

MUDIYANSE

v.

CHRISTIE SILVA, GOVERNMENT AGENT, HAMBANTOTA

SUPREME COURT.

RANASINGHE, J., ATUKORALE, J. AND L. H. DE ALWIS, J.

S.C. APPEAL No. 37/84.

C.A. APPLICATION No. 275/81.

MAY 16, 1985.

Writ of Certiorari - Suspension of liquor licence - Section 28A (1) of the Excise Ordinance as amended by Excise (Amendment) Law No. 24 of 1977 - Proper party to be sued.

The appellant had been the holder of an excise licence for the sale of foreign liquor at his cinema, renewed annually from 1976. When he sought renewal of the licence for 1981 the appellant was informed that there was a directive from the Ministry (of Finance) to suspend the licence and therefore his licence fee could not be accepted. The appellant then made representations to the Minister of Finance but the Excise Commissioner instructed the Government Agent (respondent) to cancel the licence with immediate effect as the Minister of Finance had so directed and to report the same to the Ministry of Finance. The appellant alleging arbitrariness, capriciousness and mala fides on the part of the respondent in that he had been influenced by extraneous and irrelevant considerations, and violation of natural justice sought to quash the respondent's decision by certiorari. The Court of Appeal however held that the application could not be maintained without joining the Minister of Finance.

Held--

Section 28A (1) of the Excise Ordinance as amended by Excise (Amendment) Law No. 24 of 1977 clearly empowers the Minister of Finance to direct the authority granting a licence to, inter alia, cancel a licence and such authority is obliged to give effect to such a direction. The respondent's refusal to renew the licence for the year 1981 was not one made by him on his own volition in the exercise or purported exercise of the powers vested in him but one made in pursuance of the direction given by the Minister of Finance. Hence this application for a writ of certiorari should have been made against the Minister and not against the respondent.

APPEAL from order of Court of Appeal.

H. L. de Silva, P.C. with *D. S. Wijesinghe* for the appellant.

Douglas Premaratne, D.S.G. with *L. M. Wijesundera, S.C.* and *Mrs. S. Samararatne* State Attorney for respondent.

Cur. adv. vult.

April 2, 1985.

ATUKORALE, J.

The appellant filed this application in the Court of Appeal seeking an order in the nature of a writ of certiorari to quash the decision of the respondent, the Government Agent of Hambantota, refusing to grant him a renewal of the excise licence for the sale of foreign liquor at the premises called Saliya Cinema, Ambalantota. He also asked for a writ of mandamus directing the respondent to grant a renewal of the said licence. The renewal sought for by the appellant was for the year 1981.

The facts established that the appellant was the proprietor of the Cinema ; that from 1976 he had been the holder of the said licence, P.1 being the licence for the year ending 31.12.1980 ; that on 29.12.1980 when the appellant went to the office of the respondent to ascertain the licence fee for the year 1981, he was informed by the officer in charge of the licence branch that there was a directive from the 'Ministry' to suspend the licence and that a decision would be reached after a discussion with the respondent - vide P4 ; that on the following day (30.12.1980) the appellant again went to the office of the respondent and made a written request that the licence fee be accepted, to which the respondent replied by P5 of the same date stating that on the advice of the District Minister of Hambantota the issue of the licence to the respondent had been suspended and that the fee could not be accepted. The appellant then by P6 of 06.01.1981 made representations to the Minister of Finance and requested him to give instructions for the issue of the licence. On the same date the Excise Commissioner by P7 wrote to the respondent (with a copy to the appellant) directing the respondent to cancel the licence with immediate effect and to report the same to the Secretary of the Ministry of Finance. P7 refers to the direction made by the Minister of Finance to cancel the appellant's licence with immediate effect and contained in letter R3 of 01.01.1981 by which the Secretary, Ministry of Finance, communicated the Minister's direction to the Excise Commissioner. The appellant in his application averred that the decision of the respondent not to accept the licence fee for the year 1981 and not to renew the licence was null and void for the reasons, inter alia, that the respondent acted mala fide in that he was influenced by extraneous and irrelevant considerations ; that the respondent acted arbitrarily and capriciously in 'suspending' and later

'cancelling' the licence and that the respondent acted in violation of the principles of natural justice in not giving the appellant an opportunity of being heard prior to taking a decision. The appellant thus sought to quash the respondent's decision not to renew the licence.

The respondent in his affidavit of objections whilst admitting that the Excise Commissioner by P7 directed him to forthwith cancel the appellant's licence stated that the decision not to renew was made consequent to and upon a direction issued by the Minister of Finance in terms of the provisions of the Excise Ordinance (Chap. 52, L.E.). In support of this position he produced as R3 the copy received by him of the letter dated 1.1.1981 sent by the Secretary, Ministry of Finance, to the Excise Commissioner embodying the Minister's direction. The respondent also produced as R1 a letter dated 29.12.1980 sent by him to the Assistant Excise Commissioner by which he informed the Assistant Commissioner that the District Minister of Hambantota had advised him that the Minister of Finance had ordered that the issue of the licence for 1981 be suspended and that accordingly he has suspended the same until he receives further orders from the Assistant Commissioner.

The Court of Appeal reached the finding that the decision of the respondent not to renew the licence for the year 1981 was referable solely to the directive in P7 given by the Minister of Finance through the Excise Commissioner to the respondent to cancel the licence. On this basis the court held that the appellant could not maintain this application without joining the Minister of Finance as a party respondent. This is the main ground upon which the Court of Appeal dismissed the application. The short point that arises for our consideration is whether the court was right in rejecting the application on this ground.

The Excise (Amendment) Law, No. 14 of 1977, introduced a new section as s. 28A to the Excise Ordinance (Chap. 52). Subsection (1) of this section reads as follows :-

- (1) Notwithstanding anything in this Ordinance, if, upon representation made or otherwise, the Minister considers it necessary to do so, he may, without assigning any reason therefor, direct the authority granting a licence, to grant a licence, or to renew or cancel a licence, and such authority shall give effect to such direction."

This subsection clearly empowers the Minister of Finance to direct the authority granting a licence (in this case the respondent) to, inter alia, cancel a licence and such authority is obliged to give effect to such a direction. On a careful perusal of documents P4, P7, R1 and R3 it seems to me that the respondent's refusal to renew the licence for the year 1981 was not one made by him on his own volition in the exercise or purported exercise of the powers vested in him by s. 27 (1) or s. 28 (1) of the Excise Ordinance but was in pursuance of the direction given by the Minister of Finance embodied in R3 and communicated to the respondent by P7 of 6.1.1981. The fact that the appellant himself was aware that it was so is borne out by his own statement to the Police, P4 of 29.12.1980, in which he states that he was informed by the officer-in-charge of issuing licences that there was an order of the 'Ministry' to suspend the renewal of the licence. The application for a writ of certiorari should therefore, in my view, have been made not against the respondent who was merely giving effect to the Minister's direction to cancel the licence but against the Minister himself who gave the direction under s. 28A (1). For these reasons the judgment of the Court of Appeal is affirmed and the appeal is dismissed with costs fixed at Rs. 420.

RANASINGHE, J. – I agree.

L. H. DE ALWIS, J. – I agree.

Appeal dismissed.
