

IN THE SUPREME COURT OF BELIZE A. D. 2008

CLAIM NO. 261 OF 2008

BETWEEN:                    1.DWIGHT NEAL                    CLAIMANTS  
                                  2.LORENA BLANCO  
                                  3.DORITA TAYLOR  
                                  4.JUSTINO MENDEZ  
                                  5. ANTONIO ZABENEH

AND

MINISTER OF RURAL            RESPONDENTS  
DEVELOPMENT

Mr. Anthony Sylvester for all claimants.  
Ms. Lois Young Barrow S.C., for the defendant.

AWICH     J.

20.5.2009

J U D G M E N T

- Notes: Judicial Review. Judicial review claim for the review of a decision of the Minister responsible for village water boards, dismissing the claimants from a village water board; decision made under s: 43:02 (6) of the Village Council Act Cap 88; whether a decision made on the ground of lack of cooperation motivated by party politics rivalry is a decision made for a “fit and proper cause”; whether the Minister may rely on consultation carried out by another person, the area representative. The spirit and practice of the written Constitution.*

2. Permission to commence this judicial review claim was applied for promptly and was promptly granted on 8.5.2008. From there on there has been delay for several reasons for about twelve months before the claim was tried on 28.4.2009. The permission granted to the applicants – claimants was to commence judicial review proceedings for the review of a decision of the Minister of Labour, Local Government and Rural Development, responsible for village water boards, communicated to the applicants by a letter dated 10.4.2008. The decision removed the claimants from membership of the Village Water Board of Independence Village. The correct defendant is the Minister responsible, not the Attorney General; and there is no need to joint the Commissioner of Police.
  
3. Following the permission, the proceedings were duly filed and a first hearing was conducted. Trial was listed for as early as 15.7.2008. The trial was adjourned on that date because the learned crown counsel in charge of the case had resigned; the only other crown counsel attending to civil cases was committed in other courts. The adjourned date given was mistakenly a date during court vacation in early Sept 2008, so the case had to be relisted for hearing on a new

date, 27<sup>th</sup> January, 2009. Again there was difficulty with that date. The claim was finally tried three weeks ago on 28.4.2009. Unfortunately, when a case listed for trial is adjourned (for good reason) it must be relisted at the tail-end in the diary, which is normally four to five months later. There is nothing a judge or parties can do about the large number of cases that go to trial.

4. ***The Facts.***

On 7.9.2007, Honourable Mark Espat, the Minister then, responsible for village water boards, appointed seven persons including the five named claimants, members of the Village Water Board of Independence Village. The first named claimant, Mr. Dwight Neal was also appointed chairman. That date of their appointment was in the last few months of the constitutional five year term of the Government.

5. About six months later on 7.3.2008, general elections were held; the Peoples United Party, the party in government then, lost the elections. The United Democratic Party was victorious, it formed a new government.

6. Two weeks later on 20.3.2008, Honorable Gabriel Martinez, the new Minister of Labour, Local Government, and Rural Development, responsible for village water boards, wrote individual personal letters to six persons, namely: Mr. Clint Foreman, Mr. Mateo Salam, Mr. Nathan Young Longsworth, Ms. Alma Logan, Mr. Elroy Foreman (a sitting member), and Mr. Denzel Garbutt, appointing each one a member of the Village Water Board of Independence Village. They were designated respectively, chairman, vice chairman, secretary, treasurer, and the last two, simply members. The letter listed out the six persons, and a seventh, Mr. George Murray, as members. The Minister did not write to Mr. Murray. He was the chairman of the Village Council of Independence Village, and was an *ex officio* member of the village water board, according to **s: 43:02 (2) (c) of the Village Council Act, Cap. 88, Laws of Belize**. Membership of a village water board is seven persons. The Minister explained in each of the six letters that he made the appointment under s: 43:01 of the Act.
  
7. Curiously, there are also two letters in evidence, both dated on a later date, 10.4.2008, addressed to Mr. Dwight Neal, chairman of the

Village Water Board of Independence Village, signed by the chief executive officer of the Ministry responsible. One letter, presumably the first, informed Mr. Neal that the Minister intended to make changes in the membership of village water boards, and that it, “was considered necessary in the interest of the smooth and effective management of water boards and villages”. The letter enumerated the names of seven persons who the Minister intended to appoint as members of the Village Water Board of Independence Village in particular. Six of them were the same persons that the Minister had written to on 20.3.2008. The seventh person Mr. George Murray, was the sitting *ex officio* member, the chairman of the Village Council of Independence Village. He did not need to be appointed.

