[HOUSE OF LORDS]

CASWELL AND ANOTHER . . . . . APPELLANTS

AND

DAIRY PRODUCE QUOTA TRIBUNAL FOR ENGLAND AND WALES . . . . . RESPONDENT

[On appeal from REGINA v. DAIRY PRODUCE QUOTA TRIBUNAL FOR ENGLAND AND WALES, *Ex parte* CASWELL AND ANOTHER]

1990 March 26, 27; May 17

Lord Bridge of Harwich, Lord Griffiths, Lord Ackner, Lord Goff of Chieveley and Lord Lowry

Judicial Review—Time bar—Delay—Application outside three month period—Leave to apply granted—Merits of application in applicants' favour—Whether undue delay—Whether such delay detrimental to good administration—Whether relief to be witheld—Supreme Court Act 1981 (c. 54), s. 31(6)(7)—R.S.C., Ord. 53, r. 4

The applicants, having failed to qualify for a wholesale quota in respect of milk production, claimed relief under the exceptional hardship provisions set out in the Dairy Produce Quotas Regulations 1984. In February 1985 the Dairy Produce Quota Tribunal, on their construction of the Regulations, dismissed the claim. Initially unaware of a remedy, the applicants took no step to challenge the tribunal's decision until 1987 when they applied for and obtained ex parte leave to move for judicial review. On the hearing of the substantive application the applicants conceded before the judge that there had been "undue delay" within the meaning of section 31(6) of the Supreme Court Act 1981[1] and R.S.C., Ord. 53, r. 4 (1)[2] but they resisted an assertion by the tribunal that since there had been a number of other unsuccessful applications to which the same provisions applied, the grant of relief would be detrimental to good administration. The judge held that the tribunal had erred in their construction of the Regulations but, accepting the tribunal's evidence, he declined to grant relief. The Court of Appeal dismissed the applicants' appeal.

On appeal by the applicants:—

Held, dismissing the appeal, (1) that the words "an application for judicial review," in section 31(6) and (7) of the Supreme Court Act 1981 were to be read as referring, where appropriate, to an application for leave to apply for judicial review; and that the effect of R.S.C., Ord. 53, r. 4 was to limit the time for making such an application so that it was made promptly and in any event within three months; but that notwithstanding the lateness of the application the court could grant leave to apply, by extending the time, where the court thought that there was good reason to exercise the power; that, furthermore, the combined effect of section 31(7) of the Act of 1981 and of Ord. 53, r. 4(1) was that whenever the application was not

[1] Supreme Court Act 1981, s. 31(6)(7): see post, p. 745C–D.
[2] R.S.C., Ord. 53, r. 4: see post, pp. 744H—745B.

made promptly and in any event within three months from the relevant date the delay was regarded as undue delay within section 31(6); and that, even if the court considered that there was a good reason for the delay, it might still refuse leave, or if leave had been granted, refuse substantive relief, where in the court's opinion the granting of such relief was likely to cause hardship or prejudice, within section 31(6), or would be detrimental to good administration independently of hardship or prejudice (post, pp. 746G—747C).

Reg. v. Stratford-on-Avon District Council, Ex parte Jackson [1985] 1 W.L.R. 1319, C.A. applied.

(2) That, without attempting to formulate any precise definition or description of detriment to good administration, in the present context, it was in the interest of good administration to have a regular flow of consistent decisions, made and published with reasonable dispatch and for citizens to know their position so that they could regulate their affairs; and that, accordingly, since the court was concerned with a decision to allocate part of a finite amount of quota, and with circumstances in which a re-opening of the decision would lead to other applications to re-open similar decisions which, if successful, would lead to re-opening the allocation of quota over a number of years, it was plain that to grant the applicants the relief sought, after the lapse of time which had occurred, would be detrimental to good administration (post, pp. 749E—750B).

Decision of the Court of Appeal [1989] 1 W.L.R. 1089; [1989] 3 All E.R. 205 affirmed.

