

1959

Present : Weerasooriya, J.

TENNEKOON, Petitioner, and THE PRINCIPAL COLLECTOR OF CUSTOMS *et al.*, Respondents

S. C. 373—Application for a Mandate in the nature of a Writ of Certiorari on A. O. Weerasinghe, Principal Collector of Customs, Colombo, and another

Certiorari—Inquiry held by an administrative body—Duty to act judicially—Customs Ordinance (Cap. 185), ss. 8 (1), 127—Exchange Control Act, No. 24 of 1958, s. 21 (1) (c).

An administrative body is under a duty to act judicially when in arriving at a decision it has to consider the matter solely on the facts and the evidence before it and apart from any extraneous considerations such as policy and expediency.

The obligation to act judicially means that certain rules of "natural justice" have to be complied with. It implies a duty to give "a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view" and to give to each of the parties "the opportunity of adequately presenting the case made".

The petitioner, who was employed in the Customs, was called upon by the Principal Collector of Customs to pay a penalty of Rs. 10,000 under section 127 of the Customs Ordinance for importing gold in contravention of section 21 (c) of the Exchange Control Act. The penalty was imposed on the basis of certain findings arrived at by the 2nd respondent, the Deputy-Collector of Customs. It was conceded that no opportunity was given to the petitioner to meet the case made against him at the inquiry held by the 2nd respondent.

Held, that *certiorari* should be granted for the reason that section 127, read with section 8 (1), of the Customs Ordinance imposed on the respondents a duty to act judicially.

APPPLICATION for a mandate in the nature of a writ of *certiorari*.

N. E. Weerasooria, Q.C., with *F. A. de Silva*, for the petitioner.

A. C. Alles, Acting Solicitor-General, with *P. Naguleswaram*, Crown Counsel, for the respondents.

Cur. adv. vult.

¹ (1947) 48 N. L. R. 369.

February 23, 1959. WEERASOORIYA, J.—

This is an application for a mandate in the nature of a writ of *certiorari* to quash an order made by the first respondent, who is the Principal Collector of Customs, calling upon the petitioner to pay a penalty of Rs. 10,000 under the provisions of section 127 of the Customs Ordinance (Cap. 185). This penalty was imposed on the basis of the following findings arrived at by the second respondent, the Deputy-Collector of Customs, Colombo :—

- (a) that the petitioner “ had been concerned in the unshipping of two bars of gold being goods the import of which is restricted and which were imported contrary to the restrictions imposed by law ” ;
- (b) that he “ had knowingly harboured, kept or concealed the two bars of gold being goods the importation which is restricted by law and which were imported contrary to such restrictions ” .

Under section 21 (1) (c) of the Exchange Control Act, No. 24 of 1953, no person shall, except with the permission of the Central Bank of Ceylon, import any gold into Ceylon.

On the 22nd May, 1954, the petitioner, then an acting Sub-Inspector of Police, was detailed for duty as a ship's visiting officer in the port of Colombo. In the performance of that duty it would have been lawful for him to go on board any of the ships that were in the port. One of these ships was the S. S. “ Vietnam ” .

According to an affidavit filed by the petitioner in these proceedings he had boarded the S. S. “ Vietnam ” at about 4.30 p.m. on the 22nd May, 1956, when he came across two unwrapped gold bars which had apparently been dropped by an unidentified member of the crew who “ ran up a flight of stairs and disappeared on the petitioner's approach ” . The petitioner picked up the gold bars and after an unsuccessful search for the person who dropped them he decided to report the matter to his superior officer Mr. Hamid, Inspector of Police, and for that purpose he disembarked from the S. S. “ Vietnam ” and entered the Port Health Officer's launch in which he proceeded towards the passenger jetty. It would appear, however, that Inspector Hamid was not at the passenger jetty then but was in a Police launch which was plying somewhere in the harbour area. After the petitioner got to the passenger jetty and not finding Inspector Hamid there he entered another launch, the “ Pearl ” , which lay alongside the jetty and requested the coxswain of it to take him to the Police launch. Just then two Customs Officers entered the launch. One of them was an Assistant Charges Officer of the Customs, Mr. Ponniah.

The versions given by the petitioner and Mr. Ponniah as to what happened at this stage are substantially at variance. According to the petitioner, as the Customs Officers arrived he of his own accord showed them the gold bars and accompanied by them he went to the Baggage Hall where he handed over the bars to the Charges Officer, his statement

was recorded by the second respondent, he was told that there would be an inquiry into the matter and he then went away. Mr. Ponniah states, on the other hand, that on certain information he had received he kept watch on the movements of the petitioner from the time the latter went on board the S. S. "Vietnam" and till the petitioner entered the launch "Pearl". Having followed the petitioner into the launch "Pearl" Mr. Ponniah informed the petitioner that he had received information that the petitioner was carrying some gold bars which he requested the petitioner to hand to him, whereupon the petitioner pleaded with him to keep silent about the matter. He then saw the petitioner attempting to insert his hand into his trousers pocket and, in order to prevent the petitioner from throwing any contraband article into the sea, he held on to the pocket and with the assistance of the Chief Preventive Officer, Mr. Speldewinde, (who also had in the meantime come on board the launch) two bars of gold were taken out from the petitioner's hip and trousers pockets respectively.

