

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P348 of 2019

CV 2018 – 03159

BETWEEN

1. BK Holdings Limited
2. Central Equipment Rentals Limited
3. Bartholomew Transport Company Limited
4. Waste Disposals (2003) Limited

Appellants

AND

1. The Mayor, Aldermen, Councillors and Citizens of the City of Port of Spain
2. The Mayor, Aldermen, Councillors and Citizens of the City of San Fernando
3. The Mayor, Aldermen, Councillors and Citizens of the Borough of Arima
4. The Mayor, Aldermen, Councillors and Citizens of the Borough of Point Fortin
5. The Mayor, Aldermen, Councillors and Citizens of the Borough of Chaguanas
6. The Mayor, Aldermen, Councillors and Electors of the Region of Diego Martin
7. The Mayor, Aldermen, Councillors and Electors the Region of San Juan/Laventille
8. The Mayor, Aldermen, Councillors and Electors of the Region of Tunapuna/Piarco
9. The Mayor, Aldermen, Councillors and Electors of the Region of Sangre Grande
10. The Mayor, Aldermen, Councillors and Electors of the Region of Mayaro/Rio
Claro
11. The Mayor, Aldermen, Councillors and Electors of the Region of Princes Town
12. The Mayor, Aldermen, Councillors and Electors of the Region of
Tabaquite/Talparo
13. The Mayor, Aldermen, Councillors and Electors of the Region of Penal/Debe
14. The Mayor, Aldermen, Councillors and Electors of the Region of Siparia
15. The Ministry of Rural Development and Local Government
16. Trinidad and Tobago Solid Waste Management Company Limited (SWMCOL)

Respondents

CORAM: I. Archie, C.J.
N. Beraux, J.A.
M. Dean-Armorer, J.A.

Appearances: Mr. Fyard Hosein S.C., Mr. Rishi Dass instructed by Mr. Anil Maraj for the
Appellants
Mr. Gilbert Peterson S.C., Mr. Kerwyn Garcia instructed by Ms. Vishma
Jaisingh for the Respondents

JUDGMENT

Delivered by: I. Archie, C.J

Date of Delivery: July 29th, 2020

EXECUTIVE SUMMARY

1. The central issue for determination in this appeal is whether the first fourteen respondents [“the Corporations”], can lawfully delegate the process of procurement/award of contracts for garbage collection in the areas under their control to the sixteenth respondent [“SWMCOL”], pursuant to a policy developed by the fifteenth respondent [“the Ministry”] that gave effect to the Cabinet’s intention to allow contractors of various sizes access to the bidding process. For the reasons that appear later in this judgment I say the answer is no.
2. A secondary issue arose that concerned the possible distinction between “pre-qualification” of potential contractors according to size and “procurement” or “award” of contracts. Although it is now common ground that the instant matter has progressed beyond the “pre-qualification” stage the Court was invited to give guidance, as it is of continuing general importance. In my view, it is unlawful for the Corporations to procure the services of SWMCOL for the pre-qualification exercise as it is inseparable from the rest of the procurement process.

3. However, a pre-qualification process that gives effect to Cabinet's intention as aforesaid is not, per se, unlawful

HISTORY AND BACKGROUND

4. Prior to 2010, the procurement for garbage collection services for Municipal Corporations was managed (on their behalf) by the Central Tenders Board (CTB) established by the Central Tenders Board Act (CTBA)¹.
5. Since 2010, the CTB has not been involved in procuring garbage collection services for the Municipal Corporations or any of them. In 2010, the Cabinet decided that SWMCOL would do so on behalf of the Ministry for the 14 Municipal Corporations. The rationale for this course of action was said to be Section 20A of the CTBA.
6. By way of context, it should be noted that whenever services are required to be supplied to Municipal Corporations, Sections 4(1)(a) and 20 of the CTBA require them to go through the CTB for the invitation of tenders². The only exception relevant to these proceedings is Section 20A(1)(c), which permits **the Government** to act on its own behalf where-

“ it enters into a contract with the National Insurance Property Development Company Limited or a company which is wholly owned by the State, for the supply of articles or for the undertaking of works or services in connection therewith;”

SWMCOL is wholly owned by the State.