The following cases are referred to in the opinion of Lord Goff of Chieveley:

O'Reilly v. Mackman [1983] 2 A.C. 237; [1982] 3 W.L.R. 1096; [1982] 3 All E.R. 1124, H.L.(E.)

Reg. v. Stratford-on-Avon District Council, Ex parte Jackson [1985] 1 W.L.R. 1319; [1985] 3 All E.R. 769, C.A.

The following additional case was cited in argument:

De Souza v. Automobile Association [1986] I.C.R. 514, C.A.

Reg. v. Dairy Produce Quota Tribunal for England and Wales, Ex parte Burrows (unreported), 16 February 1988, Henry J.

Reg. v. Dairy Produce Quota Tribunal for England and Wales, Ex parte Dimlow Farms (unreported), 18 May 1987, D.C.

Reg. v. Dairy Produce Quota Tribunal for England and Wales, Ex parte Hood (unreported), 3 October 1989, Pill J.

Reg. v. Dairy Produce Quota Tribunal for England and Wales, Ex parte Lifely (unreported), 29 October 1986, Webster J.

APPEAL from the Court of Appeal.

This was an appeal from an order of the Court of Appeal (Kerr, Lloyd and Butler-Sloss L.JJ.) [1989] 1 W.L.R. 1089 dated 26 May 1989, by leave of the court, dismissing an appeal by the applicants Albert Raymond Caswell and Eirlys Edwina Caswell (trading as Mr. A. R. and Mrs. E. E. Caswell), and upholding an order of Popplewell J. dated 25 November 1988. On the applicants' motion the judge declared that in determining an exceptional hardship claim pursuant to the Dairy Produce

Quota Regulations 1984 (S.I. 1984 No. 1047) the Dairy Produce Quota Tribunal for England and Wales had erred in construing paragraph 17(3) of Schedule 2 of the Regulations but refused the substantive relief. The applicants had sought certiorari to quash the tribunal's decision and further or alternatively, a direction under R.S.C., Ord. 53, r. 9(4) requiring the tribunal to reconsider the applicants' application for wholesale quota on the grounds of exceptional hardship and reach a decision in accordance with the findings of the court. The applicants had also sought mandamus requiring the tribunal to reconsider the applicants' application and arrive at a final determination. The judge and the Court of Appeal refused relief, in the exercise of the discretion conferred by section 31(6) of the Supreme Court Act 1981, on the ground that there had been undue delay on the part of the applicants in making an application for judicial review and that the granting of the substantive relief sought would be detrimental to good administration.

The facts are stated in the opinion of Lord Goff of Chieveley.

Richard Gordon and *Helen Rogers* for the applicants. Historically, in 1976, for creating the modern remedy of judicial review, the Law Commission made far reaching recommendations (Law Com. No. 73 Cmnd. 6407). By paragraph 50 of its report it recommended that on an application for judicial review relief should not be refused by the court solely on the ground that there was delay in making the application unless the court considered that "granting of the relief would cause substantial prejudice or hardship to any person or would be detrimental to good administration. . . ." As a consequence of that report R.S.C., Ord. 53 was amended in 1977. But the Order contained an express time limit of three months for certiorari instead of the former six months. In 1980 the order was further amended. The provisions were, at that stage, applied to "an application for judicial review:" see rule 4. All public law remedies became subject to a three months time limit with a discretion in the court to extend time. However, section 31(6) of the Supreme Court Act 1981 made no exception for certiorari. There was no amendment to Order 53 when the Act of 1981 was enacted. Therefore three months limitation continued to apply under that Order. See *Wade's Administrative Law*, 6th ed. (1988), p. 674. The Administration of Justice Bill 1985 contained clause 43 which would have repealed section 31(6) of the Act of 1981. But that clause was abandoned.

