

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **BIBIN
VARGHESE** pursuant to S.224 of
the Act for renewal of a Manager's
Certificate

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr L A Cocks
Members: Mr E W Unwin
Mr J M Mann

HEARING at QUEENSTOWN 24th April 2019

APPEARANCES

Mr B. Varghese – applicant
Mr M. Walker (Todd & Walker Law) – Counsel for applicant
Ms T. McGivern – Licensing Inspector – to assist
Sergeant T. Haggart – Queenstown Police – in opposition

DECISION OF THE COMMITTEE

The Application.

[1] Before the committee is an application by Bibin Varghese for the renewal of his manager's certificate. The application was received by the Agency on the 11th December 2018.

[2] Mr Varghese was granted a Managers Certificate on the 15th January 2018 which included an undertaking from him that the certificate only be used whilst working at the Bombay Palace Queenstown where he has been employed since 1st June 2017 and is currently employed.

[3] In his renewal application, Mr Varghese failed to disclose a conviction on 11th June 2018 in the Queenstown District Court for 'Driving with Excess Breath Alcohol' and 'Careless Driving' following a motor vehicle crash on Dart Place in Queenstown on 30th April 2018. Instead on the application form he wrote 'At the moment there no criminal convictions'.

The Police Opposition.

[4] The application was opposed by the Police under:
'Section 222(a) & (b), Sale and Supply of Alcohol Act 2012
(a) The applicants suitability to be a manager
(b) Any convictions recorded against the applicant',

based on the 11th June 2018 conviction and the applicants failure to declare any criminal convictions in his renewal application on the 11th December 2018.

[5] The Police provided evidence as follows:

'At approximately 10 26pm on the 30th April 2018, Bibin Varghese was the driver of a Nissan motor vehicle travelling east on Dart Place in Queenstown. He veered to the side of the road clipping the side of three parked vehicles causing minor damage to each. Further along the road he failed to negotiate a right hand bend and crashed into the back of a parked vehicle shunting it forward into another parked vehicle. Breath test procedures were carried out and Mr Varghese produced an evidential breath test result of 811 micrograms of alcohol per litre of breath.'

The Criminal and Traffic History provided showed that Mr Varghese has no other convictions.

[6] The Police submitted the Alcohol, Regulatory and Licensing Authority (ARLA) has made it clear in previous decisions that the holder of a manager's certificate now receives greater scrutiny of character and reputation. Relevant decisions were provided in support of this. They believe the actions of Mr Varghese choosing to drive a motor vehicle while intoxicated with a level of 811 micrograms and causing a number of minor collisions, brings into question his suitability to hold a Managers Certificate.

[7] The Police acknowledged that an application for suspension of Mr Varghese's Managers Certificate was not sent to the ARLA following his conviction. They suggested it may be appropriate that the applicant agrees to a voluntary 28 day suspension of his Managers Certificate consistent with ARLA's guidelines for a first offence, and that we consider a truncated renewal period if a renewal was to be granted.

The Licensing Inspector.

[8] The Inspector submitted that the suitability of the applicant is what is in question and reminded us of a statement we previously made in decision QLDLC 0007/14 as follows:

'Its abundantly clear that parliament expect that the management of licensed premises will be conducted only by persons of integrity who are committed to the reduction of alcohol related harm.'

She noted that Mr Varghese does not appear to have demonstrated any commitment to reducing alcohol harm; rather the opposite in highlighting the harm caused by alcohol consumption during the incident as described above.

[9] The options of voluntary suspension and a truncated renewal period put forward by the Police were acknowledged by the Inspector and she helpfully advised that we have previously agreed to a voluntary suspension and provided the relevant extract from the decision. She also provided an excerpt from the 2009 case 'White' where the Authority determined a truncated renewal was appropriate.

The Applicant.

[10] Mr Varghese is from India and resides in Queenstown on a work visa, which is valid until 10 July 2019. He is 28 years of age and married. His wife Anu Thomas is a trained nurse and is employed at the Bupa Lake Wakatipu Care Home in Frankton. Bupa has offered her sponsorship enabling her to stay in New Zealand, which she wants to do. Mr Varghese will be returning to India on 9th July 2019 with the intention of making an offshore application for a visa to return to New Zealand and continue working at Bombay Palace Queenstown.

