

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 9/4/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition Nos.10223, 10467, 10979 and 10985 of 2019
and

WMP No's.10788,10790,10981,11413 and 11417 of 2018

W.P.No.10223 of 2019

V.K.Vanaja

...

Petitioner

Vs

1. Union of India
rep. By Union Territory of Pondicherry
through the Chief Secretary
Government of Pondicherry
Pondicherry.

2. The Office of the District Magistrate
Government of Puducherry.

3. The Superintendent of Police
Mahe.

...

Respondents

Prayer in W.P.No.10223 of 2019: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the second respondent in No.1003/DM/RO/D1/2019 dated 18/3/2019, quash the same and consequently, grant a temporary Festival License to the petitioner.

W.P.No.10467 of 2019

1. S. Susi
2. Sathyendranadan
3. M.P.Parkashan
4. K.K.Haridasan
5. P.M.Saleel Kumar
6. C.T.Nishad Kumar
7. K. Vijith
8. K. Rajesh
9. N. Karthiyayani
10. V.K.Vanaja
11. Dhanesh

12. Ratheesh Babu ... Petitioners

Vs

The District Magistrate
Office of the District Magistrate
Puducherry. ... Respondent

Prayer in W.P.No.10467 of 2019: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the respondent herein in No.1003/DM/RO/D1/2019 dated 28/3/2019, quash the same and consequently, to direct the respondent to grant temporary licenses to the petitioners to possess and sell manufactured crackers/fireworks on the eve of "Vishu" celebrations.

W.P.No.10979 of 2015

Janu.M.M ... Petitioner

Vs

The District Magistrate
Office of the District Magistrate
Puducherry. ... Respondent

Prayer in W.P.No.10979 of 2019: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the respondent herein in relation to the Memorandum No.1003/DM/RO/D1/2019 dated 28/3/2019, quash the same and consequently, to direct the respondent to grant temporary license to the petitioner to possess and sell manufactured crackers/fireworks on the eve of "Vishu" celebrations.

W.P.No.10985 of 2015

Vazhayil Raveendran ... Petitioner

Vs

The District Magistrate
Office of the District Magistrate
Puducherry. ... Respondent

Prayer in W.P.No.10985 of 2019: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus, calling for the records of the respondent herein in relation to the Memorandum No.1003/DM/RO/D1/2019 dated 28/3/2019, quash the same and consequently, to direct the respondent to grant temporary

license to the petitioner to possess and sell manufactured crackers/fireworks on the eve of "Vishu" celebrations.

For petitioner

... Mr.K.Raja Srinivas
for Mr.C.Gauthamaraj
(in W.P.No.10223 of 2019)

Mr.M.R.Thangavel
(W.P.No.10467, 10979 and
10985 of 2019)

For respondent

... Mr.D.Ravichandran
Additional Government Pleader
(Pondy)

C O M M O N O R D E R

(Order of the Court was made by S.Manikumar,J)

Ms.V.K.Vanaja, has filed W.P.No.10223 of 2019, to quash the order passed by the District Magistrate, Government of Puducherry, in Proceeding No.1003/DM/RO/D1/2019, dated 18/3/2019, and consequently, grant a temporary Festival License to her.

2. Ms.S.Susi, has filed W.P.No.10467 of 2019, to quash the order passed by the District Magistrate, Office of the District Magistrate, Puducherry, in Proceeding No.1003/DM/RO/D1/2019, dated 28/3/2019, and consequently, to direct the respondent, to grant temporary licenses to the petitioners, to possess and sell manufactured crackers/fireworks, on the eve of "Vishu" celebrations.

3. Ms.M.M.Janu, has filed W.P.No.10979 of 2019, to quash the order by the District Magistrate, Puducherry, in Memorandum No.1003/DM/RO/D1/2019, dated 28/3/2019, and consequently, to direct the respondent, to grant temporary license to the petitioner, to possess and sell manufactured crackers/fireworks, on the eve of "Vishu" celebrations.

4. Mr.Vazhayil Raveendran, has filed W.P.No.10985 of 2019, to quash the order passed by the District Magistrate, Office of the District Magistrate, Puducherry, in Memorandum No.1003/DM/RO/D1/2019, dated 28/3/2019, and consequently, direct the respondent to grant temporary license to the petitioner, to possess and sell manufactured crackers/fireworks, on the eve of

"Vishu" celebrations.

5. In proceeding No.1003/DM/RO/D1/2019, dated 18/3/2019, the District Magistrate, Government of Puducherry, Office of the District Magistrate, Puducherry, has granted exemption, for sale of crackers/fire works, from 1/4/2019 to 15/4/2019, in Mahe region only. Subsequently, vide, proceeding No.1003/DM/RO/D1/2019, dated 28/3/2019, District Magistrate, Government of Puducherry, Office of the District Magistrate, Puducherry, has clarified that exemption is granted only to the permanent license holders. In exercise of powers, under Section 6 (c) (1) (c) of the Explosives Act, 1884, the District Magistrate, Puducherry, has rejected the request for grant of temporary license.

