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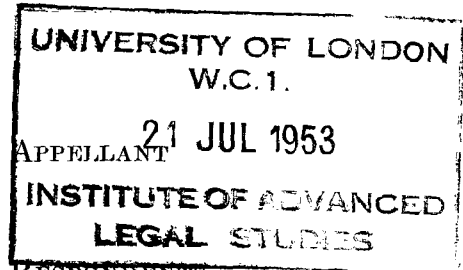
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In the Privy Council.

No. 44 of 1951.

ON APPEAL FROM THE SUPREME COURT  
OF MAURITIUS

BETWEEN  
SEEREELALL JHUGGROO ... .. APPELLANT  
AND  
THE CENTRAL ARBITRATION AND CONTROL BOARD and REUNION LIMITED ... .. RESPONDENTS.



CASE FOR THE FIRST RESPONDENTS

RECORD

1.—This is an appeal from two Orders dated the 24th January, 1951, of the Supreme Court of Mauritius (Espitalier-Noel, Ag. C.J., Brouard and Neerunjun, Ag. JJ.) refusing applications by the Appellant for writs of certiorari and mandamus addressed to the First Respondents. pp. 82, 102

2.—The Sale of Canes (Control) Ordinance, 1941, controls the traffic in sugar cane between planters, middlemen and millers. Every planter selling canes direct to a factory is obliged to enter into a contract with the miller in a prescribed form entitling the planter to receive per ton of canes supplied so many kilos of sugar or their equivalent in money, and so many kilos of scums and molasses. The First Respondents (a body set up under the Ordinance) supervise the traffic between planters, middlemen and millers; and one of their functions is to decide any disputes referred to them. The question in this appeal is how the First Respondents ought to exercise their jurisdiction to decide in disputes between planters and millers how much ought to be paid to planters for their canes. The relevant provision of the Ordinance is Section 6 (2), viz. :— In pocket

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.

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- p. 3, ll. 22-25, p. 3, l. 14  
p. 3, l. 21  
p. 4, ll. 3-15
- 3.—On the 25th June, 1946, the Appellant, a planter, entered into a contract in prescribed form with the Second Respondents, owners of a sugar estate and factory, for five years for the sale to the Second Respondents of the sugar cane grown on the Appellant's land. Under this contract the Appellant was to receive per ton of canes supplied 70 kilos of sugar or their value, on a basis of 98.5<sup>b</sup> polarisation, subject to modification according to any decision of the regional committee or the First Respondents.
- p. 4, ll. 18-19  
p. 4, l. 20 p. 5, l. 12
- 4.—In 1949 the Appellant delivered to the Second Respondents 33 tons of sugar canes. In February, 1950, the First Respondents provisionally fixed the amount to be received for each ton of canes delivered by planters having contracts as 85 kilos of sugar (representing two-thirds of the sugar extracted from each ton) with an additional kilo per ton if no molasses were given and an additional half kilo per ton if no scums were given. 10
- p. 5, l. 21-p. 6, l. 20
- 5.—On the 24th February, 1950, the Second Respondents and certain other millers wrote to the First Respondents appealing against their decision on the ground that the First Respondents had failed to exercise the discretion vested in them, inasmuch as they had made their decision without taking into account all relevant factors, e.g. the cost of production of canes, the cost of manufacture of sugar, and the cost of bagging and transport, with the result that the distribution between planters and millers was not fair or equitable. On the 10th March, 1950, the First Respondents, pending their final decision, altered the figure of 85 kilos to 79 kilos. 20
- p. 6, l. 23-p. 7, l. 2
- 6.—When the First Respondents heard the appeal the Second Respondents called evidence, but the planters (including the Appellant) represented at the hearing did not. On the 1st June, 1950, the First Respondents' Registrar informed the Appellant's legal adviser that the First Respondents had decided by four votes to one as follows: (A) that they were entitled under Section 6 (2), if the circumstances of a particular case seemed to them to justify the course, to assess the amount to be received by planters for their canes at more or less than two-thirds of the amount of sugar which the canes might normally be expected to yield; (B) that in view of all the circumstances of the case, particularly the cost of production to the planters and the cost of manufacture, handling and packing to the millers, the fair amount of sugar to be given to planters per ton of canes for the 1949 crop was 81 kilos, with the additions originally fixed in lieu of molasses and scums. 30
- pp. 7-8  
p. 9
- 7.—The Appellant, on the 27th July, 1950, gave notice that the Supreme Court would be moved for a writ of certiorari to remove this decision of the First Respondents into the Supreme Court in order that it might be quashed. The reasons stated were that the First Respondents had not heard and determined the dispute between the planters and the 40
- pp. 12-16

