IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE

CONSTITUTIONAL/ADMINISTRATIVE JURISDICTION

2017-HC-DEM-CIV-FDA-1959

BETWEEN:

IN THE MATTER OF ARTICLE 144(1) AND ARTICLE 154(A) OF THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA

-AND-

IN THE MATTER OF AN APPLICATION BY EUSI ANDERSON ESQ

Applicant

-AND-

THE ATTORNEY GENERAL OF GUYANA

Respondent

BEFORE THE HON. *NARESHWAR HARNANAN, J.*

APPEARANCES:

MR. NIGEL HUGHES FOR THE APPLICANT

MS ONEKA ARCHER-CAULDER FOR THE RESPONDENT

DECISION:

1. The Applicant filed a Fixed Date Application on December 11, 2017, for an Order quashing the contempt proceedings concluded against him on that day, as well as Declaratory Orders that **Sections 12, 13** and **15** of the **Contempt of Court Act, Cap 5:05** ("the Act") are unconstitutional and

that there was no conduct by him which can amount to contempt within the definition of contempt of court in that Act.

2. He so contends because:

   (i) By vesting the Court with the powers of complainant and adjudicator, the Act contravenes the Applicant's rights to a fair hearing before an independent and impartial court established by law;

   (ii) The procedure outlined, the draconian punishment imposed and the absolute removal of a right to appeal deprive the Applicant of the protection of the law and is in violation of the rule of law as constitutionally guaranteed to him;

   (iii) The conduct as alleged by the Court falls woefully short of the definition of contempt of court as defined by the Act.

3. The questions for this Court are whether:

   (i) The right(s) of the Applicant have been infringed or breached; and

   (ii) The conduct of the Applicant was such as to be considered as contempt under the Act.

BREACH OF RIGHTS

4. The Applicant contends that:

   (a) he was deprived of a fair hearing before an impartial and independent tribunal as required under **Article 144** of the **Constitution of the Co-operative Republic of Guyana, Cap. 1:01** ('the Constitution');

   (b) he should be informed with sufficient precision of the charge against him and given the opportunity to explain his conduct, to advance any available defence and to apologise; and,

(c) he is deprived of a right of appeal by **Section 13** of the Act, which is another violation of his constitutional rights.

5. In relation to the first argument at (a) above, the Applicant relies on **Article 144** of the Constitution which, at paragraph (1), provides that:

> If any person is ***charged with a criminal offence***, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law. (emphasis supplied)

6. He argues that the contempt proceedings set out in the Act violate his rights under that paragraph in that the Judge is both complainant and adjudicator in the action against him and therefore could not be said to have been presiding over a court of law that is impartial, nor could the process be said to be fair to him.

7. The Respondent submits that **Article 144(1)** provides protection for persons charged with a ***criminal offence*** and argues that contempt of court is not classified as a crime *per se* but is an offence *sui generis*. They rely on the case of ***Robertson (Stewart) v HM Advocate*** **(2008) J.C. 146** in this regard.

8. The applicant also referenced the case of ***B (Petitioner)*** **(2015) Fam LR 58** arguing that while contempt of court is not a criminal offence, some instances of contempt may be criminal in themselves and potentially give rise to prosecution on summary complaint or indictment.

9. The Applicant did not address the contention by the Respondent directly, though he did reference the case of ***Re Pollard*** **(1868) LR 2 PC 106**, where the Privy Council said that it was well established that contempt of court was a criminal offence, and as such no person can be

punished for it unless the specific offence charged against him is distinctly stated and an opportunity given to him to answer.

10. The court in ***Robertson*** examined this issue in some depth, recognising that 19th century authorities did indicate that contempt was a crime. It ultimately concluded that contempt of court was not a crime *per se*, but a *sui generis* offence committed against the court which was within the province of the court to punish, and held that a penalty imposed for contempt was not regarded as a sentence.