6. Proceeding dated 18/3/2019 of the District Magistrate, Puducherry, reads as under:-

GOVERNMENT OF PUDUCHERRY
OFFICE OF THE DISTRICT MAGISTRATE

No.1003/DM/RO/D1/2019

Puducherry, 18.03.2019

MEMORANDUM

Sub: DM, Puducherry - General Election to Lok Sabha - 2019 -
Exemption from suspension of crackers licence issued
under
Explosive Act and Rules - Orders - issued -
Regarding

Pursuant to the enforcement of the Model Code of Conduct on account of the Parliamentary Elections - 2019 to Puducherry Constituency on 10.03.2019, the undersigned has suspended all explosives licenses in the District of Puducherry till the completion of election process.

Whereas, representation has been received from the crackers licence holders of Mahe region stating to exempt them from suspension of explosives licences in view of the Vishu festival on 16th March 2019, in which fireworks is a part of the festival and it is custom and tradition followed by the people of Mahe and the State of Kerala. Further, celebration of Vishu festival is concerned with the religious sentiments of the people in the region of Mahe. Also, the law and order situation must also be maintained to ensure fair and smooth conduct of

the election.

In view of the above and as also a mark of respect to the religious sentiments of people of Mahe, the suspension of licence issued under the Explosives Act and rules, to possess and sale crackers/fireworks is exempted for the period from 01.04.2019 to 15.04.2019 in the Mahe region only. Further, this exemption is subject to the following conditions:

(1) All crackers/fireworks possession godowns/storage place to be equipped with CCTV cameras.

(2) Regular inspection of the inventory and stock register by the authorities concerned.

(3) Illegal transport of crackers/fireworks to and from other states is strictly prohibited.

(4) No bulk sale to any person or political party.

(5) The explosives godown/shop shall be sealed again on 16.04.2019 till the completion of election process.

(6) Inventory of the sale of crackers/fireworks should be maintained at the shops.

The Tahsildar/Deputy Tahsildars of Taluk Office/Sub Taluk Office shall inspect the premises of shops selling firecrackers. They shall also conduct surprise inspection/raids in these locations and furnish weekly report. The Circle Inspectors and the Station House Officers of the concerned Police Station in Mahe shall also be on routine monitoring of the sale of the fire crackers.

DISTRICT MAGISTRATE

7. Proceeding, dated 28/3/2019, of the District Magistrate, Puducherry, reads as under:-

GOVERNMENT OF PUDUCHERRY

OFFICE OF THE DISTRICT MAGISTRATE

No.1003/DM/RO/D1/2019

Puducherry, 28.08.2019

MEMORANDUM

Sub: DM, Puducherry - General Election to Lok Sabha - 2019
- Licence to possess and sale of
fireworks/crackers under
Explosive Act and Rules - Regarding

- Ref: 1. This office Memorandum No.1003/DM/RO/D1/2019,
dated 10.03.2019
2. This office Memorandum No.1003/DM/RO/D1/2019,
dated 18.03.2019
3. Your office letter No.3222/SDM/C2/2019, dated

24.03.2019

.....

Pursuant to the announcement of schedule of General Elections to Lok Sabha 2019 to Puducherry Constituency, as one of the preventive measures to maintain law and order and to curb the chances of illegal movement and supply of explosives, this authority vide the memorandum cites first under reference had suspended all licences issued under Explosives Act and Rules to manufacture of possess and sell fireworks/crackers in Puducherry District including Mahe and Yanam region.

2. Whereas, representation was received from the crackers licence holders of Mahe region stating to exempt them from suspension of explosives licences in view of the Vishu festival on 15th March 2019, in which fireworks is a part of the festival and it is custom and tradition followed by the people of Mahe and the State of Kerala.

3. In view of the above and as also a mark of respect to the religious sentiments of people of Mahe, the undersigned vide the memorandum cited second, has already issued orders exempting permanent licence holders to possess and sale crackers/fireworks for the period from 01.04.2019 to 15.04.2019 subject to certain conditions in Mahe region only.

4. Further, the responsibility of maintaining law and order in the district is vested with this district administration and all necessary steps should be immediately taken to maintain appropriate ambience for smooth, free and lawful campaigning by political parties and for free exercise of individual rights to vote. In this circumstance, grant of temporary licence to possess and sale fireworks/crackers would require close monitoring of the shops to avoid misuse or illegal movement of crackers which leads to vulnerable situation to maintenance of law and order thereby affecting the safety and security of the public.

5. Hence, in order to ensure smooth conduct of elections by maintaining law and order and considering the security of the public peace and safety, and in exercise of powers under Section 6(C) (1)(C) of the Explosives Act, 1884, the applications received from Mahe region on account of Vishu festival 2019, for

grant of temporary licence in Form AE-5 to possess and sell fireworks/crackers under Explosives Act and Rules are rejected.

DISTRICT MAGISTRATE

8. In W.P.No.10223 of 2019, Ms.V.K.Vanaja, has challenged the exemption granted to the permanent licensees, to sell crackers/fireworks, between 1/4/2019 to 15/4/2019, in Mahe region only, whereas the petitioners in W.P.Nos.10467, 10979 and 10985 of 2019, have challenged the order of the District Magistrate, Puducherry, dated 28/3/2019, rejecting the applications, for grant of temporary licenses.

9. As all the writ petitions relate to the grant of licenses, permanent/temporary, as the case may be, under the Explosives Act & Rules, writ petitions are taken up together and disposed of, by a common order.

