THE STATE

v

THE SUGAR INDUSTRY TRIBUNAL

ex parte
THE SUGAR CANE GROWERS COUNCIL

[HIGH COURT, 1990 (Byrne J) 30 March)

Revisional Jurisdiction

Sugar Industry- whether Master Award susceptible to judicial review- nature and extent of Tribunal's duty to consult- Sugar Industry Act (Cap 206) Sections 64(3), 67(1) and 67(2).

The Sugar Cane Growers Council sought to quash the 1989 Master Award on the grounds both of error of law and defects of procedure by the Tribunal. The High Court examined the meaning and effect of the relevant sections of the Sugar Industry Act and HELD: (i) Section 64 (3) of the Act is a clear privative clause and (ii) the Tribunal had fully discharged the duties imposed by Sections 67(1) and (2) of the Act.

Cases cited:

Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147
Ex parte Bradlaugh (1878) 3 QBD 509
In re Racal Communications Ltd [1981] A.C. 374
Ishak v Thowfeek [1968] 1 WLR 1178
Montreal Street Railway Company v Normandin (1917) AC 170
R v Environment Secretary Ex parte Ostler [1977] QB 122
R v Medical Appeal Tribunal ex parte Gilmore [1957] 1 QB 574
R v Murray ex parte Proctor (1949) 77 CLR 387
RAS Behari Lal v King-Emperor (1933) All ER Rep. 723
Re Coldham (1983) 57 ALJR 721
Regina v The Registrar of Companies ex parte Central Bank of India [1986] QB 1114
WEA Records Ltd v Visions Channel 4 Ltd [1983] 1 WLR 721

N. Moshinsky Q.C. & *S.M. Koya* for the Applicant
J.R. Flower for the 1st Respondent
I.V. Gzell Q.C. & *B.N. Sweetman* for the 2nd Respondent (Fiji Sugar Corporation)

Judicial Review in the High Court

Byrne J:

On the 24th of January last I gave the Applicant in proceedings in Judicial Reviews

Nos. 10 and 12 of 1989 leave to review a decision made by the First Respondent on the 29th of August 1989 to issue a document titled "Final Draft of Master Award" made under the Sugar Industry Act (Cap 206) and to quash the decision made by the First Respondent on the 20th of November 1989 to issue a document titled "Sugar Industry Tribunal Master Award and Report 1989" and its decision made on the 23rd of November 1989 to publish the same in an extraordinary Fiji Republic Gazette under Volume 3 No. 64.

On the 12th of January 1990 the Second Respondent issued an Originating Summons for a declaratory order against the Applicant namely, that the Sugar Industry Master Award made by the First Respondent and published in the Fiji Republic Gazette on the 23rd of November 1989 is:

(i) Valid, and

(ii) Binding upon the Applicant, the Sugar Cane Growers Council, the growers, the Sugar Commission of Fiji, the Industrial Commissioner of the Tribunal, the Accountant of the Tribunal and the Tribunal.

On the 5th of March 1990 on the hearing of the Summons for Directions in these matters, I directed that all three actions, that is Judicial Reviews Nos. 10 and 12 of 1989 and the Originating Summons No. 12 of 1990 be consolidated and separate judgments were to be given in respect of each matter. Because the evidence and counsel's submissions are so closely inter-twined and because, during the hearing, no attempt was made by either of the principal parties to separate the three matters, for convenience, and I hope for ease of understanding, I shall give one judgment relating to all three matters and at the end of my reasons enter judgments in accordance with those reasons.

In my Ruling of the 24th of January 1990 I expressed the opinion that on the hearing of the two Motions for Judicial Review the Court should be asked to answer the following questions

(1) Did the First Respondent err in law in making or issuing on 29th August 1989 a document titled "Final Draft of the Master Award?"

(2) Did the First Respondent err in law in making or issuing and publishing in an Extraordinary Fiji Republic Gazette on 23rd day of November 1989 the document titled "Sugar Industry Tribunal Master Award and Report 1989"? and

(3) What is the effect if any in law of Section 64(3) of the Sugar Industry Act Cap. 206 on the document titled "Sugar Industry Master Award"?