7. The applicability of Section 20A(1)(c), by its express language, is clearly limited to contracts in which the Government is the recipient of the services and the State-owned Corporation is the supplier. In the particularly unhelpful and circular style of drafting that is all too common in our statutes, the “Government” is defined in section

¹ Ch. 71:91

² Section 20(1) provides that, subject to section 19 (which is not relevant here)-

“...whenever articles or works or any services in connection therewith are to be supplied to or undertaken on behalf of the Government or a statutory body to which this Act applies, the Government or such statutory body shall make a written request to the Board to invite on its behalf offers for the supply of those articles or for the undertaking of the works or services in connection therewith”

2 of the CTBA as meaning “*the Government of Trinidad and Tobago*” (more on that later).

8. Between 2010 and 2013, SWMCOL was appointed by the Government (the Ministry) to procure garbage collection services for that period. SWMCOL awarded contracts to contractors (including the appellants). The contractors entered into written contracts *with the Corporations* pursuant to which they provided garbage collection services and were remunerated *by the Corporations*. I pause here to observe that, while Counsel for the respondents sought to characterize it as a “sub-contracting” arrangement, **it does not appear that SWMCOL was ever a party to any contract for provision of garbage collection services.**³
9. An interesting variation in the arrangements was made in respect of the period 2013 to 2016. In November 2012, the Permanent Secretary of the Ministry advised SWMCOL to proceed (as in 2010) to procure garbage collection services on behalf of the Corporations for the period 2013 to 2016.
10. However, SWMCOL was also advised that, in accordance with a Cabinet Minute of October 2012, it was agreed that pursuant to the provisions of section 20A(1)(c) of the CTBA, Government (the Ministry) would enter into a contract with SWMCOL *to procure garbage collection services on behalf of the Corporations* for a period of 3 years from March 1, 2013 wherein SWMCOL would be paid 0.25% of the annual cost of garbage collection to cover the cost of the procurement services.
11. Like in the 2010 procurement process, SWMCOL awarded contracts to contractors (including the appellants) for the period 2013 to 2016. As before, the appellants entered into contracts with the applicable Municipal Corporations for a term of three years.
12. In 2016, Cabinet agreed to extend the contracts entered into between the Corporations and contractors to provide garbage collection services on a month-to-month basis on the same terms as contained in their expired contracts for the period 2013 to 2016.

³ The significance of this is explained at para. 46 below. The letters sent to the contractors specifically stated that they were to enter into an Agreement **with the relevant Corporation.**

13. In May 2016, the Ministry engaged the services of National Insurance Property Development Company Limited (NIPDEC) for the procurement of garbage collection services on behalf of the Corporations for a period of two years (2016 to 2018).
14. NIPDEC invited and received bids from members of the public but the procurement process did not progress to the stage of awarding of contracts. The existing contracts were extended on a month-to-month basis in the interim.
15. In November 2017, Government determined that there must be a holistic approach to the award of contracts with the Corporations. The intention was to give small and medium sized entrepreneurs a fair chance to participate in the bidding process. It was determined that the only way to do so was to reserve a fixed percentage of available contracts for smaller entrepreneurs. Cabinet therefore agreed that contractors should be grouped according to the size of their fleet of trucks. Contractors would be grouped into three categories – small, medium and large, and a combination of small, medium and large contractors would be utilised within each municipality. A minimum of 50% of the contractors within each municipality and a minimum of 50% of the contracts were to be awarded to small contractors⁴.
16. In December 2017, the Permanent Secretary of the Ministry advised SWMCOL that Cabinet had directed that, *in accordance with the provisions of Section 20A (1) (c) of the CTBA*, Government (the Ministry) would enter into a contract with SWMCOL for the procurement of garbage collection services on behalf of the Corporations for a period of three years, from January 1, 2018. SWMCOL was directed to ensure compliance with the provisions of the Cabinet minute of November, 2017 re: grouping of contractors and award of contracts. SWMCOL was to be paid a procurement fee equivalent to 0.5% of the annual value of the contracts awarded.
17. SWMCOL embarked on a pre-qualification process to group contractors into small, medium and large categories following which, each Corporation was to establish a scope of works/services, garbage collection zones/routes and the number of trucks required to adequately service each zone/route. SWMCOL would then proceed to a tender process, inviting prequalified contractors to tender for the contracts for routes determined by the Corporations.

