SHELL GAS LANKA LTD., VS. CONSUMER AFFAIRS AUTHORITY AND ANOTHER

COURT OF APPEAL.
SRIPAVAN., J.
SISIRA DE ABREW. J.
CA 505/2005.
OCTOBER 16, 2005.

Consumer Affairs Authority Act, No. 9 of 2003, sections 18, 18(1), 18(3) and 18(4) - Specified goods - Application to increase the retail or wholesale price - Prior written approval of the Consumer Affairs Authority to be obtained - Refused - Natural justice - Should reasons be given - Violation ?–Unreasonable decision - Ground for quashing ?

The Minister of Commerce and Consumer Affairs acting under section 18 of the Consumer Affairs Authority Act published a gazette notification specifying LP Gas as one of the specified goods under section 18. Thus, it became necessary for the petitioner to obtain the prior written approval of the 1st respondent to increase the retail/ wholesale price of LP domestic gas. The application as well as the appeal were rejected. The petitioner contended that (1) the respondent failed to give any reason for the refusal (2) No opportunity was given to place facts as to why the application should not be rejected. (3) The decision is unreasonable.

HELD:

Per Sisira de Abrew :

"Natural justice demands the administrative tribunals to give reason for the decisions; failure to give reasons can be construed as "no reasons".

(1) The 1st respondent before taking the impugned decisions did not give an opportunity to the petitioner to place the facts as to why its application should not be rejected ; on this ground alone the impugned decisions could be quashed.

(2) Unreasonable decision of a public officer or Administrative Tribunal can be quashed by the Court of Appeal.

APPLICATION for a Writ of Certiorari.

Cases referred to :

(1) *R* vs. *Secretary of State for the Home Department ex-parte Frayed* and *Others 1997* 1 ALL ER 229

(2) *Regina* vs. *Secretary of State for the Home Department ex-parte Doody 1994* 1 AC 531

(3) *R* vs. *Civil Service Appeal Board ex-parte Cunningham - Law Reports of the Common Wealth Constitutional and Administrative Law 1999* page 941

(4) In *Regina* vs. *Secretary of State for Trade and Industry - ex-parte Lonrho pla 1989* 1 WLR 525 at 540 (HL)

(5) *Ceylon Printers Ltd.* vs. *Weerakoon - Commissioner of Labour* and *Others 1998* 2 Sri LR 29 (SC)

(6) *Karunadasa* vs. *Unique Gem Stone Ltd* and *Others 1997* 1 Sri LR 256 (SC)

(7) *Unique Gem Stones Ltd.* vs. *Karunadasa and Others 1995* 2 Sri LR 357 (CA)

(8) *Kegalle Plantations Ltd.* vs. *Silva and Others 1996* 2 Sri (1) LR

(9) *Samalanka Ltd.* vs. *Weerakone Commissioner of Labour* and *Others 1994* 1 Sri LR 405

(10) *R* vs. *Higher Education Funding Council - ex parte Institute of Dental Surgery (1994)* 1 ALL ER 651

(11) *Wheeler* vs. *Leicester City Council 1985* AL 1054 (112)

(12) *Rex.* Vs. *Tynemouth District Council 1896* 2 QB 219

(13) *Regina* vs. *Birmingham Licensing Planning Committee 1972* 1 QB 140

D. S. Wijesinghe, PC with *Chanaka de Silva* for Petitioner.

P. A. Perera, State Counsel for Respondent.

Cur. adv. vult.

November 11, 2005.
SISIRA DE ABREW J.

This is an application for writs of certiorari and mandamus. The facts of this case may be summarized as follows :

The petitioner is a body corporate incorporated in Sri Lanka under the Companies Act, No. 17 of 1982 and carries on business of purchasing, supplying, selling and distributing liquid petroleum gas (hereinafter referred to as LP gas) in Sri Lanka for domestic and industrial application. The petitioner sells gas cylinders for domestic consumption in Sri Lanka in two categories, namely 12.5kg and 2.3 kg. The Minister of Commerce and Consumers Affairs, acting under-section 18 of the Consumer Affairs Authority Act, No. 9 of 2003 (hereinafter referred to as the Act), published a gazette notification marked P2 dated 20.08.2003 specifying LP gas as one of the specified goods under-section 18 of the said Act. Therefore it became necessary for the petitioner to obtain the prior written approval of the 1st respondent to increase the retail or wholesale price of domestic LP gas.

The petitioner made an application dated 30.07.2004 marked P29 to the 1st respondent seeking to raise the price of LP gas with effect from 30.09.2004. Although the 1st respondent was obliged to give a decision on the application of the petitioner for revision of prices within 30 days of the receipt of such application, the 1st respondent failed to do so. Therefore the petitoner, acting under-section 18 (4) of the Act gave effect to the increase of prices as set out in its application made to the 1st respondent dated 30.07.2004.