On the hearing of the Summons for Directions I indicated to the parties that I would be willing to consider any application to enlarge these questions if counsel
A thought it desirable. On the hearing which began on the 19th of March no such applications were made.

All three matters raise difficult questions of law concerning the interpretation of, particularly, Sections 64(3) and 67 Sub-section (1) and (2) and my task in coming to a decision has not been made any easier by the powerful and persuasive
B arguments by both senior counsel addressed to me. In such a situation it is always very difficult for a Judge to decide which of two opposing view -points he should accept, although my mind is now quite clear as to this.

I turn now to consider the respective arguments and many of the authorities cited to me. At the out-set it is convenient to refer to the question whether leave granted for Judicial Review can be revoked. There was no dispute about this
C between the parties but it is as well that I should mention a fairly recent decision of the English Court of Appeal on this subject so as to indicate why leave once granted can be revoked.

In WEA Records Limited v. Visions Channel 4 Limited [1983] 1W.L.R. 721, Sir John Donaldson M.R. said:

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> "By its nature, an ex-parte order is essentially a provisional order made by the Judge on the basis of the evidence and submissions emanating from one side only and there is therefore no basis for making a definitive order and accordingly when the Judge reviews his provisional order in the light of the evidence and argument
> E adduced by the opposite party, he is not hearing an appeal from himself and is in no way inhibited from discharging or varying his original order."

By agreement between counsel Mr. Gzell addressed me first, and accordingly I shall deal with his submissions and those of Mr. Moshinsky in that order.

F The first submission by the Second Respondent was that by virtue of Section 64(3) of the Sugar Industry Act which was made by Sugar Industry (Amendment No. 2) Decree 1988, No. 27 the Applicant's Motion for any relief was barred. This reads as follows:

> (3) "When made, the Master Award shall be final and conclusive,
> G shall not be challenged, appealed against, reviewed, quashed or called into question in any court, and shall not be subject to prohibition, mandamus or injunction in any court."

The effect of a privative clause such as Sub-section (3) has been considered in numerous cases, which, as I said in my Ruling of the 24th of January are generally

to the effect that the Court gives the narrowest possible construction to statutory restrictions on judicial remedies. In one case Ras Behari Lal v. King-Emperor (1933) All E.R. Rep. 723 at 726 Lord Atkin said: A

> "Finality is a good thing but justice is better."

In another case Denning L.J. said:

> "I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words." B

That was in R. v. Medical Appeal Tribunal ex.p. Gilmore [1957] 1Q.B. 574 at 583. In that case Section 36 (3) of the English National Insurance (Industrial Injuries) Act 1946, provided ..... "any decision of a claim or question shall be final". C

In Ex-parte Bradlaugh (1878) 3 Q.B.D. 509 a court comprising Cockburn, C.J. and Mellor, J. held that a section in an Act of Parliament taking away the remedy of certiorari did not apply in the case of a total absence of .jurisdiction.

Then came what has been variously described as the land-mark decision or high-water mark of judicial control in the leading case of Anisminic Ltd. v. Foreign Compensation Commission [1969] 2 A.C. 147. In that case the words which the House of Lords was called on to interpret were the provision of the Foreign Compensation Act 1950 that a determination of the Commission "shall not be called in question in any Court of law". Yet a determination of the Commission was questioned for five years before successive courts, and in the end the House of Lords granted a declaration that it was ultra vires and a nullity. The House held: D E

(a) (unanimously) that the ouster clause did not protect a determination which was outside jurisdiction; and

(b) (by a majority) that misconstruction of the Order in Council which the Commission had to apply involved an excess of .jurisdiction because they had based their decision on a ground which they had no right to take into account (1) and sought to impose another condition not warranted by the Order. (2) F

Much has been written about this case and its effects on administrative law and sharply conflicting views about the case and its effects now prevail in the House of Lords and in the Privy Council and I do not propose to canvass them in any detail here; to do so would require more time than is necessary for the purpose of the three matters now before me but one thing *Anisminic* does show clearly is the great determination of the courts to up-hold their long-standing policy of resisting G

attempts by Parliament to disarm them by enacting provisions which, if interpreted literally, would confer uncontrollable power upon subordinate Tribunals. One other effect of the decision has been to make all errors of law subject to judicial review, thus rendering obsolete the distinction which the courts had previously made of errors of law which go to jurisdiction and errors of law which do not.

