

10038

IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 23 of 1982

Between

IN THE MATTER of an Application by
RANCHOD BHAI f/n Lal Bhai Applicant

- and -

AND IN THE MATTER of a decision dated
the 27th day of November, 1981 Respondent

Dr. M. S. Sahu Khan
Mr. A. Patel

Counsel for the Applicant
Counsel for the Respondent

J U D G M E N T

The applicant Ranchod Bhai is the managing director and substantial shareholder of the business known as Bhikha Bhai & Co. Ltd. conducting business in Ba Township.

Application was made to the Western Divisional Liquor Tribunal on behalf of Bhikha Bhai & Co. Ltd. for the issue of an off-licence to sell liquor in the supermarket run by the company. A licence was provisionally approved on 29th September, 1981, but the main hearing of the Tribunal was heard on 27th November, 1981.

The applicant gave quite substantial reasons to support his application and gave evidence on oath. No objectors appeared and gave evidence at the hearing though two letters of objection, one from a licence holder in adjacent premises were presented to the Tribunal. This latter letter raised objection on the grounds that the reasonable requirements of the neighbourhood were already being met. The first letter, apparently from some church body, was not taken into consideration.

In the event the applicant's request was turned down quite shortly on the ground that the reasonable requirements of the neighbourhood were being met. There was no objection on any other ground, and apparently the applicant's reasons, which he presented before the Tribunal, why an increase in the number of licences should be permitted was apparently ignored. However if that were all, the applicant would hardly be in a position to challenge the Tribunal's decision.

But immediately after hearing the applicant's request, the Tribunal heard another applicant and granted him an off licence to sell liquor off premises situated no more than 3-4 chains away from the applicant's premises.

In reply to this application the Tribunal, though served with a copy, at first chose to ignore it. Then when this Court adjourned to give the Tribunal another opportunity to defend its position or engage someone to argue its case, the chairman submitted an affidavit.

That affidavit reaffirmed that the refusal to grant the applicant an off licence was on the ground that the reasonable requirements of the neighbourhood were already met. But it completely ignored the applicant's other complaint, that immediately after refusing him the Tribunal granted a licence to someone else to sell liquor only a very short distance away. If the reasonable requirements of the neighbourhood were already met why should they have done that? How could a distance of 3-4 chains make any difference to the granting of a licence to sell liquor off the premises? If it were for liquor consumed on the premises there might be more reason. The chairman of the Tribunal has not attempted to justify or explain the reason for its decision, and I must conclude either that it was an entirely arbitrary decision to grant a licence to one applicant and not another or that it was based on some undisclosed reason. Either way the decision is contrary to natural justice and contrary to the provisions of the Liquor Act which sets out the procedure, and duties of the Tribunal, and the grounds on which it may refuse applications.

Although section 51 of the Act purports to exclude the Tribunal's decisions from review by the supreme Court, there is ample authority to show that the Supreme Court can and will interfere if the Tribunal acts ultra vires or contrary to natural justice, and that is just what seems to have happened here.

Now what action can the Supreme Court now take, what action should it take? Firstly it can and will quash the decision of the Tribunal refusing to grant the applicant an off licence.

But this may not help the applicant, because even if the Tribunal were ordered to re-hear the applicant's request, the fact that another off licence has already been issued has complicated the situation. There is no way that other licence can be cancelled so as to put the parties back in the original position.

The only fair order this Court can make is to order the Tribunal to issue another off licence to the applicant, provided only that the national limit of 200 off licences is not exceeded. If this order results in rather more off licences being issued in Ba than is desirable it is unfortunate, but the Tribunal has only itself to blame and no doubt can rectify the position next year.

IAANTOYA,
12th March, 1982

(G. C. L. Dyke)
Judge