

(1978) 09 KAR CK 0022
In the Karnataka High Court
Case No : Writ Petition Number 798 of 1975

T.M. Sriramulu Naidu and Others

APPELLANT

Vs

Divisional Commissioner and Others

RESPONDENT

Date of Decision : 01-09-1978

Acts Referred:

Karnataka Cinemas (Regulation) Rules, 1971 — Rule 105, 107, 96 (1), 98 (2), 99

Citation : (1984) ILR (Kar) 1127

Hon'ble Judges : Venkatachalaiah, J; Rama Jois, J; Jagannatha Shetty, J

Bench : Full Bench

Advocate : R.U. Goulay, for the Appellant; M.P. Chandrakantaraj Urs, Government Advocate for Respondents 1 and 2, B.G. Sridharan, for Respondent 3, for the Respondent

Judgement

Jagannatha Shetty, J.—The Petitioners are residents of Thyagarajanagar which is a locality in Bangalore North Taluk. Respondent-3 held a licence for exhibiting cinematographs in his touring talkies situate at Site No. 240/1, 240/2 and 240/3 in the said locality. The licence was valid up to 18th September, 1974. He applied to the District Magistrate for regrant of licence. The application was rejected on the ground that the camp site is not in conformity with Rule 27 of the Karnataka Cinemas (Regulation) Rules, 1971 (hereinafter referred as the "the Rules"). Against the said order, Respondent-3 preferred an appeal to the Divisional Commissioner, Bangalore, who allowed the appeal and directed the District Magistrate to regrant the licence. The Petitioners have challenged the validity, of the appellate order.

2. In order to appreciate the controversy arising in this case, it is necessary to set out the facts in detail :

On 28th June, 1971, Respondent-3 made an application for grant of "No Objection Certificate" for constructing a touring talkies in Site Nos. 240/1, 240/2 and 240/3 of Thyagarajanagar, Bangalore. After following the procedure prescribed under the Rules, and in particular under Rule 96, the District

Magistrate made an order dated 26th December, 1972, rejecting the application. He was of the opinion that the grant of " No Objection Certificate " would be contrary to the then existed Rule 107. Rule 107 provided that no licence shall be granted to any touring cinema in any place where there is a permanent cinema theatre provided that licence may be granted to one touring cinema in any place with a population exceeding fifteen thousand and if there is only one permanent cinema theatre in such place.

3. Against the order of the District Magistrate, Respondent-3 preferred an appeal to the Divisional Commissioner. The Divisional Commissioner disagreed with the view taken by the District Magistrate. He held that Rule 107 was no bar for the grant of " No Objection Certificate " and accordingly, he directed the District Magistrate to dispose of the application of Respondent-3 in accordance with law.

4. Pursuant to the appellate order, the District Magistrate after making an enquiry granted " No Objection Certificate " to Respondent-3 on 6th August, 1973. Respondent-3 constructed touring cinema building and obtained licence on 9th October, 1973. The said licence was valid up to 18th September, 1974. Before the expiry of the period, Respondent-3 applied for regrant of licence under Rule 105. During the pendency of that application, Rule 107 was substituted. The substituted Rule 107 provides that no licence for a touring cinema shall be granted in respect of a site situated within a distance of 1.6 kilometres from a permanent cinema or 800 metres from another touring cinema in towns or cities having a population of twenty-five thousand or more. Respondent-3 apprehending that his regrant application would not be considered, approached this Court in W. P. No 5730/74 challenging the validity of the said rule.

5. On 4th February, 1974, Writ Petition No. 5730/74 was disposed of following the decision of Chandrashekhar, J., in Sri Laxmi Touring Talkies and others v. The State of Karnataka and others. In the said case, Clause (b) of sub-rule (1) of amended Rule 107 was struck down by this Court. Accordingly, the Writ Petition of Respondent-3 was allowed with a direction to the District Magistrate to dispose of his application for regrant of licence without applying the amended Rule 107.

6. Pursuant to the said direction of this Court, the District Magistrate took up the application of Respondent-3. Then, the Petitioners before me, represented to the District Magistrate that licence should not be regranted since the camp site is situated within the prohibited distance prescribed under Rule 27. The District Magistrate appears to have entertained their objection. He made a spot inspection and formed an opinion that licence should not be regranted. Accordingly, he made an order rejecting the application of Respondent-3. Against the said order, Respondent-3 preferred an appeal before the Divisional Commissioner. The Divisional Commissioner, following the decision of this Court in Sri Laxmi Touring Talkies and Others Vs. The State of Karnataka and Others, allowed the appeal observing thus :

"In this case the request for regrant of the licence. The Hon'ble High Court have issued a mandamus in similar cases referred to above, that licences may be issued without applying the amended Rule 107 of the Karnataka Cinemas (Regulation) Rules, 1971. Similar relaxation in respect of Rule 27 would also appear to be applicable in this case. According to the Government letter No. HD 46 CNA 73 dated 20-8-1973, a touring talkies can run in a particular place for a maximum period of 2-1/2 years. In this case the original " No Objection Certificate " and licence was issued on 9-10-1973. Therefore, the Appellant is entitled for regrant of the orders of the Learned District Magistrate, Bangalore District and direct him to grant the licence.

The appeal is allowed."

Challenging the validity of the appellate order, the Petitioners have preferred the top noted Writ Petition.

7. The primary contention arising for consideration is whether the District Magistrate while considering the application for regrant of licence under Rule 105 could take into consideration any of the representation from the public touching upon the matters which are relevant for granting "No Objection Certificate".

8. The decision of Chandrashekar, J., in Sri Laxmi Touring Talkies proceeds on the basis that the District Magistrate at the time of regrant is required to consider only the matters relevant for the regrant of licence, i.e., with regard to those matters set out under sub-rule (2) of Rule 105 ; Clause (d) of Rule 97 ; and Rules 91 to 95 and Learned Judge observed that when once a "No Objection Certificate" has been granted, the question whether the requirements of Rule 107 have been satisfied or not cannot be gone into at the time of regrant of licence.

9. In the present case, I am not concerned with the applicability of Rule 107. I am concerned with Rule 27. Rule 27 is also one of the rules, the conditions of which will have to be complied with before granting "No Objection Certificate", Applying the principles stated by Chandrashekar, J., in Sree Laxmi Touring Talkies case¹, it was contended for Respondent-3, that Rule 27 cannot be invoked when the licence is sought to be regranted.

10. But, my attention has been invited to a later decision of Malimath. J., in W.P.No. 5970/74 G.V. Madanaik and others v. The District Magistrate, Mysore and Another, W. P. No. 5970 of 1974 Dated 9-1-1975 .The facts of the said case lie in close parallel to the facts of the present case. Malimath, J., while dealing with the scope of an enquiry to be held by the District Magistrate under Rule 105 (3) observed :

"....The Licensing Authority, may, after such enquiry as it deems necessary subject to Rule 99, regrant the licence. Sub-rule (3) of the Rule 105 undoubtedly confers power on the Licensing Authority to make such enquiry as he deems necessary at the time of considering the prayer for regrant of the licence. The

said rule cannot, however, be read as conferring a legal right on others to oppose the regrant of licence. But as power has been conferred on the Licensing Authority to hold enquiry as he deems necessary, any one who is likely to be affected by the regrant of licence could place necessary materials before the Licensing Authority. If on a perusal of that material, the Licensing Authority considers that an enquiry is necessary, it is open to him to undertake such enquiry. If on looking into the representations he forms an opinion that no enquiry is called for, he is not under an obligation to hold an enquiry merely because some complaint or representation has been lodged before him. But as a power has been conferred on the Licensing Authority that power has to be undoubtedly exercised in the public interest. It would be very unreasonable if the Licensing Authority having been apprised of certain objections to the regrant of licence, does not care to peruse or look into them."

The above observations give an indication that it is open to the District Magistrate to take into consideration any of the representations relating to the matters which he ought to take into consideration at the time of granting "No Objection Certificate." In view of this decision, I think the Petition has to be adjourned for being heard by a Bench of two Judges.

11. I, therefore, refer the matter u/s 9 of the High Court Act to a Division Bench. Let the connected papers be placed before the Hon"ble the Chief Justice for necessary orders.

12. Now the question is whether I should continue the interim stay order till the disposal of the Petition. In my opinion, I should not I am inclined to take the view expressed by Chandrashekhar, J in Sri Laxmi Touring Talkies case¹ and I therefore vacate the stay order.

ORDER OF REFERENCE BY THE DIVISION BENCH

Present:

Chandrashekhar and Venkataswami, JJ.

Chandrashekhar, J.

This Petition under Art. 226 of the Constitution has been referred to a Division Bench by Jagannatha Shetty, J., as his Lordship felt that there were conflicting decisions of this Court on some of the questions arising for determination therein.

At this stage, we need set out only a few material facts of this Petition. Respondent-3 had applied for grant of a " No Objection Certificate " to run a touring cinema in a site situate in Thyagaraja Nagar, an extension in Bangalore City. The Licensing Authority (respondent-2) granted to respondent-3 a "No Objection Certificate" which was followed by grant of a licence for running a touring cinema in that site. Before the expiry of that licence, respondent-3 applied to the Licensing Authority for regrant of that licence.

At that stage, the Petitioners filed objections to regrant of that licence. They

contended, *infer alia*, that the location of that site was in violation of the conditions prescribed in Rule 27 of the Karnataka Cinemas (Regulation) Rules, 1971 (hereinafter referred to as the Rules), inasmuch as that site was within a distance of 50 metres from a place of worship and also a school and was also, in the midst of thickly populated residential area.

After hearing respondent-3 and the Petitioners) the Licensing Authority declined to regrant the licence. Against the order refusing to regrant the licence, respondent-3 herein went up in appeal to the Divisional Commissioner, Bangalore.

In that appeal, the Petitioners herein had not been impleaded as respondents. The Divisional Commissioner allowed the appeal and directed the Licensing Authority to regrant the licence.

In *Laxmi Touring Talkies v. State of Karnataka*, which was decided by one of us, it was held as follows :

"As "No Objection Certificates" had been granted to the Petitioners in respect of the theatres where they had been running touring cinemas and as they have applied for re- grant of licences in respect of the same places, the first stage of granting licences to them had been completed. If they (the Petitioners) have fulfilled the other conditions (conditions other than those relating to location of the theatres), grant of licences to them should ordinarily follow....."

The above view was followed by Malimath, J., in *Sri Laxmi Touring Talkies, Challakere v. State of Karnataka*. That was also a case relating to regrant of a licence. His Lordship held that while considering the question of regranting the licence the District Magistrate was not required to satisfy himself as to whether there was compliance with the provisions of Clauses (h), (i), (j) and (k) of sub-rule (4) of Rule 27 of the Rules.

However, in *K.J. Anjanappa v. S. Marappa Venkataramiah, J.*, after noticing the decision in *Laxmi Touring Talkies*" case, observed :

" In the case of a touring cinema it cannot be held that a " NOC" (No Objection Certificate) once issued would obviate necessity of issue of " NOC " on any subsequent date. As mentioned earlier Clause (5) of Rule 96 leads to the inevitable conclusion that there is a necessity for a " NOC " even before the lapse of two and a half years from the date on which a touring talkies has been allowed to camp on any site ".

The above view cannot, in our opinion, be reconciled with the views expressed in two other decisions referred to above.

