IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

MISCELLANEOUS

SUIT NO. M.65/1976

Regina v Commissioner of Police

Ex parte Winston Tennant

(Application for Certiorari)

Heard: February 14, 1977

Coram: Parnell, Wright and Vanderpump JJ

Dr. Barnett and Dr. Adolph Edwards for the Applicant, Winston Tennant

Mr. Lloyd Ellis, Assistant Attorney General for the Respondents, the Commissioner of Police

Vanderpump, J:

On the 14th February, we ordered that certiorari should go to quash the order of the Commissioner of Police dismissing the Applicant from the Island Special Constabulary Force. We also ordered the respondent to pay costs. We promised to put out reasons in writing. This we now do.

Part 3 of the Island Special Constabulary (General) Regulations 1950 deals with the matter of this Force's discipline.

A Special Constable's services may be determined summarily by the Commissioner of Police under Regulation 27, or a Disciplinary Board appointed by him under Regulation 28 to investigate the matter and report to him.

Regulation 27 in so far as is relevant, reads:

> "The Commissioner of Police may determine the services of ..... any Special Constable if such Special Constable does not perform the duties he undertakes or is for any other reason considered unsuitable. When a Special Constable's services have been determined the fact shall be published in Police Orders."

The underlinings are mine.

On the evening of the 3rd November last year the

Commandant of this Force told the applicant that a certain pamphlet was being distributed and he was informed that the applicant was the person responsible for issuing it. In the next breath he added that as a result of this, "You will be dismissed as of Friday, 5th November, 1976!" When the applicant demurred saying he knew nothing about the pamphlet the reply was, "The decision has already been taken to dismiss you as of 5th November, 1976!" The narrative becomes more and more startling as the story unfolds!

At page 7 of the Force Orders issued next day appears an item, "Dismissal 5.11.76 X Div. X667 Spec. Cpl. W.A. Tennant". Immediately under that, another item, "Services Determined"; dealing with another member of the Force. If purporting to act under Regulation 27, as indeed it appears he was doing, the Commissioner of Police was certainly not adhering to the strict wording thereof.

In due course an order of certiorari was sought to remove into this Court and quash this order of the Commissioner of Police which purported to dismiss this applicant, on the ground that he was dismissed without being charged with any offence and without being given an opportunity of presenting his defence, contrary to the rule of natural justice.

No Counter or any Affidavit was filed by the Respondent so it was not known for what offence or indeed for what reason this unfortunate applicant had been dismissed. It was alleged by the Commandant that he was responsible for the distribution of a certain pamphlet. Whether of one pamphlet or more than one pamphlet we know not and as to whether the pamphlet was a blank one or had on it writing good or bad we are equally ignorant. Suffice it to say that the fact of its distribution was regarded in such a serious light that the applicant was dismissed before he was even told of his dismissal! Lightning action! By process of elimination his conduct in so doing must have been a reason for him to have been considered unsuitable (in the wording of the

Regulation) for the Commissioner of Police so to have acted! There appears to have been no such material for this exercise.

Dr. Barnett inter alia referred to Ridge v Baldwin 1963 2 AER 66, 72E where Lord Reid said in effect that it cannot ever be assumed that no enquiry is necessary and to Glynn v Keele University 1971 1 WLR 487 where a student was seen on the campus naked yet should have been given an opportunity of being heard before decision reached to inflict a penalty on him.

Mr. Ellis in his usual lucid style submitted that all the Special Constable had was a privilege or licence to act as a Special Constable. He relied on the three prongs of Section 22 (2) of the Act when a Special Constable was deemed to be on duty (and not otherwise) for this submission.

All the Commissioner of Police had done was to withdrew this licence, the submission ran, the statute having given him the peremptory right of dismissal; it was of a subjective nature so he was not obliged to disclose what was before him!

Mr. Ellis went on to liken this licence (as he termed it) to the licence of a merchant in Ceylon. Nakkuda Ali vs Jayaratine 1951 Ac p. 66. The words in the relevant Regulation No. 62 are different to those in the instant case. They read: "Where the controller has reasonable grounds to believe that any dealer is unfit to be allowed to continue as a dealer", and then imposed a condition before the power could be exercised by him. Then at page 82 we find that,

> "The applicant was informed in precise terms what it was that he was suspected of: and he was given proper opportunity of dissipating the suspicion and having such representation as might aid him put forward by Counsel on his behalf."

