

**Lucas v Public Service Appeal Board
(1997) SLR 111**

Bernard GEORGES for the Petitioner
John RENAUD for the Respondent

Judgment delivered on 10 March 1997 by:

AMERASINGHE J: The petitioner invokes the supervisory jurisdiction of this Court under article 125 (1) (c) of the Constitution of the Republic of Seychelles (hereinafter called the said Constitution) and seeks the issue of a writ of certiorari quashing the decision of the 26th December 1995 of the respondent Public Service Appeal Board (hereinafter referred to as the Board) established under chapter XI of the said Constitution.

In accordance with the application the [petitioner, being aggrieved by the termination of his employment under the Government of Seychelles, has appealed to the respondent resulting in the aforesaid decision. In *Local Government Board vs. Arlidge* (1915) AC 120 it was held that the hearing of an appeal is an exercise of the quasi-judicial function. Article 125 (7) of the Constitution describes an "adjudicating authority" to be one that exercises quasi-judicial functions, hence the operation of article 125(1)(c) in relation to this application and the jurisdiction of this Court.

The petitioner pleads the denial of a fair hearing by the respondent and in paragraph 5 pleads the following grounds in support of the application:-

- (a) "breached natural justice in not hearing the petitioner and in not allowing him to contradict or explain evidence led against him by his employer;"
- (b) "erred in leading the petitioner to believe that his case had been accepted when it had not".

It became clear at the hearing of this matter that the counsel for the applicant Mr Bernard Georges relied only on the first ground with the emphasis that the applicant was denied a fair hearing. He expressed the following views in support-

It is a cardinal principle of fairness and natural justice that no order adverse to a person or prejudicial to him can be made without a person given an opportunity of being heard in the defence of his action. The proposition is so trite that it's been accepted and requires no legal support in my humble submission.

The counsel for the respondent, who was himself the Chairman of the respondent Board, disagrees with the applicant's assertion that he was not given an opportunity to be heard. It is his contention that the applicant was satisfied with only a denial of the

allegations made against him. I do not think that counsel for the respondent appreciates the applicant's position as stated in paragraph 5(4) of the application, the complaint being that an opportunity was not given to the applicant to contradict or explain evidence led against him by his employer. Counsel for the applicant in reference to the principles of natural justice complains that the applicant was not given the opportunity to be heard. It is evident from the record that at the commencement of the hearing the respondent had questioned the applicant but there is no reference in the proceedings to the applicant being denied the opportunity to be heard.

I believe the observation of Tucker L.J. on the said subject in *Russell v Duke of Norfolk* [1949] 1 All ER 109 at 118 is relevant.

The requirement of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter that is being dealt with, and so forth. Accordingly I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted one essential is that the person concerned should have a reasonable opportunity of presenting his case.

In dealing with the only substantial ground in support of the application as urged by the applicant, although the record of proceedings before the respondent Board shows that neither the applicant nor any witnesses have given evidence before the Board, that by itself does not amount to a denial of an opportunity of the applicant to be heard or to present his case. Could only a recording in the proceedings have indicated such opportunity being provided to the applicant? The respondent Board was not required to grant an oral hearing to the applicant (see *Jagoo v National Transport Authority* (1988) MR 99). However it is without dispute that the respondent Board did afford an oral hearing on the applicant's appeal.

It is not alleged by the applicant that he sought an opportunity to testify before the Board and present evidence on his behalf and that the Board rejected his request. It is common ground that the Board held an inquiry in respect of his appeal and the only witness called was cross examined by the counsel for the applicant. If the applicant at that stage wished to testify and call witnesses there can be no doubt that he had all the opportunity he required. When the applicant was represented by counsel, I do not think that to satisfy the principles of natural justice the Board had an obligation to question the applicant or his attorney and record the response received to satisfy the availability of the aspired opportunity in question.

I fear that the second ground pleaded in support of the application in its paragraph 5(b) reveals the reason behind the failure of the applicant to make use of the opportunity to testify and or call evidence. If the applicant allowed himself to be influenced by spur of the moment remarks or observations of the members of the Board, he has only himself to blame, however it cannot amount to a denial of rights by the Board. I find that no deliberate attempt on the part of the Board to lead or mislead the applicant to believe

that the Board did favour his cause. Counsel for the applicant also referred to *Wednesbury* principles. In the case of *Associated Provincial Picture House Ltd, v Wednesbury Corporation* (1948) 1 KB 223, [1947] 2 All ER 680, Lord Greene MR found that in judicial review proceedings a court will quash an order of the tribunal "if it is found that the decision is such that no such person or body properly directing itself on the relevant law and acting reasonably could have reached that decision". As rightly pointed out by Mr John Renaud, counsel for the respondent, the applicant has not relied upon the said principle in support of his application.

I therefore for the reasons given above deny the issue of a writ and dismiss the application.

Record: Civil Side No 72 of 1996