

IN THE SUPREME COURT OF FIJI

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Civil Jurisdiction

Civil Action No. 591 of 1981

Between:

KRISHNA NAND CHAUDHARY
s/o Indar Jeet Chaudhary
of Nausori, Fiji,
Managing Director

Plaintiff

and

1. BERENADO VUNIBOBO of Suva
Civil Servant
2. ATTORNEY GENERAL OF FIJI

Defendants

Mr. K.C. Ramrakha for the Plaintiff
Dr. Ajit Singh for the Defendants

J U D G M E N T

This is an action for slander. The plaintiff is a former Mayor of Nausori. The first defendant is a civil servant who was appointed by the Minister of Urban Development, Housing and Social Welfare as Chairman of a Committee of Inquiry set up to investigate the affairs of the Nausori Town Council. On the 19th May, 1981 the plaintiff was giving evidence at the inquiry and he was being questioned by the members of the Committee. In the course of the proceedings the first defendant used words which impute dishonesty to the plaintiff and which were unbecomingly defamatory.

Counsel for the parties took the commendable course of agreeing to the facts, placing before the Court certain exhibits and settling the issue to be determined. The issue to be tried is whether the statement was made by the first defendant on an occasion of privilege.

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The Committee of Inquiry was appointed by the Minister on the 7th April, 1981. Notice was given in the Fiji Royal Gazette on Friday 10th April (Vol. 108 No.16). The first defendant was named as Chairman and the other members of the Committee were Messrs J.R. Flower and Vishnu Prasad. The Committee was enjoined to investigate the affairs of the Nausori Town Council and to report to the Minister whether in the opinion of the Committee -

- (a) the revenues of the Council are being used in the best interests of the municipality as a whole;
- (b) the administration of the Council is wasteful, inefficient or corrupt; or
- (c) the Council has failed to act in conformity with any of the provisions of the Act. "

The power to set up the Committee of Inquiry was made under sections 130 and 131 of the Local Government Act, Cap. 125 (as amended by Act 26 of 1980).

Section 131 under which the Minister acted reads :

"131. (1) If, after consideration of a report submitted to him under section 130, the Minister is satisfied that there is reason to believe that a council is in default on the grounds that the revenues of the council are not being used in the best interests of the municipality as a whole or that the administration of the council is inefficient, wasteful or corrupt or that the council has in any other way failed to act in conformity with the provisions of this Act, he may appoint a committee of inquiry to investigate the affairs of the council.

(2) A committee of inquiry shall consist of not less than two but not more than five members one of whom shall be nominated by the Minister as chairman.

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(3) For the purpose of carrying out its functions under this section a committee of inquiry shall have the same powers and authority to summon witnesses and to admit and receive evidence as are conferred upon the commissioners of a Commission of Inquiry by section 9 of the Commission of Inquiry Act and the provisions of sections 14 and 17 of that Act shall apply mutatis mutandis in relation to the powers and authority vested in the committee of inquiry under this subsection.

(4) A council shall be entitled to be heard at any inquiry held under the provisions of this section and may be represented by any member or officer of the council authorised by the council for that purpose or by a barrister and solicitor.

(5) At the conclusion of the inquiry the committee of inquiry shall submit a written report of its findings to the Minister. "

Important consequences may follow a report made by a committee including, inter alia, the dissolution of the Council (section 131A).

The provisions of the Commission of Inquiry Act, Cap. 47, applied by subsection (3) above include the power to summon witnesses, to admit evidence which would be inadmissible in civil and criminal proceedings, to admit or exclude the press from meetings etc. The applied provisions impose penalties for refusing to give evidence and allow for the payment of the expenses of witnesses.

The Local Government (Inquiries) Regulations made by the Minister under section 123 of the Act, which are to be found in the Laws of Fiji, Volume VII, Cap. 125 at 130-132, set out such matters as the composition of committees, the representation of councils subject to such inquiries by counsel and other matters.

An inquiry may be held in public or in camera.

