ANTIGUA AND BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 1 OF 1998

BETWEEN:

OBSERVER PUBLICATIONS LIMITED

Applicant/Appellant

and

[1] CAMPBELL 'MICKEY' MATTHEW
[2] THE COMMISSIONER OF POLICE
[3] THE ATTORNEY-GENERAL

Respondents

Before:

The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr.Albert Redhead	Justice of Appeal
The Hon. Mr. Albert Matthew	Justice of Appeal [Ag.]

Appearances:

Mr. Sydney Christian, Q.C., Mr. H. Lovell with him
for the Appellant
Mr. Anthony Astaphan for the Respondent

1999: April 13, 14;
May 10.

JUDGMENT

SATROHAN SINGH J.A.

I have had the advantage of reading beforehand, the judgment of my brother Redhead on the appeal with which I agree. I do not think I can usefully add anything thereto. I propose therefore to address only the issues raised in the respondent's notice. The facts and circumstances of

the matter having been adequately set out in the Redhead J.A's judgment, I do not propose to repeat them here.

THE RESPONDENT'S NOTICE

On September 1, l996 the appellant, without the requisite licence, commenced broadcasting over a telecommunication media in Antigua called Observer Radio. On the second day of the broadcast, the police arrived with a search warrant, executed same on the appellant's premises and seized various pieces of broadcasting equipment. In its motion before the High Court, the appellant prayed for a declaration that the execution of the purported search warrant on its premises was a violation of its constitutional right in relation to protection from arbitrary search and entry under Section 10 of the Constitution of Antigua and Barbuda. Benjamin J found in favour of the appellant on this issue. He found the search warrant to be invalid and ordered that it be quashed. He then granted the aforementioned declaration. The learned judge also gave liberty to the appellant to apply for "assessment of damages for trespass occasioned by the unlawful entry upon its premises."

Benjamin J ruled, that because on the face of the warrant it was not reflected that the Magistrate himself was satisfied that there was reasonable cause to believe that telecommunication apparatus was alleged to be concealed on the appellant's premises, and because the warrant did not ex facie state its statutory authority, that those deficiencies rendered the warrant invalid. The respondents, by way of notice, have appealed from this ruling on the ground that those deficiencies did not render of were not sufficient to render the search warrant defective.

THE SEARCH WARRANT

It is accepted that Section 10 of the Constitution protects the appellant and his property from arbitrary search or entry. It is not disputed that Observer Radio was on the day of the search operating without a licence in that behalf. It is also not disputed that the search warrant was

issued pursuant to the provisions of Section 15 [1] of the Telecommunications Act of Antigua Cap. 423, the relevant portions of which read as follows:

> "If a Magistrate is satisfied by information that there is reasonable ground for supposing that a telecommunications station has been or is being established without a licence in that behalf or that any telecommunications apparatus has been installed, worked, operated or concealed in any place in Antigua and Barbuda,……..without a licence in that behalf contrary to the provisions of this Act or any rules made thereunder or of any licence granted under this Act, he may grant a search warrant authorizing the telecommunications officer or any police officer…….to enter, inspect and search at any time day or night the station, place……and to seize any apparatus which appears to him to be used or intended to be used for telecommunications."

The warrant evidenced in the transcript before us shows it to be in its statutory form. Ex facie it does not reveal that it was issued pursuant to Section 15[1] of the Telecommunications Act. Neither does it specifically state that the Magistrate was satisfied that there was reasonable cause justifying its issue. It states, inter alia, that on September 2, l996, evidence on oath was given by Mackenzie Joseph, Inspector of Police, that there was reasonable cause to believe that telecommunications apparatus were alleged to have been concealed on the premises of the Observer Radio Station. It was signed by the Magistrate. It is accepted that it was executed without resistance to entry. In fact the evidence was that the appellant consented to the entry and search.

THE LEGAL POSITION

In Attorney General of Jamaica v Williams and Another [1997] 3 W.LR. 389, a case relied on by both sides, Her Majesty's Privy Council expressed opinions on the issue which I gratefully adopt and will now simply encapsulate.

