
(1946) 05 CAL CK 0030

In the Calcutta High Court

Case No : Appeal from Original Order No. 11 of 1945

Commissioner of The Calcutta Police

APPELLANT

Vs

Rolla Ram Chopra

RESPONDENT

Date of Decision : 30-05-1946

Acts Referred:

Citation : (1946) 05 CAL CK 0030

Final Decision : Dismissed

Judgement

Gentle, J.—This appeal and the cross-objection relate to the boarding house license granted to the Respondent (applicant in the Court below) by the Commissioner of Police, Calcutta (Appellant before us) under sec. 39 of the Calcutta Police Act, 1866. The appeal is preferred by the Commissioner against the order made by Mr. Justice Ormond on the 31st August, 1944, under sec. 43 of the Specific Relief Act, requiring him and his subordinates to forbear from cancelling the license and from taking any proceedings against the Respondent upon any purported cancellation of the licence. The Respondent has preferred a memo of cross-objection against the learned Judge's refusal to grant similar relief by a writ of Prohibition or Certiorari. The facts arising in the appeal can now be stated. Since the year 1917. the premises, No. 144, Harrison Road, Calcutta, have been occupied by the Respondent. Rolla Ram Chopra, where he has continuously carried on the business known as the Punjab Hindu Hotel. The premises comprise 15 or 20 bed-rooms, conducted as a boarding house, and a restaurant or eating house, used both by residents and nonresidents. The Calcutta Police Act, 1866. requires keepers of boarding and eating houses to hold licenses, in that behalf, granted by the Commissioner. It is an offence under the Act to conduct either of those businesses without obtaining such licenses. The licences do not permit the supply of alcoholic liquor. Throughout the period approaching 30 years, during which the Respondent has conducted the Hotel, he has been granted and held boarding house and eating house licenses for the residential part of the premises and the restaurant respectively. Licences were each current for one year and on the 1st April, 1944, boarding house and eating

house licences were regranted to him for the period ending 31st March, 1945.

2. The Hotel is situated within the jurisdiction of the Jorasanko Police Station. On the 13th April, 1944, a prostitute, named Anjali Debi, lodged a complaint at the Police Station against two employees of the hotel, named Basdeo Ram and Durga Kahar or theft of three gold churies. The affidavit of Sub-Inspector Jiban Bandhu Dutt of the Calcutta Police, who is stationed at the Jorasanko Thana states that he investigated the complaint and ascertained that Anjali had been taken by Durga to the hotel for the entertainment of the occupants of one room in the boarding house; one of those persons co-habited with her in that room; alcoholic liquor was consumed in the room; Anjali drank and created a scene, demanding an increased sum above the amount agreed to be paid to her; Sub-Inspector Dutt reported the above incidents to the Commissioner of Police, through the Deputy Commissioner of the Detective Department, as they constituted a breach of the terms and conditions upon which the boarding house licence was granted to the Respondent.

3. On the 25th April, Anjali withdrew her complaint and the two men were released. The Deputy Commissioner considered the matter and came to the conclusion there was insufficient evidence to proceed and no prosecution of the two men took place; he also came to the conclusion there was not sufficient evidence to justify a charge being made against Anjali for preferring a false complaint.

4. A document, bearing date 3rd May, 1944, signed "P. Mulkahay I.P.D." (the letters I.P.D. represent "Inspector Pass Department"), was given to Sub-Inspector Dutt. It states as follows:

Confidential

O/C. E.

C.P. (Commissioner of Police) has been pleased to cancel the boarding house licence of Rollaram Chopra at 144, Harrison Road. Will you kindly take charge of the licence and return to this office and see that the Boarding house is closed down immediately?

P. Mulkahay, I.P.D. 3-5-44.

5. It is endorsed at the foot "S/I J.B. Dutt comply and report O/C E. 3/5."

6. On the 7th May the Sub-Inspector went to the hotel, the Respondent was absent but his manager was present. The Sub-Inspector showed the document to the manager, obtained his signature upon it, took away the document and left no copy of it. On the 8th May the Respondent consulted his attorney Mr. S.M. Chowdhury; at that time the name and identity of Dutt were unknown to the Respondent. On the same day the attorney wrote to the officer-in-charge of the Jorasanko Thana and forwarded a copy of his letter to the Deputy Commissioner of Police, North, in whose area the Thana is situated. The letter is headed.

