

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. C.423/90

BETWEEN PEARWELL CHARLES PLAINTIFF

AND BRUCE GOLDING FIRST DEFENDANT
 (On behalf of and as representing
 the Standing and Central Executive
 Committees of the Jamaica Labour
 Party)

AND RYAN PERALTO SECOND DEFENDANT
 (On behalf of and as representing
 the Standing and Central Executive
 Committees of the Jamaica Labour
 Party)

S. Macaulay, Q.C., and Wentworth Charles for Plaintiff/Applicant
Emile George, Q.C., and Patrick Foster for Defendants/Respondents

Heard: June 13, 14, 19, 20, 21 and
 July 12, 1991.

CHESTER ORR, J.

This is a motion for Judgment on admissions by the defence under section 307 of the Judicature Civil Procedure Code.

The plaintiff is a member of the Jamaica Labour Party hereafter referred to as the "Party". The first defendant, Bruce Golding is the Chairman and the second defendant Ryan Peralto, the Secretary of the Party. Both defendants are sued in a representative capacity on behalf of and representing the Standing and Central Executive Committees of the Party.

The Party is governed by a Constitution (hereafter referred to as the "Party Constitution") which was revised in 1990.

This action arises out of a decision of the Standing Committee contained in a letter dated 8th October, 1990 from the Standing Committee to the plaintiff in which he was advised that he would not be considered as the candidate to contest the next elections on behalf of the Party.

In the Statement of Claim the plaintiff alleges that he is a Trade Unionist and a member of Parliament having been the successful Party's

candidate for Eastern St. Thomas Constituency in the General Elections held on the 9th February, 1989 for the House of Representatives.

He had been recommended by the Constituency Committee and approved by the Central Executive of the Party as the Party's candidate for the General Elections held in 1980, 1983 and 1989 in which he was successful.

The defence did not admit that he was recommended but admitted that he was approved by the Central Executive to be the Party's candidate as aforesaid.

He was appointed a Minister and member of the Cabinet during the tenure of the government in 1980-1983 and again in 1983-1986.

Paragraphs 23 to 25 are as follows:

"23. By letter dated October 2, 1990, Mr. Edward Seaga, aforesaid, in his capacity as Leader of the Jamaica Labour Party, wrote to the Plaintiff inter alia as follows:-

'For the past six months the Jamaica Labour Party (JLP) has suffered from the presence within its ranks of a clique comprised of five senior members, including yourself. I, therefore, require you, as Leader of the Jamaica Labour Party, to unconditionally and immediately separate yourself from attachment to any clique or face political isolation and revocation of your portfolio.

I expect you to advise me of your willingness or unwillingness to respond to this requirement by 12.00 noon tomorrow.'

24. On the same day, October 2, 1990, the Plaintiff by letter replied to Mr. Edward Seaga, inter alia as follows:-

'I want to make it clear, that I have never been a member of any gang or clique and that I am not now so associated nor do I intend to be.

I hope the above satisfies your concern.'

25. The Plaintiff's reply, however, did not satisfy the concern of Mr. Edward Seaga, the Leader of the Party; for on the next day, October 3, 1990, the latter wrote to the Plaintiff as follows

'It is my presumption from your letter of response of today's date to my letter of October 2nd in which you deny ever having been a member of any gang or clique within the Jamaica Labour Party, that you will now publicly advise the news media that you denounce the allegations that you are a member of the Gang of Five which you have been made by the media for the past six months without denial by you; indeed, not even when other members publicly asserted that they spoke collectively in your name as a member of the group.

It is presumed also that you will strongly deny that you have ever told any member of the Standing Committee of the JLP that you are acting collectively with others in a group of five persons to take decisions to which you are all bound in your perceived dispute with myself and/or the Party.

As for other comments set out in your letter of response, I am sure that, along with your attempts to wish away the past, these will make most interesting reading for the Standing Committee to which I shall forward the full text for its next meeting on Monday.

Any further response by you on this matter should be directed to the General Secretary of the Jamaica Labour Party to be dealt with at the meeting of the Standing Committee on Monday, October 8th."

