

31, 1969

IN THE PRIVY COUNCIL

No.16 of 1968

ON APPEAL FROM THE SUPREME COURT OF CEYLON

B E T W E E N :

DONALD JASON RANAWEERA Petitioner-
Appellant

- and -

CLAUDE BERTRAM EMMANUEL
WICKRAMASINGHE, Deputy
Commissioner of Inland
Revenue, Department of
Inland Revenue, Colombo Respondent

UNIVERSITY OF LONDON
LONDON, W.C.1A
RECORDED
INDEXED
MAY 1969

10

CASE FOR THE APPELLANT

Record
p.13

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 with costs the 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 an Order made by the Respondent on the 21st day of April 1964, by which Order the Respondent had imposed certain penalties on the Appellant under section 80(1) of the Income Tax Ordinance (Chapter 242).

p.1
p.27

20

2. The principal questions that arise in this Appeal are -

(a) Whether the Respondent, in acting under the said section 80(1) and in imposing the said penalties upon the Appellant, was exercising or purporting to exercise judicial powers.

30

(b) whether the Respondent, not having been appointed by the Judicial Service Commission as a "judicial officer", was vested with such judicial powers

2.

Record

(c) whether the Respondent, 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 Respondent had not been properly appointed as a "judicial officer", his appointment as Deputy Commissioner of Inland Revenue, was not wholly invalid.

10

(e) whether, in any event the Respondent's said 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.

3. The Ceylon (Constitution) Order in Council provides as follows:

20

Section 3(1) In this Order, unless the context otherwise requires

"judicial office" means any paid judicial office.

"public office" means any office the holder of which is a public officer.

"public officer" means any person who holds a paid office, as a servant of the Government of the Island....

Section 55(1) The appointment, transfer, dismissal and disciplinary control of judicial officers is hereby vested in the Judicial Service Commission.

30

(5) In this section, "appointment" includes an acting or temporary appointment and "judicial officer" means the holder of any judicial office but does not include a Judge of the Supreme Court or a Commissioner of Assize

The Income Tax Ordinance (Chapter 242)
provides as follows:

10 Section 73(1): Any person aggrieved by
the amount of an assessment made under
this Ordinance may within twenty-one days
from the date of the notice of such
assessment appeal to the Commissioner by
notice of objection in writing to review
and revise such assessment. Any person
so appealing (hereinafter referred to as
"the appellant") shall state precisely in
his notice the grounds of his objection and
the notice shall not be valid unless it
contains such grounds and is made within
the period above mentioned:

20 Provided that the Commissioner, upon
being satisfied that owing to absence from
Ceylon, sickness, or other reasonable
cause the appellant was prevented from
giving notice of objection within such
period, shall grant an extension thereof;

Provided further that, where the
assessment appealed against has been made
in the absence of a return of income by
the appellant, no notice of objection shall
be valid unless and until such return has
been duly made.

30 (2) On receipt of a valid notice
of objection under subsection (1), the
Commissioner may cause further inquiry to
be made by an Assessor, and if in the course
of such inquiry an agreement is reached as
to the amount at which the appellant is
liable to be assessed, any necessary adjust-
ment of the assessment shall be made

40 (3) Where no agreement is reached
between the appellant and the Assessor in
the manner provided in subsection (2), the
Commissioner shall, subject to the
provisions of section 76, fix a time and
place for the hearing of the appeal

Section 74(1) For the purpose of hearing

Record

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 re-appointment.

Section 75(1) Any appellant, or the authorised representative of any appellant, who is dissatisfied with the determination by the Commissioner of an appeal under section 73, may declare his dissatisfaction with that determination. Such declaration shall be made orally immediately after the announcement by the Commissioner of his determination or shall be communicated in writing to the Commissioner within one week from the date of such announcement.

10

20

(2) Where the appellant has declared or communicated his dissatisfaction in accordance with subsection (1) the Commissioner shall, within one month of the determination of the appeal, transmit in writing to the appellant or his authorized representative his determination and reasons therefor

(3) Within one month of the transmission of such written determination and reasons by the Commissioner, the appellant may give notice of appeal to the board. Such notice shall not be entertained unless it is given in writing to the clerk to the board and is accompanied by a copy of the Commissioner's written determination, together with a statement of the grounds of appeal therefrom.

30

40

Section 79 Where no valid objection or appeal has been lodged within the time limited by this Chapter against an assessment as regards the amount of the assessable income assessed thereby, or

where the amount of the assessable income has been agreed to under section 73(2), or where the amount of such assessable income has been determined on objection or appeal, the assessment as made or agreed to or determined on appeal, as the case may be, shall be final and conclusive for all purposes of this Ordinance as regards the amount of such assessable income:

10

Provided that nothing in this Chapter shall prevent an Assessor from making an assessment of additional assessment for any year or assessment which does not involve reopening any matter which has been determined on appeal for the year.

