

(1958) 08 CAL CK 0033
In the Calcutta High Court
Case No : Matter No. 210 of 1957

Kishan Chand Arora

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 07-08-1958

Acts Referred:

Calcutta Police Act, 1866 — Section 39
Constitution of India, 1950 — Article 19(1), 19(6)

Citation : AIR 1959 Cal 123 : (1959) CriLJ 180 : 62 CWN 799

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Advocate : P.P. Ginwalla, for the Appellant; B. Das, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Sinha, J.—The facts of this application are briefly as follows: One Prafulla Kumar Mitra is tenant of premises No. 2, Chowringhee Road, Calcutta, wherein he runs a Hotel called the "Bristol Hotel". In October 1953, he sub-let the ground floor of the said premises to the Respondent No. 2 Haripada Bhowmick as a monthly tenant. The said Haripada Bhowmick was carrying on the business of an eating house therein, known as the "Kalpataru Cafeteria." The running of such an eating house requires the grant of a license by the Commissioner of Police, Calcutta u/s 39 of the Calcutta Police Act 1866 read with Section 6(2) of Bengal Act V of 1909 and Section 3 of Act VII of 1912. Bhowmick had taken out such a license. Section 39 of the Calcutta Police Act 1866 (hereinafter referred to as the "Act") runs as follows:

"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 license 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 Commissioner for any time not exceeding one year."

Under Section 35 of the said Act whoever, in the town of Calcutta keeps any eating house where provisions or refreshments are sold or consumed, without a license, is liable on summary conviction before a Magistrate to a fine not exceeding fifty rupees for every day that the eating house is kept open without such a license. As I have stated above, Bhowmick took out a license in respect of the Cafeteria, which license was being renewed from year to year. The license was granted, subject to certain terms and conditions. Condition No. 5 of the license, runs as follows:

"That the licensee shall not at any time during the currency of the license sublet, hire out or transfer his business to any other person or persons without the written sanction of the Commissioner of Police."

On 11-8-1954 Bhowmick entered into an agreement with the petitioner, a copy whereof is annexed to the petition and marked "A". In the agreement, Bhowmick is described as the "principal" and the petitioner is described as the "Contractor." It was agreed that the principal was to employ the contractor to manage and conduct his business known as "Kalpataru Cafeteria," Although, this is how the agreement is framed, the result is as follows:

- (a) The business, with its goodwill and visible assets is taken over, by the contractor and run by him.
- (b) From the date of taking over, the principal has no further hand in the running of the business except paying the rent of Rs. 1,000/- per month to the landlord and renewing his license.
- (c) The contractor was to pay Rs. 110/- per day to the principal irrespective of whether the business earned any profit or not.
- (d) The contractor was to deposit a sum of Rs. 30,000/- as security for discharging his liability under the agreement.
- (e) The agreement was to subsist for a period of 5 years with a right of renewal for a like period.
- (f) The contractor had the right to terminate the contract upon six months notice and payment of all outstanding dues of the principal.
- (g) The principal had the right to terminate the contract upon 15 days notice, if the contractor failed to make the payment agreed upon or committed a breach of contract.

On the same day, a tripartite agreement was entered into between the petitioner, Bhowmick and Prafulla Kumar Mitra whereby the sum of Rupees 30,000/- was to be deposited by the petitioner with Mitra, who was to guarantee the performance

of the contract by Bhowmick. Mitra further agreed that if the tenancy of the principal was terminated then the contractor would become the tenant.

