited under the statute except by regulation. The restriction imposed, therefore, cannot

be said to be arbitrary, unbridled or uncanalised. The guidance for exercising the discretion need not ex facie be found in the notification or orders. It could be gathered from the provisions of the Act or Rules and a total consideration of the relevant provisions in the notification or order or conditions of the licence. The discretion conferred on the licencing authority, the Commissioner or the District Magistrate, cannot be said to be arbitrary, uncanalised or without any guidelines. The regulations, therefore, are imposed in the public interest and the right under Art. 19(1)(g) is not violated. [344-G, H, 345-A to C]

1.4. No one has right to play with the credulity of the general public or the career of the young and impressive age school or college going children by operating unregulated video games. If its exhibition is found obnoxious or injurious to public welfare, it would be permissible to impose total prohibition under Article 19(6) of Constitution. Right to life under Art. 21 does protect livelihood, but its deprivation can not be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order. Therefore, regulation of video games or prohibition of some of video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair nor unjust. [345-D to F]

1.5. The power u/s 31 of the Madras City Police Act conferred on the Commissioner and the District Magistrate in the area under their respective charge are of wide amplitude to meet diverse situations by making, altering or rescinding the orders in accordance with the Act. [346-D]

1.6. The Licensing and Controlling of Places of Public Amusement (Bangalore City) Order, 1989, regulates the running of the video games in public places. The dimensions of the place where video games are run are not relevant for the applicability of the Order to the video games. [347-B]

1.7. The exercise of the power u/s 39 of the Madras City Police Act is to ensure order and decency and for public safety at all places of the public entertainment or resort including the places referred to in s.34 and s.35. Therefore, any person intends to use any premises for public entertainment or resort though may use the premises below 46-1/2 sq. meters is required to obtain licence under rules made under s.39 for decency or public safety. Therefore, any person using any building or enclosed place with a dimension of below 46-1/2 sq.meters is required to obtain licence

A under the rules made under s.39 and another relevant law elsewhere.

[348-C, D]

B 1.8. The conditions of the licence clearly mention that the students in uniforms shall not be allowed to play video games between 10.00 a.m. to 3.00 p.m. In other words, during school or college hours, the licensee is prohibited to admit students in uniform to the video games. This restriction is imposed in public interest of education of the students. It is, therefore, neither arbitrary nor capricious. [348-E, F]

C 1.9. The Order and the condition of licence regulate diverse games in general played at different places and not with reference to a particular individual game or place. On that ground, the condition regarding parking cannot be declared to be ultra vires or arbitrary. With reference to a particular case, it may be dealt with according to fact-situation. [348-G]

D 2. Though the delegated authority under the Act made general order, it may well that a part thereof is not applicable, or is bad, in relation to a particular trade or business. Partly good and partly bad legislation cannot be struck down as a whole. To the extent it becomes applicable to a particular trade or business, it would be valid and operative and the balance remains either inapplicable or invalid. Diverse situations may arise in a particular trade or business. For that reason the delegated legislation cannot be condemned as a whole unless the invalid part is inextricably interconnected with the valid. The Court is, therefore, entitled to consider whether the rule as a whole or in part is valid or becomes invalid or inapplicable. On its finding that to the extent the rule is not relevant, Court is entitled to set aside or direct to disregard the irrelevant or inapplicable part leaving the rest intact and operative. [349-B, C]

G 3.1. Every action of the State or an instrumentality of the State must be informed by reason. Actions unformed by reason may amount to being arbitrary and liable to be questioned under Article 226 or Article 32 of the Constitution. The action must be just, fair and reasonable. Rejection of the licence must be founded upon relevant grounds of public interest. Fair play and natural justice are part of fair public administration, non arbitrariness and absence of discrimination are hall marks for good governance under rule of law. Therefore, when the State, its delegated authority or an instrumentality of the State or any person acts under a statutory rule or by administrative discretion, when its actions or orders

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visit the citizen with civil consequences, fairness and justness require that in an appropriate case, the affected citizens must have an opportunity to meet the case. *Audi alteram partem* is part of the principles of natural justice. However, this requirement of natural justice cannot be put in a rigid mould. [350-D to F, G] A

3.2. Order need not contain detailed reasons like court order. Administrative order itself may contain reasons or the file may disclose reasons to arrive at the decision showing application of mind to the fact in issue. It would be discernible from the reasons stated in the order or the contemporaneous record. Reasons are the link between the order and the mind of its maker. When rules direct to record reasons, it is a *sine qua non* and condition precedent for valid order. Appropriate brief reasons, though not like a judgment, are necessary concomitant for a valid order in support of the action or decision taken by the authority or its instrumentality or the State. Normally it must be communicated to the affected party so that he may have an opportunity to have it tested in an appropriate forum. [351-C, D] B C D

