PAYAS v. ATTORNEY-GENERAL

COURT OF APPEAL (Fieldsend, P., Huggins and Neill, JJ.A.):
September 17th, 1997

Administrative Law—judicial review—legitimate expectation—promise by Government officer may create legitimate expectation even if not enforceable as contract—since officer unable to fetter exercise of statutory powers, expectation may be limited to Government's proper consideration of action to be taken

The applicant applied for judicial review.

The applicant was the lessee of a property abutting upon a narrow lane. Planning permission was given for a three-storey house on the opposite side of the lane on the basis that the plans complied with the Building Regulations and building work commenced. The applicant became concerned that the light and ventilation to her property would be severely affected by the new house and was advised by an architect that the new building would not comply with the relevant regulations. Her solicitor attempted in vain to persuade the developer to cease work and also requested the Attorney-General to take action under the Public Health Ordinance to enforce the Regulations.

The Attorney-General, in turn, was advised that she could not halt the building works since planning permission had been given. The applicant was persuaded to submit to arbitration the question of whether there had been a breach of the Building Regulations, on the understanding that the Government would be bound by the outcome. Meanwhile, assurances were made to the applicant without the Attorney-General's knowledge, by a Government Legal Draftsman, that if the arbitration went in her favour the building permit would be withdrawn and remedial steps taken under s.49 of the Public Health Ordinance.

The arbitrator found that the building breached Part K of the Building Regulations but the Attorney-General refused to honour the assurances which had been given. The applicant applied for an order of mandamus to force the Attorney-General to take all available steps to ensure that the building was removed or altered to comply with the Regulations or, alternatively, a declaration that she was obliged to do so.

The Supreme Court (Schofield, C.J.) dismissed the application. It found that although the Government was unable to issue a notice requiring the owner of the new house to demolish or alter the property under s.49(1) of the Public Health Ordinance, since it had approved the plans for the building, under sub-s. (5) it would be open to the Attorney-General to seek an injunction to the same effect (the grant of which might

entitle the owner of the offending property to damages from the Government). However, the promise, if any, which had been made to the applicant had not given rise to a legitimate expectation that the respondent would take any action, since the agreement was not enforceable as a private law contract.

On appeal, the applicant submitted that (a) since the owner of the new property was not bound by the outcome of the arbitration, she would not have wasted time and expense on those proceedings had a Government official not promised in clear terms, on behalf of the Attorney-General, that action would be taken to ensure compliance with the Building Regulations in the event of a favourable ruling; (b) since it was possible in law to claim a benefit, on the basis of legitimate expectation, to which she had no legal right, the agreement between the parties did not have to amount to a binding contract in order to give rise to such an expectation; (c) if the Public Health Ordinance did not permit the Attorney-General to issue a notice for demolition or alteration, then she was obliged to take action by seeking an appropriate injunction; and (d) alternatively, the court should make a declaration entitling the applicant to damages for the diminution in value of her own house due to the new building.

The Attorney-General submitted in reply that (a) the Government had agreed only that the matter of compliance with the Regulations should be referred to arbitration and, in any event, it was entitled to resile from any further assurance which had been given to the applicant, since no details had been agreed and it would not amount to an enforceable private law agreement; (b) the applicant had not, therefore, been given a legitimate expectation that any remedial action would be taken following a decision in her favour by the arbitrator; and (c) any expectation which had arisen was limited to the Attorney-General's giving proper consideration to acting upon the findings of the arbitration in the public interest.

Held, allowing the appeal and making a declaration:

(1) The applicant was entitled to a declaration that the Attorney-General had given her a promise which led her to believe that everything possible would be done to enforce the Building Regulations if they were found by the arbitrator to have been breached, and that the Attorney-General had repudiated that promise. The promise was capable of giving rise to a legitimate expectation notwithstanding that not all the details of the arbitration proceedings (which were a condition of the agreement) had been worked out and despite the fact that the agreement did not constitute an enforceable contract at private law (page 164, lines 12–40; page 168, lines 33–44; page 169, lines 40–45; page 170, lines 33–41).

(2) However, since a public officer could not by a representation fetter the exercise of the Government's powers, and since the Attorney-General was obliged, in deciding what course of action to take, to consider the public interest—including the extent of the breach of the Regulations, the likelihood of success in obtaining an injunction and the possible award of

damages to the building's owner—the applicant could legitimately expect only that the Attorney-General would give proper consideration to what action, if any, should be taken. Accordingly, the declaration would be made in these terms (page 164, line 41 – page 165, line 33; page 171, line 25 – page 172, line 3; Huggins, J.A. dissenting as to the scope of the declaration, page 167, lines 3–5; page 169, line 39 – page 170, line 3).

