

IN THE FIJI COURT OF APPEAL

CIVIL JURISDICTION

CIVIL APPEAL NO. 51 OF 1991

BETWEEN

FIJI PUBLIC SERVICE ASSOCIATION APPELLANT

-and-

THE REGISTRAR OF TRADE UNION

FIJI AIR TRAFFIC CONTROL RESPONDENTS
OFFICER'S ASSOCIATION

Mr V Kapadia & Mr D Sharma for the Appellant
Mr N Nand for the Respondents

Date of Hearing : 6th August 1993
Date of Delivery of Judgment : 20th August, 1993.

JUDGMENT OF THE COURT

The Registrar of Trade Unions published a Gazette notice dated 7 June 1988 that the Fiji Air Traffic Control Officer's Association (FATCOA) had applied for registration. The notice invited written objections from any registered trade union under the proviso to the (now repealed) paragraph (e) of section 13(1). The appellant union, the Fiji Public Service Association (FPSA), wrote objecting on the basis that it was adequately representative of the interests for which FATCOA was seeking registration.

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In accordance with section 3(2) the Registrar consulted the Trade Union Advisory Committee on 19 July 1988 and the Committee advised against registration. The Registrar followed that advice and published a notice, dated 20th September 1988, in the Gazette that registration was refused on the grounds that "the members of the applicant Union are adequately represented by the Fiji Public Service Association." That notice is subscribed with a Note in the following terms:

"NOTE: Upon receipt of this notice, reference should be made to Section 13 of the Trade Unions Act, Subsection (2) of that Section sets out the provisions which have effect upon the refusal of the Registrar to register a trade union."

The events thereafter are set out in the written decision of the Registrar dated 30th November 1988:

- "2. After the refusal, the applicants through their solicitor Mr. Tevita Fa, requested a reconsideration because certain important documents which should have been considered at the T.U. Advisory Committee meeting on 19th July were not then available through oversight on the applicant's part.*
- 3. The request for reconsideration was put to the meeting of T.U.A.C. on 20th October 1988 and it was agreed that if the Registrar considered the documents and further representation and merit placing the same before the committee, then he might do so. The Registrar went over the documents and Mr. Fa's representation and found the same worthy of consideration by the committee and were duly placed at their meeting on 29th November 1988.*

4. *There were three members of T.U.A.C. present at the meeting of 29th November - Tulele, Roberts and Raman, Ratu Filimone was absent. Roberts and Raman maintained the original position and Tulele did not express any views.*
5. *I have given due consideration to all matters and I am inclined to the view that the applicants' interests will be better served by a union of their own as they are somewhat out of a limb from FPSA."*

It should be mentioned that the "important documents" referred to in paragraph 2 consisted of the conclusions from a report of a "meeting of experts on problems concerning air traffic controllers" published by the International Labour Organisation in Geneva in May 1979 attached to a one page introduction to a 'final report' (not included) on a survey prepared for the 1987 conference of the International Federation of Air Traffic Controllers Association held in Nairobi. The conclusions refer to the specialist nature of air traffic controllers work and their problems in general. The conclusions mention no specific country by name or implication, they advise negotiation through trade unions and emphasise the right of association and choice but, at no point, does the document claim it is necessary to have separate specialist unions nor does it ever allude to Fiji or suggest the appellant was in any way failing the air traffic controllers.

On receiving a copy of the Registrar's decision, the FPSA wrote asking him to revoke the registration and on 25th January 1989 the Registrar replied advising the union his decision "will not be revoked."

By notice filed on 15 March 1989, the FPSA moved for a order of certiorari which was heard by Byrne J. The learned Judge summarised the challenge to the Registrar's decision as:

- (i) *it was in breach of the rules of natural justice;*
- (ii) *it was an abuse of the Registrar's discretion;*
- (iii) *the decision was made in excess of the Registrar's discretion.*

The learned Judge dismissed the application with costs in a lengthy written judgment delivered more than a year after the first hearing day and two years, four months after the notice of motion was filed. Applications of this nature require a decision as soon as possible and we consider such a delay most unfortunate. We note the hearing took four days which were spread over nearly a year.

The judgment seeks reasons for the Registrar's decision by an examination of the I.L.O. report in some detail. The learned Judge also sought to define the phrase from section 13 "adequately representative of" by consideration of a number of authorities on a phrase the Judge considered the equivalent from the Australian Conciliation and Arbitration Act, "might conveniently belong". The motion before the Court did not require consideration of the merits of the Registrar's decision and we can only assume these contributed to the protracted hearing.