3. W.P. Nos. 1749 and 1750 of 1975 dated 15-7-1975 4. 1975 (2) KarLJ 383 : ILR 1975 Kar 1702 The Learned Government Advocate referred to Section 8 Of the Karnataka Cinemas (Regulation) Act, 1964, which provides that the Licensing Authority shall not grant a licence unless it is satisfied, *inter alia*, that the Rules made under that Act have been substantially complied with. The Learned

Government Advocate maintained that even where a No Objection Certificate or a licence had already been issued to run a touring cinema in a particular site, the Licensing Authority should not regrant the licence unless it (the Licensing Authority) is satisfied that the Rules have been substantially complied with and that the mere fact that a No Objection Certificate or a licence had been issued earlier in respect of a site even though the requirement of the Rules had not been complied with, would not absolve the Licensing Authority of its duty to re-examine at the time of regranting the licence whether the requirements of the Rules have been substantially complied with. It was also contended by the Learned Government Advocate, that a No Objection Certificate or a licence granted where the Rules have not been substantially complied with, is void abinitio and cannot bar the Licensing Authority from re-examining on every occasion when an application is made for a regrant of the licence, whether the Rules have been substantially complied with. The Learned Government Advocate urged that any other view would result in perpetuation of the injury to the public resulting from an improper grant of a No Objection Certificate or licence made even though the Rules had not been complied with.

Apart from conflicting rulings of this Court, an important question of public interest arises, in our opinion, for determination in this Petition and we consider it fit to refer it (that question) to a Full Bench. That question is :

"If the Licensing Authority had granted a No Objection Certificate for running a touring cinema in a particular site and had also subsequently granted a licence to run that touring cinema, can the Licensing Authority while considering an application for re-grant of that licence after the expiry of the period of original licence, re-examine the question whether the location of that touring cinema in that site satisfies the requirements of the Karnataka Cinemas (Regulation) Rules, 1971 ? "

OPINION OF THE FULL BENCH

Dated 1st September 1978

Jagannatha Shetty, J. (Venkatachaliah, J. concurring)

1. A Bench of this Court in view of the conflicting views taken in *Sri Lakshmi Touring Talkies and others v. The State of Karnataka and others and Anjanappa K.J. v. Marappa*", has referred the following question for opinion to a Full Bench :

"If the Licensing Authority had granted a No Objection Certificate for running a touring cinema in a particular site and had also subsequently granted a licence to run that touring cinema, can the Licensing Authority, while considering an application for regrant of that licence after the expiry of the period of original licence, re-examine the question whether the location of that touring cinema in that site satisfies the requirements of the Karnataka Cinemas (Regulation) Rules 1971 ? "

2. The decision on the question essentially turns on the scope of the power to

grant and regrant a licence to a touring cinema and also closely connected with the procedure governing the grant of " No Objection Certificate " (" NOC ") for location of a touring cinema. The question to put it in other words, is this :- Whether the Licensing Authority on an application for regrant of licence to a touring cinema, could re-examine whether the site in respect of which "NOC" was granted, continues to conform to the requirements of law?

3. Before we refer to the decisions in which contrary views have been expressed, it will be proper to have a brief 1. AIR 1975 (Kar) 37 (1) Sri Laxmi Touring Talkies and Others Vs. The State of Karnataka and Others, survey of the Karnataka Cinemas (Regulation) Act, 1964 (which is here in afterwards referred to as "the Act"). A panoramic view of the Act has been projected by the Legislature in the preamble. It refers, " to provide for regulating exhibition by means of cinematographs and the licensing of places in which cinematograph films are exhibited in the State of Karnataka ".Section 4 provides that save as otherwise provided in the,Act, no person shall give an exhibition by means of a cinematograph in a place which has not been licensed under the Act or otherwise than in compliance with any conditions and restrictions imposed by such licence. Section 5 provides for grant of a licence to an applicant who intends to give exhibition by means of a cinematograph. Section 6 sets out the following matters which the Licensing Authority must bear in mind while deciding whether to grant or to refuse a licence :

- (a) The interest of the public generally ;
- (b) The suitability of the place where the cinematograph exhibitions are proposed to be given ;
- (c) The adequacy of existing places for the exhibition of cinematograph films in the locality ; and
- (d) the benefit to any particular locality or localities to be afforded by the opening of a new place of cinematograph exhibition.

From these provisions, the Legislative purpose is clearly intelligible, that was, to regulate the cinematograph exhibitions at suitable places in different localities having regard to the interest of the public generally, and the benefit to any particular locality or localities to be afforded thereon.

4. The purpose being thus ascertained, let us now turn to the Rules framed under the Act. Section 19 confers power on the State Government to make rules to carry out the purposes of the Act. In exercise of this power, the State Government has framed the Rules called "The Karnataka Cinemas (Regulation) Rules, 1971, called shortly as "the Rules". These Rules classify the cinemas into four categories, namely, permanent cinemas, drive-in cinemas, semi-permanent cinemas and touring cinemas. Rules 25 to 29 in Chapter IV of Part II regulate the grant of "No Objection Certificate" and licences for permanent cinemas. Rules 111-A to 111-D in Chapter XII-A of Part 1V-A regulate the grant of "No Objection

Certificate" and licences for drive-in cinemas. Chapter XII of Part IV provides for grant of licences to the touring cinemas; Chapter XII-B of Part IV-B provides for grant of licences to semi-permanent cinemas. These Rules are not uniform in nature and scope, and indeed, they cannot be, as they are intended to apply to different classes of cinemas.

5. We are concerned in this case only with a touring cinema. The rules relating to this cinema are hapazardly arranged. It is therefore, necessary to pick up the relevant rules and examine the salient provisions. It is best to say that "touring cinema," is not defined but described under Rule 89 in Chapter XII, Part IV of the Rules. The Rule 89 (2) "touring cinema" means,...

"(i) an outfit comprising the cinema apparatus and plant and the accessories taken from place to place in the State of Karnataka for giving cinema exhibitions; or

(ii) an outfit comprising cinema apparatus and plant taken from place to place in the State of Karnataka for conducting shows in any local theatre or hall."

Rule 89 (1) defines "building" to mean, any booth, tent or similar structure. For construction of any cinema including a touring cinema, the Act and the Rules require permission from a Licensing Authority. Section 11 states that any person who intends to use any place for exhibition of cinematograph films or to use any site for constructing a building for the exhibition of cinematograph films, shall obtain permission from the Licensing Authority. Rule 6 in Chapter II, Rule 27 in Chapter IV, and Rule 107 in Chapter XII impose certain conditions in respect of a site for the location of a touring cinema or for grant of "NOC". Rule 6 requires the applicant to produce before the Licensing Authority necessary records relating to his ownership and possession of the site ; if he is not the owner, he shall produce to the satisfaction of the Licensing Authority, documentary evidence in proof of his lawful possession of the site or building. Rules 27 (h) to (k) are in these terms :

"27. Conditions for the grant of No Objection Certificate :

(1) No Objection Certificate shall not be granted under this Chapter in respect of any cinema unless:

xx xx xx xx (h) the cinema site is situated at a place where it is not likely to cause traffic difficulties;

(i) the cinema site is at a distance of not less than fifty meters from--

(i) any existing petrol bunk or place licensed for a petrol bunk and other places of fire resort, or

(ii) any place of community worship, cremation ground, graveyard or cemetery in use, or

(iii) any recognised educational institution or any residential institution attached

to such educational institutions, or

(iv) at one Car parking space for every fifty seats subject to a minimum of space for five cars in places having a population of less than fifty thousand,

(v) any public hospital or a private Nursing Home, or

(vi) any recognised orphanage, or

(vii) any thickly populated residential area or an area used generally for residential purposes as distinguished from business purposes:

Provided that the licensing authority may, if the proposal is to construct a sound proof cinema building, at its discretion in public interest considering the suitability of the place, for reasons to be recorded in writing after inspection of the proposed site, relax, subject to such conditions as it may consider necessary to impose in each case, all or any of the conditions specified in items (i) to (vi) :

Provided further that considering the facts and circumstances of each case different conditions may be imposed in different cases;

(j) the cinema site is in an elevated place or is free from dampness having proper drainage arrangements; and

(k) the cinema site having space for sheltered cycle stand for a minimum of fifty cycles."

Rule 107 provides that no licence for a touring cinema shall be granted in respect of a site situated within a distance of 1.6 kilometers from a permanent cinema or 800 meters from another touring cinema, and in towns or cities having a population of 25,000 or more.

6. We now move on to the procedure prescribed for grant of "NOC". Rule 90 requires a person who intends to construct a building for a touring cinema, to make an application in Form "A" with the plan in triplicate showing the details of the Construction of the building giving its area and dimensions. Rule 96 provides procedure for disposal of the application made in Form "A". The procedure provided thereunder is as follows: The Licensing Authority shall notify the public by publication in atleast two local newspapers in the regional language having the largest circulation in the area and also by such other methods as it deems fit inviting objections. Such notice shall be in Form "C". The Licensing Authority shall also direct the applicant to put up a notice in the English language and also in the regional language in Form " B " on the proposed site in such a position that it can be plainly seen from the public thoroughfare. The Licensing Authority shall satisfy himself by personal inspection or otherwise whether these requirements have been complied with by the applicant. After the receipt of objections, if any, from the public, the Licensing Authority shall forward the application together with the plans and other connected records to the local authority concerned for its opinion regarding suitability or otherwise of the site for the location of the touring cinema. The local authority must furnish its opinion

to the Licensing Authority with regard to the suitability of the site. After the Licensing Authority receives the records from the local authority with its opinion, it shall consider the objections, if any, received from the members of the public and the opinion of the local authority if it decides to grant a permission. This permission is termed as "NOC".

Before granting "NOC" the Licensing Authority shall also take into consideration the provisions of Rule 6, and clauses (h) to (k) of Rule 27 (1) and Rule 107.

7. The aforesaid elaborate procedure prescribed by sub-rules (1) to (4) of Rule 96 is, however, not required to be observed if "NOC" is sought for the second year in respect of a camp site licensed during the previous year. The Licensing Authority, however, must follow the usual procedure if "NOC" is sought for in respect of a camp site for the third year. That much is clear from sub-rule (5) of Rule 96 to which we will have an occasion to refer in detail a little later.

Sub-rule (6) of Rule 96 states that the applicant shall, within two months from the date of grant of "NOC", complete the construction of the building unless "NOC" is extended for a further period. The maximum period which could be extended by the Licensing Authority for valid reasons is, only three months, and if the building is not constructed even within the said extended period, the Licensing Authority may cancel the "NOC".

Rule 91 provides guidelines for the construction of building. It states that the building shall be provided on all its sides with an open space which in no part thereof shall be less than ten metres in width. It further states that the building shall have a road frontage on the public thoroughfare upon which the site of such building abuts. It also states that there shall be suitable means of entrance and exit for the public in such frontage and the eaves of the building shall have a height of not less than two and a half metres. Rule 92 provides that the owner of the building shall provide such sanitary conveniences as may be prescribed by the Licensing Authority; and Rule 93 states that the building shall not be constructed in whole or in part with inflammable materials which may be a source of danger to public or dangerous otherwise to any other nearby building. Rule 94 provides safeguards for building constructed of inflammable materials. It states that in every building constructed of inflammable materials, there shall be on each side, an aperture atleast two metres high and five and a half metres wide, and this aperture may be closed by that is fixed on split bamboo frame and fastened by twine on the inside.