The purpose of the requirement that a warrant be issued by a Justice is to interpose the protection of a judicial decision between the

citizen and the power of the state. The function of the justice is to satisfy himself that the prescribed circumstances exist. It is a duty of high constitutional importance. The law relies on the independent scrutiny of the judiciary to protect the citizen against the excesses which would inevitably flow from allowing an executive officer to decide for himself whether the conditions under which he is permitted to enter private property have been met. It must appear to the justice from information on oath not only that the officer has reasonable cause to suspect one or more of the matters there specified but also that his cause for suspicion is reasonable. The test is an objective one. He ought not to act simply as a rubber stamp on the officer's application. The issue of the warrant is a judicial act, and must be preceded by a judicial inquiry which satisfies the justice that the requirements for the issue of the warrant have been met. Even though not statutorily required, it is highly desirable for the warrant to contain an express statement of the statutory authority under which it was issued. Lord Hoffman in the said case felt that without this disclosure on the face of the warrant there may be resistance to entry.

MY OPINION

In the instant matter, I hold that Section 15[1] of the Telecommunications Act gave the Magistrate jurisdiction to issue the warrant. I also hold that whilst it was highly desirable that the search warrant should have contained this statutory source of its issue, that because the search was consented to by the appellant and not resisted, that such an omission without more would not be enough to invalidate the warrant [Attorney General of Jamaica v Williams Supra]. It is also my considered opinion that, implicit in the words used in the warrant, coupled with the signature of the Magistrate thereon, is the fulfillment of the statutory requirement of Section 15[1] that the Magistrate was satisfied that the requirements for the issuance of the warrant were met. In my judgment, the only inference to be drawn from the words "evidence on oath has been given……..that there is reasonable cause to believe that

certain property to wit Telecommunications apparatus alleged to have been concealed……on the Observer Radio Station," when coupled with the signature of the Magistrate, was that the Magistrate himself was satisfied that the officer's cause for suspicion was reasonable.

It was submitted by Mr. Lovell that this satisfaction of the Magistrate should be spelt out on the face of the warrant. I do not disagree. However, where it is not spelt out and the Magistrate's satisfaction is implicit as it is in the instant matter, I am of the view that the warrant should not be found to be invalid in the absence of evidence to the contrary, especially in this case where it is accepted that the appellant consented to the search. In my view, such consent would be enough to negate the need for the warrant. It is my opinion, that the absence of these two bits of information from the face of a search warrant without more, would not automatically invalidate the warrant. Their insertion therein is not a statutory requirement. Their appearance ex facie the warrant is required merely to satisfy the aggrieved party of its authenticity thereby assisting in the avoidance of resistance to its execution. Each case therefore should be approached on its own facts. If no injustice resulted from their omissions, the warrant ought not to be struck down.

CONCLUSION

For these reasons, I would hold that the search warrant was validly issued and that the search, entry and seizure were legally done. I would therefore allow the appeal as addressed in the respondent's notice and set aside that part of the judgment of the trial judge and the orders and declarations made thereon. The respondents will have their costs incurred as a result of their notice to be taxed if not agreed and paid by the appellant.

SATROHAN SINGH
Justice of Appeal

REDHEAD J.A.

I have had the opportunity of reading the Judgment of Singh J A on the respondent's notice with which I fully agree. I cannot usefully add anything. This is an appeal against the dismissal of the appellant's motion which sought declaratory reliefs and orders on the ground that its constitutional right to freedom of speech was infringed by the refusal of the first named respondent to grant it a broadcasting licence to operate a commercial F.M. Radio Station.

The background facts are that on 23rd March, l995 the appellant was granted a business licence under the provisions of the Business Licence Act, 1994 [No. 17 of l994], the certificate issued by the Minister of Finance described the appellant's business as that of a "Radio and Television Station".

The following day, on 24th March l994, after receipt of its licence, the appellant made application for permission to operate a "Commercial F.M. Radio Station with 10,000 watts of power at a frequency of 91.1 megahertz" .

The application was addressed to the first-named respondent in his capacity as Telecommunications Officer of the Government of Antigua and Barbuda.