10. Grounds of challenge, to the proceeding, dated 18/3/2019, of the District Magistrate, Government of Puducherry, is that there is no intelligible differentia between permanent licensees/temporary licensees, to carry on a trade in selling fireworks/crackers, under Rule 84 of the Explosive Rules, 2008, and hence violative of Art 14 of the Constitution of India.

11. In addition to the above, petitioners have contended that authorities under the Explosives Act, have visited the premises, where temporary stalls were intended to be put up, during the festive season and having done so, District Magistrate, Government of Puducherry, cannot pass a blanket order, rejecting the requests of the writ petitioners, which would amount to violation of their constitutional right guaranteed, under Article 19 (1) (g) of the Constitution of India.

सत्यमेव जयते

12. In so far as W.P.No.10223 of 2019 is concerned, V.K.Vanaja, petitioner, has challenged the order, dated 28/3/2019, issued by the District Collector, District Magistrate, Government of Puducherry, to the permanent licensees, on the grounds of violation of Article 14 of the Constitution of India, that there is no intelligible differentia classifying permanent and temporary licensees. There is no rational nexus for the classification and the object intended to be achieved and no basis in exempting permanent licensees alone, on the contrary, preventing temporary licensees, from possessing and selling fireworks. Memorandum, dated 18/3/2019, is an omnibus order, declining applications for temporary

licensees.

13. Mr.K.Raja Srinivas and Mr.M.R.Thangavel, learned counsel for the petitioners made submissions, on the averments and they also invited the attention of this Court to the temporary licensees given in the year 2014 - 2016, respectively.

14. Per contra, Mr.D.Ravichandar, learned Additional Government Pleader (Puducherry), submitted that having regard to the Elections, a tentative decision was taken by the District Magistrate, not to allow any licensees, either permanent or temporary licensees, to sell fireworks/crackers. However, having regard to the customary practice of the people, in Mahe region, to burst crackers, during Vishu festival, a decision was taken to allow only permanent license holders, to possess and sell crackers, for a limited period, between 1/4/2019 and 15/4/2019.

15. Learned Additional Government Pleader (Puducherry) also submitted that two days prior to the election date, i.e., on 18/4/2019, the campaigning stops. Vishu festival would be celebrated, on 14th of April, every year and therefore, a decision was taken to allow only permanent licensees, to possess and sale crackers, for the period between 1/4/2019 and 15/4/2019, only in Mahe region, subject to the conditions, set out in the order, dated 18/3/2019. He further submitted that many applications have been received from Mahe region, to grant temporary licenses, to possess and sell fireworks/crackers, under the Explosives Act and Rules, framed thereunder.

16. Referring to paragraph 4 of the Memorandum, dated 28/3/2019, learned Additional Government Pleader (Puducherry) submitted that granting temporary license to possess and sale of fireworks/crackers, requires close monitoring of the shops to avoid misuse or illegal movement of crackers, leading to vulnerable situation to maintenance of law and order, thereby affecting the safety and security of the public.

17. Keeping in mind, the maintenance of law and order, free and lawful campaigning by political parties, close monitoring of the shops and the reasons stated supra, District Magistrate, Government of Puducherry has ordered not to allow any temporary license for possession and sale of fire crackers.

18. According to him, the District Magistrate, Government of Puducherry, has given valid reasons, for rejecting the

request for temporary license and granted exemption, only to permanent license holders, for possession and sale of crackers/fire works, from 1/4/2019 to 15/4/2019, in Mahe region only, keeping in view that custom and tradition followed by Mahe and State of Kerala. Learned Additional Government Pleader also submitted that the procedure for grant of permanent license and temporary license, under the Act, is different.

19. Heard Mr.K.Raja Srinivas, Mr.M.R.Thangavel, learned counsel for the petitioners and Mr.D.Ravichandran, learned Additional Government Pleader (Puducherry) for the respondent.

20. One of the main contentions of the learned counsel for the petitioners is that both permanent, as well as temporary licensees, are engaged in possession and sale of fireworks/crackers and in that context, there is no intelligible differentia in classifying temporary/permanent licensees, for the purpose of granting license, and the said classification, has no rational nexua with the object sought to be achieved.

21. Conjoint reading of the orders, dated 18/3/2019 and 28/3/2019, makes it clear that District Magistrate, Government of Puducherry, who is enjoined with the duty of conducting fair and free elections, enforcement of moral code of conduct, which has come into force from 10/3/2019, has suspended all the explosives licenses, in the District of Puducherry, till the completion of results. However, on receipt of the representations, from the license holders of Mahe region, requesting for exemption from suspension of license, in view of Vishu festival, which falls on 14/4/2019, taking note of the law and order situation, custom and tradition, followed by people of Mahe, while celebrating Vishu festival, religious sentiments of the people of Mahe has passed orders, dated 18/3/2019, exempting suspension of license for the period between 1/4/2019 and 15/4/2019, in Mahe region, subject to the following conditions:

(1) All crackers/fireworks possession godowns/storage place to be equipped with CCTV cameras.

(2) Regular inspection of the inventory and stock register by the authorities concerned.

(3) Illegal transport of crackers/fireworks to and from other states is strictly prohibited.

(4) No bulk sale to any person or political party.

(5) The explosives godown/shop shall be

sealed again on 16.04.2019 till the completion of election process.

(6) Inventory of the sale of crackers/fireworks should be maintained at the shops.