11. The Respondent argued that the learning from ***Robertson*** accords with our Constitution and discussed the provisions of **Article 139**. Both the Applicant and Respondent referenced **Article 139** of the Constitution, which addresses the right to personal liberty. Both Parties acknowledged that punishment for contempt of court is one exception to that right that is authorised by law.

12. The Respondent pointed out, however, that **Article 139(1)** indicates the exception in the case of punishment for contempt of court (**Article 139(1)(b)**) AND an exception for a sentence in respect of a criminal offence (**Article 139(1)(a)**). They submit that if contempt of court was regarded as a criminal offence there would have been no reason for the Constitution to include both exceptions, as an exception for a sentence imposed in respect of a criminal offence would have been sufficient.

13. It is also instructive, as the Respondent has highlighted, that the exception for the criminal offence uses the word 'sentence', while the exception for contempt of court refers simply to punishment. The Act, too, excludes the word 'sentence', which also accords with the ruling of the court in ***Robertson*** that a punishment imposed for contempt is not regarded as a sentence. In the light of these distinctions, this Court is of the view that the Applicant has failed to show that a charge for contempt

of court is covered by the provisions of **Article 144** of the Constitution in respect of persons charged with criminal offences.

14. No argument was put forward by the respondent, considering the ruling in ***B (Petitioner)*** above, that the offence the Applicant was charged with in this case was a contempt of court AND a criminal offence. However, while such a finding may arguably have brought this case under **Article 144**, no such issue may arise here.

15. The Applicant is said to have obstructed the administration of justice by misrepresenting the time at which he was to appear before the Honourable Chief Justice (ag) and by arriving late for the resumption of the matter before the Judge by whom he was found to be in contempt.

16. Neither of these may constitute a criminal offence as, for example, the misrepresentation is not capable of being classified as perjury. Therefore, given the distinction between the offence of contempt of court and a criminal offence, and the facts of this case which do not reveal that the Applicant was charged with any act that may amount to a criminal offence, this Court must find that **Article 144** of the Constitution is not relevant to this case, and the Applicant's rights thereunder could not have been and were not breached.

17. The Respondent nevertheless acknowledges that, while contempt of court is not strictly a criminal offence, there are parallels with criminal proceedings. For example, an accused facing such a charge is entitled to have his guilt proven beyond a reasonable doubt. He is also, of course, entitled to a fair hearing.

18. Similarly, in ***Robertson***, the Crown conceded that contempt of court should be treated as if it were a crime for the purposes of ***Article 6*** of the ***European Convention on Human Rights***, not least because of the severe penalties that may be imposed for it.

19. That Article is similar to ***Article 14(3)*** of the ***International Covenant on Civil and Political Rights*** ('ICCPR'), to which Guyana is a signatory and which has been incorporated into the Constitution *via* **Article 154A**. Compliance with these requirements has been addressed by many courts in the past and, while it has been admitted that there can be no fixed formula that would be appropriate in all cases, certain elements have been affirmed over time, including in ***B (Petitioner)*** above.

20. These elements have been reflected in the procedure outlined in the Act at **Section 12**. With regard to the remitting of a contempt charge to a different judge, it has been affirmed by the courts, even in jurisdictions where contempt of court is included in the criminal code, that it is proper for the judge before whom the contempt is committed to deal with it summarily (***McKeown v. The Queen*** **[1971] S.C.R. 446**).

21. It is admitted, however, that in some cases remitting it may be necessary to preserve the appearance of a fair trial, such as:

(i) where the contempt is directed personally against the judge,

(ii) where the judge had to make a finding on disputed facts on which he was a witness, or

(iii) where the judge had compromised himself by prematurely expressing a concluded view (***Robertson***).

