

**SUNDARKARAN
V.
BHARATHI AND OTHERS**

SUPREME COURT

S.C. APPEAL NO. 59/87

C.A. L.A. (S.C.) NO. 22/87

C.A. APPEAL NO. 57/87

RANASINGHE, C.J.

SENEVIRATNE, J. & AMERASINGHE, J.

OCTOBER 3 and 4 1988.

Writs of Certiorari and Mandamus — Liquor licence — Excise Department Circular No. 221 of 14.02.1986 — Are decisions of the Government Agent, decisions of the Excise Commissioner? — Is concurrence of Member of Parliament necessary? — Judicial review — Is a liquor licence a vested right in property? — Natural Justice — Audi alteram partem — Does certainty of no change in decision obviate necessity to afford opportunity to be heard? Legitimate expectation — Would court be acting in vain where relevant year of licence is past?

The petitioner was an applicant for a liquor licence for 1987. He had been granted liquor licences for the two preceding years and in respect of 1987 he was written to and asked to pay the licence fees. When he went to the office of the Government Agent he was informed by the accountant that no licence could be issued to him as he failed to obtain the consent of all the members of Parliament in the constituency in terms of Circular No. 221 of 14.02.1986. He appealed to the Minister of Finance but received no response. He then moved for a writ of mandamus to compel issue of the licence. The Court of Appeal

refused the application holding that the consent of all the members of the constituency this being a multi member constituency was an absolute imperative and judicial review was inappropriate because this was a matter of executive policy.

Held

(1) All that Circular 221 required was that the members of the Parliament of the constituency should be *consulted*. Their *concurrence* was not an essential requirement.

(2) The decision of the Government Agent was the decision of the acting Excise Commissioner.

(3) The court will not question the correctness of the conclusions or the decision not to issue the licence but the court can examine the decision making process in the interests of administrative Justice.

(4) It was not enough that the Government Agent had taken into account all the circumstances and not relied exclusively on the objections of the Member of Parliament. It was imperative in natural Justice that the petitioner should have been heard before he was refused the licence. The assumption that the result is obvious from the outset does not obviate the requirement that the principle *audi alteram partem* should be complied with.

(5) The licence has a money value and was a vested right in property. As an existing licence — holder with legitimate expectations of success in obtaining the licence, the petitioner was entitled to a full and fair opportunity of being heard. The duty of fairness in cases of this type requires the decision maker not only to determine the application honestly and without bias or caprice but also fairly by hearing him according to Law.

(6) The court will not be acting in vain in quashing the determination not to issue the licence for 1987 because the right of the petitioner to be fully and fairly heard in future applications is being recognised.

Cases Referred:—

- (1) *R v. Northumberland Compensation Appeal Tribunal ex Parte Shaw* [1952] 1 All E.R. 122, 127 ;
- (2) *Ridge v. Baldwin* [1963] 2 All E.R. 66, 91 ;
- (3) *Chief Constable of North Wales Police v. Evans* [1962] 3 All E.R. 141, 151 ;

- (4) *K.M. Dayaratne v. Y.M.W. Bandara* S.C. NO. 924/77 October 3rd 1978 : (1983) Bar Association Law Journal Reports, Vol 1 Part 1 p. 23 :
- (5) *Cooper v. Wandsworth Board of Works* [1983] 14 CBNS 180 :
- (6) *R v. Secretary of State for the Environment* ex p. Brent London Borough Council [1922] 2 W.L.R. 693,734. [1983] 3 All E.R. 321 :
- (7) *General Medical Council v. Spackman* [1943] A.C. 627. 644 : [1963] 2 All E.R. 66 H.L.

Appeal from Judgment of the Court of Appeal reported in (1987) 2 Sri L.R. 243

H.L. de Silva P.C. with *E.D. Wickremanayake, M.S.M. Suhaid* and *Miss L.N.A. de Silva* for petitioner. *M.S. Aziz, D.S.G. with P. Karunaratne S.C. and N.R. Laduwahetty S.C.* for respondents.

Cur. adv. vult.

November 1, 1988

AMERASINGHE, J.

In December 1985 the Petitioner-Appellant had applied to the Government Agent, Kandy (the predecessor in office of the 2nd Respondent-Respondent) for licences to sell liquor. The Government Agent referred the application to the Assistant Government Agent of the area where the licensed premises were to be situated. In terms of Excise Department Circular No. 212 issued to all Government Agents by the Excise Commissioner, the Assistant Government Agent on 18th December 1985 reported on the area of the premises and the location of the premises in relation to places of worship and schools and recommended the granting of the licences.