However the first-named respondent in the application before the learned trial judge had sworn that he was appointed as Telecommunications officer by the Public Service Commission but he had received no instrument of appointment from the Governor-General. Consequently, according to him, he had no power to issue broadcasting licence and all applications for such licences were forwarded by him to the Minister of Public Works and Communications for him to obtain the decision of cabinet.

Communications on behalf of the appellant and the first-named respondent continued until 23rd July, l996. The appellant up to that time,

not having received a licence, wrote to the first-named respondent stating its intention to commence broadcasting on a specific frequency from 6.00 a.m on September 1, l996. The first-named respondent by letter dated 25th July, l996 advised the appellant of the illegality of operating a radio transmitting apparatus in the radio frequency spectrum without the appropriate permission to do so.

On Sunday 1st September, l996 at 6.00 a.m. Observer Radio which is owned by the appellant began broadcasting. The broadcast ended at 10.00 p.m. and resumed at 6.00a.m the following day. The second day broadcast ended abruptly at about 1.30p.m when the police entered the appellant's premises pursuant to a search warrant and seized the radio equipment.

The appellant as a result brought a constitutional motion alleging that its fundamental right to freedom of speech was infringed by the failure of the first-named respondent to grant it a broadcasting licence to operate a radio station. The learned trial judge dismissed that part of the constitutional motion. The appellant now appeals to this court.

Four main grounds of appeal were filed on behalf of the appellant. The first ground alleges that the learned trial judge was erroneous in point of law because:

[a] the learned judge erred when he held that the appellant had not been injured in its freedom of expression under Section 12 of the Constitution of Antigua and Barbuda.

[b] In his consideration of Section 12 of the Constitution the learned judge did not properly apply the presumption of Constitutionality while the appellant had the burden of establishing that Section 4 of the Telecommunications Act Cap. 423 collided with sub-section 12[1] [2] and [3] of the Constitution, that burden then shifted to the respondents to establish that the legislation or any act done under the

authority thereof fell within the exceptions laid down in subsection 12[4] of the Constitution.

[c] In this case there was no doubt that section 4 of the Act did collide with sub-section 12[1] of the Constitution but the respondents failed to show that section 4 of the Act or actions by the first respondents in relation to this case fell within the exceptions laid down in section 12[4] of the Constitution.

[d] Having found the expression of the Prime Minister's Permanent Secretary that the appellant's application was "under consideration" to be a euphemism for a refusal, the learned judge erred when he held that the complaint the appellant could make was that the entire process had been attended by inordinate delay.

[e] In holding that in order to maximize the benefits to be derived from the airways, there need to be a central controlling authority, the learned judge failed to apply a purposive construction to section 12 of the Constitution and failed to give due consideration to the impugned conduct of the respondents and in particular to the question of fairness in the way in which the respondent treated the appellant's application.

[f] In light of the recent authorities cited on behalf of the appellant, the learned judge gave undue weight to the obiter remarks of Lewis C.J. [Ag.] in respect of section 4 made thereunder in the case of Attorney General of Antigua vs. Antigua Times Limited [1973] 20 WIR 573.

[g] The learned judge misdirected himself when he held that in the absence of policy guidelines the licensing authority is restricted to the requirements of the ITU "convention". In fact the evidence disclosed that the ITU convention does not

apply to broadcasts on the F.M Frequency which the appellant sought to use.

[h] In consideration of the term “law” as defined by section 127[1] of the Constitution, the learned judge failed to take account of the overriding provisions of section 2 of the Constitution which provides that any law which is inconsistent with the Constitution shall to the extent of its inconsistency be void.

[2] The learned judge erred when he held that the appellant’s right to protection from discrimination had not be infringed.

[3] The learned judge failed to exercise his discretion properly in declining to exercise his powers under sub-section 18[1] of the Constitution. The appellant having challenged the constitutionality of the Telecommunications Act Cap. 423 and the action of the respondent done under the authority thereof under three separate sections of the Constitution the learned judge ought to have found that the appellant had taken the proper course of action in commencing proceedings against the respondents by way of a constitutional motion.

