

(1962) 01 CAL CK 0006
In the Calcutta High Court
Case No : A.F.O.O. No. 137 of 1960

Commissioner of Police

APPELLANT

Vs

Lakshmi Chand Gupta

RESPONDENT

Date of Decision : 11-01-1962

Acts Referred:

Calcutta Police Act, 1866 — Section 39
Constitution of India, 1950 — Article 14, 19, 226

Citation : AIR 1962 Cal 556 : 66 CWN 487

Hon'ble Judges : H.K. Bose, C.J.; Debabrata Mookerjee, J

Bench : Division Bench

Advocate : B. Das, for the Appellant; S.S. Roy and R.L. Sinha, for the Respondent

Final Decision : Allowed

Judgement

Debabrata Mookerjee, J.—This appeal is brought from a decision of G.K. Mitter J., making absolute a Rule for Mandamus whereby two orders of the Commissioner of Police, Calcutta, dated March 1 and March 11, 1960, refusing to grant licence to the respondent Lakshmi Chand Gupta to run an eating house, known as Lakshmi Hotel or Shri Lakshmi Hotel, were directed to be withdrawn or cancelled and the Police Commissioner ordered to renew licences in favour of the respondent, authorising him to run the Hotel for the years 1959-60 and 1960-61.

2. The respondent had rented the first floor of premises No. 170/2D, Lower Circular Road, Calcutta, in the year 1958 and obtained in the course of the year a licence under the Calcutta Police Act, 1866, to run a boarding and eating house. The licence was due to expire, on March 31, 1959. Before its expiry, the respondent applied for renewal on the 25th of March 1959, for the year 1959-60. On May 16, he received a communication from the Commissioner of Police that it had been brought to his notice that on several occasions women of questionable character visited the hotel and liquor supplied to customers. This, it was said, involved infringement of one of the conditions of the licence which had been granted to the respondent in respect of the boarding house. He was accordingly

required to show cause why his application for renewal of licence should not be refused. The respondent complied with this requisition and showed cause denying the allegation that such women had ever been allowed on the premises or liquor served to the customers. He characterised the information as false and malicious and relied on the circumstance that no prosecution for infringement of the conditions of the licence had, at any time, been launched against him. On August 20, 1959, the respondent had a personal interview with an Administrative Officer attached to the establishment of the Commissioner of Police. At that interview, he requested expeditious disposal of his application for renewal. On October 24, 1959, he was informed that his application had still been receiving attention. On February 5, 1960, he received another communication in which it was stated that in view of the fact that there was a residential school for boys and girls situate in a part of the same building in which the hotel was being run, it was considered undesirable to grant a licence for eating house establishment at the place. It was also said that there was a cycle-cart factory in the same building. He was accordingly asked to say what he had to say before a final decision was reached in the matter of granting or refusing licence. On receipt of this notice, the respondent wrote to the authority, concerned denying that there was a residential school for boys and girls in the same building. He stated that the school was situate in a separate building at a distance of 100 feet from the premises where the eating house was run. As regards the cycle-cart factory, he said that it was not a factory at all but merely a shop where cycle parts were assembled which could be reached by a separate entrance. He asserted that only two workers were employed in the shop which had since been closed. He called attention to the fact that there was a Chinese restaurant at a distance of only 6 feet from the gate of the school and there was another hotel run by the Salvation Army opposite the respondent's hotel. He suggested that these facts had been known to the authorities when a licence was issued to him to run the hotel for the year 1958-59. He accordingly repeated his request for the issue of a licence for the year 1959-60 at an early date.

3. On March 1, 1960, the respondent was informed that the Commissioner of Police had, on a consideration of "all facts and circumstances", rejected his application for renewal of the licence for the year 1959-60. Despite this refusal, the respondent applied on March 4, 1960, for a licence to run the hotel for the year 1960-61. This application was also rejected and he was informed on the 11th of March 1960 that this application too had been refused. Thereafter, he moved this Court under Article 226 of the Constitution and obtained a Rule Nisi requiring the appellant the Commissioner of Police to show cause why he should not be directed to withdraw or cancel his orders dated March 1, and March 11, 1960, refusing to renew licenses to the respondent to run the hotel for the years 1959-60 and 1960-61.