In *Reg. v. Stratford-on-Avon District Council, Ex parte Jackson* [1985] 1 W.L.R. 1319 the Court of Appeal held that the words "an application for judicial review" in Order 53 meant "an application for leave" and not the substantive application. The Order was amended to reflect that interpretation. Accordingly, Ord. 53, r. 4(1), in the present version, applies to applications "for leave to apply" for judicial review. It further provides that such an application should be made within three months of the events giving rise to the application. That period can be extended if the court considers that there is a good reason for an extension. The purpose of the time limit would appear to be to eliminate unmeritorious applications. Ord. 53, r. 5 deals with the procedure

A subsequent to grant of leave. Under rule 5(5) the motion for hearing has to be made within 14 days of the grant of leave.

Section 31 of the Act of 1981 contains two elements: (i) the court has to find that the delay is "undue delay" and that the grant of relief will be detrimental to good administration before the court's discretion to refuse relief can be exercised against an applicant on the ground of delay; (ii) a discretion which then operates to preclude the grant of B relief. Thus, the provisions with regard to delay are not intended to operate in a technical or oppressive manner. They are not intended to be utilised as a means of disciplining particular applicants but are intended to relate to excessive delay in all the circumstances. The reasoning in *Reg. v. Stratford-on-Avon District Council, Ex parte Jackson* [1985] 1 W.L.R. 1319 suggests that Order 53 should be used to construe C statutory provisions in section 31(6) of the Act of 1981. That proposition cannot be right and that case, therefore, is wrongly decided. On that construction of the section there was no statutory reason for the court to refuse relief to the applicants. The failure on the applicants' part to make the application for leave before 15 October 1987 did not constitute an excessive delay. Furthermore, Order 53 is a totally separate rule from section 31 of the Act of 1981. The Order only applies at the stage for D leave to apply for judicial review but the section on the other hand is not applicable at that stage.

Even if there was, here, undue delay, in order to find detriment to good administration the court has to be satisfied that there is evidence of detriment. It cannot be inferred from mere passage of time. If substantial hardship or substantial prejudice is relied upon it is only necessary for E the court to be satisfied of likelihood. But the test for detriment to good administration is higher. The court has to find that there would be such detriment. It is a stringent test. In considering the weight to be attached to the evidence of detriment the court is entitled to take into account both the very late stage at which the issue was raised and the respondent's approach in similar cases. The court has also to be satisfied that there would be detriment, that is to say, adverse effect, damage or F prejudice. The detriment should be to good administration and not to administrators. This involves considering whether the public interest would suffer, not merely whether administrators would be inconvenienced. The detriment should flow from the grant of relief to the particular applicant and not from the grant of relief to other potential applicants. The detriment relied on here is that other farmers would be encouraged to make applications for judicial review relying on the same substantive G point and that this would involve the administrative inconvenience of re-opening quota for each year since 1984–85. But there is insufficient evidence that there would be a significant number of such claims and all claimants would not necessarily be given leave. Such problems as might arise would arise from the obtaining of leave and/or the granting of relief in future cases and not from the grant of relief to the present H applicants. [Reference was made to *O'Reilly v. Mackman* [1983] 2 A.C. 237.]

Even if the court finds both undue delay and detriment to good administration from the granting of relief a discretion remains and should be exercised in the applicants' favour.

George Pulman Q.C. for the tribunal.

[LORD BRIDGE OF HARWICH. Their Lordships would like you to address them on the issue of detriment to good administration only.]

On the affidavit evidence and from the surrounding circumstances of the case the judge's conclusion was justified that, if the applicants were to succeed in their application, there will be detriment to good administration. There has been, here, substantial delay. The number of farmers who were refused milk quota on the same or similar grounds as the present applicants were considerable. The amount of quota is not unlimited. Therefore, late applications cause considerable administrative difficulties in that substantial investigation into the matter will be required and hearings which took place almost five years ago will have to be re-opened. That will involve repayment of super levy for years dating back to 1984 involving re-assessment of quota. While it is true that the tribunal have adequate quota in reserve for the present applicants, further allocation of quota can only be made at the expense of all other producers. These matters will inevitably effect third parties who are not going to be before the court. These practical difficulties will arise because of undue delay on the applicants' part. [Reference was made to *De Souza v. Automobile Association* [1986] I.C.R. 514.] The weight a judge attaches to a consideration in the exercise of his discretion is not capable of challenge in the higher courts.

