

IN THE COSTITUTIONAL COURT OF SEYCHELLES

NICHOLAS PREA

PETITIONER

V

SPEAKER NATIONAL ASSEMBLY

1st RESPONDENT

ATTORNEY GENERAL

2nd RESPONDENT

Constitutional Case No: 09 of 2011

BEFORE M. N. BURHAN J (PRESIDING) C. G. DODIN J.

Mr. Bernard Georges Attorney at Law for the Petitioner.

Mr. R. Govinden Hon. Attorney General for the Respondents.

JUDGMENT

Burhan J,

[1] The Petitioner in this case a member of the National Assembly of the Republic of Seychelles, filed a petition averring that the purported dissolution of the National Assembly on the 19th of July 2011 was in contravention of Article 111 of the Constitution of the Republic of Seychelles. He therefore prayed for a declaration from this court that:

“the purported dissolution of the National Assembly by a vote of the House on the 19th of July 2011 on the motion put does not amount to a resolution of the Assembly and therefore contravenes the Constitution.”

[2] Article 111 of the Constitution relevant to this application reads 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 that the Assembly be dissolved, the National Assembly shall stand dissolved on the day next following the passing of the resolution.”

[3] It is of considerable importance that it be borne in mind that Article 111 of the Constitution is an entrenched Article, entrenched by Article 91(1) of the Constitution. The term “entrenched” is also referred to in the case of ***United Opposition v Attorney General SCA 14 of 1996***.

[4] Article 91(1) of the Constitution reads as follows:

“The National Assembly shall not proceed on a Bill to alter Chapter I, Chapter III, this article, article 110 or article 111 unless-

a) the proposed alteration contained in the Bill has been approved on a referendum by not less than sixty percent of the votes cast in the referendum, and

b) the Speaker signifies that such approval has been so given.”

[5] The salient facts of this petition are that a meeting of the National Assembly was convened on the 19th of July 2011 to consider its dissolution. It is accepted by the Petitioner that notice of such a meeting (as decided in the case of ***Clifford Andre & Ors v The***

Speaker & Anr SC CC No.5 &6 of 2011) was given to the Members by letter dated 18th July 2011 to which an Order Paper was attached, giving notice of the business to be transacted which was titled “Motion of Dissolution of the National Assembly.” A copy of the “motion of dissolution” referred to by the Petitioner in his petition as the “motion for dissolution” was attached to the said Order Paper.

- [6] The attached “motion of dissolution” produced below in verbatim reads as follows:

“Sitting of Tuesday 19th July 2011 at 9.00am.

Motion

1)Mover- Hon. Marie - Louise Potter – Leader of Government Business.

I move for the dissolution of the National Assembly under Article 111 of the Constitution of the Republic of Seychelles.”

- [7] On the 19th of July 2011 following the debate to the motion the Speaker the 1st Respondent, invited the members present to vote by stating “.... we will take a vote on the motion before us that the Assembly stands dissolved,” A vote was thereafter taken on the motion and the requisite number of votes was obtained that the Assembly be dissolved as required by Article 111 of the Constitution. Thereafter the National Assembly stood dissolved in accordance with Article 111 on the day next following the passing of the resolution.

- [8] When one considers the particulars of the contravention as set out by

the Petitioner it is the contention of the Petitioner that the “motion of dissolution” was not a properly framed motion but was a personal prayer by a Member and therefore an incompetent motion for presentation to a vote of the Assembly. The Petitioner further contends that neither the “motion of dissolution”, nor the “question put to a vote” by the Speaker the 1st Respondent which reads “...we will take a vote on the motion before us that the Assembly stands dissolved,” amounts to a resolution of the Assembly as required by the Constitution.

- [9] In this regard learned counsel drew the attention of court to the relevant Standing Orders (SO) i.e the Standing Orders 2009 (S.I. 87 of 2009) and based his submissions on the basis that as the “motion of dissolution” was not properly drafted to convey the proper meaning of what was intended to be done under Article 111 and was not in conformity with the Standing Orders it was improper and as the aforementioned “question put to vote” by the Speaker under SO 39 (7) and voted on by the members was not in conformity and different to the “motion of dissolution,” what was resolved on a vote did not amount to a proper resolution as required by Article 111 of the Constitution to dissolve the said Assembly.