The FPSA appeals against that decision on six grounds. We need only set out grounds four and six because we feel they conclusively resolve these proceedings.

"4. THE Learned Trial Judge erred in Law and in fact in holding that the Registrar of Trade Unions was not functus officio when he first refused to register FATCOA as a trade union.

6. THE Learned Trial Judge erred in law and in fact in not properly considering the statutory provision giving FATCOA a right to appeal to the High Court against the initial refusal of registration by the Registrar of Trade Unions."

In dealing with these matters, the learned Judge, at p.18 of his judgment, stated:

"Finally I turn to the last submission made by counsel for the Applicant. This is the claim that the Registrar had become functus officio when he first refused registration of FATCOA on 20th of September 1988. It is said that the Registrar had no power thereafter to reconsider the case."

He then considered two authorities cited and concluded they are

".... both distinguishable in my view from the facts of the present case. Both actions concern decisions of Magistrates' Courts which are bound by strict rules of evidence. In my judgment the Registrar is not so bound because there is nothing in the Trade Unions Act to suggest this is so. It is true that Section 16 of the Trade Unions Act gives FATCOA the right to appeal to this Court against the Registrar's refusal to register it initially but Section 16 is in permissive terms only and I do not consider that

it barred FATCOA from asking the Registrar to reconsider his refusal. He was entitled to hold, as it transpired correctly, that the door was not finally closed. I do not consider that the Registrar was obliged to inform FATCOA that its only remedy was to appeal to this Court. In my view he was entitled to consider any further material which FATCOA wished to place before him."

We must disagree with that conclusion.

The consequences of a refusal to register are set out in section 13(2).

"13(2) When the Registrar refuses to register a trade union, he shall notify the applicants in writing of the grounds of such refusal within two months of the date of receipt of such application and the trade union shall be deemed to be dissolved but such dissolution shall not take effect prior to the expiry of the period limited by subsection (1) of section 16 for the bringing of an appeal and then-

- (a) if no appeal is brought under the said subsection within that period, the dissolution shall take effect at the commencement of the day following the day on which that period expired; and
- (b) if an appeal is brought within that period, the dissolution shall not take effect prior to the determination of the appeal, but, if the appeal is dismissed, shall take effect on the determination thereof."

This is the section to which attention was drawn in the paragraph of the notice of refusal set out above.

The period of appeal is found in section 16(1).

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"16(1) Any person aggrieved by the refusal of the Registrar to register a trade union, or by an order made by the Registrar under section 14, may within one of the date of the refusal or order, as the case may be, appeal against such refusal or order to the Supreme Court and from such appeal the Supreme Court may order as it thinks proper, including any directions as to the costs of the appeal."

Clearly, the result of the Registrar's refusal on 20th September 1988 was that FATCOA was deemed to be dissolved but that dissolution only took effect, as no appeal was lodged, on 20th October 1988. From that date, it was dissolved.

With respect to the learned judge, we fail to understand his reliance on the permissive terms of section 16. The two provisions set out above impose no obligation to appeal but they clearly demonstrate, in our view, that there is an intention to give finality to the Registrar's decision. If he refuses registration, the union is dissolved one month later failing appeal and, where an unsuccessful appeal is heard, as soon as it is determined. We cannot accept the contention that an unsuccessful applicant for registration, by not lodging an appeal, can in some way keep the way open for endless re-applications any more than an unsuccessful objector can continue to challenge a registration.

The precise effects of dissolution under section 13(2) do not appear to be dealt with in the Act. Cancellation of

registration results in the union ceasing to exist as a corporate body and ceasing to enjoy any of the rights, immunities or privileges of a registered trade union (section 18). Voluntary dissolution also results in the union ceasing to be a body corporate (section 49).

The effect of registration is set out in section 17 and includes the fact it renders the union a body corporate. Until registration occurs, it is not a body corporate and so dissolution under section 13(2) must mean something more than the loss of that status. That it has no corporate status is confirmed by the fact that section 16 gives the right of appeal against a refusal to register and cancellation or suspension of registration to "any person aggrieved" rather than to a trade union.

We conclude that FATCOA was dissolved as a trade union on 20th October 1988 and the Registrar thereafter had no power to register it.

The appeal is allowed with costs.

Michael Helsham
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Mr Justice Michael M. Helsham
President Fiji Court of Appeal

Mari Kapi
.....
Sir Mari Kapi
Judge of Appeal

Gordon Ward
.....
Mr Gordon Ward
Judge of Appeal