

IN THE COURT OF APPEAL OF THE SUPREME COURT OF
JUDICATURE

APPELLATE JURISDICTION

GUYANA

CIVIL APPEAL NO. 35 OF 2000

BETWEEN:

GUYANA ELECTRICITY CORPORATION INC.

Appellants

- and -

CHARLES LIBURD, substituted herein by
CLARENCE HUGHES, one of the Executors of the
estate of the said CHARLES LIBURD, deceased by
Order of Court dated 12th June, 2002.

Respondent

BEFORE:

Hon. Madam Justice Desiree Bernard	-	Chancellor
Hon. Madam Justice Claudette Singh	-	Justice of Appeal
Hon. Mr. Justice Ian Chang	-	Justice of Appeal

Mr. Khemraj Ramjattan for Appellants
Mr. Nigel Hughes for Respondent

2002: June, 13
July, 3
October, 11

RULING

BERNARD, C.: *delivered the judgment of the court*

An appeal has been filed against the decision of the Public Utilities Commission awarding compensation to the Respondent in the sum of \$16,138,953.00 for loss and damage suffered by him on account of the failure of the Appellants to comply with Section 26 of the Public Utilities Commission Act, 1990, and a further sum of \$500,000.00 as costs. Section 26 imposes a duty on a public utility to provide service to the public which is in all respects safe, adequate, efficient, reasonable and non-discriminatory.

The Respondent satisfied the Commission that he suffered loss and damage due to a failure of the Appellants to provide a service which was safe.

A preliminary objection as to the jurisdiction of the Public Utilities Commission was taken by Counsel for the Appellants, and a ruling was sought before embarking on a hearing of the substantive appeal.

Counsel for the Appellants submitted that Section 27 of the Public Utilities Commission Act 1990 is unconstitutional in that it is inconsistent with Article 8 of the Constitution. He contended that Parliament sought through Section 27 to transfer the jurisdiction of the High Court to award compensation for breach of statutory duty to a non-judicial body. He referred to the cases of Hinds & Others v. R. (1975) 24 WIR, 326 and J. Astaphan & Co. (1970) Ltd v. Comptroller of Customs (1954) WIR, 153, and emphasised that any Act which seeks to diminish the jurisdiction of the High Court is unconstitutional. He also made reference to Articles 144(8), 123(1)-132, and 197 of the Constitution, and highlighted the fact that the Public Utilities Commission is not an independent body, its functions being only investigatory; as such it cannot be impartial when discharging its purported adjudicatory function. Other cases cited by Counsel were Farrell v. Attorney General of Antigua (1979) 27 WIR, 377 and The Commissioner of Police v. Davis (1993) 2 LRC, 333 as well as Dr. Fiadjoe's text "Commonwealth Caribbean Public Law", 2nd Edition, at pages 159 and 161, and "Commonwealth Caribbean Constitutional Law" by Sir Fred Phillips at pages 17 and 18.

Counsel for the Respondent in reply referred to Article 65 of the Constitution as well as Article 144(8) which he submitted provides expressly for the establishment of a tribunal. He postulated that the doctrine of separation of powers has no status, and cannot override the Constitution.

He made reference to Sections 18 & 19 of the Electricity Act, Cap. 56:01, and stated that prior to 1990 no court had jurisdiction to determine liability of the Guyana Electricity Corporation. There was therefore no transfer of the powers of the courts to a non-judicial body as none existed before the 1990 Public Utilities Commission Act was passed; further, courts do not have exclusive jurisdiction to determine rights of parties. He further submitted that this Court has no original jurisdiction to determine the constitutionality of the Public Utilities Commission Act under Article 144(8) or its independence or impartiality; this can only be determined by the High Court under Articles 153 (1) & (2).

All but one of the cases referred to by Counsel for the Appellants were decisions of the Privy Counsel and therefore only of persuasive authority in relation to this Court. However, I shall undertake an analysis of them to ascertain whether there is some common ground particularly in relation to our constitutional provisions concerning the establishment of our Supreme Court of Judicature,

The decision in Hinds v. R. (supra) turned on a provision of the Act establishing the Gun Court in Jamaica which sought to vest in that court composed of resident magistrates (the lower judiciary) a jurisdiction enjoyed only by members of the Supreme Court composed of members of the higher judiciary, i.e. judges of the High Court and of the Court of Appeal.

The main bone of contention in that case was the establishment of a Full Court Division consisting of three resident magistrates which was held to be in conflict with the Constitution of Jamaica and therefore void. The reasoning behind this was that the provision sought to give to a court composed of members of the lower judiciary jurisdiction to try all criminal offences except in murder and treason and to punish by penalties extending

in the case of some offences, to imprisonment for life. This jurisdiction was previously enjoyed only by a Supreme Court judge in conformity with the Constitution.

The same reasoning was applied by the Privy Council in The Commissioner of Police v. Davis (supra).

This was the main provision of the Act which was struck down as being unconstitutional, although Lord Diplock in his judgment conceded that "the Legislature in the exercise of its power to make new laws for the 'peace, order and good government' of the State, may provide for the establishment of new courts and for the transfer to them of the whole or part of the jurisdiction previously exercisable by an existing court." Overall I agree with the ratio decidendi of that case.

In Farrell v. Attorney General of Antigua (supra) the Court of Appeal of the West Indies Associated States *held* that the provisions of the Industrial Court Act 1976 of Antigua which purported to divest the Supreme Court of its supervisory jurisdiction was in conflict with the Constitution of Antigua and therefore void. In my opinion a provision of the Act which sought to place an order or award of the Industrial Court beyond challenge of any court whether by appeal or review as well as removing it from challenge by prohibition, mandamus or injunction was a glaring example of ouster of the jurisdiction of the Supreme Court and a definite usurpation of its functions. The relevant Act sought to insulate the Industrial Court from scrutiny or supervision by any court, and that provision was correctly declared unconstitutional by the Court of Appeal. Reference was made to dicta of Lord Diplock in Hinds.

J. Astaphan & Co. (1970) Ltd. v. Comptroller of Customs of Dominica & others (supra) concerned the constitutionality of a provision in

