

**WICKREMASINGHE AND ANOTHER**  
**v.**  
**THE URBAN DEVELOPMENT AUTHORITY**

COURT OF APPEAL  
JAYASINGHE, J.  
CA NO. 856/99  
JUNE 20, 2001

*Writ of certiorari – Urban Development Authority (Amendment) Act, No. 4 of 1982, section 23 (3) – Revocation of powers granted to a Pradeshiya Sabha by the Urban Development Authority – Should the revocation be done in consultation with the local authority? – Can it be revoked without any reason being assigned? – Fair hearing – Legitimate expectation.*

On or about 01. 07. 1991 the planning and development within the Kataragama Pradeshiya Sabha was transferred to the Chairman and the Secretary in terms of section 23 (5) of the Urban Development Authority (Amendment) Act, No. 4 of 1982. The said powers were withdrawn on 01. 02. 1999 without any reason being assigned.

**Held:**

- (1) Rules of natural justice demand that there has to be a fair hearing before an administrative authority acts or makes decisions affecting the rights of subjects.
- (2) Legitimate expectation is pivoted on fairness and reasonableness; as long as these two components coexist there can and always will be legitimate expectation.
- (3) A public authority has a duty to act with fairness and consistency in dealing with the public and if it makes inconsistent decisions unfairly and unjustly, it misuses its powers.

**APPLICATION** for a writ in the nature of *certiorari*.

**Cases referred to :**

1. *Attorney-General v. Silva* – 60 NLR 145.
2. *Prathap Singh v. State of Punjab* – AIR (1964) SC 72.
3. *Rowjee v. State of Andhra Pradesh* – AIR (1964) SC 962.
4. *Breen v. Amalgamated Engineers' Union* – (1971) 2 QB 175.
5. *Padfield v. Minister of Agriculture, Fisheries and Food* – (1968) AC 997.
6. *Ridge v. Baldwin* – (1964) AC 40.

*Shibly Aziz, PC, with S. Dayaratne* for petitioners.

*R. K. W. Goonesekera with Shiranthi Jayatillake* for 1st to 9th and 12th and 13th respondents.

*Cur. adv. vult.*

August 03, 2002

**C. N. JAYASINGHE, J.**

This is an application for a writ of *certiorari* to quash the decision<sup>01</sup> of the 1st to 3rd respondents revoking the powers granted to the Kataragama Pradeshiya Sabha in terms of section 23 (5) of the Urban Development Authority (Amendment) Act, No. 4 of 1982 in respect of planning and development of the Kataragama Pradeshiya Sabha area: to quash the decision of the 1st to 3rd respondents to appoint a new Planning Committee for the said area; for a writ of *mandamus* compelling the 1st to 3rd respondents to re-vest in the petitioners the said powers; for interim relief restraining the 4th to 14th respondents from carrying out any functions in relation to planning and development<sup>10</sup> and for costs.

The petitioners state that with effect from 01. 07. 1991 planning and development within Kataragama Pradeshiya Sabha was transferred to its Chairman and Secretary in terms of section 23 (5) of the Urban Development Authority Act, No. 4 of 1982, *vide* P1, that the services of the representative of the Urban Development

Authority who was a member of the Planning Committee was withdrawn as from 18. 11. 1998 by P2 and thereafter by letter dated 01. 02. 1999 the 2nd and 3rd respondents withdrew the powers of planning and development vested in the said Kataragama Pradeshiya Sabha, *vide* P3. The said notice was published in the Press. Petitioners state that the powers vested in the other Pradeshiya Sabhas by the Urban Development Authority in terms of the said provision still remain with those Pradeshiya Sabhas and petitioners allege that aforesaid withdrawal of powers is discriminatory, arbitrary and unreasonable and that the conduct of the respondents is politically motivated illegal and / or unreasonable. 20

The respondents in their objections alleged that powers delegated to the said Pradeshiya Sabha were withdrawn, *inter alia*, for the reason that Kataragama Pradeshiya Sabha had issued unauthorised building permits in the area and also allowed unauthorised constructions in the lands belonging to the Urban Development Authority without its approval. The respondents deny that the Kataragama Pradeshiya Sabha was singled out and discriminated and stated that the powers delegated to the Anuradhapura and Nuwara Eliya local authorities have also been withdrawn. The respondents denied that they acted *mala fide*. 30

The petitioners thereafter filed counter objections.