2. The last license taken out on behalf of Bhowmick expired on 31-3-1955. After the expiry thereof, no application was made for renewal for several months, but the petitioner went on carrying on the business of the Cafeteria as if no license was required. He says that he did so by an "oversight," an excuse which I am unable to accept as true. On 30-8-1955 an application was lodged for a license. It was signed by Bhowmick but forwarded to the Commissioner by the petitioner. In September 1955 a prosecution was launched against Bhowmick for carrying on the Cafeteria without a license and he was fined Rs. 5/- on 12-12-1955. In June 1956, a letter was received by the Deputy Commissioner Head Quarters, from the Health Officer District III of the Corporation of Calcutta, to the effect that no health license had been granted to either Kissenchand Arora or Jagadish Lall in respect of the Kalpataru Cafeteria. It is not clear who Lall is. The agreement enables the petitioner to associate other people to work with him and this is perhaps how he came into the picture. The license of Bhowmick was not renewed, but this did not deter the petitioner from carrying on the Cafeteria without a license. Indeed, he is doing so even now. On 7-9-1956, a notice was issued upon Bhowmick by the Deputy Commissioner, Head Quarters, asking him to show cause why license in respect of the Kalpataru Cafeteria should not be refused to him inasmuch as he had violated Clause 5 of the license by having leased out" the same to Kisanchand Arora. This notice appears to have been served by affixation upon the Cafeteria and brought matters to a head. On 21-9-1956 the petitioner wrote to the Deputy Commissioner of Police praying for a license to be issued in his own name, saying that he was a subtenant in respect of portion of 2 Chowringhee Road occupied by the Cafeteria under Prafulla Kumar Mitra. Referring to the agreement dated 11-8-1954, he said:

"The said Indenture was entered into between myself and the said Mr. Prafulla Kumar Mitra in the benami of and/or in collusion with Mr. Haripada Bhowmick. I have however filed a petition on 21-8-1956 before the Rent Controller, Calcutta for declaring me a tenant direct under Shri Deba Prosad Gooptu."

3. What does this confession really mean? Deba Prosad Gooptu is the owner of Premises No. 2 Chowringhee Road; Prafulla Kumar Mitra is his tenant. In respect of the ground floor Prafulla Kumar Mitra sub-let it to Bhowmick and now the petitioner says that Prafulla Kumar Mitra sub-let it to the petitioner and the document of 11-8-1954 was a benami and collusive document. This surprising stand is further elucidated by the Petitioner's letter dated 21-5-1957 to the Deputy Commissioner which inter alia states as follows:

"The said agreement dated 11-8-1954 is really one of the tenancy between myself and one Prafulla Kumar Mitra in the benami name of Haripada Bhowmick. The said agreement was entered into in its present form only with a view to evade, if possible, the provisions of the West Bengal Premises Rent Control (Temporary Provisions) Act 1950."

On 13-9-1956 Bhowmick caused a solicitor's letter to be served upon the petitioner, stating that he had failed to make the payments stipulated, under the agreement, dated 11-8-1954 and had committed breaches of contract and had been running the Cafeteria without a police license unlawfully. Unless therefore these were remedied within 15 days, the agreement stood cancelled. In October 1956 Bhowmick filed a suit against the petitioner in this court, being Suit No. 2793 of 1956, for possession of the Cafeteria damages and other reliefs. That suit is still pending.

4. As regards the petitioner's application for a license in his own name, on 27-12-1956 the Commissioner of Police directed the petitioner to satisfy him by producing his documents of tenancy etc. Commencing from February 1956, a series of prosecutions had been launched against the petitioner for carrying on the Cafeteria without license, in violation of the provisions of the Calcutta Police Act.

5. On 29-11-1957 the petitioner made an application to this court under Article 226 of the Constitution and a rule was issued, being Matter No. 210 of 1957. The reliefs claimed were the same as in this application. At the hearing of the rule I found that the application was premature inasmuch as the Commissioner of Police had merely demanded to be satisfied of the status of the petitioner by production of documents and had not made up his mind. The only order that was made on 27-2-1958 was that the petitioner should furnish the requisite documents and the Commissioner should consider them and make known his decision.

6. Thereafter the petitioner furnished the Commissioner with the above two agreements dated 11-8-1954 and certain other documents. During the investigation, the Commissioner of Police received objections from both Bhowmick and Prafulla Kumar Mitra. Both of them stated that Bhowmick was the tenant and no license should be issued to Arora. Meanwhile, the petitioner had himself brought to the notice of the authorities about the institution of a suit against him by Bhowmick in this High Court.