8. It now remains to make a brief survey of the rules for grant and regrant of licence. After the "NOC" is obtained and the building is constructed, the person concerned may apply for a licence. Rule 97 sets out the certificates which should accompany the application for licence. Rule 98 provides for grant or refusal of licence Rule 98 (2) prohibits grant or regrant of licence continuously for a period exceeding one year. Rule 99 again restricts the period of licence granted under Rule 98 or regrant under Rule 105.

9. It will be now necessary to refer to the decisions which occasioned the reference in this case. In *Laxmi Touring Talkies*'s case¹. Chandrashekhar, J., as he then was, while dealing with almost a similar question, observed at page 433 thus :

"Thus, it is seen while considering whether a licence should be regranted or not, what the Licensing Authority has to satisfy itself is whether there is a proper certificate of the Electrical Inspector, whether the requirements of Rules 91 to 95 are satisfied, whether the fee for regrant of licence has been paid and whether the building of the touring cinema is constructed of inflammable materials. At the stage of regrant of licence, the Licensing Authority is not required to examine whether the conditions of Rule 107 have been satisfied. The question whether the requirements of Rule 107 have been satisfied, will arise only at the stage of deciding whether or not to grant a "No Objection Certificate". Once the same has been granted, the question whether the requirements of Rule 107 have been satisfied, cannot again be considered while deciding whether or not the licence should be granted or regranted ".

This view was followed by Malimath, J. in *Marappa v. State of Karnataka and others*. But in *G. V. Madanaik and others v. The District Magistrate*, Malimath, J. had something different to state. He said that even at the stage of regrant of a licence, the Licensing Authority should look in to the representation made by any person objecting to the grant of licence as sub-rule (3) of Rule 105 confers such power on him to make necessary enquiry.

In *Anjanappa K.J. v. S. Marappa, Venkataramiah, J.*, distinguished the decision in *Laxmi Touring Talkies*'s case and held that a fresh "NOC" is necessary for the grant of a licence to a touring cinema after the expiry of one year. He also observed that in the case of a touring cinema it cannot be held that the "NOC" once issued would obviate the necessity for issue of "NOC" on any subsequent date.

10. The argument advanced by Sri B. G. Sridharan, Learned Counsel for respondent-3 was that when an application for regrant of a licence under Rule 105 is made, the Licensing Authority is required to make only a limited enquiry under sub-rule (3) to find out whether the certificates accompanying the application for regrant are in accordance with law, and it is not required to reconsider whether the site in respect of which the "NOC" was granted, continues to conform to the requirements of other rules like Rules 6, 27 and 107. According to him, there is no limit to the period for regrant of a licence and the power to regrant is not conditioned by the validity of "NOC", because "NOC" is required only for constructing a cinema building and not for continued exhibition of cinematograph. On the other hand, the contention urged by Sri Goulay, Learned Counsel for the Petitioner and Sri Chandrakanthraj Urs, Learned High Court Government Advocate for the Licensing Authority ran like this : Whenever an application for regrant of a licence for a touring cinema is made under Rule 105, the Licensing Authority must also make an enquiry and satisfy itself

whether the site in question continues to conform to the requirements of Rules 6, 27 and 107 of the Rules in addition to the enquiry as to correctness of the other certificates produced by the applicant.

11. Before we proceed to consider the arguments put forward by each side on the question, we venture to refer to some general observations by way of approach to the questions of construction. In *Seaford Court Estates, Ltd. v. Asher*, Denning, L.J. observed ;

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision.... It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge 5. 1949(2) All, E.R.155 at 164 cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislatureA judge must not alter the material of which the Act is woven, but he can and should iron out the creases ".

When this case went up to the House of Lords, it appears that the Law Lords disapproved of the bold effort of Lord Denning. Lord Mac Dermott observed that the principles enunciated by Denning J., are stated rather widely. Be that as it may, our Supreme Court in *M. Pentiah v. Muddala Veeramallappa* and in *State of Bihar v. Asis Kumar Mukherjee*, has approved of the reasoning adopted by Lord Denning.

In *Rugby Joint Water Board v. Footit and Another*, Lord Simon of Glaisdale observed :

"The task of the Courts is to ascertain what was the intention of Parliament, actual or to be imputed, in relation to the facts as found by the Court. There are a number of established canons of interpretation to assist the Courts in ascertaining and applying the Parliamentary intention. These canons have two aspects : first, as a code of communication whereby the draftsman signals the Parliamentary intention to the Courts; and secondly, as the quintessence of what experience has found to be the best guide of Parliamentary intention ".

In *Collector of Customs, Baroda v. Digvijaysinhji Spinning & Weaving Mills Ltd.* Jamnagar, Subba Rao, J., as he then was, speaking for the Supreme Court observed :

6. *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, 8. *State of Bihar and Others Vs. Dr. Asis Kumar Mukherjee and Others*, 10. *The Collector of*

Customs, Baroda Vs. Digvijaysinhji Spinning and Weaving Mills Ltd., " It is equally well settled principle of construction that " where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system "which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system."

12. With this background and having regard to the afore-said principles of construction, let us set to work on the constructive task of finding the intention of the rule-making authority. We may start the discussion with Rule 105 with which we are primarily concerned, and then proceed on a reverse gear. Rule 105 provides :

"105. Regrant of licence :-

(1) An application for regrant of a licence shall be made not less than 15 days before the expiry of the licence originally granted :

Provided that, if the Licensing Authority is satisfied that for valid reasons the application could not be made within the period specified in sub-rule (1), he may receive an application filed after the said date.

(2) Every application for regrant of a licence shall be accompanied by a certificate of the Electrical Inspector duly regranted, a certificate referred to in Clause (d) of sub-rule (1) of Rule 97, treasury receipts for payment of fees at the rates specified in Rule 106 and a copy of the licence originally granted.

(3) On receipt of the application for regrant of licence, the Licensing Authority may, after such enquiry as it deems necessary subject to Rule 99 regrant the licence ."

Sub-rule (1) of Rule 105 states that an application for regrant of a licence shall be made not less than fifteen days before the expiry of the licence originally granted. Proviso thereunder states that the Licensing Authority may receive a belated application if it is satisfied that for valid reasons the application could not be made within fifteen days before the expiry of the licence Sub-rule (2) provides that the application for regrant of a licence shall be, accompanied by certificate of Electrical Inspector and certificates issued by the concerned Tahsildar in respect of matters covered by Rules 91 to 95. Those certificates must state whether the building in question is in accordance with the requirements of law as stated by Rules 91 to 95. The application must also be accompanied with treasury receipts for payment of fees and a copy of the licence originally granted. Sub-rule (3) of Rule 105 provides that the Licensing Authority may after such enquiry as it deems necessary and subject to Rule 99, regrant the licence. It is true that Rule 105 does not make it obligatory for any applicant to produce the basic certificate, that is, "NOC" along with the application for regrant of a licence. This significant omission in the said rule is the foundation for the contention of Mr. Sridharan that it is not open to the Licensing Authority to make

an enquiry whether the site in respect of which a "NOC" was granted, continues to conform to the requirements of law. Does that omission lead to that inference, is the next question. This question must be examined not only on the scope of Rule 105 but also on the scheme provided by the Rules for grant and regrant of licence and "NOC". Sub-rule(3) of Rule 105 states that a licence may be regranted subject to Rule 99. Let us, therefore, revert to Rule 99. It provides :

"99. Duration of licence :

Subject to sub-rule (2) of Rule 98 no licence shall be granted under Rule 98 or regranted under Rule 105 for a period exceeding one year but a licence may be granted for a period less than one year. "

This Rule while conferring a discretion on the Licensing Authority to grant licence for a period less than one year, emphatically states that a licence shall not be granted under Rule 98 or regranted under Rule 105 for a period exceeding one year. The Rule, however, does not restrict the maximum period of licence to the granted or the total period of licence to be granted and regranted in respect of any touring cinema. Rule 99 purports to state that when a licence is granted or regranted, it shall not be for a period exceeding one year, obviously meaning, at a time and not for all time. If Rule 99 restricts the maximum period of licence to be regranted under Rule 105 upto one year and one year only inclusive of a shorter period of original grant, then that restriction must equally apply to grant of licence as Rule 99 refers to both grant and regrant of licence. There is no warrant, in our view, to read down the said rules so narrowly or unreasonably. The position would be clearer if we turn to sub-rule (2) of Rule 98, which again regulates the power to grant or regrant licence. Sub-rule (2) of Rule 98 reads:

" 98 (2). No licence in respect of a site shall be granted or regranted continuously for a period exceeding one year unless one month has lapsed after the expiry of said period of one year."

Two things are fairly clear from this sub-rule. It expressly limits the power to grant or regrant a licence continuously for a site. The word "site" appears to have been introduced by mistake. It must mean in the context "a touring cinema", because the Licensing Authority does not grant or regrant licence to a site. It only grants "NOC" to a site. Sub-rule (2) states that a licence shall not be granted or regranted continuously beyond one year. It, by necessary implication, permits the Licensing Authority to grant or regrant licence repeatedly if the temporary cinema has stopped exhibition of cinematographs for one month after the expiry of one year of licence. Thus, Rules 105, 99 and 98(2) are dove-tailed with each other and the combined effects of these rules are as follow's : A licence to a touring cinema may be granted for a period less than one year. It may be re-granted also for a period less than one year. But the period of such licence with continuous running shall not exceed one year. If the licensee stops exhibition for one month immediately after one year continuous period, his licence may be granted or regranted for a further period subject to the other

conditions being satisfied, but that further period also should not exceed one year at a time.

13. From the aforesaid rules, we may come to the conclusion that the Licensing Authority may regrant a licence any number of times subject to the restriction imposed by sub-rule (2) of Rule 98 and without reference to "NOC" because "NOC" is not required to be produced under Rule 105. But this view will altogether ignore sub-rule (5) of Rule 96 introduced by Notification No. HD 16 CNL Bangalore, dated 1st/2nd July 1976. That sub-rule refers to "NOC" for the second and third year in the camp site which was licensed for a touring cinema during the first year. Sub-rule (5) of Rule 95 reads :

"96 (5) (i) The Licensing Authority may, on application made to it in this behalf, if satisfied, after inspection or such inquiry as it may consider necessary, that the site continues to conform to the provisions of clauses (h), (i), (j) and (k) of sub-rule (1), of Rule 27 and of Rule 107, dispense with the requirements of sub-rule (1), the notice under sub-rule (2) and the procedure specified in sub-rule (3) for grant of No Objection Certificate for the second year in respect of a camp site licensed for the touring cinema during the previous year.

Provided that no such exemption shall be granted in respect of a camp site which had been licensed for a period of two years (excluding the break period) specified in sub-rule (2) of Rule 98 immediately preceding the date of the application.

