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(Continued from Part 9)

Having considered their respective submissions, the relevant provisions contained in the Civil Procedure Code as well as the provisions stated in Rule 3(2) as well as other provisions contained in the aforesaid Court of Appeal (Appellate Procedure) Rules 1990, I do not think that there is any merit in the aforesaid objections taken by the petitioner-respondent, for the simple reason that the provisions contained in the Court of Appeal (Appellate Procedure) Rules 1990 has no application to the instant application which is a leave to appeal application.

It is to be seen that the order canvassed in this application is an incidental order falling under the purview of section 754(2) of the Civil Procedure Code. The events which culminated in the learned District Judge making the aforesaid order is as follows: On 10.06.2004 when further inquiry was taken up and as the respondent-petitioner was ill his registered Attorney-at-Law had tendered a medical certificate and moved for a postponement. The petitioner-respondent moved for costs in a sum of Rs. 50,000 to equate his expenses. Though the respondent-petitioner's Attorney-at-law suggested to pay Rs. 15,000 as costs for the day the learned trial Judge made order directing the payment. The order is marked R1.

As to which application the learned District Judge accepted is not clear, viz. whether the payment of Rs. 50,000 or whether it should be restricted to Rs. 15,000. In any event, the so called medical certificate issued by Dr. T. Wickramasinghe has not been challenged.

Be that as it may, it is a matter that needs our consideration when this application is taken up for argument. For at the moment we are only concerned with the objection taken for the maintainability of this application.

Let us now consider the relevant provisions contained in the Civil Procedure Code that deals with leave to appeal applications. The manner of making an application seeking leave to appeal is laid down in sections 754(2), 757, 758 and 759 of the Civil Procedure Code. The relevant particulars that should be contained in a petition for leave to appeal is stated in section 758 of the Civil Procedure Code and in terms of section 759, if the petition is not drawn up in the manner as set out in section 758 the petition could be either rejected or returned to the petitioner for amending the same.

The relevant procedural provisions read as follows :

"757(1) Every application for leave to appeal against an order of court made in the course of any civil action, proceeding or matter shall be made by petition duly stamped, addressed to the Court of Appeal and signed by the party aggrieved or his registered attorney. Such petition shall be supported by affidavit, and shall contain the particulars required by section 758, and shall be presented to the Court of Appeal by the party appellant or his registered attorney within a period of fourteen days from the date when the order appealed against was pronounced, exclusive of the day of that date itself, and of the day when the application is presented and of Sundays and public holidays, and the Court of Appeal shall receive it and deal with it as hereinafter provided and if such conditions are not fulfilled the Court of Appeal shall reject it. The appellant shall along with such petition, tender as many copies as may be required for service on the respondents."

"758(1) The petition of appeal shall be distinctly written upon good and suitable paper, and shall contain the following particulars:

(a) the name of the court in which the case is pending;
(b) the names of the parties to the action;
(c) the names of the appellant and of the respondent;
(d) the address of the Court of Appeal;
(e) a plain and concise statement of the grounds of objection to the judgment, decree, or order appealed against, such statement to be set forth in duly numbered paragraphs:
(f) a demand of the form of relief claimed.

759(1) If the petition of appeal is not drawn up in the manner in the last preceding section prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended, within a time to be fixed by the court; or be amended then and there. When the court rejects under this section any petition of appeal, it shall record the reasons for such rejection. And when any petition of appeal is amended under this section, the Judge, or such officer as he shall appoint in that behalf, shall attest the amendment by his signature.

(2) In the case of any mistake, omission or defect on the part of any appellant in complying with the provisions of the foregoing sections, (other than a provision specifying the period within which any act or thing is to be

done) the Court of Appeal may, if it should be of opinion that the respondent has not been materially prejudiced, grant relief on such terms as it may deem just".

It is to be seen that the particulars that should be contained in a petition filed in a leave to appeal application is specified in section 758 and the provisions contained therein applies to a final appeal too. In the circumstances it is to be seen that the procedure in instituting an application for leave to appeal is governed by the provisions of the Civil Procedure Code and not by the Rules as laid down in the Court of Appeal (Appellate Procedure) Rules 1990. Further leave to appeal is a statutory remedy like the final appeal made available to a party by the Civil Procedure Code. As such when exercising this statutory remedy there is no necessity to insert an averment in the petition that the petitioner had not previously invoked the jurisdiction of this Court. My considered view is that a leave to appeal application being a statutory remedy does not attract the provisions contained in the Court of Appeal (Appellate Procedure) Rules 1990.

I might point out that this same issue was considered by Ameratunga, J. in *J. M. C. Caderamenpulle vs. A. M. J. M.V. Caderamenpulle.*[1] In that case Ameratunga, J. having considered most of the judgments that considered this issue, viz: the applicability of Rules of the Court of Appeal (Appellate Procedure) Rules 1990 to an application for leave to appeal came to a finding that the provisions as prescribed in the aforesaid Rules are not applicable to leave to appeal applications. I would certainly agree with him on this point only. However though not relevant to the issue at hand , his finding in that case that Court has no power to dismiss a leave to appeal application on the basis that necessary documents have not been filed is unacceptable and should be frowned upon.

For the foregoing reasons I would over-rule the preliminary objection taken by the counsel for the petitioner-respondent and fix the matter for inquiry.

WIMALACHANDRA , J. — *I agree.*

Preliminary objection over ruled.

Matter set down for inquiry.

JEEVANI INVESTMENTS

VS.

WIJESENA

COURT OF APPEAL.
EKANAYAKE, J.
SILVA, J.
CA 886/94(F).
DC COLOMBO 15513/L.
MAY 6, 2005.

