

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE FULL COURT
IN MISCELLANEOUS
SUIT NO.M65 OF 1988

CORAM; ELLIS, J, LANGRIN, J AND
SMITH, J.

BETWEEN DONALD PANTON APPLICANT
A N D THE ATTORNEY GENERAL RESPONDENT

D. Coore, Q.C. & Enos Grant instructed by Clough, Long
& Company for the Applicant.

Wendell Wilkins & Patrick Foster for the Respondent.

January 23, 24, 25, 27, 1988

LANGRIN, J.

This is an Originating Motion in which the applicant seeks redress under Section 25 of the Constitution of Jamaica. The application was made by Notice of Motion dated 19th December, 1988. After three days of argument, the Full Court granted the application and promised to put its reasons in writing. This we now do.

The applicant alleges in the Motion that Sections 13, 15 and/or 16 of the Constitution have been contravened in relation to him in that he has been deprived of his personal liberty and or freedom of movement by the issuing of Notices of Restriction by the Commissioner of Income Tax.

The redress provided under Section 25 is without prejudice to any other action with respect to the same motion which is lawfully available. The Court which hears and determines the application may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of the right to which the applicant is entitled.

The reliefs sought in the motion are the following declarations:-

- (a) that notices of restriction issued on the 2nd day of June, 1987 and/or the 2nd day of November, 1987 by the Commissioner of Income Tax are null and void and of no effect,
- (b) that sections 13, 15 and or 16 of the constitution have been contravened in relation to the applicant in that he has been deprived of his personal liberty and/or freedom of movement by the issuance of the said notice of restriction,
- (c) that Sections 13, 15 and/or 16 of the Constitution have been contravened in relation to the applicant, in that he has been deprived of his personal liberty and/or freedom of movement by the conduct of officers of the Immigration Department on the 11th of November, 1988;
- (d) that rule 4 of the Part II of the Second Schedule of the Income Tax Act is null and void insofar as it purports to conflict with Sections 13, 15 and/or 16 of Chapter III of the Constitution, having regard to the provisions of section 4 of the Jamaica Constitution.
- (e) that the applicant is entitled to compensation, in particular in the form of exemplary and/or aggravated damages for the contravention of his Constitutional right.

Section 21 of the Income Tax (Amendment) Act 1970 provides that the First Schedule to the Principal Law is amended by repealing rule 4 in Part II thereof and substituting therefore the following rule -

- "4(1) If the Commissioner thinks fit he may serve on any person a Notice requiring that he shall not leave the island

unless at the time of leaving he has in his possession a certificate issued by or on behalf of the Commissioner within the preceding ninety days stating that he -

- (a) does not owe any income tax or
 - (b) has made satisfactory arrangements for the payment of income tax payable by him.
- (2) On the application of any person on whom a notice under paragraph (1) has been served; the commissioner shall issue to him within thirty days after the date of the application, a notice of assessment in respect of all income tax that will be due by him at the date of his intended/departure from the island.
- (3) Where a notice has been served on a person under paragraph (1) and it has not been withdrawn by a further notice served on him by the Commissioner, that person shall if he leaves the island in contravention of the Notice be guilty of an offence and liable on summary conviction to a fine not exceeding fifty dollars or a term of imprisonment not exceeding three months, or to both.
- (3) A person who leaves or attempts to leave the island in contravention of this Rule may be taken into custody without warrant by Immigration Officer for a period not exceeding twelve hours."

The purported allegations concerning the infringements of the applicant's rights are set out in his affidavit in support of the Motion. They are briefly as follows:-

On the 2nd day of June, 1987 the applicant was served with six notices of assessment of Income Tax for the years of assessment 1981 to 1986 inclusive for a total income tax liability of \$5.6 million dollars. On the same date the applicant was served with a notice pursuant to Part II of the Second Schedule of the Income Tax Act preventing him from leaving the Island unless he had in his possession a

letter from the Commissioner of Income Tax stating that he did not owe any income tax or that he had made satisfactory arrangements for the payment of income tax payable by him.

