

DHANJEE v ELECTORAL COMMISSIONER

(2011) SLR 141

Judgment delivered on 27 May 2011 by

MACGREGOR P: This is an application for interlocutory injunction against the Electoral Commissioner to postpone the presidential election 2011 pending the hearing of an appeal against a judgment of the Constitutional Court that inter alia declined to make an order on the postponement of election there prayed for.

That judgment resulted in two appeals against it - one by the respondent, and another on cross-appeal by the applicant.

Before me is strictly the issue of the injunction to which I shall confine myself.

At the hearing both counsel went by their affidavits, plus argument and counter-arguments from the bar.

Essentially two issues were raised and argued at the hearing;

- (a) The propriety of the presence and participation of the Attorney-General in this hearing
- (b) The balance of convenience on granting or refusing the injunction

On the first issue on the Attorney-General, I will not go into this issue at this juncture as I believe it was argued and pronounced on by the Court below, and is a specific ground of appeal by the applicant in his cross-appeal, thereby best left to be determined at the appeal on its merits.

There are two appeals in this matter, one from each side, with live issues to be determined later, and at this stage the strength and chances on appeal, it may be premature to rely on. This ruling deals only with the injunction applied for and not the later appeals due.

In exercising my discretion I have taken into account that the timing of the specific and particular application for injunction to order the Electoral Commissioner to postpone the election was only filed in the Court of Appeal Monday 16 May 2011, after the official campaign period of the election was over.

I believe the application should have been filed at the earliest possible time once the Chief Electoral Officer had made his decision on 27 April, and specifically pleaded and applied for by separate application together with the petition to the Constitutional Court.

On looking at the chronology of events, dates and sequences since the presidential election date was announced by the *Official Gazette* of 21 February 2011 to actually filing for the injunction, indicate timing and delays were crucial before the actual filing for injunction. The decision of the Chief Electoral Officer was on 27 April 2011, the

petition was filed 3 May, heard 10 May. The judgment of Constitutional Court was delivered on 11 May 2011. The official campaign was over on 15 May 2011, whereas the application was applied for on 16 May 2011.

The balance of convenience test in matters of injunction leads me to consider, also after considering the UK case of *Choudhry & Ors v Treisman* (2003) EHC 1203 and further cases cited at note 35, in particular remarks of Justice Chadwick at note 36;

- (a) Whether more harm will be done by granting or refusing the injunction.
- (b) Is the risk of injustice greater if the injunction is granted than the risk of injustice if refused.
- (c) Would a breach of the appellant's right to stand for election (if and when finally determined on appeal) outweigh that of the electorates' right to have the elections as they are now scheduled and in the circumstances of Seychelles today.

I find that they do not outweigh the electorate's right.

Accordingly I decline to exercise my discretion to grant an injunction, and therefore the application is dismissed.