R. v. ATTORNEY-GENERAL, ex parte REYES

SUPREME COURT (Schofield, C.J.): June 26th, 1997

Administrative Law—judicial review—delay—by Rules of Supreme Court, O.53, r.4, application to review decision to be made promptly and within three months—mere re-statement by Director of Education of existing decision by school not to appoint RE teacher not approved by Bishop not separate decision amenable to judicial review

Administrative Law—judicial review—delay—court may extend time for application, notwithstanding delay, e.g. if case raises issues of general public importance, if applicant has behaved sensibly and reasonably and sought extra-judicial resolution of dispute

Administrative Law—judicial review—delay—court may strike out leave on ground of delay but discretion only exercised rarely and in clear case—not to adopt unduly technical approach preventing applicant who has behaved reasonably from obtaining redress

The respondent sought to set aside the applicant's leave to apply for judicial review.

The applicant, a former priest who had left the priesthood following a relationship with a married woman, became a teacher qualified to teach, *inter alia*, religious studies. However, because of that relationship, he did not have the approval of the Roman Catholic Bishop of Gibraltar to "give religious instruction" to Catholic children as required by s.42(2) of the Education Ordinance. Nevertheless, between May 1992 and September 1994 he applied for a number of teaching posts and posts involving the supervision of the curriculum in religious studies and on each occasion his application was refused, on the ground that in the absence of the Bishop's approval, and consequently the approval of the Advisory Council on Religious Education, his applications could not be entertained.

The applicant subsequently sought to persuade the Director of Education that "instruction" in s.42(2) referred to teaching only and not to the supervision of teaching or the curriculum in religious education. However, his attempts at persuasion were unsuccessful and in July 1995 the Director of Education informed the applicant that unless the Bishop reinstated his approval for the applicant to give instruction in the Catholic faith, he could not be considered for any post concerning religious studies.

Almost three months later, the applicant sought judicial review, *inter alia*, of the "decision" of the Director of Education. Leave was granted by

the Supreme Court (Pizzarello, A.J.). The respondent then made the present application for that leave to be set aside, submitting that (a) the alleged decision of the Director of Education was not a decision amenable to judicial review, since it was merely a re-statement of decisions which had already been made up to three years previously and for this reason, the application was not made promptly or within three months of the actual decision complained of, as required by O.53, r.4(1) of the Rules of the Supreme Court; and (b) although the court nevertheless had a discretion to allow the application for judicial review to proceed if the matters raised were of general public importance, in the present case the matters raised were particular to the applicant's personal circumstances and provided no exception to the general requirement of O.53, r.4(1).

The applicant submitted in reply that (a) he had properly made his application within the three-month limit but if he had not, the court nevertheless retained the discretion to extend the period if the case raised matters of general public importance, which this case did, namely, the interpretation of the Education Ordinance; (b) his attempts to persuade the Director of Education of the proper interpretation of the requirements of the Education Ordinance amounted to sensible and reasonable behaviour which gave the court a further ground for exercising its discretion to allow his application to proceed; and (c) applications to set aside leave on the ground of delay should only very rarely be allowed and in a clear case, and the court should not take an unduly technical stance if the effect would be to deprive a litigant of a remedy even though he had acted sensibly.

Held, allowing the respondent's application:

(1) It was clear that the application for judicial review had not been made promptly or within three months of the date on which the grounds for the application first arose—namely, the refusals to consider his applications for teaching posts between 1992 and 1994. The explanation by the Director of Education of his understanding that without the Bishop's reinstating his approval, the applicant could not be considered for any religious education post did not amount to a decision which could be complained of; rather, it was merely a re-statement of decisions which had already been made, more than three months previously, and already explained to the applicant (page 147, line 31 – page 148, line 16).

(2) There was no justification for extending the time within which the application should have been made. The application did not raise issues of general public importance making it appropriate that leave should not be set aside on the ground of delay; rather, the issues were specific to the applicant's personal circumstances. Nor could it be said that his attempts to resolve the situation amounted to sensible and reasonable behaviour giving grounds for extending the time for making his application. Whether attempts at negotiation provided such grounds depended on the

circumstances of the case, and in the present case the applicant had merely been attempting to persuade the authorities to alter their decisions, without altering his own position (page 148, lines 17–43).

