

IN THE COURT OF APPEAL

STATE OF ANTIGUA

CIVIL APPEAL NO. 2 of 1977

BETWEEN: SYDNEY URIAH PRINCE Plaintiff/Appellant

and

KARL PHILLIPPE DE JACQUES DE LA BASTIDE  
SOOKH MUNGAL SUPERSAD  
GEORGE CALVIN HAMILTON THOMAS Defendants/  
Respondents

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice  
The Honourable Mr. Justice St. Bernard  
The Honourable Mr. Justice Peterkin

Appearances: Sir Lionel Luckoo, S.C. (Guyana)  
for Appellant, S. Christian with him.

Attorney-General for Respondents,  
C. Richards with him.

1977, June 6, 7 and 8; Jan. 6

J U D G M E N T

PETERKIN, J.A.:

This appeal flows from a Commission of Inquiry announced in the Antigua Official Gazette of 2/9/76. The Commissioners were appointed under and by virtue of the Commissions of Inquiry Act, Cap. 305.

The terms of reference were,

"to inquire into and investigate the contents of an address made on the third day of March 1976 in a Radio-Television broadcast by the Honourable Reuben Henry Harris to the citizens of the State of Antigua and Barbuda with particular reference to certain allegations therein made suggesting misconduct and

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irregularities amounting to possible dishonesty and malpractices in the conduct and administration of the finances and funds of the Public Service and of certain Statutory Authorities of the said State;

They were

"to make a full, faithful and impartial inquiry into the matters abovementioned and with all convenient speed to report fully your findings to me upon all facts relating to the matters abovementioned and any other matter connected therewith which may be brought to your notice and to submit such conclusions and observations as you see fit, making such recommendations and suggesting such remedies as you the said Commissioners may deem useful proper and/or expedient;"

Section 7 of the Act states that it shall be their duty to make a full faithful, and impartial inquiry into the matter specified in such commission, and Section 9 states that they may make such rules for their own guidance, and the conduct and management of proceedings before them, and the hours and times and places for their sittings.

The Commissioners commenced their inquiry on 3/9/76 at 10 a.m. and heard evidence. Thereafter, they sat and heard evidence except on Saturdays and Sundays. On Saturday 4th September the Appellant received a Summons from the Commission to attend and give evidence on Monday 6th September. The Appellant in obedience to the Summons attended in person. He took the oath, and then stated that he had been the minister responsible for the finances of the State of Antigua from January, 1974, to February, 1976;

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that he was one of the persons whose conduct was the subject of the inquiry or was in some way implicated or concerned in the matter under inquiry, and that he was entitled to be represented by Counsel. After answering a few questions he refused to answer any further questions, and the Chairman agreed to allow him until Thursday 9th September so that he could get Counsel to advise him. When he attended on 9th September the Chairman informed him that he would not be required to give evidence before Tuesday 14th September. On Monday 13th September, the Appellant's Counsel, Mr. Sydney Christian, appeared before the Commission, and made application that the Appellant be provided with:

- "(i) the contents of the address made by Hon. Reuben Henry Harris in a Radio-Television broadcast on 3rd March, 1976, referred to in the terms of reference of the said Commission;
- (ii) a copy of the evidence already led which relates to my conduct or which in some way implicates or concerns me in the matters under inquiry, and
- (iii) particulars of the matters on which the Commission desire that I give evidence."

The Commission after considering the application ruled that he be supplied with a copy of the address of 3rd March, 1976, and with a copy of the Statements of the witnesses who had given evidence relating to his conduct up to Friday 10th September, 1976. They did not agree to the request made at (iii) above. They required the Appellant to return on Tuesday 21st September to indicate the position he proposed to take after being advised

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by Counsel. These are the facts and circumstances as they existed up to the time of the filing of Appellant's Originating Summons dated 25/9/76. They are contained in the affidavit of the Appellant dated 25/9/76 in support of his Summons. By his Summons the Appellant sought the following relief:-

- "(i) A declaration that the proceedings of the inquiry which commenced on 3rd September, 1976 have been conducted in a manner inconsistent with the provisions of section 11 of the Commissions of Inquiry Act, Cap. 305 and all its deliberations are therefore null and void;
- (ii) A declaration that the proceedings of the Inquiry have been conducted in contravention of the principles set out in section 8 of the Constitution of Antigua in that the plaintiff has been and will continue to be unable to obtain a fair hearing and that the interests of justice have been prejudiced;
- (iii) An injunction restraining the Defendants from continuing to hold the Inquiry and to act thereunder;
- (iv) Alternatively, a declaration that the plaintiff is a person whose conduct is the subject of the inquiry and/or the plaintiff is in some way implicated or concerned in certain matters under inquiry and as such -
  - (a) was entitled to be presented either in person or by counsel throughout the whole of the inquiry, and
  - (b) is entitled to refuse to answer any questions put to him by or with the concurrence of the Defendants;

It was I think filed on 27/9/76.

/The.....

