

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2017-04261

BETWEEN

**SOLOMON GABRIEL
CURTIS CUFFIE
DEMETRIUS HARRISON
LAUANN ARCHIE
ANNISHA PERSAD
CURTIS MEADE
DEAN LINTON**

Claimants

AND

**ANTHONY GUERRA
AKIEL NANCOO
NATRUDA CAMPBELL
DEBORAH DUNCAN
JULIET SMITH
CURLENE MARCELLE-MARS
NICHOLAS FORBES
JOAN PIERRE
SALISHA JOSEPH-DOUGLAS
DAPHNE MOORE
RICHARD PARISIENE**

**(ELECTION COMMITTEE OF THE PUBLIC SERVICES ASSOCIATION OF
TRINIDAD AND TOBAGO)**

First named Defendant

**GORGINA AUGUSTE
(GENERAL SECRETARY)**

Second named Defendant

Before the Honourable Mr. Justice Frank Seepersad

1. Ms Raisa Caesar for the Claimants.
2. Mr J. Heath, Mr Luckhoo and Mr Xavier for the Defendants.

Date of Delivery: 24th November, 2017.

DECISION

1. Before the Court for its consideration is the application filed on the 24th November, 2017 by virtue of which the Claimants sought the following reliefs against the Defendants:
 - i. An injunction restraining the conduct of the Election of the Public Services Association and any action of the Election Committee until a proper and duly constituted Election Committee is convened;
 - ii. All necessary and consequential directions;
 - iii. Such further and/or other relief as the Honourable Court deems fit.
2. In support of the application, Solomon Gabriel the first named Claimant filed an affidavit on behalf of all of the Claimants.

The Law

3. In making a determination as to whether or not the Court should grant or refuse interim relief, the Court should address its mind to the relevant principles. These principles were outlined in several decisions which have to be considered holistically. These decisions are **American Cyanamid Co. v Ethicon Ltd. [1975] A.C. 396** and subsequently **Smith & Others v Inner London Educational Authority [1978] 1 All E.R. 410** and **R v Secretary of State for Transport ex parte Factortame Ltd. and Others (No. 2) (1990) 3 WLR 818.**
4. The overarching principle is that injunctive remedies are granted where it is just or convenient to do so and on terms and conditions as the Court thinks fit.
5. The decision of the House of Lords in *American Cyanamid* (supra) laid down the tests to be applied by courts when ruling on interim applications on notice by virtue of which prohibitory injunctions are sought. According to the case, when an application is made for an interlocutory injunction, in the exercise of its discretion, the initial questions that fall for the Court's consideration, are:
 - A. "Is there a serious issue to be tried? If the answer to that question is, "yes", then two further related questions arise, they are:
 - B. Would damages be an adequate remedy for a party injured by the court's grant of, or its failure to grant, an injunction?
 - C. If not, where does the balance of convenience lie?"
6. In the determination of whether there is a serious issue to be tried, it must be shown that the action is not frivolous or vexatious and must have some prospect of succeeding. The Court should have regard to what was said in *American Cyanamid* at page 407 where it was stated that:

"It is no part of the Court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claims of either party

may ultimately depend nor to decide difficult question of law which call for detailed argument and mature considerations. These are matters to be dealt with at trial”

7. The Court must also consider the purpose of the interim relief sought and as Lord Diplock stated at page 406 of *American Cyanamid*:

“The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where "the balance of convenience" lies.”

8. In setting out the factors to be considered where an injunction is sought, Lord Goff in *Factortame* (supra) gave credence to the decision of Lord Diplock in *American Cyanamid* and the guidelines set out within that judgment. The Court in that case went on to consider other factors after having determined whether there is a serious issue to be tried. The next step according to *Factortame* is that the Court would then have to address its mind as to whether or not it is just to grant the relief prayed for and in deciding what is just, the Court should consider:

- a. Whether an adequate remedy in damages is available to either the Claimant (which precludes the injunction from being granted) or for the Defendant in the event that the injunction is granted, that the Claimant would have a sufficient undertaking to compensate him; (this principle is not always applicable in public law cases since the State may be seeking to enforce a law and it would not be deemed appropriate for the State to make an undertaking in damages as a condition of granting the injunction since there is no general right to indemnity for damage suffered by an invalid administrative action);

