

**IN THE SUPREME COURT OF SEYCHELLES é**

Exeter Trust Com  
of Victoria, Mahé

**Petitioner**

**Vs**

**Indian Ocean Tuna Limited of**

**New Port, Victoria, Mahé**  
**Respondent**

Civil Side No: 253 of 2009

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Mr. F. Elizabeth for the Petitioner

Mr. F. Chang-Sam for the Respondent

**D. Karunakaran, J.**

**RULING**

This is a petition for “Judicial Review” of an administrative decision of the respondent, the Seychelles International Business Authority (SIBA). The petitioner, a company having filed the main petition for

Judicial Review has now, by way of an interlocutory application seeks this Court for an interim relief, in the nature of a mandatory injunction directing the respondent to renew the license of the petitioner pending final determination of the main petition in this matter.

I meticulously analyzed the arguments advanced by counsel for and against the application. Their arguments though relevant to the application have indeed, given rise to many an issue based on facts and on points of substantive as well as procedural law. If this Court now embarks on an attempt to determine all those issues canvassed by the parties in this interlocutory application, particularly at this stage of the proceeding, certainly, such attempt would in effect, dispose of the main petition itself. That would be tantamount to putting the cart before the horse. This, I should not and cannot do. Indeed, in the thin disguise of determining the interim injunction the Court should not determine the fate of the main petition before giving parties ample opportunities to present their respective case in full on the merits of the petition.

Having said that, I note in matters of interlocutory injunctions, the Court must be satisfied prima facie that the claim is bona fide, not frivolous or vexatious; in other words, that there is a serious question to be tried vide: ***American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504 at p. 510.*** Unless the materials available to the court at the hearing of the application for an interlocutory injunction, disclose that the petitioner has a real prospect of succeeding in his claim at the trial, the court should not go on to consider whether the balance of convenience lies in favour of granting or refusing the interim relief that is sought. In considering the balance of convenience, the governing principle is whether the petitioner would be adequately compensated by an award of damages, which the respondent would be in a financial position to pay, and if so, the interim injunction should not be granted. Where there is doubt as to the adequacy of remedies in damages available to a party, the court would lean to such measures as are calculated to preserve the status quo. Besides, in the instant case I do not find the relevant record in the case file relating to the impugned decision of the respondent, as yet to be received from the respondent in this matter. In light of all the above, I find that it is not a fit and

proper case, where an interim mandatory injunction should be granted pending final determination of the main petition for judicial review. Obviously, the injunction is an equitable remedy, and so the one, who seeks such remedy should come before the court with clean hand. The possibility of irreparable loss, hardship and injury if any, the plaintiff may suffer during the inevitable interval between the commencement of the action and the judgment in the main case, should also be taken into consideration as an important factor in the determination of injunctions.

The submission of the petitioner's counsel with regard to the non-compliance with the rules of natural justice involves a question of law and fact which would be more appropriately argued in the main petition for "Judicial Review", not at the hearing of this interlocutory application. Suffice it is for me to say at this stage that I am of the opinion, based on pleadings, affidavit and submissions, that more prejudice would be caused to the respondent by granting the interim relief than by refusing to grant it. On this score as well, I am loath to grant the interim relief sought by the petitioner in this matter.

Having thus given diligent thought to the entire circumstances of the case, I decline to grant the interim injunction. The application is therefore, dismissed with costs. However, I shall proceed fix the hearing of the main petition at an early date in the interest of justice.

**Further order**

In terms of Section 10 of the Supreme Court (supervisory jurisdiction over subordinate courts, tribunals and adjudication authorities) Rules, 1995 I direct the Respondent SIBA to forward the relevant record or record of proceedings in this matter to the Supreme Court Registry at the earliest. The SIBA be notified accordingly.

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**D. Karunakaran**

**Judge**

**Dated this 27<sup>th</sup> Day of May 2010**