7. On 8-3-1958 the Commissioner of Police passed his order, refusing to grant a license to the petitioner, and hence this application, praying for a high prerogative writ commanding the Commissioner of Police to renew his license. The Commissioner of Police has appeared and explained why he did not grant the license to the petitioner. Bhowmick has appeared and strongly objects to a grant of license to the Petitioner. Prafulla Kumar Mitra has not been made a party at all to the application. The Commissioner of Police has himself affirmed an affidavit and has referred to two affidavits, one affirmed by the Deputy Commissioner, Head Quarters, and the other by the O. C. Taltolla. The reasons for refusing the license are stated to be as follows:

(1) That the petitioner failed to satisfy the Commissioner that he was a tenant in respect of the premises wherein the cafeteria is situate.

(2) That the previous holder of the license, Bhowmick had contravened the terms of his license by entering into an agreement with the petitioner, enabling him to carry on business.

(3) That after the expiry of Bhowmick's license, the petitioner carried on, and is still carrying on the eating house, unlawfully without a license, in spite of numerous prosecutions in that behalf and (numerous convictions.

(4) Considering all these matters, the Commissioner of Police did not consider it desirable to issue a license to the petitioner.

8. The question before me is, as to whether I should compel the Commissioner of Police to use his discretion in favour of the petitioner and command him to issue a license. The way Mr. Ginwala has presented his case is this. He says that his client is carrying on the business of an eating house and the respondents are precluded from challenging this as they are actually launching prosecutions against him for carrying on the business. As to the quarrel between him and Bhowmick or Mitra, that is said to be no concern of the Commissioner. He further argues that his client has a fundamental right to carry on the business, under Article 19(1)(g) of the Constitution, and the Commissioner cannot refuse to issue a license on such grounds as aforesaid. According to learned counsel, the scope of Section 39 of the Act is severely limited to the matters stated therein, namely to secure the good behaviour of the keeper of the eating house, and to prevent drunkenness and disorder among the persons frequenting the same. Mr. Ginwala posed the question as to whether the Commissioner could refuse a license, upon the ground that the keeper of an eating house had committed adultery. Seeing that adultery is a criminal offence in India, the question is indeed an interesting one, namely as to whether a self-confessed criminal could as a matter of right claim the issue of a license, which imposes serious duties and liabilities, and whether the Commissioner could reasonably expect to secure "good behaviour" from such a person. I must begin by pointing out that before me, the provision of the Calcutta Police Act 1866, imposing a liability upon the keeper of an eating house to take out a license from the Commissioner of Police, has not been challenged as an unreasonable restriction within the meaning of Clause 5 of Article 19. In fact, in *Purshottam Singh v. Commr. of Police, Calcutta* 92 Cal LJ 81 (A) I have held that Section 39 of the Act imposes a reasonable restriction and is not violative of Article 19(1)(g) of the Constitution. I shall now proceed to consider several other aspects of the matter.

9. In *Nakkuda Ali v. Jayaratne* 54 CWN 1883 (B), the Privy Council was dealing with the power of the Controller to cancel a license under the Ceylon Defence (Control of Textiles) Regulations, 1945. Regulation 62 empowered the Controller to cancel a textile license when he had reason-table grounds to believe that any dealer was unfit to be allowed to continue as a dealer. A dealer's license was cancelled because he had falsified paying-in slips in his dealings with the Textile Corporation Bank. The dealer applied for a writ of certiorari, but the Privy Council rejected the prayer holding that when a Controller cancels a license he was not

determining a question. He was taking an executive action to withdraw a privilege because he believed and had reasonable grounds to believe that the holder was unfit to retain it. *It Jayaratne v. Bapu Miya*. 64 CWN 893 (C), the Privy Council held that the Controller may act on suspicion which arose out of the facts that were before him, and no judicial determination was required. See Page facing. (sic).

10. In *Rameshwar Prasad Kedarnath Vs. The District Magistrate and Others*, a division bench of the Allahabad High Court pointed out that in view of Article 19(1)(g) of the Constitution, a citizen was prima facie entitled to a license under the U. P. Controlled Cotton Cloth and Yarn Dealers Licensing Order, 1948, and it was no longer a "privilege" and the view taken in *Nakkuda Ali's case* (A) was no longer of any assistance. In this case, we are of course not concerned with a writ of certiorari but a writ of mandamus. The writ court does not control the exercise of a discretion, but if people who have to exercise a public duty by exercising their discretion take into account matters which the court considers not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion. Per Lord Esher in *R. v. Vestry of St. Pancras* (1890) 24 QBD 371 (E).

