**GRENADA**

**IN THE COURT OF APPEAL**

**CIVIL APPEAL NO. 16 OF 2000**

**BETWEEN:**

**THE ATTORNEY GENERAL**

Appellant

**and**

**JULIA LAWRENCE**

Respondent

**Before:**

| | |
|---|---|
| **The Hon. Sir Dennis Byron** | **Chief Justice** |
| **The Hon. Mr. Satrohan Singh** | **Justice of Appeal** |
| **The Hon. Mr. Albert Redhead** | **Justice of Appeal** |

**Appearances:**

**Mr. Karl Hudson Phillips Q.C. instructed Henry Hudson Phillips & Co. for the Appellant**
**Dr. Francis Alexis, Mrs Celia Clyne Edwards with him for the Respondent**

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**November 19: 20: 2001**

**January 14: 2002**

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**JUDGMENT**

[1] **Singh JA: Julia Lawrence**, (the respondent), at the material time, held the office of Director of Audit under the **Constitution of Grenada (The Constitution**). The Prime Minister, **Dr. Keith Mitchell**, also at that time held office as Minister of Finance.

[2] On March 30, 1999, the respondent, in pursuance of her duty in that regard, under **S82 of the Constitution**, submitted to Dr. Keith Mitchell, the Minister of Finance, two audit reports crafted by her in pursuance of **S82 (2) of the Constitution**.

[3] Following a conversation between Abel Newton, Clerk of Parliament, and the respondent, on the 4th or 5th August 1999, the respondent, as Director of Audit, addressed a letter to the Minister of Finance on 11th August 1999. This letter was copied to the Clerk of Parliament and the Speaker of the House of Representatives. It was delivered to the Minister by the respondent personally, and they had a short conversation about the audit reports. Later that day the Prime Minister and Minister of Finance read the letter. He was struck by its contents because in their conversation she had intimated to him that she had been told that the Accountant General had marked up or tampered with those reports, contrary to what he understood the letter to be alleging. The Minister of Finance and Prime Minister was shocked by what he read, and on 20th August he replied to the respondent, pointing out that he regarded her letter as containing very serious false allegations against him as Prime Minister, that were tantamount to gross misbehaviour by her.

**THE LETTER**

[4] The letter read as follows:-

> "The Hon. Minister for Finance
> Ministry of Finance
> Financial Complex
> St. George's
>
> Dear Sir,
>
> Audit Reports Nos. 1 and 2 of 1999
>
> With Reference to the above reports which deal with the audit of the Statements of Account of the Government of Grenada for 1994 and the audit of the Ministry of Works, Communications, and Public Utilities and the awarding of contracts for Works, I have been informed by the Clerk of Parliament that the reports submitted to him for laying were **mutilated**: they contained a number of scratches and insertions. IN EFFECT THE REPORTS OF THE DIRECTOR OF AUDIT HAVE BEEN DOCTORED! This is UNCONSTITUTIONAL. It is UNETHICAL and is a TRAVESTY. **You** also provided comments from the Accountant General to lay therewith.

What is **your authority** for amending my reports? The Constitution envisages **you** to act merely as a conduit for getting my reports to Parliament. In section 82 (4) it is clearly stated that:

> The Director of Audit shall submit every report made by him in pursuance of Subsection (2) of this section to the Minister for the time being responsible for Finance who shall not later than seven days after the House of Representatives first meets after he has received the report, lay it before the House.

Nowhere does it make any provision for **you** to amend my reports, or obtain comments from the Accountant General to lay therewith.

The Constitution makes provision for a Director of Audit to provide Parliament with an independent opinion on the accounts. **That role is for the Director of Audit and NO OTHER**.

Already **you** are in breach of the Constitution for not laying the reports within the stipulated time. Those reports were delivered to **you** on 30 March 1999.

