REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civ. App No. 120 of 2007

BETWEEN

BASDEO PANDAY **APPELLANT**

AND

JACQUELINE SAMPSON **RESPONDENT**

PANEL:

M. Warner, J.A.
I. Archie, J.A.
P. Weekes, J.A.

APPEARANCES:

Mr A. Ramlogan, Mrs. K. Persad-Bissessar, Ms. S. Gopeesingh for the Appellant

Mr Armour, S.C., Mr. S. de la Bastide for the Respondent

Mr I. Benjamin for the Attorney General

DATE DELIVERED:

19th October 2007

Delivered by M. Warner, J.A.

I have read in draft the judgment delivered by Warner, J.A. I agree with it and I have nothing to add.

I. Archie
Justice of Appeal

I also agree

P. Weekes
Justice of Appeal

1. This appeal arose in the context of a Vacancy Petition which had been referred to the High Court pursuant to provisions in the Constitution of Trinidad and Tobago and the Representation of the People Act Chap 2:01.

2. Sections 48 (1) (d) and 49 (2) (d) of the Constitution of Trinidad and Tobago operate to disqualify anyone who is serving a sentence of imprisonment exceeding twelve months or is under such sentence, the execution of which, has been suspended, from membership in the House of Representatives and as a result such person shall "vacate his seat". As will be demonstrated presently, provision is made by section 49 (3) to (6) for the vacation of the seat to be deferred provided that certain time-related conditions are fulfilled. Essentially, these are the constitutional provisions which must be construed in relation to the appellant's tenure of office as a member of the House.

Background

3. The appeal arose in the following circumstances. On the 24th April 2006, Mr. Basdeo Panday, the elected representative for the electoral district of Couva North, (the appellant) was convicted by the Chief Magistrate of three offences under the Integrity in Public Life Act. He was sentenced to serve a term of imprisonment of two years for each offence, the sentences to run concurrently. He filed an appeal against his conviction and sentence on the same day. The appellant was subsequently granted bail pending the hearing of the appeal against the decision of the Chief Magistrate. On the 20th March 2007, the Court of Appeal quashed the conviction and sentence on the ground of 'apparent bias' and ordered that the appellant be retried before another magistrate. Special leave to appeal the order for retrial was granted by the Privy Council on the 4th October 2007. That appeal is fixed for hearing in early 2008.

4. On the 23rd May 2006, the Speaker of the House, upon the expiry of thirty days after the sentence was handed down ascertained from the appellant that he intended to pursue an appeal. The significance of this time limit and the Speaker's inquiry will be appreciated when the legislation is set out verbatim.

5. As a consequence, on the 24th May 2006, the Speaker informed the appellant in writing that he had granted him an extension to pursue his appeal. Section 49(4) of the Constitution vested the Speaker with the power to grant further "thirty day" extensions up to a maximum of 150 days. The Speaker granted four further "thirty day" extensions. By letter of 20th September 2006, the Speaker duly informed the appellant that any further extension of time would require a resolution of the House and in the absence of such a resolution the seat for Couva North would be declared vacant. No motion was moved in the House on the appellant's behalf for any further extension. Accordingly, on the 27th October 2006, the Speaker declared in the House that the seat of Couva North had fallen vacant on the 24th October 2006.

Pemberton J., against whose order this appeal was lodged set out a more detailed account of the entire course of conduct and I adopt it.

<u>The Vacancy Petition</u>

6. By section 52 (1) (b) of the Constitution any question whether any Senator or Member of the House of Representatives has vacated or is required to vacate his seat shall be determined by the High Court. Leave of a judge of the High Court is however required (section 52 (2)).

7. The method of questioning disputed vacancies is also addressed in section 130 of the Representation of the People Act Chapter 2:01. It refers to the High Court's

exclusive jurisdiction, and specifies that it is exercised after leave has been granted by a judge of the High Court (See Section 130(1) (a)).

8. The House duly applied for such leave in the name of Jacqueline Sampson, Clerk of the House of Representatives, (the Respondent) to obtain the High Court's determination on the vacancy. The questions were these:

a) Whether the seat of Couva North in the House of Representatives was vacant;

b) Whether in the alternative, that the seat of Couva North in the House of Representatives was not vacant.

