S. & G. COLOCASSIDES CO. LTD.,

and

PRESIDENT INDUSTRIAL DISPUTES COURT.

(*Civil Application No.* 21/76).

Termination of Employment (Temporary Restrictive Provisions) Law, 1974 (Law 50 of 1974)—"Finality clause" in section 4(a) of the Law—Does not preclude an appeal by way of a Case Stated.

Industrial Disputes Court—Appeal from—Statutory provision providing that judgment of Industrial Disputes Court "shall be final"—Right of appeal by way of a Case Stated.

Mandamus—Industrial Disputes Court—Refusing to state case in in view of "finality clause" in section 4(a) of the Termination of Employment (Temporary Restrictive Provisions) Law, 1974 (Law 50 of 1974)—Said clause not precluding an appeal by way of a Case Stated—Order of mandamus directing that a Case be stated as applied for.

The applicants sought to be declared a stricken business in the sense of the Termination of Employment (Temporary Restrictive Provisions) Law, 1974 (Law 50/74) but the Minister of Labour and Social Insurance rejected their application; they, then, challenged the Minister's decision before the Industrial Disputes Court but that Court upheld the decision of the Minister. The applicants applied, in writing, for a Case Stated, but the President of the Industrial Disputes Court informed them that he could not state a Case because the provision in section 4(a)* of the above Law to the effect that the decision of the Industrial Disputes Court "shall be final" ex-

* Section 4(a) provides as follows:

"4. In the case of a stricken business the following provisions shall apply—

(a) whether a business is a stricken one is determined by the Minister on the application of the employer, and in case the employer is not satisfied with the decision of the Minister he may make a recourse, within seven days from the communication to him of the decision of the Minister, to the Industrial Disputes Court, the decision of which on the matter shall be final".

cludes an appeal to the Supreme Court by way of a Case Stated.

Hence the present application for an order of Mandamus directing the President of the Industrial Disputes Court to state a Case, under rule 17 of the Arbitration Tribunal Regulations, 1968 by way of an appeal from the decision of the Court.

It was common ground that this was, indeed, an instance when if it were to be found that the refusal to state a Case was erroneous then an order of Mandamus had to be made.

Held, that when a statute says that a decision of an inferior tribunal "shall be final" it does so on the assumption that the tribunal will observe the law; that if a tribunal goes wrong in law and the error appears on the face of the record the Supreme Court will interfere by *certiorari* to quash the conviction (see, *inter alia, Tehrani and Another v. Rostron* [1971] 3 All E.R. 790 at pp. 792-793); that the finality clause in section 4(a) of Law 50/74 does not preclude an appeal, by way of a Case Stated, to this Court, in accordance with the relevant procedure specified in rule 17 of the 1968 Rules; and, that, accordingly, an order of Mandamus, as applied for, will be made.

Application granted.

Cases referred to:

Reg. v. Shiel and Others [1900] 82 L.T. 587;

Regina v. Medical Appeal Tribunal, Ex parte Gilmore, [1957] 1 Q.B. 574 at pp. 583-585;

Tehrani and Another v. Rostron [1971] 3 All E.R. 790 at pp. 792-793.

Application.

Application for an order of Mandamus directing the President of the Industrial Disputes Court to state a Case, under rule 17 of the Arbitration Tribunal Regulations, 1968 by way of an appeal from the decision of such Court in case No. 31/76.

M. Christophides, for the applicants.

R. Gavrielides, Counsel of the Republic, for the Attorney-General of the Republic.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, P.: In this case the applicants are seeking an order of Mandamus directing the President of the Industrial Disputes Court to state a Case, under rule 17 of the Arbitration Tribunal Regulations, 1968—(see Not. 151) in the Third Supplement to the Official Gazette of February 28, 1968)—by way of an appeal from the Decision of such Court in case No. 31/76.

That decision was given on May 4, 1976, and counsel for the applicants (who were, also, the applicants in the said case before the Industrial Disputes Court) applied, in writing, for a Case Stated, on May 24, 1976.