During our meeting Mitchell/Lawrence on 2 April 1998 which I requested out of concern over the delay in the laying of my reports on the 1993 accounts and on various ministries and non ministerial departments **you** stated then that you were concerned about the contents of the report on the 1993 accounts and that **you** felt some of its contents should not have been included. **You** further stated that **you** had obtained the comments of the Accountant General to lay therewith. I reminded **you** then of your role as a conduit and the functions of the Public Accounts Committee. I am therefore deeply disturbed by **your latest actions.**

In the name of good governance, accountability and transparency, I hereby request the immediate return of the two documents so that I can replace them with clean copies for transmission to Parliament.

Meanwhile by copy of this letter the Clerk of Parliament is requested to contact my office henceforth to verify any document submitted to Parliament on behalf of the Director of Audit. This has become necessary in light of the foregoing.

Julia G. Lawrence
DIRECTOR OF AUDIT

cc Clerk of Parliament
Speaker of the House of Representatives"
[Emphasis also mine]

**THE DISMISSAL**

[5] The Minister of Finance then referred the matter to the Chairman of the Public Service Commission [the Chairman] for an investigation under **S87(8) of the Constitution.**

[6] After investigating the matter, the Chairman represented to the Governor General that the question of removing the respondent from office ought to be investigated.

[7] Pursuant to **S87(8) (a) of the Constitution**, the Governor General appointed a Tribunal selected by the Chief Justice.

[8] At the enquiry before the Tribunal, the respondent attended in person, was represented by Counsel, gave evidence, was cross examined and called a witness.

[9] After full investigation, the Tribunal recommended to the Governor General that the respondent be removed from office.

[10] By letter dated March 10, 2000, the Governor General removed the respondent from the office of Director of Audit with effect from March 31, 2000.

**THE INSTRUMENT**

[11] The instrument appointing the Tribunal commanded the Tribunal to inquire into the following charge:

> "an allegation of misbehaviour by the said Ms Julia Lawrence consisting of conduct unbecoming of a public officer and holder of the post of Director of Audit and prejudicial to the reputation and good order of the Public Service of Grenada in that the said Ms Julia Lawrence recklessly and improperly made unwarranted and unsubstantiated accusations of impropriety against a Minister of the Crown that the **said Minister** tampered with or improperly

> altered a Report of the Director of Audit prior to the same being laid in Parliament pursuant to section 82(4) of the Constitution the said accusation being contained in a letter dated 11th August, 1999 and addressed to the Hon. Dr. Keith C. Mitchell, Minister of Finance and Prime Minister."

[12] I accept the submission of Queen's Counsel Mr. Hudson Phillips that the only issues of fact that arose out of the charge and which were contested before the Tribunal were the following:-

i. Whether the Respondent had accused a Minister of Government to wit the Minister of Finance and Prime Minister of tampering with or improperly altering a Report of the Director of audit prior to the same being laid in the Parliament.

ii. Whether those allegations were made recklessly and improperly and were unwarranted and not substantiated by the Respondent who made them.

[13] I also accept learned Counsel's submission which is borne out from the transcripts before us, that the only issue of fact relevant to the charge, which was raised by the Respondent before the Tribunal, was whether the references in her letter of the 11th August 1999 referred to the Minister personally, or whether it was a reference to the office of the Minister.

[14] The Tribunal did not consider as an issue for their investigation, or as relevant, whether the Report had in fact been tampered with.

**FINDINGS OF THE TRIBUNAL**

[15] In arriving at its recommendation to the Governor General, the Tribunal expressed this opinion:

> (iv) "Throughout the remainder of the letter it seemed that she was castigating the Minister of Finance in a manner that seemed to us to reflect her view of her importance as Director of Audit. The tone of the letter, in part, was dictatorial and demonstrative of her conception of her omnipotence under the provisions of the Constitution of

Grenada – to the point where she seemed to consider it to be a part of her role to advise the Minister of Finance of his duty in laying the Reports in the House of Representatives.

