

Public Law

(STUDENT'S DETAILS)

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Question 1

Part 1

The Solar Panel Act 2019 is responsible for setting up the Solar Panels Commission (SPC) and regulating the standards by which solar panels are circulated in the UK. In this regard, SPC outlines various rules that businesses should adhere to. For example, businesses wishing to operate as solar panel installers are required to get a permit from SPC first. Accordingly, the business must also obtain a separate permit for each of the regions it operates in. Recently, SPC has refused the application of Universal Panels (UP) to get a permit for operating in the North-West on the grounds that only 20 permits per region are allowed and the limit has already been reached. The refusal can cause great loss for UP.

Under UK law, Judicial Review is utilized by the courts to ensure the functions of public law are exercised appropriately. It also ensures that the bodies that are responsible for performing functions of public law act in accordance with the law fairly and justly without abusing their powers. It is vital to remember that judicial review only focuses on the processes by which the decisions are made and particular actions are taken. In this way, judicial review is not confined only with reviewing the decisions of the public bodies. Also, judicial review is the last option that can be taken by the business when all alternative options for appeal or challenge have been used already. For example, if the status has set up a tribunal for disputes, then the decision should be taken to the tribunal. The Act does not signify any establishment of tribunal for disputes.

Various approaches can be adopted to consider whether a particular decision can be reviewed or not. The first is the “but for” test determines actual causation. If SPC would have not existed, then the law of 20 permits per region may not have existed as well, establishing the fact that the effects

on UP's business are direct results of the operations of SPC. The second is the statutory underpinning under which the government encourages the activities of an organization, as in the case of SPC. Therefore, the decision can be reviewed. The nature of the power of the body is also a relevant factor. Despite these tests, courts may choose to review the decisions¹. Courts further employ "sufficient interest test" to evaluate whether the party can make a judicial claim or not. In doing so, the merits of the challenge are evaluated to consider the standing². This matter is clearly important as it is associated with public good and economic good. Secondly, it is the right of the business to make profit, as UP can lose substantial contracts if it is not given the permit, establishing the proximity of the decision to the claimant.

Under the Act, the SPC already specified that in order to maintain high standards of the solar panels, only 20 permits per region are allowed. Also, SPC state that more than 20 permits can increase the number of solar panels in the region and therefore, ruin the views of countryside. It is not an irrational reason since SPC is responsible for maintaining highest standards possible. However, according to UP, the demands for solar panels in the North-West exceeds the supply. Therefore, it is rational for the SPC to consider the demand and supply in each region when setting the number of permits allowed. Despite this, courts consider decisions to be irrational when they are so outrageous in logic or morality that a sensible individual would have not taken the decision³. Under the procedural impropriety, judicial review exists when decisions are biased. However, there are no instances where SPC has given permits to other companies despite exceeding the limit. Therefore, a judicial review cannot be established in this case.

¹ R -v- Cobham Hall School, ex parte S [1998] ELR 39.

² R -v- Secretary of State for Foreign Affairs, ex parte World Development Movement Ltd [1995] 1 All ER 611.

Part 2

PanelsRUs (PRU) is granted a permit to conduct its business in the East Midlands recently. However, Consumer Protect (CP), which is a pressure group responsible for ensuring the consumers are receiving safe and quality goods and services only. However, CP has been receiving several complaints about the quality of the PRU's solar panels. These solar panels have been operating in the South East region for a considerable time. After substantial investigation, CP revealed that the SPC officer who was responsible for handling the application of PRU was the manager of the company until last three months. In addition, he owns many shares in the company to this date. This information raises questions on the integrity of the SPC's decisions and indicates occurrence of fraud and bias for PRU. Accordingly, it needs to be evaluated if CP can go ahead with a judicial review against SPC's decision to grant permit to PRU.

According to the statutory underpinning test, SPC exercises a public function because it is established under the government's authority with the duty to ensure the Solar Panel Act 2019 could be implemented in a timely and efficient manner. This test alone is not sufficient to establish its public function, as in one the Football Association was not considered to have public function through this test, even though it was recognized under the Football Spectators Act 1989.⁴ However, the "but for" test can be also employed to establish the legitimacy of SPC's functions. Under the consideration of monopolistic powers, SPC also has extensive or exclusive functions, which can be perceived as a relevant factor.