⁴ Cabinet Minute No. 1985 dd Nov. 2, 2017 [see ltr. of December 12, 2017 from PS to CEO of SWMCOL]

18. Accordingly, SWMCOL, published public advertisements in the three daily newspapers, commencing 23 January, 2018, inviting interested persons to purchase pre-qualification packages. The pre-qualification submissions were evaluated by an independent procurement specialist. This resulted in 179 individual contractors being pre-qualified: 34 large (which included BK Holdings and Bartholomew Transport Co.); 29 medium (which included Central Equipment and Waste Disposal) and 116 small, spread across all 14 Corporations
19. All successful pre-qualified contractors were so informed in writing by SWMCOL, indicating the category in which they prequalified.
20. The scope of works/services were established and a determination of the garbage collection zones/routes for each Corporation and the number of trucks required to adequately service each zone/route was made by the Corporations based on their individual needs for garbage collection services. Between May and June, 2018, the Corporations submitted collection schedules/work packages to SWMCOL grouped into small, medium or large categories. A total of 387 routes were developed (25% more than the 310 that previously existed); 144 for large contractors, 108 for medium and 135 for small.
21. Requests for Tenders were then to be issued in three batches⁵:
 - a. Group 1 – Diego Martin Regional Corporation; Arima Regional Corporation; Siparia Regional Corporation and Princes Town Regional Corporation
 - b. Group 2 – Tunapuna Regional Corporation; Point Fortin Regional Corporation; City of Port of Spain; Chaguanas Borough Corporation and Penal/Debe Regional Corporation;
 - c. Group 3 – Couva/Tabaquite/Talparo Regional Corporation; Mayaro Regional Corporation; San Juan/Laventille Regional Corporation; Sangre Grande Regional Corporation.
22. In or around June 2018, SWMCOL issued a Request for Proposals and invited 46 pre-qualified contractors in Group 1 to submit tenders. Tenders closed in July, 2018.

⁵ CV 2018-03159 @para.5

23. Three of the four appellants were invited to submit tenders, having been pre-qualified for Group 1. The other did not apply to be considered for pre-qualification and was therefore not invited.
24. The whole process was suspended when the appellants sent a pre-action protocol letter (dated the day before the closing of the tenders) to the respondents demanding that they desist from the award of any contracts using the current process and stating their intention to apply to the Court for the reliefs claimed in this application.
25. One of the consequences of the launch of these proceedings is that SWMCOL has not been able to open the tenders received for Group 1 or to award any contracts. Furthermore, SWMCOL has not been able to issue any Requests for Proposal for any of the other Groups.

FINDINGS OF 1ST INSTANCE COURT

26. In a “rolled up” hearing after an application for leave to apply for judicial review, the learned Judge concluded that S20A(1)(c) permitted the Government, through SWMCOL (a wholly owned State Company) **to manage the procurement process** [my emphasis] with respect to garbage collection outside the provisions of the CTBA⁶. In that regard, she appears to have treated the prequalification process as separate from the solicitation of tenders and entering into contracts with the ultimate service providers.
27. Secondly, the learned Judge found that the prequalification process for the tender of garbage disposal services was a contractual and commercial exercise, giving rise to private contractual rights regardless of the involvement of the public purse or the Municipal Corporations public bodies. In her view, it did not possess a sufficient public law interest and therefore was not amenable to judicial review for want of any statutory underpinning.
28. Accordingly, she dismissed the application for Judicial Review on the ground that there was no arguable ground for Judicial Review having a realistic prospect of success⁷.

⁶ CV 2018-03159 @ para. 63

⁷ See CV 2018-03159 @ para. 65

29. While there was no detailed discussion in her judgment of when the process of 'procurement' begins and ends, the Court was assisted in this appeal by the respondents' concession that it ends with the evaluation of tenders and award of contracts⁸. The process having been arrested at the tender stage, the issue of 'prequalification' is somewhat moot. In spite of this, I will make observations on the propriety of the process.

GROUNDS OF APPEAL

30. The Appellants' Grounds of appeal (summarised) are as follows:

- a. The Learned Judge was plainly wrong and erred in holding that Section 20A (1) (c) of the CTBA permitted Municipal Corporations established under the Municipal Corporations Act ["the MCA"] to enter into contracts with various third parties, using SWMCOL to award these contracts in place of the Central Tenders Board;
- b. The Learned judge, in the context of S 20A (1) (c) of the CTBA, was plainly wrong and misunderstood and misdirected herself as to the applicability and proper construction of **NH International v NIPDEC** and **AG v Motilal Ramhit and Sons** and **NH International (Caribbean Limited) v. UDECOTT** by failing to realise that in this case the Municipal Corporations were expressly listed in the schedule to the CTBA and were not contracting with a wholly owned state company but were instead involved in a scheme to contract with third party contractors outside of the CTBA process;
- c. The Learned judge was plainly wrong and erred in holding that the prequalification process undertaken by SWMCOL on behalf of all of the Municipal Corporations in respect of garbage collection was not statutorily underpinned and/or did not have a sufficient public law element and/or was in any event beyond the reach of judicial review;
- d. The Learned judge erred in failing to hold that the process undertaken by SWMCOL and all the respondents was ultra vires the CTBA, illegal and further

