

# State Of U.P. And Anr vs Raja Ram Jaiswal And Anr- on 29 April, 1985

**Equivalent citations: 1985 AIR 1108, 1985 SCR (3)1021, AIR 1985 SUPREME COURT 1108, 1985 ALL. L. J. 626, 1985 (3) SCC 131, (1985) 2 CURCC 447**

**Author: D.A. Desai**

**Bench: D.A. Desai, V. Balakrishna Eradi**

PETITIONER:  
STATE OF U.P. AND ANR.

Vs.

RESPONDENT:  
RAJA RAM JAISWAL AND ANR-

DATE OF JUDGMENT 29/04/1985

BENCH:  
DESAI, D.A.  
BENCH:  
DESAI, D.A.  
ERADI, V. BALAKRISHNA (J)

CITATION:  
1985 AIR 1108                      1985 SCR (3)1021  
1985 SCC (3) 131                1985 SCALE (1)1248

ACT:

Constitution of India 1950, Article 226 Writ of Mandamus-Issuance of-To statutory authority under a licensing statute to grant a licence-Whether permissible.

U.P. Cinema (Regulation) Act, 1955, sections 3 and 5 & U.P. Cinematograph Rules 1951 Rules 3 and 7.

Licence for location and construction of Cinema under Rule 3-Licence for exhibition of films in cinema building under section 3-Grant of-Determination of 'public interest'-Stages of consideration-Explained.

Administrative Law Licensing powers-Indisputable adjunct of controlled economy-Exercise in oppressive or arbitrary manner-Avoidance of-Vigilance , by courts-Necessity of.

Construction of Cinema theatre-Grant of licence-Objection of Hindi Sahitya Sammelan-Refusal of Licence-Whether Justified.

HEADNOTE:

The respondent desired to construct a cinema theatre on a plot of land. He submitted an application under Rule 3 of the U.P. Cinematograph Rules 1951 to the District Magistrate, for obtaining a certificate signifying his approval of the site selected for constructing a permanent building to be used for cinematograph exhibition. The District Magistrate as the licensing Authority issued a public notice specifying the request of the respondent for grant of a certificate and calling objections. An organisation called the Hindi Sahitya Sammelan alone submitted its objection, The District Magistrate referred the application of the respondent to the State Government, which directed the District Magistrate to carefully examine the matter. The District Magistrate was of the opinion that the Sammelan can neither be styled as an educational institution nor a residential institution within the contemplation or Rule 7(2)(b) because it was an institution wedded to and working for the propagation of Hindi language, and even though it may provide some research facility on its campus it has no regular programme of class teaching, and that having regard to all the

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relevant circumstances, the construction of a cinema building at the proposed site was not against public interest. On the contrary, it was held that a modern beautiful fully air-conditioned cinema building apart from adding to the beautification of the city would enrich the coffers of the State exchequer in the form of entertainment tax. The District Magistrate granted the certificate informed the respondent that construction of a cinema house and be completed within two years from the date of the issuance of the order. Chagrined by the grant of the certificate, the Sammelan initiated action for acquisition of the plot over which the cinema building was being constructed, should under the Land Acquisition Act. The respondent successfully assailed the acquisition order in the High Court.

In the meantime as the period of two years specified in the certificate issued under Rule 3 was about to expire, the respondent moved an application for extension of time for completion of the construction of cinema building, and during the pendency of this application, the building was completed.

The respondent made an application under section 3 of the U.P. Cinema (Regulation) Act, 1955 for a licence to exhibit films in the cinema building. The District Magistrate refused to grant the licence. The respondent preferred an appeal under Sec. 5(3) of the 1955 Act to the State Government, which allowed the appeal and remitted the matter to the District Magistrate with a direction to re-

examine the grounds on which he had refused to grant licence to run the cinema in accordance with the rules and pass suitable and legal order after giving an opportunity of hearing.

Against the aforesaid order of remand the respondent filed a Writ Petition in the High Court. A Division Bench held that even though the order under challenge was one of remand, as the respondent has journeyed to and fro on numerous occasions, it was necessary to dispose of the petition on merits, and held that while granting a certificate under Rule 3 of the 1951 Rules, it was open to the licensing authority to take into consideration whether it would be in public interest to grant the necessary certificate or to refuse the same, but after the grant of certificate when a full-fledged cinema building comes up and is shown to comply with the relevant rules and regulations, cinematograph licence cannot be refused on the vague consideration that it would not be in public interest to grant the licence. It was also held that the failure to complete the construction of the cinema building within the prescribed time, if properly explained would not be a ground to refuse the cinematograph licence, more so

because the requirement of rule 3(3) is directory and not mandatory. The High Court accordingly made the rule absolute and in modification of the order of the State Government, it directed the District Magistrate-Licensing Authority to forthwith grant to the petitioner the requisite licence subject to reasonable condition and restrictions.

In the appeal to this Court it was contended on behalf of the appellant state that the scheme of the U.P. Cinema (Regulation) Act, 1955 and the U.P.