The defence admitted these paragraphs save that as to paragraphs 23 and 25 the letters from Mr. Edward Seaga were written at the request of the Standing Committee.

Paragraphs 27 and 28 are as follows:

"27. At no time either before or after the date of the letters aforementioned in paragraphs 23 and 25, of Mr. Edward Seaga, Leader of the Party, or up to the morning of the 8th October, 1990 did the Standing Committee invite the Plaintiff to answer or comment on any grievance about, or complaint or allegation of any conduct by the Plaintiff in his capacity as a Party Member of which it was dissatisfied, or at all thereafter up to and including the date of the issue of the Writ in this action.

28. The Leader, in his letter of October 2, 1990 (see paragraph 23 herein) threatened the Plaintiff with political isolation. By letter dated the 8th October, 1990, that is, the date on which Mr. Edward Seaga had advised the Plaintiff that a meeting of the Standing Committee was to be held and to which he was referring the text of the Plaintiff's reply of October 2, 1990 (see the foregoing paragraph 25 herein), the Chairman of the Party, Mr. Bruce Golding, who is also Chairman of the Standing Committee (see the foregoing paragraph 10 herein) wrote to the Plaintiff as follows:-

'Dear Mr. Charles,

I am to advise that the Standing Committee has taken a decision that you will not be considered as a candidate to contest the next elections on behalf of the Party."

The defence to these paragraphs reads thus:

Save that officers of the Party and members of the Standing Committee held discussions with the plaintiff at a meeting of the Central Executive and that the Defendants will rely on the letters of Mr. Seaga of 2nd and 3rd October, 1990, referred to at paragraphs 23 and 25 of the Statement of Claim, paragraphs

27 and 28 of the Statement of Claim are admitted. The Defendants will say that the decision of the Standing Committee to declare that the plaintiff will not be considered as a candidate for the Party was based on the Committee's view that having regard to the Party's interests, he would not be a suitable representative.

Interrogatories were delivered to the plaintiff pursuant to an Order of the Court of Appeal.

Interrogatory No. 5 reads:

"In view of the letter of the 3rd October, 1990, written by Mr. Edward Seaga, were you aware that the Standing Committee was considering allegations of misconduct by you in your capacity as a member of the Jamaica Labour Party?"

The Plaintiff objected to this Interrogatory as being irrelevant in view of the clear and express admission of paragraph 27 and 28 of the Statement of claim.

Mr. Macaulay submitted that this Interrogatory amounted to an admission by the defence that on the 3rd October, 1990 the Standing Committee was considering allegations of misconduct against the plaintiff even though the Committee had not invited him to answer or comment on any such allegation.

The plaintiff claims the following reliefs:

Declarations -

- "1. A Declaration that the action taken by the Standing Committee as evidenced in its letter of the 8th August, 1990 to the Plaintiff is ultra vires of the Constitution of the Jamaica Labour Party.
2. That the decision of the Standing Committee contained in the letter of the 3th October, 1990 addressed to the Plaintiff is null and void as being contrary to the principles of natural justice."

And Injunctions -

- "1. Restraining the Central Executive and Standing Committee of the Jamaica Labour Party from issuing any instructions or directives to or requirements of any selection meeting in a Division or Constituency of the Jamaica Labour Party not to consider the selection of the Plaintiff for recommendation to the Central Executive as the "Party's" candidate to be approved and named by the Central Committee.
2. Restraining the Central Executive and Standing Committee of the Jamaica Labour Party from taking any decisions which would affect the Applicant's membership of the Jamaica Labour Party or benefits thereof including the opportunity to offer himself for selection to be recommended as the Party's Candidate in any selections for any office without giving the Applicant any opportunity to be heard thereon."

Rule 6 (1) of the Party Constitution provides for the Central Executive of the Party and defines its composition.

Rule 6 (3) states:

"The Central Executive shall approve the Party's Candidates for Central and Local Government Elections.

Rule 6(9) - The Central Executive shall have the power to undertake and manage all matters pertaining to the Party, and shall have final disciplinary powers over all members of the Party.

