

CHAINANI TRADING LIMITED v. ATTORNEY-GENERAL

SUPREME COURT (Pizzarello, Ag. C.J.): September 11th, 1998

Tobacco—licensing—retail—revocation—Tobacco Ordinance, 1997, s.7(4) confers absolute discretion on Collector of Customs to revoke retail licence following offence involving breach of licence condition—must take into account all relevant factors, including proportionality between offence and punishment

Civil Procedure—appeals—appeal against exercise of discretion—court not normally to substitute own decision for that of administrative body exercising absolute statutory discretion—may do so if decision ignores discretion

The appellant appealed from a decision of the Collector of Customs to revoke his tobacco retail licence.

The appellant was convicted, having pleaded guilty, of selling a single quantity of cigarettes which was well in excess of the amount permitted by his tobacco retail licence, contrary to s.4(3) of the Tobacco Ordinance, 1997. He was fined £600. The Collector of Customs then notified him that he had no option under s.7(4) of the Ordinance but to revoke the licence in view of the breach of a condition of the licence, but that the appellant would be given an opportunity to make representations on the matter.

The appellant attended a meeting with the Collector at which his solicitor made submissions as to the nature of the Collector's discretion under s.7(4), the details of the appellant's offence and the potential effect of the revocation of his licence on his business and family. The Collector nevertheless wrote to the appellant and his solicitor advising them that the licence had been revoked.

On appeal, the appellant submitted that (a) under s.8(1) of the Ordinance, the court had power to hear an appeal against the exercise of the Collector's discretion and could substitute its own view of the relevant factors to be considered, particularly since this was a new Ordinance and no reasons for the decision had been given; (b) the Collector had erred in construing s.7(4) as imposing an obligation to revoke a licence upon the breach of a condition of that licence; (c) the Collector had failed to take into account or give sufficient weight to matters relevant to the exercise of his discretion, including (i) the relatively small quantity of tobacco sold outside the terms of the licence, (ii) the fact that this was a first offence and that a fine of £600 had been imposed, compared to the maximum possible fine of £10,000, (iii) the

appellant's guilty plea, (iv) the appellant's reliance on the sale of tobacco for 75% of his profits and the consequent effect of revocation on a business worth £350,000, and (v) the further effects of the failure of the business on the appellant's ability to maintain his family and pay his mortgage; (c) furthermore, the Collector's affidavit evidence showed that he had considered extraneous and irrelevant matters and had chosen to disbelieve the financial information placed before him and to form opinions as to the viability of the appellant's business based on its location, without giving the appellant the opportunity to challenge these views; and (d) accordingly, the Collector had unlawfully fettered his own discretion and had exercised it in a manner so irrational that no reasonable body could have reached the decision he did.

The respondent submitted in reply that (a) the court could interfere with the Collector's decision only if it was unreasonable in the *Wednesbury* sense, and was not entitled to look further into the merits of the case; (b) since the Collector had power under s.7(4) to revoke a retail licence if he had reasonable grounds to suspect that a breach of the licence had occurred, he had acted entirely properly in this case where the appellant had been convicted and fined; (c) the appellant had been aware that his licence could be revoked if he breached the terms under which it was granted and that he was entrusted with acting in good faith at all times; and (d) the Collector was entitled to consider issues of public policy, to accept or reject the evidence tendered by the appellant, and was not bound to take account of all the mitigating factors which the magistrates' court had already considered in sentencing him.

Held, setting aside the decision of the Collector of Customs:

In contrast to other provisions of s.7 of the Tobacco Ordinance, sub-s. (4) gave the Collector an absolute discretion as to whether to revoke a tobacco retail licence. The Collector appeared to have acted in the belief that once a conviction had occurred, he was bound to revoke the licence and had therefore fettered his own freedom to take fully into account the factors of the case which were put to him at the appellant's hearing, including the need to apply a sanction proportionate to the breach of the licence. Since the magistrates' court had dealt relatively leniently with the appellant, the Collector should have considered whether it was reasonable to revoke his licence. The appellate court was at liberty to look at the matter anew and substitute its own decision for that of the Collector if he had approached his discretion in the wrong manner, particularly in view of the fact that the Ordinance was a recent piece of legislation and the correct approach to the exercise of the discretion in s.7(4) required judicial guidance. Accordingly, the Collector's decision would be reversed (page 370, lines 13–42; page 373, line 14 – page 374, line 13).

