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**(1992) 05 AHC CK 0061**

**In the Allahabad High Court**

**Case No :** Civil Misc. Writ Petition No. 29772 of 1991

Smt. Shyama Devi and others

APPELLANT

Vs

District Magistrate, Varanasi and another

RESPONDENT

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**Date of Decision :** 12-05-1992

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Uttar Pradesh Cinemas (Regulation) Act, 1955 — Section 10, 10  
Uttar Pradesh Cinematograph Rules, 1951 — Rule 3, 3(3), 44  
Uttar Pradesh General Clauses Act, 1904 — Section 4(42)

**Citation :** AIR 1993 All 37 : (1992) 3 AWC 1342

**Hon'ble Judges :** S.D. Agarwala, J; M. Katju, J

**Bench :** Division Bench

**Advocate :** Sri H.M. Sahai, for the Appellant;

**Final Decision :** Allowed

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## Judgement

S.D. Agarwala, J.—This is a petition under Art. 226 of the Constitution of India. The petitioners applied for permission to make a mini cinema hall in Chakiya, district Varanasi. The District Magistrate by his letter dated 3-11-1989 granted permission to construct the cinema hall. One of the conditions mentioned in the permission letter was that the construction shall be completed within a span of one year. Admittedly, the construction could not be completed within a period of one year from 3-11-1989, and consequently before expiry of the said period, the petitioners moved an application before the District Magistrate on 1-11-1990 requesting him that some more time may be granted for completion of the aforesaid cinema hall. The District Magistrate did not pass any order on this application, but the petitioners continued to make their construction. On 19th September, 1991 the Works Superintendent of Public Works Department, Varanasi submitted a report to the respondent District Magistrate informing him that the picture hall has been made in accordance with the Rules and there is no illegality in making the cinema hall. A photostat copy of this report which is addressed to the District Magistrate, Varanasi is attached as Annexure-1 to the

rejoinder affidavit. The receipt of this report was denied on behalf of the District Magistrate and hence the photostat copy has been filed. The position, therefore, which emerges is that the construction of the cinema is now complete and the petitioners made an application for grant of a licence to them for running the cinema. Their application for grant of the licence is not being considered by the authorities on the ground that under R. 3(3) of the U.P. Cinematograph Rules, 1951, hereinafter referred to as 1951 Rules, the District Magistrate has no power to extend the time for constructing the cinema house beyond that which was already granted to them, and the stand taken in the counter-affidavit is that the question for grant of licence can only be considered when the exemption is granted by the State Government which is compound-able under R. 44 of the U.P. Cinematograph Rules, 1951 as amended up-to-date. In effect the contention on behalf of the respondent is that unless the delay in construction of the picture house is compounded under Rule 44 of the Rules, the question for granting licence to the petitioners does not arise.

2. Under Rule 3 of 1951 Rules an application has to be made for constructing a building. Under sub-clause (3) of Rule 3 the licencing authority is empowered to grant permission for construction provided he is satisfied that the site-plans and specifications fully conform to the Rules. The licencing authority has to also state in the said permission the period within which the construction has to be completed. Rule 3 which is relevant for the purposes of decision of this petition is quoted below:--

"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 vehicles and the position of the premises in relation to adjacent premises and public thoroughfares 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."

3. We have examined the Rules. Besides sub-clause (3) of Rule 3 quoted above, there is no other rule which empowers an authority to grant extension of time granted by the Licensing Authority under sub-clause (3) for constructing the cinema building. The question which arises for consideration in this case is as to whether under sub-clause (3) of Rule 3 of the Rules the Licensing Authority has power to extend the time granted by him.

Section 21 of the U.P. General Clauses Act provides as follows:--

"21. Power to make to include power to add to, amend, vary or rescind, orders, rules, or bye-laws.-- Where, by any Uttar Pradesh Act, a power to issue statutory instrument is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add; amend, vary, or rescind any statutory instrument so issued."

4. Section 21 categorically states that where by any U.P. Act a power to issue a statutory instrument is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and conditions to add, amend, vary or rescind any statutory instrument so issued. The expression "statutory instrument" has been defined in S.4(42-B). The definition is as follows :--

"(42-B). "Statutory instrument" shall mean any notification, order, scheme, rule or bye-law issued under any enactment and having the force of law."

5. In our opinion, the principles laid down in S. 21 of the General Clauses Act read with definition "of the expression "statutory instrument" would be applicable to the instant case. Under sub-clause (3) of Rule 3 of 1951 Rules, the Licensing Authority grants permission and fixes the period within which construction has to be completed. Since the Licensing Authority has power to fix the period by which construction has to be completed, it has also power to modify the said permission and extend the time granted by him. It is not disputed that the District Magistrate is the Licensing Authority. It is also not disputed that before expiry of the period within which construction was to be completed, an application was made on behalf of the petitioners for extension of time. The District Magistrate did not pass any order on the said application for extension of time, and kept it pending, though he had the power to extend the time. Under the circumstances the person to whom permission has been granted cannot be penalised for completing construction after the expiry of the time granted to him. In *Raja Ram Jaiswal v. State of U.P.* 1981 ALJ 1159, Rule 3(3) of the Rules came up for interpretation before this Court and it was held that R. 3(3) is only directory. In that case also the petitioner had applied for extension of time for completing the construction, and the District Magistrate did not extend the time as he was of the opinion that he was powerless to extend the time, this Court consequently held that the petitioner in that case did not commit any violation of the rule in completing the building after the expiry of the period granted under Rule 3(3) of the Rules. The principle laid down in the case of *Raja Ram Jaiswal* (supra) fully applies to the present case. In our opinion, consequently, in this case also the petitioner had applied for extension before expiry of the period granted to him and the District Magistrate did not extend the time on the ground that he did not have the power to do so, the petitioner cannot be held to have committed any violation of the rules in completing the construction of the cinema building.

6. The main ground set up in the counter-affidavit on behalf of the respondents

is that in view of Rule 44 of the Rules the petitioners are not entitled to the consideration of their application for the grant of licence. Rule 44 of the Rules, in our opinion, is not applicable to the facts of the present case at all. Rule 44 lays down the manner of imposing of composition charges, while granting exemption under S. 10 of the Uttar Pradesh Cinema (Regulation) Act, 1955. S. 10 of the U.P. Cinemas (Regulation) Act, 1956 gives powers to the State Government to exempt subject to such condition and restrictions as it may impose any exhibition or class of exhibition by means of cinematograph or video from any of the provisions of the said Act or any rules made thereunder. This provision has nothing to do with the question of completing construction of cinema building beyond the period for which the permission had been granted. In the circumstances, Rule 44, in our opinion, does not apply to the case of the petitioners at all, and the respondents are wholly unjustified in not considering the application of the petitioners for the grant of the licence on the ground that Rule 44 of the Rules is applicable to them.

7. We, consequently, allow the petition, and issue a writ of mandamus to the respondent for considering the application of the petitioners for grant of licence to run the cinema in the building constructed by them within a period of two months from the date a certified copy of this order is produced before the authority concerned. Since there has already been delay in granting the licence for the reasons which was not tenable in law, we hope and trust that the authorities shall consider the application of the petitioners for grant of licence to the petitioners sympathetically and without any further delay. The parties are directed to bear their own costs.

A certified copy of this judgment be given to the learned counsel for the parties on payment of usual charges within ten days.

8. Petition allowed.