

SUPREME COURT OF SEYCHELLES

Reportable
[2021] SCSC
605
MC 35/2019

In the matter between:

SUNWAY GROUP LIMITED
(rep. by Nichol Gabriel)

Petitioner

and

**COMMISSIONER GENERAL
OF SEYCHELLES REVENUE COMMISSION**
(rep. by Lansinglu Rongmei and Corrinne Rose)

Respondent

Neutral Citation: *Sunway Group Limited v Commissioner General of Seychelles Revenue Commission* (MC 35/2019) [2021] SCSC 605 (17 September 2021).

Before: Dodin J.

Summary: Judicial Review – Procedure and decisions of Seychelles Revenue Commission – disclosure of documents – appeal to Revenue Tribunal

Heard: Written submissions

Delivered: 17 September 2021

ORDER

The Petition for judicial review succeeds. Procedural breach by Respondent for failing to comply with section 15(5) of the Revenue Administration Act. All decisions taken in respect of reassessment and recovery are quashed as all decisions are null and void.

JUDGMENT

DODIN J.

[1] The Petitioner, Sunway Group Limited, a Seychellois company carrying business in Seychelles petitioned the Court for judicial review of the decision and procedures of the Revenue Commissioner in respect of assessment of taxes for the years 2010 to 2014. The Petitioner’s contention is that despite her objections to

the assessment and despite having lodged an appeal she never received any notice to appear before the Revenue Tribunal nor has she been furnished with any relevant document in relation to her case.

[2] By Ruling delivered on 20 November 2019, the Court granted leave for the Petitioner to proceed with this judicial review petition. By the nature of the issues raised and being considered, the much of the subject matter more relevant to this petition were rehearsed in the preliminary objection and ruling. Nevertheless both parties made further submissions in respect of the judicial review case proper.

[3] Learned counsel for the Petitioner's submission can be summarised as follows: The petitioner filed a Petition before the Supreme Court praying for a writ of mandamus to be issued on the Respondent compelling it to declare the Petitioner's appeal to the Revenue Tribunal and to disclose all relevant documents relating to and incidental to tax liability and the Appeal to the Revenue Tribunal. The Respondent had failed to follow the procedure laid out in the Revenue Administration Act. The Petitioner lodged her appeal and served notice on the Respondent as per section 70 and 72(4) of the Act.

[4] The Respondent did not comply with section 73 of the Act which requires that the Respondent, the Revenue Commissioner, within 28 days of being served, shall lodge with the Revenue Tribunal a copy of the impugned decision, statement setting out the reasons for the decision and any other documents and the Tribunal may by written notice require the Commissioner to lodge additional documents. There was no such disclosure and in fact, the Revenue Tribunal sent a letter dated the 8th July 2019 and a letter of reminder dated 19th August 2019 in regards to a purported withdrawal of the appeal before the Revenue Tribunal. This request for the withdrawal of the appeal stems from the fact that the Respondent had not been forthcoming with its disclosure requirements under section 73.

[5] The Petitioner had then proceeded to file a petition before the Supreme Court seeking the relief as the Revenue Tribunal failed to hear its appeal and there had been no disclosure from the Respondent by the time the Petitioner decided to

canvass her case before the Supreme Court. The only disclosure was in the form of documents served on the Petitioner by the Respondent subsequent to the filing of the Application for a writ of mandamus before the Supreme Court. The procedure adopted by the Respondent falls short of the strict procedure rules of section 73 and the time limit imposed for disclosure.

[6] Learned counsel submitted that a writ of mandamus, as prayed for by the Petitioner, will not be granted if adequate relief can be obtained by some other means, such as appeal. In this particular case, the appeal procedure was frustrated by the Respondent itself as it failed to disclose the documents within the specified time limit and it failed to declare the Petitioner's appeal to the Revenue Tribunal. The Respondent in its submission has raised the applicable procedure under section 15(5) of the Act. The correct procedure to be relied upon is the one prescribed under section 73 of the Act.

[7] Learned counsel for the Respondent's submission is also summarised as follows: The Petitioner lodged objection to the tax assessment for the year 2010, 2011, 2013 and 2014 dated 31st August 2017 but which the Petitioner received on the 19th September 2018. The Revenue Commissioner arrived at the Objection Decision to Disallow in full and served on the Petitioner the Objection Decision by letter dated 02 November 2018 setting out reasons for the Objection Decision as per Section 15 (5) of the Revenue Administration Act.

[8] The Petitioner had several discussions and meetings with the officials of the Respondent in relation to settlement of the outstanding Tax liabilities and at the meeting on the 16th January 2019, the Petitioner on being informed that her case has been dealt with and on the outstanding debt of SCR 14 million is payable as per law, she replied that she cannot pay the amount as she does not have that kind of money. The Petitioner further said that she has already appealed to the Revenue Tribunal against the assessment of the Revenue Commissioner.

[9] Learned counsel submitted that from the reading of the averment in the petition, minutes of the 16th January 2019 meeting and the prayer (b) of the petition, firstly

it is clear that the Petitioner being dissatisfied with the Objection Decision of the Revenue Commissioner has exercised her right under Section 16 of the Revenue Administrative Act and appealed against the impugned decision before the Revenue Tribunal in accordance with Section 72 of the same Act. Secondly, it establishes that the Revenue Commissioner has correctly followed the procedure and dealt with the Objections lodged and given its Objection Decision as per legal requirement under Section 15 (5) of the said Act and served the same on the Petitioner. Had the Petitioner not been served with the said Objection Decision, she would not have applied to the Revenue Tribunal for review of the Decision. Hence, there is no procedural impropriety committed by the Respondent nor has the Respondent denied the Petitioner the right to appeal which she had admitted already done so.