The Appellant filed two additional affidavits, one dated 13/10/76, and the other dated 21/10/76. They both related to events subsequent to 27/9/76. The affidavits alleged that on 5th October, 1976, Appellant's Counsel appeared before the Commission and made application on his behalf to recall for cross-examination Messrs Merchant, Guishard, and Henry, all of whom had given evidence on 3/9/76. He also made application to call as a witness the Hon. Reuben Henry Harris, Minister of Finance, whose address was referred to in the terms of reference of the Commission. On 6th October Counsel again appeared before the Commission and was informed by the Chairman that the Commissioners would not permit Counsel to call Mr. Harris as no useful purpose would be served in their view in requiring him to give evidence. They also informed Counsel that they would not permit the financial officers who had given evidence on 3/9/76, namely, Messrs Merchant, Guishard, and Henry to be recalled. In making his request for the recall of these three witnesses Counsel had drawn to the Commissioners attention the fact that the transcripts of evidence supplied to the Appellant did not contain their evidence in spite of the Commission having so ruled, and that the Appellant up to then was still unaware as to what allegations they had made. He then informed the Commissioners that the Appellant would decline to give evidence until his rights were determined by the High Court. After hearing further evidence the public hearing of the Commission of Inquiry was closed on 8/10/76.

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Most of the submissions and arguments addressed to the Court in this appeal have been as to the nature of this inquiry, the effect of Sections 7 and 11 of the Commissions of Inquiry Act, Cap. 305, and as to what has been termed the rules of natural justice. In short, it has been submitted on behalf of the Appellant that the conjoint effect of Sections 7 and 11 meant that the inquiry had to be conducted in accordance with the rules of natural justice; that the Respondents had failed (a) to give adequate notice of hearing, (b) to disclose the nature of the allegations made against the Appellant, and (c) to give to the Appellant an opportunity to hear the evidence and to cross-examine witnesses implicating the Appellant; and that consequently there has been a clear violation in this case of the rules of natural justice.

The Attorney-General has submitted on behalf of the Respondent as follows:-

- (i) that the function of fact finding is not judicial but inquisitorial.
- (ii) that there is a duty on the investigators to be fair, but the precise form of attaining this objective would vary according to the circumstances, and is a matter of discretion for the investigators, and no precise rules could be framed.
- (iii) that the opportunity that must be given is one to contradict or explain by the person it is intended to criticise or condemn.

Before passing on to deal with these submissions there is one aspect of this appeal which I think should be disposed of at this stage. It has been submitted on behalf of the Respondents that Section 10 of the Act prohibits an action such as this being

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taken against them because the section declares that no Commissioner shall be liable to any action or suit. The trial judge has given his opinion to the contrary, and it has not been made the subject matter of any cross appeal. I think, however, that what the section does mean is that the Commissioners are immune from any Suit or action in respect of acts done by them as Commissioners acting within their terms of reference. The author of "The Declaratory Judgment (I. Zamir) deals with this aspect at P. 159 by reference to a comment made by Denning L.J., in the case of Taylor v National Assistance Board:

"The remedy by declaration is available at the present day so as to ensure that a board or other authority set up by Parliament makes its determination in accordance with the law; and this is so, no matter whether the determinations are judicial or disciplinary, or, as here, administrative determinations."

There is in my view no doubt as to the courts power to make a declaration in circumstances such as these.

I return to the submissions earlier stated. We have heard a great deal of argument as to the precise compartment into which these proceedings fall and consequently as to the scope and extent to which the rules of natural justice apply. If I were asked I should have said administrative or investigatory, but I would like to adopt the words of Sachs L.J. in the case of *Re Pergamon Press Ltd.*, 1970, 3 A.E.R. 535, at pages 541 and 542.

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"To come to that conclusion it is, as recent decisions have shown, not necessary to label the proceedings, 'judicial', quasi-judicial', 'administrative or investigatory'; it is the characteristics of the proceedings that matter, not the precise compartment or compartments into which they fall."

What then are the characteristics of the proceedings under consideration? The Commissioners are not to decide or determine anything. They only investigate and report, along with whatever recommendations and suggestions they may add. On the other hand they have to make a report which may have wide repercussions. In their fact-finding capacity they have to produce a report which may be made public and thus be damaging to the Appellant. They may criticise or condemn, and their report may even lead to judicial proceedings. Seeing that their report may lead to such consequences, the Commissioners in my opinion owed to the Appellant what Sachs L.J. has described in the Pergamnn Press Case as "an appropriate measure of natural justice, or as it is often nowadays styled 'fair play in action.'" In short, the Commissioners must act fairly even though their inquiry may be merely investigatory or administrative. Further to this, it has been conceded that the Appellant was a person who was concerned in the matter under inquiry, and the trial judge has so declared. In accordance therefore with the provisions of Section 11 of Cap. 305 he is entitled to be represented by Counsel at the whole of the inquiry which in my opinion includes the right to cross-examine. In my view their conjoint effect means that, to use the words of Lord Denning in the case

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of Kanda v Government of Malaya, 1962 A.C., 322 at page 337,

"He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct OR contradict them."

