

C 112 005

28, 1952

No. 44 of 1951.

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF MAURITIUS.

31, 481

4481

BETWEEN

SEEREELALL JHUGGROO

Appellant

Y OF LONDON
W.C.1.

AND

(1) THE CENTRAL ARBITRATION AND
CONTROL BOARD

and

(2) REUNION LIMITED

Respondents.

21 JUL 1953

INSTITUTE OF ADVANCED
LEGAL STUDIES

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Case for the Appellant.

RECORD.

1. This is an appeal from judgments of the Supreme Court of Mauritius dated 24th January, 1951, refusing the Appellant's motions dated the 27th July, 1950, (1) for a Writ of Certiorari to remove into the Supreme Court the record of the proceedings and of the decisions arrived at on 29th May, 1950, by the first Respondents in the matter of the objection lodged by the second Respondents, Reunion Limited, against the provisional assessment by the first Respondents of the amount of sugar accruing to
20 planters of the factory area of Reunion Sugar Factory in respect of the 1949 crop under the Sale of Canes (Control) Ordinance, 1941, for the first Respondents to show cause why the said decisions should not be quashed, reversed and set aside, and (2) for a Writ of Mandamus directing the first Respondents to hear and determine the dispute between the second Respondents and the said planters according to law.

pp. 82, 102.

pp. 12-16, 92-5.

p. 9.

p. 5, l. 21 to

p. 6, l. 20.

p. 5, ll. 5-10.

2. The Sale of Canes (Control) Ordinance, 1941 (No. 47 of 1941), provides a broad system of control of the sale and purchase of sugar canes in Mauritius. Under the said Ordinance "factory areas" are set up, and all the canes grown in any given factory area must be crushed by the
30 particular factory to which the area is assigned and every planter in the area is expressly prohibited (save with special permission) from selling or delivering canes grown in the area to any factory outside the area, and from refusing to sell or deliver canes grown in the area to the factory to which the area is assigned. Every planter who sells his canes to a factory is required to enter into a contract with the miller in the prescribed form, which provides for payment of the planter by reference to a formula

based upon the amount of sugar expected to be extracted per ton of canes, the said amount being provisionally agreed between the parties and stated in the contract. A Central Board (the first Respondents to this Appeal) is set up under the Ordinance; it has the function *inter alia* of settling disputes in the industry, and is assisted by Regional Committees. The first Respondents also have an important function in relation to fixing the amount which planters are to receive from millers for the canes supplied by them. Section 21 of the Ordinance provides as follows :—

“ 21. . . . whenever the parties to a contract to be entered into under the provisions of this Ordinance cannot agree as to the number 10 of kilograms of sugar and of factory residues, if such are provided for in the contract which the party who is to supply canes should receive in return for the canes supplied by him, such quantity shall be provisionally fixed in respect of each contract by the appropriate Regional Committee or, if necessary, by the Board, and shall as soon as possible after the termination of the first crop of the contract be altered or confirmed by the Board, and the Board's decision in the matter shall be final and binding upon the parties to the contract. In such a case a clause shall be inserted in the contract giving effect to the provisions of this section.” 20

3. The issue raised by this appeal is as to the extent of the jurisdiction conferred upon the first Respondents by Section 6 (2) of the Ordinance, which reads as follows :—

“ 6. (1)

“ (2) When determining the payment due to planters in return for their canes the Board shall be guided by the principle that the average amount of sugar which planters might expect to receive for their canes would be not less than two-thirds of the amount of sugar which a ton of such canes delivered at the factory may normally be expected to yield.” 30

4. The Appellant contends that, by reason of the provisions of Section 6 (2), the first Respondents, when determining the payment due to planters in return for their canes under the said Section 21, have no power or jurisdiction to allocate to the planters as a whole an amount which is less than two-thirds of the amount which a ton of canes delivered at the factory has yielded, and further that the first Respondents have no power or jurisdiction to take into consideration such extraneous matters as the cost of production incurred by the planters or the cost to the millers of manufacture, handling, packing or transport of the sugar.

