

all Court - Motion for Order of Certiorari - whether decision of Superintendent of Insurance to cancel registration of applicant - whether decision in Insurance Act ultra vires - Secs. 15, 16 and 17 Insurance Act - whether decision in breach of rules of natural justice - Application dismissed  
No further reference to

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FULL COURT

SUIT NO. M. 157 OF 1993

CORAM: THE HON. MR. JUSTICE BINGHAM  
THE HON. MR. JUSTICE LANGRIN  
THE HON. MR. JUSTICE SMITH

IN THE MATTER of an application by  
Motor and General Insurance Company  
Limited for leave to apply for Order  
of Certiorari.

AND

IN THE MATTER of the Motor Vehicle  
(Third Party Risks) Act.

BETWEEN	MOTOR AND GENERAL INSURANCE COMPANY LIMITED	APPLICANT
AND	THE SUPERINTENDENT OF INSURANCE	1ST RESPONDENT
AND	THE MINISTER OF FINANCE	2ND RESPONDENT
AND	THE ATTORNEY GENERAL	3RD RESPONDENT

Norman Wright and C. Dunkley for applicant

Douglas Leys Asst. Attorney General and D. Higgins for Respondents.

HEARD: February 14, 15, 17, & 18, 1994

ORAL JUDGMENT delivered on February 18, 1994

LANGRIN, J.

This is an application on Motion for an Order of Certiorari to quash a decision made by the Superintendent of Insurance by letter dated November 16, 1993 whereby it was ordered that the registration of Motor and General Insurance Company Limited was cancelled, effective from 17th November, 1993.

The applicant Insurance Company was on January 30, 1984 served with a Notice of the then Superintendent of Insurance pursuant to Sections 15 and 16 of the Insurance Act requiring it to immediately close down its operations because the Insurance Company had failed to comply with the provisions of the Insurance Act. As was provided by Sec.16 of the Insurance Act the applicant company appealed to the Minister of Finance who heard the appeal and made a decision

that: subject to the company complying to the satisfaction of the Superintendent of Insurance with specified conditions stated by the Minister the company's registration should not be cancelled.

The Superintendent of Insurance gave the company six months to comply with the conditions but at the end of that period and for the rest of the period it is common ground between the parties and borne out by the affidavit evidence presented to us by both sides that the stipulated conditions by the Minister remained fully unsatisfied up to the time of cancellation on 16th November, 1993.

The grounds upon which the application is sought are essentially:-

- (1) That the Superintendent of Insurance having been directed under Sec.16(2) (b) not to cancel the registration acted ultra vires his powers when he sought to cancel the applicant's registration under Sec.17 of the Insurance Act.
- (2) The Superintendent acted in breach of the Rules of Natural Justice because he failed to give the applicant a right to be heard and did not exercise his discretion reasonably.

The first question which we have to answer is this:

Did the Superintendent of Insurance act illegally in cancelling the registration of the Applicant?

In examining this question the Court had to interpret the provisions of Sections 15, 16, & 17 of the Insurance Act which is conveniently set out as under:-

"15. The Superintendent may notify in writing an approved company that he proposes to cancel its registration in respect of all or any of the classes in respect of which it is so registered, giving his reasons for so doing (and notifying the company of its right of appeal under section 16), if at any time -

- (a) the Superintendent is satisfied -
- (b) .....

"16. (i) An approved company notified of a proposal of the Superintendent under section 15 may, within the prescribed period and in the prescribed manner, appeal to the Minister.

- (2) The Minister shall, after considering the appeal, give his decision in writing and may either -
  - (a) with or without variation, confirm the Superintendent's proposal; or
  - (b) direct the Superintendent not to cancel the registration of the company in respect of such class or classes as the Minister may specify,  
but any direction under paragraph (b) may be expressed to be conditional on the company's complying, to the satisfaction of the Superintendent, with such conditions as the Minister may specify.
- (3) The decision of the Minister shall be final.
- (4) The Minister shall forward one copy of his decision to the Superintendent (and one copy to the company) and the Superintendent shall give effect to his decision.

"17. Where an approved company has been notified under section 15 and fails to appeal to the Minister in accordance with section 16 or having appealed withdraws the appeal or the result of the appeal is the confirmation, with or without variation, of the Superintendent's proposal appealed against, then subject to any such variation, the Superintendent shall give effect to his proposal and notify the company in writing accordingly."

Mr. Wright submitted in the main that the Minister having acted under Sec.16(2) (b) of the Act did not delegate to the Superintendent of Insurance a power to cancel the company's registration under Sec.17 of the Act. Therefore the Superintendent acted outside the power of the statute when he purported to cancel the applicant's registration.

We do not agree with Mr. Wright's submission. It is as plain as plain can be that Sections 15, 16, & 17 set out the framework with which the Superintendent of Insurance and the relevant Minister can give effect to a cancellation of a company's registration. The Minister in our view stated that the registration of the company should not be cancelled unless the company complies with certain conditions. The conclusion is inescapable that if the company fails to comply with the stipulated conditions to the satisfaction of the Superintendent then its registration must be cancelled. Section 17 must be construed in that light in order to give effect.

Section 17 must be construed in that light in order to give effect to the legislation. This ground therefore fails.

The second question which we had to consider is: whether there was a breach of the Rules of Natural Justice. The ground initially gave us some concern but on a closer examination we are unanimously of the view that any delay in carrying out a statutory function cannot amount to an abuse of a discretion. Further the statute provides an opportunity for the applicant to be heard on appeal and no further right to be heard need be granted.

We therefore reject the argument of Counsel for the applicant that with the introduction of the Minister's specified conditions under Section 16(2)(b) of the Act the applicant was entitled to a fresh notice of proposal under Section 15 of the Act.

In all the circumstances there is no illegality nor breach of the rules of Natural Justice. There was a sufficient foundation of facts which established that the same breaches complained of in the Superintendent of Insurance proposal in 1984 continued throughout thereby giving rise to the exercise of the statutory power under Section 17 of the Insurance Act.

Consequently the application for the Order of Certiorari is dismissed with costs to the Respondents to be agreed or taxed.

Reasons to be put in writing at a later date.

This is a unanimous decision of the Court.