The Tahsildar/Deputy Tahsildars of Taluk Office/Sub Taluk Office shall inspect the premises of shops selling firecrackers. They shall also conduct surprise inspection/raids in these locations and furnish weekly report. The Circle Inspectors and the Station House Officers of the concerned Police Station in Mahe shall also be on routine monitoring of the sale of the fire crackers.

22. After granting suspension of exemption, for the period between 1/4/2019 and 15/4/2019, there were many applications received from Mahe region, for grant of temporary licenses. Order, dated 18/3/2019, is not clear as to whether such exemption is applicable only for permanent license holders or it applies to temporary licensees as well. Paragraph No.3 of the Memorandum, dated 28/3/2019, clarifies that orders, dated 18/3/2019, apply only to permanent license holders to possess and sell of firecrackers. For brevity, paragraph No.3 of the order, dated 28/3/2019 is reproduced hereunder:-

"3. In view of the above and as also a mark of respect to the religious sentiments of people of Mahe, the undersigned vide the memorandum cited second, has already issued orders exempting permanent licence holders to possess and sale crackers/fireworks for the period from 01.04.2019 to 15.04.2019 subject to certain conditions in Mahe region only."

23. In so far as maintenance of law and order, conducting a free and fair campaigning by political parties and as to whether grant of temporary license to possess and sell fireworks/crackers would require close monitoring of the shops, whether restrain for granting temporary licenses, would avoid mis-use of illegal movement of crackers and other aspects, stated supra, the District Collector, Government of Puducherry, at para No.4 of the Memorandum, dated 28/3/2019, observed as hereunder:-

"4. Further, the responsibility of maintaining law and order in the district is vested with this

district administration and all necessary steps should be immediately taken to maintain appropriate ambience for smooth, free and lawful campaigning by political parties and for free exercise of individual rights to vote. In this circumstance, grant of temporary licence to possess and sale fireworks/crackers would require close monitoring of the shops to avoid misuse or illegal movement of crackers which leads to vulnerable situation to maintenance of law and order thereby affecting the safety and security of the public.

24. Maintenance of law and order, public safety and security of the public are important matters, to be considered, by the District Magistrate/District Collector, even during an ordinary time. However, during Elections and when mode of conduct has come into force, District Collector/District Magistrate is burdened with more duties, to take preventive measures, to maintain law and order and to curb the chances of illegal movement and supply of explosives. District Magistrate has to maintain appropriate ambience, for smooth, free and lawful campaigning by political parties and at the same time, is required to have close monitoring of the shops, to avoid misuse or illegal movement of crackers, which according to him would lead to vulnerable situation to maintenance of law and order, thereby affecting safety and security of the public. Thus, the District Magistrate has explained as to why the applications for grant of temporary licenses received for Mahe region, cannot be entertained and rejected. District Magistrate, Puducherry has also stated that in view of the ensuing elections, preventive measures have to be taken to maintain law and order, and to curb the chances of illegal movement and supply of explosives. Thus, for the abovesaid reasons, District Magistrate, has classified permanent and temporary licensees, in the matter of grant of licence, permitting them to possess and sell fire works/crackers. Now, let us consider few decisions on classification.

(i) Article 14 does not prohibit reasonable classification but for passing test of permissible classification there are two conditions which have been time and again laid down and reiterated. It is useful to refer to the Constitution Bench judgment of this Court in AIR 1955 SC 191, Budhan Choudhary v. State of Bihar. In paragraph 5, following has been laid down:-

"5...It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be

founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well established by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure..."

(ii) In *Probhudas Morarjee Rajkotia v. Union of India*, reported in AIR 1966 SC 1044, a Constitutional Bench of the Supreme Court, while interpreting Article 14 of the Constitution of India, held as follows:

"8. It cannot be too strongly emphasized that to make out a case of denial of the equal protection of the laws under Art.14 of the Constitution, a plea of differential treatment is by itself not sufficient. An applicant pleading that Article 14 has been violated must make out that not only he had been treated differently from other but he has been so treated from persons similarly circumstanced without any reasonable basis, and such differential treatment is unjustifiably made."

(iii) In *Harakchand Ratanchand Bantia v. Union of India*, reported in (1969) 2 SCC 166 : AIR 1970 SC 1453, at paragraph No.23, the Hon'ble Supreme Court, held thus:-

"23...When a law is challenged as violative of Article 14 of the Constitution it is necessary in the first place to ascertain the policy underlying the statute and the object intended to be achieved by it. Having ascertained the policy and object of the Act the Court has to apply a dual test in examining its validity (1) whether the classification is rational and based upon an intelligible differentia which distinguishes persons or things that are grouped together from others that are left out of the group and (2) whether the basis of differentiation has any rational nexus or relation with its avowed policy and object..."

(iv) In *Western M.P. Electric Power & Supply Co. Ltd. v. State of U.P.*, reported in AIR 1970 SC 21, the Hon'ble Supreme Court held that Article 14 of the Constitution of India does not operate against rational classification. The relevant portion is

as under:

"7. Article 14 of the Constitution ensures equality among equals; its aim is to protect persons similarly placed against discriminatory treatment. It does not, however, operate against rational classification. A person setting up a grievance of denial of equal treatment by law must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relation to the object sought to be achieved by the law."

