[HIGH COURT OF AUSTRALIA.]

ANDREWS AND OTHERS . . . . . APPELLANTS;
RESPONDENTS,

AND

DIPROSE . . . . . RESPONDENT.
APPLICANT,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

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MELBOURNE, *Nov.* 10.

SYDNEY, *Dec.* 14.

Latham C.J., Starke, Dixon, Evatt and McTiernan JJ.

Dairy Produce—Registration of premises—Conditions of registration—Matters to be considered—"Best interests of the industry"—"Situation and environment" of premises—Dairy Produce Act 1932-1935 (*Tas.*) (23 *Geo. V. No.* 37—26 *Geo. V. No.* 52), *sec.* 6 (3).

Sec. 6 (3) of the *Dairy Produce Act* 1932-1935 (Tas.) provides that a certificate of registration for dairy-produce premises shall not be issued unless the Director of Agriculture is satisfied that "I. the premises in respect of which the application is made are fit for the purpose for which they are used or intended to be used and are so constructed and equipped as to comply with the requirements of this Act; and II. . . . that it is in the best interests of the industry that the same should be registered, having regard to the situation and environment of the premises proposed to be registered."

Held, by *Latham* C.J., *Starke*, *Dixon* and *McTiernan* JJ. (*Evatt* J. dissenting), that the matters to be taken into account for the purposes of par. II. of the sub-section included not only the physical attributes of the proposed site of the premises but also the effect upon the interests of the industry as a whole which the establishment of the premises at that site would have.

Decision of the Supreme Court of Tasmania (Full Court) reversed.

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APPEAL from the Supreme Court of Tasmania.

In October 1936 Roy Tasman Diprose applied to the Director of Agriculture for the State of Tasmania for a certificate of registration of a cheese factory at Ringarooma under sec. 6 of the *Dairy Produce Act* 1932-1935 (Tas.). The Director of Agriculture refused the application in a letter in which he stated :—"I have to advise that after going fully into the matter I have decided that having regard to the situation and environment of the proposed premises it will not be in the best interests of the industry to grant a certificate of registration for a cheese factory in the Ringarooma district. There does not seem to be any immediate prospect of an extension of the industry in the north-east and the existing factories can deal with more cream than is offering at present. Any decrease in supplies to either of the existing factories must be attended by an increase in overhead charges and consequently a decrease in payments to suppliers." The respondent then appealed to the appeal board appointed under sec. 6 (9) of the *Dairy Produce Act* and consisting of Peregrine Fellowes Andrews, Roderick George Mackenzie and James Rowland Hilder, which upheld the decision of the director. The decision of the appeal board was conveyed to the respondent by a letter in the following terms :—"Re Cheese Factory—Ringarooma. After carefully considering the evidence of Mr. R. T. Diprose, and the North-Eastern Co-op. Dairy Co. of Legerwood, and the Cool Stores, for and against the refusal of the Director of Agriculture to grant a licence for registration of a cheese factory at Ringarooma ; the board are of the opinion that it would not be in the best interests of the dairymen of the district to grant a permit for purchasing milk for the manufacture of cheese and, therefore, uphold the decision of the Director of Agriculture and dismiss the appeal." Diprose then applied to the Supreme Court of Tasmania for a writ of mandamus directing the appeal board to hold an adjournment of the hearing of the appeal and to determine the appeal according to law. The Full Court of Tasmania granted the application.

From that decision the board, by leave, appealed to the High Court.

Hudson, for the appellants. The words "having regard to the situation and environment of the premises" in sec. 6 (3) of the

Dairy Produce Act are not limited to something of a noxious character. In exercising his discretion to grant or not to grant a certificate, the director may take into account what is in the best interests of the industry, and in so doing he must have regard to the " situation and environment " of the proposed factory. " Situation " connotes situation with regard to all other factories and means something more than the mere site of the proposed factory. " Environment " means something more than the immediate surroundings or vicinity and includes the surrounding conditions of all kinds (*Oxford English Dictionary*). The director may consider the economic position of the proposed factory and is not limited to its hygienic conditions. It is proper for him to consider the existence of other factories and their relation to, and probable effect on, the proposed factory by way of competition or otherwise. The director has not taken into account matters which he was not entitled to consider.