(ii) * * * * If we anatomize the aforesaid sub-rules the following points become clear. If a camp site licensed for one year is to be made use of for the second year, one must apply for "NOC" in respect of that site. When such an application is made, the action of the Licensing Authority is not automatic as in the case of a renewal. It must be satisfied that the site continues to conform to the requirements of clauses (h) to (k) of sub-rule (1) of Rule 27 and of Rule 107. If it is satisfied after inspection or by such other inquiry that the site continues to conform to the prescribed conditions, it may adopt a summary procedure dispensing with the procedure provided by sub-rules (1) to (3) of Rule 96. But it cannot grant "NOC" unless the site continues to conform to the requirements of law. Again, if the same site is to be made use of for the third year, a fresh "NOC" is also necessary, but it cannot be granted upon summary enquiry as in the case of a second year. The Licensing Authority must follow the regular procedure prescribed by sub-rules (1) to (4) and it has no option in this regard. The sub-rule thus requires a fresh "NOC" for the second or third year in respect of a camp site although a licence has been granted in the first year.

In this context, we may have a glance over the proviso to Rule 88 which was introduced on 13th July, 1971. The said proviso also confers discretion on the Licensing Authority to adopt a summary procedure for grant of "NOC" relating to a camp site which was earlier used for a touring cinema. No period, however, has been, prescribed by the proviso; It looks as though the proviso was not taken notice of when Rule 96 (5) was introduced in July, 1976. But Rule 96 (5) is

specific that it does not permit summary procedure for grant of " NOC " for the third year. The proviso to Rule 88 must therefore be read subject to the limitation imposed by Rule 96(5) and both must be read as part of an integral scheme for grant and regrant of licence to a touring cinema. Otherwise it will lead to confusion and friction into the working of the system.

14. Sub-rule (5) of Rule 96 appears to be in conformity with the rule of change in a developing society. There cannot be a permanent " NOC " for a touring cinema. One is antithesis of the other. The Rules also do not confer any discretion to the Licensing Authority to relax any of the conditions set out under Clauses (h) to (k) of sub-rule (1) of Rule 27. Such relaxation, however, is permissible only in the case of a cinema when the proposal is to construct a sound proof building as provided by the proviso to Clause (h) of sub-rule (1) of Rule 27. The sound proof building for touring cinema is not compulsory and could rarely be envisaged. Its building may be a booth, tent or similar structure, and " touring cinema " is an outfit comprising the cinema apparatus and accessories taken from place to place. It is intended to be mobile and does not require much investment. It could, therefore, be shifted from one place to another if the site in respect of which " NOC " and licence were granted in the first year, is found unsuitable in the second year having regard to the conditions imposed by Clauses (h) to (k) of sub-rule (1) of Rule 27 and Rule 107. Here, we may have a glance over the said conditions. Clause (h) states that the site should be situated in such a place where it is not likely to cause traffic difficulties. Clause (i) states that the site should be at a distance of not less than fifty metres from a petrol bunk or any place of community worship, cremation ground, grave yard or cemetery in use. It should be likewise away from any recognised educational institution, public hospital, private nursing home, recognised orphanage or any thickly populated residential area. Clause (j) states that the site should be in an elevated place or is free from dampness. Clause (k) states that the site must have sheltered cycle stand for a minimum of fifty cycles. Rule ,107 provides that a licence should not be granted for a touring cinema in towns or cities having a population of 25,000 or more In the very nature of these conditions, it is seen that they are variable factors and not permanent features. When there are such variable factors in any place, law and life must interlace for an orderly progress and "any search for absolutes", as observed by Krishna Iyer, J, in *Bangalore Water Supply and Sewerage Board v. Rajappa and others*¹¹, "would be a self condemned exercise", besides being detrimental to the public interest.

15. Rule 96 (5) appears to have been made to protect the interest of the general public pursuant to the mandate of Section 6 which requires the Licensing Authority to have regard to the interest of the public generally and the suitability of the place where the cinematograph exhibitions are proposed to be given. It is undisputed that the touring cinema has no sound proof building. If the site is not according to the conditions set out under Clauses (h) to (k) of sub-rule (1) of Rule 27, then, it would be a perpetual nuisance for persons in the neighbouring houses, patients in the nearby hospitals, children in the adjacent schools, the

devotees in the temple, parishioners in the church, namazian in the mosque and not to speak of the silence and solemnity in the nearby cremation ground, grave yard or cemetery in use. Therefore, the public interest will be better served if the requirements of clauses (h) to (k) of sub-rule (1) of Rule 27 are strictly complied with every year in respect of a campsite.

16. In this context, we may have to notice the effect of sub-rule (6) of Rule 96 on which Mr. Sridharan strongly relied upon in support of his contention. It was argued that a "NOC" is required only to put up a building and when once the building is constructed the concerned party can secure a licence by grant or regrant subject to a break of one month after the expiry of one year from the date of licence. It was further argued that the building constructed, if it continues to conform to the requirements of the Rules, the Licensing Authority is bound to regrant the licence, subject to the other conditions being satisfied. We have carefully perused sub-rule (6) of Rule 96. We do not think that 11. Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, could support the contention urged. It does not prescribe a period of any "NOC". It only prescribes the maximum period for construction of a building as per the approved plan for exhibition of cinematographs. It further empowers the Licensing Authority to cancel the "NOC" if the building is not constructed within two months or within the extended period. The building once constructed may continue to remain in accordance with the approved plan and satisfy the conditions provided by Rules 91 to 95. But "NOC" is not a certificate approving of any building as such. It is granted in respect of a place or site. It is a certificate declaring that the site in question is suitable and there is no objection for locating a cinema. It is a permission without which a place cannot be made use of by any person for exhibition of cinematograph films. That is clear by clauses (a) and (b) of sub-section (1) of Section 11 and Rule 90 of the Rules.

17. It is also necessary to state that Rule 105 does not provide for renewal of licence. Renewal means merely a continuation of the licence originally issued. But that is not what is intended under Rule 105. It provides for regrant of licence. Regrant of a licence in the context of the scheme of the Rules cannot be other than a fresh grant. A similar view was expressed by the Supreme Court in N. S. Shethna v. Vinubhai Harilal Panchal while considering the scope of Bombay Cinema (Regulation) Act, 1953 and Bombay Cinema Rules, 1954. Therefore, it is imperative that the Licensing Authority must satisfy itself before regranteeing licence whether the camp site continues to conform to the requirements of law, Rule 105 providing for regrant may be silent as to the production of "NOC", but it does not mean that the Licensing Authority with impunity, could regrant licence to the prejudice of the public when the site in 12. N.S. Shethna Vs. Vinubhai Harilal Panchal, question does not conform to the requirements of law. Sub-rule (3) of Rule 105 requires the Licensing Authority to make such enquiry as it deems necessary before regranteeing licence. This enquiry must necessarily extend to the period of the licence originally granted, genuineness of the certificates accompanying the application and the suitability of the site in question. This

enquiry as to the suitability of the site, however, is not required to be made if the original grant was for a period less than one year and regrant is sought for a further period upto one year from the date of the initial grant. But if the original grant was for one year and regrant is sought for a further period, then the Licensing Authority must insist on the production of a fresh " NOC ". It cannot regrant licence for a period beyond one year without a fresh " NOC ".

18. For the reasons stated above, our answer to the question referred is as follows :

The Licensing Authority while considering an application for regrant of a licence to a touring cinema, is not required to re-examine whether the site where the touring cinema has been located, satisfies the requirements of the Karnataka Cinemas (Regulation) Rules, 1971, if the original grant of licence was for a period less than one year and regrant is sought to be granted upto one year from the date of the original licence. But if regrant is sought for a period beyond one year from the date of the original grant, then the Licensing Authority must examine the question whether the site where the touring cinema has been located satisfies the requirements of the Karnataka Cinemas (Regulation) Rules, 1971. It cannot regrant licence for the second year without producing a fresh "NOC". It cannot also regrant licence for the third year without a fresh " NOC " in respect of the site in question.

Rama Jois, J.—I have had the advantage of reading the opinion furnished by my learned brothers, Jagannatha Shetty and Venkatachalaiah, JJ. While I agree with their conclusion that there is no requirement of a fresh "No Objection Certificate" (hereinafter referred to as " NOC ") for a period of one year, after the initial grant of a licence, to a touring cinema, I find it difficult to persuade myself to agree to the view that an application for regrant of the licence to a touring cinema can be entertained even after one year from the date of initial grant under Rule 105 of the Karnataka Cinemas (Regulation) Rules, 1971 (hereinafter referred to as " the Rules "), and in such a case enquiry under sub-rule (3) of Rule 105 can extend to find out, as to whether the "NOC" conforms to the requirement of the Rules though sub-rule (2) of Rule 105 does not require the production of " NOC " along with an application for regrant. Hence I record my reasons for taking a contrary view.

2. The question which has been referred to us for decision in the above Writ Petition arises out of a "proceeding for regrant of licence for a touring cinema under the provisions of the Karnataka Cinemas (Regulation) Act, 1964 (hereinafter referred to as "the Act") and the Rules framed under the Act, which reads as follows :

" If the Licensing Authority had granted a No Objection certificate for running a touring cinema in a particular site and had also subsequently granted a Licence to run that touring cinema, can the Licensing Authority, while considering an application for regrant of that licence after the expiry of the period of original

licence re-examine the question whether the location of that site satisfies the requirement of the Karnataka Cinemas (Regulation) Rules 1971 ?"

3. The grant of a cinematograph licence is regulated by the Act and the Rules. In this case we are only concerned with the grant of licence for a touring cinema. The Rules contemplate the grant of permission to establish a touring cinema on a given site which is called the "NOC". After the grant of "NOC" the concerned person is required to construct a building for the exhibition of cinematograph films. Thereafter the Rules provide for making an application and the grant of licence. The Petitioners in this Writ Petition are residents of a locality known as "Thyagarajanagar" in Bangalore North Taluk. They are objectors for the regrant of "NOC" and touring cinema licence to respondent-3 on the ground that such grant contravenes Rules. Respondent-3 is the applicant for the grant of licence who contends that as he has once secured "NOC" and also touring cinema licence on the site in question, he has a right to get the licence. The controversy between the parties may be summarised as follows :

(i) According to the Petitioners, on each occasion when an application for grant or regrant of a licence for a touring cinema is made, the applicant concerned must produce a fresh "NOC" or atleast the authority concerned must certify that the SITE continues to conform to the Rules.

(ii) According to respondent-3, a "NOC" granted once is permanent and he is entitled to secure a touring cinema licence for any number of years on the same site subject only to stopping the cinema for one month as required under rule 98 (2) of the Rules.

4. The cause for reference of the question to the Full Bench is the divergence of opinion expressed on the interpretation of the Rules in some of the cases decided by this Court. In *Laxmi Touring Talkies v. State of Karnataka* Chandrasekhar, J. (as he then was) held that the restrictions imposed in the amended Rule 107 of the Rules has no application to the cases of regrant of licence to persons, who had already secured "NOC" before the amendment of the Rules. In *G. V. Madanik and others v. The District Magistrate Malimath*, J. held that even at the stage of regrant of licence, the Licensing Authority should look into the representations made by any person objecting to the grant of a licence holding that sub-rule (3) of rule 105 confers power on the Licensing Authority to make necessary enquiry. In *Anjanappa v. Marappa Venkataramiah*, J-distinguished the decision in *Laxmi Touring Talkies* as also the judgment in the case of *Nanjappa v. State of Karnataka*¹³ rendered by one of us (Jagannatha Shetty, J.), which followed the judgment in *Laxmi Touring Talkies* and held that a fresh "NOC" is necessary for the grant of a licence to a touring cinema after the expiry of one year in view of the specific provision contained in sub-rule (5) of rule 96 of the Rules.