3.3. The Commissioner or the District Magistrate is required to record reasons while refusing to grant the licence. This assures compliance with principles of natural justice. It is not mandatory that hearing should be extended before rejecting licence. A caveat is, however, necessary. When the licencing authority seeks to place reliance on any adverse material gathered behind the back of the applicant to which he had no prior opportunity to meet or explain such adverse material, principles of natural justice do require that before taking a decision to reject the licence such material or the gist thereof must be brought to the notice of the applicant and an opportunity given to meet the grounds or such material. It would be open to the party to make a representation in that behalf or he may place any other material in support of his contention to persuade the licencing authority to come to a different conclusion or to disabuse any prejudice against the appellant. If the facts are in acute dispute the request for personal hearing may be extended. The licencing authority, then, is required to consider the objections or grounds putforth in support of the claim of the applicant or relevance or otherwise of the adverse material. The licencing authority is entitled to grant or reject the licence as is enjoined by sub-para (7) of para 4. The licencing authority has to record reasons in support of its decision of rejecting the application for licence which includes the renewal and should communicate the same to the H

**A applicant. [351-G, H, 352-A to C]**

*Mahabir Auto Stores and Ors. v. Indian Oil Corporation and Ors.*, [1990] 3 SCC 752; *C.B. Gautam v. Union of India*, [1993] 1 SCC 78 and *S.L. Kapoor v. Jagmohan*, [1981] 1 SCR 746, relied on.

**B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4564 of 1995 Etc. Etc.**

From the Judgment and Order dated 17.9.1990 of the Karnataka High Court in W.A.No. 1303 of 1990.

**C M.L. Verma, S.B. Sanyal, K.N. Bhat, Ajit Kr. Sinha, S. Srinivasan, K.K. Mani, Girish Ananthamurthy, Shantha Kr. Mahale, Rajesh Mahale, P. Mahale, Ms. Kiram Suri, T. Raja, Veerappa, K.H. Nobin Singh, A. Mariarputham, Ms. Aruna Mathur, Ajay Kapur, K.R. Nagaraja and R. Santhanam Krishnan, Advs. for the appearing parties.****D The Judgment of the Court was delivered by**

**K. RAMASWAMY, J.** Leave granted in SLP Nos. 11012/91, 10065-78/94, 18271-75/94, 18617-18630, 18316, 22759-22763/94, 22865-70/94, 675/95, 2347-53/95, 6437-6440/95, SLP...../95 (CC 1306).

**E These appeals by special leave arise from the Division Bench judgment of Karnataka High Court in Writ Appeal Nos. 1303-23/90 dated September 17, 1990 and of the Madras High Court in Writ Petition No. 404/86 and batch dated December 28, 1993. Since common questions of law arise in these cases, they are disposed of by common judgment.****F The primary question is whether video games require to be regulated under the respective Mysore Police Act, 1963 and the notifications issued thereunder and the Madras City Police Act, 1888 and the orders of the Tamil Nadu Government in GOMS No. 166- 0 dated January 18, 1993 and the allied. When the Commissioner of Police, Bangalore, exercising the power under the Licencing and Controlling of Places of Public Amusements (Bangalore City) Order, 1989, (for short 'Bangalore Order') called upon the appellants to obtain licences under that order, they challenged his power and jurisdiction on diverse grounds. The single Judge held that video game is a game covered by Bangalore Order, the appellants are required to get licence thereunder to play the video games. It was further**



held that it does not violate their fundamental right under Articles 19(1)(g) and 21 of the Constitution. The Division Bench upheld the view of the signal Judge. Equally, Division Bench of the Madras High Court held that the Madras City Police Act and the order of the Government, placed reasonable restrictions on the right to carry on video games. It does not violate Articles 19(1)(g) and 21. Video games are games requiring licence under the Act and the orders. The survey of working of the video games by a committee of high level police officers and a practicing advocate who appeared for some of the appellants in the High Court, found the malpractices committed in conducting the games. The video game is a game covered by the Act and the Order. The ban imposed on the named games as games of chance and permitting the rest of the games to be of games of skill was in public interest. The conditions of licence are not arbitrary or unreasonable. Therefore, the action of the Commissioner was within the power under the Act or the Order.

The main thrust in these appeals is whether the video games attract the relevant orders and is a game within the definition of 'gaming' defined under the Tamil Nadu Gaming Act, 1930 or the Madras City Police Act or of the Mysore Act etc. The contention of the appellants is that it does not involve collection, soliciting, receiving or distribution of winning of prizes nor does it involve wagering. There is no element of betting or wagering in the business conducted by the appellants while operating video games. The definition of gaming, therefore, does not get attracted to video gaming. The space occupied by the machines used for video gaming is very small. It is neither like a theater nor a public place. Therefore, it does not a 'common gaming house' defined under the respective Acts. The games conducted in the respective shops of the appellants do not involve of any money transaction except collection of non-refundable charges for tokens for playing game. The player is rewarded on winning as many number of tokens as he can obtain by skill and such token he so gains gives him another chance to play. The tokens are not exchangeable for any cash or money. That apart, the games are conducted only for amusement and to pass off the time. The essential requirement to bring any game within the definition of gaming as defined under the Act, is completely lacking. The customers are entertained purely for amusement. The video games are, therefore, neither illegal nor unjustified. Therefore, the appellants are not required to obtain any licence from the concerned licensing authority.

