

IN THE HIGH COURT AT SUVA

APPELLATE JURISDICTION

Miscellaneous No. HBM 38 of 2016

In the matter of the Political Parties (regulation, Conduct, Funding and Disclosure)

Decree 2013

AND

In the matter of specific decisions of the Supervisor of Elections in his capacity as

Registrar under the Decree

BETWEEN

NATIONAL FEDERATION PARTY, a political party whose head office is at 124

Princes Road, Tamavua, Suva.

FIRST APPELLANT

AND

DALIP KUMAR of No. 39 Kula Street, Samabula, Suva, Operations Manager,

in his capacity as Registered Officer of the First Apellant.

SECOND APPELLANT

AND

BIMAN CHAND PRASAD of No. 152 Sekoula Road, Laucala Beach Estate,
Suva, Politician.

THIRD APPELLANT

AND

JAGNATH SAMI of No. 22 Chameli Street, Drasa Vitogo, Lautoka, retired
Chief Executive Officer.

FOURTH APPELLANT

AND

THE SUPERVISOR OF ELECTIONS in his capacity as Registrar under the Decree,
of 59-63 High Street, Suva.

RESPONDENT

Counsel : Mr. J. Apted for the Appellants
Ms. S. Chand with Ms. Prasad for the
Respondent

Date of Hearing : 21st November, 2016

Date of Judgment : 16th February, 2017

JUDGMENT

- [1] The appellants filed this appeal challenging the legality of the following decisions of the respondent dated 01st February 2016;
- (a) the finding that the 1st appellant was in breach of section 26(2) of the Political Parties (regulation, Conduct, Funding and Disclosure) Decree 2013 [hereinafter referred to as 'the Decree'].
 - (b) the decision to suspend the first appellant under section 19(3) of the decree.
 - (c) the decision that (in the notice dated 1stFebruary, 2016) during its suspension the first appellant cannot operate, function, represent or hold itself out to be a political party.
- [2] Section 26(2) of the decree provides as follows;
- The accounts of every political party shall be audited annually by an auditor certified by the Fiji Institute of Accountants and shall be submitted to the Registrar within 3 months after the end of each financial year, who shall publish the accounts in the Gazette and in the media, and the costs of any such publication shall be paid by or recovered from the political party.
- [3] The respondent suspended the 1st appellant from functioning as a political party under the powers conferred upon him by section 19 of the Decree on the ground that it has failed to comply with the above provisions [section 26(2)] in that the auditor who certified the accounts submitted by the 1st appellant did not have a Certificate of Public Practice.
- [4] Section 19 of the Decree provides as follows;
- (1) The Registrar may deregister a political party if the political party-
 - (a) has contravened the provisions of this Decree;
 - (b) does not promote free and fair nomination of candidates;

- (c) does not adhere to any written law relating to the nomination of candidates;
 - (d) obtained its registration in a fraudulent manner; or
 - (e) has instigated or participated in the commission of an offence under this decree.
- (2) The Registrar shall, before deregistering a political party –
- (a) Inform the political party, in writing, of the particulars of the breach or contravention;
 - (b) Inform the political party, in writing, of the intention to deregister the political party; and
 - (c) Direct the political party to remedy the breach or contravention within 60 days or otherwise show cause why the party should not be deregistered.
- (3) The Registrar may suspend the registration of a political party to enable that political party to remedy the breach specified in the notice issued by the Registrar under subsection(2).
- (4) A political party that has been suspended under subsection (3) shall not be entitled to any of the rights and privileges specified under this decree.
- (5) The Registrar shall deregister a political party which has not remedied the breach or contravention or complied with the Decree as required by the Registrar under subsection (2).
- (6) The Registrar shall deregister a political party which has been declared to be a prohibited organisation under the provisions of any written law.
- (7) The Registrar shall deregister a political party if the majority of the members of the political party apply to the Registrar for voluntary deregistration of the political party.

- (8) If a political party is deregistered by the Registrar under this section, the Registrar shall publish a notice of the deregistration in the Gazette and in the media.

[5] Section 27(5) of the Decree provides:

- (5) Where a political party commits an offence under this Decree, the Registrar shall have the power to –
- (a) issue a warning and require the political party to conform to this Decree within a specified period; or
 - (b) suspend the registration of the political party for a period not exceeding 12 months.

[6] The learned counsel for the appellants based their appeal on six grounds of appeal. However, there are two main grounds of appeal arising out of the arguments which I will now consider. They are;

- 1) Whether the respondent was correct in suspending the 1st appellant political party without first giving it an opportunity of being heard as required by the rules of natural justice?
- 2) Whether the respondent is correct in concluding that the auditor who certified the accounts of the 1st appellant should in law be a holder of a Certificate of Public Practice?

[7] *Audi alteram partem* (hear the other side) is one of the basic principles of Rules of Natural Justice. Before arriving at a finding affecting a person's substantive rights in a judicial or quasi-judicial hearing, it is a fundamental principle that the party whose rights are at stake must be given a fair hearing.

[8] There are instances where the courts have relaxed this rule in certain administrative actions which are neither judicial nor quasi-judicial.

[9] For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that

the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation. (*Wiseman v. Broadman* [1971] AC 297).

