UNIQUE GEMSTONES LTD.
v.
W. KARUNADASA AND OTHERS

COURT OF APPEAL.
H. W. SENANAYAKE, J.
C/A 393/95
TEU/A 20/94.
OCTOBER 16, 1995.

Termination of Employment – Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971 S. 2(1) – Services terminated – Inquiry – Reasons for reinstatement of Employees not given, though requested. Should reasons be given – Natural justice – 'State Decisis'.

The Workmen complained to the Commissioner of Labour of the Termination of Employment of the Workmen (Special Provisions) Act, (T.E. Act), that his services were terminated contrary to S. 2(1) of the T.E. Act.

At the conclusion of the inquiry the 2nd Respondent issued the impugned Order, holding that the workmans' services have been terminated contrary to S. 2(1) of the T.E. Act. As there were no reasons given for the said findings, the Petitioner requested the 2nd Respondent for the 'reasons'. The 2nd Respondent replied, without giving any reasons that the services of the 1st Respondent were terminated in violation of S. 2(1) T.E. Act. The matter before Court was whether the failure to give reasons is a negation of natural justice.

Held:

***Per* Senanayake, J.**

"I am of the view that the Commissioner should give reasons for his decision. The action of Public Officers 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 a decision.

I am of the view that it is only in special cases the reasons should be withheld, where the security of the State is affected, otherwise a statutory Body or Domestic Tribunal should give reasons for its decision. Though the T.E. Act is silent on this matter the Commissioner being a creature of the statute is performing a Public function it is not only desirable but necessary to give reasons for its decision.

***Per* Senanayake, J.**

"The common law as understood by us has now been battered down. Reasoned Orders are the '*sine qua-non*" of administrative justice even if the Statute is silent.

In my view the law cannot be static it must be dynamic and progress with the social changes in society."

There is a continuing momentum in administrative law towards transparency on decision making. The failure to give reasons is a breach of S. 17 T.E. Act, because it is inconsistent with the principles of natural justice.

AN APPLICATION for a Writ of Certiorari.

Cases referred to:

1. (a) *Kamil Hassan v. Fairline and Garments Ltd.* 1990 1 SLR 394 at 404.
   (b) *State Graphite Corporation v. Fernando* – 1982 2 SLR 684.
2. *Bandahamy v. Senanayake,* 62 NLR 313 at 349.
3. *Young v. Bristol Aeroplane Company Ltd.* 1944 2 All E.R. 293.
4. *Padifield v. Minister of Agriculture* 1968 AC 997.
5. *R. v. Lancashire County Council ex parte Hyuddleston* – 1968 – 2 All E.R. 941 at 945.
6. *DC Felician Silva v. M/s Aztex Industries Ltd.,* and *S. Weerakoon* – C.A. 260/93 – C.A. Minutes of 8.2.95.
7. *H. J. H. Perera v. H. C. Ebert, Deputy Commissioner of Co-operatives, A. M. M. Amarasinghe and Kolonnawa MPCS* – CA 480/84 – C.A. Minutes of 2.4.93.
8. *Kegalle Plantations Ltd. v. G. P. de Silva and Others* C.A. 686/94 – C.A. Minutes 28.8.95.
9. *Doody v. Secretary of State for the Home Department Ex P. Doody* - 1993 3 WLR 154.

Varuna Basnayake P.C. with *Tyrone Weerakkody* for Petitioner.

Respondent absent and unrepresented.

(Mr. D. W. Abeykoon, P.C. the Respondent's Counsel submitted Written Submissions subsequently after 16.10.1995).

Cur adv vult.

November 28, 1995.

H. W. SENANAYAKE, J.

This is an application invoking the jurisdiction of this Court to issue a mandate in the nature of Writ of Certiorari to quash the order dated 30.04.95 marked 'P-7' made by the 2nd Respondent.