22. The contempt here was not directed personally against the judge. The facts are not disputed (only the interpretation thereof), and the judge only expressed the preliminary view that the behaviour of the Applicant was contemptuous, which the cases indicate must naturally be present in order to initiate a charge for contempt. The facts under observation therefore, do not indicate anything that would cause the question of remitting to a colleague to arise (***Robertson***). This Court therefore is of the

view that it cannot then be said that the Applicant was deprived of a fair hearing before an impartial and independent tribunal.

23. The next argument raised by the Applicant in his assertion that his rights have been violated is that he was not sufficiently informed of the charge against him by the Judge. His argument, though, focused on being given the opportunity to apologise and having his apology accepted.

24. In relation to not being informed of the charge, the Applicant cited ***Maharaj v AG of Trinidad and Tobago*** **[1977] 1 All ER PC** in support. In that case, Lord Salmon said that, before an alleged contemnor can properly be convicted and punished, the judge must make plain to him the particulars or the specific nature of the contempt with which he is being charged. In that case, the judge had said only that the appellant was "*formally charged with contempt of court and [he was called upon] to answer the charge*". There were no particulars or specifics given with which the appellant should have been furnished.

25. In this case, however, the transcript of the proceedings (exhibited by the Respondent in its Affidavit of Defence) records the Judge as saying:

> "*Counsel, given your representations, the manner in which it was made…they were made, the fact that you consulted your diary and the subsequent revelation regarding your matter before the Chief Justice, your lateness this morning, this Court is of the preliminary view that your behaviour is contemptuous. In the circumstances, I am giving you an opportunity to retain Counsel and return with a view to showing cause why you should not be found in contempt.*"

26. This Court considers that Applicant was provided with sufficient particulars to know what actions of his were considered potentially contemptuous. Further, he had ample opportunity to request any

clarification needed, and only sought to ascertain the time at which the hearing would begin.

27. Given that the Judge did provide specifics of the actions that she found to be potentially contemptuous, and coupled with the fact that the Applicant did not seek any clarification, the argument that he was not sufficiently informed of the charge against him cannot be sustained.

28. In relation to being given an opportunity to apologise, the Applicant referenced the case of ***Moran*** **(1985) 81 Cr. App. Rep.** in support, quoting Lawton LJ that:

> The Judge acted too precipitately. He did not in terms give the appellant an opportunity of apologising…

29. In that case, an accused was held in contempt of court and imprisoned for (an additional) six months for refusing to give evidence. The interaction between the judge and the accused was brief and reported as follows:

> ""Judge Dean: You know you are in contempt of court by refusing to give evidence? You had better go back and think about it. You are doing two and a half years and I can add to that." Thereupon the appellant said: "You can add to that if you like. Judge Dean: I will give you another six months. Take him down. That is consecutive to the present sentence, of course."

30. The court found that the accused was given no opportunity to receive advice, which was said to usually lead to the person apologising to the court. The court also said that the judge should give himself time for reflection and consider doing so overnight. In the extant case, the Applicant was informed of the contempt charge and given three days to

"*retain Counsel and return with a view to showing cause why [he] should not be found in contempt*". It would appear that all of the principles set out in ***Moran*** were satisfied by the Judge in this case.

31. The Applicant was given an opportunity to apologise. The Applicant avers that he immediately apologised to the Court. However, this apology was prior to being informed of the contempt charge. Further, he only asked to be excused for his tardiness, which he said was due to him "*feeling a little unwell*" and claimed that his previous representations were as a result of a mistake based on the inaccuracy of his diary. These contentions will be addressed shortly, but the foregoing indicates that the Applicant was clearly given sufficient opportunity to seek advice and to apologise.

32. Further, the Applicant contends that the deprivation of a right of appeal, by **Section 13** of the Act, amounts to a breach of his right to protection of the law, since it is a fundamental element of that constitutional right.

33. **Section 13** provides that:

> ***No appeal*** shall lie from any order of guilt for contempt of Court, or punishment imposed therefor, made by the Court under section 12. (emphasis supplied)

34. The Applicant submitted the functions of the appeal, according to Peter D Marshall, Assistant Crown Counsel in New Zealand, were to correct errors, prevent miscarriages of justice and ensure fidelity and give credence to the administration of justice by correcting and reducing anomalous applications of the law and holding judicial officers accountable.

