

32, 1969

IN THE PRIVY COUNCIL

P.C.A. No. 17 of 1968

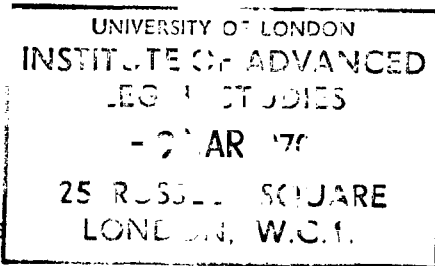
ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

DONALD JASON RANAWEERA Appellant

- and -

1. R. RAMACHANDRAN
 2. N.S. PERERA, and
 3. S.N.B. WIJEYKOON,
Members of the Income
Tax Board of Review,
and
 4. S. SITTAMPALAM,
Commissioner of Inland
Revenue
- Respondents



CASE FOR THE RESPONDENTS

HATCHETT, JONES & CO.,
90 Fenchurch St.,
LONDON, E.C.3.

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1. This is an appeal against a Decree of the Supreme Court of Ceylon, dated the 29th September, 1966, dismissing the Appellant's Application in the Supreme Court under Section 42 of the Courts Ordinance for inter alia: (1) a Mandate in the nature of a Writ of Certiorari for the forwarding to the Supreme Court of the record of proceedings before the Respondents Nos 1 to 3 wherein the said Respondents, as members of the Income Tax Board of Review, had, by their Order, dated the 5th October, 1964, confirmed an Order of the Deputy Commissioner of Inland Revenue imposing penalties upon the Appellant under Section 80(1) of the Income Tax Ordinance (C.242) and for the quashing of the said Order of the Respondents; and (2) alternatively, for a Mandate in the nature of a Writ of Mandamus ordering and directing the Respondents Nos. 1 to 3 to hear and determine his appeal according to law.

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p.6, 11.6-9

The Appellant, in this Application, claims no relief against the Commissioner of Inland Revenue who was joined by him as Respondent No. 4 solely for the purpose of giving him notice of the Application.

2. Portions of the Income Tax Ordinance (C.242), the Ceylon (Constitution) Order in Council (hereinafter also referred to as "the Constitution") and the Courts Ordinance will be found in the Annexure to the Case for the Respondent in the connected appeal. P.C.A. No.16 of 1968.

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3. This appeal is, in regard to its facts and the questions for determination thereon, closely connected with the connected appeal No. 16 of 1968 which is also before the Board. Additional questions which arise for determination on this appeal are as follows : -

(A) In the circumstances of this case can it reasonably be said that the said confirmatory Order of the Income Tax Board of Review, dated the 5th October, 1964, was null and void on the ground that Members of the said Board had not been appointed in accordance with the relevant provisions of the Ceylon (Constitution) Order in Council, 1946, and, therefore, lacked jurisdiction to hear and determine the Appellant's appeal?

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(B) Was the said Order of the Board contrary to law and natural justice?

4. The narrative of the facts leading up to this appeal is concerned with events post the 21st April, 1964, on which date the Order of the Deputy Commissioner of Inland Revenue imposing penalties upon the Appellant was made. Events leading up to that Order and the Appellant's Application for relief in relation thereto are set out in the said connected appeal before the Board.

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The Appellant appealed against the said Order of the Deputy Commissioner to the Income Tax Board of Review but the Board, by its Order, dated the 6th October, 1964, (Ex.R2), confirmed the Order appealed from and, for reasons that it gave, dismissed the appeal.

pp.34-42

10 5. In its said Order, the Board made clear its view that the imposition of a penalty under Section 80(1) of the Income Tax Ordinance is an administrative or executive function and cannot, therefore, be ultra vires the Constitution as an unlawful exercise of judicial power.

p.35, 1.33 to
p.36, 1.10

20 On the question as to whether or not, in the instant case, the rules of natural justice had been contravened in the imposition of penalties upon the Appellant, the Board of Review referred to, but did not accept, the argument advanced on behalf of the Appellant that, under the said Section 80(1), it was necessary for the Deputy Commissioner to fix a date of inquiry for the Appellant to show cause, and this not having been done, the imposition of penalties on the Appellant was unlawful. The Board was in agreement with Crown Counsel's submission that "all that is required is that Appellant should be given an opportunity to show cause, that he was given such an opportunity given even by the extended date, 3 - 4 - 64".

p.37, 1.25 to
p.38, 1.16

p.37, 11.31-
34, p.38,
11.15-16

30 6. The said Board held, further, that "as an administrative body with very limited powers," it had no power under Section 80(3) of the Income Tax Ordinance to accede to the Appellant's request that the case should be remitted to the Commissioner in order to enable him to show cause. It rejected, also, his request that he should be permitted to lead evidence before the Board to prove that there was no fraud or neglect on his part, and his application that he should be permitted to raise a new point of law, namely, that the "compromise entered into whereby Appellant agreed to pay Rs.450,000/- acts as an estoppel to any proceeding under Section 80(1)".

p.38, 1.36 to
p. 39, 1.3

p.40, 11.19-
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As to the penalties themselves, the Board confirmed them and expressed the view that they were not excessive.