Gordon in reply. In *Reg. v. Dairy Produce Quota Tribunal for England and Wales, Ex parte Lifely* (unreported), 29 October 1986, *Reg. v. Dairy Produce Quota Tribunal for England and Wales, Ex parte Dimlow Farms* (unreported), 18 May 1987, D.C. and *Reg. v. Dairy Produce Quota Tribunal for England and Wales, Ex parte Burrows* (unreported), 16 February 1988, applications were allowed and no point on delay was taken. In *Reg. v. Dairy Produce Quota Tribunal for England and Wales, Ex parte Hood* (unreported), 3 October 1989, Pill J. also allowed applications.

Their Lordships took time for consideration.

17 May. LORD BRIDGE OF HARWICH. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Goff of Chieveley. I agree with it and for the reasons he gives I would dismiss the appeal.

LORD GRIFFITHS. My Lords, I have had the advantage of reading in draft the speech prepared by my noble and learned friend, Lord Goff of Chieveley. I agree with it and, for the reasons he gives, I would dismiss this appeal.

LORD ACKNER. My Lords, I agree that, for the reasons given by my noble and learned friend, Lord Goff of Chieveley, this appeal be dismissed.

LORD GOFF OF CHIEVELEY. My Lords, there is before your Lordships' House an appeal from a decision of the Court of Appeal

dated 26 May 1989, by which they dismissed an appeal from a decision of Popplewell J. dated 25 November 1988 refusing the appellants substantive relief by way of judicial review on the ground that there had been undue delay on the part of the appellants and that, if substantive relief were granted, there would be detriment to good administration.

The matter has arisen as follows. The appellants are dairy farmers, who farm in partnership two farms in Dyfed, called Berthlwyd and Pantdwfn. They sell milk wholesale to the Milk Marketing Board. The present case is concerned only with Pantdwfn. As from 1 April 1984, the sale of milk wholesale became subject to a "wholesale quota" allocated to each milk producer under the Dairy Produce Quotas Regulations 1984 (1984 S.I. No. 1047) ("the Regulations"), which were made to give effect to E.E.C. Regulations (Council Regulation (E.E.C.) No. 856/84 (Official Journal No. L. 90, 1 April 1984, p. 10), Council Regulation (E.E.C.) No. 857/84 (Official Journal No. L. 90, 1 April 1984, p. 13) and Commission Regulation (E.E.C.) No. 1371/84 (Official Journal No. L. 132, 18 March 1984, p. 11). Under the Regulations, milk producers became eligible to be awarded "primary wholesale quota" and "secondary wholesale quota:" see regulation 2 and paragraphs 9 and 10 of Schedule 2. The former was allocated on the basis of milk production during the reference year, which was 1983. The latter was allocated on the ground of insufficient primary wholesale quota, being based either on the fact that 1983 was an unrepresentative reference year, so enabling 1981 or 1982 to be selected in its place, or on the extent of a producer's investment for dairy farming. An exceptional hardship claim could, however, be made where (inter alia) a producer had before 2 April 1984 entered into a transaction or made an arrangement, the reasonably expected outcome of which was a wholesale delivery of dairy produce in respect of which wholesale quota was not otherwise capable of being allocated. Exceptional hardship claims were made by a significant number of milk producers, constituting about 11 per cent. of producers.

Under the Regulations, a Dairy Produce Quota Tribunal ("D.P.Q.T.") was established: regulation 6. D.P.Q.T. adjudicated on applications for primary and secondary wholesale dairy produce quotas (on appeal from local panels), and it had sole jurisdiction over exceptional hardship claims. It is still in being, though it completed the bulk of its work in 1984 and 1985.