11. If executive authority has acted upon more than one reason and there is a bad reason, the order could not be supported because one cannot be certain as to what extent the mind of the authority was swayed by the bad reason. AIR 1943 72 (Federal Court); *Dwarka Dass Bhatia Vs. The State of Jammu and Kashmir*, .

12. In *Commissioner of The Calcutta Police Vs. Rolla Ram Chopra Gentle, J.* had to deal with Sections 65, 39 and 40 of the Calcutta Police Act, 1866. It was argued there that the Commissioner having issued a licence could, by virtue of Section 22 of the General Clauses Act, rescind the order and cancel the license at his will and pleasure. Gentle J. said as follows:

"A citizen has an unrestricted right to carry on a bona fide trade including the business of a Boarding House Keeper. Section 35 takes away that right by making it an offence to conduct a boarding house without a license. Section 39 gives a right to a person to keep a boarding house to whom the Commissioner grants a license under the section. If under the Act, the license 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 license at his will and pleasure the license, the latter part of Section 40 would be nugatory."

13. In *Ram Padarat v. Commr. of Police, Calcutta* 57 CWN 229 (I) Rose J. was also dealing with Section 39 of the Calcutta Police Act 1866. In that case, the petitioner was the holder of a license granted by the Commissioner of Police, in respect of a Boarding House. The petitioner made an application for renewal but the Commissioner refused the application, and gave no reason. Before the

learned Judge, the Commissioner of Police did not affirm any affidavit, but a sub-inspector of police attached to the Jorasanko Thana gave evidence that complaints had been received from members of the public that the petitioner was running his boarding house in a disorderly manner, and he had reported this to the Commissioner, who thereupon refused to renew the license. The learned Judge was not satisfied that any reasonable grounds had been made out for not issuing the license and the Commissioner was directed to recall the order of refusal and to deal with the application for renewal, in accordance with law. The learned Judge said:

"It is true that the power of granting license is a discretionary power, but there can be no doubt that this discretionary power is occupied with a duty. This power of issuing licenses has been conferred for public benefit and in order to control or regulate the running of business or trade by Persons engaged in such business. It is, therefore, expected that the Commissioner of Police will normally grant licenses to persons asking for such licenses unless justifiable grounds exist for refusing such licenses."

14. In *Veerappa Pillai Vs. Raman and Raman Ltd. and Others*, , the Supreme Court was dealing with the case of a permit for stage carriages under the Motor Vehicles Act, which might be compared to the issue of a license for running an eating house. Aiyar J. said as follows:

"The Motor Vehicles Act is a Statute which creates new rights and liabilities and prescribes an elaborate procedure for their regulation. No one is entitled to a permit as of right even if he satisfies all the prescribed conditions. The grant of a permit is entirely within the discretion of the transport authorities and naturally depends on several circumstances which have to be taken into account. The R. T. A. and the P. T. A. are entrusted u/s 42 with this power. They may be described as administrative bodies exercising judicial functions in the matter of the grant of permits As observed already, the issue or refusal of permits is solely within the discretion of the transport authorities and it is not a matter of right."

15. In *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, , the provision of Section 4(3) of the Uttar Pradesh Coal Control Order, 1953, was struck down because the licensing authority had been given absolute power to grant, refuse to grant, renew or refuse to renew, suspend, revoke or cancel any license granted under the said Order. Held that such naked and arbitrary power was violative of the fundamental rights of the petitioner under Article 19(1)(g) of the Constitution.

16. In *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, it was held that the policy underlying the M. P. Cotton Textiles (Control of Movement) Order 1948, was to regulate the transport of cotton textiles in a manner that will ensure an even distribution of the commodity in the country and make it available at a fair price to all. The grant or refusal of a permit is thus to be governed by this policy and the discretion given to the Textile Commissioner is to

be exercised in such a way as to effectuate this policy.

