

1949

Present : Wijewardene C.J.

DON CAROLIS, Petitioner, and CHAIRMAN, U. C.,  
GAMPAHA, Respondent

S. C. 267—IN THE MATTER OF AN APPLICATION FOR A WRIT OF  
MANDAMUS ON THE CHAIRMAN, GAMPAHA URBAN COUNCIL.

*Writ of mandamus—Application for butcher's licence—Proper remedy when application is refused—Butchers (Amendment) Ordinance, No. 44 of 1917, Section 7.*

Where an application for a licence under the Butchers Ordinance is refused the proper remedy for the applicant is to appeal to the Minister under Section 7, even though no objection had been taken by any person to the issue of the licence to the applicant.

THIS was an application for a writ of *mandamus* directing the Chairman of the Urban Council, Gampaha, to issue to the petitioner a butcher's licence.

*Frederick W. Obeyesekere*, for the petitioner.

*S. W. Jayasuriya*, for the respondent.

*Cur. adv. vult.*

November 3, 1949. WIJEYWARDENE C.J.—

This is a petition for a writ of Mandamus on the Chairman of the Urban Council, Gampaha. The petitioner states in his petition—

- (a) that he applied to the respondent for a licence for 1949 under the Butchers Ordinance ;
- (b) that the respondent refused unlawfully to issue " a General Licence for Butchers for 1949 to the petitioner which will enable beef to be sold " ;
- (c) the respondent issued " a pretended General Licence for Butchers . . . . confining the licence to pigs and excluding cattle " .

The petitioner asks for a writ of Mandamus directing the respondent " to issue to the petitioner a lawful General Licence for Butchers in place of the pretended licence . . . . confining sales to pork " .

This petition does not set out the facts correctly. The petitioner made two applications to the respondent one for " a pork stall " and the other, later, for " a beef stall " . The respondent issued him a licence on the first application but refused a licence on the second application. The application for a writ of Mandamus is now made as the petitioner feels, in fact, aggrieved by the refusal of the respondent to issue a licence on his application for a beef stall.

Now, the Butchers Ordinance, No. 9 of 1893, has been amended by Ordinance No. 44 of 1947. Section 7 of the old Ordinance has been repealed and in its place we get a new Section 7 and two additional Sections 7A and 7B. The procedure according to the new Section 7 is as follows :—

- (i) an applicant for a licence has to make his application in writing to the lawful authority and
- (ii) the lawful authority has to publish a notice in the *Gazette* calling upon any person residing within his area, who desires to object to the issue of the licence, to forward to him in duplicate a written statement of the grounds of the objection within a specified time ;
- (iii) on receipt of any such objection the proper authority shall forward a copy of the written objection to the applicant.

The subsequent procedure is set out in Sections 7 (3) (b) and 7 (4).

*Section 7 (3) (b)* :—“ The proper authority shall, after giving the applicant, and each person by whom a statement of objections is furnished (hereinafter referred to as an “ objector ”), an opportunity of being heard, make order allowing or disallowing the application. The order shall contain a statement of the grounds upon which it is made and the proper authority shall cause a copy thereof to be served on the applicant and each objector ”.

*Section 7 (4)* :—“ Any applicant for a licence or any objector to the issue of such licence, if he is aggrieved by the order of the proper authority, may, within ten days from the date of the service on him of the order, appeal against the order to the Minister in the manner set out in Section 7B ”.

In this case there is no evidence that anyone has forwarded any written objections to the issue of a licence. But even where there are no such objections, it is under Section 7 (3) (b) that the proper authority would make his order regarding the issue of a licence. If an applicant is aggrieved by the order so made he must then proceed under Section 7 (4) and appeal against the order to the Minister in the manner set out in Section 7B. That section makes the Minister's decision final and conclusive and enacts that “ it shall not be subject to question or revision in any Court of Law ”.

I may state that there is no question here as to “ the lawful authority ” or the Minister exceeding the powers given to them by the Ordinance. It is merely a case of the petitioner not following the procedure laid down in the Ordinance.

I refuse the application with costs.