Civil Procedure Code, sections 27(1), 27(2) - Appointment of a Registered Attorney-at-Law – Can a relisting application be filed by a person who is not the registered Attorney?–Supreme Court (Court of Appeal) – Appellate Procedure-Copies of Records Rules 1978 - Rule 13(b).

HELD:

(1) The proxy on behalf of the appellant has been filed in the District Court by Attorney W, and when the appeal was rejected due to non payment of brief fees the attorney on record was W. The notice of appeal/ appeal have been filed by Attorney W. The proxy given to W has not been revoked nor have any of the events stipulated in section 27(2) occured.

The relisting application has been filed by Attorney E.

(2) When a proxy is filed it shall be in force until revoked with the leave of Court and after notice to the Registered Attorney by a writing signed by the client and filed in Court or until the client dies or until the registered Attorney dies or is removed or suspended or otherwise becomes incapable to act and until all proceedings in the action are ended and judgment is satisfied as regards the client.

(3) The relisting application is bad in law as it has not been filed through the Attorney on record - W.

(4) According to Rule 13(b) of the SC Rules if the appellant fails to comply with any direction given by the Court of Appeal to comply with such directions, as the court may think fit to give, court has the discretionary power to reject the appeal.

APPLICATION for relisting.

Cases referred to :

1. *Letchemanan* vs. *Christian 4 NLR 323*
2. *Seelawathie* vs. *Jayasinghe 1985 2 Sri LR 296*

Asoka Fernando for 3rd defendant-appellant-petitioner.
Sanath Jayatilleke for plaintiff-respondent-respondent.
Sahana Mahfi for 2nd defendant-respondent-respondent.

Cur.adv.vult.

September 20, 2005.

CHANDRA EKANAYAKE, J.

This is an application made by the 3rd defendant-appellant-petitioner (hereinafter sometimes referred to as "petitioner") by the petition dated 19.11.2003 moving to set aside the judgment of the Court of Appeal dated 18.11.1996 marked X8 along with the petition dismissing the appeal on the ground of non payment of brief fees, for an order relisting this appeal and order directing the Registrar to call for the original case record in D. C. Colombo Case No. 15513/L to this Court. The 2nd defendant-respondent-respondent (hereinafter some times referred to as the 2nd defendant) by his statement of objections dated 06.05.2004 has moved this Court that the application of the petitioner be allowed.

The plaintiff has objected to the above application of the petitioner by statement of objections dated 6th May 2004 pleading inter *alia* amongst other grounds that the present relisting application has been made by a person other than the registered Attorney-at-law, who is a stranger in court who has no right to be entertained or be heard and moved to reject the said application.

After conclusion of oral submissions by Counsel, parties have tendered their written submissions and same have been filed.

By the aforesaid petition, the petitioner had averred inter *alia* that this appeal bearing No. C. A. 886/94 was preferred against the judgment of the learned Additional District Judge of Colombo dated 26.07.94 as averred in paragraph 14 of the petition. When no correspondence with regard to this appeal was received inquiries were made and then only the petitioner became aware that this appeal had been rejected on 18.11.1996 due to his failure to deposit brief fees. It is further averred that according to the

draft minute of this court dated 18.11.96 this appeal had not been listed on that day and therefore what has to be inferred is that same had been dismissed not in open court but in the Chambers of the Judge. The petitioner has averred in paragraph 16 of the petition, that this appeal had been dismissed,

(a) without notice to pay brief fees.
(b) without notice to appear before Court on 18.11.1996.
(c) without calling the case in open court.

Accordingly the petitioner had moved for reliefs prayed by him in the petition.

Judgment of this Court dated 18.11.96 is as follows:

"This appeal comes up for an order of Court today. Previously the Court directed the appellant to deposit fees for the preparation of a copy of the record. The appellant failed to comply with that directive. Accordingly, the appeal is rejected in terms of Rule 13(b) of the Supreme Court(Court of Appeal-Appellate Procedure–Copies of records) Rules 1978."

However there is no indication whether this order had been made in open court or in the chambers. Examination of previous minutes in the docket reveals that no mention date had been given for 18.11.1996. It was urged by the counsel for the Plaintiff that according to the certified copy of the list of cases scheduled before this court on 18.11.1996 that this case was not included in the above list. On a perusal of the above list the above position is found to be correct.

As evidenced by the first minute available in the docket a direction has been given to the Registrar of this Court in terms of rule 13(b) of the Supreme Court (Court of Appeal - Appellate Procedure - Copies of Records) Rules, 1978 to inform the appellant to deposit such fees before 31.10.1996 and on which day the appeal will be mentioned for a final order of Court. Minute bearing the date 05.09.1996 shows that notice had been issued on the appellant. The next minute is the minute dated 15.11.1996 which being the last minute prior to 18.11.1996 (the date the order of rejection was made). According to the rubber stamp placed under the minute of 15.11.1996 it has to be observed that although notices have been issued on the Appellant and the Attorney-at-law requesting them to deposit the necessary fees for appeal briefs neither the Appellant nor his Attorney-at-law had deposited the said amount. Thereafter on 18.11.1996 the appeal had been rejected by Hon.Dr. Ranaraja J. However it has to be observed that the notice which had been issued as evidenced by the minute of 05.09.1996 had not been returned.

Rule 13(b) of Supreme Court (Court of Appeal-Appellate Court Procedure-Copies of Records) Rules, 1978 reads as follows:

13(b) "Where the appellant fails to pay the fees due under these rules, the Court of Appeal may direct the appellant to comply with such directions as the Court may think fit to give, and may reject the appeal if the appellant fails to comply with such directions."