(3) Lastly, it was important to recall that leave should only be struck out on the ground of delay very rarely and in a very plain case, and that the court should not adopt an unduly technical approach, thereby preventing an applicant who had behaved reasonably from seeking relief. In the present case, however, the delay had been so great that it could not be said that the applicant had behaved reasonably. His leave to apply for judicial review would therefore be struck out (page 148, line 44 – page 149, line 37).

Cases cited:

(1) *R.* v. *Commissioner for Local Administration, ex p. Croydon London Borough Council*, [1989] 1 All E.R. 1033, *dicta* of Woolf, L.J. considered.

(2) *R.* v. *H.M. Customs & Excise, ex p. Eurotunnel PLC*, [1995] C.O.D. 291, considered.

(3) *R.* v. *Home Secy., ex p. Chinoy*, [1991] C.O.D. 381; (1991), 4 Admin. L.R. 457, *dicta* of Bingham, L.J. followed.

(4) *R.* v. *Home Secy., ex p. Ruddock*, [1987] 1 W.L.R. 1482; [1987] 2 All E.R. 518, considered.

Legislation construed:

Education Ordinance (1984 Edition), s.42(2): The relevant terms of this sub-section are set out at page 139, lines 39–42.

Rules of the Supreme Court, O.53, r.4(1): The relevant terms of this sub-rule are set out at page 143, lines 6–10.

S.P. Triay for the applicant;
L.E.C. Baglietto and *F.R. Picardo* for the respondent.

SCHOFIELD, C.J.: Edwin Joseph Reyes is a teacher at St. Joseph's Middle School and Bayside Comprehensive School, teaching children of middle and secondary school ages. He has a recognized teaching qualification and one of his specialist subjects is religious studies. Nevertheless, he has not been permitted to take up a post involving the teaching or the supervision of teaching of religious studies in Gibraltar. Section 42(2) of the Education Ordinance states:

> "No person shall be appointed to give religious instruction except with the approval of the Advisory Council [on Religious Education ('A.C.R.E.')] and of the head of the religious denomination of the instruction to be given."

His Lordship the Roman Catholic Bishop of Gibraltar has withdrawn his approval for Reyes to teach pupils of the Roman Catholic denomination and A.C.R.E. endorses that decision. Be that as it may, says Reyes, he

should not be debarred from taking up a post which involves him in supervising the teaching of or teaching religious studies as an academic subject. The Director of Education disagrees with him and, although there would be subtlety of argument if the matter went to full hearing, much would turn on whether the word "instruction" in s.42(2) of the Education Ordinance involves or includes "teaching."

In this application for judicial review, the Attorney-General applies to set aside the leave, granted *ex parte*, for Reyes to proceed.

The circumstances leading up to the decision of the Director of Education to preclude Reyes's appointment to the posts he seeks and to these applications are as follows. Reyes was ordained a priest in the Roman Catholic Church in September 1985. As a priest, he was appointed to Westside School, Gibraltar to teach religion under an agreement reached between the Director of Education and the Roman Catholic Church that a priest would act as Chaplain to the Comprehensive Schools and as such would also teach religious education. Reyes was appointed on a temporary basis.

In late 1989, the Rt. Reverend Bishop Devlin, Roman Catholic Bishop of Gibraltar, started receiving reports about Reyes's involvement with a married woman. This caused the Bishop and his Church much dismay. His Lordship the Bishop discussed the position of Reyes within the priesthood with him, but made it clear that he was terminating Reyes's appointment as Chaplain to the schools and expected him to resign from his teaching post at Westside School. When Reyes showed no sign of so doing, the Bishop withdrew his approval for Reyes to teach Roman Catholicism and A.C.R.E. withdrew its approval for Reyes to give religious instruction. The decisions were communicated to Reyes on February 16th, 1990, by which time he had already left the priesthood. On December 28th, 1990, Reyes married Christine Sanguinetti, 14 days after the pronouncement of her decree of divorce absolute.

Reyes went to England, to Christ Church College in Canterbury, and returned to Gibraltar with a post-graduate Certificate in Education, naming religious studies and history as the main subjects, and philosophy as the degree subject. It is of interest to note here that Reyes went to Canterbury on a non-mandatory scholarship, awarded by the Department of Education, but it is the evidence of the then Director of Education, Mr. Julio Alcantara, that at the time the scholarship was awarded, it was made clear to Reyes that when he returned to Gibraltar armed with his teaching qualification, he would not be able to teach religion until such time as His Lordship the Bishop no longer withheld his consent for him to teach children of the Roman Catholic faith.