Cases cited;

- (1) *Associated Provncl. Picture Houses Ltd. v. Wednesbury Corp.*, [1948] 1 K.B. 223; [1947] 2 All E.R. 680, *dicta* of Lord Greene, M.R. applied.

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- (2) *Eagil Trust Co. Ltd. v. Pigott-Brown*, [1985] 3 All E.R. 119, considered.
- (3) *Thobani v. Pharmaceutical Socy. of Great Britain*, [1990] C.O.D. 279.

Legislation construed:

Tobacco Ordinance, 1997, s.4(3):

“Any person who is knowingly concerned in the sale of tobacco by retail in breach of any condition subject to which a retail licence under section 6 below has been issued, shall be guilty of an offence.”

s.6(1): “The Collector of Customs may, subject to subsections (6) and (7) below, in his absolute discretion issue a wholesale or retail licence, subject to such terms, conditions and restrictions as he considers necessary or expedient.”

(4) “Every retail licence shall be issued—

(a) subject to the condition that it authorises the sale of no more than 1000 cigarettes to the same individual at any one time;

(b) subject to the condition that it authorises the sale of cigarettes in either individual packets ... or cartons ... and that the said cartons must each be sold and delivered separately....”

s.7(1): “Where the holder of a ... retail licence ... is convicted of any such offence as is mentioned in section 6(5) above, the Collector of Customs shall forthwith revoke the ... retail licence.”

(2): The relevant terms of this sub-section are set out at page 368, lines 43-44.

(3): The relevant terms of this sub-section are set out at page 368, line 45 – page 369, line 1.

(4): The relevant terms of this sub-section are set out at page 371, lines 40-45.

s.8(1): “Any person who is aggrieved by—

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(c) the revocation or cancellation of a...retail licence issued to him save when such revocation or cancellation has been made under section 7(1) above, may appeal to the Supreme Court.”

H.K. Budhrani, Q.C. for the appellant;

A.A. Trinidad, Senior Crown Counsel, for the respondent.

PIZZARELLO, Ag. C.J.: This is an appeal from a decision of the Collector of Revenue of Customs given on August 13th, 1998 pursuant to s.8(1)(c) of the Tobacco Ordinance, 1997. The decision of the Collector of Customs is dated August 12th, 1998 and is as follows:

“Tobacco Retail Licence No. 83/98, Issued on January 19th, 1998

I write with reference to the hearing held in my office on Friday, August 7th, 1998. Having given very careful and detailed consideration to all the points raised, including the submissions made on your behalf by Mr. H. Budhrani, Q.C., I write to inform you that Tobacco Retail Licence No. 83/98 is hereby revoked.

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In accordance with s.6(9) of the Tobacco Ordinance, a notice giving effect to this decision will appear in the Gibraltar Gazette on August 13th, 1998, on which date the revocation [*sic*] will be effective.”

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Simultaneously, the Collector wrote to Mr. Budhrani in the following terms:

“Chainani Trading Limited, Tobacco Retail Licence No. 83/98

I write with reference to the hearing held in my office on Friday, August 7th, 1998. I have written to Mr. Chainani advising him of my decision to revoke his tobacco retail licence.

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I cannot emphasize enough that I have given very careful and detailed consideration to all the relevant matters which were brought to my attention in the submission made by you at the hearing.

I would also assure you that this Department is aware of the need to assist traders generally but I trust you will understand that it also has a responsibility to society to ensure that breaches of any Ordinance are dealt with fairly but firmly.”

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The memorandum of appeal sets out 11 grounds of appeal and is as follows:

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“The Collector of Customs erred in his interpretation of s.7 of the above-mentioned Ordinance, which he construed as fettering his discretion where a licence holder has been convicted of *any* offence under s.6 of the Ordinance.

The Collector failed to attach any or sufficient weight to the appellant’s long-standing right to trade in tobacco and erroneously construed the regulatory effect of the Ordinance as imposing some sort of trust on the appellant as licence holder.

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The Collector failed to attach any or sufficient weight to the fact that the appellant was a first-time offender against the provisions of the Ordinance.

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The Collector failed to attach any or sufficient weight to the fact that the appellant readily admitted the offence when asked by the investigating police officer and at his trial in the magistrates’ court on the following day pleaded guilty to the offence under s.4(3).