[11] Mr Varghese told us that he made a terrible decision to drive on the 30th April 2018 after consuming alcohol, resulting in him crashing into parked and unoccupied vehicles. He has paid for all the damage to the other vehicles as well as the fine and completed the driving disqualification. He also told us he has not consumed alcohol since the incident and has completed a drug and alcohol and mental health assessment with Mr Shane Pleasance from Talking Shop Limited, who reported he had no concerns about Mr Varghese use of alcohol or risk of excessive use.

[12] When completing this application for renewal of his Managers Certificate, Mr Varghese made another poor decision by failing to disclose his conviction which brings in to question his suitability. He explained this failure as a result of advice he received from a friend and he was not trying to hide anything. The advice appears to have been that after paying the fine and reparation the case was over and he would not have a conviction.

[13] We are grateful to Mr Walker for the quality of his submissions as well as the research that he had undertaken on behalf of his client. He submitted that the applicant should still be considered a suitable person to hold a manager's certificate as there was no objection by the Medical Officer of Health. Further, that the Inspector did not raise concerns about the manner in which Mr Varghese has executed his role as a Duty Manager, and he has the ongoing support of his employer. In response to the Police opposition, Mr Walker provided details of a similar case (*Hargrave* [2016] NZARLA PH) where a truncated renewal was granted by the Authority after suspensions had been served.

[14] The consequences for Mr Varghese were outlined by Mr Walker. Mr Varghese requires the sponsorship of his employer to maintain his visa and therefore must stay employed as a restaurant supervisor at the Bombay Palace Queenstown. Maintaining a manager's certificate is essential for him to continue in this role which he currently undertakes at least five days a week. The convictions have also resulted in a compliance warning from Immigration NZ which states he is not only liable for deportation but is now subject to character requirements upon renewal of visa. Mr Walker stated that upon application for renewal of his visa, holding a Managers Certificate may assist Mr Varghese pass his character waiver requirements.

[15] Mr Varghese told us he would willingly volunteer a stand down period and accept a truncated renewal. He also agreed to continuing the undertaking to only use the Certificate while employed at the Bombay Palace Queenstown.

The Committee's Decision and Reasons.

[16] The suitability of Mr Varghese to be awarded a Managers Certificate is the question. When discussing 'suitability' **Holland J in *Re Sheard* (1996) 1 NZLR 751** stated "*Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in the Concise Oxford Dictionary as 'well fitted for the purpose; appropriate'.*

[17] Mr Varghese has been working at Bombay Palace Queenstown since 1st June 2017 and as a Duty Manager there since 15th January 2018 and therefore has relevant experience. He is supported by his employer and his conduct as the Duty Manager has not been questioned.

[18] The conviction for driving with excess breath alcohol and careless driving and failure to disclose this conviction have brought into question Mr Varghese's suitability to hold a Managers Certificate. However, taking into account the evidence presented, submissions made, actions taken by Mr Varghese since the conviction and the penalties and consequences he has incurred, we consider he has learned his lesson from one bad decision and is a suitable person to continue holding a Managers Certificate.

[19] In her submission for the Police, Sergeant Haggart suggested that it may be appropriate that the applicant agree to a voluntary 28 day suspension of his Managers Certificate consistent with the Authorities guidelines for a first offence. She also suggested we might like to consider a truncated renewal period if granted. These suggestions were supported by case law provided by Mr Walker.

[20] Our decision is as follows:

- a) Mr Varghese's Managers Certificate is voluntarily suspended for six weeks from the 24th April 2019;
- b) The renewal of Mr Varghese's Managers Certificate is approved for two years; and
- c) The Manager's Certificate is to be endorsed with the undertaking made by Mr Varghese that it will only be used while employed at the "Bombay Palace" in Queenstown. However, the applicant may apply at any time for the undertaking to be reviewed either by the senior Inspector or this Committee.

DATED at Queenstown this 18th day of May 2019.



L A Cocks
Chairperson