

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 7 OF 1993

(High Court Judicial Review No. 5 of 1991)

BETWEEN

FIJI PUBLIC SERVICE ASSOCIATION

APPELLANT

and

REGISTRAR OF TRADE UNIONS
& FIJI POST & TELECOMMUNICATIONS
EMPLOYERS ASSOCIATION

RESPONDENTS

Mr H. K. Nagin for the Appellant
Mr V. Nathan for the 1st Respondent
Mr J. Semisi for the 2nd Respondent

Date of Hearing : 10th February 1994
Date of Delivery of Judgment : 17th February 1994

JUDGMENT OF THE COURT

This is an appeal from the decision of Scott J. given on 4 December 1992 declining a judicial review of the decision of the Registrar of Trade Unions to register the Second Respondent as a trade union.

Prior to 1 January Posts and Telecommunications in Fiji were operated by a Government Department and all its employees were public servants. By far the majority of those employees were members of the Fiji Public Service Association (F.P.S.A). As from 1 January 1990 that Department ceased to operate those services, which were taken over by a private company, namely Fiji Posts and Telecommunications Ltd. Accordingly the employees ceased to be public servants. The F.P.S.A took legal proceedings against that company seeking recognition by the new employer, but

those proceedings failed. The Court held that the only way in which a union could obtain recognition was in accordance with the procedures laid down in the Trade Unions (Recognition) Act cap.96A. The F.P.S.A then applied under that Act, but that application has apparently not yet been determined.

Contemporaneously, the F.P.S.A also, at a general meeting, passed a resolution amending its rules so as to add a new category of membership, namely, "Persons employed by the Fiji Posts and Telecommunications Limited or any of its successors." Notice of this amendment was then given to the Registrar for the purpose of obtaining registration under s.37 of the Trade Unions Act cap. 96. Before granting registration the Registrar was required by s.37 to be satisfied as to various matters, and in particular that the amendment did not offend against s.13(1)(e) which was then in force.

On 8 January 1990 the Second Respondent, Fiji Posts and Telecommunications Employees Association (FPTEA), was formed and presented an application for registration as a trade union pursuant to the provisions of s.8 of the Trade Unions Act. That application was signed by eight persons. On 13 January 1990 two of those persons wrote to the Registrar withdrawing from the application. Notwithstanding this the Registrar proceeded to advertise the application in the Fiji Gazette and to call for objections as required by the Trade Unions Act. An objection was lodged by the F.P.S.A upon the ground that it already represented nearly all the employees of the new company and accordingly, in

terms of s.13(1)(e) of the Act, there was adequate representation of the interests sought to be represented by the F.P.T.E.A.

On 24 January 1991 the Registrar registered the F.P.T.E.A, and the F.P.S.A thereupon applied for leave to apply for a judicial review of the Registrar's decision.

There are three grounds of appeal against Scott J's refusal to grant a judicial review, namely that the Judge had erred:

1. *In holding that the withdrawal of the two signatories did not affect the validity of the application.*
2. *In holding that the Registrar had not abused his discretion by giving no reasons for his decision.*
3. *By not following the decision of this Court in Fiji Public Service Association v Registrar of Trade Unions and another, Civil Appeal No. 32 of 1990.*

As we have decided that this appeal must succeed on the second ground we make no reference to the other two.

In the present case, at the time when the Registrar made his decision to register the F.P.T.E.A, the situation which confronted him was this :

1. He had received an application under s.8 of the Trade Unions Act for registration of the F.P.T.E.A. That application was signed by 8 persons and was, on the face of it, a valid application requiring consideration by him.

2. Of the persons who had signed the application, two had written to him withdrawing their support for the application upon the ground that their signatures had been obtained "through misrepresentation of facts" and adding, "We never envisaged that our signatures were to be used against us in weakening the existing union, namely the F.P.S.A who in (our) view is still the best to represent us in the F.P.T.L."

3. The Registrar thus had before him two separate applications, one for registration of the F.P.T.E.A and the other for registration of an amendment to the Rules of the F.P.S.A. Each of those applications related to the right to represent the employees of Fiji Posts and Telecommunications Ltd., and each involved a decision as to the application of s.13(1)(e).

Accordingly it was plain that there were competing applications directed to the same end and requiring consideration of whether there was a trade union already registered which was adequately representative of the interests of the applicants.

The Registrar, in the performance of his statutory duty, was required to act judicially, and the real enquiry in the present case is whether he did so. We are unable to conclude that he did.

It may be that the mere withdrawal of two of the eight

signatories to the application would not, as the Judge has found, invalidate the application. But the matter went much further than that. The two signatories who withdrew did so in the context of an allegation of misrepresentation of a kind which had a direct bearing on the merits of the two competing applications. The Judge has observed that, as a matter of common sense, it might have been expected that the Registrar would enquire further into the application. There was power for him to do so under s.11 of the Act. We go further and say that there was a clear obligation on him to do so.

The general principle which is to be applied is that expressed by Lord Pearce in Padfield v Minister of Agriculture Fisheries and Food (1968) A.C. 997 at p.1053:

"If all the prima facie reasons seem to point in favour of his taking a certain course to carry out the intention of Parliament in respect of a power which it has given to him in that regard, and he gives no reason whatever for taking the contrary course, the Court may infer that he has no good reason and that he is not using the power given by Parliament to carry out its intentions."

In the light of that principle it was never appropriate for the Registrar to make a decision to register one of the two competing applications without giving reasons of any kind. If there had only been one applicant and it were possible to say that the result of it was self-evident, or could be seen with reasonable clarity, then the absence of reasons may well have been acceptable. But no such conclusion can be reached here, and we

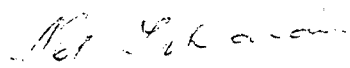
consider the failure to give reasons was fatal.

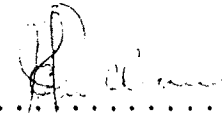
Accordingly the appeal must be allowed.

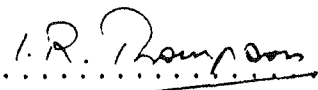
The question then arises as to what course should now be followed. In the normal course one would expect that the matter should be referred back to the Registrar with a direction that he re-consider the application. However, because of the withdrawal of the two signatories and the allegations they have made this course would not be appropriate.

There will therefore be an order of certiorari that the decision of the Registrar be removed into this Court and quashed. It is, of course, open to the F.P.T.E.A to make a fresh application if it should wish to do so.

The appeal is allowed with costs.


.....
Sir Moti Tikaram
Acting President Fiji Court of Appeal


.....
Sir Peter Quilliam
Judge of Appeal


.....
Mr Justice Ian R. Thompson
Judge of Appeal