The appellants were allocated primary and secondary wholesale quotas in respect of Berthlwyd. However, there was no milk production at Pantdwfn during the reference year (1983) or in earlier years, and so wholesale quota could only be awarded in respect of Pantdwfn on the basis of exceptional hardship. The appellants therefore made a claim on that basis, which was determined by D.P.Q.T. in February 1985. At the hearing before the tribunal, the appellants were asked how many cows they would be able to milk at the end of March 1985 (the end of the first quota year). Milking had not then commenced, but the appellants estimated that by the end of March 1985 they would be able to milk about 70 cows. The chairman of the tribunal then indicated that quota would be awarded only for that number on the basis of exceptional

hardship, although the housing and facilities at Pantdwfn could carry a dairy herd of 150 cows. He also indicated to the appellants that there was a possibility of making a further application (an indication which proved to be incorrect).

The decision of D.P.Q.T. was posted to the appellants on 20 February 1985. It determined the quantity of dairy produce justified by the appellants' claim for wholesale quota in respect of Pantdwfn on the ground of exceptional hardship as 318,500 litres per annum, being the expected produce from 70 dairy cows at a specified average yield. The appellants then consulted Mr. Goronwy Evans, a local non-legal expert in milk marketing matters. He advised them that there was nothing they could do at that time. They then consulted the European Commission, from which they received a reply in very general terms. It was not until May 1987 that they first became aware of the remedy of judicial review, as the result of an article in the "Farming Press." A local solicitor was then consulted. He frankly admitted that he knew nothing about judicial review, but promptly referred the appellants to their present solicitors. Within a week, they submitted an application for legal aid; it was not however until 5 October 1987, after considerable correspondence, that legal aid was granted to the appellants. Within two days the appellants attended a conference with counsel, who forthwith settled the necessary documents for an application for leave to apply for judicial review, which were engrossed on 15 October 1987. The respondents to the application, D.P.Q.T., were notified on 19 October. On 21 October Mann J. granted the appellants leave to apply, observing however that the appellants would have to deal with the matter of delay at the hearing.

The application came on for hearing before Popplewell J. on 23 November 1988. After a hearing lasting half a day, he dealt with the substantive issue in an ex tempore judgment in which, after reviewing the relevant Regulations, he concluded that D.P.Q.T. had erred in law in making an award based upon the limited number of cows which the appellants would have on Pantdwfn farm at the end of March 1985, without regard to the future. There has been no appeal from that decision. Popplewell J. then heard argument on the question of delay. On 25 November he delivered a second judgment in which he held that, by reason of the delay which had occurred, no order of mandamus or certiorari should be made, and that the relief granted should be limited to a declaration giving effect to his interpretation of the Regulations and stating that D.P.Q.T. had erred in law. The appellants then appealed against the judge's refusal of substantive relief. On 26 May 1989 the Court of Appeal [1989] 1 W.L.R. 1089 dismissed their appeal, the sole judgment being delivered by Lloyd L.J., with whom Kerr and Butler-Sloss L.JJ. agreed. The appellants now appeal to their Lordships' House, with leave of the Court of Appeal.

I turn first to the relevant legislative provisions relating to delay in matters of judicial review. These are to be found in R.S.C., Ord. 53, r. 4, and in section 31 of the Supreme Court Act 1981. Ord. 53, r. 4, provides as follows:

A "(1) 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. (2) Where the relief sought is an order of certiorari in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first B arose shall be taken to be the date of that judgment, order, conviction or proceeding. (3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made."

C Section 31 of the Act of 1981 provides (so far as relevant) as follows:

"(6) Where the High Court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant—(*a*) leave for the making of the application, or (*b*) any relief sought on the application, if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or D would be detrimental to good administration. (7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made."

When Order 53 was redrawn in 1977, rule 4(1) then provided that, E where there had been undue delay in making an application for judicial review, the court might refuse to grant leave for the making of the application, or any relief sought on the application:

"if, in the opinion of the court, the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good F administration."

