

in re TOMASI VOLA

[Civil Jurisdiction (Vaughan, C.J.) November 26th, 1951]

Power to hear Order of Certiorari—jurisdiction of preliminary inquiry held under Marine Board Ordinance.

Tomasi Vola was the helmsman and master of a launch which collided with another causing loss of life.

The Marine Board later held an inquiry under the provisions of the Marine Board Ordinance and cancelled his sailing licence.

His counsel then made application by Writ of Certiorari to the Supreme Court to quash this finding.

The judgment in this application was as follows:—

HELD.—(1) The Fiji Marine Board must observe the fundamental principles which apply to any inquiry.

(2) The only decision that an inquiry held under the provisions of section 33 of the Marine Board Ordinance can make, is that a formal investigation should be held.

[**EDITOR'S NOTE.**—Section 34 of the Marine Board Ordinance reads as follows:—

“ 34. At the conclusion of such inquiry the Board shall decide whether a formal investigation is or is not requisite or expedient. They shall also draw up a full report of the result of the inquiry and embody therein the decision to which they have come. Such report shall be signed by the President of the Board and kept for future reference.”]

Cases referred to:—

Nakkuda Ali v. Jayaratne, (1951) A.C. 66.

Ann Bernard for the applicant.

W. G. Bryce, Acting Solicitor-General for the respondent.

VAUGHAN, C.J.—This is an application for an Order of Certiorari to remove into this Court an order or finding of the Fiji Marine Board made on the 25th April, 1951, and asking for that order or finding to be quashed as made without jurisdiction or in excess of its jurisdiction.

Mr. Bryce for the Marine Board has very properly raised the question of whether in this matter this Court has jurisdiction to entertain a motion for an Order of Certiorari. He submits that the inquiry and cancellation of a sailing licence under section 43 of the Marine Board Ordinance (Cap. 200) is a purely administrative act and therefore certiorari does not lie. In view of the provisions of that section which require the Board to come to a finding, after “due inquiry”, on the fitness of a person to hold a sailing licence, this submission is not sustainable. The Legislature, had they wished, could of course have given the Board power to cancel a sailing licence by an administrative act, but they have not done so. The case of *Nakkuda Ali*, (1951) A.C. 66, does not support his contention because in that case the authority concerned was not required either to hold an inquiry or to come to a finding.

Arising out of a collision between the launch *Malahine* and the launch *Jubilee* of which the applicant Tomasi Vola was helmsman and master, as a result of which loss of life occurred, the Marine Board held an inquiry. The inquiry was not held in public, the applicant

Tomasi Vola was not present, except when he was called to give evidence, and it does not appear that he was informed of the nature of the inquiry or given a proper opportunity of defending himself against any charges or allegations which might be made against him. The inquiry appears to have been directed mainly to ascertaining the causes of the collision. As a result of the inquiry the Marine Board made a finding to the effect that the applicant Tomasi Vola was, by his neglect of the rules of the road at sea and his neglect to carry navigation lights, responsible for the collision: to this finding the Board added a decision that his sailing licence should be cancelled and that proceedings should be instituted against him for failing to carry lights.

The Fiji Marine Board makes provision for two different kinds of inquiries. Under section 33 the Board can hold a "preliminary inquiry" as to shipping casualties and as to charges of incompetence against masters and other officers. Of the procedure to be followed nothing is said and it is clear from section 34 that the only decision that can be made by the Board as a result of such an inquiry is whether or not a formal investigation should be held. I read the word "decision" in the fourth line of section 34 as related to the word "decision" in the first line, and that is related solely to the question of whether a formal investigation is necessary. If the Board decides that such an investigation is necessary a court of investigation is set up by the Governor under section 34 and the procedure and powers of such a court are prescribed in some detail in that and the following sections. I cannot therefore accept Mr. Bryce's submission on behalf of the Marine Board that section 34 gives the Board power to make a finding as to the causes of a collision at sea or to make a decision to cancel a sailing licence.

The second inquiry provided by the Ordinance is under section 43 the relevant part of which is in the following terms: "It shall be lawful for the Board if, after due inquiry, it be found that the holder of any . . . sailing licence is unfit to have charge of any vessel he may then be in charge of either to cancel, suspend or limit such licence to such lesser tonnage as the Board may think fit.

Mrs. Bernard's submission here is that firstly the inquiry was not a "due inquiry" because the accused was not given any opportunity of defending himself against a charge of unfitness, or of being present at the inquiry, and secondly that the Board had no power under this section to decide that the applicant was by his negligence responsible for the collision or to penalize him by cancelling his licence. These submissions must succeed. The section requires the Board after due inquiry to come to a finding on the question of the fitness or otherwise of the person concerned to hold a sailing licence of some particular vessel or of vessels of some particular tonnage and if the Board find he is so unfit they can cancel his licence. The Board did not purport to do this but did something quite different outside their powers under the section. In my opinion the provisions of the section and the subject-matter require the Board to act judicially in the sense that they must observe the fundamental principles which apply to any inquiry where the rights of a person are at stake. Furthermore the Board determined a matter which they had no power to determine under that section.

Order in terms of the motion. Costs to the applicant.