16. In Mohd. Shujat Ali vs. Union of India [1975 (3) SCC 76], the Hon'ble Supreme Court observed that Article 14 ensures to every person equality before law and equal protection of the laws. However, the constitutional code of equality and equal opportunity does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation directed towards specific ends limited in its application to special classes of persons or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it." At the same time, the Court cautioned against the readymade invoking of the doctrine of classification to ward off every challenge to the legislative instruments on the ground of violation of equality clause and observed:

"The equal protection of the laws is a "pledge of the protection of equal laws". But laws may classify. And, as pointed out by Justice Brandeis, "the very idea of classification is that of inequality". The Court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification.

This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated."

"A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is - and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution - that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation."

"We have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the Legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that

guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in *State of Jammu & Kashmir v. Triloki Nath Khosa* the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments". Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in *State of Jammu & Kashmir v. Triloki Nath Khosa*: (at SCC p.42)

"Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

[Emphasis added]

(v) In *Mohd. Shujat Ali vs. Union of India*, reported in 1975 (3) SCC 76, the Hon'ble Supreme Court observed that,

Article 14 ensures to every person equality before law and equal protection of the laws. However, the constitutional code of equality and equal opportunity does not mean that the same laws must be applicable to all persons. It does not compel the State to run "all its laws in the channels of general legislation". It recognises that having regard to differences and disparities which exist among men and things, they cannot all be treated alike by the application of the same laws. "To recognise marked differences that exist in fact is living law; to disregard practical differences and concentrate on some abstract identities is lifeless logic." The Legislature must necessarily, if it is to be effective at all in solving the manifold problems which continually come before it, enact special legislation

directed towards specific ends limited in its application to special classes of persons or things. "Indeed, the greater part of all legislation is special, either in the extent to which it operates, or the objects sought to be attained by it." At the same time, the Court cautioned against the readymade invoking of the doctrine of classification to ward off every challenge to the legislative instruments on the ground of violation of equality clause and observed:

"The equal protection of the laws is a "pledge of the protection of equal laws". But laws may classify. And, as pointed out by Justice Brainer, "the very idea of classification is that of inequality". The Court has tackled this paradox over the years and in doing so, it has neither abandoned the demand for equality nor denied the legislative right to classify. It has adopted a middle course of realistic reconciliation. It has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification. This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated."

"A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law. There should be no discrimination between one person or thing and another, if as regards the subject-matter of the legislation their position is substantially the same. This is sometimes epigrammatically described by saying that what the constitutional code of equality and equal opportunity requires is that among equals, the law should be equal and that like should be treated alike. But the basic principle underlying the doctrine is that the Legislature should have the right to classify and impose special burdens upon or grant special benefits to persons or things grouped together under the classification, so long as the classification is of persons or things similarly situated with respect to the purpose of the legislation, so that all persons or things similarly situated are treated alike by law. The test which has been evolved for this purpose is - and this test has been consistently applied by this Court in all decided cases since the commencement of the Constitution -

that the classification must be founded on an intelligible differentia which distinguishes certain persons or things that are grouped together from others and that differentia must have a rational relation to the object sought to be achieved by the legislation."

"We have to be constantly on our guard to see that this test which has been evolved as a matter of practical necessity with a view to reconciling the demand for equality with the need for special legislation directed towards specific ends necessitated by the complex and varied problems which require solution at the hands of the Legislature, does not degenerate into rigid formula to be blindly and mechanically applied whenever the validity of any legislation is called in question. The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and drown the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud, J., in *State of Jammu & Kashmir v. Triloki Nath Khosa* the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well-marked classes characterised by different and distinct attainments". Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the guarantee of equality of its spacious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in *State of Jammu & Kashmir v. Triloki Nath Khosa*: (at SCC p.42)

"Mini-classifications based on micro-distinctions are false to our egalitarian faith and only substantial and straightforward classifications plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

(vi) A Constitutional Bench of the Hon'ble Supreme Court in D.S. Nakara v. Union of India, (1983) 1 SCC 305, explained the said concept of Article 14 of the Constitution of India, as follows:

"11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question (see Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 538). The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e. causal connection between the basis of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by a law of procedure.

12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in In re Special Courts Bill, 1978, AIR 1979 SC 478, restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are:

"***

(3) The constitutional command to the State to afford equal protection of its laws sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(4) The principle underlying the guarantee of Article 14 is not that the same rules of law should be

applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act. "

(vii) In Prem Chand Somchand Shah and another vs. Union of India reported in 1991 (2) SCC 48, the Hon'ble Supreme Court at paragraph Nos.9, 12 and 16, held thus:-

9. The petitioners, in order to successfully invoke the right guaranteed under Article 14 of the Constitution, will have to establish that they and the Export Houses which were issued Additional Licences under the Import Policy 1988-91 are similarly situate. A close examination of the Import and Export Policy 1978-79 under which the petitioners have been granted the Additional Licences and the Import and Export Policy 1988-91 shows that there is material difference between the conditions for grant of Additional Licences under Import Policy 1978-79 and the conditions for grant of such licences under the Import Policy 1988-91 and it cannot be said that the petitioners who have been granted Additional Licences under the Import and Export Policy 1978-79 and the Export Houses who are granted Additional Licences

under the Import and Export Policy 1988-91 are persons similarly circumstanced.

