ANDRE v THE SPEAKER

(2011) SLR 248

The first petitioner in person
B Georges for the second and the third petitioners
D Esparon for the respondents

Judgement delivered on 18 and 26 July 2011

Before Karanakaran Ag CJ, Renaud, Dodin JJ

A PETITION PURSUANT TO RULE 3(1) OF THE CONSTITUTIONAL COURT (APPLICATION, CONTRAVENTION, ENFORCEMENT OR INTERPRETATION OF THE CONSTITUTIONAL) RULES

Both of these petitions were entered on Friday 15 July 2011. These were consolidated and heard together at an urgent sitting of this Court held on 18 July 2011.

On 18 July 2011 this Court delivered its considered judgment and undertook to give detailed reasons for that judgment later. We now proceed to give the reasons

The National Assembly of Seychelles (hereinafter the Assembly) was in session at 9 am on 12 July 2011. The Revised Order Paper for that session was for the 1st Reading of the Public Order Bill 2011 and the 2nd Reading of The Constitution of the Republic of Seychelles (Sixth Amendment) Bill, Constitutional Appointees' Emoluments (Amendment) Bill, 2011, and Elections (Amendment) Bill 2011.

Following discussion, the session of the Assembly was adjourned at around 11.45 am and was to be reconvened at 2 pm but instead it reconvened at around 2.45 pm whereat the Speaker informed the Members that due to developments he needed to attend to, the Assembly would stand adjourned for a later time that same day.

When the session of the Assembly reconvened again at around 4.30 pm another Revised Order Paper for the 1st and 2nd Reading of the Political Parties (Registration and Regulation) (Amendment) Bill 2011 was tabled.

After approving the three pieces of legislation, namely, the Constitutional Appointees' Emoluments (Amendment) Bill 2011, the Elections (Amendment) Bill, 2011 and the Political Parties (Registration and Regulation) (Amendment) Bill 2011, a motion was tabled by the Leader of Government Business (Hon Marie-Louise Potter) calling for the dissolution of the Assembly.

Subsequently the motion was put to the vote and 23 Members of the Assembly voted in favour of the motion and accordingly the Speaker declared the Assembly dissolved.

Pursuant to the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rule 3(1), the petitioner in case CC 05/11, Mr

Clifford Andre a Member of the Assembly, sought from this Court an interpretation of article 111 of the Constitution which states as follows:

> Where the National Assembly at a meeting summoned for this purpose resolves by the affirmative votes of not less than two-thirds of the number of members of the Assembly be dissolved, the National Assembly shall stand dissolved on the day next following the passing of the resolution

The petitioner stated that his reason for seeking the interpretation of article 111 is for this Court to make a finding, declaration, or orders as the Court deems necessary in the circumstances of this case.

The petitioners in case CC 06/11, Messrs Nicholas Prea and Jean-Francois Ferrari, both Members of the Assembly, prayed this Court to declare that the purported dissolution of the Assembly by a resolution of the House on 12 July 2011 without a meeting being convened for that purpose contravened the Constitution.

Messrs Prea and Ferrari averred that the resolution of the Assembly passed at its sitting on 12 July 2011 was moved at an ordinary sitting of the Assembly convened to transact business set out on the Order Paper, as subsequently amended. That sitting was not at any stage summoned for the purpose of resolving that it be dissolved.

The petitioners also averred that the purported dissolution of the Assembly without a meeting being summoned for that purpose contravenes article 111 of the Constitution and that the petitioners' interests as Members of the Assembly to continue to serve the Assembly until properly dissolved have been affected by the said purported dissolution.

Respondents' Case

In answer, the respondents took the stand that the Leader of Government Business made a motion for the dissolution of the Assembly and after the two-thirds of majority vote, the Speaker of the Assembly (hereinafter the Speaker) declared the Assembly dissolved, the Speaker acted within the limits of Order 38(1) of the Standing Order.

The respondents averred that article 111 of the Constitution stipulates that the Assembly has to be summoned at a meeting for the purpose of deciding on the dissolution of the Assembly. The respondents did not deny that the motion for dissolution was not on the Order Paper of 12 July 2011

The respondents also averred that article 101 of the Constitution stipulates that the Assembly may make Standing Orders to regulate the proceedings of the Assembly. As per Standing Orders a notice for a motion before the Assembly has to be sent to the Speaker with 10 days notice. Standing Order 38(1) provides for the Speaker to dispense with the 10 days notice on the ground of public urgency. As per the affidavit of the Speaker, it is clear that it was within the meaning and ambit of public urgency for the Speaker to act under Order 38(1).

