

SHELL GAS LANKA LTD
v
CONSUMER AFFAIRS AUTHORITY AND OTHERS

COURT OF APPEAL
SIRIPAVAN, J.
SISIRA DE ABREW, J.
CA 604/2006 (WRIT)
NOVEMBER 6, 2006
JANUARY 30, 31, 2006
MARCH 1, 2007

Consumer Affairs Authority Act, No.9 of 2003 – Sections 3 (4), 6, 7, 8 (20), 18, 52 (2) – Revision of Price – Quorum for any meeting for Members – Absence of a quorum – Implications – Delegation of power?

The petitioner's application for an upward revision of L.P. Gas cylinders – price revision – was refused by the 1st respondent – The petitioner sought to quash same.

Held:

- (1) Section 3 (4) of the Act contemplates that the quorum for any meeting of the Authority shall be four members; it is mandatory that in order to have legal force any decision made by the 1st respondent authority must have been made by at least four members.
- (2) The Director General cannot act as a member of the Authority – S 3 (1)

Held further:

- (3) It is essential that to the lawful exercise of power, it should be exercised by the 1st respondent authority upon which such power is conferred and by no one else. The powers of the Authority cannot be delegated to the Pricing Committee, the Pricing Committee may facilitate the discharge of the functions of the Authority, but the Pricing Committee has no jurisdiction to exercise the powers of the Authority.

Application for a *Writ of Certiorari*.

Cases referred to:

1. *General Medical Council v U.K. Dental Board* 1936 Ch 41
2. *R. v Kensington and Chelsea Rent Tribunal ex.p. Mac Farlane* – 1974 WLR 1486 at 1490

Faiz Musthapha PC with Chanaka de Silva and Javed Mansoor petitioner.

Milinda Gunatilleke SSC for respondents.

Cur.adv.vult.

March 05, 2007

SRIPAVAN, J.

The petitioner made an application to the 1st respondent Authority in terms of section 18 of the Consumer Affairs Authority Act No.9 of 2003 seeking an upward revision of LP Gas Cylinders. The 1st respondent by its letter dated 2nd March, 2006 refused to grant the price revision to the petitioner. The petitioner now seeks a *Writ of Certiorari* to quash the said refusal contained in the document marked 'p108' on the following grounds, *inter alia*;

- 1) the failure to hold a proper inquiry and acting in violation of the principles of natural justice;
- 2) the failure to take into account relevant circumstances;
- 3) the 1st respondent has abused its powers conferred upon it by section 18 of the said Act; and
- 4) the violation of the legitimate expectation of the petitioner that the petitioner's application would be determined in accordance with the agreed pricing formula.

The petitioners in paragraph 74 of the specification averred that the decision of the 1st respondent Authority communicated to the petitioner by its letter dated 2nd March, 2006 marked 'P108a' was an abuse of the power conferred upon the said Authority by section 18. Answering the averments contained in paragraph 74 of the petition, the respondents in paragraph 35 of their statement of objections referred to the minutes of the meeting of the Authority and the attendance sheet containing the names of the members who were present at the meeting marked 'R7' and 'R8' respectively.

Section 3(4) of Act No. 9 of 2003 in its schedule contemplates that the quorum for any meeting of the Authority shall be four members. Thus, it is mandatory that in order to have legal force any decision made by the 1st respondent-Authority must have been made at least by four members. In this back ground, the Court has to consider

whether the impugned decision marked 'P108' was in fact made in terms of section 3(4) of the said Act read with clause 8(2) of the schedule.

Learned Senior State Counsel appearing for the respondents submitted that the Pricing Committee "which met on 27th February, 2006 made its decision marked 'R7'. It was further submitted that the members of the Pricing Committee were also members of the 1st respondent Authority and in any event the powers of the 1st respondent Authority could be delegated to the Pricing Committee in terms of section 8(n). It is apparent from the minutes of the meeting and the attendance sheet marked 'R7' and 'R8', the Chairman of the 1st respondent Authority was not present at the meeting. Other members present were as follows:

- 1) Mr. Jude Fernando
- 2) Mr. Neville Jayawardena and
- 3) Ms. Rajes Nonis.

The 4th person who was present at the meeting was Ms. R.K. Jayasooriya, Director-General/Chief Executive Officer of the 1st respondent Authority.

In terms of section 52(2) of the said Act, the Director-General is the Chief Executive Officer of the Authority and acts under the direction of the Authority. Further, section 5 provides that the Director-General acts as the Secretary of the Authority. Therefore, the Director-General cannot act as a member of the Authority appointed in terms of section 3(1). Thus, the Court can safely conclude that the impugned decision was taken only by three members of the Authority.

It is essential that for the lawful exercise of power, it should be exercised by the 1st respondent Authority upon whom such power is conferred and by no one else. The extent of permissible delegation will, of course, have to be determined with reference to the terms of the statute, because if the delegation exceeds the limits set out by the statute it will be *ultra vires* leading to the invalidity of the act done by the delegate. I am unable to agree with the learned Senior State Counsel that the powers of the Authority can be delegated to the Pricing Committee. The Pricing Committee may facilitate the discharge of the functions of the Authority. But, the Pricing Committee has no jurisdiction to exercise the powers of the Authority. The Act

section 6 provides the delegation of powers to Public Officers only. A statutory power to delegate functions will not necessarily extend to everything. Thus, it has been held in the case of *General Medical Council v U.K. Dental Board*⁽¹⁾ that the General Medical Council must itself exercise its disciplinary powers over Dentists and cannot delegate them on to a Executive Committee for the purpose of its functions under Dentists Act.

There is no doubt that the actual participation of a non member of the Authority in the taking of a decision involves want of jurisdiction, conversely, the mere presence of the Director-General does not invalidate the decision if she did not participate in the decision making process. It is indeed the Duty of the Courts to ensure that powers shall not be exercised in an unlawful and arbitrary manner, when the exercise of such powers affect the basic rights of individuals. The court should be alert to see that such powers conferred by the statute are not exceeded or abused. Once it is established who constitute the Authority, it is clear that all members must participate in its decision. In *R v Kensington and Chelsea Rent Tribunal ex.p. Mac. Farlane*⁽²⁾ Lord Widgery, C.J. recognized this principle when he said "Counsel has given us a timely reminder that under the Act, tribunal consists of a Chairman and 2 other members; he submitted quite rightly that no decision can be taken except by the tribunal so constituted."

In the absence of a quorum for the meeting of the members of the 1st respondent Authority, I hold that the decision contained in the document marked 'P108' is devoid of any legal effect. Accordingly, a *Writ of Certiorari* is issued quashing the said document marked 'P108'.

The objectives of the Consumer Affairs Authority Act No.9 of 2003 as shown in its long title is the promotion of effective competition and the protection of the consumers. Thus, the Court is duty bound to consider the general legislative policy underlying the provisions contained the Act. While the Act protects traders and manufacturers against unfair trade practices, the consumer interest shall also be given due consideration as provided in section 7 of the said Act. One of the objects of the 1st respondents Authority is to ensure that consumers have adequate access to goods and services at competitive prices. Its function includes the protection of rights and

interest of consumers and other users of goods and services and availability of quality goods and services at reasonable prices.

Therefore, exercising the discretionary powers vested in this Court, I direct the 1st Respondent to consider the Petitioner's application for the increase of the LP Gas prices in terms of the provisions contained in Act No.9 of 2003 and to take a decision in terms of the law within one month from today. The petitioner is entitled for costs in a sum of Rs.10,000/= payable by the first respondent Authority.

SISIRA DE ABREW, J. – I agree.

Application allowed.