35. The Applicant says that this is the reason appeals were provided for in contempt of court legislation in Guyana for 91 years prior to the coming into force of the Act in 2010. The Applicant also submits that **Section 13** 'flies in the face' of **Article 14(5)** of the ICCPR, which provides that:

> Everyone ***convicted of a crime*** shall have the right to his conviction and sentence being reviewed by a higher tribunal according to the law. (emphasis supplied)

36. The Applicant referenced a number of European authorities that interpreted and applied the rights conferred under that Article, including the ***United Nations Human Rights Committee*** ('UNHRC') decisions in ***Bandajevsky v Belarus and Aboushanif v Norway, Views Human Rights Committee 93rd Session* (2008)** and ***Vasquez v Spain, Views Human Rights Committee 69th Session* (2000)**, and the ***European Court of Human Rights*** ('ECHR') case of ***Lantto v Finland* App. No. 27665/95**.

37. Apart from the fact that the right to protection of the law is contained in **Article 144** of the Constitution which, as discussed above, is applicable to persons charged with *criminal offences* as opposed to contempt of court, courts have held that the right of appeal is not a fundamental principle of justice.

38. In ***R v Vallieres (No. 2)* (1973) 47 D.L.R. (3d) 363**, a Canadian case in which the court examined the Canadian Bill of Rights provisions and the Canadian Supreme Court case of ***McKeown v. The Queen* [1971] S.C.R. 446**, among others, the Court found that nothing in the Canadian Bill of Rights provisions containing the rights to the protection of the law indicated that the right of appeal is a fundamental principle of justice in the definition of the rights and obligations of the ordinary man.

39. It must be noted, however, that the absence of appeal does not remove the right to make an application for judicial review of the decision of a Judge in contempt proceedings (***Magistrates' Court (Vic) v Murphy* [1997] 2 VR 186**). In Guyana, it may be helpful to recognise that the Act, which removed the right to appeal in contempt cases, was *Act No. 25 of 2010.*

40. This followed closely on the heels of *Act No. 23 of 2010*, the ***Judicial Review Act*** ('JRA'). The JRA provides a statutory scheme for judicial review of acts, including decisions of judges, and at **Section 5** indicates that grounds for relief by way of judicial review include errors of fact and law, failure to satisfy or observe conditions or procedures required by the Constitution or other law, breach of the principles of natural justice, deprivation of legitimate expectation and others that ensure fidelity in the administration of justice and accountability of judicial officers.

41. Though the JRA was not in force at the time the Applicant was found to be in contempt, orders such as *certiorari* to quash decisions were still available (the remedy highlighted for contempt in the face of the court in ***McKeown***), though the procedure is subject to the new **Civil Procedure Rules 2016** following the decision of the Caribbean Court of Justice in ***The Medical Council of Guyana v Ocampo* [2018] CCJ 18 (AJ)**. The essence of the functions of appeals identified by the Applicant in his submissions may therefore be satisfied by the presence of the avenue of judicial review.

42. The rights conferred by **Article 14(5)** of the ICCPR, like **Article 144** of the Constitution, are also addressed to criminal matters, in the case of the ICCPR persons 'convicted of a crime'. While, as established above, contempt of court is not a criminal charge, and thus cannot lead to a criminal conviction, the judicial review process allows for a decision in a contempt hearing to be reviewed by a higher tribunal. The grounds for

judicial review are also wide enough to cover compliance with **Article 14(5)** as interpreted by the UNHRC and the ECHR. And, should such a review prove unsatisfactory, a decision made by a judge on judicial review of a decision in a contempt hearing is subject to appeal (e.g. the JRA explicitly provides for this in **Section 22**).

