

CHANG SING LOONG COMPANY

v.

MINISTER OF PRIMARY INDUSTRIES &
ATTORNEY-GENERAL

[HIGH COURT, 1989 (Jesuratnam J) 24 February]

Civil Jurisdiction

Administrative law- ministerial direction- whether ultra vires the Act- Fruit Export and Marketing Act (Cap. 154) Section 7.

The Minister attached a condition to the Plaintiff's ginger exporting licence which required the minimum price, destination and manner of the exports to be subject to his direction. The Plaintiff argued that the condition was ultra vires the powers conferred on him by the Act. Dismissing the action the High Court HELD: that (i) there was nothing to show that the Plaintiff had suffered any hardship as a result of the condition (ii) the Minister's decision was not wholly unreasonable and therefore (iii) the condition was *intra vires* the Act.

Case cited:

Associated Provincial Picture Houses Ltd v. Wednesbury Corporation [1948] 1 KB 223

F. S. Lateef for the Plaintiff
N. Nand for the Defendants

Action for declaratory Judgment in the High Court.

Jesuratnam J:

In this case the plaintiff, Chang Sing Loong Company of Suva, is challenging the validity of a condition imposed by the Permanent Secretary for Primary Industries in an export licence issued to it to export ginger overseas.

The plaintiff stated in its amended statement of claim that one of the conditions attached to the export licence issued to it for 1987 is condition 5 which is in the following terms:-

"Export of ginger must be on the basis of minimum F.O.B. prices or equivalent to North American or any other markets specified by the Ministry of Primary Industries to importers approved by the Ministry of Primary Industries and in the manner directed by the Ministry of Primary Industries"

According to the State this condition (as indeed all conditions) was imposed on the plaintiff's export licence in pursuance to section 7(3) of the Fruit Export and Marketing Act (Cap. 154).

A The plaintiff states that he has been an exporter of ginger from 1940 to North America and other markets without any restrictions. It states that the present condition is an unlawful interference with its freedom of choice of foreign importers with whom it is on contract to supply ginger. It says that the condition is *ultra vires* section 7 of the Fruit Export and Marketing Act and is unreasonable and should be declared to be so by the court.

B The defendants have taken up various legal positions in this case. They have as a preliminary matter taken up objection that the plaintiff cannot have and maintain this action in as much as it has not exhausted all the remedies under the Act before coming into a court of law. Section 7(4) gives to an applicant for an export licence the right to appeal to the Minister not only against a refusal to grant a licence but also against the inclusion in a licence of a condition.

C I may say that in another case which also contained a right of appeal to the Minister in the first instance (Judicial Review 2 of 1988 Mahendra Patel and another v. Principal Immigration Officer in which I delivered judgment on 25.11.88) the State did not take this preliminary objection. Presumably it was not taken in that case because the order complained of was made by the Minister himself. But the applicants were not aware at the time they received the order that it was made by the Minister. Nevertheless they did not appeal to the Minister but came into court straightaway - although it was by way of Judicial Review. However I do not say that the State is in any way bound by such a precedent.

E It seems to me that the plaintiff in the instant case is challenging the very validity of the condition as being *ultra vires* the Act. This objection was not so much factual as legal. In these circumstances the plaintiff probably thought there was little use in appealing from the decision of the department to the Minister in charge of the same department on what was perhaps a policy matter. I am therefore not inclined to shut out the plaintiff on this technical ground.

F Learned Acting Solicitor-General has in his written submissions set out a useful background to the present dispute. I am mindful of the fact that the court cannot stray outside the four corners of the Act to gather material to interpret the provisions of the Act. But I think it is clear and beyond dispute that the ginger industry was left to its own for a long time before the State intervened to regulate the industry not only in the interests of the growers but in the national interest as a whole. The Act itself indicates that section 7 was introduced by Act No. 9 of 1983. It would appear from the Act itself that the State began progressively intervening in successive stages in an industry which was earlier marked by a policy of *laissez-faire*. It was perhaps natural that such intervention would have inconvenienced and hampered many who operated on their own, unrestricted by any conditions imposed from above. It was therefore legitimate for the plaintiff to feel aggrieved as he had been operating freely from 1940. The reasons for the intervention by the State in regulating the ginger industry are grounded in policy which is for the State to decide and not for the courts. However it is the duty of the courts to strike down whatever is repugnant to the provisions of enacted

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legislation. Has there been such a contravention in this case? Does Condition 5 contravene section 7(3) of the Fruit Export and Marketing Act or of any regulation under it, only in which event can it be declared to be *ultra vires* the Act (section 7(2))?