Second Respondents according to law ; had exceeded their jurisdiction by considering such extraneous matters as the costs of production, manufacture and handling ; had failed to determine the real question, which was how to apportion the amount of sugar which a ton of canes could reasonably be expected to yield so that not less than two-thirds of that amount was received by the planters, and had been wrong in holding that under Section 6 (2) they were entitled to assess the amount of sugar to be received by the planters at more or less than two-thirds of that amount. The notice of motion also alleged that the discretion vested in the First Respondents under Section 6 (2) was only to vary the amount of sugar to be received between individual planters according to (e.g.) the distance of their fields from the factories, but so that the average of the amounts received by all the planters was not less than the two-thirds. Another notice of motion, issued on the same date and for the same reasons, gave notice that the Supreme Court would be moved for a writ of mandamus directing the First Respondents to hear and determine the dispute between the Second Respondents and the planters. Both these notices of motion were served on both the First and the Second Respondents.

8.—Two affidavits in support set out the facts stated in paragraphs 3 to 6 of this Case, and also alleged, for the reasons given in the notices of motion, that the First Respondents had not determined the matter at issue according to law.

9.—Affidavits were also sworn by Edgar Julienne, the Second Respondent's manager, Norman Craig, the chairman of the First Respondents, and Noel Chelin, a shorthand writer of the First Respondents. Julienne, while admitting the facts set out in the Appellant's affidavit, said that the Appellant had not objected to the First Respondent's enquiring into the matters mentioned in the Second Respondent's appeal, his counsel having even applied for an adjournment in order to put in figures for the planters' costs of production. Craig said that the First Respondents, after considering all the arguments for the parties before them, had decided that under Section 6 (2) they were entitled to assess the amount of sugar accruing to the planters as more or less than two-thirds of the extraction according to the circumstances of each case, and had accordingly fixed the amount to be given to the Appellant for the 1949 crop at 81 kilos. Chelin, whose affidavit was put in on behalf of the Appellant, quoted extracts from the transcript of his notes of the speech made before the First Respondents by counsel for the planters arguing that the First Respondents had no power to take into account the factors enumerated in the Second Respondents' appeal.

10.—It was agreed by the parties that the question of certiorari should be argued first, and the decision on mandamus should abide the decision of the court on certiorari. On the question of certiorari the Second Respondent, raised the preliminary objection that certiorari did not lie against the First

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p. 24, l. 24-p. 25, l. 2 Respondents since they had jurisdiction to assess the quantum of sugar accruing to planters and millers respectively and incidentally to interpret Section 6 (2). The First Respondents took no part in the argument on this preliminary objection and do not desire to argue the point before the Privy Council. After hearing arguments on behalf of the Appellant and the Second Respondents, the Supreme Court decided on the 13th November, 1950 that the First Respondents were not amenable to certiorari if their interpretation of Section 6 (2) had not led them to consider matters which were outside their jurisdiction, but were so amenable if their interpretation had led them to consider such matters. It therefore became necessary to determine the extent of the First Respondent's jurisdiction under the Ordinance. 10

p. 63, ll. 8-13 11.—This question was argued before the Supreme Court (Espitalier-Noel, Ag. C.J., Brouard and Neerunjun, A. JJ.) on the 13th, 14th, 15th, and 20th December, 1950. The Court gave judgment on the 24th January 1951, dismissing both the applications.

