

PUBLIC SERVICE COMMISSION

v.

MANUNIVAVALAGI DALITUICAMA KOROVULAVULA

[HIGH COURT, 1989 (Jesuratnam J) 20 January]

Civil Jurisdiction

Practice (civil)- discovery of documents- public interest immunity- how to be claimed- when documents to be inspected by the Court.

The Applicant in judicial review proceedings sought discovery of documents said to be relevant to his dismissal from the public service. The Minister refused to discover the documents and claimed public interest immunity. Rejecting the Minister's claim the High Court discussed the law relating to public interest immunity, stressed the need for particularity in the claim and ordered production under confidential cover of the documents to enable them to be inspected by the Court.

Cases cited:

Conway v. Rimmer & Anr [1968] 1 All ER 874

Fletcher Timber Ltd v. Attorney-General [1984] 1 NZLR 290

G. P. Shankar for the Applicant

N. Nand for the Respondent

Interlocutory application in the High Court.

Jesuratnam J:

This is a preliminary application for the discovery of a document presently in the hands of the Public Service Commission.

In the main application for Judicial Review the applicant, Mr. Korovulavula, is seeking an order of certiorari quashing the decision made by the Public Service Commission dismissing him from the post of Controller of Road Transport and Principal Licensing Authority.

The applicant complains that the decision of the Public Service Commission to dismiss him summarily in the absence of proof of misconduct, incompetence or failure to discharge his duties lawfully/is unfair, wrong and unreasonable.

On the 19th October, 1988 the applicant moved that the respondent do supply to the applicant all copies of all submissions, reports, complaints or recommendations made by the Minister for Communications Transport and Works or the Permanent Secretary or other officers of this Ministry to the Public Service Commission or to its Secretary.

HIGH COURT

A The Minister for Communications Transport and Works, Mr. Apisai Tora, has filed a certificate dated 15.11.85 claiming privilege with regard to one document dated 9.3.88 addressed to the Secretary, Public Service Commission by Mr. R. Naidu, acting Permanent Secretary for Transport and Works. The Minister states in his certificate that the production of the document "would be injurious to the public interest for the reasons set out below"

B I may say straightaway that the reasons set out by the Minister are broad, general and vague. They relate to the importance of the public service and high-level public appointments (such as was held by the applicant) and the need for secrecy and confidentiality in relation to "the process of providing for the Public Service Commission's honest and candid advice on matters of high level staffing". In my view the certificate lacks particularity and does not set out specifically as to why this particular document is so sacrosanct. The certificate does not assist the court in any way to assess the significance of the document.

C The law relating to privilege on the ground of public interest has been the subject of authoritative decisions not only in England but in Australia and New Zealand as well during the last quarter century.

D The House of Lords' case of Conway v. Rimmer and another [1968] 1 All ER 874 can be regarded as a landmark and break-through in this field.

Lord Reid says at page 888:-

E "I would therefore propose that the House ought now to decide that courts have and are entitled to exercise a power and duty to hold a balance between the public interest, as expressed by a Minister, to withhold certain documents or other evidence, and the public interest in ensuring the proper administration of justice. That does not mean that a court would reject a Minister's view: full weight must be given to it in every case, and if the Minister's reasons are of a character which judicial experience is not competent to weigh then the Minister's view must prevail; but experience has shown that reasons given for withholding whole classes of documents are often not of that character."

Again Lord Reid says at pages 888-889:-

G "There may be special reasons for withholding some kinds of routine documents, but I think that the proper test to be applied is to ask, in the language of Lord Simon in Duncan's case, whether the withholding of a document because it belongs to a particular case is really "necessary for the proper functioning of the public service" I can see nothing wrong in the judge seeing documents without their being shown to the parties."

In the instant case the applicant has made serious allegations. He complains that

he has been summarily dismissed for improper reasons. He states that his dismissal was inspired by the Minister for Communications, Transport and Works. There is no doubt that if the applicant's dismissal was unfair, unjust and improper and the grounds on which his dismissal were based cannot be sustained, the applicant has certainly suffered in reputation. The applicant alleges that the document in question which is now in the custody of the Public Service Commission is vital in that it discloses the real ground of his dismissal. In these circumstances it is necessary for the court to know the nature, type and particulars of the document before it can decide on its admissibility and production.

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A very useful guideline is contained in the judgment of Woodhouse P. in the New Zealand case of Fletcher Timber Ltd v. Attorney-General [1984] 1 N.Z.L.R. 290 at 295:-

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“ If the balance of public interest can be seen to support the claim of immunity without prior inspection by the Judge then the consequential decision against production will be made without further ado. In that regard the certificate itself should demonstrate with sufficient particularity what is the nature and the significance of the documents both in terms of any need to preserve their confidentiality on the one hand and for the actual litigation on the other. But where this is not the position, where the Judge has been left uncertain, it is difficult to understand how his own inspection could affect in any way the confidentiality which might deserve protection. And in that situation I think it would be wrong to put aside such a direct and practical means of resolving the difficulty. Indeed if it were to happen the primary responsibility of the Courts to provide informed and just answers would often depend on processes of sheer speculation, leaving the Judge himself grasping at air. That cannot be sensible nor is it necessary when by the simple act of judicial reconnaissance a reasonably confident decision could be given one way or the other.”

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With respect I adopt the reasoning contained therein as unexceptionable.

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I therefore direct the respondent to produce the document under confidential cover for the inspection of court within 21 days of the date of this ruling. The final order regarding the production of the document will be made by me after inspection.

Costs of this application will be in the cause.

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(Application granted.)