Not so here.

Regina vs Metropolitan Company ex parte Parker 1953 1 WLR 1150 was then referred to. Here again the Regulation is differently framed,

> "A cab-driver's licence shall be liable to revocation ..... by the Commissioner of Police if he is satisfied by reason of any circumstances arising or coming to his knowledge after the licence was granted that the licencee is not a fit person to hold such a licence."

It having come to his knowledge that the cab was being used for improper purposes he revoked the licence. The applicant was confronted by the two police officers concerned and allowed to cross-examined them before the decision was conveyed to him. In both these cases the applicant was given an opportunity to at least refute the allegations made against him.

Mr. Ellis then sought to distinguish Copper v Wandsworth. I do not think he was successful. In Cooper v Wandsworth, Byles, J. had this to say at p. 194 of the report:

> "Although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the Common Law will supply the ommission of the legislature."

Some years later Lord Esher expressly approved this dictum in Hopkins v Southwick 1890 24 QBd 716, 717.

In Regina v Barnsly Metropolitan B.C. 1976 3 AER 452 457B it was held by the Court of Appeal that Certiorari will lie to quash not only judicial decisions but also administrative decisions. Judgment of Lord Denning.

A rule of natural justice has been here transgressed as the applicant should have been told in precise terms what it was that he was accused of and been given an opportunity of saying something in his defence. This was not done.

:gb
23.3.77

Parnell J.

I agree with the reasons of my brother Vanderpump. If it were not for the fact that this case contains a principle of great importance and that Counsel for the Commissioner of Police with his usual facility and vigour urged an interesting but untenable argument, I would have been content to remain silent. I shall, therefore, add a few observations of my own.

I need not recite the facts. My brother Vanderpump has already done so with clarity and conciseness. Section 20 of the Constables (Special) Act, states as follows:

> "20. Every Special Constable shall be engaged for a period of three years from the date of his enrolment as a Special Constable;
> Provided that -
>
> (a) a Special Constable may apply for his release during his period of service;
>
> (b) a Special Constable shall be released on attaining the age of sixty years; and
>
> (c) the Commissioner shall have power to release a Special Constable from his engagement or to determine such engagement at any time if any Special Constable does not perform the duties which he undertakes or is for any other reason considered unsuitable."

The power conferred on the Commissioner of Police to release a Special Constable, must be based on one or both of the grounds mentioned in the section, namely:

(a) Inability from whatever cause to perform the duties undertaken by him;

(b) Unsuitability as a result of some cause.

The Island Special Constabulary (General) Regulations were made pursuant to section 23(1) of the Act. Among other things, regulations are to be made dealing with:

> "the conditions of service, enrolment, promotion, demotion, resignation, dismissal or suspension of members of the Force."
> (See section 23(1)(2)(c).

Regulation 27 states as follows:

> " The Commissioner of Police may determine the services of or suspend any Special Constable if such Special Constable does not perform the duties he undertakes or is for any other reason considered unsuitable. When a Special Constable's services have been determined, the fact shall be published in Police Orders."

And Regulation 29 which is very lengthy, deals with the duties and powers of a Disciplinary Board appointed to hear charges preferred against a Constable. Based on these regulations, Mr. Ellis submitted in effect that under regulation 27 there is a peremptory right of dismissal in which the ordinary rule that a man should not be condemned without a hearing may be ignored. However, he argued that if the dismissal is to be grounded under regulation 29, the rules of natural justice find full play. It seems that the Commissioner of Police is the one who is to decide whether he will allow "natural justice" to examine what has been done; he may exclude the rule at his pleasure.

This reasoning does not take into account the requirement that if a result may be achieved in one of two ways, then the one with the lesser show of harshness should be preferred.