9. The Attorney General was served with these proceedings, pursuant to section 133 (b) of the Representation of the People Act.

10. On the 27th July 2007, Pemberton J. answered the first question in the affirmative. She declared that the appellant had vacated the seat for Couva North and that the seat remained vacant. She also dismissed the appellant's motion to dismiss the Vacancy Petition and awarded costs to be paid by the appellant to the respondent and the Attorney General on that motion.

11. The important legal issue for the determination of this Court was, in the main whether the quashing of the conviction and sentence on the ground of 'apparent bias,' rendered the conviction null and void 'retrospectively'. Counsel for the appellant contended that the effect of this argument would be that the seat for the Couva North was no longer and/or had never been vacant. The appellant remained the member of Parliament for Couva North and would have resumed that role when, the Court of Appeal quashed his conviction and sentence on the 20th March 2007.

12. Counsel for the appellant's arguments were strongly influenced by dicta in **<u>Attorney General v Jones (2000) Q.B. 66</u>**. Pemberton J. however, accepted the opposing arguments that **<u>Jones</u>** was decided in a different legislative context. The philosophy underlying the reasoning in **<u>Jones</u>** is encapsulated in the following paragraph of the judgment of Kennedy L. J.

> ***"In our judgment there are a number of powerful reasons for preferring what Mr. Sales describes as his preferred solution. The first reason is that justice requires that when a conviction is set aside on appeal, all penalties imposed at the time of conviction should also, so far as possible, be set aside. It would require very clear statutory language to suggest otherwise and that is not to be found in section 160(4) or elsewhere in the Act of 1983. Where there is a conviction of the type with which we are concerned in this case, there is not only a need to do justice to the individual, but also to the electors she represents, and a need if possible to avoid the trauma and expense of a fresh election if there is no justification for that course."***

13. Although the turn of events is unprecedented in this jurisdiction, like most democracies, the Trinidad and Tobago Parliament has put legislation in place to maintain the integrity of its process (See observations of the **<u>Federal Supreme Court of Canada in Harvey v New Brunswick (Attorney General) [1996] 2 S.C.R. 876</u>** para. 63 in a case which dealt with disqualification after conviction, and whether it was a reasonable limit on rights guaranteed by the Canadian Charter of Rights.)

14. Provisions have been enacted in the Constitution and the Representation of the People Act relating to tenure of office of members, the disqualification of members and vacation of seats. A general survey of the Chapter devoted to these matters indicates that the Speaker occupies a pivotal position in Parliament.

15. This case characterizes the constitutional relationship between two arms of government — parliament and the judiciary. It cannot be stressed too often that while

the courts may review the end result of Parliamentary decision-making or its constitutionality, the process of Parliament's decision-making must operate without the court's interference. That demarcation is indeed demonstrated by the manner in which the questions were formulated.

16. Counsel for the appellant has made an important concession which is, that "if a literal interpretation" were applied to sections 48 and 49, the seat was indeed vacated on 24th October 2006.

17. The issues which will be considered in this judgment are therefore these:

i. The construction of sections 48 and 49 of the Constitution in the light of the finding of "apparent bias";

ii. Whether in construing the relevant sections of the Constitution, notwithstanding the clear words of the enactment, the court ought to do so in a manner consistent with the overriding principle of "interests of justice";

iii. Whether the effect of the appeal was to render the conviction null and void "retrospectively".

Cases cited

18. In addition to the **Jones** case, Counsel for the appellant relied on authorities cited from the Indian jurisdiction, the main case being **Manni Lal v Shri Parmai Lal and others [1970] INSC 158**.

19. Counsel for the respondent and the Attorney-General**,** distinguished **Jones.** Among the authorities cited were **Bodington v British Transport Police [1998] 2 All ER 203**, **Hancock v Prison Commissioners [1960] 1 QB 11**, **Sope v Speaker of**

<u>Parliament (Vanuatu) (2005) NZAR163</u>. The Court's attention was directed by counsel on both sides and counsel for the Attorney General to several leading judgments which dealt with the approach to constitutional interpretation.