8. The other letter dated 10.4.2008, presumably the second one, informed Mr. Neal that the Minister had approved changes in the membership of the Village Water Board of the Independence Village, and that it, “was considered necessary in the interest of the smooth and effective management of the boards and the villages”. The letter further asked Mr. Neal to hand over to the rural development officer, books, minutes books, bank books, receipts and inventory of assets.

The chief executive officer explained that the changes were made under s: 43:02(6) of the Act.

9. The two letters dated 10.4.2008, written to Mr. Neal by the chief executive officer, seemed to have been intended as forerunners to the six personal letters written on 20.3.2008 by the Minister, appointing the new members, and reappointing Mr. Elroy Foreman, a sitting member. May be the chief executive officer delayed in sending the forerunner letters, and they were overtaken by the six letters.
10. The combined effect of the two letters written by the chief executive officer, and the six personal letters written by the Minister, was that the five claimants were removed from membership of the Village Water Board of Independence Village. Mr. Murray was not affected; he remained an *ex officio* member. He was and is still the chairman of the Village Council of Independence Village. Mr. E. Foreman retained his membership by reappointment. He has not joined in this claim.
11. ***The Claim and Defence.***

The claimants contend that their removal was unlawful. They have brought this claim and have asked for the following reliefs: (1) a court declaration that their removal was unlawful and invalid; (2) a declaration that the Minister, “breached or frustrated legitimate expectation of the claimants”, by removing them for no fit and proper cause; (3) an order quashing the decision of the Minister contained in his letter of 10.4.2008, removing the claimants from the Village Water Board of Independence Village; (4) reinstatement of the claimants to the Village Water Board of Independence Village; and (5) “damages including exemplary and aggravated damages”.

12. At the permission stage, the claimants obtained a stay of the decision of the Minister. I assume that they continued in the meantime as members of the water board. They have since withdrawn the claim for damages.

13. The claimants relied on two affidavits; one was sworn to by Mr. Dwight Neal, the chairman of the Village Water Board of Independence Village, and the other was sworn to by Mr. George Murry, chairman of the Village Council of Independence Village.

The Minister relied on his own affidavit, and two affidavits of Honourable Melvin Hulse, the area representative to the National Assembly, doubling as a cabinet Minister, responsible for the portfolio of transport.

14. The defendant, the Minister of Labour, Local Government and Rural Development, responsible for village water boards, has been completely honest about the case. The facts so far as stated for the claimants became common facts. But the Minister went further than the common facts; he honestly disclosed the details of the reason for removing the claimants, which details the claimants seemed reticent about. Party political rivalry and the wish of the Minister to implement party policies and programmes by party supporters and not by active supporters of the opposition party, were the details of the reasons for the removal of the claimants. I commend the honesty shown by the Minister. It enabled the court to answer the questions at issue squarely.

15. I have, for ease of following the submissions for the claimants,

rearranged the grounds of law on which the claimants based their claims.

16. The first set of grounds was that, the decision of the Minister was *ultra vires* s: 43.2(6) of the Village Council Act, and otherwise unlawful in that: (1) the members he removed included Mr. Justino Mendez, a nominee of the Village Council, the Minister had no power to remove him; (2) the Minister had power to remove an individual member, in the category stated in s: 43:01(2) (c) of the Act, not the entire membership; (3) the Minister had power to remove the claimants only for a “fit and proper cause”, relating to the particular member, the Minister acted *ultra vires* when he removed the entire membership; (4) the Minister removed the claimants for the wrong reason namely, that it was, “necessary in the interest of the smooth and effective management of the water boards and villages”, further, the reason given by the Minister was a general reason anyway, applicable to all village water boards, and not in particular to the Village Water Board of Independence Village, or to any of the claimants.

17. The second set of grounds advanced by the claimants was that, the Minister did not follow the procedural rule under s: 43.02(6) of the Act, requiring the Minister to consult with the Village Council of Independence Village before he removed the claimants; and the Minister did not follow the rule of procedural fairness, in that he did not give each claimant opportunity to be heard before he was removed.
  
18. The third ground advanced was that, the Minister breached the legitimate expectation of the claimants, in that each claimant expected to remain a member of the Village Water Board of Independence Village for three years, unless removed for a fit and proper cause under s: 43.02(6) of the Act.
  