- [10] We will now proceed to deal with each of his contentions separately.

Motion of Dissolution

Learned counsel for the Petitioner submitted that the “motion of dissolution” as framed on the Order Paper accompanying the notice which reads *“I move for the dissolution of the National Assembly under Article 111 of the Constitution of the Republic of Seychelles.”* was improperly drafted as the meaning it conveyed was different to that required under Article 111 and was not proper as it was not a “self contained proposal” as required by SO 37(1) and was not in conformity with many of the other Standing Orders.

[11] SO 37(1) reads as follows:

“Subject to the Constitution and these Orders, any member may propose any matter for debate in the Assembly by way of motion, that is, a self contained proposal submitted for the approval of the Assembly and drafted in such a way as to be capable of expressing a decision of the Assembly.”

[12] At this juncture it is important for us to consider the reference of SO 37(1) to a motion being a “self contained proposal (emphasis mine).” “Proposal” according to **The New Collins Dictionary and Thesaurus in one volume at page 794** means “an act of proposing,” therefore quite simply the words “I move for” as set out in the “motion of dissolution” should be considered separately in this context, as the act of proposing and not considered in the body of the motion. Therefore when the words “I move for” are separated, the “motion of dissolution” reads as *“the dissolution of the National*

Assembly under Article 111 of the Constitution of the Republic of Seychelles.” For the aforementioned reasons this court is of the view that the “motion of dissolution” set out above is in conformity with SO 37(1) and has all the requisites of a “self contained proposal” and is drafted in such a way as to be capable of expressing a decision.

[13] Learned counsel for the Petitioner in his oral submissions has taken the words “I move for” out of context and come out with an unacceptable interpretation that the “motion of dissolution” was for Mrs. Marie Louise Potter “to move for the dissolution of the National Assembly” and not for “the dissolution of the Assembly.” Further as in the body of the “motion of dissolution” Article 111 of the Constitution is specifically mentioned, this is further clarification of the fact that the intended motion was for the dissolution of the National Assembly and nothing else.

[14] **“Question put to vote” as referred to by the Petitioner.**

SO 39 (7) reads as follows:

“When no more members wish to speak on a motion, the Speaker shall put the question on the motion to the Assembly for decision.”

[15] Learned Counsel for the Petitioner in his submissions further stated that the Speaker failed to put the question on the “motion of dissolution” before the assembly for a vote, in terms of SO 39 (7) but instead put the question as follows:

“....we will take a vote on the motion before us, that the Assembly be

dissolved.”

[16] He contends therefore that as there was no amendment in terms of SO 40 it was a different motion that was put to the assembly to vote to that proposed by Mrs. Potter.

[17] This court has already determined (paragraph [6] herein) that the “motion of dissolution” reads as “*the dissolution of the National Assembly under Article 111 of the Constitution of the Republic of Seychelles.*” and it is apparent the motion referred to by the Speaker at the time of taking the vote under SO 39 (7) is the same. The Speaker for further clarification and out of an abundance of caution, has added the words “that the assembly be dissolved” when he put the question in the motion to vote. These words are a verbatim extract from the Article itself and it is to be noted that these words are contained in Article 111 which Article is clearly referred to in the “motion of dissolution.” Therefore it cannot be accepted that the “question put to vote” was different to that stated in the “motion of dissolution” or that it conveyed a different meaning to that required by Article 111.

[18] The copy of the proceedings of the National Assembly of the 19th of July 2011 annexed to the petition indicates that no clarification or point of order was raised that the said “question put to vote” should be amended as it was not in conformity with the “motion of dissolution” by anyone present at any stage of the proceedings, clearly indicating that all present were aware that no amendment was necessary either to the “motion of dissolution” or the “question put to vote” by the

Speaker.

- [19] Further when one considers the annexed proceedings of the National Assembly on the said date, the opening address of Mrs. Marie Louise Potter commences with the words:

“Mr. Speaker, my motion is asking that our Assembly dissolves itself under Article 111 of the Constitution of the Republic of Seychelles.”

It is clear therefore that all the members who voted were well aware of the purpose of the vote and what the vote was intended for and were not misled in any way. Therefore the Petitioner’s contention that the “question put to vote” was not in conformity with the “motion of dissolution” fails.

