IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)

AT LAUTOKA

Appellate Jurisdiction

Criminal Appeal No. 102 of 1978

BETWEEN: LAUTOKA CITY COUNCIL Appellant

- and -

1. MOHAMMED JAMAL s/o Mohammed Kamal

2. PRAVIN LAL MORARJI s/o Morarji

Respondents

Mr. S. Prasad, Counsel for the Appellant

J U D G M E N T

The appellant is the Lautoka City Council who employ health officers for the purposes of the Public Health Ordinance, Cap.91, and any regulations made thereunder.

The respondent is a mineral water manufacturer and he was charged by the appellant for carrying on an aerated water factory without a permit issued by the city council.

The statement of offence reads,

"Carrying on and maintaining an aerated water factory in contravention of R.3(1) of The Public Health (Aerated Water Ice and Ice Cream) Regulations Cap. 91)."

The said regulations are found at p.4387 of the subsidiary legislation and purport to be made under S.40 of the Ord. which is contained in Part IV thereof. Part IV, according to its heading, is concerned with 'premises for the production, manufacture, preparation, storage, distribution, sale or consumption of food.' S.40 (11) (a) purports to empower the Board of Health to make regulations to control the matters referred to in the said heading to Part IV. Clauses (i)-(v) of S.40 (11) (a) set out the various operations connected with food-stuffs for the control of which regulations may be made. It is only under S.40(11)(a)(i) that the Board is empowered to make regulations relating to the issue of licences, and it refers to licences for 'hotels, restaurants, refreshment bars, eating houses, cafe's, refreshment saloons, bars and any other premises in which food or drink are sold or supplied for consumption on the premises.' Nowhere at all does the clause refer to licences to operate factories for the manufacture, storage or distribution of foodstuffs.

The Public Health (Aerated Water, Ice & Ice Cream Regulations) purport to be made under S.40 of the Ordinance. Those regulations refer to the issue of licences for the manufacture of aerated water and Reg.3 under which the respondent was charged makes it an offence to manufacture aerated water without being licensed to do so.

Although the Board by S.40(11)(a)(ii) of the Ordinance may make regulations governing the 'construction, maintenance, decoration, lighting, ventilation, water supply, sanitation and cleanliness of any such premises and any premises used for manufacture of food or drink and for regulating the use of any such premises ' that is not the same as creating power to issue licences to manufacture food or drink. If one holds a licence one is still subject to the regulations as to construction, lighting sanitation etc. governing the object for which the licence was issued. If one runs a factory for which no licence is required one is still subject to any regulations which may exist for controlling the factory's mode of operation.

It appears to me that the Board has no power to issue licences or permits for the manufacture of food or drink because the Ordinance vests no such power in the Board. Anyone can operate a food or drink factory regardless of licences. However, in so doing he must comply with the regulations in regard to hygiene etc. which the Board may lawfully make.

The learned magistrate upheld a submission by the respondent that the said regulation 3(1) was ultra vires the powers of the Board to make it. It was against that ruling that the city council have appealed.

For the reasons I have given I respectfully concur with the learned magistrate's view.

The appeal is accordingly dismissed. The respondent's advocate did not appear and so I make no order as to costs.

(Sgd.) J.T. Williams
Judge

Lautoka,
7th November, 1978.