The Legislative Background

20. For ease of reference, it is necessary to set out the relevant constitutional provisions and related provisions of the Representation of the People Act.

The Constitution

The following section deals entirely with disqualification by status, vocation and incapacity.

Section 48. (1) No person shall be qualified to be elected as a member of the House of Representatives who —

> ***a) is a citizen of a country other than Trinidad and Tobago having become such a citizen voluntarily, or is under a declaration of allegiance to such a country;***
>
> ***b) is an undischarged bankrupt having been adjudged or otherwise declared bankrupt under any law in force in Trinidad and Tobago;***
>
> ***c) is mentally ill, within the meaning of the Mental Health Act;***
>
> ***d) is under sentence of death imposed on him by a court or is serving a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by a court or substituted by competent authority for some other sentence imposed on him by a court, or is under such a sentence of imprisonment the execution of which has been suspended;***

e) *is disqualified for membership of the House of Representatives by any law in force in Trinidad and Tobago by reason of his holding, or acting in, any office the functions of which involve —*

   (i) *any responsibility for, or in connection with, the conduct of any election; or*
   (ii) *any responsibility for the compilation or revision of any electoral register;*

f) *is disqualified for membership of the House of Representatives by virtue of any law in force in Trinidad and Tobago by reason of his having been convicted of any offence relating to elections; or*
g) *is not qualified to be registered as an elector at a Parliamentary election under any law in force in Trinidad and Tobago.*

(2) Parliament may provide that, subject to such exceptions and limitations, if any, as may be prescribed, a person may be disqualified for membership of the House of Representatives by virtue of-

a) *his holding or acting in any office or appointment (either individually or by reference to a class of office or appointment);*
b) *his belonging to any of the armed forces of the State or to any class of person that is comprised in any such force; or*
c) *his belonging to any police force or to any class of person that is comprised in any such force.*

(3) For the purposes of paragraph (d) of subsection (1) —

a) *two or more sentences of imprisonment that are required to be served consecutively shall be regarded as separate sentences if none of those sentences exceeds twelve months, but if any one*

such sentences exceeds that term they shall be regarded as one sentence; and

b) ***no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.***

Section 49 sets out provisions relating to the effect of disqualification.

49. (1) Every member of the House of the Representatives shall vacate his seat in the House at the next dissolution of Parliament after his election.

(2) A member of the House of Representatives shall also vacate his seat in the House where-

a) ***he resigns it by writing under his hand addressed to the Speaker or, where the office of Speaker is vacant or the Speaker is absent from Trinidad and Toabgo, to the Deputy Speaker;***
b) ***he is absent from the sittings of the House for such period and in such circumstances as may be prescribed in the rules of procedure of the House;***
c) ***he ceases to be a citizen of Trinidad and Tobago;***
d) ***subject to the provisions of subsection (3), any circumstances arise that, if he were not a member of the House of Representatives, would cause him to be disqualified for election thereto by virtue of subsection (1) of section 48 or any law enacted in pursuance of subsection (2) of that section;***
e) ***having been a candidate of a party and elected to the House, he resigns from or is expelled by that party.***

(3) Where circumstances such as are referred to in paragraph (d) of subsection (2) arise because any member of the House of Representatives is under sentence of death or imprisonment, is mentally ill, declared bankrupt or convicted of an offence relating to elections, and where it is open to the member to appeal against the decision, either with the leave of a court or other authority or without such leave, he shall forthwith cease to perform

his functions as a member of the House so however that, subject to the provisions of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter.

(4) The Speaker may, from time to time, extend that period for further periods of thirty days to enable the member to pursue an appeal against the decision, so that however that extensions of time exceeding in the aggregate one hundred and fifty days shall not be given without the approval, signified by resolution, of the House.

(5) Where on the determination of any appeal, such circumstances continue to exist and no further appeal is open to the member, or where, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal to leave to appeal or, for any other reason, it ceases to be open to the member to appeal, he shall forthwith vacate the seat.