Keating, for the respondent. Neither by express words nor by necessary implication does the Act authorize the director to take into account the matters which influenced him. This is a restrictive provision interfering with the common-law right of the individual to enter into and carry on business conformably with the law and unrestricted except by express statutory provision. " Situation " means the actual site of the proposed factory. The director may consider that site and any defects in, or objections to, it, but its relation to other sites or factories is irrelevant. " Environment " has a local or topographical meaning, and means the immediate vicinity. The director has no right to consider economic or financial conditions or trade competition, or the existence of other factories or their economic effect upon the proposed factory. [He referred to *Glover* v. *McClintock* (1) and *Clarke* v. *Earl of Dunraven*; *The* " *Satanita* " (2).] Any doubt should be resolved in favour of the *status quo*, that is, in favour of the common-law right to carry on business.

Hudson, in reply.

Cur. adv. vult.

(1) (1914) 10 Tas. L.R. 54.

(2) (1897) A.C. 59.

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Dec. 14.

The following written judgments were delivered :—

LATHAM C.J. The respondent, Diprose, applied for a certificate of registration of dairy-produce premises, namely, a proposed cheese factory at Ringarooma, under sec. 6 of the *Dairy Produce Act* 1932 (Tas.) as amended by the *Dairy Produce Act* 1935. The application was made to the Director of Agriculture in accordance with sec. 6 (2). The director refused the application, claiming to act under sec. 6 (3). The applicant appealed to an appeal board under sec. 6 (9), and the board dismissed the appeal. Application was made to the Supreme Court for a writ of mandamus directing the appeal board to hold an adjournment of the hearing of the appeal and to determine the appeal according to law. The Full Court of the Supreme Court of Tasmania granted the application, the opinion of *Crisp* J., as the senior justice, prevailing over that of *Clark* J. An appeal by special leave is now brought to this court.

The Supreme Court held that the director and the appeal board had, in considering the application and the appeal respectively, taken into account extraneous considerations, that is, they had allowed their decision to be affected by circumstances which were not relevant to the exercise of the powers conferred upon them by the statute (See *R.* v. *War Pensions Entitlement Appeal Tribunal*; *Ex parte Bott* (1); *R.* v. *Trebilco*; *Ex parte F. S. Falkiner & Sons Ltd.* (2)). The director and the board considered not only the character of the premises sought to be registered and their local situation and physical environment, but also the effect of registration of the proposed factory at Ringarooma in relation to the interests of the industry, including the interests of dairymen as producers and sellers of dairy products.

The decision of the director upon the original application was conveyed in a letter which stated that " after going fully into the matter I have decided that having regard to the situation and environment of the proposed premises it will not be in the best interests of the industry to grant a certificate of registration for a cheese factory in the Ringarooma district. There does not seem to be any immediate prospect of an extension of the industry in the north-east and the existing factories can deal with more cream than is

(1) (1933) 50 C.L.R. 228. (2) (1936) 56 C.L.R. 20.

offering at present. Any decrease in supplies to either of the existing factories must be attended by an increase in overhead charges and consequently a decrease in payments to suppliers."

The decision of the board was conveyed to the applicant by a letter in the following terms :—" Re Cheese Factory—Ringarooma. After carefully considering the evidence of Mr. R. T. Diprose, and the North-Eastern Co-op. Dairy Co. of Legerwood, and the Cool Stores, for and against the refusal of the Director of Agriculture to grant a licence for registration of a cheese factory at Ringarooma ; the board are of the opinion that it would not be in the best interests of the dairymen of the district to grant a permit for purchasing milk for the manufacture of cheese and therefore upheld the decision of the Director of Agriculture and dismiss the appeal."