Hearing

At its sitting of 18 July 2011 this Court heard the submissions of the petitioner Mr Clifford Andre on his own behalf and counsel Bernard Georges on behalf of petitioners Messrs Prea and Ferrari.

The Attorney-General Mr Ronnie Govinden assisted by Principal State Counsel Mr David Esparon submitted on behalf of the respondents.

Reasons

At paragraph 41 in the case *Frank Elizabeth v Speaker* SCA 02/09 in its judgment delivered on 14 August 2009 the Seychelles Court of Appeal stated that -

> ... the Constitution should be interpreted to give effect to it. Where the meaning is plain, more should not be added on to it than it says. .... The doctrine of liberal interpretation of the Constitution developed in the Commonwealth and applied by our own Courts paint to that.

At [42] of the same case, the Seychelles Court of Appeal went on to state that –

> We have had a couple of occasions in the recent past to state that the best guide to the interpretation of the Constitution of Seychelles is the Constitution itself: see *John Atkinson v Government of Seychelles and Attorney-General* SCA 1 of 2007. The Constitution is not to be treated as a legislative text. The Constitution is a living document. It has to be interpreted 'sui generis'. In the case of *Paul Chow v Gappy and Ors* 2007 SCA, we also emphasized the specific role of the Constitutional Court as well as the principles of interpretation that should obtain when it sits as such. Inasmuch as the Constitution enshrines the freedoms of the people, the constitutional provisions have to be interpreted in a purposive sense. Foreign material on the same matter aid interpretation but it should be from jurisdiction which upholds the Bill of rights which our Constitution enshrines.

At paragraph [43] of the same case, the Seychelles Court of Appeal stated that –

> We need admittedly, to go to foreign source for persuasive authority. At the same time, we need to recall that paragraph 8 of Schedule 2 of the Constitution makes it so eloquent as to the manner in which we should interpret our constitutional provisions:
>
> For the purposes of interpretation;
>
> (a) the provisions of this Constitution shall be given their fair and liberal meaning;
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> (b) this Constitution shall be read as a whole; and
>
> (c) this Constitution shall be treated as speaking from time to time.

Conscious of our specific role as the Constitutional Court, as well as the principles of interpretation that should obtain when we sit as such, as stated by the Seychelles Court of Appeal, we are likewise of the view that the best guide to the interpretation of the Constitution of Seychelles is the Constitution itself.

In addressing the interpretation advanced by the respondents we are of the opinion that such approach to the interpretation of article 111 of the Constitution does not follow the guidance given by the Seychelles Court of Appeal as cited above. Suffice to say that to interpret that the Standing Orders of the Assembly can supersede a constitutional provision, cannot be maintained by any stretch of imagination. Article 111 of the Constitution can be interpreted on its own without the need to bring in the provisions of article 101 and the Standing Order made thereunder, for that purpose. This approach does not appeal to us in the least and is accordingly rejected.

Article 111 of the Constitution states that:

> Where the National Assembly at a meeting summoned for this purpose resolves by the affirmative votes of not less than two-thirds of the number of members of the Assembly be dissolved, the National Assembly shall stand dissolved on the day next following the passing of the resolution.

Applying the principles enunciated by the Seychelles Court of Appeal in *Frank Elizabeth v Speaker* SCA 02/09 we find that the meaning of that article is plain and nothing more should be added on to it than what it says and it can be given a liberal interpretation as it stands.

It is evident that article 111 of the Constitution sets out a condition precedent for the dissolution of the Assembly. That condition entails the necessity for all the Members of the Assembly to know well in advance of a meeting that is being held for the specific purpose of dissolving the Assembly. In our interpretation of article 111 a meeting must be summoned specifically when it comes to the dissolution of the Assembly. At that meeting it will then be moved that the Assembly adopts a resolution by at least two-thirds of the members voting in favour of a resolution to dissolve itself. That process is the basic constitutional requirement called for by article 111.

In our view a resolution to dissolve the Assembly cannot be tabled at an ordinary session of the Assembly. This can only be done at a meeting specifically called for that purpose. Further, such a resolution cannot be tabled without prior notice being given to all the members of the Assembly.