

ARZIKA V GOVERNOR, (1961) All N.L.R. 379

CITATION: 1961 All N.L.R. 379.

COURT OF JUDICATURE: The High Court of the Northern Region, Nigeria

FACTS:

Mallam Mohammad Arzika, the Petitioner is a former native office holder who received Ex Native Office Holder's Removal Order (1960) against him, under the Ex-native Office Holders Removal Ordinance. Therein Arzika, the Petitioner applied for order of Certiorari in order to quash the removal order from his position as District Head as per the Ex-native Office Holders Removal Ordinance. Along with this, Arzika, the Petitioner applied for an order of Prohibition for restricting the power of the Governor in exercising such removal orders. Mallam Mohammad Arzika, the Petitioner sought for a declaration that the Ex Native Office Holder's Removal Order (1960) under Ex-native Office Holders Removal Ordinance as unconstitutional as it restrains his freedom of movement within Nigeria. The remedies for which the Applicant, Mallam Mohammad Arzika filed a petition was to issue the order of Certiorari and Prohibition against the Governor of Northern Region, Nigeria to prevent from enforcing the Ex Native Office Holder's Removal Order (1960).

ISSUES

In the abovementioned application, the major issue concerned is that whether the order of Certiorari can be held against the order under the Ex-native Office Holders Removal Ordinance of removing the petitioner, Mallam Mohammad Arzika from the position of District Head. Along with this, whether the order of Prohibition can be laid against the power of Governor in exercising his function to produce such orders. Thereby the crux of the issue raised was that whether the complained action done by the Governor was done in the nature of a judicial function or was merely carrying an administrative or executive function.

RULE

R v. Electricity Commissioners, London Electricity Joint Committee Co. Ltd. (1920) emancipates that Certiorari and prohibition lie against persons or bodies only having the legal authority to determine questions affecting the rights of persons and having the duty to act

judicially. If a function is proved to be judicial or quasi-judicial, Certiorari lies for quashing an order if it resultantly commits a breach of natural justice, or made by a person who has no jurisdiction for the determination of the issue or subsequently exceeded his limits in exercising his legal jurisdiction or there is presence of improper delegation or authority being abdicated or such a decision or order has been obtained through fraud as mentioned in various precedents like *The Queen, ex p. Adebo v. Governor in Council, Western Nigeria* (1962), *The Queen v. Governor of Eastern Nigeria, ex p. Ojiego Ikoro* (1962), *The Queen v. District Officer, ex p. Atem* (1961), *Hart v. Military Governor of Rivers State & Ors.* (1976) and *R v. Gillyard* (1848).

The major distinction between the order of Certiorari and order of Prohibition is that the former lies in quashing a determination meanwhile the latter is availed to restrain proceedings carried out on any of the six illegal grounds upon which order of Certiorari is availed. This rule was mentioned in *Okuk pe v. Federal Board of Inland Revenue* (1974). Therein, in effect, the Head of the Federal Military Government *v. Nwachukwu & Ors, ex p. Umokoro* (1976) emphasizes that, order of Prohibition is availed before a decision is reached on a matter.

The general proposition that Certiorari lies to quash judicial and quasi-judicial activities only and not to purely administrative actions as mentioned in *Ridge v. Baldwin* (1964) and reiterated in *Obiyan v. Military Governor of Mid-Western State* (1974). The case law *R v. Manchester Legal Aid Committee* (1952) as represented in *Fela Anikulapo-Kuti & Africa 70 Organization Ltd. v. Commissioner of Police, Lagos State* (1977) unrepresented that the Commissioner of Police exercising powers under Sec. 5 of the Lagos State Public Order Act, 1973 was an act of administrative power made in accordance with maintenance of law and order rather than a judicial action upon which an order of Certiorari will lie.

The rule is that the Hon'ble Court may correct any Lower Court decision departing from the rules of natural justice as per the principle of Certiorari is concerned in Nigeria. It ought to be reiterated, that the fundamental object of the writ of certiorari, its sister, the writ of prohibition, is to promptly curb the wanton excessive application by an inferior Court or Tribunal of its jurisdiction. Invariably certiorari only aims to control inferior Tribunals from exercising their jurisdiction or inherent powers wrongly. As aptly held by the Supreme Court: The body to be curbed by certiorari must be by its instrument empowered to act judicially. Therefore, it is a fatal misconception to apply via certiorari to crush an entirely administrative or executive exercise of power.

On the other hand, in the case of *In Re Maclean Okoro Kubeinje* (1974) stated that application for quashing a document which dismissed the concerned person from his service without hearing or trying him of any charge as required by the Civil Service Regulation was against the principles and was successful in the same. Although his action was not judicial in nature, the Commissioner of Police was required to act fairly by giving an opportunity of the concerned person to be heard before taking such a policy decision in like circumstances.

Thus the final rule for relying on the order of Certiorari was finally put into effect that the abuse of limited powers continuously affect the rights of citizens in prejudicial manner. It also adds on that the order of Certiorari has always been issued in situations like abuses taking place for non-compliance with rules or procedures prescribed by the body; exemplified denial of right to be heard in one's defence; irregularities owing to the denial or breach of natural justice; assumption of jurisdiction to act which is unauthorized by law or refusal of jurisdiction where it should be exercised.