CONDUCT OF THE APPLICANT

43. The Applicant argues that:

(a) the Respondent has failed to satisfy the mental element of contempt of court under the Act; and

(b) the conduct alleged by the Respondent falls woefully short of the definition of contempt as defined by the Act.

44. The definition of contempt of court in the Act includes the word 'wilful' in **Section 2(a)** and **2(b)**. The Applicant refers to the case of ***Parashuran Detaram Shamdasani v King-Emperor*** **[1945] AC 264**, where the Court said that wilfully means 'intentionally' or 'deliberately' and not 'inadvertently' or 'unconsciously'. The Applicant submits that the Respondent has failed to show that the representations made by the Applicant was such as could have been taken to be more than mere inadvertence and ought not to be construed as wilful or intentional when he sought an adjournment to beyond 9am on December 4, 2017.

45. The Respondent has not responded to these submissions particularly, but submitted that the acts of the Applicant together had or tended to have the effect of interfering with or obstructing the administration of justice. The Respondent relied on the decision of the Privy Council in ***Izuora v The Queen*** **(1953) AC 327**, where it was observed that it:

is not possible to particularize the acts which can or cannot constitute contempt in the face of the court.

46. The Respondent also relied on the case of ***Ex parte Bellanto; Re Prior*** **(1962) 63 SR (NSW) 190**, which said that the essence of contempt in the face of the court is:

> conduct, ***active or inactive***, amounting to an ***interference*** with or ***obstruction*** to, or tendency to interfere with or obstruct, the due administration of justice. (emphasis supplied)

47. The definition of contempt in **Section 2** of the Act, and the authorities above, betray that the element of 'wilful' conduct is not included in every example of conduct that constitutes contempt of court. In the Act itself, the word 'wilful' only appears in two (2) of the examples in that section, though it may be inferred in some others.

48. Neither the transcript of proceedings nor the submissions of the Respondent has alleged that the Applicant's conduct fell within either of those examples, which deal with disobedience or disregard for any judgment, direction, decree or order of the court and breach of an undertaking given in court.

49. Instead, the Respondent has asserted that the charge was brought under the general definition of contempt as explained by ***Ex parte Bellanto*** above. In the circumstances, the authorities relied on by the Applicant on this point is not relevant to the contempt charge with which the Applicant was faced, and which forms the subject matter of this Application. The question whether the acts identified by the Judge satisfy the contempt charge laid before the Applicant will now be discussed.

50. The conduct complained of by the Judge consisted of two separate incidents:

> (i) that the Applicant misrepresented to the Court that he had a matter before the Chief Justice at 9:00am on December 4, 2017; and,
>
> (ii) that the Applicant failed to appear at 11:00am on December 4, 2017, this being the time to which the Court was adjourned.

51. The Applicant admitted that he did not have a hearing before the Chief Justice on the morning of December 4, 2017, but claims that this was a mistake which he was unable to remedy owing to the intervening holiday and weekend. The representations made by the Applicant are as follows:

> 30/11/2017: *I am scheduled to report for the Chief Justice at 9:00am*
>
> 04/12/2017: *I was under the impression that the matter was supposed to start at 9:00 and finish at 1:15, but I was made to understand by my clerk that this was a mistake. The matter is actually scheduled to start at 1:15 today*

52. In support of his assertions, the Applicant has tendered two pages from two different diaries, indicating his schedule on December 4, 2017. The Respondent submitted that the first of the exhibits appears to be the one which was consulted by the Applicant on November 30, 2017 when his first representation was made. The Respondent claims that this is the only exhibit which records that the matter before the Judge in the primary hearing was adjourned to 11am on December 4, 2017, and that it is also the only exhibit which shows any connection between the hearing before the Chief Justice and the 9:00am time on December 4, 2017. The

Applicant has not countered these assertions and, from an examination of the exhibits, they appear to be reasonably well-founded.