According to the above rule if the Appellant fails to comply with any directions given by the Court of Appeal to comply with such directions as the court may think fit to give, court has the discretionary power to reject the appeal. It was urged by the counsel for the Plaintiff that the present re-listing application has been made by a person other than the regular Attorney-at-law and hence there is in law a stranger in court who has no right to be entertained or to be heard. The present application for re-listing (dated 19th November 2003) has been filed by an Attorney-at-law Kapila Dushantha Epitawela with an affidavit of one S. R. Kumara Weerasinghe who is said to be the Managing Director of the 3rd Defendant Company dated 19.11.2003. The objection taken up by the Plaintiff was that the above petition has been filed by an Attorney-at-law other than the Plaintiff's registered attorney on record and his position was that when the above petition was filed there was a valid proxy on behalf of the party by another registered Attorney-at-law. To verify this, this court called for the original record in District Court Colombo Case No. 15513/L and same is available for perusal of this Court.

Perusal of the District Court case record reveals that the proxy on behalf of the 3rd Defendant has been filed in the District Court by Wijesinghe Associates and until the record in the said DC Colombo case 15513/L was forwarded to this court after preferring this appeal there had been no change of the registered Attorney on record and for all purposes aforesaid proxy has remained valid. After the appeal was rejected by the order of this Court dated 18.11.1996 the 3rd Defendant filed petition dated 19.11.2003 through an Attorney K. D. Epitawela. At this inquiry into the re-listing application made by the 3rd Defendant the Plaintiff took up the aforesaid objection that the 3rd Defendant has filed the present petition through a different registered attorney-at-law without revoking the proxy which had been held on his behalf by Wijesinghe Associates as evidenced by the original District Court record. In this regard it would be pertinent to consider sub–sections 27(1) and (2) of the Civil Procedure Code which read as follows:

"27(1) The appointment of a proctor to make any appearance or application, or do any act as aforesaid, shall be in writing signed by the

client, and shall be filed in court; and every such appointment shall contain an address at which service of any process which under the provisions of this chapter may be served on a proctor, instead of the party whom he represents, may be made.

(2) When so filed, it shall be in force until revoked with the leave of the court and after notice to the proctor by a writing signed by the client and filed in court, or until the client dies, or until the proctor dies, is removed, or suspended, or otherwise becomes incapable to act, or until all proceedings in the action are ended and judgment satisfied so far as regards the client."

According to the above sub section (2) of section 27, when a proxy is so filed it shall be in force until revoked with the leave of the court and after notice to the proctor by a writing signed by the client and filed in court or until the client dies or until the proctor dies, is removed or suspended or otherwise becomes incapable to act and until all proceedings in the action are ended and judgment is satisfied as regards the client. In the case before us obviously the judgment is not satisfied. According to the notice of appeal and the petition of appeal filed by the 3rd Defendant both had been filed by the same attorney-at-law who held the proxy on behalf of the 3rd Defendant *viz.*: Wijesinghe Associates. In response to the above objection the petitioner in this case took up the position that since this being a re-listing application the 3rd Defendant petitioner need not file the re-listing application through the same registered attorney who earlier held the proxy on his behalf. For all purposes it has to be conceded that the proxy filed by Wijesinghe Associates on behalf of the 3rd Defendant has not been revoked when this relisting application was filed in this Court.

In the light of the aforesaid circumstances now necessity has arisen to consider the decision in *Letchemanan vs. Christian* [1]. In the above case it was held that :

"No proctor is entitled to appear for a client unless he has a proxy signed by such client; and there cannot be more than one proctor at the same time on the record".

In the instant case obviously there had been two proxies of two attorneys-at-law on behalf of the 3rd Defendant when this relisting application was filed.

In the case of *Seelawathie vs. Jayasinghe* [2] *per* Senevirathne, J.(P/CA):

"It is a recognized principle in court proceedings that when there is an attorney-at-law appointed by a party such party must take all steps in the case through such attorney-at-law"

In the case at hand the present re-listing application has been filed not through the attorney-at-law appointed by the 3rd Defendant but by another attorney-at-law.

For the reasons enumerated above I conclude that the objection taken by the plaintiff with regard to filing of the petition by the 3rd Defendant through an attorney-at-law other than who held the proxy is a valid objection and on this ground alone the 3rd Defendant's present application has to be rejected. In those circumstances the necessity to consider the other objections does not arise.

Though not averred in the petition, petitioner has urged in the written submissions filed in this Court that the application for relisting is distinct and separate from the appeal which has been rejected now and since it is so rejected the original proxy given to Mr. Sarath Perera attorney-at-law in the District Court is not in operation now, and thus the plantiff has no proper appearance before this Court. **It has to be noted that the plaintiff in D. C. Case No. 15513/L is the same person who is the Plaintiff-Respondent named in the present petition and therefore the proxy filed by Attorney-at-Law Sarath Perera on behalf of the plaintiff will remain valid for all purposes until it is duly revoked or until the occurrence of any of the events stipulated in section 27(2) of the Civil Procedure Code. But in this case neither the above proxy is duly revoked nor any of the events stipulated in section 27(2) has occurred. Therefore the proxy filed by the attorney-at-law Sarath Perera remains valid up to the filing of objections and even upto now.** For the foregoing reasons I conclude that the above contention of the petitioner's Counsel is of no merit and same is hereby rejected.

Accordingly the 3rd Defendant-Appellant-Petitioner's application is hereby rejected. In all circumstances no order is made with regard to costs here.

The Registrar of this Court is directed to forward the record in Case No. 15513/L to the respective District Court forthwith.

RANJITH SILVA, J.– *I agree.*

Application allowed.

SHELL GAS LANKA LTD., VS. CONSUMER AFFAIRS AUTHORITY AND ANOTHER

COURT OF APPEAL.
SRIPAVAN., J.
SISIRA DE ABREW. J.
CA 505/2005.
OCTOBER 16, 2005.