APPLICATION OF RULE

Neither Certiorari nor Prohibition can be laid against Governor because he was not acting under judicial constraints for making the removal order. The Petitioner, Mallam Mohammad Arzika, contended that Sec. 31(2) of the 1960 Constitution enabled Court issue orders with respect of acts other than judicial actions where fundamental human rights are a matter of fact even if the Governor were not under the implied duty to act judicially. Apart from these, his heated arguments raised that the order of the Governor curtailed his freedom of movement and order of Certiorari and order of Prohibition are the appropriate remedies herewith. But the scope of this afore mentioned issue is restricted as Sec. 31(2) did not affect the position and did not enable courts in issuing orders in respect of judicial actions.

The Governor of Northern Region, Nigeria was not acting in a judicial or quasi-judicial capacity at the time of issuing the restriction order and the Applicant was misconceived his remedy thereby dismissing the application of the applicant, Mallam Mohammad Arzika as the Hon'ble Court clearly specified. For the contention raised by Mallam Mohammad Arzika, that the restriction raised against him was not 'reasonably justified in a democratic country', the Court answered negatively.

Here the situation was that Mallam Mohammad Arzika, the Petitioner is a former native office holder who received Ex Native Office Holder's Removal Order (1960) against him, under the

Ex-native Office Holders Removal Ordinance. Therein Arzika, the Petitioner applied for order of Certiorari in order to quash the removal order from his position as District Head as per the Ex-native Office Holders Removal Ordinance. Along with this, Arzika, the Petitioner applied for an order of Prohibition for restricting the power of the Governor in exercising such removal orders. Mallam Mohammad Arzika, the Petitioner sought for a declaration that the Ex Native Office Holder's Removal Order (1960) under Ex-native Office Holders Removal Ordinance as unconstitutional as it restrains his freedom of movement within Nigeria. The remedies for which the Applicant, Mallam Mohammad Arzika filed a petition was to issue the order of Certiorari and Prohibition against the Governor of Northern Region, Nigeria to prevent from enforcing the Ex Native Office Holder's Removal Order (1960).

There has been no instance of commission of breach of natural justice, or the order being made by a person who has no jurisdiction for the determination of the issue or subsequently exceeded his limits in exercising his legal jurisdiction or there is presence of improper delegation or authority being abdicated or such a decision or order has been obtained through fraud. Thus such a situation is not aiding the law to step ahead and to issue the writ of Certiorari. Thereby issuing an order for removing Mallam Arzika from his position of District Head dated 1960 under the Ex-native Office Holders Removal Ordinance is a pure matter of administrative concern rather than a judicial framework.

Certiorari and prohibition lie against persons or bodies only having the legal authority to determine questions affecting the rights of persons and having the duty to act judicially. Here there is no such instance of the Ex Native Office Holder's Removal Order (1960) affecting the rights of the person and the Governor having duty to act upon judicial orders or restraints thereupon. "Court may correct any Lower Court decision departing from the rules of natural justice" as per the principle of Certiorari is concerned. It ought to be reiterated, that the fundamental object of the writ of certiorari, its sister, the writ of prohibition, is to promptly curb the wanton excessive application by an inferior Court or Tribunal of its jurisdiction. Invariably certiorari only aims to control inferior Tribunals from exercising their jurisdiction or inherent powers wrongly. As aptly held by the Supreme Court: The body to be curbed by certiorari must be by its instrument empowered to act judicially. Therefore, it is a fatal misconception to apply via certiorari to crush an entirely administrative or executive exercise of power.

Thus for a judicial review of administrative framework, there needs to be satisfaction of certain conditions. They are firstly, lack of jurisdiction; secondly, breach of rules of natural justice; thirdly, error of law on the face of the records; and finally decision obtained by fraud or collusion. In the present situation there is no evidence of any of these instances in order to consider the issue of allowing the order of Certiorari against the issuance of the Governor of Northern Region, Nigeria.

It is affirmed that about the existence of a presumption that the Legislature acting constitutionally and laws passed thereby are required and is reasonably justified. The same presumption is also applied in the case of the actions done and the order issued by the Governor as he was bound to do the same and made the legislative order based on the powers exerted upon him by the Legislature upon the advice of the Executive Council.

Thus the arguments raised by the applicant, Mallam Mohammad Arzika was dismissed however on the ground that it was unnecessary to consider them based on the fact that the relief sought by the applicant, that is for the order of Certiorari and Prohibition in order to quash the Ex Native Office Holder's Removal Order (1960) issued against him under the Ex-native Office Holders Removal Ordinance remains to be vain. Therefore the relief for which Mallam Mohammad Arzika has requested stands not to be granted. This has led to a vacuum with respect to the protection of citizens who has been working under such legislative or executive authorities and different attempts for this protection went on vain.

CONCLUSION:

The High Court of the Northern Region, Nigeria disposed the case and the arguments put forward by the applicant, Mallam Mohammad Arzika on the ground that order of Prohibition and order of Certiorari can only be availed against Governmental officers acting under the capacity of judicial or quasi-judicial functionaries. The Court thereby extended the presumption of constitutionality to the actions done by the Governor in considering that otherwise providing relief asked by the applicant would resultantly create a superficial consideration. The Court held that the Governor was not acting judicially, rather solely acting administratively in making the order of removal and hence fair hearing does not apply consequently rejected the application for ordering Certiorari.



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