Cases cited:
(1) *Att.-Gen. (Hong Kong)* v. *Ng Yuen Shiu*, [1983] 2 A.C. 629; [1983] 2 All E.R. 346.
(2) *Council of Civil Service Unions* v. *Minister for Civil Service*, [1985] A.C. 374; [1984] 3 All E.R. 935.
(3) *Schmidt* v. *Home Secy.*, [1969] 2 Ch. 149; [1969] 1 All E.R. 904, considered.

Legislation construed:
Public Health Ordinance (1984 Edition), s.49: The relevant terms of this section are set out at page 168, lines 5–32.

C.A. Gomez for the appellant;
H.K. Budhrani for the respondent.

FIELDSEND, P.: The appellant is the holder of a long lease of a dwelling house at 53 New Passage, where she has lived since her birth over 60 years ago. The building of three storeys has windows of habitable rooms in its wall abutting on New Passage, a lane $2\frac{1}{2}$ metres in width. On the other side of New Passage, at No. 30, there had stood for many years a single-storey house also abutting on the lane.

Planning permission was granted for the demolition of the old building on No. 30 and the erection of a three-storey building abutting on New Passage. When work started on this building the appellant became very concerned that the view from and the light to her property would be severely affected. She consulted an architect who advised that the new building would not comply with Part K of the Building Regulations and she engaged a solicitor to take the matter up with the Development and Planning Commission and the Attorney-General's Chambers to seek means of stopping work which did not comply with the Regulations.

Mr. Gomez, on her behalf, attempted to persuade the respondent to take action to halt the building work, but without success. He met with long delays from the respondent's office and eventually started proceedings in the magistrates' court, whilst the appellant herself explored other avenues in the Government. On December 12th, 1995 the respondent by letter advised the appellant to refrain from taking such actions as this might well end up creating confusion by involving more individuals and Government departments than necessary at that stage. It seems that the respondent was advised that the planning permission for the new building

had been granted in accordance with the Building Regulations and that, accordingly, the respondent could not halt the building operations.

By March 1996 Mr. Gomez was led to believe that the issue of whether the building would contravene the Regulations should be put to an expert for final determination, and by April 3rd, 1996 suggestions for putting the issue to an arbitrator were made. Ms. Keohane for the respondent confirmed on April 9th that the developer of the building had been advised of the decision to refer the matter to arbitration and of the problems it would create for him if he continued to build. She added that she did not have the power to prevent the building work within the planning consent but repeated that she had told him of the problems he would be making for himself if he continued to build.

In negotiations between the parties it had been discussed what could be done if the arbitration were to go in the appellant's favour, and the following appears in Mr. Gomez's letter of April 11th, 1996:

> "If, as expected, the arbitrator determines that the works infringe the Building Regulations, the Government will take action pursuant to s.49 of the Public Health Ordinance to make sure that the law is enforced and the illegal works demolished."

That this represented what the parties had accepted would happen if the arbitration went in her favour is clear from a letter also of April 11th from Ms. Keohane to the appellant in which she said: "I did my best to reassure you that the Government will honour the obligation it has entered into to be bound by the outcome of the arbitration and to enforce the law as it is found to be by the arbitrator."

Apparently the appellant's personal reply to this letter gave Ms. Keohane some concern, for she wrote to Mr. Gomez on April 13th seeking clarification. An important passage in this letter is as follows:

> "I understand that your client's concern is that whilst I have already given a commitment that if the arbitrator were to conclude that the Development and Planning Commission was wrong in its interpretation of the Building Regulations and that as a result the building permit in respect of 30 New Passage should have to be withdrawn, the Government would proceed under s.49 of the Ordinance. However, as I see it, the individual concerned would have an opportunity to put his case to the court and I can see it might be that the court would decide that the building should not be demolished. I understand from your client that your view of the law is different. Perhaps you might like to put to me the basis for a different position with which hopefully I can agree."

On April 18th, Mr. Gomez replied confirming that it was the appellant's intention that the matter should proceed to arbitration.