The decision of the controversy depends upon the true construction of the provisions of sec. 6 of the *Dairy Produce Act* 1932, as amended by the Act of 1935. Sec. 6 provides that no person shall use any premises as dairy-produce premises (which include a cheese factory) unless he is the holder of a certificate of registration in respect of the premises. Sub-sec. 2 provides that applications for certificates of registration are to be made to the director. Sub-sec. 3 is as follows :—" A certificate of registration shall not be issued unless the director is satisfied that—" I. The premises in respect of which the application is made are fit for the purpose for which they are used or intended to be used, and are so constructed and equipped as to comply with the requirements of this Act ; and II. In respect of any proposed factory which was not registered at the time of, or immediately prior to, the making of the application, that it is in the best interests of the industry that the same should be registered, having regard to the situation and environment of the premises proposed to be registered."

It will be observed that par. I. of sub-sec. 3 provides that the director must be satisfied, first, that the premises are fit for the proposed purpose, and, secondly, that they are so constructed and equipped as to comply with the requirements of the Act. The consideration of the construction and equipment of a factory includes consideration of everything which is part of the premises and plant constituting the factory itself. But " construction and equipment "

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cannot include the situation or environment of the factory. The further provision that the director must be satisfied that the premises are fit for the proposed purpose prima facie allows the director to consider matters which relate to something affecting the factory which is not included in "construction and equipment." Among such matters, as affecting the fitness of the factory for its proposed purpose, the director would be entitled to consider the situation of the factory in relation, for example, to noxious environment, which would make it unsuitable for use as a factory dealing with dairy produce, which is easily contaminated. It is not, therefore, necessary, to have recourse to par. II. of sub-sec. 3 in order to entitle the director to take such considerations into account. Sub-sec. 9 gives an appeal to an appeal board from refusal of an application by the director under par. II., but not from a refusal under par. I. When a certificate of registration has been granted it remains in force only until 30th June next after issue (sec. 6 (5)).

The decision of this appeal depends upon the true construction of the words in par. II. of sub-sec. 3 requiring the director to be satisfied "that it is in the best interests of the industry" that the proposed factory "should be registered, having regard to the situation and environment of the premises proposed to be registered." Upon an appeal to a board, the board is obviously entitled to consider the matters as to which the statute requires the director to be satisfied. The word "situation" in par. II. of sub-sec. 3 refers to the place where the proposed factory is (if the premises in question are existing premises) or will be erected (if the premises have not been erected). The decision of the director is to be a decision with respect to the best interests of the industry. In making this decision he is required to have regard to the situation of the factory. In my opinion the director may properly consider and, indeed, is bound to consider the situation of the factory in relation to the best interests of the industry. The interests which he must consider are not the interests of the individual applicant but the interests of the industry as a whole. The situation of a new factory may affect the interests of the industry for the reason that the district in which it is proposed to establish it is already well supplied with other factories so that an addition of another factory will not improve and may possibly

prejudice the interests of suppliers, and may not really add to the service which factories render to the industry when considered from economic or commercial points of view. This, in my opinion, is a matter which may properly be considered by the director and by the appeal board on appeal from the decision of the director. The word "environment" is a general word and authorizes the director to take into account the requirements of the district in relation to dairy produce as affecting the best interests of the industry. There is nothing in the words of the section which makes it necessary to limit the meaning of the word "environment" to the immediate physical surroundings of the proposed factory. The word is capable of referring also to the environment of the factory in the sense of the district surrounding the factory regarded from the point of view of the best interests of the dairy-produce industry, including therefore the volume of supply of milk and cream available for supply to factories and the facilities already available to suppliers in the district for dealing with milk and cream and the products thereof. I am therefore of opinion that the director and the appeal board were justified in taking into account economic or commercial considerations affecting the interests of the industry.

It has been suggested that reference is made in par. II. of sub-sec. 3 to the situation and environment of the premises for the purpose of enabling the director and the appeal board to consider the immediate surroundings of the premises in relation to possible noxious elements in those surroundings and only for that purpose. But, as I have already said, it is not necessary to interpret par. II. in this manner, because these matters can be considered under par. I. when the director is determining whether the premises are fit for the proposed purpose. Further, under sub-sec. 4 a certificate can be cancelled not only if the requirements of the Act (some of which are directed towards the protection of dairy produce from noxious elements) are not observed to the satisfaction of the director, but also if in the opinion of the director the premises are not fit for the purpose for which they are used. Sub-sec. 4 contains the only power of cancellation, and the only provision in that sub-section which can authorize cancellation on account of noxious environment is to be found in the provision that the director may cancel if, in

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his opinion, the premises are not fit for the purpose for which they are used. It would be strange if these words in sub-sec. 4 were not wide enough to cover such a case. If these words when they appear in sub-sec. 4 are wide enough to cover consideration of noxious surroundings, then they are also wide enough when they appear in par. II. of sub-sec. 3 to cover a consideration of the same class of circumstances.