Beyond this, I do not think that the Commissioners were subject to any other rules. Sachs L.J. has put it this way in the Pergamon Press Case at page 542,

"It is only too easy to frame a precise set of rules which may appear impeccable on paper and which may yet unduly hamper, lengthen and, indeed, perhaps even frustrate the activities of those engaged in investigating or otherwise dealing with matters that fall within their proper sphere. In each case careful regard ~~must~~ must be had to the scope of the proceedings, the source of its jurisdiction, the way in which it normally falls to be conducted and its objective."

In the light of the evidence contained in the Appellants additional affidavits of 13th October and 21st October, 1976, concerning the events of the 5th and 6th October, 1976, can it be said that the Commissioners had acted fairly in relation to the Appellant? When they refused Counsel's request to call Harris as a witness I do not think it could be said that they were acting in an unfair manner towards the Appellant. He was in my view not entitled to this. But in refusing his request to recall the three witnesses on 6th October they ought to have paid heed to Counsel's statement that the transcripts of evidence of these three witnesses had not been supplied to the Appellant as the Commission had ruled and that the Appellant was up to that time unaware of what

/allegations.....

allegations had been made by the financial officers or of what their evidence had been. The court will not inquire whether the evidence did work to his prejudice. It is sufficient that it might have done so. The Commissioners seemed to think so because they ordered that he should receive the transcripts. I should have thought that when they were informed that he had not received the transcripts that they would at least have given him some indication as to what their impressions were so as to enable him to correct them, but they did not. The hearing was brought to a close on 8/10/76 without the Appellant ever knowing what statements were made affecting him by these three witnesses. I would conclude by saying that at that date the Commissioners in my view had not acted with fairness towards the Appellant.

But the matter does not rest there. The Attorney-General has submitted that there is no evidence that any right of the Appellant as set out in his originating summons of 25/9/76 was infringed and that his affidavits in support must contain the necessary material. He argued that by 5/10/76 the Appellant had already filed his summons dated 25/9/76 and that he must stand or fall by his complaint as of that date. Counsel for the Appellant has submitted that the matter was not static; that events were moving, and that such incidents as occurred after the filing of the summons were relevant and admissible. I doubt it. In my opinion what really falls to be considered in this appeal is whether or not the Commissioners had acted in a fair manner towards the appellant up to the time of filing of his Originating

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Summons dated 25/9/76. I say so because if he did not have a cause of action at that stage he could not in my view by filing additional affidavits relating to events subsequent to that date give himself a cause of action at the time of filing of his Summons. The affidavits filed on 13/10/76 and 21/10/76 are really not supplemental affidavits in that they do not supplement anything or correct anything in the Appellant's affidavit of 25/9/76 in support of his Summons. They both relate to a cause of action arising at a date later than 25/9/76. It is necessary then to examine what the Appellant had sought, and how the Commissioners had acted in relation to the Appellant up to the date of filing of his Summons. They could not have known by merely reading the address that he was implicated. His own Counsel says so. They sat and heard evidence on 3rd September, 1976, for the first time. The financial officers gave evidence then. What did the Commissioners do? They issued a Summons to Appellant on the 4th September to attend on 6th September which was the next day on which they would sit. He attended on 6th and stated that he considered that he was in some way implicated or concerned and wished to be represented by Counsel. They warned him that he was not obliged to answer any questions which he thought might incriminate him, and agreed to allow him an adjournment to 9th September to get Counsel to advise him. He was given a further adjournment from 9th to 14th September. On 13th September Mr. Christian appeared for him before the Commission and made application that he be provided with the address of 3rd March referred to in the terms

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of reference, and with a copy of the evidence already led which related to the Appellant's conduct or which in some way implicated or concerned the Appellant. He got both. The Commissioners ruled that the Appellant be supplied with the address and with a copy of the statement of the witnesses who had given evidence relating to his conduct up to Friday 10th September, 1976. The Appellant was then asked to return on 21st September to indicate the position he proposed to take after being advised by Counsel. On 25th September the Appellant swore to the affidavit in support of his summons of the same date.

It is my opinion that the evidence shows that up to that stage the Commissioners not only had acted with complete fairness towards the Appellant, but had made it quite clear to him that they intended to act fairly. The objections taken on behalf of the Appellant concerning the conduct of the inquiry up to that stage are in my judgment premature. I am unable to see that anything which had taken place at the inquiry up to then invalidated it in any sense. Accordingly, I would dismiss this appeal.

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(M.A. Peterkin)  
JUSTICE OF APPEAL

ST. BERNARD J.A.

I have had the opportunity of reading beforehand the judgment of Peterkin J.A. and I agree with his reasons for dismissing the appeal.

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(E.L. St. Bernard)  
JUSTICE OF APPEAL

I agree.

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(Sir Maurice Davis)  
CHIEF JUSTICE