

M.J. Sivani And Ors vs State Of Karnataka And Ors on 17 April, 1995

Equivalent citations: AIR 1995 SUPREME COURT 1770, 1995 AIR SCW 2774, 1995 (4) JT 141, 1995 (2) SCR 617, (1995) 2 SCJ 620, 1995 (2) SCC(SUPP) 680

Author: K. Ramaswamy

Bench: K. Ramaswamy, B.L. Hansaria

CASE NO.:
Appeal (civil) 4564 of 1995

PETITIONER:
M.J. SIVANI AND ORS.

RESPONDENT:
STATE OF KARNATAKA AND ORS.

DATE OF JUDGMENT: 17/04/1995

BENCH:
K. RAMASWAMY & B.L. HANSARIA

JUDGMENT:

JUDGMENT 1995(3) SCR 329 The Judgment was delivered by K. RAMASWAMY, J.

K. RAMASWAMY, J. -

Leave granted in SLPs Nos. 11012 of 1991, 10065-78, 18271-75, 18617-18630, 18316, 22759-22763 and 22865-70 of 1994, 675, 2347-53 and 6437-6440 of 1995 and SLP No. ... of 1995 (CC No. 1306)

2. These appeals by special leave arise from the Division Bench judgment of the Karnataka High Court in Writ Appeals Nos. 1303-23 of 1990 dated 17-9-1990 and of the Madras High Court in Writ Petition No. 404 of 1986 and batch dated 28-12-1993. Since common questions of law arise in these cases, they are disposed of by common judgment

3. 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-O dated 18-1-1993 and the allied. When the Commissioner of Police, Bangalore, exercising the power under the Licensing 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 rights under Articles 19(1)(g) and 21 of the Constitution. The Division Bench upheld the view of the Single 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 practising 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

4. 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 theatre nor a public place. Therefore, it is not a "common gaming house" as defined under the respective Acts. The games conducted in the respective shops of the appellants do not involve any money transaction except collection of non-refundable charges for tokens for playing games. 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 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 licensing authority concerned

5. 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 or 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, billiards room, bagatelle 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

6. 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 owning, 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

7. Black's Law Dictionary, 6th Edn., defines 'gaming' at p. 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, vehicle, 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 p. 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 p. 84 as a " pastime; diversion, enjoyment. A pleasurable occupation of the senses, or that which furnished it."

8. In Stroud's Judicial Dictionary, 5th Edn., 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) a bank is 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 players 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 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

9. In State of A.P. v. K. Satyanarayana 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 as 'flush', 'brag' etc. is a game of pure chance. Rummy on the other 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."

10. 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, 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. 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 and includes a road or a street or a way whether a thoroughfare or not and a landing place in which the public are granted access or have a right to resort or over which they have a right to pass. The elements 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 that which furnished it. A common gaming house is a place or public place kept or used for playing therein any game of 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 favourable alike 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 less gaming because the game played is not in itself unlawful and whether it involved or did not involve skill

11. 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 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 preponderates, it cannot be a game of mere skill. Therefore, it is not practicable to decide whether a particular video game is a game of skill or of mixed skill and chance. It depends upon the facts, in each case

12. 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 licensing authority, the Commissioner/District 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

13. 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

14. Some of the video games are operated with two-way or four-way joysticks, 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 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 a 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, Poker 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, it is only a game of chance for the card opened contains a numeral 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 and chance

15. 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 shot at a hidden target. Whether a particular video game is a game of skill or a game of chance, or mixed chance or skill 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 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

16. 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 "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. 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 player 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 noticed 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 rearranged. 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."

