SUDHAKARAN
v.
BHARATHI AND OTHERS

COURT OF APPEAL.
RAMANATHAN, J. AND GOONEWARDENE, J.
JUNE 4, 5, 10, 12, 17, 18 and 19, 1987.

Writs of Certiorari and Mandamus–Application to renew liquor licences – Excise Ordinance, Section 28A(1).

The 2nd respondent refused to renew the petitioner's liquor licences influenced by the objections of the 1st Member of Parliament while the Minister (3rd respondent) made no response to the petitioner's appeal. Hence the petitioner sued for certiorari to quash the refusal of 2nd respondent to renew the licences, certiorari to quash what he claimed was a decision by the 3rd respondent to disallow his appeal and mandamus to compel the Government Agent to grant the renewal. The petitioner founded his application on the basis that he had a legitimate expectation to have the licences renewed. At the argument it was contended that the legitimate expectation was also to a fair hearing.

Held–

The grounds of judicial review can be classified under three heads:

1. Illegality
2. Irrationality
3. Procedural impropriety

The decision not to renew these licences, being not one enforceable in private law, and the petitioner's case being that he was deprived of a legitimate expectation of a renewal he can rely only on the ground of procedural impropriety.

The petitioner's case being based upon legitimate expectation, when the 2nd respondent considered the question of renewal of the licences for 1987 he was entitled to give effect to current policy embodied in a circular and be influenced by the objections of the 1st Member of Parliament. The Court is not entitled to examine the reasons for withholding of consent by the Member of Parliament and their validity.

While legitimate expectation gives an applicant locus standi to ask for judicial review it differs from wrongful or *ultra vires* action. It is wrongful or *ultra vires* action which justifies the granting of judicial review and that too only if all the circumstances point to an exercise of the Court's discretion that way. Even assuming there was legitimate expectation, the 2nd respondent in refusing the renewal of the licences, influenced by the objections of the 1st Member of Parliament which he considered relevant, has not acted wrongfully or *ultra vires* so as to justify the exercise of judicial review by the court.

The question whether certiorari will lie against the 3rd respondent may have become relevant if there had been some action by the 3rd respondent. The mere silence of the 3rd respondent does not constitute a disallowing of the appeal so as to be amenable to certiorari.

Cases referred to:

(1) *Dayaratne v. G. A. Kegalle–S.C. Application No. 92477: SC Minutes of 28.11.1978.*

(2) *McInnes v. Onslow Fane–[1978] 3 All ER 211.*

(3) *The Council of Civil Service Unions v. Minister for the Civil Service–[1984] 3 All ER 935.*

(4) *A. G. of Hongkong v. Ay Yuen Shiu–[1983] 2 All ER 346.*

(5) *Schmidt v. Home Secretary–[1969] 1 All ER 904, 909: 1969 2 Ch. 149, 170.*

(6) *Ridge v. Baldwin–[1963] 2 All ER 66.*

(7) *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation–[1947] 2 All ER 680; [1948] 1 KB 223.*

(8) *O'Reilly v. Mackman–[1983] 2 AC 237.*

(9) *Findley v. Secretary of State for the Home Department –[1984] 3 All ER 801.*

(10) *R. v. Northumberland Compensation Appeals Tribunal ex p. Shaw–[1952] 1 All ER 122, 127.*

(11) *Chief Constable of North Wales Police v. Evans –[1982] 2 All ER 141, 154.*

APPLICATION for writs of Certiorari and Mandamus

E. D. Wickremanayake for petitioner.

Shibly Aziz DSG with *Parakrama Karunaratne S.C.* for respondent.

Cur. adv. vult.

September 10, 1987.

JUDGMENT OF THE COURT

In this application the petitioner seeks judicial review by way of orders of Certiorari directed against the Government Agent of Kandy the 2nd respondent and the Minister of Finance the 3rd respondent with respect to certain decisions said to have been made by them. He also seeks an order of Mandamus directed against the former.