The relevant facts briefly are as follows: The Petitioner is a duly incorporated Company and the 1st Respondent was employed by the Petitioner as an unskilled worker from the year 1989. The workman complained to the Commissioner of Labour under the Termination of Employment of the Workmen (Special Provisions) Act

hereinafter referred to as T.E. Act informing that his services had been terminated contrary to Section 2(1) of the T.E. Act. The 1st Respondent's position was after obtaining four days leave without prior approval he had reported for work on 30.05.1994 and his services were terminated by the Petitioner on the basis that he had vacated his post as he was a habitual absentee. The Petitioner was informed by the 3rd Respondent that there would be an inquiry and he had participated in the inquiry and called witnesses and produced documents. At the conclusion of the inquiry, written submissions were tendered by both parties and 2nd Respondent issued the impugned order marked 'P-7' holding that the workman's services have been terminated contrary to Section 2(1) of the T.E. Act and reinstate the 1st Respondent from 06.09.1995 with back wages amounting to Rs. 13,200/-. As there was no reasons for the said findings the Petitioner requested the 2nd Respondent by 'P-8' requesting the reasons for his decision. The 2nd Respondent replied by 'P-9' without giving any reasons that the services of the 1st Respondent were terminated in violation of Section 2(1) of the T. E. Act.

The submission of the learned Counsel for the Petitioner was that, it was a violation of the principle of natural justice in not giving reasons for the said decision. I am of the view that there is some force in the said submission.

The learned Counsel for the 1st Respondent in his written submission stated that not giving of reasons was not fatal. He relied on Wade, Administrative Law 12th Edition pages 34-35 on review, one has to findout whether the question was lawful or unlawful. His submission was the order of the Commissioner was lawful and he had not exceeded his jurisdiction and therefore he submitted he had not acted contrary to the principles of natural justice. He submitted that the application should be dismissed. He relied on the decision of *Kamil Hassan v. Fairline and Garments Ltd.* [1a]. He relied on the observations of Mark Fernando, J.

> "I have been mindful of the nature of Certiorari proceedings as distinct from an appellate jurisdiction. Certiorari in relation to the

Termination Act will lie to quash an order of the Commissioner, wholly or in part, where he assumes a jurisdiction which he does not have or exceeds that which he has or acts contrary to natural justice or is guilty of an error of law; it cannot be utilised to correct errors or to substitute a correct order for a wrong order. If the Commissioner's order was not quashed in whole or in part, it had to be allowed to stand unaltered. If the Petitioner was dissatisfied with the Commissioner's order, in that 'benefits' for the period 16.8.85 to 8.9.87 had not been awarded, it was open to him to have sought relief by way of writ, perhaps even by a counter claim (as in *State Graphite Corporation v. Fernando* [1b] although on appeal that claim failed on the merits; not having done so, the Petitioner could not have asked the Court of Appeal or this Court to vary the Commissioner's order in his favour. Wade, Administrative Law, (12th ed.) concisely puts the matter thus:

... judicial review is radically different from the system of appeals. When hearing an appeal the Court is concerned with the merits of the decision under appeal ... (in) judicial review the Court is concerned with its legality. On an appeal the question is 'right or wrong' On review the question is 'lawful or unlawful?' ... Judicial review is a fundamentally different operation. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the Court on review is concerned only with the question whether the act or order under attack should be allowed to stand or not".

I am of the view, that non-compliance of the principles of natural justice amounts to the Commissioner acting without jurisdiction.

I am of the view that the Commissioner should give reasons for his decision. The present trend which is a rubric running through out the public law is that those who give administrative decisions where it involves the public whose rights are effected specially when proprietary rights are affected should give reasons for its decisions. The action of the Public Officers should be 'transparent' and they cannot make blank orders. The giving of reasons is one of the

fundamentals of good administration. In my view it is implicit in the requirement of the fair hearing to give reasons for a decision. The standard of fairness are not immutable they may change with the passage of time both in the general and in their application to decisions of particular type. The principles of fairness are not to be applied identically in every situation. But fairness demand is dependent on the context of the decision. The present trend is to give reasons and a failure to do so amount to a failure to be manifestly seen to be injustice. I am of the view that it is only in special circumstances, the reasons should be withheld where the security of the state is affected otherwise a statutory body or domestic tribunal should give reasons for its decision. Though the T. E. Act is silent on this matter the Commissioner being a creature of the statute is performing a public function it is not only desirable but necessary to give reasons for its decision.

There is essential distinction between the Court and the administrative tribunal. A Judicial Officer is trained to look at things objectively uninfluenced by consideration of policy or expediency, an Administrative Officer generally looked at things from the stand point of policy and expediency, so it is essential that the administrative body in the matter of passing orders affecting the rights of parties the least that they should do is to give reasons for their orders. In my view the practice of the administrative bodies of making orders which *prima facie* seriously prejudice the rights of an aggrieved party without giving reasons is a negation of the rule of law.