Consumer Affairs Authority Act, No. 9 of 2003, sections 18, 18(1), 18(3) and 18(4) - Specified goods - Application to increase the retail or wholesale price - Prior written approval of the Consumer Affairs Authority to be obtained - Refused - Natural justice - Should reasons be given - Violation ?–Unreasonable decision - Ground for quashing ?

The Minister of Commerce and Consumer Affairs acting under section 18 of the Consumer Affairs Authority Act published a gazette notification specifying LP Gas as one of the specified goods under section 18. Thus, it became necessary for the petitioner to obtain the prior written approval of the 1st respondent to increase the retail/ wholesale price of LP domestic gas. The application as well as the appeal were rejected. The petitioner contended that (1) the respondent failed to give any reason for the refusal (2) No opportunity was given to place facts as to why the application should not be rejected. (3) The decision is unreasonable.

HELD:

Per Sisira de Abrew :

"Natural justice demands the administrative tribunals to give reason for the decisions; failure to give reasons can be construed as "no reasons".

(1) The 1st respondent before taking the impugned decisions did not give an opportunity to the petitioner to place the facts as to why its application should not be rejected ; on this ground alone the impugned decisions could be quashed.

(2) Unreasonable decision of a public officer or Administrative Tribunal can be quashed by the Court of Appeal.

APPLICATION for a Writ of Certiorari.

Cases referred to :

(1) *R* vs. *Secretary of State for the Home Department ex-parte Frayed* and *Others 1997* 1 ALL ER 229
(2) *Regina* vs. *Secretary of State for the Home Department ex-parte Doody 1994* 1 AC 531
(3) *R* vs. *Civil Service Appeal Board ex-parte Cunningham - Law Reports of the Common Wealth Constitutional and Administrative Law 1999* page 941
(4) In *Regina* vs. *Secretary of State for Trade and Industry - ex-parte Lonrho pla 1989* 1 WLR 525 at 540 (HL)
(5) *Ceylon Printers Ltd.* vs. *Weerakoon - Commissioner of Labour* and *Others 1998* 2 Sri LR 29 (SC)
(6) *Karunadasa* vs. *Unique Gem Stone Ltd* and *Others 1997* 1 Sri LR 256 (SC)
(7) *Unique Gem Stones Ltd.* vs. *Karunadasa and Others 1995* 2 Sri LR 357 (CA)
(8) *Kegalle Plantations Ltd.* vs. *Silva and Others 1996* 2 Sri (1) LR
(9) *Samalanka Ltd.* vs. *Weerakone Commissioner of Labour* and *Others 1994* 1 Sri LR 405
(10) *R* vs. *Higher Education Funding Council - ex parte Institute of Dental Surgery (1994)* 1 ALL ER 651
(11) *Wheeler* vs. *Leicester City Council 1985* AL 1054 (112)
(12) *Rex.* Vs. *Tynemouth District Council 1896* 2 QB 219
(13) *Regina* vs. *Birmingham Licensing Planning Committee 1972* 1 QB 140

D. S. Wijesinghe, PC with *Chanaka de Silva* for Petitioner.
P. A. Perera, State Counsel for Respondent.

Cur. adv. vult.

November 11, 2005.
SISIRA DE ABREW J.

This is an application for writs of certiorari and mandamus. The facts of this case may be summarized as follows :

The petitioner is a body corporate incorporated in Sri Lanka under the Companies Act, No. 17 of 1982 and carries on business of purchasing, supplying, selling and distributing liquid petroleum gas (hereinafter referred to as LP gas) in Sri Lanka for domestic and industrial application. The petitioner sells gas cylinders for domestic consumption in Sri Lanka in two categories, namely 12.5kg and 2.3 kg. The Minister of Commerce and Consumers Affairs, acting under-section 18 of the Consumer Affairs Authority Act, No. 9 of 2003 (hereinafter referred to as the Act), published a gazette notification marked P2 dated 20.08.2003 specifying LP gas as one of the specified goods under-section 18 of the said Act. Therefore it became necessary for the petitioner to obtain the prior written approval of the 1st respondent to increase the retail or wholesale price of domestic LP gas.

The petitioner made an application dated 30.07.2004 marked P29 to the 1st respondent seeking to raise the price of LP gas with effect from 30.09.2004. Although the 1st respondent was obliged to give a decision on the application of the petitioner for revision of prices within 30 days of the receipt of such application, the 1st respondent failed to do so. Therefore the petitoner, acting under-section 18 (4) of the Act gave effect to the increase of prices as set out in its application made to the 1st respondent dated 30.07.2004.

Thereafter again on 30.09.2004 the petitioner made an application (P34A) for revision of prices which application was rejected by the 1st respondent by letter dated 26.10.2004 marked P35. The petitioner, by letter dated 10.11.2004 marked P38, again made an application to the 1st respondent for revision of prices of 12.5kg and 2.3kg cylinders and after several correspondence the petitioner withdrew the application dated 10.11.2004 (P38).

On 30.11.2004, the petitioner, by letter marked P47, made an application to the 1st respondent for revision of prices of the said two cylinders. The petitioner, by letter dated 31.01.2005 marked P55, again made an application to the 1st respondent for an increase of prices of the two

cylinders aforementioned. The 1st respondent, by letter dated 24.02.2005 marked P56, rejected the application of the petitioner. The 1st respondent, by letter dated 03.03.2005 marked P58, informed the petitioner that the appeal submitted by the petitioner was under consideration. The 1st respondent, by letter dated 16.03.2005 marked P61, informed the petitioner that the appeal submitted by the petitioner had been rejected.

