

LANKEM TEA & RUBBER PLANTATIONS (PVT) LTD.,
v
CENTRAL BANK OF SRI LANKA AND OTHERS

COURT OF APPEAL
SRIPAVAN, J.,
C.A. NO. 1112/2000
FEBRUARY 9,
MARCH 26 AND
MAY 21, 2004

Exchange Control Act, sections 7, 10(1), 11(1), 51 and 52 — Procedural fairness — Natural justice — Reasons not given — Denial of justice — Error of law — No opportunity given to show cause.

The 3rd defendant, the Controller of Exchange, directed the petitioner company to furnish an explanation for violating section 10(1). The explanation given was not accepted and the petitioner was imposed a penalty. On appeal to the Minister the penalty was reduced.

It was contended that the two decisions are *ultra vires* and null and void, as the decisions are contrary to law, no reasons have been given, and that the petitioner had acted in contravention of section 10(1).

Held:

- i) The schedule of the penalties does not indicate any violation by the petitioner company.
- ii) It appears that the penalties imposed were based on violations of section 7 and section 11; whether the petitioner or its Directors violated section 7 and section 11(1), were not charges on which the explanation was sought.
The petitioner was not given an opportunity to show cause relating to violations of section 7 and section 11(1).
- iii) One does not know how the Minister's decision was arrived at. In the absence of reasons, it is impossible to determine whether or not there has been an error of law.
- iv) Failure to give reasons amounts to a denial of justice and is itself an error of law.

APPLICATION for writ of *certiorari***Case referred to:**

1. *Maradana Mosque v Badi-Ud-Din Mohamed* – 1967 1 AC 13 – CA 311/00 – CAM 31.3.2003
2. *R v Mental Health Review Tribunal – ex parte Clatworthy* (1985) 3 All ER 699

H.L.de Silva PC with *Nigel Hatch*, *V.K. Choksy* and *K. Wijetunge* for petitioner
Y.J. N. Wijeyathilaka Deputy Solicitor-General for respondents.

Cur.adv.vult

August 27, 2004

SRIPAVAN, J.

The petitioner is a limited liability company incorporated under the laws of Sri Lanka. By letter dated 30th June 1997 marked P1 the third respondent alleged that investigations conducted by the Exchange Control Department pertaining to the transfer / issue / sale / purchase of shares of George Steuarts Management Services (Pvt) Ltd (hereinafter referred to as GSMS) and Kotagala Plantations Limited revealed that the petitioner company had violated sec. 10(1) of the Exchange Control Act and thereby commit-

ted an offence in terms of sec. 51 thereof. The petitioner was also directed to furnish an explanation as to why a penalty should not be imposed in terms of sec. 52 of the said Act in respect of the said alleged offence. 10

The petitioner, however denied liability by letter dated 28th July 1997 marked P3 and in paragraph 7 of the affidavit of its Managing Director dated 5th October 2000 stated, *inter alia*, that none of the shareholders or directors of the petitioner company owned and / or controlled and / or managed GSMS at the time the transfer of shares took place. It is observed that the third respondent without specifically denying the aforesaid averment in paragraph 28 of his affidavit dated 27th March 2001 stated that having purchased 20 GSMS, Lankem changed its name to Lankem Tea and Rubber Plantations (Pvt) Limited. Nevertheless, the third respondent by letter dated 20th March 1997 marked P10 informed that the petitioner's explanation as contained in P3 could not be accepted and imposed a penalty in a sum of Rupees Eleven Million Six Hundred and Sixty Seven Thousand (Rs. 11,667,000). Being dissatisfied with the aforesaid decision of the third respondent, the petitioner by letter dated 10th December 1997 marked P12 preferred an appeal to the Minister of Finance in terms of sec. 52(7) of the said Act. The Minister having examined the said appeal reduced the penalty 30 imposed on the petitioner to Rs. 3,899,000 which was communicated by letter dated 7th August 2000 marked P14.

Learned President's Counsel for the petitioner contended that the decision of the third respondent dated 20th November 1997 marked P10 and the decision on appeal by the Minister contained in P14 are *ultra vires*, illegal, *null and void* and are liable to be quashed by *certiorari* on the following grounds:-

- a) That the said decisions are contrary to law as there are no evidence to support the said decisions;
- b) That neither the third respondent nor the Minister of 40 Finance has given any reasons for their respective decisions;
- c) That in any event, the petitioner has not acted in contravention of sec. 10(1) of the Exchange Control Act.

It would appear from the share certificate marked 3R26(a) that

GSMS on 11th January 1996 transferred 3340 shares to Rovenco Company Ltd. It was not in dispute that none of the shareholders and / or directors of the petitioner company owned and / or controlled and / or managed GSMS at the relevant time when the share allotment was made. In the circumstances, I do not see any legal basis on which the petitioner company could be made liable for violation of section 10(1) of the Exchange Control Act. The schedule of the penalties annexed to the affidavit of the third respondent marked 3R28 did not indicate any violation by the petitioner company. Assuming that Lanken Ceylon Limited changed its name to Lankem Tea and Rubber Plantations (Pvt) Ltd and that the petitioner company would become liable for any violation of the Exchange Control Act, it would then appear that the penalties imposed were based on violations of section 7 and 11(1) of the Exchange Control Act, as evidenced by 3R28. Whether the petitioner or its directors violated section 7 and 11(1) of the said Act were not the charges on which the explanation of the petitioner company was sought. Accordingly, I hold that the petitioner company was not given an opportunity to show cause relating to violations of section 7 and 11(1) of the said Act. The decision reached by the third respondent without giving an opportunity to the petitioner company to answer the charges against it is wholly outside the jurisdiction of the third respondent. The concept of procedural fairness or natural justice requires that no person shall be punished for an offence without giving an opportunity to answer the charges against him (*Vide Maradana Mosque v Badi-Ud-Din Mohamed*)⁽¹⁾.

The Secretary to the Treasury in his undated affidavit filed in March 2001 merely states that the Minister of Finance reduced the penalties imposed upon the petitioner after due examination of the appeal. One does not know how the Minister's decision contained in the document marked P14 was arrived at. In the absence of reasons, it is impossible to determine whether or not there has been an error of law. Failure to give reasons therefore amounts to a denial of justice and is itself an error of law. In *R v Mental Health Review Tribunal, ex. Parte Clatworthy*⁽²⁾, it was held that reasons should be sufficiently detailed as to make quite clear to the parties and specially the losing party as to why the tri-

bunal decided as it did and to avoid the impression that the decision was based upon extraneous consideration rather than the matter raised at the hearing.

For the reasons stated, the decisions contained in the documents marked P10 and P14 cannot be allowed to stand. Accordingly, a writ of *certiorari* is issued quashing the penalty imposed on the petitioner by the third respondent in terms of the letter dated 20th November 1997 marked P10 and the decision of the Minister contained in the letter dated 7th August 2000 marked P14. 90

Application allowed.