Section 30(1) Where in an assessment made in respect of any person the amount of income assessed exceeds that specified as his income in his return and the assessment is final and conclusive under section 79, the Commissioner may, unless that person proves to the satisfaction of the Commissioner that there is no fraud or wilful neglect involved in the disclosure of income made by that person in his return, in writing order that person to pay as a penalty for making an incorrect return a sum not exceeding two thousand rupees and a sum equal to twice the tax on the amount of the excess.

20

30

(2) Any person in respect of whom an order is made under subsection (1) may within twenty-one days after the notification of the order to him, appeal therefrom in writing to the board of review. The appeal shall state the grounds of objection to the order

40

4. The Appellant commenced THE PRESENT PROCEEDINGS by Petition to the Supreme Court dated the 19th September 1964, his affidavit in support having been affirmed on the 9th

p.1

p.4

Record

pp.8-12

September 1964. The facts as deposed to in this affidavit and in affidavits filed on behalf of the Respondent, were substantially not in issue between the parties and were as follows:

The Department of Inland Revenue made certain assessments in respect of the Appellant's income tax for the years 1950/51-1957/58 and in respect of profits tax for the years 1950-1956. He appealed against these assessments and submitted returns of his income and profits for the years of assessment. The Department of Inland Revenue did not accept the figures returned as being accurate. Eventually, the amounts of the Appellant's assessable income and chargeable surplus for the years in question were agreed between the Department and the Appellant who entered into a formal agreement under section 73(2) (formerly section 69(2)) of the Income Tax Ordinance adjusting the figures accordingly.

10

p.19

20

p.21

5. On the 3rd August 1962 the Respondent wrote to the Appellant telling him that as the income finally assessed as his income for the years 1955/56-1957/8 exceeded the income which he had returned, the Respondent proposed to impose a penalty on him under section 80(1) of the Income Tax Ordinance for making an incorrect return. The Respondent concluded

p.22, 11.4-7

"I am now requesting you to state in writing on or before 17.8.62 the grounds on which you rely to prove that there was no fraud or wilful neglect involved in the disclosure of income in your return and that, accordingly, no penalty should be imposed".

30

p.24

6. Thereafter the Appellant and his legal advisers met the Respondent and a further agreement dated the 3rd July 1963 was entered into, by which in consideration of proceedings not being taken against him in respect of penalties incurred, the Appellant agreed to pay to the Commissioner of Inland Revenue, Colombo, in respect of penalties

40

incurred for 1950/51-1957/8, the sum of Rs.450,000/- within two months of the issue of a notice to pay by the Commissioner of Inland Revenue.

p.10,11.18-
26

10 In his affidavit affirmed on the 13th November 1964 the Respondent deposed that the Appellant had failed to make payment in accordance with the agreement of the 3rd July, 1963 or by the "final date for payment" given him by the Commissioner of Inland Revenue in a letter of the 13th December 1963.

20 7. On the 10th February 1964 the Respondent wrote to the Appellant informing him that he was now proposing to make an order that the Appellant should pay a penalty "as contemplated by section 80(1) of the Income Tax Ordinance" in respect of each of the years of assessment 1955/56-1957/8 and that he was giving the Appellant "an opportunity to show cause, if any, on or before the 3rd March, 1964 against such order being made".

p.26

30 8. The Appellant's proctors replied by letter of the 3rd March 1964 addressed to the Commissioner of Inland Revenue stating that the Appellant had "cause to show" but that the Q.C. who had been retained to place the matter before the Commissioner was unfortunately ill and requesting "that a month's time may be granted to enable Counsel to meet you". This letter was handed by Junior Counsel to the Commissioner, who agreed to give the Appellant a further month. The Commissioner, in his affidavit affirmed on the 13th November 1964, deposed that he made a contemporaneous note of the interview on the letter and thereafter referred it to the Respondent, after which no representations were made on behalf of the Appellant nor was any communication received from him or on his behalf in respect of the action proposed in the letter of the 3rd March 1964. The Respondent in his affidavit likewise deposed that he had "received no communication whatsoever" from the Appellant or his lawyers.

p.26

p.3, 1.7

p.12, 11.18-
35

p.11,11.7-9

Record
p.27

9. On the 21st April 1964 the Respondent made an Order under section 80(1) of the Income Tax Ordinance, imposing penalties upon the Appellant.

In the Order the Respondent recited the history of the matter and, referring to his letter to the Appellant of the 10th February 1964, said that the Appellant had "not availed himself of this opportunity to show cause even by the extended date, 3rd April 1964, granted on the application of Messrs. Wijernanne & Co." (his proctors).

10

The Order concluded thus:

p.30, 1.13

"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, 1956/67 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:

20

For 1955/56 Rs.180,000/-

For 1956/57 Rs. 50,000/-

For 1957/58 Rs.120,000/-

10. In his Petition dated the 19th September 1964 the Appellant pleaded inter alia as follows:

p.3, 1.26-
p.4, 1.5

"14. The Petitioner states that the said order /of the 21st April 1964/ is a nullity and was made in violation of the principles of natural justice without affording the petitioner an opportunity at an inquiry to prove that he was not guilty of fraud as contemplated by Section 80(1) of the Income Tax Ordinance. The Petitioner further states that by his letter dated 3rd March 1964 the Petitioner has intimated to the Respondent that he has cause to show and a duty was cast on the Respondent to

30

40

fix an inquiry and intimate to the Petitioner the date of such inquiry so as to enable the Petitioner to place before the Respondent all material available on his behalf and to call evidence.