⁸ For the purposes of this judgment I accept that 'procurement' is the process of finding and agreeing to terms, and acquiring goods, services or works from an external source via a tendering or competitive bidding process.

it was a process that had the effect of allowing evasion of the obligations under the MCA and the CTBA.;

- e. The Learned Judge, because of her erroneous conclusion as to the public law justiciability under section 20A (1) (c), erred in finding that this relieved her of the responsibility of considering the remaining stand-alone grounds of challenge, which she did not assess or rule upon.
- f. The Learned Judge erred in failing to hold that the procurement process was contrary to the terms of the MCA and/or was unlawful.
- g. The Learned Judge erred in failing to find that the decisions under challenge were unlawful by virtue of being undertaken in a procedurally unfair manner.
- h. The procurement process is vitiated by bias. That SWMCOL, a provider of waste disposal services was appointed by the Corporations under the direction of the Ministry. SWMCOL is a direct competitor of the Appellants. As a result, SWMCOL, as a procurement agent and commercial competitor, is tainted by bias.
- i. The Learned Judge failed to find that the Respondents' classifications were unreasonable, arbitrary and capricious.
- j. The Learned Judge failed to consider or properly consider the grounds advanced by the Appellant in the Court below before finding that there is no arguable ground for judicial review having a realistic prospect of success.

ISSUES FOR DETERMINATION

31. Five issues arise for consideration, namely:

- a. The legality of implementing what may be loosely called 'affirmative action' whereby capable service providers are to be intentionally excluded from economic opportunity (including in respect of operations in which they have historically and are currently participating) in order to effect a redistribution of work to smaller operators, in the absence of any statutory authority for such action and on the basis of an undisclosed Cabinet policy;
- b. At what stage does the procurement process begin and/or end;
- c. Whether or not the process of prequalification falls under the remit of the CTBA;

- d. Whether, in any event, the prequalification of contractors and award of contracts can be conducted by SWMCOL. (I have not addressed the issue of bias since there is no evidence that SWMCOL ever intended to submit tenders on its own behalf);
- e. Whether this matter possesses enough of a public policy element beyond the use of the “government purse strings” to render itself amenable to judicial review.

ANALYSIS AND CONCLUSIONS

A. Is “Affirmative Action” Permissible

- 32. The discussion under this rubric proceeds from the assumption that it is the function of the Executive, and not the Judiciary, to set policy regarding the regulation of commerce and the structuring of the economy as long as no constitutional rights are infringed or no unjustifiable discrimination results. To the extent that section 4(d) of the Constitution guarantees ‘equality of treatment from any public authority in the exercise of any functions’, public authorities are only required to treat persons the same who are similarly circumstanced⁹.
- 33. Thus, for example, no one can reasonably argue that the state is not entitled to provide income support to those who are disabled or socially displaced and an effort to ‘level the playing field’ is not, per se, irrational although it would still be within the purview of the Court to intervene if discrimination by a public body was based on a prohibited category or the criteria exceeded the broad margin of appreciation that the State must be afforded. Once it acts within parameters that are not clearly irrational or arbitrary, the remedy for misjudgement lies in the ballot box and not the courts.
- 34. In that regard, one may find guidance in the preamble to the Constitution, which, although it does not find explicit articulation in the so called ‘fundamental rights’ provisions, nevertheless provides a useful interpretative lens¹⁰. There is nothing

⁹ **Webster v A.G.** [2015] UKPC 10, per Baroness Hale @ para.24; applied in **Sahatoo v A.G.** [2019] UKPC 19

¹⁰ The Preamble to the Constitution states in part:

“Whereas the People of Trinidad and Tobago—have affirmed that the Nation of Trinidad and Tobago is founded upon principles that..... (b) respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed

unreasonable, arbitrary or capricious about a policy that seeks to avoid monopolistic control over any particular area of economic activity, provided that the means employed are reasonably justifiable and do not entirely exclude any competent players.

