

**Bodco Ltd v Herminie & Or
(2001) SLR 254**

Philippe BOULLE for the Petitioner
Ronny GOVINDEN for the Respondents

Ruling delivered on 16 May 2001 by

PERERA J: The Respondents have raised a plea in limine in which the petitioner for a Writ of certiorari has not commenced within the period of the decision sought to be canvassed, as required by Rule 2 (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Authorities) Rules, 1995. That Rule is as follows-

A petition under Rule 2 shall be made promptly and in any event within 3 months from the date of the order or the decision sought to be canvassed in the petition unless the Supreme Court considers there is good reason for extending the period within which the petition

is made. It is the application of this rule which is the subject of the present application. The Supreme Court and the Adjudicating

Authority have considered the application and have found that there is good reason for extending the period within which the petition

A second ground of the plea, based on the Public Officers' Act, 1995, was not pursued at the hearing.

The Public Officers' Act was not

In the present case, the decision of the Competent Officer in terms of the Public Officers' Act 1995 was conveyed to the petitioner company by letter dated 10 December 1997. The petitioner who was dissatisfied with that decision, filed an appeal with the Minister on 12 December 1997. That Appeal was rejected on 20 November 1998. The Minister, dated 20 November 1998, that is being sought to be quashed by a writ of certiorari. The Ministry by letter dated 8 March 1999 gave final notice to the petitioner to comply with the order of compensation within 7 days, failing which legal action was entered within 7 days. The present application was filed on 16 April 1999. The Ministry.

of the Employment Appeal Tribunal on 10 December 1997. The Minister on 12 December 1997. It is that decision which is being sought to be quashed by a writ of certiorari. The Ministry by letter dated 8 March 1999 gave final notice to the petitioner to comply with the order of compensation within 7 days, failing which legal action was entered within 7 days. The present application was filed on 16 April 1999. The Ministry.

In reply to ground 1 of the plea raised by the Respondents, the

petitioner avers that –

The decision of the Appeal stated in the letter dated 20 November 1998 was followed by correspondence between the 1st Respondent and the Association of Seychelles Employers' dated 27th November 1998 and 15th February 1999, and the Appellant awaited the decision of the representation made by the Federation of Employers which was only relied to by the 1st Respondent by their letter of 15th February 1999 after which the Appellant sought legal advice and an action was entered within two months thereafter, which was the earliest opportunity in terms of legal services available to the Appellant.

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Before this averment is considered, it is necessary to consider the limitation clause in

Rule 4. The use of the words "and in any event, within 3 months", puts it beyond doubt that it is a mandatory provision. This Rule, is the same as Order 53, Rule 4(1) of the R.S.C.

Rules of the United Kingdom. In the case of *R v Stratford-on-Avon District Council ex Parte Jackson* [1985] 3 All ER 769, the petitioner filed an application for judicial review six months out of time. The reason adduced for the delay was that the petitioner had applied for legal aid within time and that the delay in granting such aid was beyond her control. The Court of Appeal accepted that reason as a "good reason" for extending the time limit. Brian Thompson in his *Textbook on Constitutional and Administrative Law*, commenting on this case states that –

The basic rationale underlying both limits is that there should be a relatively short time in which to seek judicial review, bearing in mind the consequences for good administration and third parties. The discretion in Rule 4 (same as our Rule 4) is directed towards the Applicant and seeks to be fair to that person in making a challenge to unlawful Administration, however, the factors in Section 31(6) would appear to take priority.

In that case the petitioner was seeking to quash a planning resolution to construct a Supermarket in a small historic town in Warwickshire on the ground that the planning committee had been misled by the Planning Officer. Hence there was a need to protect the interests of third parties; the inhabitants of that Town, and to ensure good Administration. Further, fairness necessitated that the petitioner should not be non-suited due to a delay in obtaining legal aid, which was beyond her control. Section 31(6) of the Supreme Court Act 1981 of the UK is as follows -

Where the High Court considers that there has been undue delay in making an application for Judicial Review, the Court may refuse to grant -

- (a) Leave for making of the application:
- (b) Any relief sought on the application.

If it considers that the granting of the relief would be likely to cause substantial hardship to, or seriously prejudice the rights of any person or would be detrimental to good Administration.

Although there is no such provision in Rules of this Court, yet considerations of hardship and prejudice being caused to the Respondents or third parties, and the need to safeguard the proper functioning of the administrative and judicial machinery are relevant factors to be considered in the exercise of the discretion of the Court to extend the time under Rule 4. As Lord Diplock stated in *O'Reilly v Mackman* [1982] 3 ALL ER 1124 at 1131:

the Public Interest in good Administration requires that Public Authorities and

third parties should not be kept in suspense as to the legal validity of a decision the Authority has reached in purported exercise of decision - making powers for any longer period than is absolutely necessary in fairness to the person affected by that decision.

Applying these principles to the present case, the Second Respondent the employee, has been declared entitled to a sum of R34,095.77 as compensation under the Act ever since 20 November 1998. Further her termination of employment has been held to be unjustified. The Association of Seychelles Employers, representing the petitioner company sent a letter dated 27 November 1998 to the Minister seeking a review of his decision. A revocation of an order made by the Minister is now permitted under Section 65 (8) of the Employment Act 1995, as amended by Act no. 8 of 1999 which came into force on 28 October 1999. But that is limited to cases where the relevant facts in existence when the original determination was made, were not made known to the Competent Officer or the Minister. However on 27 November 1998 there was no such legal provision, and no power with the Minister to review his own decision. By letter dated 15 February 1999, still before the new amendment came into operation, the Minister reiterated through his Principal Secretary that his Ruling stood and that it should be complied with at the earliest. Admittedly the Second Respondent has not been paid the compensation due to her under the Act. For a person to be excused for the delay caused by a third party, such delay should have arisen from the breach of a statutory or other duty by that party. In the present case, the Minister had no statutory duty at that time to review his own decision. The petitioner company was throughout the grievance procedure, represented by the "Association of Seychelles Employers". That Association ought to have been more familiar with the provisions of the Employment Act than any lay employee. Hence it would not be a "good reason" to rely on the misconceived course followed by the Association of Employers and to submit that the delay was caused by the Minister. Moreover the two time limits contained in Rule 4, that is, "promptly" and "in any event within 3 months", could be extended only upon reasons which do not carry any latches on the part of the petitioner, or on the legal or professional representatives he relies on.

The reason adduced by the petitioner cannot be accepted as a "good reason" for purposes of using the discretion under Rule 4 and hence is hereby rejected. Learned Counsel for the petitioner also submitted that as leave to proceed has been granted in this case, an objection under Rule 4 should not be entertained. This same submission was considered in the case of *Ex parte Jackson* (supra). The Court held that –

Even though the Court may be satisfied in the light of all the circumstances including the particular position of the Applicant, that there is good reason for that failure, nevertheless the delay, viewed objectively, remain "undue delay". The Court therefore still retains a discretion to refuse to grant leave for the making of the application or the relief sought on the substantive application on the grounds of undue delay, if it consider that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be

detrimental to good Administration.

Hence the submission of Mr Boulle that the granting of leave to proceed cures any delay in filing the petition within the time prescribed in Rule 4, is untenable.

Consequently the petition is dismissed for non-compliance with the time limits specified in Rule 4 of the Supervisory Jurisdiction Rules.

The First and Second Respondents will be entitled to costs.

Record: Civil Side No 141 of 1999