

GA262

28, 1952

No. 44 of 1951.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF MAURITIUS.

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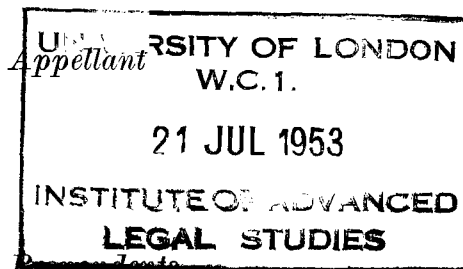
BETWEEN

SEEREELALL JHUGGROO

AND

(1) THE CENTRAL ARBITRATION AND
CONTROL BOARD and

10 (2) REUNION LIMITED



Case

for the Second Respondent, REUNION LIMITED.

RECORD.

1. This is an appeal from a Judgment of the Supreme Court of Mauritius delivered on the 24th of January 1951 in favour of the Respondents. pp. 63-81.

2. The facts giving rise to this Appeal are briefly as follows :—

20 On the 25th June 1946, the Appellant, a Cane Planter within the factory area of Reunion Sugar factory belonging to the Second Respondent, entered into a contract, for five consecutive years, for the sale, to the said second Respondent, of his canes to be crushed at the said factory. p. 3.

3. The said contract, entered into under the provisions of Ordinance No. 47 of 1941, (now Cap : 11 of the Revised Edition of the Laws of Mauritius) was drawn up in the form prescribed for the purpose in Schedule II of the said Ordinance and provided "inter alia" that the Appellant would be entitled to receive per ton of canes supplied 70 kilograms of Sugar, to be adjusted on a basis of 98.5° : polarisation, subject to modifications according to any decisions arrived at by the regional committee or the Central Arbitration and Control Board, hereinafter referred to as "the Board" (First Respondent) as the case might be. p. 4.

30 4. In terms of Section 21 of the said Ordinance, the quantum of sugar accruing to every planter for each ton of canes sent by him to be crushed at a factory is, in case of disagreement between miller and planter, fixed finally by the Board set up under the Ordinance.

Section 6, sub-section (2) of this Ordinance, further provides as follows :—

“ 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 not be 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.”

pp. 4-5.
pp. 19-20.

5. Early in 1950, the Board (First Respondent), acting on the guiding principle enacted by Section 6 (2) of Ordinance No. 47 of 1941, 10 provisionally fixed the quantum of sugar accruing to planters of Reunion Sugar factory for the 1949 crop at a figure representing exactly two-thirds of the sugar extracted from their canes (i.e. at 85 Kilogs per ton of canes) and invited objections on the part of interested parties.

p. 6.
p. 20.

6. The Second Respondent thereupon objected to such provisional assessment, urging that the two-thirds ratio should be reduced on the ground, that the Board (First Respondent) had failed to exercise the discretion vested in them by Section 6 (2) of Ordinance No. 47 of 1941, inasmuch as they had allotted to planters two-thirds of the calculated extraction without taking into account all relevant factors (such as cost 20 of production of canes, cost of manufacture of sugar and cost of bagging and transport of sugar to Port Louis), with the result that the distribution of sugar between the Second Respondent and the Appellant was neither fair nor equitable.

pp. 7-8.
p. 20.

p. 20.

pp. 23-24.

7. Issue was joined between the Appellant and the Second Respondent on the objections raised by the latter and the case was heard before the Board (First Respondent) on the 27th April, 25th May and finally on the 29th May 1950, when Counsel for the Appellant argued that the Board (First Respondent) (i) could not, in view of Section 6 (2) of Ordinance No. 47 of 1941, assess the amount of sugar accruing to the 30 planters at less than two-thirds of the extraction and (ii) would be acting *ultra vires* should they take any account of such things as costs of production, cost of bagging and transport.

8. On the 29th May 1950 the Board (First Respondent), by a majority of four to one, came to the following decision :—

p. 9, l. 10

(A) That on interpretation of Section 6 (2) of Ordinance No. 47 of 1941, they were entitled by the said section to assess the amount of sugar to be received by planters for their canes to more, or less, than two-thirds of the amount of sugar which their canes may normally be expected to yield, whenever the circumstances of the 40 particular case appeared in their opinion to justify such a course ; and

p. 9, l. 18.

(B) That, after taking into account all the circumstances of the case including planters' and millers' costs, the fair amount of sugar to be given to planters of Reunion Sugar Factory, including

Appellant, per ton of canes for the 1949 crop was 81 Kilogs (representing a reduction of 4 kilograms per ton of canes on the provisional assessment).

9. On the 31st July 1950 the matter came before the Supreme Court p. 16. on Motion by the Appellant for a writ of certiorari and a writ of mandamus addressed to the Board (First Respondent) to bring up and quash the decisions arrived at by the said Board assessing the amount of sugar due by the Second Respondent to the Appellant in respect of canes crushed at the Second Respondent's factory during the 1949 crop.

10. The Second Respondent who had been represented by Counsel p. 17. before the Board (First Respondent) was made a party to the proceedings, and joined with the Board (First Respondent) in resisting the application.