Rule 4(2) then provided that, for an order of certiorari to remove any proceeding for the purpose of quashing it, the relevant period for the purpose of paragraph (1) was three months after the date of the relevant proceeding. In 1980, however, that rule was replaced by the present rule, save only that rule 4(1) referred to "An application for judicial G review . . . " Following critical comment by the Court of Appeal in *Reg. v. Stratford-on-Avon District Council, Ex parte Jackson* [1985] 1 W.L.R. 1319, in which it was held that those words must be read as referring to an application for leave to apply for judicial review, the rule was amended to give express effect to that interpretation. Despite the change in Ord. 53, r. 4, made in 1980, section 31(6) of the Supreme Court Act 1981 mirrored the old rule 4, which had by then been H replaced. In 1985, clause 43 of the Administration of Justice Bill of that year contained a provision which would have repealed section 31(6) of the Act of 1981; but the clause was abandoned for other reasons, and the proposed repeal fell with it.

In the result, the courts have been left with the task of giving effect to two provisions relating to delay, which at first sight are not easy to reconcile. First, in Ord. 53, r. 4(1), undue delay is defined, whereas in section 31(6) it is not. Second, rule 4(1) applies only to applications for leave to apply for judicial review, whereas section 31(6) applies both to applications for leave to apply and to applications for substantive relief. Third, rule 4(1) looks to the existence of good reason for extending the specified period, whereas section 31(6) looks to certain effects of delay as grounds for refusing leave, or substantive relief, as the case may be. A further twist is provided by the fact that rule 4(1) and (2) are expressed to be without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made; and that section 31(6) is expressed to be without prejudice to any enactment or rule of court which had that effect. These two provisions were said by Lloyd L.J., in the Court of Appeal, to produce a circulus inextricabilis: [1989] 1 W.L.R. 1089, 1094F.

The relationship between Ord. 53, r. 4, and section 31(6) was considered by the Court of Appeal in *Reg. v. Stratford-on Avon District Council, Ex parte Jackson* [1985] 1 W.L.R. 1319 (to which I have already referred) with particular reference to the meaning of the expression "undue delay." It was there submitted that, where good reason had been held to exist for the failure to act promptly as required by Ord. 53, r. 4(1), and the time for applying for leave had therefore been extended, the effect of section 31(7) was that in such circumstances there was no power to refuse either leave to apply or substantive relief under section 31(6) on the ground of undue delay, because an extension of time under Ord. 53, r. 4, itself negatives the existence of undue delay. That submission was rejected by the Court of Appeal. Ackner L.J., who delivered the judgment of the court, said, at p. 1325:

> "This is not an easy point to resolve, but we have concluded that whenever there is a failure to act promptly or within three months there is 'undue delay.' Accordingly, even though the court may be satisfied in the light of all the circumstances, including the particular position of the applicant, that there is good reason for that failure, nevertheless the delay, viewed objectively, remains 'undue delay.' The court therefore still retains a discretion to refuse to grant leave for the making of the application or the relief sought on the substantive application on the grounds of undue delay if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration."

With this conclusion, I respectfully agree. First, when section 31(6) and (7) refer to "an application for judicial review," those words must be read as referring, where appropriate, to an application for leave to apply for judicial review. Next, as I read rule 4(1), the effect of *the rule* is to limit the time within which an application for leave to apply for judicial review may be made in accordance with its terms, i.e. promptly and in any event within three months. The court has however power to grant leave to apply despite the fact that an application is late, if it

considers that there is good reason to exercise that power; this it does by extending the period. This, as I understand it, is the reasoning upon which the Court of Appeal reached its conclusion in *Reg. v. Stratford-on-Avon District Council, Ex parte Jackson*. Furthermore, the combined effect of section 31(7) and of rule 4(1) is that there is undue delay for the purposes of section 31(6) whenever the application for leave to apply is not made promptly and in any event within three months from the relevant date.

It follows that, when an application for leave to apply is not made promptly and in any event within three months, the court may refuse leave on the ground of delay unless it considers that there is good reason for extending the period; but, even if it considers that there is such good reason, it may still refuse leave (or, where leave has been granted, substantive relief) if in its opinion the granting of the relief sought would be likely to cause hardship or prejudice (as specified in section 31(6)) or would be detrimental to good administration. I imagine that, on an ex parte application for leave to apply before a single judge, the question most likely to be considered by him, if there has been such delay, is whether there is good reason for extending the period under rule 4(1). Questions of hardship or prejudice, or detriment, under section 31(6) are, I imagine, unlikely to arise on an ex parte application, when the necessary material would in all probability not be available to the judge. Such questions could arise on a contested application for leave to apply, as indeed they did in *Reg. v. Stratford-on-Avon District Council, Ex parte Jackson*; but even then, as in that case, it may be thought better to grant leave where there is considered to be good reason to extend the period under rule 4(1), leaving questions arising under section 31(6) to be explored in depth on the hearing of the substantive application.

