

IN THE SUPREME COURT OF NEW ZEALAND
WELLINGTON REGISTRY

A.146/76.

IN THE MATTER of the Judicature
Amendment Act 1972

BETWEEN: FIORDLAND VENISON LIMITED
a duly incorporated company
having its registered office
at Christchurch

Applicant

AND: DUNCAN MacINTYRE of
Wellington, Minister of
Agriculture and Fisheries

Respondent

Hearing: 14 March 1977

Counsel: W.S. Shires Q.C. and D.A. Wilson for Applicant
P.W. Graham and H.S. Gajadhar for Respondent

Judgment: 21. 3. 77

JUDGMENT OF WILD C.J.

This is an application for review of the decision of the Minister of Agriculture and Fisheries given on 24 February 1976 under the Game Regulations 1975 [1975/174] refusing the application of the applicant for a licence in respect of its game packing house at Te Anau.

Before November 1974 game was exported from New Zealand to various countries which would accept it with a limited export veterinary certificate not involving physical inspection of carcasses by the Ministry of Agriculture and Fisheries. From 1971 to 1974 the Federal Republic of Germany purchased between 65 per cent. and 77 per cent. of the value of our exports of venison and between 62 per cent. and 74 per cent. of our total exports of game. In November 1974 the law of the Federal Republic was amended to prescribe new standards to be met in procuring, processing and packing killed game. The amendment required veterinary supervision and physical inspection of carcasses. It was obvious that no slaughtering premises or packinghouse in New Zealand would comply with those new standards so, unless arrangements could be made urgently, New Zealand stood to lose the very large German share of our

NO -

98

export market. As a result of negotiation with the German authorities the Ministry gained a transition period of one year on certain conditions, which involved nomination to the German government of the establishments that would be used. After consultation with the game industry the Ministry agreed on three game packing houses to be nominated to the German government. These were:

Consolidated Traders Limited, Rongotea.
Edmonds Game Consolidated Limited, Christchurch.
Southern Lakes Game Foods Limited, Mossburn.

During the transition period these three handled all the game that could be certified by the Ministry for export to the Federal Republic. Other game packing houses, including that of the applicant, which had been licensed under the then existing regulations continued to operate but their products could not be exported to the Federal Republic. They could be exported to other countries such as France and Switzerland.

During 1975 an amendment was made to the Meat Act 1964 and new regulations relating to the whole operation of slaughtering, processing, inspecting and certifying game were prepared. These were submitted to and accepted by the authorities of the Federal Republic and were promulgated as the Game Regulations 1975 which came into force on 1 July 1975. The earlier regulations were revoked and the proprietors of game packing houses were informed that they must apply for a new licence under the new regulations. Ultimately licences were granted to each of the three companies already mentioned and also to Westland Frozen Products Ltd. (of which the present applicant is a wholly-owned subsidiary and in which half the shares are owned by Consolidated Traders Ltd.), to Berg's Game Ltd., Whakatane, and to Consolidated Traders Ltd., Rotorua.

By letter of 12 November 1975 the applicant applied for a game packing house licence for its premises at Te Anau. It made further representations by letters of 7 and 30 January

1976 and 16 February 1976. By letter of 24 February 1976 the Minister informed the applicant that the application had been declined. This application seeks a review of that decision.

The relevant paragraph of the regulations is as follows:

- "10. Grant of licences (1) On receipt of an application for a licence in respect of any premises, the Minister shall grant and issue a licence in a form to be provided by the Director-General, if -
- (a) After having regard to the local authority recommendations (if any); and
 - (b) After making such enquiries and investigations as he thinks necessary -
- he is satisfied that -
- (i) The requirements of these regulations in relation to the application have been complied with; and
 - (ii) The applicant is a suitable person to be the holder of the licence; and
 - (iii) The situation or places of operation of the premises to which the application relates is or are not objectionable or otherwise contrary to the public interest; and
 - (iv) The premises are suitable for the purpose to which they are to be put; and
 - (v) The issue of a licence would not have a significant detrimental effect on the economic operation of any game establishment (other than a game depot) or the stability of the game industry as a whole.
- (2) Notwithstanding anything in subclause (1)(b)(v) of this regulation, the Minister may issue a licence in any case where he considers that in the public interest a licence should be issued to maintain competition and independence within the game industry.
- (3) Every licence shall, unless it is sooner cancelled or surrendered, continue in force until the expiration of the 30th day of June next after the day on which it takes effect. "

It is to be noted that if the Minister is satisfied of the matters mentioned in sub-para. (1)(b)(i) to (v) he has no discretion and must grant and issue the licence. In this case no question arises under subpara. (1)(a) and it is conceded on behalf of the Minister that he was satisfied of the matters mentioned in subpara. (1)(b)(i) to (iv) inclusive. The matter in issue therefore arises principally on (v).

