Judgment Book.

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE FULL COURT

SUIT NO. M124/97

BEFORE: THE HONOURABLE MR. JUSTICE PANTON
THE HONOURABLE MR. JUSTICE CLARKE
THE HONOURABLE MR. JUSTICE WESLEY JAMES

R. v. COFFEE INDUSTRY BOARD EX PARTE
SUPREME COFFEE CORPORATION LIMITED

Dennis Morrison Q.C. instructed by
Dunn, Cox, Orrett & Ashenheim for
Applicant.

David Batts and Ransford Braham
instructed by Livingston, Alexander
and Levy for Respondent.

Heard: October 20, 21, and 23, 1998

PANTON, J

On October 23, 1998, we unanimously dismissed the motion in this matter.

I have read the judgment of my learned brother Clarke, J. I agree with the reasons stated therein and have nothing to add.

CLARKE, J

By and with the consent of the Coffee Industry Board (the Board) and Supreme Jamaica Coffee Corporation Ltd. (Supreme Coffee) a Full Court of the Supreme Court (Panton, Reid and Granville James, JJ.) on April 14, 1997 quashed the decision of the Board not to grant Supreme Court a coffee works licence and ordered that Supreme Coffee's application for a coffee works licence dated February 15, 1994 be considered by the Board **de novo**.

Supreme Coffee again requested the Board to consider its application. By letter dated October 7, 1997 the Board advised Supreme Coffee's attorneys-at-law that the application "was considered at a meeting of the Board held on 1st October, 1997 and it was decided not to grant a licence to Supreme Coffee Corporation to operate a coffee works at Yallahs in the parish of St. Thomas." At the request of Supreme

Coffee's attorneys-at-law the Board by letter of 3rd November, 1997 gave the reason for its decision. That letter is in the following terms:

> "I refer to your letter dated October 9, 1997 requesting the reason for refusal by the C.I.B. to approve the application of Jamaica Supreme Coffee Corporation to establish a finishing works at Yallahs in the parish of St. Thomas.
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> The C.I.B. did not approve the application for the following reasons:
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> 1. The C.I.B. will not approve the establishment of a coffee works to process Blue Mountain Coffee outside of the designated Blue Mountain area because of the doubt that could be cast on the authencity of the Blue Mountain Coffee processed at such a coffee works.
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> 2. The company has indicated that it will be requesting the C.I.B. to pulp its coffee and the Board's policy is to provide to clients, on contractual basis, processing services from the stage of pulping through to the finishing of green beans."

Supreme Coffee now moves this Court for an order of certiorari to quash this second decision of the Board not to grant it a coffee works licence and relies essentially on two grounds namely, (1) that the Board has acted so unreasonably that no reasonable authority would have made the decision and (2) that the Board has failed in its duty to act fairly. For a proper consideration of the grounds upon which the relief is sought it would, I think, be appropriate to look at the relevant legislation, case law and factual matrix.

The Coffee Industry Regulation Act establishes the Board (section 3). The Act imposes on the Board certain duties including the duty to "do all such acts as may be lawfully done ... which the Board having due regard to the financial resources at its disposal may consider most expedient for the encouragement and development of the coffee industry in Jamaica ..." (section 4 (a)). The Act invests the Board

with certain powers including the power to establish, maintain and operate any nurseries and coffee works (section 6(a) and (c)), and to investigate the circumstances under which coffee may be best processed in Jamaica (section 6 (e) (iii). The Act empowers the Board with the approval of the Minister to make regulations for the licensing (including the grant, refusal and revocation of licenses) of coffee works (section 7(1)(d)). "Coffee works" is defined as "any plant, machinery appliances, mills or apparatus used for curing, drying, pulping, washing, cleaning, processing or preparation for sale of any coffee berries or for the manufacture of any coffee product" (section 2).

Now, it is important to bear in mind that Supreme Coffee's letter of application of January 15, 1994 makes it clear that "[f]or the time being the Company plans to confine its operation to processing and preparation for sale and export of Blue Mountain Coffee." So the proposed works would not include the initial stage of pulping and would be confined to processing coffee of the Blue Mountain variety. "Blue Mountain Coffee" is defined under the Coffee Industry Regulations, 1953 made under section 7 of the Act as coffee that is -

> (a) "grown in the Blue Mountain area [the geographical confines of which are described in the Schedule to Regulations], and
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> (b) processed or manufactured at any works specified in the [said] Schedule and to which a licence granted pursuant to regulation 5 relates."

