1940 *Present* : **Howard C.J.**

DANKOLUWA TEA ESTATES, LTD. *v.* THE TEA CONTROLLER.

In re APPLICATION FOR A WRIT OF MANDAMUS

***Tea Control Ordinance (Cap. 299), s. 15 (1) and (2)—Error in Standard production—Deduction of coupons—Retrospective effect of order—Powers of Board of Appeal—Writ of* mandamus.**

A writ of *mandamus* will not lie to compel the Tea Controller to issue coupons deducted by him on the ground that the deduction is illegal under proviso (b) to section 15 (1) of the Tea Control Ordinance, where there is a right of appeal to the Board of Appeal from an order under section 15 (1).

The words in section 15 (2) that the Board may on such appeal confirm the order seem to give the Board power to decide as to whether the Controller has correctly interpreted the provisions of the section.

THIS is an application for a writ of *mandamus* on the Tea Controller.

E. F. N. Gratiaen (with him *F. C. de Saram*), for the petitioner.

H. V. Perera, K.C. (with him *J. E. M. Obeyesekera*), for the respondent.

Cur. adv. vult.

September 12, 1940. HOWARD C.J.—

This is an application by the Dankoluwa Estates Company, Limited, the petitioner, for the issue of a writ of *mandamus* directing the Tea Controller, the respondent, to issue to the petitioner 111,069 lb. tea coupons which have been wrongfully withheld from the petitioner. The facts so far as material for the decision of this application are as follows :— The standard crop of the petitioner was duly assessed for the periods

1933-1938 as specified in paragraph 4 of the petition and he received tea coupons on the basis of such assessments. By an order dated November 29, 1939, the respondent made an order under section 15 (1) of the Tea Control Ordinance (Chapter 299) reducing the assessment of the standard crop of the said estate on the ground that an error had been made in the previous assessments. The petitioner admitted this error which arose from a *bona fide* mistake in the previously declared extent of the said estate. In his order of November 29, 1939, the respondent on the basis of the revised acreage reassessed the standard crop for the years 1933-34, 1934-35, 1935-36, 1936-37, 1937-38, 1938-39, 1939-40. In accordance with such reassessment the respondent calculated that the total over-issue to the petitioner from 1933-34 to 1938-39 amounted to 111,069 lb. The coupons due to the petitioner for 1939-40 amounted to 330,314 lb. of which 286,650 lb. had been issued. The balance due for 1939-40 therefore amounted to 43,664 lb. which deducted from 111,069 lb. the over-issue, left a balance over-issue of 67,405 lb. In his order of November 29, 1939, the respondent stated that this amount of 67,405 lb. would be deducted from the future issue of coupons in respect of the estate. The petitioner appealed to the Board of Appeal constituted under the Ordinance against the respondent's order. The grounds of appeal were as follows :—

(*a*) The decision of the Tea Controller as contained in his letter to the appellant of November 29, 1939, is contrary to law and is inequitable.

(*b*) It is submitted that the previous assessments of the standard crop of the appellant's estate are correct.

(*c*) In any event the alleged error, if any, is one of over-assessment, and the Controller had no power to make any order affecting the standard crop of the appellant's estate for any periods of assessment prior to the date of the order appealed from.

(*d*) The productivity of the appellant's estate at all material times exceeded the quantity previously assessed by the Controller.

On March 26, 1940, the Board of Appeal dismissed the appeal. The order of the Board consists of two parts. The first part is typewritten, signed by Mr. S. Obeyesekere as Chairman of the Board of Appeal and stated to be dictated on March 26, 1940. The second part is described as a rider, is also signed by Mr. S. Obeyesekere as Chairman of the Board of Appeal, and is partly in type and partly in handwriting. Although the rider is signed by Mr. Obeyesekere as Chairman of the Board, its phraseology suggests that it is merely a reflection of his own individual views and not those of the Board as a whole. In dismissing the appeal of the petitioner the Board in the first part of its order examines the claim of the Controller to revise the assessment on the basis of the new acreage. The contention of the petitioner that there was no error in the productivity of the estate and hence under section 15 of the Ordinance the Controller could not revise the assessment although there was a shortage in the acreage of 29 acres 2 roods 24 perches is also considered. The petitioner's contention that there was no error in productivity was based on a report from Mr. S. F. H. Perera in which the later attempted to nullify the special Assessor's finding. The Board have found that the special