(6) Where at any time before the member of the House vacates his seat such circumstances as are mentioned in this section cease to exist, his seat shall not become vacant on the expiration of the period referred to in subsection (3) and he may resume the performance of his functions as a member of the House.

Section 69 (3) provides:

> ***Where a vacancy occurs in the House of Representatives within the first four years of the life of the Parliament a bye-election shall be held to fill such vacancy not later than ninety days from the date of the announcement by the Speaker of the vacancy.***

This provision is of importance when one comes to consider whether the interests of the electors were overlooked. Interestingly, counsel for the appellant submitted that had the seat been filled by a bye-election, the result could not have been disturbed. It is difficult to reconcile that submission with counsel’s principal argument that the Chief Magistrate lacked jurisdiction “ab initio”.

Section 130 (1) of the Representation of the People act provides:

"The following questions shall be referred to and determined by the High Court in accordance with sections 130 to 136:

> ***(a) where leave has been granted under section 52(1) of the Constitution, any question whether any Senator or member of the House of Representatives has vacated his seat under section 43(2) or section 49(2) of the Constitution or is required under section 43(3) or section 49(3) of the Constitution to cease to exercise any of its functions as a Senator or as a member of the House of Representatives.***
>
> ***(b) …….***

<u>Whether the issues are now academic?</u>

21. Before I consider the merits of the case, I must consider whether the issues are now academic. Events have now overtaken the appellant. On the 28th September 2007 the Prime Minister announced in Parliament that he had advised the President of the Republic of Trinidad and Tobago to dissolve Parliament at midnight. He further announced that general elections will be held on 5th November 2007. For completeness, it is of relevance to note that section 49 (1) of the Constitution provides that every member of Parliament vacates his or her seat on the dissolution of Parliament.

22. It is well settled that a court will not in general embark upon an academic exercise which will not affect the rights of the appellant. That said, however, the question which the Court is required to determine is of public interest. Despite the lack of a "full adversarial content" it is apparent that Parliament required a determination on

the proper interpretation of the relevant sections of the Constitution and this Court has a corresponding duty to respond.

23. There is, of course, no single touchstone in determining whether the matter ought to go forward. A vacancy petition, like a representation petition is of interest to and touches a large number of constituents, primarily voters. (See observations of de la Bastide C.J. in **Cv. A No 21 and No. 22 of 2001 (unreported) Peters v Attorney General and Franklin Khan** and **Chaitan v Attorney General,** in which the proper construction of 48 (1) (a) of the Constitution was determined.) This provision dealt with disqualification from membership of the House by voluntary acquisition of citizenship of another country or by being under a declaration of allegiance to another country.

24. Another point was that in the absence of a further right of appeal, it was important that the Court should determine the issue in accordance with its constitutional obligation. It was for these compelling reasons that this Court continued with the interpretation exercise.

Lack of jurisdiction — Did the finding of "apparent bias" deprive the Chief Magistrate of jurisdiction?

25. I must first address Counsel for the appellant's contention that Sections 48 and 49, when properly construed do not contemplate a conviction and sentence imposed "*coram non judice*." Put simply, Counsel was contending that the Chief Magistrate lacked jurisdiction 'ab initio' when he imposed the conviction and sentence on the appellant. In this regard issues (1) and (3) are related. (See para. 17 before)

26. In administrative law, lack of jurisdiction may arise in several ways. A court may by virtue of its own constitution have no power to adjudicate on the question or embark on an enquiry; in relation to parties properly before it, it may depart from a rules of natural

justice; it may exercise a power which it does not have; it may have asked itself the wrong questions or have taken into account matters which it was not directed to take into account. (See formulation of Lord Pearce in **Animismic Ltd. v. Foreign Compensation Commission [1969]** **2 A.C. 147** at 195 and **O'Reilly v. Mackman [1983]** **2 AC 237** at 278.) In short it is a basic principle of administrative law that a public authority may not act outside its powers. The concept of judicial review of administrative acts and omissions has several features which distinguish it from the criminal jurisdiction which the court exercises. A distinction must therefore be made where an appeal against a conviction and sentence leads to the conviction being quashed or sentence set aside and varied. Up to that time there are lawful orders of the sentencing court which must be obeyed.

