

**JOHN ALI (aka Asgar Ali) and Anor v LOCAL GOVERNMENT (NASINU)
(INTERIM) COMMITTEE and 2 Ors**

HIGH COURT — CIVIL JURISDICTION

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SCOTT J

23 January 2002

10 [2002] FJHC 35

Local government — rates — power of persons appointed by minister to make and levy general rates — High Court Rules 1988 O 18 r 18 — Local Government Act (Cap 125) ss 5(1), 5(2), 9, 10, 11, 12, 13, 14, 58 — Local Government (Nasinu) (Interim Committee) (Amendment) Regulations 2001.

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Statutes — interpretation — Local Government Act (Cap 125) s 5(2).

The Minister for Local Government declared Nasinu to be a town simultaneous with the appointment of an interim committee. The Minister then made regulations as an interim measure to provide for the first election of a council and that the committee was entitled to make and levy a general rate.

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Held — (1) While there is clearly an urgent need for rates to be levied in Nasinu, the inability of the office of the supervisor of elections to arrange for the election of a council to take place is not a valid or acceptable reason for straining the meaning of the Act in order to justify imposing on the residents of Nasinu a rate which has not been properly levied by a duly elected council.

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(2) “The Council”, as defined does not include an Interim Committee appointed under s 5(2) of the Local Government Act. An act may not be altered by a regulation. Application dismissed.

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Cases referred to

Inland Revenue Commissioners v Wolfson [1949] 1 All ER 865; *Russell v Scott* [1948] AC 422, cited.

Nokes v Doncaster Amalgamated Collieries Ltd [1940] AC 1014, considered.

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R. P. Singh for the Plaintiffs

S. Sharma for the Defendants

Decision

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Scott J. This is an application by the Defendants brought under the provisions of RHC O 18 r 18. The central issue in this case is the proper interpretation to be given to s 5(2) of the Local Government Act (Cap 125) and the question to be answered is whether the section gives power to persons appointed by the Minister to make and levy a general rate.

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In December 1999 the then Minister for Local Government declared Nasinu to be a town. He was entitled to make this declaration under s 5(1) of the Act. The same month an Interim Committee was appointed pursuant to s 5(2) for a period of 6 months commencing 1 January 2000.

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In May 2000 there was an attempted coup d’état followed by general upheaval. Eventually there was a general election. I was told from the bar that for these reasons the Office of the Supervisor of Elections has not been able to arrange

elections for the new Council as is required by ss 9–14 of the Act. The Local Government of Nasinu has remained in the hands of the interim committee whose terms of appointment have several times been extended for a further 6 months by order of the Minister purporting to exercise powers conferred on him by the proviso to s 5(2).

On 1 May 2001 the Minister made the Local Government (Nasinu) (Interim Committee) (Amendment) Regulations 2001 (see Ex 7 to the supporting affidavit of Bhaksharan Nair. The Defendants’ case is that these regulations made as:

10 *Necessary or expedient as an interim measure to provide for the first election of the Council ... and for the government of the town including the provision of services until a council is duly appointed under the provisions of (the) Act.* (Emphasis added)

specifically extend to Pt IX of the Act and that therefore the Committee is entitled to levy a general rate in the town.

15 Mr Sharma suggested that the committee would be unable to “provide services” unless those services were paid for. The only way they could reasonably be paid for was by way of the levy of a rate. Mr Sharma told me (as I myself know) that the condition of the roads and verges in Nasinu leaves much to be desired. There is an urgent need for the whole area to be tidied up.
20 Mr Sharma however told me that the residents were refusing to pay the rate fixed by the Committee and meanwhile the election of a council (and several other elections also delayed) could not be held until later in the year.

In answer, Mr Singh suggested that the Committee should be funded directly by the taxpayer until a council can be elected. He described the present position as undemocratic.

When construing a statute it is useful to bear in mind that:

30 *If the choice is between two interpretations, the narrower of which will fail to achieve the manifest purpose of the legislation we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.*

(*Nokes v Doncaster Amalgamated Collieries Ltd* [1940] AC 1014.)

Adopting such an approach would tend to favour the Defendants since an interim committee without funds can hardly “provide services”.

35 There is however another important consideration which is that statutes which impose pecuniary burdens must be construed strictly. It is a well settled rule of law that charges upon the citizen must be imposed by clear and unambiguous language (*Russell v Scott* [1948] AC 422) and that the language of the statute
40 must not be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words (*Inland Revenue Commissioners v Wolfson* [1949] 1 All ER 865).

As I see it, the scheme of the Act in so far as it extends to the creation of new municipalities and the election of councils is quite clear. The principal function
45 of the Interim Committee is to help to oversee the election of the first council for the new town. The election is supposed to take place not more than 6 months after the Committee is appointed. How the Committee is to be funded is not laid out in the Act but the Act does specifically deal with the way in which rates are to be levied.

50 Under s 58 of the Act:

A council may from time to time make and levy a general rate ... (Emphasis added).

“A Council” means:

The Council of a city, a town or a district. (s 2 of the Act).

“The Council”, as defined does not include an Interim Committee appointed under s 5(2). It is trite that an Act may not be altered by a Regulation.

While there is clearly an urgent need for rates to be levied in Nasinu I am satisfied that the inability of the Office of the Supervisor of Elections to arrange for the election of a council to take place is not a valid or acceptable reason for straining the meaning of the Act in order to justify imposing on the residents of Nasinu a rate which has not been properly levied by a duly elected council.

The application fails and is dismissed.

Application dismissed.

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