

Abdul Raouf Jauffur

Appellant

v.

The Commissioner of Income Tax

Respondent

FROM

THE SUPREME COURT OF MAURITIUS

**JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL**

Delivered the 21st June 2006

Present at the hearing:-

Lord Nicholls of Birkenhead
Lord Steyn
Lord Hutton
Lord Walker of Gestingthorpe
Lord Mance

[Delivered by Lord Walker of Gestingthorpe]

1. Many countries have found that the complexity of their social organisation and legislation calls for the establishment of specialised tribunals to serve as the first port of call for citizens who wish to contest official decisions on such matters as taxation, social security, and planning permission. Such specialised tribunals (which are not courts) perform the function of ascertaining and evaluating the facts relevant to a matter within their special expertise. There is almost invariably a right of appeal from a specialised tribunal to a court, but often the appeal is restricted to questions of law.

2. This appeal is concerned with the Tax Appeal Tribunal established by the Tax Tribunal Act 1984 (since repealed, but in force during the relevant period). By section 3 of that Act the tribunal was to comprise (as Chairman and Vice-Chairman) two barristers of at least ten years' standing appointed by the Public Service Commission and (subsection

(1)(c)) ‘such other members as may be appointed by the Minister’. Section 6(3) provided that, subject to section 8, a determination of the tribunal should be final and binding on the parties.

Section 8 provided as follows:

“(1) Any party who is dissatisfied with the determination of the tribunal as being erroneous in point of law may, within 28 days of the date of determination, appeal to the Supreme Court.

(2) An appeal under this section shall be prosecuted in the manner provided by rules made by the Supreme Court.”

Rule 3 of the Tax Appeal Rules 1984 provided for an appeal under section 8(1) to be by way of case stated. By section 10 of the Act the burden of proof that any assessment is incorrect falls on the taxpayer.

3. In a country (such as the United Kingdom) which is a party to the European Convention on Human Rights, or in a country (such as Mauritius) which has a written constitution with human rights guarantees based on the European Convention, the existence of specialised tribunals which are not courts, with appeal to courts on questions of law only, can raise questions under article 6 of the Convention, or on the equivalent provisions in the written constitution. In section 10 of the Constitution of Mauritius (provisions to secure protection of law) subsection (8) provides as follows:

“Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial, and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.”

The precise content of the expression “civil right or obligation” is open to argument but their Lordships assume in favour of the appellant that his tax appeal involves the determination of his civil rights or obligations.

4. It is also material to set out part of section 8 of the Constitution (protection from deprivation of property):

“(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property

of any description shall be compulsorily acquired, except where –

- (a) [there is a public interest of the specified sort]
- (b) [there is reasonable justification for the resulting hardship] and
- (c) provision is made by a law applicable to that taking of possession or acquisition –

- (i) for the payment of adequate compensation; and

- (ii) securing for any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining payment of that compensation.”

5. Those are the main statutory provisions relevant to this appeal from a judgment given on 15 July 2004 of the Supreme Court, which dismissed the appellant’s appeal from a determination of the Tax Appeal Tribunal made on 26 February 2002. The appellant had appealed against assessments for no fewer than 13 consecutive years of assessment. These assessments were based on estimated assessments of the appellant’s income for the relevant years, apparently because the appellant had failed to make proper tax returns. In those circumstances the practice of tax officials in Mauritius as in the United Kingdom, well known to tax accountants, is to apply standard techniques by which to arrive at a fair estimate of the taxpayer’s unreported taxable income.

6. His appeal to the Supreme Court set out ten grounds of appeal, some of which, although put forward as points of law, appear to have been in substance an attempt to reopen issues of fact. None of the grounds of appeal raised any constitutional issue. In disposing of the appeal the Supreme Court addressed one preliminary issue (as to a request for production of documents made by the appellant at the start of the hearing) and five other issues, all in substance questions of weighing evidence. The record of the proceedings before the Supreme Court gives no indication of any constitutional issue having been raised.

7. Before the Board leading counsel for the appellant sought for the first time to raise constitutional issues, including some not even hinted at in the appellant's printed case. Their Lordships regard this as most regrettable; it is unfair to the respondent and a misuse of the right of appeal for new issues to be raised in the course of oral argument, even if they are issues of law. Their Lordships heard all the arguments put forward on behalf of the appellant, but parties should not assume that they will always, or often, be accorded such indulgence.

8. The first point taken by leading counsel for the appellant concerned the last-minute application for production of documents. It was pointed out that the application was made much too late; the proper course would have been to ask for any relevant documents to be annexed to the case stated by the Tax Appeal Tribunal. This then led to the argument that the procedure by way of case stated was not authorised by section 8 of the Tax Appeal Tribunal Act 1984. Their Lordships consider that argument to be without substance. An appeal by way of case stated is recognised in many jurisdictions as the most convenient medium for an appeal from an inferior tribunal limited to points of law. The substance of the matter was clearly and correctly covered by the Supreme Court in *Mauritius Breweries Ltd v Commissioner of Income Tax* [1997] MR 1, 7-9 (the fourth and sixth issues). A further last-minute point taken on behalf of the appellant, as to the independence and impartiality of the tribunal, was also dealt with in the *Mauritius Breweries Ltd* case at pp8-9 (the fifth issue).

9. The judgment of the Supreme Court in the *Mauritius Breweries Ltd* case is, in their Lordships' respectful opinion, an admirable statement of how fair trial principles apply to the proceedings of specialised inferior tribunals, and to appeals from them. It followed the decision of the European Court of Human Rights in *Bryan v United Kingdom* (1995) 21 EHRR 342. Since the coming into force of the United Kingdom Human Rights Act 1998 the subject has been revisited by the House of Lords in *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2003] 2 AC 295 and in *Runa Begum v Tower Hamlets London Borough Council* [2003] 2 AC 430. But there is nothing in those decisions to cast doubt on the correctness of the decision in the *Mauritius Breweries Ltd* case.

10. On the second limb of his constitutional points, leading counsel referred to *Harel Freres Ltd v Minister of Housing, Lands and Town and Country Planning* [1986] MR 74. In that case section 8 (1)(c)(ii) of the Constitution was held to entitle the citizen to a full merits hearing in which the burden of justifying the compulsory acquisition fell on the Minister. But the whole point of that case is that the compulsory

purchase procedure then in force in Mauritius provided nothing in the way of a specialised tribunal standing between the Minister and the citizen: see at p76. In this case, by contrast, the Tax Appeal Tribunal performed that function. Even if section 8(1) of the Constitution were in point, its requirements would be met by the statutory procedure prescribed by the Tax Appeal Tribunal Act 1984: see the *Mauritius Breweries Ltd* case at p9 (the sixth ground). But in any event section 8(1) is not in point, since the determination of an assessment to tax is not a deprivation of property.

11. Their Lordships can see no error in the way in which the Supreme Court dealt with the grounds of appeal relied on before it. These were largely issues of fact, although presented as points of law. It is not necessary for their Lordships to go further into those matters.

12. For these reasons their Lordships will dismiss the appeal with costs.