

IN THE PRIVY COUNCIL

No.17 of 1968

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

DONALD JASON RANAWEERA

Petitioner-
Appellant

- and -

1. R. RAMACHANDRAN,

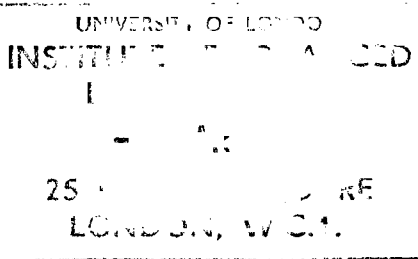
2. N.S. PERERA, and

3. S.N.B. WIJEYEKOON

Members of the Income
Tax Board of Review,
Colombo.

4. S. SITTAMPALAM,

Commissioner of Inland
Revenue, Colombo



Respondents

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CASE FOR THE APPELLANT

1. This is an Appeal from an Order and Decree of the Supreme Court of Ceylon, dated the 29th day of September 1966, whereby the said Supreme Court dismissed the Petition of the Appellant, dated the 23rd day of November 1964, praying for the issue of a mandate in the nature of a writ of certiorari to quash an Order made by the 1st, 2nd and 3rd Respondents, dated the 6th day of October 1964. By their said Order the 1st, 2nd and 3rd Respondents dismissed the Appellant's Appeal against an Order of the Deputy Commissioner of Inland Revenue, dated the 21st day of April 1964, imposing certain penalties on the Appellant under section 80(1) of the Income Tax Ordinance (Chapter 142).

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2. On the same day that it disposed of the Appeal in the present case (the 29th September 1966), the Supreme Court made an Order and Decree dismissing a Petition of the Appellant, dated the 19th day of September 1964, praying for the issue of a mandate in the nature of a writ of certiorari to quash the said Order of the Deputy Commissioner of Inland Revenue of the 21st April 1964. The Appellant is appealing to the Privy Council from this latter Order and Decree of the Supreme Court in Appeal No.16 of 1968. In that Appeal he is contending that the said Order of the Deputy Commissioner, dated the 21st April 1964, is a nullity because the Respondent is a "judicial officer" within the meaning of section 55 of the Constitution of Ceylon, and, not having been appointed by the Judicial Service Commission, was not validly appointed to his office or properly appointed to exercise judicial powers. The Appellant further contends in that Appeal that the said Order of the Deputy Commissioner, dated the 21st April 1964, is void as having been made in violation of the principles of natural justice.

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In the present Appeal the Appellant will contend inter alia that for the reasons more fully stated in his printed case in Appeal No.16 of 1968 the Order of the Deputy Commissioner, dated the 21st April 1964, is null and void, and that accordingly the Order of the 1st, 2nd and 3rd Respondents, dated the 6th October 1964, which purported to affirm that Order on appeal is likewise a nullity.

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3. The following questions, which arise in Appeal No.16 of 1968, arise also in the present Appeal

- (a) whether the Deputy Commissioner, in acting under section 80 (1) of the Income Tax Ordinance and in imposing penalties upon the Appellant, was exercising or purporting to exercise judicial powers

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- (b) whether the Deputy Commissioner not having been appointed by the Judicial service Commission as a "judicial officer", was vested with such judicial powers
- 10 (c) whether the Deputy Commissioner, not having been so appointed, was not disqualified from so acting and whether accordingly his purported exercise of such powers was not unconstitutional and void.
- (d) whether, since the Deputy Commissioner had not been properly appointed as a "judicial officer", his appointment as Deputy Commissioner of Inland Revenue was not wholly invalid
- 20 (e) whether in any event, the Deputy Commissioner's Order of the 21st April 1964 was made in violation of the principles of natural justice in that prior to the making of such Order the Appellant was not given an opportunity to be heard on the matters alleged against him.