27. Counsel for the appellant's argument was, that the Chief Magistrate did not have the power to embark upon the enquiry and that the quashing of the conviction rendered the conviction void "ab initio". Put another way, the contention rests on the argument that the Chief Magistrate was stripped of jurisdiction "retroactively" because this Court held that a "fair-minded" observer having considered the facts would have concluded that there was a real possibility that the tribunal was biased.

28. What was significant however, was Counsel for the appellant's submission that had the appellant been acquitted, he could not be tried again as the plea of autrefois acquit would be available to him.

29. The submission is not tenable because where that plea is raised, one of the pre requisites is that the earlier adjudication must have resulted from valid process and by a court of competent jurisdiction (See **Connelly v. Director of Public Prosecution**

[1964] A.C. 1254 and **Summary in Archbold (1999 Edition**) at paragraph 4 – 118). The submission does sit ill with that basic principle.

Analysis

30. I now turn to examine the effect of the Chief Magistrate's order. On the 24th April, 2006 the Chief Magistrate, in the exercise of his summary jurisdiction under the Summary Courts Act Chapter 4. No. 20 handed down a decision on the merits of the case. He convicted the appellant and passed sentence. An order in proper form was drawn up. (See Section 69 of the Summary Courts Act)

31. The conviction and sentence provided lawful authority for the appellant's detention until he was granted bail, pending appeal. It cannot be disputed that the Commissioner of Prisons was entitled to rely on the fact of the conviction and sentence being passed as providing justification for the appellant's imprisonment.

32. The precise scope of the Chief Magistrate's order is best illustrated by reference to the observations of Lord Woolf M.R. in **R v Governor of Brockhill Prison ex parte Evans (No. 2) 1999 Q. B. 1043** at 1056-1057. The controversy in that case centred on the tort of false imprisonment. It was held that a decision, authoritatively overruled, operated retrospectively. A prison Governor calculated the release date of a prisoner by reference to a formula which was later held to be incorrect. Both the Governor and the Home Office thought they were bound to follow the earlier decision which had been overruled. The prisoner brought judicial review proceedings against the Governor contending that the authorities relied upon were wrong. The question was whether the prisoner might recover damages for the extra time spent in custody. The judge at first instance held against the prisoner. Both the Court of Appeal (by a majority) and the

House of Lords in a unanimous decision, held that damages were recoverable (See **R v Governor of Brockhill Prison ex p. Evans (No. 2) [2000] 4 ALL ER 15**).

33. I cite the case however for the observations of Lord Woolf M.R. in the Court of Appeal when he contrasted that situation (where a decision was overruled) with circumstances which are analogous to the matter under consideration. He said:

> **"The situation is different from that where a prisoner is convicted and the conviction is subsequently set aside on appeal. Here the conviction is not retrospectively set aside by the higher court for all purposes. It can therefore provide lawful authority for imprisonment prior to it being set aside even though it has been shown to state inaccurately what is the law.** ***That is the position if a court of record passes a sentence which is in excess of what the law allows on a defendant (for example a court only having a power to pass 9 months, passes a 12-month sentence) where the mistake is found out afterwards and the sentence is subsequently quashed and a lawful sentence substituted). The governor will be still entitled to rely on the fact of the sentence passed by the court as providing justification for the imprisonment. The governor is not required or entitled to assess for himself the validity of the sentence. He is entitled to assume that it is a valid sentence."***

Emphasis added

34. On further appeal to the House of Lords, Lord Woolf's analysis was expressly endorsed by Lord Hobhouse (at page 37). The Law Lord cited the **Bodington** case as presenting the same type of question "in relation to bye laws".

35. In **Bodington**, the appellant had been convicted of charges laid under a byelaw which prohibited the smoking of tobacco in a railway carriage. He challenged his conviction and the byelaw was held to be invalid. Lord Browne-Wilkinson at page 218, said:

> "***The byelaw will necessarily have been found to be ultra vires; therefore it is said it is a nullity having no legal effect. I adhere to my view that the juristic basis of judicial review is the doctrine of ultra vires. But I am far from satisfied that an ultra***

<u>vires act is incapable of having any legal consequence during the period between the doing of that act and the recognition of its invalidity by the court.</u> During that period people will have regulated their lives on the basis that the act is valid. The subsequent recognition of its invalidity cannot rewrite history as to all other matters done in the meantime I reliance on its validity. The status of an unlawful act done during the period before it is quashed is a mater of great contention and of great difficulty."