In December 1985 the petitioner applied to the then Government Agent, Kandy (the predecessor in office of the present 2nd respondent) for licences to sell liquor at premises No. 60, Ranawana

Road, Katugastota situated within the administrative district of Kandy. The Government Agent referred this application for report to, inter alia, the Assistant Government Agent of the area who made a favourable recommendation (P1). The applicant on being found to satisfy the requirements for the issue of such licences as contained in the relevant cabinet decision embodied in the circular dated 15th October 1985 (P3), the 1st respondent the Excise Commissioner by letter dated 20th December 1985 (P2) notified the Government Agent of his lack of objection to the application. The 2nd member of Parliament for the relevant electorate (this being a multi member constituency) by a letter dated 10th December 1985 also made a favourable recommendation, a requirement of circular P3.

Consequently, the Government Agent issued to the petitioner simultaneously on 24th December 1985 four licences (P5, P5A, P6 and P6A). P5 authorised the sale at these premises of foreign liquor (including locally made malt liquor) and P5A authorised the sale at the same premises of bottled toddy, both kinds not to be consumed on the premises and both licences valid up to 31st December, 1985. P6 and P6A were two similar licences valid for the entirety of the year 1976.

Thereafter, it is the case of the *petitioner that he commenced and* continued the business of selling liquor under these licences in accordance with the terms of their issue and without fault and for the purpose of procuring stocks and purchasing these premises obtained a loan of Rs. 750,000 expecting to repay the same out of the income generated from the business.

On 22nd October 1986 the 2nd respondent sent to the petitioner a letter (P7) (routinely sent out to all licencees according to the affidavit of the 2nd respondent) calling upon him to make certain stated payments for the issue of similar licences for the year 1987 by which time circular No. 221 dated 14th February 1986 (P8) had come into operation and whose terms suspended the terms of the earlier circular P3. The change that had been effected by it, so far as is relevant here and with respect to multi member constituencies, was that all the members of Parliament had to be "consulted" which in the context in which such word is used in P8 had to mean that these licencees had to be issued with their "concurrence", as is the word used with respect to single member constituencies.

The petitioner contends that he went to the Kandy Kachcheri to make the payments due for the issue of the licences for the year 1987 when he was informed (apparently by the accountant of the 2nd respondent according to the latter's affidavit) that such licences could not, on the directions of the 2nd respondent, be issued as the first Member of Parliament for this electorate had objected; that when he the petitioner pointed out that the 2nd Member for the electorate had recommended their issue he was told in response that in terms of circular P8 in the case of Multi Member constituencies both members had to consent and that therefore they could not be issued but that when he requested that such decision be communicated to him in writing, that was refused. He contends that he then appealed against such refusal to the 3rd respondent the Minister by letter dated 3rd January 1987(P9) but that he received neither response nor acknowledgement.

The petitioner's case, as presented upon his papers filed in this Court, is that having spent a large sum of money in respect of this business, involving repayment of monthly instalments of a loan taken for the purpose, and having carried it on in accordance with the law and other administrative requirements without any complaint from the relevant authority, he had a "reasonable expectation" of having the licences renewed for the year 1987. He complains that the refusal to renew these licences is unreasonable, contrary to law and ultra vires the scope of the policy of the Excise Ordinance and amounts to denying him his livelihood. It is to be observed however that there is no precise complaint in those terms by the petitioner in his papers, that he was not given an opportunity of being heard before the decision, not to renew these licences, was made. While asking therefore for an order of certiorari to quash the alleged refusal by the 2nd respondent the Government Agent to renew these licences, upon the basis that the latter was in breach of his legal duty the petitioner asks for mandamus to compel such renewal. He also asks for certiorari to quash, what he terms, the decision of the 3rd respondent the Minister to disallow his appeal.

To advert first to the order asked for on the Minister the 3rd respondent, we do not think that his mere silence constituted in the circumstances of this case a disallowing of any appeal by the petitioner, in the manner contended so as to be amenable to certiorari and such order in our view must be refused. The question whether

certiorari would lie may have become relevant if there had been some action taken by the Minister, in the manner set out therein, under section 28A(1) of the Excise Ordinance which was introduced by Amending Act, No. 14 of 1977 (see in this connection the judgment of this Court in *Dayaratne v. G. A. Kegalle* (1) S.C. Application No. 924/77 decided on 28.11.1978 to which we had occasion to call the attention of Counsel at the hearing before us). For completeness that section is reproduced here:

> "28A(1) Notwithstanding anything in the Ordinance if, upon representations or otherwise the Minister considers it necessary to do so, he may, without assigning 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."