11. The grounds on which the above motions were based can be pp. 10-11. summarised as follows, in the words of the judgment delivered by the Supreme Court on the 13th November 1950 :—

“ The Board in assessing the amount of sugar accruing to p. 33, l. 12. planters of the factory area of Reunion Limited in respect of the 1949 crop—

20 (A) have misconstrued Section 6 (2) of Ordinance No. 47 of 1941 as empowering them to assess the amount of sugar to be received per ton of canes delivered at the factory of Reunion Limited by the planters of the factory area of Reunion Limited as a whole at less than two-thirds of the amount of sugar normally expected to be yielded by a ton of such canes ; and

30 (B) have taken into consideration extraneous matters such as the cost of production incurred by planters and the cost of manufacture and handling by the miller, including the cost of packing, and have thereby either exceeded their jurisdiction, or declined to exercise their jurisdiction by failing to determine the real question at issue between Reunion Limited and their planters and by converting that question into another question.”

12. On the Appellant's motion for a writ of certiorari the Second p. 25 Respondent raised three preliminary objections, two of which were subsequently waived, objection No. 2 being maintained.

The said objection was in the following terms : The Central Board p. 21, l. 19. (First Respondent) 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 (First Respondent) in the exercise of such jurisdiction, even if erroneous, cannot be reviewed by the 40 Court on certiorari.

Counsel for the Board (First Respondent) informed the Court on the p. 24, l. 24 to 4th October 1950 that he would abide by the decision of the Court on p. 25, l. 2. the preliminary objection.

pp. 25-31.

13. Arguments on the preliminary objection so raised were heard by His Honour F. Herchenroder K.C. Chief Justice, His Honour J. G. Espitalier-Noel, Puisne Judge and His Honour R. Brouard Ag. Puisne Judge on the 4th, 5th and 6th October 1950 and on the 13th November 1950 judgment was delivered, the declaratory part of which reads as follows :—

p. 47, l. 3.

“ It seems to us that, if the interpretation which they 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. 10

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 had power to deal with the matter before them as they have done.” 20

p. 47, l. 13.

The Court suggested, at the same time that consideration should be given to the question whether, on further discussion of the point raised by the Court, it would not be convenient to deal with the application for mandamus as well.

p. 50.

14. On the 13th December 1950 argument was resumed on the point raised by the Court in their judgment of the 13th November 1950, all parties agreeing that both applications for writs of certiorari and mandamus should be dealt with at one and the same time. Argument was continued on the 14th and 15th December 1950. To the contentions put forward by the Appellant as summarised in paragraph 11, *supra*, First and 30 Second Respondents replied in substance that the Board (First Respondent) had neither exceeded nor failed to exercise their jurisdiction and that Appellant's applications for writs of certiorari and mandamus should be refused.

p. 51.

pp. 54-63.

pp. 18-19.
pp. 53-60.

pp. 63-81.

15. On the 24th of January 1951, the Court (Espitalier-Noel, Ag. Chief Justice, Brouard, Ag. Puisne Judge and Neerunjun, Ag. Puisne Judge) delivered final judgment, refusing the applications both as regards certiorari and as regards mandamus, and holding—

pp. 71-72.
p. 81.

(i) that the Board (First Respondent) had rightly construed Section 6 (2) of Ordinance No. 47 of 1941, as vesting them with a 40 discretion to assess the planter's share at more or less than two-thirds of the sugar extracted from his canes according to the circumstances of the case

p. 72.

(ii) that they had exercised such a discretion with due regard for the principle enacted in the said section for their guidance

pp. 72, 75, 78.

(iii) that they had not taken into account matters outside the ambit of their jurisdiction

(iv) that they had therefore (A) neither exceeded their jurisdiction (B) nor declined to exercise such jurisdiction. pp. 72, 77, 78, 82.

16. Final leave to appeal to His Majesty in Council from the said judgment was granted by the Supreme Court of Mauritius by order dated 2nd April 1951, the motion for leave to appeal not being opposed. p. 112.
p. 108.

17. The Second Respondent humbly submits that the decision of the Supreme Court of Mauritius as summarised in paragraph 15, *supra*, is right and should be affirmed for the following amongst other

REASONS

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(1) BECAUSE the Board (First Respondent) have rightly interpreted Section 6 (2) of Ordinance No. 47 of 1941 as vesting them with a discretion to assess the Planter's share at more or less than two-thirds of his sugar extraction according to the circumstances of the case.

(2) BECAUSE they have exercised the discretion vested in them by the said section with due regard for the principle therein enacted for their guidance.

(3) BECAUSE they have not taken into account extraneous matters in exercising such a discretion.

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(4) BECAUSE they have not exceeded their jurisdiction.

(5) BECAUSE they have neither declined nor failed to exercise their jurisdiction.

(6) BECAUSE the Judgment of the Supreme Court of Mauritius is well founded in law and ought to be affirmed.

A. RAFFRAY.

RAYMOND HEIN.

No. 44 of 1951.

In the Privy Council.

ON APPEAL
from the Supreme Court of Mauritius

BETWEEN
SEEREELALL JHUGGROO *Appellant*
AND
(1) THE CENTRAL ARBITRATION
AND CONTROL BOARD *and*
(2) REUNION LIMITED - Respondents.

Case
FOR THE SECOND RESPONDENT.

CHARLES RUSSELL & CO.,
37 Norfolk Street,
Strand, W.C.2,
Solicitors for the Second Respondent.