Excise Department Circular No. 212 reproduced the following decision on 4th September 1985 by the Cabinet of Ministers :

The matter of the issue of licences for the sale of liquor was discussed and it was decided that the licensing of wholesale and retail outlets for the distribution of alcoholic beverages should be liberalised by authorising the Excise Commissioner to issue licences for the sale of liquor to

private wholesale and retailers recommended by Government Agents, after consultation with the M.P. of the area, according to the needs of each area.

By letter dated 10th December 1985 a Member of Parliament of the area recommended the issue of the licence to the Petitioner-Appellant.

Licences for the sale of bottled toddy and "Foreign liquor (including locally made malt liquor) not to be consumed on the premises" were issued for the year ending on 31st December 1985. Similar licences were issued again for the year ending on 31st December 1986.

By Excise Department Circular No. 221 dated 14th February 1986 addressed to all Government Agents, the Excise Commissioner cancelled his previous instructions contained in Circulars Nos. 212 and 213 and issued new instructions to Government Agents on the criteria for deciding whether liquor licences should be granted or refused. Paragraph 5 of Circular No. 221 stated as follows:

"No liquor licence will be issued by the Government Agent without the concurrence of the M.P. of the area. In the case of Multi-Member Constituencies all the Members of the Constituency should be consulted before licences are issued. In Constituencies where there are no Members of Parliament the District Minister shall be consulted. In Opposition Member Constituencies the District Minister should be consulted before licences are issued."

By his Circular letter dated 22nd October 1986, the Government Agent wrote to the Petitioner-Appellant asking him to pay his licence fees for the purpose of renewing his licences for the year 1987. However, when the Petitioner-Appellant went to the office of the Government Agent to make the required payments, he was informed by the Government Agent's Accountant that no licence could be issued to him.

The reason given was that in terms of paragraph 5 of the instructions issued by the Excise Commissioner in Circular:

No. 221 he was not qualified to receive the licences since he had failed to obtain the consent of all the Members of Parliament in the Constituency. He was informed that one Member of Parliament in the Multi-Member Constituency in which the premises to be licensed was situated had objected to the issue of licences to the Petitioner-Appellant.

Using the right of appeal given by Section 9 of the Excise Ordinance, the Petitioner-Appellant appealed through his letter dated 3rd January 1987 to the third Respondent-Respondent, namely, the Minister of Finance "to review my case sympathetically and request the G.A., Kandy to renew my licence for the current year so that I could continue in business."

Not having received even so much as an acknowledgment of the receipt of that appeal to the Minister, the Petitioner-Appellant applied on 15th January, 1987 to the Court of Appeal praying for

- (a) the issue of a Writ in the nature of a Writ of Certiorari quashing the refusal by the Second Respondent-Respondent — the Government Agent — to renew the licences applied for ;
- (b) the issue of a Writ of Certiorari quashing the decision of the Third Respondent-Respondent — the Minister of Finance — to disallow the appeal to him by the Petitioner-Appellant ;
- (c) the issue of a Writ in the nature of Mandamus directing the Second Respondent-Respondent — the Government Agent — to renew the licences for the year 1987
- (d) costs
- (e) such other and further relief as to the Court of Appeal might seem meet.

On 10th September, 1987, the Court of Appeal after hearing Counsel for the Petitioner and Respondents dismissed the Petitioner's application with costs.

On 15th October, 1987, the Court of Appeal granted leave to appeal to the Supreme Court on the matters of Law set out in paragraph 7 of the petition of appeal. Paragraph 7 of that petition states as follows: "Being aggrieved by the said judgment, the appellant asked for leave to appeal to the Supreme Court, upon the following substantial questions of law, viz., that the Court of Appeal has erred in holding that:

- (a) the 2nd respondent (the Government Agent) was entitled to refuse the renewal of the said licences for the year 1987 upon the ground that the 1st Member for Harispattuwa Electorate had objected to the renewal of the said licences;
- (b) the said decision was, in the circumstances of this case, not liable to be quashed by way of a Writ of Certiorari;
- (c) the failure of the 3rd Respondent to deal with the Appellant's appeal in the circumstances of this case, was not a refusal liable to be quashed by way of a Writ of Certiorari;
- (d) the local Option Polls regulation made under the Excise Ordinance (Vol 1, Subsidiary Legislation) did not apply in relation to the licences issued to the Appellant and that even if they did apply, would not affect the Appellant's claim for relief;
- (e) the Appellant was not entitled to a Writ of Mandamus to compel the issue of the licences to him for the year 1987."