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Cinematograph Rules 1951 reveal that the licensing authority has to take into consideration public interest both at the time of granting a certificate of approval as contemplated by Rule 3 as also public interest while granting a cinema licence under Sec. 3 read with Sec. 5, and that the High Court was in error in holding that one while granting a certificate of approval under Rule 3, public interest has been taken into consideration. The question of examining whether such building should be licensed for exhibition of cinematograph does not call for a re-examination whether the grant is not otherwise contrary to public interest. Public interest cannot be fitted into a straight jacket formula and what relevant considerations would constitute public interest at the time of granting a certificate of approval under Rule 3 may materially vary or differ from the relevant considerations which may constitute public interest while licensing the cinema theatre for exhibition of a cinematograph under Sec. 3.

Dismissing the appeal,

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HELD: 1 The High Court was, clearly in error in issuing

a mandamus directing the District Magistrate to grant a licence. The High Court was hearing a Writ Petition praying for a Writ of Certiorari for quashing the order of removal. The High Court should have quashed the order of remand if it was satisfied that the order suffers from an error apparent on the record. But there its jurisdiction would come to an end. The High Court cannot then proceed to take over the functions of the licensing authority and direct the licensing authority by a mandamus to grant a licence. To that extent the judgment of the High Court is set aside. [1040D,F]

2. Where a statute confers power and casts a duty to perform any function before the power is exercised or the function is performed, to the Court cannot in exercise of writ jurisdiction supplant the licensing authority and take upon itself the function of the licensing authority. [1040 E]

3. The High Court was in error in holding that once the public interest has been taken into consideration while granting certificate of approval, consideration of public interest would not arise and cannot be countenanced while granting a cinematograph licensee under Sec. 3 read with Sec. 5. [1037H, 1038]

4. Licensing powers, an indisputable adjunct of controlled economy, take various forms and they are numerous. They are generally couched in a language giving wide scope for exercise of powers. Therefore the Courts have been vigilant to see that they are not exercised in an oppressive or arbitrary manner. The powers being wide, the question of its exercise on relevant or considerations germane to the determination more often arises. If the licence is refused on grounds which appear to be irrelevant, the court can legitimately interfere. [1039H,1040A]

The scheme manifested by U.P. Cinema (Regulation) Act, 1955 and the U.P. Cinematograph Rules 1951 establish the legislative intention that the  
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licensing authority has to keep in view public interest both at the time of granting the certificate of approval under Rule 3 and granting a cinematograph licence under Sec. 5. While granting a certificate of approval under Rule 3, the licensing authority may take into consideration the various aspects set out in Rule 4 as well as the conditions prescribed in Rule 7. But even where all the conditions prescribed in Rule 4 and Rule 5 as well as various other relevant rules are satisfied still the licensing authority may refuse to grant the certificate of approval, if it is satisfied that the location of cinema at the site in question is not a public interest. [1034G-, 1035A]

6. Rule 7(2)(c) casts an obligation to record the reason in writing which must necessarily sufficient reasons for refusing to grant the certificate on the ground that the location of a cinema at the site of the building is not in

public interest. The licensing authority has not an absolute discretion but it is hedged in by relevant considerations as also by the proviso that if the licensing authority is inclined to refuse the licence on the ground that the location of a cinema at the site of the building is not in public interest, it cannot do so except without the prior approval of the State Government. [ 1035C-D]

In the instant case, the District Magistrate while granting the certificate of approval on March 24, 1972 had in terms held that Hindi Sahitya Sammelan is neither an educational institution nor a residential institution nor it has a public hospital and that it cannot be styled as an educational institution for the purpose of Rule 7(2)(b)(i). This determination is final and conclusive. [1035F]

7. While granting the cinema licence under Sec. 3 the licensing authority has to keep in view the provision of Sec. 5. Sec. 5(1)(c) provides that no licence shall be granted unless the licensing authority is satisfied that the grant of licence is not otherwise contrary to public interest. Undoubtedly, the parameters of public interest while refusing to grant licence under Sec. 5(1)(c) for exhibition of cinematograph would be materially different than the one which would enter the verdict while considering the application for granting a certificate of approval under Rule 7(2)(c). [1035G-1036]

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 2437 of From the Judgment and Order dated 25.8.1981 of the Allahabad High Court in C.M.W.P.No. 3241 of 1980 R.N. Trivedi, Addl. Adv. Genl., Gopal Subramaniam and Ms. Shobha Dikshit for the Appellants.

F.S. Nuriman, Raja Ram Agarwal, Yogeshwar Prasad, Rani Chhabra and Ms. Suman Bagga for the Respondents, The Judgment of the Court was delivered by DESAI, J. Respondent Raja Ram Jaiswal alongwith the members of his family ('respondent' for short) purchased premises No. 26/30, a plot of land with a small structure standing on it admeasuring 2978 sq yds. situated at K.P.Kakkar Road, somewhere in March 1970. The respondent desired to construct a cinema theatre on the plot of land after demolishing the existing structure. As a first step, he got prepared the plans for a modern air-conditioned, sound proof cinema building and got the same approved by the Local Municipal Corporation and the District Magistrate. Subsequently on July 6, 1971, the respondent submitted an application as required by Rule 3 of the U.P.Cinematograph Rules, 1951 (1951 Rules' for short) to the District Magistrate for obtaining a certificate signifying his approval of the site selected for constructing a permanent building to be used for cinematograph exhibition. Before granting the requisite certificate the District Magistrate as the Licensing Authority has to be satisfied that the requirements of the 1951 Rules have been fully complied with. Inter alia it must be satisfied that any recognised educational institution (other than primary school) or any residential institution attached thereto is not situated within a radius of 75 metres from the proposed cinema building.

