

000126

126

THE SUPREME COURT OF FIJI (WESTERN DIVISION)

A T L A U T O K A

Civil Jurisdiction

Action No. 225 of 1982

BETWEEN :

JIAN REDRA REDDY s/o Bal Sanjcu Reddy

Applicant

A N D

COMMISSIONER WESTERN DIVISION on
behalf of WESTERN DIVISION LIQUOR
TRIBUNAL

Respondent

Mr. Gordon, Counsel for the Applicant

J U D G M E N T

This is a motion by Mr. Jianendra Reddy, to direct the Western Liquor Tribunal to show cause why it should not state a case to the Supreme Court following a refusal to grant him a conditional Liquor Licence described in section 30 of the Liquor Act, Cap. 102 as a Tavern Licence.

The application is made under section 27 of the Act which states:-

"27(1).- Any applicant or objector who is aggrieved by the decision of a Tribunal may, if dissatisfied with such decision as being erroneous in point of law, apply in writing within one month from the date of such decision to the Tribunal to state and sign a special case setting forth the facts and grounds of such determination for the opinion thereof of the Supreme Court. The period of one month may be extended by the Tribunal for good cause.

(2) Upon receiving any such application, the Tribunal shall forthwith draw up a special case and transmit the same to the Chief Registrar of the Supreme Court and thereafter such special case shall be heard and disposed of, mutatis mutandis, as if it were an appeal by case stated under the provisions of Part X of the Criminal Procedure Code."

Mr. J. Reddy's supporting affidavit is not very informative. It does not give the address, situation, or locality of the proposed tavern nor is there any reference to the community, if any, to be served or any other benefit to the public which could result from the grant of a licence. It does point out that the Central Liquor Board in granting a provisional licence had inspected the premises.

The last two paragraphs of the affidavit read as follows :-

- "5. THAT it was submitted to the Tribunal that none of the matters contained in paragraphs (a) and (b) of sub-section 1 of Section 33 were proved or any of the matters contained in the other paragraphs of that sub-section were proved and therefore a conditional certificate for a Tavern Licence in the circumstances ought to be granted but the Tribunal refused the application saying that people will drink in the Tavern and drive on the high way.
6. THAT the decision of the Tribunal is erroneous in law and a request was made for the Tribunal on 27th February, 1962 to state a case for the opinion of the Supreme Court but the Tribunal has refused to state a case and continue to refuse to do so."

It is not easy to glean from the affidavit what point of law was determined by the Tribunal, or how they erred in law.

Again it is very difficult to know from the affidavit whether the Tribunal was justified in refusing to state a case. There is no annexure to the affidavit of the application to state a case which was made to the Tribunal. Did the application set out any statement or finding made by the Tribunal which is alleged to be erroneous in law?

The procedure to be followed when asking for a case to be stated is contained in sections 329 to 340 of the Criminal Procedure Code. Section 329 which deals with the application does not specifically state that the alleged error in law must be set out. However one would expect the applicant to set it out because section 338 which prescribes the contents of a case stated by a magistrate requires him to include any question of law which a party desires to submit to the Supreme Court in addition to any submissions in law which were made to him.

A magistrate was Chairman of the Tribunal and his affidavit showing cause explains that the tribunal found that the tavern would not serve the neighbourhood but only passing motorists thereby encouraging them to drink whilst on the highway; that existing requirements of the neighbourhood did not justify the grant; that facilities which would allegedly benefit a tavern licence were still in the planning stage for which no approvals have been obtained from the various authorities. He affirmed that no point of law was involved and therefore the Tribunal had refused to state a case.

Mr. Gordon, for the applicant at the hearing of the motion, referred to section 33(1) of the Liquor Act which sets out the objections (a) to (f) which may be made in opposition to the grant of a conditional licence.

