SAINT LUCIA

IN THE COURT OF APPEAL

CIV. APP. NO.14 OF 1997

BETWEEN

SIR JOHN COMPTON

Appellant

and

THE ATTORNEY-GENERAL OF SAINT LUCIA

First Respondent

MONICA JOSEPH

Second Respondent

Before:

The Hon. Mr. Dennis Byron	Chief Justice [Ag.]
The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr. Albert Redhead	Justice of Appeal

Appearances:

Mr. K. Monplaisir, Q.C. for the Appellant. Mrs. Cynthia Hinkson Oulha with him.

Dr F. Ramsahoye, SC for the Respondent, Ms Miriam Samaru, Solicitor General with him.

1998: January 26;
February 9.

JUDGMENT

REDHEAD, J.A.

The appellant, Sir John Compton was Prime Minister of St. Lucia from 1982 to 1996. In the year 1996 he demitted office and Dr. Vaughn Lewis took over as Prime Minister from him.

In 1997 there was a general election in St. Lucia as a result of which the Labour Party headed by Dr. Kenny Anthony wrested power from the party headed by Dr. Vaughn Lewis.

Dr. Kenny Anthony's Labour Party formed the new government which set up a one man Commission headed by retired

High Court Judge, Hon. Justice Monica Joseph who was appointed the sole Commissioner by the Governor General.

The terms of reference of the Commission and that which impact directly upon this appellant are as follows:

1[b]The payment out of the consolidated fund of certain sums of money to a Mr. Ausbert d'Auvergne under a Technical Co-operation Agreement signed by the then Prime Minister John Compton and an official of the ECLAC on the 24th July, 1992 in order to:

i. Determine whether any authority existed under the existing law and the established practice and procedure of the public service to permit such payments and identify any breaches thereof, which took place.

ii. Identify the person or persons who authorised, endorsed or facilitated the said payments to Mr. Ausbert d'Auvergne and establish whether the person or persons with the approval and/or knowledge of the Cabinet of Ministers or any Minister or Senior Public Official of the Government of St. Lucia. [See St. Lucia Gazette 20th September, 1992]".

The applicant challenged the suitability of the sole Commissioner to investigate matters in which he was involved as Prime Minister on the ground of bias.

He was granted leave to apply for an Order of Certiorari to quash the appointment by the Governor General of the Second named respondent as Commissioner of the inquiry.

The matter came before Farara J. on 12th November 1997 and on the 25th November 1997 the learned trial Judge gave a judgment refusing the appellant's application for a Writ of Certiorari.

The appellant now appeals to this court against the decision of the learned trial Judge.

Four grounds of appeal were filed on behalf of the appellant. They are as follows:

[1] The learned trial Judge erred in law in not finding that there is no real danger of bias or possibility of bias conscious or unconscious on the part of the Commissioner, the second named respondent herein.

[2] The learned trial Judge erred in law in applying as a basis in the exercise of his discretion that to find that the second named respondent, an experienced Judge is bias even unconsciously would be attributable to her being a vindictive person.

[3] The learned trial Judge erred in law in concluding that the applicant/appellant failed to make out a case to his [the Judge's] satisfaction so that he could exercise his discretion in the applicant/appellant's favour.

[4] The learned trial Judge wrongfully and erroneously took into account that the applicant/appellant did not vote against the second respondent's request for an extension of tenure as a Judge.

I deal first of all with ground 4 of the appeal.

The learned trial Judge at page 152 of the record wrote:

"The applicant at paragraph 9 of his affidavit merely states:

> "The application did not meet with the full concurrence of the Authority and it was denied."

It is quite obvious that the learned trial Judge by using the word "merely" did not put much reliance on what was deposed to by Sir John Compton.

Of course I readily agree much is not disclosed from that sentence. But of course if the proceedings of the Authority are supposed to be confidential one would respect that the confidentiality would be maintained throughout and therefore one

cannot expect that the affidavit of Sir John Compton would divulge more than it did.

However, at page 137 of the record the learned trial Judge said:

> "The said respondent in her response to these matters stated inter alia, that she functions one way, straight and fair as is known by all those who know her. She continued:
> Reference was made to a B.B.C. Caribbean Report at the end of that sentence by the interviewer was and I quote her extension was turned down by one OECS Prime Minister. Objection was made to objection of my service of OECS Judge by an OECS Prime Minister, but that Prime Minister was not Sir John Compton, former Prime Minister of St. Lucia. So there can be no bias so far as Sir John Compton is concerned . . . . . ."

Learned Queen's Counsel Mr. Monplaisir, complained against the admission of this evidence on the grounds that the second respondent could not have had that information first hand the proceedings being secret. The fact that this was not made on oath and it was given by another person – so it was hearsay upon hearsay which obviously influenced the learned trial Judge's findings. I agree.

