

THE SURVEYORS' INSTITUTE OF SRI LANKA
v.
THE SURVEYOR-GENERAL AND ANOTHER

SUPREME COURT.

G. P. S. DE SILVA, C.J.,

KULATUNGA, J. AND

RAMANATHAN, J.

S.C. APPEAL NO. 60/94.

C.A. NO. 336/92.

AUGUST 31, SEPTEMBER 03 AND 14, 1994.

Certiorari and Prohibition – Field Circular No. 05/92 of 05.02.1992 – Surveyors' Ordinance, sections 2(1) (c), 4, 6, 7, 8, 9, 10, 11, 17 and 18.

The effect of section 18 of the Surveyors' Ordinance is clearly to confine the persons exempted by section 6 from the requirement of having to pass the examination, to persons mentioned in paragraph 9 of the Schedule who have ceased to hold office in the Survey Department. The Surveyor-General is not empowered to grant annual licences to Government surveyors to practise as land surveyors in their private capacity.

The Surveyor-General Field Staff Circular No. 05/92 dated 05.02.92 calling for applications from Surveyors attached to the Survey Department for the issue of annual licences under the Surveyors Ordinance to practice as private surveyors

is *ultra vires* and its implementation is in excess of the Surveyor-General's power to grant annual licences to land surveyors under the Ordinance. Certiorari will lie to quash the Circular and Prohibition to prohibit the issue of annual licences to Government surveyors.

APPLICATION for a writ of Certiorari to quash Circular No. 05/92 of 05.02.92 and a writ of Prohibition prohibiting the issue of annual licences to government surveyors.

H. L. de Silva, P.C. with *W. P. Gunatilleke* and *Elmore Perera* for petitioner.

K. G. Kamalabayson, D.S.G. with *P. G. Dep, S.S.C.* for 1st and 2nd respondents.

Faisz Musthapha, P.C. with *H. Vithanachchi* for intervenient-respondent.

Cur. adv. vult.

October 05, 1994.

KULATUNGA, J.

The appellant (The Surveyors' Institute of Sri Lanka) applied to the Court of Appeal for writs of certiorari and prohibition in respect of the Field Staff Circular No. 05/92 dated 05.02.92 issued by the 1st respondent (the Surveyor-General) calling for applications from Surveyors attached to the Survey Department for the issue of annual licences under the Surveyors' Ordinance (Cap. 108) to practise as private surveyors, subject, however, to certain limitations and the conditions set out in the said Circular. In other words, Government Surveyors are being offered the right to engage in limited private practice. According to the circular, this offer is made pursuant to a Cabinet decision.

The appellant is a body incorporated by Act No. 22 of 1982. Under section 3 of the Act, private surveyors holding licences granted by the Surveyor-General as well as government surveyors referred to in paragraph 9 of the Schedule to the Surveyors Ordinance are its members. In terms of section 4, one of the objects of the appellant Institute is "generally to protect and promote the interests, welfare,

rights and privileges of the land surveying profession in Sri Lanka". The appellant contended that the decision contained in the impugned Circular is contrary to law in that the 1st respondent has no power under the Surveyors' Ordinance to issue annual licences to Government Surveyors to practise as land surveyors particularly in view of section 18 of the Ordinance. On that basis the petitioner prayed for a writ of certiorari to quash the said decision and a writ of prohibition prohibiting the 1st respondent from issuing any such licences. The petitioner's application was dismissed by the Court of Appeal. Hence this appeal.

The appeal to this Court was resisted by the 1st respondent and the intervenient respondent, the latter being a Government Surveyor who had applied for a licence in terms of the impugned Circular. It was submitted on their behalf that in terms of section 6 of the Ordinance read with paragraph 9 of the schedule thereto, Government Surveyors currently in service are eligible to apply for annual licences to practice as land surveyors in their private capacity and that section 18 relied upon by the appellant constitutes no bar against the grant of such licences by the 1st respondent.

This Court is thus called upon to decide whether, notwithstanding the decision of the Government to permit private practice to Government Surveyors, the 1st respondent is empowered to grant them annual licences for that purpose in terms of section 4 of the Ordinance. Section 2(1), *inter alia*, provides that no person shall practice as a Surveyor unless he is the holder of an annual licence to practice as land surveyor, granted by the Surveyor-General. Whether the 1st respondent is so empowered to grant annual licences to Government Surveyors to practise as land surveyors in their private capacity has to be determined by interpreting the relevant provisions of the Surveyors' Ordinance. I shall, now summarise those provisions, so far as they are applicable to the case before us.

Section 2(1) (c) prohibits any person practising as a land surveyor without the requisite licence. Section 4 empowers the Surveyor-

General to grant annual licences to persons of good character who have passed the prescribed examination in surveying. Section 6 provides—

“persons possessing the qualifications mentioned in Schedule A shall be entitled on production of evidence of good character and on payment of the prescribed fee, to annual licences, **without passing the examination**”.