Regulation 6 confers a privilege from disclosure on the reports, statements "or other communication or record of any meeting" while regulation 7 reads :

"7. No member of a committee shall be liable to any action or suit for any act done or omitted to be done in the bona fide execution of his duties under these regulations. "

Mr. Ramrakha submitted that the making of this regulation was ultra vires the power conferred upon the Minister by section 123 of the Act (as amended). That section contains the usual general provision empowering the Minister to make regulations "prescribing anything which may be prescribed under any of the provisions of this Act" and "generally for the better carrying out of any of the provisions of this Act".

Mr. Ramrakha submitted that the Minister had no power to protect the members of the Committee from the consequences of their actions if they incurred a liability to be sued at common law. This submission may be well founded, but, I do not find it necessary to decide the point as Dr. Singh for the defendants argued that the regulation is nothing more than a re-statement of existing law. He submitted that the absolute privilege which the defendants claim arises, not from regulation 7, but, from the nature and purpose of the proceedings during the course of which the defamatory words were published.

The first defendant was at the relevant time the Chairman of the Committee which had a duty to investigate the affairs of the Nausori Town Council. The Committee had wide powers to summon witnesses and hear evidence. The Nausori Town Council had the right to be represented by counsel who could cross-examine witnesses.

The Committee was required to submit a written report of its findings to the Minister. The Minister was obliged to consider those findings, and on such consideration he had powers under section 131A of the Local Government Act to issue directions, reduce the grant payable to the Council or to dissolve it and appoint persons to administer the municipality. The Minister could not

exercise any of these powers if the inquiry did not first take place.

The absolute privilege against actions for libel or slander which is enjoyed by the Judges of this Court while acting in their judicial capacity is based upon considerations of public policy and the preservation of judicial independence.

It was said by Lord Esher, M.R. in Anderson v. Gorrie (1895) 1 Q.B. 668 at 670 :

" If such an action would lie the Judges would lose their independence, ... the absolute freedom and independence of the Judges is necessary for the administration of justice. "

In Fray v. Blackburn 3 B & S 576 at 578 Crompton J. said :

" The public are deeply interested in this rule which indeed exists for their benefit, and was established in order to secure the independence of the Judges, and prevent their being harassed by vexatious actions. "

The protection afforded to Judges of a Court Record has been extended to members of other tribunals no doubt for the same reasons as apply to Judges.

Sankey J. said in Copartnership Farms v. Harvey-Smith (1918) 2 K.B. 405 at 408 :

"That principle I conceive to be this, that where a tribunal is a Court of justice, or a body acting in a manner similar to that in which a Court of justice acts, any statement made by a member thereof is absolutely privileged and no action can be brought thereon. This absolute privilege extends also to advocates, litigants, and witnesses, and the reason which has induced our law to adopt that principle is, if I may be allowed to say so, best stated by Channell J. in Bottomley v. Brougham

[1908] 1 K.B. 584, 587, 'the reason being that it is desirable that persons who occupy certain positions as judges, as advocates, or as litigants should be perfectly free and independent, and, to secure their independence, that their acts and words should not be brought before tribunals for inquiry into them merely on the allegation that they are malicious.' The law was originally laid down as far back as the year 1772 by Lord Mansfield in the case of Rex v. Skinner (1772) Lofft, 55 and has been acted upon ever since. When, therefore, a question of this character is litigated it appears to me that the real point which falls for decision is whether the tribunal on the occasion is a tribunal which acts in a manner similar to that in which Courts of justice act. The rule has been applied to the case of a witness giving evidence in Dawkins v. Lord Rokeby L.R. 8 Q.B. 255, which was decided in 1873. It has been applied to the case of an advocate conducting a case before petty sessions in Munster v. Lamb 11 Q.B.D. 588; to the case of an application before a justice of the peace under the Lunacy Act, 1890, in Hodson v. Pare [1899] 1 Q.B. 455; to the case of a commission issued by the bishop of a diocese under the Pluralities Act, 1835, to inquire into the conduct of an incumbent, in Barratt v. Mearns [1905] 1 K.B. 504; and has also been applied in the case to which I have already referred of Bottomley v. Brougham [1908] 1 K.B. 584, 587 to the report of an official receiver under the Companies (Winding up) Act, 1890. All these cases have been cited to me, but they are merely instances of the application of the general rule; on the other hand two cases have been cited to which the rule did not apply, one Royal Aquarium Society v. Parkinson [1892] 1 Q.B. 431, where it was held that a meeting of the London County Council to consider licences for music and dancing was not a meeting which I may describe shortly as a judicial tribunal within the meaning of the rule, and the other Attwood v. Chapman [1914] 3 K.B. 275, where it was decided by Avory J. that a meeting of the licensing justices was not a tribunal of this character, and that consequently there was no absolute privilege in the case of a person who gave notice of his intention to oppose the application by the plaintiff for a licence. The question which I have to decide is, therefore, under which category does this local tribunal fall? Does it come within that which I may describe shortly as a judicial tribunal, or does it come within a merely administrative tribunal? For that purpose it is necessary to examine the constitution of the tribunal somewhat narrowly. "