By Rule 8 (1) - There shall be a Standing Committee of the Central Executive which shall consist of

(2) The Standing Committee shall act for the Central Executive and shall meet as required.

Rule 12 - Selection of Candidates

(1) The Central Executive shall convene a Selection Meeting in the Division or Constituency for the purpose of selecting candidates to be recommended to the Central Government, Local Government and any other elections

(3) No person shall be regarded as the Party's candidate until he is so named by the Central Executive.

Rule 34 - The Disciplinary Committee appointed by the Central Executive shall -

(i) have the power to review all decisions taken at Constituency level on matters of discipline

(ii) investigate and decide on all matters of discipline within the Party

(iii) enquire into any matter referred to it by the Central Executive

Subject always to confirmation of all decisions by the Central Executive or Standing Committee."

Mr. Macaulay's submissions may be summarised thus:

The decision contained in the letter of the 3rd October, 1990 was ultra vires the powers of the Standing Committee and/or the Central Executive for the following reasons:

1. The question of approval of a candidate only arises when a candidate's name is put before the Central Executive for approval. It is a condition precedent to the exercise of the power of approval that there must be an existing candidate seeking approval. The plaintiff was not a candidate.

It was irrelevant whether the Central Executive or the Standing Committee was the agent for one another. He cited Morris v. Burdett 105 E.R. 331 for the definition of candidate.

2. The power to discipline is contained in Rule 34 of the Constitution. This power is not original but confirmatory. It is the right of every member of the party to offer himself as a candidate. To deny one of this right is punitive action. The Standing Committee had no authority to prohibit a member from enjoying his rights without suspending him from membership see Burns v. National Amalgamated Labourers' Union [1920] 2 C.L. 364 at 372 - 375.

3. The Standing Committee acted in breach of the Rules of natural justice in that:

(a) There was a breach of the audi alteram rule. The Plaintiff was not given any notice of any breach nor was he given an opportunity to explain whether or not it was in the interests of the Party that he should not be considered as a candidate. The letter from Mr. Seaga could not be construed as an invitation to appear before the Standing Committee. It is clear from the Pleadings that the discussions between members of the Standing Committee and the plaintiff referred to by the defence, did not involve any invitation to the plaintiff.

(b) There was bias

Mr. Seaga in his letter had prejudged the issue by asserting that the plaintiff was in fact part of a clique. This letter was written at the request of the Standing Committee. Reference was made to an unnamed member of the Standing Committee to whom the plaintiff is alleged to have made certain statements. It follows that Mr. Seaga, this unnamed member and the Standing Committee had prejudged the issue and had taken the decision. They were accusers and judges and therefore disqualified from taking the decision.

Mr. George submitted that the condition precedent should have been pleaded. The Rules of an Association or Political Party constitute the terms of a contract between the members of the Association or Party. In this case the condition precedent was a question of fact and should have been pleaded.

Mr. Macaulay's reply was that the condition precedent in this case was a question of law - a matter of interpretation of the Party's Constitution.

Mr. George further submitted that there was no question of a condition precedent. The decision was not an exercise by the Standing Committee of the power of approval or disapproval. It was a declaration of intention, advance notice to the plaintiff that if he is selected he would not be approved.

If the Standing Committee was exercising its power of disapproval, the power was lawfully exercised. This power is unqualified and unrestricted and not subject to any condition.

Mr. Macaulay conceded that the power was absolute. Mr. Macaulay has conceded that it is not a pre-requisite that a candidate be selected by a Selection Meeting. The plaintiff had been a successful candidate in the last three elections. Therefore the Standing Committee had a reasonable expectation that he would be a candidate for the next election and were correct in regarding him as a candidate.

The Standing Committee was not acting as a disciplinary body.

Re Breach of Natural Justice

The audi alteram partem rule and all its requirements were satisfied by Mr. Seaga's letter of the 3rd October, 1990 and by the discussions between the plaintiff and members of the Standing Committee.

Mr. Seaga's letters of the 2nd and 3rd October, made it clear to the plaintiff precisely what the complaints were and the letter of October 3, invited him in no uncertain terms to put forward his defence. He had five days in which to do so but declined to make use of the opportunity.