As I said above, sharply conflicting views about the Anisminic case have developed among lawyers and this was stressed by Mr. Gzell in his submission that the better view now is that exclusionary or limiting provisions are effective in appropriate circumstances and in this regard he quoted some remarks of Lord Diplock and Lord Salmon in the case of "In re A Company" otherwise known as In re Racal Communications Limited [1981] A.C. 374 at pp383 E - 384 G. and 386 A-E. In that case the House of Lords held that when a power to decide a particular question was conferred by statute on a court of law, as distinct from a tribunal of limited jurisdiction, there was no presumption that Parliament did not intend to confer on it a power to determine questions of law going to its jurisdiction as well as questions of fact and judicial review was not available to correct any error of law made by it. I note and find support in the marks of Lord Diplock and Lord Salmon and Lord Edmund-Davies, the latter of whose remarks appear at p390.

The next case on which Mr. Gzell placed strong reliance on this question was R. v. Environment Secretary ex-parte Ostler [1977] Q.B. 122 at pp. 134A - 136 B. This was a decision of the Court of Appeal in England as to the right of a person to obtain an order of certiorari to quash a Road Scheme when the relevant legislation fixed a time limit of six weeks in which to apply for that purpose to the High Court. The Court of Appeal led by Lord Denning M.R. held that, as the applicant, Mr. Ostler, had not applied to the court within the six weeks period, the court could not entertain any proceedings to question the validity of the order authorizing the Road Scheme. This decision, said Mr. Gzell, showed an appreciation perhaps coming rather strangely from Lord Denning in view of his remarks in Gilmore's case, that limits had to be placed on the doctrine of Anisminic. This may be so but probably, however, the explanation if, one is needed, lies in what Lord Denning said at Page 135 of the report:

> "In making a judicial decision, the tribunal considers the rights of the parties without regard to the public interest. But in an administrative decision (such as a compulsory purchase order) the public interest plays an important part. The question is to what extent are private interests to be subordinated to the public interest".

The next case cited by Mr. Gzell was Regina v. The Registrar of Companies, ex-parte Central Bank of India [1986] Q.B. 1114 I pp 1169 B-D, 1175 G, 1176 C and 1178 D-G. I shall not mention even briefly the facts of this case in my judgment today. Suffice it to say that the Court in the Central Bank case went to some

length to stress that the Anisminic principle, rests on a presumption which is rebuttable. At 1176 Slade L.J. quoted from Lord Diplock in the Racal case [1981] A.C. 374,.383 when he said: A

> "Parliament can, of course, if it so desires, confer upon administrative tribunals or authorities power to decide questions of law as well as questions of fact or of Administrative Policy." As Slade L.J. went on, this requires clear words, "since the presumption is that, where a decision making power is conferred on a tribunal or authority that is not a court of law, Parliament did not intend to confer such power. Nevertheless, the presumption is not irrebuttable." B

In these my published reasons I shall now quote from the last passage from Slade L.J.'s judgment I have mentioned at p.1178 in which His Lordship reiterates this opinion. The relevant section of the English Companies Act with which the Central Bank case was concerned was worded differently and much less widely than section 64(3) of the Sugar Industry Act. C

Finally at page 1178 His Lordship said this:

> "The essential point on which it will be seen that I respectfully differ from the judge is as to the relevance, if any, of the error or errors of law made by the registrar in the course of the registration of this charge. The judge considered that these errors meant that the registrar had usurped a jurisdiction which he did not have in effecting the registration and that section 98(2) did not preclude the court from inquiring into such usurpation. My conclusion is a different one. Section 98(2) in my opinion, by itself shows the intention of the legislature that the registrar is to have jurisdiction finally and conclusively to determine the question whether or not the requirements of section 95(1) have been complied with in any given case, and that he cannot be said to be acting beyond his powers even if he made an honest error of fact or of law or mixed fact and law in the course of determining this question. In the present case there has therefore been no usurpation by the registrar of powers which he did not have. The situation which has arisen is, I think, precisely the sort of situation which the concluding words of section 98(2) were intended to cover. D E F

Perhaps it is desirable to refer here as well as to three extracts from the actual decision in Anisminic because in my view, despite Mr. Moshinsky's argument to the contrary, they are almost compulsive in their appropriateness to the present case. I quote first from Lord Reid in [1969] A.C. 147 at p170: "It is a well established principle that a provision ousting the ordinary jurisdiction of the court must be construed strictly - meaning, I think, that if such a provision is reasonably capable of having two meanings that meaning shall be taken which G

preserves the ordinary jurisdiction of the court." I comment here that in my judgment Section 64(3) is not ambiguous and that its clear intention as I read it, is to oust the jurisdiction of the court vis-a-vis the Master Award. Lord Reid continues on page 170 on line E: "I would have expected to find something much more specific than the bald statement that a determination shall not be called in question in any court of law." Section 64(3) is not phrased in such terms. In my view it goes far wider. At page 182 of the report Lord Morris who dissented in the actual decision said this:

> "If a Tribunal while acting within its jurisdiction makes an error of law which it reveals on the face of its recorded determination, then the court, in the exercise of its supervisory function, may correct the error unless there is some provision preventing a review by a court of law."

Finally at page 207 Lord Wilberforce said at line B:

> "It is now well established that specified tribunals may, depending on their nature and on the subject matter, have the power to decide questions of law, and the position may be reached, as the result of statutory provisions, that even if they make what the courts might regard as decisions wrong in law, these are to stand."

Relying on these and other cases and some references in De Smith; Judicial Review of Administrative Action (Fourth Edition) pp370-375 and Wade; Administrative Law (Sixth Edition) pp719-733, Mr. Gzell went on to submit that the privative clause of Section 64(3) is clear. The Master Award is not to be changed in any shape or form. It is not assailable by Judicial Review under Order 53 because it is not open to be "reviewed". It is not amenable to an order in the nature of certiorari because it is not open to be "quashed".

This, says Mr. Gzell, is not surprising because Parliament has evinced an intention to set-up a specialist tribunal to deal finally with the matter with its own checks and balances, and then he referred me to Section 65(1), 65(3), 65(4), Section 66(1)(d), Section 67(3) and Section 68. Against these submissions on this point, Mr: Moshinsky argued that in view of the current situation in Fiji we are in contrast to England and elsewhere; that in Fiji persons complaining of any grievance against either the government or a government department or an administrative tribunal can only seek redress in the courts of the country, so it is vital that this court should look most closely at any attempt to restrict its supervisory jurisdiction; that whereas in England and other countries and previously in Fiji such persons, could, failing satisfaction from the courts or tribunals, have recourse to their parliamentary representatives, such recourse is not presently available to them here.

I find considerable appeal in this argument but, faced with what I regard is the clear meaning of Sections such as 64(3), combined, with Section 2(1) and Section 123 I am driven to the conclusion that Section 64(S) means what it says. Section 123 in my judgment draws a significant contrast between the effect in point of law of the Master Award and the other (namely industrial awards) which the Tribunal in the exercise of its arbitral powers is allowed to make. When these three sections are read with the extracts which I have quoted from Lords Reid, Morris and Wilberforce in Anisminic I find the conclusion irresistible that, despite the current situation in Fiji, full effect should be given to the literal meaning of Section 64(3).

