KUSUMAWATHIE AND OTHERS
V.
AITKEN SPENCE & CO., LTD. AND ANOTHER

COURT OF APPEAL
S.N. SILVA, J.
C.A. 895/85
29 JUNE, 1990,
12 FEBRUARY, 1992,
16 MARCH, 1992
7 AUGUST, 1991,
26 AUGUST, 1991,
25 SEPTEMBER, 1991.

Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971,-S2(1),S2(2)d, S2(2) (e), S5, S12 (1)e, S17, An application to terminate the employment – Inquiry – Commissioner granted approval – Failure to give reasons for decision – Does it violate the principles of Natural Justice. - Rule 52 of the Supreme Court Rules.

The 1st Respondent Company made an application in terms of S.2 of Act 45 of 1971 seeking approval of the Commissioner of Labour to terminate the employment of the 16 Petitioners. Pursuant to the application an inquiry was held. The Commissioner by the impugned decision granted his approval to the termination of Employment of the Petitioners. The Petitioners challenged the decision on the single ground that it violates the principles of Natural Justice in that the Commissioner has failed to give reasons for his decision.

It was conceded that in the statutory scheme set out, under Act 45 of 1971 the Commissioner is required only to give notice in writing of his decision.

The issue that arose, was whether in the absence of a specific statutory requirement to give reasons the Commissioner has to communicate his reasons in compliance with the principles of natural justice.

Held:

In the absence of a Statutory requirement to give reasons for decisions or a statutory appeal from a decision, there is no requirement of Common Law or the principles of Natural Justice that a Tribunal or an administrative Authority should give reasons for its decision, even if such decision has been made in the exercise of a statutory discretion and may adversely affect the interests or the legitimate or reasonable expectations of other persons.

***Per* Silva, J.**

"The finding that there is no requirement in law to give reasons should not be construed as a gateway to arbitrary decisions and orders. If a decision that is challenged is not a speaking order, when notice is issued by a Court exercising judicial review, reasons to support it have to be disclosed. Rule 52 of the SC Rules 1978- is intended to afford an opportunity to the Respondents for this purpose; the reasons thus disclosed form part of the record and are in themselves subject to review. Thus if the Commissioner fails to disclose his reasons to Court exercising judicial review, an inference may will be drawn that the impugned decision is ultra vires and relief granted on this basis".

AN APPLICATION for a Writ of Certiorari.

Cases referred to :

1. *Siemens Engineering & Manufacturing Co. Ltd., v. The Union of India* - 1976 AIR (SC) 1785.
2. *Maneka Gandhi v. The Union of India* 1978 AIR (SC) 597.
3. *Norton Tool Co., Ltd., v. Tewson* - (1973) 1 WLR 45.
4. *Alexander Macinary Ltd., v. Crabtree* (1974) ICR 120 at 122
5. *R v. Immigration Appeal Tribunal ex-parte, Khan* - 1983 Queen's Bench Division 790.
6. *R v. Secretary of State for Social Services ex-parte Connolly,* 1986 1 WLR 421 at 431.
7. *Public Service Board of New South Wales v. Osmond* (1985-1986) 159 Commonwealth Law Reports 657.
8. *Wimalaganna v. Weligoda CA* 499/83 (F) C.A.M. 15.05.1991.
9. *Wijerama v. Paul* 76 NLR 241.
10. *Brook Bond (Ceylon) Ltd., v. Tea, Rubber, Coconut and General Produce Workers Union*-77 NLR 6.
11. *K.S. de Silva v. National Water Supply and Drainage Board* (1989) 2 SLR 1.
12. *Ratnayake v. Fernando* SC 52/1986 S.C.M. 20.05.1991.
13. *Samarasinghe v. De Mel* 1982-1 SLR 123 at 128
14. *Padfield v. Minister of Agriculture* 1968 AC 997.
15. *R.v. Lancashire County Council, ex-parte Huddleston* (1986) 2 All. E.R 941 at 945.

Gomin Dayasiri for Petitioners.
M.A. Bastian for the 1st Respondent.
K. Sripavan, S.S.C. for the 2nd Respondent.

Cur. adv. vult.

May 29, 1992
S.N. SILVA, J.

Petitioners have filed this application for a Writ of Certiorari to quash the decision dated 14-03-1985 (L1) made by the 3rd Respondent (Commissioner of Labour).