4. One of the complaints made by the respondent in his writ application was that his fundamental right under Article 19(1)(g) of the Constitution to carry on the business of running the hotel had been infringed and the Commissioner of Police

having exercised his discretion in the matter in a capricious and arbitrary manner, the orders refusing licence were liable to be set aside.

5. The Commissioner of Police, who is the appellant before us, contested the proceedings and filed an affidavit in opposition which he swore himself to say that the police had received several complaints against the respondent into which he had directed enquiries for the purpose of ascertaining the truth. The respondent having alleged that the orders refusing the licences having been based on extraneous considerations, a firm denial was given and it was stated, in effect, that the complaint relating to women of questionable character being brought into the hotel and liquor being served to customers, had never been lost sight of and had been under his consideration all the time. It was further asserted that there had been no complaint against the Chinese restaurant and the existence of an eating house run by the Salvation Army was denied.

6. In the affidavit in opposition, the Commissioner of Police disclosed the actual order which he had made on the 29th of February 1960 refusing the respondent's application for licence for the year 1959-60. The order was as follows:

"I have considered the matter carefully. Besides the fact that the hotel adjoins educational institution and is therefore harmful to the students of the Institution, I am of the view that the keeper of the hotel is not a fit and proper person to hold the licence for the hotel as he is unable to prevent drunkenness and unseemly conduct and behaviour of the inmates of the hotel and the visitors there.

The application for the grant of Police licence is therefore rejected.

Sd/- U. Mukherjee, 29th February 1960."

The affidavit closed with the assertion that the deponent, namely, the Commissioner of Police, had used his discretion in rejecting the application for licence after having carefully considered all the facts and circumstances of the case.

7. It appears that at a later stage of the proceedings the learned trial Judge directed the appellant to disclose all the information in his possession which might have induced refusal of the licence to the respondent, in obedience to the Court's order, a number of General Diary entries were produced as well as the written complaints that had been received against the respondent from time to time by the Police. These were incorporated in affidavits duly sworn by competent persons. A police officer attached to the station within the local limits of which the respondent's hotel was situate, swore a further affidavit detailing the circumstances in which the complaints had been received from time to time against the respondent. The officer concerned was Sudhansu Kumar Majumdar, inspector of Police, who produced the General Diary entries and made them part of the affidavit which he swore. He stated that several representations in writing

had also been received against the respondent from the residents of (the locality regarding disorderly conduct, drunkenness and rowdism on the part of the inmates and visitors of the eating house. He proceeded to say that he had personally made enquiries on receipt of these complaints and suggested that besides those recorded in the police station, there were other complaints made to him by respectable residents of the place which all went to show that the peace of the locality used to be very much disturbed and inconvenience and annoyance caused to local residents. It was also said that the morals of students attending the Chinese school and of the inmates of the Social Service Centre of the Salvation Army were in jeopardy by reason of what happened at the respondent's hotel. He added that despite the refusal of licence, the respondent carried on the business in consequence of which there were as many as seven criminal cases brought against him which were pending at the date.

8. The learned Judge also gave the respondent opportunity to adduce further affidavit evidence in order that he might challenge, if he so wished, the statements appearing in the supplementary affidavits sworn by the Inspector of Police and by other residents of the locality. The supplementary affidavits on behalf of the respondent are also on the record.

9. The learned Judge considered the materials produced before him and came to the conclusion that the application for licence had been improperly refused. He held, in effect, that the original complaint that women of questionable character used to be brought to the hotel and liquor served to customers had been abandoned by the Commissioner of Police who proceeded on the footing that licence would not be renewed on the ground that there were a Chinese school and a Cycle cart factory close to the premises where the hotel was situate. The learned Judge held, that these were extraneous considerations which vitiated the orders of refusal of licence made by the Commissioner of Police, and accordingly made the Rule absolute and ordered the appellant to grant the licences asked for.