In September 1991, Reyes returned to Gibraltar and was employed as a teacher at St. Joseph's Middle School. It seems that Reyes teaches history, English and sociology and that his teaching of the latter subject now extends to secondary schools. However, he wishes to extend his teaching

or supervision roles to religious studies and he has applied for several posts in that discipline and has been rejected on each occasion on the grounds that the decision of His Lordship the Bishop and of A.C.R.E. to withdraw approval for him to teach Roman Catholic students has not changed. It seems, however, that the position of A.C.R.E. has either softened somewhat or had not been communicated fully to Reyes, for he says that he learned for the first time on November 21st, 1994 that the withdrawal of approval related only to his teaching religion to children of the Roman Catholic faith. Most certainly the head of the Anglican denomination in Gibraltar, the Very Reverend Brian Horlock, had indicated to the Director of Education well before October 1994, and probably from early 1993, that he would be happy for Reyes to teach children of the Church of England and it was expressed at a meeting of A.C.R.E. on November 21st, 1994 that A.C.R.E.'s prohibition applied only to the teaching of Roman Catholic pupils. A practical problem facing the consideration of Reyes for a post involving teaching or the supervision of teaching religious studies, if one accepts the respondent's view of the meaning of "instruction," is that the majority of pupils in Government Schools in Gibraltar are Roman Catholic and it would be impracticable to choose as a teacher or supervisor someone who is unable to perform his duties in relation to the majority of his pupils.

Reyes has applied for, I think, three posts which would involve him in teaching or supervising the teaching of religious studies. The first such application was for the post of teacher in charge of religious education at Bishop Fitzgerald School. The last application I have been referred to was that of head of religious education at Bayside School. All applications received the same response. Because of the decision of His Lordship Bishop Devlin and of A.C.R.E., Reyes could not be considered for the posts. Indeed, in response to Reyes's application for the post at Bayside School, the Personnel Manager of the Gibraltar Government referred Reyes to a letter he had sent him on July 5th, 1994 and told him he stood by its contents. That letter states:

> "I am advised by His Lordship the Roman Catholic Bishop of Gibraltar that his formal withdrawal of approval for you to give religious instruction under s.42(2) of the Education Ordinance, 1974, still stands.
>
> Given the circumstances, I regret to inform you that your above-mentioned application cannot be entertained."

The post referred to in that letter was one at Bishop Fitzgerald Middle School.

From as early as June 1992, the Gibraltar Teachers' Association had taken the matter up on Reyes's behalf. So there was a two-pronged attack involving the Association and the Association's solicitors on the one hand, and Reyes and ultimately his own solicitors on the other. There is substantial correspondence and evidence of meetings of A.C.R.E. at

which the Gibraltar Teachers' Association has been represented but the response of the Director of Education, A.C.R.E. and the Personnel Department has been constant. Without withdrawal of His Lordship the Bishop's decision made on February 16th, 1990, as supported by A.C.R.E., Reyes is not to be considered for appointment to any post involving the teaching of religious studies. The only change of position of His Lordship, A.C.R.E., the Director of Education and the Personnel Department, if change it was, is that communicated first to Reyes in November 1994, that the ban applies only to children of the Roman Catholic faith.

On May 5th, 1995, the solicitors for Reyes wrote to the Director of Education setting out their understanding of Reyes's position and the law involved. They concluded that letter:

> "We are instructed by our client that there may be vacancies in the Comprehensive Schools for the teaching of religious studies in the coming academic year. Our client is interested in applying for such vacancies given that if his application were to be successful he would enjoy the fulfilment of teaching one of his specialist subjects as well as opening the way to career advancement.
>
> In the circumstances, we are instructed to request your confirmation that our client will be eligible to apply for appointment to such vacancies and that his application will be considered fairly on its merits."

The Director of Education replied on July 7th, 1995. The conclusion of his letter reads:

> "Regarding the teaching of religious education, the Department does not agree with your interpretation and neither does the Advisory Council for Religious Education. Thus, even if there were to be a vacancy at Bayside Comprehensive School for an RE teacher, I regret that Mr. Reyes cannot be considered for the post."

