17 February 2010

PRESS SUMMARY

Sherman McNicholls (Appellant) v Judicial and Legal Services Commission (Respondent) (Trinidad and Tobago)

[2010] UKPC 6

ON APPEAL FROM: The Court of Appeal of the Republic of Trinidad and Tobago

MEMBERS OF THE BOARD: Lord Phillips, Lady Hale, Lord Mance, Lord Clarke, Sir Jonathan Parker

BACKGROUND TO THE APPEAL

In August 2007 the Judicial and Legal Service Commission (JLSC) brought six disciplinary charges against the appellant, the Chief Magistrate of Trinidad and Tobago. The charges, brought under the Public Service Commission Regulations, arose out of the appellant's alleged refusal to give evidence for the prosecution in committal proceedings against the then Chief Justice of Trinidad and Tobago, Mr Satnarine Sharma, which took place or were to take place on 5 March 2007. Following the appellant's refusal to give evidence, the Chief Justice was discharged.

The appellant denied all six charges and issued proceedings for judicial review, seeking an order that the JLSC's decision to bring the charges and its proposal to suspend him be quashed. On the substantive application for judicial review in February 2008, four of the six charges were quashed. Both the appellant and the JLSC appealed to the Court of Appeal in Trinidad and Tobago and both appeals were dismissed. The Court of Appeal gave both parties leave to appeal to the Judicial Committee of the Privy Council. The JLSC decided not to pursue an appeal.

The appellant's appeal raised four issues to be decided by the Judicial Committee: (1) whether the JLSC was acting ultra vires in bringing the charges against the appellant; (2) whether the JLSC was acting unfairly and/or contrary to the rules of natural justice in bringing the charges; (3) whether the charges are unsustainable in fact and law; and (4) whether the JLSC's conduct of the disciplinary process against the Chief Justice made the proceedings against the appellant unfair.

JUDGMENT

The Judicial Committee of the Privy Council unanimously dismisses the appeal.

REASONS FOR THE JUDGMENT

On the first issue, the appellant can have been under no misapprehension as to the precise nature of the allegations on which the charges are based. The two charges that were not quashed were properly brought under the Regulations and there is no basis upon which it could be held that they are ultra vires.

On the second issue, it is clear that the appellant has been made fully aware of the case against him. Further, he has exercised his right to comment upon that case at every stage of the proceedings. There is no basis on which to conclude that the JLSC was acting unfairly or contrary to the rules of natural justice in bringing the charges.

On the third issue, the appellant has a case to answer first, that he was guilty of misconduct in informing the prosecutor that he would not give evidence against the Chief Justice and, secondly, that that misconduct was causative of the criminal proceedings against the Chief Justice being brought to an end. The two remaining charges brought against the appellant are sustainable in fact and law.

On the fourth issue, the Judicial Committee of the Privy Council finds nothing oppressive in the disciplinary process conducted by the JLSC, nor does it consider the appellant's defence to be prejudiced by it. The disciplinary process was not in any way unfair or prejudicial to the appellant.

All the grounds of appeal fail and the appeal is dismissed.

References in square brackets are to paragraph numbers in the judgment.

NOTE