The 1st Respondent Company made an application in terms of section 2 of the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971, seeking approval of the Commissioner of Labour to terminate the employment of the 16 Petitioners. They were employed by the Company as unskilled labourers in the Industrial Products Division manufacturing adhesives and disinfectants. According to the application for approval the division in which the Petitioners were employed was being closed down due to large losses incurred and production becoming uneconomic.

Pursuant to the application, an inquiry was held by an Assistant Commissioner of Labour. Petitioners were represented by their Union and both parties filed affidavits. Subsequently witnesses were cross-examined and written submissions tendered. The Union did not contest the fact that production had become uneconomic but claimed that the Petitioners could be employed in another section of the Company. The Company took up the position that the Petitioners were given work in two other divisions, despatch section and the printing department, but were found unsuitable and that there is no other section in the Company where unskilled female workers could be employed. Commissioner by the impugned decision granted his approval to the termination of employment of the Petitioners subject to the payment of compensation being the equivalent of three months wages. Learned Counsel for the Petitioners challenged the decision on the single ground that it violates the principles of natural justice, in that the Commissioner has failed to give reasons for his decision. Written submissions were tendered by Counsel for the Petitioners and for the 1st and 2nd Respondents only on the aspect whether the decision 'L1' could be quashed on the ground that no reasons were given for it by the Commissioner.

Section 2(1) of the Termination of Employment of workmen (Special Provisions) Act. No.45 of 1971 prohibits the termination of scheduled employment of any workman except with the prior consent in writing of

the workman or the prior written approval of the Commissioner. In terms of section 5, termination of employment in contravention of this prohibition is null and void. Section 12 (1) (e) empowers the Commissioner to hold such inquiry, as he may consider necessary, for the purposes of the Act. Section 17 provides that proceedings at any inquiry held by the Commissioner for the purposes of the Act may be conducted by the Commissioner "in any manner, not inconsistent with the principles of natural justice ....." . Section 2 (2) (e) empowers the Commissioner to decide in his absolute discretion the terms and conditions subject to which his approval is granted. Section 2 (2) (d) requires the Commissioner to give notice in writing of his decision on the application, to the employer and the workman.

It is conceded by learned Counsel for the Petitioners that in the statutory scheme, set out above, the Commissioner is required only to give notice in writing of his decision. Learned Counsel for the Respondents submitted that the letter " L1", whereby the decision of the Commissioner granting approval for termination subject to the payment of compensation, was notified, is sufficient compliance with the statutory requirement in section 2 (2) (d). Learned Counsel for the Petitioners then contended that although order "L1" may be sufficient compliance with the provision referred to, the basic requirement that the Commissioner should comply with the principles of natural justice, makes it necessary that reasons be given in support of that decision. Therefore, the issue that arises on the submissions "is whether, in the absence of a specific statutory requirement to give reasons the Commissioner has to communicate his reasons in compliance with the principles of natural justice."

Learned Counsel for the Petitioners relied heavily on the two judgements of Justice Bhagwati, who later became the Chief Justice of India, in the cases of *Siemens Engineering & Manufacturing Co., Ltd. v The Union of India* [1] and *Maneka Gandhi v The Union of India* [2]. In the former case (at page 1789) Justice Bhagwati observed as follows:

> "It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons."

It is to be noted that the foregoing citation from Justice Bhagwati's judgment, which is not preceded by any discussion as to the basis on which the observation is made, supports a general proposition that a **quasi judicial order must be based on reasons.** In that case an order of an Assistant Controller of Customs imposing a differential duty, on some items in respect of which duty had already been paid, **was struck down by the Supreme Court on the basis that it is unjustified.** Similarly, the orders made in appeal confirming the duty were also struck down. It is clear on a perusal of the judgement that the Supreme Court examined the legality of the imposition of duty and found that in law there was no basis for it. **Thus the failure to give reasons was not the basis on which relief was granted.** The citation cannot therefore be regarded as the ratio of the decision. In any event, **it does not postulate that reasons should be communicated to the party affected by the decision**, as contended for by learned Counsel for the Petitioners.

In the Maneka Gandhi case (*supra*) an order impounding the passport of the Petitioner was challenged primarily on the basis that it was made without a hearing granted to the Petitioner. **It was conceded by the Respondents that no hearing was granted to the** Petitioner prior to the order being made. In the course of his judgment Justice Bhagwati (at p630) stated that the Central Government was wholly unjustified in impounding the passport and declining to furnish to the Petitioner the **reasons for such impounding although a request was made for such reasons.** However, it is clear on a perusal of the judgments in the case that the **basis of the majority decision is the alleged failure on the part of the authorities to give a hearing to the Petitioner before the order of impounding was made.** It was held that an inquiry in compliance with the principles of natural justice was implicit in the power given to impound passports for the public good. The majority of the Judges, including Justice Bhagwati, did not issue a Writ of Certiorari to quash the impugned order in view of an undertaking given by the authorities to afford the Petitioner a hearing. Hence this judgment too is not authority for the proposition that an order subject to judicial review can be quashed solely on the basis that the reasons for it were not communicated to the person affected by that order.

