

IN THE SUPREME COURT OF SEYCHELLES

CELINE FRANCIS

PETITIONER

VERSUS

SEYCHELLES INTERNATIONAL BUSINESS

AUTHORITY a Statutory Corporation enacted
Under the Seychelles International Business
Authority Act 1994

RESPONDENT

Civil Side No 58 of 2009

Mr. K. B. Shah for the Petitioner

Mr. Francis Chang Sam for the Respondent

JUDGMENT

Perera CJ

This is an application for a writ of certiorari to quash a decision of the Respondent conveyed by letter dated 12th February 2009, whereby the Petitioner's status as "*fit and proper*" to be a director of a Licensed Corporate Service Provider, was revoked.

The Facts

AAA International Services Ltd obtained an International Corporate Service Provider Licence (ICSP) on 14th September 2006. The first Directors were Mr. Tite Morin and Mr. Jerry Morin. For present purposes, it is not in dispute that Mr. Marco Francis and

Ms. Celine Francis (the Petitioner) were directors when the present matter arose.

By letter dated 19th May 2008, Mr. Marco Francis, the Managing Director of AAA International Services Ltd was informed that –

“The authority is pleased to inform you that based on the documents and subsequent interview with Ms. Celine Francis on 16th May 2008, Ms. C. Francis has been found to be “fit and proper” to act as Director for the International Corporate Service Provider AAA International Services Ltd.

However, due to Ms. Francis having limited experience in the offshore industry, we strongly recommend that she attends future training sessions organized by SIBA and other relevant authorities”

.....”

Subsequently Mr. Marco Francis resigned from the Company as Director on 4th November 2008, and the defendant, by letter dated 1st December 2008 accepted Ms. Selma Francis as “*fit and proper*” to act as the Manager of the Company. However, there respondent, by letter dated 19th December 2008 (R4) sought from the Petitioner any relevant documentation, resolutions or evidence that Mr. Marco Francis was no longer a shareholder of the Company and had resigned as a Director. The respondent also queried whether Mr. Francis had at anytime misrepresented himself to any of the Company clients. The letter of resignation of Mr. Francis was sent by e-mail on 7th January 2009 although, as evidenced from the letter of 19th December 2008, the respondent was already aware of that. The respondent was also informed that there was no evidence that Mr. Francis, while being Director of AAA International Services Ltd, misrepresented himself to any of the clients.

The present matter however appears to have originated from a meeting of 28th January 2009 which the respondent had with Ms. Celine Francis and Ms Selma Francis in their capacities as Director and Manager, respectively. At that meeting, Ms. Celine Francis, allegedly made certain allegations against SIBA, its Chairman and its Managing Director. By letter dated 30th January 2009 (cf1) the respondent informed the Petitioner's Company, *inter alia* as follows-

"In view of what transpired during the meeting of 28th January 2009 whereby many allegations and accusations were made against its employees by Ms Celine Francis to the extent of stating that SIBA employees were "bastards", the authority has therefore deemed it appropriate at this juncture to review the "fit and proper" of Ms. Celine Francis as Director for a licensed International Corporate Service Provider as required by law".

Reference was made to paragraph 3 (a) of Schedule 3 of the International Corporate Service Providers Act 2003, which stated that in determining whether a person is fit and proper, regard shall be had to, *"the person's probity, competence, experience, and soundness of judgment for fulfilling the responsibilities of the relevant position"*.

Attention was also drawn to paragraph 3 of Schedule 3 of the said Act which states that *"all Directors and Members of Managerial Staff of a licensee shall be and remain fit and proper persons as determined by the authority"*.

The respondent further stated –

"We like to inform you that the outcome of the review is subject to the

following-

1. *A written retraction by Ms. Celine Francis of the allegations and accusations made towards SIBA, its Chairman, its Managing Director and its employees, and*

A formal written apology with regards to allegations and accusations made from both Ms. Celine Francis and AAA International Services Ltd.”

The Petitioner's Company was given time till 4th February 2009 to comply with 1 and 2 above (cf2)

By letter dated 4th February 2009 Ms. Celine Francis denied that she stated that “SIBA employees are “bastards”. In fact such a statement has not been recorded in the minutes of the meeting of 28th January 2009 on file. Be that as it may, she maintained her right to express her opinions and concerns, and in that respect queried the right of the respondent to “review” the “fit and proper” status which had been granted to her.

The decision of the respondent sought to be quashed arose as a corollary to that matter. The respondent by letter dated 12th February 2009 decided to determine that the Petitioner was “no longer fit and proper to be a Director” of the ICSP. Further the respondent pursued the query about the academic qualifications of Mr. Marco Francis and stated that in the absence of proof it would consider that a false declaration had been made in the personal questionnaire, and consequently necessary action could be taken against the licensee under Section 15(1) (g) of the Act. That decision was further clarified by SIBA in a letter dated 20th February 2009 wherein it stated that the Petitioner, as the other Director, was also requested to furnish proof regarding the degree qualification of Mr. Marco Francis, but that she failed to do so, and instead

made further allegations and accusations against the respondent in several e-mail correspondences.