As a result of the said Notice of Restriction he was unable to travel freely from the Island to conduct the business of his several companies in consequence of which he suffered loss and damage. On the 28th August 1987 the Commissioner sent a standard format of Guarantee to the applicant's Attorney-at-law to enable him to make satisfactory arrangements guaranteeing the payment of income tax payable by the applicant for the abovementioned years of assessment and assured the applicant's Attorney-at-Law when the duly stamped instrument of guarantee was received by her department that the applicant would be permitted to travel. Under cover of letter dated 3rd September, 1987 the applicant's Attorney-at-Law sent to the Commissioner the format referred to above and a guarantee in the sum of \$5.7 million duly impressed with adequate stamp from Blaize Trust Company and Merchant Bank Limited and dated the 1st day of September, 1987.

By letter dated 7th September, 1987 addressed to the applicant, the Commissioner advised that the applicant was given permission to leave and re-enter Jamaica at anytime during the period 7th September, 1987 to 31st December, 1987 and indicated that the applicant had made satisfactory arrangements for guaranteeing the payments of his tax liability.

The Commissioner, on the 8th September, 1987, advised the applicant's Attorney-at-Law that she was only competent to grant permission to leave Jamaica for periods of ninety days and not for the duration of the Instrument of Guarantee. As a consequence, by Notice dated the 2nd day of November, 1987, the Commissioner revoked the Notice

of Restriction dated the 3rd day of June, 1987 as well as the permission to travel dated the 7th September, 1987 and restricted the applicant from leaving the Island unless at the time of travelling he had in his possession a certificate issued by the Commissioner within the preceding ninety days stating that he did not owe any income tax or had made satisfactory arrangements for the payment of income tax payable by the applicant.

The applicant was put to great expense and inconvenience in order to provide the Commissioner of Income Tax with the said guarantee. In addition the applicant had to incur legal expenses to challenge the validity of the said assessments and notices of restriction by way of Notice of Motion for Certiorari and Madamus dated 7th and 9th December 1987 respectively (Suit Nos. M84 and M88) as well as an appeal to the Revenue Court (Appeal No.2/88) dated 23rd March 1988. Further, the applicant incurred accounting expenses for the preparation of Capital statements and various returns to the Commissioner of Income Tax.

By the 24th October, 1988 the applicant had fully paid up all the Income Tax that was due to be paid by him as shown by the said Capital Statement and Returns for the relevant years of assessment and he did not owe any income tax. On the 21st October, 1988 the applicant's Attorney received a letter from the Revenue Board conceding the appeal. On the 24th October 1988 when the appeal

came up for hearing it was allowed as the Commissioner has conceded that the said assessments were ultra vires the Income Tax Act. Significantly, however, the Commissioner had not withdrawn the said notice of restriction and filed an appeal against the order of the Revenue Court.

As a culmination of this whole episode, on the 11th November, 1988 when the applicant was about to board an aeroplane at the Norman Manley Airport for a flight abroad on the business of one of his companies he was detained by

Immigration Officers, servants and/or agents of the Crown, for about three quarters of an hour. The Immigration Officers informed the applicant that the reason for the detention was that there was currently a Notice of Restriction against his leaving the island without the permission of the Commissioner of Income Tax. The applicant was not released until he produced a copy of the order of the Court. As a result of the detention he suffered great anguish, inconvenience and embarrassment.

It is significant to observe that none of the affidavit evidence was controverted by the Respondents since no affidavit was filed by the Commissioner of Income Tax. What therefore emerges from the evidence and which forms the basis of the applicant's complaint is that the Notice of Restriction dated 2nd November, 1987 which was served on the applicant had been quashed by the Supreme Court (Full Court) on a Motion for Certiorari by an Order dated 18th January, 1988. Since no further notice was served on the applicant requiring that he should not leave the Island there was no restriction on the applicant in that regard. Further it should be observed that by the 24th October, 1988 the appeal of the applicant had been allowed, having been conceded to by the Commissioner. Finally, by the latter date the applicant had paid up all the Income Tax that was due and owing for the relevant years of assessment.

