KARUNADASA

v.

UNIQUE GEM STONES LTD., AND OTHERS

SUPREME COURT.
FERNANDO, J.,
WADUGODAPITIYA, J. AND
ANANDACOOMARASWAMY, J.
S.C. APPEAL NO. 27/96
C.A. APPLICATION NO. 393/95
OCTOBER 14, 23 AND NOVEMBER 27, 1996.

Termination of employment of workman (speicl provisions) – Act No. 45 of 1971 Sections 2(1) and 11 of the Act – Labour Commissioner's order – Natural Justice.

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. No material was furnished by the 2nd or 3rd respondent at the hearing of the application for certiorari; nor was the recommendation of the 3rd respondent produced. The Court was not asked by the 1st respondent to call for the record. Neither the 1st nor the 2nd respondent was represented at the hearing in the Court of Appeal.

Held:

(1) 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 review commences, the decision may be condemned as arbitrary and unreasonable.

(2) 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 respondent's 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.

Cases referred to:

1. *Padfield v. Minister of Agriculture* (1968) A.C. 997.
2. *R. v. Secretary of State, ex. p. Doody* (1993) WLR 154, 3 All ER 92.
3. *Samalanka v. Weerakoon* (1994) 1 Sri L.R. 407.
4. *Brooke Bond Ceylon Ltd., v. Tea, Rubber (etc.) Workers' Union* (1973) 77 N.L.R. 6.
5. *Ratnayake v. Fernando* S.C. 52/86 *S.C.* minutes 20 May 1991.
6. *Minister of National Revenue v. Wrights' Canadian Ropes Ltd.*, (1947) A.C. 109, 123.
7. *Rex v. Civil Service Appeal Board, ex. p. Cunningham* (1991) 4 ALL ER 310, 543.
8. *Payne v. Lord Harris of Greenwich* (1981) 2 ALL ER 842.
9. *Bandara v. Premachandra* (1994) 1 Sri L.R. 301.
10. *Nagalingam v. de Mel* (1975) 78 N.L.R. 231.

APPEAL from the judgment of the Court of Appeal. *

D. W. Abeykoon, P.C., with *Ms Nuwanthi Dias* for respondent-appellant.

Varuna Basnayake, P.C. with *Tyrone Weerakkody* and *Marina Fernando* for petitioner-respondent.

K. C. Kamalasabayson, P.C., A. S. G. with *U. Egalahewa, S.C.* for 2nd and 3rd respondents.

Cur. adv. vult.

* 1995 2 SLR 357.

December 5, 1996.
FERNANDO, J.

The respondent-appellant is a workman who was employed by the petitioner-company, the 1st respondent, from 1989. He says that when he reported for work on 30.5.94 he was told that there was no work for him. He wrote to the 1st respondent on 6.6.94 alleging termination and asking that he be reinstated. In a reply dated 8.6.94 the 1st respondent denied that his services had been terminated, and stated that he was considered to have vacated his post as he had absented himself from work without cause, and without informing the 1st respondent.

The appellant then complained to the 2nd respondent, the Commissioner of Labour, under the Termination of Employment of Workmen (Special Provisions) Act, No. 45 of 1971, as amended, that the 1st respondent had terminated his services in violation of section 2 of the Act., and asked for reinstatement with back wages. The 1st respondent denied termination, maintaining that the appellant was guilty of frequent absenteeism and had vacated his post by reason of absence from 23.5.94.

The 2nd respondent says that he delegated to the 3rd respondent, an Assistant Commissioner of Labour, the function of holding an inquiry, as permitted by section 11. At that inquiry several witnesses gave evidence. The 2nd respondent says that, having considered the notes of inquiry (which were made available to the parties), and the 3rd respondent's recommendation (which was not), he approved that recommendation and made his order dated 30.4.95, which recorded, without further elaboration, that the appellant's services had been terminated contrary to section 2(1) of the Act, and directed reinstatement with effect from 1.6.95 and back wages of Rs. 13,200. Although by letter dated 19.5.95 the 1st respondent expressed dissatisfaction with that order, and asked the 2nd respondent to disclose his reasons, he merely repeated what he had already said.

