

IN THE COURT OF APPEAL OF BELIZE, A.D. 2005
CIVIL APPEAL NO. 20 OF 2004

BETWEEN

**BELIZE PETROLEUM
HAULERS ASSOCIATION**

Appellant

v.

**DANIEL HABET
RODOLFO PERERRA
JENNEL' S TRUCKING CO LTD**

Respondents

BEFORE:

The Hon. Mr. Justice Mottley	-	President
The Hon. Mr. Justice Carey	-	Justice of Appeal
The Hon. Mr. Justice Morrison	-	Justice of Appeal

**Mr. Hubert Elrington and Mr. Dons Waithe for appellant.
Mr. Dean Barrow, S.C. for respondents.**

4 March & 24 June 2005.

MOTTLEY P

1. This appeal raised a short point which dealt with whether the provisions of sections 3(4), 19(1)(a) and (2)(c) of the Belize

Petroleum Haulers' Association Act No. 28 of 2003 (the Act) conflict with the provisions of sections 13(1) and 15(1) of the Constitution of Belize and therefore are null and void.

2. The Belize Petroleum Haulers' Association (the Association) is a body corporate established by section 3(1) of the Act. The objects of the Association are set out in section 4 of the Act and include the promotion, fostering and encouragement of the growth of the petroleum haulage industry. The Association is empowered to ensure and maintain the safety integrity and order in the industry. It was given the responsibility for assisting in the preparation of, and settling of the terms and conditions of contracts between the haulers and third parties. It is also required to assist members in settling disputes.

3. Section 3(4) of the Act provides:

(4) The Association is and shall be only legal entity authorised to conduct the business of petroleum transportation in Belize, save and except haulage to a private facility not owned by an oil company or its affiliates.

By this provision the Association was given the sole right to conduct the business of transporting petroleum in Belize in respect of haulage to a facility owned by an oil company.

4. Section 17 of the Act prevents any person from transporting petroleum or petroleum products above 500 gallons at any time without a licence issued by the Department of Transportation. Every application for a licence under the Act has to be made to the Department on the Form set out in the First Schedule to the Act (section 18).

5. The criteria for the issuance of a licence are set out in section 19(1) which states inter alia:

19(1) In considering applications for a licence under this Part, the Department shall have regard to the following factors:

(a) the applicant is a member of the Association and certified by the Committee.

6. Section 19(2) contains restrictions which prevented the Department from issuing a special licence in certain circumstances. The relevant constraint is contained in 19(2)(b) which states:

- (2) The Department shall not issue a special licence to an applicant unless such applicant is:
 - (a) ...
 - (b) ...
 - (c) recommended by the Association.

7. The Chief Justice held:

“The effect of section 3(4) coupled with section 19(1)(a) and 2(2) of the Act is effectively to chill the right to associate or not to associate, of the applicants and this directly impacts on their right to work in their chosen field, namely the commercial haulage of petroleum products. Together, I find these sections grants the Association an unwarranted *imprimatur* even to the extent of prohibiting a public officer, the Director of Transport, from issuing special licence to applicants unless “recommended by the Association”. The *imprimatur* given by these sections to the Association seriously undermines and infringes both the right to associate or not and the right to work guaranteed by sections 3(1) and 15(1) of the Constitution.”

8. Mr. Elrington for the appellant alleged that the Chief Justice erred in holding that the provision of section 19(1)(a) and (2)(c) infringed the

provision of section 13(1) and 15(1) of the Constitution of Belize. He submitted that no constitution right was raised on the pleading and that no constitutional right was ever before the Court. He submitted that the provisions of sections 13(1) and 15(1) did not create any rights.

9. Section 13(1) of the Constitution states:

13(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association with other persons and in particular to form or belong to trade unions or other associations for the protection of his political parties or other political association.

By this sub-section, the right of the individual to associate with others and to belong to associations of his choice are protected. He cannot be forced against his will to join any association.

10. Section 15(1) of the Constitution prohibits anything be done which would deny the individual the opportunity to gain meaningful employment. The sub-section stated:

15(1) No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business or otherwise.”

11. Section 3(1) of the Act establishes the Association. Section 3(4) authorized the Association to be the sole entity to conduct the haulage of petroleum and petroleum products in Belize. The objects of the Association are extensively set out in section 4 of the Act. In my view, there is nothing in the provision of section 3 which could be considered to be unconstitutional.
12. However, in my view, the same cannot be said of the provisions of sections 19(1)(a) and 20(2)(c). Section 19(1)(a) provides that in considering an application for a licence the Department shall have regard to the fact whether the applicant is a member of the Association and is so certified by the Committee.
13. Section 19(2)(c) prevents the Department from issuing a special licence to anyone unless he has been recommended by the Association. This again places an applicant at a disadvantage as it may be unlikely that the Association would be willing to recommend a person who is not a member as someone to whom a special licence should be issued.

14. There is an absolute prohibition against transporting petroleum or petroleum products over 500 gallons at anyone time by any mean without a licence. Section 24 of the Act make it a criminal offence to haul petroleum in contravention of the Act.
15. The effect of the provisions of sections 19(1)(a) and 19(2)(c) is to interfere with the right of the citizen to be gainfully employed in the field of his choice. The Chief Justice was correct in concluding as he did. The appeal does not challenge that conclusion.
16. It is for these reasons that I agreed that the appeal be dismissed with costs.

