

## Jayasena v. Punchiappuhamy and Another

COURT OF APPEAL.  
RANASINGHE, J. AND TAMBIAH, J.  
C.A. APPLICATION NO. 130/80.  
AUGUST 11, 1980.

*Writ of certiorari—Purchase of right to prospect for gems—licence issued to petitioner—Revocation of such licence without inquiry—Natural justice—Whether administrative or judicial act—Will writ lie in these circumstances—Further relief granted by way of order restoring such licence—Writ of mandamus.*

At a gem auction held by the State Gem Corporation, Ratnapura Branch the petitioner purchased the right to prospect for gems in an area depicted as Lot 17 on a Plan. A licence was issued to him valid for one year. After a period of over 7 months the licence was recalled and the 2nd respondent who was the Regional Manager of the Corporation's Ratnapura Branch, informed the petitioner that he was cancelling the same. The petitioner was not given an opportunity to show cause against the said cancellation.

The petitioner thereupon filed this application for a writ of certiorari to quash the decision of the 2nd respondent; and for a writ of mandamus to compel the respondents to issue his licence allowing him to prospect for the balance period of the one year which was unexpired when the licence was recalled.

It was submitted on behalf of the respondents that the revocation of the licence was an administrative act and therefore not subject to any requirement of natural justice.

#### **Held**

(1) The petitioner had the right to prospect for gems and a licence valid for one year had been issued. The revocation of the petitioner's licence took away his existing right to prospect for a further period of about four months and this was done without his being heard. In these circumstances the petitioner had made out a case for the issue of a writ of certiorari quashing the order cancelling his licence.

(2) The petitioner who had also prayed for the issue of a writ of mandamus was entitled to a further order directing the respondents to extend the validity of his licence for the unexpired period thereof. The respondents had in their affidavits not indicated that the Lot allotted to the petitioner was no longer available and the justice of the case required that the petitioner be granted this relief.

*Per* TAMBLIAH, J. :

"Recent decisions, in England and in this country, have advanced the frontiers of natural justice. The Writ of Certiorari is not confined to judicial or quasi-judicial acts. It extends even to administrative acts that affect the rights of subjects (per Samarakoon, C.J., in *Fernandopulle v. The Minister of Lands and Agriculture*)."

#### **Cases referred to**

- (1) *Fernandopulle v. Minister of Lands*, (1978) 79 (2) N.L.R. 115.  
 (2) *McInnes v. Onslow Fane*, (1978) 3 All E.R. 211; (1978) 1 W.L.R. 1520.

APPLICATION for writs of certiorari and/or mandamus.

A. C. Gooneratne, Q.C., with Iqbal Mohamed, for the petitioner.  
 T. M. S. Nanayakkara, for the respondents.

*Cur. adv. vult.*

September 19, 1980.

#### **TAMBIAH, J.**

At the gem auction held on 4th March, 1979, by the State Gem Corporation (Ratnapura Branch) the petitioner purchased for Rs. 10,000 the right to prospect for gems within the area of the river bed depicted as Lot 17 in Plan (P1). The licence issued to the petitioner is annexure (2R1), was valid for 1 year and in the normal course would have expired on 3.3.80. It was a condition of the grant of the licence that the petitioner would not damage the river banks and the lands adjoining Lot 17.

The petitioner has alleged in his petition that he commenced operations in Lot 17 on 8.3.79 and that on 12.3.79, the Enforcement Officer of the Gem Corporation inspected the site and was satisfied that the pits dug were within Lot 17. In May 1979, the 2nd respondent, the Regional Manager of the Corporation, visited the site.

and informed the petitioner that he was prospecting for gems outside the boundaries of Lot 17 and ordered him to come with his licence to the Regional Manager's office, at Ratnapura. He went to the 2nd respondent's office and the latter imposed a fine of Rs. 1,000 without any justification, which the petitioner paid in order to avoid a cancellation of his licence. He thereafter resumed gemming operations.

The petitioner further states that on 27.7.79, another officer of the Corporation visited the site and forcibly removed 3 water bailing pumps on the ground they were found outside Lot 17 and he was ordered to come to the 2nd respondent's office, the next day. On 28.7.79, he went to the 2nd respondent's office and the latter imposed a fine of Rs. 3,000, again without justification. On a complaint by him to the 1st respondent, the Chairman of the Corporation, an inquiry was fixed at the site for 17.8.79. On this day, one of the Chief Executive Officers of the Corporation, one Egalahewa, was present and a survey was made which revealed that the petitioner was prospecting within the boundaries of Lot 17. The water pumps were returned to him without the imposition of any fine. He again commenced operations.

According to the petitioner on 24.10.79, the 2nd respondent visited the site and ordered him to come to his office with his licence. He attended his office on 28.10.79 and without any inquiry, the latter took his licence and stated he was cancelling the same. The 2nd respondent had requested him to come to his office to give him back his licence and though he visited the office on several occasions, the licence was not returned to him. He also wrote to the 1st respondent but was unable to obtain relief. The petitioner has annexed Plan (P5) to show that he was prospecting for gems within the boundaries of Lot 17.

It is the petitioner's case that in revoking the said licence, the 2nd respondent was actuated by malice; the cancellation of the licence was made without any inquiry and there was a violation of the principles of natural justice. He has applied for a writ of certiorari to quash the decision of the 2nd respondent cancelling his licence; a writ of mandamus to order the respondents to issue to him his gemming licence to prospect for gems within Lot 17 in Plan (P1), and for an order directing the respondents to extend the validity of the licence for a further period of 4 months, being the unexpired period of the licence issued to him.