10. The findings recorded by the learned Judge appear to suggest that the material produced before him was considered unconvincing and he thought that upon such material it could not be said that the respondent was a person unfit to run the hotel. We wish to observe that the approach of the learned Judge in the matter of assessment of material does not seem to conform to the usual standard which a Court dealing with a writ application under Article 226 of the Constitution can rightly insist upon. If the representations received against the respondent and the information recorded in the Station Diary formed the subject-matter of the Court's assessment as regards their credibility, the position might have been different. At one place, the learned Judge observed that it appeared to him extremely doubtful whether on the materials disclosed in the affidavits, a Court of law would have held that failure to prevent drunkenness and disorder in the boarding house on the part of the respondent had been established. At the same time, the learned Judge reminded himself of the "supervisory" character of the jurisdiction under Article 226 but looking at the order as a whole, it seems

plain that there was an unconscious attempt at a critical assessment of the materials produced in the case for the purpose of reaching a decision as to whether the Commissioner of Police had exercised his discretion properly in refusing the licences.

11. Section 39 of the Calcutta Police Act is in these words:

"The Commissioner of Police may, at his discretion, from time to time, grant licenses to the keepers of such houses or places of public resort and entertainment as aforesaid for which no licence as is specified in the Bengal Excise Act, 1909 is required upon such conditions, to be inserted in every such license, as he, with the sanction of the said State Government from time to time shall order, for securing the good behaviour of the keepers of the said houses or places of public resort or entertainment, and the prevention of drunkenness and disorder among the persons frequenting or using the same; and the said licenses may be granted by the said Commissioner, for any time not exceeding one year."

A Court dealing with an application under Article 226 is only called upon to see whether the discretion vested in the Commissioner of Police has been properly exercised. The conditions that are required to be fulfilled by an applicant for license are mainly that the person applying should be a person of good behaviour and that he should have the capacity to prevent drunkenness and disorder among the persons frequenting the establishment, the section is quite clear that the Commissioner of Police has his discretion in the matter. There is, of course, no gainsaying the fact that the discretion has to be exercised in a reasonable manner. The scope of the section and its content fell to be considered by the Supreme Court in the case of *Kishan Chand Arora Vs. Commissioner of Police, Calcutta*, . It was held that an order refusing or granting license is an administrative order and the discretion spoken of in the section is dependent on the subjective satisfaction of the Commissioner as to whether the person applying for a license satisfies the conditions mentioned in the section. It was pointed out that although there was no duty to act judicially, still the Commissioner was required to act reasonably. It is necessary for the applicant for a license to satisfy the Commissioner that he has a place where he can carry on the business, that he is a person of good behaviour so that the eating house he proposes to keep will not be visited by persons of ill-repute and that he is in a position to prevent drunkenness and disorder among those who visit the eating house.

12. We have to consider in the light of those observations whether the conditions specified in Section 39 were fulfilled. If there existed reasonable grounds for believing that any of these conditions was not satisfied, then it would not be right for the Court to interfere with the discretion of the Commissioner of Police.

13. It must be said that the learned Judge took the facts and circumstances into account but the way he approached the consideration of those facts does not commend itself to us. It is not for the Court to decide whether a license should

be granted in a given case. The business of the Court is only to see whether the discretion vested in the Commissioner by Section 39 of the Calcutta Police Act has been reasonably exercised. It may well be that the Court's assessment of the facts may differ from the view of them taken by the Commissioner, but that can never be a ground for superseding his discretion in the exercise of the powers given him under the Act. We do not propose to review the facts once again; but in order to be able to see whether or not there existed materials upon which the Commissioner could be said to have reasonably acted in refusing the licenses asked for, we might just notice them in their bare outline.

14. The ground of refusal, appearing from the order dated February 29, 1950, recorded by the Commissioner of Police to which we have referred, seems to be that in his opinion, the respondent was not a fit and proper person to hold a license for the eating house since he was not able to prevent drunkenness and unseemly behaviour on the part of the inmates or the visitors of the hotel. A reference to the entries recorded in the police Station would at once show that there was dis-orderliness in the eating house or in its immediate vicinity. (His Lordship referred to these entries and continued).

15-18. Besides the diary entries to which we have referred, there were other petitions calling the attention of the authorities to disorders prevailing in the hotel. (After referring to these petitions, his Lordship continued).