17. In *Rustum Tamshed Irani v. Hartley Kenneddy* ILR 26 Bom 396 (M), the High Court of Bombay was dealing with Section 12 of Bombay Act 48 of 1860. u/s 12 of that Act, it was necessary to take out a license in respect of an eating house. It however laid down that "The Commissioner of Police shall from time to time grant licenses to the keepers of such houses." It was held that u/s 12, the Commissioner of Police had no discretion to refuse the license. The wordings of Section 39 of the Calcutta Act are different and expressly makes the issue of a license, a matter of discretion.

18. In my opinion, the law on the subject may be summarised as follows:

(1) A citizen of India has the fundamental right under Article 19(1)(g) of the Constitution to carry on a trade or business of his choice.

(2) But the law may impose a reasonable restriction thereon, in the interests of the general public. (Clause 6 of Article 19).

(3) The phrase "reasonable restriction" in Article 19(6) connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature beyond what is required in the interests of the public. A naked or arbitrary power granted to executive authority, without limit, is not a reasonable restriction and will be struck down. An arbitrary exercise of such power will also be declared void.

(4). The provision contained in Section 39 of the Calcutta Police Act, 1866, whereby a citizen, in order to carry on the business of an eating house, is required to take out a license from the Commissioner of Police, is a reasonable restriction within the meaning of the phrase as used in Clause 6 of Article 19, imposed in the interests of the public.

(5). It is, however, a reasonable restriction only because the power is not naked and arbitrary. The exercise of the power is restricted by the underlying object of the Act, which is to create a police force and invest it with sufficient powers to protect public safety, peace and tranquility, within the town of Calcutta.

(6). Section 39 of the Act, grants a discretion to the Commissioner of Police to issue a license to the keeper of an eating house. The form and condition of such a license must be prescribed by him with the sanction of the State Government and must be such as will be necessary for securing the good behaviour of the keeper and the prevention of drunkenness and disorder among the persons frequenting or using the same.

(7). Although the issue of such a license is discretionary, the discretion is to be exercised, so as to effectuate the policy underlying the Act, and not arbitrarily. An arbitrary exercise of the power unconnected with the policy and object of the Act will be struck down.

(8). Thus, normally, a citizen, who complies with the formalities of the Act and

any rules made under it, and who pays the necessary fees, cannot be refused a license, unless there are reasonable grounds for such refusal.

(9). The act of the Commissioner in issuing a license, is an executive act and the discretion is an executive discretion.

(10). There is no provision in the Act for issuing a notice upon the applicant before rejecting his prayer for a license or of hearing him in support thereof or for giving or communicating the reasons for his refusal. It is however highly desirable that such reasons be recorded and communicated, otherwise it must inevitably give rise to proceedings in Court.

(11). The question whether there exist reasonable grounds for refusing to issue a license is always justiciable, because such an order tends to destroy the fundamental rights guaranteed to the petitioner under Article 19(1)(g) of the Constitution. Before the Court, the Commissioner of Police must disclose all the reasons and be prepared to support the legality of his acts.

(12). It does not follow, however, that the conclusions reached by the Commissioner must be based on a judicial determination of facts upon lawful evidence; Provided that the discretion is reasonably and bona fide exercised, the court will not interfere. Taking into account extraneous and irrelevant matters is however not a bona fide exercise of the discretion.

(13). There is a distinction between the grant of a license and the cancellation of a license. In granting a license the discretion is wider and may be broad-based upon a variety of considerations, provided however that they have a bearing upon the underlying policy of the Act and the object to be accomplished. But cancellation of a license already issued must be in accordance with the provisions of the Act. One view is that a cancellation can only be effected upon a conviction before a Magistrate for violation of a condition of the license. Since a license is only to be granted for the period of one year, a renewal must be deemed to be a fresh license.

(14). Since, one of the objects of issuing a license and in framing conditions therefore, is to secure the good behaviour of the keeper of an eating house and to prevent this Orderliness on the part of those frequenting it, it would be relevant to consider:

(a) whether the person running the eating house is really the "keeper" thereof. His right to run the business, his right to possession of the place where the business is run, the degree of control exercised by him over the employees thereof and over persons frequenting the eating house, are all relevant considerations;

(b) whether the person applying for the license, is a person fit to be entrusted with the running of an eating house. His conduct in connection with the running of the eating house, any breach by him of the conditions of the license, any conviction of such a person in connection with an offence which has any bearing

on the underlying policy of the Act, are all relevant considerations.