In my view the attitude of the 2nd Respondent stating that he is not bound to give reasons for its decision is untenable in law. His attitude and failure to give reasons is a breach and violation of natural justice and a negation of the rule of law. The present trend is to give reasons, it has veered off from the old concept of not adducing reasons by administrative bodies for their decisions. The common law as understood by us has now been battered down. Reasoned orders are the '*sine-qua-non*' of administrative justice even if the statute is silent the decision should contain reasons, it is in the interest of the Public Officer to give reasons for its decisions otherwise his action would lack 'transparency' and amount to arbitariness.

In my view, law cannot be static it must be dynamic and progress with the social changes in society. In the Case of *Bandahamy v. Senanayake* [2] Basnayake, C.J.

"The very strength of judgment law lies in his flexibility and capability of development by judicial exposition by generation of Judges. A Rigid Adherence to 'Stare Decisis' would rob our system of its virtues and hamper its development. We should strive to strike a mean between the one extreme of too frequent changes in the law without sound and compelling reasons for them and the other extreme of slavish adherence to precedent merely because it has been decided before. The virility of the Bench is shown by its capacity to re-assess past decisions and declare the law as it should be in the light of more careful analysis of the problems involved than has been done before taking to account the development of legal thought in other Countries. If the Bench is powerless to depart from a decision that research an analytical skill of Counsel backed by sound argument have shown to be wrong the judicial process would be of little value".

"Our legal machinery being so different from that of England it would be wrong I think to regard the case of *Young v. Bristol Aeroplane Company Ltd.*, [3] or the practice of the House of Lords as applicable to us. The many exceptions created by Lord Goddard who participated in it to the rule laid down in the *Bristol Aeroplane* Case (*supra*) show the unwisdom of laying down a hard and fast rule in the matter of 'Stare Decisis'. All the decisions of the Supreme Court are not reported and even the reported decisions are all not cited and unless the Judges themselves know all the reported and unreported decisions it would be impossible not to contravene the rule unwittingly. For that reason and many other reasons set out hereinbefore the rule has to be flexible."

Even in the United Kingdom the momentum is that the administrative law is to give reasons for its decision. In the case of *Padifield v. Minister of Agriculture* [4]. The Minister whose decision (given without stating reasons) was challenged. He furnished a statement of reasons to Court. The 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 Pages 1053, 1054), Lord Up John (at page 1061) made clear observations that if there is *prime 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 an inference may will be drawn that the impugned decision is *ultra vires* and relief granted on this basis.

> "In this regard I would like to cite the observations made by Sir John Donaldson in the case of *R. v. Lancashire County Council ex parte Hyuddleston* [5] "Counsel for the Council also contended that it may be 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 argument 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 judicial 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 Court 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"

This Court has held in *D. C. Felician Silva v. M/s Aztex Industries Ltd. and S. Weerakoon* [6]. In *H. J. H. Perera v. H. C. Ebert Deputy Commissioner of Co-operatives, A. M. M. Amarasinghe and Kolonnawa MPCS* [7]. In the case of *Kegalle Plantations Ltd. v. G. P. de Silva and*

Others [8] that there is an obligation on the part of the Commissioner to give reasons for its consideration.

In the recent case of *Doody, R. v. Secretary of State for the Home Department Ex. P. Doody* [9]. The prisoners H. L. Doody, Pierson, Smart and Pegg were convicted for murder and sentenced to life imprisonment. The Home Secretary's adopted practice in relation to mandatory lifer's involved 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) and opportunity to make representations and reasons for departing from those recommendations. The House of Lords held that declarations (1) and (2) should be refused but granted the relief under (3) being required by the minimum standard of fairness.

Lord Mustil observed at page 166 (*supra*) I find more recent cases on judicial review a perceptible trend towards an insistence on greater openness or if one prefers the contemporary Jargon "transparency" in the making an administrative decision. This tendency has been accompanied by the increasing recognition, both in the requirement of statute and in the decisions of the Court.

There is a continuing momentum in administrative law towards transparency in decision making. It is my considered view that Public Officers who wield power on others should give reasons for their decisions. The failure to give reasons is a breach of Section 17 of the T. E. Act because it is inconsistent with the principles of natural justice.

It is my view the 2nd Respondents' failure to give reasons is a negation of natural justice.

In the circumstances, I quash the impugned order P-7. I allow the application of the Petitioner in terms of prayer (b). I refrain from making an order for costs.

Application allowed.