

AMAL SURIYAGE AND OTHERS

v.

S. B. DISSANAYAKE

MINISTER OF YOUTH AFFAIRS, SPORTS AND
RURAL DEVELOPMENT AND OTHERS

COURT OF APPEAL.
DR. RANARAJA, J.
C.A. 517/97
OCTOBER 13, 1997.

Writ of Certiorari – Sports Law No. 25 of 1973 – Sections 32, 32(c) and 33 – Regulations 20, 35 and 37 of the Constitution of the Cycling Federation – Minister purporting to act under section 32(c), 33 to suspend the Federation – Legality of same – Absolute or untrammelled discretion in Administrative Law.

The 1st and 2nd petitioners were elected as Vice Presidents at the Annual General Meeting. The 1st respondent, Minister of Sports purporting to act under section 32(c) and section 33 of the Sports Law suspended the registration of the Federation and appointed the 2-8th respondents to continue the functions of the Federation.

Held:

(1) The Minister has purported to act in terms of section 32(c) and **Not** in terms of the other two subsections (a) and (b). The basis of the suspension is therefore that the office bearers of the Federation were duly elected to office and that they failed to carry out their duties and functions. Section 31 of the Sports Law has vested the Minister with the power to prescribe by regulations, *inter alia* the duties, powers and functions of the Federation.

The Minister could not have exercised any power of suspension under section 32(c) without first calling upon the office bearers to explain why they failed to carry out their duties and functions.

(2) Even assuming the 1st respondent acted under section 32(a), he could not have suspended the registration of the Federation without the Secretary to the Ministry first calling upon the office bearers in writing to remedy any malpractices etc., within such time specified in such notice, the procedure under section 32(a) has not been followed and thus the Minister in any event could not have acted under section 32(a).

*In public regulation of this sort there is no such thing as absolute and untrammelled discretion, that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator. No legislative act can without express language, be taken to contemplate an unlimited arbitrary power, exercisable for any purpose, however capricious or irrelevant regardless for the nature or purpose of the stature.

APPLICATION for a Writ of Certiorari.

Case referred to:

1. *Roncarelli v. Duplessis* (1959) 16 DLR(2d) 689 at 705.

Shibly Aziz, P.C., with *Nigel Hatch* for the petitioner.

Wijedasa Rajapakse, with *Kuwera de Zoysa* for 1st respondent.

Cur. adv. vult.

October 13, 1997.

RANARAJA, J.

The Cycling Federation of Sri Lanka was named and registered to promote, encourage supervise and Control Amateur and Professional Cycling and to protect the interests, and welfare of cyclists in terms of the Sports Law No. 25 of 1973.

The last Annual General Meeting of the Cycling Federation of Sri Lanka was held on 29.03.1997. The 1st and 2nd petitioners were elected as Vice Presidents while the 3rd and 4th petitioners were elected as Honorary Secretary and Honorary Treasurer respectively. The 6th respondent, a coach attached to the Ministry of Sports, participated at that election as an observer on the instructions of the Director of Sports. The Deputy Director of Sports by letter dated 3.4.1997 called for details, setout therein, of the new office bearers of the said Federation. That request was complied with by letter of the Assistant Secretary of the Federation dated 24.4.1997.

The 1st respondent, Minister of Sports purporting to act in terms of section 32(c) and 33 of the Sports Law, by order P16(a) dated 28.04.1997 suspended the registration of the Federation with immediate effect and appointed the 2nd to 8th respondents to continue the functions of the Federation during the period of suspension and/or the election of new office bearers of the Federation. The petitioners have filed this application *inter alia*, for a writ of certiorari quashing order P16(a).

Section 32 of the Sports Law No. 25 of 1973 reads;

"The Minister may refuse registration, suspend or cancel the registration, of a National Association of Sports;

(a) for failing or neglecting to remedy any malpractices, misconduct or irregularities on the part of the office bearers of members of such Association, on being noticed to do so in writing by the Secretary to the Ministry within such time as may be specified in such notice; or

(b) for inactivity, non-cooperation or obstruction in the implementation of the policies of the Ministry; or

(c) for failing to carry out its duties and functions."

As seen, the Minister has purported to act in terms of section 32(c) and not in terms of the other two subsections (a) and (b). The basis of the suspension is therefore that the office bearers of the Federation were duly elected to office and that they failed to carry out their duties and functions. Section 31 of the Sports Law has vested the Minister with the power to prescribe by regulation, *inter alia*, the duties, powers and functions of the Federation. Copies of such regulations marked P3 and 1R1, as amended by P3a, P3b, P3c, P3e have been filed. Regulation 25 states, subject to the provisions of the law and the regulations made thereunder a National Association shall be the controlling body for the entire island of the sport or groups of Sports in respect of which it is registered and shall take all such steps as are necessary for the promotion and development of such sport or group of sports. Subject to any directions that may be given by the Secretary, it shall be the duty of every affiliated member of a National Association to comply with any directions given by that Association. The functions and powers of the Federation are further explained in section 20 of its Constitution P1.