We do not think it becomes necessary to dwell any further with any degree of particularity upon the relief sought against the Minister.

The affidavits filed by and on behalf of the respondents together with their annexures, demonstrate that the objections of the 1st Member of Parliament for this electorate were not made mala fide (nor was it suggested differently), but that he was impelled by several representations made, to take the stand he did. There was, we think, clear reason for him to believe that the religious susceptibilities of various persons and organisations in the electorate were disturbed by the location of this tavern in this place although in point of actual fact the contention of the petitioner could well be correct that with reference to the time the licences were first issued, there had occurred no change with respect to the distance of this tavern from schools and places of religious worship (properly so called) such as would have had the effect of offending against the requirements of the relevant circulars. Of importance to note though is that, the concurrence of the 1st Member of Parliament was a requirement for the issue of a new licence in terms of the current circular (P8), such new requirement as will appear later being in our view a matter of executive policy and therefore not properly a subject for judicial review. The thinking of the Government Agent the 2nd respondent that this was something he should take account of even in the case of renewal, is we think not such as would enable us to describe such thinking or the subsequent decision based thereon as unreasonable (That his decision was in actual fact not to renew such licences, and

that it was based solely upon the objections of the 1st Member of Parliament, we have no doubt and this is made clear by his own affidavit at paragraph 18(1)(*h*)).

Counsel for the petitioner, in his opening argument at the hearing before us, rested his case on the basis that it was governed by the principles enunciated by Megarry V.C. in the case of *McInnes v. Onslow Fane* (2). The Vice Chancellor there dealt with three situations that arise in licencing cases which were what he called, application cases, forfeiture cases and expectation cases. He said (at page 218) "First, there are what may be called the forfeiture cases. In these, there is a decision which takes away some existing rights or position, as when a member of an organization is expelled or a licence is revoked. Second, at the other extreme there are what may be called the application cases. These are cases where the decision merely refuses to grant the applicant the right or position that he seeks, such as membership of the organization or a licence to do certain acts. Third, there is an intermediate category which may be called the expectation cases, which differ from the application cases only in that the applicant has some legitimate expectation from what has already happened that his application will be granted. This head includes cases where an existing licence holder applies for renewal of his licence, or a person already elected or appointed to some position seeks confirmation from some confirming authority. . . . . .

The intermediate category, that of the expectation cases, may at least in some respects be regarded as being more akin to the forfeiture cases than the application cases; for although in form there is no forfeiture but merely an attempt at acquisition that fails, the legitimate expectation of a renewal of the licence or confirmation of the membership is one which raises the question of what it is that has happened to make the applicant unsuitable for the membership or licence for which he was previously thought suitable".

A possible answer to this question as to what it is that happened to make the applicant unsuitable for the licences for which he was previously thought suitable is, as we have already suggested, that the circular P8 which came into operation as a statement of policy after the issue of the earlier licences, stipulated the requirement although with respect to new licences, that the concurrence of all members in the case of multi member constituencies was needed. The withholding of such concurrence by one member in response to public

pressure, based upon grounds linked to religion and religious susceptibilities (even if the location of the premises was beyond the distance specified from schools and places of religious worship) could well be considered the new factor which caused the 2nd respondent to refuse the renewal. As pointed out already the petitioner's papers do not complain of his not having been given an opportunity of being heard by the Government Agent before the refusal of renewal. Yet, that was relied upon in the opening argument of his Counsel. With regard to this, we think there was nothing that the petitioner could place before the Government Agent in an effort to change his mind when the ground of refusal was that the 1st member of Parliament for whatever reason was withholding his consent. Any attempt at persuading anyone to the contrary, if the opportunity was made available, should have been directed to persuading the 1st Member of Parliament whose opposition to the renewal played the dominant role in impelling the Government Agent to refuse renewal.

