IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

(REGULAR JURISDICTION)

2018-HC-DEM-CIV-FDA-1095

BETWEEN:

PATRICIA WENT, in her capacity as a Member and Chairman of the **GUYANA PUBLIC SERVICE CO-OPERATIVE CREDIT UNION LIMITED**.

Applicant

- and -

1. PERLINA GIFTH, Chief Co-operatives Development Officer/ Commissioner.
2. JUSTICE PREM PERSAUD
3. PATSY RUSSEL
4. TREVOR BENN
5. RAJDAI JAGGERNAUTH
6. GILLIAN POLLARD
7. ONEIDGE WALROND-ALLICOCK
8. PATRICK MENTORE
9. GEORGE VAUGHN

Respondents

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Roysdale A. Forde and Ms. Olayne D. T. Joseph representing the Applicant

Ms. Deborah Kumar (Deputy Solicitor General) and Ms. Beverly Bishop-Cheddie for the Attorney General of Guyana representing the First Named Respondent

Mr. Nigel Hughes and Ms. Prithima Kissoon representing the Second to Ninth Respondents

Delivered July 13th 2018

RULING

BACKGROUND

On June 12th 2018 the Applicant instituted this Action by filing a Fixed Date Application (hereinafter referred to as the FDA) seeking several Declarations and Injunctions.

On the same date the Applicant filed an Application praying for certain interlocutory injunctions pending the hearing of the FDA.

The hearing of the FDA was scheduled for July 9th 2018.

The Application came up for hearing on June 15th 2018, at which time the Court granted leave to the Parties to file additional documents.

Counsel for the Parties made oral submissions with respect to the Application for interlocutory relief on July 4th and 5th 2018 and at the close of those submissions, they all agreed that during the course of those submissions all of the issues arising in the FDA had in fact been addressed and therefore, by consent, this ruling would encompass both the Application for interlocutory relief and the relief claimed in the FDA.

The Applicant **was** the Chairman of the Guyana Public Service Co-operative Credit Union Limited (hereinafter referred to as the Credit Union).

The First Named Respondent (hereinafter referred to as the FNR) is the Chief Co-operatives Development Officer and Commissioner for Co-operative Development (hereinafter abbreviated to CCDO or Commissioner).

On May 25th 2018, acting pursuant to Regulation 56 (2) of the Co-operative Societies Act, CAP 88:01 the FNR suspended the Committee of Management by directing the Applicant (it's Chairperson) and members thereof to cease to function, assumed control of the affairs of the Credit Union and installed an Interim Management Committee to manage the affairs of the Credit Union.

The Second to Ninth Respondents herein are the members of that Interim Management Committee.

Before dealing with the issues arising out of the Application for interlocutory relief and the FDA the Court feels compelled to address certain procedural issues.

The grounds stated in the FDA stretch out over 14 pages, containing 24 substantive paragraphs, mainly containing evidence in support of the FDA. In fact the only real difference between the stated grounds and the Affidavit in Support of the FDA is that one is written using the first person pronoun and the other, the third person pronoun.

A ground in an Application to a Court is the legal principle or claim being advanced or relied upon to justify the granting of the relief being sought. It is the reason/s specified in law that form/s the basis for the relief claimed.
The **grounds**, therefore, cannot be a full discourse of the evidence relied upon. An Application drafted in the form of the present Application can and maybe ought to be struck out for not clearly stating a **ground**.

In addition, the reliefs sought in the Application for interlocutory relief is a complete reproduction of the reliefs claimed in the FDA. An applicant cannot seek

substantive reliefs/ Orders in an interlocutory Application. Again, such an Application may be struck out as being an Application that, if granted, will effectively determine the substantive matter.

Due to the fact that this matter is one of public importance, the Court will proceed to determine the Application and the FDA on the merits, notwithstanding the foregoing.

The Court discerns that the grounds of this FDA and interlocutory Application is that the action of the FNR, as stated above, is *ultra vires* the Co-operative Societies Act, CAP 88:01 and in breach of the rules of Natural Justice.

