

IN THE SUPREME COURT }  
OF THE TERRITORY OF }  
PAPUA AND NEW GUINEA }

CORAM : FROST, J.  
TUESDAY,  
10TH JUNE, 1969.

LEE v. AH SING TRADING COMPANY LIMITED & ORS.

REASONS FOR JUDGMENT.

1969.  
Jun 5, 10  
RABAUL  
Frost, J.

This is an appeal brought by James Lee from a decision of the Liquor Licensing Commission under Section 15 of the Liquor (Licensing) Ordinance 1963. That section provides that a person aggrieved by a decision, order, direction or requirement of the Commission may appeal therefrom to the Supreme Court, the decision of which is final.

The appellant is the proprietor of Kokopo Tavern at Kokopo in New Britain, in respect of which he holds a Tavern licence. The respondents to the appeal are various persons and companies to whom storekeepers' licences were granted, which authorise the licensee to sell ale, beer, porter, stout, cider or perry in quantities of not less than fourteen pints (which in the case of beer is equivalent to a carton of twentyfour small bottles), with the authority during licence hours to sell less than that quantity. On or about 26th March, 1968, the Commission held Special Sittings, and made a determination which was stated as follows in the Government Gazette:-

"It is further notified that at the said Special Sittings of the Commission pursuant to notice given at the Annual Sittings of the Commission as constituted for the East New Britain Licensing District and as a consequence of the granting of a Tavern Licence in respect of premises known as the Kokopo Tavern and situate within the town of Kokopo, the matter of a review of hours previously authorized by the Commission in relation to the sale and disposal of ale, beer and stout in quantities less than 14 pints between the hours of 8 a.m. and 6 p.m. with relation to premises situate in or near the town of Kokopo in respect of which a current storekeeper's licence has been issued, was considered by the Commission and the following determination relating to a variation in the terms and conditions of all storekeeper's licences held in respect of premises situate within

the said town of Kokopo or within 2 miles by the nearest practicable route from the premises of the said Kokopo Tavern, is notified for public information:-

- (1) All authorities previously granted in respect of such premises shall cease and be of no further effect as from the hour of six o'clock in the evening of the 31st day of March, 1968.
- (2) As from the 1st day of April, 1968, the hours authorized in respect of the sale from such premises of ale, beer or stout in quantities less than 14 pints shall be between 8 a.m. and 10 a.m. and between 4 p.m. and 6 p.m. on all days other than Sunday, Good Friday, Christmas Day or any prescribed day or part of a day.
- (3) Subject to any further decision reached by the Commission in this regard the authority set out in paragraph (2) of this determination shall cease and be of no further effect as from the hour of six o'clock in the evening of the 30th day of April, 1968.
- (4) Any person the holder of a Storekeeper's Licence in respect of premises situate within two miles of the premises of the said Kokopo Tavern who wishes to continue to sell ale, beer, or stout in quantities less than 14 pints shall on or before the 17th day of April, 1968, file with the Commission at Rabaul an application setting out in detail the hours requested to be authorized for this purpose.
- (5) Every application made under paragraph (4) of this determination shall be supported by submissions in writing verified by the statutory declaration of the applicant or his solicitor or agent setting out any special reason considered to be applicable to the authority applied for."

That part of the Commission's order which fixed the hours for the sale of ale etc. in quantities of less than fourteen pints (see para. 2, supra) was made pursuant to Section 60(2) which provided that if the Commission shall for any reason think fit, a storekeeper's licence may authorise the sale and disposal of ale etc. in quantities less than fourteen pints, subject to such conditions as the Commission thinks proper.

This determination had been made after the Commission had heard witnesses called on behalf of the respondent and also the appellant. It was the familiar contest between the tavern involving a large capital

investment and licence fees and the licensed grocers. Mr. Lefevre, who appeared for the appellant, submitted that the actual terms of the decision are to be found in the Chairman's notes, as follows:-

"All single bottle sales between 8 a.m. - 6 p.m. to cease as from 31st March, 1968.