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The Collector failed to attach any or sufficient weight to the fact that the appellant was fined only £600 by the magistrates’ court and attached excessive weight to the fact that the appellant was liable to a fine of up to £10,000 under s.15(2) of the Ordinance.

The Collector improperly and unlawfully took into account

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information obtained by him from wholesalers as to the quantity of tobacco supplied by them to the appellant during the months of May, June and July 1998 without giving the appellant any opportunity to offer any comment or explanation.

5 The Collector failed to attach any or sufficient weight to the appellant's submissions on the effect that the revocation of its licence to retail tobacco would have on its business and erroneously concluded that the appellant had 'exaggerated and over-simplified' its financial analysis of the likely consequences.

10 At the hearing on August 7th, 1998 the Collector failed to take issue with the appellant's submissions as to the likely financial consequences of the revocation of its licence and failed to afford the appellant any or a reasonable opportunity to produce returns, accounts or other documentary evidence in support of its submission.

15 The Collector improperly and unlawfully took into account extraneous factors such as other premises which he believed 'continue to so trade and are currently being successful' without disclosing to the appellant the premises or businesses which he had in mind and without giving the appellant the opportunity to comment or contradict him.

20 The Collector erred in forming a view that the appellant's business premises are located in a prime site in Main Street and improperly and unlawfully took such view into account in arriving at his conclusion that 'there was no reason whatsoever why Chainani Trading Ltd. could not continue to trade in a successful manner' without disclosing such view to the appellant and without giving the appellant the opportunity to comment or to contradict him.

25 In all the circumstances, the Collector came to a conclusion that was so unreasonable that no reasonable authority entrusted with the powers and discretions conferred upon the Collector by the Ordinance could have come to it."

30 The facts which led to the revocation of the licence are set out in the affidavits of Haresh Chainani, a director of the appellant company, and the affidavit of Anthony Douglas Lima, Collector of Customs. They are these:

35 Haresh Chainani, a director of the appellant, was on July 24th, 1998, convicted of an offence contrary to s.4(3) of the Tobacco Ordinance in that on July 23rd, 1998 he was knowingly concerned in the sale of a quantity of tobacco in excess of the condition attached to the tobacco retail licence No. 83/98 which had been granted to the appellant. Haresh Chainani pleaded guilty at the magistrates' court the day after the offence. He had sold 8,600 Winston cigarettes, that being eight times over the permitted amount, to one Jose Miguel Dominguez Garrena. He was fined

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£600, the maximum penalty being £10,000 or six months' imprisonment or both.

This conviction came to the notice of the Collector and, in pursuance of his duties and powers under the Tobacco Ordinance, the Collector considered that the appellant had breached his trade licence and formed the intention to revoke the appellant's licence under s.7(4). He wrote on July 28th, 1998 as follows:

"I refer to Tobacco Retail Licence No. 83/98 issued to you on January 19th, 1998. The licence clearly states that 'the Collector of Customs may cancel the licence if he has reasonable grounds to believe that the holder has breached any of the terms and conditions subject to which it has been issued.'

I am informed that on Friday, July 24th, 1998 you appeared before the magistrates' court where you were convicted of knowingly being concerned in the sale of tobacco in breach of a condition of a retail licence, and that you were fined £600.

In the circumstances, I have no alternative but to inform you—

(a) of my intention to cancel Licence No. 83/98; and

(b) of your right to be given an opportunity to be heard as to why the licence should not be cancelled."

I have been left in some doubt as to the exact chronology and circumstances in which this letter was sent and received but both counsel accept that since the Collector afforded the appellants a hearing under s.7(4) on August 7th, 1998, what went before is water under the bridge. So I move to August 7th, 1998 when the Collector afforded the appellant an opportunity to be heard. Mr. Budhrani attended and made certain submissions to the Collector. These submissions were:

1. On issue of licences

Section 6(1) confers on the Collector an absolute discretion (subject to the prohibitions contained in sub-ss. (6) and (7) against the issue to persons/companies convicted of an offence under the Tobacco Ordinance or the other listed Ordinances) subject to such terms, conditions and restrictions as he considers necessary or expedient. Note the use of the words 'absolute discretion.'

2. On renewal

The Collector has a discretion under s.6(3)(e) to renew licences annually. Note the absence of the word 'absolute.'

