

## SUPREME COURT OF SEYCHELLES

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### **Reportable**

[2021] SCSC ...  
MC66/2018

In the matter between:

### **THE GOVERNMENT OF SEYCHELLES**

*At the instance of the Commissioner of Police  
(rep. by Joji John)*

### **Petitioner**

and

### **PUBLIC SERVICE APPEAL BOARD**

*(rep. by John Renaud)*

### **1<sup>st</sup> Respondent**

### **DAVE BARRA**

*(rep. by Clifford Andre)*

### **2<sup>nd</sup> Respondent**

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**Neutral Citation:** *The Government of Seychelles v Public Service Appeal Board & Anor* (MC 66/2018) [2021] SCSC ... (9 July 2021).

**Before:** Dodin J.

**Summary:** Judicial Review – Jurisdiction of Public Service Appeal Board – Articles 145 and 146 of the Constitution

**Heard:** Written submissions

**Delivered:** 9 July 2021

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### **ORDER**

The PSAB acted within its prescribed powers in hearing the 2<sup>nd</sup> Respondent's complaint. The Court does not find sufficient grounds to interfere with the determination the PSAB. The Petition for judicial review is dismissed.

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### **JUDGMENT**

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### **DODIN J.**

[1] The Petitioner filed this application for judicial review under article 125(1)(c) of the Constitution and rule 2(1) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts and Tribunals and Adjudicating Authority) Rules 1995.

- [2] The background facts relevant to this application are not contested. The 2<sup>nd</sup> Respondent, Dave Barra, a police constable was interdicted from the exercise of his duties on half pay pending investigations into a case of sexual assault. The 2<sup>nd</sup> Respondent filed a complaint to the 1<sup>st</sup> Respondent the Public Service Appeal Board (PSAB) against the interdiction.
- [3] On the 28<sup>th</sup> day of May 2018 the 1<sup>st</sup> Respondent (PSAB) made the following orders in favour of the 2<sup>nd</sup> Respondent:-
1. *That Seychelles Police Force withdraws the letter of Interdiction dated 08<sup>th</sup> May 2016.*
  2. *That the complainant is reinstated in employment and his full salary is restored with immediate effect.*
  3. *That the Seychelles Police Force pays the complainant the other half of his salary for the period of which he was interdicted.*
  4. *That all arrears of salary should be paid to the Complainant by 30<sup>th</sup> July 2018.*
- [4] The Petitioner feeling dissatisfied with the orders of the PSAB applied to this Court to exercise its supervisory jurisdiction under Rule 2(1) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts and Tribunals and Adjudicating Authority Rules) Rules, 1995.
- [5] The Petitioner maintains in its petition that the order of the 1<sup>st</sup> Respondent (PSAB) granting the relief as sought and on the complaint of the 2<sup>nd</sup> Respondent is in violation of the expressed provision of Article 146 (1) of the Constitution in view that the 1<sup>st</sup> Respondent passed the order outside of its mandate and exceeding its jurisdictional power vested in it by Article 146 (1) of the Constitution and as such has acted ultra-petita.
- [6] The Petitioner further avers that the order is illegal, highly irrational and arbitrary in view that the 1<sup>st</sup> Respondent is functioning outside of its mandate by granting relief to the 2<sup>nd</sup> Respondent thereby interfering in the administrative function and the power vested upon the Petitioner to take disciplinary action against the 2<sup>nd</sup> Respondent under Section 35, Part V of the Seychelles Police Act read with Section 2(a) of the Police Force (Offence

Against Discipline) Regulations by ordering the Petitioner to withdraw the Letter of Interdiction dated 08<sup>th</sup> May 2016 against the 2<sup>nd</sup> Respondent.

- [7] The Petitioner further submitted that the 1<sup>st</sup> Respondent erred and failed to consider the fact that the said investigation against the 2<sup>nd</sup> Respondent was not completed at the time of the hearing before the 1<sup>st</sup> Respondent (PSAB). In violation of principle of natural justice the Petitioner was not afforded the right to a fair hearing.
- [8] The Petitioner further submitted that as per Article 145(1) of the Constitution of the Republic of Seychelles, it is provided that there shall be a Public Service Appeal Board which shall perform the functions conferred upon it by this Constitution and any other law and Article 146(6) provides that a complaint made under this article shall not affect the right of the complainant or other person to take legal or other proceedings under any other law. Further that as per section 19 (1) of the Police Force Act, when any police officer is accused of any offence against any law or against this Act, the Commissioner of Police may interdict such officer from the exercise of the powers, functions and duties vested in him as a police officer, pending the result of the proceedings taken against such officer.
- [9] The Petitioner submitted that as per Public Service Order 1.4 (c) unless specifically excluded under particular orders, these orders shall, in so far as they are not inconsistent with any legislation, apply to members of the disciplinary services. So as long as no particular order exists for the Police Force, the Police Force will come under the provisions of Public Service Order. Therefore as per Order 133(ii) of Public Service Order the powers of disciplinary control of persons appointed to offices in the public service are vested in the President who has delegated these powers to the Commissioner of Police for the Seychelles Police Force.
- [10] The Petitioner further submitted that the Public Service Order 137(b) read with Procedures Manual 66 says that, where a case involving an alleged serious offence has been reported to the Police for their action, the employee shall be suspended from duty