Against that background, it is difficult to understand why the applicant was detained on the 11th November, 1988 on the basis of a Notice of Restriction against his leaving the Island. It is not known whether the applicant's name was inadvertently left on the Immigration Stop List after the Full Court's Order on the 18/1/88 or whether despite the Court's Order it was deliberately placed there to prevent the applicant from leaving the Island. The failure of the

respondent to file an affidavit leaves a deafening silence. Since the applicant was not aware of any restriction after the 18/1/88 and before the 11th November, 1988 (at least there is no evidence to that effect) there can be no complaint about any restriction during that period. Further, because the Full Court had quashed the Restriction Notice which was in place on the 18th January, 1988 there was nothing in respect of the same matter emanating from the Income Tax Department which could have legally prevented the applicant from leaving the Island. In spite of the valiant efforts of the applicant in extricating himself from the stranglehold of the Income Tax Department on the 11th November, 1988 he was detained for three quarters of an hour at the Airport by Immigration Officers on the basis of the Notice of Restriction which had been previously rendered invalid by the Supreme Court.

Was there then in these circumstances a violation of the applicant's Constitutional rights relating to the liberty of the person and his freedom of movement? Put another way, does this act of the Commissioner of Income Tax constitute a deprivation of liberty in contravention of the applicant's fundamental right of freedom? Mr. Wilkins, Counsel for the respondent is not seeking to deny that the applicant was detained by the Immigration Officers and therefore hinged his submission on the absence of any constitutional protection for the right to travel abroad.

Mr. David Coore in his usually impressive manner made the following broad submissions.

- (1) Both Notices of Restriction on 2/6/87 and 2/11/87 constituted a contravention of the applicant's rights under the constitution because the provisions of the Income Tax Act under which the Commissioner purported to issue the notices i.e. Rule 4 of Part II of the Second Schedule

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of the Income Tax Act is null and void by virtue of Sections 15 and 16 of the Constitution of Jamaica.

- (2) In the alternative, even if the said rule is not unconstitutional in itself the Commissioner does not have an arbitrary uncontrolled discretion to do as she pleases under the rule as it is a power which she has to exercise in conformity with the law and neither on 2/6/87 nor on 2/11/87 was there any lawful reason for exercising this power because the apparent basis for the exercise namely, the assessment of the Income Tax on 2/6/87 was on the face of them bad and indeed have been held by the Supreme Court to be null and void. Consequently, there was no legal basis for the exercise of the Commissioner's discretion assuming she had a discretion under Rule 4.
- (3) In any event the Notice of Restriction of November 2, 1987 which was the only Notice of Restriction after that date having been quashed by the Supreme Court in January 1988 there was no colour of right in leaving the applicant's name on a stop list resulting in his being detained in November 1988.

It is imperative to restate the passage from Lord Diplock's opinion in Maharaj vs. Attorney General (No.2) 1979 30 WIR 331 when dealing with Chap.1 of the Trinidad Constitution which is similar to Chap.III of the Jamaica Constitution: ...

"No human right or fundamental freedom recognised by Chap. 1 of the Constitution is contravened by a judgment or order

that is wrong and liable to be set aside on appeal for an error of fact or substantive law, even where the error has resulted in a person serving a sentence of imprisonment. The remedy for errors of these kinds is to appeal to a higher Court. When there is no higher Court to appeal to then none can say that there was error. The fundamental human right is not to a legal system that is infallible but to one that is fair. It is only errors in procedure that are capable of constituting infringements of the rights protected by Section 1(a), and no mere irregularity in procedure is enough, even though it goes to jurisdiction; the error must amount to a failure to observe one of the fundamental rules of natural justice. Their Lordships do not believe that this can be anything but a very rare event."