5. The Appellant owns a portion of land at Hollyrood in the District 40 of Plaines Wilhelm, situated within the factory area of Reunion Sugar Factory, which is part of Reunion Sugar Estate and Factory, owned by the second Respondents. In 1949 the said land was under sugar canes, and in the course of that year's crop season the Appellant delivered 33 tons of sugar canes to the factory, in pursuance of an agreement made between him and the second Respondents on 25th June, 1946, providing for the sale for 5 consecutive years of the sugar canes growing on his land. Under

p. 3, ll. 16–21.

p. 4, ll. 18–19.

p. 3, l. 22 to
p. 4, l. 17.

p. 3, l. 22 to
p. 4, l. 17.

the said contract, which was in the appropriate form prescribed by Schedule II to the said Ordinance, the Appellant was entitled to receive certain agreed amounts, according to express terms set forth in the said contract, but "subject to modifications according to any decisions arrived at" by the first Respondents under the said Ordinance.

6. On 6th February, 1950, the first Respondents gave notice that the amount of sugar that planters who had made provisional contracts with millers (of whom the Appellant was one) should receive for each ton of canes of the 1949 crop was fixed by the first Respondents, by way of preliminary assessment, at 85 kilos (with certain stated additions) which amount represented two-thirds of the sugar extracted from each ton of canes.

7. The second Respondents, together with certain other sugar estates, by letter to the first Respondents dated 24th February, 1950, appealed against the said preliminary assessment on the ground (*inter alia*) that the first Respondents in making the assessment "failed to exercise the discretion vested in it by Art. 6 (2) of Ordinance No. 47 of 1941, inasmuch as it allotted to planters two-thirds of the calculated extraction without taking into account all relevant factors, including *inter alia*, cost of production of canes, cost of manufacture of sugar and cost of bagging and transport of sugar to Port Louis."

8. On 10th March, 1950, the first Respondents gave a second Notice stating that pending their decision on the said appeal planters would be paid on the basis of 79.0 kilos of sugar per ton (with certain stated additions).

9. After due notice by the first Respondents to certain Co-operative Credit Societies and other representative planters who had contracted to sell their canes to the second Respondents, the first Respondents heard the said appeal on 27th April, 11th, 25th and 29th May, 1950; the Appellant was represented at the said hearing. Evidence was adduced by the second Respondents but by no-one else. By letter dated 1st June, 1950, to the Appellant's legal adviser, the first Respondents informed the Appellant that by a majority of four votes to one of their members voting they had come to the decisions (A) that they were entitled under Section 6 (2) of the said Ordinance to assess the amount of sugar to be received by planters for their canes to [*sic*] more, or less, than the two-thirds of the amount of sugar which their canes may normally be expected to yield, whenever the circumstances of the particular case appear, in the opinion of the first Respondents, to justify such a course and (B) that, "taking all the circumstances of the present case, and in particular the cost of production incurred by the planters, the cost of manufacture and handling by the miller including cost of packing," the fair amount of sugar to be given to the planters per ton of canes for the 1949 crop was 81 kilos (plus certain stated additions). The said amount of 81 kilos was less than two-thirds of the amount extracted from each ton of canes.

10. By two Notices of Motion, both dated 27th July, 1950, the Appellant instituted

THE PRESENT PROCEEDINGS.

pp. 12-16.

The first of the said Notices of Motion was for a Writ of Certiorari to remove into the Supreme Court the record of the proceedings and of the said decisions arrived at by the first Respondents on the said appeal of the second Respondents, for the said decisions to be quashed, for a number of reasons, the more important of which may be briefly stated as follows :—

That the first Respondents exceeded their jurisdiction inasmuch as in determining the amount of sugar which planters within the factory area of Reunion Sugar Estate were entitled to receive, they took into consideration extraneous matters such as the costs of production incurred by the planters and the costs of manufacture 10 and handling by the miller, including cost of packing ;

That the first Respondents had declined to exercise their jurisdiction inasmuch as they failed to determine the real question they were required by law to determine, namely, the amount of sugar that a ton of canes delivered at the factory yard of Reunion Sugar Estates during the 1949 crop season could normally be expected to yield, and to apportion the total amount of sugar so obtained from the canes of all the planters, between the planters on the one hand and the miller on the other, but so that the average amount of sugar received by the planters in payment for their canes 20 would be not less than two-thirds of the amount that the canes could be expected to yield ;

That the first Respondents had acted on a wrong interpretation of the law ;

That the only discretion vested in the first Respondents under Section 6 (2) of the Ordinance is to vary the amount of sugar as between individual planters by giving more than the two-thirds to such of the planters as they choose and less than two-thirds to the remaining ones, having regard to the circumstances of individual planters, such as, for example, the greater or smaller distance of their 30 respective cane fields from the factory, but so that for all the planters taken together the average amount of sugar so given would be not less than the two-thirds.

pp. 92-5.