53. In his Affidavit in Support of his Fixed Date Application, the Applicant said that he informed the Court that he gave the indication of a 9:00am fixture before the Chief Justice on the basis of his diary having two fixtures on December 4, 2017 before the Chief Justice, one at 9:00am and another at 1:15pm. This is a third representation by the Applicant of the information his diary provided to him.

54. However, this representation is supported by neither exhibit, since the first has only one (1) fixture and the second, though it has two (2) fixtures, has these at 9:15am and 1:15pm. Though this is not what was before the Judge, it must be noted that this representation of the Applicant cannot be substantiated.

55. Returning to the representations made before the Judge, the second representation of the Applicant is that his diary gave him the impression that the matter was supposed to start at 9:00 and finish at 1:15. The Respondent submits that this position is untenable for the following reasons:

(i) Though the hearing before the Chief Justice was written in the 9am slot in the diary, it was written as:

Dellon St. Hill – HHJ CJ George – 1:15

The format employed by the Applicant for scheduled hearings in this diary appears to be:

Client's name – Judge – Time for hearing

This format appears to be consistent with that recorded on that page for the primary matter before the Judge:

The Respondent argues that it would be difficult to believe that the Applicant, who displayed a preference for writing in this format, and used it again when recording the adjournment of the proceedings before the Judge, would misinterpret that format to mean that the hearing before the Chief Justice would commence at 9am.

(ii) The Applicant indicated initially that he was scheduled to be before the Chief Justice "*much of the day on Monday*" and that it may spill over into Tuesday. The Respondent submits that this, too, is not credible given the Applicant's second representation that he was under the impression that the matter was supposed to start at 9:00 and finish at 1:15. If this was so, he could easily have requested that the primary matter before this Court be adjourned to a time after 1:15. The Respondent further argues that it is very unlikely that this impression could have been had when no 'end time' is usually given to counsel for hearings, and therefore the '1:15' notation in the diary could not have been interpreted as the 'end time'.

56. The arguments made by the Respondent are convincing given what appears to be an obvious format preferred by the Applicant in the first diary page exhibited. It is incredible that the Applicant would misinterpret this format and, within minutes, use it correctly to record the adjournment before the Judge.

57. The Applicant, who is certainly not a novice in the Court system, would also be aware that no 'end time' for hearings is normally, if ever given. Further, that exhibit, as well as the fly sheet of the matter before

the Chief Justice exhibited by the Respondent, indicates that the matter was scheduled for 'Report', which would not last for an entire day and spill over into the next.

58. It is difficult to imagine any circumstance under which the report of a matter, following dates scheduled for the filing and service of submissions, would even last for more than four (4) hours, which the Applicant continues to submit was his belief at the time of his initial representations on November 30, 2017.

59. This all points very strongly to the conclusion that the Applicant did misrepresent what his diary actually informed him on November 30, 2017, and that he did deliberately seek to mislead the Judge into granting an adjournment of at least one (1) full day. The contention that the matter before the Judge was only delayed by two (2) hours and thus was not 'substantial' does not assist the Applicant, since it was only the Judge's unwillingness to relent following the multiple attempts of the Applicant, prevented a longer adjournment. In the circumstances, such misrepresentations can be said to tend to have the effect of interfering with or obstructing the administration of justice in the matter before the Judge.

60. The trial was a jury trial, of which 12 persons serving on a jury are also affected by any period of delay, be it 2 hours or 24. State prosecutors, the alleged victim and accused, as well as witnesses and other court personnel, add to the list of persons. They are of course, in addition to the Court itself, discommoded by the actions of the Applicant. They are all stakeholder in the justice system, and they would have an interest in its efficient and effective administration.

61. In relation to the failure of the Applicant to appear at 11:00am on December 4, 2017, the Applicant has submitted that he was attempting to

get sinus medication for himself on the morning of December 4, 2017, which resulted in him being late by approximately ten minutes. In support of this, he has tendered a prescription for such medication from the East Bank Demerara Regional Hospital in support of this assertion. The Respondent has raised the following questions about these submissions:

(i) The Applicant, when initially asked by the Court about the reason for his late arrival, did not mention anything about getting sinus medication for himself, but instead said that he was feeling a little unwell.