By a notice dated May 26, 1976, the President of the Industrial Disputes Court informed the applicants that he could not state a Case because, in his view, such a course was excluded by section 4(a) of the Termination of Employment (Temporary Restrictive Provisions) Law, 1974 (Law 50/74), which reads as follows:-

"4. Ἐν περιπτώσει πληγείσης ἐπιχειρήσεως ἐφαρμόζονται αἱ ἀκόλουθοι διατάξεις—

(α) ἐὰν ἐπιχείρησις εἶναι πληγεῖσα καθορίζεται τῇ αἰτήσει τοῦ ἐργοδότου ὑπὸ τοῦ Ὑπουργοῦ, καὶ ἐν περιπτώσει καθ' ἣν ὁ ἐργοδότης δὲν εἶναι ἱκανοποιημένος ἐκ τῆς ἀποφάσεως τοῦ Ὑπουργοῦ δύναται οὗτος νὰ προσφύγῃ ἐντὸς ἑπτὰ ἡμερῶν ἀπὸ τῆς εἰς αὐτὸν κοινοποιήσεως τῆς ἀποφάσεως τοῦ Ὑπουργοῦ εἰς τὸ Δικαστήριον Ἐργατικῶν Διαφορῶν τοῦ ὁποίου ἡ ἀπόφασις ἐπὶ τοῦ θέματος εἶναι τελειωτική'".

("4. In the case of a stricken business the following provisions apply—

(a) whether a business is a stricken one is determined by the Minister on the application of the employer, and in case the employer is not satisfied with the decision of the Minister he may make a recourse,

within seven days from the communication to him of the dicision of the Minister, to the Industrial Disputes Court, the decision of which on the matter shall be final;")

The said section 4(a) was amended by the Termination of Employment (Temporary Restrictive Provisions) (Amendment) Law, 1974 (Law 62/74), but such amendment is not material for the purposes of the present case.

The applicants had sought to be declared a stricken business, in the sense of Law 50/74, but the Minister of Labour and Social Insurance—who is the Minister referred to in section 4(a), above—rejected their application; they, then, challenged the Minister's decision before the Industrial Disputes Court, but that Court upheld the decision of the Minister.

By his aforementioned notice, of May 26, 1976, the President of the Industrial Disputes Court has taken the view that the provision in section 4(a) to the effect that the decision of such Court "shall be final" excludes an appeal to the Supreme Court by way of a Case Stated. During the hearing before me counsel for the applicants, as well as counsel who appeared for the Attorney-General, have submitted that this view is incorrect inasmuch as what may be described as the "finality clause" in section 4(a) cannot exclude an appeal, by way of Case Stated, in order to test the legality of the decision of the Minister. It has not, of course, been at all in doubt, at any stage during the hearing of this case before me, that the President of the Industrial Disputes Court, in refusing, as he did, to state a Case, has acted with absolutely good faith, solely because he thought that in law he was not empowered to do so; and this was not an instance where he had to exercise any discretionary powers.

It is common ground that this is, indeed, an instance when if it were to be found that the refusal to state a Case was erroneous then an order of Mandamus has to be made (see, also, Atkin's Encyclopaedia of Court Forms in Civil Proceedings, 2nd ed., vol. 14, p. 14, and *Reg. v. Shiel and Others* [1900] 82 L.T. 587, where, however, it was, eventually, found that the refusal to state a Case was not erroneous and so an order of Mandamus was not made).

In relation to what has been described as the "finality clause" in section 4(a), above, the following statement of the law is to be found in Wade on Administrative Law, 3rd ed., pp. 149, 150:-

> "In order to preserve their control the courts have made a firm rule to put a narrow construction on the finality clauses which are commonly found in statutes. If it is provided that some decision 'shall be final' or 'shall be final and conclusive', this is interpreted to mean that there is no further appeal, but that the decision is still subject to judicial control if it is ultra vires, or even if it merely shows error on the face of the record[1]. 'Parliament only gives the impress of finality to the decisions of the tribunal on condition that they are reached in accordance with the law[2]'. The same principle applies equally to certiorari and to the grant of a declaration[3]. This robust attitude virtually deprives finality clauses of meaning for this purpose, since there is no right of appeal any way unless expressly given by statute. But these clauses may be important for other purposes, for example when the question is whether the finding of one tribunal may be reopened before another[4]".

In Regina v. Medical Appeal Tribunal. Ex parte Gilmore, [1957] 1 Q.B. 574, Denning L.J., as he then was, said (at pp. 583-585):-

> "The second point is the effect of section 36(3) of the Act of 1946 which provides that 'any decision of a claim or question... shall be final'. Do those words preclude the Court of Queen's Bench from issuing a certiorari to bring up the decision?
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> This is a question which we did not discuss in *Rex v. Northumberland Compensation Appeal Tribunal. Ex parte Shaw*[5], because it did not there arise. It does

(1) R. v. Medical Appeal Tribunal [1957] 1 Q.B. 574.

(2) Ibid., (Denning L.J.).

(3) Pyx Granite Co. Ltd., v. M.H.L.G. [1960] A.C. 260.

(4) See R. v. Deputy Industrial Injuries Commissioner [1967] 1 A.C. 725; R. v. National Insurance Commissioner [1970] 1 Q.B. 477.