[4] The learned judge was wrong in point of law when he failed to find that misconduct of the first respondent and/or the Cabinet had to give fair and unbiased consideration to the application of the appellant.

[5] In all circumstances of the case the learned judge had misdirected himself in the matters referred to in grounds 1-4 of this Appeal.

[6] The decision arrived at by the learned judge cannot be supported having regard to the legally admissible evidence, and in particular has failed to appreciate the effect and significance of the evidence of the first respondent.

[7] The learned judge erred when he found on the evidence that Sun F.M was not a separate radio station from ZDK Radio.

[8] The learned judge failed to give any or any due consideration to the affidavit evidence given on behalf of the appellant in relation to the Sun F.M Radio and cable television and appeared to accept without question the First Respondent's evidence without appreciation that the licence to broadcast was a licence to use a particular frequency under the Telecommunications Act.

What is the appellant's case? If I may encapsulate it thus. It applied for a business licence which it received. The certificate granted under the business licence described the appellant's business as that of a "Radio and Television Station". The appellant then applied under the Telecommunications Act for a licence to operate a radio station. After correspondence lasting for about one [1] year on behalf of the appellant and the Telecommunications officer, the appellant's application for a licence was not determined.

In my view therefore, what was the remedy available to the appellant? Clearly it was a mandamus action, an administrative action, to seek to compel the communication's officer or having regard to his sworn testimony, the first respondent who held himself out as communication's officer, to seek to compel him to issue the licence to operate his radio station.

Having said that, I have great difficulty in finding that the appellant's constitutional motion was well founded because, it is my view, that by just merely shrieking breach of a fundamental right one can knock on and disturb the sanctity of the constitutional door. In order to open the constitutional door there must be a genuine, a real allegation of a breach of a fundamental constitutional right.

As Lord Diplock said in Harrikisson v. Attorney-General 1979 31 WIR 346 at 349.

> "In originating application to the High Court under Section 6 [1], the mere allegation that a human right or fundamental freedom of the

> applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the sub-section if it is apparent that the allegation is frivolous or vexations or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom"

It is interesting to note that the appellant in the instant case, first filed an application for an order of mandamus against the first-named respondent on 12th July, l995. Learned Queen's Counsel, Mr. Christian informed this court for a variety of reasons, that application was never heard. That, notwithstanding, in my view, was the proper course of action to adopt.

That in my view must be different from what was called to be decided in the case of-

Pumbun and Another v. Attorney-General and Another 1993 2LRC. 317 - referred to the court by Mr. Christian, Learned Senior Counsel for the appellant. In Pumbun's case the appellants wanted to bring a civil action in the High Court against the government but were prevented from doing so because of the refusal of the Attorney-General's fiat which was necessary to commence the proceedings under and by virtue of the provisions of section 6 of the Government proceedings Act 1967. The appellants challenged the constitutionality of the provision under Art. 30[3] of the Constitution on the grounds,inter alia that it obstructed the right of unimpeded access to the courts and a right to a fair hearing protected under Arts. 13[3] and 13[6] of the Constitution. The High Court ruled that S.6 of the Act was not unconstitutional in that, in any event the appellants had other remedies such as mandamus and certiorari available to them.

It was held on appeal that section 6 the Government Proceedings Act violated the right of unimpeded access to the courts and could not be

saved by the availability of alternative remedies such as mandamus or certiorari.

In the instant case there is no denial or interference of the appellant's right of free access to the High Court but rather a choice of how it proceeds whether by constitutional means or by ordinary administrative action.

The learning in my view is quite clear, if one does not have a serious or genuine constitutional problem, then one cannot disturb the sanctity of the Constitutional Court if there are other remedies, such as mandamus available, because the way I see it, to disturb the sanctity of the constitutional court where there is no real infringement of a constitutional right, would diminish the effectiveness of that remedy which is available to applicants who have a genuine constitutional complaint.

In the instant case I have great difficulty in appreciating that the appellant has a constitutional, rather than, an administrative problem. To put another way, I cannot see that any fundamental right of the appellant has been infringed.