- b. The balance of convenience. The Court deduces the balance of convenience by considering all of the circumstances of the case which varies considerably from case to case. The Court must weigh on a balance of probabilities whether the greater risk of injustice lies in granting or not granting the injunction. There are also special cases which must be considered when granting interlocutory relief (see point c below).
 - c. The public interest. In cases where the public interest is an issue, the Court is required to consider the balance of convenience in much broader terms and to take into account the public interest where a public body is performing its duties which are owed to the public. The Court must emphasise the upholding of the law which is in the public's interest and the need for public bodies tasked with upholding the law, to be free to perform their duties in the public's interest. If it is found that there must be a fetter on these powers, considerable emphasis must be placed, in order to outweigh the duty to enforce the laws, against enforcing said laws.
9. In the Hoffmann-La Roche case [1975] A.C. 295, Lord Reid said, at p. 341, that:

"it is for the person against whom the interim injunction is sought to show special reason why justice requires that the injunction should not be granted or should only be granted on terms."

Where, for example relief is sought to restrain a public body from enforcing the law on the basis that the validity of that law is being challenged then a strong prima facie case must be brought by the party challenging the law to show that the statutory instrument is ultra vires and this issue one which must be determined is in the exercise of the Judge's discretion.

Findings

Application of the Law to the facts

10. The Claimants contend that the PSA's constitution has been violated and that the list of voters for the election carded on Monday 27th November 2017 is fundamentally flawed. The Court noted that Rule 99.1 of the Constitution of the PSA provides for the holding of elections every four years and that the decision to hold the upcoming elections was made

on 22nd February 2017. The Claimants contend that at a special general council meeting which was held on the 5th October 2017, a decision was taken which enabled then non-financial members to pay their dues and to be treated thereafter as eligible voters. Rule 7 of the PSA's constitution states that non-financial members are prohibited from voting and Rule 20(b) of the election rules provide that a person shall not be eligible to vote unless he was a financial member for a period of 12 months prior to the date of the election.

11. The PSA's constitution at clause 103 provides for any amendment to be effected at the meeting of the "conference". The conference is defined as the special majority body under clause 11 and under clause 12 the conference is usually fixed during the first quarter of a financial year and the conference can consider matters put forward by the general council.
12. The Claimants contend that they requested copies of the minutes of the said meeting of October 5th but were not provided with same. The Defendants through their attorney Mr Heath denied that any decision for non-financial members to pay up was taken and they contend that the meeting was limited to the decision to be adopted for Airports Authority personnel and Ms Natruda Campbell.
13. Solomon Gabriel in his affidavit stated that the Airports Authority personnel who were underpaying dues in the sum of \$50.00 and whose names did not appear on the first list of voters generated by the election committee, appeared on the second list. He also pointed out that one of the Defendants namely Natruda Campbell was not a financial member for 15 months but she was allowed to pay her arrears and was included on the voters list and she was also appointed as a member of the elections committee. The Defendants indicated that the membership fee was increased from \$50 to \$100 on or about May, 2015 and that for unexplained reasons an increase of deduction with respect to salary assignments was not effected for the Airports Authority workers. As a result, a decision was taken to allow them to pay the difference and to vote in the elections. The Court was told that these workers amount to roughly 242 persons. In relation to Ms Campbell, they contend that she was always an active member of the PSA but no salary assignment form was ever prepared

and it was only during the verification process was it discovered that she was not a financial member.

14. The Claimants indicated that in the Defendants' financial documents of 2016, there were some 14,000 financial members but the current voters list now has 15,129 persons. Counsel for the Defendants indicated that the November 26 position was not a final position and after the election date was fixed, persons who were financial members but whose names were excluded from the November, 2016 document contacted the relevant authorities in the PSA and once their membership status was verified, their names would have been included.
15. The Claimants also pointed out that contrary Rule 27(b) of the election rules, all the polling stations were not listed in the advertisement in the daily newspapers on the 6th November 2017. Attorneys for the Defendants indicated that administrative difficulties prevented them from publishing all the polling stations but an additional list of stations was placed in an ad in a newspaper of general circulation on 23rd November.
16. The issue as to the accuracy of the list of voters is one that is of paramount importance and at all times there should be strict compliance with the relevant constitutional provisions. Under the constitution, the full list of polling stations should be advertised at least 14 days prior to the election and a process is outlined to enable persons whose names are not included on the voters list to seek to have that situation remedied.
17. Article 7 of the PSA's Constitution as amended on the June 18, 2009 outlines the criteria for eligibility to vote and be voted for in national elections. This provision reads:

*“(i) An Ordinary Member (including a re-admitted member) shall be permitted to vote in National Elections, or be voted for at any meeting of the Association or Section, and he/she shall be eligible for election to such with the exception of national office after the expiration of **twelve (12) months** from the date of his/her admission to membership.”*

18. If changes have to be effected to any of the constitutional provisions, then any such amendment has to strictly accord with the constitutional provisions that enable same. Given that there is no dispute that a meeting was held on the 5th October and that certain decisions pertaining to the Airports Authority workers' entitlement to vote as well as Ms Natruda Campbell's entitlement to be considered as a financial member and having noted that the minutes for the said meeting were not disclosed, the Claimants' assertion that a decision was taken to enable persons who were in arrears to pay up, does cause a degree of disquiet in the Court's mind and that disquiet is intensified when one considers the Claimants' assertion that the change may have resulted in an increase of over 1000 eligible voters. The manner in which an election is conducted affects the membership's rights and all members ought to have confidence in the legitimacy of the electoral process. The provisions of the constitution should never be compromised and those in charge of the executive of the Union should never be permitted to alter and/or change the process in a manner which is not consistent with the Union's constitution.
19. The issue as to whether a change in policy was effected at the meeting on the 5th October 2017 and whether or not that change was effected in accordance with the Union's constitution are issues which are serious and at this stage it cannot be said that the Claimants' assertions are devoid of merit. While the Court recognizes that preparations for the election are well advanced and that significant cost may have been incurred, financial prejudice should never trump the need to have strict compliance with constitutional obligations. At this stage the Court has deep rooted concerns that the list of voters may have been compromised and is of the view that the argument advanced by the Claimants with respect to the voters list is one that is not devoid of merit and the Court feels with a high degree of assurance that the Claimants may be able to establish an entitlement to the reliefs sought, at trial.
20. If elections are allowed to proceed and unauthorized persons are allowed to vote, the legitimacy of the process will be seriously compromised and such a violation of the membership contract is a matter which can never be addressed in monetary terms. Trade unions play a critical part in relation to the protection and advancement of workers' rights and given the economic cross roads and challenges that confront citizens in this country,

the need to have legitimate union representation cannot be dismissed. Serious issues have been raised in this matter and damages will not be an adequate remedy, if the election is allowed to proceed and it is established at trial that the list of voters was flawed and/or compromised and/or its formulation violated provisions of the constitution, such a course of action will occasion immense damage to the union's reputation and seriously compromise the membership's confidence in the election results.

21. The failure to adequately advertise the complete list of polling stations in accordance with the constitution and to afford to potential voters the opportunity, having looked at the posted list of voters, to have their names included, is also a serious issue and the provisions of rule 27 should have been strictly followed. The Court also noted that the final list was signed by the general secretary with no proper endorsement that same was approved by the election committee. Under the constitution, the general secretary has to provide the election committee with the list of members but it is the election committee's responsibility to finalise same.
22. The Court is of the view that greater injustice will be occasioned if the Court refuses to grant the injunction as opposed to a decision to grant same. The union is a public body whose influence on the national landscape cannot be minimalized and the Court therefore has to adopt a wide approach and factor into its considerations, the expectation of the thousands of members to have all of the contractual provisions that govern their membership upheld and the Court should strictly enforce the rules and regulations which govern the conduct of elections.
23. In the circumstances this Court is of the view that it will be unsafe to permit the election to be undertaken on the 27th November 2017 and that there may exist a dire need to revisit the list of voters and to sanitize same. Accordingly, an injunction is hereby granted to prevent the holding of the PSA's election on Monday 27th November, 2017. The Defendants are directed to provide the minutes of the meeting of October 5, 2017 to the Claimants' attorney at law on or before 4pm on 27th November, 2017. The parties are to appear before the docketed Judge Madame Justice Kangaloo on the Tuesday 28th

November, 2017 at 10am in POS 25 at the Hall of Justice, Port of Spain for further case management.

24. Legal costs in this matter are reserved.

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FRANK SEEPERSAD
JUDGE