3. On revocation

(a) Section 7(1) imposes a mandatory duty (by the use of the word 'shall') to revoke a licence on the commission by the holder of an offence under s.6(5) (as to invoicing by wholesaler);

(b) The Collector *may* revoke a licence where the licence holder has not 'carried on substantial trade or business authorised by the licence for a period of twelve months' (s.7(2)) or where the licence holder 'has vacated or ceased to occupy or trade

from the premises to which the licence relates' (s.7(3));

(c) The Collector *may* cancel the licence where he has reasonable grounds to believe that the holder thereof has breached any of the terms and conditions subject to which it has been issued (s.7(4)).

5 Note the use of the word 'may' in sub-ss. (2), (3) and (4) which connotes a discretion as opposed to an obligation, which the use of the word 'shall' imposes.

10 In exercising his discretion, the rules of natural justice require the Collector to take into account all relevant matters which are brought to his attention in order to arrive at a reasonable and rational decision and he should not fetter his discretion by political considerations or directives from the Government.

Matters for consideration by the Collector in the exercise of his discretion

15 1. The nature of the offence and the quantity involved (43 cartons/8,600 cigarettes).

2. The licensee is a first offender for which he was fined the sum of £600 by the magistrates' court on July 24th, 1998.

20 3. The licensee readily admitted the offence when asked by the investigating police officer.

4. The effect on the licensee's business. The sale of tobacco is the main-stay of the licensee's business. 75% of its turnover consists of the sale of tobacco. In addition, the attraction of customers into the shop for the purchase of tobacco results in sales of other goods. The discontinuance of the sale of tobacco (as the revocation of the licence would necessitate) would seriously undermine the licensee's viability and will jeopardize an investment of over £350,000 (that is to say £250,000 in premises and £100,000 of stock-in-trade). The closure of the business (if it came to that) would affect the licensee's creditors amounting to £160,000.

5. The effect on the business will have far-reaching and potentially disastrous consequences on Mr. Chainani's ability adequately to maintain his wife and two young children. Apart from the usual day-to-day living expenses, the Chainanis have to service a £30,000 mortgage over their home.

35 6. In all the circumstances, the revocation of the licence is not justified having regard to the nature of the offence and would amount to excessive punishment over and above the fine imposed by the magistrates' court."

40 Messrs. Budhrani & Co. gave notice of appeal on August 21st, 1998. The matter came before me on August 26th, 1998 in chambers for a stay of execution of the Collector's decision until the determination of the appeal and for directions as to the future conduct of the appeal. I adjourned the substantive hearing of this appeal to September 4th, 1998 and gave the respondent leave to file an affidavit.

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The first submission made by Mr. Budhrani was that it was not appropriate for the appellant to bring forward evidence of what transpired at the hearing of August 7th unless it be contained in any reasons for the decision of which there were none. The appellate court should deal with the appeal on the papers that were engendered on that occasion and not take account of any explanatory affidavit. Nevertheless, submits Mr. Budhrani, the latest affidavit of Mr. Manolo Mauro sworn on September 4th, 1998 shows that the Collector took account of matters which were not taken at the hearing and relied upon them, so to speak, behind the appellant's back. These were not put to Mr. Chainani, as would have been proper and the result is that in his affidavit he finds something indicative with the figures but does not say what they indicate. 5 10

The second submission made by Mr. Budhrani is that s.8 specifically allows an appeal against the exercise of a discretion and while there is authority that as a rule the court does not substitute its own view where the exercise of discretion is involved, there is in this case (by statute) power to do precisely that and when no reasons are given the court may look afresh and substitute its own discretion. He refers to *Eagil Trust Co. Ltd. v. Pigott-Brown* (2) where Griffiths, L.J. said ([1985] 3 All E.R. at 121): 15 20

“The House of Lords has in a series of recent decisions reminded this court that its function is to review the exercise of the judge's discretion and not to entertain an appeal from it in the sense of being invited to substitute its own discretion for that of the judge.”