Thereafter again on 30.09.2004 the petitioner made an application (P34A) for revision of prices which application was rejected by the 1st respondent by letter dated 26.10.2004 marked P35. The petitioner, by letter dated 10.11.2004 marked P38, again made an application to the 1st respondent for revision of prices of 12.5kg and 2.3kg cylinders and after several correspondence the petitioner withdrew the application dated 10.11.2004 (P38).

On 30.11.2004, the petitioner, by letter marked P47, made an application to the 1st respondent for revision of prices of the said two cylinders. The petitioner, by letter dated 31.01.2005 marked P55, again made an application to the 1st respondent for an increase of prices of the two

cylinders aforementioned. The 1st respondent, by letter dated 24.02.2005 marked P56, rejected the application of the petitioner. The 1st respondent, by letter dated 03.03.2005 marked P58, informed the petitioner that the appeal submitted by the petitioner was under consideration. The 1st respondent, by letter dated 16.03.2005 marked P61, informed the petitioner that the appeal submitted by the petitioner had been rejected.

The petitioner states that prior to arriving at the aforementioned decisions contained in letters marked P56 and P61, the 1st respondent failed to give the petitioner any opportunity of being heard in support of its application. Further, the 1st respondent failed to give any reason in support of or justifying the aforementioned decisions, and acted in breach of and total disregard of the principles of natural justice in arriving at the aforementioned decisions contained in letters marked P56 and P61 ; and that the said decisions are bad in law and/or null and void and/or of no force or avail in law. The petitioner, by this petition, seeks to quash, by way of writ of certiorari, the decisions contained in letters marked P56 and P61 and further by way of writ of mandamus seeks a direction on the 1st respondent to determine the application of the petitioner dated 31.01.2005 marked P55 according to law. The respondents contend that the petition of the petitioner is futile since the petitioner, subsequent to the filing of this petition, sought an increase of prices of the said 12.5kg and 2.3kg cylinders to Rs. 800 and Rs. 162 respectively. It has to be noted that the contention of the petitioner is that the 1st respondent acted in breach and total disregard of the principles of natural justice in arriving at its decisions contained in letters marked P56 and P61. Therefore the petitioner's subsequent application for revision of prices does not make the petition of the petitioner futile. I am unable to agree with the contention of the respondents.

In view of the facts alleged by the petitioner it is necessary to consider section 18 of the Act which reads as follows :

Section 18 (1) - "Where the Minister is of opinion that any goods or any service is essential to the life of the community or part thereof, the Minister in consultation with the Authority may by Order published in the Gazette

prescribe such goods or such service as specified goods or specified service as the case may be."

Section 18 (2) - "No manufacturer or trader shall increase the retail or wholesale price of any goods or any service specified under-subsection (1), except with the prior written approval of the Authority."

Section 18 (3) - "A manufacturer or trader who seeks to obtain the approval of the Authority under-subsection (2), shall make an application in that behalf to the Authority, and the Authority shall, after holding such inquiry as it may consider appropriate –

(*a*) approve such increase where it is satisfied that the increase is reasonable ; or

(*b*) approve any other increase as the Authority may consider reasonable,

and inform the manufacturer or trader of its decision within 30 days of the receipt of such application."

Section 18 (4) - "Where the Authority fails to give a decision within 30 days of the receipt of an application as required under-subsection (3), the manufacturer or trader who made the application shall be entitled to, not withstanding the provisions of subsection (1), increase the price :

Provided however, where the delay in giving its decision within the stipulated period was due to the failure of the manufacturer or trader to give any assistance required by the Authority in carrying out its inquiry into the application, the Authority shall have the power to make an interim order preventing the said manufacturer or trader from increasing the price, until the Authority makes its decision on the application."

According to section 18 (3) of the Act, when an application is made to the 1st respondent by a manufacturer or a trader to obtain the approval to increase the retail or wholesale price of any goods specified under section 18 of the Act, the 1st respondent has to hold an inquiry as it may consider

appropriate and the Consumer Affairs Authority, the 1st respondent, has the power to do one of the two things stated below after holding an inquiry :

(a) Approve such increase where the Authority is satisfied that the increase is reasonable ; or

(b) Approve any other increase as the Authority may consider reasonable.