Re: The Punjab Hindu Hotel Clt: Rolla Ram Chopra.

7. It sets out the facts of the Inspector's visit to the hotel on the 7th May; states that the Respondent was suspicious as to the bond fides of that incident; and enquires whether any one had been sent from the Thana with any documents for the information of the Respondent or his manager and if so, to furnish the attorney with a copy; it concludes that a copy of the letter was being forwarded to the Deputy Commissioner in case there had been any personation and a request is made that the matter be treated as urgent.

8. No reply was sent to this letter either by the Thana officer or by the Deputy Commissioner; in his affidavit, Inspector Dutt states that he filed both the letter and the copy upon instructions given to him by the Assistant Commissioner of Police.

9. On the 18th May the Respondent's manager went to the Police Station and asked for a copy of the document shown to him on the 7th May, the original was produced and he was allowed to make a copy.

10. On the 20th May the attorney wrote to the Commissioner and attached a copy of his communication of the 8th May to his letter. The letter commences that the attorney had been instructed by the Respondent to address the Commissioner and to request him to take immediate action in regard to conduct which the attorney had advised his client to be totally illegal. The facts of Sub-Inspector Dutt's visit on the 7th May and a copy of the document shown to the manager on that date are fully set out. Reference is made to the attorney's letter written on the 8th May of which a copy was annexed to the letter, and it is stated no reply whatever had been received. The letter then proceeds as follows:

I am instructed to request you, which I hereby do, to give your immediate attention to prevent this unwarranted interference with my client's lawful occupation. I would further request you to bring to book" the officers (if they be officers of your force) who are thus intimidating my client and exposing him to loss and damage. Should it transpire as the result of your enquiries that my client is being intimidated by individuals who are personating the police, my client looks to you to take them to task and to that end my client will give you every assistance. On the other hand should it transpire that any officers of your force are responsible for the conduct complained of. which I have advised my client to be entirely illegal, I must ask you to take appropriate steps to prevent further embarrassment while at the same time and the present I reserve my client's right to proceed against them in their individual capacity for such compensation to my client as the law allows. Kindly treat this matter as one of extreme urgency and allow us to hear from you by return.

11. In reply, a communication written on a plain sheet of paper, without any reference or tile number, dated the 29th May, 1944, and signed by "B.N. Chatterjee for Commissioner of Police, Calcutta," was sent to Mr. Chowdhury.

It states:

Dear Sir,

With reference to your letter dated 20th May, 1944, I write to inform you that the Boarding Licence for 144, Harrison Road, was cancelled by the Commissioner of Police.

Yours faithfully,

B.N. chatterjee, for Commissioner of Police. 29/5-

12. It is said that the signatory is the Deputy Commissioner of Police responsible for the issue of boarding house and eating house licences. It is to be noticed that the Respondent's boarding house licence had been purported to be cancelled but his eating house licence was not cancelled.

13. No document has been forthcoming containing the Commissioner's order, proceeding or direction for cancellation. It is manifest that the document of the 5th May is not the Commissioner's order for cancellation. In that respect it does no more than record that the licence had been cancelled. No reasons for the alleged cancellation* appear in any document. Sub-Inspector Dutt's affidavit, as above mentioned, sets out the matters relating to Anjali and in addition it states that the Respondent was being prosecuted at the date of the affidavit, 17th June, 1944, upon charges of conspiracy with other persons to defraud the Railway authorities, which charges were then pending. The affidavit adds that in the circumstances, the deponent submitted that the Respondent was not a fit person to hold the boarding house licence and that the Commissioner had rightly and lawfully and for sufficient reasons cancelled it and was entitled to do so.