The learned President's Counsel submitted that the petitioners who were the Chairman and Secretary of the Kataragama Pradeshiya Sabha at the time were neither informed of any failing on their part in relation to the powers delegated nor asked to answer any allegations against them. Mr. Goonesekera, however, submitted that there is no condition to be satisfied prior to revocation, such as opportunity to show cause. This is so because there is no decision that affects the rights of the person to whom power is delegated and there can be no legitimate expectation of a continued exercise of delegated powers. 40

The matter for determination by this court is therefore, whether, such delegated authority can be revoked by the delegating authority without any reason being assigned.

Section 23 (5) provides that:

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"The authority may delegate to any officer of a local authority, in consultation with that authority any of its powers, duties and functions relating to planning within any area declared to be a development area under section 3 and such officer shall exercise, perform or discharge such power, duty or function so delegated under the direction, supervision and control of the authority."

Mr. Aziz sought the intervention of court complaining that the Urban Development Authority gave no reasons for the revocation of the authority granted in terms of section 23 (5) submitting that upon these powers being delegated, the Kataragama Pradeshiya Sabha engaged 60 itself on extension development projects with the legitimate expectation that the Pradeshiya Sabha would be permitted to continue. If the Urban Development Authority gave reasons for its decision, the Pradeshiya Sabha could have persuaded the Urban Development Authority to permit the *status quo* to remain. He submitted that the revocation of the authority was done unreasonably and *mala fide* in that the other Pradeshiya Sabhas have been permitted to exercise the powers that have been delegated to them. He submitted that this court will intervene both on the grounds of unreasonableness and *mala fide*. Mr. Aziz also submitted that section 23 (5) allows the Urban Development 70 Authority to delegate to any officer of a local authority any of its powers, duties and functions relating to planning in any area declared to be a development area and that *such delegation is discretionary*. No local authority can demand that these powers be delegated to it. To that extent the delegation is discretionary. He submitted that such delegation will have to be done in consultation with the local authority. There was, therefore, a consensus between the Urban Development Authority and the local authority regarding the exercise

of the powers delegated. Thus, any revocation of the powers delegated under section 23 (5) must necessarily be done in consultation with the local authority and when there is a withdrawal of the powers the local authority will know the reason why it has been done. In *Attorney-General v. Silva*<sup>(1)</sup> it was held that the process of revocation must follow the same route as the delegation. 80

Mr. Aziz argued that discretionary power exercised by public authority must be reasonable and transparent. *Wade and Forsyth* 8th ed. at page 351 says that:

"For more than three centuries it has been accepted that discretionary power conferred upon public authorities is not absolute even within its apparent boundaries, but is subject to general legal limitations. These limitations are expressed in a variety of different ways, as by saying that discretion must be exercised reasonably and in good faith, that relevant considerations only must be taken into account, there must be no malversation of any kind, or that the decision must not be arbitrary or capricious . . ." It is further stated at page 356 ". . . statutory power conferred for public purpose is conferred as it were upon trust, not absolutely – that is to say that it can validly be used only in the right and proper way which Parliament when conferring it is presumed to have intended . . . (the argument) that unrestricted permissive language confers unfettered discretion, the truth is that; in a system based on the rule of law unfettered governmental discretion is a contradiction in terms . . ." 90 110

The learned President's Counsel submitted that it is now an established tenant of Administrative Law that no discretionary power is unreviewable. He relied on de Smith Woolf Jowell in *Judicial Review of Administrative Action* where it is stated at page 311 (5th ed.) that:

"Meanwhile our brief excursus into judicial control of discretionary power indicates that no statutory power is any longer unreviewable."