The second Notice of Motion was for a Writ of Mandamus directing the first Respondents to hear and determine the dispute between the second Respondents and the planters according to law : the reasons given were the same as those put forward in the said Notice of Motion for a Writ of Certiorari.

pp. 12-16.

pp. 16-17.

p. 17, ll. 5-7.

p. 95.

11. On 31st July, 1950, on counsel for the Appellant moving for a Rule for the issue of a Writ of Certiorari, the first Respondents informed the 40 Court that the second Respondents proposed to take a Preliminary Objection and that the first Respondents would leave the case in the hands of the Court quoad the preliminary objection. The Court fixed dates for argument on the preliminary objections. Immediately thereafter, on the same day, counsel for the Appellant moved for a Rule for the issue of a Writ of Mandamus and the hearing was fixed for the same date as the hearing of the said preliminary objections in the Certiorari proceedings.

12. By Notice dated 26th September, 1950, the second Respondents gave notice of preliminary objections to the hearing of the Appellant's application for a Writ of Certiorari on three grounds. All of these grounds were subsequently withdrawn, except the following :—

“ 2. The Central Board ” (the first Respondents) “ having full and exclusive jurisdiction to assess the quantum of sugar accruing to planters and millers respectively and incidentally to interpret the provisions of Section 6 (2) of Ordinance No. 47 of 1941, the decision arrived at by the Board in the exercise of such jurisdiction, even if erroneous, cannot be reviewed by the Court on Certiorari.”

The second Respondents gave a similar Notice of preliminary objection, also dated 26th September, 1950, in the Mandamus proceedings.

13. The hearing of the preliminary objections in the Certiorari proceedings took place on 4th, 5th and 6th October, 1950, and the Court (Herchenroder, C.J., Espitalier-Noel, J., and Brouard, Ag.J.) gave Interlocutory Judgment thereon on 13th November, 1950. The declaratory part of the said Judgment was as follows :—

“ It seems to us that, if the interpretation which they ” [i.e., the first Respondents] “ have given to Section 6 (2) of the Ordinance, even if erroneous, has not led them to exercise functions which were outside the ambit of those entrusted to them by the Ordinance, Certiorari will not lie. On the other hand, if their interpretation has resulted in their examining and adjudicating upon certain matters which were beyond their purview and which they should not, therefore, have considered, the conclusion which we have reached, after a careful examination of the authorities on the subject, is that Certiorari would lie.”

“ It becomes necessary, therefore, to determine what is the extent of the jurisdiction of the Board under the Ordinance, in order to ascertain whether they have power to deal with the matter before them as they have done.”

“ The Court will hear counsel further on a date to be fixed.”

14. The hearing on the question of the extent of the first Respondents' jurisdiction began on 13th December, 1950, when the second Respondents waived its preliminary objection in the Mandamus proceedings and, with the approval of the Court, the parties agreed that the whole matter raised by the Certiorari and the Mandamus proceedings should be put before the Court. Thereafter both proceedings were dealt with as one. The arguments were heard on 13th to 15th and 20th December, 1950.

15. The Court (Espitalier-Noel, Ag.C.J., Brouard and Neerunjun, Ag.JJ.) gave judgment on 24th January, 1951, refusing both motions. All the judges gave reasons for judgment.

16. The leading judgment was given by the Acting Chief Justice, who said :—

“ It is now necessary to consider what is the extent of the jurisdiction which the Central Board, set up under the Sale of Canes

p. 63, l. 20 to
p. 65, l. 11.

(Control) Ordinance, 1941 (No. 47 of 1941), can exercise, when that Board is called upon to determine the payment due by millers to planters in return for their canes.

