

1943

Present : Wijeyewardene J.

NOORDEN v. CHAIRMAN, Village Committee, Godapitiya.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Mandamus*.

Writ of mandamus—Application for a butcher's licence—Refusal by proper authority—Grounds not just and reasonable—Butcher's Ordinance (Cap. 201) s. 7.

Where a person who was carrying on the trade of a butcher applied for the renewal of his licence, and the proper authority refused his application on the ground that he must first purchase his right to obtain a licence,—

Held, that the applicant was entitled to a licence as the grounds upon which his application was refused by the proper authority, were not just and reasonable.

THIS was an application for a writ of *mandamus*.

A. Seyad Ahamed, for petitioner.

E. B. Wickremanayake (with him H. Wanigatunge), for respondent.

Cur. adv. vult.

May 28, 1943. WIJEYEWARDENE J.—

This is an application for the issue of a writ of *mandamus* to the respondent directing him to grant a butcher's licence to the petitioner.

The petitioner carried on the trade of a butcher at Godapitiya in 1941 and 1942 on licences issued by the Assistant Government Agent, Matara, who was then the "proper authority" under the Butchers' Ordinance. The respondent was duly appointed in writing by the Assistant Government Agent under section 3 of that Ordinance as the "proper authority" for 1943 for the village area of Godapitiya. When the petitioner applied to the respondent for his licence for 1943, the respondent wrote to him on November 11, 1942, as follows:—

"The committee (*i.e.*, the Village Committee) has decided to open two meat stalls at Godapitiya and to sell them by public auction for next year. Two licences to slaughter cattle will be issued to these persons who purchase the meat stalls at the auction. The renewal of your licence will be considered after the day of auction."

It was further stated by the petitioner in his affidavit—

- (a) that no meat stalls were established by the Village Committee as undertaken in the respondent's letter.
- (b) that the respondent sold, in fact, what "he called the right to obtain a licence" to one Haniffa for Rs. 200 and then issued licences to Haniffa.
- (c) that the petitioner's application for a licence was refused on the ground that "he did not buy the right to obtain a licence".

Showing cause against the *order nisi* served on him, the respondent filed an affidavit which was extremely vague and inconclusive in its character. On my directing him to file a further affidavit setting out definitely his position with regard to the various material allegations

made in the petitioner's affidavit, the respondent submitted a second affidavit. In that affidavit the respondent has attempted to justify his action by reference to a resolution passed by the Village Committee to establish two meat stalls at Godapitiya to be sold "by public auction by means of tender" and to issue the butcher's licences only to the "purchasers" of the meat stalls so established. He has, however, admitted that no meat stall have, in fact, been established by the Village Committee at Godapitiya and has not denied that Haniffa to whom the licences were issued had paid Rs. 200 in "purchasing" the non-existent meat stalls in order to qualify himself as an applicant for the licences. The respondent has also sought to justify the refusal of a licence to the petitioner on the ground that "the needs of the inhabitants of the village were sufficiently served" by the issue of licences to Haniffa.

One fact emerges clearly from these affidavits and it is that the respondent purporting to act on a resolution passed by the Village Committee refused to issue a butcher's licence to the petitioner as he did not purchase at a "public auction by tender" what has been termed "a right to obtain a licence".

Now section 4 of the Butchers' Ordinance requires every person carrying on the trade of a butcher to obtain an annual licence and section 9 fixes the fee for the licence at Rs. 5. Section 6 lays down that every such applicant for a licence should enter into a bond in the Form B in the Schedule to the Ordinance. That form shows that the conditions to be inserted in the bond should be "in accordance and conformity with the enactment and provisions of the (Butchers') Ordinance and of the by-laws made thereunder". The Ordinance proceeds to enact in section 7 that "it shall be lawful for the proper authority, in the exercise of his discretion, upon just and reasonable grounds, to refuse to issue an annual licence".

The petitioner was carrying on a legitimate trade as a butcher from 1941. In the words of Lord Lindley in *Quinn v. Leatham*¹ "he was at liberty to earn his own living in his own way, provided he did not violate some special law prohibiting him from so doing, and provided he did not infringe the rights of other people". The only way in which this right of the petitioner has been curtailed by statute is by requiring him to obtain a butcher's licence, subject to the conditions referred to in section 6 of the Butchers' Ordinance. The provisions of that Ordinance indicate that the Legislature recognized the right of a person to carry on the trade of a butcher but sought to control and regulate the trade by making it obligatory for a butcher to obtain a licence. The Ordinance sought to regulate the trade further by empowering the proper authority to refuse or withdraw a licence. It is, no doubt, true that section 7 vests the proper authority with a discretion in refusing or withdrawing a licence but that discretion has to be exercised on just and reasonable grounds. The conditions imposed by the respondent were not conditions "in accordance and conformity with" the Ordinance or the by-laws made under it. The condition that an applicant for a licence should first purchase "the right to obtain a licence" is a distinct negation of the basic principle of an Ordinance which recognizes a right in every person to

¹ (1901) A.C. 495 at 534.

apply for a licence. This Court will grant a *mandamus* even in the case of a tribunal in which is vested a discretion of a judicial nature, if it lays down and acts on arbitrary and unjust rules regulating the exercise of its discretion.

The resolution passed by the Village Committee is of no legal effect. The Village Communities Ordinance gives a village committee power to make rules but such rules do not become valid and effectual until they have been approved by the Governor and published in the *Gazette*. The Counsel for the respondent admitted that there were no relevant rules on the subject of meat stalls made under the Village Communities Ordinance for the village area of Godapitiya.

There is no merit whatever in the reason urged in the affidavit that there was no necessity for a licence to the petitioner as "the needs of the inhabitants of Godapitiya are sufficiently served" by Haniffa. (Vide *Rustom Jamshad Irani v. Hartley Kennedy*).

The rule for the *mandamus* asked for is made absolute and the petitioner is granted the costs of these proceedings.

Rule made absolute.