19. We have referred to the foregoing not with a view to re-assess the evidence but only with a view to see whether there existed material upon which the commissioner of Police could be said to have exercised his discretion reasonably. It may well be that the informations recorded in the police station may not stand the test of judicial scrutiny at full-fledged trials, but that is not the criterion by which we have to go in a writ appeal. The only question before the Court in dealing with an application in a case of this kind, is whether the Police Commissioner had before him material which would justify rejection of the application of the respondent for a license, the Court may entertain a different view of the facts, but that is no ground for thinking that the Police Commissioner acted unreasonably in the exercise of statutory discretion given him by Section 39 of the Calcutta Police Act. It is in this sense that the learned judge's approach of the consideration of the materials cannot be supported.

20. Several grounds have been urged on behalf of the respondent in support of the order made by the learned Judge which is now under appeal. In the first place, it has been said that although the question of constitutionality of section 39 has been decided by the Supreme Court in *Kishan Chand Arora Vs. Commissioner of Police, Calcutta*, to which we have referred, still the objection to Section 39 of the Act on the ground that it infringes the fundamental right of the respondent to carry on trade or business is still available on other grounds, the respondent, it is said, has been gravely affected in the enjoyment of his right to carry on trade as a citizen of this country and he complains that Section 39, as it stands, gives uncontrolled power to the Commissioner to give or refuse a license.

At a later stage of the argument, this objection was almost withdrawn. Whatever may be the attitude of the respondent in regard to this matter, we, however, feel bound by the decision of the Supreme Court and we must hold that Section 39 does not counter arbitrary power on the Commissioner of Police. We do not think it necessary to pursue this aspect of the matter further and we propose to proceed on the footing that the constitutionality of Section 39 is not open to challenge.

21. It has then been argued that even if Section 39 cannot be challenged on the ground that it is unconstitutional, the fact remains that the respondent was not given adequate opportunity to represent his case before the orders were made rejecting his applications for license. We find no substance in this contention. From the narrative of facts which we have given, it will appear clear that the Commissioner of Police gave ample opportunity to the respondent to say what he had to say against the tentative decision taken that license should be refused to him. Reference may be made to the letter from the Department dated May 16, 1959, in which the respondent was expressly asked to show cause within seven days as to why his application for renewal of license should not be refused on the ground that women of questionable character had been brought to the hotel on several occasions and liquor served to customers. It is equally clear that the respondent did show cause and said what he had to say in his letter dated May 22, 1959. That was not all. The respondent had a personal interview with an Administrative Officer and it appears from his own letter that in the course of the discussion, he referred to the existence of a factory in the premises about which complaint had been made against him sometime ago. Thus, he had not only opportunity but even a personal hearing and he cannot now be heard to say that he had been deprived of opportunity to represent his case. Again, on the 5th of February 1960, the Commissioner of Police wrote to say that he was free to make further representation against the decision then tentatively taken that license should be refused on the ground that the eating house was close to a residential school and that there was a cycle cart factory in the same building. The respondent took advantage of this opportunity and made further representation. It seems, therefore, clear that the amplest opportunity was given to the respondent for the purpose of showing that the complaints made against him were unsubstantial. If the authority concerned was not impressed with his representation, that is entirely a different matter. We have no doubt, therefore, that the respondent had full opportunity to say what he had to say at all stages during the pendency of the applications for license.

22. Assuming for a moment that no opportunity was given to the respondent, even then we do not think he can legitimately complain of want of opportunity. The Supreme Court clearly pointed out that the compulsion of hearing before the passing of an order u/s 39 Implied in the maxim "*audi alteram partem*" applies only to judicial or quasi-judicial proceedings, but the order granting or refusing a license u/s 39 being only an administrative order, there is no lis between the person applying, for a license and the Commissioner of Police; consequently,

there is no obligation to give a hearing to the applicant for a license.

23. It has not been argued that the Commissioner of Police did not, in fact, make the order on February 29, 1960, by which he refused the respondent's application for license for the year 1959-60. It has not been said that the order is vitiated by bad faith. The order makes it plain that in the opinion of the Commissioner of Police, the respondent was not a fit and proper person to hold a license for the hotel, since he was unable to prevent drunkenness and unseemly conduct and behaviour of the inmates and visitors of the place. This order was actually communicated to the respondent on the 1st of March 1960. There can be no doubt that the refusal was made, as the Commissioner of Police himself says, upon a consideration of the whole of the matter. The Court may not agree with his view of the facts but that is wholly irrelevant. The materials to which we have referred were the materials which were taken into account by the Commissioner of Police upon which he founded the order. It is then argued that, in any event, no reason has been given for refusing the license for the year 1960-61. It is to be recalled that after his application for renewal of license for the year 1959-60 had been refused, the respondent applied again on the 4th March 1960, for license for the year 1960-61.