It is also vital for the applicant to show that the party has sufficient interest in the matter to achieve leave from the court. The sufficient interest test can be employed for establishing this. Firstly, the issue is of great importance, as it is a duty of CP to ensure that quality products are distributed

among the consumers. The rising complaints against PRU's solar panels require immediate attention of CP, which also establishes the proximity of the decision to the claimant. On the other hand, the matter has great strength because there are indications of bias in the matter. In addition, there seems no alternative remedy to resolve the issue as PRU already has the permit to conduct the business and CP cannot take any actions that goes against the permit.

Accordingly, a judicial review can be filed against the decision of SPC to grant the permit to PRU. The review can be established on the grounds of procedural impropriety. The concept is based on the notion of natural justice, which requires a public body to act fairly in all cases. This is in accordance with the Human Rights Act 1998, Article 6 of the ECHR, which makes it important for the English courts to ensure a fair and public hearing is conducted by an impartial and independent legal body within a reasonable time. Accordingly, procedural impropriety is comprised of the right to a fair hearing and the rule against bias. Considering this case, there is a probability that PRU has been granted its permit on bias grounds, as the SPC officer who handle the application owns shares in the company and was also the manager of the company. To ensure the decision is biased, the court will have to evaluate whether there is a direct interest for the parties, whether financial, proprietary, or of other nature³. In case of no direct personal interest, the court may review the case for existence of any non-direct interest. In doing so, the court questions if "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the [decision] was biased"⁴. If the judicial review concludes that the decision is biased, there are three possible remedies. One is the mandatory order

³ R v Bow Street Metropolitan and Stipendiary Magistrate, ex parte Pinochet Ugarte (1999).

⁴ Magill -v- Porter [2001] UKHL 67.

under which SPC will be asked to perform a certain action, like removing the officer from duty and re-evaluating the permit of PRU. Prohibitory or quashing orders can also be imposed.

Question 2

Article 10 of the European Convention on Human Rights grants individuals the right to have freedom of expression and information all across the globe, together with the right to hold opinions without any interferences of the public authority. Accordingly, this freedom of expression and information is subject to various restrictions under different state laws, so the right can be in accordance with the law and the necessities of a democratic society. This ensures that the right stays within the interests of the national security and public, preventing disorder and crime⁵. In this regard, while citizens have the right to freedom of expression, they are responsible to behave responsibly and comply with all the legislation of the state. Thus, an authority also has the right to restrict an individual's freedom of expression if it encourages crime, hatred, or discrimination.

Under the UK law, authorities can interfere with an individual's human rights in certain scenarios. For example, if the rights are limited, an individual can be restricted from exercising them in certain situations. Similarly, if an individual's rights clashes with the interest of the wider community, that is, the right is qualified an authority can also interfere. Article 10 is a qualified right, as it requires a balance between people's rights to ensure a fair outcome for the wider community can be attained.

The Shale Development (Fracking) Act 2020 ensures that the shale resources in the UK can be utilized and developed to provide uninterrupted power supply to the public. According to the section 2 of the Act, it is a criminal offence to criticize the processes or methods at a public

⁵ Handyside v United Kingdom (5493/72)

gathering by which fracking is conducted. This is in line with the Act's motive to ensure an uninterrupted power supply, as the criticism can be detrimental to the operations of power production and supply. Therefore, it is appropriate for the governmental agencies to ensure that the section 2 of the Act is implemented in the public gatherings.

However, Dee Martin failed to comply with this section, as she heavily criticised the process of fracking during a talk organised by the Students' Union at the University of Appletown. Dee Martin is the leader of the Environmentalists Against Fracking, which is a campaign group advocating against the process of fracking. In her talk, Dee argued that the amount of water used in the process was very detrimental for the environment, together with the potential risks of underwater contamination due to chemicals. Accordingly, Dee was arrested and will be trialed in the Appletown Crown Court.

References

1. R -v- Cobham Hall School, ex parte S [1998] ELR 39.
2. R -v- Secretary of State for Foreign Affairs, ex parte World Development Movement Ltd [1995] All ER 611.
3. R v Bow Street Metropolitan and Stipendiary Magistrate, ex parte Pinochet Ugarte (1999).
4. Magill -v- Porter [2001] UKHL 67.
5. Handyside v United Kingdom (5493/72)