14. On the 5th June, 1944, the Respondent instituted a notice of motion in this Court praying that:-(a) a writ of prohibition be issued directed to the Commissioner of the Calcutta Police prohibiting him from cancelling the Respondent's boarding house licence and from taking any action founded upon any alleged cancellation; (b) for an injunction restraining the Commissioner and his subordinates from taking steps towards closing the hotel pending the disposal of the notice of motion and (c) an interim injunction to the same effect. On the 19th July, 1944, the hearing of the motion was commenced before Mr. Justice Ormond; on the 3rd day it was pointed out that a writ of prohibition did not lie since the boarding house licence was cancelled before proceedings had been taken; whereupon and without objection, a prayer was added to the notice of motion that a writ of Certiorari be addressed to the Commissioner directing him to bring up any proceedings and order purporting to cancel the licence to the end that they might be quashed. A further prayer, for inclusion of an injunction in the notice of motion, was not pressed. The hearing before Mr. Justice Ormond lasted for 8 or 9 days and at its conclusion judgment was reserved. On the 31st August, 1944. the learned Judge delivered judgment. He expressed the opinion that writs of Prohibition and Certiorari would not lie as the Commissioner of Police was not

a Court and his purported cancellation was not in the exercise of a judicial or a quasi-judicial function. During the course of delivering his judgment the learned Judge gave learned Counsel for the Respondent an opportunity to apply to amend the notice of motion by adding a further prayer for relief under sec. 45 of the Specific Relief Act, which corresponds to the old writ of Mandamus. This application was made and after some argument, was allowed. Thereupon relief under the section was granted. In his judgment the learned Judge made no order in the Respondent's favour for costs but in view of the lateness of the amendment he directed him to pay one-third of the costs of the Commissioner.

15. It is now convenient to refer to the relevant provisions of the Calcutta Police Act. They are the following:

Sec. 35 makes it an offence to keep a boarding house and an eating house without a licence punishable on summary conviction before a Magistrate with a fine not exceeding Rs. 50 for every day that the house is kept open.

Sec. 39:

The Commissioner of Police may, at his discretion, from time to time, grant licences to the keepers of such houses or places. upon such conditions to be inserted in every licence, as he with the sanction of the Provincial Government from time to time shall order.... and the said licences may be granted by the said Commissioner for any time not exceeding one year.

Sec. 40

Any person committing a breach of any of the conditions subject to which a licence is given under sec. 39 of this Act, shall, on summary conviction before a Magistrate, be liable to a fine not exceeding one hundred rupees

Any person so convicted shall also be liable to the forfeiture of his licence, at the discretion of the Commissioner of Police, subject to the direction and control of the Provincial Government.

16. The Act does not provide for "cancellation" of a licence but for its "forfeiture." There is, however, no difference in effect between cancellation and forfeiture.

17. The licence issued to the Respondent by the Commissioner, pursuant to sec. 39, contains on its back the conditions upon which the licence is granted, which conditions are referred to in the section. There are 15 conditions endorsed on the back of the licence, subject to which the licence was granted. None of these conditions includes a condition that the licence is subject to cancellation by the Commissioner of Police in the event of breach of any conditions being committed. At the foot of the conditions the following appears

G.O. No. 1688 P. dated 7-2-1917.

NOTE:-If the holder of this licence shall commit any breach of any of the foregoing conditions he shall be liable on conviction before a Magistrate to a

penalty not exceeding one hundred rupees for every such offence and be further liable at the discretion of the Commissioner of the Police, subject to the general directions and control of the Governor in Council, to the forfeiture of this license in addition to any other penalty or punishment which shall be imposed on him.

18. Reference in the Note to Governor in Council, by virtue of later legislation, relates to the Provincial Government. The Note does not accord with the provisions of sec. 40 of the Calcutta Police Act. According to the note the Commissioner can forfeit a licence upon a breach of a condition.

19. It would seem that prior to 1917 the form of licence was different to that which is now in use. By letter, No. 1688. P. dated 7th February; 1917, addressed to the Commissioner of Police, the Government accorded approval to the form now in use, a draft or copy of which is attached to and is referred to in the letter. The letter and the draft or copy were produced before us. The draft does not include the word, letters and figures "G.O. No. 1688 P dated 7-2-17 " appearing on the back of the licence between the last condition and the note at the fact. As these words, letters and figures appear on the back of the licence, an impression is given that the Note is authorised by them; those words letters and figures clearly relate to the Government's letter according approval to the form of the licence.