There were other conditions to be satisfied but this one is being referred to by us because the allegation is that this condition has been contravened. It also appears that before granting the requisite certificate, with a view to giving an opportunity to the public in the locality to express their opinion for or against the grant of the certificate, if they so desired, a public notice was issued specifying the request by the respondent for issue of a certificate of approval of the site for constructing a cinema theatre. An organisation called The Hindi Sahitya Sammelan ('Sammelan' for short) alone submitted its objection. The District Magistrate referred the application of the respondent to the State Government. The State Government directed the District Magistrate to carefully examine the matter and determine whether it would or would not be in public interest to grant the certificate. There ensued some correspondence between the District Magistrate and the State Government, the query centering round the question whether the Sammelan was a recognised educational institution as envisaged by Rule 7(2)(b) of 1951 Rules. The District Magistrate in his letter dated March 24, 1972 inter alia stated that Sammelan can neither be styled as an educational institution nor a residential institution within the contemplation of Rule 7(2)(b) because it is an institution wedded to and working for the propagation of Hindi language and even though it may provide some research facility on its campus, it has no regular programme of class teaching. The District Magistrate was also of the opinion that having regard to all the relevant circumstances, the construction of cinema building at the proposed site was not against public interest. On the contrary according to him, a modern beautiful fully air-conditioned cinema building apart from adding to the beautification of the city would enrich the coffers of the State exchequer in the form of entertainment tax. He concluded by observing that in his opinion public interest will not be adversely affected if the permission is granted for construction of the cinema house at the proposed site and that he proposed to grant the permission. Accordingly, on March 28, 1972, the District Magistrate informed the respondent that 'with reference to his application dated July 6, 1971 in connection with the construction of a cinema house over Plot No. 26, Crosthwaite Road, the site plans checked and signed by the Executive Engineer, P.W.D. Allahabad have been approved on certain conditions including that the construction of the cinema house will be completed within two years from the date of the issue of the order and the cinema house will be fully air-conditioned and according to the plans and specifications submitted to him.' There was a small building over the plot in respect of which the certificate signifying the approval of the District Magistrate was granted. This building was demolished and construction of the cinema building according to the plan was commenced. Chagrined by the grant of the certificate, Sammelan initiated action for acquisition of the plot over which the cinema building was being constructed somewhere in August, 1973. As the various steps taken for acquisition of land form part of a separate controversy to be dealt with in Civil Appeal No. 2458/80, the same may be skipped over here. Suffice it to state that a notification under Sec. 4(1) of The Land Acquisition Act, 1894 was issued by the Collector, Allahabad on January 31, 1974 notifying that Plot No. 26 admeasuring 2865 Sq. Yds. was proposed to be acquired for a public purpose viz. for extension of Hindi Sangrahalaya of Hindi Sahitya Sammelan. The respondent challenged this notification in Writ Petition No. 1932/74 in the High Court of Allahabad. In the meantime as the period of two years specified in the certificate issued under r. 3 was about to expire, the respondent moved an application on March 26, 1974 before the District Magistrate for extension of time for completion of the construction of cinema building. The State Government withdrew the notification dated January 31, 1974 with the result that the writ petition filed by the respondent was dismissed on January 30, 1975 as having become infructuous. Within a period of six days on

February 6, 1975, the Collector of Allahabad issued a fresh notification under Sec. 4(1) of the Land Acquisition -13 Act for acquiring land described as bearing Plot No. 62 admeasuring 8265 sq. yds. for the same purpose. The respondent questioned the validity and legality of the second notification in Writ Petition No. 3174/75. During this period, the application for extension of time for the construction of cinema building was pending with the District Magistrate. By Letter dated July 25, 1975, the District Magistrate informed the respondent that 'with reference to his application dated March 26, 1974 praying for extension of time, it is not possible to grant the extension as the matter is pending before the High Court at the instance of the respondent and as they have obtained stay against the land acquisition proceedings, it would not be proper for the District Magistrate to pass any order regarding this very land so long as the stay order granted by the High Court is in force. It was also noticed that the period of two years initially granted had expired in March, 1974 and the same cannot be extended. It appears, however, that during the time the application for extension of time for completion of the cinema building was pending with the District Magistrate, the work of construction was going a pace and it was completed presumably sometime before the District Magistrate declined to grant extension of time. As the cinema building was complete, the respondent made an application on May 25, 1979 under Sec. 3 of the U.P. Cinema (Regulation) Act, 1955 ('1955 Act' for short) for a licence to exhibit films in the cinema building. Though the District Magistrate is a statutory authority for grant or refusal of licence under the 1955 Act, surprisingly, he referred the application of the respondent for grant of licence to the State Government specially in view of the pendency of the Writ Petition No. 3174/75 challenging the notification for acquisition of the land on which the cinema building was constructed. A communication from the Joint Secretary of the State Government to the District Magistrate concerning the question of grant of cinema licence has a material bearing on the issue involved in the writ petition. Therefore the relevant portion of the communication may be extracted. It reads as under:

"With reference to your letter No. 23/MAOKA./79-80 dated June 27, 1979, I have been directed to say that you may grant licence to Chandralok Cinema constructed by Sri Raja Ram Jaiswal on the Hindi Sahitya Sammelan Marg, for one year if you are satisfied that this cinema complies with the requirements of the Uttar Pradesh Chalchitra Niyamawali, 195' with the condition that if in the mean time the case pending before the Hon'ble High Court is decided in favour of the Government, the licence would automatically stand cancelled."

It would thus appear that the District Magistrate had to consider the application for licence uninfluenced by another litigation pending between the respondent and the State Government. On receipt of this letter the District Magistrate after obtaining reports from various authorities vis-a-vis the building reiterated his view to the State Government on October 19, 1979 that as the writ petition of the respondent challenging the notification for acquisition of land is pending, it would not be proper to grant cinema licence to the respondent. On December 7, 1979, writ petition filed by the respondent challenging the notification for acquisition of land on which the cinema building was constructed was allowed by a Division Bench of the High Court and the notification dated February 6, 1975 was quashed. On December 9, 1975, the respondent made a representation to the State Government for issuance of a cinema licence. By the, notification date December 13, 1979, the State Government directed the first respondent to contact the District Magistrate in this behalf.

Accordingly, on December 18, 1979, the respondent wrote to the District Magistrate that all the concerned authorities had inspected the building and reported that the building complies with all the rules and regulations and recommended grant of licence. By its communication dated December 24, 1979, the Additional District Magistrate informed the respondent that 'with reference to his application for cinema licence dated May 4, 1979 to run Chandralok Cinema he has to inform him that the District Magistrate' by his order dated December 24, 1979 has refused to grant the licence.' The respondent preferred an appeal under Sec. 5(3) of the 1955 Act to the State Government against the order of the District Magistrate refusing to grant the licence. The reasons which weighed with the District Magistrate in rejecting the application will be dealt with a little while after. The State Government called for the comments of the District Magistrate with regard to the contentions raised by the respondent in his appeal and after taking into consideration the comments, the State Government as per its order dated February 15, 1980 allowed the appeal and remitted the matter to the District Magistrate with a direction, to re-examine the grounds on which he had refused to grant licence to run the Chandralok cinema in accordance with the rules and pass suitable and legal order after giving them an opportunity of hearing. If the District Magistrate feels necessary to seek prior approval of the Government to refuse to grant licence in public interest, he may express his opinion and send full facts through the Commissioner for prior approval.' This order of remand was questioned by the respondent in Writ Petition No. 3241/80 in the Allahabad High Court.

A Division Bench of the High Court held that even though the order under challenge was one of remand, as the respondent has journeyed to and fro on numerous occasions, it is necessary to dispose of the petition on merits. It was further held that while granting a certificate under Rule 3 of the 1951 Rules, it was open to the licensing authority to take into consideration whether it would be in public interest to grant the necessary certificate or to refuse the same, but after the grant of the certificate when a full fledged cinema building comes up and is shown to comply with the relevant rules and regulations, cinematograph licence cannot be refused on the vague consideration that it would not be in public interest to grant the licence. It was also held that the failure to complete the construction of cinema building within the prescribed time, if properly explained would not be a ground to refuse cinematograph licence, more so because the requirement of rule 3(3) is directory and not mandatory. The High Court accordingly made the rule absolute and in modification of the order of the State Government dated February 15, 1980 it directed the District Magistrate- Licensing Authority to forthwith grant to the petitioner the requisite licence subject to reasonable conditions and restrictions. An order in the nature of mandamus was issued accordingly. Hence this appeal by the State of Uttar Pradesh and the District Magistrate by special leave.

Before we advert to the contentions canvassed before us on behalf of the appellants, a brief resume of the stages through which the proceedings journeyed in this Court may be mentioned. The petition for special leave came up for admission on September 17, 1981 when special leave to appeal was granted and the operation of the judgment of the High Court was stayed. Consequently, the mandamus directing the District Magistrate to grant licence stood suspended. CMP 26710/81 was moved on behalf of the present respondent for vacating the stay granted by this Court. The proceedings dated December 15, 1981 as recorded show that after the arguments were heard at some length, the Court in the interest of justice thought it expedient to modify the stay order dated September 17, 1981 to the effect that the stay order granted by the Court will be in operation for a