(v) Taken as a whole, the facts and circumstances showed that the attitude of Julia G. Lawrence in this episode was not one born of the qualities which she admitted should be demonstrated by a Director of Audit. Rather they revealed not only an annoyance but more particularly a recklessness that manifested itself in her making allegations against the Minister of Finance, who was also a Minister of the Crown, of mutilating, of doctoring and of amending her Reports prior to their being laid in Parliament. Her accusations were clearly unfounded and unwarranted and as was indicated earlier unsubstantiated by any cogent evidence.

**(vi)** The Director of Audit did not assert in her letter of 11th August, 1999 that the Minister of Finance admitted to her or to anyone that he or a member of his Ministry altered or in any way interfered with the 1994 Reports, so that the Director could not have been so relying when she alleged, as she did, that it was he who mutilated, doctored and amended her Reports. **In our view there was a total absence of cogent evidence arising out of the events prior to 11th August 1999 to establish that the Minister of Finance interfered, in any way whatever with the Director of Audit's Reports.**

(vii) So that, at that point in time – when the letter was written – the assertions against the Minister, described in the letter from the Director of Audit to the Minister of Finance, were in fact, unfounded and unjustified."

**PROCEEDINGS IN THE HIGH COURT**

[16] The respondent, being dissatisfied with the decision of the Tribunal, took the matter to the High Court and made the following challenges as set out in the skeleton arguments of Mr. Phillips::

"(i) That the decision of His Excellency the Governor General to remove the Respondent/Applicant was flawed in that she was not given a fair hearing before the Tribunal in accordance with ss 8(8) and 87 (8) of the Constitution. [Declaration 1 of the Motion]

(ii) That the recommendation of the Tribunal was made after a hearing or in circumstances in which the Respondent /Applicant was not given a fair hearing or the procedures laid down in s 87 (8) ibid were not followed. [Declaration 2 of the Motion]

(iii) That the decision of the Chairman of the Public Service Commission to recommend to the Governor General an investigation into the removal of the Respondent/Applicant from office was flawed and contrary to ss 8(8) and 87(8) because the Respondent/Applicant was not given an opportunity to be heard by the Chairman prior to the making of the decision to recommend. [Declaration 3 of the Motion]

(iv) That the decision of the Governor General to suspend the Respondent/Applicant from office without prior notice to the Respondent/Applicant violated ss 8(8) and 87(9) ibid as the Respondent/Applicant was not given an opportunity to be heard prior top suspension contrary to ss 8(8) and 87(9). [Declaration 4 of the Motion]"

**ALLEYNE J**

[17] On October 5, 2000, **Alleyne J** determined the matter and in relation to the Declarations sought by the Respondent, he held as follows:

"(i) That the Chairman of the Public Service Commission, Mme. Justice Monica Joseph had afforded the Respondent/Applicant full opportunity to make representations on her own behalf and was not deprived of the benefit of the maxim *audi alteram partem* .

(ii) That the Tribunal had given the Respondent/Applicant an opportunity to be heard and that the charge had been served on her in fulltime and that there "was afforded a full opportunity to be heard" before the Tribunal.

(iii) That the Tribunal had come to the conclusion that the conduct of the Respondent/Applicant was such as to amount to misbehaviour justifying a recommendation of dismissal given that "the language of the (Respondent/Applicant) might well be considered to display an intemperate, arrogant or officious attitude."

[18] By so ruling, the learned trial judge ruled directly and impliedly that there was no denial of due process and that the respondent was not deprived of any right to a fair hearing and that there was any procedural impropriety in the proceedings against her. Those rulings have not been challenged before this Court. Indeed, the cross appeal filed by the respondent, asked this Court to confirm the judgment of the trial judge.

[19] However, **Alleyne J,** apparently on the findings of fact of the Tribunal, ruled that the Report and recommendation should not be allowed to stand. The learned judge then made the following declarations and orders.