In this way, I believe, sensible effect can be given to these two provisions, without doing violence to the language of either. Unlike the Court of Appeal, I do not consider that rule 4(3) and section 31(7) lead to a circulus inextricabilis, because 31(6) does not limit "the time within which an application for judicial review may be made" (the words used in rule 4(3)). Section 31(6) simply contains particular grounds for refusing leave or substantive relief, not referred to in rule 4(1), to which the court is bound to give effect, independently of any rule of court.

Accordingly, in the present case, the fact that the single judge had granted leave to the appellants to apply for judicial review despite the lapse (long before) of three months from the date when the ground for their application first arose, did not preclude the court from subsequently refusing substantive relief on the ground of undue delay in the exercise of its discretion under section 31(6). This was the approach adopted by both courts below, applying (as they were bound to do) the decision of the Court of Appeal in *Reg. v. Stratford-on-Avon District Council, Ex parte Jackson* [1985] 1 W.L.R. 1319. Before your Lordships Mr. Gordon for the appellants submitted that the principles stated in *Ex parte Jackson* were erroneous; but, for the reasons I have already given, I am unable to accept that submission.

It follows that there is no doubt that, in the present case, there was undue delay within section 31(6). No suggestion has been made that substantial hardship or substantial prejudice were likely to be caused by the grant of the relief sought. The only questions which remained on the appeal were (1) whether the Court of Appeal should reject the judge's conclusion that the grant of such relief would be detrimental to good administration; and (2) if not, whether it should interfere with the judge's exercise of his discretion to refuse such relief. The Court of Appeal decided against the appellants on both of these points.

On the question of detriment to good administration, the judge reviewed with care the evidence before him. This consisted of an affidavit sworn by Mr. Newton, who was secretary of D.P.Q.T. until September 1988, and two affidavits submitted by the appellants in answer to that affidavit, one sworn by Mr. May of the legal department of the National Farmers' Union, and the other by Mr. Collinson, a partner in the solicitors acting for the appellants. It appeared from the evidence that the essence of the quota system is that there is a finite amount of milk quota available, so that a quota given to one producer is not available to others. In fact, about 4,000 exceptional hardship appeals were heard by D.P.Q.T. Of these, about 600 were successful, additional quota being granted; so about 3,400 producers failed in their applications for additional quota on this ground. In a large number of these latter cases, the end of the final quota year was stated to be the major consideration. Next, the fact that judicial review was the remedy available to a milk producer aggrieved by a decision of D.P.Q.T. must have become well known at least after September 1985, when the first hearing of an application for judicial review in such a case received wide publicity in the dairy trade.* Consideration was given to the possibility of other producers seeking judicial review of adverse decisions of D.P.Q.T. if the appellants' application for substantive relief was successful. It was accepted that sufficient provision had been made to deal with the appellants' claim for extra quota. But, in Mr. Newton's opinion, a small but administratively substantial number of milk producers could be encouraged to make applications for judicial review relying on the same point as the appellants, or a variation of it; and that could mean re-opening the quota for the year 1984–85, and for each succeeding year. Further allocations of quota could only be made at the expense of all other producers whose quotas would have to be reduced accordingly. Mr. Collinson, in his affidavit, questioned whether other milk producers would be likely to follow the appellants' lead and seek judicial review or whether, if they did so, they would obtain leave to apply after such a long delay.