19. The contentions of the Minister were the following. 1. The fourth claimant, Justino Mendez, was a member nominated by the Village Council of Independence Village under s:43:02 (6) of the Act, the nomination has since been withdrawn by the Council; and Mateo Salam has been nominated by the Council in place of Mendez. 2. The removal of the claimants was, “to ensure the smooth and effective

management of the Village Water Board of Independence Village”. The defendant submitted that, smooth and effective management could not be achieved with the claimants as members, because their political allegiance was to the previous Minister, and to the political party in opposition, the Peoples United Party. 3. The members of the Village Water Board of Independence Village were not cooperating with Mr. Hulse, their area representative to the National assembly, who spent and still spends a lot of money in buying materials, paying for labour and for expansion of water supply in the village. It was and is still the policy of the Minister that village water boards cooperate with their area representatives. 4. The Minister consulted with the Village Council of Independence Village as required by s: 43.02 (6) of the Act, before removing the claimants. He pointed to several occasions of consultation with the Village Council, made by the area representative, about which the area representative reported to the Minister, as sufficient consultation by the Minister under the Act.

20. ***Determination.***

This claim is largely, if not wholly, based on the provision of ***Part VII***

*of the Village Council Act.* I set out below the relevant provisions:

*“PART VII: 01*

*VILLAGE WATER BOARD*

*43:01 The Minister may appoint in each village or community established under Part II of this Act, a Village Water Board, consisting of the members specified in section 43:02(2), and having the powers, and performing the functions, set out in this Act.*

*43:02 (1) Each Village Water Board (hereinafter referred to as “the Board”) shall consist of seven persons.*

*(2) The members of the Board shall be:-*

*(a) the Chairman of the Village Council*

*(b) a member of the Village Council nominated by the Village Council;*

*(c) five other members appointed by the Minister after consultation with*

- (i) the Area Representative of the Electoral Division wherein the village is situated; and*
- (ii) the Village Council for that village.*

*Provided that where a Village Water Board covers more than one Village, the Minister shall appoint the five members referred to in paragraph (c) of this subsection after consultation with the Area Representative of the Electoral Division wherein the villages are situated, and the Village Councils representing those villages.*

*(3) The Minister shall appoint, after consultation with the Area representative of the Electoral Division wherein the village is situated, and the Village Council for that village, four members of the Board of whom one shall be-*

- (a) the Chairman of the Board;*
- (b) the Deputy Chairman of the Board;*
- (c) the Secretary of the Board; and*
- (d) the Treasurer of the Board.*

*(4) Members of a Board shall hold office for a period of three years and may be eligible for reappointment provided that such members have satisfactorily performed their functions as such members.*

*Provided that members of Board which were in existence at the commencement of this section shall continue in office until the next election of Village Councils after such commencement, after which they shall stand dissolved.*

*(5) A member of the Board may at any time resign his appointment by giving written notice to the Minister, through the Chairman of the Board, and such notice takes effect thirty days after its receipt by the Minister.*

*(6) The Minister may, after consultation with the Area Representative of the Electoral Division wherein the Village is situated and the Village Council, remove any member of the Board referred to in subsection (2) (c) for*

*any fit and proper cause, and may likewise appoint another suitably qualified person to replace such member for the unexpired term of office of such member.*

*(7) The Minister may, by Order published in the Gazette, approve an allowance to be paid to the members of a Board out of the funds of the Board.*

....

*43:03 (1) Every Board -*

- (a) is a body corporate bearing the name of “The Village Water Board of” followed by the name of the village in respect of which it is constituted;*
- (b) has perpetual succession;*
- (c) has power to sue and to be sued under its corporate name;*
- (4) is deemed to be a public authority within the meaning of the Public Authorities Protection Act and is entitled to the protection afforded a public authority under that Act.*

(2) *every Board is independent of the Village Council of the Village in respect of which it is constituted*".

21. So by law, village water boards are statutory public corporations, created to provide water services in villages. The Legislature has chosen to divest the central government and local councils of the direct responsibility for managing water services operation, which is mainly a social and commercial service anyway. The management of the corporations are by boards of seven members. Notwithstanding, the Legislature chose to retain for the government some control in the matter. The Minister responsible has been given the power in ***ss: 43:01 and 43:02(2)(c) of the Village Council Act***, to appoint the boards and five of the seven members of each board; and the power under ***s:43:02(6) of the Act***, to remove those members for, "any fit and proper cause".
  
