Administrative Law Decisions (Australia)

QUEENSLAND CONSERVATION COUNCIL INC v XSTRATA COAL QUEENSLAND PTY LTD and Others

2007 QCA 338

Supreme Court Of Queensland -- Court Of Appeal

98 A.L.D. 483

12 October 2007 -- , delivered

CATCHWORDS:

Energy and resources - Minerals - Environmental protection legislation - Application to mine additional surface area - Condition sought requiring 100% offset of greenhouse gas emissions - (QLD) Mineral Resources Act 1989ss 265, 268, 269 - (QLD) Environmental Protection Act 1994s 223.

Practice and procedure - Natural justice - Procedural fairness - Land and Resources Tribunal informing itself - Information not relevant to matters in issue between parties to proceedings - Tribunal information directly contradicting parties evidence - Right to be heard and adduce evidence to respond to tribunal information - (QLD) Land and Resources Tribunal Act 1999s 49.

HEADNOTES:

The appellant appealed from a decision of the Land and Resources Tribunal (the tribunal) recommending the Minister for Mines and Energy grant the respondent additional surface area, under s 275 of the Mineral Resources Act 1989 (Qld) and an associated environmental authority under s 223 of the Environmental Protection Act 1994 (Qld), for development of an open-cut coal mine. The appellant claimed the mine operations would emit greenhouse gases that would contribute to global warming. While the respondent denied the extent of the harm the appellant alleged, it did not deny the connection between greenhouse gas emissions and global warming. Prior to the hearing, the tribunal became aware of two scientific papers, the 2006 "Stern Review on the Economics of Climate Change" and "Climate Change 2007: The Physical Science Basis", that doubted any connection between greenhouse gas emissions and global warming. The parties had already tendered expert witness statements and preliminary statements of contention that did not dispute this issue. The tribunal gave both parties 4 days' notice to make submissions about the papers, without specifying how it proposed to rely on them, or what concerns it had with them, in relation to the issues raised in the proceedings or the parties evidence. The day after submission were made, the tribunal decided to recommend to the minister that the respondents application for further surface area be granted, without any of the environmental conditions sought by the appellant. The recommendation was made on the basis that it could not ignore the two papers it had come across and the parties persuaded it otherwise. Had the mater proceeded to hearing, the appellant proposed to amend the particulars of its objection to the application for additional surface area by requiring that the respondent offset 10% of the gas emissions, rather than 100%. An application to amend the objection would have failed as it was under the statutory time limits. The respondent objected to his on the basic that it was made at a late stage and required it to meet a different case, so that it would need an adjournment to reformulate its case in order to respond.

Held, allowing the appeal, remitting the matter to the Land Court for rehearing ordered (McMurdo P, McKenzie J and Holmes JA concurring):

(i) The tribunal was required to not only ask the parties to make submissions about the two papers, but to tell them how it proposed to rely on them, and particularise to them the concerns that they gave rise to in relation to the case before it. The parties should have been allowed the opportunity to respond to its concerns and call further evidence to address the new issues, especially as the papers contradicted the principal that greenhouse gas emissions did contribute to global warming, a proposition that the parties and their experts had accepted and did not put in issue: at [37], [38].

(ii) Although the tribunal had power to inform itself under s 49 of the Land and Resources Tribunal Act 1999 (Qld), it could only do so while observing the rules of natural justice. These required it to give the parties before it a "real opportunity" to present arguments: at [43], [45], [46].

Public Service Board of NSW v Osmond (1986) 159 CLR 656; 63 ALR 559

Kioa v West (1985) 159 CLR 550; 62 ALR 321, followed

(iii) The appellant was allowed to amend its particulars in the manner sought as the tribunal had a wide discretion to allow amendment, and provided the amendment did no change the issues between the parties, it was allowable. The amendment sought would only require the respondent expert to recalculate their evidence, not adduce evidence going to a different issue: at [51].

Mummery v Irvings Pty Ltd (1956) 96 CLR 99; [1956] ALR 795, followed

JUDGES: McMurdo P, Holmes JA and Mackenzie J

WRITTENBY: ROBIN TRIGGE, BARRISTER