KEGALLE PLANTATIONS LTD.,
V.
SILVA AND OTHERS

COURT OF APPEAL.
SENANAYAKA, J.
C. A. 686/94
TEU/A 102/93
JULY 06, 1995.

Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971 - Inquiry - Finality clause - Applicability of S22 of the Interpretation Ordinance (amendment) - Reliefs granted by Commissioner - Final and Conclusive - S5, 6(A) 6(B) - Restrictive Interpretation - Reasons - Should Reasons be given - Natural Justice.

The 1st Respondent was employed by the JEDB; the Petitioner company took over the functions of the JEDB. The 1st Respondent reached the age of Retirement - 55 yrs - on 14.1.93. The Petitioner on 25.1.1993 gave Notice that the 1st Respondent would be retired from service with effect from 1.8.93. The 1st Respondent made an application to the 2nd Respondent and complained that the said act of retirement of service was in violation of the T.E. Act No. 45 of 1971.

After inquiry the impugned order was made by the 2nd Respondent.

Held:

(1) Finality does not attach only to acts done in terms of S.2(1) only. The powers conferred on the Commissioner are interwoven and interlinked with the other provisions of the TE Act.

It is a condition precedent that the Employer cannot terminate the services of a workman of the Scheduled employment firstly without the prior consent in writing of the workman and if the workman had given prior consent in writing the Commissioner is functus, otherwise the Employer would obtain the prior written approval of the Commissioner and where the Commissioner gives approval he could grant any particular terms and conditions relating to the payment of gratuity or compensation for the termination of such employment. The said reliefs are granted at the absolute discretion of the Commissioner.

(2) The Commissioner should give reasons for its decisions.

***Per* Senanayake, J.**

'The present trend which is a rubric running throughout public law is that those who give administrative decisions where it involves the public whose rights are affected should give reasons for its decision.The actions of the Public Officer should be transparent and they cannot make Blank Orders. *In my view it is implicit in the requirement of a fair hearing to give reasons* for its decisions, the failure to do so amount to a failure to be manifestly seen to be doing justice.'

***Per* Senanayake, J.**

'I am of the view, unless the party can discover the reasoning behind the decision he may be unable to say whether it is reviewable or not, so he may be deprived of the protection of the law. It's my view that it is a healthy discipline for all who exercise power over others to give reasons, though the statute does not spell out that reasons should be given.'

(3) Proviso to S22 of the Interpretation Act clearly envisage a situation of this nature where there is a breach of natural justice.

AN APPLICATION for a Writ of Certiorari.

Cases referred to:

1. *M. P. Industries v. Union of India* AIR 1966 S.C. 67
2. *Express Newspapers (Wage Board)* AIR 1958 SC 578.
3. *Paddy-field v. Minister of Agriculture* 1968 AC P 997.
4. *R. Lancashire Country Council, exparte Hyuddleston* - (1968) 2 All ER 941 at 945.
5. *R. v. 14 (London West) Legal Aid Area Committee ex parte Bunting* 1974 - Times 4.

6. *R. v. Sykes* 1875 1 QBD 52.
7. *D. C. Felician Silva v. M/s. Aztee Industries Ltd., and Mr. S. Weerakoon* in CA 260/93 CAM 8.2.1995.
8. *H. J. H. Perera v. H. C. Ebert, Deputy Commissioner of Co-operative, AMM Amarasinghe and Kolonnawa* MPCS CA 460/84 CAM 02.04.93.
9. *Breen v. Amalgamated Engineering Union and Others* - WLR 02.04.1971 at 742.
10. *Doody R v. Secretary of State for the Home Department ex. p. Doody* 1993 3WLR 154

Gomin Dayasiri with *M. Wickramasinghe* for Petitioner.
V. W. Kularatne with *Ms. Amanda Ratnayake* for 1st and 4th Respondents.
Adrian Pereira, SC. for 2nd and 3rd Respondents.

Cur. adv. vult.

August 28, 1995.
H. W. SENANAYAKE, J.

The Petitioner filed, this application for a mandate in the nature of a Writ of Certiorari to quash the order P12 dated 22.08.94 made by the 2nd Respondent.