The problem however does not end there having regard to the turn the arguments took at a subsequent stage. When the Deputy Solicitor-General Mr. Aziz was being heard in argument against the submissions of Mr. Wickremanayake Counsel for the petitioner, in view of the very strong reliance placed on behalf of the petitioner upon "legitimate expectation" particularly with reference to the principles in the case of *McInnes v. Onslow Fane* (supra), we invited argument in the context of the decision of the House of Lords in the case of *The Council of Civil Service Unions v. Minister for the Civil Service*(3) (hereinafter for convenience referred to as the *Civil Service case*) which is considered to be expositive of the developed law in England in this regard up to the present, as the subsequent cases show.

Mr. Aziz adopted the reasoning contained in the speeches there as supporting altogether his position that the petitioner's claim must fail. Mr. Wickremanayake then in reply took a position which in our view was not the one he took during his opening argument. Indeed, we think it would not be inaccurate to say that the two positions appear in certain respects, not to be altogether compatible with one another. His later contention was to the following effect. The Government Agent has a discretion with respect to application cases where new licences are applied for, whether or not they should issue, and in exercising that discretion would take account of the need by an applicant for a licence to satisfy certain stated requirements which would include

those demanded by policy considerations. The Excise Ordinance also in certain designated areas gives a discretion to the Government Agent with respect to forfeiture cases (for example under section 56). With respect to renewal cases, Counsel argued, there was no discretion left in the Government Agent at all and, as of necessity, he had to grant such renewal. He contended that if any renewal was to be withheld, that had to be done as a result of a local option poll held in accordance with Regulations framed under the Ordinance (as contained in Volume I of the Subsidiary Legislation). Apart from that, in his argument, the only instance where a discretion is made available, whether to renew a licence or not, is that given by section 28A (1) of the Excise Ordinance, and that to the Minister and not to the Government Agent. In the result, he claimed, it was mandatory for the Government Agent to have renewed these licences in the performance of his public duty so to do, and on failure thereof was liable by mandamus to be compelled to make such renewal.

In the result we find ourselves mystified as to whether it is the case of the petitioner that the orders asked for lie because of a failure on the part of the 2nd respondent the Government Agent to act in conformity with his (the petitioner's) legitimate expectations or on the other hand these orders would lie on account of the Government Agent's failure to correctly understand the applicable law and give effect to it; two positions we think are, in the circumstances of this case, somewhat discordant with one another, as we will endeavour to show at a later stage.

Mr. Wickremanayake also contended that the petitioner's interests in these licences were interests in property as was held in *Dayaratne v. G. A. Kegalle* (supra) and thus renewal could not be withheld without giving him an opportunity of being heard. Indeed, in that case which dealt with a direction made by the Minister under section 28A (1) of the Excise Ordinance to cancel an existing licence, Vaithialingam J., held that the licencee enjoyed was not a mere privilege but a "vested right in property". However this last contention of Counsel based upon a duty to give a hearing is one, we think, not altogether necessary for his argument that it was the duty of the Government Agent as a matter of compulsion to renew these licences. If that argument be correct and there was this statutory duty imposed upon the Government Agent, the question of granting the petitioner an opportunity to be heard before making a decision to the contrary has no significance.

Whether an opportunity was so provided or not, and if the former, what the petitioner did say or even if he said nothing, there had to be one result, namely, that the licences had to be renewed with the Government Agent having no choice in the matter.

Counsel's argument that the discretion was vested in the Minister and not in the Government Agent, in the case of renewal, is one we however find we cannot accept. If that argument be correct, then, prior to section 28A(1) being introduced into the Excise Ordinance by way of amendment in 1977 (granting to the Minister the authority to make directions under its provisions) there would have been no discretion available either to the Minister or to the Government Agent and thus renewal of a licence had to be a continuous and automatic process, a situation we think was never in the contemplation of the legislature having regard to the provisions of the Excise Ordinance and the nature of the legislation dealt with therein. Counsel's submission with respect to local option polls too, we think, is similarly untenable. Upon an examination of the Regulations framed in this regard we have to come to the conclusion that they deal with taverns and other premises licenced to sell liquor for consumption on the premises themselves and therefore have no application to the instant case. Even if they do have application, we do not think that that would affect the result of this application.