forthwith without pay and the suspension may continue until the outcome of the trial. The Public Service Order 142(a) further states that when an employee is charged with a criminal offence which is not connected with his/her employment, any action to be taken by his/her employer will depend on the seriousness of the offence and clause (b) states where the employee is not detained in the police custody, the employer shall decide whether or not the employee may be permitted to continue to work until the case has been decided.

[11] The Petitioner submitted that the 2<sup>nd</sup> Respondent has been interdicted from duty with respect to an investigation into a case of sexual assault and the charge had been filed against the 2<sup>nd</sup> Respondent before the Magistrate Court. Hence considering the change of circumstances and the seriousness of the offence charged against the 2<sup>nd</sup> Respondent, it was highly necessary to take disciplinary actions against the 2<sup>nd</sup> Respondent.

[12] The Petitioner hence moved the Court to issue a Writ of Certiorari to quash and set aside the Order made by 1<sup>st</sup> Respondent as prayed.

[13] The 1<sup>st</sup> and 2<sup>nd</sup> Respondent objected to the Petition and made identical submissions in support of their objections as follows:

- (i) *The Government has no legal standing to challenge the decisions of the Public Service Appeal Board.*
- (ii) *When correctly constituted under Article 145 et seq of the Constitution, the Board is independent of Executive and other organs of state, in the performance of its work and who adjudicate on the correctness of its decision, or where the government is unhappy with its decisions.*
- (iii) *The government of Seychelles cannot sue in its own capacity in terms of section 29 of the Seychelles Code of Civil Procedure.*

- (iv) *The Affidavit in support does not disclose the source of the authority to represent the Petitioner and is therefore in defective.*

Both Respondents moved the Court to dismiss the Petition.

- [14] In its final submission, learned counsel for the Petitioner submitted that the Government of Seychelles has all legal right as well as legal standing to challenge the decision made by the Public Service Appeal Board outside of its mandate and exceeding its jurisdictional power vested in it by Article 146 (1) of the Constitution. Learned counsel submitted that Article 145 (1) of the Constitution of the Republic of Seychelles provides that there shall be a Public Service Appeal Board which shall perform the functions conferred upon it by this Constitution and any other law and Article 146 (6) states “*A complaint made under this article shall not affect the right of the complainant or other person to take legal or other proceedings under any other law.*” Accordingly the Petitioner has all the legal right to file this application before this Court under Article 125 (1)(c) of the Constitution and Rule 2(1) of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts and Tribunals and Adjudicating Authority Rules) Rules 1995 of the petitioner).
- [15] The petitioner further submitted that the averment in the paragraph (iii) of the objections made by the 2<sup>nd</sup> Respondent is denied on the ground that as it is based on the wrongful interpretation of Section 29 of the Code of Civil Procedure. The Petitioner submitted that the Government of Seychelles is not prohibited by any law to file a Judicial Review petition before the Supreme Court.
- [16] Learned counsel further submitted that the averment in the paragraph (iv) of the submission made by the 2<sup>nd</sup> Respondent is denied on the ground that the affidavit of Mrs. Angele Lebon, Director General of Human Resources and Administration, Police Department is proper and has no legal infirmity in terms of procedure. Learned counsel submitted that the PSAB is a quasi-judicial body and therefore any decision made by PSAB can be challenged by the Government (Petitioner) by way of filing a Judicial

Review petition before the Supreme Court. The Petitioner has sufficient interest in the matter as the impugned Order has been made against it and is aggrieved by it.

[17] The PSAB was constituted and its functions regulated by Articles 145 and 146 of the constitution of the Republic of Seychelles which state:

*145. (1) There shall be a Public Service Appeal Board which shall perform the functions conferred upon it by this Constitution and any other law.*

*(2) Subject to this Constitution, the Public Service Appeal Board shall not, in the performance of its functions, be subject to the direction or control of any person or authority.*

*146. (1) The Public Service Appeal Board shall hear complaints by persons aggrieved by -*

*(a) an appointment made to an office;*

*(b) a promotion to an office;*

*(c) disciplinary proceedings taken in respect of an officer;*

*(d) the termination of appointment of a person who was holding an office;*

*(e) any decision relating to the qualification of a person who has applied for an office or is serving in an office,*

*in the public service.*

*(2) Clause (1) shall not apply to an office the appointment to which falls within the competence of the Constitutional Appointments Authority or an office referred to in article 62(3) or any other law.*

*(3) The Public Service Appeal Board may refuse to consider a complaint where it is of the opinion that -*