The letter of 12th February 2009 was replied by Mr. K.B. Shah, Counsel for the Petitioner on 26th February 2009. In that letter, the following points were raised –

1. *The respondent, at no stage had denied the validity of the complaints made by the Petitioner.*
2. *Mr. Marco Francis resigned on 4th November 2008. If there was anything pending from him, the respondent ought to have exercised the right under Section 6(3) to object to the change in Directorship within one month thereof. Instead the change was accepted.*
3. *There is no law which entails a disqualification of being “fit and proper” to be a Director for complaining or criticizing.*

Prior to that, the respondent had met with the Petitioner on 23rd February 2009 (cf4) and followed it up with the following letter to the Petitioner.

“Re: Fit and proper status

Following our meeting of this morning were (sic) we have embraced the necessity to work congenially in our mutual benefits.

The authority would re-instate your fit and proper status for the Directorship of the AAA Corporate Service Office, subject to a letter of

apology on the pronouncement the SIBA staff were acting like "bastards".

I thank you for your corporation and understanding and look forward to an amicably (sic) resolution to the matter".

The Law

Admittedly, the Petitioner was found by the authority to be "*fit and proper*" to act as Director of the ICSP upon consideration of documents produced and after an interview. Paragraph 3 of Schedule 3 of the Act gives the authority to determine whether Directors and Managerial Staff of a licensee "*shall be and remain fit and proper*". However a revocation of a status already bestowed should be done judiciously and not capriciously. Section 2(1) of the Act provides that the term "*fit and proper*" in relation to any person means that the person satisfied the criteria set out in paragraph 3 of Schedule 3. It is clear that such criteria are based on matters that ensure the efficiency and the professional integrity of the licensed Corporate Service Provider in particular and the Seychelles International Business regime in general. The discretion vested in the authority is to safeguard both those interests. The correspondence produced in the case, including the record maintained by SIBA on this matter disclose a personal or subjective element, being involved in an otherwise statutory exercise of a discretion. Statutory power must be exercised bona fide. As Basu, on "*administrative law*" states,

"Were a power is used for more than one purpose, one of which is authorized and the other unauthorized, the validity of the Act will be determined by the "Dominant" purpose, which the Court has to ascertain".

In the present matter, the respondent queried about the particulars furnished by Mr Marco Francis in the “personal questionnaire form for Directors, Members of Managerial Staff holding significant powers and responsibilities for activities in connection with the company applying for a licence under the International Corporate Service Providers Act, 2003”. That he attended the University of Durham and obtained a degree in law, had been one of the considerations in granting him “*fit and proper*” status. Section 3(4) provides that the authority, before granting a licence, ascertain that –

1. *The Applicant is a fit and proper person*

Each Director and Manager of the Applicant is a fit and proper person.

The Applicant has the necessary financial standing.

Hence “*fit and proper*” status has to be ascertained in respect of an Applicant Company to be licenced, as well as the Directors and Managers of that Licensee Company. Under Section 15(1) (g), the authority can revoke the licence granted, if the licensee had furnished false or misleading information, in the form applying for licence under Section 3(2) (b). The form filled by Mr. Marco Francis was a personal questionnaire, and hence if any false or misleading information had been given therein, the authority could have revoked his “*fit and proper*” status as Director/Manager of the Company. The Petitioner, as the other Director had no responsibility for any personal default on the part of Mr. Francis.

In the case of **Barnsley Metropolitan Bourough Council, Ex Parte Hook** (1976) 3. All E.R. 452 the Applicant was a trader who had traded from a stall in the Market for six years without complaint. One evening, after the Market had closed, and the toilets were locked, he went to a side street and urinated there. A Council worker saw that and reported to a Security Officer who reprimanded him. The Applicant used abusive

language against the Manager and the Chairman of the amenities services committee who decided that the staff should be protected from such abuse. The same day he was banned from trading in the market. It was the abuse that precipitated that action.

Lord Denning MR held *inter alia* that as long as the Applicant paid stallage, he had a right to trade in the market. It was accordingly held that if the Applicant had misbehaved, he could have been prosecuted under the bye laws of the Council and a small fine imposed, and that the banning from trading was *excessive and out of proportion to the occasion*. Hence, the Court issued a writ of certiorari quashing that decision.

Similarly, in the instant case, the authority could have considered an appropriate judicial remedy against the Petitioner if they felt aggrieved by any allegations or accusations made against them. Instead, by letter dated 30th January 2009 they informed the Company that the Petitioner's "*fit and proper*" status would be "*reviewed*" in view of those allegations and accusations and calling the SIBA employees "*bastards*". In the same letter they stated that the "outcome of that review (was) subject to a formal written retraction by the Petitioner and the Company". Further by letter dated 23rd February 2009, the authority positively stated that the "*fit and proper*" status could be reinstated if a letter of apology was given by the Petitioner. Hence the "*Dominant purpose*" of the decision to revoke the "*fit and proper*" status of the Petitioner was her failure to apologise for those statements she allegedly made. The insistence of an apology shows that the revocation order was based, not on a bona fide exercise of a statutory discretion. That decision was coloured by the alleged statements made by the Petitioner at the meeting of 28th January 2009, and hence was an ultra vires exercise of a statutory power, as it was based on a colourable consideration. A writ of certiorari is accordingly issued quashing the decision of S.I.B.A conveyed by letter dated 12th

February 2009 revoking the “*fit and proper*” status of the Petitioner.

Order made accordingly.

The Petitioner will be entitled to costs.

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A.R. PERERA
CHIEF JUSTICE
(Pursuant to Article 132(3) of the Constitution)

Dated this 8th day of June 2009