In his appeal to this Court the Petitioner-Appellant prays that this Court

- (a) quash by way of a Writ of Certiorari
 - (i) the determination of the 1st Respondent — the Acting Commissioner of Excise — not to renew the Petitioner-Appellant's licence for the year 1987

- (ii) the refusal or rejection of the appeal made by the appellant to the 3rd Respondent — the Minister of Finance ;
- (b) issues a Writ of Mandamus compelling the 1st Respondent — the Acting Commissioner of Excise — to renew the Appellant's licences for 1987 ;
- (c) Costs ; and
- (d) such other and further relief as to the Court may seem meet

The first prayer in the appeal to this Court is this : that we quash by way of a Writ of Certiorari the determination of the Acting Commissioner of Excise not to renew the Appellant's licence for the year 1987.

The Acting Excise Commissioner himself made no decision to refuse to renew the licence. The refusal was made by the Government Agent of Kandy. Counsel for the Respondents-Respondents insisted that the Government Agent acted for and on behalf of the Excise Commissioner from whom he took his orders and directions in matters relating to the issue of liquor licences and was, to use his own words, a mere "collector of revenue." We may, therefore accept the position that the decision of the Government Agent was the decision of the Acting Excise Commissioner.

Counsel for the Petitioner-Appellant supported his case on four main grounds, viz.

- (1) that Circular No. 221 issued by the Excise Commissioner which the Government Agent used as the basis of his decision was ultra vires and invalid in law because the statutory discretion conferred on the Government Agent could be curtailed only by Rules made by the Minister by virtue of the powers conferred upon him by Section 32 of the Excise Ordinance. (Cap 64 vol. III Legislative Enactments 1980 Ed.)

- (2) that if Circular No. 221 was not altogether invalid then at least the directions contained in paragraph 5 of that Circular were ultra vires and invalid in law because, by virtually conferring a power of veto on Members of Parliament, a fetter had been placed improperly upon the use of the discretionary power conferred by statute on the Government Agent since such fetter was imposed by Circular instructions and not by legislation or subsidiary legislation, as it might have been.
- (3) that if Circular No. 221 and paragraph 5 thereof were valid in law, the Court of Appeal had misdirected itself by erroneously construing the direction given in paragraph 5 to consult the Members of Parliament in a Multi-Member Constituency to mean obtaining the consent of such Members ;
- (4) that the Petitioner-Appellant had a " legitimate expectation " that a licence would be issued to him and that therefore he had a right to be heard before the Government Agent made any decision on the application for the renewal of the licences.

Although Mr. Aziz for the Respondents-Respondents argued that the Government Agent had taken all the circumstances into account and did not rely exclusively on the objections to the issue of the licences by one of the several Members of Parliament, I am inclined to agree with Mr. H.L. de Silva, P.C. who argued that, whatever the Government Agent may or may not have done, the Court of Appeal had erroneously refrained from granting the relief prayed for by the Petitioner-Appellant on the ground that the failure to obtain the unanimous support of all the Members of Parliament of that Constituency was conclusive of the matter.

In my view, the duty of the Government Agent acting in accordance with Circular No. 221 in the case of a Multi-Member Constituency is to consult all the Members of Parliament in that Constituency. The relevant words of instruction in paragraph 5 are as follows : " In the case of Multi-Member Constituencies all the Members of the Constituency should be consulted before

licences are issued." The Court of Appeal, however, in my view, erroneously, took the view that the direction required not merely consultation but also concurrence. Ramanathan J. who delivered the Judgment of the Court, discussing the effect of Paragraph 5 of Circular No. 221 (P8) said: "The change that had been effected by it, so far as is relevant here and with respect to Multi-Member Constituencies was that all the Members of Parliament had to be "consulted" which in the context in which such word is used in P8 had to mean that these licences had to be issued with their "concurrence", as is the word used with respect to single member constituencies."

There is a great difference between 'consult' and concurrence.