In the present Appeal the following further questions also arise:

- 30 (f) whether the 1st, 2nd and 3rd Respondents, in acting as an appellate tribunal under the Income Tax Ordinance and hearing the Appellant's appeal from the Deputy Commissioner's said Order of the 21st April 1964, were exercising or purporting to exercise judicial powers.
- (g) whether, not having been appointed by the Judicial Service Commission as "judicial officers", they were vested with such judicial powers
- 40 (h) whether not having been so appointed, they were not disqualified from so acting and whether accordingly their purported exercise of such powers was not unconstitutional and void.

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- (i) whether since they had not been properly appointed as "judicial officers" their appointments as Members of the Income Tax Board of Review, were not wholly invalid.
- (j) whether, if the 1st, 2nd and 3rd Respondents are not "judicial officers", they are not "public officers" within the meaning of section 60 of the Constitution.
- (k) whether in that event, since they were not appointed by the Public Service Commission either, their appointments as Members of the Income Tax Board of Review were not in any case wholly invalid and their purported acts as such void. 10

4. The following further legislative provisions are relevant to this Appeal.

The Ceylon (Constitution) Order in Council Section 60(1)

The Appointment, transfer, dismissal and disciplinary control of public officers is hereby vested in the Public Service Commission. 20

Provided that appointments and transfers to the office of Attorney-General shall be made by the Governor-General

(2) In subsection (1) of this section the expression "transfer" means a transfer involving an increase of salary.

The Income Tax Ordinance (Chapter 242).

Section 74(1)

For the purpose of hearing appeals in the manner hereinafter provided, there shall be a board of review (hereinafter referred to as "the board") consisting of not more than twenty members who shall be appointed from time to time by the Minister. The members of the board shall hold office for a term of three years but shall be eligible for reappointment 30

Section 77

(1) As soon as may be after the receipt of a notice of appeal, the clerk to the board shall fix a time and place for the hearing of the appeal, and shall give fourteen clear days' notice thereof both to the appellant and to the Commissioner.

10 (2) Every appellant shall attend at the meeting of the board at which the appeal is heard in person or by an authorized representative:

Provided always that the board may postpone the hearing of the appeal for such time as it thinks necessary for the attendance of the appellant.

20 (3) The Assessor who made the assessment appealed against or some other person authorized by the Commissioner shall attend such meeting of the board in support of the assessment.

(4) The onus of proving that the assessment as determined by the Commissioner on appeal, or as referred by him under section 76, as the case may be, is excessive shall be on the appellant.

(5) All appeals shall be heard in camera.

30 (6) The board shall have power to summon to attend at the hearing any person whom it may consider able to give evidence respecting the appeal and may examine him as a witness either on oath or otherwise. Any person so attending may be allowed by the board any reasonable expenses necessarily incurred by him in so attending.

40 (7) At the hearing of the appeal the board may, subject to the provisions of section 75(4) admit or reject any evidence adduced, whether oral or documentary, and the provisions of the Evidence Ordinance relating to the admissibility of evidence shall not apply.

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(8) After hearing the appeal, the board shall confirm, reduce, increase, or annul the assessment as determined by the Commissioner on appeal, or as referred by him under section 76, as the case may be, or remit the case to the Commissioner with the opinion of the board thereon. Where a case is so remitted by the board, the Commissioner shall revise the assessment as the opinion of the board may require. 10

(9) Where under subsection (8) the board does not reduce or annul such assessment, the board may order the appellant to pay as costs of the board a sum not exceeding one hundred rupees, which shall be added to the tax charged and recovered therewith.

Section 78(1)

The decision of the board shall be final: 20

Provided that either the appellant or the Commissioner may make an application requiring the board to state a case on a question of law for the opinion of the Supreme Court. Such application shall not be entertained unless it is made in writing and delivered to the clerk to the board, together with a fee of fifty rupees, within one month of the date of the board's decision. If the decision of the board shall be notified to the Commissioner or to the appellant in writing, the date of the decision, for the purposes of determining the period within which either of such persons may require a case to be stated, shall be the date of the communication by which the decision is notified to him. 30

(2) The stated case shall set forth the facts, the decision of the board, and the amount of the tax in dispute where such amount exceeds five thousand rupees, and the party requiring it shall transmit the 40

case, when stated and signed, to the Supreme Court within fourteen days after receiving the same."