The petitioners state that the conduct of the respondents is politically 120 motivated and that the Member of Parliament for the area does not approve of the area being administered by a United National Party dominated Pradeshiya Sabha; that there being a total absence of circumstance demonstrating the necessity for the said revocation, it is *mala fide*, and actuated by improper and collateral considerations. The 3rd respondent in his affidavit has not denied this allegation as found in paragraph 16 of the petition. In *Prathap Singh v. State of Punjab*<sup>(2)</sup> the appellant, a civil surgeon, was initially granted leave preparatory to retirement, but subsequently revoked and placed under suspension and disciplinary proceedings instituted on an allegation of 130 bribery. The appellant alleged that disciplinary action was initiated against him at the instance of the Chief Minister because he refused to yield to illegal demands of the Chief Minister. The Chief Minister did not deny these allegations by affidavit or place any evidence contradicting the allegations. The Supreme Court held that the allegation of *mala fide* was sustained. In *Rowjee v. State of Andra Pradesh*<sup>(3)</sup> the appellant alleged that the Chief Minister had acted *mala fide* in proposing the nationalisation of certain transport routes because he sought to take vengeance on the private operators as they were his political opponents. Court observed from the course of events and 140 the absence of an affidavit from the Chief Minister denying the charge against him, *mala fides* on the part of the Chief Minister was established.

Mr. Aziz then went onto submit that the exercise of a discretionary power on irrelevant grounds or without regard to relevant considerations make the exercise of discretion bad in law. In essence discretion means the power to objectively decide on the best course of action when faced with alternatives. In such a situation it is imperative that the focus should fall on relevant considerations to the complete exclusion of the irrelevant. The learned President's Counsel charged that if the Urban Development Authority has been influenced by 150 irrelevant considerations or if irrelevant considerations have been omitted from consideration, its decision to revoke the delegation of powers would necessarily be unlawful. Mr. Aziz submitted that the

bulk of the complaints against the petitioners are found in paragraph 15 of the 3rd respondent's affidavit; some "misdemeanours" date to 1993-1995 and the others could have been explained if an opportunity was given; some being trivial and some others not being valid. It is for this reason that he submitted that the exercise of power had been on irrelevant grounds. Lord Denning MR in *Breen v. Amalgamated Engineering Union*<sup>(4)</sup> stated that:

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"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account then the decision cannot stand. No matter that the statutory body may have acted in good faith nevertheless the decision will be set aside. That is established by *Padfield v. Minister of Agriculture, Fisheries and Food*<sup>(5)</sup> which is a landmark in modern Administrative Law."

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The petitioners also complained that they have been singled out in that the other Pradeshiya Sabha throughout the Island continue to exercise the power delegated to them by the Urban Development Authority. They say that there was no reason for such discriminatory treatment unless the Urban Development Authority was motivated by improper and collateral considerations. The Court of Appeal in England time and again has held that a public authority has a duty to act with fairness and consistency in dealing with the public and if it makes inconsistent decisions unfairly and unjustly it misuses its powers.

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Mr. Goonesekera argued that there can be no legitimate expectation of a continued exercise of delegated power. He submitted that there is no decision that affects the rights of the person to whom the power is delegated. I am unable to subscribe to this view. Legitimate expectation is pivoted on fairness and reasonableness. As long as these two

components coexist there can and always be the legitimate expectation.

Rules of natural justice demand that there has to be a fair hearing before an Administrative Authority acts or makes decisions affecting the rights of subjects. As Wade says in its broadest sense natural justice may mean simply the "natural sense of what is right and wrong" and even in its technical sense it is often equated with fairness. *Ridge v. Baldwin*<sup>(6)</sup> reinstated the right to a fair hearing as a rule of universal application in the case of administrative acts for decisions affecting rights and natural justice must apply where some legal right, liberty or interest is affected. Petitioner complains that the delegated authority was revoked without any reason being assigned. <sup>190</sup>

I, accordingly, issue a writ of *certiorari* quashing order by the 1st, 2nd and 3rd respondents' 'P3' dated 01. 02. 1999.

Writ of *certiorari* quashing the decision of 1st, 2nd and 3rd <sup>200</sup> respondents' decision to appoint a new Planning Committee.

Writ of *mandamus* compelling the 1st to 3rd respondents to re-vest in the petitioners the said powers in respect of Planning and Development.

Application for writ is allowed with costs.

*Application allowed.*