A Section 2(7) of Mysore Act defines "gaming" to mean that it does not include a lottery but all forms of wagering or betting in connection with any game of chance, except wagering or betting on a horse-race, when such wagering or betting takes place. Explanation (ii) says : 'game of chance' includes a game of chance and skill combined and a pretended game of chance or of chance and skill combined, but does not include any athletic game or sport. "Instruments of gaming", as defined in Clause (11), includes any article used or intended to be used as a subject, or means of gaming, any document used or intended to be used as a register or record of evidence of any gaming, the proceeds of any gaming and any winnings of prizes in money or otherwise distributed or intended to be distributed in respect of any gaming. Clause (13) defines that "place" includes a building, a tent, a booth or other erection, whether permanent or temporary, or any area whether enclosed or open. Clause (14) defines that "place of public amusement" means any place, where music, singing, dancing, or any diversion, or game, or the means of carrying on the game is provided and to which the public are admitted and includes a race course, circus, theatre, music hall, billiard room, beagattelle room, gymnasium, fencing school, swimming pool or dancing hall. Clause (15) defines "place of public entertainment" to mean any place to which the public are admitted ..... Clause (18) defines "public place" to include the foreshore, the precincts of every public building or monument, and all places accessible to the public for drawing water, washing or bathing or for the purpose of recreation.

Section 3 of the Madras City Police Act defines "common gaming house" to mean any house, room tent, enclosure, vehicle, vessel or any place whatsoever in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owing, occupying, using, or keeping such house, room, tent, enclosure, vehicle, vessel or place, whether by way of charge, room tent, enclosure, vehicle, vessel or place, or otherwise howsoever and includes any house, room, tent, enclosure, vehicle, vessel or place opened, kept or used or permitted to be opened, kept or used for the purpose of gaming. "Instruments of gaming" has been defined to include any article used or intended to be used as a subject or means of gaming, any document used or intended to be used as a register or record or evidence of any gaming, the proceeds of any gaming, and any winning or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming. "Public Place" has been defined to mean a place including a road, street or way, whether a thoroughfare or

not and a landing place to which the public are granted access or have a right to resort, or over which they have a right to pass. A

*Black's Law Dictionary*, 6th Ed., defines "gaming" at page 679 thus : "The practice or act of gambling. An agreement between two or more persons to play together at a game of chance for a stake or wager which is to become the property of the winner, and to which all contribute. The element of gaming are the presence of price or consideration, chance and prize or reward." "Gaming place" means any place, room building, vehicles, vessel, tent or location which is used for any of the following : making and settling bets' receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries or policy games; playing games of chance for money or other property; or playing gambling devices. "Game" includes a contrivance which has for its object to furnish sport, recreation, or amusement. "Public" has been defined at page 1227 as "open to all; ..... common to all or many; general; open to common use. Belonging to the people at large." "Amusement" has been defined at page 84 "pastime; diversion, enjoyment. A pleasurable occupation of the senses, or that which furnished it." B C D

In *Stroud's Judicial Dictionary*, 5th Ed., Vol.I, "common gaming house" has been defined to mean (1) "Is a house in which a large number of persons are invited whether publicly or privately, habitually to congregate for the purpose of gaming". (2) A common gaming house is a house kept or used for playing therein any game of chance, or any mixed game of chance and skill, in which (a) bank if kept by one or more of the players, exclusively of the others; or (b) in which any game is played, the chances of which are not alike favourable to all the players, including among the player the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet." "Gaming" has been defined as to play at any game, whether of skill or chance for money or money's worth; and the act is not less gaming because the game played is not in itself unlawful and whether it is involved or did not involve skill. E F G

In *State of Andhra Pradesh v. K. Satyanarayana*, AIR (1968) SC 825, considering whether Rummy is a game of chance or skill, this Court held that "the game of Rummy is not a game entirely of chance like the 'three-card' game. The three-card game which goes under different names such a 'flush', 'brag' etc. is a game of pure chance. Rummy on the other H

A hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. It is mainly and preponderantly a game of skill. The chance in Rummy is of the same character as the chance in a deal at a game of bridge".