(ii) The prescription tendered by the Applicant indicates that it was obtained on November, 29, 2017, which was the Thursday before December 4, 2017. Since this medication was necessary particularly as a result of the effect of the AC in the Courtroom, it is extremely surprising that the Applicant waited for five days, inclusive of another day in the Courtroom, a holiday and the weekend, before attempting to obtain that medication.

(iii) The Clerk of the Applicant informed the Court on December 4, 2017 that the Applicant was on his way from the East Coast, which was the reason for his lateness. Again, there was no mention of his illness nor his attempt to get sinus medication which was prescribed by a hospital on the East Bank.

(iv) No receipt for sinus medication has been tendered which would indicate that he was indeed purchasing such medication at or about the time of the hearing.

62. It would be difficult to conclude that the Applicant being 10 minutes late for the resumption of the matter before the Judge would constitute contempt. As the Applicant has submitted, the matter started even later owing to the tardiness of the jurors. However, this Court is invited to

examine the surrounding circumstances with a view to seeing the tardiness of the Applicant as part of an overall attitude of contempt by the Applicant towards the court.

63. From this perspective, the Applicant is seen as also misrepresenting the reason for his being late on December 4, 2017. The representation by the Applicant that he was late because he was getting sinus medication does appear questionable for the reasons listed by the Respondent. The day after the Applicant received his prescription, he was present before the Judge in the courtroom.

64. However, the failure of the Applicant to obtain the medication prior to that appearance cannot by itself lead to the conclusion that he was lying about getting the medication on the morning of December 4, 2017, though him not doing so in any of the intervening days may raise questions about the urgency with which the Applicant viewed his need for the medication.

65. More convincing, though, is the Applicant's failure to indicate this to the Judge upon appearing on December 4, 2017, especially since he would have just come from attempting to obtain such medication. These matters, however, are not relevant to whether there was sufficient evidence before the Court on December 4, 2017 to conclude that the tardiness of the Applicant constituted contempt in the face of the court, as none of this information would have been before the Judge at that time.

66. In light of the above, the lateness of the Applicant on December 4, 2017 cannot give rise to a finding that the Applicant committed contempt in the face of the Court on that day. At most, it can point to the overall inconsistency of the representations of the Applicant before the Court, thus affecting the Applicant's credibility in the determination of the extant Application.

CONCLUSION

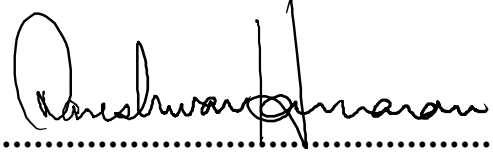
67. For the above reasons, this Court is of the view that:

a) The procedure of the Act providing for the Judge to deal with contempt committed before her did not contravene the Applicant's rights under **Article 144(1)** and **154A** of the Constitution, which deal specifically with criminal proceedings.

b) Since the procedure outlined in the Act is consistent with the common law procedure and principles for contempt proceedings, and the avenue of judicial review is still available to correct bad decisions in contempt proceedings, the Applicant has not been deprived of the protection of the law nor are the provisions of the Act in violation of the rule of law.

c) The facts available to the Court at the time of the hearing, and the submissions of the Applicant subsequent to the hearing, all provide support for a finding of contempt beyond a reasonable doubt, in that the Applicant did misrepresent facts to the Court which would tend to substantially obstruct or interfere with the administration of justice in the primary proceedings before the Court.

68. Therefore, the orders sought in this application are refused. The Applicant is ordered to pay costs to the Respondent in the sum of $150,000.00.



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Nareshwar Harnanan
Puisne Judge
August 29, 2018