Neutral Citation Number: [2006] IEHC 93

THE HIGH COURT
ON CIRCUIT

[2005 No. 451CA]

IN THE MATTER OF THE LICENSING ACTS, 1933-2004
AND IN THE MATTER OF THE COURTS (SUPPLEMENTARY PROVISIONS) ACT, 1961
AND IN THE MATTER OF THE LICENSING (IRELAND) ACT, 1902
SECTION 6
AS AMENDED BY THE INTOXICATING LIQUOR ACT, 1960, SECTION 24
AND IN THE MATTER OF THE INTOXICATING LIQUOR ACT, 1960, SECTION 15
AND IN THE MATTER OF AN APPLICATION OF PETER KINGSTON

APPLICANT/APPELLANT

Judgment of Mr. Justice Roderick Murphy dated 21st March, 2006.

1. Application
This is an application by the appellant for an order for the costs of his appeal to the High Court against the unsuccessful objector. The applicant/appellant did not seek his costs of his application to the Circuit Court.

Judgment was delivered by this Court on 21st December, 2005 in relation to an application for a declaration pursuant to s. 15 of the Intoxicating Liquor Act, 1960 that an extension to the premises known as the Classic Bar, situate at 1/3 Main Street in the city of Cork, would be fit and convenient to be fit and convenient to be so licensed.

An application for the grant of a certificate had been made and there being no objection on the ground of the character, misconduct or unfitness of the applicant on the hearing of such application, it was shown to the satisfaction of the Court that it would be proper, having regard to the provisions of the Licensing Acts, 1833 to 2004, to grant the application.

This Court, in making such a declaration, did so subject to seven specified conditions.

The appeal to the High Court was by way of rehearing of the matter pursuant to s. 38 of the Courts of Justice Act, 1936.

Section 15 of the Intoxicating Liquor Act, 1960, already referred to, requires the intending applicant to give to the superintendent of the Garda Síochána, within whose district it is proposed to have the premises, at least twenty-one days' notice in writing of the intention to make the application and cause to be deposited with the said superintendent copy of the plans of the premises. (15(3)(b) and (c)). The intending applicant shall also cause to be inserted, at least twenty-one days before the making of the intended application, in a newspaper circulating the place in which it is proposed to have the premises, notice of intention to make the application (s. 15(3)(a)).

The overriding provision is that the court, if it is so satisfied, may grant the application on such terms as it may think fit.

Any person who would be entitled to object to an application for the grant of a certificate entitling the applicant to receive a licence in respect of the premises is entitled to object in like manner to an application under sub-s. (1) of this section.

It is clear that the role of the superintendent of the Garda Síochána is to represent a wider interest than that of individual objectors. The superintendent did, in fact, object to the fitness and suitability of the premises and the number of previously licensed houses in the neighbourhood.

2. Issue for costs
2.1 Ms. Cassidy S.C. for the applicant/appellant contends that costs should follow the event where the court did grant the declarations applied for and referred *to Cooper Flynn v. R.T.E.* [2004] 2 I.R. 72 at 79*; R. v. The Lord Chancellor* [1999] 1 W.L.R. 347; *SPUC v. Coogan* (No. 2) [1990] 1 I.R.273 and *Grimes v. Punchestown Developments Company Limited* [2002] 4 I.R. 515.

Counsel also referred to the notice dated 2nd September, 2005, from the Garda Síochána which indicated that "the State would be objecting to a night club on South Main Street" on the grounds of unfitness or inconvenience and of adequacy of existing number of licensed premises of the same character in the neighbourhood. The Gardaí called a representative of the local friary, of the fire service and the ambulance service, as witnesses in that regard. Counsel submitted that counsel for the objector conceded that evidence given in the Circuit Court that the premises were situate on the main thoroughfare was not correct.

Counsel referred to *O'Connor v. Fahey and the Attorney General* [1945] I.R. 50, where costs were granted against the Attorney General in an application for a six-day publican's license.

2.2 Miss Fawsitt, for the objector, submitted that the onus was on the applicant to prove that the premises were fit and convenient. In the High Court further evidence was adduced which addressed concerns of the Circuit Court judge who had refused the application.

Counsel was of the view that the matter came by way of rehearing and that the same provisions should apply with regard to costs as applied in the Circuit Court where no order of costs was applied for nor made.

She distinguished *O'Connor v. Fahey and the Attorney General* in that the issue in relation to which special costs were made related to a defence that the applicant had no right of appeal. She further distinguished the provision relating to costs following the event as applying to issues between parties. A licensing application was not such an issue between parties. The Gardaí were given specific right to object and fulfilled a social function.

Miss Cassidy in her reply referred to much of the matters before the High Court having been canvassed before the Circuit Court.

3. Judgment of the Court
The title of these proceedings is indicative of the nature of the application: an application by an intending licensee in relation to the fitness and convenience of premises. There is no respondent indicated in the title.

Moreover, the Gardaí, pursuant to s. 15(3)(b) are entitled to be given notice in writing of the intention to make the application and, pursuant to s. 15(3)(c), to be given a copy of the plans of the premises. Other objectors can only avail of the newspaper notices. The Gardaí are in a special position in that they represent the wider interests of the community in an application for a declaration.

In the instant case, as was their right and, indeed obligation, to consider the application. In the event they adduced evidence of one neighbour, the representative of the Augustinian Friary, and of the fire and ambulance services.

In the court below, the applicant did not satisfy the court as to the fitness and convenience of the application. No objector could not have been entitled to an order for costs, nor could the Garda Síochána, as objector, be so entitled in fulfilling their public duty in relation to the application. Neither would the applicant have been entitled to his costs had he been successful in the application for such a declaration.

The appeal was by way of rehearing and it seems to me that, on that basis, the same provision regarding to costs apply. Indeed, as there is no respondent, it is difficult to see, from the standpoint of principle, how costs could be made against a party fulfilling its statutory function. If there had been other objectors it seems to be clear that an order for costs could not be made against them nor, indeed, had the court rejected the application, could they be entitled to their costs of objecting.

It seems to me that the authorities cited in relation to costs following the event, *Cooper Flynn v. R.T.E., SPUC v. Coogan* and *Grimes v. Punchestown Development Company Limited*, all refer to *lis inter partes* as distinct from an application for a declaration under the Licensing Acts.

In *O'Connor v. Fahey and the Attorney General*, which was an application to grant a licence rather than a s. 15 application, measured costs had been awarded on the basis of the preliminary issue against the second respondent, the Attorney General. No order for costs was made against the first named respondent. In the present case, as already noted, there was no respondent and, indeed, the Attorney General was not an objector.

Mr. Carson K.C., for the appellant in *O'Connor* would seem to have restricted his application for costs to the resisting of a new point of law as against the Attorney General. He had submitted that he was entitled to appeal and was put to the expense of doing so and of resisting "this new point of law". Mr. O'Daly, for the Attorney General, had submitted that the appellant was not entitled to his costs of the appeal as an appeal to the High Court on circuit is a rehearing of the application for which costs could not be given. Licensing matters seemed to be in a special category which was neither civil nor criminal.

In allowing the appellant a measured sum of 7 guineas for costs, Haugh J. would appear to have given costs only in relation to the "new point of law".

In the circumstances the Court refuses the application for costs.