20. On behalf of the Commissioner Mr. Rahman made the following contentions:

(i) Since the Commissioner is the authority to grant the licence, he can cancel it at his discretion irrespective of a conviction for breach of conditions.

(ii) The approval by the Government of the form of the licence is also its sanction under sec. 39 of the conditions of the licence and the provision in the Note, (at the foot of the 15 conditions) is also a sanctioned condition.

(iii) Whilst the learned Judge had a discretion to allow an amendment with respect to sec. 45 of the Specific Relief Act, relief under that section cannot be given unless there is compliance with the provisions of sec. 4b of the Act regarding the affidavit supporting an application for relief under sec. 45. The Respondent's petition does not comply with sec. 46 and therefore the amendment should not have been allowed.

(iv) The learned Judge wrongly exercised his discretion by allowing the amendment to be made during the course of delivery of his judgment.

21. As to (1) Reliance for this contention was placed solely upon the provisions of sec. 22 of the Bengal General Clauses Act, 1899, which provides as follows:

Where, by any Bengal Act, a power to make orders, rules, by-laws or notifications is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any orders, rules, by-laws or notifications so made.

22. It was argued that the grant of a licence under sec. 39 of the Police Act is the

making of an order and the Commissioner's power to grant such licence is power to make an order, within the purview of sec. 22 of the General Clauses Act. Therefore he had power to rescind the order, and the cancellation_of the licence is rescission of the order within the section.

23. I am unable to accept this argument. The word "orders" in sec. 22 appears together with the words "rules, by-laws or notifications "; all these words, in my view, relate to some form of delegated legislation authorised by a statute. The Commissioner is no more than the Government's issuing officer of the licence which is authorised to be granted by sec. 39 of the Police Act and in exercising that power the Commissioner acts much in the same way as the prescribed authority issues a motor driving licence under the Motor Vehicles Act. The executive act of granting a licence upon payment of a fee of Rs. 2 is not making of an "order" which has the force of law although there may be, as sec. 39 provides, a discretion in the Commissioner which he can exercise before granting the licence. A citizen has an unrestricted right to carry on a bond fide trade, including the business of a boarding house keeper. Sec. 35 takes away that right by making it an offence to conduct a boarding house without a licence. Sec. 39 gives a right to a person to keep a boarding house, to whom the Commissioner grants a licence under the section. If, under the Act, the licence can be forfeited or cancelled at the will of the Commissioner, then the Act takes away with one hand what it has given with the other hand. If the Commissioner could cancel or forfeit the licence at his will and pleasure, in the absence of a conviction for breach of a condition of the licence, the latter part of sec. 40 would be nugatory. The provision in that section, in my view, negatives any power in the Commissioner to cancel or forfeit where a conviction has not been obtained. If such power in the Commissioner existed then a person, who had been prosecuted and acquitted for breach of a condition, would nevertheless be liable to lose his licence although by sec. 40 the conviction is a condition precedent to forfeiture. Even assuming the Commissioner had discretionary power to forfeit at will, there is nothing in the present case to show that he exercised that power. The document dated the 3rd May, 1944, records that the Commissioner had cancelled the licence, but when, how, in what circumstances and for what reasons are not manifested in any document. The document of the 3rd May is not the executive act of cancellation; it is headed " Confidential," it does not purport to be signed by or on behalf of the Commissioner, but it is signed by an Inspector as such; it is, at the most, a directive to a Police Officer that since the Commissioner had previously cancelled the licence, it was to be obtained and returned to the Pass Inspector's office and the boarding house was to be closed. Further under sec. 40, the Commissioner's power to forfeit is not an absolute power, but it is subject to the direction and control of the Government; this negatives a power in the Commissioner to forfeit at his will and pleasure.