The issue in the appeal is whether the appellant is entitled to relief by reason of the respondent's refusal to acknowledge an obligation to take action to ensure that the building being erected at 30 New Passage

complies with the Building Regulations. There has now been an arbitration on the issue of whether the building as planned does comply with the Regulations. This has decided that there should be a distance of 2 metres between the outer wall of the building and the centre line of New Passage, but that this distance is only $1\frac{1}{4}$ metres. The building therefore does not comply with the Regulations.

The ground upon which relief is sought is that the Government, by its promise that it would take action to ensure that the law was complied with, led the appellant to the legitimate expectation that if the arbitration went in her favour it would take action under the Public Health Ordinance to ensure compliance. The first main issue, therefore, is whether any such promise was made and is still binding. That the promise was made is apparent particularly from Ms. Keohane's letter of April 11th quoted above. There are subsequent letters which bear this out, notably that of April 13th.

Mr. Budhrani argues strenuously that the agreement to arbitrate, the details to be settled and the respondent's promise to take action if the arbitration went in the appellant's favour must be treated as one, and that until all the details were settled the respondent was entitled to resile from the promise. I cannot accept that argument. As Mr. Gomez pointed out, the whole reason for arbitration was to provide a starting point for the implementation of the promise. Without the promise there would have been no purpose in having an arbitration. I cannot accept Mr. Budhrani's argument that the fact that there were still some details to be agreed in regard to the arbitration meant that the respondent's promise could be retracted at any stage until the final details of the arbitration were agreed.

It is important to stress that the appellant is not relying on the law of contract for her claim that the respondent is bound by the promise given. The appellant relies upon the serious promise of a senior Government officer which raised in her a legitimate and reasonable expectation that if the arbitration went in her favour that promise would be kept. I am satisfied that the promise was made on behalf of the respondent and that the appellant was thereby led to the legitimate expectation that the respondent would at least do all that was possible to see that the building complied with the building regulations. It is clear from such cases as *Att.-Gen. for Hong Kong* v. *Ng Yuen Shiu* (1) and *Council of Civil Service Unions* v. *Minister for Civil Service* (2) that a legitimate expectation can arise and be relied upon without the need for there being a contractual agreement. It is also clear that the respondent no longer considers herself bound by the promise and has in effect repudiated it.

The question of the relief to which the appellant is entitled is a more complex problem. The appellant sought at first a mandamus to oblige the respondent to take all available and necessary steps to ensure that the offending works are removed or altered to comply with the Regulations, or alternatively a declaration that the respondent was obliged to do this.

This would, of course, require action against the owner of the offending building, who would not be bound by the arbitrator's award and who could have other defences to an action to demolish the building or part of it. Further, by reason of the provisions of s.49(5) of the Public Health Ordinance, the Government could become liable for compensation to be determined by the court, as apparently the building was built in accordance with Government-approved plans. These are both factors which, in the public interest, the respondent would have to take into account before embarking on litigation.

I would be reluctant to hold that the respondent's promise raised objectively any great expectation in the appellant other than an expectation that the respondent would give full and proper consideration to doing all that was reasonably possible to ensure that the building complied with the Building Regulations, having regard to all the circumstances, including the margin by which the building failed to comply with the Regulations. These circumstances have not been canvassed either below or in this court.

Mr. Gomez indicated in argument that he would be content with an order which might entitle the appellant to claim damages from the respondent for the repudiation of the promise. I would see any such claim as being fraught with considerable difficulty. A possible basis advanced was the diminution of the value of the appellant's property by the presence of this building which affects both its view and its light. But any losses on that basis would not be due to the found breach of the Building Regulations; it would be due to the legal presence of a three-storey building at 30 New Passage.

I feel, however, that the appellant has been very badly treated and put to considerable expense over the period from July 1995, including the expense of preparing for the arbitration that was finally held. I would be prepared to make a declaration that the respondent gave the appellant a promise that led the appellant to the legitimate expectation that she would give full and proper consideration to acting upon the arbitrator's award of October 12th, 1997 and that the respondent has repudiated that promise.

HUGGINS, J.A.: The view of the appellant has been throughout that the building works at 30 New Passage were in breach of Part K of the Building Regulations and that they were detrimental to her enjoyment of her own property by reason of interference with her right to light and with the ventilation of her rooms. At all times it was open to her to institute proceedings against her neighbour for interference with her alleged right to light but, not surprisingly, she was reluctant to embark upon such litigation if she could persuade someone else to take action which would produce the result which she desired or at least what she thought would be a sufficient remedy. She was content that the neighbouring building should be erected along the line she believed to be dictated by the

Building Regulations, and therefore she urged the Attorney-General to enforce the Regulations. There is no provision in the relevant statute giving the appellant an opportunity to object to the grant of planning permission for the building work.