Notwithstanding the argument of Counsel for the Respondents-Respondents that the Government Agent had exercised his discretion after considering all the circumstances, including, but not entirely depending upon the objection to the issue of the licences by one of the Members of Parliament, the Court of Appeal was of the view that it was the failure of the Petitioner to obtain the unanimous support of all the Members of Parliament that was the decisive factor.

Ramanathan, J. says:

"The Petitioner contends that he went to the Kandy Kachcheri to make the payments due for the issue of the licences for the year 1987 when he was informed . . . that such licences could not . . . be issued as the First Member of Parliament for this electorate had objected; that when the Petitioner pointed out that the 2nd Member of the electorate had recommended the issue he was told in response that in terms of Circular (P8) in the case of Multi-Member Constituencies both Members had to consent" (sic.) "and that therefore they could not be issued"

In coming to the conclusion that the matter before the Court of Appeal was inappropriate for judicial review because it was "a matter of executive policy," Ramanathan, J. says:

" The thinking of the Government Agent the 2nd Respondent that this was something he should take account of even in the case of renewal, is we think not such as would enable us to describe such thinking or the subsequent decision based thereon as unreasonable, (That his decision was in fact not to renew such licences, and that based solely upon the objections of the 1st Member of Parliament, we have no doubt and this is made clear by his own affidavit at paragraph 18 (1) (h)). "

Paragraph 18 (1) (h) of the Second Respondent's Affidavit, it must be pointed out in fairness to the 2nd Respondent, does not show that his decision is based " solely upon the objections of the 1st Member of Parliament. "

What the Second Respondent states in paragraph 18 (1) (h) is this :

" I have examined the nature of the objections and after having given consideration to them I am satisfied that the continuing of a liquor shop in this area will affect the religious susceptibilities of the public of that area and will not be conducive to their interests. I have decided therefore that the licences should not be renewed for 1987. "

I might have dismissed the Petitioner-Appellant's appeal on the basis that the 2nd Respondent had in fact acted independently, without considering himself, as Counsel for the Petitioner-Appellant contended, being " vetoed " by the decision of one Member of Parliament but for the fact that I am not satisfied that in arriving at his decision the 2nd Respondent-Respondent, (the Government Agent), had sufficiently informed himself of the facts of the matter before him.

This was not a case in which there was agreement on the matters which formed the basis for the 2nd Respondent's decision to refuse the granting of the licences:

For example, in his affidavit filed in the Court of Appeal, the 2nd Respondent says in paragraph 18 (e) :

" I also received a letter dated 4.12.86 from the Secretary, Ministry of Finance and Planning annexing a communication dated 1.12.86 addressed to the Hon. Minister of Finance and Planning from the Hon. First M.P. for Harispattuwa objecting to the issue of the licence in his electorate (and another in the same electorate). In this letter the First M.P. for Harispattuwa has complained that these licences have been granted without him being consulted " (*sic.*) " The First M.P. for Harispattuwa has also informed me that the issue of these licences have created a public outcry among his constituents as the outlets are situated in near proximity to religious places and that there is a misapprehension gaining ground that as he is a member of a minority community he is not taking steps to curb the opening of taverns and liquor stores near places of Buddhist religious worship. "

The 1st Member for the Multi-Member Constituency of Harispattuwa swears in his affidavit filed before the Court of Appeal as follows :

" I Abdul Cader Shahul Hameed, being a Muslim, do hereby solemnly, sincerely and truly, declare and affirm as follows :

1. I am the 1st Member of Parliament for Harispattuwa having represented the constituents of Harispattuwa as their elected representative continuously for the past 27 years.
2. This long association with Harispattuwa, which is a predominantly Sinhala-Buddhist electorate, and the meetings with the constituents, which I make a point of holding regularly, has given me a very intimate understanding of the needs and wishes of the electorate.
3. I recall that numerous constituents of Harispattuwa, some of whom representing religious and social organisations, made representations to me objecting strongly to the siting of two liquor shops at Alawathugoda, and Ranawana respectively.

4. I conveyed these objections to the Government Agent, Kandy, and informed the latter of the increasing public pressure which was building up in my electorate over the siting of these two liquor shops.
5. I also state that several of my constituents met me recently in Harispattuwa and indicated their relief that the liquor shops have not been opened in 1987 and expressed their appreciation that the authorities have considered their protests.

On the other hand, the Petitioner-Appellant contends that the premises sought to be licensed was not near places of Buddhist religious worship and did not offend the religious susceptibilities of the people of the area concerned. He argued that the 2nd Member of Parliament who was herself a Buddhist supported the granting of the licences.