The petitioner states that prior to arriving at the aforementioned decisions contained in letters marked P56 and P61, the 1st respondent failed to give the petitioner any opportunity of being heard in support of its application. Further, the 1st respondent failed to give any reason in support of or justifying the aforementioned decisions, and acted in breach of and total disregard of the principles of natural justice in arriving at the aforementioned decisions contained in letters marked P56 and P61 ; and that the said decisions are bad in law and/or null and void and/or of no force or avail in law. The petitioner, by this petition, seeks to quash, by way of writ of certiorari, the decisions contained in letters marked P56 and P61 and further by way of writ of mandamus seeks a direction on the 1st respondent to determine the application of the petitioner dated 31.01.2005 marked P55 according to law. The respondents contend that the petition of the petitioner is futile since the petitioner, subsequent to the filing of this petition, sought an increase of prices of the said 12.5kg and 2.3kg cylinders to Rs. 800 and Rs. 162 respectively. It has to be noted that the contention of the petitioner is that the 1st respondent acted in breach and total disregard of the principles of natural justice in arriving at its decisions contained in letters marked P56 and P61. Therefore the petitioner's subsequent application for revision of prices does not make the petition of the petitioner futile. I am unable to agree with the contention of the respondents.

In view of the facts alleged by the petitioner it is necessary to consider section 18 of the Act which reads as follows :

Section 18 (1) - "Where the Minister is of opinion that any goods or any service is essential to the life of the community or part thereof, the Minister in consultation with the Authority may by Order published in the Gazette

prescribe such goods or such service as specified goods or specified service as the case may be."

Section 18 (2) - "No manufacturer or trader shall increase the retail or wholesale price of any goods or any service specified under-subsection (1), except with the prior written approval of the Authority."

Section 18 (3) - "A manufacturer or trader who seeks to obtain the approval of the Authority under-subsection (2), shall make an application in that behalf to the Authority, and the Authority shall, after holding such inquiry as it may consider appropriate –

(*a*) approve such increase where it is satisfied that the increase is reasonable ; or

(*b*) approve any other increase as the Authority may consider reasonable,

and inform the manufacturer or trader of its decision within 30 days of the receipt of such application."

Section 18 (4) - "Where the Authority fails to give a decision within 30 days of the receipt of an application as required under-subsection (3), the manufacturer or trader who made the application shall be entitled to, not withstanding the provisions of subsection (1), increase the price :

Provided however, where the delay in giving its decision within the stipulated period was due to the failure of the manufacturer or trader to give any assistance required by the Authority in carrying out its inquiry into the application, the Authority shall have the power to make an interim order preventing the said manufacturer or trader from increasing the price, until the Authority makes its decision on the application."

According to section 18 (3) of the Act, when an application is made to the 1st respondent by a manufacturer or a trader to obtain the approval to increase the retail or wholesale price of any goods specified under section 18 of the Act, the 1st respondent has to hold an inquiry as it may consider

appropriate and the Consumer Affairs Authority, the 1st respondent, has the power to do one of the two things stated below after holding an inquiry :

(*a*) Approve such increase where the Authority is satisfied that the increase is reasonable ; or

(*b*) Approve any other increase as the Authority may consider reasonable.

In the present case, did the 1st respondent, before arriving at the decisions contained in letters marked P56 and P61, hold an inquiry as stipulated in section 18 (3) of the Act ? Having considered the documents filed by both parties, I have to conclude that the 1st respondent has failed to hold such an inquiry. I, therefore, hold that the 1st respondent has not acted under section 18 (3) of the Act and that its decisions contained in P56 and P61 have to be quashed by way of a writ of certiorari.

The Petitioner alleges that the 1st respondent did not give any reason for rejection of its application for revision of prices stated in the letter marked P55. The petitioner further alleges that the 1st respondent failed to hear the petitioner before rejecting its application P55. The first respondent before rejecting the said application of the petitioner, did not ask for any material from the petitioner in order to decide the application. Therefore it cannot be said that the petitioner was guilty under the proviso to section 18 (4) of the Act. The petitioner, by letters dated 01.03.2005 (P57), 07.03.2005 (P59) and 18.03.2005 (P62) requested to provide reasons for the decision of the 1st respondent but the 1st respondent failed to give its reasons for its decision contained in P56 and P61. In my view, failure to give reasons can be construed as 'no reasons'. In view of the failure on the part of the respondents to give reasons for the said decisions, it is safe to conclude that the 1st respondent did not have reasons for its decisions.

It is necessary to consider whether administrative tribunals should give reasons for their decisions. In this connection, I would like to consider the following passage from Administrative Law by Wade & Forsyth 8th edition page 516 dealing with the subject of 'reasons for decisions' ;

"The Principles of Natural Justice do not, as yet, include any general rule that reasons should be given for decisions. Nevertheless there is a strong case to be made for the giving of reasons as an essential element

of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others." At page 517, dealing with this subject, it states as follows: "Where the decision maker departs from a previously adopted policy (even if not published) fairness will require that departure to be explained. Thus a health authority's refusal without giving reasons, to follow the policy of the National Health Service Executive to introduce a new (and expensive drug) was quashed.

On this question, I would like to cite a judgment of the Court of Appeal of England. *R Vs Secretary of State for the Home Department, ex parte Fayed and another*[1] : "The applicants were two brothers who were born in Egypt but had lived and worked in the United Kingdom for many years where they had substantial business interests and a high public profile. Both had been granted leave to remain indefinitely. One brother was married to a British citizen, the other to a citizen of Finland, and both had children who were British citizens. Eventually the brothers applied for naturalization as British citizens under section 6 (1) and (2) respectively of the British Nationality Act 1981, and although they satisfied the requirements of the Act, their applications were refused without any reasons being given.