This application was also refused but no reasons were given in support of this refusal. The complaint is that in any event the refusal ought to have been accompanied by good and credible reasons. We cannot accept this contention. As we have indicated, the Commissioner of Police is not obliged to give reasons for refusal. He acts in the exercise of his discretion and as long as he acts within the limits of the power prescribed by the Statute, the failure to give reasons for the order refusing license cannot be successfully challenged. In any event, it is to be borne in mind that this refusal came closely upon the refusal of the earlier application. A person who was, in the opinion of the Commissioner, unfit for the grounds indicated, to be given a license to run a boarding house on the 1st of March could not possibly become fit to hold a license in the course of ten days. We think there is no substance in this contention and we are of the opinion that the Authority acting u/s 39 is not obliged to give reasons in support of an order refusing license.

24. It is unnecessary to consider the other criticism that there is hardly any evidence worth the name which will justify refusal of the licenses. We have dealt with that ground in some detail and we do not propose to deal with it again except to say that as long as there exists on the record material upon which the mind of the Commissioner of Police could have been reasonably exercised, no just exception can be taken to an order made on such exercise of discretion.

25. A cognate criticism that the section infringes the constitutional right of the respondent to carry on trade on another ground may now be noticed. It was said that there is no provision in the Calcutta Police Act which provides for service of notice on persons who might be effected adversely by an order u/s 39 refusing an application for license. This objection is akin to the other with which we have

dealt, namely, that the section does not provide for a hearing. Notice is necessary in order that the person concerned may have an opportunity to say what he has to say in the matter but as we have indicated, the Supreme Court has held that in a licensing statute there need be no provision for hearing since a proceeding under such statute is not a judicial nor a quasi-judicial one involving a lis.

26. The substantial question raised on behalf of the respondent relates to the objection that in this case the Commissioner of Police gravely erred in taking into account extraneous matters for the purpose of arriving at a decision as to whether a license should be granted or refused to the respondent. It will be recalled that the respondent was informed by the Department on the 16th of May, 1959 that it had been brought to the notice of the authorities that women of questionable repute used to be brought to the hotel and liquor served to customers or visitors at the place. On receipt of this intimation, the respondent wrote to the Commissioner of Police questioning the truth of the allegations made against him in this behalf. He asserted that these were false and malicious. This was followed by a personal interview which the respondent had with the Administrative Officer. Sometime elapsed between this interview and the 5th of February, 1960 when the respondent was informed by the authorities concerned that they considered it undesirable that a license should be granted to run the hotel on the ground that there were a residential school and a cycle-cart factory located in the same building. It is said that while on the 16th May, 1959 the authorities concerned wrote that license should be refused on the ground that women of ill-repute came to the place and wine was served at the hotel, on the 5th February, 1960, there was a complete shift of emphasis and the grounds were changed and the respondent was informed that license was proposed to be refused on entirely different grounds. To put it pithily, at first it was wine and women, then it became school and cycle-cart factory. It is this change of front which is said to have vitiated the entire consideration of the case resulting in refusal of licenses to the respondent. In other words, the criticism is that while the presence of undesirable women and serving of liquor to visitors might have some relevance on the question of good behaviour of the keeper of the hotel or of the persons visiting it, the existence of the school and of a cycle-cart factory in the vicinity was a wholly alien consideration, completely unrelated to any of the conditions mentioned in Section 39 of the Act. Indeed, it was on this ground that the learned trial Judge proceeded to hold that the Commissioner of Police had erred in refusing license to the respondent. The effect of the learned Judge's finding is that there has been, what may perhaps be described as, a mix-up of relevant and irrelevant matters with the consequence that the Commissioner of Police travelled beyond the limits of the section and allowed his mind to be influenced by extraneous matters. It is this aspect of the question which requires consideration.