p. 64, l. 15-p. 65, l. 11 12.—The judgment of Espitalier-Noel, Ag. C.J., may be summarised as follows: The Appellant contended that the power of the First Respondents under Section 6 (2) was restricted to ascertaining the average yield of a ton of canes delivered at the factory and allocating at least two-thirds of that amount to the planters, and that by considering such matters as the costs of production and manufacture they had exceeded their jurisdiction. Both Respondents contended that the First Respondents' duty was to consider these facts and figures, that they had a discretion in dividing the sugar between the planters and the millers, and the only limitation imposed by the Ordinance was that they should take as a basis of calculation the ratio of two-thirds to one-third; and that the First had paid due regard to that principle. The question was whether Section 6 (2) was imperative, and compelled the First Respondents to allocate to the planters at least two-thirds of the average yield, or only directory, being inserted to give a basis for the calculation of an equitable division. The use of the subjunctive mood in Section 6 (2) minimised any imperative effect which might have been intended. It was argued for the Appellant that the words "shall be guided by the principle . . ." left no discretion to allow the planters less than two-thirds, and for the Respondents that the words "determining" and "guided" showed the whole subsection to be directory. The learned judge thought the subsection by itself appeared to be directory, but it had to be read with regard to the policy of the whole Ordinance. When the former Ordinance (now superseded by that of 1941) was passed in 1939, freedom of contract between planter and miller was abolished and a board was given power to decide matters on which the parties could not agree. Before 1939 the parties, before entering into a contract for the sale of canes, had to consider costs of production, manufacture, bagging, etc. It would therefore not be unreasonable for the board to be entitled to take these matters into account in their duty of arbitration 20 30 40

*Respondents*

p. 65, l. 20-p. 66, l. 3

p. 66, l. 23-p. 67, l. 17

p. 67, l. 18-p. 68, l. 4

p. 68, ll. 7-24

p. 68, l. 25-p. 69, l. 15

where the parties could not agree. Clearer words than Section 6 (2) would be needed to deprive the arbitral body of the right to consider matters which had to be taken into account if full justice was to be done. Other parts of the Ordinance (e.g. Sections 11, 13, 14, 15, 21) conferred wide discretionary powers upon the First Respondents ; so it was not unreasonable to assume that they were intended to use their own judgment in fixing the price which planters should receive. The legislature intended to give the First Respondents a judicial discretion to decide what average amount planters should receive for their canes. The average amount of two-thirds was mentioned not to tie down the First Respondents but to indicate a fair basis on which they might work. Provided that they paid due regard to this principle, they could give less or more. The First Respondents, therefore, had not exceeded their jurisdiction, and certiorari could not lie. They had exercised their discretion with due regard to the principle in Section 6 (2) and had not considered matters beyond their jurisdiction, so the application for a writ of mandamus also failed.

13.—Brouard, Ag. J., said the Ordinance of 1939 had set up a board to control all transactions between planters and millers and to arbitrate in all disputes in the sugar industry. The Ordinance of 1941 gave extensive powers to the First Respondents, and was intended to set up a tribunal of experts to settle all disputes in the industry without external interference. Counsel for the Appellant had argued that particular planters might be given more or less than two-thirds of the expected yield, provided the average amount assessed to all planters was at least two-thirds. If this were right, in order to make a fair decision the First Respondents would have to consider the matters which the Appellant called extraneous, and they had been right in considering them. Section 6 (2) was not clear, but the legislature, if it so wished, could have said plainly that nothing less than two-thirds of the yield was to be given. The learned Judge held that the First Respondents had a discretion to interpret Section 6 (2), which they had exercised judicially without exceeding their jurisdiction, so that certiorari should not lie. Since they had exercised their discretion judicially, mandamus should not lie whether they had erred or not in assessing less than two-thirds.