The relevant facts briefly are as follows: The Petitioner was an incorporated Company which took over the functions to carry on the business of the parts of the Janatha Estate Development Board. The Petitioner was subject to the directions and control of the Plantations Restructuring Unit of the Ministry of Finance *inter-alia* in all matters concerning the management of the said Estate R. P. K. Management Services (Private) Limited and was appointed by the Petitioner to manage its business in terms of the Management Agreement P2. The employees of the Janatha Estate Development Board were deemed to be employees of the Petitioner on the same terms and conditions of the contracts of service as they had with the Janatha Estate Development Board. The 1st Respondent was employed by the said Janatha Estate Development Board in terms of contract of employment dated 15.12.1977 P3 where in Paragraph 9 of the said contract of employment provided the age of retirement of the 1st Respondent to be 55 years. The Petitioner relied on the documents P4 and P5 dated respectively 07.09.92 and 23.12.92 where the retiring age to be 55 years except in cases where the letter of appointment of the employee

in question explicitly indicated that the retirement age is higher than 55 years. Extension beyond the retirement age were to be granted solely at the discretion of the Management.

The 1st Respondent reached the age of 55 years on 14th January 1993. The Petitioner by letter dated 25.01.1993 marked P7 informed that as he had reached the age of 55 years on 14.01.93, he was given notice that he would be retired from service with effect from 01.08.93. The 1st Respondent made an application to the 2nd Respondent complaining that the said act of retirement of service was in violation of theTermination of Employment of workmen (Special Provisions) Act No. 45 of 1971 (hereinafter referred to as T.E. Act) The 3rd Respondent on the direction of the 2nd Respondent proceeded to inquire into the application. The 4th Respondent a Registered Trade Union appeared for the 1st Respondent. After inquiry the impugned order P12 was made by the 2nd Respondent.

The learned Counsel for the Petitioner's first submission was that the finality clause in reference to Section 2(6) only attaches to Section 2 and it cannot be extended to any other provisions of the T.E. Act. His position was that the wording of the provisions of 2(b) only relates to a decision made by the Commissioner under the Section 2(1) (2) 'a' to 'e' are matters that makes the decision of the 2nd Respondent the Commissioner final and conclusive and cannot be called in question by way of writ or otherwise in any Court.

In my view it most apposite to examine Section 2 and the subsections of the T.E. Act.

Section 2(1) reads as follows: "No Employer shall terminate the scheduled employment of any workman without

(a) the prior consent in writing of the workman or

(b) the prior written approval of the Commissioner And subsection (2) grants the power to the Commissioner.

(a) approval may be granted or refused on application in that behalf made by such employer.

(b) The Commissioner may in his absolute discretion grant or refuse such approval.

(c) The Commissioner shall grant or refuse such approval within 3 months from the date of the receipt of application.

(d) The Commissioner shall give notice in writing of his discretion on the application to both the Employer and the workman."

In my view the most vital provision is (c) which reads as follows "The Commissioner may in his absolute discretion decide the terms and conditions, subject to which his approval should be granted, including any particular terms and conditions relating to the payment of by such employer to the workman of a gratuity compensation for the termination of such employment."

This subsection spells out the extensive relief that could be granted by the Commissioner and any of the reliefs that are granted are final and conclusive. I am unable to agree with the submission of the learned Counsel that finality attaches only to the acts done in terms of the provisions of Section 2(1). One cannot take the Sections to be in watertight compartments in my view the powers conferred on the Commissioner are interwoven and interlinked with the other provisions of the T.E. Act. It is a condition precedent that the Employer cannot terminate the services of a workman of the scheduled employment firstly without the prior consent in writing of the workman and if the workman had given prior consent in writing the Commissioner is functus. Otherwise the Employer should obtain the prior written approval of the Commissioner and where the Commissioner gives approval he could grant any particular terms and conditions relating to the payment of gratuity or compensation for the termination of such employment. The said reliefs are granted at the absolute discretion of the Commissioner. One cannot dissociate the provisions of Section 5 and Sections 6-A and 6-B of the T.E. Act. In my view finality attaches not only to Section 2 and its Subsections. Such a restrictive interpretation would be doing violence to the Act. In my view Section 2 and its Subsections are interlinked and interwoven with the other Section of the Act. I am of the view that his first submission is not tenable in law.

