IN THE SUPREME COURT OF THE TERRITORY OF PAPUA AND NEW GUINEA

CORAM : FROST, J.
Thursday,
22nd May, 1969.

Re BURNESS ELECTRICAL PACIFIC PTY. LIMITED.

REASONS FOR JUDGMENT.

This is an application under Order 81, Rule 1, for a Writ of Certiorari to remove an order of the Papua and New Guinea Electricity Commission into the Supreme Court.

The applicant is the holder of an Electrical Contractor's licence under the Electrical Contractors and Electricians Licensing By-Laws 1966. The reason why he comes to this Court is that the Commission, by letter dated 1st May, 1969, notified him that the Commission had suspended his licence, the suspension to take effect and operate from the 7th May to the 7th June, 1969. The power the Commission exercised was the power conferred under By-law 19, which provides that the Commission may suspend or cancel the licence of an electrical contractor, where, in the opinion of the Commission, as provided for in By-law 19(1)(b):

> "The holder of the licence or a person employed by him has carried out electrical wiring work in a negligent, unsatisfactory or incompetent manner and the work does not conform to the Wiring Rules, or the Electricity Commission (Service and Installation) By-laws, in force on the date on which the work was carried out."

The applicant contends that the reasons given in writing by the Commission for its decision show that the Commission went outside 19(1)(b) and he further submits that, as no notice was given him of the Commission's intention to consider his licence with a view to its cancellation or suspension, and as he was given no opportunity to be heard in his defence, there was a breach of the principles of natural justice.

I reserved my decision following the hearing yesterday to consider two matters. One was the procedure under Order 81 and the other was whether I should not accede to the application on the ground that the

.../Commission

Commission has since removed the suspension under By-law 20, as the Commission's letter stated, as from the morning of the 20th May, 1969.

Upon the first matter, under Order 81, Rule 1, the procedure is for application for an order nisi to be made upon notice to the other party. This procedure has been abolished in England and in some Australian states. In my judgment, if the applicant shows that he has an arguable case, he is entitled to an order nisi. Now Mr. Pratt did not contest at this stage that, in exercising the power to suspend a licence, the Papua and New Guinea Electricity Commission was exercising a power to determine a question affecting the rights of subjects and had the duty to act judicially, so that if it acted in excess of its authority, it was subject to the controlling jurisdiction of this Court. See R. v. Electricity Commissioners (1). The applicant has shown an arguable case that there was a failure to observe the principles of natural justice and that the right of appeal to a District Court under By-law 22 should not prevent this Court from exercising its discretion in the applicant's favour.

As to the second matter upon which I reserved consideration, it seemed to me yesterday that, as the suspension had been removed as from the morning of the 20th May, 1969, an order of this Court in the applicant's favour could be said to be ineffective, in the sense that this Court could do no more than the Commission has already done in lifting the suspension. See The Principles of Australian Administrative Law, Second Edition, Benjafield & Whitmore, page 211. The matter is also touched on in R. v. Licensing Authority of Logan & Denny, Ex parte Behr (2) and R. v. P.M. at Rockhampton & Hemmenstall, Ex parte Luddy (3), although neither case takes the matter very far. Upon this point I have been much assisted by a passage from the speech of Lord Morris in Ridge v. Baldwin (4), which is as follows:-

---

(1) (1924) 1 K.B. 171.
(2) (1910) S.R. Q. 391.
(3) (1933) 2 W.N. 13.
(4) (1964) A.C. 40.

.../'It

"It was submitted that the decision of the watch committee was voidable but not void. But this involves the inquiry as to the sense in which the word "voidable", a word deriving from the law of contract, is in this connection used. If the appellant had bowed to the decision of the watch committee and had not asserted that it was void, then no occasion to use either word would have arisen. When the appellant in fact at once repudiated and challenged the decision, so claiming that it was valid, only the court could decide who was right. If in that situation it was said that the decision was voidable, that was only to say that the decision of the court was awaited. But if and when the court decides that the appellant was right, the court is deciding that the decision of the watch committee was invalid and of no effect and null and void. The word "voidable" is therefore apposite in the sense that it became necessary for the appellant to take his stand: he was obliged to take action, for unless he did, the view of the watch committee, who were in authority, would prevail. In that sense the decision of the watch committee could be said to be voidable. The appellant could, I think, have applied for an order of certiorari: he was not saying that those who purported to dismiss him were not the watch committee; he was recognising that they had a power and jurisdiction to dismiss, but he was saying that whether the regulations applied or whether they did not, the committee could only exercise their power and jurisdiction after hearing his reply to what was said against him. In these circumstances he could, I think, have applied for an order of certiorari (though considerations of convenience would probably have pointed against pursuing such a course) or he could have asked for a declaration." (at pages 124-125).

Thus, in this case, it can be said on behalf of the applicant that he is obliged to take action because, until he does, the order for suspension, although now lifted, will prevail in respect of the period

.../from

from the 7th May until the 20th May, and that suspension may, as a decision of the Commission, affect him particularly in his business. Lord Morris indicated that proceedings for a declaration, which was the remedy sought in Ridge v. Baldwin (5) (supra) and which no doubt was convenient for the appellant to seek in that case, because he was also seeking consequential relief in relation to his salary, or for certiorari may be alternative. It seems to me that those considerations are relevant to the present case before me. Accordingly I consider that an arguable case has been shown on this point also and I accordingly make the order sought.

Order nisi for
writ of certiorari.

Soliciters for the Applicant : Richard Major & Co.

---

(5) (1964) A.C. 40.