further period of two months only and that the hearing of the appeal may be expedited. The present appeal and the cognate Appeal No. 2458/81 came up together for hearing and the cognate appeal was first taken up for hearing for the obvious reason that if the challenge to the notification for acquisition of the plot on which the cinema building is constructed failed in the appeal on behalf of the State of U.P., it would have an impact on the present appeal because if the land was to be acquired, the question of granting licence for running a cinema on the land under acquisition could hardly be envisaged. The hearing as usual in this Court went on merrily. Therefore, after hearing the parties, we made the order on January 20, 1983 directing the District Magistrate to comply with the remind order. It may be recalled that the order under challenge in this appeal was the order of remand made by the State Government to the District Magistrate for considering and disposing of the application for a cinema licence on merits. We had some hesitation whether the court can grant a mandamus directing a statutory authority to grant a licence at a stage when the District Magistrate was yet to apply his mind and examine the application on merits because doing so would tantamount to the court substituting itself as a licensing authority without the licensing authority performing its duty, which would be impermissible. We were conscious of the fact that the District Magistrate was bound to take some time in processing and disposing of the application for a cinema licence pending with him. Accordingly, we directed the District Magistrate to proceed to consider the application of the respondent for grant of a cinema licence and dispose of it in the light of the observations made in the order. Pursuant to this order, the District Magistrate, Allahabad proceeded to examine the application of the respondent for cinema licence on merits and having given him an opportunity of being heard, by his order dated February 20, 1983 rejected the application for licence observing that it would not be in public interest to grant the cinematograph licence applied for by the respondent. The appeal was again placed on board for further directions on March 10, 1983. After giving anxious consideration to the order of the District Magistrate, the Court made an order vacating interim stay granted by this Court staying the operation of the judgment of the High Court. The effect of this order was that the mandamus granted by the State became operative. Accordingly. On March 19, 1983, the District Magistrate granted the licence to run Chandralok cinema. Two CMPs Nos. 12718-19/83 were moved in this Court, one of them being for taking action for contempt and another for certain directions. They were a sequel to the granting of a licence and public annoyance demonstrably exhibited by the authorities of the Sammelan. While disposing of these petitions, we directed that the City Magistrate would withdraw the impugned order under Sec. 144, Cr.P.C. within a fortnight from the date of the order and the District Magistrate shall renew the licence of Chandralok cinema to be operative and in force till the decision of appeal by this Court and the City Magistrate shall make necessary arrangements to maintain public order near and around Chandralok cinema if necessary by posting additional police force and grant necessary protection to the licensee enabling him to run the cinema house peacefully. Regrettably, it must be concluded from this resume that the dispute is hardly between the State Government and the respondent, but it is a proxy fight consequent upon the clash of ego between the Sammelan and Jaiswal. Uninfluenced by this irrelevant aspect, the appeal may be disposed of on merits.

It may be mentioned that even though the Sammelan had moved an application for being joined as a party to the writ petition in the High Court which was rejected, we, without the slightest hesitation, granted the request for intervention made by Shri S.N Kacker, learned counsel for the Sammelan to intervene and suspending the normal procedure that the interventionist is not entitled to address

oral arguments, we heard Mr. Kacker on all points he wanted to canvass and at some length and permitted him to put his written submissions on record.

While the introduction has become some what long, the Contentions canvassed in the dispute are relatively of an insignificant nature save and except the one whether the statutory licencing authority acting within the parameters of the statute under which it is set up can be supplanted in exercise of the writ jurisdiction before the statutory authority has yet to discharge its functions under the statute. Incidentally, whether public interest has a relevance at the time of issuance of a certificate of approval under Rule 3 or at the time of grant of licence under Sec. 3 is another important question ? Other contentions are minor and of incidental nature.

The present situation viewing the background of public interest have a direct bearing on the rival contentions in this appeal. A cinema building in which for the purposes of the record, we may note that Rs. 60 lakhs have been sunk stares into our face. Admittedly, it is a modern air- conditioned sound-proof cinema building. It abuts on a road named K.K.Marg, a very prominent locality in Allahabad town. it is equally true that Hindi Sahitya Sammelan has its campus at a distance of roughly 95 feet from the outer boundary of the cinema building. Hindi Sahitya Sammelan was founded for the development and propagation of Hindi, and certainly it is a prestigious institution devoted to making Hindi the Lingua Franca of India. Though Hindi Films have contributed immeasurably to the propagation of Hindi yet the Sammelan championing Hindi appears not to have taken kindly to the modern mass media communication and detested the existence of a theatre somewhere near its campus. That is the genesis of the present litigation. Sincere efforts were made to assuage all the authorities in charge of the Sammelan, but they proved of no avail. May be an institution devoted to research may consider cinema theatre a nuisance but in an urban area like Allahabad. the Sammelan cannot hope to live in isolation of the existence of theatre as also the noise OF transport vehicles.