I acknowledge that Section 64(3) is identical in terms to Section 150 of the Australian Industrial Relations Act 1988 and I have read the cases to which he referred dealing with judicial review in Australia. However, it is interesting to observe that, as H.R. Wade says in his Fifth Edition at page 609:

> "The High Court of Australia has made interesting attempts to steer a middle course. Its, solution is to retain power to quash for plain excess of jurisdiction, but not to intervene where the tribunal has made a bona fide attempt to exercise its authority in a matter relating to the subject with which the legislation deals and capable reasonably of being referred to the power possessed by the tribunal."

See R. v. Murray Ex-parte Proctor (1949) 77 C.L.R. 387, a case mentioned in Re Coldham (1983) 57 A.L.J,R. 721 which Mr. Moshinsky cited to me.

For these reasons I hold that the Master Award is not subject to judicial review. However, if I am wrong in this conclusion there are other reasons which lead me to conclude that the Master Award should be up-held. Out of deference to the submissions of counsel and because it appears this Court has never previously interpreted it, I now pass to consider the argument addressed to me by the Applicant and Second Respondent on Section 67 of the Sugar Industry Act. Sub-sections (1)and (2) of this Section read as follows:

(1) Before finally determining the provisions to be included in the Master Award the Tribunal, after the close of the Inquiry and after taking into consideration the evidence and arguments presented to the Tribunal at the Inquiry, shall consult the Commission, the Council and the Corporation as to the need for, or desirability of, amending the draft of the Master Award prepared under paragraph (a) of subsection (1) of section 66, having regard to that evidence and those arguments.

2) The Tribunal shall not include in the Master Award any provision which has not been agreed by the Commission,

> the Council and the Corporation unless the Tribunal, after consultation with the Chairman of the Commission, is satisfied that no useful purpose would be served in endeavouring to obtain such agreement.

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By way of background to these submissions it should be noted that between 14th of February and 15th of March 1989 the First Respondent conducted a Public Inquiry which he was required to conduct by Section 66(1)(d) of the Sugar Industry Act. Following that Inquiry at which the Applicant, the Sugar Cane Growers' Council was represented by Mr. S.M. Koya, the First Respondent wrote a letter to the Chief Executive of the Sugar Cane Growers Council on the 29th of August 1989. This letter is exhibited to an affidavit of Olivia Pareti sworn on behalf of the Applicant on 24th of November 1989. The Applicant complains before this court that the First Respondent did not consult with the Applicant after the Public Inquiry as to the desirability of amending the fresh draft called, by the First Respondent "Final Draft of the Master Award" and that such failure to consult constitutes a breach of Section 67(1). It is further alleged by the Applicant that the First Respondent committed an error of law by so failing to consult in that it misconstrued the provisions of Section 67 and that it failed to take into account matters it was obliged to take into account prior to publication of the Master Award namely the submissions made to it on behalf of the Applicant in a letter to the First Respondent dated the 10th of November 1989 relating to the concept of reimbursement of basic costs which is set out in part XX of the so called the "Final Draft of the Master Award" under the heading Price of Cane. Its principal objections to this document are that the concept of reimbursement and the fixing of the price of cane were not mooted and debated by any party at the Public Inquiry. Furthermore it alleges that the selection of 1987 as the base year for this concept was unjust.

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Numerous cases were cited to me concerning the meaning of the word "consult". Essentially they amount to a requirement by the law that the party being consulted should have a receptive mind and that the consultor should have an opportunity to put his views. It is alleged that this was not done in the present case. This claim by the Applicant involves the interpretation of Section 67(1) and (2). The Applicant contends that there was no consultation with it at all by the First Respondent and that Section 67(1) required the Tribunal to consult the Applicant about the evidence and argument at the Public Inquiry in as full a manner as possible; that such consultation (he said, as I had understood it) to be of as broad a nature as that required by Sections 64, Section 65 and Section 66.