(5) [1952] 1 K.B. 338.

arise here, and on looking again into the old books I find it very well settled that the remedy by certiorari is never to be taken away by any statute except by the most clear and explicit words. The word 'final' is not enough. That only means 'without appeal'. It does not mean 'without recourse to certiorari'. It makes the decision final on the facts, but not final on the law. Notwithstanding that the decision is by a statute made 'final', certiorari can still issue for excess of jurisdiction or for error of law on the face of the record.

Lord Coke started this train of authority when he said that the words of an Act of Parliament 'shall not bind the King's Bench because the pleas there are *coram ipso Rege*': see *Foster's Case*[1]. Kelynge C.J. gave the train an impetus in 1670 when an order of the Commissioners of Sewers was brought before him. It was pointed out that the statute enacted 'that they should not be compelled to certify or return their proceedings' and 'that they shall not be reversed but by other Commissioners'. Kelynge C.J. disposed of the objection by saying: 'Yet it never was doubted, but that this court might question the legality of their orders notwithstanding: and you cannot oust the jurisdiction of this court without particular words in Acts of Parliament. There is no jurisdiction that is uncontrollable by the court': See *Rex v. Smith*[2], Callis on Sewers, 4th ed., p. 342.

A few years later, in 1686, the Court of King's Bench had a case where the collectors of the tax on chimneys had distrained on the landlord of a cottage. The Act said that 'If any question shall arise about the taking of any distress, the same shall be heard and finally determined by one or more justices.....' The justices made a determination which was erroneous in law on its face in that it did not state sufficient grounds for making the landlord liable.

The court issued a certiorari to quash their determination and said: 'The statute doth not mention any

(1) [1615] 11 Co. Rep. 56b, 64b.
(2) (1960) 1 Mod. 44.

certiorari, which shows that the intention of the law-makers was, that a certiorari might be brought, otherwise they would have enacted, as they have done by several other statutes, that no certiorari shall lie. Therefore the meaning of the Act must be, that the determination of the justices of the peace shall be final in matters of fact only': *Rex v. Plowright*[1].

In 1697, in the famous case of the College of Physicians, Lord Holt gave the full weight of his authority to those decisions, especially mentioning the case of the Commissioners of Sewers[2]: see *Groenvelt v. Burwell*[3]. In 1760 Lord Mansfield was faced with the Conventicle Act which said 'that no other court whatsoever shall intermeddle with any cause or causes of appeal upon this Act: but they shall be finally determined in the quarter sessions only'. Nevertheless Lord Mansfield ordered certiorari to issue, saying: 'The jurisdiction of this court is not taken away, unless there be express words to take it away: this is a point settled': see *Rex v. Moreley*[4].

In 1800 a conviction by justices was erroneous on the face of the record, because it did not exclude a possible defence. When the defendant moved to have it quashed, the prosecutor objected 'that the defendant having elected to appeal to the sessions, the certiorari was in effect taken away by the Act, because it is said that the determination of the sessions should be final': but Lord Kenyon C.J. said: 'That would be against all authority; for the certiorari being a beneficial writ for the subject, could not be taken away without express words': see *Rex v. Jukes*[5], Joseph Chitty, commenting on this case, said that the words 'finally determine' merely prohibit a re-investigation of the facts: see Chitty's Practice, Vol. II, p. 219. Finally, in 1823 the Court of King's Bench in its golden age presided over by Abbott C.J. summed up the whole matter by saying that 'certiorari always

(1) (1686) 3 Mod. 94, 95.
(2) 1 Mod. 45.
(3) (1967) 1 Ld. Raym. 454, 469.
(4) (1760) 2 Bur. 1041, 1043.
(5) (1800) 8 Term Rep. 542, 544.

lies, unless it is expressly taken away, and an appeal never lies, unless it is expressly given by the statute': see *Rex v. Cashiobury Hundred Justices*[1].

It was no doubt that train of authority which Lord Summer had in mind when he said in *Rex v. Nat Bell Liquors Ltd.*[2]: 'Long before Jervis's Acts statutes had been passed which created an inferior court, and declared its decisions to be 'final' and 'without appeal', and again and again the Court of King's Bench had held that language of this kind did not restrict or take away the right of the court to bring the proceedings before itself by certiorari'.

I venture therefore to use in this case the words I used in the recent case of *Taylor (formerly Kraupl) v. National Assistance Board*[3] (about declarations), with suitable variations for certiorari: 'The remedy is not excluded by the fact that the determination of the board is by statute made 'final'. Parliament only gives the impress of finality to the decisions of the tribunal on the condition that they are reached in accordance with the law'.