*(a) it is frivolous, vexatious or trivial or made in bad faith; or*

*(b) the making of the complaint has, without reasonable cause, been delayed for more than six months, or the complaint is the subject of proceedings before the court.*

*(4) Where after considering a complaint the Public Service Appeal Board is of the opinion that the complainant has been aggrieved as alleged in the complaint, the*

*Board shall order the public authority concerned to take such appropriate action as is specified in the order within the time specified in the order and where the public authority fails to comply with the order the Board shall make a report to the National Assembly.*

*(5) ...*

*(6) A complaint made under this article shall not affect the right of the complainant or other person to take legal or other proceedings under any other law.*

*(7) For the purposes of this article-*

*“body” means a body of persons whether corporate or incorporate;*

*“public service” means service under a public authority;*

*“public authority” means a Ministry, department, or division of the Government.*

[18] Judicial supervision or judicial review is the process by which the court reviews the lawfulness of a decision or action made by a public body. It is a challenge to the way in which a decision has been made rather than the rights and wrongs of the decision reached. It is a challenge to the exercise of power by a public authority. Hence the court is not adjudicating on the correctness of the decision but rather on whether PSAB acted within the ambit of its power and authority.

[19] It is obvious that the PSAB is a public authority established under the constitution with the pertinent articles being articles 145 and 146 of the constitution set out above. The contention of the Respondents are that the Petitioner, Government of Seychelles, has no legal standing to challenge the decision of the PSAB or to sue in its own capacity. The Respondents rely on article 29 of the Seychelles Code of Civil Procedure whereby article 29(1) states:

*29 (1) All claims by the Government of Seychelles against any private person shall be brought in the name of the Attorney General and(subject as hereinafter provided) shall be carried on in the same manner in every respect as suits between private parties.*

[20] This article applies to a claim by the Seychelles Government against a private person. The rest of article 29 clearly provides the type of claim which comprises of a suit to be commenced by a plaintiff. Article 29 (3) states

*(3) The suit shall be commenced by filing a plaintiff in the registry.*

The power of supervisory jurisdiction or judicial review by the Supreme Court is drawn from articles 125(1)(c) of the Constitution of Seychelles which states:

*125. (1) There shall be a Supreme Court which shall, in addition to the jurisdiction and powers conferred by this Constitution, have -*

*(c) supervisory jurisdiction over subordinate courts, tribunals and adjudicating authority and, in this connection, shall have power to issue injunctions, directions, orders or writs including writs or orders in the nature of habeas corpus, certiorari, mandamus, prohibition and quo warranto as may be appropriate for the purpose of enforcing or securing the enforcement of its supervisory jurisdiction*

In principle judicial review guards against the abuse of power by adjudicating authorities but it does not limit who can initiate the process. Since article 29 of the Seychelles Code of Civil Procedure does not apply to judicial review, the Respondents' contentions that the Government of Seychelles cannot sue in its own capacity and has no legal standing are misconceived.

[21] It remains now to determine whether the PSAB acted within its powers and authority. The complaint by the 2<sup>nd</sup> Respondent to the PSAB was in respect of his interdiction on half pay whilst there was an investigation and subsequent charge of sexual assault made against him. The PSAB's mandate includes:

*146. (1) The Public Service Appeal Board shall hear complaints by persons aggrieved by -*

*(c) disciplinary proceedings taken in respect of an officer;*

The judgment of the Constitutional Court in Government of Seychelles v Public Service Appeal Board and Gretel Jacques CC 16 /2019 is relevant to the extent that the Constitutional Court determined that asking the Commissioner of Police to re-examine the 2<sup>nd</sup> Respondent's personal situation fell outside the mandate of the PSAB with



reference to article 146 of the Constitution. In this case the hearing of a complaint in respect to disciplinary proceedings taken against the 2<sup>nd</sup> Respondent falls within the provisions of article 146. Consequently, the PSAB did not act outside its mandate to entertain the 2<sup>nd</sup> Respondent's complaint.

[22] Whether the PSAB came to the right conclusion is another matter and this Court can only consider that aspect if it is so obvious that the PSAB was so unreasonable in its decision that such decision is perverse. A reasoning or decision is unreasonable or irrational if it is so unreasonable that no reasonable person acting reasonably could have made it. See the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation (1948) 1 KB 223.*

[23] One must also note that unreasonableness is intended to be a safety net only. The court cannot use unreasonableness as a guise to review the merits of a case and substitute its own decision for that of the authority under review. The test is a different and stricter test than merely showing that the decision was unreasonable. I am therefore not persuaded by the reasoning of Pereira J. in *Government of Seychelles v Public Services Appeal Board [2005] SLR 69.*

[24] I therefore find that the PSAB acted within its prescribed powers in hearing the 2<sup>nd</sup> Respondent's complaint and I do not find sufficient grounds to interfere with its determination.

[25] This Petition is therefore dismissed.

Signed, dated and delivered at Ile du Port on 9 July 2021.

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C G Dodin

Judge.