I now turn to ground 1 of the appeal. Learned Senior Counsel argued that there must be confidence in the outcome of the decision making process. He stressed that if there is any suspicion of, or any real danger of bias in the Commission because of the past history, as I understand it, between the parties ie. between the Commissioner and applicant then that confidence would be destroyed.

He referred to R v Gough [1983] A.C. 646 at page 659 Lord Goff said:

> "But there is also the simple fact that bias is such an insidious thing that a person may in good faith believe he was acting impartially his mind may unconsciously be affected by bias ….in any event, there is always an overriding public interest in

> the integrity of the administration of justice, which is always associated with the statement of Lord Hewart C.J. in R v Sassex Justices ex parte McCarthy [1924] 1 K.B. 256, 259 that it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done."

As I have said in Lewis' case which is closely related to this appeal, and in my view which is stronger than the Lewis case because there was direct involvement by the appellant in the refusal of the second respondent's application for extension of her tenure of service. He was a member of the Authority and there is no admissible evidence how he voted. As deSmith Woolf and Jowell in Judicial Review of Administrative Action 5th Edition Chapter 12 at page 52, the learned authors say:

> "The rule against bias is concerned, however, not only to prevent the distorting influence of actual bias, but also to protect the decision of the integrity of the decision making process by ensuring that, however disinterested the decision-maker is in fact, the circumstances should give rise to risk of bias."

I must therefore conclude on the same reasoning as Lewis that the learned trial Judge ought to have made findings favourable to the appellant. His failure to do so led to an erroneous conclusion on the law.

Dr. Ramsahoye however took a different approach to this appeal. His argument centered basically that there was, as he said, an imposition on the judiciary.

As I understand, learned Senior Counsel, the action by the appellant challenging the ruling of the Commissioner that the appellant is not entitled as of right to legal representation before the Commission is not challengeable at this stage because it is not a final report made by the Commissioner. Learned Senior Counsel argued strenuously that this action of the appellant was premature for the following reasons:

i. The Commissioner made a ruling that the conduct of the appellant, Sir John Compton was not investigated and;

ii. having so ruled she cannot write anything adverse against the appellant without an amendment of the terms of reference.

The latter seems attractive but when one looks at the terms of reference of the Commission one has great difficulty in agreeing with this because the terms of reference specifically states:

1[b]"the payment out of the Consolidated Fund of certain sums of money to a Mr. Ausbert d'Auvergne, under a Technical Co-operation Agreement signed by the then Prime Minister John Compton and an Official of ECLAC on 24th July, 1992 in order to:

i. determine whether any authority existed under the existing law and the established practice and procedure of the public service to permit such payments and identify any breaches thereof which took place;

ii. identify the person or persons authorised, endorsed or facilitate the said payments to Mr. Ausbert d'Auvergne and establish whether the person or persons acted with the approval and/or knowledge of the Cabinet Ministers or any Minister or Senior Public Official of the Government of St. Lucia;

iii. determine whether any action may be taken by the government of St. Lucia and or any person whose act or omission facilitated such payment may be sanctioned.

Frankly, I am at a loss to understand why the Commissioner made such a statement that Sir John Compton was not under investigation.

In paragraph 3 of his affidavit Sir John Compton deposed as follows:

> "….I was Head of the Government of St. Lucia from 1964 to 1979 as Chief Minister and from 1982 to 1996 as Prime Minister" "Among the portfolios which I held during the above period was Minister of Finance".

Obviously apart from naming the appellant, he was the holder of the office of Minister of Finance at the relevant period under investigation by Commissioner and having regard to the terms of reference referred to above, I have difficulty in understanding the Commissioner's statement. Certainly if he is not investigated in my view, his office is, and there could be no difference.

I do take the view however, that the Commissioner having made that statement and having regard to her background ie. High Court Judge with a vast experience, it is difficult in my view for her to write anything adverse against the appellant. I am still faced with one difficulty having regard to the terms of reference of Commission of inquiry, how could such a statement be made which in my view would restrict her from inquiring into all the references which are placed before her.

Moreover, the above does not accord with what the Commissioner said:-

> "Sir John's conduct is not "the subject of the Inquiry and he is not entitled to be represented."

This to my mind clearly demonstrates that there is a real possibility that adverse findings can be and may be made against the appellant. He does not have to wait until these findings are made to say that he is a person identified as being probable culpable.

In my judgment, the appellant is the subject of the inquiry.

Having regard to the foregoing in my judgment, if the inquiry goes ahead against the applicant as presently constituted there is a real danger of bias.

The cross-appeal is therefore dismissed. The appeal is allowed. An order is hereby granted quashing the decision of the Commissioner not to disqualify herself in relation to those terms of reference that affect this this appellant.

There will be no order as to costs.

ALBERT REDHEAD
Justice of Appeal

I Concur.

DENNIS BYRON
Chief Justice [Ag.]

I Concur.

SATROHAN SINGH
Justice of Appeal