12. The aforesaid examination of the provisions contained in the Import and Export Policy 1978-79 and the Import and Export Policy 1988-91 shows that while in the Import and Export Policy 1978-79 the emphasis was only on the f.o.b. value of exports without taking into account the outgo of foreign exchange in importing the goods required for achieving the exports by an Export House and Additional Licences were granted for a much larger amount at a higher percentage on the basis of the f.o.b. value of the exports, in the Import and Export Policy 1988-91 there is a more realistic appraisal of actual benefit to the country's economy by the exports by taking into account the net foreign exchange earnings after deducting the value of the imports and Additional Licences are issued on the basis of the net foreign exchange earnings for a much lesser value on a smaller percentage. The petitioners who were granted Additional Licences to the extent of 33.33 per cent of the f.o.b. value of the exports made by them during the year 1977-78 cannot, therefore, be said to be persons similarly circumstanced as Export Houses who exported goods in the year 1987-88 and in subsequent years and obtain Additional Licences for a much lesser value under the Import Policy 1988-91 on the basis of the net foreign exchange earnings. The provisions conferring flexibility in the matter of imports contained in sub-para (4) of para 215 of the Import and Export Policy 1988-91 are intended to give an incentive to Export Houses to increase the exports in a way as to enhance the net foreign exchange earnings of the country. The petitioners were not granted Additional Licences on the basis of net foreign exchange earnings and they have secured the Additional Licences on the basis of the f.o.b. value of the exports, without taking into account the value of the goods imported by them for achieving the exports. They cannot claim to be entitled to the same facilities that have been provided to Export Houses who are granted Additional Licences under the Import and Export Policy 1988-91.

16. Here we find that in the Import and Export Policy 1988-91 there has been relaxation to a limited extent in respect of imports by Export Houses who are granted Additional Licences under the said Policy on the basis of their exports during that period 1987-88 and subsequent periods. Since the basis for the grant

of Additional Licences which are entitled to this relaxation is different from the basis on which Additional Licences were granted to the petitioners, the petitioners cannot claim the benefit of the same relaxation and assail the validity of sub-para (10) of para 218 of the Import and Export Policy 1988-91.

(viii) In Sri Srinivasa Theatre and others vs. Government of Tamil Nadu and others, reported in (1992) 2 SCC 643, while explaining the scope of Article 14, the Hon'ble Supreme Court at paragraph Nos.9 and 10, held thus:-

"9. Article 14 of the Constitution enjoin upon the State not to deny to any person 'Equality before law' or 'the equal protection of laws' within the territory of India. The two expressions do not mean the same thing even if there may be much in common. Section 1 of the XIV Amendment to U.S. Constitution uses only the latter expression whereas the Irish Constitution (1937) and the West German Constitution (1949) use the expression "equal before law" alone. Both these expressions are used together in the Universal Declaration of Human Rights, 1948, Article 7 whereof says "All are equal before the law and are entitled without any discrimination to equal protection of the law." While ascertaining the meaning and content of these expression, however, we need not be constrained by the interpretation placed upon them in those countries though their relevance is undoubtedly great. It has to be found and determined having regard to the context and scheme of our Constitution. It appears to us that the word "law" in the former expression is used in a generic sense-a philosophical sense-whereas the word "law" in the latter expression denotes specific laws in force.

10. Equality before law is a dynamic concept having many facets. One facet-the most commonly acknowledged-is that there shall be no privileged person or class and that none shall be above law. A facet which is of immediate relevance herein is the obligation upon the State to bring about, through the machinery of law, a more equal society envisaged by the preamble and part IV of our Constitution."

(ix) In Venkateshwara Theatre vs. State of andhra Pradesh and Others, reported in (1993) 3 SCC 677, at paragraph Nos.20 and 23, the Hon'ble Supreme Court, held thus:-

"20. Article 14 enjoins the State not to deny to any person equality before the law or the equal protection of the laws. The phrase "equality before the law" contains the declaration of equality of the

civil rights of all persons within the territories of India. It is a basic principle of republicanism. The phrase "equal protection of laws" is adopted from the Fourteenth Amendment to U.S. Constitution. The right conferred by Article 14 postulates that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Since the State, in exercise of its governmental power, has, of necessity, to make laws operating differently on different groups of persons within its territory to attain particular ends in giving effect to its policies, it is recognised that the State must possess the power of distinguishing and classifying persons or things to be subjected to such laws. It is, however, required that the classification must satisfy two conditions namely, (i) it is founded on an intelligible differentia which distinguishes those that are grouped together from others; and (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. It is not the requirement that the classification should be scientifically perfect or logically complete. Classification would be justified if it is not palpably arbitrary. [See: Re Special Courts Bill, [1979] 2 SCR 476 at pp. 534-536]. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstance arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. [See: Khandige Sham Bhat v. Agricultural Income-Tax Officer, [1963] 3 SCR 809 at p. 817].

23. Just a difference in treatment of persons similarly situated leads to discrimination, so also discrimination can arise if persons who are unequals, i.e. differently placed, are treated similarly. In such a case failure on the part of the legislature to classify the persons who are dissimilar in separate categories and applying the same law, irrespective of the differences, brings about the same consequence as in a case where the law makes a distinction between persons who are similarly placed. A law providing for equal treatment of unequal objects, transactions or persons would be condemned as discriminatory if there is absence of rational relation to the object intended to be achieved by the law."