Thus, in my opinion, the words of par. II. entitle the director and the appeal board to consider, upon an application for a certificate of registration, the effect of registering the proposed factory in the place proposed and in its environment in relation to the best interests of the industry. The interests of the industry include economic and commercial considerations, and I am therefore of opinion that the order nisi for a mandamus should not have been made.

The appeal should be allowed and it should be ordered that the order nisi be discharged. Special leave to appeal was granted to the appellants upon the condition that they should abide by any order which the court should make in relation to costs, and, as the appeal was brought for the purpose of obtaining a decision from this court upon the construction of a statute for the guidance of the administrative authority, I think that the appellant should pay the costs of the respondent.

STARKE J. Appeal by special leave from a judgment of the Supreme Court of Tasmania directing the issue of a writ of mandamus to Peregrine Fellowes Andrews and other members of an appeal board constituted under the *Dairy Produce Act* 1932 (Tas.) peremptorily commanding them to hold an adjournment of an appeal by Roy Tasman Diprose under the *Dairy Produce Act* against the refusal of the Director of Agriculture to issue to him a certificate of registration of a cheese factory under the Act, and to determine the appeal according to law.

The *Dairy Produce Act* 1932-1935 of Tasmania is an Act to consolidate and amend the law relating to the production, manufacture and sale of dairy produce. It controls, in a very large measure, both directly and by means of regulations, which the Governor is authorized to make, those activities in relation to dairy produce.

By sec. 6 no person shall use any premises as dairy-produce premises unless he is the holder of a subsisting certificate under the Act. Application for a certificate of registration must be made to the Director of Agriculture. And sub-sec. 3 provides that a certificate of registration shall not be issued unless the director is satisfied that :—I. The premises in respect of which the application is made are fit for the purpose for which they are used or intended to be used, and are so constructed and equipped as to comply with the requirements of the Act ; and II. In respect of any proposed factory which was not registered at the time of, or immediately prior to, the making of the application, that it is in the best interests of the industry that the same should be registered, having regard to the situation and environment of the premises proposed to be registered. Any person whose application has been refused by the director may appeal to an appeal board appointed in the manner prescribed by the Act, and the director must give effect to the decision of the board. Certificates of registration, subject to some exceptions immaterial to this case, remain in force until 30th June next after the certificate is issued, and are renewable annually.

In November 1936 Roy Tasman Diprose applied, pursuant to the Act, to the Director of Agriculture for a certificate of registration of dairy-produce premises, to wit, a cheese factory. The director refused the application for the following reasons :—" I have decided that having regard to the situation and environment of the proposed premises it will not be in the best interests of the industry to grant a certificate of registration for a cheese factory in the Ringarooma district. There does not seem any immediate prospect of an extension of the industry in the north-east and the existing factories can deal with more cream than is offering at present. Any decrease in supplies to either of the existing factories must be attended by an increase in overhead charges and consequently a decrease in payments to suppliers."

Diprose appealed from this refusal to an appeal board constituted under the Act. The appeal was heard in January 1937, and the board were " of the opinion that it would not be in the best interests of the dairymen of the district to grant a permit for purchasing milk for

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the manufacture of cheese" and therefore upheld the decision of the Director of Agriculture and dismissed the appeal.

An order nisi for mandamus was then obtained from the Supreme Court directed to the Director of Agriculture and the members of the appeal board and it was made absolute as above stated. The question on this appeal is whether the decision of the Supreme Court was right. It turns entirely upon the construction of the Act and the proper interpretation of the words "in the best interests of the industry that the same should be registered, having regard to the situation and environment of the premises proposed to be registered."