24. As to (ii) sec. 39 of the Police Act empowers the Government to sanction the conditions upon which a licence is granted. Nevertheless, the Government cannot give effective sanction to a condition which conflicts with the provisions of the

Act, contained in sec. 40, requiring a conviction to be obtained before the question of forfeiture of a licence can arise. If the note were a condition of the licence, then, in my view, such condition violates sec. 40 and is beyond the powers of the Government to sanction. But, the Note is not and does not purport to be, a condition of the licence. It merely directs attention of the holder to the consequences of a breach of the conditions which are set out above the Note. The Note is inaccurate in its terms since it does not accord with sec. 40 and in that respect, requires correction. Neither the Note nor the approval by the Government of the form of the licence confers any authority upon the Commissioner of Police to forfeit or cancel a boarding house or similar licence, in the absence of a conviction for breach of condition of the licence.

25. Mr. Justice Ormond discussed at length the law relating to licences. In my view one can deal sufficiently with the present matter without considering that general question. I agree with the learned Judge's finding that the purported cancellation by the Commissioner of Police of the Respondent's boarding house licence was in excess of his powers, was ineffective and was unlawful and that the licence was not cancelled or forfeited but remained current throughout the period for which it had been granted.

26. As to (iii) and (iv) Mr. Rahman referred to sec. 46 of the Specific Relief Act which requires on application under sec. 45 to be founded on an affidavit of the person injured stating his right in the matter in question, his demand of justice and the denial thereof. Mr. Rahman argued that the Respondent's petition does not comply with these requirements and consequently he is not entitled to any relief pursuant to sec. 45. In support of the argument, that failure to comply with sec. 46 disentitled the Respondent to relief, reference was made to the King v. The Company of Proprietors of the Brecknock and Abergavenny Canal Navigation (1835) 3 Adolphus & Ellis, 217 and The Queen v. The Bristol and Exeter Railway Company (1838) 11 Adolphus & Ellis, 202. Mr. Rahman further argued that since there was non-compliance with sec. 46 a prayer for relief under sec. 45 cannot succeed, and therefore an amendment by the addition of such a prayer ought not to have been allowed by the learned Judge.

27. The notice of motion and the Respondent's petition in support, amongst others, are intituled "In the matter of sec. 45 of the Specific Relief Act." The petition which it is not disputed, must be treated as the Respondent's affidavit pursuant to sec. 46 sets out the facts relating to his conducting the Punjab Hindu Hotel since 1917, the annual grant to him of boarding house and eating house licences, the visit of Sub-Inspector Dutt to the hotel on the 7th May the Manager's visit to the Police Station on the 16th May; and it refers to the attorney's letters written on the Respondent's behalf dated, the 8th and 30th May and the Commissioner's letter of the 29th May and a copy of the document of the 3rd May is attached to the petition. The full contents of these documents are fully set forth in an affidavit by a clerk to the attorney which was filed in support of the notice of motion. Paragraph 8 of the petition cites the Calcutta

Police Act and states that the Commissioner's powers in respect of the issue of licences are derived from secs. 35 to 41 thereof; paragraph 10 states that to avoid prolixity and repetition, the Respondent craves leave to refer to the clerk's affidavit wherein all the correspondence is set out; paragraph 9 of the petition states that the document of the 3rd May was shown to the manager (a copy of which was attached to the petition) and which purported to inform the Respondent that his licences or one of them had been cancelled; paragraph 11 states that no reason had been assigned for the cancellation and paragraph 13, that the Respondent was advised and submitted that the discretion vested in the public authority with respect to the licences was being exercised in a capricious arbitrary and oppressive manner and was ultra vires the Commissioner of Police.

28. By referring in the petition to the several letters and documents and to the clerk's affidavit in which the contents of all of these documents are set out, the letters and documents were incorporated in and formed part of the petition.

29. Paragraph 10 of the petition which refers to the attorney's letter of the 20th May adds that thereby the Respondent requested to be informed officially as to the position and the intention of the police in matter. Mr. Rahman contended that the interpretation to be placed upon the letter is given in the paragraph by the Respondent and that interpretation is not that the letter was a demand for justice. At the date of the letter the Respondent was ignorant of the full facts and position. All that he knew was that on the 7th May, Sub-Inspector Dutt had shown the manager the document of the 3rd May, but had taken it away without leaving a copy; information was sought by the attorney's letter of the 8th May to which no reply was sent; on the 18th May the manager had been allowed to make a copy of the document when he went to the Police Station and when, it would seem, it was ascertained that Sub-Inspector Dutt was the man who had shown the document to the manager on the 7th. The facts known to the Respondent are set out in the letter of the 20th May including the full text of the document of the 3rd May and the non-receipt of any reply to the attorney's letter of the 8th May, a copy of which was attached.