pp.1-5

7. Aggrieved by the Board's decision, the Appellant filed this Application (or Petition) in the Supreme Court for a Mandate claiming relief as stated in paragraph 1 hereof. He repeated the argument (which he had relied on in the previous Application) that, in imposing penalties upon him, the Deputy Commissioner of Inland Revenue had exercised judicial powers. His Petition continued as follows :

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"18. The Petitioner states that the said Order of the 1st, 2nd and 3rd Respondents, was erroneous in law and/or made in violation of the principles of natural justice for the reason that (a) the Petitioner was not permitted to prove that the Petitioner was not guilty of fraud as contemplated by Section 80(1) of the Income Tax Ordinance by calling evidence at the hearing before the 1st, 2nd and 3rd Respondents, (b) the Petitioner was not permitted to raise a ground of appeal not contained in his notice of appeal to the said Respondents, namely, that the Order of the said Deputy Commissioner is erroneous in that it was not open to the said Deputy Commissioner in law to impose penalties on the Petitioner in respect of the years 1955/56, 1956/57 and 1957/58, inasmuch as the said Deputy Commissioner had already called upon the Petitioner to pay a penalty of Rs.450,000/- as aforesaid for the years of assessment 1950/51 to 1957/58, and (c) the grounds of appeal on questions of law that were entertained by the said Respondents were not upheld."

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8. On the jurisdiction of Members of the Income Tax Board of Review to hear and determine his appeal from the said Order of the Deputy Commissioner of Inland Revenue, dated the 21st April 1964, imposing penalties on the Appellant under Section 80(1) of the Income Tax Ordinance, the Appellant said :-

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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."

9. The Appellant's prayer was for inter alia -

20 "(a) a Mandate in the nature of a Writ of Certiorari ordering and directing the 1st to 3rd Respondents to forward to Your Lordships' Court the record of the proceedings in this matter and to quash the Order, dated 5th October, 1964;

(b) and, alternatively, for a Mandate in the nature of a Writ of Mandamus ordering and directing the 1st to 3rd Respondents to hear and determine the Petitioner's appeal according to law."

30 10. Affidavits, in reply, dated the 13th January, 1965, were filed by the Deputy Commissioner of Inland Revenue and the Senior Deputy Commissioner of Inland Revenue. The Commissioner of Inland Revenue also filed an Affidavit dated the 15th January, 1965. It is sufficient to state here that the Affidavit of the Senior Deputy Commissioner of Inland Revenue was generally in similar terms to his Affidavit dated the 13th November, 1964, filed by him in answer to the Appellant's first Application (P.C.A. No. 16 of 1968). pp.9-13 pp.13-14

40 11. The Application came up for hearing before the same Bench in the Supreme Court which was constituted to hear the first Application (H.M.C. Fernando S.P.J. and Abeyesundere J.). As in the case of the first Application, the learned Judges of the Supreme Court, on the 29th September, 1966, dismissed the

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Application without giving any reasons.

12. It should be stated here that during the arguments in the Supreme Court on both Applications, Counsel for the Appellant informed the Court that because of the recent Judgment of the Supreme Court, delivered on the 22nd July, 1966, in Xavier v. S.N.B. Wijeykoon and Others, 69 N.L.R.197, he did not propose to present arguments in support of either Application. There was, accordingly, no argument presented to the Supreme Court on behalf of the Appellant either on the invalidity or otherwise of the powers granted to the Commissioner of Inland Revenue and to the Income Tax Board of Review by Section 80 of the Income Tax Ordinance or on any other matter.

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p.15

13. A Decree in accordance with the decision of the Supreme Court was drawn up on the 29th September, 1966, and against the said Decree this appeal is now preferred to Her Majesty in Council, the Appellant having obtained leave to appeal by Orders of the Supreme Court, dated the 26th January, 1967, and the 3rd June, 1967.

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pp.17,20

In the respectful submission of the Respondents this appeal should be dismissed, with costs throughout, for the following among other

R E A S O N S

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1. BECAUSE the appointments of Respondents Nos. 1 to 3 to exercise the powers vested in the Income Tax Board of Review under the Income Tax Ordinance (C.242) were valid and both the imposition and the confirmation of penalties under the said Ordinance were in accordance with law.

2. BECAUSE Members of the said Board of Review are not judicial officers within the meaning of the Constitution.

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3. BECAUSE the Order of the said Board in the instant case confirming the Order of the Deputy Commissioner of Inland Revenue imposing penalties on the Appellant was a valid exercise of powers lawfully conferred on the Board, the appointment of Members of which was not in contravention of any provision of the Constitution or any other law.
- 10 4. BECAUSE the said Order of the Board was in accordance with law and practice.
5. BECAUSE in arriving at its decision the said Board did not contravene any rule of natural justice.
6. BECAUSE insofar as the Appellant's claim to relief was based upon his assertion that the Respondents Nos. 1 to 3 had not been properly appointed the action was misconceived for neither a Mandate in the nature of a Writ of Certiorari nor a
20 Mandate in the nature of a Writ of Mandamus was an appropriate remedy.
7. BECAUSE the decision of the Supreme Court was right and its decree ought to be affirmed.

K.F.N. GRATIAEN
R.K. HANDOO

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