35. In that regard, the Courts are neither qualified nor justified in questioning the percentage allocations in this case as there is nothing patently absurd or unfair on the face of it.
36. Neither can any argument be raised about legitimate expectation or deprivation of property because each round of contract awards is a separate undertaking and the government is entitled to tweak its policy. There is no evidence of any promise or undertaking to the contrary.

B. When does 'Procurement' begin?

37. Adopting the working definition in the footnote to paragraph 29 (supra), the real question is when does it begin **for the purposes of the CTBA?** The CTBA has to be considered as providing a coherent and comprehensive scheme for the procurement of goods and services. Its provisions must therefore be read together and in context. The relevant sections for the purpose of this analysis are sections 4, 20 and 33.
38. The purpose and authority of the Central Tenders Board ["the CTB"] are clearly set out in section 4(1) of the CTBA as follows:

"There is hereby established a Central Tenders Board which save as is provided in section 20A and in section 35 of this Act shall have the sole and exclusive authority in accordance with this Act—

(a) to act for, in the name and on behalf of the Government and the statutory bodies to which this Act applies, in inviting, considering and accepting or rejecting offers for the supply of articles or for the undertaking of works or any services in connection therewith, necessary for carrying out the functions of the Government or any of the statutory bodies;" [emphasis mine]

as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;

39. Clearly the CTB does not set policy. That conclusion is reinforced by the wording of Section 33, which states –

“In the exercise of its powers and the performance of its duties, the Board shall conform with any general or special directions given to it by the Minister.”¹¹

40. Two things follow from those sections. The first is that the CTB must become involved at the stage of invitation of tenders. The second is that the Minister may direct the classes of persons (not the individual persons) from whom tenders may be invited for certain categories of services, in accordance with government policy.

41. Thus far, the way is clear. The only question that remains under this head is how are the individual members of each class to be ascertained? That is the process known as ‘pre-qualification’. It becomes logically problematic if the pre-qualification is artificially divorced from the tender process.

42. The reason that is so becomes apparent from a perusal of the language of section 20(3), which states, in part, that the Board, on receipt of a request to invite tenders shall either –

(a) invite members of the public in general to make offers for the supply of such articles or for the undertaking of such works or services, as the case may be, by Notice published in the Gazette and in local or overseas newspapers, or

*(b) **subject to the approval of the Minister, invite such bodies or persons as may be selected by the Board** to make offers for the supply of such articles or for the undertaking of such works or services, as the case may be, **whenever the Board considers it expedient or desirable so to do.**” [my emphasis]*

43. Since it is the Board (subject to policy direction) that must decide who is invited to tender, the pre-qualification process cannot, in ordinary circumstances, be divested

¹¹ See also section 269(1) of the Municipal Corporations Act which states:

“The Minister may give general or specific directions to any Council in relation to Government policy touching or concerning any matter; and it shall be the duty of the Council to govern its actions in accordance with any such directions.”

to any other entity. That is the only way that the language of sections 4, 20 and 33 can be comfortably reconciled.

44. For the avoidance of doubt, I therefore find that the process of procurement begins with pre-qualification and ends with the evaluation of tenders and award of contracts.

C. Can SWMCOL Nevertheless Undertake the Procurement Process

45. On an initial reading of the written submissions, it appeared that there may have been a nuanced argument by the respondents that distinguished the pre-qualification from the tender process. However, in light of the findings above and the fact that Counsel for the respondents frankly (and commendably) acknowledged that things had, in any event, progressed to the tender stage, the oral argument at the hearing of this appeal was premised on the proposition that section 20A(1)(c) permitted the Corporations to contract for garbage services with SWMCOL and SWMCOL could, in turn, subcontract to the ultimate service providers, thereby circumventing the CTB.
46. That argument is fatally flawed because the process being contemplated does not involve contracts between the Government and the service providers. Section 4(1)(a), by its express language, draws a distinction between ***“the Government and the statutory bodies to which this Act applies”*** [my emphasis]. It is common ground that the respondents are statutory bodies subject to the CTBA¹². Section 20A(1) would permit only the (central) Government to contract with SWMCOL, not the respondents (local government). Even if a broader interpretation of “Government” was permissible under Section 20A, the problem persists because the party at the other side of the contract would not be SWMCOL¹³.

D. Is There a Sufficient “Public Law” Element?

47. The leading Court of Appeal authority in this jurisdiction (upon which the Respondents relied) is **N.H. International (Caribbean) Limited v Urban Development Corporation of Trinidad and Tobago Limited and Hafeez Karamath Limited** (“N.H.