ISSUE I

Can the Applicant properly make this application to the Court having regard to the fact that the Regulations to the Co-operative Societies Act provide a process for the appeal of a decision such as the one made by the FNR?

LAW

Regulation 56 (3) of the Co-operative Societies Act provides;

"*Where the Commissioner has assumed control of a society under paragraph (2), one-third of the members of the society or, and notwithstanding the exercise of the right by the aforesaid one third of the members, the majority of members of the committee in office immediately before the Commissioner assumed control of the society may within 21 days appeal in writing to the Minister and the decision of the Minister shall be final.*"

FACTS

No appeal was filed within 21 days of the decision of the Commissioner (the FNR) or at all.

This action was instituted by a single member of the society (the Credit Union) 18 days after the decision of the Commissioner (the FNR).

ANALYSIS

Counsel for the Applicant contends that the remedy under Regulation 56 (3) of the Co-operative Societies Act was not available to the Applicant for the following three reasons;

1. The law is that an exception to having to use the statutory process is created where there is a breach of Natural Justice and there was a breach of the ***audi alteram partem*** rule in this case. It is contended by Counsel for the Applicant that the members of the Committee of Management were not told of the issues that caused them to be removed and therefore not given an opportunity to be heard on such issues.
2. Where reasons are not provided for a decision, the statutory appeal process is nugatory.

3. The appeal would lie to either Minister Scott or Minister Ally and they have rendered themselves to be not fair by their public statements.

REASON 1

FACTS

The FNR has asserted that there were breaches and non-compliance of various sections and requirements of the Co-operative Societies Act by the Committee of

Management which were brought to the attention of the Committee of Management, particularly with respect to the auditing of accounts in accordance with section 35 of the Co-operative Societies Act.

No audit had been approved since the year 2010 and no audits had been conducted for the years 2011 onwards.

Mr. Maurice Solomon, an Accountant, was authorised to perform the audit of the Credit Union for the years 2011, 2012 and 2013, which reports were completed in 2016.

There were numerous written correspondence and meetings between the CCDO, The Ministry of Social Protection and the Committee of Management to discuss the breaches and non-compliances.

The audit reports prepared by Maurice Solomon have not been signed off by the Committee of Management since their completion in 2016, nor has an **Annual General Meeting** been convened since 2013.

ANALYSIS - REASON 1

The authorities do not demonstrate that if an aggrieved person is not given a hearing that person can as of right abandon the statutory defined right of appeal provided.

In fact, it stands to reason that, if indeed, the Applicant was of the firm belief that the Committee of Management's right to be heard was breached then the appeal process laid out in the Co-operative Societies Act seems to be the next logical step to challenge the decision made by the FNR (the CCDO), **provided**, of course, that

a majority of the members of the Committee of Management were desirous of challenging that decision.

Further, since the the principles of Natural Justice supplement the law, it is possible that in the formulation of a particular Statute and in certain situations, for those principles to be excluded.

In other words it is not a foregone conclusion that the rules of Natural Justice will form part of the procedure to be followed. These principles supplement but do not supplant the law.

Regulation 56 (2) of the Co-operative Societies Act provides;

"*If in the opinion of the Commissioner the committee of any registered society is or becomes incapable of managing or wilfully neglects to conduct the affairs of such society in a proper manner the Commissioner may assume control of the affairs of the society and may appoint a person or persons to manage the affairs of the society for such time as the Commissioner thinks fit.*"

The Co-operative Societies Act gives the Commissioner very wide latitude and authority to ensure the proper management of societies that are registered under the Act.

The words used in Regulation 56 (2) do not contemplate a hearing or an application of the Natural Justice principle ***audi alteram partem***.

All that is required is that the Commissioner forms a particular opinion, obviously based on factual occurrences within a society.