In her affidavit to the Court of Appeal dated 14th March 1987 she says :

1. I am the affirmant abovenamed. I am the 2nd Member of Parliament for the electoral district of Harispattuwa. I am a Member of the United National Party to which the 1st Member of Parliament for Harispattuwa, Mr. A.C.S. Hameed also belongs.
3. I state that I am a Sinhala Buddhist and I am deeply concerned about the religious susceptibilities not only of the Sinhala Buddhists in my electorate but also about the religious susceptibilities of all my constituents whatever community or religion " (sic) " they belong "
5. I state that the " Headquarters " of the " Buddhist Balamandalaya " referred to in paragraph 18 (g) of the affidavit filed by the 2nd Respondent is not a place of religious worship. The premises are little more than a

shed and I am aware that they have been rented out, inter alia, for a Muslim Wedding reception at which meat was served”

From his affidavit dated 30th March 1987 it is clear that the Government Agent (the 2nd Respondent-Respondent) had satisfied himself that the premises to be licensed was in close proximity to the Bauddha Balamandalaya premises which he thought was a place of religious worship. However, the Petitioner-Appellant strongly disputes the claim that the premises occupied by the Katugastota Bauddha Balamandalaya is in fact a place of religious worship.

It may well be that the conclusion arrived at by the 2nd Respondent-Respondent that the place was a place of religious worship was a right conclusion.

It would appear from Paragraphs 12 and 18 of the 2nd Respondent-Respondent's affidavit dated 1st March 1987 that he had received and considered protests against the issue of licences from several organisations. However, the Petitioner-Appellant in Paragraphs 4 and 5 of his affidavit dated 20th March 1987 challenges the relevance of the representations and even challenges the very existence of one of the organisations.

I do not question the correctness of the conclusions of the 2nd Respondent-Respondents on these matters. Nor do I question his decision not to issue the licences. These are matters for the decision of the appropriate authority vested with the power of making such decisions. Indeed it would be an improper usurpation of authority for me to do so. (See *R v. Northumberland Compensation Appeals Tribunal, Ex parte Shaw*, (1); *Ridge v. Baldwin*, (2), and *Chief Constable of North Wales Police v. Evans* (3). I am, however, not satisfied with the decision making process in the instant case. I do not think that the Respondents acted fairly and therefore consider the matter to be one which deserves judicial review in the interests of administrative justice. (See *North Wales Police v. Evans (supra. loc. cit)*.)

The circumstances in which the 2nd Respondent-Respondent decided not to renew the licences of the Petitioner-Appellant

show that he had failed to give the Petitioner-Appellant an opportunity of meeting the objections which were supposed to have been made against the issue of the licences. He had been issued licences for the two preceding years; he had received a notice from the 2nd Respondent-Respondent requesting him to make payments for obtaining his licences for 1987 and in pursuance of a legitimate expectation that he would be issued the licences, he had raised a loan of Rs. 750,000 to develop his liquor sales business. It seems to me to be manifestly unjust and improper that a decision to refuse to renew the licences was made in the circumstances of this case without hearing the Petitioner-Appellant who was being deprived not merely of a privilege but a vested right in property. (See per Vythialingam, J. (Abdul Cader, J. agreeing), in the case of *K.M. Dayaratne v. Y.M.W. Bandara* (4).

In *Dayaratne's* case the Petitioner had been granted a licence annually under the Excise Ordinance to sell foreign liquor at his shop at Mawanella. Subsequently, on the orders of the Respondent, who was the Government Agent, the shop was closed by the Police. The licence issued was cancelled on the orders of the Minister acting in terms of section 28A of the Excise Ordinance. The Petitioner had not been given a hearing. Vythialingam J. says at p. 27 :

"In deciding whether the principle *audi alteram partem* should be applied in the instant case I would follow the approach adopted by the Privy Council in *Durayappah's* case (*A.T. Durayappah v. W.J. Fernando* 69 N.L.R. 265). There Lord Upjohn said at page 270, "In Their Lordship's opinion there are three matters which must always be borne in mind in considering whether the principle should be adopted or not. The three matters are : First, what is the nature of the property, the office held, status enjoyed, or services to be performed by the complainant of injustice; Secondly, in what circumstances or upon what occasions is the person claiming to exercise the measure of control entitled to intervene. Thirdly, when a right to intervene is proved what sanction in fact is the latter entitled to impose on the other. It is only upon a consideration of all these

matters that the question of the application of the principle can properly be determined." In regard to the first matter, here there is no complaint in regard to any office held, status enjoyed, or services to be performed by the Petitioner. He must come, if at all, as the holder of a right in property."