And Mr. Budhrani goes on to refer to the subsequent paragraph of Griffiths, L.J.'s judgment (*ibid.*): 25

“Obviously, where the court is developing a new discretionary jurisdiction in, for example, actions to strike out for want of prosecution, or the development of what has come to be known as the Mareva injunction, there will inevitably in the early days be a number of appeals to this court so that clear guidance can be given as to the principles on which a judge at first instance should exercise his discretion. But, once those principles have been clearly settled, there is a heavy burden on an appellant to demonstrate to this court that the judge has either failed to apply well-settled principles or, alternatively, that his discretion can be attacked on what are colloquially known as ‘Wednesbury’ grounds (see *Associated Provincial Picture Houses Ltd. v. Wednesbury Corp.*).” 30 35

Mr. Budhrani submits this instant case is an example of a discretionary jurisdiction; the Ordinance is less than a year old, and the court should look carefully and enunciate principles on which the Collector should act in the future. 40

The third submission is that the Collector has a discretion. Section 7(4) gives the Collector a discretion, by contrast to s.7(1,) under which the revocation is mandatory in respect of offences mentioned in s.6(5). So he 45

5 must use his discretion. But the view taken by the Collector is such that
he has fettered his own discretion and that though he has gone through the
motions of giving the appellant a hearing he has done nothing of the sort,
for he has, in effect, divested himself of discretion. The Collector's
affidavit shows that no sooner was the fact of a conviction brought to his
10 attention than he "informed Mr. Chainani that it was the intention of the
Collector of Customs in accordance with his powers under s.7(4) to
revoke his tobacco licence." He draws attention to "a particularly serious
offence ... subject to a penalty of £10,000" and "eight times the legal limit
of tobacco, which amount I considered in my opinion to be a substantial
15 amount." He states that this was "a serious offence and in my mind the
fact that the licensee was a first offender did not diminish the seriousness
of the offence that this retailer had committed." For this reason alone,
submits Mr. Budhrani, the Collector has not exercised his discretion
reasonably and the decision is *Wednesbury* unreasonable.

The fourth submission is that the Collector has introduced irrelevant
and wrong considerations. In his affidavit he introduces a concept of trust
and approaches the appeal on the grounds of a blatant breach of trust. Mr.
Budhrani submits there is a common law right to trade and the Ordinance
20 regulates the trade. There is no question of any trust towards anyone and
this shows he was in error and therefore *Wednesbury* unreasonable.

The fifth submission was that the Collector has not addressed the
fundamental issue that 75% of the appellant's trade is tobacco related. It
is wrong, submits Mr. Budhrani, for the Collector to make an assessment
25 that the 25% business left can survive without tobacco sales, as these
enhance the sales of these items. The Collector cannot look at the general
level of business in Gibraltar of these items and conclude that the
appellant can manage with them alone without giving the appellant at
least a chance to counter this view. The Collector never disputed the
30 figures at the hearing and it is conceded that exact accounting was not
given to the Collector, but if that was to be a factor it should have been
put to Mr. Chainani that his financial analysis was not accepted because it
was exaggerated and over-simplified. How others do in business is not the
concern of the appellant, nor is it privy to such knowledge. This also
35 applies to the erroneous view of the Collector when he says in his
affidavit: "Additionally, his premises are situated near the Convent, they
are in a prime site in Main Street." It is no good to say "I will give you a
hearing" and then decide on matters which are not raised at the hearing.

Mr. Trinidad for the respondent focuses on s.7(4). That section reads:

40 "Where the Collector of Customs has reasonable grounds to
believe that the holder of a retail or wholesale licence has breached
any of the terms and conditions subject to which the licence has
been issued, he may after informing the licence holder of his
intention to do so and the reasons therefor and after giving the
45 licence holder the opportunity to be heard, cancel the licence."

Mr. Trinidad makes the important point that the Collector is given the power to cancel the licence (after giving an opportunity to be heard) where he has reasonable grounds to believe there has been a breach of the licence. On grounds of reasonable belief alone the Collector may act under s.7(4) and he has a discretion whether or not to cancel the licence.

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Here, the case is not one of reasonable belief. In the instant case there is a conviction of a blatant offence, in which eight times the permitted amount of tobacco was sold, in respect of which the appellant had been issued with a licence which warned him of the possibility of the rescission of the licence should there be a breach of condition in a situation where the issuing authority would look to him (“entrusting to him”) to ensure the law was not contravened by persons purchasing and holding a larger amount of tobacco than they are allowed. The remit of the Collector is not that of a court: He has to consider the public policy issues and the fact of a first offence is not significant in this context. That Mr. Chainani pleaded guilty cannot be said to help him because, unlike a finding of guilt where the convicting court might be wrong and is subject to appeal, here Mr. Chainani is self-confessed.