In any event I shall examine carefully the alleged breach of the appellant's fundamental right.

The appellant is alleging by being denied a licence to operate a radio station its fundamental right to freedom of speech has been infringed. That is the gist of the appellant's complaint.

The appellant is also alleging that because of its political connections it was discriminated against by not being granted the licence. Assuming that the inaction of the authorities is tantamount to a refusal in granting the appellant the licence which it applied for. The critical issue therefore which calls for consideration is by the denial of a licence to the appellant to operate a radio station is that tantamount to a denial of its fundamental right of freedom of speech under the Antigua and Barbuda constitution. To put another way, does the government of Antigua and

Barbuda have a positive obligation to guarantee the freedom of speech of its citizen? I think not.

The section of the Constitution relied on as being impugned is section 12 which provides as follows:

> "[1] Except with his own consent no person shall be hindered in the enjoyment of his freedom of expression.
> [2] For the purpose of this section the said freedom includes the freedom to disseminate information and ideas without interference [whether the dissemination be to the public generally or to any person or class of person.
> [3] For the purposes of this section expression may be oral or written or by codes signal, signs or symbols and includes recording, broadcasting, broadcast [whether on radio or television].
> [4] Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision:
> [a] that is reasonably required:-
> [i] in the interests of defence public safety, public order, public morality or public health or for the purpose of protecting.
> [ii] ……."

It is to be noted that the section is couched in negative terms.

I now refer to the Canadian Charter of Rights and Freedoms:

S.2 Everyone has the following fundamental freedom:-

> "[b] freedom of thought, belief, opinion and expression including freedom of the press and other media communication."

It is my view that S.12 of the constitution is couched in negative terms that is, nothing must be done to hinder any one in the enjoyment of his freedom of expression.

If this is compared with section 2 of the Canadian Charter of Rights and Freedom which says everyone has the fundamental freedom, thought, belief, opinion, expression including freedom of the press and other media communication.

In my opinion this is expressed in positive terms, yet Sopinka J. in - Native Woman's Association of Canada 1994 35 S.C.R 627 at 653 said:-

> "It has not yet been decided that in the circumstances such as the present one a government has a constitutional obligation under S. 2 [b] of the Charter to provide a particular platform to facilitate the exercise of freedom of expression contained in S.2[b] prohibits gags but does not compel the distribution of megaphones."

In Haig v Canada 1993 2 S.C.R 995 Madame L. Heuerex Dube J writing for the majority noted that:-

> "Case Law and doctrinal writings have generally conceptualized freedom of expression in the terms of negative rather than positive entitlement"

I have great difficulty in finding that the appellant has a constitutional right to be granted a licence to exercise his fundamental right of freedom of expression because in my opinion that is what its complaint amounts to. I therefore decide that the appellant's constitutional right was not infringed by the refusal of a licence to broadcast.

Having so decided, the other issues in this appeal do not call for consideration. Nevertheless, I address them. The appellant has challenged the constitutionality of the Telecommunications Act Cap. 423. This was an existing Act when the Antigua and Barbuda constitution came in force and must be construed in accordance with the provisions of Section 2[1] of Schedule 2.

Section 4[1] of the Act provides as follows:

> "No person shall establish any telecommunications station or install, work or operate any telecommunications apparatus in any place in Antigua and Barbuda."
> "Except under and in accordance with a licence granted in that behalf under the provisions of this Act and subject to such conditions and restrictions as may be prescribed by rules made under this Act"

Mr. Christian, Queen's Counsel, argued on behalf of the appellant that the Act is unconstitutional, neither the rules nor the Act lay down any proper guidelines or criteria for granting a licence. There is no right of review after a refusal by the telecommunications officer.

In support of his submissions, learned Queen's Counsel referred to Fred L. Shuttlewroth v City of Birmingham Alabama 394 US P.162.

At page 167 Stewart J. said:-

> "The prior restraint of a licence, without narrow objective, and definite standard to guide the licensing authority, is unconstitutional. It is settled by a long line of recent decisions of this court that an Ordinance which, like this one, makes peaceful enjoyment of freedoms which the constitution guarantees contingent upon the uncontrolled will of an official – as by requiring a permit or licence which may be granted or withheld in the discretion of such official – is an unconstitutional censorship or prior restraint upon the enjoyment of those freedoms."