The Attorney-General was advised that there had been no breach of the Regulations and was not inclined to intervene. However, the persistence of the appellant eventually persuaded her that there was an arguable point as to the application of the Regulations to the new building works. Briefly stated, the point was this: If the building works amounted to the construction of a new building, that building was too close to the appellant's house, whereas if they amounted to the re-erection of an old building there was no breach of the Regulations. Reluctantly, the Attorney-General agreed that the point in dispute should be referred to arbitration. It is the case for the appellant that the Government went further and promised that, if the award were in the appellant's favour, the Attorney-General would take available and necessary steps to ensure that the new building complied with the Regulations.

It may be said at once that unless the Attorney-General were willing to take steps to enforce the Regulations should the award be in the appellant's favour, the arbitration would be a waste of time and money; the award itself could not require the neighbouring owner to take down or alter his building and the appellant would not be materially benefited.

There was protracted correspondence between the appellant and her attorney on the one side and the Attorney-General and the Government officials on the other. There were unfortunate delays on the Government's part and not a little confusion on both sides. This was in part due to the fact that whilst the appellant's attorney was writing to the Attorney-General, the appellant herself was carrying on a correspondence with the Deputy Governor and his advisers. We need not concern ourselves with the discussions which led to the arbitration which eventually took place, although it may be mentioned that there was a draft agreement (subsequently superseded) which included a reference to what the Attorney-General would do if the award were in the appellant's favour. The effective agreement omitted that reference.

The Building Regulations were made under the Public Health Ordinance and I think it is now common ground that the provisions of Part K were designed for the health and comfort of those using the building under erection. That being so, the appellant had no *locus standi* to enforce the Regulations and it was not strictly accurate for her attorney to say in his letter of September 18th, 1995 that "she should not be put to the expense of doing the Government's work of enforcing the law"; she was hoping to benefit from someone else's enforcing the law. Equally it was wrong in his letter of September 27th, 1995 to say that the works being undertaken by the neighbour were "depriving [the appellant's] property of her zone of open space"; her "zone of open space" was not

affected by the works and it may be noted that that space was always less than would now be required for a new building of the same height on her land. Nevertheless, if a promise was made to the appellant that the Attorney-General would enforce the Regulations in this case, it may be a promise that the courts will recognize as binding.

Much time was spent in argument in reviewing the evidence on which the appellant relied to support the alleged promise but, in my view, this was not strictly relevant to the appeal. As I understand the judgment of the learned Chief Justice, he was satisfied that a promise had been made to the appellant, but he held that it was a promise which was not binding because the appellant was not given "a legitimate expectation that, having secured a determination by the arbitrator that Part K of the Regulations had been breached, the Attorney-General would take action against the owners of the works at 30 New Passage for removal or alteration of the works." However, it may be desirable to set out the evidence on which the finding of a promise was based.

There was evidence that on September 29th, 1995 a Mr. Pitto, purportedly acting on behalf of the then Attorney-General, agreed "to put the permit holder on notice of his intention to apply for an injunction unless the works were stopped." That was not, in my opinion, enough to bind the Attorney-General, nor has it been argued that it was. Shortly thereafter, a new Attorney-General took office and J.A. Hassan & Partners were instructed by the Government to advise in this matter. In a letter dated February 9th, 1996, they said they were taking further instructions but pointed out that there appeared to be little prospect that the Attorney-General would be advised to bring proceedings to enforce the Regulations.

However, in a letter dated April 11th, 1996 and addressed to the appellant personally, a Legal Draftsman on behalf of the Government wrote: "When I last spoke to you on the telephone, I did my best to reassure you that the Government will honour the obligation it has entered into to be bound by the outcome of the arbitration and to enforce the law as it is found to be by the arbitrator." In a further letter (this time to the appellant's solicitor) the draftsman, on April 13th, 1996, wrote:

> "I understand that your client's concern is that whilst I have already given a commitment that if the arbitrator were to conclude that the Development and Planning Commission was wrong in its interpretation of the Building Regulations and, as a result, the building permit in respect of 30 New Passage should have to be withdrawn, the Government would proceed under s.49 of the Ordinance. However, as I see it, the individual concerned would have an opportunity to put his case to the court and I can see it might be that the court would decide that the building should not be demolished."