I am indebted to Dr. Ajit Singh for providing me with a great number of authorities in support of his submission that having regard to the nature of the question to be determined by the Committee of which the first defendant was Chairman, its powers and procedure and the consequences that could arise from its report, the words were spoken on an occasion of absolute privilege. It is unnecessary to refer to all of them.

The Committee was established by the authority of a statute. It was concerned with a matter in which the public was interested. Therefore it was of importance that the whole truth should be elicited even at the risk that an injury inflicted maliciously might go unredressed. (See the remarks of Devlin L.J. In Lincoln v. Daniels (1962) 1 Q.B. 237 at 254).

The Committee's procedure in the conduct of its inquiry was regulated by section 131(3) and (4) of the Act and the regulation made under section 123. It would be difficult to distinguish the procedure applied from that followed in a court of law. (Trapp v. Mackie (1979) 1 W.L.R. 377).

The object of the inquiry was to enable the Minister to decide what was to be done to remedy any defects found to affect the conduct of the affairs of the Nausori Town Council. They were "an essential step towards an effective decision" in the words of Lord Fraser in Trapp v. Mackie (supra) at 389.

A great weight of authority supports the view that the first defendant as Chairman of the Committee was protected by absolute privilege and that no action for slander can lie against him for the words spoken even if they were uttered maliciously or recklessly. The public interest demands that the members of a committee such as this, charged with a public duty to investigate the affairs of a municipality, should be able to do their work in complete independence and free from fear. They

should not be inhibited by any apprehension that if they ask a question or make a remark in the course of their inquiries, they may be liable to an action in damages.

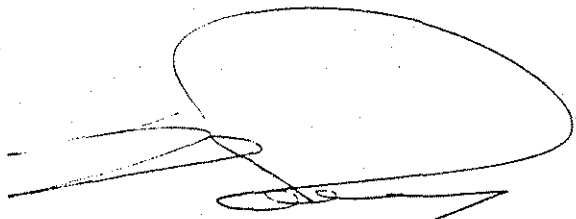
The second defendant was joined in these proceedings because it was alleged that a Minister of Crown had set up the inquiry and the first defendant was acting as an agent of the Crown.

The right to sue the crown in tort was established by the Crown Proceedings Act, Cap. 24. However, section 3(5) of the Act excludes liability "in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial nature vested in him

As the proceedings of the Committee were subject to absolute privilege because of their judicial nature it follows that no action lies against the Crown in this instance.

In an action for libel or slander general damages are at large and it is not necessary to ask for any specific sum. In this case the plaintiff prayed for \$100,000 damages. Such a claim was extravagantly out of proportion to any possible injury to his reputation which the plaintiff may have suffered. The plaintiff's case could not have been advanced by such an exaggerated claim, even if he had been successful.

This action is dismissed with costs.



(F.X. Rooney)

JUDGE

Suva,
27th May, 1985