22. It is clear from the above that, while village water boards must manage and run the day to day business of water services and the development of water supply, the policy aspect remains the

responsibility of the government. It is my view that, the Minister's unfettered power to appoint up to five of the seven members of the board, and to dismiss those five members, is given to him so that he may be able to have the policy of the government to which he belongs implemented without resistance or frustration. Contrast may be made with the fact and law that civil servants are not appointed by a minister; and are expected to impartially carry out the policy of the government of the day.

23. In addition to his power to remove members of a village water board, the Minister is given a very wide discretion in deciding the reason for removing a member. He may remove a member for, "any fit and proper cause". In my view, that includes removing a member who does not support the policy of the government and seeks to implement a rival policy. If at any one time, all the five members do not support the policy of his government, and are not cooperating for political rivalry reason, in implementing the policy, the Minister will be entitled to remove any or all the five for that reason, on that one occasion. His government has the mandate to implement its policy. I must warn however, that the Minister will not be justified if he

dimisses a member who cooperates and does not frustrate or disrupt policy, simply because the member supports the opposition party. The Minister will have to wait for the statutory three year term of the member to expire before the Minister appoints a member of his choice and perhaps of his political inclination.

24. There is another important restriction to the power of the Minister to remove a member of a village water board. He is required to consult first with the area representative and the village council of that particular village. He consults by communicating genuine invitation to them to give advice; the invitation must include supplying the material reason for wishing to remove the member, and give sufficient time to the person consulted to tender informed and helpful advice, which the Minister seriously takes into consideration— see *R v Secretary of State for Social Services, ex parte Association of Metropolitan Authorities* [1986] 1 All ER 164.

25. In this claim there has been evidence in the affidavit of Mr. Hulse, the area representative, that the members of the Village Water Board of Independence Village did not cooperate with him in the business of

the Village Water Board of Independence Village, and that the reason was political rivalry. It has been confirmed in the affidavit of Mr. Murray and the exhibits thereto that there was political disagreement. There has also been evidence that the policy of the Minister responsible was that there be cooperation with area representatives. The merit of that policy is not for the court to judge. The policy is not patently unlawful or absurd and unreasonable – compare *Associated Picture Houses Ltd v Wednesbury Corporation [1948] 1K.B. 223 CA*. Moreover, the Village Council Act includes area representatives in the policy aspect of the responsibility for village water services, by requiring the Minister to consult with area representatives.

26. It is my conclusion that the reason given by the Minister, namely that, “it was considered necessary in the interest of the smooth and effective management of the water boards”, for him to remove the claimants, was referable to the state of party politics rivalry that existed at Independence Village, and caused lack of cooperation in the business of the Village Water Board of Independence Village. The state of rivalry was a fit and proper cause on which the Minister could base his decision to remove four of the five claimants from the board.

The position of Mr. Justino Mendez is different. He is a member nominated by the Village Council, and is not removable by the Minister under *s: 43:02(6)(c) of the Act*.

27. I must however, take into consideration that lawful cause for the removal of the claimants under the Act is one question in the claim. The other is whether having identified a lawful cause, the Minister complied with the procedure for the removal of a member, laid down in *s: 43:02 (6) of Act*; and whether he generally acted by a fair procedure as required by the Common Law, illustrated in among others, the case of *Council of Civil Service Unions v Minister for the Civil Service [1985] AC. 374 HL*.

28. It is pretty obvious from the evidence that, the Minister responsible consulted the area representative as required under *s: 43:02(6) of the Act*, before he removed the claimants. On the other hand, there is no evidence that he directly consulted the Village Council. The contention of the Minister was that the consultation carried out by the area representative should be deemed consultation by the Minister. I reject the contention. To allow the area representative to carry out

consultation with village council on behalf of the Minister, would be untenable. The advice tendered by a village council could be different from that desired and intended by the area representative. That could lead to the area representative exerting undue influence on the council. *Section 43:02(6) of the Act* intends that the Minister should benefit from two pieces of advice, one from the area representative, the other from the village council. I must hold that the Minister failed to comply with one part of the statutory procedure laid down in *s:43:02(6)*, before he removed four of the claimants, in that he did not consult the Village Council of Independence Village. To that extent the Minister acted by unlawful procedure.