5. With this background, I shall now proceed to make a brief survey of the relevant provisions of the Act and the Rules which have a bearing on the question required to be answered in this reference which are as follows :

(i) Section 4 of the Act provides that exhibition of cinematograph films shall take place only at a place licensed under the Act-Section 11 is connected with the same topic and prescribes the making of an application for the construction or reconstruction of a building for the purpose of cinematograph exhibition and for the installation of the required machinery and equipment.

(ii) Section 5 of the Act makes it obligatory for an exhibitor of cinematograph to do so only in accordance with the licence which is required to be granted by the Licensing Authority subject to the provisions of the Act and the Rules.

(iii) Section 6 of the Act enumerates matters, which are obligatory for the Licensing Authority to consider, before granting or refusing licence, the most important and relevant provisions for 13. W.P. 5240 of 1974 Dated 13.9.1974 this case being "the interest of the public generally" set out in Section 6 (a) of the Act.

(iv) Sections 7 and 8 authorise the Licensing Authority to limit the number of places in any area in respect of which, the licences under the Act may be granted and also restricts the power of the Licensing Authority to the granting of licences in strict conformity with the Rules made under the Act.

(v) Section 19 of the Act confers power on the State Government to frame Rules for carrying out the purposes of the Act and also in respect of specific matters such as conditions and restrictions subject to which, permission to construct a building for exhibiting cinematograph films and the licence for exhibiting cinematograph films, can be granted.

6. The State Government has framed the Rules called the Karnataka Cinemas (Regulation) Rules, 1971 in exercise of its power u/s 19 of the Act read with the provision of the Act referred to earlier for regulating the matters specified in that section and for carrying out the purposes of the various provisions of the Act set out earlier regulating the construction or reconstruction of buildings or for use of any place for the purpose of cinematograph exhibitions and also the granting of licences.

7. As the answer to the question referred to the Full Bench mainly depends on the interpretation of the Rules, it is necessary to make a brief reference to the relevant rules with which we are concerned in this case.

(i) Rules 27 (1) (h) to (k) of the Rules impose various restrictions regarding location of the site on which a touring cinema may be established having due regard to the interest of the general public as envisaged by Section 6 (a) of the Act, Some of the important restrictions imposed by this rule are that "NOC" for a touring cinema cannot be granted if the cinema site is situated at a place where it is likely to cause traffic difficulties or situated at a distance of not less than fifty meters from places such as any recognised educational institution or any residential institution attached to such educational institutions, or any public hospital or a private Nursing Home or any thickly populated residential area or an

area used generally for residential purposes as distinguished from business purposes, which conditions may however be relaxed under certain conditions as specified in the proviso to that rule, by the Licensing Authority.

(ii) Rule 96 of the Rules regulates the procedure for the grant of permission or licence for the location of a touring cinema in any given site, as provided in Section 4 read with Section 11 and Section 19 (2) of the Act. The permission or licence issued for the purpose is called "NOC" Rule 96 (1) to (4) prescribes the procedure for the issue of public notice inviting objection to the grant of "NOC" from the members of the public and local authorities and taking decision thereon. Rule 96 (5) has a bearing on the requirement of a fresh "NOC" for continuing a touring cinema on the same site reads as follows:

"96. PROCEDURE ON APPLICATION

** ** (5) (i) The Licensing Authority may, on application made to it in this behalf, if satisfied, after inspection or such enquiry as it may consider necessary, that the site continues to conform to the provisions of Clauses (h), (i), (j) and (k) of sub-rule (I) of Rule 27 and of Rule 107, dispense with the requirements of sub-rule f 1) the notice under sub-rule(2) and procedure specified in sub-rule (3) for grant of No-objection certificate for the second year in respect of a camp site licensed for a touring cinema during the previous year.

Provided that no such exemption shall be granted in respect of a camp site which had been licensed for a period of two years (excluding the break period specified in sub-rule (2) of rule (98) immediately proceeding the date of the application. "

Rule 96 (6) provides that the person who secures a "NOC" must complete the construction of the building within two months or within three months thereafter if extension of time is granted by the licensing authority, being satisfied as to the reasons for the delay in completing the construction.

**Substituted by GSR 189 date 1-2-1976 Sub-rule 1 of Rule 88 provides for the application of the Rules in Chapter XII as also other rules in the preceding Chapters specified therein to a touring cinema. Proviso to that rule however provides for the exemption from the procedure for grant of "NOC" in certain cases. The said rule reads as follows :

"88. Application of Rules - The rules in this Part and the following rules and sub-rules shall mutatis mutandis be applicable to touring cinemas namely :-

Rules 2, 3, 4, 5, 6, 7, 25, 26, Clauses (h), (i) (j) and (k) of Rule 27, 56, 58, 62, 63, 64 sub-rule (3) of Rule 68, 70, 71 and 77 to 83 :

Provided that the Licensing Authority may, on an application made to it in this behalf, dispense with the notice in form "B" under sub-rule (1), and requirement of Clauses (a) and (b) of sub-rule (2) of Rule 25, and the procedure specified in rule 26 is respect of "No Objection Certificate" relating to a camp site of a touring cinema, if a touring cinema had been allowed to camp there on a

previous occasion."

(iii) Rule 97 of the Rules prescribes that every application for the grant of a licence for touring cinema shall be accompanied by

(a) a copy of the "NOC";

(b) a certificate from the Electrical Inspector and the declaration prescribed in Clause (c) of Rule 35 ;

(c) a treasury receipt for payment of fees for the licence at the rates prescribed in Rule 106 ; and

(d) a certificate from the concerned Tahsildar in respect of condition of the building, sanitary facilities and safety measure provided against danger from fire etc., as required under Rules 91 to 95.

(iv) Rule 98, Rule 99 and Rule 105 of the Rules provided for the grant and regrant of licence and also fix the maximum period in respect of which a licence for establishing a touring cinema on a given site can be granted as also the period for which licence may be granted as required to be regulated by Section 19 (2) (c) of the Act. These rules read as follows:

"98. GRANT OR REFUSAL OF LICENCE :-

(1) On receipt of the application for licence together with the certificate of the Electrical Inspector and declaration referred to in rule 97, the licensing authority shall subject to sub-section (2) issue to the applicant a licence in Form "G" or refuse to issue such licence within a period not exceeding one month from the date of its receipt.

(2) No licence in respect of a site shall be granted or regranted continuously for a period exceeding one year unless one month has lapsed after the expiry of the said period of one year.

99. DURATION OF LICENCE : -- Subject to sub-rule (2) of rule 98 no licence shall be granted under rule 98 or regranted under 105 for a period exceeding one year but a licence may be granted for a period less than one year.

xxx xxx xxx xxx 105. REGRANT OF LICENCE :- (1) An application for regrant of a licence shall be made not less than 15 days before the expiry of the licence originally granted :

Provided that, if the licensing authority is satisfied that for valid reasons the application could not be within the period specified in sub-rule (1), he may receive an application filed after the said date.

(2) Every application for regrant of a licence shall be accompanied by a certificate of the Electrical Inspector duly regranted, a certificate referred to in clause (d) of sub-rule (1) of rule 97, treasury receipts for payment of fees at the rates specified in Rule 106 and a copy of the licence originally granted.

(3) On receipt of the application for regrant of licence, the Licensing Authority may, after such enquiry as it deems necessary subject to Rule 99, regrant the licence."

(v) Rule 107 of the Rules prohibits the grant of touring cinema licence in respect of a site situated within 16 kilo meters from the location of a permanent cinema or 800 meters from the site on which any other touring cinema, if already existing, and also prohibits the grant of licence for a touring cinema in towns and places having a population of less than 25,000.

8. Sri R. U. Goulay, Learned Counsel appearing for the Petitioner, Sri B. G. Sridharan, Learned Counsel appearing for the third respondent and Sri M. P. Chandrakantharaj Urs, Learned Government Advocate, addressed arguments in support of their respective contentions by placing deferring interpretations on the Rules set out above which regulate the grant of "NOC" for the construction of a building on any specified site for the purpose of touring cinematograph exhibition as also regulating the grant of licence for a touring cinema.

8A.Sri R. U. Goulay, Learned Counsel for the Petitioners, urged the following contention :

On each occasion when an application for the regrant of a licence or conducting a touring cinema is made under sub-rule (1) of Rule 105, the Licensing Authority must examine as to whether NOC continues to con-form to the requirements of Rules 27 (1) to (k) and Rule 107 of the Rules.

He argued that every application for regrant of a touring cinema licence is required to be disposed of by the Licensing Authority after such enquiry as it deems necessary as specifically provided in sub-rule (3) of Rule 105. Elaborating his contention, he submitted that even though a "NOC" as also the licence for running a touring cinema for a specified period, has been, once secured by an applicant, when he makes an application for regrant of licence, under sub-rule (1) of Rule 105 whether first or subsequent regrant, on each such occasion, the Licensing Authority must see that the site in respect of which "NOC" is granted continues to conform to the requirements of Rules 27 (1) (h) to(k) and Rule 107 of the Rules. In particular, he referred to Rules 27 (1) (h) of the Rules which prescribes that the location of a cinema site must be such, where it is not likely to cause traffic difficulties and Rules 27 (1) (i) which provides that the cinema site should be situated at a distance of not less than 50 meters from, any existing petrol bunk or any place of community worship, cremation grounds etc., or any recognised educational institution or any public hospital or a private nursing home or any thickly populated residential area. He submitted that the various restrictions regarding the location of the cinema site imposed under Rules 27 (1) (h) and (i) of the Rules are meant to safeguard the interest of the public generally which is one of the objects which is specifically required to be ensured by Section 6 (a) of the Act. Similarly, he submitted that the restrictions imposed under rule 107 of the Rules should also be looked into by the Licensing

Authority before regranting licence to a touring cinema. In support of this submission he relied on a decision of this Court in Channagiri Rangappa v. District Magistrate in which a Division Bench of this Court held that a "NOC" is in substance merely a stage for the grant of a licence for construction of a cinema theatre on a particular site. His argument was that as the "NOC" is part of licence, on each occasion when an application for regrant of licence is made by a grantee, it is the duty of the Licensing Authority to ensure that the licence to be regrant, which according to the Learned Counsel for the Petitioners, must include a "NOC", does not violate the provisions of Rules 27 (1) (h) and (i) and Rule 107 of the Rules. In other words, according to him, after granting a "NOC" for the establishment of a touring cinema on a particular site even if the Licensing Authority had granted a licence only for one or two months and not for one full year on an application for regrant made under Rule 105(3), after the expiry of the initial period of grant for one or two months or for any period shorter than one year, as the case may be, the Licensing Authority is bound to examine the question whether the "NOC" continues to conform to 14.1971 (1) Mys. L.J. 60 the requirement of Rules 27 (1)(h) to (k) and Rule 107 of the Rules. If the Licensing Authority finds that on account of subsequent changes in the locality the location of the site contravenes the provisions of Rules 27 (1)(h) and (i) and Rule 107 of the Rules, the Licensing Authority, must refuse the licence.

9. Sri M. P. Chandrakantharaj Urs, Learned High Court Government Advocate, appearing for the Licensing Authority and the appellate authority under the Act, who are respondents 1 and 2, supported the stand of the Petitioners and submitted that the "NOC" issued for a touring cinema is in the nature of things of a temporary character and cannot be permanent and the compliance of Rules 27(1)(h) to (k) and Rule 107 of the Rules must be ensured from time to time.

