

IN THE SUPREME COURT OF BELIZE A.D. 2004

ACTION NO. 682 OF 2004.

IN THE MATTER of Section 36 of The Public Utilities Commission Act, Chapter 223 of the Revised Laws of Belize, 2000

AND

IN THE MATTER of Part IV (Annual Review Proceedings) of The Water and Sewerage (Tariffs) Bye Laws, 2002, S.I. 67 of 2002

AND

IN THE MATTER OF an Annual Review Proceedings on the Application of the Belize Water Services Limited

Mr. Fred Lumor S.C. and  
Mr. M. Chebat, for the applicant.  
Mr. Michael Young, S.C., for the respondent.

AWICH J.

18.1.2005.

JUDGMENT

1. *Notes: Referring questions of law to the Supreme Court; S: 36 of the Public Utilities Commission Act; whether a decision of the PUC challenged in a judicial review proceeding may be acted upon on the request of the challenger, Belize Water Services Ltd, in the meantime.*
2. On 18.1. 2005, the applicant, the Public Utilities Commission, PUC, referred questions of law to be answered by the Court. At the close of submissions by counsel for PUC and for Belize Water Services Ltd, BWS, the Court orally answered questions 11(a), (b) and (c) in the positive and 11(d) in the

negative, and advised that a written judgment would be filed. This is the written judgment.

3. PUC is authorised to refer to the Supreme Court questions of law that may arise in the course of its decision and function, by *S: 36 of the Public Utilities Commission Act, Cap 223, Laws of Belize*. It was envisaged that from time to time PUC might come across difficult questions of law or might consider it wise to have a point of law resolved or clarified before hand instead of waiting to be dragged to Court, with costs implication.

4. The questions referred to the Court are:

“(a) Should the Public Utilities Commission review its Final Decision which the Applicant, Belize Water Services, seeks to quash as illegal, ultra vires and could not lawfully be implemented?

(a) Should the Public Utilities Commission review its Final Decision in respect of which the Applicant, Belize Water Services, seeks an order of the Supreme Court to prevent the PUC from taking any further steps to implement?

(b) Should the Public Utilities Commission review its Final Decision when the Applicant, BWS, seeks an order of the Supreme Court to “preserve the 17% tariff contained in the Final Decision pending any reconsideration of that Final Decision by the PUC”?

(c) Should the Public Utilities Commission in the circumstances

stay further consideration of the Annual Review Proceedings application by BWS to await the outcome of the decision in the Judicial Review Action?”

5. The circumstances in which these questions arose were these. The PUC has statutory duty to oversee and regulate the activities of public utilities providers. On 17.4.2004, it made a decision authorising increase in water tariffs and other charges that would generate increase of 17% in the revenue of BWS, and about other relevant matters. It then published Byelaws, SI 102 of 2004, amending Byelaws SI 67 of 2002, accordingly. BWS was dissatisfied. It applied to this Court and obtained leave to bring judicial review proceeding in which BWS sought court review of the decision and the Byelaws, and court orders quashing the decision and the Byelaws. The judicial review proceeding is now underway. On 20.12.2004, notwithstanding that the judicial review was underway, BWS applied for an annual review, and increase in the tariffs and other charges on the ground of two exceptional circumstances which it said had resulted in decline of its annual revenue. The circumstances were:(1) that there had been changes to the sewerage zone delienation, and (2) there had been unforeseen need for significant additional chemical treatment of water at the plant at Double Run.

6. *Byelaws 27 in Part IV of the Water and Sewerage (Tariffs) Byelaws, Statutory Instrument 67 of 2002*, allows for annual review on the ground of “exceptional circumstances”. It was not an issue in the questions referred that exceptional circumstances were factors that resulted or could result in

unexpected rise in costs in the operation of BWS and BWS could not have avoided them by taking prudent management action.

7. The annual review requested by BWS was of tariffs and other charges set by the decision dated 17.4.2004, of the PUC, which decision was the subject of the judicial review proceeding underway. The decision could be quashed or could be allowed to stand.
8. I suppose PUC has referred the above questions to Court because it has doubt as to whether it is legal to act on a matter under consideration by Court, and PUC envisaged that in the event the Court decides in the judicial review proceeding to quash the decision dated 17.4.2004, any annual review exercise commenced in the meantime would be an exercise in futility, and costs associated would be wasted costs. That certainly was a courteous and prudent administrative and management decision. At issue in Court, however, are questions about what the law permits or does not permit, without being concerned with the business prudence. Moreover, what the law permits, is not necessarily what it must compel to be done. Parties have the choice to undertake what is permitted by law and is in their business interest. I am sure that BWS considered primarily its business interest, whereas PUC considered the interests of BWS and of consumers and the public at large, as obligated in *SS: 6,7 and 8 of the Water Industries Act, No 1 of 2001*.
9. The decision challenged was made by the PUC under *byelaw 13 in Part III*

*of the Water and Sewerage (Tariffs) Byelaws, S.I. 67 of 2002.* The Byelaws had been made by the PUC by authority of *S: 7 of the Water Industry Act.* So the PUC had jurisdiction to make the decision dated 17.4.2004, and Byelaws, S.I. 102 of 2004. In its judicial review case BWS has not challenged the authority of the PUC to make decision regarding the subject matters in the decision under review by the Court. BWS's complaints were that, PUC did not use the business plan methodology required, did not adopt certain recommendations by an independent expert, adopted some that it ought to have excluded, and that the decision was irrational. In short, BWS did not claim that the decision of PUC was void, rather that it should be avoided. BWS had, in fact, already applied some items of the decision in its operation.

10. A decision of an administrative authority or tribunal is operative until reviewed and declared invalid or quashed - see *Smith v East Elloe Rural District Council [1956] 1 ALL ER 855* and *R v Secretary of State for the Environment ex parte Ostler [1976] 3 WLR 288* or *[1976 3 ALL ER 90.* The decision dated 17.4.2004, challenged is still the subject of court proceeding. Pronouncement of the Court on its validity is still awaited. In the meantime the decision is operative and may be acted upon. BWS has applied to PUC to act on it by reviewing tariffs and other charges set by it. BWS' application was made under byelaw 27 that allows for annual review. That may be done legally. It may not be wise administratively and may turn out to be wasteful in costs. That, however, is besides the question of legality. I suppose PUC can put proposal as to costs to BWS, in the event wasted costs are incurred.

11. Questions 11(a), (b) and (c) are all about whether the annual review applied for under byelaw 27, by BWS, can be undertaken legally when the judicial review proceeding is underway. The answer to each question is in the positive.
12. Question 11(d) is whether PUC should “stay” further consideration of the application by BWS for annual review until the court judicial review proceeding is concluded. The answer is in the negative.
13. No order as to costs.
14. Dated 18<sup>th</sup> day of January, 2005.  
At the Supreme Court.

Sam Lungole Awich

Judge

Supreme Court