Assessor has made due allowance for all relevant factors and in rejecting Mr. Perera's report is not prepared to find that the finding of the special Assessor was incorrect. In endorsing this finding the order states that the Board is of opinion that section 15 of the Ordinance gives the Controller power to correct such errors and this is what he has done. The order further states that the proprietors cannot be allowed to take advantage of their own mistake and that had they sent an accurate return in 1933 the maximum they could have got was 411,350 lb. and not 441,000 lb. In these circumstances the Board expresses the opinion that the appeal should be dismissed.

In submitting to this Court his argument in support of the application for a *mandamus* Mr. Gratiaen has conceded that the order of the Board is as against the petitioner, final and conclusive for the purposes of the Ordinance, so far as the standard crop for the period 1939-40 and for the succeeding periods of assessment is concerned. He complains, however, that the respondent in his order of November 29, 1939, has deducted from the issue of coupons for 1939-40 and 1940-41 in respect of the over-issues for the previous years an amount of 111,069 lb. He maintains that the respondent had no power under the Tea Control Ordinance to give retrospective effect to his order. In this connection my attention has been directed to section 15 (1) of the Ordinance. The material parts of this section are worded as follows :—

> " (1) . . . . the Controller, if it appears to him at any time that an error has been made in the assessment of the standard crop of any estate or small holding in respect of any period of assessment. . . . may by order declare that the standard crop of that estate. . . . for that period shall be deemed to have been. . . . reduced by the amount in respect of which the assessment was in error ; and the exportable maximum of that estate. . . . for that period shall be deemed to have been . . . . reduced . . . . to such an amount as would have been the exportable maximum of that estate . . . . for that period if such error had not been made :
>
> Provided that where such error is one of over-assessment, an order under this sub-section—
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> (*a*) shall not be made unless and until the estate or small holding has been inspected by the Controller or by some person authorized by the Controller in that behalf, and
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> (*b*) shall not affect the standard crop of any estate or small holding for any period of assessment prior to that in which the order is made.

The petitioner's claim for a *mandamus* is based on the contention that the respondent by his order of November 29, 1939, has under the first part of the sub-section reduced the standard crop of the estate without taking into consideration paragraph (*b*) of the proviso and in consequence of such illegal order made deductions under section 17 (5) of the Ordinance.

On behalf of the respondent Mr. Perera has contended that a writ of *mandamus* cannot issue inasmuch as the legality of the deductions made by the respondent including the interpretation of proviso (*b*) to section 15 (1) of the question was a matter for the Board of Appeal under section

15 (2) of the Ordinance and has been decided by the Board in favour of the respondent. In other words the jurisdiction of this Court is ousted. Mr. Perera also maintains that, even if the jurisdiction of this Court is not ousted, the respondent has given the correct interpretation to sections 15 (1) and 17 (5) of the Ordinance and the deductions were properly and lawfully made. It is obvious that if I come to the conclusion that in the circumstances I have no jurisdiction and therefore a writ of *mandamus* cannot issue, interpretation by me of the legal effect of provision (*b*) would be merely *obiter* and would serve no useful purpose.

The grounds on which a writ of *mandamus* will be granted has been stated in a number of English cases. The principles formulated herein are applicable in Ceylon. In *The King v. Port of London Authority*[1], it was held by Scrutton L.J. that one reason against granting a *mandamus* was the existence of another and equally convenient remedy by way of appeal to the Board of Trade. Reference to this principle is to be found in *Shortt on Informations, Mandamus and Prohibition, pp. 232-246.* On page 236 it is stated as follows :—

> "If, supposing the applicant has a right, there is a mode of enforcing it by appeal or writ of error, a *mandamus* will be refused".