17. 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 of chance while permitting to play the games

of skill

18. 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 far 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 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

19. The licensing 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 a danger to public peace and order and safety; but the public will 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 licensing 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

20. 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 the right to play with the credulity of the general public or the career of the young and impressionable 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 the Constitution. Right to life under Article 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 video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair or unjust

21. 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 Section 31 to make the regulation. We find no force in the contention. It is seen that Section 31 empowers the Commissioner or the District Magistrate in the area under their respective charge to make, alter or rescind orders not inconsistent with the Mysore Act. They are empowered to license 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 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), the Commissioner or the District Magistrate is empowered to regulate by licensing or controlling, with such exceptions specified therein, the musical, dancing, 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 artistes or the audience. They are also entitled to prescribe procedure in accordance with which any licence or permission 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

22. It is seen that the draft notification was published, admittedly on 8-6-1989 inviting objections and suggestions to make the licensing and controlling the places of public amusement by Bangalore order applicable to Bangalore City. They were required to file objection on or before 7-7-1989. 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 15-9-1989. 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 statutory force

23. 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 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 severed by

the Single Judge, the whole order became inapplicable. It is also equally contended that the Commissioner has no power to levy licence fee since the place has no required number of seating capacity

24. 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 other place not covered by clauses (a) to (c). What sub-para (2) of para 3 contemplates is payment of fee up to 200-seat capacity, namely, 1 to 200, if it is a permanent place, a 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/District Magistrate. When clause (d) is applicable, the licence fee is Rs. 20. We are informed that Rs. 20 is being charged 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 on 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

25. It is next contended by the appellants from Tamil Nadu that they are running video games within a space of 46-1/2 sq. m. and that, therefore, they are not required to obtain any licence under Section 34 of the Madras City Police Act, which says that no enclosure or place of playing having an area of 46-1/2 sq. m. or upward shall be used for public entertainment or resort without a licence from the Commissioner. Since they are using video games in a place less than 46-1/2 sq. m., they require no licence. The contention is wholly misconceived. Under Section 39 of that Act, the Commissioner may 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 Sections 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. m. or upward for public entertainment or resort without a licence from the Commissioner. In other words the licence is for user of the building up to and upwards of 46-1/2 sq. m. whereas Section 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 Sections 34 and 35 shall be allowed to be open or used. The exercise of the power under Section 39, therefore, is to ensure order and decency and for public safety at all places of public entertainment or resort including the places referred to in Section 34 and Section 35. Therefore, any person who intends to use any premises for public entertainment or resort though may use premises below 46-1/2 sq. m. is required to obtain licence under rules made under Section 39 for decency or public-safety. Therefore, any person using any building or enclosed

place with a dimension of below 46-1/2 sq. m. is required to obtain licence under the rules made under Section 39 of Madras City Police Act and other relevant law elsewhere

26. Next contention is that prevention of the students from attending the video games is arbitrary and, therefore, violates Articles 14 and 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

27. The submission that condition regarding parking is arbitrary, since video games are played in the 3rd floor or 2nd floor of the multistoreyed 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 the fact-situation

28. 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 a general order, it may well be 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, the 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. 874-75 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."

29. 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 licensing 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 licensing authority shall not grant a licence under this order unless he is satisfied

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

(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."

30. 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 licensing 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

31. 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 hallmarks 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 v. Indian Oil Corpn.* 2 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 basis. 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* referred by learned counsel for the appellants. In some cases like *Maneka Gandhi*, post-decisional hearing was regarded as sufficient

32. It is also settled law that the order need not contain detailed reasons like a 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 a 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

33. In *S. L. Kapoor v. Jagmohan* 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 Section 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

34. It is seen that 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 licensing 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 licensing 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 licensing authority, then, is required to consider the objections or grounds put forth in support of the claim of the applicant or relevance or otherwise of the adverse material. The licensing authority is entitled to grant or reject the licence as is enjoined by sub-para (7) of para 4. The licensing 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

35. 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 25-1-1994, 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

36. It is contended for the appellants from Tamil Nadu that the authorities are refusing to grant licence en bloc 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 may be open to the aggrieved party to have its legality impugned in appropriate proceedings

37. 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

38. The Contempt Petitions Nos. 38-51 of 1995 in SLPs Nos. 10065-78 of 1994 are also dismissed