1958 *Present :* **T. S. Fernando, J.**

A. MUNASINGHE, Applicant, *and* W. T. JAYASINGHE (Government Agent), Respondent

S. C. 349—Application for Writs of Certiorari and Mandamus on the Government Agent, Polonnaruwa

Certiorari—Public Performances Ordinance (Cap. 134)—Rule A 5 made under s. 3—Grant or refusal of licence by local authority—Is it a judicial act ?

By Rule A5 made in terms of section 3 of the Public Performances Ordinance—

" On receipt of an application for a licence, the local authority, *after such inquiry as he thinks fit,* and after the payment of the fees mentioned in rule A3, *may, if he sees no objection,* grant a licence, subject to the conditions as he may consider necessary in the interests of the safety and the comfort of the public."

Held, that the effect of the expressions " if he sees no objection " and " after such inquiry as he thinks fit " is that the grant or refusal of a licence by the local authority is merely an executive (or ministerial) and not a judicial (or quasi-judicial) act. A writ of certiorai is, therefore, not available in respect of a refusal of the licence.

APPLICATION for Writs of Certiorari and Mandamus on the Government Agent, Polonnaruwa.

A. C. Nadaraja, with *S. Ponniah*, for the applicant.

M. Tiruchelvam, Acting Solicitor-General, with *H. L. de Silva*, Crown Counsel, for the respondent.

Cur. adv. vult.

May 29, 1958. T. S. FERNANDO, J.—

The applicant who has been refused an extension of a licence for an erection for the purpose of public performances in the shape of exhibitions of pictures by means of cinematographs applies to this court for mandates in the nature of writs of certiorari and mandamus, certiorari to quash the order of refusal and mandamus to direct the local authority to hold an inquiry and to grant the extension of the licence. The local authority for the place in which the public performances are to be given is the Government Agent, Polonnaruwa, and the respondent was at all relevant times the holder of that office.

Rules made in terms of section 3 of the Public Performances Ordinance (Cap. 134) regulate the manner in which licences may be granted. The relevant rule is rule A5 published in *Gazette* No. 7,004 of 4th April, 1919—(see Vol. 2 of the Subsidiary Legislation, page 143)—and that part of this rule with which we are concerned in this application reads as follows :—

> " On receipt of an application for a licence, the local authority, *after such inquiry as he thinks fit*, and after the payment of the fees mentioned in rule A3, *may, if he sees no objection*, grant a licence, subject to the conditions as he may consider necessary in the interests of the safety and the comfort of the public."

There is no rule dealing specifically with extensions of licences already granted, and it was not disputed at the argument that the rule governing the granting of licences reproduced above governed any extension as well.

The relevant facts are quite simple and are admitted. The applicant had been granted by the respondent a licence for an erection for exhibiting cinema films in respect of a period of six months expiring on 28th February, 1957. This licence had been extended on two occasions, each such extension covering a period of one month. The latter of the two extensions was due to expire on 30th April, 1957, and the applicant applied on 26th April, 1957, for a further extension to cover the period 1st May to 31st August, 1957. This extension was at first refused, but subsequently was allowed in part to enable the applicant to exhibit films up to 30th June, 1957. The applicant, not satisfied with an extension of the licence for a period of only two months, insisted on an

inquiry being held in respect of the application for the remaining two months. No inquiry of the nature demanded by the applicant was held. The applicant contends that the respondent is by law under a duty to hold an inquiry while the respondent denies that there is any such legal obligation upon him. The application made to this Court depends upon the existence of a legal duty on the respondent to hold an inquiry such as that contended for by the applicant, viz., an inquiry of which the applicant must have notice and at which he must be given an opportunity of showing cause against the refusal of the extension.