Based on the finding that there were ongoing breaches of the law as provided for in the Co-operative Societies Act by the Committee of Management the Commissioner formed the opinion that the Committee of Management was either incapable of managing or was wilfully neglecting to conduct the affairs of the Credit Union in a proper manner and therefore proceeded to exercise the powers given to her by the Act.

Under the Act, the Commissioner has a positive duty to ensure that the societies comply with the law for the protection of their members.
By necessary implication, in order for the Commissioner to properly oversee the management of the societies registered under the Act, the principle of ***audi alteram partem*** is excluded from that Regulation.

Mr. Hughes submitted that there could not have been a lack of Natural Justice since there were numerous hearings and ongoing meetings with the Committee of Management.

The Court finds favour with this contention and does not find that the members of the Committee of Management were in fact deprived of a hearing.

Based on the evidence before the Court there was continuous communication with the Committee of Management regarding the concerns that the CCDO had about the lack of audits, financial statements and no Annual General Meeting being held.

The concept of being given a hearing depends and may be satisfied based on the circumstances of each case. It cannot be that there has to be a specific format of a sit down question and answer meeting/ interrogation.

The issues were constantly being raised over **several years** with the Committee of Management and evidently the explanations, coupled with the fact that the breaches continued, led the CCDO to form the opinion that the Committee of Management was either incapable of managing or was wilfully neglecting to conduct the affairs of the Credit Union in a proper manner.

In Mavis Baker *v* Minister of Citizenship and Immigration [1999] 2 S.C.R. 817 it was stated "*Nevertheless, taking all the factors into account, the lack of an oral hearing or notice of such a hearing did not constitute a violation of the requirement of procedural fairness. The opportunity to produce full and complete written documentation was sufficient.*"

REASON 2

The second reason advanced for not employing the Statutory appeal process is not maintainable since Regulation 56 (2) of the Co-operative Societies Act provides the reasons for the actions of the Commissioner.

The CCDO does not have to further provide a reason/s for the reasons specified in the Act in her letter since her letter simply served to inform the persons to whom it was addressed that she was exercising the power given to her by the Statute.

REASON 3

The Applicant relies on two publications in the Guyana Chronicle newspaper purporting to report statements made by Ministers Keith Scott and Amna Ally which the Applicant has interpreted to be biased against the Committee of Management.

ANALYSIS - REASON 3

The Court cannot accept this as evidence of the truth in the form presented. It is inadmissible hearsay and unreliable and therefore cannot substantiate the reason advanced.

On this issue Mr. Hughes has submitted that the fact that there may be a fear of bias in a tribunal cannot be the basis for not pursuing a procedure established by the Statute.

Indeed, unless there is clearly established bias in a tribunal, the Applicant's mere belief cannot form the basis of avoiding a tribunal.

Should the tribunal in adjudicating upon the appeal in fact display bias that can be remedied by an Application for Judicial Review.

ANALYSIS - **ISSUE I** (continued)

The Attorney General argues that this Application should not be entertained by the Court on two grounds;

1. The existence of a Statutory appeal precludes an Application to the High Court.
2. Assuming that the Applicant could make an Application to the High Court, such Application would have to be one for Judicial Review and not for Declarations and Injunctions, as has been instituted.

GROUND 1

LAW

Dr. Jose Ocampo Trueba *v* The Medical Council of Guyana [Civil Appeal No. 125 of 2017 - Court of Appeal of Guyana]

ANALYSIS - GROUND 1

Following the detailed analysis of Chancellor Cummings-Edwards in Dr. Jose Ocampo Trueba *v* The Medical Council of Guyana [Civil Appeal No. 125 of 2017 - Court of Appeal of Guyana] of whether there is exclusion of Judicial Review where a Statutory Appeal exists, [which reasoning was upheld by the CCJ in [2018] CCJ 08 (AJ)], it is clear that the existence of a Statutory appeal does not automatically preclude an Application to the High Court.

Such a determination would depend on the nature of the challenge being made.

