

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.11 OF 2006

IN THE MATTER OF SECTION 98 OF THE CONSTITUTION

AND

IN THE MATTER OF THE CITIZENSHIP ACT CHAPTER 54

AND

IN THE MATTER OF STATUTORY RULES AND ORDERS NO.15 OF 2004

BETWEEN:

RADHAY NOEL

Appellant

and

[1] THE ATTORNEY GENERAL

[2] THE MINISTER RESPONSIBLE FOR CITIZENSHIP

Respondents

Before:

The Hon. Denys Barrow, SC

Justice of Appeal

The Hon. Hugh Rawlins

Justice of Appeal

The Hon. Frederick V. Bruce-Lyle

Justice of Appeal [Ag.]

Appearances:

Mr. James Bristol for the Appellant

Mr. Hugh Wildman and Mr. Adebayo Oluwe for the Respondents

2006: May 31;
November 13.

JUDGMENT

- [1] **BARROW, J.A.:** The appellant maintains that the requirement that she must pay a fee before she will be registered as a citizen of Grenada violated her right under the constitution to be so registered.
- [2] There was no dispute that the appellant, who is married to a citizen of Grenada, is entitled to be registered as a citizen of Grenada. She deposed that she was informed by the ministry responsible for citizenship that her application to be registered as a citizen was approved but she had to first pay a fee of EC\$2,000.00 in order to receive her certificate of registration as a citizen. She stated that she cannot afford to pay the fee and that she was advised that the payment of the fee as a precondition to her being registered as a citizen is unconstitutional.
- [3] According to the permanent secretary in the ministry, the application was approved in principle pending the fulfilment of other conditions required for the grant of citizenship. The relevant condition was the payment of the fee. The permanent secretary deposed that the minister imposed the requirement of the fee in exercise of the powers conferred on him by section 15(1) of the **Citizenship Act**¹ (the Act). She deposed, as well, that the fee is not excessive and is 'to cater for expenses incurred for processing of the application, having regard to administrative processes that are usually taken.'
- [4] Part II of the Act provides for citizenship to be acquired by three categories of persons. Under section 5(1) the Minister may cause a Commonwealth citizen or a citizen of the Republic of Ireland to be registered as a citizen. Under section 5(3) a person married to a citizen shall be entitled to be registered as a citizen. Under section 7(1) the Minister may grant a certificate of naturalization to aliens and British protected persons.

¹ Cap 54 of the Laws of Grenada, 1990 Revised Edition

[5] Various sections² of the Act confirm by express language the fact that these provisions create two methods by which citizenship is conferred: one is by registration (under s. 5) and the other is by naturalization (under s. 7). Thus, section 9 refers to a “citizen by registration” and a “citizen by naturalization”.

[6] Section 15 of the Act, which the permanent secretary deposed was the source of the minister’s power to impose the requirement of the fee, is in these terms:

“15. (1) The Minister may by regulations make provisions generally for carrying into effect the purposes of this Act and Chapter VII of the Constitution and in particular for –

...

(f) the imposition and recovery of fees in respect of applications made to the Minister for registration, or in respect of the grant of a certificate or the taking of an oath or affirmation of allegiance, authorized to be made, granted or taken, and in respect of supplying a certificate, a declaration or an entry given, granted or made, and for the application of such fees:

Provided that the Minister may waive the whole or part of any fee imposed by virtue of this paragraph whenever he thinks it just and equitable to do so.”

[7] The minister made the **Grenada Citizenship Regulations**³ pursuant to section 15 of the Act. These regulations provide for the issue of Certificates of Registration and Certificates of Naturalization. They also provide for the fees specified in the Eighth Schedule “to be paid into the treasury for the several matters set out in the said Schedule.” In the Eighth Schedule appears a table of fees. The scheme of the table is to state a section of the Act as a heading and state a certain matter or matters and a fee beside each matter. This is how the table⁴ appears:

TABLE OF FEES

Matter in which Fees shall be paid	Amount of fees
	\$ c
Section 5(1)	
Registration of Commonwealth Citizen	250. 00
Citizen of the Republic of Ireland	250.00

² sections 7(3), 7(4), 8 and 9

³ Cap 54 – SRO. 5/1977

⁴ Incorporating the amendment to the Eighth Schedule, in respect of section 7, made by the Citizenship (Amendment) Regulations, Statutory Rules and Orders No. 15 of 2004

Husband or wives of citizens of Grenada	100.00
Section 6(1)	
Registration of Minor child of citizen of Grenada	100.00
Section 7	
Grant of a certificate of naturalization to a person who is ___	
Of Grenadian parentage	250.00
Married to a person who is Grenadian by birth	2,000.00
...	