5. On the 21st April 1964 the Deputy Commissioner made an Order under section 80(1) of the Income Tax Ordinance imposing penalties upon the Appellant. The findings and the decision of the Deputy Commissioner were thus stated in the Order:

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10 "As the assessee has not satisfied me that there was no fraud or wilful neglect involved in the disclosure of income in his returns for the years of assessment 1955/56, 1956/57 and 1957/58, I order him, under Section 80(1) of the Income Tax Ordinance to pay the following sums as penalties for making incorrect returns:

p.32, 11.13-20

20 For 1955/56 ... Rs.180,000/-
For 1956/57 ... Rs. 50,000/-
For 1957/58 ... Rs.120,000/- "

6. The Appellant appealed from the said Order to the Board of Review under section 80(2). The 1st, 2nd and 3rd Respondents were the members of the Board which heard the appeal.

Upon the hearing of the appeal it was submitted inter alia on behalf of the Appellant that:

30 "1. The first point raised is that the order imposing penalties is a nullity as the powers conferred on the Commissioner under Section 80(1) of the Tax Ordinance is ultra vires the Ceylon (Constitution and Independence) Order in Council 1946 and 1947. Appellant's contention is that the imposition of a penalty under section 80(1) is an exercise by the Commissioner of judicial power and not being appointed by the Judicial Services Commission, he had no right to exercise such powers and that the powers conferred

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p.34, 11.9-18

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on him under section 80(1) is ultra vires the Ceylon (Constitution and Independence) Order in Council 1946 and 1947"

p.37, 11.25-
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The Appellant also submitted that the Deputy Commissioner, having granted him a month's extension of time on the 3rd March 1964, should have fixed a date for enquiry for the Appellant to show cause why he should not be condemned.

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pp.34-42

On the 6th October 1964 the Board gave its decision. In its reasoned Order of that date, it rejected the submission that the imposition of a penalty under section 80(1) was an exercise of judicial power, and, upon the second submission referred to above, held that the Appellant had been given an opportunity to show cause, "but he did not avail himself of the opportunity given even by the extended date 3.4.64".

p.35, 1.35

p.37, 11.32-
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The Order concluded:

p.42, 1.9

"The penalties are confirmed and the appeal dismissed".

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7. The Appellant commenced THE PRESENT PROCEEDINGS by Petition to the Supreme Court dated the 23rd November 1964. The 4th Respondent was made a party to the proceedings for the purpose of giving him notice thereof but no relief was claimed against him.

In the Petition the Appellant pleaded inter alia as follows:

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p.4, 11.1-9

"17. The Petitioner states that the provisions of Section 80(1) of the Income Tax Ordinance empowering the said Deputy Commissioner to impose a penalty on the Petitioner is null and void by reason of the fact that the said Commissioner is exercising judicial powers in so doing and the said Deputy Commissioner is not empowered in law to exercise judicial power inasmuch as the

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said Deputy Commissioner is the holder of a paid office and was not appointed by the Judicial Service Commission to exercise powers under section 80(1) of the Income Tax Ordinance".

10 "19. The Petitioner states that though the 1st to 3rd respondents are either the holders of a paid Judicial Office or are Public Officers, they were not appointed in accordance with the provisions of the Ceylon (Constitution) Order in Council 1946 and had no jurisdiction to hear and determine the Petitioner's appeal and therefore their aforesaid order dated 5th October 1964 and communicated to the Petitioner on 2nd November 1964 is null and void".

p.4, 11.26-
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The Appellant in his Prayer asked the Court for

20 "(a) a Mandate in the nature of a Writ of Certiorari ordering and directing the 1st to 3rd respondents to forward to Your Lovdships' Court the record of the proceedings in this matter and to quash the order dated 5th October 1964:

p.5, 11.3-
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30 (b) and alternatively for a Mandate in the nature of Writ of Mandamus ordering and directing the 1st to 3rd respondents to hear and determine the petitioner's appeal according to law:

(c) for costs of this application:"

8. On the 29th September 1966 the Supreme Court dismissed the Appellant's Petition.

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9. The Appellant was granted Conditional Leave to appeal to the Privy Council on the 26th January 1967 and Final Leave to appeal on the 3rd June 1967.