On October 6th, 1995, Reyes filed this application for judicial review. He states that the decisions of which he seeks review are those of the Director of Education, of His Excellency the Governor, who has refused to consider his application to be a teacher of religious studies, and of the Public Service Commission, which has refused to carry out all those responsibilities necessary for giving His Excellency proper advice on the matter. It should be said at once that there is nothing in the material before me to suggest that either His Excellency the Governor or the Public Service Commission has taken any decisions or had any involvement in this matter, although, as stated above, the Personnel Department of the Gibraltar Government has been involved in the correspondence. The Attorney-General has been named as respondent. The first point made by counsel for the respondent is that the Attorney-General is improperly named as such. These proceedings, he says, are not proceedings against the Crown but in England are proceedings brought on the Crown side of

the Queen's Bench Division of the High Court. However, he does not raise any objection for the purpose of this application.

The application to set aside the leave granted *ex parte* by Pizzarello, A.J. on October 16th, 1995 is based on delay. Order 53, r.4(1) of the Rules of the Supreme Court provides:

> "An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending the period within which the application shall be made."

The point taken by the respondent is that the decision of the Director of Education communicated to Reyes through his solicitors on July 7th, 1995 was not a new decision from which a judicial review application could flow. The decision was the reiteration of a decision communicated much earlier, perhaps as long ago as 1993, but at the very latest by a letter dated May 9th, 1995. The respondent's position is that the door to teaching religious studies has been firmly shut to Reyes from 1992 onwards and he has known that and the reason for it, and that the letter of July 7th, 1995 was merely a repetition of a prior existing position. Accordingly, says the respondent, Reyes has not brought these proceedings promptly or in any case within three months of the date on which the grounds of application first arose, and leave should be set aside.

Reyes argues, on the other hand, that each application he made gave rise to a separate decision which, even if that decision were made on grounds previously communicated, was none the less a separate decision attracting separate review. The grounds for the decision communicated by letter dated July 7th, 1995 could not be formulated before the decision was made, and such decision and the grounds upon which it was made are to be separately treated for the purpose of judicial review.

Let us therefore identify the decision, the grounds upon which it was made and the date upon which it was made. Of course, the initial decision of His Lordship the Bishop and of A.C.R.E to withdraw approval for Reyes to give religious instruction pursuant to s.42(2) of the Education Ordinance is not challenged. That decision was communicated to Reyes on February 16th, 1990 by the Personnel Manager of the Gibraltar Government.

On Reyes' return to Gibraltar he was offered his appointment as a teacher in the Gibraltar Education Department. His letter of appointment was dated September 26th, 1991 and contained no mention of the subjects he would be called upon to teach, or indeed the school to which he would be attached. On May 21st, 1992 Reyes applied for the post of teacher in charge of religious education at Bishop Fitzgerald Middle School. From a letter written by Messrs. Triay & Triay, solicitors acting for the Gibraltar Teachers' Association, in September l992, it seems that Reyes was informed that he was not being considered for the post following a

meeting of the Promotion Board on June 23rd, 1992. The reason given to Reyes was that he did not have the approval of A.C.R.E. to give religious instruction. In that letter, Messrs. Triay & Triay ask the Director of Education the date on which A.C.R.E.'s decision was made and communicated to Reyes and the reasons for the decision. The Director's reply, dated October 15th, 1992, refers back to the decision communicated to Reyes by the Personnel Manager on February 16th, 1990. The final paragraph of that letter reads:

> "This decision stands until revoked by due process and we are so advised. His Lordship the Bishop has confirmed continuance of his decision in respect of the application for the religious education post in question."

Messrs. Triay & Triay replied to that letter several months later, on May 15th, 1993. In that letter, they give their view that A.C.R.E.'s decision did not prevent Reyes from being appointed as the head of any religious department in any school, particularly in the light of the Dean's approval that he teach children of the Anglican faith. On June 9th, 1993, the Director of Education wrote to Messrs. Triay & Triay that they had raised a matter which was entirely the concern of A.C.R.E. and His Lordship the Bishop. As a result, Messrs. Triay & Triay wrote to His Lordship the Bishop asking for the reasons for his withdrawal of approval for Reyes to give religious instruction. His Lordship replied on July 27th, 1993. I need not go into the reasons he gave. It is sufficient for our purposes that His Lordship made it clear that he did not approve of Reyes imparting religious education.