Let us have a glance at the relevant provisions of the 1955 Act and the 1951 Rules which should be our starting point. 1955 Act was enacted as its long title shows for making provisions and regulating exhibitions by means of cinematographs in the State of U.P. Sec. 3 provides that 'save as otherwise provided in the Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act or otherwise than in compliance with conditions and restrictions imposed by such licence.' Sec. 4 constitutes District Magistrate to be the Licensing Authority. There are two provisos conferring power on the State Government to constitute other licensing authority. They are hardly material for the present purpose. Sec. 5` prescribes restrictions on the power of the licensing authority and inter alia provides that 'the licensing authority has to be satisfied that the building or other place in which cinematograph exhibition proposed to be given

(i) ..... (ii) is situated at such minimum distance as may be li prescribed from other public buildings and from recognised educational and other public institutions and public hospitals.. ' Sec. 5 (1)(c) provides that the licensing authority must be satisfied that the grant of licence otherwise is not contrary to public interest. Sub- sec. (3) of Sec. 5 confers right of appeal to the State Government, on any person aggrieved by the decision of the licensing authority refusing to grant licence. Sec. 13 confers power on the State Government to make rules for carrying out the purposes of the Act. 1951

Rules were framed in exercise of the power conferred by Sec. 9 of the Cinematograph Act, 1918 and by the deeming fiction enacted in Sec. 12 of the 1985 Act they remain in force. Rule 3 provides as under

"3. Application for constructing a building- (1) A person desirous of constructing a permanent building to be used for cinematograph exhibition shall submit an application specifying the site on which the proposed building is to be constructed together with a plan and specifications thereof to the officer authorised in this behalf by Government. (2) The plan mentioned in the aforesaid sub-rule shall contain the elevations and sections of the buildings, the proposed electrical installations, arrangements for ventilation, sanitation and parking of vehicle and the position of the premises in relation to adjacent premises and public thoroughfare on which the building abuts, within a radius of one furlong. (3) The Licensing Authority may, if it is satisfied that the site plans and specifications fully conform to the rules, grant to the applicant a certificate signifying his approval thereto. The period within which the construction shall be completed shall also be stated in the certificate."

Rule 4 provides for the contents of an application for a licence. Rule 7 prescribes conditions for granting and renewal of a licence, the one to be noted for the present purpose is the one prescribed in Rule 7(2)(b)(i) which is to the effect that 'no building shall be so licensed, if it is situated within a radius of 75 metres from any recognised educational institution (other than primary school) or any residential institution attached thereto. Rule 7(2)(c) provides that 'no building shall be so licensed, if for any other sufficient reason to be recorded, the licensing authority is satisfied that the location of a cinema at the site of that building is not in Public interest.

Learned Advocate General of Uttar Pradesh who appeared for the appellant urged that the scheme of the Act and the relevant rules reveal that the licensing authority has to take into consideration public interest both at the time of granting a certificate of approval as contemplated by Rule 3 as also public interest while granting a cinema licence under Sec. 3 read with Sec. 5. It was urged that the High Court was in error in holding that once while granting a certificate of approval under Rule 3, public interest has been taken into consideration and it has been found that the location of a cinema at the site of the building is not shown to be not in public interest, the question of examining whether such building should be licenced for exhibition of a cinematograph does not call for a re-examination whether the grant is not otherwise contrary to public interest. It was urged that public interest cannot be fitted into a straight jacket formula and what relevant considerations would constitute public interest at the time of granting a certificate of approval under Rule 3 may materially vary or p differ from the relevant considerations which may constitute public interest while licensing the cinema theatre for exhibition of a cinematograph under Sec.

3. The scheme manifested by the relevant provisions of the Act and the Rules would demonstrably establish the legislative intention that the licensing authority has to keep in view public interest both at the time of granting the certificate of approval under Rule 3 and granting a cinematograph licence under Sec. 3. While granting a certificate of approval under Rule 3, the licensing authority may take into consideration the various aspects set out in Rule 4 as well as the conditions prescribed in Rule

7. But even where all the conditions prescribed in rule 4 and Rule 5 as well as various other relevant rules are satisfied still the licensing authority may refuse to grant the certificate of approval, if it is satisfied that the location of cinema at the site in question is not in public interest. What constitutes public interest at the time of consideration for granting certificate of approval may be culled out from the various conditions prescribed in the various statutes as well as all other considerations which may enter the verdict while granting the certificate. But it will be a paper compliance with the relevant rules if it is merely stated that even though all other conditions are satisfied and complied with the licensing authority would refuse to grant the certificate as it is not in public interest to do so. Rule 7(2)(c) casts an obligation to record the reasons in writing which must necessarily be sufficient reasons for refusing to grant the certificate on the ground that the location of a cinema at the site of the building is not in public interest. The licensing authority has not an absolute discretion but it is hedged in by relevant considerations as also by the proviso that if the licensing authority is inclined to refuse the licence on the ground that the location of a cinema at the site of the building is not in public interest, it cannot do so except without the prior approval of the State Government. There is an explanation which provides that for the purpose of the sub-rule, the licensing authority shall, subject to the general control of the State Government, determine what is a public hospital or a recognized educational institution, and its decision shall be final and conclusive.' It will be presently pointed out that the District Magistrate while granting the certificate of approval on March 24, 1972 had in term's held that Hindi Sahitya Sammelan is neither an educational institution nor a residential institution nor it has a public hospital and that it cannot be styled as an educational institution for the purpose of Rule 7(2)(b)(i). In view of the explanation herein extracted, this determination is final and conclusive.