B Gaming, therefore, is an inclusive definition which includes a game of chance and skill combined or a pretended game of chance or of chance and skill combined. Gaming house would mean any house, room, tent etc. whether enclosed or open or any place whatsoever in which the instruments of gaming are kept or used for profits or gain by the person occupying, C using or keeping such house, room, tent etc. whether by way of charge or otherwise. The instrument of gaming would include any article used or intended to be used as a subject of means of gaming, any document used or intended to be used as a register or record or evidence of gaming, the profits of any gaming or any winnings or prizes in money or otherwise distributed or intended to be distributed or money's worth in gaming. D Place would include a building or a tent etc. whether permanent or temporary or any area whether enclosed or open. Place of public amusement means any place where any gain or means of carrying on the gain is provided in which the public are admitted includes a road or a street or a way whether a thorough fare or not a landing place in which the public are granted E access or have a right to resort or over which they have a right to pass. The element of gaming are the presence of prizes or consideration, chance and prizes are reward and games includes a contrivance which has for its object to furnish sport, recreation or amusement. Amusement would mean diversion, pastime or enjoyment or a pleasurable occupation of the senses, or F that which furnished it. A common gaming house is a place or public place kept or used for playing therein any game or chance, or any mixed game of chance and skill, in which the organiser keeps one or more of the players. It is also a place in which any game is played, the chances of which are not alike favourable to all the players. Gaming is to play any game whether of skill or chance for money or money's worth and the act is not G less gaming because the game played is not in itself unlawful and whether it involved or did not involve skill.

Where in a certain game, certain operations are to be performed to enable the gamester to play the game, the persons taking part in such H operations must be deemed to be 'gaming' or actually assisting in the

gaming. "To game", therefore, is to play any game, whether of skill or chance, for money or money's worth. It is playing of the game for money or money's worth whether the game be lawful or not. No game can be a game of skill alone. In any game in which even great skill is required, chance must play a certain part. Even a skilled player in a game of mere skill may be lucky or unlucky, so that even in a game of mere skill chance must play its part. But it is not necessary to decide in terms of mathematical precision the relative proportion of chance or skill when deciding whether a game is a game of mere skill. When in a game the element of chance strongly preponderate, it cannot be game of mere skill. Therefore, it is not practicable to decide whether particular video game is a game of skill or of mixed skill and chance. It depends upon the facts, in each case.

The respective Acts deal with the regulation of the gaming or running of the common gaming house with penal consequences enumerated in the appropriate Act or the Rules or Regulations operating in that behalf. The licencing authority, the Commissioner/Dist. Magistrate having a charge over the place or public place, by virtue of office, exercises his powers regulating the gaming or common gaming house by issuance of licence for running the same subject to such conditions or restrictions imposed therein to maintain peace, order and security, morality prevention of offences, detection of the crime, apprehension or detention of offenders and have the offenders tried for violation of law in accordance with law.

The primary questions that emerge are whether video game is a game and whether it is a game of skill or chance and liable to be regulated under the relevant Act, notification or regulations or orders issued thereunder. The word "gaming" defined under the Acts is an inclusive definition to bring within its ambit diverse games as held earlier.

Some of the video games are operated with two way or four way joy-sticks, push buttons, a volume control with a steering wheel and accelerator, gun trigger control or potentiometer etc. etc. Every video game is operated by an electronic machine. In all the games, tokens are actually used by the player by inserting into the machine before the play actually begins. The tokens are required to be purchased for cash at the counter and are exchangeable for cash. In the Tamil Nadu cases, in the counter affidavit filed by the Commissioner, it was stated and accepted by the High Court that Super Continental game has four vertical pathways on the

- A screen. The first containing figures of apples, second contains grapes, third contains bells and fourth contains stars. On pressing the button, these stripes move fast and after some time come to stop. The points are given in the figures appearing in groups for example three apples or three grapes or the order as indicated in the machine. The player can either lose the amount or win if he makes more points than the bet. Similarly, Five Line game is the same as that of Super Continental except that this game has got only three stripes. Other games like High-low, Black Jack, Packer Double UP, Skill Ball, Pac Man, Golden Derby, have been explained, the details of play are not material for decision. If the player presses the button without knowing the outcome i.e. the nature of cards that would be turned,
- C it is only a game of chance for the card opened contains a numerical of either higher or lower denomination. Video gaming, therefore, is associated with stakes or money or money's worth on the result of a game, be it a game of pure chance or of mixed skill or chance.

- D For a commoner or a novice, it is difficult to play video game with skill. Ordinary common people who join the game can hardly be credited with skill for success in the game. The forecast is nothing better than a short at a hidden target. Whether a particular video game is a game of skill or a game of chance, or mixed chance or skilled requires to be determined on the main element, namely, skill or chance. If it is a game of pure chance or mixed chance and skill, it is a gaming. Even if the game is for amusement or diversion of a person from his usual occupation for entertainment, it would constitute "gaming." The object of the relevant Act, notification or Orders made thereunder is to regulate running of the video games and for that licence is required from the licensing authority.