The 2nd respondent has filed affidavit and has stated that on a complaint (annexure 2R2) by the adjoining land owner, one Dharma Wijesinghe, that his land has been encroached upon by the petitioner, he was ordered by the 1st respondent by letter

dated 22.10.79 (annexure 2R3) to investigate and report ; that he visited the site and found that the petitioner had encroached on the land of Wijesinghe and had dug pits outside the boundary of Lot 17 ; that he submitted a report to the Chairman in 24.10.79 (annexure 2R6) and that he cancelled the said licence on being convinced that the petitioner had encroached on the adjoining land. He also annexed to his affidavit, complaints made by Dharma Wijesinghe to the Police regarding the alleged encroachment by the petitioner on his land (annexures 2R4 and 2R5). The 1st respondent has also filed affidavit supporting the position of the 2nd respondent. He has also stated that in view of the complaints against the petitioner and the contents of the report (annexure 2R6) he had justly and reasonably exercised his discretion and decided not to disturb the decision of the 2nd respondent. It is significant that neither the 1st nor the 2nd respondent has controverted the specific allegation of the petitioner that his licence was cancelled without due inquiry. Learned counsel for the respondents conceded that when the 2nd respondent visited the site on 24.10.79 to investigate and report, the petitioner was not present ; he also conceded that the petitioner was not given an opportunity of showing cause, before the revocation of his licence.

On the issue raised, that the order of cancellation of the licence was made in bad faith and with malicious intent, on the material placed before us, we are not inclined to hold with the petitioner. There remains the question of the violation of the principles of natural justice, to be considered.

Learned counsel for the respondents contended that the revocation of the licence was an administrative and not a judicial act and therefore not subject to any requirement of natural justice.

Recent decisions, in England and in this country, have advanced the frontiers of natural justice. The writ of certiorari is not confined to judicial or quasi-judicial acts. It extends even to administrative acts that affect the rights of subjects (*per* Samarakoon, C.J. in *Fernandopulle v. The Minister of Lands and Agriculture* (1) at 119).

The petitioner had purchased the right to prospect for gems for a sum of Rs. 10,000. The licence (2R1) was valid for one year and would have in normal course, expired on 3.3.80. The petitioner had a right to prospect for gems until the said date. The revocation of the permit in October 1979 took away from the petitioner his existing right to prospect for a further period of about 4 months and this was done without his being heard.

In *McInnes v. Onslow Fane* (2), Megarry V-C in discussing the type of decisions which are subject to the requirement of natural justice, observed (at p. 218)—

“First, there are what may be called the forfeiture cases. In these, there is a decision which takes away some existing right or position, as where a member of an organisation is expelled or a licence is revoked. Second, at the other extreme there are what may be called the application cases. These are cases where the decision merely refuses to grant the applicant the right or position that he seeks, such as membership of the organisation, or a licence to do certain acts. Third, there is an intermediate category, which may be called the expectation cases, which differ from the application cases only in that the applicant has some legitimate expectation from what has already happened that his application will be granted. This head includes cases where an existing licence-holder applies for a renewal of his licence, or a person already elected or appointed to some position seeks confirmation from some confirming authority.....

It seems plain that there is a substantial distinction between the forfeiture cases and the application cases. In the forfeiture cases, there is a threat to take something away for some reason ; and in such cases, the right to an unbiased tribunal, the right to notice of the charges and the right to be heard in answer to the charges (which, in *Ridge v. Baldwin*, (1963) 2 All ER 66 at 114, (1964), AC 40 at 132—Lord Hodson said were three features of natural justice which stood out) are plainly apt. In the application cases, on the other hand, nothing is being taken away, and in all normal circumstances there are no charges, and so no requirement of an opportunity of being heard in answer to the charges. Instead, there is the far wider and less defined question of the general suitability of the applicant for membership or a licence. The distinction is well-recognised, for in general it is clear that the courts will require natural justice to be observed for expulsion from a social club, but not on an application for admission to it. The intermediate category, that of the expectation cases, may at least in some respects be regarded as being more akin to the forfeiture cases than the application cases ; for although in form there is no forfeiture but merely an attempt at acquisition that fails. the legitimate expectation of a renewal of the licence or confirmation of the membership is one which raises the question of what it is that has happened to make the applicant unsuitable for the membership or licence for which he was previously thought suitable.”

The petitioner has made out a case for the issue of a Writ of Certiorari to quash the order of the 2nd respondent cancelling the licence issued to him. We accordingly quash the said order.

The petitioner has also prayed for the issue of a Writ of Mandamus to compel the respondents to issue him his gemming licence to work the said Lot 17 in Plan (P1). The licence was valid for one year commencing on 4.3.79 and expiring on 3.3.80; so that on the face of it, it would appear that the petitioner could not obtain an order from this Court for the issue of a licence for a period which has already expired. The petitioner, in his prayer, has asked that we make order, directing the respondents to extend the validity of the licence for a further period of 4 months, being the unexpired period of the licence. There is nothing in the affidavits of the respondents to indicate that Lot 17 in Plan (P1) is no longer available to the petitioner, as the right to prospect for gems in this Lot has been sold to a 3rd party since the cancellation of the petitioner's licence and therefore it is not within their power to grant the extended period asked for. The justice of the case requires that we accede to the request of the petitioner. We accordingly make order directing the respondents to issue to the petitioner his gemming licence to work the said Lot 17 in Plan (P1) for a further period of 4 months, commencing 1st October 1980. The petitioner's right to prospect for gems in this Lot 17 for the said period will be subject to the conditions contained in the licence (2R1).

The application of the petitioner is allowed with costs fixed at Rs. 1,050.

**RANASINGHE, J.**—I agree.

*Application allowed.*

K. Thevarajah,  
Attorney-at-Law.

---