10 15. The Petitioner further states that the provisions of Section 80(1) of the Income Tax Ordinance (Cap.242) empowering the Respondent to impose a penalty on the Petitioner is null and void by reason of the fact that the Respondent is exercising judicial powers in so doing and the Respondent is not empowered in law to exercise judicial power inasmuch as the Respondent 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 (Cap.242)"

The Appellant in his Prayer asked the Court:

20 "(a) to issue a Mandate in the nature of a Writ of Certiorari ordering and directing the Respondent to forward to Your Lordships' Court the record of the proceedings imposing the aforesaid penalties on the Petitioner and to quash the said order

p.4,11.13-18

(b) for costs;"

30 11. In his affidavit affirmed on the 13th November 1964 and filed on behalf of the Respondent, L. Piyasena, Deputy Commissioner of Inland Revenue, deposed that the Order made by the Respondent on the 21st April 1964 "was the subject of an appeal to the Board of Review constituted under the provisions of the Income Tax Ordinance. The Board of Review by its Order dated 6th October 1964 has disallowed the said Appeal"

p.9,11.1-6

40 12. In the evidence filed on the Respondent's behalf the Appellant's averments that "the respondent is the holder of a paid office and was not appointed under the Judicial Service Commission to exercise powers under Section 80(1) of the Income Tax Ordinance (Cap. 242)" were not contested.

pp.8-12

Record
p.13

13. On the 29th September 1966 the Supreme Court dismissed the Appellant's Petition with costs.

p.15

14. 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.

p.18

15. The Appellant respectfully submits that in acting under section 80(1) (as also under other provisions) of the Income Tax Ordinance the Respondent exercises judicial powers and that the decision of the Supreme Court of Ceylon in the case of Xavier v. Wijeyekoon (69 C.N.L.R.197) which was to the contrary effect, was wrong. It is submitted that the Respondent is a "judicial officer" within the meaning of section 55 of the Constitution of Ceylon and that, accordingly, since he was not appointed by the Judicial Service Commission, he was not validly appointed to his office. If validly appointed to his office it is submitted that he was not properly appointed to exercise judicial power. It has been held by the Privy Council in the case of Liyanage v. The Queen (1967 1 A.C.259) that the principle of the Separation of Powers is implicit in and recognised in the Constitution of Ceylon and that there exists a separate power in the Judicature which cannot be usurped or abrogated by the Legislature or the Executive. Accordingly, it is respectfully submitted, a person who is not properly appointed to exercise judicial power, cannot have conferred upon him powers such as the Respondent has purported to exercise in the present case, namely powers of determining whether there is fraud or wilful neglect and of convicting and punishing on the basis of such determination. In the submission of the Appellant the Order which the Respondent purported to make was a nullity.

16. It is further submitted that in any event the Respondent was under a duty to act judicially in determining the issues before him and that his failure to give the Respondent an opportunity at an enquiry to prove that he was

not guilty of fraud or wilful neglect was a breach of this duty and a violation of the principles of natural justice.

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

10

R E A S O N S

1. BECAUSE the Respondent is a "judicial officer" within the meaning of section 55 of the Constitution of Ceylon.

2. BECAUSE the Respondent was not validly appointed to his office.

3. BECAUSE the Respondent was not appointed by the Judicial Service Commission.

20

4. BECAUSE the principle of the Separation of Powers is implicit in and recognised in the Constitution of Ceylon.

5. BECAUSE the Respondent 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 Respondent was not properly appointed to exercise judicial powers.

7. BECAUSE no judicial power could properly or validly be conferred on the Respondent.

30

8. BECAUSE the case Xavier v. Wijeyekoon (69 C.N.L.R. 197) was wrongly decided.

9. BECAUSE the Order of the 21st April 1964 was a nullity.

10. BECAUSE the Respondent, in enquiring into the matters before him and in determining the issues, was under a duty to act judicially.

12.

Record

11. BECAUSE the Respondent was in breach of his duty to act judicially and the Order of the 21st April 1964 was made in violation of the principles of natural justice and was void.

DINGLE FOOT

MONTAGUE SOLOMON

HAMAVI HANIFFA

No.16 of 1968

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME
COURT OF CEYLON

B E T W E E N :

DONALD JASON RANAWEERA
Petitioner-
Appellant

- and -

CLAUDE BERTRAM EMMANUEL
WICKRAMASINGHE,
Deputy Commissioner of
Inland Revenue,
Department of Inland
Revenue, Colombo
Respondent

C A S E FOR THE APPELLANT

T.L. WILSON & CO.,
6, Westminster Palace Gardens,
London, S.W.1.
Solicitors for the Appellant