- F In Madras cases, the Commissioner prohibited afore-enumerated games as pure games of chance and permitted certain other games as game of skill. That conclusion was based upon consideration of the findings, submitted by a committee of senior police officers arrived at on sample survey. The High Court accepted the finding by the committee thus :

- G "From the file, it is seen that when one enters the video games parlours, he is able in the first instance, only to see these machines exhibited, which appears to be providing games of entertainment or amusement or games involving skill on the part of the player.
- H Several instances have been given in the survey report. It is seen

from the report; that on a closer look, one could perceive electronic machines installed wherein the game or games provided are purely games of chance. As an instance, in one of these games, five closed cards are exhibited on the screen. The player is allowed to press some of the buttons provided in the machine on which the closed cards are reversed and jacks, aces, kings, Queens, etc. appear. If the player succeeds in getting two jacks and three aces, he gains certain points and these points are recorded electronically. The players is permitted to repeat the play as a result of which he might also lose the initial points gained by him. Although this game is claimed to be one which depends upon the skill with which the buttons are pressed in, actually operating these buttons one could easily see that there is absolutely no skill at all involved in the game and the chances of a player maintaining the game depends purely upon his luck and not upon his skill. Further, on opening one such machine, it is notice by the Technical Officer, Control Room, that there is a provision for making adjustments in such a way that a player can never succeed in winning the points required for a success at the time. The player appears to have absolutely no idea as to how the cards got reversed or re-arranged. There can, therefore, be no doubt, that this game is purely a game of chance wholly unrelated to the skill of the player. In respect of this particular game, the minimum amount fixed for a play is Rs. 20."

The report further disclosed that one player by name Ramesh lost rupees one lakh in video games who was also examined by the committee. The machines are not freely accessible or easily visible to a casual visitor. At some places, they were installed behind partition and the players are conducted into such places with a view to ensuring that such games are not visible from outside. There is no scope for using one's skill to arrive at a desired result in the games like Royal Casino, Super Continental, Five Line, High Low, Black Jack, Poker Double Up, Skill Ball, Pac Man and Golden Derby. They were classified as games of chance. By allowing such games, the innocent children and the common public would lose hard earned money. Machines electronically operated are adjusted in such a way that the player always lose the game since no skill is involved. Machines were tampered with, so that chances of winning by the player was almost an impossibility. The Commissioner, therefore, had prohibited such games

A of chance while permitting to play the games of skill.

B The question then emerges whether regulation of video games violates the fundamental right to trade or business or avocation of the appellants guaranteed under Articles 19(1)(g) and 21. It is true that they have fundamental right to trade or business or avocation but it is subject to control by Article 19(6) which empowers to impose by law reasonable restrictions on the exercise of the right in general public interest. In applying the test of reasonableness, the broad criterion is whether the law strikes a proper balance between social control on the one hand and the right of the individual on the other hand. The court must take into account factors like nature of the right enshrined, underlying purpose of the restriction imposed, evil sought to be remedied by the law, its extent and urgency, how for the restriction is or is not proportionate to the evil and the prevailing conditions at that time. The court cannot proceed on general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or a class of persons on whom the restrictions are imposed. In order to determine reasonableness of the restriction, regard must be had, as stated earlier, to the nature of the business and the prevailing conditions in that trade or business which would differ from trade to trade. No hard and fast rules concerning all trades etc. could be laid. The State, with a view to prohibit illegal or immoral trade or business or injurious to the public health or welfare, is empowered to regulate the trade or business appropriate to the conditions prevailing in the trade/business. The nature of the business and its indelible effect on public interest etc., therefore, are important elements in deciding the reasonableness of the restriction. No one has inherent right to carry on a business which is injurious to public interest. Trade or business attended with danger to the community may be totally prohibited or be permitted subject to such conditions or restrictions as would prevent the evils to the utmost.

G The licencing authority, therefore, is conferred with discretion to impose such restrictions by notification or Order having statutory force or conditions emanating therefrom as part thereof as are deemed appropriate to the trade or business or avocation by a licence or permit, as the case may be. Unregulated video game operations not only pose danger to public peace and order and safety, but the public fall a prey to gaming where they always stand to lose in playing in the games of chance. Unless one resorts

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to gaming regularly, one can hardly be reckoned to possess skill to play the video game. Therefore, when it is a game of pure chance or manipulated by tampering with the machines to make it a game of chance, even acquired skills hardly assist a player to get extra tokens. Therefore, even when it is a game of mixed skill and chance, it would be a gaming prohibited under the statute except by regulation. The restriction imposed, therefore, cannot be said to be arbitrary, unbridled or uncanalised. The guidance for exercising the discretion need not *ex facie* be found in the notification or orders. It could be gathered from the provisions of the Act or Rules and a total consideration of the relevant provisions in the notification or order or conditions of the licence. The discretion conferred on the licencing authority, the Commissioner or the District Magistrate, cannot be said to be arbitrary, uncanalised or without any guidelines. The regulations, therefore, are imposed in the public interest and the right under Article 19(1)(g) is not violated.