Getting back to the ground upon which judicial review is sought, the petitioner relies upon what he, in his papers, has termed "reasonable expectation", as we referred to earlier. The expression "reasonable expectation" is now we think understood to mean the same as "legitimate expectation". In the *Civil Service Case (supra)* Lord Diplock (at page 949) said–

> "I prefer to continue to call the kind of expectation that qualifies a decision for inclusion (among those susceptible to judicial review) . . . . . a 'legitimate expectation' rather than a 'reasonable expectation' in order thereby to indicate that it has consequences to which effect will be given in public law, whereas an expectation or hope that some benefit or advantage would continue to be enjoyed, although it might well be entertained by a 'reasonable' man would not necessarily have such consequences".

In the same case Lord Fraser who gave the leading speech said (at page 944)–

"I agree with Lord Diplock's view expressed in his speech in this appeal that 'legitimate' is to be preferred to 'reasonable' in this context. I was responsible for using the word 'reasonable' for the reason explained in *Ng Yuen Shiu* (4) but it was intended only to be exegetical of 'legitimate'".

In the same case Lord Roskill said (at page 954)–

"The introduction of the phrase 'reasonable expectation' into this branch of our administrative law appears to owe its origin to Lord Denning M.R. in *Schmidt v. Secretary of State for Home Affairs* (5) (where he used the phrase 'legitimate expectation'). Its judicial evolution is traced in the opinion of the Judicial Committee delivered by Lord Fraser in *A.G. of Hong Kong v. Ng Yuen Shiu* (supra)..... .... Though the two phrases can, I think, now safely be treated as synonymous for the reason there given by my noble and learned friend, I prefer the use of the adjective 'legitimate' in this context and use it in this speech even though in argument it was the adjective 'reasonable' which was generally used. The principle may now be said to be firmly enshrined in this branch of the law. As the cases show, the principle is closely connected with a 'right to be heard'. Such an expectation may take many forms. One may be an expectation of prior consultation. Another may be an expectation of being allowed time to make representations. . . . . ".

In *Schmidt v. Secretary of State for Home Affairs* (supra) (at page 909) Lord Denning said–

"The speeches in *Ridge v. Baldwin* (6) show that an administrative body may, in a proper case, be bound to give a person who is affected by their decision an opportunity of making representations. It all depends on whether he has some right or interest or, I would add, some legitimate expectation of which it would not be fair to deprive him without hearing what he has to say".

In *Attorney-General of Hongkong v. Ng Yuen Shiu* (supra) in the Privy Counsel Lord Fraser said (at page 350)–

"The narrower proposition for which the respondent contended was that a person is entitled to a fair hearing before a decision adversely affecting his interest is made by a public official or body, if he has a 'legitimate expectation' of being accorded such a hearing".

The authorities do not make altogether clear as one sees from the citations, as to what this expectation refers (whether one calls it 'reasonable' as the petitioner has in his papers or 'legitimate' as is the word used by Megarry V.C. in *McInnes v. Onslow Fane* (supra)) that is to say, whether such expectation is on the one hand, of a hearing before the making of the decision or perhaps to put the same thing somewhat differently that official powers shall not be used arbitrarily, or, on the other hand, whether such expectation is that the benefit sought (in the instant case the renewal of the licences for the year 1987) would be granted.

The *Civil Service case* (supra) itself provides examples of the two ways in which this expression has been used. Lord Fraser who in the earlier case of *A.G. of Hong Kong v. Ng Yuen Shiu* (supra) appears to have used it with reference to the right to be heard, himself in the *Civil Service Case* (supra) used it with reference to the benefit sought thus (at page 943)

> "But even where a person claiming some benefit or privilege has no legal right to it as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and if so, the Court will protect his expectation by judicial review as a matter of public law".

(Parenthetically, Lord Fraser extends protection even to a 'privilege', which in the submission of Mr. Aziz was the nature of the entitlement that the petitioner had with respect to these licences). Lord Diplock in this regard said in the same case (at page 952)

> "Prima facie, therefore, Civil Servants employed at G.C.H.Q. who were members of National Trade Unions have.....a legitimate expectation that they would continue to enjoy the benefit of such membership....."

