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PAPUA NEW GUINEA

IN THE NATIONAL) CORAM: KAPI, J.
)
COURT OF JUSTICE) Thursday,
 18th June, 1981.

BETWEEN: MAPUN PAPOL
Petitioner

AND: ANTONY TEMO
First Respondent

AND: THE ELECTORAL COMMISSION
Second Respondent

Election petition - Southern Highlands Provincial
Assembly Elections.

Sections 184 and 186 of the Provincial Government
(Electoral Provisions) Regulation 1977 (as
applied to Southern Highlands) considered.

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June 17, 18. MENDI,
SOUTHERN
HIGHLANDS
PROVINCE

KAPI, J.

The petitioner is the losing candidate of the Upper Mendi Constituency in the Southern Highlands Provincial Assembly elections. The first respondent is the winning candidate and the second respondent was added, by leave of the court, as a party to this petition under s.187 of the Provincial Government (Electoral Provisions) Regulation 1977 (as applied). The petitioner and the first respondent appeared in person without legal representation and Mr Gregory appeared by leave of the court on behalf of the Electoral Commission under s.198 of the Provincial Government (Electoral Provisions) Regulation 1977 (as applied).

The petition is brought under Part 18 of the Provincial Government (Electoral Provisions) Regulation 1977. This regulation was made by the Head of State under the Provincial Government (Preparatory Arrangements) Act, 1974. This regulation applies to the Southern Highlands under the Provincial legislation namely Provincial Elections Act, 1979 with the necessary modifications set out under this Act. There is a further amendment of this Provincial Act which in fact repeals s.109 of the Provincial Government (Electoral Provisions) Regulation 1977. The law applicable in this instance is to be found in the regulation and the Acts referred to above. All of this law is now conveniently compiled by the Electoral Commission which is entitled Electoral Law for Provincial Government Elections for the

Southern Highlands. For convenience I shall refer to the whole of this law as the Provincial Government (Electoral Provisions) Regulation 1977 (as applied).

At the outset of the hearing certain preliminary matters were raised by counsel for the second respondent and it is convenient to deal with these matters first.

The first point raised was that the petition filed herein does not comply with s.184(d) of the Provincial Government (Electoral Provisions) Regulation 1977 (as applied) and according to the provisions of s.186 the petition cannot be heard. S.184 is in these terms:

"184. - REQUISITES OF PETITION.

A petition shall -

- (a) set out the facts relied on to invalidate the election or return; and
- (b) specify the relief to which the petitioner claims to be entitled; and
- (c) be signed by a candidate at the election in dispute or by a person who was qualified to vote at the election or by the Electoral Commissioner; and
- (d) be attested by two witnesses whose occupations and addresses are stated; and
- (e) be filed in the Registry of the National Court at Port Moresby within two months after the declaration of the result of the election in accordance with Section 153(1) (a)."

Section 186 is in these terms:

"186. - NO PROCEEDINGS UNLESS REQUISITES COMPLIED WITH.

Proceedings shall not be had on a petition unless the requirements of Sections 184 and 185 are complied with."

A second point was raised but this relates to the merits of the case. This second point was raised in an attempt to determine the merits of this case without considering the preliminary point raised above. However this second point cannot be decisively determined without proceeding to hear the evidence and the full arguments on the nature and the scope of the grounds upon which the petition is based. Whether or not this court should go on to decide the second point on its merits depends on the ruling raised on the first preliminary point. It is necessary to decide the first point first.

I considered that a ruling on this point would involve important points of law and could be fatal to the petitioner. I indicated to him that I was willing to stand over the arguments on this point to a later date until he obtained proper legal representation. He indicated that he could afford a private lawyer.

However, after some discussion and consideration he indicated that the matter should proceed and the point be determined without legal representation. I adjourned the matter for two hours so that Mr Gregory could give further research to the point.

Part 18 of the Provincial Government (Electoral Provisions) Regulation 1977 (as applied) provides for disputed elections. A person who wishes to contest an election result may file a petition in the National Court. A petition is instituted by complying with the requirements of s.184 of the Regulation, and s.185 of the Regulation which requires that at the time of filing the petition the petitioner shall deposit the sum of K200 as security for costs. S.186 of the Regulation is significant because it requires that the requisites in ss. 184 and 185 are conditions precedent to instituting a proceeding by way of petition in the National Court. The effect of this provision is that unless the requirements are complied with there can be no proceedings in the National Court as a matter of law. In my view this is clear from the provision itself. It is also clear that all of the requirements in ss. 184 and 185 must be complied with. I think these provisions were intended to make a definite cut off point after which there would not be any questions about the result of elections. It may be questionable that these provisions are too technical for many Papua New Guineans who would not have access to a lawyer. However, a court of law has nothing to do with the reasonableness or unreasonableness of a provision of a statute. If the statute has clearly expressed its intentions no court can disregard it. See Cooke v. The Charles A. Vogeler Company (1).

The next question that arises is whether this court has power to dispense with any of these requirements or power to extend the two months period in which to comply with the requirements. The method of disputing elections is a right given by statute. This is a statutory creature and if any such power is given it must be found in the provisions of the applicable legislation. There is no such power given under the applicable legislation. The closest provision I can find in relation to this point is s.193 of the Regulation (as applied) and it is in the following terms:

"193. - REAL JUSTICE TO BE OBSERVED.

The National Court shall be guided by the substantial merits and good conscience of each case without regard to legal forms or technicalities, or whether the evidence before it is in accordance with the law of evidence or not."

However, in my view, this provision is not applicable in considering the preliminary point raised here. This provision becomes

(1) (1901) A.C. 102 at p. 107

relevant only when it has been determined that there is a petition instituted pursuant to ss. 184 and 185 of the Regulation (as applied). This provision becomes applicable when the court is determining the merits of the case and all matters connected with the determination of the merit. To read s.193 of the Regulation as applicable to this preliminary point is to bring it in conflict with the intentions of s.186. These two provisions appear in the same division. I do not think they are in conflict. It is a well settled principle of interpretation of statute that an act should be interpreted as a whole so that as far as possible the clauses are in harmony with one another; see Maxwell on The Interpretation of Statutes, 12th Ed., Ch. 9 'Construction to Avoid Collision with other Provisions'. SS. 186 and 193 deal with different subject matters.

Can the petitioner find any assistance in s.155(4) of the Constitution? This section was interpreted in the recent case of Avia Ahi v. The State (2). This provision was interpreted in relation to the question of whether a convicted person has a right to make an application for leave to appeal beyond the 40 days limit set out by s.27 of the Supreme Court Act. The majority of the court ruled that s.155(4) of the Constitution could not be interpreted in a way which would give the court the power to override the provisions of an Act passed by the Parliament. This would be giving a power to the court greater than the unlimited legislative power given to the Parliament by the Constitution. Similarly, for this court to give itself the power under s.155(4) of the Constitution would be, in effect, amending the Regulation and thereby giving the National Court the power to dispense with this requirement. This provision does not give this court the power either to dispense with the requirements or to extend the two month period.

Schedule 1.16 of the Constitution was raised but in my view this does not apply here as this provision is only applicable where a constitutional law sets a time limit.

Having regard to the matters I have discussed, I have no discretion in the matter and must dismiss the petition in accordance with the dictates of s.186 of the Regulation (as applied).

Petitioner : In person
First Respondent : In person
Solicitor for the second
Respondent : Principal Legal Adviser
Counsel : K.N. Gregory