(14). Because the Act contains a provision for the imposition of a penalty for running an eating-house without a license, it does not follow that the imposition of a penalty is the only result of running an eating house contrary to the provisions of the Act. Such action, if it is deliberate and not merely accidental, would constitute a very good reason for refusing to issue a license at all. A person who openly violates the provisions of the Act cannot be considered a fit person to be entrusted with a license.

(15). In order to be recognised as a "keeper" of an eating house, to whom a license may be issued u/s 39, a person must be a keeper not only "de facto", but also "de jure". Otherwise any trespasser to a premises may claim as of right to run an eating-house therein. While, therefore, the Commissioner of Police cannot adjudicate as to disputed titles, he is entitled to ask for prima facie proof of title. But a "de facto" keeper may be proceeded against for contravention of the provisions of the Act u/s 35.

19. It remains for me to apply these principles to the facts of this case. The facts narrated above will show that the petitioner came into the scene, as a result of an open violation of Clause 5 of the license granted to Bhowmik. The agreement dated 11-8-1954 can be construed in one of two ways. In one view of the matter (as put forward by Bhowmick) the petitioner is a mere contractor, that is to say the agent of the real keeper of the eating house. In such a case, no license can be granted to him at all u/s 39 of the Act. In the other view, the agreement constitutes a leasing out or hiring by Bhowmick of the business in favour of the petitioner. This is in gross violation of Clause 5 of the license granted to Bhowmick. So far as the petitioner is concerned, he realises this difficulty and that is why he has been at pains to establish that he was the tenant and the document of 11th August was a collusive and fictitious document, executed merely to get round the provisions of the Rent Control Acts. If this is to be accepted, it shows that the root of the petitioner's title is a dishonest and collusive transaction calculated to defeat a provision of law and to prejudice the rights of the real owner of the premises. Looking at the materials before me I have no hesitation in saying that the story of being a tenant of the premises, as propounded by the petitioner, has no legs to stand upon. In the agreement itself there is recognition of the tenancy of Bhowmick and in the tripartite agreement it is expressly stated that only upon the termination of the tenancy of Bhowmick that the petitioner would become a tenant. That tenancy has never been determined. Therefore, it must follow that the petitioner came in because Bhowmick violated the conditions of his license, and he was himself a party to such action. He fails to show any existing right of tenancy. The real tenant has denied any such right reposing in the petitioner. The "principal" has purported to terminate the agreement of 11-8-1954 and has filed a suit in that behalf. Therefore, while the petitioner is a "de facto" keeper of the Cafeteria, because he is actually running it, he has failed to show any "de jure" right. The petitioner

himself admits that the root of his title is a collusive affair calculated to cheat a provision of the law. A license is granted because it would enable the Commissioner to exercise some degree of control over the keeper of the eating house. If, however, the keeper fails to show a "de jure" right, and in fact his title is dubious and hotly disputed and in respect of which litigation is going on, such control becomes impossible. The more damning fact however is that since April 1954, the petitioner is carrying on the business in open defiance of the provisions of the Act, without a license. Mr. Ginwalla has argued that it is something like the right of private defence and his client is entitled to carry on the business because the Commissioner of Police has wrongly refused to grant him a license. In my opinion, this is a dangerous doctrine. Where a law lays down restrictions calculated to ensure public safety, peace and tranquillity, a private citizen cannot openly violate the restriction merely because he questions the propriety of the executive order. It is true that the executive cannot be allowed to be a law unto themselves, but the required corrective must come from the Court, which alone can decide whether the limits of law have been transgressed or not, and not from a private citizen. The trouble is that the wording of the Calcutta Police Act is defective and merely provides for a money penalty. In this case, it pays the petitioner to run the business even after payment of the penalty, and so he carries it on in spite of innumerable prosecutions and convictions. It is time that the legislature gave its attention to this aspect of the matter and make provisions for a penalty of a deterrent nature.

20. In the present case, I hold that the Commissioner of Police has exercised his discretion, reasonably and bona fide and has satisfied the court that he has done so. I see no reason to compel him to use his discretion by granting a licence to the petitioner. The application fails, the application is dismissed. There will be no order as to costs.