

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC87/2016

[2016] SCSC 617

LINYON DEMOKRATIK SESELWA
REPRESENTED BY ROGER MANCIENNE

Petitioner

versus

THE ELECTORAL COMMISSION
REPRESENTED BY THE ITS CHAIRMAN

Respondent

Heard: 25 August 2016
Counsel: Mr. A. Derjacques for petitioner
Ms Aglae for respondent
Delivered: 25 August 2016

JUDGMENT

D. Karunakaran, J

[1] This is a petition for “Judicial Review” of an administrative decision of the respondent, the Electoral Commission (EC), in registering a political party in the name of “LSD” (Lafors Sosyal Demokratik) under the provisions of the Registration of the Political Parties (Registration and Regulation) Act. The petitioner, “LDS” (Linyon Demokratik Seselwa), an existing, recognised and registered political party is challenging the said

decision hereinafter called the impugned decision of the EC on the grounds that the said decision is irrational, unreasonable and above all, illegal. The Petitioner contends that the name “LSD” is identical or so nearly resembles the name of an existing registered political party “LDS”, or is so close and similar, or appears to be the same as, or is likely to be confused with, or mistaken for, the name of the petitioner “LDS”, which is an existing, recognised and registered political party. The impugned name “LSD” according to the petitioner is likely to deceive, mislead or to say the least confuse the members of the public, its party members and supporters, who are potential electorates and soon going to exercise their voting rights in the forthcoming election to elect the members of the National Assembly.

- [2] I carefully perused all the pleadings the affidavits, and all documents adduced including authorities cited by the parties for and against the petition. I diligently scrutinised the record of proceedings forwarded to the Court by the EC in this matter. I meticulously analysed the arguments advanced by counsel Mr. Derjacques for the Petitioner and Mrs S. Aglae for the respondent, who vehemently argued that the impugned decision of the respondent was legal and reasonable given the circumstances of the case. I gave due consideration to the relevant provisions of law, case law submissions of counsel on both sides, and to our jurisprudence on the subject of judicial review.
- [3] First of all, I hold the Judgment delivered earlier in MC 86 of 2016 and the Ruling delivered in MA 257 of 2016 mutatis mutandis be read as part of this Judgment hereof. In this judgment, I apply the same principles of law to facts relevant to the instant petition. Having heard arguments from both sides, I am satisfied of the reasons given by the petitioner inviting this Court to hold that the impugned decision of the EC is irrational, unreasonable and above all, illegal.
- [4] On the strength of the evidence and in the of light relevant provisions of law and legal principles, it is so evident as I stated in my previous order on interim injection any reasonable man with average intelligence or the *man on the Clapham omnibus* would obviously find that the name/acronym “LSD” does appear to be very similar or the same

as, or is likely to be confused with, or mistaken for, the name/acronym of “LDS” which is the name of an existing registered and recognized political party.

[5] Furthermore, it is axiomatic that Section 7(1) of the Political Parties (Registration and Regulation) Act reads thus:

“7. (1) The Commission may refuse to register a political party if he is satisfied that -

(a) the application is not in conformity with this Act;

(b) the name of the party -

(i) is identical to the name of a registered political party or a political party which has been cancelled under this Act or a political party whose application precedes the present application;

(ii) so nearly resembles the name of a registered political party or a political party which has been cancelled under this Act or a political party whose application precedes the present application as to be likely to deceive the members of the party or the public; or

(iii) is provocative or offends against public decency or contrary to any other written law as to be undesirable;

(c) any purpose or object of the party is unlawful.”

[6] I also restate, what I have stated earlier that in accordance with the rules of interpretation of statutes (See, Maxwell) and judicial exposition vide *Border R.D.C. v. Roberts [1950] 1 K.B, per Somervell L.J* the word “may” used in Section 7 supra - to the least- has a compulsory force.

[7] It is interesting to note that the Election Commission was well-versed with this provision on 5th April 2016, in its letter to the Petitioner, when the Petitioner had sought to register a party under the name “Linyon 2015” stating that it resembled that of “Linyon

Sanzman”. However, this very same provision was seemingly forgotten on the 11th August 2016, when the EC decided to allow the registration of “LSD” as a political party, when the Petitioner had already registered its political party under the name “LDS”. This selective application of the law in such a manner only strengthens my view that the decision of the Respondent was ill-conceived, and arbitrary.

[8] In the circumstances, I find and conclude that the impugned decision of the EC in this matter is grossly illegal, improper, irrational and unreasonable.

Consequently, I make the following orders:

- (1) I allow the petition and issue a writ of certiorari quashing the said impugned decision of the EC accordingly.
- (2) I confirm and hereby make permanent, the ex parte interim injunction granted in this petition in respect of the relevant and operative part of the final orders made therein, to form mutatis mutandis, part of the orders made hereof in this judgment; and.
- (3) I make no orders as to costs

Signed, dated and delivered at Ile du Port on 25 August 2016

D Karunakaran
Judge of the Supreme Court