It therefore follows that if the imposition of the Notice of Restriction was done in error of substantive law i.e. powers vested in her by the Income Tax Act there would be no contravention of the constitutional provision. The case of Padfield v. Minister of Agriculture 1967 AC. 997 is one in which a Minister had abused his discretion by refusing to appoint a committee of investigation to report to the Minister whether any provision of a scheme or any act or omission of a Board administering a scheme is contrary to the interests of consumers. It was held by the House of Lords that the Minister's discretion was not unlimited and if it appeared that the effect of the Minister's refusal to appoint a committee of investigation was to frustrate the policy of the Act, the Court was entitled to interfere. The applicant quite rightly placed reliance on this case. Where a public officer erroneously acts in accordance with the Income Tax Act, the proper remedy lies not in a motion to the Court under the provisions of Section 25 of the Constitution, but in invoking the supervisory jurisdiction of the Supreme Court seeking a prerogative Order. It maybe

useful to draw attention to the statement of Lord Diplock in Harrisson v. Attorney General of Trinidad and Tobago (4) (1979) 3 WLR at p. 64.

"The notion that whenever there is a failure by any organ of Government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chap. I of the Constitution is fallacious. The right to apply to the High Court under Section 5 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control in administrative action."

If the respondent's failure to remove the applicant's name from the Immigration Stop List resulting in his temporary detention as well as restricting him from travel abroad is not a mere irregularity of procedure but amounts to a violation of his rights under Section 15 and 16 of the Constitution it would be a contravention by the state against whom the applicant was entitled to relief. Whether it amounted to a contravention depends on the following:

- 1) the validity of Rule 4 of Part II of the Second Schedule of the Income Tax Act and
- 2) the existence of a fundamental right to personal liberty i.e. travel abroad as well as freedom of movement. under sections 13, 15 or 16 of the Constitution of Jamaica.

WITNESSED

The relevant fundamental rights are set out in Chapter III of the Constitution and are stated inter alia as follows:

"Section 13. Whereas every person in Jamaica is entitled to the fundamental rights and freedoms of the individual, that is to say has the right, whatever his race, place of origin, political opinions, colour, creed or sex but subject to respect for the rights and

interest, to each and all of the following, namely -

- (a) life, liberty, security of the person, the enjoyment of property and the protection of the law
- (b)
- (c)

the subsequent provision of this chapter shall have effect for the purpose of affording protection to the aforesaid rights and freedoms, subject to such limitations of that protection as are contained in these provisions being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest."

Section 15 - (1)

"No person shall be deprived of his personal liberty save as may in any of the following cases be authorised by law

- (a) in consequence of his unfitness to plead to a criminal charge; or
- (b) in execution of the sentence or order of a court, whether in Jamaica or elsewhere, in respect of a criminal offence of which he has been convicted; or
- (c) in execution of an order of the Supreme Court or of the Court of Appeal or such other court as may be prescribed by parliament on the grounds of his contempt of an any such court or of another court or tribunal; or
- (d) in execution of the order of a court made in order to secure the fulfilment of any obligation imposed on him by law; or
- (e) for the purpose of bringing him before a court in execution of the order of a court; or
- (f) upon reasonable suspicion of his having committed or of being about to commit a criminal offence; or

- (g) in the case of a person who has not attained the age of twenty-one years, for the purpose of his education or welfare; or
- (h) for the purpose of preventing the spread of an infectious or contagious disease; or
- (i) in the case of a person who is, or is reasonably suspected to be, of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community; or
- (j) for the purpose of preventing the unlawful entry of that person into Jamaica, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Jamaica or the taking of proceedings relating thereto; or
- (k) to such extent as may be necessary in the execution of a lawful order requiring that person to remain within a specified area within Jamaica or prohibiting him from being within such an area, or to such extent as may be reasonably justifiable for restraining that person during any visit that he is permitted to make to any part of Jamaica in which, in consequence of any such order, his presence would otherwise be unlawful.