“ In the present instance it is common ground :

(I) that the Central Board originally fixed the amount which the planters in the factory area of Reunion Limited Sugar Factory were to receive per ton of canes at 85 kilos, and that such figure represented two-thirds of the ascertained extraction from those planters' canes ;

(II) that on appeal by Reunion Limited from that decision 10 the Central Board proceeded to hold an enquiry ; and, after taking into consideration such factors as the cost of production incurred by the planters, the cost of manufacture and handling by the miller, including the cost of packing, they reduced the quantity of sugar which they had originally allocated to the planters from 85 to 81 kilos per ton of canes (an amount which is admittedly less than two-thirds of the ascertained extraction).

“ Parties are agreed that Ordinance No. 47 of 1941 has invested the Central Board with the power of determining the payment which planters should receive for their canes. 20

“ On behalf of the Applicant it is contended that such power is restricted (A) to ascertaining the average amount of Sugar which one ton of canes grown by planters and delivered by them at the factory of the Factory area to which they belong does actually yield, and (B) to allocating a minimum of two-thirds of that amount to those planters. It is submitted that by enquiring into and considering such questions as the cost of production, of manufacture, etc., which, Applicant avers, are matters extraneous to the above, the Central Board, when they decided the appeal before them, have exceeded the jurisdiction conferred upon them by the Ordinance, and that this 30 Court should issue a writ of certiorari to bring up and quash their decision, and grant mandamus commanding them to hear and determine according to law.

“ Learned counsel for the Central Board and for Reunion Limited argued that the Central Board, in the discharge of their duties of arbitration, had full power to deal with the matter before them as they have done, that it was their duty to take into consideration the facts and figures which they have examined in order to determine the amount of sugar which the planters of Reunion Limited had to receive in return for their canes ; that the 40 Board have a discretion, which they should exercise, when making a division of the sugar extracted from the canes of planters between the miller and the grower of those canes ; that the only limitation imposed by the Ordinance to that discretion is that, when making an equitable adjustment of the sugar to be shared, the Board should take as a basis of calculation upon which to work out their assessment a ratio of two-thirds to one-third in favour of the planters and the miller respectively ; that, in deciding the appeal before them, the Board had paid due regard to that principle and that, in the circumstances, their decision should not be disturbed.” 50

The conclusion reached by the Acting Chief Justice, after reviewing the arguments, was that the first Respondents had not exceeded their jurisdiction, having regard to the provisions of Section 6 (2) of the Ordinance, and that therefore Certiorari would not lie; and that, as the first Respondents had exercised the discretion vested in them by the said Section 6 (2), and exercised it having due regard to the principle enacted for their guidance by the subsection, and not taken into account matters outside the ambit of their jurisdiction, the application for Mandamus also failed.

10 17. Concurring judgments were delivered by Brouard and Neerunjun, Ag.JJ. p. 72, ll. 9-19. pp. 72-78, 78-82.

18. On 4th April, 1951, the Supreme Court granted the Appellant leave to appeal to His Majesty in Council from the said Judgments of 24th January, 1951, under Section 3 (b) of the Order in Council of 15th February, 1909, which provides that such appeal shall lie at the "discretion of the Court . . . if in the opinion of the Court the question involved in the appeal is one which by reason of its general or public importance or otherwise ought to be submitted to His Majesty in Council for decision." pp. 112-3. pp. 82, 102.

20 19. The Appellant submits that this Appeal should be allowed and the said Judgments dated 24th January, 1951, should be reversed, and the Appellant's motions for a Writ of Certiorari and a Writ of Mandamus should be granted for the following amongst other pp. 12-16, 92-5.

REASONS

- (1) BECAUSE the first Respondents had no power or jurisdiction to fix the amount payable to the planters on a basis of less than two-thirds of the calculated extraction.
- 30 (2) BECAUSE the first Respondents failed to determine the question which they were required by law to determine.
- (3) BECAUSE the first Respondents exceeded their jurisdiction in that they took into consideration extraneous matters which they had no power or jurisdiction to consider.
- (4) BECAUSE the first Respondents failed to deal in accordance with the law with the matters referred to them.
- (5) BECAUSE the Supreme Court did not correctly interpret Section 6 (2) of Ordinance No. 47 of 1941.
- 40 (6) BECAUSE the judgments under appeal are wrong and ought to be reversed.

D. N. PRITT.

RALPH MILLNER.

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Case for the Appellant.

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