Learned Counsel for the Petitioners also relied on two judgments of Sir John Donaldson, in the cases of, *Norton Tool Co, Ltd. v Tewson* [3] and *Alexandar Macinary Ltd. v Crabtree* [4] in support of the proposition that there is an implied duty to state the reasons or grounds for a decision. In these two cases Sir John Donaldson, sitting as the President of the National Industrial Relations Court whose jurisdiction is limited to appeals on questions of law, observed that the failure of the subordinate Industrial Tribunal from whose order an appeal lay, to give reasons, was a denial of justice amounting to an error of law. These decisions may be explained on the basis that section 12 of the Tribunals and Inquiries Act of 1958 amended by the Act of 1971, of the United Kingdom, which was applicable to the Tribunal from which the appeal was made, required it to furnish a statement of reasons either written or oral for the decision, if requested. The decisions are not based on the premise that there is a general requirement of natural justice that reasons should be given for its decision by that Tribunal. Furthermore, it has to be noted that in a later case, R v Immigration Appeal Tribunal, ex parte, Khan [5]. Lord Lane C.J. commenting on these judgments observed (at p794) as follows:-

> "Speaking for myself, I would not go so far as to endorse the proposition set forth by Sir John Donaldson that any failure to give reasons means a denial of justice and is itself an error of law."

Thus it is seen that the observation of Sir John Donaldson relied upon by learned Counsel for the Petitioners is not authority for the proposition that in the United Kingdom the Common law or the principles of natural justice as observed, require reasons to be given by a Tribunal or an authority whose order is subject to judicial review.

On the question whether there is a requirement of common law or the principles of natural justice that reasons should be given by a Tribunal or an authority for its decisions, learned Counsel for the Respondents have rightly relied upon certain passages from leading treatises on the subject of Administrative Law. In Administrative Law by H.W.R. Wade (1988) 6th Edition at P547 it is stated as follows:

> "It has never been a principle of natural justice that reasons should be given for decisions."

A similar opinion is stated in de Smith's Judicial Review of Administrative Action, 4th Edition at P148:-

> "There is no general rule of English law that reasons must be given for administrative (or indeed judicial) decisions."

It is also to be noted that in the case of *R v Secretary of State for Social Services, ex parte Connolly* [6], Slade LJ of the Court of Appeal, stated affirmatively that there is no basic requirement of natural justice that reasons should always be given when a discretionary power is exercised.

Learned Counsel for the 1st Respondent also relied on the recent decision of the High Court of Australia (being the highest Court of Appeal in that country) in the case of *Public Service Board of New South Wales v Osmond* [7] . In that case a decision of the *Public Service Board of New South Wales* was challenged in the Court of Appeal by an unsuccessful applicant for a promotion in the Public Service, inter alia on the ground that no reasons were given by the Board for that decision. The Court of Appeal allowed the application and directed the Board to give reasons for the decision. In appeal by the Board, the High Court set aside the judgement of the Court of Appeal. It was held by the High Court upon an exhaustive analysis of the decisions in several jurisdictions that in the absence of a statutory requirement, there was no rule of common law and no principle of natural justice, requiring the Board to give reasons for its decisions, however desirable it might be thought that it should have done so. Gibbs C.J. stated his findings in the following terms (at page 662) :-

> "There is no general rule of the common law, or principles of natural justice, that requires reasons to be given for administrative decisions, even decisions which have been made in the exercise of a statutory discretion and which may adversely affect the interests, or defeat the legitimate or reasonable expectations, of other persons."

It is thus to be seen that neither the common law nor principles of natural justice as observed in the many jurisdictions to which reference has been made, require as a general rule, administrative tribu-

nals or authorities to give reasons for their decisions that are subject to judicial review.