His second submission is that the Commissioner had failed to give reasons for its decision of the order. There is some force to this

submission.This Court had held in number of decisions that the Commissioner should give reasons for its decisions.

The learned Counsel for the Respondent referred to the Judgment of this Court in C.A. 703/90 the minutes of 16.09.92 where the Court took the view that a failure to give reasons for an administrative order did not make the order null and void. I am now of the view that the decision in that Case is not the correct exposition of the law. The present trend which is a rubric running throughout public law that those who gives Administrative decision where it involves the public whose rights are affected should give reasons for its decisions. The action of the public officer should be transparent and they cannot make Blank Orders. As Lord Denning says "that the giving of reasons is one of the fundamentals of good administration." In my view it is implicit in the requirement of a fair hearing to give reasons for its decision. The present trend is to give reasons and that a failure to do so amount to a failure to be manifestly seen to be doing justice. I am of the view that it is only in special circumstances that reasons should be withheld otherwise a statutory body or a domestic Tribunal should give reasons to its decision.The T.E. Act is silent and the Commissioner being a creature of the statute who is performing a public function it is not only desirable but necessary to give reasons for its decisions.

In my view the attitude of the 2nd Respondent the Commissioner stating that he is not bound to give reasons for its decision is untenable in law. Perhaps he must be following the advice given by Lord Mansfield to a Governer of a West Indian Island who also sits as a Judge **"Be of good cheer - take my advice and you will be reckoned a great Judge as well as a great Commander-in-Chief. Nothing is more easy only hear both sides patiently - then consider what you think justice requires and decide accordingly. But never give your reasons, - for your Judgment will probably be right but your reasons will certainly be wrong."**

Lord Mansfield's words are a denial of any system of adjudication based on rules except in a system of palm tree justice.

The present trend is to give reasons and it has veared off from the old concept of not adducing reasons by Administrative bodies for their

decisions. In U.S.A. Section 8 (6) of the Administrative Procedure Act enjoins that all administrative decisions should be accompanied by findings and conclusions as well as the reasons therefore on all the material issues of law, facts or discretion giving of reasons is the only safeguard against arbitrary decisions. In France the French Administrative laws has made the reasons for the order mandatory.

In the case of *M. P. Industries v. Union of India*[1] Justice K Subba Rao observed:

"In the context of a Welfare State, administrative tribunals have come to stay - But arbitrariness - in their functioning destroys the concept of a Welfare State itself - The least that a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons introduces clarity and excludes or at any rate minimises arbitrariness. It gives satisfaction to the party against whom the order is made."

Reasoned Orders are the sine qua non of administrative justice. Even if the statutes are silent that the decisions should contain reasons it is in the interest of the Public Officer to give reasons for its orders otherwise his action would lack Transparency and amount to arbitrariness.

In my view the law cannot be static it must be dynamic and progress with the social changes in society otherwise we would be bound to an archaic legal system that existed in the Victorian Era.

In the Case of *Express Newspapers (Wage Board)*[2] N. H. Bhagawati, J. observed

> "It was no doubt not incumbent on the Wage Board to give any reasons for its decisions. Prudence should however have dictated that it gave reasons which it ultimately reached because if it had done so we would have been spared the necessity of trying to probe into its mind and find out any particular circumstances received due consideration and its hands in arriving at its decisions." In the said case the Court held even if no reasons were given them was sufficient

indication of the Wage Board Chairman's mind in the note which he made on 30.04.56 which is contemporaneous record explaining the reasons for the decision of the majority.

In the Case of *Paddyfield v. Minister of Agriculture*[3] the Minister whose decision (given without stating reasons) was challenged, furnished a statement of reasons to Court. There 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, and 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 Country*[4]

> 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 judgment 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 judical review and the evolution of what is in effect, a specialist administrative or public law court is a post-war development. This development had 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."