Now while granting the cinema licence under Sec. 3, the licensing authority has to keep in view the provisions of Sec. 5. Sec. 5(1)(c) provides that no licence shall be granted unless the licensing authority is satisfied that the grant of licence is not otherwise contrary to public interest. One has to compare the language of Rule 7(2)(c) with the language implied in Sec. 5(1)(c). Undoubtedly the parameters of public interest while refusing to grant licence under Sec 5(1)(c) for exhibition of cinematograph would be materially different than the one which would enter the verdict while considering the application for granting a certificate of approval under Rule 7(2)(c). It must, however, be made absolutely clear so as to put it beyond the pale of controversy that the relevant aspects required to be kept in view as prescribed under Rule 7 while granting or refusing to grant certificate of approval under Rule 3 cannot be reviewed in The name of public interest for rejecting an application for cinematograph licence under Sec. 3 read with Sec. 5 of the Act. To wit, if while granting the certificate of approval the question whether a particular institution is an educational institution and is within or outside the prohibited distance, is examined and a decision is reached that the institution is held not to be an educational institution within the contemplation of the relevant rule nor it is within the prohibited area, this aspect cannot be reviewed to refuse to grant a licence under Sec. 3 read with Sec. 5 in the name of public interest. If any other view is taken, it would lead to startling results. Again to wit, if the Sammelan was held not to be an educational institution with in the contemplation of Rule 7(2)(b)(i) and the necessary certificate of approval is granted, the licensing authority cannot turn round in the name of public interest and hold at the time of considering the application for a cinematograph licence that the Hindi Sahitya Sammelan is an educational institution and it is also situated within the prohibited area because such an

approach would do irreparable and irreversible harm to the person to whom certificate of approval is granted because by the time he applies for a cinematograph licence under Sec. 3, he has sunk a large sum of money in constructing a cinema building. To refer to the facts of this case, if now the District Magistrate chooses not to grant licence on the ground that it would be contrary to public interest to grant licence only because the authorities of the Sammelan may act in a manner so as to disturb public peace and that it is an educational institution, Rs. 60 lakhs sunk by the respondent would go down the drain and would be an irreparable wastage affecting both the national interest and the public interest. Therefore, while accepting the submission of the learned Advocate General that the concept of public interest statutorily recognised has to be kept in view both at the time of granting certificate of approval under Rule 3 and licence under Sec. 3 read with Sec. 5 of the 1955 Act, permitting exhibition of a cinematograph, the relevant parameters of public interest would differ and they cannot overlap each other and have to be justified on the relevant grounds stricter view about the parameters of public interest has to be taken at the second stage because by that time the person who has been granted certificate of approval has sunk a fortune in the venture.

Before we conclude on this point, we may refer to the two decisions to which our attention was drawn by the; learned Advocate General. In *The King v. London Country Council, Ex parte London and Provincial Electric Theatres Limited*(1) it was held that the statutory authority was justified in exercise of their discretion to refuse to grant licence to a company, the majority of whose shareholders were alien enemies..A submission was made on the basis of the ratio of this decision that even if a cinema building is constructed, licence can be refused on the ground that it is not in public interest to do so. The decision in *R. v. Barnstaple justices, Ex parte Carder*.(8) is hardly of any assistance because it proceeds on the scheme of the Cinematograph act, 1909. The Act empowered County Councils or justices where the power have been delegated to them to grant licences to persons to use premiss specified In the licence' for the purposes of a cinema, subject to certain conditions, terms and restrictions. The practice was stated to be in existence whereby, in cases where it was intended to erect premises for use as a cinema, justices were asked to approve the plans of the building to be erected, and thereby honourably to commit themselves or their successors to grant the licence after completion of the premises. Disapproving this practice, it was held that the practice was beyond the powers given by the Act and is unenforceable. It was observed that it was improper for justices by a gentlemen's agreement to fetter, limit control, or in any way affect their own future decisions, or those of their successors or of other justices. The scheme of the Act and the rules at present under examination envisages two stages when the licensing authority has to examine the application:

- (i) at the stage of grant of certificate Of approval of the site and (ii) at the stage of grant of cinema licence. In view of this difference in the scheme, the decision is hardly of any assistance. We have reached the conclusion purely on the examination and interpretation of the scheme merging from the Act and the Rules.

The High Court was therefore, in our opinion, in error in holding that once the public interest has been taken into considera-

(1) [1915] 2 K.B. 266 (2) [1937] 4 All E.R. 263 tion while granting certificate of approval, consideration of public interest would not arise and cannot be countenanced while granting a cinematograph licence under Sec. 3 read with Sec. 5.

The next question is whether the District Magistrate in this case was justified in refusing to grant the licence in public interest on relevant consideration.

The District Magistrate initially refused to grant licence against which in the appeal preferred by the respondent, the order impugned in the writ petition was made by the State Government. The State Government called for the comments of the District Magistrate qua the contentions raised by the respondent in his appeal. Briefly summarised the view expressed by the District Magistrate in his comments, which was the view that prevailed with him while rejecting the application for licence, was that the relevant rules having not been complied with: (i) inasmuch as the cinema hall has been constructed in the restricted area; (ii) educational institutions are situated within 100 yards of cinema house; (iii) there is no provision to give conditional licence under the cinema rules; (iv) the allegation that the District Magistrate has some bias against the respondent was not correct; (v) the licence has been refused in public interest on consideration of public peace and order; (vi) the construction of cinema building was not completed within the prescribed period of two years; (vii) if the licence is granted, there is apprehension of breach of peace. These comments provide a peep into the mind of the District Magistrate while rejecting the application for licence. The State Government while quashing the order of the District Magistrate refusing to grant licence held that the reasons on the basis on which the licence to run cinema was rejected do not fall within the cinematograph Rules and violation of no specific rule is shown. That sets at naught ground Nos.

