K. S. DE SILVA
v.
NATIONAL WATER SUPPLY AND DRAINAGE BOARD AND ANOTHER

SUPREME COURT
H. A. G. DE SILVA, J., G. P. S. DE SILVA, J. AND JAMEEL, J.
S.C. APPEAL NO. 42/88;
C.A. APPLICATION NO. 386/88
JUNE 01, 1989

Writ of Mandamus – Failure by Court of Appeal to give reasons – Public duty

The post of Accountant in the National Water Supply and Drainage Board is not a public office which attracts the remedy of mandamus. If the appointment is contractual, the writ does not lie. A distinction must be drawn between duties enforceable by mandamus which are usually statutory and duties arising merely from contract.

It is neither possible nor desirable to lay down a hard and fast rule as to whether reasons need be given when the court refuses to issue notice on respondents. Much depends on the nature of the application, the remedy sought, the pleadings, the submissions made to the Court and other matters germane to the maintainability of the application.

In the case of the petitioner, there was no necessity to give reasons when the Court of Appeal refused notice.

Cases referred to:

1. *Rodrigo* v *Municipal Council, Galle and another* 49 NLR 89

2. *Wijesinghe* v. *Mayor of Colombo* 50 NLR 87

3. *Perera* v. *Municipal Council of Colombo* 48 NLR 66

APPEAL from Order of Court of Appeal

F. C. Perera with *Upali Ponnamperuma* and *A. W. Leelaratne* for petitioner-appellant.

H. Soza for respondents-respondents.

Shibly Aziz, P.C. Addl. Solicitor General and *S. Rajaratnam,* State Counsel as *amicus.*

Cur. adv. vult.

July 05, 1989.

G. P. S. DE SILVA, J.

The petitioner who is an employee of the National Water Supply and Drainage Board (hereinafter referred to as the Board) filed an

application before the Court of Appeal for a writ of Mandamus on the General Manager of the Board. The first respondent was the Board and the second respondent was the General Manager of the Board. In his petition he alleged, inter alia, that (i) he was appointed as Book-keeper (Grade III) of the Board by letter of appointment dated 13.06.75; (ii) he was promoted as an Accounts Clerk, Grade I, by letter dated 20.05.86; (iii) by circular dated 29.08.86 the Board called for applications from its employees for the post of Accountant, Grade IV; (iv) the petitioner applied for the post, was called for an interview, and the Board approved his appointment to the post of Grade IV Accountant; (v) the 2nd respondent, the General Manager has failed to carry out the directions of the Board and has failed to issue to the petitioner the letter of appointment. The petitioner accordingly prayed for a writ of Mandamus directing the 2nd respondent to issue the letter of appointment.

When this application was supported by Counsel for the petitioner on 20.05.88, the Court of Appeal made the following order: "We have heard counsel in support. Notice is refused". The petitioner has now preferred an appeal to this court against the order refusing notice. Special leave to appeal to this court was granted on two grounds: (1) whether the Court of Appeal was wrong in law in not giving reasons for its order made on 20.05.88, (2) Even so, would such failure entitle the petitioner, in the circumstances of this case, to the relief he has claimed in the petition?

I shall first consider the ground of appeal (2) set out above. The principal submission of Mr. Perera for the petitioner was that the writ of Mandamus is available inasmuch as the 2nd respondent has failed to perform a public legal duty, namely, to issue a letter appointing the petitioner to the post of Accountant, Grade IV, as directed by the Board. On the other hand, both Mr. Aziz, Additional Solicitor-General, and Mr. Soza for the respondents maintained that the writ does not lie for the reason that the petition does not disclose a failure to perform a duty of a public nature which is an essential pre-requisite for the issue of the writ. Mr. Soza further submitted that some of the averments in the petition are not factually correct. This, however, is not a matter which could properly be taken into account, since notice did not issue on the respondents. The appeal before us has to be considered on the assumption that the averments in the petition are correct.

On a scrutiny of the averments in the petition, it is clear that the petitioner is applying for a writ of Mandamus on the 2nd respondent so that he may be admitted to the office of Accountant, Grade IV. It seems to me that the precise question which arises for consideration is whether such office is a public office, for if it is an appointment which is essentially contractual in character, the writ does not lie. The principle is succinctly stated by H. W. R. Wade: "A distinction which needs to be clarified is that between public duties enforceable by Mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by Mandamus which in the first place is confined to public duties ....." (Administrative Law, 5th Edn. Page 635)