29. The evidence also proved that the Minister did not put his views and the reasons therefor to each of the claimants before he removed that claimant. So, each claimant was not afforded opportunity to persuade the Minister that for the remainder of the three year term of the member, he would cooperate with the area representative, and would work for the success of the policy of the Minister. To that extent, the Minister acted by unfair and unlawful procedure.

30. *Mr. Justino Mendez.*

The considerations regarding the claim of Mr. Justino Mendez are different from those regarding the claim of the other four claimants. Mr. Mendez was a member of the Village Council of Independence Village; he became a member of the Village Water Board of Independence Village, by authority of *s: 43:02 (2)(6) of the Village Council Act*, upon nomination by the Council. Like all the other members, except the chairman of the Village Council who is an *ex officio* member, Mr. Mendez, “*shall hold office for three years and may be eligible for reappointment...*” – see *s:43:02(4) of the Act*. There is no provision at all in the Act for the removal of a nominated member by the Minister. He may remove only members in the category spelt out in *s:43:02(2)(c)*, that is, members appointed the Minister.

31. The defence that the nomination of Mr. Mendez by the Village Council of Independence Village was withdrawn and another councillor, Mr. Mateo Salam was nominated to replace Mr. Mendez cannot stand because, it would be contrary to the provision that members of a board shall hold office for a period of three years. The

Act does not provide for a village council terminating membership of a nominated member, by withdrawing the nomination. Unlike in the case of members appointed by the Minister, the Act does not at all provide for the removal of a nominated member. There is no provision that qualifies the three year tenure of a member nominated by a village council. A member of a village water board including a nominated member may, of course, resign under *s:43:02(5) of the Act*. Replacing Mr. Justino Mendez was unlawful. He may continue as a member of the Village Water Board of Independence Village. It would be unwise practically though, for a member nominated by a village council to continue as a member after he will have lost the confidence of the council. The honorable thing would be to resign. That however, is not for the court.

32. I have held that the Village Council of Independence Village, or the Minister responsible had no power to remove Mr. Justino Mendez from the Village Water Board of Independence Village. Accordingly, I grant that an *order of certiorari* issue to quash the decision removing Mr. Mendez from membership of the Village Water Board of Independence Village. I have further, held that the Minister had a fit

and proper cause for him to remove the other four claimants: Mr. Dwight Neal, Ms. Lorena Blanco, Ms. Dorita Taylor and Mr. Antonio Zabaneh; but that the Minister removed them by an unlawful procedure because, he did not follow the procedure in *s:43:02(6) of the Act*, and did not act by fair procedure required by the Common Law. I also grant that an *order of certiorari* issue to quash the decision and the second letter dated 20.3.2008, of the Minister, removing the four claimants from membership of the Village Water Board of Independence Village.

33. The final result is that all the five claimants may continue as members of the Village Water Board of Independence Village. There is no need to grant the declaratory orders asked for.
  
34. That I have decided the claim in favour of the claimants is no vindication of their action, or cause for celebration. The claimants are persons with responsibility in public affairs. They are expected to uphold the spirit and practice of the Constitution. Two of the central themes of the Constitution of Belize are: the protection of fundamental rights and freedoms, and safeguarding democracy. Public officials are expected to act in a manner consistent with

ensuring or protecting fundamental rights and freedoms and safeguarding democracy.

35. The Constitution of Belize is a written constitution like the constitutions of many commonwealth countries. Although a written constitution provides for most of the fundamental laws of the country, there will be some matters on which it will be silent. To fill the void, practices consistent with themes and spirit of the written constitution have emerged. That is true in countries such as the USA, Canada, Australia, New Zealand and many others. Those practices like the constitutional conventions in England do not depend for their validity on sanction by court, but on “constitutional morality”, conscience and the need to avoid the consequence of violation – see *Attorney General v Jonathan Cape Ltd and Others [1976] Q.B. 752*. If the claimant had the spirit of the Constitution at heart, they ought to have realized that they should give way to the current Minister responsible, to implement the policy of his Government. They should have honourably resigned. They have not done so. There is no sanction in court for their conduct.

36. I shall assume that when the former Minister appointed the claimants only six months to the general elections, the appointments were not made in disregard of the spirit of the Constitution. There is no evidence of improper motive.
37. Based on the observations I have made, the claimants are denied the costs of this claim.
38. Delivered this Wednesday the 20<sup>th</sup> day of May, 2009.  
At the Supreme Court  
Belize City

Sam Lungole Awich  
Judge  
Supreme Court