Privy Council Appeal No. 1 of 1987

Pandit Jayram Seetohul *Appellant*

v.

Mauritius Arya Ravi Ved Pracharini Sabha *Respondent*

FROM

THE SUPREME COURT OF MAURITIUS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 21ST NOVEMBER 1988

Present:-

LORD TEMPLEMAN
LORD HAVERS
LORD ACKNER
SIR JOHN STEPHENSON
SIR ROBERT MEGARRY

[Delivered by Lord Templeman]

The appellant Pandit Seetohul ("the Pandit") was employed by the respondent association as a full-time priest. The association is an incorporated religious society of Hindus. The affairs of the association fell into disorder and in 1975 there was constituted by Ministerial Order a Caretaker Committee charged with the management of the association. The Caretaker Committee consisted of twelve members including the Pandit who was designated first Vice-President. On 16th March 1979 the association was informed that the Government subsidy for the financial year 1978 to 1979 amounted to Rs.119,913.48 and that 80 per cent of this should strictly be used to meet the salaries of priests. On 20th February 1980 the Minister of Labour and Industrial Relations extended the term of office of the Caretaker Committee to 31st May 1980, directed the quorum of the Caretaker Committee to be six and ordered the election of a Management Committee to take over the management of the association from the Caretaker Committee. On 20th May 1980 at a meeting of the Caretaker Committee attended by

six members, including the Pandit, the following relevant decisions were taken:-

> "(iv) Taking into consideration that full-time priests and part-time priests were paid from the Sabha A/C No 2, i.e. the Religious Subsidy Account, the amount of which depended upon the membership of the Sabha and which membership varied every ten years, i.e. according to latest Govt. Population census the Caretaker Committee decided that, subject to the continued availability of funds the only acting full-time priest J. Seetohul of the Sabha because of his long years of service to the Sabha, be placed at par salary wise with the clerk, i.e. Rs.775 a month, plus extra remunerations as required by Govt, and with retroactive effect from the date on which increase in Govt subsidy was paid to Sabha. It was further decided that, that priest would have to shoulder the additional responsibility of supervising the work of the part-time priests of the Sabha all over the island regarding which, he would have to enter into a new agreement with the Sabha.
>
> The text of the agreement would first have to be cleared with legal adviser of the Sabha, the twenty part-time priests, as per list annexed to these minutes, would receive Rs.150/- instead Rs.100/- a month as missionary duty and that decision too, would have the same retroactive effect as the one for the full-time priest."

It is common ground that retroactive effect would have made the increased salary payable from 1st July 1978.

> "7. Finally at the request of the General Secretary it was decided to seek legal advice on the main decisions taken at that meeting, before implementation of any decisions taken."

It is also common ground that among the "main decisions" was the decision to increase the salary of the Pandit.

On 31st May 1980 at a meeting of the Caretaker Committee the members present, including the Pandit, but not constituting a quorum, approved the minutes of the meeting held on 20th May 1980 and:-

> "The President announced on matters arising out of minutes that legal clearance (advice) had been received on files of the respective persons to the effect that action be stayed on the decisions regarding Pandit J. Seetohul, the twenty other Pandits because of the fact that when that particular matter was discussed there could not have been a quorum for the fact that Pandit Seetohul was himself the party concerned in the decision; ..."

The new Management Committee duly took over from the Caretaker Committee and decided to take no action on the decisions reached by the Caretaker Committee on 20th May 1980. At that date the basic salary of the Pandit was Rs.240. In 1981 his basic salary was increased to Rs.450. On 18th November 1982 the Pandit issued a writ in the Industrial Court of Mauritius claiming Rs.48,486.04 on the basis that the association had agreed to raise his salary from 1st July 1978 to Rs.775 per month.

The proceedings came before Mr. Magistrate R. Proag on 22nd April 1983 and 20th June 1983 when certain witnesses were heard. The proceedings resumed on 4th June 1984, 26th June 1984 and 19th September 1984 before Mr. Magistrate V. Boolell who delivered judgment in favour of the Pandit on 19th October 1984. On 11th June 1986 the Supreme Court of Mauritius (Appellate Court), (V.J.P. Glover Senior Puisne Judge and A.M.G. Ahmed J.) allowed an appeal from the decision of the Magistrate and dismissed the Pandit's claim.

The Magistrate was of the view that the decision reached by the Caretaker Committee on 20th May 1980 to increase the salary of the Pandit to Rs.775 a month was valid and created a contract binding on the association. The Supreme Court held that the increase in salary was conditional on clearance being obtained from the legal adviser and that no such clearance was obtained. In the alternative the Supreme Court held that the decision of

the Caretaker Committee on 20th May 1980 did not suffice to create a contract between the association and the Pandit.

Mr. Platts-Mills, who said all that was possible to be said on behalf of the Pandit, urged that the resolution of the Committee on 20th May 1980, passed in the presence of the Pandit, albeit in his capacity as a member of the Committee, sufficed to complete a contract between the association and the Pandit. The reference to the legal adviser was either an unlawful delegation of the powers of the Committee or alternatively the advice which was received was bad in law and should therefore have been ignored. On behalf of the association Mr. Hurnam fairly pointed out that the Committee only sought advice and did not delegate any power of decision.

Their Lordships agree with the decision reached by the Supreme Court. The resolutions or decisions of the Caretaker Committee were only expressions of intention and could not give rise to a contract with the Pandit simply because he happened to be present in his capacity as a member of the Committee. The decision of the Caretaker Committee was in any event expressed to be conditional on clearance being obtained from the legal adviser and such clearance was never forthcoming. In their Lordships' opinion the appeal must therefore fail.

In these circumstances the fact that the proceedings before the Magistrate were defective is immaterial; but their Lordships confirm the views expressed by the Supreme Court on 27th April 1988 in M. Ramkalawon v. The Private Secondary Schools Authority (unreported) that the decision of the Board in N.G. (alias Wong) v. The Queen [1987] 1 W.L.R. 1356 applies to civil as well as to criminal proceedings. A judge who has heard only part of a case is not in a position to pronounce judgment. In the present case the Magistrate who delivered judgment only heard some of the witnesses and the closing addresses. The proceedings were therefore defective, but even if they had been properly heard and determined the decision must have gone against the Pandit for the reasons which the Board have now expressed.

Their Lordships will accordingly humbly advise Her Majesty that the appeal ought to be dismissed. The appellant must pay the respondent's costs.