I agree entirely with the views expressed by Stewart J. But this pronouncement must be looked at against the background that he was dealing with "the enjoyment of freedoms" which existed i.e. freedom of assembly.

The appellant in that case was convicted for having demonstrated without first obtaining a permit. The appellant having applied for a permit which was refused.

The ordinance in question authorised the members of the City Commission to refuse a permit if required by "public welfare, peace, safety health, decency, good order morals or convenience."

In the instant case as I have said the appellant does not have the constitutional right to the grant of a licence to operate a radio station.

In Secretary Ministry of Information & Broadcasting Govt. of India & others v. Cricket Association of Bengal and Another Union of India and others 1995 S.C.C. 161:

At page 290 Jeevan Reddy J. wrote:

> "……the United States Supreme Court in F.C.C. v. National Citizens Committee for broadcasting where it has been held that "to deny a Station licence because the public interest requires it is not a denial of free speech". It is significant that this was so said with reference to [the] First Amendment to the United States Constitution which guarantees freedom of speech and expression in absolute terms……"

At page 297 he said:-
"The question whether to permit private broadcasting or not is a matter of policy for Parliament to decide ……"

At page 299 the learned judge opined:
"As a matter of fact, private broadcasting stations may perhaps be more prejudicial to free speech right of the citizens than the government controlled media……"

At page 201 Stewart J. wrote:
"A licence permits broadcasting, but the licencee has no constitutional right to be the one who holds the licence or to monopolize a radio frequency to the exclusion of his fellow citizens."

Mr. Astaphan, Learned Counsel for the respondent in his submission argued that the submission on behalf of the appellant that the Act contains no guidelines is erroneous. He submitted that the discretion or power to issue a licence is limited by the preamble.

That by its very provisions, regulations, the fact that in Convention and the International Radio Regulations are part and parcel of the Act. All these according to learned Counsel are adequate guidelines with this submission, I am fully in agreement.

> "Benjamin J. at page 24 of his judgment found that "there is unchallenged technical evidence to the effect that the radio spectrum allows for frequencies between 88 megahertz to 108 metgahertz."

I am in agreement with the learned judge's conclusion when he said that there is a plethora of authority for the proposition that the airways are public property and that there is the need for control in order to avoid chaos and maximize the benefits derived from the airways.

[See Secretary Minister of Information and Broadcasting et al v Cricket Association of Bengal et al [Supra]

Red Lion Broadcasting v. F.C.C.395 U.S 367].

I am also in agreement with the learned trial judge when he wrote:

> "I would venture to say that in the absence of policy guidelines the licensing authority is restricted to the requirements of the ITU convention to which Antigua and Barbuda is a signatory and which convention is imported into the Act by form H to the Rules. I do not for one moment regard the absence of time limits and appellate procedure as placing the licensing authority beyond judicial control as the courts supervisory jurisdiction remains intact."

I now address the question of the constitutionality of the impugned Act.

In Saghit Amad v State of U.P. 1954 S.C.R 728

Mukherjea J. at page 729 said:-

> "There is undoubtedly a presumption in favour of constitutionality of a legislation but when the enactment on the face of it is found to violate a fundamental right guaranteed under Article 19 [1][g] of the Constitution, it must be held to be invalid unless those who support the legislation can bring it within the purview of the exception laid down in clause 6 of the article"

In re Ontario Film and Video Appreciation Society and Ontario Board of Censors 147 D.C.R. [3rd] P.58

At page 64 it is there stated:

> "It is not in dispute that in the event that legislation is enacted which limits any of these freedoms [fundamental freedoms] the government bears the onus of demonstrating that the limit comes within the language of S.1. The presumption of constitutional validity, which generally applies in cases of ordinary legislation, is not available once it is shown that there has been an interference with one of the fundamental freedoms."