In K. Thimmappa v. Chairman, Central Board of Directors, SBI, (2001) 2 SCC 259 that the

classification under Article 14 of the Constitution of India need not be a scientifically perfect one and it is sufficient if the distinction is on just and reasonable relation to the object of the legislation. The relevant portion is as under:

"3. Before we deal with the respective contentions of the parties it would be appropriate for us to notice that what Article 14 prohibits is class legislation and not reasonable classification for the purpose of legislation. If the rule-making authority takes care to reasonably classify persons for a particular purpose and if it deals equally with all persons belonging to a well-defined class then it would not be open to the charge of discrimination. But to pass the test of permissible classification two conditions must be fulfilled:

(a) that the classification must be founded on an intelligible differentia which distinguishes persons or things which are grouped together from others left out of the group; and

(b) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.

The classification may be founded on different basis and what is necessary is that there must be a nexus between the basis of classification and the object under consideration. Article 14 of the Constitution does not insist that the classification should be scientifically perfect and a court would not interfere unless the alleged classification results in apparent inequality. When a law is challenged to be discriminatory essentially on the ground that it denies equal treatment or protection, the question for determination by court is not whether it has resulted in inequality but whether there is some difference which bears a just and reasonable relation to the object of legislation. Mere differentiation does not per se amount to discrimination within the inhibition of the equal protection clause. To attract the operation of the clause it is necessary to show that the selection or differentiation is unreasonable or arbitrary; that it does not rest on any rational basis having regard to the object which the legislature has in view. If a law deals with members of a well-defined class then it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. It is for the rule-making authority to determine what categories of persons would embrace within the scope of the rule

and merely because some categories which would stand on the same footing as those which are covered by the rule are left out would not render the rule or the law enacted in any manner discriminatory and violative of Article 14. It is not possible to exhaust the circumstances or criteria which may afford a reasonable basis for classification in all cases. It depends on the object of the legislation, and what it really seeks to achieve."

(x) In *L.I.C. of India and Another vs. Consumer Education & Research Centre and Others*, reported in (1995) 5 SCC 482, the Hon'ble Apex Court reiterated the above noted principal in the following words:-

"The doctrine of classification is only a subsidiary rule evolved by the courts to give practical content to the doctrine of equality, overemphasis on the doctrine of classification or anxious or sustained attempt to discover some basis for classification may gradually and imperceptibly erode the profound potency of the glorious content of equality enshrined in Article 14 of the Constitution. The overemphasis on classification would inevitably result in substitution of the doctrine of classification to the doctrine of equality and the Preamble of the Constitution which is an integral part and scheme of the Constitution. *Maneka Gandhi v. Union of India* [1978 (1) SCC 248] ratio extricated it from this moribund and put its elasticity for egalitarian path finder lest the classification would deny equality to the larger segments of the society. The classification based on employment in Government, semi-Government and reputed commercial firms has the insidious and inevitable effect of excluding lives in vast rural and urban areas engaged in unorganized or self-employed sectors to have life insurance offending Article 14 of the Constitution and socio-economic justice."

(xi). In *Prafulla Kumar Das v. State of Orissa*, reported in (2003) 11 SCC 614, the Hon'ble Supreme Court, deciding about the validity of a legislation, held thus it would be impossible to declare a law ultra vires merely because it would cause hardship, unless a case for discrimination or unreasonableness has been made out.

"45. In this case, the petitioners seek benefit to which they are not otherwise entitled. The legislature, in our opinion, has the requisite jurisdiction to pass an appropriate legislation which would do justice to its employees. Even otherwise a presumption to that effect has to be drawn. If a

balance is sought to be struck by reason of the impugned legislation, it would not be permissible for this Court to declare it ultra vires only because it may cause some hardship to the petitioners. A mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness. A valid piece of legislation, thus, can be struck down only if it is found to be ultra vires Article 14 of the Constitution of India and not otherwise. We do not think that in this case, Article 14 of the Constitution is attracted."

(xii) In *Amita vs. Union of India*, reported in (2005) 13 SCC 721, at paragraph No.11, the Hon'ble Supreme Court, held thus:-

"11.Article 14 of the Constitution of India guarantees to every citizen of India the right to equality before the law or the equal protection of law. The first expression "equality before the law" which is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. It also means that amongst the equals the law should be equal and should be equally administered and that likes should be treated alike. Thus, what forbids is discrimination between persons who are substantially in similar circumstances or conditions. It does not forbid different treatment of unequal. Article 14 of the Constitution of India is both negative and positive right. Negative in the sense that no one can be discriminated against anybody and everyone should be treated as equals. The latter is the core and essence of right to equality and state has obligation to take necessary steps so that every individual is given equal respect and concern which he is entitled as a human being. Therefore, Art.14 contemplates reasonableness in the state action, the absence of which would entail the violation of Art.14 of the Constitution."