Section 16 - (1) "No person shall be deprived of his freedom of movement and for the purposes of this section the said freedom means the right to move freely throughout Jamaica, the right to reside in any part of Jamaica, the right to enter Jamaica and immunity from expulsion from Jamaica.

- (2) Any restriction on a person's freedom of movement which is involved in his lawful detention shall not be held to be consistent with or in contravention of this section.
- (3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision

- (a) which is reasonably required in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the imposition of restrictions on the movement or residence within Jamaica of any person who is not a citizen thereof or the exclusion or expulsion from Jamaica of any such person; or
- (c) for the imposition of restrictions on the acquisition or use by any person of land or other property in Jamaica; or
- (d) for the imposition of restrictions upon the movement or residence within Jamaica of public officers, police officers, or members of a defence force; or
- (e) for the removal of a person from Jamaica to be tried outside Jamaica for a criminal offence or to undergo imprisonment outside Jamaica in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(4)

(5)

* Section 48 of the Constitution provides that subject to the provisions of the Constitution Parliament may make laws for the peace order and good government of Jamaica. Parliament enacted Rule 4 of Part II of the Second Schedule of the Income Tax Act which makes it a criminal offence for a person to leave or attempt to leave the Island in contravention of a Notice of Restriction. Section 15 (f) of the Constitution provides that a person maybe deprived of his liberty upon reasonable suspicion

of his having committed or being about to commit a criminal offence. That being so the new enactment which gave rise to Rule 4 would be in conformity with the Constitution. It follows that Rule 4 is valid and therefore consistent with the Constitution.

Let us turn now to the question of whether there exists a right to travel abroad which is protected by the Constitution. In doing so it is essential to examine whether such a right falls within the scope of 'personal liberty' in Section 15 of the Constitution.

Metaphysical abstractions like justice and liberty have always presented some difficulty to define. As far back as the year 1215, in England, the right to travel abroad was recognized as an integral part of the personal liberty of the subject. Article 42 of the Magna Carta declared as follows:-

"It shall be lawful to any person for the future, to go out of the Kingdom, and to return safely and securely, by land or by water, waving his allegiance to us, unless it be in time of war, for some short space, for the common good of the Kingdom; excepting prisoner's and outlaws, according to the laws of the land."

Blackstones Commentaries on the Laws of England, 4th Edition, Vol.1 page 134 states:-

"Personal liberty consists in the power of locomotion, of changing situation of moving one's person to whatever place one's own inclination may direct without imprisonment or restraint unless by due process of law."

¶ Article 13(2) of the Universal Declaration of Human Rights which forms the basis of the fundamental rights and freedoms under the Westminster model Constitutions states:-

"Everyone has the right to leave any country including his own and to return to his country."

Under the American Juris prudence and in particular the United States Supreme Court decision of Kent v. Dulles (1958) Supreme Court Reporter (78) at 1113 the Secretary of State promulgated regulations denying passports, in effect to Communists and to persons whom evidence showed were going abroad to further communist causes. It was decided by the Court that the right to travel is a part of "liberty" of which citizens cannot be deprived without due process of law.

The leading case on this area of the law in the Commonwealth is: Sawney vs. Assistant Passport Officer Government of India 1967 AIR 1836 (V54C 359) a Court consisting of 5 Judges of the Supreme Court of India. In this case the applicant was refused the grant of a passport as an effective method of restraining his movement. The Court in dealing with a similar provision to the Jamaica Constitution decided that the right to travel abroad, being an integral part of the personal liberty of the citizen was protected by the relevant guarantee of personal freedom. Chief Justice Subba Rao on a majority judgment observed:

"A person may like to go abroad for many reasons. He may like to see the world, to study abroad, to undergo medical treatment that is not available in our country, to collaborate in scientific research, to develop his mental horizon in different fields and such others. An executive arbitrariness can prevent one from doing so and permit another to travel merely for pleasure."