¹² See the definition of “statutory body” under section 2 of the CTBA

¹³ In that regard see ltr. of Dec. 12,2017 from PS, Ministry of Rural Development and Local Government engaging SWMCOL to “procure” [not “provide”] garbage collection services. [pp 526 Vol 2 of Record]

International)¹⁴. In his very lucid and thorough analysis of the law, Kangaloo J.A. distilled the following guiding principles that still remain valid:

- a. A tender process without statutory underpinning does not give rise to public law rights;
- b. The nature of a tender process undertaken by a governmental body is not changed by the governmental nature of the body. It is no different from the procedure adopted in ordinary commercial situations;
- c. If the obligation breached in tender procedures is fairness, that obligation cannot be equated to the obligation of fairness of government departments such as immigration and Inland Revenue to give rise to public law relief, because tender procedures are rooted in the common law right to contract.¹⁵

48. In that case, Kangaloo J.A. opined that there was strong persuasive authority for the proposition that the lack of a statutory underpinning of the tender procedure deprived the appellant of a remedy in judicial review to challenge what was essentially a commercial dispute between the appellant and the intervenor.¹⁶ The converse is not necessarily true, that is, statutory underpinning, by itself, is not dispositive of the question whether the tender process is amenable to judicial review¹⁷.

49. N.H International is distinguishable from the instant case because I have found that there is a breach or intended breach of the statutory obligation to submit the process to the CTBA. Thus, the justification for intervention by way of judicial review in this case is based on **illegality**. However, while this ground of appeal can be disposed of on that basis alone, it may be useful to make some further observations in the light of my earlier findings on the propriety of a pre-qualification process.

50. I would adopt Kangaloo J.A.'s careful analysis in N.H. International and add that an essential factor for justiciability, if the process were to be undertaken by the CTB, would be that the obligation that is said to have been breached must arise from the

¹⁴ Civ. Appeal No. 95 of 2005

¹⁵ Ibid @ para. 21

¹⁶ Op. cit @ para 13

¹⁷ Op. cit @ para 35 (although strictly speaking this statement is 'obiter dicta' I am inclined to agree)

statute and not from the common law¹⁸. In that regard, I can discern no breach of any implied duty of good faith merely in the application of a quota system.

51. N.H. International was followed by Jamadar J (as he then was) in **N.H. International v National Insurance Property Development Co. Ltd.**¹⁹. It is a first instance judgement and therefore not binding on this Court, but the analysis is persuasive. For all of the reasons adumbrated therein, I would be hard pressed, in the absence of any evidence of irrationality or arbitrariness, to find any basis to intervene apart from the fact that the necessary involvement of the CTB is being circumvented in this case.

DETERMINATION

52. In summary therefore I would find as follows:

- a. Judicial Review is an appropriate remedy in this case because there is no authority to conduct the tender process without reference to the requirements of the CTBA and the involvement of the CTB;
- b. The process of procurement begins with pre-qualification and ends with the evaluation of tenders and award of contracts;
- c. There is nothing wrong in law with a pre-qualification process that reserves portions of the available work for specified categories of contractors, particularly if the objective is to provide opportunities for a broader range of applicants and the means employed are not patently irrational or unfair;

ORDERS:

- a) A declaration that the establishment and continuation of the purported procurement process undertaken by the Trinidad and Tobago Solid Waste Management Company Limited ('SWMCOL') on behalf of the Ministry of Rural Development and Local Government ('the Ministry') for the procurement of garbage collection services on behalf of the Municipal Corporations Act ('the Municipal Corporations') ('the Procurement Process') is unlawful and null, void and of no effect;

¹⁸ Op. cit. @ paras 19, 21

¹⁹ CV 2005 - 00640

- b) A declaration that the Municipal Corporations are required to procure garbage collection services through the facility of the Central Tenders Board, established under the **CTB Act** Ch 71: 91
- c) A declaration that the Municipal Corporations are not lawfully entitled to invite or authorise either the Ministry or SWMCOL to invite on their behalf offers for the supply of articles or works or services in connection therewith.
- d) An order of certiorari to remove into this Honourable Court and quash the decision to embark upon or continue the procurement process.
- e) The appeal is allowed and the order of the learned Judge at first instance is set aside;
- f) The respondents are to pay the costs of the appellants certified fit for Senior and Junior Counsel.

I. Archie
Chief Justice

I have read the judgement of Archie, C.J. and I agree and have nothing further to add

N. Breaux
Justice of Appeal

I also agree

M. Dean-Armorer
Justice of Appeal