The requirement to give reasons appears to be more a development of statute law. In the United Kingdom a Committee presided by Sir Oliver Franks was commissioned in 1955 to inquire into inter alia, the exercise of discretion by Government Departments. This Committee recommended the establishment of a Council on Tribunals. Some of the recommendations of the Committee were implemented by the Tribunals and Inquiries Act of 1958 amended by the Act of 1971. Section 12 of the Act as amended requires the Tribunals listed in the Act, to furnish a statement either written or oral, of the reasons for decisions, if requested. A failure to give reasons on request by such a tribunal may be an error of law as held by Sir John Donaldson in the cases referred above. American Federal Law has a comparable requirement in section 8 (b) of the Administrative Procedure Act, 1946. Similarly the Australian Federal Law as stated in section 13 of the Administrative Decisions (Judicial Review) Act, 1977 requires reasons to be given for administrative decisions, on request.

In Sri Lanka there is no general enactment similar to the Statutes referred above. Specific enactments such as section 34 (3) of the Ceiling on Housing Property Law No.1 of 1973 and section 23(5) of the Land Acquisition Act No, 9 of 1950 require reasons to be given by Boards of Review or Appeal, as the case may be. Article 13 (1) of the Constitution enshrines as a fundamental right that any person arrested be informed of the reason for his arrest.

The judgment of H.W.Senanayake, J in the case of *Wimalaganna v Weligoda* [8], relied upon by learned Counsel for the Petitioners relates to the application of section 18 (2) of the Civil Procedure Code which requires a Court to give reasons for an order made upon an application for addition of a party. This decision does not have any bearing on a principle of administrative law that reasons should be given by administrative tribunals or authorities, as contended by learned Counsel for the Petitioners. It is a reflection of the general trend of authority, as referred above, that a failure to comply with a statutory requirement to give reasons may amount to an error of law vitiating the decision.

Learned Counsel for the Petitioners also relied on the judgement of the former Court of Appeal in the case of *Wijerama v Paul* [9] . That appeal involved a finding of guilt made by the Medical Council against a Surgeon on a charge of infamous conduct. The Supreme Court on an application by the Surgeon quashed the finding of guilt on several grounds. In appeal the Court of Appeal held that several grounds relied upon by the Supreme Court were not well founded. However, it was held that the record did not disclose evidence to support the finding of guilt made by the Medical Council. The Council held an inquiry and recorded evidence but did not give its reasons for the finding. On this aspect, Justice T.S. Fernando, President made the following observations (at page 245) :-

"Section 18 (1) of the Ordinance renders every order or decision of the Medical Council subject to an appeal to the Minister (of Health) and the latter's decision is declared final. The exercise of the Minister's power to decide an appeal would certainly be facilitated if he knows the reasons which led the Council to make the order or decision complained of. Even in the absence of a legal requirement, we think it desirable that any tribunal against whose decision an appeal is available should, as a general rule, state the reasons for its decision, a course of action which has the merit of being both fair to the practitioner and complainant concerned and helpful to the appellate authority."

The foregoing observations made by the President of the Court of Appeal is in accord with the English common law. As noted by H.W.R. Wade (*supra*) at P459 "Formal tribunals have an inherent duty to state their reasons, at any rate where there is a right of appeal of any kind."

In the case of *Brook Bond (Ceylon) Ltd. v Tea, Rubber, Coconut and General Produce Workers Union* [10] the then Court of Appeal set aside an order of a Labour Tribunal giving relief to a workman and a judgement of the Supreme Court affirming that order, on the basis that there were no findings made by the President of the Labour Tribunal as to the disputed questions of fact. Sivasupramaniam, J (at page 9) stated as follows:-

"Where an appeal lies from the order of a tribunal to a higher Court,

though the appeal may be only on a question of law, it is the duty of the tribunal to set down its findings on all disputed questions of fact and to give reasons for its order. Questions of law must necessarily be considered in relation to the facts and it would be impossible for a Court of Appeal to discharge its functions properly unless it has before it the findings of the original tribunal on the facts as well as its reasons for the order it has made."

In the case of *K.S.de Silva v National Water Supply & Drainage Board* [11] the Supreme Court did not rule upon a submission that as a "general rule" there is no duty to state reasons for judicial or administrative decisions. A point at issue in that appeal was whether this Court should give reasons when refusing to issue notice on Respondents in an application for a Writ of Mandamus. G.P.S. de Silva, J (as he then was), observed as follows (at P5) :-

"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."

In a later case the Supreme Court followed the observations made by Sivasupramaniam, J in the Brook Bond case (*supra*). In the case of *Ratnayake v Fernando* [12] Fernando, J. stated the law on this aspect as follows :-

> "It is a general principle of law, recognised in the Brook Bond Ceylon Limited case, that whenever a right of appeal is given from the order of a tribunal, a duty to record findings and give reasons is implied from the grant of such right of appeal."