Held :

"Although the Home Secretary was not required to give reasons for refusing an application for British citizenship, by virtue of section 44 (2) of the 1981 Act, where the decision involved the exercise of discretion, he was required to exercise that discretion reasonably and accordingly was not relieved of the obligation to be fair in arriving at his decision." During the process of reaching a decision, the Home Secretary was therefore required to give the applicant sufficient information as to the subject matter of his concern in such terms as to enable him to make such representations as he could and, where that would involve disclosing matters not in the

public interest, to indicate that was the position so that the applicant could challenge the justification for the refusal before the courts. It followed that since the applicants had not enjoyed the fairness to which they were entitled, justice had not been seen to be done. The appeal would therefore be allowed and the Home Secretary's decision would be quashed so that they could be retaken in a fair manner."

House of Lords in the case of *Regina Vs Secretary of State for the Home Department Ex parte Doody*[2] held that a life prisoner was entitled to be told the Home Secretary's reasons for rejecting the advice of the trial Jugde as to the penal element in the sentence.

R. Vs Civil Service Appeal Board, ex parte Cunningham[3] "The applicant, a 45-year old prison officer, was dismissed from the prison service after he allegedly assaulted a prisoner. He appealed against his dismissal to the Civil Service Appeal Board which held that his dismissal was unfair and recommended that he be reinstated. The Home Office, as it was entitled to do, refused to reinstate him and the Board then assessed the compensation for unfair dismissal at Pounds 6500. Since the applicant's employment was regarded as Police service he was prevented by section 146 of Employment Protection (Consolidation) Act 1978 from appealing to an industrial tribunal, which would have assessed compensation of between Pounds 14240 and Pounds 16374 in comparable circumstances. The Board refused to give reasons for its award on the ground that it employed simple and informal procedures and that to ensure a non-legalistic approach to the merits of each individual case it had adopted a policy of not giving reasons for any award. The applicant applied for judicial review of the Board's decision on the grounds that the award was *prima facie* irrational and the Board's refusal to give reasons was a breach of natural justice. .....

Court of Appeal of England held (per Lord Donaldson MR) : "A party appearing before a tribunal such as the Board was entitled to know either expressly or by inference to what the tribunal was addressing its mind and that it had acted lawfully. Having regard to the facts that the Civil Service Appeal Board carried out a judicial function and that in similar circumstances an industrial tribunal would be required to give reasons, natural justice required that the Board should have given reasons when deciding the amount

of the applicant's compensation for unfair dismissal. Accordingly, the Board was required to give reasons for the way in which it had reached the award made to the applicant and in the absence of such reasons the award, when compared to awards made by industrial tribunals in comparable circumstances, was so low as to be *prime facie* irrational."

In Regina. Vs Secretary of State for Trade and Industry Ex parte Lonrho plc.[4] *Lord Keith* observed thus : "The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision."

In the case of *Ceylon Printers Ltd Vs Weerakoon Commissioner of Labour and Others*[5], Justice Gunasekere held : "It is apparent from the order of the Commissioner that he had failed to duly consider the material produced at the inquiry before the Assistant Commissioner or the recommendation made by the Assistant Commissioner and the Deputy Commissioner. In view of the failure by the Commissioner to give the appellants an opportunity of challenging the new material on which he acted, the Commissioner was under a duty to give reasons for his decision, particularly in view of the fact that it was not he who held the inquiry and recorded the evidence. In the result, the order of the Commissioner was in breach of the principles of natural justice."

In the case of *Karunadasa Vs Unique Gem Stones Ltd and Others*[6] "the Commissioner of Labour (2nd respondent) acting on the recommendation of an Assistant Commissioner (3rd respondent) to whom he had delegated the power to hold an inquiry as permitted by section 11 of the Termination of Employment of Workmen (Special Provisions) Act No.45 of 1971, held that the termination of services of the appellant workman was contrary to section 2 (1) of the Act and ordered his reinstatement with back wages. The 2nd respondent failed to give reasons for his decision, though requested by the 1st respondent employer." Justice Fernando held as follows : "Natural justice also means that a party is entitled to a reasoned consideration of his case ; and whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial

reveiw commences, the decision may be condemned as arbitrary and unreasonable. The mere fact that the 3rd respondent held the inquiry does not vitiate the 2nd respondent's order but the facts, in particular the 2nd respondents failure to produce the 3rd respondent's recommendation, justified the conclusion that there were no valid reasons, and that natural justice had not been observed."

In *Unique Gemstone Ltd Vs Karunadasa and Others*[7] *Senanayake J* observed thus : "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 decisions. Though the Termination of Employment 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. 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 social changes in society.There is continuing momentum in administrative law towards transparency on decision making. The failure to give reasons is a breach of section 17 of the Termination of Employment Act, because it is inconsistent with the principles of natural justice."

In the case of *Kegalle Plantations Ltd Vs Silva and Others*[8] *Senanayake J* remarked as follows : The present trend which is 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 amounts to a failure to be manifestly seen to be doing justice."

The view taken in the above judicial decisions is that Administrative Tribunals should give reasons for their decisions. However a contrary view has been expressed in certain judicial decisions. In the case of *Samalanka Ltd Vs. Weerakoon, Commissioner of Labour and Others*[9] Kulatunga J held as follows : In the absence of a statutory requirement there is no general principle of Administrative Law that natural justice requires the authority making the decision to adduce reasons, provided that the decision is made after holding a fair inquiry."

In the case of *R. Vs Higher Education Funding Council, ex parte Institute of Dental Surgery*[10], Sedley J held as follows : "There was no duty on administrative bodies to give reasons for their decisions either on general grounds of fairness or simply to enable any grounds for judicial review of a decision to be exposed."