Perhaps we may pause here to comment that Messrs. Triay & Triay, acting for the Gibraltar Teachers' Association, were clearly taking up the case on behalf of Reyes and it has not been suggested that these communications were not made known to Reyes. He would therefore, as early as July or, say, August 1993, know that His Lordship the Bishop of Gibraltar did not approve of his imparting religious education and whilst His Lordship did not spell out that this lack of approval applied only to religious education to Roman Catholic students, Messrs. Triay & Triay, who had shown themselves to be familiar with the provisions of s.42(2) of the Education Ordinance, would know that such lack of approval could only be so restricted.

By August 1993, Messrs. Triay & Triay had taken the matter up with A.C.R.E. but there is before me no indication of the result of that approach. By letter dated June 20th, 1994, the President of the Gibraltar Teachers' Association took the matter up with the Personnel Manager of the Gibraltar Government, expressing the view that a co-ordinator or teacher in charge of religious education does not necessarily have to teach lessons personally and so A.C.R.E.'s approval is immaterial to consideration for a post such as Reyes applied for at Bishop Fitzgerald School. On June 30th, 1994, Reyes re-applied for the post of teacher in charge of

religious education at Bishop Fitzgerald School. He received the letter of July 5th, 1994 from the Personnel Department set out above, indicating that he would not be considered for the post because of the decision of His Lordship the Bishop.

On July 12th, 1994, the Personnel Manager replied to the letter of the Gibraltar Teachers' Association of June 20th. It is necessary to set this letter out in full:

> "When Mr. Reyes applied for the post of teacher in charge of religious education ('A' Allowance) at Bishop Fitzgerald Middle School in May 1992, he also submitted applications for the posts of Head of Humanities/Year Co-ordinator ('B' Allowance) and Year 5 Co-ordinator ('A' Allowance), both at Sacred Heart Middle School.
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> Interviews for all the above-mentioned posts were held on June 23rd, 1992, and were duly attended by Mr. Reyes. However, although the Advisory Council on Religious Education together with His Lordship the Roman Catholic Bishop of Gibraltar had withdrawn approval for Mr. Reyes to give religious instruction in February 1990, under s.42(2) of the Education Ordinance, 1974, it was too late to inform Mr Reyes that this decision still stood and consequently his application for the post of teacher in charge of religious education could not be entertained. This was therefore explained to Mr. Reyes at the interview and the Board only proceeded to interview him for the other above-mentioned posts. Regrettably, due to an oversight, it was not communicated to him in writing.
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> Your opinion that s.42(2) of the Education Ordinance does not prohibit a person becoming the co-ordinator or teacher in charge of religious education as it refers to the giving of religious instruction is not shared by this Department. The duties of the post as defined in the job description refer to the 'general professional duties of all teachers': this clearly means to teach. Furthermore, the management and development of a subject syllabus/programme is indivisible from its delivery in the classroom.
>
> Given the circumstances, until such time as the Advisory Council and His Lordship the Roman Catholic Bishop of Gibraltar revokes its decision regarding the teaching of religion by Mr. Reyes, any application submitted by him in this subject area will not be entertained."

Again, it is not suggested that the contents of this communication were not imparted to Reyes. It was thus very clear to him by about July 1994 that no application in the subject area of religious education would be entertained by the Government of Gibraltar until such time as A.C.R.E. and His Lordship the Bishop withdrew their objections. It was open to Reyes to apply for judicial review of the decision at that point in time.

Despite the above communication, on September 7th, 1994, Reyes applied for the post of Head of Religious Education at Bayside

Comprehensive School. The response of the Personnel Department was communicated in a letter dated September 14th, 1994. It is a brief letter. It reads:

> "Re: Your application dated September 7th, 1994 for the above-mentioned post.
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> I am directed to inform you that the contents of my letter dated July 5th, 1994 still stand.
>
> Given the circumstances, I regret to inform you that your above-mentioned application cannot be entertained."