Having reviewed the evidence, the judge expressed his conclusion on this point in the following passage in his judgment:

> "It is obvious that if there are a number of applications the problem of re-opening these claims, going back now three years, is going to be very great. It arises out of events in 1985. The evidential

* *Reg. v. Dairy Produce Quota Tribunal for England and Wales, Ex parte Atkinson* (unreported), 25 September 1985, Macpherson J.

problems are self-evident, leaving aside the question of being able fairly to deal with claims now in relation to matters in 1985. I think there is likely to be a very real problem in relation to a number of cases. I do not think the number of cases is de minimis. I have concluded that the fact that hitherto there have been only these two applications is not a matter which is of very great help in determining what the effect will be of the particular decision in this case. I have come to the clearest view that there will be a detriment to good administration if this application were granted."

The judge's conclusion, on the evidence before him, that there was likely to be a very real problem in relation to a number of cases, was a finding of fact with which I can see no reason to interfere. Once that conclusion was reached, it seems to me inevitable that to grant the relief sought in the present case would cause detriment to good administration. As Lloyd L.J. pointed out in his judgment [1989] 1 W.L.R. 1089, 1099, two things emerged from the evidence with sufficient clarity: first that, if the appellants' application for substantive relief were to be successful, there would be a significant number of further applications, and second that, if a significant number of applications were granted, then all previous years back to 1984 would have to be re-opened. These facts disclose, in my opinion, precisely the type of situation which Parliament was minded to exclude by the provision in section 31(6) relating to detriment to good administration. Lord Diplock pointed out in *O'Reilly v. Mackman* [1983] 2 A.C. 237, 280–281:

> "The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision."

I do not consider that it would be wise to attempt to formulate any precise definition or description of what constitutes detriment to good administration. This is because applications for judicial review may occur in many different situations, and the need for finality may be greater in one context than in another. But it is of importance to observe that section 31(6) recognises that there is an interest in good administration independently of hardship, or prejudice to the rights of third parties, and that the harm suffered by the applicant by reason of the decision which has been impugned is a matter which can be taken into account by the court when deciding whether or not to exercise its discretion under section 31(6) to refuse the relief sought by the applicant. In asking the question whether the grant of such relief would be detrimental to good administration, the court is at that stage looking at the interest in good administration independently of matters such as these. In the present context, that interest lies essentially in a regular flow of consistent decisions, made and published with reasonable dispatch; in citizens knowing where they stand, and how they can order their affairs in the light of the relevant decision. Matters of particular importance, apart from the length of time itself, will be the extent of the

effect of the relevant decision, and the impact which would be felt if it were to be re-opened. In the present case, the court was concerned with a decision to allocate part of a finite amount of quota, and with circumstances in which a re-opening of the decision would lead to other applications to re-open similar decisions which, if successful, would lead to re-opening the allocation of quota over a number of years. To me it is plain, as it was to the judge and to the Court of Appeal, that to grant the appellants the relief they sought in the present case, after such a lapse of time had occurred, would be detrimental to good administration. It is, in my opinion, unnecessary to deal expressly with the detailed arguments advanced by Mr. Gordon on behalf of the appellants on this point. They were substantially the same as the arguments canvassed by him before the Court of Appeal, which considered and dismissed each argument seriatim. None of them, in my opinion, made any impact upon the essential matters, which I have indentified.

Finally, I can, like the Court of Appeal, see no basis for interfering with the judge's exercise of his discretion. The judge took into account the relevant factors, including in particular the financial hardship suffered by the appellants by reason of the erroneous approach adopted by D.P.Q.T., and in particular the imposition upon them of substantial superlevy in the years 1986–87 and 1987–88. He then balanced the various factors and, as he said, came down firmly against the view of the appellants. I can perceive no error here which would justify interference with the judge's conclusion.

For these reasons, I would dismiss the appeal.

LORD LOWRY. My Lords, I have had the advantage of reading in draft the speech of my noble and learned friend, Lord Goff of Chieveley. I agree with it and, for the reasons which he gives, I, too, would dismiss this appeal.

Appeal dismissed.
Legal aid taxation.

Solicitors: Dawson & Co.; Solicitor, Ministry of Agriculture, Fisheries and Food.

A. R.