

SAMADASA
v.
WIJERATNE, COMMISSIONER-GENERAL OF EXCISE
AND OTHERS

SUPREME COURT
AMERASINGHE, J.,
WADUGODAPITIYA, J. AND
GUNAWARDANA, J.
S.C. APPLICATION NO. 495/97 WITH
S.C. APPLICATION NO. 172/98
NOVEMBER 4, 1998.

Fundamental rights – Refusal of a liquor licence – Abdication of authority by the licensing authority – Article 12 (1) of the Constitution.

The petitioner's application for a liquor licence was recommended by the Grama Seva Niladhari, the OIC in charge of the area police station and the excise authorities. It was objected to by the Divisional Secretary on the ground of a possible breach of the peace and religious, and moral considerations. However, on the recommendation of the SLFP organiser for the area, a licence had been granted to one Ariyasena without weighing such considerations. Besides, four other liquor stores had been permitted to operate in Matara in close proximity to one another.

Held :

1. There was no rational basis for treating the petitioner's application differently.
2. The 1st respondent, Commissioner-General of Excise was the person empowered by law to issue or refuse the licence. He had abdicated his authority by blindly accepting the recommendation of the Divisional Secretary.
3. In the circumstances the respondent had violated the petitioner's rights guaranteed by Article 12 (1) of the Constitution.

APPLICATION for relief for infringement of fundamental rights.

L. C. Seneviratne, PC with *Ronald Perera* for petitioner.

K. Siripavan, DSG with Harsha Fernando, SC for respondents.

Cur. adv. vult.

November 17, 1998.

AMERASINGHE, J.

These two connected matters were heard together. The petitioner applied to the Commissioner-General of Excise in January, 1997, for a licence in respect of the sale of liquor at premises No. 85, Sri Ratnapala Mawatha, Izzadeen Town, Matara. The application was refused and the petitioner instituted Fundamental Rights Application No. 55/97 in the Supreme Court praying, *inter alia*, for a declaration that there had been a violation of the fundamental rights of the petitioner under Articles 12 (1), 12 (2) and 14 (1) (c) and (g) of the Constitution. When the matter was supported before this Court on the 30th January, 1997, learned counsel for the respondents stated that the licence for 1997 would be issued to the petitioner forthwith on payment of the necessary charges. The Court made order accordingly.

However, it was found that the premises had in the meantime been occupied by another tenant to whom a licence had been issued despite the existence of a valid contract of tenancy between the petitioner and the landlord of the said premises. When the petitioner complained about this to the Divisional Secretary, Matara, the petitioner was advised to find alternate premises to carry on his retail liquor business. The petitioner found alternate premises at Jayanthi Butth Kade, Galle Road, Kamburugamuwa and made an application to the Commissioner General of Excise requesting permission to carry on his business at the new premises. By his letter dated the 2nd of April, 1977, the Commissioner-General of Excise directed the Divisional Secretary, Divisional Secretariat, Weligama, to make her recommendations with regard to the petitioner's application. On the 4th of April, 1997, the 6th respondent wrote to the Grama Seva Niladhari and on the 6th of April, 1997, the Grama Seva Niladhari of Kamburugamuwa recommended the issue of the licence. On the 7th of April, 1997, the Grama Seva Niladhari of Weragampitiya also recommended the issue

of the licence. On the 10th of April, 1997, the officer in charge of the Matara Police station too recommended the granting of the licence stating that after due investigation, there was no likelihood in his opinion, of a breach of the peace as a result of the establishment of the proposed liquor retail store.

On the 5th of April, 1997, the 7th respondent, one Saman Weeraman, the Sri Lanka Freedom Party Organiser for Weligama and a Member of the Southern Provincial Council, wrote to the Headquarters Inspector of Matara stating that he objected to the licence being granted to the petitioner as he had not recommended the grant of the licence at the location of the proposed liquor shop. He stated that the proposed shop was in his electorate. On the 24th of April, 1997, the Superintendent of Excise, Galle and the Assistant Commissioner-General of Excise (Southern Province) considered the objections of the 7th respondent, but nevertheless recommended the issue of the licence. On the 5th of May, 1997, the Assistant Commissioner of Excise also recommended the issue of the licence.

The Divisional Secretary, notwithstanding these reports, took it upon himself to advise the Commissioner-General of Excise against the issue of the licence in her letter 1R5 dated 7th of July, 1997. She pointed out that there had been public protests against the issue of the licence because the applicant happened to be "an outsider" and because of the close proximity of the proposed premises to other premises that had already been licensed. She stated that there would be a breach of the peace and that religious and moral consideration stood in the way of the issue of the licence to the petitioner.

The Divisional Secretary's reasons for refusing the licence are untenable. As we have seen the Police, who might be expected to be in the best position to assess and comment upon the question of a likely breach of the peace had, after investigations, ruled out that possibility. Moreover, the question of religious and moral considerations should have applied equally to Ariyasena who had already been granted a licence: no explanation is given as to why

such considerations did not weigh in the case of the licence granted to Ariyasena but weighed against the petitioner. The real difference it seems is to be found in the fact that Ariyasena was a person recommended by the 7th respondent, Saman Weeraman. Moreover, it has been pointed out in para 38 of the petition in SC FR 172/98 that four liquor stores have been permitted to operate in close proximity to each other. Eg In the case of Sunil Wine Stores and Fredrica Wine Stores at Hakmana Road, Matara and in the case of S. K. Oriental Wine Stores and City Wine Stores, New Tangalle Road, Matara. There is no rational basis for treating the application of the petitioner differently.

First respondent, the Commissioner-General of Excise, was the person empowered by law to issue or refuse the licence. He has in my view abdicated his authority by blindly accepting the recommendation of the Divisional Secretary, with the result that he has acted in violation of the petitioner's rights to equal treatment under the law. In the circumstances, the respondent has violated the petitioner's fundamental rights guaranteed by Article 12 (1) of the Constitution. I declare that the petitioner is entitled to the issue of the liquor licence for 1998.

I make order that State shall pay the petitioner a sum of Rs. 50,000 as compensation and Rs. 5,000 as costs.

WADUGODAPITIYA, J. – I agree.

GUNAWARDANA, J. – I agree.

Relief granted.