As it seems to me, the reference to the decision of the court indicates that there was a misunderstanding of the provisions of s.49 of the Public Health Ordinance, and it is necessary to set out the material provisions of that section:

> "(1) If any work to which building rules are applicable contravenes any of those rules, the Government without prejudice to their right to take proceedings for a fine in respect of the contravention, may by notice require the owner either to pull down or remove the work or, if he so elects, to effect such alterations therein as may be necessary to make it comply with the rules.
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> (4) No such notice as is mentioned in subsection (1) or subsection (2) shall be given after the expiration of twelve months from the date of the completion of the work in question, and, in any case where plans were deposited, it shall not be open to the Government to give such a notice on the ground that the work contravenes any building rule or, as the case may be, does not comply with their requirements under any such section of this Ordinance as aforesaid, if the plans were passed by the Government, and if the work has been executed in accordance with the plans and of any requirement made by the Government as a condition of passing the plans.
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> (5) Nothing in this section shall affect the right of the Attorney-General, or any other person, to apply for an injunction for the removal or alteration of any work on the ground that it contravenes any rule or any enactment in this Ordinance, but if the work is one in respect of which plans were deposited and the plans were passed by the Government, and if the work has been executed in accordance with the plans, the court on granting an injunction shall have power to order the Government to pay to the owner of the work such compensation as the court thinks just, but before making any such order the court shall, in accordance with rules of court, cause the Government, if not a party to the proceedings, to be joined as a party thereto."

In the present case the plans were passed by the Government and it is not disputed that the work has been executed in accordance with the plans. Accordingly, notice could not properly be given under sub-s. (1). Correctly construed, sub-s. (5), as the Chief Justice stated in his judgment, is not an enabling provision but preserves existing rights.

The Government could not "proceed under s.49 of the Ordinance." It could, through the Attorney-General, bring an action for an injunction to enforce the Regulations and in that action the court would have a discretion as to the relief it would grant. Nevertheless, it is clear that the appellant and her advisers would understand that the Government was reiterating its promise to take steps with a view to enforcing the Regulations. Both these letters from the Draftsman appear to have been written without the knowledge of the Attorney-General.

Much of the correspondence which followed related to the arbitration itself and not to any action which would be taken should the award be in the appellant's favour. In her letter of August 12th, 1996 the Attorney-General states categorically: "There is no question of a s.49 application coming into play." This produced, on August 15th, 1996, the retort that "without recourse to s.49 the arbitration process is rendered a total nonsense, since . . . there are no other statutory or common law remedies available." For the reason I have already given I cannot agree with that reply.

That brings me to the real issue of the appeal, which appears from para. 2 of the memorandum of appeal. It arises from the following passage of the judgment of the Supreme Court:

> "Counsel have not sought to define the word 'legitimate' but in argument it seemed to be accepted that the applicant could not hold a legitimate expectation if the parties had not reached such a stage of agreement that, if they were private individuals engaged upon private dealings, they could not each hold the other to the agreement in contract. I consider that a reasonable approach, for it would seem unreasonable to hold a public official to an agreement which would not pass the test of an agreement in private law."

The learned Chief Justice did not indicate what gave him the impression that the matter was not in issue. There is no record of any concession. Indeed, it appears from the skeleton argument of counsel for the appellant in the court below that he was contending that—

> "even where a person claiming some benefit or privilege *has no legal right to it*, as a matter of private law, he may have a legitimate expectation of receiving the benefit or privilege, and, if so, the courts will protect the expectations by judicial review as a matter of public law." [Emphasis supplied.]

He cited *Council of Civil Service Unions* v. *Minister for Civil Service* (2) ([1984] 3 All E.R. at 943–944) in support. To the same effect is a passage in the opinion of the Privy Council in *Att.-Gen. of Hong Kong* v. *Ng Yuen Shiu* (1) ([1983] 2 A.C. at 637):

> "The expectations may be based upon some statement or undertaking by, or on behalf of, the public authority which has the duty of making the decision, if the authority has, through its officers, acted in a way that would make it unfair or inconsistent with good administration for him to be denied such an inquiry."

With respect, the matter was in issue, and I am satisfied that the appellant's submissions to us on the law are correct. Having regard to all that took place I think it is clear that the appellant was given to understand that steps would be taken to enforce the Regulations, and it cannot be said that her understanding was unreasonable. It would be unjust that the Government should now stand upon the absence of any binding contract.

Although this may be a pyrrhic victory for the appellant, I would therefore allow the appeal and grant a declaration that the Government was bound by the promise made by the Legal Draftsman.

