

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

MISCELLANEOUS CIVIL CAUSE NO. 168 OF 2002

BETWEEN:

THE STATE

-AND -

THE PRINCIPAL SECRETARY

FOR COMMERCE AND INDUSTRY.....1ST RESPONDENT

-AND-

MALAWI REVENUE AUTHORITY.....2ND RESPONDENT

EX PARTE: M. FATCHI.....APPLICANT

CORAM: JUSTICE W. M. HANJAHANJA

Msungama, Counsel for Applicant

..... for 1st Respondent

..... for 2nd Respondent

..... Court Official

ORDER

The applicant is aggrieved with the decision made by the Principal Secretary for Commerce and Industry (the 1st Respondent) and applies to this Court to review the decision judicially.

The story is that he was granted with a licence on 13th September 2002 to import 200 metric tons of sugar from Zimbabwe into Malawi. The licence is granted for a duration to terminate on 13th December 2002. Acting upon this authority, the applicant bought 200 metric tones of the sugar and transported it into Malawi via Mwanza Border. The Malawi Revenue Authority (the 2nd defendant) at Mwanza refused to process customs formalities because they said they had information that the licence had been cancelled.

Perturbed with the turn of events, the applicant commenced consultations with the 1st Respondent to try to find out why the licence was cancelled without the authorities giving him reasons for doing so and without giving him an opportunity to be heard. He then contacted a Mr Mkandawire of the 1st defendant and later had a meeting with him. Mr Mkandawire confirmed at the meeting of the cancellation and handed to the applicant a letter dated 20th September 2002 confirming this cancellation. The letter says:-

Mr M. Fatch, 20th September 2002
P. O. Box 1356,
BLANTYRE.

Dear Sir,

CANCELLATION OF IMPORT LICENCE FOR SUGAR

Please refer to the telephone conversation I had with you (Fatch/Mkandawire) last Thursday regarding the above quoted subject.

I wish to inform you that licence No. 000519 issued to you to import 200 metric tons of sugar has been cancelled and should, therefore, not be used for the importation of sugar.

Yours faithfully,

Geoffrey Mkandawire

for: Secretary for Commerce and Industry

The applicant then wrote a letter dated 17th October 2002 addressed to the Minister responsible for Commerce and Industry for him to reconsider the matter stating that the licence had been cancelled when he had ordered 200 metric tons and which was transported to the Malawi border of Mwanza on 18th September before the cancellation. He had by then spent K1,000,000.00 to transport the sugar. He doubted if the suppliers would accept a return of the sugar. He would need to spend another K1,000,000.00 in the event of re-transporting the sugar. He was using US\$140 a day for.....

According to the applicant he received no reply from the Minister. He then decided to refer the matter to this court for judicial review as the applicant feels that his rights for a fair administrative procedure granted by S.43 of the Constitution have been violated.

Section 43:

Every person shall have the right to

(a) lawful and procedurally fair administrative action, Which is justified in relation to the reasons given whether his or her rights, freedoms, legitimate expectations or interests are affected or threatened; and

(b) be furnished with reasons in writing for administrative action where his or her rights, freedoms, legitimate expectations or if those interests are known.

Consequently, the applicant seeks an Order of court to nullify the Order for cancellation of the licence and further an Order declaring that the Principal Secretary for the 1st Defendant did not have powers to cancel or revoke a licence where the provisions of the order or conditions under which the licence was issued were complied with.

Indeed, under Section 43 of the Constitution it is a must that a public officer performing his duties as such should give reasons for a decision he makes against any person. Where this is not done the decisions should be subject to a judicial review. It is obvious from the letter quoted above that the cancellation of the licence was made without giving reasons for that action. This is contrary to what the Constitution provides, a right to "be furnished with reasons in writing for administrative action.....". I see and can read no reason given in this letter for the cancellation of the licence. I hold, therefore, that the decision by the Principal Secretary to revoke is inoperative and of no effect.

Furthermore, the licence was cancelled without giving the applicant the right to be heard. The right to be heard is called natural justice. By proceeding to cancel the licence without giving the applicant the opportunity of being heard, clearly, the Principal Secretary was guilty of infringing the constitutional rights of the applicant.

In *KANDA v GOVERNMENT OF MALASIA* 1962 A.C.322, Lord Denning delivering a judgement of their Lordships in the House of Lords at page 337, had this to say:-

"If a right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statement has been made affecting him; and he must be given a fair opportunity to correct or contradict them."

From the foregoing, it is obvious the Principal Secretary's action in cancelling this licence was both unconstitutional and against the principles of natural justice.

The cancellation, I hold, was done in bad faith. The licence was issued on 13th September 2002. The expiry date of the licence was 13th December 2002. Before the licence's duration had expired, the Principal Secretary withdrew, evoked and cancelled the licence more specifically on 20th September 2002. The cancellation was made against the provisions of Section 43 of the constitution and without following the principles of natural justice. In my ruling, I hold that there was unreasonable use, (if not abuse) of the power by a public authority in the cancellation of the licence. There was a denial of natural justice. I, therefore, and hereby quash the decision and ultimate order by the Principal Secretary. The sugar must be released forthwith to the applicant and the Malawi Revenue Authority must proceed to attend to customs formalities pertaining thereto.

MADE in chambers on 6th day of December 2002.

W.M M. Hanjahanja

JUDGE