[10] Learned counsel submitted that from reading of Section 70 to 74 of the Act, the Revenue Tribunal is a separate legal entity with its own jurisdiction and function from that of the Revenue Commissioner or Commission/ the Respondent herein and that the Respondent is actually made a party/ respondent by virtue of the application lodged by the applicant before the Revenue Tribunal. The Revenue Commissioner/ Respondent herein as well as before the Revenue Tribunal therefore is only a party require to explain the reasons for arriving at the impugned decision that is being reviewed by the Tribunal and it has no any jurisdiction to issue notice to appear before the Tribunal nor declare the petitioner's appeal before the Tribunal as prayed. For the reasons there is no merits in the petition and moved for the Court to dismiss the petition for Judicial Review with costs.

[11] As stated above, much of what this Court has to determine and raised again by the parties have been touched upon by the Court in its ruling particularly paragraph 14 of the Ruling which determined as follows:

[14] Considering this Petition, it is obvious that the Petitioner ought to have been issued with a formal decision of the Revenue Commissioner as

per section 15(5) of the Revenue Administration Act 2009. Without it, the Petitioner is denied its right to appeal to the Revenue Tribunal. It is therefore a breach of the Petitioner's legitimate expectation and it also denotes procedural impropriety both of which are subject to judicial review. It is premature at this stage for the Revenue Tribunal to be added as a Respondent party to the proceedings since the Revenue Tribunal has not yet been seized to hear the Petitioner's application.

The issue that this Court has to determine is whether the Revenue Commissioner acted properly and lawfully in reaching the decisions it did and whether the Commissioner did not breach its legal requirements by not communicating to the Petitioner a formal Objection Decision on time and allow the matter to be put before the Revenue Tribunal. Section 70 to 74 of the Revenue Administration Act is therefore not relevant to this case.

[12] Section 15 of the Act provides that

15. (1) Subject to subsection (2), a taxpayer dissatisfied with a revenue decision may, within sixty days after service of the notice of the decision, serve on the Revenue Commissioner an objection in writing against the decision stating fully and in detail the grounds for the objection.

(2)...

(3)...

(4) The Revenue Commissioner shall consider the objection and either allow the objection in whole or part, or disallow it, and the Revenue Commissioner's decision is referred as an "objection decision".

(5) The Revenue Commissioner shall serve notice of the objection decision on the taxpayer as soon as is practicable after making the decision.

The Petitioner having met the requirements of section 15(1) contends that she was not served with the Objection Decision until the matter was before the Court.

[13] Learned counsel for the Respondent in her submission argued that the Objection Decision was made and served by letter dated 2nd November, 2018 which the

Petitioner contends not to have received in order to pursue an appeal to the Revenue Tribunal, hence this Petition. According to the Respondent, several meetings were held in regard to the re-assessment and in fact learned counsel referred the Court to minutes of such meetings up to 16 January, 2019. This lends much credence to the Petitioner's contention that the Petitioner was not being provided with the formal decisions being taken as required by law to allow the Petitioner to pursue an appeal to the Revenue Tribunal. In addition, I take judicial notice that it was only after the ruling of this Court granting leave for judicial review and ordering the disclosure of relevant documents that the document served included a letter containing Objection Decision. It is not sufficient to have the Objection Decision drawn up as a formality. It must be served on the taxpayer as per section 15(5) of the Revenue Administration Act. On that I hold with the Petitioner.

[14] Further to the finding above, the law imposes minimum standards of procedural fairness that must be observed by adjudicating authorities which concept is founded on the principle of natural justice. The right to be given reasons for a decision is an integral element of procedural fairness. Lord Diplock in the case of Council of Civil Service Unions v Minister for the Civil Service [1984] UKHL 9, more constantly referred to as the GCHQ case, described procedural impropriety as ground of judicial review to include

'the failure to observe basic rules of natural justice or failure to act with procedural fairness' and also 'failure... to observe procedural rules expressly laid down in... legislative instrument'.

[15] This doctrine can be traced back to the landmark case of Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147 which essentially set the modern basis of judicial review by setting the principle that if a decision was made by an improperly constituted authority or in bad faith or in breach of natural justice or in excess of jurisdiction because of an error of law induced by the authority asking

itself or answering the wrong question or applying the wrong consideration, then the decision is a nullity as it is no decision at all. As per Lord Reid in the same case:

“No case has been cited in which any other form of words limiting the jurisdiction of the court has been held to protect a nullity”.

Having concluded that the Respondent breached section 15(5) of the Revenue Administration Act, this Petition for judicial review succeeds accordingly.

[16] I note that it was only in the year 2018 that the Respondent decided to re-assess the tax payments of the Petitioner for the years 2011, 2012, 2013 and 2014. In view of the length of time taken by the Respondent to make the re-assessment and then failing to meet the requirement of section 15(5) of the Revenue Administration Act, it will be unfair for this Court to simply grant a madamus and condone the Respondent’s breach. Justice requires that such decisions are made in a timely manner, not detrimental to the Petitioner, otherwise the Court would be protecting a nullity.

[17] Consequently I quash all decisions by the Respondent in respect of the tax re-assessments made for the years 2011, 2012, 2013 and 2014 to which an Objection Decision ought to have been served on the Petitioner.

[18] I further quash and declare null and void any decision made or communicated to the Petitioner or any financial institution in respect of the above invalidated tax re-assessments.

[19] I make no Order for costs.

Signed, dated and delivered at Ile du Port on 17 September 2021.

Dodin J