The presumption of constitutional validity would apply in the case of the telecommunications Act as I have shown there is no violation of the appellant's constitutional rights by the failure of the first named respondent's refusal to issue it with a licence to broadcast. The Act is

merely regulatory which is consistent with the provision of section 12[4][ii][a] of the constitution which states:

> "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention with this section to the extent that the law makes provision :-
> [a] that is reasonably required-
> [I] in the interests of defence, public safety, public orders, public morality or public health; or
> [ii] ……..
> and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

Finally I turn to the question of bias. The appellant has alleged that because of its political persuasion it was denied a licence to broadcast.

The learned trial judge has found that the appellant had not established deliberate and definite discriminatory treatment on the basis of its political opinions and affiliations.

At page 32 of the judgment Benjamin J. wrote:

> "I can find no cogent evidence on the record to support a finding of discriminatory treatment of the appellant by virtue of the political opinions of its newspaper or as a member of a class of persons of different political persuasion from the Prime Minister and the Antigua Labour Party. Accordingly, I can find no support for an infringement for the Applicants fundamental right to protection from discrimination under section 14 of the constitution."

This finding, in my view, has not been seriously challenged before this court. As Mr. Astaphan rightly submitted, in my view, that the allegation of political discrimination was and still is the only ground or basis upon which the appellant has challenged the failure of the respondents to grant it the licence applied for.

No other ground has been pleaded or alleged by the appellant. The appellant having failed to established discrimination his application fails on that ground as well.

Having regard to the foregoing the appeal is dismissed. The judgment of the trial judge thereon is affirmed. The cross appeal on the

respondent's notice is allowed. The judgment of the trial judge as it relates to that notice is set aside. The respondents will have their costs on the appeal and on their notice to be taxed, if not agreed and paid by the appellant.

ALBERT J. REDHEAD
Justice of Appeal

MATTHEW, J.A. (Ag.)

I also agree with Redhead J.A. that the Appellant's appeal should be dismissed.

With respect to the Respondent's notice which concerns the validity of the search warrant I agree with Benjamin J. that because on the face of the warrant it was not reflected that the Magistrate himself was satisfied that there was reasonable cause to believe that the telecommunication apparatus was alleged to be concealed on the Appellant's premises, the warrant was rendered invalid.

I will not repeat the provision of Section 15(1) of the Telecommunications Act which is the authority for the issue of the warrant but it is clear as was so ably submitted by learned counsel for the Appellant, Mr. Lovell, that a condition precedent for the issue of the warrant is the satisfaction of the Magistrate.

In Attorney General v Williams (1997) 51 WIR 264 P.C. it was stated at page 270 that the purpose of the requirement that a warrant be issued by a Justice is to interpose the protection of a judicial decision between the citizen and the power of the State. The Magistrate must exercise the judicial decision and as Mr. Lovell submitted, if he does not state he is satisfied, he cannot be so satisfied.

The warrant contained the words “evidence on oath has been given.... that there is reasonable cause to believe that certain property to wit telecommunication apparatus alleged to have been concealed on the Observer Radio Station”; and the Magistrate signed the warrant. I cannot agree that the Magistrate’s satisfaction is implicit from the words contained in the warrant and his signature. The Magistrate may have signed the warrant without bringing his mind to bear on the matter. See Hutchinson v Commissioner of Police 1970 16 WIR 96.

The Learned Trial Judge gave another reason why the warrant was invalid, namely, because it did not on its face state its statutory authority. In the light of the decision of Attorney General v Williams this can no longer be held to be a valid reason. Lord Hoffman who delivered the advice of the Board at page 277 letter (j) stated:-

> “Their Lordships agree that it is highly desirable for the warrant to contain an express statement of the statutory authority under which it was issued. If it does not, the householder might reasonably think that it was not based upon any authority and resist entry. But this does not mean that in a case in which the warrant was in fact issued under proper authority and there was no resistance to entry, the warrant should be treated as invalid, particularly when, as Forte J.A. said, it is clear from the terms of the warrant that it was issued under Section 203.”

I conclude therefore that the appeal and the Respondent’s notice should both be dismissed; costs following the events.

A.N.J. MATTHEW
Justice of Appeal [Ag.]