Instead, hours 8 a.m. - 10 a.m. and 4 p.m. - 6 p.m. for month of April, or until next convenient sittings of the Commission.

Licensee desiring to retain these or other SPS hours on or before 15th April, 1968, to submit an application setting out full reasons or special circumstances considered applicable."

He particularly relies on the words requiring applications to set out "full reasons or special circumstances considered applicable", and for the purposes of this appeal I shall take these words as expressing the Commission's decision.

Subsequently, on the 4th June, 1968, the Commission sat to consider applications made by the respondents pursuant to paragraph 4 of the above order, and it is this order then made which is appealed against. The applications were for renewal of the storekeeper's licence already granted in respect of the applicant's premises, and for permission to sell beer by the single 12 oz. bottle or can between the hours authorized by the order of the 29th March, 1968.

Two witnesses only were called; Mr. B. R. Reynolds, who is the Assistant Licensing Inspector, gave evidence concerning traffic congestion in the vicinity of the tavern, and he also stated that in his opinion the tavern was clean, well-conducted and provided a badly-needed facility. He thought it desirable that the tavern should continue to exist. The appellant also gave evidence. The two main matters canvassed were that the appellant sold beer at a price 5 cents per bottle dearer than the respondents, and that there was no bottle department at the tavern, so that customers wishing to buy a bottle of beer to take away would have to go through the tavern to the bar counter. There had been consideration of those matters at the March hearing. However, at the

close of the evidence, it appears from the Chairman's notes that Mr. Hickey, who appeared for the appellant, stated that the appellant would provide a bottle department, although it would take four months to make the necessary extensions, and that the appellant would reduce his prices, presumably to the same price as that charged by the respondents for a single bottle. The Commission's order made on the 5th June, 1968 was, in effect, that the respondents were authorized to sell single bottles during the hours previously fixed at the special sittings held in March 1968.

The only ground of appeal relied on before me was that the Commission's finding was against the evidence in that there was no evidence before the Commission in which it could be found that special circumstances existed to enable it to make the order appealed against.

Mr. Lefevre strongly submitted the only matters placed before the Commission at the hearing on the 4th June, 1968 had already been considered by the Commission at the March hearing, so that such matters could not be considered special circumstances within the meaning of that term as used in the earlier order. He submitted that "special circumstances" must mean circumstances special to the applicant and going beyond the matters already considered. However, the Commission's powers to grant or refuse an application are conferred by Section 33(1), which confers a complete discretion. The grant of a licence or an authority does not confer on the grantee a right to a renewal, Section 33(4). Accordingly, in my opinion, the Commission could not, by the terms of any order, limit the exercise of its discretion on the hearing of any subsequent application. Accordingly, the Commission had a complete discretion to consider the application on the 4th June, 1968, and it was not limited to the consideration of the new matters.

Turning to the grounds of the appeal, the Commission had to consider the local circumstances under which the tavern sold beer at a price of five cents higher than the storekeepers, the appellant's undertaking to reduce his prices and the practicality of it, having regard to

the Commission's assessment of the appellant and his financial position, the immediate lack of any bottle department and the legitimate needs of the customers to purchase single bottles during licensing hours. In deciding to continue the authority granted in March, the effect of the decision was that the local people lost the convenience of purchasing single bottles at the stores, except during the hours referred to, and during the remainder of the licensing hours, if they wished to purchase single bottles, it would be necessary for them to go to the tavern which, at that date, had no bottle department. In my opinion, there was ample evidence to support the Commission's decision.

Mr. Thornton appeared on behalf of the respondents to take a preliminary objection only. He submitted that I should refuse the appeal on the ground that, as the Commission had at the later annual sittings in September, 1968, renewed the storekeepers' licences and had authorised the sale of single bottles during the same hours, any order of this court would be ineffective. However, in my opinion, the substance of the matter was that the authority was decided in June, 1968, and accordingly I consider the objection should fail.

The appeal will be dismissed. There will be no order as to costs.

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Solicitors for the appellant : P. G. Lefevre Hickey & Co.

Solicitor for the respondents: F. N. Warner Shand, Esq.