The view sustained in the Supreme Court of Tasmania was that the words "having regard to the situation and environment of the premises proposed to be registered" restricted and controlled the words "in the best interests of the industry." But I cannot agree with that construction of the Act. The dominant matter is "the best interests of the industry," which leaves the director and the appeal board on appeal from him free to consider any economic or other reason, within reason, that in his or their opinion affect those interests. The words "having regard to the situation and environment of the premises" are, in my judgment, directory in character and not restrictive of the matters open for consideration. On this construction neither the Director of Agriculture nor the appeal board considered or omitted to consider anything beyond or outside their statutory power and duty.

The appeal should be allowed.

DIXON J. In this appeal we have another instance of a controversy as to the ambit of an administrative discretion conferred by statute with no indication of the grounds upon which it is exercisable except of the most vague and indefinite description. Other examples will be found in *Victorian Railways Commissioners* v. *McCartney and Nicholson* (1), *R.* v. *Trebilco*; *Ex parte F. S. Falkiner & Sons Ltd.* (2) and *Swan Hill Corporation* v. *Bradbury* (3), cases which contain some discussion of the general principles to be applied.

The question before us is whether a purported determination of an appeal board constituted under Tasmanian legislation relating

(1) (1935) 52 C.L.R. 383. (2) (1936) 56 C.L.R. 20.
(3) (1937) 56 C.L.R. 746.

to the production, manufacture and sale of dairy produce is bad because it is based on grounds which are beyond the scope of the board's discretion. The purpose of the board is to decide an appeal from a refusal of the Director of Agriculture to register dairy-produce premises as a factory. The statute is the *Dairy Produce Act* 1932, as amended by an Act of the same name of 1935. By sec. 6 dairy-produce premises may not be used except under the authority of a subsisting certificate of registration. The application for a certificate must be made in the first instance to the Director of Agriculture. Before the Act was amended in 1935, all it said about the grounds upon which he should consider applications was that a certificate of registration should not issue unless he were satisfied of the fitness of the premises for the purpose to which they were, or were to be, put and their compliance, in construction and equipment, with the requirements of the Act (sec. 6 (3)). Except in the cases of a dairy and of a store, registration is annual.

The present case concerns a factory, that is, premises where purchased dairy produce is processed, manufactured, prepared or treated (sec. 3 (1)). A factory is only one of the various kinds of building which fall within the category of dairy-produce premises, an expression which means a store, dairy, depot, factory and any place where dairy produce is deposited, treated, dealt with or sold otherwise than by retail (sec. 3 (1)). In 1935, by an amendment, the registration of dairy-produce factories was specially dealt with. To the existing requirement of fitness for the purpose, prescribed as a condition precedent for the registration of all dairy-produce premises, a second was added, limited, however, in its application, to the case of factories not already registered. The amendment provided that such a factory should not be registered unless the director be satisfied that it is in the best interests of the industry that the same should be registered, having regard to the situation and environment of the premises (sec. 6 (3) II.). At the same time, the amending enactment gave to an applicant, registration of whose premises might be refused under this provision, a right to appeal " as prescribed to an appeal board to be appointed by the Minister and constituted as prescribed," to the decisions of which the director is required to give effect (sec. 3 (9)). An appeal is not given to

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applicants in respect of all kinds of dairy-produce premises. The right of appeal is confined to cases of factories, not already registered, in respect of which applications are refused by the director upon the ground of non-fulfilment of the new condition.

The premises for which the respondent sought registration are a cheese factory at Ringarooma. The director refused the application on the ground that it was not in the best interests of the industry to allow it. His reasons for this conclusion were that, in his opinion, there was no immediate likelihood of the dairy industry in the north-east of Tasmania extending, that the existing factories could deal with more cream than was at present supplied and that any decrease in the quantity available to them would mean an increase in their overhead costs with a consequent reduction in the price paid to suppliers. This decision was confirmed by the appeal board. The validity of the decision has been attacked on mandamus, and the question, therefore, is whether the reasons of the director and of the board of appeal for refusing registration are relevant to the matter upon which, under the statute, the director must be satisfied before he registers a new factory, namely, "that it is in the best interests of the industry that the same should be registered, having regard to the situation and environment of the premises proposed to be registered."