It is true that the owner or person in charge of the video game, earn livelihood assured under Article 21 of the Constitution but no one has right to play with the credulity of the general public or the career of the young and impressive age school or college going children by operating unregulated video games. If its exhibition is found obnoxious or injurious to public welfare, it would be permissible to impose total prohibition under Article 19(6) of Constitution. Right to life under Art. 21 does protect livelihood, but its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order. Therefore, regulation of video games or prohibition of some of video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair nor unjust.

It is next contended in the appeals arising from Karnataka that they are not required to obtain licence under the notification. In support thereof, it is contended that the Commissioner lacks power under s.31 to make the regulation. We find no force in the contention. It is seen that s.31 empowers the Commissioner or the District Magistrate in the area under their respective charge to make, alter or amend orders not inconsistent with the Mysore Act. They are empowered to licence persons doing any trade or business, or to control places of public amusement or entertainment. They are also empowered to prohibit keeping all public places or places

- A of public amusement or entertainment to prevent obstruction etc. They are entitled to regulate the means of entrance or exit at places of public amusement or assembly and providing for the maintenance of public safety and the prevention of disturbance thereat. Under clause (x), Commissioner or the District Magistrate is empowered to regulate by licencing or controlling, with such exceptions specified therein, the musical, dancing,
- B mimetic or theatrical or other performances for public amusement including melas and tamashas. In the interest of public order or decency or morality or in the interest of general public, they are entitled to regulate the conduct of even the artists or the audience. They are also entitled to prescribe procedure in accordance with which any licence or permission
- C required to be obtained under the Act should be applied for and to fix the fee to be charged for such licence as provided under Clause (z) etc. Therefore, the power conferred on the Commissioner and the District Magistrate in the area under their respective charge are of wide amplitude to meet diverse situations by making, altering or rescinding the orders in accordance with the Act.
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It is seen that the draft notification was published, admittedly on June 8, 1989, inviting objections and suggestions to make the licencing and controlling the places of public amusement by Bangalore order applicable to Bangalore city. They were required to file objection on or before July

E 7, 1989. No objections were received by the Commissioner of Bangalore City. He had obtained necessary approval from the State Government of Karnataka and final notification was published in the Gazette on September 15, 1989. Thus, the notification is a statutory notification. Similar is the order of the Commissioner of Police, Madras city who initially issued regulations and thereafter they became the order. Therefore, they have a

F statutory force.

It is contended for the appellants from Karnataka that the notification was made applicable to an area of specified seating capacity and since the places in which the video games are played are of a small dimension

G which do not have minimum or maximum seating capacity envisaged in para 3(2) of the Bangalore Order 1989, it has no application to video games and the learned single Judge having directed not to apply the above clause, the entire order does not apply to them. Another argument stemmed therefrom is that being a delegated legislation, when part of it was served

H by single Judge, the whole order became inapplicable. It is also equally

contended that Commission has no power to levy licence fee since the place has no required number of seating capacity. A

We find no force in either of the contentions. It is already seen that the order regulates the running of the video games in public places. The dimensions of the place where video games are run are not relevant for the applicability of the order to the video games. Sub-para (2) of para 3 of the Bangalore Order divides public places into four categories according to which the person is required to pay licence fee by a treasury challan i.e. permanent, semi-permanent, temporary or other places of public amusement. It also prescribes the maximum and minimum rates of licence fee. Clause (d) becomes applicable to any of other place not covered by clauses (a) to (c). What sub-para (2) of para 3 contemplates of is payment of fee up to 200 seat capacity, namely, 1 to 200, if it is a permanent place, minimum fee is Rs. 50 etc. Public amusement would be permitted to be conducted at any of the places for which licence was obtained from the Commissioner/Dist. Magistrate. When Cl.(d) is applicable, the licence fee is Rs. 20. We are informed that Rs. 20 is being charges for obtaining the licence to control the video games by the Commissioner. Relying upon the statement in this clause about its applicability in those cases where admission to the place in question is payment of money, it has been contended by the counsel for the appellants that this clause too is not attracted, as in the position qua other clauses which have prescribed payment as per seating capacity - there being no arrangement for seating at all in the places in question. However, the provision is not tailor made for video games only, but is quite general in nature. We have not been persuaded to hold that the notification was not meant to apply to places where video games are being played. According to us, clause (d) is in the nature of a residuary provision and it is because of this that licence fee of Rs. 20 is being charged in cases at hand. B  
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It is next contended by the appellants from Tamil Nadu that they are running video games within a space of 46-1/2 sq. mt. and that, therefore, they are not required to obtain any licence under s.34 of the Madras City Police Act, which says that no enclosure or place of playing having an area of 46-1/2 Sq. mt. or upward shall be sued for public entertainment or resort without a licence from the Commissioner. Since they are using video games at a place less then 46-1/2 sq.mt., they require no licence. The contention is wholly misconceived. Under s.39 of that Act, the Commissioner may H