In the present case, did the 1st respondent, before arriving at the decisions contained in letters marked P56 and P61, hold an inquiry as stipulated in section 18 (3) of the Act ? Having considered the documents filed by both parties, I have to conclude that the 1st respondent has failed to hold such an inquiry. I, therefore, hold that the 1st respondent has not acted under section 18 (3) of the Act and that its decisions contained in P56 and P61 have to be quashed by way of a writ of certiorari.

The Petitioner alleges that the 1st respondent did not give any reason for rejection of its application for revision of prices stated in the letter marked P55. The petitioner further alleges that the 1st respondent failed to hear the petitioner before rejecting its application P55. The first respondent before rejecting the said application of the petitioner, did not ask for any material from the petitioner in order to decide the application. Therefore it cannot be said that the petitioner was guilty under the proviso to section 18 (4) of the Act. The petitioner, by letters dated 01.03.2005 (P57), 07.03.2005 (P59) and 18.03.2005 (P62) requested to provide reasons for the decision of the 1st respondent but the 1st respondent failed to give its reasons for its decision contained in P56 and P61. In my view, failure to give reasons can be construed as 'no reasons'. In view of the failure on the part of the respondents to give reasons for the said decisions, it is safe to conclude that the 1st respondent did not have reasons for its decisions.

It is necessary to consider whether administrative tribunals should give reasons for their decisions. In this connection, I would like to consider the following passage from Administrative Law by Wade & Forsyth 8th edition page 516 dealing with the subject of 'reasons for decisions' ;

"The Principles of Natural Justice do not, as yet, include any general rule that reasons should be given for decisions. Nevertheless there is a strong case to be made for the giving of reasons as an essential element

of administrative justice. The need for it has been sharply exposed by the expanding law of judicial review, now that so many decisions are liable to be quashed or appealed against on grounds of improper purpose, irrelevant considerations and errors of law of various kinds. Unless the citizen can discover the reasoning behind the decision, he may be unable to tell whether it is reviewable or not, and so he may be deprived of the protection of the law. A right to reasons is therefore an indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it, since the giving of reasons is required by the ordinary man's sense of justice. It is also a healthy discipline for all who exercise power over others." At page 517, dealing with this subject, it states as follows: "Where the decision maker departs from a previously adopted policy (even if not published) fairness will require that departure to be explained. Thus a health authority's refusal without giving reasons, to follow the policy of the National Health Service Executive to introduce a new (and expensive drug) was quashed.

On this question, I would like to cite a judgment of the Court of Appeal of England. *R Vs Secretary of State for the Home Department, ex parte Fayed and another*[1] : "The applicants were two brothers who were born in Egypt but had lived and worked in the United Kingdom for many years where they had substantial business interests and a high public profile. Both had been granted leave to remain indefinitely. One brother was married to a British citizen, the other to a citizen of Finland, and both had children who were British citizens. Eventually the brothers applied for naturalization as British citizens under section 6 (1) and (2) respectively of the British Nationality Act 1981, and although they satisfied the requirements of the Act, their applications were refused without any reasons being given.

Held :

"Although the Home Secretary was not required to give reasons for refusing an application for British citizenship, by virtue of section 44 (2) of the 1981 Act, where the decision involved the exercise of discretion, he was required to exercise that discretion reasonably and accordingly was not relieved of the obligation to be fair in arriving at his decision." During the process of reaching a decision, the Home Secretary was therefore required to give the applicant sufficient information as to the subject matter of his concern in such terms as to enable him to make such representations as he could and, where that would involve disclosing matters not in the

public interest, to indicate that was the position so that the applicant could challenge the justification for the refusal before the courts. It followed that since the applicants had not enjoyed the fairness to which they were entitled, justice had not been seen to be done. The appeal would therefore be allowed and the Home Secretary's decision would be quashed so that they could be retaken in a fair manner."

House of Lords in the case of *Regina Vs Secretary of State for the Home Department Ex parte Doody*[2] held that a life prisoner was entitled to be told the Home Secretary's reasons for rejecting the advice of the trial Jugde as to the penal element in the sentence.

R. Vs Civil Service Appeal Board, ex parte Cunningham[3] "The applicant, a 45-year old prison officer, was dismissed from the prison service after he allegedly assaulted a prisoner. He appealed against his dismissal to the Civil Service Appeal Board which held that his dismissal was unfair and recommended that he be reinstated. The Home Office, as it was entitled to do, refused to reinstate him and the Board then assessed the compensation for unfair dismissal at Pounds 6500. Since the applicant's employment was regarded as Police service he was prevented by section 146 of Employment Protection (Consolidation) Act 1978 from appealing to an industrial tribunal, which would have assessed compensation of between Pounds 14240 and Pounds 16374 in comparable circumstances. The Board refused to give reasons for its award on the ground that it employed simple and informal procedures and that to ensure a non-legalistic approach to the merits of each individual case it had adopted a policy of not giving reasons for any award. The applicant applied for judicial review of the Board's decision on the grounds that the award was *prima facie* irrational and the Board's refusal to give reasons was a breach of natural justice. .....