10. As against the contention urged for the Petitioners, Sri B.G. Sridharan, Learned Counsel appearing for the third respondent, raised the following contention :

The "NOC" granted once in respect of a site for the establishment of a touring cinema in favour of a person is final and irrevocable and on the basis of such "NOC" he is not only entitled to the grant of a licence, but also entitled to the regrant of licence without any limit of time.

Elaborating his contention he submitted that on an application for regrant of licence under sub-rule (1) of Rule 105, under sub-rule (3) of Rule 105, the Licensing Authority is only required to examine the correctness of the certificates mentioned in Rule 97 of the Rules except the "NOC". In support of this submission, he placed reliance on sub-rule (2) of Rule 105. The said rule requires that every application for regrant of a licence shall be accompanied by a certificate of the Electrical Inspector and a certificate referred to in clause (d) of Rule 97 of the Rules and a treasury receipt for having remitted the requisite licence fees. According to him, if these conditions are satisfied, the Licensing Authority is bound to regrant the licence. He argued that the enquiry authorised

to be conducted by the Licensing Authority under sub-rule(3) of Rule 105 of the Rules is confined to the examination of the certificates referred to in sub-rule (2) of Rule 105 of the Rules which includes, all the certificates mentioned in Rule 97 except the "NOC". Though he agreed that the power of the Licensing Authority to grant or regrant a licence on the same site in respect of which "NOC" was granted earlier is subject to the restriction that there must be a gap of one month after the period of one year from the date of licence as specifically provided in sub-rule (2) of Rule 98 of the Rules he still maintained that notwithstanding the necessity of a break of one month to secure further licence for conducting a touring cinema, it can be secured on the strength of the "NOC" already issued once as, according to him, it is final and permanent. However, when he was confronted with the provision of Clause (5) of Rule 96 which provides that the Licensing Authority must examine that the site in respect of which "NOC" was granted in the first instance continues to conform to the requirements of Rule 27 (1) (h) to (k) and also Rule 107 of the Rules on an application made to it after the expiry of the first year, by following the summary procedure as prescribed under that sub-rule and on an application made to it for the grant of "NOC" for the third year after following the detailed procedure as prescribed under sub-rules (1) to (4) of Rule 96, as is clearly indicated by the, proviso to Rule 96(5), He explained that the said provision is attracted only when a person other than the person who had secured "NOC" in respect of a site in the first instance applies for the second year or third year and has no reference to the application of the person in whose favour "NOC" has already been granted, which according to him is permanent.

11. As I shall be able to point out in the following paragraphs, a fair and reasonable construction of the Rules indicates that both the Learned Counsel for the Petitioners and the Learned Counsel for the third respondent are correct upto a point, but they are taking their arguments to the extreme, which is not warranted by the Rules, and the answer lies in between the two extreme positions taken by these contesting parties.

12. I shall now proceed to ascertain the correct scope and ambit of all the relevant rules set out earlier.

13. I start with, Rule 96 of the Rules. That is the Rule which prescribes the procedure for the grant of "NOC" Sub-rule (1) of Rule 96 requires that the Licensing Authority is to notify the application at the cost of the applicant by publication in atleast two local newspapers in regional language having larger circulation in the area and also by such other methods as the Licensing Authority, deems fit, inviting objections from the members of the public. The objections are required to be sent to the Licensing Authority within 15 days, from the date of publication of such notice in the prescribed form. In addition to the publication prescribed under sub rule (1), sub-rule (2) of Rule 96 prescribes the requirement of a notice to be put up on the proposed site prominently both in English and the regional language in the manner prescribed in the said Rule. This sub-rule also

requires the Licensing Authority to satisfy itself that the requirement of sub-rules (1) and (2) of Rule 96 are complied with by personal inspection or otherwise. Sub-rule (3) of Rule 96 requires the Licensing Authority to forward all the connected records including the objections received from the members of the public to the local authority for its opinion and also provides for joint inspection by an Officer now below the rank of an Officer deputed by the local authority. The local authority is required to furnish its opinion within a period of 10 days from the date of the reference to it by the Licensing Authority. Sub-rule (4) of rule 96 provides that the authority shall consider the objections as also the opinion of the local authority, if any, and may proceed to grant a "NOC" if the Licensing Authority is of the opinion that it should be granted or it may refuse to grant the same for the reasons recorded in writing. The most important part of sub-rule (4) of rule 96 is that the Licensing Authority, apart from considering the objections received from the members of the public and the opinion of the local authority, is bound to take into account the following important matters :

(i) The provisions of Rule 6 which relates to the lawful ownership or possession of the applicant in respect of the site for which "NOC" is asked for.

(ii) Sub-clauses (h) to (k) of sub-rule (1) of Rule 27 which imposes various restrictions regarding the location of the site such as the distance from educational institutions, place of worship, hospitals, cremation grounds etc., and as to whether the site is located in a purely residential locality, which are restrictions imposed in public interest.

(iii) The restrictions imposed by Rule 107, namely, regarding the maximum population of towns or places in which the licence for a touring cinema can be granted as also the restriction regarding the distance from a permanent cinema theatre or any other touring cinema in respect of which licence has already been granted.

Sub-rule(5) of Rule 96 provides that if an application is made for the grant of a "NOC" for the second year in respect of the same camp site in respect of which "NOC" had been granted for a touring cinema during the previous year, the Licensing Authority may grant such an application if it is satisfied after inspection or such enquiry that site continues to conform to the restrictions imposed by Rule 27 (1) (h) to (k) and Rule 107 of the Rules. The elaborate procedure prescribed under sub-rules (1) to (4) is exempted in considering an application for a "NOC" for the second year. But the proviso to sub-rule (5) of Rule 96 makes it clear that the exemption from the procedure prescribed in sub-rules (1) to (4) of Rule 96 is applicable only for the grant of a "NOC" in respect of the same site for the second year after a break of one month as provided in sub-rule (2) of Rule 98.

(1A) At this stage it is convenient to refer to Rule 88 which is the first Rule in the chapter regulating grant of "NOC" and licence to touring cinemas. As discussed above, Rule 96 (1) to (4), regulates the grant of "NOC" for the first time. Sub rule

(5) of Rule 96 provides for the summary procedure for the grant of "NOC" when asked for in respect of the same site after securing a touring cinema licence for one year. Proviso to sub-rule (5) of Rule 96 provides for following the procedure fixed under Rule 96 (1) to (4) if "NOC" is asked for in respect of the same site for the third year. Proviso to Rule 88 authorises the Licensing Authority to exempt the entire procedure for grant of "NOC" and to grant straight away a "NOC" to an applicant in respect of a site of touring cinema if the touring cinema had been allowed to camp there on a previous occasion, Proviso to Rule 88 speaks of exemption from Rule 26 which is obviously a mistake for Rule 96. Reference to Rule 26 in proviso to Rule 88 must be understood as reference to Rule 96. Rule 26 is also relating to grant of "NOC" and is similar to Rule 96. But Rule 26 regulates the grant of "NOC" to a permanent cinema and Rule 96 regulates grant of "NOC" to a touring cinema. The specific reference to Form No. "B" and "NOC" relating to a camp site of a touring cinema leaves no doubt that the exemption provided in the proviso to Rule 83 is from Rule 96, though a mistake has crept into the Rule in not referring to Rule 96 but referring to Rule 26. By virtue of proviso to Rule 88, "NOC" can be granted straight away if the conditions specified therein are satisfied and it follows that a touring cinema licence can also be granted after granting "NOC" under that Rule.

Next question that arises for consideration is as to what is the scope of proviso to Rule 88. This must be read harmoniously with Rule 96 already discussed and Rule 98 (2) which imposes a restriction on the grant of licence to a touring cinema on a specified site continuously for a period exceeding one year without a break of one month. In this behalf, it is necessary to point out that proviso to Rule 88 was inserted on 13-7-1971 and sub-rule (2) was inserted to Rule 98 on 16-4-1974 and sub-rule(5) was substituted to Rule 96 (5) on 8-7-1976. Therefore, proviso to Rule 88 must be interpreted in the light of Rule 96 (5) and Rule 98 (2) as brought into existence after Rule 88 proviso was inserted. Therefore, the power to grant exemption from Rule 96 can be exercised only in cases where a person who either after following the procedure prescribed under Rule 96 (1) to (4) or after a summary procedure under Rule 96 (5) in respect of a site, failed to establish a touring cinema or having established vacates the site shortly after the grant of licence i.e , within a year. In such cases, if an application for "NOC" by any other person is made, as the site has already been certified to be fit for locating a touring cinema, "NOC" can be granted straight away. However, in view of Rule 96, if "NOC" is applied for the same site for the next year, relevant procedure prescribed under Rule 96(1) to (4) or Rule 96 (5), as the case may be has to be followed.

(2) The next two Rules which may be considered together are Rules 98 and 99. Sub-rule (1) of Rule 98 provides that after an application for the grant of a licence for a touring cinema is received in accordance with the provisions of Rule 97 the Licensing Authority can either grant the licence or refuse the licence in accordance with the provisions of the Rules. Sub-rule (2) of Rule 98 imposes a restriction on the grant of licence in respect of the same site. According to the

said provision no licence can be granted or regranted in respect of the same site continuously for a period exceeding one year unless one month has elapsed after the expiry of the said period of one year. After a break of one month again a licence may be granted to a touring cinema on the same site for one year or if granted for a shorter period, it may be regranted continuously upto one year, if the concerned person applies after securing "NOC" after following the procedure prescribed by Rules 96(1)(4) or 96(5) or by the exemption from such procedure under proviso to Rule 88, whichever is applicable. This Rule is not meant to regulate the licence granted to any individual, but is meant to regulate the location of a touring cinema on a specified site irrespective of the individual or individuals who may seek licence for establishing a touring cinema on the same site. To illustrate, it may be as follows :

(a) The licence may be granted by an initial grant to a person for one year ;

or

by an initial grant to him for a shorter period and regrant or regrants to him upto one year ;

or

by an initial grant for a shorter period than one year to one and a further grant in favour of another in continuation upto one year from the date of grant to the former, after issuing " NOC" to the latter under Rule 88.

The regrant contemplated by the Rule is only in continuation of the grant and not an independent regrant and further as the rule is concerned with the location of the site the word "regrant" in this Rule also means a grant made under sub-rule (1) to a different person in continuation of the earlier grant as regrant under this sub-rule has reference to the site.

Rule 99 :While Rule 98(2). regulates the grant of licence on a given site, Rule 99 concerns itself with the period of the licence given to an individual. This is clear from the heading of the rule viz., Duration of licence. Therefore the period of life of a touring cinema licence itself is one year. As the rule indicates though a licence can be granted straight away for one year, it is also permissible to grant for a shorter period. It is for this reason, it is provided in Rule 99 that regrant can be made upto one year which necessarily takes in, the period of original grant. In other words, regrant presupposes the grant for a period shorter than one year. That is why while Rule 99 states that licence may be granted for a period shorter than one year, the Rule does not state that regrant may be for a period shorter than one year as it would have been redundant. Therefore, according to Rule 99, the maximum period of life of a touring cinema licence either by an initial grant or by an initial grant for any shorter period and regrant or regrants for any period or periods, as the case may be, is one year. In other words, regrant contemplated under Rule 99 is not an independent regrant like a regrant of licence to a permanent cinema. This difference can be ascertained by

looking into the relevant Rules relating to the grant and regrant of a licence to a permanent cinema and Rule regulating the duration of such licence. Rule 36 provides for grant of a licence to a permanent cinema. The duration of licence is regulated by Rule 37, which reads as follows :

"37.DURATION OF LICENCE.-

(1) All licence granted under Rule 36 shall be valid for a period of three years from the date of issue of the licence;

Provided that the Licensing Authority may for reasons to be recorded in writing grant a licence for a period shorter than three years."