This citation suggests that he used this expression with reference to the benefit sought, but he continued (also at page 952) thus:

> "So.....they (the applicants for judicial review) were entitled as a matter of public law under the head of 'procedural propriety' before administrative action was taken on a decision to withdraw that benefit to have communicated to the national trade unions by which they had theretofore been represented, the reason for such withdrawal and for such unions to be given an opportunity to comment on it".

This last passage is perhaps a pointer to a correct approach to this apparent confusion, and interestingly in this connection Professor H. W. R. Wade in his work "Administrative Law" 5th Edition (at page 465) says "There is some ambiguity in the dicta about legitimate expectation, which may apparently mean either expectation of a fair hearing or expectation of a licence or other benefit which is being sought. But the result is the same in either case; absence of legitimate expectation will absolve the public authority from affording a hearing".

To repeat, the petitioner upon his papers contends that his legitimate expectation was to have his licences renewed. His Counsel at the hearing in opening argument appeared to contend that the legitimate expectation was also to a fair hearing. But if the result be the same, as Professor Wade says, then it is important to note that whatever position is relied on, the petitioner, if he became entitled as a matter of public law to be heard before a decision was taken against him, that requirement of a hearing was one falling under the head of "procedural propriety", the significance of which will appear presently.

Lord Diplock in the *Civil Service Case* (supra) (at page 950 and 951) said "judicial review has I think developed to a stage today when.....one can conveniently classify under three heads; the ground on which administrative action is subject to control by judicial review. The first ground I would call 'illegality'. The second 'irrationality' and the third 'procedural impropriety'.....

By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and give effect to it.....

By 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness' (see *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation*(7)). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it....."

I have described the third head as 'procedural impropriety' rather than failure to observe the basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this

head covers also the failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice.....As respects, 'procedural propriety', I see no reason why it should not be a ground for judicial review of a decision made under powers of which the ultimate source is the prerogative (implying in this context that a decision made under powers, of which the ultimate source is a statute-and not the common law to which the lafel prerogative could perhaps be sometimes given – is also susceptible to judicial review on this ground)....Indeed, where a decision is one which does not alter rights or obligations enforceable in private law but only deprives a person of legitimate expectations, 'procedural impropriety' will normally provide the only ground on which the decision is open to judicial review.

It has by no means shown to us, nor indeed was it contended, that the refusal of renewal of a liquor licence is one enforceable in private law in the manner envisaged by Lord Diplock and we are ourselves are of the view that there is no room for thinking so.

It has by no means been shown to us, nor indeed was it contended, that the refusal of renewal of a liquor licence is one enforceable in private law in the manner envisaged by Lord Diplock and we are ourselves of the view that there is no room for thinking so.

It is illuminating then to fit the petitioner's case into the classification formulated by Lord Diplock in order to try to understand precisely what he says. The decision not to renew these licences, being one not enforceable in private law, and the petitioner's case being that he was deprived of a legitimate expectation of renewal, consistently with the thinking of Lord Diplock, 'procedural impropriety' would we think be the *only* ground on which such decision could be open to judicial review. The corollary to that is that the argument of petitioner's Counsel that the 2nd respondent was in breach of a statutory duty to renew these licences cannot succeed, inasmuch as, implicit in that argument is the premise that the 2nd respondent failed to correctly understand the applicable law which would then bring the petitioner's case under the different head of 'illegality'.

Left then with the petitioner's case based upon 'legitimate expectation', we must express our view, even if we repeat ourselves in doing so, that at the stage the 2nd respondent considered the