<u>Emphasis added</u>

36. Returning to the instant case, by parity of reasoning, it is undeniable that the Speaker would not have been required to question the jurisdiction of the Chief Magistrate and the validity of the conviction and sentence, when the decision was handed down.

37. The appellant was, in fact, incarcerated after conviction and sentence until he was released on bail pending appeal. It could not be suggested that the appellant's detention was unlawful. His position was not different from convicted persons who have had their sentences overturned on appeal. The Commissioner of Prisons acted on the decision and so did the Speaker, In fact all relevant authorities were entitled to act on the decision of the court as being valid and correct until such time as it was overruled. By the 24th October 2006 the procedure which the Constitution provided to extend the period of grace was not set in motion. In that regard, it is to be recalled that by letter of the 20th September 2006, the Speaker informed the appellant that any further extension would require a resolution of the House and in the absence of such resolution, the seat would be declared vacant. I do not therefore accept the proposition that the quashing was "<u>retroactive for all purposes</u>".

38. Our function, however, is to construe sections 48 1(d) and 49 (2) (d) of the Constitution.

Canons of construction

39. It is not necessary to cite authority for the basic canon of construction that a statute must be construed as a whole. Sections 48 and 49 must therefore be construed as part of the comprehensive provisions of the Constitution regulating tenure of office, disqualification, resignation and expulsion, which Parliament devised in relation to its members.

40. Counsel for the appellant, in his reliance on the dicta in **Jones** contended that the overriding principle of justice and fairness, the principles of democracy, respect for fundamental rights of electors to be represented in Parliament had to be taken into account. As part of this argument, Counsel for the appellant made two points. First, he contended that the appellant could not himself move the House for a further extension after the 150 days had elapsed, and secondly, that the voters were left without representation in circumstances which were beyond their control.

41. As regards the first point, the answer lies in the fact that in construing the instrument as a whole, it is clear that Parliament, in Section 49(3) to (6) clothed the Speaker and then the House with the responsibility for ensuring that those areas were not overlooked. Section 49 (4) to (6) contain positive provisions for participation which were designed to meet the same concerns highlighted by counsel for the appellant.

42. As regards the second point, Section 69 (3) of the Constitution provides that where a vacancy occurs in the House of Representatives within the first four years of the life of Parliament a bye-election shall be held to fill such a vacancy not later than ninety days from the announcement by the Speaker of the vacancy. In order to appreciate the full effect of this provision, one must relate it to section 48 (1) (d) where vacation of the seat in is not triggered unless the sentence of imprisonment exceeds

twelve months. Clearly, Parliament must have recognised that a member who is incarcerated for less than twelve months could not represent his constituents in the House during that period of incarceration.

43. But more than that, the construction for which counsel for the appellant contends would have the effect of simply overlooking section 49(4) of the Constitution, which requires a resolution of the House. On the basic presumption that Parliament 'does nothing in vain', every word or phrase has significance unless, of course, no sensible meaning can be given to it or if subsequent changes in the law rob it of its meaning. It must be presumed that the framers of the Constitution had good reason for involving the House in the process. It is abundantly clear therefore that the Constitution imposed obligations on the appellant, the Speaker and the entire House. The role of the Court is not to usurp any of those functions, but to decide whether those obligations have been fulfilled. This, in my view, is the effect of reading the provisions of the Constitution as a whole. I therefore find no merit in Counsel for the appellant's argument.

The Purposive Approach

44. Undoubtedly, the literal approach to statutory interpretation has shifted towards a more purposive approach. However, where there is no uncertainty in the words of a statute, words should not be employed to produce a meaning according to the courts' predilections and moral values or its own sense of how competing interests ought to be balanced. (See **Reyes v the Queen (2002) AC 235** at 246). Further I do not regard the dicta in **Minister of Home Affairs v Fisher (1980) AC 319** at 318-329 in its application to fundamental rights, as countenancing a construction which is inconsistent with Parliament's clear intention.