That regulation stipulates that every application for a coffee works licence must be accompanied by evidence that the applicant holds a certificate issued by a person duly authorised by the Board that in the the opinion of that person adequate facilities have been provided "for the pulping, curing, drying, washing, cleaning, processing, preparation for sale or manufacture of coffee or any coffee product"

section 5 (2)). Over and above that requirement the Regulations pay special attention to what is defined therein as blue mountain coffee. For instance, section 4(2) obliges every licensed coffee works operator who processes, manufactures, sells or exports any blue mountain coffee, to keep a record of the source of supply of such coffee in a coffee record book which must be kept for inspection at the operator's place of business.

With regard to Supreme Coffee's application for a coffee works licence, avowedly to process blue mountain coffee, the copious correspondence between Supreme Coffee and its Board mainly concerned (a) the location of the proposed processing works and any enviromental impact that could flow from operating at such location, (b) the question of the erection and operation of a complete coffee works from pulping to finishing. So far as concerns the processing of blue mountain coffee those matters are within the ambit of the Act and the Regulations and were, in my judgment within the competence of the Board to raise with Supreme Coffee.

In the course of the correspondence relative to the application Supreme Coffee advised as follows:-

(i) that it would locate its factory in Yallahs, St. Thomas, an area outside the designated Blue Mountain area;

(ii) that inspite of the Board's advice it would not include sorting machines along with its proposed machinery and equipment but would be sorting manually;

(iii) that in the initial stages it would confine its operation to processing from the stage of "wet parchment [through] to exportable green beans," making it clear that it was not then interested in processing cherry ripe coffee and so would not itself do "pulping", a process whereby cherry ripe coffee is stripped of its outer covering;

(iv) that it would be in the interim continue continue to utilize the Board's pulping facilities.

The board subsequently disclosed that it would not pulp for Supreme Coffee if the latter was going to establish its own coffee works, and advised that it should consider establishing a complete coffee works from pulping to finishing of green beans. To that end the Board requested full information "on the physical requirements to establish a complete coffee works from pulping to finishing to green coffee" as evidenced by the Board Secretary's letter to Chairman of Supreme Coffee dated 8th February, 1995. There is no evidence that that information was furnished. In the letter just referred to, the Board requested an environmental impact report on the proposed site but none was provided. Nor is there admissible evidence that an environmental impact statement as recommended by the Natural Resources Conservation Authority was provided. Supreme Coffee did, however, indicate that having regard to what it considered to be the Board's surprising stand on the question of pulping, it had in consequence contracted to have its cherry ripe coffee pulped by Blue Mountain Cooperative Society at Moy Hall.

Mr. Morrison Q.C. submitted that bearing in mind the factual background the decision of the Board, in the purported exercise of its statutory discretion, was expressly based on reasons which are neither adequate nor intelligible. I disagree. Take the first reason given by the Board. In my judgment it can in no wise be characterised as inadequate, unintelligible or irrational in the light of the totality of the evidence. To argue otherwise, as Mr. Morrison did on the basis that the Board operates a coffee processing facility outside of the designated Blue Mountain area, is

to fail to take into account the special and unique position of the Board in the coffee industry. The Board is the regulatory statutory authority with power to establish, maintain and operate any coffee works such as the one it owns and operates in Kingston. It requires no licence under the Regulations to do so. And, in fact, it owns and operates the only facility for processing blue mountain coffee located outside of the designated Blue Mountain area. It not only owns and operates that facility but strictly monitors it. All that is in keeping with the aim of the Regulations to protect the authencity of blue mountain coffee.

So the first reason given for rejecting Supreme Coffee's application is intelligible under the legislation. It demonstrates a legitimate concern of the Board about the possibility of adulteration of blue mountain coffee if it were to be processed by any would-be licensee at a coffee works outside of the designated Blue Mountain area.

As for the second reason given by the Board for its decision Mr. Morrison submitted that on the evidence it is misconceived and neither relates rationally to the evidence nor is comprehensible in itself. It is true, as Mr. Braham conceded, that the Board made an error of fact in saying that "[t]he company has indicated that it will be requesting the [Board] to pulp its coffee", when in fact Supreme Coffee made arrangements elsewhere following the intimation by the Board that it would not be offering Supreme Coffee pulping facilities if it was going to establish its own coffee works. The error was, however, insubstantial, for Supreme Coffee made it clear it would not then be pulping its own beans and had in fact asked the Board to undertake this in the interim. The Board refused to offer pulping facilities only. Supreme Coffee thereupon made arrangements for pulping elsewhere. So, shorn of the slight error of fact, the second reason given by the Board for its decision was essentially

and comprehensibly this: Supreme Coffee would not be pulping its own beans and had asked the Board to do so. However, the Board only processes for clients on a contractual basis from pulping to the finishing stage of green beans.