- [10] In Particular it is well-established when a statute has conferred on anybody the power to make decisions affecting individuals, the courts will not only require the procedure prescribed by the statute to be followed, but readily imply so much and no more to be introduced by way of additional procedural safeguards as will ensure the attainment of fairness. (*Lloyd v. McMahon* [1987] AC 625 at 702).
- [11] It is clear from the provisions of section 19(3) of the Decree that the purpose of suspending a political party from registration is to enable such party to remedy the breach specified in the notice.
- [12] In enacting these provisions the legislature has not disregarded the common law principles of natural justice. Section 19(3) of the Decree does not deal with the substantive rights of the appellants. It gives power to the Registrar to suspend it while making provisions to hear the political party before deregistering it. The procedure to be adopted in deregistering a party, which affects the substantive rights of the party and its members, is clearly laid down in the decree which requires the Registrar to inform the relevant party, give them an opportunity to remedy the breach or to show cause why the party should not be deregistered. Since the appellant has acted within the scope of the legislation it cannot be said that his decision to suspend the 1st respondent temporarily is in violation of the rules of natural justice.
- [13] Section 22 of the Fiji Institute of Accountants Act (Cap 259) provides as follows;
- No member of the Institute shall have the right to offer his services to the public under the designation of "chartered accountant", unless he is the holder of a certificate of public practice issued in accordance with rules made under the provisions of this Act.

- [14] The learned counsel for the appellants brought to the attention of the court certain provisions of other legislations where it is specifically stated that auditors or chartered accountants must be holders of Certificate of Public Practice to act as an auditor and submitted that since there is no such requirement in the Decree the accountant who certified the accounts did not require the Certificate of Public Practice to certify the accounts of the 1st appellant and the respondent was wrong in suspending the party on that ground.
- [15] The requirement to have a Certificate of Public Practice to offer services to the public is not a mere rule or regulation to manage internal affairs of the Fiji Institute of Accountants. These regulations have been made under and in terms of a statute of the Parliament. Therefore, it is an imperative statutory requirement that every chartered accountant must hold a Certificate of Public Practice to enable him or her to offer services to the public. For the mere fact that section 26(2) of the Decree does not contain such a requirement, the provisions of section 22 of the Fiji Institute of Accountants do not become redundant. Therefore, the decision of the respondent that the 1st appellant was in breach of section 26(2) of the Political Parties (regulation, Conduct, Funding and Disclosure) Decree 2013 is correct.
- [16] Discretion is conferred upon the Registrar to suspend a political party enabling it to remedy a breach. In the instant case the Registrar exercising the discretionary power conferred upon him by the statute decided to suspend the 1st respondent party temporarily.
- [17] The learned counsel for the appellant submitted that there was no evidence that the 1st appellant political party had knowledge that the accountants who certified the accounts did not meet any professional requirement. Whether the 1st appellant was aware that the accountants who certified its accounts did not possess a Certificate of Public Practice is within the exclusive knowledge of the appellants. On the other hand as I have already stated it is not a mere technical requirement to have a Certificate of Public Practice to offer services to the public. It is a statutory requirement. Whether it is technical or otherwise the 1st appellant is bound to comply with the statutory requirements. When the accounts of the 1st appellant is certified by

an accountant who does not possess the qualification required by law such accounts cannot be said to be in conformity with the imperative requirements of the law. The appellants should have inquired whether the accountants, who certified their accounts, possessed a Certificate of Public Practice before obtaining their services.

[18] One might argue that the registrar could have directed the 1st appellant to correct the error in the accounts without suspending its operation. I agree that he could have merely asked the 1st respondent to correct the error but since the respondent has acted within the powers conferred upon him by the statute (*intra vires*) the court has cannot interfere with his decision.

[19] The learned counsel for the appellant submitted that the respondent in deciding to suspend the 1st appellant and to declare that it was not entitled to any rights and privileges of a political party breached the constitutional rights of the 2nd to 3rd appellants guaranteed by sections 17 (freedom of expression), section 18 (freedom of assembly), section 19 (freedom of association) and section 23 (political rights) and 3rd appellants rights under section 23(3)(d) of the Constitution which is “to hold office, if elected”.

[20] The respondent suspended the 1st appellant party in accordance with the provisions of the relevant statute. It cannot be said that such a decision has the effect of depriving the members of that political party of their rights guaranteed by the Constitution. Every citizen is entitled to enjoy the freedom of expression, freedom of assembly, freedom of association, political rights and to hold office if elected subject to the laws of the country. The Constitution does not confer freedom upon any citizen to violate the law of the land in the guise of exercising constitutional rights. Therefore, the allegation that the respondent violated the constitutional rights of the 2nd to 4th appellants is without merit.

[20] The last paragraph of the letter sent by the respondent on 01st February, 2016 informing the 1st appellant its suspension from operating as a political party, reads as follows;

Please take notice that in accordance with section 19(4) of the Decree, a political party that has been suspended under section 19(3) shall not be entitled to any of the rights and privileges specified under the decree. Given the above, NFP is not entitled to any of the rights and privileges as a political party during the period of suspension.

[21] In this letter there is nothing to say that the 1st appellant cannot operate, function, represent or hold itself out to be a political party. What is contained in this paragraph is not a decision of the respondent but a mere reproduction of section 19(4) of the Decree. It does not contain any finding of the respondent. However, in the notice sent by the respondent on 01st February, 2016 it is stated that a political party that has been suspended under section 19(3) cannot operate, function, represent or hold itself out to be a political party. Once a political party is suspended there is no such political party in existence before the law during the period of suspension and therefore it cannot operate as a political party whether the respondent states so in his notice or not. In the circumstances I see no error in the letter and the notice sent on 01st February, 2016 by the respondent to the 1st appellant.

[22] For the reasons given above I hold that there is no merit in the appeal of the appellants. Accordingly, I make the following orders;

1. The appeal of the appellants is dismissed.
2. The appellants are ordered to pay the respondent \$2000.00 as costs of this appeal within fourteen (14) days from the date of this judgment.




Lyone Seneviratne

JUDGE

16th February, 2016.