These are indefinite words capable of embracing almost every consideration relating to the effect upon the production of milk or the manufacture of milk products likely to ensue from the establishment of a factory at a particular place. But the provision in which they occur involves a very severe restriction upon the freedom of the individual, and they ought not, therefore, to receive any larger interpretation than is required by their natural meaning when considered in the context in which they are found and in relation to the subject matter to which they are applied.

Before the amendments of 1935 the purpose of the *Dairy Produce Act* does not appear to have been to regulate in every respect the production, manufacture and sale of dairy produce. Its operation may be compendiously stated as affecting (*a*) the construction, equipment, maintenance and the hygiene and general fitness of dairy-produce premises; (*b*) the weighing, grading and testing of

the commodity; (*c*) the basis of calculating and verifying the prices of milk and cream supplied by dairy farmers and the variation of prices according to grade; (*d*) the purity and quality of the product and many matters incidental to securing them; and (*e*) the registration and use of brands.

It is evident that, when the amendments of 1935 were made, it was considered that the power conferred upon the director in relation to new factories was of such consequence that it was proper to give an appeal from its exercise to an administrative board. It is contended that the discretion thus dealt with should be understood as limited to considerations arising out of the physical states or conditions likely to be produced by the establishment of a factory in a particular situation or environment.

The respondent, on whose behalf the contention is advanced, cannot be fairly expected to define with any exactness the restricted meaning which he says should be placed upon the indefinite words describing the director's function. All that he seeks to do is to exclude from their meaning any consideration of what may be called the mere economics of the industry. But the reasons for this negative exclusion necessarily involve some grasp of the positive extent of the discretion conferred. Apparently the contention is that the direction to have regard to the situation and environment should be taken as limiting the grounds of the discretion to those two elements and those two elements should be treated as pointed to consequences upon states or conditions such as drainage, access, freedom from contamination, odours, smoke and the like, absence of any dense population in the vicinity and matters *ejusdem generis*. I do not think that such a view of the amendment should be adopted. The words "best interests of the industry" are the widest that could be imagined and, according to their natural meaning, refer to the conduct and development of the commercial and productive activities in Tasmania collectively called the dairy-produce industry. The "economic" consequences of the establishment of a factory seem those most likely to affect the "best interests of the industry," and the references to locality are not in any way inconsistent with their inclusion within the ambit of the discretion. Situation and environment are not very precise words, but they naturally refer to

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the industrial, commercial or other activities surrounding a site as much as the physical attributes. No doubt the direction to have regard to them is limiting in the sense that the director must consider the consequences of the establishment of the factory from the point of view of its site and the condition of the "industry" in that locality. But I think that the amendment was intended to give the director a discretionary power wide enough to cover the grounds upon which he decided the respondent's application.

In my opinion the appeal should be allowed. Pursuant to the appellant's undertaking given as a condition of obtaining special leave, the respondent should have his costs of the appeal. The order of the Supreme Court should be set aside and the order nisi for a mandamus should be discharged with costs.

EVATT J. The respondent applied to the Director of Agriculture for a certificate of registration in respect of a proposed cheese factory which was not already registered. The Tasmanian statute of 1935 provides that no certificate shall be issued unless the director is satisfied, "in respect of any proposed factory which was not registered at the time of, or immediately prior to, the making of the application, that it is in the best interests of the industry that the same should be registered, having regard to the situation and environment of the premises proposed to be registered."

The director refused the application, stating the following reason for his refusal :—

> "After going fully into the matter I have decided that having regard to the situation and environment of the proposed premises it will not be in the best interests of the industry to grant a certificate of registration for a cheese factory in the Ringarooma district. There does not seem to be any immediate prospect of an extension of the industry in the north-east and the existing factories can deal with more cream than is offering at present. Any decrease in supplies to either of the existing factories must be attended by an increase in overhead charges and consequently a decrease in payments to suppliers."

The respondent brought an appeal to the appeal board, which dismissed his appeal. The reasons for the appeal board's decision were thus stated : "The board are of the opinion that it would not be in the best interests of the dairymen of the district to grant a permit for purchasing milk for the manufacture of cheese and therefore upheld the decision of the Director of Agriculture and dismiss the appeal."