000128 I set them out here for convenience :-

"33.-(1) The objections which may be made to the grant of a conditional certificate shall be -

- (a) that the premises do not or will not have the minimum furnishings or standard of accommodation specified in section 29 or by the Board as the case may be;
- (b) that the premises are or will be unsuitable for publicans' premises on public health or structural or other grounds;
- (c) that the proposed facilities for serving liquor are not satisfactory;
- (d) that the reasonable requirements of the neighbourhood do not justify the grant of a publican's licence;
- (e) that the quiet and good order of the neighbourhood in which the premises are situated will be disturbed if a publican's licence is granted;
- (f) that the premises are in the immediate vicinity of a place of public worship, hospital or school; or
- (g) any objection (not being frivolous or vexatious) which appears to the Tribunal to be sufficient and is an objection relating to the premises and is not an objection personal to the applicant."

Under Section 33(2) the Tribunal must refuse the application if paragraphs (a) or (b) of subsection (1) are proved but no objections arose under (a) or (b). However, the Tribunal under Section 33(2) can in its discretion refuse a grant where matters contained in paragraphs (c) to (g) of subsection (1) are proved. Mr. Gordon states that none of these were proved and that the Tribunal was wrong in finding that the proposed tavern would add to the hazards of the main highway by encouraging motorists to drink en route. He now says that under section 33(1)(g) the objection must be one relating to the premises and that the behaviour of motorists is not a matter related to the premises. But Mr. Paddy's affidavit does not allege that the Tribunal erred in law in construing the likelihood of motorists using the tavern as being an objection peculiar to the premises.

The magistrate's affidavit states that the Tribunal also found that the proposed tavern licence was not justified by the reasonable requirements of the neighbourhood. Mr. Gordon has not submitted that that finding was unjustified or in any way erroneous.

It comes under section 33(1)(d) and would therefore be a proper ground for refusing the application. Whether Mr. Gordon's failure to refer to this aspect was due to oversight or some other reason is not apparent.

During the hearing of the motion I observed to Counsel that the Court found itself in some difficulty because of an absence of information revealing facts and findings of the Tribunal. Thereupon Mr. Flower, Crown Counsel, appearing for the Tribunal, tendered photo-stats of the proceedings and findings and the Court offered to stand down for a while until Mr. Gordon had perused them. Mr. Gordon declined stating that he preferred to let his application and submission stay as presented.

Mr. Reddy's affidavit in support of his motion is inadequate.

I would say, with respect, that his first step should have been to obtain a copy of the proceedings and the Tribunal's findings and reasons for refusal. Using that as the basis his application to the Tribunal for a case stated should preferably indicate the alleged error in law. Following the Tribunal's refusal to state a case the deponent could then have set out in his affidavit to the Supreme Court the facts and findings of the Tribunal as required by section 333 of the Criminal Procedure Code and annexed thereto his application to the magistrate. Had this been done it would have been apparent to Mr. Gordon that the Tribunal based its refusal on findings under section 33(1)(d) as well as under section 33(1)(g).

It is probable that section 33(1)(g) when referring to premises means objections which can be attached to the premises as opposed to objections ~~as opposed~~ to the applicant personally which may be made under section 36. Whilst I am not purporting to rule on the meaning of "an objection relating to premises" under section 33(1)(g) it may embrace not only the actual building but the siting or location of it. My reasons for that tentative view is that section 33(1)(a)&(b) cover furnishings, accommodation, public health, structural AND OTHER grounds of that nature; therefore reference to premises in section 33(1)(g) must contemplate other aspects.

However, the object of stating a case would be to determine whether it can be argued that the final decision rests on erroneous legal grounds.

How does the Tribunal substantiate its finding under section 33(1)(d)?

I am of the view that the Tribunal should state a case and I ORDER accordingly. Had the initial request been properly drafted the Tribunal would no doubt have acceded to the request. They can scarcely be expected to act as advocate for the applicant in a search for legal points.

It appears to me that in complying with section 38 of the Criminal Procedure Code, the Tribunal should, among other things, have reference to the meaning of "objection relating to premises" in section 33(1)(d); to the relevance of their finding that "the tavern" is merely part of a larger contemplated unauthorised project; and the facts on which their finding under section 33(1)(d) was based.

LAUTOKA,
25/6/1982

J. T. Williams

(J. T. Williams)
Judge

RECEIVED
5 JUL 1982
SUPREME COURT
REGISTRY