

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. S 1095 of 2004

BETWEEN

**SANATAN DHARMA MAHA SABHA
OF TRINIDAD AND TOBAGO**

Applicant

AND

THE HONOURABLE MR. PATRICK MANNING

Respondent

Before the Hon. Madam Justice C. Gobin

Appearances:

Mr. Anand Ramlogan instructed by

Mr. Lalbeharry for the Applicant

Mr. Quamina for the Respondent

REASONS

1. On the 16th July 2004 I perused the papers filed in support of an ex parte application for leave to file Judicial Review of the appointment of Dr. Selwyn Cudjoe as a director of The Board of the Central Bank of Trinidad and Tobago.

2. The application raised a serious issue as to whether Dr. Cudjoe was qualified for his appointment to the Board. In the face Dr. Cudjoe's qualification, expertise and experience as was known to the applicants at the time of the filing of the application, a question arose as to the legality of his appointment under the relevant provision of the Central Bank Act.

3. I considered that the application was neither frivolous nor vexatious. I was inclined to grant leave on a perusal of the papers filed and on counsel's urging heard limited submissions.

4. Mr. Ramlogan addressed inter alia on the issue of delay. He cited cases including **R v Secretary of State for Foreign Affairs, ex parte World Development Movement Ltd** and **R v Secretary of State for the Home Department, ex parte Ruddock and Ors.**

5. I considered that in assessing the length of period of the delay, the date of Dr. Cudjoe's appointment was irrelevant. The public must presume that persons appointed to office are qualified to take up appointments. To suggest otherwise would place an enormous burden on members of the public or interested persons wherever appointments are made to ensure that there has been compliance with statutory requirements. In the ordinary course of things one could hardly expect any question to arise.

6. The issue of legality of Dr. Cudjoe's appointment had been raised only after details of his curriculum vitae were discovered by a visit to a website of Wellesley College. There were no particulars as to the precise time of the discovery and I am inclined to believe there was some delay from that time to the time of making the instant application.

7. What was significant too was that a request had been made on the 6th November 2003 under the Freedom of Information Act seeking disclosure about the duties and responsibilities of Dr. Cudjoe. As a result of the failure and or refusal to respond, proceedings in the High Court were filed. The Central Bank was subsequently exempted from the provisions of the Freedom of Information Act.

8. I consider that this history in part explained some of the delay in the matter. It reflected conduct on the part of the executive which contributed to the delay.

9. Counsel submitted that if there was a continuing illegality the issue of delay did not arise. Even if it did, Mr. Ramlogan further submitted that the issue which arose on the application was of such importance that it needed to be resolved. In those circumstances even if it could be said that there had been delay, I should nevertheless exercise my discretion in favour of the applicant. In support of this submission he referred to the case of **R v Secretary of State for Foreign Affairs ex parte World Development Movement Ltd – 1994 4 LRC p. 214 (g-h)** and to the case cited therein of **R v Secretary of State for the Home Department ex parte Ruddock [1987] 2 All ER 518 @ p.521 (h)**. In the latter case there was delay, the reasons for which did not impress the Learned Judge.

10. In granting leave Taylor J said –

“I am unimpressed by the reasons for it (the delay). But I have concluded that since the matters raised are of general importance, it would be a wrong exercise of my discretion to reject the application on ground of delay, thereby leaving the substantive issues unresolved.”

11. I find that in a case of alleged continuing illegality, the issue of delay cannot be so stringently regarded.

12. I find further that the issue raised by the applicant is one of resolving sufficient importance and one which requires a resolution by the court. The delay notwithstanding, I exercised my discretion to grant leave.

13. I therefore extended the time for the making of the application and granted leave.

Dated this day of February 2005

**CAROL GOBIN
JUDGE**