

65/1980

## SUPREME COURT OF VICTORIA

**PIETSCH v PSIHOGIOS**

Crockett J

20 May 1980

**FISHERIES - MASTER FISHERMAN'S LICENCE - LICENCE SUBJECT TO CONDITIONS LIMITATIONS AND RESTRICTIONS AS PRESCRIBED - DEFENDANT CHARGED WITH BREACH OF A CONDITION - CONDITIONS ETC NOT SET OUT IN THE ACTUAL LICENCE HELD BY DEFENDANT - SUBMISSION THAT THE DEFENDANT'S LICENCE WAS NOT A VALID ONE - SUBMISSION ACCEPTED BY MAGISTRATE - WHETHER MAGISTRATE IN ERROR: FISHERIES ACT 1968, S16(4).**

S16(4) of the *Fisheries Act* 1968 ('Act') provides:

"Every such licence or renewal shall be subject to such conditions limitations and restrictions as the Minister thinks fit or are prescribed and are expressed or referred to in the licence ..."

The defendant held a Master Fisherman's licence. He was charged by the informant in that he breached a condition of his licence. At the hearing of the information, the defendant submitted that the licence issued to him was not valid in that the conditions, limitations and restrictions (including the particular condition alleged to have been breached) were not set out in the licence itself. The Magistrate agreed with this submission and dismissed the charge. Upon appeal—

**HELD: Order nisi absolute. Dismissal set aside. Remitted for further consideration.**

**The composition and arrangement of the relevant words in s16(4) of the Act indicate that what is provided is that there is to be expressed in the licence itself, any special conditions, limitations and restrictions that are special in the sense that the Minister has thought fit that they should bind the particular licence-holder. Further, that the licence should be subject to conditions, limitations and restrictions that are prescribed. Prescribed conditions, limitations and restrictions are those that are prescribed by regulation. Conditions, limitations and restrictions created by prescription are to be referred to in the licence. A reference to conditions, limitations and restrictions subject to prescription, is something less than an actual setting out each of such conditions, limitations and restrictions *seriatim* in a particular licence. Conditions, etc, that are prescribed can be referred to in the licence if they are sufficiently identified in the licence as to enable the licence holder to know of them, in the sense that it is possible to ascertain with precision what they are and to know that the holding of his licence is subject to them.**

**CROCKETT J:** The respondent in these proceedings is the holder of a Master Fisherman's licence. That licence is granted pursuant to Part III of the *Fisheries Act* 1968. The form of the licence is prescribed by the *Commercial Fishing Licences Regulations* 1970 as amended by regulations made in 1977. S16(4) of the Act provides that:-

"Every such licence or renewal shall be subject to such conditions limitations and restrictions as the Minister thinks fit or are prescribed and are expressed or referred to in the licence ..."

The form of the licence is to be found scheduled to the Regulations. It has a provision for the insertion of conditions, limitations and restrictions. It sets out also that the licence is:

"... issued pursuant to the provisions of the *Fisheries Act* 1968 and subject to any conditions limitations and restrictions that may be specified in the licence and to any conditions limitations and restrictions that may be prescribed by regulation."

The *Commercial Fishing Licences Regulations* 1970 set out, in Regulation 3, that:

"Every Master Fisherman's Licence shall be subject to the following conditions limitations and restrictions."

Then appears on the next line the word "Conditions", and on the next line:

"The holder of a Master Fisherman's Licence shall ..."

and then a list of various conditions is set out in a series of sub-paragraphs.

By an information dated 31st May 1979, the applicant, as informant, charged the respondent with a breach of a condition on which it was said that he held his Master Fisherman's Licence. It is unnecessary to refer to the particular condition or the evidence that was led in relation to the alleged breach. It is sufficient to say that it may be accepted that it was an essential part of the proof of the informant's case that the respondent was the holder of a valid Master Fisherman's Licence.

At the conclusion of all the evidence before a Stipendiary Magistrate sitting as the Magistrates' Court at Werribee, it was submitted on the respondent's behalf that the licence issued to him, and which had been placed in evidence, was not a valid one. The argument was that the conditions, limitations and restrictions (including the particular condition alleged to have been breached by the licence holder) were not set out in the licence itself. It is true that they were not. It was submitted that the necessity for them to be so set out is to be found in the provisions of s16(4) of the Act to which I have referred. The Magistrate accepted the contention and dismissed the information.

The single ground on which the Order Nisi was granted is that the Magistrate was in error in so ruling. In my view it is clear that the Magistrate was in error. I think it plain that he has misconstrued the relevant words in s16(4). The composition and arrangement of the relevant words indicate that what is provided is that there is to be expressed in the licence itself, that is to say, set out with specificity, any special conditions, limitations and restrictions that are special in the sense that the Minister has thought fit that they should bind the particular licence-holder. Further, that the licence should be subject to conditions, limitations and restrictions that are prescribed. Prescribed conditions, limitations and restrictions are, of course, those that are prescribed by regulation. Conditions, limitations and restrictions created by prescription are to be referred to in the licence. A reference to conditions, limitations and restrictions subject to prescription, is something less than an actual setting out each of such conditions, limitations and restrictions *seriatim* in a particular licence. Conditions, etc, that are prescribed can be referred to in the licence if they are sufficiently identified in the licence as to enable the licence holder to know of them, in the sense that it is possible to ascertain with precision what they are and to know that the holding of his licence is subject to them. I have no doubt that the legislation is to be construed in this way; that is, construed *reddendo singula singulis*. Furthermore, the form of the licence prescribed by the regulations (to which I have already referred) is consistent with such a construction.

The result is that the Order Nisi must be made absolute, The order dismissing the information will be set aside. I order that the further hearing of the information be remitted to the Magistrates' Court at Werribee as constituted for the hearing that took place on 6 August 1979 to be dealt with according to law. The respondent is ordered to pay the applicant's costs.

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