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The test in *Wednesbury* (1), he submitted, which enables the court to interfere is: “Has that authority come to a conclusion so unreasonable that no reasonable authority could ever come to it” and he submits that in this case all the factors considered by the Collector of Customs are all eminently reasonable. To recap: (a) the fact of conviction; (b) an offence involving eight times over the legal amount; (c) a confession; (d) the licence warned against a breach of its conditions; and (e) the trader is expected to exercise his licence in good faith so that purchasers may also not breach the law. He concedes that the discretionary process is not absolute but subject to legal limitations, none of which apply except for the *Wednesbury* (1) principle, which he submits he has shown the Collector’s decision did not abuse. The discretion is that of the authority and not the court and the Collector may look at the intent of the legislature as reflected in the Ordinance as a whole and bring to bear the public interest, under which a breach of the law shows a breach of the policy underlying the law. Hence he exercised his discretion because the law has been breached.

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But the Collector has not abused his power, submits Mr. Trinidad. He has acted within it and has exercised his discretion upon reasonable grounds and if the decision is within the confines of reasonableness, it is no part of the court’s jurisdiction to look further into its merits (see *Wade, Administrative Law*, 6th ed., at 407 (1988)). Mr. Trinidad refers to *Thobani v. Pharmaceutical Socy. of Great Britain* (3). Proportionality is not, nor ought it to be, an issue in this case. As for the argument that the Collector ought to have given the appellant an opportunity to rebut his views, he submitted that it is for the appellant to show all that to the Collector: It should have taken figures and accounts to him to the hearing on August 7th.

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5 According to Mr. Trinidad, the Collector was perfectly within the scope of his discretion (i) to consider that there was a wide range of articles in which the appellant could, as it indeed did, trade in from 305 Main Street without tobacco and (ii) to disbelieve the appellant—if it made the submission and did not prove it, the consequences followed from its own inadequate presentation. And it is not unreasonable to make that assumption. As for the “Main Street as a prime site” point, it is clear that the Collector was referring to Main Street as a whole as a prime site, as opposed to somewhere in Castle Road. The factors taken into account by the Collector were all reasonable and his decision should be upheld.

10 In reply, Mr. Budhrani reiterated the point that the Ordinance did not mean every conviction to lead to a revocation. If it had meant that it would have said so. Instead it gave the Collector a discretion.

15 In my view, the Ordinance gives the Collector an unfettered discretion, and if the Collector blinkers himself from that position he is wrong and his decision can be overturned. The *Wednesbury* (1) principle as enunciated by Mr. Trinidad and indeed, by Mr. Budhrani is truncated because it must be read in the context of what Lord Greene, M.R. said ([1947] 2 All E.R. at 685):

20 “I do not wish to repeat what I have said, but it might be useful to summarise once again the principle, which seems to me to be that the court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought not to take into account, or, conversely, has refused to take into account or neglected to take into account matters which it ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that the local authority, nevertheless, have come to a conclusion so unreasonable that no reasonable authority could ever have come to it.”

30 The question is: Did the Collector take matters into account which he ought not or neglected to take into account matters he ought to have taken?

35 I agree with Mr. Budhrani that the Collector appears to have essentially taken the position that once a conviction is received there is little else to say. And that is the position as I see it of Mr. Trinidad’s approach when he asks rhetorically: What else can the Collector look at to revoke a licence when there is a conviction if he can do so on reasonable grounds? He is not just perilously close to divesting, but indeed divests himself of any discretion and so he will approach the application in the wrong way. In my view, that was his approach as reflected in his letter of July 28th: “I have no alternative but to inform you...” Well there *was* another alternative and that was not to revoke. That approach was wrong and puts the whole of his decision in jeopardy. It may have led to his not taking into sufficient consideration the factors put forward by the appellant and so I can look at the matter anew and substitute my own decision.

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I note the concerns of the Collector as contained in his affidavit and they are valid ones, but the legislature has not seen fit to punish the offence committed with mandatory cancellation and that has to be weighed in the balance in the exercise of a discretion. Public policy is said to be an unruly horse. Mr. Trinidad makes the point that if this case may not lead to a cancellation, what can? Well, I think the question to bear in mind is: Where is the proportionality, the punishment to fit the crime, if a trader who is fined £10,000 and sentenced to six months' imprisonment suffers the same consequence? It goes almost without saying that while the Collector may cancel a licence on reasonable grounds, those must be very firm grounds indeed, but of course each case has to be decided on its own merits.

I will allow the appeal and reverse the Collector's decision.

Appeal allowed.