> "It is declared
>
> (1) that the decision of His Excellency the Governor-General communicated to the Applicant by letter dated 10 March 2000 to remove the Applicant from office as Director of Audit for misbehaviour with effect from 31 March 2000, pursuant to section 87 (7) of the Constitution of Grenada, on a recommendation to do so made to him by a tribunal appointed by him in that behalf under section 87 (8) of the Constitution, is void for inconsistency with sections 8 (8) and 87 (8) of the Constitution.
>
> (2) That the recommendation by the tribunal is void for inconsistency with sections 8 (8) and 87 (8) (b).
>
> And it is ordered that
>
> (1) The recommendation of the tribunal, and the resulting decision of the Governor-General to remove the applicant from office, are set aside.
>
> (2) The applicant be reinstated in office without loss of pay or other benefits.
>
> (3) That the respondent do pay to the applicant the costs of these proceedings (fit for two Counsel) to be taxed if not agreed."

[20] In arriving at this conclusion, the judge held, as was accurately submitted by Mr. Phillips.

> a. that the Tribunal had adopted the subjective "interpretation of the letter as fact, rather than, as was its responsibility, objectively assessing the meaning and import of the letter …. the Tribunal in this respect abdicated its responsibility to

independently and objectively evaluate the evidence, asked itself a wrong question and in that respect acted irregularly."

b. that the Tribunal wrongly treated the question of whether or not the Reports had in fact been mutilated or doctored as an irrelevance.

c. That the Tribunal failed to pay due or any regard to the question of whether the Report was mutilated or doctored and thereby abdicated its responsibility under s. 87 (8) (b*) ibid*.

d. That the Tribunal had improperly concluded that the Respondent/Applicant was not truthful when she asserted that she had not alleged that it was the Minister himself who had personally interfered with the Reports.

e. That the Tribunal based its conclusion on what the letter of the 11th August 1999 from the Respondent/Applicant meant not by an independent evaluation of the same but by basing its findings "not on what the letter said, but on what the Honourable Prime Minister interpreted the letter as saying".

f. That at page 93 of the Report of the Tribunal, the Tribunal had misdirected itself as to its task in evaluating the letter of 11th August 1999 sent by the Respondent/Applicant to the Minister."

[21] Arising form those conclusions, the trial judge concluded that the Tribunal "had deprived the respondent of the benefit of the protection of the law."

[22] The Attorney General has challenged the decision of **Alleyne J** before this Court.

**THE APPEAL**

[23] Three major issues arose before us for our determination: (1) whether there was jurisdiction in the trial judge to interfere with findings of facts of the tribunal: (2) Whether when the respondent wrote the letter, she was accusing Keith Mitchell, the person, of the improprieties alleged therein and (3) Whether, having regard to the mandate of the Governor General, there was an obligation on the part of the Tribunal to enquire whether in fact the reports were tampered with. I propose dealing with these issues in reverse order.

**THE TAMPERED REPORTS**

[24] Addressing the third issue, I am of the view, looking at the proceedings in its entirety, that it was an accepted fact that the reports were in fact interfered with, and that is why, at the hearing before the Tribunal, that was not contemplated by the Tribunal as a contested issue. Those reports were presented to and seen by the Chairman of the Public Service Commission in their altered form, before the said Chairman recommended to the Governor General of an investigation.

[25] It is not surprising therefore that the Tribunal, quite correctly, in my view, interpreted the mandate of the Governor General as directing an enquiry as to whether or not the respondent, when she wrote the offending letter, (1) blamed Keith Mitchell for the alterations (2) if so whether she was justified in so doing and (3) whether, if she was so justified, she did so in language "…. of the qualities which she admitted should be demonstrated by a Director of Audit."

[26] I therefore do not agree with **Alleyne J** when he held in effect, that the Tribunal wrongly treated the question of whether or not the reports had in fact been mutilated as an irrelevance and that it therefore abdicated its responsibility under **S87(8)(b**) of the Constitution. I accordingly set aside this finding of the trial judge as being erroneous.

[27] In my judgment, that question not being in issue, was accepted as being true and therefore enured to the benefit of the Respondent.