45. In **Fisher**, in a unanimous opinion, the Privy Council espoused a "generous interpretation free from the austerity of tabulated legalism". However their Lordships explained that this did not mean that no rules of interpretation should be employed. Respect must be paid to the language used and to the traditions and usages which give meaning to that language. Those principles are therefore applicable to the provisions under scrutiny.

46. The dicta of de la Bastide C.J. in the **Peters** case are apt. As I have already indicated, this case involved a construction of Section 48 (1) (a). He had this to say:

> ***" I can also find no warrant whatever for construing the words 'or is under a declaration of allegiance to such a country' as referring only to a declaration of allegiance made otherwise than for the purpose of, or in connection with, the acquisition of citizenship. Here again the words are clear and unambiguous and it is the duty of the Courts to give effect to them. If that produces a result which is no longer desirable in the light of the liberalisation of the law relating to dual citizenship, then it is the function of the Parliament to amend or repeal the law that it has itself enacted. For us to do so would amount, in my view, to a clear usurpation of the legislative function, one which cannot be justified by claims to be interpreting the Constitution 'generously', or 'as a living instrument'.***

Emphasis added

The matter ought to rest here. However, Counsel for the appellant relied vigorously on the principle of "interests of justice" invoked in **Jones**. I now consider it.

47. This concept is usefully defined in the South African case of **S v Dlamini 1994 (4) SA 623** at para 45. **Kriegler J** in a matter which concerned the constitutional validity of bail applications, had this to say:

> ***"The term the 'interests of justice' is of course well known to lawyers, especially students of South African constitutional law. It***

> ***is a useful term denoting broad and evocative language a value judgment of what would be fair and just to all concerned. But while its strength lies in its sweep, that is also its potential weakness. Its content depends on the context and applied interpretation. It is also, because of its breadth and adaptability, prone to imprecise understanding and inapposite use."***

48. In the broadest sense therefore while, courts are mandated to produce results that are fair and just, they have a duty to interpret and uphold the law. A court does not approach its role of interpretation in a vacuum. There are rules of interpretation which must be adopted and applied.

The Jones case

49. With that introduction, I shall now examine the **Jones** case carefully, bearing in mind counsel for the appellant's main submission that, despite the clear words of the enactment, the court ought to construe the sections in a manner consistent with the overriding principle of the 'interests of justice'. The relevant facts of **Jones** were these. At the general election in Great Britain held on 1st May 1997, Mrs. Jones was elected as a member of Parliament for the Newark Constituency in Wales. Following the election, her election agent made a return of election expenses. They were both convicted in the Crown Court before a judge and jury of making a false declaration about Mrs. Jones' expenses, contrary to section 82 (6) of the Representation of the People Act. 1983 — the conviction was quashed by the Court of Criminal Appeal shortly after.

50. The Attorney General, representing the Speaker and the Authorities of the House of Commons referred the following question to the High Court. Whether on a proper construction of the Act the defendant Mrs. Jones was entitled to resume her seat in the Commons.

51. The allegations in Jones concerned, therefore, malpractice in relation to elections. The Act provided three ways in which an allegation of corruption might have been considered – by an election court; by the High court or by a criminal court. It also provided that a candidate found guilty by an election court was subject to incapacities — (a) he was incapable of being registered as an elector or of voting; b) of being elected; c) and of holding any public or judicial office. Tacked on to the last part of the section were the words — "and if already elected shall from that date vacate his seat". (Section 160(4)).

52. On a conviction before a criminal court, the relevant section, 173 (a), which was triggered provided that a person convicted of a corrupt practice shall be subject to the incapacities set out in 160(4). As stated before, this section related to conviction before an election court. The crucial question was whether section 173 (a) also invoked the concluding part of section 160 (4) which was introduced by the word "and". The court held that the use of the word "and", helped to demonstrate that the final part of the section simply set out a consequence of the incapacity to sit, which fell, if the conviction was set aside.

