

IN THE CONSTITUTIONAL COURT OF SEYCHELLES

**[Corum: M. BURHAN. J. – (Presiding), Lady F.ROBINSON.J. and
C.MCKEE.J.]**

CP No:04/2015

[2015] SCCC 5

ELECTORAL COMMISSION

Petitioner

versus

THE ATTORNEY GENERAL

First Respondent

Heard: 6 October 2015

Counsel: Ms. Samantha Aglae Attorney at Law for petitioner

Hon: Mr. Ronny Govinden Attorney General with Mr. Ananth
Subramanian Asst. Principal State Counsel for respondent

Delivered: 13 October 2015

JUDGMENT OF COURT

[1] The prayer of the petitioner namely the Electoral Commission reads as follows:

- 1) *for a ruling on the interpretation of Section 8 (1A) of the Elections (Amendment) Act in the light of the provisions of article 24 of the Constitution.*
- 2) *for a ruling as to whether there is a contravention of article 24 of the Constitution by section 8(1A) of the Elections (Amendment) Act.*
- 3) *make any such orders or rulings the Court deems appropriate.*

[2] The Hon Attorney General was included as a respondent in terms of Rule 3 (3) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules and it was accepted that he stood as amicus curiae.

[3] The respondent the Hon Attorney General, filed his response seeking the following declaration:

- a) *that section 8(1A) of the Elections (Amendment) Act is constitutional.*
- b) *to dismiss the petition*
- c) *to make such orders that the court shall deem fit.*

[4] Both parties made oral submissions during which the Hon Attorney General informed court, that as article 24 was within the Seychellois Charter of Fundamental Human Rights and Freedoms, the petitioner had come to court under article 46 (1) of the Constitution of the Republic of Seychelles (hereinafter referred to as the Constitution).

[5] Article 46 (1) of the Constitution reads as follows:

A person who claims that a provision of this Charter has been or is likely to be contravened in relation to the person by any law, act or omission may, subject to this article, apply to the Constitutional Court for redress.

[6] It is apparent on a reading of article 46(1) that it refers to two types of contraventions. Contraventions that have taken place and contraventions that may take place.

[7] In this instant case on perusal of the wording of prayer (2) of the petition, we observe it seeks, “a ruling as to *whether* (emphasis added) there is a contravention of article 24 of the Constitution by section 8(1A) of the Elections (Amendment) Act”. We see no cogent challenge in the prayer of the petitioner to declare any particular law unconstitutional, other than a doubt being expressed as to whether section 8(1A) of the Elections (Amendment) Act is constitutional. Therefore this application is based, more on the basis of seeking an opinion on the interpretation of a section in an enactment, rather than seeking redress or relief by claiming that a provision of this Charter has been contravened in relation to the petitioner, by the said law as warranted by article 46 (1) of the Constitution.

[8] It would be pertinent at this stage to refer to article 87 (1) of the Constitution and article 87 (5) which read as follows:

Article 87 (1),

Where the President is of the opinion that a Bill presented for assent infringes or may infringe this Constitution, the President shall not assent to the Bill and, as soon as is practicable within fourteen days of the presentation of the Bill-

a) advise the Speaker accordingly; and

b) refer the Bill to the Constitutional Court for a decision in this respect

Article 87 (5),

Where the Constitutional Court decides that a Bill referred to it under clause (1) infringes this Constitution, the Court shall forthwith inform the President and the Speaker in writing accordingly and the President shall return the Bill to the Speaker.

[9] It appears therefore, that it is the President of the Republic who can seek an opinion from the Constitutional Court as to whether a Bill infringes or may infringe the Constitution and the Constitutional Court is empowered under article 87 (5) to act on the referral and decide on whether it infringes the Constitution.

[10] Further article 47 (7) of the Constitution read as follows:

Where in the course of any proceedings in any court, other than the Constitutional Court or the Court of Appeal , a question arises with regard to whether there has been or is likely to be a contravention of the Charter, the court shall, if it is satisfied that the question is not frivolous or vexatious or has already been the subject of a decision of the Constitutional Court or the Court of Appeal, immediately adjourn the proceedings and refer the question for determination by the Constitutional Court.

However this article does not apply to the facts of this case.

[11] The petitioner, the Electoral Commission in our view, could proceed on the presumption of constitutionality of an enactment and the burden is on the person who challenges the law, to show there has been a transgression of constitutional principles. The language of a statute should be construed in the light of the presumption of constitutionality (***A.G of Gambia v. MomoduJobe (1984) A.C. 689 at 702.***)

[12] We are of the view that to permit applications seeking opinions and interpretations of sections of law on this basis would open the floodgates for same and inundate the Constitutional court with such applications. For the aforementioned reasons,we dismiss the petition. No order is made in respect of costs.

Signed, dated and delivered at Ile du Port on 13 October 2015

M Burhan
Judge

Lady F.Robinson
Judge

C.McKee
Judge