MOTTLEY P

CAREY, JA

1. The backdrop to these proceedings is the business of commercial haulage of petroleum products in Belize. The judicial basis is the constitutionality of the Belize Petroleum Haulers' Association Act 2003 (the Act) which the respondents claimed infringes their right of association under section 13(1) of the Constitution. In the event,

the Chief Justice declared that sections 3(4), 19(1)(a) and 2(c) of the Act are invalid for incompatibility with the rights of the respondents under section 13(1) and 13(5) of the Constitution.

2. The grounds of appeal which were filed on behalf of the appellant were not really argued before us. It is right to point out that these grounds were filed by attorneys other than the attorneys who filed the skeleton arguments to which counsel spoke. What was advanced in the skeleton arguments was not raised below. It ran thus - no constitutional issue arose on the facts of the case. That the application was misconceived and the source of the misconception was the belief that the Act affected applicant's constitutional rights, namely, the 'right to associate' and the 'right to work' when in fact, all the Act deals with is a privilege. Driving a motor vehicle and licensing a motor vehicle is a privilege, not a constitutional right. Procedures exist to control the exercise of discretionary authority given under statute and contract, and also where no statute (sic) or contract exist, but the body exercising the power has a virtual monopoly over an important area of human activity, and affect (sic) people's right to associate and their liberty or privilege to work, the court has amply (sic) jurisdiction and power to review and control the exercise of such powers in the interest of fairness". It was never argued below that breaches of the rules of natural justice had occurred which affected the parties who were

seeking redress. They certainly had made no such complaints nor could they. No orders were made against any of these persons which allowed judicial review to be invoked, to secure redress.

3. A novel proposition was advanced that the rights which the respondents sought to vindicate were not constitutional rights but constitutional privileges or liberties, and the Court has ample jurisdiction to protect by review in the interest of fairness. It is only necessary to state this proposition to demonstrate its hopelessness: it is to be dismissed as semantic terpsichore.
4. The right to associate and the “liberty to work” are both rights protected under the Constitution. Sec. 13(1) of the Constitution protects freedom of assembly and association. It provides as follows:

“13(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of assembly and association with other persons and in particular to form or belong to trade unions or other associations for the protection of his political parties or other political associations.

The right to work is a ‘right’ under and by virtue of the Constitution, section 15(1):

“No person shall be denied the opportunity to gain his living by work which he freely chooses or accepts, whether by pursuing a profession or occupation or by engaging in a trade or business, or otherwise”.

Both are recognized and are declared rights under the Constitution and as such, are protected. Section 20(1) enacts as follows:

(1) “If any person alleges that any of the provisions of sections 3 - 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other action with respect to the same matter which is lawfully available, that person (or that other person) may apply to the Supreme Court for redress.”

In the result, this disposes of the submission that the “right to work” is not amenable to constitutional redress.

5. The Belize Petroleum Haulers’ Association Act, 2003 established a body of that name to be the only legal entity authorized to conduct the business of petroleum transportation in Belize except haulage to a private facility not owned by any oil company or its affiliates. The complaints against this legislation related to sections 18(1), 19(1)(1) and 19(2)(c) which it was claimed, were *ultra vires* the

constitutional guarantees of freedom of association and the right to work. These provisions relate to the licensing regime set up under the Act, as it is an offence to transport petroleum or petroleum products over 500 gallons without a licence (section 17). The Chief Justice held that:

“The effect of section 3(4) coupled with section 19(1)(a) and 2(c) of the Act is effectively to chill the right to associate or not to associate, of the applicants, and this directly impacts on their right to work in their chosen field, namely, the commercial haulage of petroleum products. Together, I find these sections grant the Association an unwarranted *imprimatur* even to the extent of prohibiting a public officer, the Director of Transport, from issuing special licence to applicants unless “recommended by the Association”. The *imprimatur* given by these sections to the Association seriously undermines and infringes both the right to associate or not and the right to work guaranteed by sections 3(1) and 15(1) of the Constitution”.

None of the submissions in the skeleton arguments which Mr. Elrington addressed to us, challenged this holding of the Chief Justice. Counsel contended that if any aggrieved applicant for a licence had a right to appeal to the Minister, it arose where the

Minister who has a legal duty to act fairly, failed to do so. But that is to accord no value to rights guaranteed under the Constitution, in the instant case, the right to associate and the right not to be denied the opportunity to gain their living by work which they freely choose, rights which the respondents sought to vindicate and which they could properly choose to invoke by constitutional action. With all respect to the pertinacity of counsel, I am of the view that his submissions are without merit, and must be rejected.

6. The original grounds which were filed by different attorneys were not pursued before us. Since they were not relied on, it must be assumed that counsel had no faith in them. For my part, I regard them as abandoned. It was for these reasons that I agreed that the appeal be dismissed.

CAREY JA

MORRISON JA

On 4 March 2005 I concurred in the order of this Court dismissing the appeal from the judgment of the learned Chief Justice, with costs to the respondent to be agreed if not taxed. I have since had the advantage of reading in draft the judgments prepared by the President and Carey JA. I agree with them and there is nothing that I can usefully add.

MORRISON JA