14.—Neerunjun, Ag. J., agreeing with these two judgments, said that the increasing complexity of public affairs had led to the delegation of legislative, executive and judicial powers to various bodies, and the power of the Courts to control these bodies had been curtailed. The Ordinance of 1941 was intended to reorganise the sugar industry, and this involved limiting the rights of interested parties. It seemed inconceivable that an arbitration body would be limited to the purely mechanical operation of calculating the yield and apportioning benefits on a fixed ratio. Section 6 (2) gave the First Respondents arbitral powers with a directory, but not an imperative, limitation. Both applications should be refused.

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15.—The First Respondents submit that they are permitted by Section 6 (2) to award the planters more or less than two-thirds of the expected yield of their canes. The tentative language of the sub-section indicates that it contains advice for assistance in a calculation, and not a positive injunction to award at least a certain amount. If the effect of the sub-section is to lay down a minimum remuneration for planters, it narrows the field within which the determination must be made, but gives no direction about the method of determination within that narrowed field. The policy of the whole Ordinance, however, is to establish a framework for the control of relations between planters and millers, and to leave to the First Respondents a discretion to administer the control within that framework. It is consistent with this policy that the First Respondents should have power, subject to the limitation of a principle and not of a fixed amount, to make a fair apportionment between planters and millers. 10

16.—Furthermore, Section 6 (2) refers to an “average amount” not less than two-thirds of the “normally” expected yield. The use of the word “average” indicates that the actual amount awarded may be more or less than two-thirds. The Appellant contends that the “average” referred to here is the average of the amounts received by all the planters, presumably in the year when the determination is made. The First Respondents submit that this is not the meaning of the word “average” in this context. The amounts received by all the planters in any year would include those received by planters who had reached agreement by direct negotiation with the millers. The Board could not possibly ascertain the amounts actually received by such planters so as to make the calculation necessary, on the Appellant’s construction, for securing that the average of these amounts and of the amounts awarded by the Board was not less than two-thirds of a given yield. Carriage charges are covered by Clause 3 of the form of contract between a miller and a planter in the second schedule to the Ordinance. The different arrangements possible within the form of this clause would make it impracticable to ascertain the average of the amounts actually received by the planters whether by agreement with the millers or under awards of the Board. It is submitted that the “average” referred to in the section is the average which a planter might expect to receive taking one year with another and having regard to the yield which might normally be expected from canes of the like description and quality. On this construction the section does not prohibit the Board from awarding an amount which in any particular year may be less than two-thirds of the normally expected yield; it does not oblige the Board to ascertain the exact amount and to award the planters not less than two-thirds of that amount. 20 30 40

17.—The First Respondents submit that on this view it must be open to them to consider such matters as costs of production, manufacture, bagging, etc., because these are precisely the matters on which a fair

apportionment in each year must depend. The evidence showed that in this case the First Respondents reached their decision after proper consideration of all the evidence submitted to them.

RECORD  
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18.—The First Respondents therefore respectfully submit that the orders of the Supreme Court of Mauritius were right and should be affirmed for the following amongst other

### REASONS

- 10        1. BECAUSE the First Respondents are entitled to award to  
           planters more or less than two-thirds of the expected yield  
           of sugar, provided that the First Respondents are guided by  
           the principle stated in Section 6 (2) of the Ordinance.
2. BECAUSE the principle stated in Section 6 (2) of the  
           Ordinance expressly or by necessary implication permits the  
           First Respondents to make allowances for variations from the  
           average and from the normal.
- 20        3. BECAUSE in determining what sugar or payment is due to  
           planters the First Respondents are entitled to consider all  
           such matters as a planter and a miller would consider in  
           contracting for the sale of canes.
4. BECAUSE the First Respondents decided the dispute and  
           exercised their discretion in this case properly without in any  
           way exceeding their jurisdiction.
5. BECAUSE the Supreme Court rightly construed the Ordinance.

B. MACKENNA.  
FRANK GAHAN.

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THE CENTRAL ARBITRATION  
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REUNION LIMITED ... RESPONDENTS.

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CASE FOR  
THE FIRST RESPONDENTS

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