NEILL, J.A.: The facts of this case are set out in the judgment of the President and I am content respectfully to adopt his account.

In his judgment the Chief Justice stated that the real issue between the parties was "whether the Attorney-General agreed to pursue an injunction and thus raised a legitimate expectation in the applicant that she would do so." The Chief Justice then referred to a number of English authorities on the doctrine of legitimate expectation and continued:

> "Did then the applicant in this case have a legitimate expectation that, having secured a determination of the arbitrator that Part K of the Building Regulations had been breached, the Attorney-General would take action against the owner of the works at 30 New Passage for removal or alterations of the works? Counsel have not sought to define the word 'legitimate' but in argument it seemed to be accepted that the applicant could not hold a legitimate expectation if the parties had not reached such a stage of agreement that, if they were private individuals engaged upon private dealings, they could not each hold the other to the agreement in contract. I consider that a reasonable approach, for it would seem unreasonable to hold a public official to an agreement which would not pass the test of an agreement in private law.
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> In my judgment, it all comes down to whether agreement was reached between Ms. Keohane and the applicant by the various letters exchanged between April 11th and 13th, 1996. It is clear that by April 11th, although the parties were resolved to go to litigation, there was still much to agree upon between them."

It appears from this passage and from the judgment as a whole that the Chief Justice was satisfied that the Attorney-General had undertaken to go to arbitration but that this undertaking was not enforceable because there was no agreement between the parties which would have amounted to a contract in private law.

It was submitted, and I accept, that there was no concession by Mrs. Payas that a legitimate expectation could not be relied upon unless the parties had reached the stage of an agreement binding in private law. Indeed, such a concession would have been at variance with my understanding of the law. A promise, if clear and unequivocal, is capable of giving rise to a legitimate expectation, even though all the ingredients of a contract are not present. I therefore propose to add a few words about the doctrine of legitimate expectation.

As far as I am aware the term "legitimate expectation" was first used in *Schmidt* v. *Home Secy.* (3) where a foreign student sought review of the decision of the Home Secretary not to grant an extension of his temporary

permit. Lord Denning, M.R. said ([1969] 2 Ch. at 170) that the question whether the student should have been granted a hearing depended on whether he had "some right or interest, or, I would add, some legitimate expectation, of which it would not be fair to deprive him without hearing what he has to say." The scope of the doctrine of legitimate or reasonable expectation is discussed at some length in de Smith, Woolf & Jowell, *Judicial Review of Administrative Action*, 5th ed., paras. 8–046 and 8–048, at 421:

> "The terms of the representation by the decision-maker (whether express or implied from past practice) must entitle the party to whom it is addressed to expect, legitimately, one of two things:
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> (1) that a hearing or other appropriate procedures will be afforded before the decision is made; or
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> (2) that a benefit of a substantive nature will be granted or, if the person is already in receipt of the benefit, that it will be continued and not be substantially varied.
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> In either of the above cases the substantive benefit or advantage may not in the end be granted. All that is required at this stage is that the opportunity be given to participate in the decision about whether or not it should be granted (or not withdrawn or varied). However, in the second case (relating to the expectation of a benefit), the law may sometimes go further and require the expectation to be fulfilled by the actual grant of what was promised."

It is important to bear in mind that the doctrine of legitimate expectation, particularly in relation to what are sometimes termed substantive legitimate expectations, is still in the stage of development in English law. But at the present time I think it can be safely asserted that as a general rule a person or body entrusted with discretionary powers for the public benefit cannot by a promise or representation fetter the exercise of those powers, and that the promisee's or representee's legitimate expectations have to be construed accordingly.

In the context of the present case, therefore, I am satisfied that, although a promise was given on behalf of the Attorney-General, the legitimate expectation of Mrs. Payas was limited to an expectation that if the arbitration resulted in a ruling in her favour the Attorney-General would give proper consideration to what action should then be taken in the public interest. The factors to be taken into account would include the importance of ensuring compliance with Building Regulations but also the extent of the breach found by the arbitrator and the probability of proceedings for an injunction being successful. In my view, Mrs. Payas could not have had a legitimate expectation that enforcement proceedings would be brought by the Attorney-General regardless of other considerations.

In these circumstances, I consider that Mrs. Payas is entitled to the grant of a declaration, which is one of the remedies available in judicial

review proceedings, but that it should be in a limited form on the lines I have suggested. The precise terms of the declaration can perhaps be agreed between counsel.

Appeal allowed.