The decision and the reasons to refuse the application for the grant of the licence are plainly consistent with the position taken and with the suggestions made to Supreme Coffee by the Board. Accordingly I am of the view that the Board in the exercise of its discretion has not acted so unreasonably that no reasonable authority could have made that decision: see **Associated Provincial Picture House Ltd. v. Wednesday Corporation [1948] 3 All E.R. 935 at 951a, per Lord Diplock.**

Was there a failure by the Board to act with procedural fairness?

Mr. Morrison submitted that even if the reason given by the Board for its decision were adequate and intelligible it would have been unfair for the Board to have come to its decision in reliance on them without allowing Supreme Coffee the opportunity to respond before the decision was made. Although this is an application case with no protectable interest, he also submitted that before the decision was taken Supreme Coffee had a legitimate expectation to be afforded an opportunity to respond to (a) any problem raised by the Board which Supreme Coffee obviously thought it had answered satisfactorily and (b) problems beyond those already raised by the Board such as the question of the location of the coffee works.

But was there in the first place any promise or representation made by the Board which could have induced the legitimate expectation contended for? I find that there was none. The reliance placed by Mr. Morrison on the following two factors as constituting the representation is, with respect, misplaced:

(1) The Board's statement in its letters of 26th October 1994 and 8th February, 1995 that it had no objection in principle to the application for a coffee works licence;

and

(2) that Supreme Coffee was told on 28th April 1995 by the Board Secretary's secretary that Supreme Coffee had complied with all the Board's requirements and that the application would be submitted to the next Board meeting for approval.

In neither instance was there, in my opinion, any unconditional or unequivocal representation. It is not that the Board said it had no objection to the application. What the Board said in its letters of 26th October 1994 and 8th February 1995 was that it had no objection in principle to the application. The Board made it clear that it needed to be satisfied about certain location of the proposed works. Secondly, the Board requested and regarded as of "utmost importance" an environmental impact study to establish (a) possible environmental effects and, (b) the impact the environment would have on the quality of the coffee to be processed. The Board then advised that Supreme Coffee set up a complete works which would process coffee from cherry through to green beans and recommended that sorting machines be included. Again, the submission that the aforesaid communication by the Board Secretary's secretary to Supreme Coffee meant or could possibly cause Supreme Coffee to believe that the grant by the Board of the application was a **fait accompli**, has only to be stated to be rejected.

Furthermore, the following passage from the judgment of Bingham L.J. in one case is instructive, albeit concerned with whether the revenue was bound by assurances given to taxpayers having regard to the particular facts of that case:

> "If a public authority so conducts itself as to create a legitimate expectation that a certain course will be followed it would often be unfair if the authority were permitted to follow a different course to the detriment of one who entertained the expectation, particularly if he acted on it. If in private law a body would be in breach of contract in so acting or estopped from so acting a public authority should generally be in no better position. The doctrine of fairness is not a one way street. It imports the notion of equitableness, of fair and open dealing, to which the authority is as much entitled as the citizens. The revenue's discretion, while it exists is limited. Fairness requires that its exercise should be on the basis of full disclosure. Mr. Sumption accepted that it would not be reasonable for a representee to rely on an unclear or unequivocal representation. Nor, I think, on facts such as the present, would it be fair to hold the revenue bound by anything less than a clear, unambigous and unqualified representation:
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> **R. v. Inland Revenue Commissioners, Ex parte M.F.K. Underwriting Agents Ltd. and Others [1990] 1 W.L.R. 1545, 1569H to 1570A and B (D.C.)**

As there was plainly on the facts of the case before the Court, no clear unambiguous or unqualified representation by the Board that could induce any such legitimate expectation as contended for by the Board, Supreme Coffee's contention that there was procedural impropriety on the part of the Board must fail.

Therefore, this is an application case in which Supreme Coffee seeks to obtain a licence that it never held and had no legitimate expectation of holding. I accept Mr. Braham's submission that all that the Board was required to do was to reach an honest conclusion without bias, and without capriceL See **McInnes v. Onslow Fane and Another [1978] 3 All E.R. 211.** I find that the Board met that requirement. Indeed, before reaching its decision the Board wrote to Supreme Coffee (at least twice) raising issues which it considered important to which Supreme Coffeee responded. Even if a hearing were required that, in my jdgment, would have been sufficient for the purpose of the case before this Court to constitute a hearing.

It was for the above reasons that I agreed with my learned brothers that the motion be dismissed.

JAMES, W.A, J

I have read the judgment of my learned brother Clarke, J. I agree with the reasons stated therein.