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40 10. The Appellant respectfully submits that, in hearing and determining his appeal against the Order of the Deputy Commissioner of the

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21st April 1964, the 1st, 2nd and 3rd Respondents were exercising or purporting to exercise judicial powers. They were therefore "judicial officers" within the meaning of section 55 of the Constitution of Ceylon but, not having been appointed by the Judicial Service Commission, they were not validly appointed to their offices. If they were validly appointed to their offices it is submitted that they were not properly appointed to exercise judicial powers, and judicial powers were not vested in them. Accordingly, their purported exercise of such powers was null and void. 10

11. It is further submitted that, if, contrary to the Appellant's submission, the 1st, 2nd and 3rd Respondents are not "judicial officers", they are "public officers" within the meaning of section 60 of the Constitution and, since they were not appointed by the Public Service Commission either, their appointments as Members of the Board of Review were in any case wholly invalid and their purported acts as such null and void. 20

12. The Appellant respectfully submits that this Appeal should be allowed and that he should be granted the relief prayed for in the suit and the Respondents should be ordered to pay the costs of this Appeal and in the Supreme Court of Ceylon for the following amongst other 30

R E A S O N S

1. BECAUSE the Deputy Commissioner is a "judicial officer" within the meaning of section 55 of the Constitution of Ceylon.
2. BECAUSE the Deputy Commissioner was not validly appointed to his office.
3. BECAUSE the Deputy Commissioner was not appointed by the Judicial Service Commission. 40
4. BECAUSE the principle of the Separation of Powers is implicit in and recognised in

the Constitution of Ceylon.

5. BECAUSE the Deputy Commissioner in enquiring into the matters before him and arriving at his findings and in making his Order of the 21st April 1964, was exercising judicial powers.
6. BECAUSE the Deputy Commissioner was not properly appointed to exercise judicial powers.
- 10 7. BECAUSE no judicial power could properly or validly be conferred on the Deputy Commissioner.
8. BECAUSE the case of Xavier v. Wijeyekoon (69 C.N.L.R.197) was wrongly decided.
9. BECAUSE the Order of the 21st April 1964 was a nullity.
- 20 10. BECAUSE the 1st, 2nd and 3rd respondents, in hearing and determining the Appellant's appeal against the Deputy Commissioner's Order of the 21st April 1964, were exercising judicial powers.
11. BECAUSE the 1st, 2nd and 3rd Respondents were not properly appointed to exercise judicial powers.
12. BECAUSE no judicial power could properly or validly be conferred on the 1st, 2nd and 3rd Respondents.
- 30 13. BECAUSE the 1st, 2nd and 3rd Respondents are "judicial officers" within the meaning of section 55 of the Constitution of Ceylon.
14. BECAUSE if the 1st, 2nd and 3rd Respondents are not "judicial officers" within the meaning of section 55 of the Constitution of Ceylon, they are "public officers" within the meaning of section 60.
15. BECAUSE the 1st, 2nd and 3rd Respondents were not validly appointed to their

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offices.

16. BECAUSE the 1st, 2nd and 3rd Respondents were appointed neither by the Judicial Service Commission nor by the Public Service Commission.

17. BECAUSE the Order of the 1st, 2nd and 3rd Respondents dated the 6th October 1964 was null and void.

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MONIAGUE SOLOMON

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HAMAVI HANIFFA

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Respondents

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