

1917.

Present : Shaw J.

*In re the Application of SOYZA for a Writ of Mandamus on the
Chairman, Municipal Council, Colombo.*

*Application for mandamus—Refusal by Chairman, Municipal Council,
of a license for an eating-house—Discretion of Chairman.*

Under chapter II. of the by-laws made under the provisions of the Municipal Councils Ordinance of 1910, the Chairman of the Council has no discretion to refuse a license to a person to use certain premises as an eating-house on other grounds, if the premises satisfy the structural and sanitary requirements specified in the by-laws.

THE facts are set out in the judgment.

A. St. V. Jayawardene, for applicant.—Where an applicant for a license has satisfied the requirements of by-laws and provisions of the Ordinance, the Chairman has no discretion to refuse, but must

¹ (1910) 2 Cur. L. R. 222.

issue a licence. The by-laws and the Ordinance specially provide for cases where license may be refused. 26 Bom. 396; (1905) A. C. 21.

F. J. de Saram, for the respondent.—The power to issue license includes power to cancel license. The tenor of chapter XI. of the by-laws shows that the issue of licence was meant to be discretionary. The affidavit of the defendant proves that this application was not made *bona fide* and was long delayed. In such circumstances the application will be refused. Moreover, the applicant is not the person really interested in the license. The person interested is an undesirable person. See 44 L. J. Q. B. 85; 21 L. J. Q. B. 284; 77 L. J. 599.

October 16, 1917. SHAW J.—

This is an application for the issue of a writ of mandamus to the Chairman or the Municipal Council of Colombo directing him to grant to the applicant, Agampodi Alison de Soya, a license to use certain premises situated at No. 5, Main Street, Colombo, as an eating-house.

The application for a license was refused by the Chairman for the reasons set out in his affidavit filed in these proceedings. Briefly they are: that there is living on the premises and associated with the applicant in the managership a man named Agampodi Charles Mendis, who has been on more than one occasion convicted for keeping a brothel, and that the Chairman has reasons to believe that the premises would be used for immoral purposes; that liquor would be sold on the premises without a license; that the premises would be used as a common lodging-house contrary to the provisions of the law; and that it was not desirable in the interests of the public that the license should be granted.

The issue of licences for eating-houses is regulated by chapter XI. of the by-laws made under the provisions of the Municipal Councils Ordinance. That chapter commences by providing by by-law 1 that "no place shall be used as a bakery or eating-house without an annual license from the Chairman." It then goes on in the subsequent by-laws to specify certain structural and sanitary requirements of the premises to be licensed, some of them being made applicable to both bakeries and eating-houses and some of them to bakeries only. An eating-house is defined to include any house or place where cooked rice is kept for sale, other than a house for which a license has been obtained under the Licensing Ordinance.

The question for my decision is whether the Chairman has a discretion to refuse a license on other grounds, if the premises satisfy the structural and sanitary requirements specified in the by-laws.

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In my opinion he has not. The business of carrying on a bakery or eating-house is a legitimate and *prima facie* innocuous trade, and any enactment curtailing the rights of a member of the public to carry it on must, in accordance with the general rules for the construction of legislative enactments, be given the most limited construction that its language permits. In the present case, not only is no discretion to refuse a license, if the specified requirements of the by-laws are complied with, expressly given, but both the Municipal Councils Ordinance and the by-laws themselves appear to me to expressly negative the contention that any such discretion is intended to be given. Section 210 of the Ordinance, relating to slaughter-houses, and sections 212 and 214, relating to offensive and dangerous trades, specifically provide that the licensing of such places shall be in the discretion of the Chairman, and that he may in his discretion revoke or suspend the licenses. Chapter X., by-law 2, of the by-laws relating to licenses for places for the deposit of offensive materials, and chapter XIII., by-law 39, relating to cattle sheds, galas, &c., contain similar provisions. The specific gift of discretionary power in such cases and its omission in the case of innocuous businesses, such as bakeries and eating-houses, seems to show that no discretion to refuse is meant to be given with regard to places where such businesses are carried on so long as the specific requirements of the by-laws are complied with. It is also important to note that, although the licence for a bakery or an eating-house is given to a person, it is the place that is licensed, and in cases where the license is personal and the character of the licensee important, as in the case of rickshaw coolies under chapter VII., by-law 19, and keepers of common lodging-houses under chapter XVI., by-law 4, discretion is given to the Chairman whether the license should be granted or not.

In the view that I have come to, I am fortified by the opinion of the Court of Appeal in Bombay, which, in the case of *Rustom Jamsed Irani v. Hartley Kennedy*,¹ decided under substantially similar provisions of the Indian law to those I have been considering, that the Commissioner of Police in Bombay had no discretion to refuse to issue a license for an eating-house on the ground that no more places of the description were wanted in the locality.

The reasons given in the affidavit of the Chairman for the refusal of the license in this particular case are of considerable force on grounds of convenience, but I think the answer to them is that, if any of the infringements of the law which he anticipates occur, the criminal law provides means for punishment.

It was contended on behalf of the respondent that, even if it was held that the Chairman had no discretion to refuse the license, a mandamus shall not issue in the present case on account of the delay

¹ I. L. R. 26 Bom. 396.

of the appellant in seeking the remedy, and because the application for the writ is not *bona fide*.

I see no sufficient reason for refusing the issue of the writ on either of these grounds. Although the application for the renewal of the license for the year 1917 was first applied for and refused early in the year, the applicant has continued to use the premises up to the present time, and under these circumstances his delay in not moving for a mandamus until he was compelled to do so by the threat of a prosecution does not appear to me by any means to show that the license is not really desired, and the application now made is not made *bona fide* for the purpose of obtaining it.

Although the suspicions of the Chairman that Charles Mendis has an interest, and perhaps even the principal interest, in the business appear to be based on very good grounds, the applicant has clearly some interest in the business carried on at the premises, and I cannot say that the application for a mandamus is not made by the applicant *bona fide* on his own behalf, but is on behalf of a third party. The cases of *R. v. Peterborough Corporation*,¹ *Liverpool, Manchester and Newcastle-upon-Tyne Railway Company*, and *R. v. Wimbledon Urban District Council*² cited in *Halsbury's Laws of England*, vol. X., p. 100, showing that an application for a mandamus will not be granted unless it is shown that the applicant is himself interested in the performance of the duty sought to be enforced, and that he makes the application in good faith and not for an indirect purpose, were decided on very different states of fact to the present case. In the first of these cases the applicant sought to mandamus a Municipal Corporation on account of a slip made during the proceedings at a meeting, and he purported to be moving in the interests of the burgesses. The person who made the affidavit in support of the rule was not even present at the meeting, and the Court was not satisfied that he made the application in the interests of the burgesses at all. In the second, an application was made to mandamus a company by a person who had merely acquired a few shares for the purpose of the application, and with no intention of becoming a *bona fide* shareholder in the company at all. In the third, the application of a ratepayer to mandamus a burial board was refused on the ground that the applicant did not really himself desire to inspect the books at all, but was applying to enable a firm of solicitors to inspect the books on behalf of a third party for an ulterior motive. None of these cases have any application to a case like the present, where the applicant has some interest in a personal right sought to be enforced by him.

The rule for the mandamus sought must be made absolute, and the petitioner is entitled to an order for his costs.

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