One class of persons so exempted from the examination is to be found in paragraph 9 of Schedule A; it refers to—

“Any person who **has served** in the Survey Department as

- (1) Surveyor-General, or
- (2) Deputy Surveyor-General, or
- (3) Assistant Surveyor-General, or
- (4) A Superintendent of Surveys, or
- (5) An Assistant Superintendent of Surveys, or
- (6) A Senior Survey Assistant, or
- (7) A First Grade Surveyor, or
- (8) A Second Grade Surveyor, or
- (9) A Third Grade Surveyor for a period of more than fifteen years,
or
- (10) A Third Grade Surveyor for a period of more than ten years and passed the junior examination of the Survey Department”.

The reason for the exemption of the above persons is that under the regulations made under S. 7 (Vide Subsidiary Legislation (Cap. 108) Vol. II 1956) every person who wishes to obtain an annual licence in surveying has to complete a course of studies conducted by the Surveyor-General and pass the prescribed examination. It is only persons who have so qualified who are eligible for appointments in the Survey Department.

Section 8 of the Surveyors' Ordinance provides for the power of the Surveyor-General to cancel or refuse renewal of a licence.

Section 9 provides for cancellation or suspension of a licence by the District Court on the ground of gross misconduct or incompetence or carelessness of a Surveyor in the discharge of his duties, as a Surveyor, section 10 provides for inquiries by the Surveyor-General into irregularities, errors and omissions in surveys etc., section 11 provides for the penalty for the offence of practising as a surveyor without a licence.

It is apparent that the provisions of sections 2–17 of the Ordinance are essentially applicable to the licensing and regulation of private surveyors; and section 18 provides –

“Nothing hereinbefore contained shall apply to any land surveyor for the time being in the service of the Ceylon Survey Department...”

The Court of appeal held that a surveyor currently serving in the Survey Department is entitled to obtain an annual licence for private surveying under section 4 read with section 6(1) of the Ordinance on the basis that the words “any person who **has served** in the Survey Department” in paragraph 9 of the Schedule may not be limited to persons who had previously served and ceased to hold office there. The Court was of the view that the expression “has served” can include a person who is in service at the time he makes an application for a licence.

Learned Deputy Solicitor-General for the respondents, defending the judgment of the Court of Appeal, argued that the object of section 18 is to make the preceding sections inapplicable to land surveyors in the Survey Department *qua* government Surveyors and that it does not have the effect of depriving them the right to an annual licence to engage in private practice as land surveyors. Learned President's Counsel for the intervenient respondent also urged the same view.

Learned President's Counsel for the appellant argued that the Court of Appeal based its judgment on the Schedule to the Ordinance reading it independently of section 6; that the Schedule is

a part of the statute and hence integral to section 6 which precedes section 18. He submitted that the effect of section 18 is to exclude persons holding office in the Survey Department from the ambit of section 6. As such, the expression "has served" (though ambiguous) should be interpreted to refer to a person who has terminated his services. Counsel also submitted that the Surveyor-General is one of the persons referred to in paragraph 9 of the Schedule. Admittedly, he cannot grant a licence to himself. If so, the reference there is to a person who has ceased to hold office. Hence, the same interpretation should be given to the other categories referred to therein.

Learned D.S.G. submitted that the reference to the Surveyor-General in paragraph 9 of the schedule has to be confined to a person who has ceased to hold that office since a wider interpretation would lead to absurdity; but the other persons therein mentioned, can reasonably include persons in service at the time of making an application for a licence. Learned President's Counsel for the appellant submitted that this submission is untenable; and that the legislature contemplated only private individuals as being entitled to the exemption provided by section 6 of the Ordinance read with the Schedule.

After giving consideration to the submissions of parties, I am satisfied that the effect of section 18 is clearly to confine the persons exempted by section 6 from the requirement of having to pass the examination to persons mentioned in paragraph 9 of the Schedule who have ceased to hold office in the Survey Department. I agree that the Court below has misdirected itself by interpreting the Schedule independently of section 6; in the result, it failed to consider the impact of section 18 on section 6. As regards the appellant's submission that the Surveyor-General holding office for the time being is clearly without power to grant a licence to himself in view of the anomaly which would result if he could do so, the Court considered it irrelevant in ascertaining the intention of the legislature. This too is a misdirection.

I hold that the Field Staff Circular No. 05/92 dated 05.02.92 is *ultra vires* and its implementation is in excess of the 1st respondent's

power to grant annual licences to land surveyors under the Ordinance. In the result, I allow the appeal, set aside the judgment of the Court of Appeal and issue a writ of certiorari quashing the said circular. I also issue a writ of prohibition prohibiting the 1st respondent from issuing any licences under the said Circular. In all the circumstances, I make no order as to costs.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Writs of certiorari and prohibition issued.