**DID KEITH MITCHELL TAMPER WITH THE REPORTS**

[28] Addressing the second issue, it does not need a professor in English language, to understand the offending letter to mean that the respondent was referring to Keith Mitchell, the person, who occupied the office of Prime Minister and Minister of Finance, as the mutilator, and the Doctorer of her reports. A dull primary school student would so understand the letter.

[29] Before us there was a long dialogue whether the respondent meant his office without him, or whether she meant him personally. In my view, the letter on that issue was open to one interpretation only, that it referred Keith Mitchell, the person, in his capacity as Prime Minister and Minister of Finance. And this despite the evidence of the respondent that she did not mean him "personally." I can only interpret her "personally" there, in context of the letter, to mean, in his private capacity.

[30] In my judgment therefore, whether or not the Tribunal used the interpretation of the letter as given by Keith Mitchell to arrive at its meaning, was of no moment. The language of the letter spoke for itself. There was no obscurity as to its meaning. In any event, even if the Tribunal relied on the meaning that Keith Mitchell gave to it, the fact that they accepted that as its true interpretation, they, having read the letter and listened to the evidence, converted that Mitchell's interpretation into theirs, thus making it the interpretation of the Tribunal.

[31] Accordingly, I cannot agree with **Alleyne J** that, in the context of the above, the Tribunal allowed itself to be diverted from the precise mandate of the Governor General. This finding of the trial judge is also set aside. I now address the first issue.

**ALLEYNE J's JURISDICTION**

[32] Addressing the issue of jurisdiction, I would refer to and adopt **May J's** ideas on the subject in **Barty-King and Another -v- Ministry of Defence [1979] 2 All ER 80**. In that case, the learned judge opined, that the High Court was not a Court of Appeal from the inferior tribunal, save as provided by statute. It merely had regulatory powers. It could not substitute its own determination of the facts of any dispute or question which may have come before the tribunal for that of the tribunal. In that case it was held at **P81**:-

> "The court was entitled to review the determination of an inferior tribunal, as opposed to granting a declaration that the

> determination was a nullity, only where it was demonstrated beyond doubt that the tribunal's decision was a perverse decision which no reasonable tribunal, on the material before it, could have reached, and even then the court had a discretion whether or not to grant a declaration that on that material the tribunal should have reached a different determination. Moreover, in exercising the jurisdiction to review an inferior tribunal's decision the court was entitled only to look at the material before the tribunal and not to assess the relative cogency of the material."

[See also **Bracegirdle -v- Oxley [1947] 1 All ER 126 and Anisminic Ltd -v- Foreign Compensation Commission [1969] 1 All ER 208**.]

[33] A clinical examination of the reasons why **Alleyne J** set aside the determination of the tribunal, revealed that he did so, not because he was substituting his own determination of the facts for that of the Tribunal, or that he was saying the tribunal's decision was perverse as contemplated in **Barty-King.**

[34] I read the reasons therein, to be (1) that the tribunal did not follow the precise mandate of the Governor General and (2) that it abdicated its responsibility under **S87 (8) (l) of the Constitution**, both reasons which I have already found to be erroneous.

[35] I therefore do not agree with the submission of Queen's Counsel Hudson-Phillips that **Alleyne J** exceeded the jurisdiction given to him by the law in his determination of he matter. He merely arrived at an erroneous conclusion.

**CONCLUSION**

[36] Having set aside the findings of the trial judge upon which he had set aside the recommendation of the Tribunal, and the resulting decision of the Governor General to remove the applicant from office, it is my order that such recommendation and resulting decision be re-instated. Whilst it can be said that the Constitution might not guarantee an infallible system, no one can say it does not guarantee a fair system. This instant matter is a very good example of the guarantee of such a fair system.

[37] The appeal is therefore allowed. The judgment of the trial judge, in so far as it related to this appeal, is set aside. The appellant will have his costs in this Court and the Court below fit for two Counsel.

**Satrohan Singh**
**Justice of Appeal**

**I concur**

**Sir Dennis Byron**
**Chief Justice**

**I concur**

**Albert Redhead**
**Justice of Appeal**