Court of Appeal of England held (per Lord Donaldson MR) : "A party appearing before a tribunal such as the Board was entitled to know either expressly or by inference to what the tribunal was addressing its mind and that it had acted lawfully. Having regard to the facts that the Civil Service Appeal Board carried out a judicial function and that in similar circumstances an industrial tribunal would be required to give reasons, natural justice required that the Board should have given reasons when deciding the amount

of the applicant's compensation for unfair dismissal. Accordingly, the Board was required to give reasons for the way in which it had reached the award made to the applicant and in the absence of such reasons the award, when compared to awards made by industrial tribunals in comparable circumstances, was so low as to be *prime facie* irrational."

In Regina. Vs Secretary of State for Trade and Industry Ex parte Lonrho plc.[4] *Lord Keith* observed thus : "The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision."

In the case of *Ceylon Printers Ltd Vs Weerakoon Commissioner of Labour and Others*[5], Justice Gunasekere held : "It is apparent from the order of the Commissioner that he had failed to duly consider the material produced at the inquiry before the Assistant Commissioner or the recommendation made by the Assistant Commissioner and the Deputy Commissioner. In view of the failure by the Commissioner to give the appellants an opportunity of challenging the new material on which he acted, the Commissioner was under a duty to give reasons for his decision, particularly in view of the fact that it was not he who held the inquiry and recorded the evidence. In the result, the order of the Commissioner was in breach of the principles of natural justice."

In the case of *Karunadasa Vs Unique Gem Stones Ltd and Others*[6] "the Commissioner of Labour (2nd respondent) acting on the recommendation of an Assistant Commissioner (3rd respondent) to whom he had delegated the power to hold an inquiry as permitted by section 11 of the Termination of Employment of Workmen (Special Provisions) Act No.45 of 1971, held that the termination of services of the appellant workman was contrary to section 2 (1) of the Act and ordered his reinstatement with back wages. The 2nd respondent failed to give reasons for his decision, though requested by the 1st respondent employer." Justice Fernando held as follows : "Natural justice also means that a party is entitled to a reasoned consideration of his case ; and whether or not the parties are also entitled to be told the reasons for the decision, if they are withheld, once judicial

reveiw commences, the decision may be condemned as arbitrary and unreasonable. The mere fact that the 3rd respondent held the inquiry does not vitiate the 2nd respondent's order but the facts, in particular the 2nd respondents failure to produce the 3rd respondent's recommendation, justified the conclusion that there were no valid reasons, and that natural justice had not been observed."

In *Unique Gemstone Ltd Vs Karunadasa and Others*[7] *Senanayake J* observed thus : "I am of the view that the Commissioner should give reasons for his decision. The action of Public officers should be transparent and they cannot make blank orders. In my view, it is implicit in the requirement of a fair hearing to give reasons for a decision. I am of the view that it is only in special cases the reasons should be withheld, where the security of the State is affected, otherwise a Statutory Body or Domestic Tribunal should give reasons for its decisions. Though the Termination of Employment Act is silent on this matter the Commissioner being a creature of the statute is performing a Public function. It is not only desirable but necessary to give reasons for its decision. The common law as understood by us has now been battered down. Reasoned orders are the *'sine qua non'* of administrative justice even if the Statute is silent. In my view the law cannot be static ; it must be dynamic and progress with social changes in society.There is continuing momentum in administrative law towards transparency on decision making. The failure to give reasons is a breach of section 17 of the Termination of Employment Act, because it is inconsistent with the principles of natural justice."

In the case of *Kegalle Plantations Ltd Vs Silva and Others*[8] *Senanayake J* remarked as follows : The present trend which is rubric running throughout public law is that those who give administrative decisions where it involves the public whose rights are affected should give reasons for its decision. The actions of the Public Officer should be transparent and they cannot make blank orders. In my view it is implicit in the requirement of a fair hearing to give reasons for its decisions, the failure to do so amounts to a failure to be manifestly seen to be doing justice."

The view taken in the above judicial decisions is that Administrative Tribunals should give reasons for their decisions. However a contrary view has been expressed in certain judicial decisions. In the case of *Samalanka Ltd Vs. Weerakoon, Commissioner of Labour and Others*[9] Kulatunga J held as follows : In the absence of a statutory requirement there is no general principle of Administrative Law that natural justice requires the authority making the decision to adduce reasons, provided that the decision is made after holding a fair inquiry."