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G For its part the Second Respondent argued that this interpretation was too wide and that the type of consultation contemplated by Section 67(1) and (2) was of a much narrower nature. It submitted that the construction sought to be placed on Sub-section (1) by the Applicant involved reading into the Sub-section after the phrase "Draft of the Master Award" the words " and shall consult the Council in relation to that evidence and those arguments". The Second Respondent argues

that the consultation has, by the very words of the Sub-section to be limited as to "the need for, or desirability of, amending the (Third) draft having regard to that evidence and those arguments". A

This, the Second Respondent contends, accords with the clear intention and scheme of the Act, namely, that by the time the Master Award is ready for preparation all necessary consultation and debates about its proposed contents will have been concluded. It is said finally that the purpose of Section 67(1) was to operate as a safeguard to ensure that the principal parties to the Award were still of the same mind as at the close of the Public Inquiry. B

Although I was initially disposed to reject this argument on the ground that it was too technical, on further consideration I am of the opinion that it is correct and that the Tribunal was under no obligation under Section 67(1) to consult the Applicant about the matters appearing in part XX of the Final Draft which is now the Master Award. C

It is clear from the evidence that apart from the actual formula in Part XX of the Master Award the Applicant had submitted that there ought to have been extensive changes to the Third Draft Award at the Public Inquiry. There was nothing to indicate that it had subsequently changed its attitude. I therefore agree with the Second Respondent that it was totally unnecessary then for the Tribunal to ask the Applicant after the Public Inquiry whether it considered it desirable that the fresh Draft Award should be amended. It had already said so. D

After the close of the Public Inquiry the Second Respondent made it clear that it could see no purpose in any further discussions with the Tribunal or the Sugar Cane Growers' Council. This was confirmed in a letter dated the 12th of October 1989 which is Annexure 16 to the affidavit of Rasheed Akhtar Ali sworn on behalf of the Second Respondent on the 14th of March 1990. It was submitted by the Applicant that the First Respondent misinterpreted its duty under Section 67(2) in that it considered it was thereby required to obtain unanimous agreement by the Sugar Industry Commission, the Applicant and the Second Respondent before any new provisions could be included in the Master Award by the First Respondent on its own motion. E F

I do not accept this submission. There is nothing under Section 67(1) and (2) which in my view required the First Respondent to consult the principal parties at all about the document which the First Respondent called the "Final Draft of the Master Award". There is no reference in the Sugar Industry Act to any such document. Furthermore, I hold that the Tribunal's duty at this last stage is to receive and consider but not necessarily accept. G

In Ishak v. Thowfeek [1968] 1 W.L.R. 1178 the Privy Council held that a statutory requirement to "have regard" to any existing terms or circumstances does not necessarily impose a duty to comply with them.

If, however, there was any failure by the Tribunal to consult as alleged, which I do not accept, then I would hold that such failure was technical only and should not be held to invalidate the Master Award. To me, with great respect, the Applicant's argument here sounds more in legal theory than in reality. No legal system, certainly not the Common Law, can exist without a certain amount of legal theory but for any system to allow its Courts or Administrative Tribunals to enclose themselves in a cosy, comfortable cocoon of legal theory only, divorced from the realities of life in the community in which they operate, can only lead to stagnation. So too with the Sugar Industry Tribunal.

On the evidence there had been consultations extending over four years so that it must have been patently clear to him that nothing further could be achieved by consensus between the main parties. Obviously he had to do something himself to resolve the deadlock, and he did.

In Montreal Street Railway Company v. Normandin [1917] A.C. 170, Sir Arthur Channell speaking for the Privy Council said at page 175:

> "When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done."

It seems to me that this passage is very apposite to the Sugar Industry at the present time in Fiji. It is not in dispute that the sugar industry is of utmost importance to this country's economy. In my estimation the interests of the public, and not merely those of the parties to this litigation, require that the sugar industry be properly regulated. Here it seems to me the ordinary man in the street who is not directly involved in this litigation has a very real interest as a tax-payer in seeing that this Master Award which has been so long in its preparation should now be given a chance to prove its value or otherwise to the country.