(i), (v) and (vi). The charge of bias was shown to be not merited and failure to complete the construction within the specified time did not merit rejection of the application for licence. Location of educational institutions within the prohibited area would not enter the verdict at the stage granting cinematograph licence because the same was taken care of and rejected while granting the certificate of approval. It is even factually not correct. Accordingly, the State Government remitted the matter to the licensing authority to consider whether licence could be refused in public interest and if it is to be so refused, the prior appro-

val of the State Government may be obtained. Therefore the remand order limited the enquiry by the District Magistrate to question of grant or refusal of licence in public interest. Other aspects are concluded by the remand order.

Therefore, the only question that survives for consideration is whether the District Magistrate is now justified in refusing to grant licence on the ground that it is not in public interest to do so. Reading the order dated February 20, 1983, as a whole the influence of the *Sammelan* permeates through the order. Curiously, after the direction given by the Court that the District Magistrate shall process and dispose of the application for licence, the District Magistrate gave a public notice inviting objections to the grant of cinematograph licence. The only objector again appears to have been the *Sammelan* and it has repeated all those objections which it had preferred at the time of granting of certificate of approval. The objections of the *Sammelan* were founded on two environmental aspects: (i) that the

surroundings of the campus of Sammelan are calm and quiet and there is such an atmosphere as would be conducive to the research work conducted on the campus of the Sammelan; (ii) granting of a cinematograph licence would disturb the cultural and educational environment of the locality and would be a traffic nuisance. In our opinion, both are irrelevant considerations for the obvious reasons that they are deemed to have been disposed of while granting certificate of approval and affirmed by the State Government in appeal. They ought to be rejected for the additional reason that the cinema building is an air-conditioned sound-proof building. It is not possible to believe that conducting cinematograph exhibition in a sound-proof building will add to the noise. The grievance was that once a cinema theatre comes up, tea stalls will spring up, hawkers would crowd the locality and traffic would increase is hardly relevant. There is nothing special about it. Anyone living in a developing urban area has obviously to put up with this situation. Noise can be mitigated not wholly obliterated. Therefore, the District Magistrate rejected the application on extraneous and irrelevant considerations not germane to the issue at the stage of granting the licence.

Licensing powers, an indisputable adjunct of controlled economy, take various forms and they are numerous. They are generally couched in a language giving wide scope for exercise of powers. Therefore the courts have been vigilant to see that they are not exercised in an oppressive or arbitrary manner. The powers being wide, the question of its exercise on relevant or considerations germane to the determination more often arises. If the licence is refused on grounds which appear to be irrelevant, the court can legitimately interfere. In this case the sole ground of refusal of licence is that it is not in public interest to grant it. Lifting the veil of public interest what transpires is that the licence should not be granted because the Sammelan is not reconciled to the existence of a cinema theater in its vicinity. In other words, public interest is shown to be co-extensive with the likes and dislikes of the authorities in charge of the Sammelan. This cannot be countenanced. Dislike of a body howsoever prestigious it may be, is not an adequate substitute for public interest. The licensing authority has clearly acted on irrelevant consideration in refusing the licence.

The High Court was of course, clearly in error in issuing a mandamus directing the District Magistrate to grant a licence. Where a statute confers power and casts a duty to perform any function before the power is exercised or the function is performed, the Court cannot in exercise of writ jurisdiction supplant the licensing authority hearing a writ petition praying for a writ of certiorari for quashing the order of remand. The High Court could have quashed the order of remand if it was satisfied that the order suffers from an error apparent on the record. But there its jurisdiction would come to an end. The High Court cannot then proceed to take over the functions of the licensing authority and direct the licensing authority by a mandamus to grant license. To that extent the judgment of the High Court is set aside. However, as pointed earlier, while narrating the chronology of events through which the appeal proceeded in this Court, the present situation is that the District Magistrate by its order dated February 20, 1983 refused to grant licence on extraneous and irrelevant considerations, and it has failed to exercise jurisdiction vested in it. This Court, therefore, on March 10, 1983 vacated the interim stay of the operation of the judgement of the High Court. Within a week thereafter the District Magistrate granted license and It was renewed for a further period of one year in April, 1984. That licence is valid and in force and holds good, subject to the application for its renewal at prescribed intervals. The order dated February 20, 1983 refusing to grant license in public interest is quashed and set aside. The District Magistrate as licensing

authority shall examine the application for renewal of licence whenever made, on relevant and legally valid considerations germane to the determination and in the light of the observations made in this judgment.

Subject to the modifications set out in this judgment, the appeal fails and is dismissed but with no order as to costs.

N.V.K.

Appeal dismissed.