30. The statements in the petition and in the letters and documents incorporated in and forming part of the petition are, so far as material, to the following effect.

31. The Respondent had conducted his hotel since 1917 and in respect of the hotel the Commissioner of Police had granted annually to him boarding house and eating house licences of which the two current licences were attached to the petition; the Commissioner was the authority for the grant of the licences and his powers with respect thereto were derived from the Calcutta Police Act: the Commissioner had purported to cancel the two current licences, which cancellation was notified to the Respondent by showing his manager a document of the 3rd May; the Commissioner's discretion with respect to the licences was exercised in a way that was ultra vires his powers; the cancellation of the licences and all the other acts and conduct relating thereto were illegal and the Commissioner was asked to give immediate attention to prevent and to remedy

the illegal acts. Finally, the Commissioner had refused by failure to comply with the request made to him.

32. The petition in my opinion complies with sec. 46. It is the affidavit of the person injured, in which he sets out his right with regard to the hotel and the boarding house licence; his demand for justice with respect to the purported cancellation of the licence and the action of the police regarding matters connected therewith and also the denial of the justice demanded. The averment in the petition that by the letter of the 20th May the Respondent requested to be informed of the position and intention of the police does not detract from the demand for justice made in that letter. There was a demand by the letter to do justice and its inclusion in the petition is a statement or is equivalent to a statement, in an affidavit that such demand was made. The terms of the Commissioner's reply dated the 29th May are referred to in the petition. It is not necessary that there should be an express refusal to do justice (see *Littledale, J.*, at page 223 in the *Brecknock* case) and a refusal in effect, though not in direct terms, is sufficient (see *Coleridge, J.*, at page 172 in the *Bristol* case). Non-compliance with the request contained in the 20th May letter and the bare statement in the Commissioner's reply of the 29th May is a clear refusal of justice within the requirement of sec. 46. No reason was forthcoming for the purported cancellation until Sub-Inspector Dutt's affidavit was affirmed on the 17th June after the institution of the present proceedings. The reasons given in that affidavit are wholly inadequate and do not conform with the Police Act.

33. In my view, the petition complies with sec. 46, consequently relief under sec. 45 could have been sought and obtained at the commencement of the proceedings, and there was no reason against an amendment to the notice of motion being allowed so as to include such relief. By Or. 6, r. 17 or the CPC the Court may allow an amendment at any stage of proceedings. A Judge has a discretion to allow an amendment at any time, and indeed, an Appellate Court can allow an amendment to pleadings during the hearing of an appeal. The whole of the facts were before Mr. Justice Ormond who, in my opinion, correctly came to the conclusion that the purported cancellation of the licence was unlawful and that the Respondent was entitled to relief with regard to the wrong done to him. The amendment invoked no more than the means by which he could be accorded relief to which he was entitled. Proceedings by way of Prohibition, Certiorari and Mandamus (the latter now obtainable under sec. 45 of the Specific Relief Act) are highly technical and somewhat artificially distinguished. The first two forms of relief were not available since in the learned Judge's view, (with which I agree for the reasons stated below) the Commissioner was not a Court nor a person or entity exercising judicial or quasi-judicial functions. That being the position the only method by which the Respondent could be accorded relief was by means of sec. 45 and the amendment related solely to the form of granting the relief to which the Respondent was entitled upon the facts and circumstances previously disclosed and discussed. No additional costs were incurred by the Commissioner and he sustained no hardship by the amendment being allowed. In my view the

learned Judge did not act wrongly in the exercise of the discretion, which admittedly he had by allowing the amendment.

