

IN THE SEYCHELLES COURT OF APPEAL

DARREL GREEN

APPELLANT

Versus

1. SEYCHELLES LICENSING AUTHORITY

2. THE SEYCHELLES GOVERNMENT

RESPONDENT

Civil Appeal No: 43 of 1997

[Before: Goburdhun, P., Ayoola, and Venchard, JJ.A]

Mr. P. Boulle for the Appellant

Mr. R. Kanakaratne for the Respondent



JUDGMENT OF THE COURT

(Delivered by Ayoola J.A)

This is an appeal from the decision of the Constitutional Court (Perera, Amerasinghe and Bwana, JJ) dismissing an application brought by Darrel Green, the appellant, pursuant to Article 46(1) of the Constitution of the Republic of Seychelles, 1993 ("the Constitution") for redress for an alleged infringement of Article 35 of the Constitution in regard to him. By his petition dated 14 April 1997 the appellant sought a declaration that the refusal of a licence by the Seychelles Licensing Authority (the 1st respondent) on 24th August 1995 was a violation of his right to carry on his trade. The appellant claimed damages for his loss from 14th August 1994 till the grant of a new licence.

The Constitutional Court upholding the respondents' plea in limine litis, dismissed the petition on two broad grounds, namely:

- (1) that the action could not be maintained as it had not been filed within the time prescribed by rule 4(1)(a) of the Constitutional Court (Applications Contravention, Enforcement or

Interpretation of the Constitution) Rules, 1994 ("the Constitutional Court Rules");

- (2) that the appellant could not seek any further redress from the Constitutional Court under Article 46(1) of the Constitution because:
- (i) (Per Perera, J.) the licence having been renewed at the time when the application was brought, there was no further redress that the Constitutional Court could grant; and,
 - (ii) (Per Amerasinghe, J.) the appellant had in terms of article 46(3) of the Constitution obtained redress for the alleged contravention "when he exercised and proceeded with the institution before the Supreme Court".

On this appeal from the decision of the Constitutional Court the main issue for determination is whether the Constitutional Court was right in rejecting the application on the grounds stated above. Rule 4(1) of the Constitutional Court Rules provides that:

"When the petition under Rule 3 alleges a contravention or a likely contravention of a provision of the Constitution, the petition shall be filed in the Registry of the Supreme Court –

- (a) in a case of an alleged contravention, within 30 days of the contravention."

Rule 4(3) permits a petition under rule 3, with leave of the Constitutional Court to be filed out of time; and, rule 4(3) empowers the Constitutional Court, for sufficient reason, to extend the time for filing a petition under rule 3. These provisions are straight forward and unambiguous in their terms. A person who alleges a contravention of a provision of the Constitution is as of right entitled to file his petition within 30 days of the contravention. He is permitted to do so outside the prescribed period only if he obtains leave of the Constitutional Court.

The Constitutional Court may grant such leave not as of course but only if the applicant shows sufficient reasons to justify an extension of time. Nothing in these provisions empowers the Constitutional Court to act suo motu and grant leave where none has been sought and where facts have not been deposed to before it showing "sufficient reasons" to extend time. Counsel for the appellant had proceeded on this appeal on the wrong footing when he made the focus of his argument an alleged erroneous exercise of the discretion by the Constitutional Court. Throughout the proceedings the jurisdiction of the Constitutional Court to grant leave had not been invoked by any application duly made.

The facts material to the determination of this appeal are clear and straight forward. Drawing largely from the ruling of Perera J, they are that: On 14th August 1995 the appellant applied for a licence to carry on the business of "a take away" for the year ending 13th august 1996 and the 1st respondent by a letter dated 24th August 1995 informing the petitioner that his licence would not be renewed. The Supreme Court exercising its supervisory jurisdiction on 30th January 1997 quashed the said decision of the 1st respondent which in turn, on the 12th March, 1997, issued a fresh licence to the appellant. The contravention of the Constitution alleged as the basis of the appellant's application was the alleged denial of his right to work during the period that his licence was not renewed or granted. It is undisputed that the consequence of the alleged contravention of his right to work did not go beyond 12th March 1997 when he was issued with a fresh licence. As to when the contravention, if any, took place the better view which must prevail is that it was on 24th August 1995 when the refusal to renew the licence was communicated to the appellant. The appellant himself seemed to have accepted this fact when he claimed damages from 14th August 1995. It is clear that an application brought on 14th April 1997 was outside the prescribed period and that the appellant needed to have obtained leave to file his application out of time but neither applied for nor obtained such leave.

On this appeal, counsel for the appellant proceeded to argue, rather irrelevantly, that rule 4(1) of the Constitutional Court Rules is

not a statutory prescription and that a "generous interpretation" of the rule should have been adopted. Reference was made to several passages from Basu: Shorter Constitution of India (11th Edition) to support the argument that the exercise or enforcement of a fundamental right by an individual should not be obstructed and that "once the Supreme Court is prima facie satisfied that the petitioner before it has a fundamental right which is or is likely to be infringed by State action, it becomes the duty of the Supreme Court to interfere."

Article 46(10) of the Constitution empowers the Chief Justice to make rules for the purpose of Article 46 with respect to the practice and procedure of the Constitutional Court in relation to the jurisdiction and power conferred upon it or under article 46 including rules with respect to the time within which an application or reference may be made or brought. It is clear from this provision that the Constitutional Court Rule prescribing time within which an application could be made is proper and constitutional and can in no way be regarded as a measure obstructing or stifling the enforcement of fundamental rights. It is manifest that reference by learned counsel for the appellant to passages from Basu (op cit) which deal with "obstruction" to the exercise of fundamental rights or their enforcement or the validity of subordinate legislations is both unnecessary and misconceived.

The first ground of appeal couched as a criticism of the exercise of discretion of the Constitutional Court is misconceived. Since there was no application before that court invoking its jurisdiction to exercise a discretion to grant leave to apply out of time no question of propriety of the manner in which a discretion is exercised arose.


Since the application was not properly before the Constitutional Court, a decision as to whether that court could have granted a redress pursuant to Article 46(1) of the Constitution or whether the applicant should be denied relief by the Constitutional Court by his choice of remedy by invoking the supervisory jurisdiction of the Supreme Court, is now not necessary. The matter though raised by the second ground of appeal has not been argued in any appreciable


manner in this court to warrant our making a pronouncement on the question.


We therefore refrain from making a pronouncement on the Constitutional Court's view of the meaning and application of Article 46(1) and 46(3) of the Constitution until such occasion when the matter properly arises, is essential to the determination of the case and the issue is fully argued. Interpretation of the Constitution is not an exercise to be embarked upon lightly and perfunctorily.

This appeal is distinctly without merit. For the reasons which we have stated, the appeal must fail. The appeal is accordingly dismissed with costs to the respondents.

Dated at Victoria, Mahe this ^{13th}..... day of **August** 1998.


H. GOBURDHUN
PRESIDENT


E.O. AYoola
JUSTICE OF APPEAL


L.E. VENCHARD
JUSTICE OF APPEAL