Privy Council Appeal No. 19 of 1992

Compagnie Sucriere de Bel Ombre Limitee *Appellants*

v.

Raymond Moorghen *Respondent*

FROM

THE SUPREME COURT OF MAURITIUS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH JULY 1993

Present at the hearing:-

LORD GOFF OF CHIEVELEY
LORD LOWRY
LORD MUSTILL
LORD SLYNN OF HADLEY
CHIEF JUSTICE ZACCA

[Delivered by ***Lord Slynn of Hadley****]*

The respondent was formerly employed by the appellants for over ten years as a worker on their sugar estate in Mauritius. In April 1990 he was injured at work and in September 1990 he produced to the appellants a medical certificate to the effect that he was permanently unfit for work. The medical officer recommended his retirement on medical grounds. The respondent's claim for a gratuity on retirement was refused by the appellants on the ground that a certificate by one Government medical practitioner was insufficient; the certificate it was said had to be signed by a panel consisting of three medical practitioners, one appointed by the employer, one by the worker, and a Government medical practitioner.

On 2nd August 1991 the respondent began proceedings claiming three months' wages in lieu of pre-retirement leave and a gratuity. On 17th December 1991 Her Honour Mrs. Magistrate S. Peeroo in the Industrial Court upheld the respondent's claim and awarded him Rs55420.90. The appellants' appeal to the Supreme Court of Mauritius against that judgment was dismissed with costs on 21st January 1992 but the Supreme Court gave the appellants leave to appeal to the Judicial Committee of the Privy Council.

The point in issue arises in this way.

Section 96 of the Industrial Relations Act 1974 (RL 3/169 - 7th February 1974) empowered "the Minister to whom responsibility for the subject of industrial relations is assigned" (hereinafter called "the Minister of Labour"), on receipt of a recommendation from the National Remuneration Board fixing remuneration and prescribing conditions of employment, to make by regulations a "Remuneration Order".

The Minister of Labour made the Sugar Industry (Agricultural Workers) (Remuneration Order) Regulations 1983 on 30th December 1983. Paragraph 20 of the Second Schedule to those Regulations provided:-

"(1) Every employer who owns either a sugar factory or more than 100 arpents of land under sugar cane cultivation shall pay a gratuity to every worker who has worked on the same estate for not less than 10 consecutive years if he retires or is asked to retire -

(a) on or after the age of 60; or

(b) before reaching the age of 60 on the ground of permanent incapacity certified by a Government Medical Practitioner."

It is not disputed that the respondent's certificate satisfied this condition.

However by section 4 of the Sugar Industry Efficiency Act 1988 (Act 36 of 1988 - 10th December 1988) the aforesaid Regulations of 1983 were amended:-

"(b) in the Second Schedule

(i) ...

(ii) by deleting in paragraph 20(1)(b) the words 'a Government Medical Practitioner' and replacing by the words 'a panel consisting of three medical practioners [sic], one appointed by the employer, one by the workers and a Government Medical Practitioner'."

The Minister "to whom the subject of agriculture is assigned" (hereinafter called "the Minister of Agriculture") may by section 8 of the Act:-

"(a) make such regulations as he thinks fit for the purposes of this Act;

(b) by regulations, amend the Schedules other than the Fifth Schedule."

On 28th November 1989 (Government Notice No. 191 of 1989) the Minister of Labour, acting under section 96 of the Industrial Relations Act, made a regulation which provided that the Second Schedule to the Regulations of 1983:-

> "is amended in paragraph 20 by deleting sub-paragraph (1) and replacing it by the following sub-paragraph -
>
> (1) ...
>
> (a) ...
>
> (b) before reaching the age of 60 on the ground of permanent incapacity to perform his work certified by a Government Medical Practitioner."

In this regard the initial provisions of the Regulations of 1983 were reinstated. The Regulations of 1989 were deemed to have come into operation on 10th December 1988. In *Bhowan v. Compagnie Sucriere de Bel Ombre* (1991) S.C.J. 321 the Supreme Court of Mauritius ruled that whilst the Regulations of 1989 were otherwise valid they could not operate retrospectively from 10th December 1988. That latter ruling does not apply to the respondent since his retirement did not begin until after the Regulations of 1989 were made.

The appellants contend that (a) there was no power to amend an Act of the Legislature by regulation, (b) alternatively that, if any such regulation could be made, it could only be made by the Minister of Agriculture under section 8 of the Act of 1988.

The Supreme Court of Mauritius rejected the first of these contentions so it was not necessary for it to consider the second.

Sir Hamid Moollan Q.C., on behalf of the appellants, has stressed the importance of the sugar industry to Mauritius. He drew attention to the purposes of the Act of 1988 as set out in the Explanatory Memorandum which accompanied the Bill and as set out in the long title of the Act namely "To provide for an efficient and viable sugar industry, to preserve agricultural land, to promote agricultural diversification and diversification within sugar, to ensure that all commitments under the Sugar Protocol are met and to ensure fairness, equity and transparency within the sugar industry". He points out that this Act covers much ground; it amended the Customs Tariff Act, the Income Tax Act, the Labour Act; it provided a package of legislative measures which were to have statutory effect. The amendments to the Regulations of 1983 were part of that package and have statutory effect. To say that the Minister of Labour could amend those provisions on any view is in conflict with section 8 of the Act of 1989, especially since when the Minister of Agriculture's powers are to be excluded, as in relation to tax matters, it is done expressly.

Their Lordships consider that these arguments cannot be accepted. It is clear that the effect of section 4(3)(b)(ii) of the Act of 1988 is to do no more than to amend the Regulations of 1983. That section does not incorporate those regulations into the statute, nor does it either expressly or by necessary implication take away the powers of the Minister of Labour to make regulations under section 96 of the Industrial Relations Act 1974. Accordingly, when the Minister of Labour reamended the Regulations of 1983 he was not seeking by subordinate legislation to amend a statute, which in the absence of a specific power in the statute he could not do. He was exercising powers conferred on him by section 96. Those powers were not cut down by the powers conferred on the Minister of Agriculture by section 8 of the Act of 1988.

His authority to make such regulations "as he thinks fit" included a power to amend regulations already made by virtue of section 23(b) of the Interpretation and General Clauses Act 1974 (RL 3/267 - 12th July 1974).

Since the Assembly did not exercise its powers under section 20(3) of the Interpretation and General Clauses Act 1974 to disallow the Regulations of 1989 within 30 days of their being laid before the Assembly, those Regulations took effect.

Their Lordships agree with the conclusion of the Supreme Court that the Minister of Labour acted within the powers conferred upon him. Their Lordships accordingly dismiss this appeal. The appellants must pay the respondent's costs before the Board.