

NIMALASIRI
v
DIVISIONAL SECRETARY, GALEWELA

COURT OF APPEAL
SRIPAVAN, J.
C.A. 1565/2002
JUNE 11, 2003

Writ of Certiorari – Grant of Liquor Licence – Rule of Audi Alteram Partem – Licence expired – Right of petitioner to be heard in future applications considered.

A Committee appointed after Inquiry, with the petitioner attending the said Inquiry, recommended that, the licence issued to the petitioner for the year 2002 should not be cancelled. However, the 2nd respondent, rejected the recommendation purely on a report submitted subsequently, on the basis that the original information submitted by the petitioner was incorrect or false. The petitioner was not afforded an opportunity to controvert or contradict the second respondent.

Held :

- (i) No man can incur a loss of property by judicial or quasi judicial proceedings unless and until he has had a fair opportunity of answering the complaint made against him.

- (ii) Objectors at public Inquiries must be given a fair opportunity to meet adverse evidence, even though the statutory provisions do not cover the case expressly.

Per Sripavan, J.

"It is not a futile exercise to issue a *Writ of Certiorari* because the decision complained of related to year 2002, which had already expired, the Court is not acting in vain because the right of the petitioner to be fully and fairly heard in future application is recognized."

APPLICATION for a *Writ of Certiorari*.

Cases referred to :

1. *Gamalath v Commissioner General of Excise and two others* CA 1675/02 – CAM 28.3.2003.
2. *Errington v Minister of Health* – 1935 1 KB 249
3. *Schmidt v Secretary of State for Home Affairs* – 1969 2 Ch. 149 at 170
4. *Marshreq Bank PSC v Arunachalam* – 2001 – 3 SRI LR 128
5. *Regina v Barnsley Metropolitan Borough Council Exp. Hook* 1976 1 WLR 1052
6. *Sudakaran v Barathi* – 1989 1 SRI LR 46

Mohan Pieris for petitioner

Janak de Silva, S.C., for respondents.

Cur. adv. vult.

July 14, 2003

SRIPAVAN, J.

The petitioner obtained a FL 11 category licence from the second respondent for the years 1999, 2000, 2001 and 2002 for the sale of liquor in premises No.169, Dambulla Road, Galewala. The petitioner alleges that the 2nd respondent by letter dated 27.08.2002 (P4) informed the petitioner that licence would stand cancelled with effect from 30.09.2002. The petitioner seeks a mandate in the nature of a *writ of certiorari* to quash the said decision contained in P4.

The learned State Counsel appearing for the respondents submitted that the second respondent received a general complaint

from one Sumeda Amarasiri of Raja Maha Place, Galewala challenging the location of premises within the Galewala town limits to which liquor licences were issued. Accordingly, the second respondent appointed a Committee in terms of Cabinet decision dated 09.01.2002 headed by the first respondent as the Chairman of the Committee to summon the parties concerned, hold an inquiry and to submit a report to him. It would appear that the petitioner attended an inquiry held on 09.04.2002 and based upon the findings, the Committee recommended by its report dated 11.04.2002 (2R5) that the relevant licensed premises was outside the radius of 500 meters from the temple and recommended that the licence issued to the petitioner for the year 2002 should not be cancelled. However, it appears that the second respondent thought it fit to direct the first respondent to obtain a official survey report to confirm the distance. The recommendation of the first respondent was submitted by her report dated 13.08.2002 (2R9) which indicated that the distance from the licensed premises to Sri Bodhi Raja Maha Viharaya was 491 meters. If the second respondent rejected the original recommendation made by the Committee and acted purely on the report submitted subsequently marked 2R9 on the basis that the original information submitted by the petitioner was incorrect or false, then the second respondent should have given the petitioner an opportunity to controvert or contradict the said report.

In this context it may be relevant to quote a paragraph from my own judgment in *Gamalath v Commissioner - General of Excise and two others* .⁽¹⁾

"It is one of the fundamental principles in the administration of justice that an administrative body which is to decide must hear both sides and give both an opportunity of hearing before a decision is taken. No man can incur a loss of property by judicial or quasi-judicial proceedings unless and until he has had a fair opportunity of answering the complaint made against him. Thus, objectors at public inquiries must be given a fair opportunity to meet adverse evidence, even though the statutory provisions do not cover the case expressly (*Vide Errington v Minister of Health*⁽²⁾). The Court would certainly regard any deci-

sion as having grave consequences if it affects proprietary rights. In *Schmidt v Secretary of State for Home Affairs*⁽³⁾ at 170 Lord Denning M.R. suggested that the ambit of natural justice extended not merely to protect rights but any legitimate expectation of which it would not be fair to deprive a person without hearing what he has to say."

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It is well established when a body of persons are conferred with the power to make decision affecting individuals the Court will not only require the procedure prescribed to be followed, but would also ensure the attainment of fairness. In the case of *Marshreq Bank PSC v Arunachalam*⁽⁴⁾ this Court held that "as far as possible and feasible in the interest of justice and fair play all the parties should be afforded an opportunity of being heard before making an order or varying an existing order". In *Regina v Barnsley Metropolitan Borough Council, exp Hook*⁽⁵⁾ Lord Denning M.R. held that the rules of natural justice applied to the revocation of a licence to trade at a market because of the importance of the right to the stall-holder; it was irrelevant whether the Council was exercising an administrative or judicial function.

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A decision to cancel the petitioner's licence was made without hearing him which deprived a vested right in property. Learned State Counsel urged that it is a futile exercise to issue a *writ of certiorari* because the decision complained of related to the year 2002 which had already expired. However, following the decision in *Sudakaran v Barathi and others*⁽⁶⁾ this Court issues a *writ of certiorari* quashing the decision of the second respondent contained in the letter dated 27.08.2002 marked (P4). Thus this Court is not acting in vain because the right of the petitioner to be fully and fairly heard in future application is recognized.

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I cannot bring myself to accept the position taken up by the learned State Counsel that all necessary parties have not been made respondents to this application and as such this application should be dismissed in limine. Learned State Counsel submitted that the members of the Committee who conducted the inquiry should have been made parties to this application. The petitioner is not seeking to have the report of the Committee to be set aside; it

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is only the decision/determination of the second respondent marked (P4) is being challenged in these proceedings. Since the second respondent has been made a party, I overrule the objection raised by the learned State Counsel.

I make no order as to costs since this Court granted interim relief 90 to the petitioner operative until 31.12.2002.

Application allowed .