The principle formulated in the English cases is applicable here. In this connection I would invite attention to Poyser J's reference in *Samynathan v. Whitehorn*[2], to the judgment of Wood Renton A.C.J. in *An application for a writ of* mandamus *on the Chairman of the Municipal Council.*[3]

The elucidation of the questions at issue has not been facilitated either for myself or the parties themselves by the somewhat unusual form assumed by the judgment of the Board of Appeal, a semi-judicial body. Although dissenting judgments are not an unusual feature so far as Courts of law are concerned, riders are unknown. Moreover although the language of the rider seems to indicate that it is merely an expression of opinion on the part of one of the members of the Board, the signature appended thereto has assumed the same form as the main part of the judgment thereby indicating that it may be the opinion of the whole Board and is added as explanatory of the order. The following passages from the rider seem to throw an entirely different complexion on the main part of the order in relation to the Board's interpretation of section 15 (1) :—

> "A careful examination of Mr. Perera's report and the circumstantial evidence, furnished by the appellant's election not to appeal, satisfy me that there is no case for interference with the order so far as it comes within the scope of section 15. Reference was made to contemplated deductions. This question involves the construction of section 17 (5) and action thereunder by the Controller. No appeal is provided regarding such action. In my view, the Appeal Board has no jurisdiction in the matter".

Deductions from the period of assessment during which the order is made or for any succeeding periods of assessment are, it is true, made

[1] *(1919) 1 K. B. 176.*
[2] *35 N. L. R. 225.*
[3] *18 N. L. R. 97.*

under section 17 (5), but such deductions follow automatically once an order revising the standard assessment and thereby the exportable maximum is made under section 15 (1). Section 17 (5) merely provides necessary machinery to put into effect an order under section 15 (1). It was the validity of the order under section 15 (1) that the Board was asked to consider and it would appear that the opinion expressed in the rider does not differ so far as section 15 (1) is concerned with that expressed in the main part of the order.

Ground (*c*) in the case presented by the petitioner to the Board of Appeal raised the right of the respondent to make any order affecting the standard crop of the appellant's estate for any periods of assessment prior to the date of the order appealed from. The legality of retrospective action by the Controller and the question of the interpretation of proviso (b) to section 15 (1) was therefore in issue. Although such an issue was directly raised by the petitioner before the Board of Appeal, his Counsel in this Court has contended that the Board of Appeal was not vested with any such power. I cannot accept this contention. The words in section 15 (2) that the Board may, on any such appeal—

> " (*a*) confirm the order."

seem to me to give the Board the power to decide as to whether the Controller has correctly interpreted the provisions of section 15 (1).

The question as to whether the Board in coming to a decision has applied its mind to the effect of the proviso on the power of the Controller under the first part of section 15 (1) is not so easy to decide. There is not a single reference to the proviso either in the main part of the judgment or in the rider. There is therefore nothing to indicate that it was present in the minds of the Board. On the other hand the rider states " that there is no case for interference with the order so far as it comes within the scope of section 15 ". Moreover the main part of the judgment which states that the Board is of opinion that the appeal should be dismissed has a paragraph phrased as follows :—

> " The Controller, however, acting under section 15 of the Ordinance declined to retain the present assessment and having revised it on the new acreage as from 1933-34 proposes to deduct the over-issues. The appeal is from this order.

The rider must, therefore, be taken to confirm the retrospective revision of the assessment, whilst the main judgment in addition approved the deductions consequent thereon. It may be that in coming to this decision and in dismissing the appeal, there has been on the part of the Board of Appeal a refusal to act in accordance with the law or a failure to act judicially. I am not prepared to say on the material before me whether this is so or whether proceedings will lie against the Board. I am, however, of opinion that the legal right which the petitioner seeks to enforce by writ of *mandamus* was one that the Board could grant by appeal. In these circumstances proceedings against the respondent by way of writ of *mandamus* are misconceived. The application is, therefore, dismissed with costs.

Application dismissed.