I have earlier discussed the facts of this case. Having regard to the facts of this case, I would like to follow the view that natural justice demands the Administrative Tribunals to give reasons for their decisions. I have earlier pointed out that the 1st respondent failed to give reasons for its decisions contained in P56 and P61. Applying the principles set out in the above judicial decisions which held the view that Administrative Tribunals should give reasons for their decisions, I hold that the 1st respondent's decisions contained in P56 and P56 and P61 should be quashed.

The 1st respondent before taking the decisions in P56 and P61 did not give an opportunity to the petitioner to place the facts as to why its application should not be rejected. This failure on the part of the respondents amounts to violation of rules of natural justice. On this ground alone the decisions contained in P56 and P61 should be quashed and the respondent must be directed to determine the application of the petitioner P55 according to law. I have earlier pointed out that the respondents had failed to give reasons for their decisions contained in P56 and P61 ; the respondents, before rejecting the application P55, have not given an opportunity to the petitioner to place the facts before them as to why the application should

not be rejected ; and the respondents had not acted under section 18 (3) of the Act. I therefore hold that the decisions of the 1st respondent contained in P56 and P61 are unreasonable. It is pertinent to consider whether the unreasonable decisions of Administrative Tribunals could be quashed by the Court of Appeal in the exercise of its writ jurisdiction. In this regard I would like to consider certain judicial decisions. In the case of *Wheeler Vs Leicester City Council* [11] a city Council had refused, contrary to its previous practice, to allow a local rugby football club to use the city's sports ground because three of its members had played in South Africa." The House of Lords held that it was unreasonable to punish the club for not conforming to the Council's political attitudes. The Council's decision was quashed. Lord Templeman in the above case remarked thus : " A private individual or a private organization cannot be obliged to display zeal in the pursuit of an object sought by a public authority and cannot be obliged to publish views dictated by a public authority. ..... The council could not properly seek to use its statutory powers of management or any other statutory powers for the purposes of punishing the club when the club had done no wrong."

In the case of *Rex Vs Tynemouth District Council Lord Russel CJ* [12] held as follows. "A Local Authority was not entitled, as a condition of approving building plants, to stipulate that the applicant should provide and pay for sewers outside his own property." Issuing the writ of mandamus against the Council, Lord Russel CJ further held that this decision of the Council was utterly unreasonable.

In the case of *Regina Vs Birmingham Licensing Planning Committee* [13] "An elaborate system had been set up by the statutory licensing planning committee in Birmingham to deal with the licences relating to the many public houses destroyed in the Second World War. With Home Office approval and for some twenty years they had refused to approve applications unless the applicant purchased outstanding licences sufficient to cover his estimated sales. The main object of the policy was to relieve the city of the cost of compensating the holders of the outstanding licences. At the

current market price of these Licenses the proprietors of a large new hotel would have had to pay over 14000 Pounds. At their instance the Court of Appeal condemned the whole system as unreasonable." Lord Denning MR said : "I think it is unreasonable for a licensing planning committee to tell an applicant : 'we know that your hotel is needed in Birmingham and it is well placed to have an on-licence, but we will not allow you to have a licence unless you buy out the brewers.' They are taking into account a payment to the brewers which is a thing they ought not to take into account."

Considering the above judicial decisions, I hold that an unreasonable decision of a Public Officer or Administrative Tribunal can be quashed by the Court of Appeal in the exercise of its writ jurisdiction. I have earlier held that the decisions of the 1st respondent contained in P56 and P61 were unreasonable. Therefore the said decisions of the 1st respondent can be quashed on the ground that they are unreasonable.

For the reasons set out in my judgment, I issue a writ of certiorari quashing the decisions contained in P56 and P61. Further I issue a writ of mandamus directing the 1st respondent to determine the application of the petitioner marked P55 according to law.

This Court in CA Application No. 252/2005 (decided on 11.05.2005), CA Application No. 2146/2004 (decided on 18.07.2005), and CA Application No. 274/2005 (decided on 01.08.2005) issued writs of certiorari against the 1st respondent on identical issues alleged in this petition. The 1st respondent does not seem to follow the said decisions in the aforesaid applications. Considering the facts and the circumstances set out above, the 1st respondent is directed to pay a sum of Rs. 25,000/- as costs to the petitioner.

SRIPAVAN J. – *I agree.*

Application allowed.

NANDAWATHIE

VS.

JINASOMA

COURT OF APPEAL.
WIJEYARATNE., J.
CALA 301/2002 (LG)
DC GAMPAHA 35471/L.
NOVEMBER 29, 2004.

Civil Procedure Code, sections 121, 175, 175(2) – Refusing to allow document not in the list – Discretion of Court ? – Failure to list or delay of producing documents ? – Consequences.

On leave being sought –

HELD :

Per Wijeyaratne, J.

(1) Upon the literal reading of the provisions of section 121 read with section 175, it is true that the document that has not been listed as required by law should not be allowed in evidence. However, the purpose of reading such document is to establish facts and assist Court in determining the facts. The purpose of reading documents in evidence is either to support the contention of the party or to destroy the case of the opposite side.

(2) Mere delay in producing the documents or failure to list same on the part of the defendant should not stand in the way of serving ends of justice, through the establishment of the truth.

(3) In this particular instance the trial Judge who allowed another document, which is referred to in the other document to establish such fact is not justified in rejecting the 2nd document. He has not used his discretion judiciously.

APPLICATION for leave to appeal with leave being granted from an order of the District Court of Gampaha.

Case referred to :

Kandiah vs. Visvanadan 1991 1 Sri LR 269.

S. A. D. S. Suraweera for petitioner.
M. U. M. Ali Sabry for respondents.

Cur. adv. vult.