[8] It is the common position, stated in the skeleton argument of both sides, that the appellant applied to be registered as a citizen under section 5(3) of the Act. But section 5(3) is not even mentioned in the Eighth Schedule as “a matter in which fees shall be paid”.

[9] In the table, under section 5(1), reference is made to ‘husbands or wives of citizens of Grenada’ and I take it that this is for or in respect of the registration of such a person as a citizen. Since section 5(1) does not relate to the registration of the spouse of a Grenadian citizen as a citizen but section 5(3) does, it would appear that by error this matter was not placed under its own heading, which would have been “section 5(3)”. Assuming that it is permissible for me to ignore the heading that actually appears and/or read into the statutory instrument the separate heading that one deduces may have been intended – not having had any argument on whether or not I can do so, I refrain from expressly deciding the point, but I am of the tentative view that I should ignore the heading⁵– there is still no provision that imposes the fee of \$2,000.00 that the appellant was required to pay. The fee that is stipulated is a fee of \$100.00.

[10] The fee of \$2,000.00 that the ministry required the appellant to pay appears in the table under section 7. As the judge found, and this was not challenged, section 7 relates to citizenship by naturalization. It does not concern citizenship by registration. Therefore the fee of \$2,000.00 that the Eighth Schedule of the

⁵ The discussion in Maxwell on The Interpretation of Statutes, 12th edition (1976), at p. 11 strongly supports this view. So does the discussion in Craies on Statute Law, 7th edition (1971), at p. 209

Regulations imposes is not imposed upon an applicant for citizenship by registration and the minister may not require such an applicant to pay that fee.

[11] Interestingly, the judge decided that the fee imposed under the section 7 “does not and cannot apply to section 5(3) applications.”⁶ However, the judge went on to hold that “An examination of the Eighth Schedule reveals that a fee is imposed for the registration of husbands and wives of citizens of Grenada.”⁷ The judge did not say what fee that was but it may readily be inferred that the judge had in mind the fee that appears under the section 5(1) heading -- for the registration of spouses of Grenadian citizens. It is on the basis that a fee is imposed that the judge went on to consider the constitutionality of imposing a fee in respect of the grant of a certificate of registration.

[12] The judge found that the fee is not imposed in respect of applications made by spouses to the minister for registration but is imposed in respect of the grant of a certificate of registration. In the judge’s view, the entitlement to be registered as a citizen is not unqualified. The judge stated,

“While section 98 of the Constitution does not expressly speak of a fee, the entitlement to registration is predicated upon “application in such manner as may be prescribed by or under a law enacted by Parliament”. In that regard, the Citizenship Act and its regulations provide the prescribed manner for making the application as well as the fee to be imposed for the grant of a certificate of registration.”

The judge went on to find that the proviso to s. 15(1) for the minister to waive the fee whenever he thought it just and equitable to do so repelled any argument that the fee itself was unconstitutional because it excluded an applicant who was unable to afford the fee. It was open to the appellant to apply for this benefit, the judge stated.

[13] The essence of the case for the appellant is that the entitlement to be registered as a citizen is unqualified and cannot be subject to the imposition of a fee in

⁶ judgment, paragraph [11]

⁷ judgment, paragraph [13]

respect of the grant of a certificate. This would be tantamount to introducing a further requirement into s 98 of the constitution, which Parliament cannot do, and would be a fetter on the constitutional right.