The case of *Rodrigo vs. The Municipal Council, Galle & another,* (1) appears to me to have a direct bearing on the matters that have arisen for decision on this appeal. That was a case where the petitioner who was a Revenue Inspector in the Moratuwa Urban Council applied for a writ of Mandamus. He was transferred to the Galle Municipal Council (1st respondent) by the Local Government Service Commission. When the petitioner reported for work at the Galle Municipal Council, he was refused work and he was not paid his salary. The petitioner sought a writ of Mandamus to order the respondents (the Municipal Council and the L.G.S.C.) "to give the petitioner work and to pay his salary". In refusing the application for the writ, Windham, J. stated that one of the matters upon which the court must be satisfied is that "the petitioner is being prevented from exercising a right to perform certain duties and functions legally conferred upon him by virtue of his holding an office carrying with it such a right ..... in the present case the petitioner has no powers or duties statutorily vested in him. It may well be that he is a public servant and in the employ of a public body (i.e. the 1st respondent) ..... But that is not the test. The question is whether he has public duties and powers vested in him by statute, so that he can be said to be statutorily entitled to exercise them". In short, Windham, J. held that the petitioner was not the holder of an office "to which specified duties and powers had been statutorily attached."

Another decision which throws some light on this question is *Wijesinghe vs. Mayor of Colombo & another,* (2). The petitioner was

appointed to the post of Charity Commissioner by the Local Government Service Commission. The Municipal Council, Colombo, declined to recognise his appointment. The petitioner moved for a writ of Mandamus to order the respondents (the Mayor and the Secretary of the Colombo Municipal Council) "to permit him to perform his duties in the exercise of his lawful functions as Charity Commissioner .....". In allowing the application, Gratiaen, J. stated: "I do not agree that the petitioner's right to the office of Charity Commissioner was only of a private nature which could adequately be enforced in a civil suit. The petitioner is an executive officer of the Council by virtue of section 176 of the Municipal Councils Ordinance of 1947 ..... many, if not all, of the powers and functions contemplated are clearly powers and functions of a public nature" (at pages 90 and 91). See also the case of *Perera vs. Municipal Council of Colombo,* (3).

In support of his submission that the petitioner in the application before us is seeking admission to an office which is of a public character, Mr. Perera referred us to sections 68 and 69 of the National Water Supply and Drainage Board Law No.2 of 1974. But these two sections refer only to the powers and duties of the General Manager of the Board and the powers of the Board to appoint "to its staff such officers and servants as the Board may deem necessary and determine their terms of remuneration and other conditions of employment". We were not referred to any rules made under the said Law No.2 of 1974 which speak of the powers or duties attached to the post of Accountant. In my opinion, the office to which the petitioner is seeking admission is not a "public office" of the kind which attracts the remedy by way of Mandamus. It is an office essentially of a contractual or private character. Accordingly, as a matter of law, the writ of Mandamus does not lie and the application must fail.

I now turn to the next question, namely, whether the Court of Appeal was wrong in law in not giving reasons for its order refusing notice. Mr. Perera urged that the order of the Court of Appeal was gravely prejudicial to the petitioner and that he was handicapped in the presentation of the appeal to this court by reason of the fact that no reasons were given. While conceding that it would have been desirable for the Court of Appeal to have given reasons for its order, Mr. Soza maintained that the law did not require the Court of Appeal

to give reasons. It was the submission of Mr. Aziz that this was not a case in which it was necessary to give reasons.

Mr. Soza referred us to de Smith's Judicial Review of Administrative Action, 4th Edn. where the learned author states: "There is no general rule of English Law that reasons must be given for administrative (or indeed judicial) decisions" (page 148). Both Mr. Aziz and Mr. Soza drew our attention to an article entitled "Statements of Reasons for Judicial and Administrative Decisions" by Michael Akehurst appearing in the (1970) Modern Law Review at page 154. The learned writer commences his article with the statement: "The general rule is that there is no duty to state reasons for judicial or adminstrative decisions".

It is unnecessary for present purposes to consider the "general rule" set out above. It is neither possible nor desirable to lay down a hard and fast rule as to whether reasons need be given when the court refuses to issue notice on the respondents. Much depends on the nature of the application, the remedy sought, the pleadings, the submissions made to the Court, and other matters germane to the maintainability of the application. Suffice it to say, that on the facts and circumstances pleaded in the petition filed in these proceedings it was *manifest* that a writ of Mandamus did not lie. In this view of the matter, I am of the opinion that it was not incumbent on the Court of Appeal to give *reasons for refusing* notice in the instant case.

In the result, the appeal fails and is dismissed, but in all the circumstances, without costs.

We wish to place on record our appreciation of the assistance given by Mr. Aziz who appeared as amicus curiae.

H.A.G. DE SILVA, J. – I agree.

JAMEEL, J. – I agree.

Appeal dismissed.