Vythialingam, J., after analysing the various authorities on the subject, says at p. 29 :

" The fact that the licence in the instant case has a money value cannot be doubted. The Petitioner paid Rs. 450/- as licence fee for the full year 1977. On the strength of the licence he stocked his shop with foreign liquor He could have made profits by the sale of the liquor. The licence can be sold or sub-rented Under the general condition attaching to all Excise Licences sets out " No privilege manufacture, supply, or sale or any interest therein " shall be sold or transferred or sub-rented without the Government Agent's previous permission. (Paragraph 13 General Conditions Applicable to All Excise Licences from and After September 30, 1955 Vol. I, Subsidiary Legislation p. 585). So that the Petitioner had at that time a vested right in property which had money value. "

It has been repeatedly recognized that no man is to be deprived of his property without having an opportunity of being heard. Even if what he had was mere permission to which the Appellant-Petitioner had no legal entitlement or claim of right, the refusal of the permission which had previously been granted I think may be at least sufficiently comparable to the act of taking away property so that the *audi alteram partem* rule will apply. I am unable to agree with learned Counsel for the Respondents that the Petitioner-Appellant was simply "hoping" against "hope" of being granted a renewal of a licence. He had, in my view, a legitimate expectation of success and therefore a right to a full and fair opportunity of being heard.

Counsel for the Respondents-Respondents urged that the decision had not been made capriciously. As an existing licence-

holder with legitimate expectations the Petitioner-Appellant was entitled to much more. The duty of fairness in cases of this type requires the decision maker not only to determine the application honestly and without bias or caprice but also fairly by hearing him according to the law.

There are, I think, in the words of Erle, C.J. in *Cooper v. Wandsworth Board of Works* (5) "a great many advantages which might arise in the way of public order, in the way of doing substantial justice, and in the way of fulfilling the purpose of the statute by the restriction we put upon them, that they should hear the party before they inflict upon him such a heavy loss."

Counsel for the Respondent-Respondents argued that a fair hearing would make no difference to the result in this case. "Procedure and merits should be kept strictly apart since otherwise the merits may be prejudged unfairly." (H.W.R. Wade *Administrative Law*, 5th Edition p. 475). The so called "no difference" argument has been properly rejected on more than one occasion (e.g. See *R. v. Secretary of State for the Environment ex p. Brent London Borough Council* (6)), but I should like to recall the words of Lord Wright in *General Medical Council v. Spackman* (7). His Lordship said :

"If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the essential principles of justice. The decision must be declared no decision."

The perils of assuming that a result is obvious from the outset was vividly and elegantly expressed by Megarry, J. in *John v. Rees* (8) in the following words :

"As everybody who has anything to do with the law will know the path of the law is strewn with examples of open and shut cases which, somehow were not of unanswerable charges which, in the event, were completely answered ; of inexplicable conduct which was fully explained ; of fixed and unalterable determinations that, by discussion, suffered a change."

I do not believe that this Court will be acting in vain or that quashing the determination of the 1st Respondent not to renew the Petitioner-Appellant's licences for the year 1987 and requiring that the Petitioner-Appellant be fully and fairly heard before a decision with regard to any future applications for licences are made, will be only a useless formality.

I would express no opinion on the question of the validity of the Circular in question or the validity of Paragraph 5 thereof because it is unnecessary for me to do so having regard to the opinion I have reached on the third and fourth propositions of Counsel for the Petitioner-Appellant. I prefer to leave these important questions open until they arise in a case where decisions on them are necessary.

For the reasons I have given I set aside the judgment of the Court of Appeal, quash the decision of the Respondents and make order that the Respondents do hear and determine according to law i.e. make due inquiry upon its merits any application for a licence to sell liquor by the Petitioner-Appellant may hereafter make.

I order that a sum of Rs. 2100 be paid to the Petitioner-Appellant as costs of the proceedings before the Court of Appeal and this Court.

RANASINGHE, C.J. — I agree

SENEVIRATNE, J. — I agree

Judgment of Court of appeal set aside. Decision of Respondents quashed. Respondents directed to make due inquiry upon merits in future applications for a licence.