[14] In support of his argument counsel for the appellant relied on a couple of unexceptionable propositions, which call for no discussion. I accept that there is no discretion in the minister to refuse an application that is properly made: see **Application by Kareem Abdulghani⁸ and Neilson v Barker⁹** I also accept that where there is a constitutional right, the duty of the authority concerned is to verify that the preconditions for claiming the right exists but the authority has no discretion to fetter the right; see **Electrotec Services Ltd. v Issa Nicholas (Grenada) Ltd.¹⁰**

[15] On the other side, counsel for the respondents supported the judge's decision by relying on the decision of the Privy Council in **Attorney General v Antigua Times Ltd¹¹** regarding the imposition upon the respondent newspaper publishers of the obligation to pay an annual licence fee of \$600 and to give a bond for \$960 for the payment of any penalty imposed for blasphemous or seditious libel or for the payment of any damages and costs awarded for libel. In addition to the bond, \$10,000 had to be deposited with the Accountant General to satisfy any judgment for libel but with the proviso that the minister, being satisfied with the publisher's security in the form of a policy of insurance or a bank guarantee, "may" waive the requirement for the deposit. The publisher obtained declarations that the relevant provisions were ultra vires the powers of the legislature as repugnant to s 10 of the Constitution. That section provides for freedom from hindrance in the enjoyment of freedom of expression. Both in the High Court and the Court of Appeal reliance was placed on the dictum of Douglas J in **Murdock v Pennsylvania (City of**

⁸ [1985] LRC (Const) 425 at 427 g; 428a-c; 428 e.

⁹ 32 WIR 254 at 267-268

¹⁰ [1997] 3 LRC 480 at 483 e; 484 a-b; 485 g-h. The English court of appeal decision in *R v Secretary of State for the Home Department ex parte Phansopkar* [1976] Q.B. 606 is further support for both propositions.

¹¹ [1976] A.C. 16

Jeannette)¹² that, "A state may not impose a charge for the enjoyment of a right granted by the Federal Constitution."

[16] The opinion of the Board was delivered by Lord Fraser, who stated that in their Lordships' opinion "... the imposition of the licence fee to be paid annually by all publishers of newspapers was correctly regarded ... as a tax." He also stated:

"[S]ection 12 (4) (d) of the constitution enables the government, any local authority and any body for local purposes to discriminate in the imposition of taxation or appropriation of revenue without contravening the Constitution."

His Lordship continued:

"Revenue requires to be raised in the interest of defence and for securing public safety, public order, public morality and public health and if this tax was reasonably required to raise revenue for these purposes or for any of them, then [the section imposing the fee] is not to be treated as contravening the Constitution."

[17] Their Lordships noted that it was to be presumed that the law was reasonably required for the purpose of raising revenue and that this presumption had not been rebutted; and, that the amount of the fee was not manifestly excessive and of such a character as to lead to the conclusion that the imposition of the fee was not enacted to raise revenue but was enacted for some other purpose. On this basis the Board held that the licence fee did not offend the Constitution and the appeal by the state was allowed.

[18] Guided by that that decision I would similarly conclude that the fee of \$100.00 that is imposed in the Eighth Schedule for the registration of husbands and wives is to be treated as a tax. The permanent secretary specifically deposed that the imposition of the fees was a tax measure and the appellant did not assert the contrary. Counsel for the respondents provided photocopies of similar legislative provisions from a number of other countries to show that it is a commonplace for such a fee to be imposed.

¹² (1942) 319 U.S. 105, 113.

[19] The **Antigua Times** decision shows that the imposition of a tax on selected categories of persons does not contravene the Constitution. The executive is constitutionally empowered to discriminate in the imposition of taxes and, therefore, to impose this tax only on persons who apply for registration as citizens and not, for example, on the general populace or on a broader category of persons. I would, therefore, hold that the imposition of a fee or tax of \$100.00 (or any reasonable amount) is not to be treated as a contravention of the respondent's right to be registered as a citizen of Grenada. It seems to me to follow from the Privy Council's decision that the executive is also permitted, as a matter of tax collection, to require that a person who is liable to pay a tax should pay that tax before the person is permitted to enjoy a constitutional right: in the **Antigua Times** case the publisher was required to pay the tax before it was permitted to exercise the right to publish a newspaper in the enjoyment of its freedom of expression.

[20] Accordingly I would dismiss the appeal. In accordance with rule 64.6.2of CPR 2000, I would make no order as to costs.

Denys Barrow, SC
Justice of Appeal

I concur.

Hugh A. Rawlins
Justice of Appeal

I concur.

Frederick V. Bruce-Lyle
Justice of Appeal [Ag.]