Thus it is seen that the common law of this country has evolved so as to require every tribunal or administrative authority whose decision is subject to a statutory right of appeal to give its reasons for such decision. Reasons have to contain findings on the disputed matters that are relevant to the decision. It is also seen that in the absence of a statutory requirement to give reasons for decision or a statutory appeal

from a decision, as aforesaid, there is no requirement of common law or the principles of natural justice, that a tribunal or an administrative authority should give reasons for its decision, even if such decision has been made in the exercise of a statutory discretion and may adversely affect the interests or the legitimate or reasonable expectations of other persons.

As noted above section 2 (2) (b) empowers the Commissioner to "decide" to grant or refuse his approval to an application for termination. Section 2 (2) (e) empowers him to "decide" the terms and conditions subject to which such approval is granted. Hence there is sufficient compliance with section 2 (2) (d) which requires him to give notice in writing of his "decision" to the parties, if he informs them whether his approval has been refused or granted and if so the terms and conditions subject to which it is granted. The letter "L1" is sufficient compliance with this requirement. There being no statutory requirement to give reasons and no provision for an appeal from the Commissioner's decision, the only ground of challenge advanced by the Petitioner has to fail. However, I have to reiterate the observation made by Tambiah, J ten years ago in the case of *Samarasinghe v De Mel* [13] that it is indeed desirable that reasons be given by the Commissioner for a decision or an order made under the Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 as amended. In an instance of non-disciplinary termination of employment, a proceeding before the Commissioner, either by way of an application for approval of termination (section 2 (1)) or for relief in respect of illegal termination (section 6), takes place in substitution of a proceeding before a Labour Tribunal under the Industrial Disputes Act. Therefore parties will have sufficient confidence in such proceedings before the Commissioner only if reasons are given for the final decision or order.

The finding in the preceding section of this judgment that there is no requirement in law to give reasons should not be construed as a gateway to arbitrary decisions and orders. If a decision that is challenged is not a "speaking order", (carrying its reasons on its face), when notice is issued by a Court exercising judicial review, reasons to support it have to be disclosed with notice to the Petitioner. Rule 52 of the Supreme Court Rules 1978, is intended to afford an opportunity to the Respondents for this purpose. The reasons thus disclosed form part of the record and are in themselves subject to review. In the well known

case of *Padfield v Minister of Agriculture* [14] the Minister whose decision (given without stating reasons) was challenged, furnished a statement of reasons to Court. These reasons were found to be bad in law and the Petitioners were granted relief by an order of Mandamus. In appeal, it was contended by the State, that since there is no requirement to give reasons, the reasons that were furnished to court cannot be attacked on the ground of an error of law. Lord Reid (at page 1032), Lord Pearce (at page 1053,1054), Lord Up John (at page 1061) made clear observations that if there is prima facie material that the Minister has acted contrary to the intentions of Parliament in failing to take steps as required by law, and no reasons are furnished to court by the Minister in his defence, the court will infer that the Minister had no good reasons for the impugned action, in deciding the matter. Thus if the Commissioner fails to disclose his reasons to the court exercising judicial review, an inference may well be drawn that the impugned decision is ultra vires and relief granted on this basis. In this regard I have to also cite the observations made by Sir John Donaldson MR in the case of *R V Lancashire County Council, exparte Huddleston* [15] (at page 945) :-

"Counsel for the Council also contended that it may be an undesirable practice to give full, or perhaps any, reasons to every Applicant who is refused a discretionary grant, if only because this would be likely to lead to endless further arguments without giving the Applicant either satisfaction or a grant. So be it. But in my judgement the position is quite different if and when the Applicant can satisfy a judge of the public law court that the facts disclosed by her are sufficient to entitle her to apply for judicial review of the decision. Then it becomes the duty of the Respondent to make full and fair disclosure. Notwithstanding that the courts have for centuries exercised a limited supervisory jurisdiction by means of the prerogative writs, the wider remedy of judicial review and the evolution of what is, in effect, a specialist administrative or public law court is a post-war development. This development has created a new relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration."

Although the letter "L1" does not contain the reasons for the decision the Commissioner has disclosed his reasons by way of an affidavit to this Court. He has also annexed the recommendation made by

the Assistant Commissioner who held the inquiry. Upon a disclosure of this informaiton, learned Counsel for the Petitioner has not sought to challenge the decision on any ground other than what has been stated above.

In these circumstances I dismiss this application but make no order for costs.

Application dismissed.