

1943

Present: Jayetileke J.

## VALUE v. COMMISSIONER OF INCOME TAX.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Mandamus*.

*Income Tax Ordinance (Cap. 188) s. 2—Power of Commissioner to appoint authorised representative—Right to revoke approval—No public inquiry necessary—Writ of Mandamus.*

The definition of the expression "authorised representative" in section 2 of the Income Tax Ordinance implies that the Commissioner has power to approve or disapprove of a person as an authorised representative.

The Commissioner has also power to revoke his approval if the person approved subsequently becomes unfit to continue as an approved representative.

Where an application is made for his approval there is a legal duty imposed upon him to exercise his discretion judicially and his decision is not liable to be controlled by the Supreme Court if he has acted fairly and honestly.

The Commissioner is not bound to frame a charge and hold a public inquiry before he withdraws his approval of a person as an authorised representative.

**T**HIS was an application for a writ of *Mandamus* on the Commissioner of Income Tax.

*C. Suntheralingam* in support.

*H. H. Basnayake, C.C.*, for Attorney-General, respondent.

*Cur. adv. vult.*



November 25, 1943. JAYETILEKE J.—

The petitioner obtained from this Court a rule for a *mandamus* to compel the Commissioner of Income Tax "to withdraw his decision as communicated by his letter dated December 23, 1941". By that letter the Commissioner informed the petitioner that for the reasons stated by him at an interview he had decided to withdraw the petitioner's approval as an authorised representative under the Income Tax Ordinance for the year 1942-1943 and subsequent years.

In 1932 the petitioner was approved by the Commissioner as an authorised representative and he functioned as such till 1941. On March 20, 1941, Mr. Paulusz, an assistant assessor in the Department of Income Tax, made an assessment on A. S. S. Sangaralingam Chettiar for the year 1937-1938. On April 16, 1941, the assessee appealed against the assessment. Thereupon the Commissioner made an order under section 76 (2) of the Ordinance that payment of the tax be held over pending the result of the appeal. On August 1, 1941, the Commissioner cancelled the said order as the appellant failed to take the necessary steps to prosecute the appeal.

On December 15, 1941, the petitioner had an interview with Mr. Paulusz on behalf of the assessee in connection with the appeal. Mr. Paulusz says that at the end of the interview the petitioner said—"If you like any little thing—this is not from me but they asked me to ask you—they will let you have it."

Mr. Paulusz understood this to be an inquiry whether he would accept an illegal gratification from the assessee and he promptly reported the matter to his immediate superior, Mr. Burah, who called up the petitioner and asked him for an explanation. Mr. Burah says that the petitioner told him that he could not recollect the exact words used by him but what he wanted to convey was that he was willing to give any further information. Mr. Burah was satisfied as to the truth of Mr. Paulusz's complaint and he reported the matter to the Commissioner.

Exhibit C is a note of an interview the Commissioner had with the petitioner about the complaint. It is dated December 23, 1941, and it reads:—"I inquire from him what his explanation is of the complaint made by Mr. Paulusz. He states that this case had been previously dealt with by another accountant and that after he was engaged the assessor worried the client a great deal and there was great delay in settling the case. His client had said that perhaps it may be because the assessor wants money from them. When he saw Mr. Paulusz he mentioned this but before he could finish what he was saying Mr. Paulusz got excited and took him to Mr. Burah."

The Commissioner referred to the file and found that there was no delay on the part of the assessor but it was the petitioner who was delaying and asking for time. He also found that there was nothing to indicate that the assessor was in any way worrying the assessee and that he was only inviting his attention to the appeal and asking for figures.

He thereupon made the following order:—"I have no doubt that Mr. Paulusz's version is the correct one, and that Mr. Value had attempted to make a suggestion that his client was willing to give a present to the assessor if he would settle the appeal in their favour. I consider this a



very serious offence. An approved accountant who could make such a suggestion is totally unsuitable to be kept on the list. In File 21/96 this same accountant made an improper request to an assistant assessor that he should make an estimated additional assessment on a client so that the accountant may be given the opportunity of recovering his fees. I consider Mr. Value unfit to be continued as an approved accountant and accordingly withdraw approval."

On December 23, 1941, by his letter quoted in para 7 of the petitioner's petition the Commissioner informed the petitioner that he had decided to withdraw his approval and that no accounts prepared by him for 1942-1943 or subsequent years would be accepted and that he will not be permitted to represent his clients for Income Tax purposes.

Thereafter the petitioner did nothing till May 29, 1942, when he wrote the letter marked D to the Commissioner. In that letter he states:—

" I took your decision, Sir, and, without appearing to question it now, I would respectfully urge on you that it was made on the uncorroborated testimony of one person, in each instance, in respect of two alleged statements made by me. I do not say, Sir, that it is not competent for you to do so. I only pray that you will consider the possibility of a misunderstanding on the part of Mr. Paulusz who first complained against me . . . ."

This letter contains an *ad misericordiam* appeal to the Commissioner to reconsider his decision. It seems to me that what the petitioner wanted the Commissioner to do was to make a fresh order approving him in view of his long connection with the Department. That is the only reasonable interpretation that can be placed on the letter having regard to the fact that the petitioner stated that he accepted the Commissioner's decision.

The Commissioner presumably refused to accede to the petitioner's request and the latter thereupon interviewed the Commissioner with Counsel. The note of the interview, X, shows that the attitude taken up by the petitioner at the interview was different from that taken up by him in the letter D. Counsel seems to have urged that a formal charge should have been framed against the petitioner and a full and proper inquiry held.