It is clear that the director's decision was based upon the principle that it was undesirable to allow any competition between the proposed new factory and the existing factories upon the ground that such competition would increase the proportionate overhead charges of the existing factories, which in turn would ultimately reflect itself in smaller payments to the producer.

The appeal board followed a very similar line of reasoning, considering that the interests of the dairymen would or might be prejudicially affected if they were suddenly confronted with the spectacle of an additional purchaser for their milk.

Fortunately for the courts, and perhaps also for the appeal board, the validity of this economic reasoning is not open to review. The only question for us is whether the board's decision was vitiated by its consideration of irrelevant matters. If so, the form of the statutory provision—that a certificate shall not be issued " unless " etc.—is no bar to the issue of a mandamus to hear and determine, as distinct from a mandamus to issue a certificate.

Were the matters which influenced the board's decision relevant ? Under the statute, the sole issue for its determination was whether " it is in the best interests of the industry that the same should be registered, having regard to the situation and environment of the premises proposed to be registered."

The question is: Does the phrase " having regard to " state exhaustively, and so define and limit, the considerations which are relevant ? Or does the phrase merely require that " the situation and environment " of the proposed premises must be considered *in addition to* any other factors which may have a bearing on " the best interests of the industry " ?

In my opinion, the phrase " having regard to," used as it is in reference to the very grounds of decision of an administrative authority, introduces an exclusive specification of the relevant factors to be taken into account. Indeed, the phrase " having regard to " may be paraphrased as " treating the following as the relevant factors." As *Crisp* J. says, " the director is not asked to concern himself with any other considerations. If the intention had been to give him a free hand in every respect it would have been simple to say so."

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The final question is whether the statutory authority to consider the situation and environment of the premises permits the director and the board to act upon the grounds stated by them. Apart from the ordinary meaning of " situation," I think that the director or the board might possibly consider that the proposed " situation " of a cheese factory would be unsuitable and inconvenient. Thus the authority might have power to refuse to register until the factory was so situated that, for instance, the supplies from the producers would reach it without unreasonable delay, trouble or expense ; or so situated that it would not be unusually difficult to inspect. The " environment " of a factory refers to its surroundings so far as they can affect a very important process of producing food for human consumption. Thus, existing facilities for water supply and other services should be taken into account. I presume that it would be considered very undesirable that a cheese factory should be in close proximity to sewers, incinerators, stagnant waters, garbage tips, etc.

But, however wide an interpretation is given to the phrase " situation and environment," it seems to me to be quite impossible to regard it as authorizing the administrative authority to eliminate or reduce competition among the factories. That may be desirable or undesirable, but there is a great deal of force in the view of *Crisp* J. that, if the legislature desired to authorize departmental authorities to exercise the tremendous weapon of eliminating competition in industry, it would have said so in clear and direct language rather than through the guise of an apparently unimportant scheme of factory registration where the annual fee for registration is a merely nominal sum.

If a traffic authority were authorized by statute to refuse motor licences " if considered undesirable in the public interest having regard to the driving qualifications of the applicant and his physical fitness," the licence fee being the nominal one which typifies many systems of registration, I do not think that the traffic authority would be authorized by such a statute to refuse an applicant upon this ground :—" We have enough drivers already. It will not tend to the public interest to have any more licences. The fewer the drivers, the less danger to the public."

In my opinion, the Tasmanian legislature has not expressed any intention to empower the director or board to carry out a very important general policy of trade restriction by means of the power to refuse the necessary registration certificate.

The judgment of *Crisp* J. was, in my opinion, correct and the appeal should be dismissed.

McTIERNAN J. I agree with the judgment of the Chief Justice.

Appeal allowed. Judgment of Supreme Court set aside. Order nisi discharged. Appellant to pay costs of respondents in the Supreme Court and in this court.

Solicitor for the appellant, *A. Banks-Smith*, Crown Solicitor for Tasmania.

Solicitors for the respondent, *Archer, Weston, Hall & Campbell.*

H. D. W.