Essentially, if the procedure followed in making the decision is being challenged then an Applicant may and probably should make that challenge by way of an Application for Judicial Review, however, if the challenge is concerning the merits of the decision then the Applicant should properly engage the appeal process provided in the Statute.

Upon a close examination of the Affidavit evidence filed in this Application it seems to the Court that despite the fact that the Applicant claims relief on the basis that the rules of Natural Justice have been breached, the Applicant recognises what the reason/s are for the CCDO forming the opinion that the Committee of Management was either incapable of managing or was wilfully neglecting to conduct the affairs of the Credit Union in a proper manner, since the affidavit evidence goes a long way towards attempting to establish that the CCDO's opinion/ conclusion was wrong.

CONCLUSION - GROUND 1

The actual contentions raised in this Application, that is, that the Committee of Management was not mismanaging or wilfully neglecting the affairs of the Credit Union are issues that should properly have been raised on appeal.

GROUND 2

The Applicant is free to chose whether to pursue Judicial Review or Private Law Review of Administrative action.

It should be noted, however, that in seeking a grant of Declaratory relief in Public Law, the person must be entitled to a legal character/ legal status which may include official position or right to any property **and** there must be some public person or authority interested in denying such character or right or have actually denied it.

CONCLUSION - **ISSUE I**

Based on the foregoing the Court finds that any challenge to the decision of the CCDO should have been pursued as provided for in Regulation 56 (3) of the Co-operative Societies Act.

ISSUE II

Does the Applicant in her capacity as a Member, (She misrepresented that she was the Chairman at the time of the filing of the Application), of the Credit Union have *locus standii* to institute this Application?

ANALYSIS

Regulation 56 (3) of the Co-operative Societies Act requires the participation of either two-thirds of the Members of the Credit Union or a majority of the members

of the Committee that has been removed in appealing the decision of the Commissioner to the Minister.

Mr. Hughes submitted that whether the decision of the CCDO is challenged by appeal pursuant to Regulation 56 (3) of the Co-operative Societies Act or by an Application to the Court the challenge must be supported by either one-thirds of the members of the Credit Union or a majority of the members of the Committee that has been removed.

The Court does in fact find that assuming that the Members of the Credit Union or the Committee of Management could by-pass the Statutory appeal process and apply to the Court for redress, the Application must be made by either two-thirds of the Members of the Credit Union and/ or a majority of the members of the Committee that has been removed.

The Applicant's bare, unsubstantiated statement that she is authorised to make this Application on behalf of the members of the Committee of Management is insufficient to clothe her with such authority, especially in light of the fact that two person whom she claimed had given her authority, namely Maurice Veecock and Jermain Hermanstyne, submitted affidavits to the Court denying her claim.

CONCLUSION

The Court finds that the Applicant does not have *locus standii* to make this Application.

ISSUE III

Is there a stated claim against the Second to Ninth Respondents?

FACTS

In the FDA though injunctions are applied for against the Second to Ninth Respondents, no declaratory order is sought against those Respondents.

ANALYSIS

Mr. Hughes has submitted that none of the Declaratory reliefs sought are reliefs sought against the Second to Ninth Respondents and therefore the FDA ought to be dismissed as against them.

A Declaration is a judicial remedy which conclusively determines the rights and obligations of public and private persons and authorities without the addition of any coercive or directory decree.

In the context of an Application/ FDA for Private Law Review of Administrative action, an injunction would be consequential relief, that is, relief which flows directly from the Declaration.

In the area of Public Law, consequential relief may not be of any significance, however there must be a claim against a party for the Application/ FDA to be maintainable against that party.

CONCLUSION

There is no stated claim against the Second to Ninth Respondents.

In the circumstances, based on the foregoing findings, the Application for interlocutory relief and the Fixed Date Application filed on June 12th 2018 are dismissed.

The Court wards costs against the Applicant in the sum of $150,000.00 to each Respondent.

_____

Justice N. A. Singh