

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

CV.A. No.97 OF 2002

**IN THE MATTER OF THE CONSTITUTION
OF THE REPUBLIC OF TRINIDAD AND TOBAGO**

And

**IN THE MATTER OF THE JUDICIAL REVIEW ACT 2000
AND THE RULES OF THE SUPREME COURT**

And

IN THE MATTER OF THE OFFICE OF PRIME MINISTER

And

**IN THE MATTER OF THE CONTINUING BREACH OF THE
CONSTITUTION AND PUBLIC LAW DUTIES AND CONTINUING
FAILURE BY PATRICK MANNING TO UNDERTAKE AND FOLLOW
CONSTITUTIONAL OBLIGATIONS BY HIS CONTINUING DECISIONS TO HOLD
ON TO AND/OR RETAIN THE OFFICE OF PRIME MINISTER WITHOUT
CALLING GENERAL ELECTIONS ALTHOUGH HE DOES NOT COMMAND THE
SUPPORT OF THE MAJORITY OF MEMBERS OF THE HOUSE OF
REPRESENTATIVES**

And

IN THE MATTER OF AN APPLICATION BY

FLORENCE BOBB

AND

GIRLIE MOSES

**ELECTORS ON THE VOTERS'
LIST OF TRINIDAD AND TOBAGO**

Between

**FLORENCE BOBB AND GIRLIE MOSES
APPELLANTS**

AND

**PATRICK MANNING
RESPONDENT**

CORAM:

**S. Sharma, C.J.
R. Nelson, J.A.
W.N. Kangaloo, J.A.**

APPEARANCES:

**Mr. R. L. Maharaj S.C., Mr. Rikki Harnanan and Mr. G. Mungalsingh
appeared on behalf of the Appellant**

**Mr. R. Martineau S.C., Ms. Glennis Potts, Ms. Ayana Humphrey and Ms
Parvati Persad appeared on behalf of the Respondent**

DATE DELIVERED: 11th February 2004

JUDGMENT

DELIVERED BY SHARMA C. J.

Introduction

[1] This appeal arises from the political stalemate which occurred after the December 2001 general elections held in Trinidad and Tobago. The facts and circumstances giving rise to the appeal shall be explored in greater detail below. But it is necessary at this point to state briefly that upon the failure to elect a speaker to convene Parliament, the then Prime Minister, the Honourable Patrick Manning (Manning), advised the President to prorogue Parliament. Thereafter, he remained in office for several months without calling general elections.

[2] The appeal is based on an application for leave for judicial review brought by Florence Bobb and Girlie Moses (the appellants) seeking to have, inter alia, the court declare illegal Manning's decision to retain office, without a functioning Parliament and without calling general elections. The trial judge denied this application. The appellants now challenge this refusal of leave.

Background ¹

[3] There are two main political parties in Trinidad and Tobago- the People's National Movement (PNM) led by Manning and the United National Congress (UNC) led by the Honourable Basdeo Panday (Panday).

[4] Prior to the general elections held in December 2001, Panday was the Prime Minister of Trinidad and Tobago.

[5] On December 6th, 2001 general elections were constitutionally held and each party obtained an equal number of seats (18-18). This election is hereafter referred to as "the tied election".

¹ Most of what is set out is contained in the evidence. The rest are matters that were in the public domain and cannot reasonably be disputed

[6] The country was plunged into a constitutional crisis, with many jurists, self styled and otherwise, rendering opinions in the print and electronic media. Constitutional assistance was sought from some of the finest jurists abroad.

[7] Recognising that this state of affairs could not go on indefinitely, Panday and Manning entered into a post-election truce, which gave the President Arthur Napoleon Raymond Robinson the authority to choose one of them. Both parties agreed to abide by his choice.

[8] Again there erupted heated and emotional arguments as to which leader should be chosen. Many took the view that the incumbent be chosen, while others contended that the governing party was corrupt and morally decadent and should not be allowed to form the government.

[9] The matter was left in limbo for quite sometime. The country was becoming restive and impatient.