According to the affidavit of the second respondent, before arriving at the findings which I have set out earlier he held an inquiry into the circumstances in which the gold bars came to be found on the petitioner's person at which he recorded on oath the statements of the petitioner, the Assistant Charges Officer Mr. Ponniah and the Chief Preventive Officer Mr. Speldewinde. The petitioner has stated in his affidavit that the inquiry was held "behind his back", and this statement has not been contradicted in any of the affidavits filed by the respondents. The learned Acting Solicitor-General in fact conceded that no opportunity was given to the petitioner at the inquiry of meeting the case against him. The argument advanced by him was that no obligation arose to give the petitioner such an opportunity since the respondents were exercising purely administrative or executive functions in taking action in this matter under section 127 of the Customs Ordinance and, therefore, no duty to act judicially was imposed on them. But, as pointed out in *R. v. Manchester Legal Aid Committee, Ex parte Brand & Co., Ltd.*¹ an administrative body may be under a duty to act judicially, though the question whether in a given case such a duty arises or not would depend on a variety of circumstances "which it would be impossible, and, indeed, inadvisable, to define exhaustively". That case is also authority for the view that as a general rule a duty to act judicially would arise where an administrative body in arriving at its decision has to consider the matter solely on the facts and the evidence before it and apart from any extraneous considerations such as policy and expediency.

Even a purely domestic tribunal as, for instance, the committee of a club, which under the rules has power to expel a member on the ground of misconduct, would appear to be under a duty to act judicially when exercising such power. See in this connection the dictum of Jessel, M. R., in *Fisher v. Keane*² that a committee functioning on such an occasion must act according to the ordinary principles of justice and should not convict a man of a grave offence which shall warrant his expulsion

¹ (1952) 1 A. E. R. 480.

² (1879) 11 Ch. D. 353 at 362.

from the club without fair, adequate and sufficient notice and an opportunity of meeting the accusation brought against him. Another case is *Labouchere v. The Earl of Wharncliffe*¹ where the Court stated that although it had nothing to do with the question whether the decision of the committee to expel a member was right or wrong it was nevertheless concerned whether the accused had been given fair notice and due inquiry had been made.

In *Nakkuda Ali v. Jayaratne (Controller of Textiles)*² the Privy Council, in considering the question against whom a writ of *certiorari* may be granted, stated that "the only relevant criterion by English law is not the general status of the person or persons by whom the impugned decision is made but the nature of the process by which he or they are empowered to arrive at their decision. When it is a judicial process or a process analogous to the judicial, *certiorari* can be granted".

In view of these cases I do not think that the test sought to be applied by the Acting Solicitor-General as conclusive of the question whether or not the respondents were under a duty to act judicially is one which can be accepted. That question must, therefore, be considered in the light of certain other circumstances which I shall now proceed to discuss.

It is to be noted that section 127 of the Customs Ordinance does not require that the liability of a person to a penalty or forfeiture should be established to the satisfaction of the Principal Collector or other officer of the Customs. On the contrary, the language of the section indicates that the matter has to be considered objectively. Section 8 (1) of the Customs Ordinance requires that persons who are questioned on matters relative to the customs or the conduct of officers or persons employed therein shall be examined on oath and any person who gives false evidence on being so questioned is deemed to be guilty of giving false evidence in a judicial proceeding and liable to be dealt with accordingly. The Acting Solicitor-General readily granted that section 8 (1) applied to any inquiry involving the questioning of witnesses which may have to be held for the purposes of section 127. It was, no doubt, in compliance with section 8 (1) that the second respondent, in holding an inquiry into the circumstances in which the gold bars came to be found on the petitioner's person, recorded on oath the statements of the petitioner and certain of the Customs Officers as stated in the second respondent's affidavit to which I have already referred. The liability of the petitioner to a penalty or forfeiture under section 127 of the Customs Ordinance had, therefore, to be objectively assessed on an evaluation of the evidence on oath of the persons examined at the inquiry. The matter had to be decided by the second respondent solely on the facts of the particular case, solely on the evidence before him, and apart from any extraneous considerations. In other words, he had to act judicially—*R. v. Manchester Legal Aid Committee, Ex parte Brand & Co., Ltd. (supra)*.

¹ (1879) 13 Ch. D. 346 at 352.

² (1950) 51 N. L. R. 457 at 461.

The obligation on the second respondent to act judicially meant that in holding that inquiry he had to conform to certain rules of "natural justice". These rules have been laid down from time to time in a number of decisions of the House of Lords in England. He had, for instance, to give "a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view" (*Per* Lord Loreburn in *Board of Education v. Rice*¹); and to give to each of the parties "the opportunity of adequately presenting the case made" (*Per* Viscount Haldane in *Local Government Board v. Arlidge*²). It would seem that these rules were disregarded by the second respondent. Although the petitioner's statement was recorded at the inquiry it does not appear that in regard to any allegation made by the Customs Officers which was prejudicial to him he was given any opportunity of contradicting or correcting it. The contents of the statement made by the petitioner on that occasion are not in evidence in these proceedings, but it may be assumed that they were of an exculpatory nature. As I have already stated, it was conceded by the learned Acting Solicitor-General that no opportunity was given to the petitioner at the inquiry of meeting the case against him.

I hold, therefore, that the findings arrived at by the second respondent against the petitioner are of no legal effect. As for the order calling upon the petitioner to pay the penalty of Rs. 10,000, although the letter dated the 26th May, 1956, communicating that order to the petitioner purported to be written on behalf of the first respondent, it is clear from the second respondent's affidavit that the order was in fact made by the second respondent. That order is quashed. The second respondent will pay to the petitioner his costs of this application which I fix at Rs. 525.

Application allowed.