As can be seen from the above Rule, the duration of a licence granted under Rule 36 is fixed at three years unless for reasons to be recorded in writing the Licensing Authority grants it for a shorter period as provided in the proviso. Rule 85 provides for the regrant of a permanent cinema licence. There is no reference to the regrant in Rule 37 which regulates the duration and there is no separate Rule fixing the period of licence when it is regranted. In other words, the regrant of licence under Rule 85 is given the same effect as grant of licence under Rule 36 and consequently the duration of licence stands regulated by Rule 37 only. It is so because the regrant of a licence to a permanent cinema is, an independent regrant and considered to be a grant of licence for purposes of duration. But Rule 99, which fixes the duration of licence to a touring cinema, makes a specific reference to grant as well as regrant. This gives the indication that a regrant of licence to a touring cinema as contemplated under Rule 99 is only in continuation of the grant where the initial grant is made for a period shorter than one year. It should be remembered that Rule 99 is subject to Rule 98 (2) and Rule 96 (5) is also subject to Rule 98 (2). The construction suggested for respondent-3 that regrant is independent of the grant and therefore a licence to a touring cinema can be regranted for one year at a time militates against Rule 98 (2) and rule 96.(5). For instance, if initial grant is made for six months, if regrant is considered as independent, then it can be made for one year in continuation of six months. This would contravene Rule 98 (2) which prohibits grant of licence on the same site continuously for more than one year and Rule 96 (5) which requires a fresh "NOC " after expiry of one year of licence.

(3) Rule 96 and Rule 105 :

These two Rules may be considered together as Rule 97 prescribes the requirements of an application for grant of a touring cinema licence and Rule 105 proscribes the requirement of an application for regrant of licence for a touring cinema. Sub-rule (1) of Rule 97 of the Rules provides that after the completion of all formalities such as construction of a building according to the approved plan, the applicant is required to submit his application for the licence to the Licensing Authority along with the following certificates :

(i) A copy of " NOC " granted under Rule 96.

(ii) A certificate from the Electrical Inspector and a necessary declaration prescribed in Clause (c) of Rule 35 to the effect that the applicant has completed all arrangements for obtaining a licence approved by the Central Government.

(iii) A treasury receipt for having paid the prescribed fees.

(iv) A certificate from the concerned Tahsildar in respect of matters covered by Rules 91 to 95 which relates to the conditions regarding building (Rule 91), conditions regarding sanitary fitting (Rule 92), that the building is not constructed with inflammable material (Rule 93), the building if constructed of inflammable material satisfies the requirements regarding the size of apertures (Rule 94) and that the doors and apertures not ordinarily used are covered in the manner as prescribed (Rule 95).

On receipt of an application in conformity with the requirements of Rule 97, the Licensing Authority is empowered to proceed to consider the same and to grant the licence as provided in sub-rule (1) of Rule 98 of the Rules subject to the restrictions regarding the maximum period in respect of the site as prescribed under sub-rule (2) of Rule 98. The duration of such licence is prescribed under Rule 99 which is again made subject to the restriction imposed by Rule 98(2) regarding location.

(?) Sub-rule (1) of Rule 105 of the Rules provides that an application for regrant of a licence shall be made not less than 15 days before the expiry of the licence originally granted. However, according to the proviso, under the said sub-rule, the Licensing Authority if satisfied that there were valid reasons for the delay in making the application can receive an application filed after the date specified in sub-rule (1). Sub-rule (2) of Rule 105 of the Rules prescribes the requirements of every application for regrant. The requirements for an application for regrant, according to the said sub-rule are as follows :

(i) An electrical certificate;

(ii) A treasury receipt for the payment of the amount for having paid the prescribed fees, and

(iii) A certificate of the Tahsildar referred to in Clause (d) of sub-rule (1) of Rule 105 of the Rules.

The requirements for an application for regrant in sub-rule

(2) of Rule 105 indicates that it covers all the certificates mentioned in Rule 97 except the "NOC" Sub-rule (3) of Rule 105 provides that on receipt of the application for regrant made under sub-rule (1) of the said Rule, the Licensing Authority may after such enquiry as it deems necessary but subject to Rule 99, regrant the licence. From the pro-visions of Rule 105 (2), it is clear that there is no requirement for the production of a "NOC" along with an application for regrant. But, at the same time, sub-rule (3) makes the power of the Licensing Authority to regrant the licence expressly subject to the provisions of Rule 99. As

already discussed above, the effect of Rule 99 is that the maximum period of life of a touring cinema's licence" is one year. Therefore, there can be no question of regrant of a licence of a touring cinema under Rule 105 if the initial period of the grant of licence was itself for one year or in a case where the initial grant was for a period shorter than one year, the said period coupled with the subsequent period or periods of regrant together comes to one year. The Learned Counsel for the third respondent Sri B G Sridharan, however, strenuously contended that all that Rule 99 which in turn makes reference to sub-rule (2) of Rule 98 means is that grant or regrant cannot be made continuously for a period exceeding one year, but there can be regrants of the same licence even after the first year but not exceeding one year at a time. Such a construction is plainly contrary to the wordings of Rule 99 and sub-rule (2) of Rule 98. As stated earlier, Rule 99 fixes the maximum period of a licence of, a touring cinema and the clear effect of the rule is that there can be an initial grant of licence for the maximum period of one year and if for any reason the Licensing Authority made the initial grant of the licence for a shorter period, he could make one or more regrants subject to a maximum of one year. The acceptance of the contention of the third respondent would amount to the amendment of Rule 99 by introducing the words "on each occasion" after the words "one year" in that rule. The Court cannot be asked to amend the rule in, "the" guise of interpretation. There is a clear distinction between sub-rule (2) of Rule 98 and Rule 99. For the first sight it appears as if Rule 99 is superfluous and is a mere unnecessary repetition of sub-rule (2) of Rule 98. But on a closer scrutiny, they reveal different purpose. Sub-rule(2) of Rule 98 concerns with the licence to be taken with, reference to the location of the site of a touring cinema.

This rule is complimentary to rule 96 (5). This is clear from the reference to sub-rule (2) of Rule 98 in the proviso to sub-rule (5) of Rule 96, which clearly indicates that for the grant of "NOC" for the third year in respect of the same site which can be considered after the break of one month as prescribed under sub-rule (2) of Rule 98, the detailed procedure prescribed under sub-rules (1) to (4) of Rule 96 is required to be followed. Rule 88 proviso, however, covers a case where the approved camp site by grant of "NOC" under Rules 96(1) to (4) or Rule 96 (5) is abandoned by the grantee without utilising or after taking licence and utilising the site for a period shorter than one year, in which event "NOC" if applied for by another person can be granted straightaway. The combined effect of Rule 96(?) and Rule 98(2) is that on the basis of a "NOC" in respect of a specified site, no touring cinema licence can be granted or regranted continuously for a period exceeding one year and there must be a break of one month after one year from the date of licence and further a fresh "NOC" is necessary for securing a licence to locate or continue a touring cinema on that site. Therefore, the provisions of sub-rule (2) of Rule 98 imposes a separate and additional requirement which has bearing on the question of requirement of a fresh "NOC" under Rule 96 of the Rules. Rule 99, however, concerns with the licence for the exhibition of a touring cinema granted to an individual. From the

wording of that rule, it is clear that the maximum life of such licence is one year. If it is granted in, the first instance itself for one year, the licence comes to an end after the expiry of one year from the date of grant and there is no power to renew or regrant it for any further period as the power under Rule 105 to regrant a touring cinema licence is made expressly subject to Rule 99 under Rule 105 (3). But if the initial grant is for a shorter period, then the grantee can seek regrant under Rule 105 for further period or periods subject to the maximum period of one year from the date of grant, The regrant of a touring cinema licence granted in the first instance under Rule 99 for a period shorter than one year, is in effect a continuation of the grant for a further period. This is also the indication from sub-rule (1) of Rule 105 which requires the regrant application to be made 15 days before the expiry of the period of licence and by the proviso to sub-rule (1) of Rule 105 which provides for condonation of delay in making the regrant application. But at the same time sub-rule (3) of Rule 105, by making the power to regrant expressly subject to Rule 99 fixes the maximum period for which the licence can be continued by way of regrant also, to one year from the date of initial grant.

14.(i) The contention urged for the petitioners viz., that the Licensing Authority is bound to find out on each occasion when an application for regrant of licence is made under Rule 105 that the site continues to conform to the requirements of Rules 27 (1) (h) to (k) and Rule 107 is an extreme contention ignoring the effect of Rule 96 read with Rules 98 (2) and 99, according to which a person can seek the grant of a touring cinema licence for one year on the basis of a "NOC". Further it is opposed to the express wording of Rule 105 which dispenses with the production of "NOC" with an application for regrant. The contention urged for the Petitioner also leads to discriminatory results.

For a instance, when two applicants, "A" and "B", make applications for grant of touring cinema licences on the specified sites along with the "NOC", if the Licensing Authority makes the initial grant of licence for one year to "A" and for a shorter period to "B", there would be no requirement of verification as to whether the "NOC" granted to "A" conforms to Rules 27 (1) (h) to (k) and Rule 107 upto one year whereas such a requirement has to be insisted against "B" on each occasion when he applies for regrant within one year. Therefore, it has to be held that a "NOC" granted once is sufficient for the grant or regrant of a touring cinema licence for a period not exceeding one year from the date of the licence.

(ii) Similarly the contention urged for the third respondent that "NOC" granted once for the establishment of a touring cinema is final and holds good for all times to come and that a regrant application can be made even after expiry of one year from the date of grant, under Rule 105, which does not require the production of "NOC" is opposed to the express wording of Rules 98 (2) and 96 which Rules make the requirement of "NOC" obligatory after each year and also insist on a break of one month. Sri B. G. Sridharan, Learned Counsel for the third Respondent relied on sub-rule (6) of Rule, 96 and submitted that after a "NOC

"is granted the applicant is required to construct the building or the exhibition of cinematograph within two months or in any event before the expiry of any extended period which may be granted by the Licensing Authority subject to a maximum of three months on being satisfied of the reasons for not completing the construction within two months and if the building is not constructed even during the extended period, the Licensing Authority is empowered to cancel the licence. On the basis of this sub-rule he argued that once the building is constructed on the basis of a " NOC " there is no question of dismantling the building and the concerned party can secure a touring cinema licence and have it regranted from time to time subject only to a break of one month after the expiry of one year from the date of licence. That is not the purport of sub-rule (6) of Rule 95. The said rule only prescribes the maximum period before which a grantee of a "NOC" in respect of a particular site should complete the construction of the building meant for cinematograph exhibition by a touring cinema. The construction only entitles him to apply for a licence under Rule 97 as such construction is a condition precedent for making an application for licence as is clear from the opening words of sub-rule (1) of Rule 97. in view of sub-rule (2) of Rule 98 and Rule 99 the person who has constructed a building after securing "NOC" is entitled to secure a licence for the exhibition of cinematography in such building for a period of one year from the date on which the licence is granted, and not for a period exceeding one year. In this behalf, it is necessary to bear in mind the distinction between the construction of a permanent cinema theatre after securing a "NOC", and the construction of a building for running a touring cinema. For instance, for construction of a permanent cinema "NOC" is required only once as can be seen from Rule 28 of the Rules unlike the requirement of Rule 96 according to which fresh "NOC" is necessary even if the touring cinema has to continue on the same site, after the expiry of one year from the date of licence. Therefore a touring cinema, in the nature of things, stands on a different footing. In order to appreciate the aforesaid differentiation, it is useful to refer to Rule 89 which reads as follows :

"89.DEFINITIONS.-- In this Chapter.--

(1) "building" includes any booth, tent or similar structure;

(2) "touring cinema" means,--

(i) an Outfit comprising the cinema apparatus And plant and the accessories taken from place to place in the State of Karnataka for giving cinema exhibitions ;

or

(ii) an outfit comprising cinema apparatus and plant taken from place to place in the State of Karnataka for conducting shows in any local theatre or hall."