[10] President Robinson finally acted and announced that Manning was the candidate most likely to command the support of the majority of the members of the House of Representatives. He appointed Manning as Prime Minister of Trinidad and Tobago pursuant to *section 76(1) of the Constitution* which provides:

“Where there is occasion for the appointment of a Prime Minister, the President shall appoint as Prime Minister-

(a) a member of the House of Representatives who is the Leader in that House of the party which commands the support of the majority of members of that House; or

(b) where it appears to him that that party does not have an undisputed leader in that House or that no party commands the support of such a majority, the member of the House of Representatives who, in his judgment, is most likely to command the support of the majority of members of that House;

and who is willing to accept the office of Prime Minister.

[11] This produced an angry reaction from Panday, who accused the President of not only violating the Constitution; but further attacked the President’s basis of “moral and spiritual” values as the pivotal reason for not appointing him.

[12] The UNC cried foul, declaring that such reasons were spurious and artificial and ignored the constitutional underpinnings necessary in arriving at a decision.

[13] Declaring the Manning administration to be illegitimate, Panday called for new elections and refused to agree to a Speaker of Parliament, thereby preventing the legislature from functioning.

[14] However, Manning continued in office without a functioning Parliament.

[15] On the 5th and 6th of April 2002, the House of Representatives convened but failed to elect a Speaker, as it was required to do by virtue of *section 50 of the Constitution of Trinidad and Tobago*. *Section 50 (1)* provides:

“ When the House of Representatives first meets after any general election and before it proceeds to the dispatch of any other business, it shall elect a person to be the Speaker of the House; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament, the House shall, as soon as practicable, elect another person to that office.”

[16] Manning advised the President to prorogue Parliament. This was done by Proclamation dated 6th April, 2002.

[17] After the 6th April 2002 Manning continued in office without a functioning parliament. He did not resign or cause a date to be fixed for general elections despite numerous calls to do so by members of the opposition party, the United National Congress.

[18] This state of affairs continued for several months with Manning giving no indication of when general elections were likely to be held. It was only on the 3rd of July 2002 in his address at the 23rd CARICOM Heads of Government meeting that he stated “if we are unable to elect a speaker and/or pass a budget by October 31st, the end of this current budget period, general elections will be held in Trinidad and Tobago.”

The application for leave to apply for judicial review

[19] The appellants applied for leave to apply for judicial review of Manning’s decision to stay in office as evidenced by this statement on the basis that Manning’s retention of office in these circumstances was illegal and was an abuse of power.

[20] The appellants contended that the failure to elect a speaker and the subsequent dissolution of Parliament demonstrated that Manning could not command the support of the majority of members of the House of Representatives. This state of affairs undermined the principle of collective responsibility owed by Cabinet to Parliament enshrined in section 75 of the Constitution.

[21] The appellants sought the following relief²:

- a) a declaration that the continuing decisions of Patrick Manning to retain the office of Prime Minister after 3rd of July 2002 without causing a date for general elections to be fixed is illegal.
- b) a declaration that the decision of Patrick Manning contained in his address on the 3rd of July 2002 to the 23rd Conference of the Heads of CARICOM Governments in which he has stated that he has up to the 31st of October 2002 to hold general elections is unreasonable and illegal.
- c) A declaration that general elections be held in Trinidad and Tobago on or before the 8th day of October 2002.

² See page 2 of the Statement filed on the 19th August 2002 pursuant to Order 53 of the Rules of the Supreme Court

- d) An order directing Patrick Manning to cause a date to be fixed for general elections to be held in Trinidad and Tobago not later than the 8th day of October 2002.
- e) A declaration that if Patrick Manning does not cause a date to be fixed for general elections to be held in Trinidad and Tobago on or before the 8th of October 2002, that the office of Prime Minister be declared vacant.
- f) A declaration that Patrick Manning, on or before the 4th day of September 2002, announce or cause to be announced a date for general elections to be held in Trinidad and Tobago.
- g) An order directing Patrick Manning to announce or cause to be announced, on or before the 4th day of September 2002, a date for General Elections to be held in Trinidad and Tobago.
- h) A declaration that if Patrick Manning does not, on or before the 4th day of September 2002, announce or cause to be announced a date for general elections to be held in Trinidad and Tobago, that the office of Prime Minister be declared vacant.
- i) Such further or other relief as may be appropriate.
- j) Costs.