The Commissioner considered the points raised and decided to adhere to the order made by him on December 23, 1941. The petitioner made the present application on November 3, 1942. At the very outset I may say that one of the principal general rules applicable to *mandamus* is that the Court will refuse to grant it unless the application is made in proper time. In my opinion there has been in this case an unreasonable delay in making the application. The order complained of was made by the Commissioner on December 23, 1941, and the present application was made on November 3, 1942.

The writ of *mandamus* is a high prerogative intended for the purpose of supplying defects of justice. It is founded upon a passage of *Magna Carta* that " the Crown is bound neither to deny justice to any man nor to delay any man in justice."



*In re Application for a Writ of Mandamus on the Assistant Government Agent, Uva*<sup>1</sup>, Abrahams C.J. said:—

“the petitioner must show that the officer against whom the remedy is prayed for has infringed a right or, to put it another way, that an officer who is under a duty to do something on his behalf has refused to do so.”

The petitioner alleges in his petition that what he told Mr. Paulusz was that “his client wished to know whether by withdrawing the stand-over order the officer concerned expected something”. His complaint seems to be that the Commissioner did not give him an opportunity of establishing his defence by cross-examining Messrs. Paulusz and Burah.

At the argument before me Mr. Suntheralingam contended that the Commissioner had no power to revoke his approval and that if he had the power he could only exercise it after a proper inquiry.

There is no express provision in the Ordinance which confers on the Commissioner the power to approve or disapprove a person as an authorised representative. But the definition of the expression “authorised representative” in section 2 presupposes such a power, which, in the absence of an express provision, must be taken to be implied.

Having regard to the general scheme of the Ordinance and the nature of the work an authorised representative is permitted to do, which is specified in sections 71 and 73 (2) of the Ordinance, I am inclined to the view that the Legislature did not intend that the Commissioner should give his approval for all time but only for the particular year of assessment. A fresh approval is therefore necessary for the subsequent year.

As the Ordinance does not provide that the approval should be given in a particular form a person who has been previously approved is entitled to assume that he has been approved for the subsequent year unless the Commissioner informs him that he has decided to withhold his approval.

The question arises whether the Commissioner has no power to revoke his approval if the person approved subsequently becomes insane or is found to be incompetent or guilty of fraudulent or corrupt practices or otherwise becomes unfit to continue as an authorised representative.

I think such a power is inherent in the absence of anything to the contrary in the Ordinance. The approval amounts to no more than permission given by the Commissioner to an accountant to represent a taxpayer for the purposes mentioned in sections 71 and 73 (2) of the Ordinance.

The word used in the Ordinance is “approved” and that implies that the Commissioner is invested with a discretion to approve or not. The taxpayer is given the right by sections 71 and 73 (2) to do certain acts through the medium of an authorised representative. When an application is made to the Commissioner for his approval I think there is a legal duty imposed on him to exercise his discretion judicially. In the words of Lord Mansfield in *Rex v. Askew*<sup>2</sup>, “the discretion must be exercised in a manner fair, candid and unprejudiced and not arbitrary,

<sup>1</sup> 39 N. L. R. 450.

<sup>2</sup> 4 Burr. 2189.



capricious and biassed, much less coupled with resentment or personal dislike”.

His decision is not liable to be controlled by this Court if he has acted fairly and honestly.

In *Smith v. Chorley Rural Council*<sup>1</sup>, Lopes L.J. said:—

“The rule applicable to such a case is that the exercise of the discretion of a tribunal, however erroneous it may be, upon a question within its jurisdiction and when honestly exercised, cannot be questioned. Any other conclusion would lead to this—that although the Legislature has entrusted to a local tribunal a discretion as to a particular matter which they consider, and as to which they honestly exercise their discretion, still the Court would direct them to exercise their discretion in a different way—a result which in my opinion would be absurd.”

The only other question is whether the Commissioner should have framed a charge against the petitioner and held a public inquiry. This question was considered in the *King v. Archbishop of Canterbury*<sup>2</sup>, where the right of approving a fit and proper person to an endowed lectureship was by statute vested in the Bishop of the Diocese. Lord Ellenborough C.J. said:—

“It has been urged, however (and much stress was laid upon it in the argument), that it was the duty of the bishop to have instituted his inquiry upon the subject, in the manner and by the means usually adopted in Courts of Law, that is, by the formal production of the charges made against the applicant in a judicial course, and by a public and solemn hearing of the several parties, their proofs and witnesses. But in the first place, what power has the bishop to compel the attendance of parties and witnesses? What power has he to administer an oath? or what word is there in the Act of Parliament that prescribes the mode by which he shall attain a conscientious satisfaction on the subject? It only requires him first to approve, that is, before he licenses; and in so doing, it virtually requires him to exercise his conscience duly informed upon the subject; to do which he must duly, impartially, and effectually inquire, examine, deliberate, and decide”.

The same view has been taken by the House of Lords in *Board of Education v. Rice*<sup>3</sup>, and *Local Government Board v. Arlidge*<sup>4</sup>. With this view I am in respectful agreement.

On the materials before me I am unable to say that the opinion formed by the Commissioner was not fair and honest, or that he did not give the petitioner a fair hearing before making his order. Whether it was proper for the Commissioner to withdraw his approval was a question for him and not for me to determine. The Legislature has left the decision of that question to him. All I have to decide is whether he has honestly exercised his discretion and I am of opinion that he has.

The rule is discharged with costs.

*Rule discharged.*

<sup>1</sup> (1897) Q.B.D. 678.

<sup>2</sup> 15 East. 789.

<sup>3</sup> (1911) A. C. 179.

<sup>4</sup> (1915) A. C. 120.