The court, in **Jones,** accepted counsel's submissions that the vacation of the seat was merely machinery – a consequence of the incapacity to sit, so that if the conviction was overturned, the capacity to sit was restored and the seat if not already filled ceased to be vacant. Not only was the legislative context in **Jones** very different from sections 48 and 49, but the court was faced with a real doubt as to the legal meaning of the section.

53. Counsel for the appellant also sought to support his submissions by relying on dicta in **Manni Lal**, a judgment of the Supreme Court of India. This was a civil appeal in which an election petition had been presented for determination of disqualification and

other matters. The successful candidate had been convicted and sentenced to imprisonment. His appeal was allowed and conviction and sentence was set aside. It was held that the conviction and sentence were "wiped out" retrospectively. No rationale was stated for the Court's broad formulation.

54. In the later cases of **Vidya Charan Shukla v Pursottam Lal Kaushik [1981] INSC 15** and **Dilip Kumar Sharma and ors. v State of Madhya Pradesh [1975] INSC 258** both courts invoked the principle of stare decisis and followed the reasoning in **Manni Lal**. I am not persuaded that those authorities are of assistance.

55. The **Sope** case was cited by counsel for the respondent. It concerned a member of the Parliament of Vanuatu (formerly the New Hebrides). He had been convicted of forgery and sentenced to imprisonment for two years. The **Sope** case presented some of the elements of the instant case — disqualification by conviction and sentence; similar provisions for extension by the speaker to enable the member to pursue an appeal; no bye-election held. The point of departure was that the President granted a pardon to the member and, as a result, he applied to be reinstated to Parliament. A major part of the judgment was devoted however to the legal effect of the pardon. It was held that the seat became vacant at the expiration of the prescribed time. There was no longer a member who held it. It could not be regained by the fact of or consequence subsequent to the grant of pardon.

56. Another case which shows the same approach is **Harvey**, which was ultimately considered by the Supreme Court of Canada (See para. 13 before). At the level of the **Queen's Bench Division, Dickson J. 1993 A.C.W.S (3d) 62** para. 27 had this to say.

> ***"Any degree of misgiving I may have in concluding as I have done in upholding the provision that a sitting member vacate his or her seat is prompted by the somewhat harsh, but in my view***

> ***necessary, provision that vacancy occurs on entry of the conviction and does not await the expiry of an appeal period or the hearing of any appeal. One must recognize that an appeal could drag on for months or even much longer. Suspension of operation of the disqualification pending resolution of the appeal could serve only to leave the affected member in a state of suspended and useless animation in the interim, and of no real worth either to the Assembly, to the constituents in the electoral district concerned, or to advancement of respect for the democratic system."***

57. Reverting therefore to the rule that the statute should be construed as a whole, which was the starting point of the construction exercise, it is useful to repeat that provisions are made in section 49(4) to (6) for participation by the appellant, the Speaker and the House in the process. Unlike **Jones**, where the Court was faced with a real doubt about the use of the word "and", sections 48 and 49 present no uncertainty.

58. The sections designate the persons or authorities who may exercise the relevant powers; determine the manner in which they are to be exercised and specify the limits to which they are confined. The language of the sections is clear and unambiguous.

59. In summary, therefore, I can safely assert that the answer to the questions this Court had to determine lay in the Constitution itself. The quashing of the conviction and sentence did not affect the prior lawful authority exercised by the Speaker pursuant to sections 48 (1) (d) and 49 (2) (d) of the Constitution. Accordingly the seat for Couva North fell vacant on the 24th October 2006. That such vacancy was not affected by the decision of the Court of Appeal handed down on the 20th March 2007.

60. I would therefore dismiss the appeal and affirm the order of Pemberton J.

Costs

61. In keeping with the overriding objective of the Civil Proceedings Rules 1998, as amended, (the New Rules) which is to deal with cases justly, I am of the view that

having regard to the circumstances of the case there should be no order as to costs. The Petition originated from the House; the questions submitted for determination were novel and of general public interest. It was therefore not unreasonable for the appellant to seek the determination of the Court of Appeal on the construction of the relevant sections.

Margot Warner

Justice of Appeal