The trial judge's basis for refusing leave

[22] The learned trial judge refused to grant leave for the judicial review application. He declined to determine the primary issue of whether the Prime Minister's holding of office after the 3rd July 2002, without causing a date to be announced for a general election was illegal on two bases:

1. *The Court lacked jurisdiction*

- The trial judge found that the High Court lacked jurisdiction to consider an issue "which is wholly or very substantially a political one, and which by its nature in reality involves the exercise of a political judgment, as opposed to a legal one." He found that the naming of a date for a general election pre-eminently involved political policy, political strategy and other political considerations which at this stage were non-justiciable.
- The learned trial judge found that the material before the court did not establish any arguable abuse of power by Manning. He found that the only mechanism for removal of the Prime Minister established by Section 77 of the Constitution was the resolution of no confidence passed by the House of Representatives. In the absence of any special mechanism for removal of the Prime Minister in the particular circumstances of this case, it could not be said that Patrick Manning was acting illegally and unconstitutionally by retaining office.
- The learned trial judge found that the court lacked the jurisdiction in public law to direct a Prime Minister to announce the date for a General Election by a certain period, failing which the Office of the Prime Minister would be declared vacant.
- The learned trial judge considered that Manning's statements were not amenable to judicial review as no identifiable "illegal, improper or irrational administrative act done or decision" was taken.

2. *The issues raised were academic, hypothetical and/or premature.*
- The learned trial judge recognised that declaratory relief would not be granted if the issues were academic and premature. He took judicial notice of the fact that an attempt would have been made on the 28th August 2002 to convene³ Parliament and therefore considered the issue to be premature for the reason set out below:
“Dependent on what transpires in Parliament, the House of Representatives may well become duly constituted by the election of a speaker and the passage of a budget, or the Prime Minister may be left with no practical choice but to call a general election, a matter for his political judgment. It may well be called before the time suggested by the applicants.”⁴

The appeal

[23] The Notice of Appeal was filed on the 28th August 2003. The appellants claim that they were entitled as a matter of law to be granted leave to apply for judicial review because their application disclosed an arguable case. They contend that the learned judge erred in law and failed to correctly exercise his discretion.

The issues on appeal

[24] As general elections were held on the 7th of October 2002 counsel for the appellants conceded that there remained only 2 issues in dispute and abandoned the relief listed as (c) – (h).

[25] These 2 issues are:

1. Whether Patrick Manning’s retention of the office of Prime Minister after the 3rd of July 2002 without causing a date for General Elections to be fixed, is illegal?
2. Whether Patrick Manning’s decision (contained in his address on the 3rd of July 2002) that the deadline for deciding when to hold general elections was October 31st, 2002 is unreasonable and illegal?

[26] Counsel for the appellants urged this Court to consider these issues as live ones. Even if they were found to be academic, he urged this Court to exercise its discretion to consider them as matters of public importance affecting the legitimacy of government.

[27] After a careful consideration of the grounds of appeal and the authorities relied on by the appellants, this Court affirms the decision of the learned trial judge.

[28] This was not a suitable case for the exercise of the court’s discretion to grant leave to apply for judicial review.

Although the matters raised are of great public importance, they are all academic at this point. No determination should be made “in the air”.

[29] Counsel for the appellant has submitted that the legality of Manning’s action in retaining office notwithstanding his inability to command the support of the majority, is a justiciable issue as it raises an important constitutional question

³ See page 100 of the Record of Appeal

⁴ See page 101 of the Record of Appeal

involving the lawfulness of government.⁵ He urged this court to determine the issues to provide clarification of the law and to establish guidelines which would assist in the future exercises of public power in similar circumstances. He contended that the “unusual facts of this case provide a good basis for the matter to be determined by the Courts as a general principle.”

[30] I do not dispute the existence of the Court’s discretion to grant declaratory relief in academic and hypothetical matters where a claimant has little direct interest in the matter but which is of great public importance.

[31] It is imperative however, that this discretion be exercised with caution. Indiscriminate and unjustified exercise of this discretion can lead to grave injustice. Lord Sterndale M.R. recognised this in *Gray v. Spyer*⁶ when he stated: “I agree that claims for declaration should be carefully watched. Properly used, they are very useful; improperly used, they almost amount to a nuisance.”