August 1, 2005.
WIJEYARATNE J.,

This is an application for leave to appeal from the Order of the Learned District Judge refusing to allow the document marked V14 to be read in evidence by the witness for the defendant when giving evidence. This document was to be marked at the trial in a case instituted by the plaintiff seeking a declaration that the plaintiff is entitled to right of servitude over the land of the defendant given access of his land described in schedule 02 of the plaint or in the alternative to declare the plaintiff entitled to such right of way of necessity.

The defendant filing answer denied the existence of such road or the right of the plaintiff to use such road over her land and said

that the means of access to the land claimed by the plaintiff was given in the plan bearing number 65/64 marked as lot 05 in the said plan.

After parties raised several issues on the disputed fact, the case proceeded to trial by the plaintiff giving his evidence, leading other evidence of the other witnesses and reading the several documents in evidence and thereafter the defendant called two witnesses and through the last witness tried to produce these documents, a plan showing the sub division of lots 9 and 10 in the said plan No. 65/64 being subdivided.

The defendant's counsel moved to mark this plan No. 310-2K through the last witness of the defense who also produced deed No. 48 dated 03.01.2002 by which the plaintiff in the present action conveyed the lot 02 of Plan No. 310-2K marked V14 being sub division of lot 9 and 10 of Plan No. 65/64. However, when this plan V14 was to be read in evidence, the counsel for the plaintiff objected to the same on the ground that the same has not been listed under-section 121 of the Civil Procedure Code.

After hearing submissions in support of the objections and in defense, the Learned Trial Judge made order refusing to allow such document being marked. The Learned trial Judge refused the application on the basis that it is not a fit case for him to exercise the discretion under section 175(2) of the Civil Procedure Code because the trial commenced on 21.01.1997.

The defendant has not taken any steps to list these documents even as at 01.04.2002. The Learned District Judge appears to have considered that the defendant is not justified in not listing this

document even after several years of the commencement of the trial. However the defendant's position was that the defendant was not relying on this document to prove her case and that was not one of his documents but that of the plaintiff who suppressed the existence of such documents and such document is contrary to the position taken up by the plaintiff and the claim made in his plaint and in evidence.

The very document is dated 22.08.2001 the date after the closure of the plaintiff's case.

Being aggrieved by the said order of the Learned District Judge refusing to allow to read such document in evidence, the defendant made this application for leave to appeal. Court granted leave on the question whether the Learned District Judge has used his discretion under section 175(2) of the Civil Procedure Code lawfully and justifiably.

In considering the argument it is significant to note that the Learned District Judge has allowed V13, Deed No. 48 dated 03.01.2002 to be read in evidence without any objection from the Plaintiff. The document sought to be imported and rejected namely V14 is the very document that is referred to in document V13 read in evidence.

Examining the evidence on record it is clear that the defendant's counsel attempted to establish the fact that the very Plaintiff who denied the existence on plan No. 65/64 and having acted upon it has during the pendency of the action too acted upon the same and proceeded to subdivide lot No. 9 and 10 of 65/64 dated 06.04.1964. V13 clearly established that the very plaintiff has transferred the rights on said deeds describing the property

conveyed as subdivided lots 9 and 10 of Plan No. 65/64, the alternative is that facts so established is inconsistent with the plaintiff's position from his conduct and the fact that the plaintiff's evidence in support of his claim cannot justifiably be acted upon.

Upon the literal reading of provisions of section 121 read with section 175, it is true that the document has not been listed as required by law and should not be allowed in evidence. However the purpose of the reading of such document is to establish facts and assist Court in determining the facts after ascertaining the truth is most important to be borne in mind of the trial Judge. The purport of reading documents in evidence is either to support the contention of the party or to destroy the case of the opposite party.

In the case of *Kandiah vs. Visvanadan*[1] it was held that whether leave of Court should be granted under section 175(2) to read the document not listed under 121(2) is a matter eminently within a discretion of the trial Judge. The same Judgment held further the precedents indicated the instances of granting such leave as –

(1) where it in the interest of justice to do so.
(2) where it is necessary for the ascertaining of the truth
(3) .....
(4) where sufficient reasons are adduced for the failure to list the documents. (as for instance where a party is ignorant of its existence before the trial)

This instance eminently fit the facts of the present case. The defendant's position of the fact that they became aware, of these documents subsequently ; the very date of the documents indicates the preparation of the same only after the closure of the plaintiff's case. The reading of the evidence in document marked V14 was

sought in the name of justice and for the ascertainment of the truth namely the plaintiff who denied the plan No. 65/64 being acted upon has himself acted contrary to his evidence and denial of such facts. Besides, when the Court has allowed the document V13 conveying the land described as being depicted in Plan V14, there is no justification for shutting out such plan only because even otherwise the Court that admitted document marked V13 cannot overlook the fact of the description of the property conveyed by the plaintiff with reference to the plan, the use of which he denied.

In such circumstances, the mere delay of producing these documents or failure to list the same on the part of the defendant should not stand in the way of serving ends of justice through the establishment of the truth and in this particular instance the learned Trial Judge who allowed one document to establish such fact is not justified in rejecting the 2nd document. Therefore he has not used his discretion judiciously.

Accordingly the appeal is allowed and the Learned District Judge is directed to admit the document marked V14 bearing plan No. 310-2K dated 22.08.2001 prepared by J. M. D. T. Patrick Reginald, Licensed Surveyor and the Order is made setting aside the impugned order of the Learned District Judge dated 16.07.2002 rejecting the said document marked V14. The Learned Trial Judge is directed to admit the said document in evidence and proceed with the trial accordingly to law. The appeal is allowed with costs.

Appeal allowed.

Trial judge directed to admit the document in evidence.