- A make rules for ensuring order and decency and for public safety at all places of public entertainment or resort and for regulating the times during which the places referred to in ss.34 and 35 are used. Section 34(1) prohibits user of an enclosed place or a building having an area of 46-1/2 sq. meters or upward for public entertainment or resort without a licence from the Commissioner. In other words the licence is for user of the building upto the upwards of 46-1/2 sq. meters whereas s.39 gives power to the Commissioner to make rules for ensuring order and decency and for public safety at all places of public entertainment or resort, and for regulating the times during which the places referred to in ss.34 and 35 shall be allowed to be open or used. The exercise of the power under s.39, therefore, is to ensure order and decency and for public safety at all places of public entertainment or resort including the place referred to in s.34 and s.35. Therefore, any person intends to use any premises for public entertainment or resort though may use the premises below 46-1/2 sq. meters is required to obtain licence under rules made under s.39 for decency or public safety. Therefore any person using any building or enclosed place with a dimension of below 46-1/2 sq. meters is required to obtain licence under the rules made under s.39 of Madras City Police Act and other relevant law elsewhere.

- E Next contention is that prevention of the students from attending the video games is arbitrary and, therefore, violates Articles 14 & 21. We find no force in the contention. The conditions of the licence clearly mention that the students in uniforms shall not be allowed to play video games between 10.00 a.m. to 3.00 p.m. In other words, during school or college hours, the licensee is prohibited to admit students in uniform to the video games. Restriction is imposed in public interest of education of the students. It is, therefore, neither arbitrary nor capricious.

- G The submission that condition regarding parking is arbitrary, since video games are played in the 3rd floor or 2nd floor of the multi-storeyed building, is also devoid of force. The order and the condition of licence regulate diverse games in general played at different places and not with reference to a particular individual game or place. On that ground, the condition cannot be declared to be ultra vires or arbitrary. With reference to a particular case, it may be dealt with according to fact-situation.

- H The Karnataka appellants urge that the High Court having severed

para 3(2) of the Order being inapplicable to the video games, the whole order must be struck down as being inseparable. We find no force in the contention. It has already been held that the orders are statutory in character. Though the delegated authority under the Act made general order, it may well that a part thereof is not applicable, or is bad, in relation to a particular trade or business. Partly good and partly bad legislation cannot be struck down as a whole. To the extent it becomes applicable to a particular trade or business, it would be valid and operative and the balance remains either inapplicable or invalid. Diverse situations may arise in a particular trade or business. For that reason, the delegated legislation cannot be condemned as a whole unless the invalid part is inextricably interconnected with the valid. The Court is, therefore, entitled to consider whether the rule as a whole or in part is valid or becomes invalid or inapplicable. On its finding that to the extent the rule is not relevant, Court is entitled to set aside or direct to disregard the irrelevant or inapplicable part leaving the rest intact and operative. Our attention has been invited by the learned counsel for the respondents is what has been stated in this regard in Wade's Administrative Law at pp.874.5 of the 6th Edn. under the heading "Partial invalidity". The learned author has cited many cases according to which it is possible for delegated legislation to be partially good and partially bad - the general rule being :- "Unless the invalid part is inextricably interconnected with the valid, a court is entitled to set aside or disregard the invalid part, leaving the rest intact."

It is next contended that the applications for licence were rejected without hearing the appellants and, therefore, it is violative of the principles of natural justice. We find no force in the contention. The condition in para 4 of the Bangalore order envisages thus :

"(5) The licencing authority shall in deciding whether to grant or refuse licence for conducting public amusements have regard to the following matters, namely :-

(a) the interest of public in general; and

(b) the status and antecedent of the applicant.

(6) The licencing authority shall not grant a licence under this order unless he is satisfied :-

A (a) that the provisions of this order have been substantially complied with; and

B (b) in the case of an application for the grant of a licence for conducting public amusements, all adequate precautions have been taken in the place, in respect of which the licence is to be granted, to provide for the safety, convenience and comfort of the persons attending exhibition therein."

C A reading of these rules expressly does not provide for a right of hearing before rejecting licence to permit public amusements. In sub-para (7) of para 4, it is made clear that where the licencing authority refuses to grant a licence, it shall do so and the order be communicated to the applicant giving reasons in writing for such refusal.

