

ROYAL COURT  
(Samedi Division)

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20th March, 1991

Before: The Bailiff, Single Judge

Between:

Bastion Offshore Trust  
Company Limited

Appellant

And:

The Finance and Economics Committee  
of the States of Jersey

Respondent

Appeal under Part 11 of the Royal Court Rules, 1982, from an administrative decision of the Finance and Economics Committee.

Appeal by the Appellant, under Rule 15(2) of the said Rules, from an Order of the Judicial Greffier of the 17th January, 1991, dismissing the Appellant's application for further and better particulars of the Respondent's case.

Advocate W.J. Bailhache for the Appellant.  
Advocate S.C. Nicolle for the Respondent.

JUDGMENT

BAILIFF: This is an interesting matter. It arises from a judgment of the Judicial Greffier refusing a request for further and better particulars

in an appeal brought by Bastion Offshore Trust Company Limited, against a decision of the Finance and Economics Committee of the States of Jersey, the Respondent.

It is not necessary for me to go into the background of the appeal because that is not relevant to my decision.

Proceedings come before this Court in a number of ways. In a criminal case they of course are instituted by the Attorney General and it is then the State or the Crown represented by the Attorney General against a citizen who is accused of having committed a crime or offence.

Secondly, they can come between citizen and citizen in straightforward civil actions which occupy, of course, most of the time of this Court.

Thirdly, they can come before this Court between the citizen and the State in respect of appeals from decisions of the States organs, the Executive Committees of the States of Jersey.

Therefore, in any reading of the Rules of Court one must bear in mind that there are proceedings of different natures before this Court requiring a decision.

If it is the case that in civil cases, i.e. cases between citizen and citizen, each party should know precisely the facts upon which his opponent is going to rely, how much more important it is, in my opinion, for an Appellant against an administrative decision of a Committee of the States of Jersey to know precisely the grounds upon which the Committee bases its case and precisely the reasons which prompted them to refuse to grant the application, because in most cases, an appeal would be against a refusal of a Committee to grant a particular application based on the relevant Law.

I consider it of the utmost importance that a citizen who feels that his common law rights have been restricted, as the statutes do restrict them, should be entitled to say to every Committee properly

carrying out the Law: please tell me precisely and in detail why it is you have refused my application. Such an entitlement, it seems to me, must not be subservient to the procedural requirements of this Court. In my view the procedure of this Court and of the Rules made thereunder must enable the parties in a case such as an appeal from an administrative decision to be absolutely clear about the facts upon which the arguments are going to evolve. That, of course, does not include the Law which is to be advanced, which is a different matter.

I entirely agree with Miss Nicolle that it would not be proper for any Order for further and better particulars to be made in relation to legal argument.

The Committee in this case has of course filed not only its statement of reasons as required under Part 11 of the Royal Court Rules, 1982, as amended, but it has also filed its case and it is in respect of the case that Mr. Bailhache, for the Appellant, wishes to obtain further and better particulars.

In that case, as Miss Nicolle has quite rightly pointed out, there may well be a mixture of Law and fact, but it should not be impossible for further and better particulars to be required of the facts excluding the Law; that should not be beyond the bounds of the Greffier's duties to work out, with the parties, which particulars of fact may be properly asked for and which are Law, in which case they may not be asked for, always assuming that I am going to rule in favour of Mr. Bailhache's application, and allow the appeal.

I have made those general observations because it seems to me that that seems to be the proper approach to dealing with the difficulties over procedure.

I think also that the history of appeals from administrative decisions must be looked at. Before 1965 (when the first Rules were made dealing with administrative decisions), none were in force. The first Rules were in fact made on the 22nd September, 1966, and for a long time before that the Court was chary of ordering Committees to justify their decisions, other than by requesting them to be good

enough to submit their statement of reasons to the Court. Mr. Bailhache has said of course that that amounted to an Order to the Committee and indeed it was, but the Court decided that that was the way in which the disputed facts could be brought before it.

The new Rules of Court were nothing more than statutory provisions to enable those disputed facts in all their detail to be brought before the Court.

Miss Nicolle quite fairly has conceded that the provisions - and they are consolidated provisions - of Part II, as further amended by the latest amendment in August, 1990, do not exclude the possibility of other parts of the Rules being applied to appeals from administrative decisions. But, she says, where Rule 6 conflicts with Rule 11, then Rule 11 is to be preferred and if that causes certain pleadings not to be as full and detailed as they would otherwise be, then that failure must lie where it falls. If the Committee, or indeed the Appellant are not precise and detailed in their pleadings, then he or the Committee must accept responsibility for a possible adverse decision from the Court.

It is quite clear that there is no provision in Part II, (which governs the appeals from administrative decisions) for further and better particulars, which there is the case in the rest of the Rules, in Rule 6/14. That Rule says (and I only read paragraph (1)): "A further and better statement of the nature of the claim or defence in any action; or further and better particulars of any matter stated in any pleadings, or written proceedings requiring particulars may in all cases be ordered on such terms as to costs and otherwise as may be just".

Miss Nicolle has convinced me that I could not regard an appeal from administrative decision as an action; nor do I think it is a pleading in the narrow sense, but it is certainly, in my opinion, a written proceeding. The statement of the Committee's case certainly is a written proceeding. In my opinion it requires particulars in order that the Appellant may know exactly and precisely - I may be repeating

myself, but I cannot stress it too clearly - exactly what he has to meet. Without that in my view justice cannot be done.

Therefore I regret to say that I find the decision of the Greffier to be wrong and I accordingly overrule it and allow the appeal with taxed costs.

Authorities

Ashworth Sons & Barratt -v- Housing Committee: Decision of the  
Judicial Greffier dated 12th June, 1984.  
Arbaugh -v- Island Development Committee (1966) JJ 593.  
Royal Court Rules, 1968.  
Royal Court Rules, 1982.  
RSC Order 1 Rule 4.  
Royal Court (Procedure and Pleadings) Jersey Rules 1965.  
Royal Court (Appeals from Administrative Decisions) (Jersey) Rules  
1966.  
Royal Court (Amendment No. 5) Rules, 1990.  
Clare -v- Stype Trustees (Jersey) Ltd. (1984) JJ 13.