(xiii) In *Confederation of Ex-Servicemen Association vs. Union of India*, reported in AIR 2006 SC 2945, at paragraph No.27, the Hon'ble Supreme Court, held thus:-

"27. Before more than five decades, a Constitution Bench of this Court was called upon to consider a similar contention in the well known decision in *State of West Bengal v. Anwar Ali Sarkar & Another*, (1952 SCR 284 : AIR 1952 SC 75). In that case, validity of certain provisions of the West

Bengal Special Courts Act, 1950 was challenged on the ground that they were discriminatory and violative of Article 14 of the Constitution. Dealing with the contention, S.R. Das, J. (as His Lordship then was), made the following pertinent observations which were cited with approval in several cases;

"It is now well established that while article 14 is designed to prevent a person or class of persons from being singled out from others similarly situated for the purpose of being specially subjected to discriminating and hostile legislation, it does not insist on an "abstract symmetry" in the sense that every piece of legislation must have universal application. All persons are not, by nature, attainment or circumstances, equal and the varying needs of different classes of persons often require separate treatment and, therefore, the protecting clause has been construed as a guarantee against discrimination amongst equals only and not as taking away from the State the power to classify persons for the purpose of legislation. This classification may be on different bases. It may be geographical or according to objects or occupations or the like Mere classification, however, is not enough to get over the inhibition of the Article. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and that that differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while the Article forbids class legislation in the sense of making improper discrimination by conferring privileges or imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liability proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not

arbitrary in the sense I have just explained."
(emphasis supplied)"

(xiv) In *Satyawati Sharma vs. Union of India and another*, reported in AIR 2008 SC 3148, at paragraph Nos.14 to 17, the Hon'ble Supreme Court, observed thus:-

"14. Article 14 declares that the state shall not deny to any person equality before the law or the equal protection of the laws. The concept of equality embodied in Article 14 is also described as doctrine of equality. Broadly speaking, the doctrine of equality means that there should be no discrimination between one person and another, if having regard to the subject matter of legislation, their position is the same. The plain language of Article 14 may suggest that all are equal before the law and the State cannot discriminate between similarly situated persons. However, application of the doctrine of equality embodied in that Article has not been that simple. The debate which started in 1950s on the true scope of equality clause is still continuing. In last 58 years, the courts have been repeatedly called upon to adjudicate on the constitutionality of various legislative instruments including those meant for giving effect to the Directive Principles of State Policy on the ground that same violate the equality clause. It has been the constant refrain of the courts that Article 14 does not prohibit the legislature from classifying apparently similarly situated persons, things or goods into different groups provided that there is rational basis for doing so. The theory of reasonable classification has been invoked in large number of cases for repelling challenge to the constitutionality of different legislations.

(xv) In *Shayara Bano vs. Union of India*, reported in 2017 (9) SCC 1 the Hon'ble Supreme Court, held thus:-

63. In the pre-1974 era, the judgments of this Court did refer to the rule of law or positive aspect of Article 14, the concomitant of which is that if an action is found to be arbitrary and, therefore, unreasonable, it would negate the equal protection of the law contained in Article 14 and would be struck down on this ground. In *S.G. Jaisinghani v. Union of India*, (1967) 2 SCR 703, this Court held: In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The

rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey Law of the Constitution 10th Edn., Introduction cx). Law has reached its finest moments, stated Douglas, J. in United States v. Wunderlick [342 US 98], when it has freed man from the unlimited discretion of some ruler. Where discretion, is absolute, man has always suffered. It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes [(1770) 4 Burr. 2528 at 2539], means sound discretion guided by law. It must be governed by rule, not by humour: Shayara Bano vs Union Of India And Ors. Ministry Of ... on 22 August, 2017 Indian Kanoon - <http://indiankanoon.org/doc/115701246/239> it must not be arbitrary, vague, and fanciful. (pages 718 719) This was in the context of service rules being seniority rules, which applied to the Income Tax Department, being held to be violative of Article 14 of the Constitution of India."

25. Though the above decision relate to legislation, principles of law, laid down by the Hon'ble Supreme Court can be made applicable to the case on hand. In the light of the above, classification made by the District Magistrate, cannot be said to be arbitrary, discriminatory and violative of Article 14 of the Constitution of India.

26. Statute provides for different procedure, in the matter of granting permanent and temporary license. Difficulties expressed by the District Magistrate, in monitoring and thus preventive measures have to be taken by him, cannot be ignored. Yet another aspect to be considered is, public order, maintenance of law and order, public safety, factors taken into consideration by the District Magistrate, Government of Puducherry, overall in public interest, cannot be given a go by vis-a-vis the private interest of the petitioners to have temporary licensees, to exercise their right under Article 19 (1) (g) of the Constitution of India. Having regard to the factors taken note of, we hold that public interest will prevail over private interest and measures taken by the District Magistrate, to allow only permanent licensees, to possess and sell crackers/fireworks, for the period from 1/4/2019 to 15/4/2019, subject to certain conditions, stated supra, cannot

be said to be violative of Article 19 (1) (g) of the Constitution of India. Rejection of applying for grant of temporary licence in Form AE-5, to possess and sell fireworks/crackers, under the Explosives Act & Rules, when the model code of conduct is in force, cannot be said to be illegal.

27. In the result, all the writ petitions are dismissed. No costs. Consequently, the connected Miscellaneous Petition Nos.10788, 10790, 10981, 11413 and 11417 are closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

mvs/dm

To

1. The Chief Secretary
Union Territory of Pondicherry
Union of India
Government of Pondicherry
Pondicherry.
2. The Office of the District Magistrate
Government of Puducherry.
3. The Superintendent of Police
Mahe.

+3ccs to Mr.M.R.Thangavel, Advocate SR.No.34962,34963,34964

+2ccs to Government Pleader SR.No.35100, 35101

Writ Petition Nos.10223, 10467,
10979 and 10985 of 2019

KAN (CO)
GMY (15/04/2019)

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