It is of interest to observe the case of Jamakana v. Attorney General and Another 1985 LRC 569. In this case, the applicant was prevented for a period from leaving the Solomon Islands by Immigration Officers acting on the instructions of the second Respondent, Minister of Police and Justice. The applicant applied to the High Court for declaration that the direction made by the second respondent and the

consequential acts by Police and Immigration Officers were in breach of the applicant's fundamental rights under Chap.II of the Constitution of the Solomon Islands and for compensation for these contraventions. It was held that the order which restricted the applicants to the Solomon Islands in a manner not authorized by any law amounted to a deprivation of personal liberty in contravention of Section 5 of the Constitution. It is significant that Section 5 of the Solomon Islands Constitution which deals with personal liberty is identical to Section 15 of the Jamaica Constitution. Daley C.J. in dealing with the question of the freedom of movement under the Constitution had this to say:-

"In my judgment the right to move freely throughout Solomon Islands must include a right to board a vessel or aircraft which will cross part of the Solomon Islands to reach the frontiers and cross them."

The provision under the Solomon Islands Constitution which deals with freedom of movement is somewhat dissimilar to the relevant provision under our Constitution so it is necessarily unhelpful in that regard.

An examination of Section 16 of the Jamaica Constitution in respect of the freedom of movement provides basically for movement within the island and it is demonstrably clear that such movement in a foreign country could not be guaranteed by the Jamaica Constitution. Accordingly, the section does not come to the aid of the applicant.

Dr. Lloyd Barnett, author of the well known book, The Constitutional Law of Jamaica at p. 390 in commenting on Section 16 of the Jamaica Constitution had this to say:

"The most significant omission from the protection afforded by this section is the right to leave the Island."

Personal liberty is used in Section 15 of the Jamaican Constitution as a comprehensive term to include all the varieties of rights which go to make up personal liberty of man other than those dealt with in Section 16. Section 16 deals specifically with certain rights while Section 15 includes all such rights which were not dealt with in Section 16.

Mr. Wilkins, for the respondent urged us to give Section 15 its narrowest interpretation which is that the section embraces nothing more than a protection from arbitrary arrest or detention.

In the Canadian case of Edwards v. Attorney General for Canada 1930 AC 126 - Lord Sankey in delivering the opinion of the Privy Council described the constituent statute of the Dominion as a living tree capable of growth and expansion" within its natural limits and added:-

"The object of the Act was to grant a constitution to Canada Their Lordships do not conceive it to be the duty of this Board - it is certainly not their desire - to cut down the provisions of the Act by a narrow and technical construction, but rather to give it a large and liberal interpretation."

In a fairly recent case of Minister of Home Affairs & Another v. Fisher (1980) AC 319, Lord Wilberforce in interpreting the Bermuda Constitution had this to say:

".....recognizing the status of the Constitution as in effect an Act of Parliament, there is room for interpreting it with less rigidity and greater generosity than other Acts, such as those which are concerned with property, or succession, or citizenship."

In our view the right to travel abroad is within the ambit of the expression 'personal liberty' as used in Section 15 and personal liberty in the same section was not intended to bear the narrow interpretation of freedom from physical restraint.