The first question that arises upon the application to this Court is whether the respondent as the local authority is performing a judicial or quasi-judicial act in ordering or refusing the grant of a licence or whether he is only performing an executive act. Mr. Nadaraja appearing for the applicant has relied on the decisions in *South-Western Bus Co., Ltd. v. Arumugam*[1] and *The King v. Woodhouse*[2] in contending that the respondent's function is judicial and not executive. In the first of those cases Jayetileke J., after examining sections 4, 12 and 13 of the Omnibus Services Licensing Ordinance, No. 47 of 1942, concluded that the provisions of those sections implied that the character of the jurisdiction vested in the Commissioner of Motor Transport to grant or refuse a licence under that Ordinance was essentially judicial. In the second case, the Court of Appeal held that the granting or refusing of a licence by the justices at the general annual licensing meeting is a judicial act. The learned Solicitor-General has, on the other hand, drawn my attention to the observations of Lord Greene in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*[3]—a case in which the proprietors of a cinema theatre sought to obtain a declaration that a certain condition imposed on the grant of permission for sundry performances was ultra vires—which indicate that the learned Master of the Rolls thought that the grant of a licence by the Corporation of Wednesbury for the exhibition of cinema films was not a judicial but an executive act. I was referred also to the remarks made by Lord Radcliffe in *Nakkuda Ali v. Jayaratne*[4] that a Textile Controller in cancelling a licence granted by him to a person authorising him to deal in textiles, a controlled commodity, was not "determining a question" but merely "taking executive action to withdraw a privilege". The observations of the Queen's Bench Division in *R. v. Manchester Legal Aid Committee*[5] that "where a decision is that of a court then, unless, as in the case, for instance, of justices granting excise licences, it is acting in a purely ministerial capacity, it is clearly under a duty to act judicially" would appear at first sight to doubt the correctness of the decision in *The King v. Woodhouse* (supra). Be that as it may, authorities can be quoted in support of the view that the grant or refusal of certain kinds of licences has been held to be a judicial act and of other kinds of licences has been considered as amounting to the performance only of an executive act. The decision whether the respondent in the case

[1] *(1947) 48 N. L. R. 385.*
[2] *L. R. (1906) 2 K. B. D. 501.*
[3] *(1947) 2 A. E. R. at 682.*
[4] *(1950) 51 N. L. R. at 463.*
[5] *(1952) 1 A. E. R. at 489.*

before me was performing a judicial (or quasi-judicial) as opposed to an executive (or ministerial) act must, I think, depend ultimately on an examination and interpretation of rule A5 already referred to above.

It will be observed that the local authority may, if he sees no objection, grant a licence. The grant or refusal is, of course, in the discretion of the local authority ; but the words " if he sees no objection ", while they may on a cursory reading of them appear superfluous, would seem to require the local authority, before granting a licence, to consider whether there are objections to such a grant. Does the fact that he is obliged to consider whether there are objections to the grant impose on him a duty to act judicially ? His decision in the matter of granting a licence must obviously be actuated in whole or in part by questions of policy or expediency and he is, therefore, in my opinion, performing merely an executive act when he decides to grant or refuse a licence. The conclusion I have reached on this point does not, however, dispose of this application. It is now well settled that even when the decision is that of an administrative (as opposed to a judicial) body and is actuated in whole or in part by questions of policy, " the duty to act judicially may arise in the course of arriving at that decision " —see *R. v. Manchester Legal Aid Committee* (supra). Is there anything in rule A5 or in the context thereof which can be said to impose upon the respondent an obligation to act judicially in the course of arriving at his administrative decision ? The rule permits him to exercise his decision " *after such inquiry as he thinks fit* ". The grammatical and natural construction of this phrase leads me to infer that he must make— I refrain advisedly from saying hold—an inquiry and is not free to dispense with an inquiry altogether. But the very rule which obliges him to make inquiry has constituted him the sole judge of the nature of the inquiry that should be made by him. The position might well have been different if the material words in the rule were " *after inquiry* " and not " *after such inquiry as he thinks fit* ". The words being what they are, it is not possible without giving a strained construction to the phrase to conclude that he is obliged to hold an inquiry in the nature of a judicial inquiry of which the applicant must have notice. I am of opinion that it was competent in law for the respondent to make an inquiry in the nature only of an investigation to ascertain whether there could be any valid objection to the grant of the licence. The respondent's affidavit discloses that he has made investigations into the desirability of extending the licence granted to the applicant and he has therefore complied with the legal requirements of the rule. As I am of opinion that the respondent was not under a duty to act judicially in the course of arriving at what I hold to be an administrative decision, it follows that a writ of certiorari is not available to the applicant. The respondent has performed his statutory duties and therefore no occasion arises to consider the issue of an order in the nature of a writ of mandamus.

The application therefore fails and must be dismissed with costs which I fix at Rs. 300.

Application dismissed.