The above Rule which defines a "building" and a "touring cinema" fully brings about the difference between a permanent cinema and a touring cinema. In the nature of things there can be no permanency in the case of a building meant for

the exhibition of a touring cinema. Both the equipment and building are capable of being moved from place to place.

(iii) This Court had the occasion to consider these aspects in the case of *Laxmi Touring Talkies*¹, in which the validity of sub-rule (2) of Rule 98 was challenged on the ground that it is violative of Article 19(1)(g) and Article 14 of the Constitution. Rejecting the contention, Chandrasekhar, J. (as he then was) held as follows :

"As stated by the Learned Advocate General, the restriction imposed by sub-rule (2) of amended Rule 98, was intended to ensure that a touring cinema retains its character as a touring cinema and does not stay permanently in any particular place. Such restriction is necessary to carry into effect the limitation of the period for which licences in respect of any place may be granted for touring cinemas, as provided in Section 19 (2) (c) of the Act. A restriction on a touring cinema which is intended to preserve its character as a touring cinema and to prevent it from becoming a permanent cinema without complying with the conditions imposed by the Rules on a permanent cinema, cannot, in my opinion, be regarded as an unreasonable restriction. Nor can the period of one month provided by that sub-rule as the minimum interval between successive grants of licences to a touring cinema in respect of the same place, be regarded as unreasonably long.

Even assuming that sub-rule (2) of amended Rule 98 does not enjoy the immunity under Art. 358 of the Constitution it (that sub-rule) is not violative of Article 19(1)(g).

Merely because there is no provision corresponding to sub-rule (2) of amended Rule 98 applicable to permanent cinemas, it does not follow that sub-rule brings about an impermissible discrimination between permanent cinemas and touring cinemas so as to offend Art. 14 of the Constitution. There is an intelligible differentiation between touring cinemas and permanent cinemas so as to constitute a valid classification between the two and such classification has a reasonable relation to the object of sub-rule (2) of amended Rule 98, namely, a touring cinema, unlike a permanent cinema should not permanently stay in any particular place, but should retain its character as a touring cinema.

Thus sub-rule (2) of amended Rule 98 is not violative of Art. 14 of the Constitution."

Further it is necessary to point out that the location of the site of a touring cinema is always approved on the basis of the facts and circumstances as on the date when "NOC" is granted. If situations change by the subsequent establishment of a school or hospital, and the like mentioned in Rule 27 (1) (h) to (k) of the Rules or a permanent cinema is established in the vicinity which necessitates the discontinuance of the licence for a touring cinema in view of Rule 107, these circumstances must be taken into account. If the "NOC" once issued is treated as permanent as contended for the third respondent, the public

interest will suffer. It is obviously for this reason Rule 96 (5) read with Rule 98 (2) and Rule 99 restricts the maximum period for which a licence can be granted for a touring cinema on the basis of a "NOC" to one year and also insists on a break of one month, before grant of fresh licence in respect of the same site, so that the person concerned may apply for a fresh "NOC" which enables the authorities to ensure the public interest required to be safeguarded by Rules 27 (1) (h) to (k) and also to ensure compliance to Rule 107. In order to mitigate any hardship that may be caused to the concerned licensee, a summary procedure for grant of "NOC" for the second time is prescribed in Rule 96 (5) of the Rules.

(iv) By fixing the maximum period of one year for which the touring cinema licence can be granted on a given site, on the basis of a "NOC" the Rules strike a balance between the interest of an individual touring cinema owner and public interest. The restriction imposed in Rules 27(l)(h) to (k) and Rule 107 are designed in public interest. However, once a "NOC" is granted to locate a touring cinema on a specified site and the licence establishes a touring cinema the Rules give him the right to run his touring cinema atleast for one year subject of course to his fulfilling other requirements of Rules designed in public interest. The rules are neither as unreasonable as interpreted for the Petitioners so as to drive out a touring cinema owner from the site in respect of which he had secured a "NOC" and also a licence for a period shorter than one year, immediately after the period of expiry of such licence, on the ground that circumstances attracting the restrictions imposed by Rules 27 (1) (h) to (k) or Rule 107 have come into existence, as contended for the Petitioners, nor they are as unreasonable as to make the "NOC" permanent to the detriment of the public interest even under such a changed situation, as contended for the third respondent, but provides for review of the position after expiry of one year from the date of grant of the licence by insisting on a fresh "NOC", so that the public interest is not jeopardised by the continuance of touring cinema, if by the change of circumstances it attracts the restrictions imposed by Rule 27 (1) (h) to (k) or Rule 107 of the Rules. The extreme stand taken for the Petitioners on the one hand and the third respondent on the other, are liable to be rejected as not warranted by the provisions of the Rules.

14. The aforesaid discussion about the interpretation of Rules 96, 88, 97, 98, 99 and 105 of the Rules yields the following result :

(1) ABOUT NO OBJECTION CERTIFICATE :

(i) Any person who intends to establish a touring cinema on a specified site has to take " NOC " in accordance with Rule 96 (1, to (4) for construction of a building on such site. Thereafter the "NOC" holder has to complete the construction of the building within the time allowed by sub-rule (6) of Rule 96 of the Rules.

(ii) After constructing the building, the " NOC " holder is required to make an

application for a licence under Rule 97 along with " NOC " and other certificates prescribed under that Rule.

(iii) A "NOC" granted in respect of a site for establishing a touring cinema, whether it is the first grant or a second or subsequent grant, only enables the applicant to secure a licence for conducting a touring cinema only on the site in respect of which "NOC" is granted and for one year only, either by an initial grant for one year or by initial grant for a shorter period and by subsequent regrants for further period or periods, continuously or otherwise not exceeding one year.

(iv) After the expiry of first year of licence, on the basis of the "NOC" given in respect of a specified site, if a " NOC " is applied for in respect of the same site, it can be granted by following a summary procedure prescribed under sub-rule (5) of Rule 96 of the Rules.

(v) After the grant of second " NOC " for the same site by following a summary procedure prescribed under sub-rule (5) of Rule 96, if " NOC " is applied for, the third time, it can be granted only after following a detailed procedure prescribed under sub-rules (1) to (4) of Rule 96 of the Rules. The " NOC " as granted for the same site becomes the first " NOC " if applied for the same site thereafter also the procedure indicated above has to be followed for the second year.

(vi) If " NOC " granted, to any applicant in any one of the methods mentioned above is not utilised by the concerned person either by not establishing a touring cinema on the concerned site or having taken licence and established a touring cinema vacating the site shortly thereafter before utilising it for full one year, "NOC" may be granted to another person by exempting the relevant procedure prescribed for grant of " NOC " under Rule 88.

(2) RESTRICTION ON LOCATION :

In view-of Rule 98 (2), between the date of expiry of one year from the date of grant of a touring cinema licence granted on the basis of one "NOC" and the date of grant of another licence on the basis of subsequent "NOC" granted under Rule 96 in respect of the same site, there must be a break of atleast one month on each occasion.

(3) DURATION OF LICENCE :

Under Rule 99 the maximum period of life of a touring cinema licence granted under the rules is one year whether the initial grant is for one year or the initial grant is for a period shorter than one year and is subsequently renewed or regranted for a further period or periods, it must come to an end on the date on which one year expires from the date of initial grant.

(4) SCOPE OF REGRANT :

(i) Under Rule 105 of the Rules which provides for regrant of a touring cinema licence, a first regrant application can be made after the expiry of the period of initial grant, only in cases where the initial grant of licence for a touring cinema

was for a period less than one year. Subsequent applications for regrant can be made any number of times and regrants also can be made subject to the condition that the total period of regrants must come to an end on the date on which one year expires from the date of initial grant as the power to regrant is expressly made subject to Rule 99 by sub-rule (3) of Rule 105.

(ii) There is no requirement of "NOC" for making an application for regrant under Rule 105. The certificates required are only those specified in sub-rule (2) of Rule 105, viz., all the certificates mentioned in Rule 97 (1) of the Rules except the "NOC". The enquiry authorised by sub-rule (3) of Rule 105 in connection with an application for regrant is only to find out the correctness of the certificates mentioned in sub-rule (2), and not in respect of any other matter.

(iii) To put it differently if by the combined effect of Rule 96 (5) and Rule 98 (2) a fresh "NOC" is necessary for establishing a touring cinema on a given site, the application for licence falls under Rule 97, relating to grant which requires the production of "NOC" and if on the other hand those Rules do not require a fresh "NOC" after the initial grant of touring cinema licence for a period shorter than one year, such an application for regrant falls under Rule 105 which does not require the production of "NOC".

15. In the light of the above discussion, I am of the opinion that answer to the question referred to the Full Bench should be as follows ;

(i) The scope of Rule 105 is limited to an application for regrant of a licence of a touring cinema only in cases where the period of initial grant or the period of initial grant and the subsequent period of regrant or regrants falls short of one year.

(ii) Rule 105 of the Rules does not require the production of a "NOC" along with an application for regrant of a touring cinema licence and also does not provide for examining as to whether the site continues to conform to the requirements of Rules 27(1) (h) to (k) and Rule 107 of the Rules, before making a regrant.

(iii) Every application for regrant of a touring cinema licence has to be considered by the Licensing Authority on production of only those certificates as are referred to in sub-rule [2] of Rule 105 of the Rules and the enquiry permitted by sub-rule [3] of Rule 105 of the Rules is also confined only in respect of matters covered by those certificates.

OPINION OF THE COURT

(Per Majority)

Jagannatha Shetty, J.

Our answer to the question referred is as follows :

The Licensing Authority while considering an application for regrant of a licence to a touring cinema, is not required to re-examine whether the site where the

touring cinema has been located, satisfies the requirements of the Karnataka Cinemas (Regulation) Rules, 1971, if the original grant of licence was for a period less than one year and regrant is sought to be granted up to one year from the date of the original licence. But if regrant is sought for a period beyond one year from the date of the original grant, then the Licensing Authority must examine the question whether the site where the touring cinema has been located satisfies the requirements of the Karnataka Cinemas (Regulation) Rules, 1971. It cannot regrant licence for the second year without the production of a fresh "NOC". It cannot also regrant licence for the third year without a fresh "NOC" in respect of the site in question.