In the Case of *R. v. 14 (London West) Legal Aid Area Committee ex parte Bunting*[5]

The Committees decision was 'Your appeal against the decision of the local committee has been dismissed'. The Divisional Court said that this complied with statutory regulations which did not require reasons to be given, but commented that this was unsatisfactory for applicants for legal aid to have to rely on such generalised statements. Elementary justice required that they give particularised reasons. The law Society was invited to reconsider the regulations.

In the case of *R. v. Sykes*[6] a statute provided that "no application for a certificate . . . in respect of a licence to sell . . . shall be refused, except upon one or more of the following grounds . . . " Four grounds were then listed; if the application was refused on the fourth ground, reasons had to be given in writing. The justices did not state the ground on which they rejected the application, and the Divisional Court issued mandamus to compel them to hear and determine in accordance with law.

QUAIN, J. observed I am of the same opinion. "The legislature has expressly enacted that such a licence as this shall be refused on four grounds only. The Justices, by refusing a licence sub silentio, and refusing to state on which of the grounds they acted, might practically evade the enactment altogether, and refuse licences arbitrarily and on other grounds than the four mentioned in the section. They cannot be said to have "heard and determined" the application until they have stated on which ground their fourth ground, the justices are bound to specify to the Applicant in writing the grounds of their decision; and this right he would practically

> be deprived of if the justices were at liberty to refuse the licence without saying on which of the four grounds it was refused. The Mandamus must go to the justices to hear and determine the application."

This Court has held in *D. C. Felician Silva, v. M/s. Aztec Industries Ltd., and Mr. S. Weerakoon,*[7] *and H. J. H. Perera v. H. C. C. Ebert, Deputy Commissioner of Co-operative, A. M. M. Amarasinghe and Kolonnawa Multi-purpose Society*[8], that there is an obligation on the part of the 2nd Respondent to Commissioner to give reasons for its determination. In the Case of *Breen v. Amalgamated Engineering Union And Others*[9]

> Lord Denning in his dissenting Judgment had held that reasons ought to be given as a case depend. He observed at Page 750 "The giving of reasons is one of the fundamentals of good administration. Again take Padfield's case (1968) A.C. 997. The dairy farmers had no right to have their complaint referred to a committee of investigation, but they had a legitimate expectation that it would be. The House made it clear that if the Minister rejected their request without reasons, the court might infer that he had no good reason: and, that if he gave a bad reason, it might vitiate his decision."

In the recent case of *Doody, R. v. Secretary of State for the Home Department ex p Doody*[10] H. L. Doody, Pierson, Smart and Pegg were convicted murderers sentenced to life imprisonment. The Home Secretary's adopted practice in relation to mandatory lifers invoked Consultation with the trial Judge and the Lord Chief Justice (the Judges) in setting a penal tariff of minimum custody. The prisoners applied for Judicial Review seeking declarations that the Home Secretary was not (1). not entitled to depart from the Judges recommendations (2). not entitled to delegate his tariff setting powers to a junior minister and (3) obliged to afford a lifer (a). disclosure of the Judges recommendations and comments (b). an opportunity to make representations and reasons for departing from those recommendations. The House of Lord held that declarations (1). and (2). should be refused but granted the relief under (3). being required by the minimum standard of fairness.

The trend now appears to be reasons to be a "*sui quanon*" for a fair hearing and to be within the ambit of natural justice."

In view of the above circumstances, I am of the view, unless the party can discover the reasoning behind the decision he may be unable to say whether it is reviewable or not so he may be deprived of the protection of the law. It is my view that it is a healthy discipline for all who exercise power over others to give reasons, though the Statute does not spell out that reasons should be given.

The learned Counsel for the Respondent relied on that the findings of the 2nd Respondent cannot be canvassed in court. The proviso to Section 22 of the Interpretation Act clearly envisage a situation of this nature where there is a breach of natural justice. There is a continuing momentum in administrative law towards transparency of decision making. It is my considered view that Public Officers should give reasons for their decisions.

In the circumstances, I allow the application in terms of the prayer (a) of the Petitioner and quash the said order marked P12. I refrain from making an order for costs.

Application allowed.