A

The need to impose conditions when licences are granted is so basic that even the Interpretation Act (Cap. 7) provides as follows in section 64:-

“Where any written law confers a power to issue any licence, permit or authorisation, then, unless a contrary intention appears, such licence, permit or authorisation may be issued subject to such conditions, not inconsistent with that law, as the authority issuing it deems expedient”

B

It is in most cases the conditions which trim, shape and particularise the terms in a licence, which are, as a rule, general in nature.

C

There are 4 types of conditions which are set out in section 7(3)(a)(b)(c) and (d). The plaintiff contends that condition 5 cannot be deemed to come under any of those subsections. The argument of the State is that it is caught up by (6) and (d). It should also be remembered that (a) to (d) are “without limiting the generality of subsection 2.....”.

D

Condition 5 which requires an exporter to export to approved importers abroad certainly seems to define and delimit “places” It restricts it to approved importers in the different places. From the correspondence that has passed between the parties (which are annexures in this case) I find that the designation of approved importers has been purported to be made in the interests of co-ordination and central control which are generally beneficial to the industry and nation as a whole. The plaintiff has not succeeded in showing that such action is not *bona fide*. It also seems to me that no actual hardship has been caused to the plaintiff. It has been assured that it could direct its export to the ultimate importer of its choice through the approved importer. Except for a little inconvenience perhaps and interference with its freedom in the abstract I can see no practical hardship which will deny to the plaintiff the content of its need viz the export to its ultimate designated importer of its choice.

E

F

Does the inconvenience caused to the plaintiff outweigh the advantages of condition 5 to the national interest or vice versa? It seems to me that these are eminently matters for the policy-makers and not for the courts to decide.

It also appears from the correspondence between the parties, which preceded the institution of this action, that there is a representative national body “Fiji Fresh Ginger Exporters Association” of which the plaintiff too later became a member on the advice of the Permanent Secretary for Primary Industries. If condition 5 was inimical to the interests of the ginger exporters of Fiji as a class it is a matter for this Association to agitate and lobby. From the very fact that the Permanent Secretary for Primary Industries had advised the plaintiff to join this Association

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it appears that there was agreement and co-operation between the department and the Association on matters like this.

- A In the absence of contrary indications one can assume that condition 5 imposed on ginger exporters met with the approval of this representative body which looks after the interests of the class of exporters. The legal argument of the plaintiff's counsel is that this condition adversely affected the class of exporters of ginger.
- B The probable reason why the Permanent Secretary for Primary Industries reminded the plaintiff of his right to appeal to the Minister in the first instance (letter of 19.7.88) was to enable the plaintiff (perhaps with the co-operation and assistance of the Association) to persuade the Minister to change a policy matter in this regard.
- C It is not for this court to conjecture on the results which an appeal to the Minister would or could have achieved.

- D However I do not mean to say that, whatever the views of the Association may be, the plaintiff has no individual right to complain of trespass on his rights as a citizen and individual. He has every right to seek his redress. But it seems to me that in the circumstances of this case the plaintiff's task is an uphill one in order to persuade this court to say that the Permanent Secretary for Primary Industries has "come to a conclusion so unreasonable that no reasonable authority could ever have come to it" per Lord Greene M. R. in Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1K.B. 223 at p- 234.

In the same leading case Lord Greene M.R. further said:-

- E "The subject-matter with which the condition deals is one relevant for its consideration. They have considered it and come to a decision upon it. It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is quite right; but to prove a case of that kind would require something overwhelming, and, in this case, the facts do not come anywhere near anything of that kind."
- F

The plaintiff in the instant case has not come up to the level of this test. In my view condition 5 is *intra vires* the Act.

- G I therefore dismiss plaintiff's action with costs.

(Action dismissed.)