- [20] Learned counsel for the Petitioner in his submissions referred to several other standing orders which the “motion of dissolution” did not conform to. In this regard the Learned Attorney General submitted that the proper procedure to cure such defects is contained within the Standing Orders and brought to the attention of court the contents of SO 45(1).

- [21] SO 45(1) reads as follows:

“A Member who fails to observe these orders may be immediately called to order by the Speaker or the Chairperson, or by a Member raising a point of order and the Member raising the point of order shall direct attention to the point the Member desires to bring to

notice and submit it to the Speaker or the Chairperson for decision.”

[22] We are inclined to agree with the learned Attorney General, that the proper procedure the Petitioner should have followed in this instant case would have been to take steps under SO 45(1) to remedy what he felt were failures to observe Standing Orders and not come directly to the Constitutional Court for relief in respect of same. In fact learned counsel for the Petitioner himself conceded, dispensing of the notice period for the moving of motions as set down in SO 38(1) was a matter to be decided within the National Assembly itself. We however are of the considered view based on the wording of SO 45 that the procedure set out therein, applies to all Standing Orders contained in SO 2009 and not limited to a few.

[23] Learned Attorney General also drew the attention of court to Article 102 of the Constitution which reads as follows:

“There shall be freedom of speech and debate in the National Assembly and a member shall not be subject to the jurisdiction of any court or to any proceedings whatsoever, other than in proceedings in the Assembly, when exercising these freedoms or performing the functions of a member in the assembly.”

[24] In this respect we are of the view that the act of moving the “motion of dissolution” could be considered as a function being performed by a Member of the Assembly and falls within the precincts of this Article. Further we are satisfied that the record of the proceedings

clearly indicate that the Speaker was satisfied that the required majority as set down by Article 111 had been obtained for the National Assembly to be dissolved. The Petitioner does not seek to deny this in his affidavit. Any shortcomings pertaining to the recording of proceedings in the National Assembly should be adjusted within the Assembly itself and not brought to the Constitutional Court. In this regard one must draw reference to the case of *Paul Chow v Hendricks Gappy & Ors SCA 10/2007* where the Seychelles Court of Appeal refers to the avoidance of “Judicial dictatorship.”

[25] The Petitioner in this case being a Member of the National Assembly himself, should be well aware of Article 102 of the Constitution concerning the privileges and immunities of a member of the Assembly and the provisions of the National Assembly (Privileges, Immunities and Powers) Act 2011 (Act No. 3 of 2011) and should ensure that such privileges and immunities are safeguarded and not sacrificed or surrendered. Therefore we wish to reiterate that any alleged failure to observe any of the Standing Orders in respect of the “motion of dissolution” or in respect of the “question put to vote” should have been clarified and corrected by recourse to the respective provisions contained in the Standing Orders.

[26] The Petitioner’s failure to do so indicates that all the members present at the time of the vote agreed that the “motion of dissolution” and “question put to vote” were in order and all procedures taken to resolve same as correct and therefore the Petitioner is now precluded from complaining of same.

- [27] Learned counsel for the Petitioner did not seek to base his argument on the terminology or meaning of the words “motion” and “resolution.” In fact learned counsel submitted that a properly drafted motion would suffice and in fact kindly proceeded for our benefit, to give a draft of what he considered to be a properly drafted motion which would fall within the ambit of Article 111.
- [28] While appreciating his effort, we are of the view for the reasons contained herein the “motion of dissolution” moved by Mrs. Louise Potter, fulfills the requirements contained in Article 111 and that the Speaker put the question to vote on the motion correctly and that the members present and voting were not misled in anyway and resolved a proper motion by the required majority, thereby expressing their intention clearly that the Assembly be dissolved.
- [29] We therefore proceed to reject the particulars of contraventions set down by the Petitioner and we proceed further to declare that the dissolution of the National Assembly by a vote of the House on the 19th of July 2011 on the motion put to vote does amount to a resolution of the Assembly as required by Article 111 of the Constitution of the Republic of Seychelles and thus there is no contravention of the said Article.

No order is made in respect of costs.

M.N BURHAN

JUDGE

Dated this 05th day of September 2011.

I concur.

C. G DODIN

JUDGE

Dated this 05th day of September 2011.