Re Bias

The question of bias does not arise. There is no allegation in the pleadings and no admission by the defence. If Mr. Seaga and an unnamed member took part as investigators but did not take part in the decision making, it cannot be said that the decision was tainted or vitiated.

Twenty-four (24) authorities were cited and reference made to text books. No lack of respect is intended by my not referring to all of these authorities. Many of them dealt with the same point.

Re Condition Precedent

These words used in the context of Mr. Macaulay's submissions are not concerned with the law of contract. It is a submission in law as to the construction of the Constitution of the Party.

As Mr. Macaulay pointed out these words were used in Ridge v. Baldwin [1963] 2 W.L.R. 939 in relation to regulations made under the Police Act. At 982 Lord Morris of Borth-y-Gest says:

"In my judgment, once there was a report or allegation from which it appeared that a chief constable may have committed an offence it was a condition precedent to any dismissal based on a finding of guilt of such offence that the regulations should in essential have been put into operation."

and per Lord Devlin at 1304.

"I see no reason therefore why I should do more than read the regulations into the Act of 1882, not as a condition precedent to the power to dismiss, but simply as rules that the committee is required to observe

But, if one of the regulations itself expressly imposes a condition precedent, it is another matter." (emphasis supplied).

Rule 6 (8) states:

"The Central Executive shall approve the Party's Candidates for Central and Local Government Elections." (emphasis supplied).

The Oxford English Dictionary defines Candidate thus:

"One who seeks or aspires to be elected or appointed to an office, privilege, or position of honour, or who is put forward or selected by others as an aspirant; e.g. one who seeks a seat in the House of Commons or other representative body."

In Morris v. Burdett 105 E.R. 361 Lord Ellenborough C.J. said at 363:

"there can be no doubt that they (The Legislature) assumed that upon every occasion of an election there would be found a candidate or candidates in the ordinary sense of the word, that is, persons offering themselves to the suffrages of the electors. That, I take it is, strictly speaking, the correct sense of the word candidate.

. . . . for here there is not any evidence that the defendant tendered himself in any way as the object of choice; but he was merely passive. The electors themselves having brought him forward without any consent on his part.

. . . . upon the whole then, it appears to me that this defendant was not a candidate within the true meaning of the word; having never acted as such; nor in any wise, either directly or indirectly assented to becoming a candidate. If there had been any evidence of acts, which might have amounted to an adoption of that character, it would have been different."

Bayley, J. delivered a judgment to the like effect.

I hold that the power of approval by the Central Executive is only exercisable where there is a person who falls within the ambit of the definition of a candidate in the ordinary sense of the word. In the instant case the plaintiff did not by word or action evince a desire to be a candidate.

To adopt the phraseology of Lord Ellenborough C.J., the Standing Committee themselves brought him forward without any consent on his part.

I hold that the decision contained in the letter of the 3rd October, 1990, purporting to disapprove of the plaintiff as a candidate at the next elections was ultra vires and void.

Was the decision of the Standing Committee disciplinary action?

Rule 12 (4) of the Party's Constitution states:

"No person shall be eligible for selection as the Party's Candidate who is not a member of the Party."

The plaintiff is still a member of the Party.

As Mr. Macaulay submitted, in my opinion correctly, the decision has deprived the plaintiff of his right to offer himself as a candidate at the next Election, a right enshrined in the Constitution of Jamaica.

In Burn v. National Amalgamated Labourers' Union [1920] 2 C.L.

364 Lawrence, J. said at 374.

"I do not think that the rule, by conferring upon the Committee a power to suspend a member from membership authorises the committee to prohibit a member without suspending him from membership from enjoying some of the rights and privileges of membership."

This dictum which I adopt, is apposite to the instant case. The Standing Committee has not suspended the plaintiff from membership in the Party, but has prohibited him from enjoying one of the privileges of membership, viz., to offer himself as the party's candidate at the next election.