In my opinion, therefore, notwithstanding the fact that the statute says that the decision of the medical appeal tribunal is to be final, it is open to this court to issue a certiorari to quash it for error of law on the face of the record. It would seem to follow that a decision of the national insurance and industrial insurance commissioners is also subject to supervision by certiorari (a point left open by the Divisional Court in *Reg. v. National Insurance Commissioner, Ex parte Timmis*[4]*);* but they are so well versed in the law and deservedly held in such high regard that it will be rare that they fall into error such as to need correction".

In the later case of *Tehrani and another v. Rostron,* [1971] 3 All E.R. 790, Lord Denning M.R. stated (at pp. 792-793):-

(1) (1823) 3 Dow. & Ry. 35.
(2) [1922] 2 A.C. 128, 159 - 160.
(3) [1957] P. 101.
(4) [1955] 1 Q.B. 139.

"Before I deal with the merits of the appeal, I must mention a preliminary point to which counsel for the appellants drew our attention. There is a provision in the 1968 Act which says that 'the judgment of the court of quarter sessions on the appeal shall be final'. It is in Sch 7, para 11(4). Counsel for the appellants suggested that this provision rendered any appeal from the recorder incompetent and that he had no power to state a case for the High Court. For this purpose he drew our attention to a case in the House of Lords: *Kydd v. Liverpool Watch Committee*[1], and the subsequent case of *Piper v. St. Marylebone Licensing Justices*[2]. But I must say at once that I do not think we should accede to this preliminary objection. Much has happened since those cases were decided. The Courts have given more thought to the meaning of the legislature when it says that a decision of this or that tribunal is to be 'final'.

The modern cases establish this principle: when Parliament says that a decision of an inferior tribunal is to be 'final', it does so on the assumption that the tribunal will observe the law. Parliament only gives the impress of 'finality' to the decision on the condition that it is reached in accordance with law: and the Queen's courts will see to it that this condition is fulfilled. Accordingly if a tribunal goes wrong in law and the error appears on the face of the record, the High Court will interfere by certiorari to quash the decision. It is not to be deterred by the enactment that the decision is 'final'. The decision may be final on the facts, but it is not final on the law. This was settled by *Re Gilmore's Application*[3], where all the cases are collected. Likewise if a board or a Minister is entrusted with a decision affecting private rights, then even though it is said to be 'final', the High Court can ensure that it is correct in point of law. It can do so by making a declaration as to the law by which the authority must abide. That was settled by *Pyx Granite Co. Ltd. v. Ministry of Housing and*

(1) [1908] A.C. 327.
(2) [1928] 2 K.B. 221.
(3) [1957] 1 All E.R. 796.

Local Government[1], and particularly by the speech of Viscount Simonds[2]. Counsel for the appellants agreed that, in the present case, if quarter sessions went wrong in law, the High Court would intervene by certiorari or a declaration. But he suggests that there was no power to state a case. This suggestion is a mere procedure point. It only goes to the machinery by which the High Court can intervene. If a point of law can be resolved by certiorari, or declaration, I do not see why it should not also be resolved by case stated".

Phillimore L.J. said (at p. 797) in the same case:

"Counsel for the appellants felt that he was bound to take the first point, namely, the preliminary point that this court had no jurisdiction. So far as that is concerned, I entirely agree with the judgment of Lord Denning M.R. I do not think that in this particular case, where the point was not taken before the Divisional Court[3] and where a special application was made to us for leave to appeal out of time and to expedite the appeal, it was open to the appellants to take the point at this stage. In any case, I think that Lord Denning M.R. is perfectly right and that there is an appeal by case stated, just, of course, as the appellants could have moved for certiorari. I do not think that the provision in para 11(4) of Sch 7 to the Gaming Act 1968 that the appeal to quarter sessions should be final is sufficient to exclude the jurisdiction of the Divisional Court or of this court on appeal".

In the light of the principles expounded in the above referred to case-law, I have reached the conclusion that the finality clause in section 4(a) of Law 50/74 does not preclude an appeal, by way of a Case Stated, to this Court, in accordance with the relevant procedure specified in rule 17 of the 1968 Rules; consequently, an order of Mandamus, as applied for, is made, and it is directed, by means of it, that the President of the Industrial Disputes Court shall state a Case in response to the application made for

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(1) [1959] 3 All E.R. 1.
(2) [1959] 3 All E.R. at 6, 7.
(3) [1971] 2 All E.R. 304.

this purpose, by the applicants, on May 24, 1976. Of course, the President is not bound, in stating the Case, to act in any way which, in his opinion, is not warranted by the procedure prescribed by the said rule 17.

In view of the novelty of the issue raised, and of the very fair stand taken by counsel for the Attorney-General, there shall be no order as regards the costs of these proceedings.

Application granted
No order as to cost