

KARAWITA
v.
ABEYRATNE

COURT OF APPEAL

L. H. DE ALWIS, J. AND SIVA SELLIAH, J.

C. A. 58/76 A. T.

ANURADHAPURA NO. 4/v/3(3)/96

FEBRUARY 02 1983

Agricultural Tribunal — Failure to give reasons — Question of law.

Natural Justice — Bias

Preliminary objection of bias had been taken at Agricultural Tribunal hearing as the brother of the respondent was a member of the Tribunal and had engaged himself actively on behalf of the tenant cultivator and attempted to oust the appellant from the field. The objection was overruled without reasons. No reasons were given for the order holding respondent to be the tenant —cultivator.

Held —

(1) When an allegation of bias is made the Court looks on the impression given to other people. If right-minded persons would think that, in the circumstances there was a real likelihood of bias on his part he

should not sit. And, if he does sit, his decision cannot stand. Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking 'The Judge was biased'.

(2) The tribunal is under a duty to give reasons for its conclusion because under s.3(3) of the Agricultural Lands Law an appeal lies on a question of law.

(3) A question of law arises where the facts relied upon by the Tribunal are unsupported by the evidence and includes also wrong inferences drawn from them. The absence of reasons entitles a Court to assume that the Tribunal had no good reason to give and was acting arbitrarily.

Cases referred to :

1. *Metropolitan Properties Co. Ltd. v. Lannon* [1969] 1 QB 577
2. *Reg. v. Barnsley Licencing Justices* [1960] 2 QB 167
3. *Simon v. Commissioner of National Housing* 75 NLR 471

APPEAL from order of Agricultural Tribunal.

J. W. Subasinghe, S.A. with *Miss E. M.S. Edirisinghe* for appellant.

N. R. M. Daluwatte for respondent.

Cur. adv. vult

March 23, 1983

L. H. DE ALWIS, J.

This is an appeal from the order of the Agricultural Tribunal of Anuradhapura dated 2.2.76 holding that the Applicant-Respondent is the 'ande' (tenant) cultivator of the field in dispute and ordering that his 'ande' rights be restored to him.

The Respondent made an application to the Agricultural Tribunal on 7.6.1975 complaining that he was evicted by the appellant on 10.10.73 from a field called Samaraweera Kotuwa in extent 1A. 1R.

At the hearing of the appeal the order of the Tribunal was challenged on the grounds that :—

- (1) One of the members of the Tribunal was biased against the appellant.

- (2) No reasons were given by the Tribunal in its order for its conclusion.
- (3) The Agricultural Tribunal had no jurisdiction to entertain the application because the appellant is a permit holder of the field in question under the Land Development Ordinance (Cap. 464), and the respondent therefore cannot claim to be a tenant cultivator of that field in view of the provisions of the Land Development Ordinance.
- (4) The application to the Agricultural Tribunal was made by the respondent over a year after the alleged eviction and is therefore out of time, in terms of section 3(4) of the Agricultural Lands Law No. 42 of 1973.
- (5) There is no evidence of the letting of the paddy field to the respondent in terms of section 3(1) of the Paddy Lands Act No. 1 of 1958.

At the very commencement of the proceedings on 20.12.75 the appellant referred to a letter dated 8.12.75 sent by him to the Tribunal and objected to Mr. S. Sivagnanasunderampulle sitting on the Tribunal on the grounds of his alleged bias against him. In his letter he made the allegation that the brother of that member had actively engaged himself on behalf of the tenant cultivator and had attempted to oust the appellant from this field. The objection was overruled without any reasons being given by the Tribunal which then proceeded to inquire into the tenant cultivator's complaint.

In *Metropolitan Properties Co. Ltd., v. Lannon* (1) Lord Denning M. R. at page 599 referring to Devlin J's dictum in *Reg. v. Barnsley Licensing Justices* (2) said : "In considering whether there was a real likelihood of bias, the Court does not look at the mind of Justice himself or at the mind of the Chairman of the Tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The Court looks at the impression which would be given to other people.

Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand . . . The Court will not inquire whether he did, in fact favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence and confidence is destroyed when right-minded people go away thinking 'The Judge was biased' "

In the present case there was an allegation against one of the members of the Tribunal, that his brother had taken an active part on behalf of the respondent to evict the appellant from the field in question. Beyond overruling the objection raised by the appellant, no denial of the allegation was made by the member concerned and recorded by the Tribunal. In the circumstances the allegation stands uncontroverted and whether or not the particular member of the Tribunal was actually biased or not against the appellant is immaterial. Reasonable and right-minded people would think that he was biased.

There were several other fields in the area in which the appellant was involved in disputes with tenant cultivators. In an unreported case, C.A. (S.C.) No. 236/76 A.T. Anuradhapura Case No. 4/v/3(3) 106, where the same member sat on the Tribunal in regard to one such dispute, a similar allegation was made against him and that was one of the reasons why the order of the Tribunal was set aside by this Court. See also *Simon v. Commissioner of National Housing* (3).

The second ground on which the appellant seeks to set aside the order of the Agricultural Tribunal dated 2.2.76 is that no reasons are given by the Tribunal for its conclusion. Four witnesses gave evidence for the respondent and two for the appellants at the inquiry and the evidence ran into 8 closely typed pages. But the order of the Tribunal is in inverse proportion to the length of the proceedings, and consists of only four lines. Those four lines contain for the most part a repetition of the finding by the Tribunal that the respondent has proved that he is

the tenant cultivator of the field. No reasons whatsoever are given as to how the Tribunal reached that conclusion. There is no analysis or evaluation of the evidence. The Tribunal is under a duty to give reasons for its conclusion, because under section 3 (6) of the Agricultural Lands Law, an appeal lies to this Court on a question of Law. A question of Law arises where the facts relied upon by the Tribunal are unsupported by the evidence and includes also wrong inferences drawn from them. **Wade Administration Law** 4th Edition page 271. In the absence of an examination and assessment of the evidence by the Tribunal it is not possible for this Court to consider whether the Tribunal's reasoning and conclusion are correct. The absence of reasons, entitles a Court to assume that the Tribunal had no good reason to give and was acting arbitrarily. **Wade** *ibid* page 358. This is another circumstance that supports the allegation of bias.

On these two grounds alone the Order of the Agricultural Tribunal cannot be allowed to stand. In view of the order I propose to make, it is unnecessary to consider the other grounds urged by the appellants.

I set aside the Order of the Agricultural Tribunal dated 2.2.76 and send the case back for a fresh inquiry by the appropriate authority under the Agrarian Services Act No. 58 of 1979, which is the Law that is now applicable.

SIVA SELLIAN, J. — I agree.

Order of the Agricultural Tribunal set aside.

Case sent back for fresh trial.