On November 21st, 1994, there was a meeting of A.C.R.E. attended by the President and members of the Gibraltar Teachers' Association. Reyes's position was discussed at length and it is as a result of this meeting that Reyes says he first learnt that A.C.R.E.'s non-approval applied only to the teaching of Roman Catholic pupils. The conclusive sentence in the minutes of the meeting regarding this subject are instructive and can have left Reyes in no doubt of his position with A.C.R.E. and His Lordship the Bishop:

> "In reply to questions, it was established that it was most likely that Mr. Reyes would continue to be disallowed from giving religious instruction to Roman Catholic pupils even after regularizing his position in accordance with the Roman Catholic Church law."

A further meeting of A.C.R.E. was held on January 17th, 1995 at which Reyes, accompanied by representatives of the Gibraltar Teachers' Association, was offered an opportunity to clarify certain points of fact arising from the November meeting. There was no indication in that meeting that A.C.R.E. or His Lordship the Bishop were considering altering their decision.

On April 11th, 1995, Messrs. Triay & Triay, on behalf of the Gibraltar Teachers' Association, wrote two letters, one of which was to the Director of Education, in which they stated that it was their understanding that A.C.R.E. had approved Reyes to provide religious instruction. There seems to be no factual basis for that understanding. The Director replied that he did not consider that there was any point in discussing the matter further. The second letter, to the Attorney-General, sought confirmation that the Public Service Commission would be advised to entertain further applications by Reyes. The Attorney-General's response indicated that she disagreed with the interpretation of the Education Ordinance put forward by Messrs. Triay & Triay.

It is then that Messrs. Louis Triay & Partners, acting on behalf of Reyes, came into the picture and wrote their letter of May 5th, 1995 to the Director of Education, setting out their understanding of the law and Reyes' position and seeking confirmation that Reyes would be eligible to apply for appointment to vacancies for teachers of religious studies. That letter elicited the response of July 7th, 1995 which has given rise to this application for judicial review.

I have set out the history of the correspondence and communications in this matter at somewhat tedious length, because it is only by so doing that it becomes abundantly clear that the letter of July 7th, 1995 did not communicate a decision made as a result of Louis Triay & Partners' letter of May 5th, 1995, but was communicating a decision which had been made much earlier in time. In view of the history of this matter, Reyes could have expected no other answer than the one he received, and he received communication of a decision reached by all parties who were approached by or on his behalf at the very latest 12 months or so prior to the July 7th letter.

His Lordship the Bishop has been constant in his decision. He does not approve of Reyes's instructing or teaching children of the Roman Catholic faith. That is as far as his decision goes and is as far as it is permitted to go under s.42(2) of the Education Ordinance. It is the final word on the narrow issue. A.C.R.E.'s position has perhaps changed. In February 1992, A.C.R.E. withdrew approval for Reyes to give religious instruction to students of any denomination. At their meeting of November 21st, 1994, that non-approval was declared to apply to the teaching of Roman Catholic students only. None the less, A.C.R.E. has never communicated a withdrawal of that position. The Personnel Manager of the Gibraltar Government has been constant in his approach. Because of His Lordship's decision, supported by that of A.C.R.E., he maintains that he cannot consider Reyes for an appointment to any post involving the teaching or supervision of teaching of religious studies. The letter set out in full above and dated July 12th, 1994 states clearly and comprehensively the decision of the Personnel Department on that matter.

The position of the Director of Education was made quite clear in his letter of October 15th, 1992 and has not changed. The withdrawal of approval for Reyes to give religious instruction stands until revoked "by due process."

These decisions may have been wrong but I am not asked to decide the rightness of them in this application. What I have been called upon to decide and what I do decide, on a review of the correspondence, is that the decisions were made long before July 1995. The Director of Education's letter of July 7th, 1995 was simply stating the existing position as a result of decisions already in existence and communicated by the various parties to Reyes or those acting for him constantly from February 1990.

In this action, Reyes seeks judicial review of decisions of the Director of Education, His Excellency the Governor and the Public Service Commission. In my judgment, the decision complained of by the Director of Education was that Reyes cannot be considered for a post involving the teaching of religious education. The grounds of that decision were that it is a matter for A.C.R.E. and His Lordship the Bishop to decide, and their decision not to approve Reyes for such posts were not within the remit of

the Director of Education. This was communicated through Messrs. Triay & Triay in the particular context of Reyes' application for the post at Bishop Fitzgerald Middle School and in a general context by letters dated October 15th, 1992 and June 9th, 1993.