[32] Judicial restraint is advised in issues of this nature- Lord Slynn made this clear in *R. v. Secretary of State for the Home Department, ex. p. Salem*⁷:

“The discretion to hear disputes, even in areas of public law, must...be exercised with caution and appeals which are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example...when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future”.

[33] Whilst these matters concern the legitimacy of government, there is no real need for this court to grant a declaration in vacuo, there being no actual incident of illegal retention of power as general elections were called before October 31st 2002. This court would hesitate to decide questions about events which might never occur. Counsel for the appellants conceded that the facts of this case are “unusual”. This affirms my point that any declaration on such facts would be of limited utility in the future.

These matters primarily involve “political judgments” which are unsuited for judicial resolution. The trial judge correctly declined grant leave for judicial review.

[34] The selection of a date for general elections and the decision to announce that date are deeply political decisions.

[35] *Sections 68 and 69 of the Constitution govern the calling of general elections:*

S.68 (1): The President, acting in accordance with the advice of the Prime Minister, may at any time prorogue or dissolve Parliament.”

(2): Subject to subsection (3), Parliament, unless sooner dissolved, shall continue for five years from the date of its first sitting after any dissolution and shall then stand dissolved.”

⁵ See appellant’s Further Skeletal Arguments filed on the 22nd of October 2003.

⁶ [1922] 2 Ch. 22 at 27.

⁷ [1999] 2 W.L.R. 161

S.69(1): A general election of members of the House of Representatives shall be held at such time within three months after every dissolution of Parliament as the President, acting in accordance with the advice of the Prime Minister, shall appoint."

[36] The decision when to dissolve Parliament and call elections was exclusively within the province of the Prime Minister. It was an executive discretion of the kind completely unsuited to judicial resolution. The trial judge correctly applied the general rule prohibiting the courts from intervening in cases involving the exercise of "purely or substantially political judgment".

Generally, courts should exercise restraint in reviewing "political questions/judgments"

[37] Political questions and judgments are generally not amenable to judicial review because they are inherently unsuitable for judicial resolution. They often involve politically contentious issues which judges have no training to consider and for which the machinery of judicial review is inadequate.

[38] Where the political question is exclusively committed to non-judicial branches and is beyond judicial resolution, the court must abide by the constitutional mandate of separation of powers.

[39] In accordance with this the court must defer to the proper constitutional relationship between the executive and the courts. The courts must respect all acts of the executive within its lawful province and the executive must respect all decisions of the courts as to what its lawful province is.

[40] Justice Brennan in *Re Limbo*⁸ explains the rationale for this constitutional mandate:

"It is essential that there be no mistake between the functions that are performed by the respective branches of government. It is essential to understand that courts perform one function and the political branches of government perform another. One can readily understand that there may be disappointment in the performance by one branch or another of government of the functions that are allocated to it under our division of power. But it would be a mistake for one branch of government to assume the functions of another in the hope that thereby what is perceived to be an injustice can be corrected."

[41] Whilst the courts are the ultimate guardians of the rule of law, a high degree of judicial restraint is necessary in matters which are exclusively political. The court's authority ultimately rests on sustained public confidence in its moral sanction. To maintain that confidence the courts must be completely detached from political engagements and must abstain from injecting itself into the volatile political arena.

[42] In matters constitutionally committed to political resolution, it is only right that the courts defer to the political branches because of their democratic accountability and institutional competence.

⁸ (1989) 64 ALJR 241, 242

The mere fact that the issue involves some political considerations does not automatically render it immune from judicial review.

[43] A critical distinction must be made on the issue on justiciability. It is important to recognise that the mere involvement of a political question does not mean that a court lacks jurisdiction or that a cause of action lacks viability or that the issue is rendered non-justiciable.

[44] Whilst the courts hesitate to enter the “political thicket”, their jurisdiction to do so is not absolutely excluded. Such a broad exclusion of jurisdiction on the basis of political questions is not consistent with the nature of our constitutional jurisprudence.

[45] I would exercise great caution in demarcating any prohibited field of review for the Judiciary of Trinidad and Tobago. All constitutional questions turn on whether power has been exceeded or abused. The courts must tread very carefully in cases where policy and political considerations are dominant. But even then, the courts retain the jurisdiction to determine whether the policy considerations taken in account are irrelevant, or extraneous or whether the exercise of the power is *mala fides*.