The words of Byles,J. uttered over 100 years ago still have a sweet sound in the ears of the aggrieved. This is what he said:

> " Although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature." (Cooper v. Wandsworth Board of Works, /1863/,14C.B.N.S. 180 at 194)

A requirement that attracts a rule of the common law cannot be disposed of by way of the exercise of what is called a discretion or by labelling what is plainly a judicial or quasi-judicial act, an administrative exercise.

If a man is considered to be unsuitable to remain in the Force, his conduct, record and general behaviour may have weighed with the Commissioner before he arrives at this conclusion. And if it is alleged that he has misconducted himself, then the nature of the alleged misconduct should be brought to the attention of the Constable and he should be given a fair opportunity to meet the complaint. He cannot be drummed out of the Force without the usual previous ceremony which involves a fair trial and a fair evaluation of the whole evidence at some inquiry.

...../

In these troubled days a Special Constable has an important part to play in the maintenance of law and order in the society. He is regarded as a member of the Security Forces and is subject to discipline. Many men have made the service in the Special Constabulary as their career. Their family and themselves depend on the salary received for the work done by them as Special Constables. It is in the discharge of their public duties that some men build up an enviable reputation. And so long as good behaviour diligence and loyalty are demonstrated, a public officer secures a right to work in his particular assignment until age, ill-health or his own resignation put him out of action.

If he is to be dismissed - with all the odium which a dismissal carries - then he should know beforehand the ground on which such a strong decision is to be based and natural justice demands that he should be given an opportunity to defend himself. The applicant who has twelve years of service was told about 48 hours before his summary dismissal what was going to happen. Benignity did not extend beyond the '48 hours notice'. Execution was carried out in the manner told to him. The applicant was given no opportunity to have a fair run before the axe fell. To decide an important matter which seriously affects a man without a hearing is arbitrary and unreasonable.

Despite the persistency and valiance which Mr. Ellis displayed in his arguments, I can find nothing in the Act or in the regulations which supports the stand taken by the Commissioner of Police. And I would be surprised if an Act of Parliament can be found in these modern days which would support a contention that the rules of natural justice can be relegated to a furnace by a tribunal when a man's reputation, his right to work, and his right to property are at stake.

The applicant may have had a case to answer if the proper procedure were followed. I do not know and I need not speculate. What I do say is that the manner in which he was dismissed cannot be supported. My hope is that there will be no repitition of the action of the kind which forms the basis of these proceedings.

Wright J.

Although I agree with the judgment of my brothers Parnell and Vanderpump I consider the matter of sufficient importance to warrant a brief contribution from me.

Counsel for the Commissioner of Police argued with great vigor and obvious sincerity that the Commissioner of police was well within his powers in summarily dismissing the applicant, who after 12 years in the Island Special Constabulary Force had risen to the rank of Corporal, without any charge being preferred against him and an opportunity afforded him to defend such charge.

If the submission could be set down to mere flippancy I would dismiss it as being of no moment. But Councel's sincerity makes the contention a frightening one. And the situation is not in any way assuaged by Counsel's Appeal to the court to make a pronouncement which would alert the relevant authorities to the urgent need to deal with the position of the Special Constable which he submitted is anomalous and needs to be brought in line with the modern emphasis on the position of the worker.

I am relieved to think that counsel is wrong. But indeed if the statute could lend itself to such an interpretation it may well be time for the Legislature to give it a modern look. However, in my judgment such interpretation is fallacious.

Counsel was no less emphatic that the Commissioner of Police was merely performing an administrative act in the instant case and therefore the remedy sought by the applicant was not available to him because certiorari will not go to quash an administrative decision. This submission echoes earlier learning on certiorari but ignores the recent decision of court of Appeal in Regina vs. Barnsley Metropolitan Borough Council ex Parte

Hook (1976) 3 A.E.R. 452 which clearly states (per Lord Denning MR) at page 457.

> "Certiorari will lie to quash not only judicial decisions but also administrative decisions".

I am satisfied that the Commissioner's position is indefensible. A charge should have been preferred against the applicant which he should have had the opportunity to answer. This not having been done the requirements of natural justice have been breached and the applicant should have the remedy claimed. Indeed it is a great relief to know that such conduct is not beyond the reach of the court's supervisory powers for otherwise a grave injustice would go unremedied.