The 1st respondent applied to the Court of Appeal for certiorari to quash the order on the ground that the failure to give reasons was a violation of the principles of Natural Justice.

The 2nd and 3rd respondents did not furnish any further information. The 3rd respondent did not produce his recommendation, and did not make his record available to the Court of Appeal, and the 1st respondent did not ask the Court to call for and examine the record. Neither the 2nd nor the 3rd respondent was represented at the hearing in the Court of Appeal. The Court of Appeal in a well considered order held that the 2nd respondent was under a duty to give reasons, citing *Padfield v. Minister of Agriculture*[1]; and *R v. Secretary of State, ex p. Doody*[2].

The appellant obtained special leave to appeal on the following questions:

1. Has the Court of Appeal erred in taking the view that there is a general principle of Administrative Law that Natural Justice requires the authority making the decision to adduce reasons?

2. In the instant case, has the Commissioner of Labour held a fair hearing and acted within jurisdiction? If so, is his decision vitiated by the failure to give reasons?

3. Is the impugned order (of the Commissioner of Labour) vitiated by reason of the fact that the 2nd respondent (the Commissioner of Labour) who delivered the order did not hold the inquiry, nor did he give reasons for his decision?

Mr. D. W. Abeykoon, PC, for the appellant submitted that the 2nd respondent was under no duty to give reasons, citing *Samalanka v. Weerakoon*[3]:

> "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 give reasons, provided that the decision is made after holding a fair inquiry."

He contended that appellate jurisdiction was different to writ jurisdiction. Although there were decisions (such as *Brooke Bond*

Ceylon Ltd. v. Tea, Rubber (etc.) Workers' Union,[4]) that the conferment of a right to appeal against a decision implied a duty to give reasons, the same inference, he argued, could not be drawn from the availability of the right of judicial review. While conceding that in other Commonwealth jurisdictions Administrative Law seemed now to be recognising a duty to give reasons, he nevertheless argued that this was not the position in Sri Lanka, in the absence of statutory provisions.

Mr. K. C. Kamalasabayson, PC, for the 2nd and 3rd respondents submitted, however, that today Administrative Law often did recognise a duty to give reasons, although there were many exceptions. He drew our attention to the following extracts from Wade, (Administrative Law, 7th Edition) dealing with "Reasons for decisions":

* The principles of Natural Justice have not in the past included 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 ... 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 541-542 cited with approval in *Ratnayake v. Fernando*[5])

* Although there is no general rule of law requiring the giving of reasons, an administrative authority may be unable to show that it has acted lawfully unless it explains itself ... Going still further the Privy Council held that a Minister who had failed to give reasons for a special tax assessment had not shown that it was correct and that the taxpayer's appeal

must be allowed (citing *Minister of National Revenue v Wrights' Canadian Ropes Ltd.*[6]). An award of abnormally low compensation to an unfairly dismissed prison officer by the Civil Service Appeal Board, which made it a rule not to give reasons, was quashed by the Court of Appeal, holding that Natural Justice demanded the giving of reasons both in deciding whether dismissal was unfair and in assessing compensation, since other employees were entitled to appeal to industrial tribunals which were obliged by law to give reasons (*Rex v. Civil Service Appeal Board ex p. Cunningham*[7]).

* In a series of cases it has been held that statutory tribunals must give satisfactory reasons in order that the losing party may know whether he should exercise his right of appeal on a point of law ..... the House of Lords held that a life prisoner was entitled to be told the Home Secretary's reasons for rejecting the advice of the trial judge as to the penal element in the sentence [citing *R v. Home Secretary ex p. Doody*] (*supra*) ... the House of Lords has indicated that if a minister fails to explain a decision satisfactorily, it may be condemned as arbitrary and unreasonable [citing *Padfield v. Minister of Agriculture, Fisheries and Food – supra*].

* Although the lack of a general duty to give reasons is recognised as an outstanding deficiency of Administrative Law, the judges have gone far towards finding a remedy by holding that reasons must be given where fairness so demands; and the decisions show that may now be the case more often than not. It has been held at first instance that English Law has now arrived at the point where the duty to act fairly imparts at least a general duty to give reasons, subject to necessary exceptions, and this conclusion seems well justified. (at 544-545)

In *Doody's* case (*supra*), Lord Mustill explained (at page 111) why he was departing from the reasoning in the previous cases. Among other matters, he said that:

"... even in such a short time as 13 years the perception of society's obligation towards persons serving prison sentences has perceptibly changed. Finally because of the continuing momentum in Administrative Law towards openness of decision-making. Sound as it may well have been at the time, the reasoning of *Payne v. Lord Harris of Greenwich*[8], cannot be sustained today".