If, after a fair trial, it is thought not to be working in the interests of any of the parties or, perhaps more importantly, in the interest of the nation, then Section 69 allows the Tribunal to review and if necessary amend any of the provisions of the Award he considers necessary.

It was never suggested to me during the course of argument that the Tribunal seems to have been unaware of this section when preparing his Final Draft of the Master Award.

It was then claimed by the Applicant that the First Respondent had failed in a duty to take account of certain submissions made to it after the Public Inquiry by

Mr. Greg Ferguson an Australian economist who was called to give evidence at the Public Inquiry on the price of cane. This contention is in my view without any foundation as a reference to pages 888 to 905 inclusive of the Report by the First Respondent annexed to the Master Award clearly indicates. It was also complained by the Applicant that its submissions to the Tribunal in the letter of the 10th of November 1989 annexure 19 to the affidavit of Rasheed Akhtar Ali were ignored by the First Respondent.

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The basis of this complaint is that the Tribunal had no evidence before it at the Public Inquiry as to 1987 being used as the base year for the calculation of the formula appearing in part XX of the Master Award. This again in my view is not supported by the evidence as a reference to the pages of the report I have just mentioned will confirm.

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In my judgment the Tribunal was fully entitled to include his own price formula in part XX when it must have obvious that all further hopes of any agreement on such a formula between the principal parties had been dashed. The Second Respondent's attitude was obvious. The Tribunal was entitled then to make his own decision on the matter on which agreement of the parties was impossible.

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It was put to me by Mr. Moshinsky that at least the Tribunal could have listened to further submissions by the Applicant on the new formula, thus possibly causing him to change his mind on the formula. It was said that the duty resting on the Tribunal under the Act is always to be flexible.

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With all respect to this argument, it seems to me, reviewing the evidence that the Tribunal had shown himself to be most flexible and willing to listen all through. At the end, although strictly under no duty to do so, he had spoken to the Applicant's Accountant, Mr. Shyam Narain and Mr. Ferguson and had rejected a proposal that he should not take 1987 as the base year.

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In my view the letter written by the Applicant to the First Respondent on the 10th of November 1989 contained no new submissions despite the attempt by the Applicant to persuade me otherwise. I therefore reject the Applicant's submission on Section 67. It was also argued by the Applicant that by publishing the Master Award on the 23rd of November 1989 the First Respondent had denied the Applicant the legitimate expectation that the Award would not be published until the 1st of December 1989. I have read the various cases cited to me by the parties and do not consider that this submission has been made out. I say this for two reasons: First, that there is nothing in the Sugar Industry Act requiring the Tribunal to publish the Master Award on any particular date. The Tribunal in my judgment was entitled to regulate the procedure by which he brought down his final or Master Award and to decide the date of publication without any reference to the principal parties. Secondly, in any event the cases on which the Applicant relies in support of this contention are clearly distinguishable. In essence they require either an undertaking or an express promise coupled with detriment

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to the person claiming to have been deprived and in my judgment the First Respondent gave no undertaking or made an express promise to the Applicant about the publication date. In his letter of the 29th of August 1989 he said: "I am
A planning for publication in the gazette on Friday the 1st of December next". In my view this certainly cannot be construed as an express promise or even at its best, an implicit promise. If anything, I regard it merely as an expression of intention which the First Respondent was free to change if he wished.

For these reasons I conclude that there are no reasons why the Master Award
B published by the First Respondent on the 23rd of November 1989 should be quashed. I am of the opinion that it has been made in full in accordance with the Sugar Industry Act and I therefore revoke the leave which I granted to the Applicant on the 24th of January 1990 to Judicially Review the Master Award on Application for Judicial Reviews Nos. 10 and 12 of 1989.

There will be judgment for the First and Second Respondents against the Applicant
C in those Applications and the Applicant is to pay the costs of those Respondents.

On the Originating Summons No. 12 of 1990 there will be judgment for the Plaintiff against the Defendant in accordance with paragraph 1 thereof. The Defendant is ordered to pay the Plaintiff's costs.

D *(Judgment for the Respondents)*

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