I deal with the grounds on which the applicant contends that the decision of the Minister was contrary to law and invalid:

- (a) The Minister took into account irrelevant matters, namely, the economic need and justification for the continuance of the said premises as a game packing house and the availability of inspection staff for game packing houses.

This is based on a passage in a letter of 30 October 1975 to the applicant drawing attention to the new regulations and inviting an application for a licence, in the course of which the Ministry said:

"As the premises concerned was not one which following a discussion with the game industry was planned to be used as a game packing house (processing) the Minister will need to be convinced of the economic need and justification for the continuance of the premises as a game packing house (processing). Accordingly I should be pleased to receive submissions which may enable the Minister to decide whether there was economic justification for the issue of a game packing house licence in respect of the premises concerned. Also the Ministry itself will have to look at the availability of inspection staff for game packing houses if more than those previously envisaged and agreed on with the Industry are to be licensed. "

In the context of the whole letter in which the Ministry gave some details of the requirements of the Game Regulations 1975 and set out the material parts of para 10 I do not think that the first two sentences of that passage show that the Minister, when he came to consider any application, would take irrelevant matters into account. They were no more than an intimation that the applicant had to make out its case. Nor do I think the last sentence in the passage quoted shows that the Minister would take an irrelevant matter into account. Indeed it is noteworthy, as Mr. Graham pointed out, that that sentence refers to "the Ministry itself" in contrast to the earlier references to "the Minister".

- (b) The Minister did not deal with economic matters on the correct basis, namely, whether the issue of a licence would not have a significant detrimental effect on the operation of any game establishment (other than a game depot) or the stability of the game industry as a whole.

This ground is based on subpara. (1)(b)(v) of para. 10 and Mr. Shires places reliance on the following two paragraphs of the report by the Ministry to the Minister on the applicant's application:

"Fiordland Venison Ltd. has a game packing house at Te Anau which in 1975 processed 582 deer and 75 wild pigs which is not really an economic operation in relation to the cost of improvements that would be needed to bring the premises up to the standard required under the Game Regulations 1975. In 1974 the game packing house handled 5052 deer and 74 wild pigs and while the volume of game handled overall fell in 1975 it would seem that deer that would previously have been handled at Te Anau are now being accommodated satisfactorily elsewhere.

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The question of the issue of licences to Fiordland Venison Ltd. was discussed with the Parliamentary Under-Secretary for Agriculture and Fisheries and the decision was made that the issue of licences for a game packing house and a game inspection premises could not be justified because of their effect on existing premises. The attached letter which is referred for your consideration, gives effect to the decision reached."

Far from there being anything to which objection can properly be taken in the first of those paragraphs it seems to me that the fact that the number of deer processed by the applicant fell from 5052 in 1974 to 582 in 1975 was a very material matter for consideration by the Minister. Mr. Shires says that the reference to the "effect on existing premises" in the second paragraph is clearly a reference to subpara.(v) of para. 10 and he contends that that provision cannot be applied to the competition between the existing businesses all of which would be applicants for a new licence. He says that in granting the other licences, for example at Mossburn, the Minister must have ignored the effect that that business would have on the applicant at Te Anau - which was correct - and that on the applicant's application at Te Anau it was incorrect to take into account the effect it would have on the business at Mossburn. In my view, however, subpara.(v) required the Minister to consider what effect the grant of a licence to the applicant would have on the economic operation

of any game establishment and, on the information then before him as to the applicant's drop in production in the preceding year, it was reasonable for the Minister to infer that an increase in production was necessary to make the establishment economic and that that increase must come from other game establishments with consequential significant detrimental effect on them. The applicant's explanation of the drop in production was not put forward until after the date of the Minister's decision.

- (c) The Minister did not have any or due regard to the matter of public interest in issuing a licence to maintain competition and independence within the game industry.

This is based on para.10(2) which gives the Minister a discretion to issue a licence if the applicant has not satisfied him under para.10(1)(b). In my view there must be some material to show that the Minister should have considered that it is in the public interest that a licence should be issued for the reason stated in para.10(2). There was no such material before the Minister and I think this ground therefore fails.

- (d) The Minister overall approached and dealt with the matter on the basis of reduction and reallocation of existing licences in the industry instead of the requirements for a licence on the particular application.

Beyond submitting that this emerges from the documents and the history of the matter as a whole Mr. Shires did not elaborate this ground. I cannot sustain it.

The application is dismissed with costs, \$200, to the respondent, which includes the amount of \$50 awarded to the respondent on the dismissal of the applicant's motion for discovery.

Solicitors:

McIlroy Cochrane & Co., Wellington, for Applicant.
 Crown Law Office, Wellington, for Respondent.