D It is settled law that every action of the State or an instrumentality of the State must be informed by reason. Actions uninformed by reason may amount to being arbitrary and liable to be questioned under Article 226 or Article 32 of the Constitution. The action must be just, fair and reasonable. Rejection of the licence must be founded upon relevant grounds of public interest. Fair play and natural justice are part of fair public administration; non-arbitrariness and absence of discrimination are hall marks for good governance under rule of law. Therefore, when the State, its delegated authority or an instrumentality of the State or any person acts under a statutory rule or by administrative discretion, when its actions or orders visit the citizen with civil consequences, fairness and justness require that in an appropriate case, the affected citizens must have an opportunity to meet the case. *Audi alteram partem* is part of the principles of natural justice. Decided cases have not extended doctrine of hearing in every case. It depends upon facts in a given case. What has been stated in *Mahabir Auto Stores and Ors. v. Indian Oil Corporation and Ors.*, [1990] 3 SCC 752, which has been pressed into service by the appellants' counsel to contend that opportunity of hearing was required to be given in every case. This requirement of natural justice cannot be put in a rigid mould, at which stating that before an adverse decision is taken, the affected person should be taken into confidence, it was observed in paragraph 18 that whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any strait-jacket."

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When constitutionality of the statute or the statutory rules was impugned, with a view to sustain the statute or statutory rules, this Court read down the law consistent with rule of natural justice including personal hearing. See *C.B. Gautam v. Union of India*, [1993] 1 SCC 78 at 103, referred by learned counsel for the appellants. In some cases like *Maneka Gandhi*, post - decisional hearing was regarded as sufficient.

It is also settled law that the order need not contain detailed reasons like court order. Administrative order itself may contain reasons or the file may disclose reasons to arrive at the decision showing application of mind to the facts in issue. It would be discernible from the reasons stated in the order or the contemporaneous record. Reasons are the link between the order and the mind of its maker. When rules direct to record reasons, it is a *sine qua non* and condition precedent for valid order. Appropriate brief reasons, though not like a judgment, are necessary concomitant for a valid order in support of the action or decision taken by the authority or its instrumentality or the State. Normally it must be communicated to the affected party so that he may have an opportunity to have it tested in an appropriate forum.

In *S.L. Kapoor v. Jagmohan*, [1981] 1 SCR 746, it was contended that before supersession of the Municipal Committee, no opportunity of hearing was given and, therefore, it was violative of the principles of natural justice. While considering the question, the court noted the submission of the Attorney General that s.238 of the Punjab Municipal Act requires to meet emergent situation with swift action and necessarily it would imply exclusion of the natural justice. This Court negated the contention of hearing and natural justice may always be moulded to the situation. The party acting under the Act need not extend oral hearing and it is not necessary to put every detail of a case to the affected person. Broad grounds are sufficient to be given to indicate the decision.

It is seen that the Commissioner or the Dist. Magistrate is required to record reasons while refusing to grant the licence. This assures compliance with principles of natural justice. It is not mandatory that hearing should be extended before rejecting licence. A caveat is, however, necessary. When the licencing authority seeks to place reliance on any adverse material gathered behind the back of the applicant to which he had no

- A prior opportunity to meet or explain such adverse material, principles of natural justice do require that before taking a decision to reject the licence such material or the gist thereof must be brought to the notice of the applicant and an opportunity given to meet the grounds or such material. It would be open to the party to make a representation in that behalf or
- B he may place any other material in support of his contention to persuade the licencing authority to come to a different conclusion or to disabuse any prejudice against the appellant. If the facts are in acute dispute the request for personal hearing may be extended. The licencing authority, then, is required to consider the objections or grounds putforth in support of the claim of the applicant or relevance or otherwise of the adverse material.
- C The licencing authority is entitled to grant or reject the licence as is enjoined by sub-para (7) of para 4. The licencing authority has to record reasons in support of its decision of rejecting the application for licence which includes the renewal and should communicate the same to the applicant.

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It is seen that the Karnataka High Court, on an application made by the appellants, directed the Commissioner to consider the objections and to pass appropriate orders within 15 days from the date of the receipt of the High Court order. Counsel for the respondents placed before us a sample of the order passed by the Commissioner on the application of Bhagwan Das Wadwani and for reasons recorded therein, he rejected the application on January 25, 1994, namely, pending appeal in this court. The order shows that it was communicated to the address at No. 93, Wonderland Avenue Road, Bangalore. Counsel for the appellants stated the order has not yet been received. We have no material before us to accept the contention. We may put on record the stand of State counsel - the same being that the Commissioner would consider representation, if any, reason given is non-existent or is deemed not germane, whereafter fresh order containing reasons would be passed.

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It is contended for the appellants from Tamil Nadu that the authorities are refusing to grant licence enblock and the action, therefore, is arbitrary. It is seen that the Commissioner has banned exhibiting of only those video games specified in the body of the judgment and noted by the High Court and permitted exhibition of games of skill in an appropriate case. If the Commissioner rejects any application on irrelevant grounds, it

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may be open to the aggrieved party to have its legality impugned in an appropriate proceedings. A

Thus considered, we are of the view that no case has been made out warranting our interference in these appeals and the writ petitions. They are accordingly dismissed but in the circumstances, without costs.

The contempt petition Nos. 38-51/95 in SLP 10065-78/94 are also dismissed. B

R.A.

Appeals dismissed.