The court’s intervention is limited to reviewing whether the decision was made mala fides i.e. whether the political body acted reasonably

[46] In reviewing the exercise of the discretionary power, the court is not usurping the power of the executive. Such a review is limited to whether the power was abused or exercised fairly. The court can go no further than determining whether the political branch acted reasonably.

[47] The trial judge properly refrained from inquiring into the politically contentious issues before him. It is beyond doubt that the decision to announce a date for general elections is purely political.

[48] To review such a decision would be contrary to Lord Scarman’s admonition “judicial review is a great weapon in the hands of judges: but the judges must observe the constitutional limits set by our Parliamentary system upon the exercise of this “beneficent power.”⁹

No identifiable illegal, improper or irrational administrative act was done or decision taken sufficient to enable the appellants to invoke judicial review proceedings.

[49] The trial judge was correct in his determination that a mere expression of opinion does not necessarily amount to a reviewable decision. The Prime Minister’s statements at the 3rd Caricom Heads of Government Meeting that: “if we are unable to elect a Speaker and/or pass a budget by October 31st the end of this current budget period, General Elections will be held in Trinidad and Tobago.” were clearly insufficient to amount to a decision affecting the appellant’s rights. No breach of the appellant’s rights was ever demonstrated. The fact that elections were called before October 31st 2002 meant that the anticipated infringements of the appellants’ rights set out in their Affidavit¹⁰ never materialised.

⁹ Nottinghamshire C.C. v Secretary of State for the Environment (1986) 1AC 240 at 250, 251

¹⁰ Filed on the 19th of August 2002

[50] Counsel for the appellants urged this Court to apply a more liberal approach- 'the Court should focus on whether there was an unlawful exercise of power' instead of looking narrowly for a decision affecting rights. I do not challenge the validity of this approach. It is summarised by *Lewis* in '*Judicial Remedies In Public Law*' 1992 at page 109:

"As the case law in the previous section indicates, the courts have been focusing on whether there has been an unlawful exercise of power rather than looking narrowly for a 'decision' affecting 'rights'. There is clearly a difficulty in fixing the appropriate boundaries of judicial review. They should be fixed with reference to criteria such as whether the public body has acted unlawfully, whether a real issue arises for determination or a real dispute exists and whether the act of the public body is likely to have some consequences for individuals or the public generally so that judicial review is merited."

[51] This approach also denies the appellants any basis for review. None of the criteria suggested by *Lewis* is satisfied in this case.

The respondent did not act unlawfully in announcing the deadline date for calling election.

[52] There was nothing unlawful about Patrick Manning announcing what, in his opinion, was the deadline date for elections. Whether that date was the legally accurate deadline date is not an issue at this stage for the reasons identified above. I therefore do not propose to express any views on whether Manning acted unlawfully in setting that date as the deadline.

No real issue exists or arises for determination.

[53] There is no real dispute at this stage of the proceedings. More importantly, there was no real dispute at the time Patrick Manning made the statements now being challenged. Patrick Manning was merely giving an indication of the period he could legitimately remain in office without calling elections. He was merely expressing his opinion that he had until the end of the current budget period to call elections. At no time did he indicate that he intended to wait until the expiration of this period to call elections. I agree with the trial judge that the appellant's action was premature and is now entirely academic and hypothetical.

Patrick Manning's statement was not likely to have consequences for individuals or the public to merit judicial review proceedings.

[54] Patrick Manning's indication of the deadline date for elections was insufficient to merit judicial review proceedings. The appellants' concerns about the likely consequences for individuals and the public were all premised on Patrick Manning waiting until the 31st of October, 2002 to call elections. As such I find them misconceived.

[55] Patrick Manning's statements are not properly the subject of judicial review proceedings.

Disposition

[56] This appeal is dismissed. The decision of the trial judge is affirmed. The appellants are ordered to pay the respondent's costs fit for Senior and junior counsel.

S. Sharma
Chief Justice

I have had the honour and privilege of reading the erudite judgments of both the Honourable Chief Justice and the Honourable Justice of Appeal Nelson and for the reasons set out in their judgments I too agree that this appeal should be dismissed with costs fit for Senior and one junior counsel.

W.N. Kangaloo
Justice of Appeal