It is of note that no election was imminent at the time of the decision of the Standing Committee. Indeed, the previous election had taken place only 18 months before the decision was taken.

On this ground also the decision is void.

Re Natural Justice

In Ridge v. Baldwin [1963] 2 W.L.R. 935 Lord Hodson said at 998.

"No one, I think, disputes that three features of natural justice stand out -

- (1) the right to be heard by an unbiased tribunal;
- (2) the right to have notice of charges of misconduct;
- (3) the right to be heard in answer to those charges."

I will deal firstly with the second and third features in accordance with the order of the submissions herein.

It is necessary to examine Mr. Seaga's letters to determine whether these requirements have been satisfied.

It is of note that although the defence admits that these letters were written at the request of the Standing Committee, no such intimation is apparent from the texts thereof. Indeed, this information was only conveyed in an amended defence after the suit was filed.

In the letter of the 2nd October, 1990, Mr. Seaga -

- (1) postulates that the Jamaica Labour Party has suffered from the presence within its ranks of a clique including the plaintiff;
- (2) requires the plaintiff to separate himself from any clique or face political isolation and revocation of his portfolio;
- (3) requires him to respond to this requirement, namely, to separate himself from the clique.

The plaintiff in reply denied that he was a member of any clique.

In his further letter of the 3rd October, Mr. Seaga makes certain presumptions and indicates that he will forward the full text of the plaintiff's letter to the Standing Committee and directs him to address any further response to the General Secretary of the Party to be dealt with at the meeting of the Standing Committee on Monday, 8th October.

There is no indication in the letters that the Standing Committee was considering allegations of misconduct by the plaintiff in his capacity

as a member of the Jamaica Labour Party nor that the Standing Committee was considering the question of his suitability as the party's candidate which was the basis for the impugned decision of the Standing Committee.

The discussions between the plaintiff, officers of the Party and members of the Standing Committee cannot be construed as notice of the charges of misconduct and an invitation to answer such charges on a specific date.

I hold that the plaintiff was not given notice of these charges nor an opportunity to be heard in answer to them.

The dictum of Lawrence, J. in Burn v. National Amalgamated Labourer's Union supra at 374 is apposite.

"I cannot conceive anything more contrary to our notions of justice than to decide against a member that he has committed a breach of the rules and to penalize that member for such breach without giving him a chance of being heard in his own defence."

Re Bias

"English Law recognises two principles of natural justice, that an adjudicator be disinterested and unbiased (nemo iudex in sua causa) and that the parties be given adequate notice and opportunity to be heard (audi alteram partem)."

Judicial Review of Administrative Action by S.A. Smith 4th ed. at 156.

See also the first feature stated by Lord Hodson supra.

The plaintiff prays for a declaration that the decision of the Standing Committee is null and void as being contrary to the principles of natural justice. In my opinion this prayer encompasses all the principles of natural justice as none have been excluded. I hold that bias is sufficiently pleaded.

The correct test to be applied is whether there is the appearance of bias, rather than whether there is actual bias.

In Regina v. Liverpool City Justices, Ex parte Topping [1983]

1 W.L.R. 119 Ackner L.J. as he then was, said at 123 in relation to bias

"We conclude that the test to be applied can conveniently be expressed by slightly adapting the words of Widgery C.J. in a test which he laid down in Reg. v. Uxbridge Justices Ex parte Burbidge --
 would 'a reasonable and fair minded person sitting in court and' knowing all the relevant facts have a 'reasonable suspicion that a fair trial for' the applicant 'was not possible'?"

Applying this test to the facts and admissions can it be said that a fair hearing for the plaintiff was possible?

On their own admission Mr. Seaga and the Standing Committee had prejudged the issue of the plaintiff's membership in a clique. They were accusers and judges in their own cause.

I hold that the plaintiff did not have a fair hearing and that the decision of the Standing Committee was in breach of the principles of natural justice and thus null and void.

For these reasons the plaintiff is entitled to judgment.

There will therefore be judgment for the plaintiff in Terms of the Motion. The Declarations and Injunctions are granted as prayed.

The plaintiff will have his costs, such costs to be agreed or taxed.