34. Now I come to the matters in the memorandum of cross-objection which Mr. Bar-well argued for the Respondent. He contended that when in exercising his discretionary power as to forfeiture under sec. 40 of the Police Act, the Commissioner acts in a judicial or quasi-judicial capacity; in purporting to cancel the Respondent's licence, the Commissioner wrongly exercised his power and a writ of Certiorari should go in order to correct the illegality. It is not disputed that the principles relating to writs of Prohibition and Certiorari are the same, the difference being that the former will lie to prevent the wrongful exercise of judicial power and the latter to correct the wrongful exercise of that power when it has been exercised.

35. Mr. Bar well contended that prohibition will go not only to a Court or to judicial or quasi-judicial officers, but also to statutory authorities. He referred to *The King v. Electricity Commissioner* (3) and *The King v. Minister of Health* ILR (1922) All. 258. In each of these decisions the statute, with respect to which an act was sought to be prohibited, provided for a public enquiry to be held; in the first case the Electricity Commissioners were obliged to hold a local enquiry, at which all interested authorities and undertakings were entitled to appear, if there was objection to a proposed scheme; in the second decision the Minister was bound to direct an enquiry to take place if he contemplated taking action upon a petition presented to him and to decide upon the petition only after being satisfied on the report of the enquiry. In these two cases, clearly, either judicial or quasi-judicial functions were exercisable. In the *Electricity Commissioners* case ILR (1924) All. 447, Atkin, L.J., at page 205 of the report pointed out that writs of Prohibition and Certiorari go only when there is a duty to act judicially. In *The King v. London County Council* (1918) 16 L.J. 760, Scrutton, L.J., observed at page 233, "If it is a tribunal which has to decide rights after hearing evidence and oppositions, it is amendable to the writ of Certiorari."

36. Returning to the present case, the forfeiture of a licence at the Commissioner's discretion can take place only if the holder is convicted before a Magistrate for a breach of a condition of the licence. The Magistrate holds a judicial enquiry when determining the prosecution. The section does not contemplate more than one such enquiry taking place. If a judicial or semi-judicial enquiry were to be held by the Commissioner, after the conviction of the holder of the licence, when contemplating exercising his discretionary power of forfeiture, it seems to me that the Commissioner would, in effect, be sitting as an Appellate Court from the Magistrate's decision. If it had been intended that such enquiry should take place the words, "after due enquiry" or words to a similar effect would be found after the words "Commissioner of Police" in sec. 40. They are not there, and there is no reason to imply their inclusion. Further the exercise of the Commissioner's discretion to forfeit is subject to the discretion and control of the Provincial Government. If such enquiry were required by the

section it might be said that it should be held by the Government before it could come to the conclusion whether to direct the Commissioner to exercise his discretionary power to cancel the licence. In my opinion the meaning of sec. 40 is clear. Upon breach of a condition the holder of a licence is liable to prosecution and if he is prosecuted and convicted a fine can be inflicted upon him by the Magistrate by whom he is tried. Upon conviction taking place, the Commissioner at his discretion can enforce the further liability of forfeiture of the licence but his power to do so is subject to the Government's discretion and control. Instead of the forfeiture being automatic, there is a discretion; but in its exercise the holder of the licence has no right to appear before the Commissioner to show cause and the Commissioner does not take evidence before exercising his discretionary power of forfeiture or act in a way which is indicated by Lord Justice Scrutton in the observations which I have quoted. The Commissioner exercises an executive discretion in deciding whether to forfeit a licence and not judicial discretion. That being the position, Certiorari does not lie to correct any error committed by the Commissioner with regard to forfeiture, or, as in this case, cancellation of the licence; but if a wrongful exercise of the discretion takes place, as it did in the present instance, that wrong can be corrected only by the procedure under sec. 45 of the Specific Relief Act. In my judgment Mr. Barwell's argument cannot prevail.

37. I am unable to find that there is any ground raised in the memorandum of cross-objection against Mr. Justice Ormond's order that the Respondent should pay one-third of the Commissioner's costs; consequently no question arises with regard to that part of the learned Judge's judgment.

38. In my view, for the reasons given, this appeal fails and should be dismissed with costs.

39 Certified for two Counsel. In the circumstances I see no reason to make any special order with regard to costs with respect to the memorandum of cross-objection.

Das, J.

I agree.