His Excellency the Governor and the Public Service Commission have, as I have said above, made no decisions in the matter. However, the Personnel Department of the Government has decided that no application submitted by Reyes in the subject area of religion will be entertained until such time as A.C.R.E. and His Lordship the Bishop revoke their decisions. That was communicated clearly and unambiguously to Reyes through the President of the Gibraltar Teachers' Association by letter dated July 12th, 1994.

Reyes did not apply for leave to apply for judicial review promptly or in any event within three months from the date when grounds for the application first arose. Is there good reason for extending the period within which the application should have been made?

Mr. Triay argues that this suit involves important points of construction of the Education Ordinance and that the court should not miss this opportunity to clarify the ambiguities in the Ordinance. However, this is not a case which one would expect to arise often or indeed possibly again. It is very personal to Reyes who, to my mind, can have been under no impression for several years other than that the appropriate persons and bodies were against his involvement in teaching religious studies to the children of Gibraltar. Mr. Triay cited the decision of Taylor, J., as he then was, in *R.* v. *Home Secy., ex p. Ruddock* (4) that where a case involves issues of sufficient general importance, the court will not reject the application on the ground of delay. However, the issue in that case was telephone tapping and was, indeed, of general importance. Furthermore, there was held to be good reason for delay up to a date in March 1985 and the delay for which there was no good reason was only up to July 29th, 1985.

Mr. Triay also points to the authority of *R.* v. *H.M. Customs & Excise, ex p. Eurotunnel PLC* (2) as authority for the proposition that an attempt by an applicant to resolve his problems by extra-judicial activity may amount to sensible and reasonable behaviour and give grounds for extending the period. However, it was stressed in that case that this would not always be so and depended on the facts of the particular case. In this case, the position of the Director of Education and the Personnel Manager of the Gibraltar Government were stated early on in the discussions raised by Reyes and those taking up his cause. The negotiations were really not negotiations at all but an attempt by Reyes to change decisions made by stating and re-stating his position. On the facts of this case, I do not find that the efforts by Reyes and the Gibraltar Teachers' Association provide reasonable grounds for the delays involved.

Finally, Mr. Triay argued that applications to set aside leave granted *ex parte* should be granted on the grounds of delay only very sparingly and

that the court should not take an unduly technical stance. He quoted the following passage from the judgment of Bingham, L.J., as he then was, in *R.* v. *Home Secy., ex p. Chinoy* (3) (4 Admin. L.R. at 462):

> "I would, however, wish to emphasize that the procedure to set aside is one that should be invoked very sparingly. It would be an entirely unfortunate development if the grant of leave *ex parte* were to be followed by applications to set aside *inter partes* which would then be followed, if the leave were not set aside, by a full hearing. The only purpose of such a procedure would be to increase costs and lengthen delays, both of which would be regrettable results. I stress therefore that the procedure is one to be invoked very sparingly and it is an order which the court will only grant in a very plain case. I am, however, satisfied, as I have indicated, that the court does have discretion to grant such an order if satisfied that it is a proper order in all the circumstances."

Those sentiments are worthy of repetition and should be etched on the minds of members of the Bar. However, in this case, the delays in seeking judicial review are so great and the decisions complained of have been so clearly declared for such a period of time before the action was filed that this is a most proper application.

Woolf, L.J., as he then was, had this to say in *R.* v. *Commissioner for Local Administration, ex p. Croydon London Borough Council* (1) ([1989] 1 All E.R. at 1046):

> "While in the public law field, it is essential that the courts should scrutinise with care any delay in making an application and a litigant who does delay in making an application is always at risk, the provisions of R.S.C. Ord. 53, r.4 and s.3l(6) of the Supreme Court Act 1981 are not intended to be applied in a technical manner. As long as no prejudice is caused, which is my view of the position here, the courts will not rely on those provisions to deprive a litigant who has behaved sensibly and reasonably of relief to which he is otherwise entitled."

In my judgment, to set aside leave for the delays involved in this case is not a technical application of the rules and Reyes did not behave reasonably in delaying filing the action until October 1995.

In all the circumstances, I set aside the leave and order Reyes to pay the costs of this application and in the suit.

Application allowed.