question of the renewal of these licences for the year 1987, he was entitled to give effect to current policy contained in the circular P8 and allow himself to be influenced by the objections of the 1st Member of Parliament for the electorate. The fact that the consensus of the Member of Parliament (or of all Members in multi-member constituencies) was an essential requirement in terms of the circular P8, notwithstanding that the other requirements set out therein may have been met, must we think involve government policy. That implies that the Member of Parliament would be entitled to express his objections for reasons other than those referred to in the circular. It would in our view then, be not within the authority granted to the Government Agent to examine or query the grounds upon which such objections are based and therefore in allowing himself to be influenced by the objections of the 1st Member of Parliament even though with respect to renewal, the Government Agent himself we think was endeavouring to give effect to current policy. Any inquiry then by us as to whether the 2nd respondent the Government Agent was justified in refusing to renew these licences would take us into an excursion to examine ourselves, the reasons for the withholding of the consent of the 1st Member of Parliament and the validity of such reasons, an exercise we do not intend to embark upon. With respect to that, we would wish to reproduce here what Lord Diplock said in the *Civil Service Case (supra)* (at page 951) with respect to policy generally, albeit in a some what different context "Such decisions will generally involve the application of government policy. The reasons for the decision maker taking one course rather than another do not normally involve questions to which, if disputed, the judicial process is adopted to provide the right answer, by which I mean that the kind or evidence that is admissible under judicial procedures and the way in which it has to be adduced tend to exclude from the attention of the Court competing policy considerations which, if the executive discretion is to be wisely exercised, need to be weighed against one another, a balancing exercise which Judges by their upbringing and experience are ill qualified to perform".

In *O'Reilly v. Mackman* (8) Lord Diplock in the House of Lords said (at page 275):

> "In public law as distinguished from private law however such legitimate expectation gave to each appellant a sufficient interest to challenge the legality of the adverse disciplinary award made against him.....".

In like manner in *Findley v. Secretary of State for the Home Department* (9) (at page 830) Lord Scarman said–

> ".....it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right, to obtain the leave of the Court to apply for judicial review".

The importance of these citations is to show that "legitimate expectation", if in point of fact found to be present, merely gives an applicant for judicial review, *locus standi* to ask for it. As a reviewer has pointed out with reference to this doctrine, it is important to remember that "legitimate expectation" is one thing and wrongful or *ultra vires* action is another. The former, as he said, merely gives a complainant, *locus standi* to seek judicial review; whereas it is the latter which justifies the granting of judicial review and then only if all the circumstances point to an exercise of the Court's discretion in that way." (see The All England Report Annual Review – 1985 – Administrative Law–at page 8).

Even assuming that there was a legitimate expectation as claimed by the petitioner, which as pointed out merely gave him *locus standi* to seek judicial review, we do not think that the 2nd respondent in refusing the renewal of these licences, influenced by the objections of the 1st Member of Parliament which he considered relevant, acted wrongfully or *ultra vires* so as to justify the exercise of judicial review by this Court.

We would also with respect to the contention of Counsel that it was mandatory for the Government Agent to renew these licences, at this point repeat what we said earlier, that we are not convinced that this is the correct position in law nor are we convinced that the 2nd respondent was in breach of any public duty to renew them. An examination of the provisions of the Excise Ordinance and the Regulations framed under it does not demonstrate that whatever discretion has been given to the Government Agent with respect to the granting of licences upon a new application has been limited or curtailed in the case of renewal, in the manner contended.

One final thing, we think, must be said. What the petitioner seeks are, certiorari to quash what he claims is a refusal of the renewal of these licences by the Government Agent, certiorari to quash what he

claims is a decision by the Minister to disallow his appeal from that decision and mandamus to compel the Government Agent to grant such renewal. In other words he asks this Court overall, to make orders particularly by asking for mandamus in the manner he has asked, to secure for him the renewal of these licences. The petitioner's claim we think is structured upon a misunderstanding of the scope of judicial review as it applies to an application of this nature.

As far back as 1952 Denning Lord Justice (as he then was) pointed out in *R. V. Northumberland Compensation Appeals Tribunal ex.p Shaw* (10) "The Kings Bench does not substitute its own views for those of the tribunal, as the Court of Appeal would do".

Lord Evershed in *Ridge v. Baldwin (supra)* (at page 91) referred to "a danger of usurpation of power on the part of the Courts.....under the pretext of having regard to the principles of natural justice". He added "I do observe again that it is not the decision as such which is liable to review; it is only the circumstances in which the decision was reached.....".

In comparatively recent times Lord Brightman in *Chief Constable of North Wales Police v. Evans* (11) said "Judicial review is concerned not with the decision but with the decision making process. Unless that restriction on the power of the Court is observed the Court will in my view under the guise of preventing the abuse of power, be itself guilty of usurping power."

We are not satisfied that in the exercise of our discretion the relief the petitioner asks should be granted. This application therefore fails and it is accordingly dismissed with costs.

Application refused.