27. In this context, the affidavit in opposition sworn by the Commissioner of Police himself becomes relevant. He has denied in plain words that before

actually making the order refusing license to the respondent he had lost sight of the grounds of refusal relating to the presence of undesirable women and the serving of liquor at the place. The actual words used are, "With reference to paragraph 8 of the said petition, I deny that the matter was not further pursued as alleged. I state that the matter was under consideration by me at the time." Paragraph 8 of the writ petition contains a statement to the effect that the objection on the ground of presence of undesirable women and serving of wine had been given up and was not pursued. As against this statement of the Commissioner, we have merely another denial by way of an affidavit in reply from the respondent. In our opinion the respondent was not competent or in a position to controvert the fact stated by the Commissioner of Police that the complaint relating to the presence of undesirable women and the serving of wine on the premises had been under his active consideration before he came to a decision. We do not think, therefore, that the statement in the affidavit in reply is a competent statement.

28. There is nothing to suggest that the Commissioner of Police wandered from the original complaint relating to wine and women or gave it up and allowed his mind to be warped by consideration of matters wholly unrelated to the requisites mentioned in Section 39 of the Calcutta Police Act. The good behaviour of the applicant for license and good behaviour of the persons visiting the establishment are the two cardinal considerations. Apart from the statement made by the Commissioner of Police himself, there are ample materials on the record, to which we have referred, and they cannot possibly be wiped out; and it would be, in our view, unreasonable in the extreme to hold that all this volume of material facts was completely forgotten or jettisoned when the Commissioner of Police made the orders on the 1st and on the 11th March, 1960. If we are allowed to express our opinion on the facts of this case, we have no hesitation to say that this is eminently a case where a license should be refused in view of the material on record; but that is a matter of no importance in a writ appeal in which the only question is whether the authority concerned acted reasonably.

29. Even if we assumed that besides the two things mentioned in the letter of the 16th of May, about the presence of undesirable women in the premises and the serving of liquor, there was also consideration of ancillary or subsidiary matters involved in the orders of the Commissioner of Police, we would still think the orders made by him refusing license were valid. The predominant consideration related to the two conditions prescribed in Section 39 affecting the conduct of the keeper of the hotel and the conduct of the visitors of the place. It is true that the existence of the cycle factory or even of the Chinese school cannot directly be related to the two conditions mentioned in the section; but it would, in our view, be wholly unrealistic to say that while the Commissioner of Police was obliged in terms of Section 39 to consider the two conditions, he was required to shut his eyes to the fact that within 100 feet of the eating house there was a school where boys and girls were educated. It, of course, the Commissioner of Police had proceeded to make the orders merely on the ground

that the noise produced by the shop or factory created disturbance in the locality, it might have been difficult to sustain the orders; but in this case one cannot ignore the important collateral fact of the existence of the School in the context of the primary facts relating to the requirement of good behaviour of the keeper or of the persons visiting the establishment. In our view, considerations of matters of a subsidiary or ancillary character will not vitiate an order based substantially upon facts relative to the requirements mentioned in Section 39 of the Calcutta Police Act.

30. On behalf of the respondent, it has been strenuously argued that just as in a case where an order of preventive detention is made on the basis of grounds some of which are proved to be bad and unrelated to the object of detention, the whole order must be held to be bad, similarly in a case of this kind where the consideration of the authority concerned has been vitiated by extraneous matters, the order deserves to be set aside. The cases of *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, and AIR 1943 72 (Federal Court), have been relied upon for the proposition that where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters. If that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some of them are found to be non-existent or irrelevant, the very exercise of that power becomes bad." If a detaining authority gives four reasons for detaining a man without distinguishing between them and any two or three of the reasons are held to be bad, one can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before it. It has accordingly been argued that there is no knowing what exactly weighed with the Commissioner of Police in making the orders refusing license. The argument is that if there is a possibility of the authority concerned having been induced to make the order by reason of the existence of a cycle-cart factory and of the school which have nothing to do with either of the two requirements mentioned in Section 39, then it becomes entirely problematic whether the authority acted within the limits prescribed by the statute. We are not prepared to say that a case of refusal to grant a license, stands on the same footing as a case where an order of preventive detention is made. In the latter case, no one knows which of the several grounds operated upon the mind of the detaining authority; but in the former, if either of the two conditions is found to be absent, there would be sufficient justification for making an order of refusal. This aspect of the matter was clearly pointed out by the Supreme Court in *Kishan Chand Arora Vs. Commissioner of Police, Calcutta*, where the elements of the section were analysed. His Lordship, Wanchoo, J., who spoke for the majority of the Court, observed as follows:

seems therefore to us that Section 39 clearly provides that the Commissioner will use his discretion in deciding whether the person applying for a license is in actual and effective control and possession of the place where the eating house

is to be kept and is thus the keeper thereof. He will also satisfy himself that the keeper is a person of good behaviour and further that he is able to prevent drunkenness and disorder in the eating house. If he is satisfied on these three matters, it seems to us that the section contemplates that the discretion will be exercised in favour of the grant of a licence. We cannot accept that even though the Commissioner may be satisfied that the person applying for a licence has actual and effective control of the place where he is going to keep the eating house, is a person of good behaviour and can prevent drunkenness and disorder among the clientele, he will still go on to refuse the licence. The discretion that is given to him is to satisfy himself on these three points and if he is satisfied about them he has to grant the licence. On the other hand, if he is not satisfied on any one or more of these points, he will exercise the discretion by refusing the licence."

31. If such is the position in law, then it must be held that where the Commissioner of Police found that the respondent was not a fit and proper person to hold a licence for the establishment on the ground that he was unable to prevent drunkenness and unseemly conduct, one of the conditions or requirements of the section was not fulfilled. This would be enough justification for refusing to exercise the discretion in favour of the respondent.

32. A similar question was before the Supreme Court in the case of *Karanpura Development Co. Ltd. v. Karraushya Narain Singh*. In that case, the question related to the construction to be placed on Section 18 of the Court of Wards Act, 1879. That section provides:

"The Court may sanction the giving, of leases or farms of the whole or part of any property under its charge, and may direct the mortgage or sale of any part of such property and may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward." The words, "as it may judge to be most for the benefit of the property" fell to be considered and in this context reference was made to the limits within which Courts could interfere with the exercise of a power of the nature in question. Reference was then made to the House of Lords decision in *Allcroft v. Lord Bishop of London* 1891 AC 666. In that case the statute provided for, certain action being taken unless the Bishop "shall be of opinion that proceedings shall not be taken."

The Bishop of London decided not to take proceedings and the correctness of the decision was challenged in an application for mandamus. The House of Lords held that the Bishop having acted within his jurisdiction and exercised his judgment honestly, his decision was not liable to be questioned on the ground that it was erroneous or that he had not considered all the aspects of the matter. Some observations of the noble Lords were then quoted with approval.

Lord Bramwell:

"Then it was said that there was something he had considered which he ought

not to have considered and something he had not considered which he ought to have, and so he had not considered the whole circumstances and them only. If seems to me that this is equivalent to saying that his opinion can be reviewed. I am clearly of opinion it cannot be. If a man is to form an opinion, and his opinion is to govern, he must form it himself on such reasons and grounds as seem good to him."

Lord Herschell:

"It is impossible to read the Bishop's statement without seeing that he has honestly considered what appeared to him" to be all the circumstances bearing on the question whether the proceedings should be allowed to go on. That, being so, it is not for your Lordships, on this application for a mandamus, to consider whether the Bishop's reasons are good or bad; whether they ought or ought not to have led him to form the opinion he did."

33. Thus, even if it be said that the Commissioner of Police had taken into account the facts that there existed a cycle factory and a school close to the hotel, which were said to be extraneous circumstances, we cannot say in the absence of any allegation of bad faith that the Commissioner of Police acted beyond his powers in exercising his discretion in the way he did by considering something which he ought not to have considered, so long as there is material to indicate that there were facts directly related to the requirements mentioned in Section 39 of the Calcutta Police Act which guide and control the exercise of that discretion. Indeed, we are far from satisfied that in this case the decision of the Commissioner was tainted by extraneous considerations by reason merely of the fact that at a certain stage of the proceedings matters of a collateral nature were alluded to.

34. In the view we take, we must hold that the order of the learned Judge directing the issues of a writ of mandamus must be set aside. We order accordingly, allow the appeal and set aside the order of the learned Judge.

35. The interim order made by this court on the 16th August, 1960 will stand vacated.

36. There will be no order as to costs.

37. BOSE, C. J.: I agree.