

MOYOLA CELLARS LIMITED

APPLICANT

CHIEF INSPECTOR V HUTCHINSON

OBJECTOR

The applicant is the holder of an Hotel Licence for premises known as The Europa Hotel, 11/15 Great Victoria Street and 2 Glengall Street, Belfast.

The objector is a Chief Inspector of the R.U.C.

The application is for an Order under Article 50 of the Licensing (Northern Ireland) Order 1990 (hereinafter called "the Order" authorising hours additional to those mentioned in Articles 47(1) and 48 of the Order. The additional hours are sought for:

- (a) Monday to Saturday every week from 11 o'clock in the evening to 1.00am on the day following.

There is no problem about that part of the application, it is not objected to by the Objector, and it is hereby granted, except for Christmas Day, Easter Day and Good Friday.

- (b) Sunday evening from 11.00pm until 12.00 midnight.

This part of the application has been objected to by the objector and I will now consider whether I have power to grant that part of the application.

Article 50 (1) of the Order provides:

"Subject to the provisions of this Article
....a court of summary jurisdiction may, on an application duly made by a person who is the holder of a licence for premises which are or include premises to which this Article applies, by order direct that-

- (a) on such days in any licensing year, and
- (b) in such part or parts of the premises,

as may be specified in the order the hours from 11 in the evening to 1 in the morning of the day next following shall, in addition to the hours mentioned in Articles 47(1) and 48, be included in the permitted hours for those premises.

The "provisions" to which the very wide powers in 50(1) are

subject are to be found in:

50(2) which deals with procedural matters

50(3) which deals with certain factual matters about which the court must be satisfied.

50(4) which deals a situation where there are complaints about the conduct of the licensed premises

50(7) which deals with certain factual matters

I heard evidence on those matters in so far as they were relevant to this application and the applicant has satisfied me on those.

The provisions in paragraphs (5) and (6) of Article 50 to which a grant of additional hours under 50(1) is also subject do create some difficulty of interpretation.

Article 50(5) provides:

"Nothing in this Article shall permit the sale of intoxicating liquor on any Sunday after 1 in the morning, or on Christmas Day, Easter Day or Good Friday, or to a person admitted to the premises after half past 12 in the morning or, where the entertainment is due to end before 1 in the morning, less than half an hour before the entertainment is due to end."

A question has been raised as to the meaning of that paragraph. Should it be construed simply as meaning that 50(1) applies to Sundays only in so far as it enables intoxicating liquor to be sold between the hour of 12.00midnight and 1.00am on Sundays?

It seems to me that that is what 50(5) does mean; it governs or limits the apparently wide power given to the Court under 50(1) in respect of a Sunday and it is one of the "provisions" to which paragraph (1) is specifically subject. I am reinforced in my view by the following:

1. There is no similar provision in respect of any other day of the week. The Order has singled out Sunday for special treatment under Article 50.

2. Article 50(6) to which the enabling powers of 50(1) are subject provides:

"In this Article "entertainment" does not include any form of entertainment given otherwise than by persons actually present and performing, and no part of any premises shall be treated for the purposes of this Article as used or intended to be used for the purpose of habitually providing refreshment and entertainment unless it is used or intended to be used for the purpose of providing them after, and for a substantial period preceding, the end of the general permitted hours mentioned in Article 47(1) on every weekday

or on particular weekdays in every week, any break for a period or periods not exceeding 2 weeks in any successive months, or on any special occasion, or by reason of any emergency being disregarded."

The omission from that paragraph of any mention of Article 48, which governs the normal opening hours on a Sunday, is, in my view, significant. If Parliament had wanted to give to the Courts the same power to grant additional hours on a Sunday as on a weekday then it could have included a reference in 50(6) to Article 48. It is not within the power of this court to add words to a Statute or Order to change the ordinary meaning of the words used in the Statute or Order.

I am satisfied that the reasons why there is no reference to Article 48 in 50(6) is because Parliament had already placed a prohibition on granting additional hours on Sundays by the provisions of 50(5) and any such reference to Article 48 would have been inconsistent with 50(5).

Paragraph (6) of Article 50 should not be interpreted as though it is inconsistent with paragraph (1) of that Article. It should be interpreted as governing the power given to the Courts by 50(1) and as being entirely consistent with 50(5) which also limits the power given by 50(1)

3. If nothing in Article 50 "shall permit an order to authorise the sale of intoxicating liquor on any Sunday after 1.00am in the morning" from where can a court get the power to grant the additional hour from 11.00pm to 12.00midnight on a Sunday. I cannot find any such power. Indeed it would be strange if Parliament, which provides a closing hour of 10.00pm on Sundays, would authorise an additional hour from 11.00pm to midnight on Sundays, which would in effect mean that licensed premises would have to close for an hour and then open again with entertainment and meals for a final hour. Such a provision would defy common sense.

4. Paragraph (5) of Article 50 prohibits a Court from granting an Order for additional hours in respect of Good Friday also. If the applicant's case for an additional hour on Sundays rests on some supposed contradiction between Paragraphs (1) and (6) of Article 50 then what one might ask what Parliament intended in declaring that "Nothing in this Article shall permit an order to authorise the sale of intoxicating liquor onGood Friday.....".? The normal opening hours on Good Friday are governed by Article 47 - the same Article which governs normal opening on week days - thus it cannot be said that there is any contradiction between 50(1) and 50(6) in respect of that day. The correct approach to Article 50 is to give the words used their ordinary meaning and to reject the strained construction which the applicants have asked this court to place on them.

5. Article 50(5) is not the only Article to make special provisions for Sundays. Article 32 (which deals with occasional licences) also provides:

"32(7) The days mentioned in paragraph (1)(b) may be in the same week or consecutive weeks, but nothing in this Article shall permit an occasional licence to authorise the sale of intoxicating liquor on any Sunday after 1 in the morning....."

6. Article 54 which governs extension licences for sale etc of liquor in certain premises outside permitted hours provides:

"(7) Subject to paragraph (8), nothing in this Article shall permit an extension licence to authorise the sale of intoxicating liquor on any Sunday after 1 in the morning..
....."

" (8) Where 31st December in any year falls on a Sunday, an extension licence may authorise the sale of intoxicating liquor on that day after 10.00 in the evening."

These two paragraphs of Article 54 taken together show, on the one hand a prohibition against selling intoxicating liquor on a Sunday after 1.00am, and on the other special provision for a relaxation of that prohibition for one Sunday in the year, not, it should be noted, from 11.00pm but from the normal Sunday closing hour of 10.00pm.

If Parliament had intended, by Article 50, to give courts power to grant additional hours on Sundays from 11.00pm to 12.00 midnight then one would have expected a similar provision as in 54(8) without the prohibition contained in Article 50(5).

For these reasons I believe that I do not have power to grant the addition hour on a Sunday which the applicant seeks.

This is a matter which has troubled the courts for some time and it seems to me that the problem should now be brought before the Divisional Court for determination this year.

I have dealt with this matter by setting out my reasons for refusing the application for additional hours on Sundays and have not attempted to set out the submissions of the parties. However I do feel that it may be useful to attach to this judgement copy of a case stated by one of my colleagues last year from which it can be seen that he decided the matter in favour of the applicant for reasons which, I regret to say, I do not find persuasive. Unfortunately that case was not dealt with by the Divisional Court for some technical reasons.

September 1995.

(T.J.Travers, R.M.)