Regulation 37 requires every National association to furnish to the Secretary all information required by him relating to the exercise, discharge and performance of such association of its powers, **Duties and Functions**. This requirement is repeated in section 35 of the Federation's Constitution. Admittedly no such information was called

for by the Secretary, nor is there the slightest suggestion, that the office bearers failed to perform their duties and functions set out in regulation 25 or section 20 of the Constitution of the Federation.

Thus the Minister could not have exercised any power of suspension under section 32(c) of the Sports Law without first calling upon the office bearers of the Federation to explain why they failed to carry out their duties and functions.

The 1st respondent Minister has in his objections pleaded that the petitioners,

- (a) have no *locus standi* to initiate these proceedings,
- (b) failed to file an affidavit in conformity with the law.
- (c) are not qualified to be elected to hold office in the Cycling Federation.

The respondents have failed to elaborate on (a) above. The affidavit of the 3rd respondent and the documents filed suffice to support the petition. Regulations 13 and 14 in P3, 1R1 set out the disqualifications making any person ineligible to be elected to hold office as a member of any national sports association. Similarly section 17(c) and (d) of the Constitution of the Federation set out grounds of disqualification to be elected an office bearer of the Federation.

Section 30 of the Sports Law confers a right on parties aggrieved by any decision or action of a registered national association of sports to appeal to the Minister. Regulation 40 in P3/1R1 provides; "(1) where any person, body, club, organization or affiliate is aggrieved by the decision of its National Association, such person body, club, organization or affiliate may submit a written appeal to the Minister within a period of fourteen days from the date on which such decision was conveyed to such person, body, club, organization or affiliate.

(2) The order of the Minister on such appeal shall be given effect to by such National Association."

The 1st respondent states that he received several complaints with regard to non-granting of voting rights to nine clubs at the said Annual

General Meeting (1R4–1R10). 1R4, and 1R5 are letters written before the Annual General Meeting. 1R6–1R9 are complaints made within the 14 days stipulated in regulation 40, from the day the Annual General Meeting was held. He also avers that the 6th respondent not being satisfied with the conduct and the procedure adopted in conducting the election of office bearers submitted a report indicating all **irregularities** thereat. (1R2/1R3). 1R2 is dated 31.3.97 i.e.: two days after the Annual General Meeting. The 1st respondent had appointed Deputy Director of Sports, Mrs. P. Siriwardena, to hold an inquiry into the said complaints. The Deputy Director had submitted her report 1R12. The 1st respondent states he had thereupon “acting under **section 32** of the Sports Law suspended the Association by P16 and appointed an interim board by letter marked P16(a) in compliance with section 33 of the Sports Law.”

Even assuming for the purpose of argument that the 1st respondent acted under the provisions of section 32(a), he could not have suspended the registration of the Federation without the Secretary to the Ministry first calling upon the office bearers of the Federation in writing to remedy any malpractices, misconduct or irregularities within such time specified in such notice. Admittedly, the procedure set out in section 32(a) has not been followed. The Minister thus, in any event, could not have acted under section 32(a) to suspend the Federation.

“Any administrative act or order which is *ultra vires* or outside jurisdiction is void in law, ie; deprived of legal effect. This is because in order to be valid it needs statutory authorisation, and if it is not within the powers given by the Act, it has no legal leg to stand on.” Wade & Forsyth – Administrative Law 7th ed – P43.

“In public regulation of this sort there is no such thing as absolute and untrammelled” discretion “that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator: no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power, exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute. Fraud and corruption in the Commission may not be mentioned in such statutes but they are

always implied as exceptions. Discretion necessarily implies good faith in discharging public duty, there is always a perspective within which a statute is intended to operate, and any clear departure from the lines or objects is just as objectionable as fraud or corruption" – Rand, J. in *Roncarelli v. Duplessis*⁽¹⁾ at 705.

The 1st respondent avers that he appointed the Deputy Director of Sports to inquire into the eligibility of the candidates and it was on her report 1R12, that he proceeded to suspend the registration of the Federation. The findings of the Deputy Director at the inquiry are summarised as follows.

(1) The election of office bearers was not conducted in the normal manner in that the voting was for two lists and not for individual candidates.

(2) Decisions were taken which were prejudicial to several associations.

(3) Many irregularities have taken place as a result of the same persons holding office for a long period of time.

However, the Deputy Director has hastened to add that she did not inquire into items (2) and (3) above in detail. Her final recommendation was that the Minister should, using his powers vested in him, remove from office the office bearers and hold a fresh election. The Minister could have acted on the recommendation following the procedure set out in section 32(a) and the office bearers failing or neglecting to remedy the alleged malpractice, misconduct or irregularities, upon being noticed to do so by the Secretary. The 1st respondent not having followed that procedure, acting *ultra vires* his powers, purportedly under section 32(c) suspended the registration of the Federation, which subsection could be made use of for an entirely different purpose. The 1st respondent thus being misled on the provisions of the law, has acted outside his jurisdiction in suspending the registration of the Federation and appointing the 2nd to 8th respondents to continue the functions of the Federation. Both orders have therefore to be set aside. The application is allowed in terms of prayers (b) and (c) to the petition without costs.

Application allowed.