There is an even more compelling reason for Administrative Law in Sri Lanka taking a similar stride. As Mr. Kamalasabayson reminded us, Article 12(1) of the Constitution now guarantees the equal protection of the law. In the context of the machinery for appeals, revision, judicial review, and the enforcement of fundamental rights, giving reasons is becoming, increasingly, an important "protection of the law" (see, for instance, *Bandara v. Premachadra*[9]) for if a party is not told the reasons for an adverse decision his ability to seek review will be impaired (cf. Wade, 541-542).

It would seem that in *Samalanka v. Weerakoon* (*supra*) the Court did not have the benefit of these citations. Further, with respect, it is difficult to understand why the Court held that there was no duty to give reasons "provided" – and that means if, and only if – "the decision is made after holding a fair inquiry". What if there had been **no** fair inquiry? Then would there have been a duty to give reasons? But if there had been no fair inquiry, the order would have to be quashed in any event – and so the failure to give reasons would not have been so important in that situation. It seems to me that the question whether there is a duty to give reasons is a matter wholly unrelated to the fairness (or otherwise) of the antecedent inquiry.

I must now turn to the questions on which special leave to appeal was granted.

1. Senanayake, J., in the Court of Appeal did not attempt to lay down an inflexible general principle that Natural Justice always requires an administrative authority to give reasons, although he did perceive a **trend** in that direction. It seems to me that his observations – that giving reasons for a decision is one of

the fundamentals of good administration, and is implicit in the requirement of a fair hearing – were made, and must be understood, in the context of the position of the Commissioner of Labour under the Termination Act.

The 2nd respondent did not hold the inquiry. He was entitled to act on the basis of the inquiry held, and the recommendations made, by the 3rd respondent: *Nagalingam v. de Mel*[10]. In that case a perusal of the original record disclosed the Assistant Commissioner's recommendations, on the basis of which the Commissioner made the order; and there appears to have been no complaint of a lack of reasons. In this case the Court of Appeal did not have the record or the 3rd respondent's recommendation.

To say that Natural Justice entitles a party to a hearing does not mean merely that his evidence and submissions must be heard and recorded; it necessarily means that he is entitled to a **reasoned** consideration of the case which he presents. And whether or not the parties are also entitled to be told the reasons for the decision, if they are with held, once judicial review commences, the decision "may be condemned as arbitrary and unreasonable"; certainly, the Court cannot be asked to presume that they were valid reasons, for that would be to surrender its discretion. The 2nd respondent's failure to produce the 3rd respondent's recommendation thus justified the conclusion that there **were** no valid reasons, and that Natural Justice had not been observed.

2. The fact that the 3rd respondent held a fair inquiry and otherwise acted within jurisdiction does not excuse the failure to give reasons.

3. While the mere fact that the 3rd respondent held the inquiry does not vitiate the 2nd respondent's order, the 2nd respondent's failure to give reasons is all the more serious because it was not he who held the inquiry.

The judgment of the Court of Appeal that Natural Justice required that reasons be given must therefore be affirmed.

But that does not end the matter. The legal position was not clearly appreciated, and the parties do not seem to have realised the need to invite the Court of Appeal to call for and examine the record and the recommendation. In the course of the hearing in this Court, Mr. Kamalasabayson tendered copies of the recommendation made by the 3rd respondent, and undertook to make the 2nd respondent's file available whenever required. The 1st respondent consented, in the interest of justice, to the case being re-heard by the Court of Appeal, after calling for and examining the record and the recommendation. I make order accordingly. There will be no costs. I must place on record our appreciation of the manner in which Mr. Kamalasabayson assisted this Court.

WADUGODAPITIYA, J. – I agree.

ANANDACOOMARASWAMY, J. – I agree.

Court of Appeal ordered to re-hear the case.