Counsel for the Respondent, contended, inter alia that the original jurisdiction which is vested in the Supreme Court by virtue of Section 25 of the Constitution would not be exercisable if that Court were satisfied that adequate means of redress were or had been available to the person concerned under any other law (See the proviso to Sec.25 (2)). In this regard, he submitted, an action in tort for false imprisonment is available to the applicant. Such a submission undermines the main contention of the applicant which is that he has a constitutional right to travel abroad and that right was contravened by the state. The tort of false imprisonment may not succeed against the Immigration Officers since the Applicant would have to prove the absence of reasonable and probable cause or malice. A possible action against the Commissioner of Income Tax would be the tort of misfeasance in public office, In Calveley v. Chief Constable of the Merseyside Police (1989) 1 AER 1025 (H.L.) the Appellant Police Officer complained that disciplinary proceedings brought against him had been misconducted and that he had suffered loss. Lord Bridge of Harwich in delivering the judgment of the House of Lords had this to say:-

"For the tort of misfeasance in public office to be proved it had to be shown at least that a public officer had done in bad faith or possibly without reasonable cause an act in the exercise or purported exercise of some power or authority with which he was clothed by virtue of the office he held."

We express no opinion whether in those circumstances the Commissioner or the Attorney General or any other person is liable for the action of the officers concerned. What this Constitutional motion deals with primarily is the executive power of the State. However, application for redress under the Constitution is always without prejudice to any other action with respect to the same matter which is lawfully

available. In the case of Ranson v. Parker & Another (1982) 33 WIR 183, the Court of Appeal in Guyana in dealing with Constitutional right of personal liberty held that the seizure of the appellant's arm by the Police constituted an infringement of personal liberty under the Constitution.

In any event, in view of the peculiar circumstances of this case we are not inclined to the view that Section 25(2) is applicable. The failure by the respondent to take the point in limine supports our view.

There is no evidence that the applicant attempted to travel subsequent to the Supreme Court's decision on the 18th January, 1988 neither was he aware of any further restriction of his right to travel. It was only on 11th November, 1988 when he was restricted from leaving the country that any contravention could have taken place to form the basis of compensation. The applicant cannot, in the circumstances, recover compensation for the period prior to 18/1/88 when the Commissioner of Income Tax imposed the restriction since that was an error of substantive law and not one of procedure. Further the applicant had already obtained redress from the Full Court of the Supreme Court when that Court had quashed the Notice of Restriction made by the Commissioner.

The arbitrary action of the Immigration Authorities on behalf of the Commissioner of Income Tax in detaining the applicant for three quarter of an hour at the airport when the Supreme Court had invalidated the Notice of Restriction is a contravention of the applicant's personal liberty under Section 15 of the Constitution. Based on the uncontradicted affidavit evidence of the applicant, we hold that the applicant was deprived of his liberty without the authority of any law irrespective of whether there was a fundamental

right to travel abroad or not. However, it was still necessary to express an opinion on the main question of whether there is a fundamental right to travel abroad protected by the Constitution.

The failure of the Commissioner of Income Tax to remove the notice of restriction from the Stop List subsequent to January 18, 1988 when the notice was quashed by the Supreme Court which prevented the applicant from leaving the island was an unjustified and arbitrary abuse of power utterly devoid of fair-play in action.

Finally, the right to travel abroad is a normal expectation of every citizen unless there is good reason for making him an exception. The issues arising in this case have not shown any reason for depriving the applicant of this right. Accordingly, the application should be granted with costs to be taxed if not agreed.

The following declarations are therefore granted:-

- (a) That Notices of Restrictions issued on the 2nd day of June, 1987 and/or the 2nd day of November, 1987 by the Commissioner of Income Tax are null and void and of no effect;
- (b) That sections 13 and 15 of the Constitution have been contravened in relation to the applicant in that he has been deprived of his personal liberty by allowing the notice of restriction to remain on the Immigration stop list.
- (c) That the applicant is entitled to compensation for the contravention of his Constitutional rights.

2. An order.

- (a) That the applicant's name be removed from the list of persons who are restricted from leaving the island without the permission

of the Commissioner of Income Tax in relation to assessments for the years 1981 - 86 inclusive;

- (b) That the assessment of the said compensation be set down for assessment in open Court;
- (c) That the respondent must pay the Costs of these proceedings.