In the case of *R. Vs Higher Education Funding Council, ex parte Institute of Dental Surgery*[10], Sedley J held as follows : "There was no duty on administrative bodies to give reasons for their decisions either on general grounds of fairness or simply to enable any grounds for judicial review of a decision to be exposed."

I have earlier discussed the facts of this case. Having regard to the facts of this case, I would like to follow the view that natural justice demands the Administrative Tribunals to give reasons for their decisions. I have earlier pointed out that the 1st respondent failed to give reasons for its decisions contained in P56 and P61. Applying the principles set out in the above judicial decisions which held the view that Administrative Tribunals should give reasons for their decisions, I hold that the 1st respondent's decisions contained in P56 and P56 and P61 should be quashed.

The 1st respondent before taking the decisions in P56 and P61 did not give an opportunity to the petitioner to place the facts as to why its application should not be rejected. This failure on the part of the respondents amounts to violation of rules of natural justice. On this ground alone the decisions contained in P56 and P61 should be quashed and the respondent must be directed to determine the application of the petitioner P55 according to law. I have earlier pointed out that the respondents had failed to give reasons for their decisions contained in P56 and P61 ; the respondents, before rejecting the application P55, have not given an opportunity to the petitioner to place the facts before them as to why the application should

not be rejected ; and the respondents had not acted under section 18 (3) of the Act. I therefore hold that the decisions of the 1st respondent contained in P56 and P61 are unreasonable. It is pertinent to consider whether the unreasonable decisions of Administrative Tribunals could be quashed by the Court of Appeal in the exercise of its writ jurisdiction. In this regard I would like to consider certain judicial decisions. In the case of *Wheeler Vs Leicester City Council* [11] a city Council had refused, contrary to its previous practice, to allow a local rugby football club to use the city's sports ground because three of its members had played in South Africa." The House of Lords held that it was unreasonable to punish the club for not conforming to the Council's political attitudes. The Council's decision was quashed. Lord Templeman in the above case remarked thus : " A private individual or a private organization cannot be obliged to display zeal in the pursuit of an object sought by a public authority and cannot be obliged to publish views dictated by a public authority. ..... The council could not properly seek to use its statutory powers of management or any other statutory powers for the purposes of punishing the club when the club had done no wrong."

In the case of *Rex Vs Tynemouth District Council Lord Russel CJ* [12] held as follows. "A Local Authority was not entitled, as a condition of approving building plants, to stipulate that the applicant should provide and pay for sewers outside his own property." Issuing the writ of mandamus against the Council, Lord Russel CJ further held that this decision of the Council was utterly unreasonable.

In the case of *Regina Vs Birmingham Licensing Planning Committee* [13] "An elaborate system had been set up by the statutory licensing planning committee in Birmingham to deal with the licences relating to the many public houses destroyed in the Second World War. With Home Office approval and for some twenty years they had refused to approve applications unless the applicant purchased outstanding licences sufficient to cover his estimated sales. The main object of the policy was to relieve the city of the cost of compensating the holders of the outstanding licences. At the

current market price of these Licenses the proprietors of a large new hotel would have had to pay over 14000 Pounds. At their instance the Court of Appeal condemned the whole system as unreasonable." Lord Denning MR said : "I think it is unreasonable for a licensing planning committee to tell an applicant : 'we know that your hotel is needed in Birmingham and it is well placed to have an on-licence, but we will not allow you to have a licence unless you buy out the brewers.' They are taking into account a payment to the brewers which is a thing they ought not to take into account."

Considering the above judicial decisions, I hold that an unreasonable decision of a Public Officer or Administrative Tribunal can be quashed by the Court of Appeal in the exercise of its writ jurisdiction. I have earlier held that the decisions of the 1st respondent contained in P56 and P61 were unreasonable. Therefore the said decisions of the 1st respondent can be quashed on the ground that they are unreasonable.

For the reasons set out in my judgment, I issue a writ of certiorari quashing the decisions contained in P56 and P61. Further I issue a writ of mandamus directing the 1st respondent to determine the application of the petitioner marked P55 according to law.

This Court in CA Application No. 252/2005 (decided on 11.05.2005), CA Application No. 2146/2004 (decided on 18.07.2005), and CA Application No. 274/2005 (decided on 01.08.2005) issued writs of certiorari against the 1st respondent on identical issues alleged in this petition. The 1st respondent does not seem to follow the said decisions in the aforesaid applications. Considering the facts and the circumstances set out above, the 1st respondent is directed to pay a sum of Rs. 25,000/- as costs to the petitioner.

SRIPAVAN J. – *I agree.*

Application allowed.