11 May 2015

PRESS SUMMARY

Brantley and others (Appellants) v Constituency Boundaries Commission and others (Respondents) (St Christopher and Nevis) [2015] UKPC 21

On appeal from the Court of Appeal of the Eastern Caribbean Supreme Court (St Christopher and Nevis)

JUSTICES: Lord Mance, Lord Kerr, Lord Clarke, Lord Reed and Lord Hodge

BACKGROUND TO THE APPEAL

St Christopher and Nevis has 11 parliamentary constituencies which elect representatives to the National Assembly. Under the Constitution of St Christopher and Nevis, the Constituency Boundaries Commission ("CBC") is responsible for reviewing constituency boundaries and making recommendations for changes to the boundaries **[6]**. The recommendations are voted on by the National Assembly and, if they are approved, the Governor-General will make a proclamation giving effect to the changes. Under section 50(6) of the Constitution, "*that proclamation shall come into force upon the next dissolution of Parliament after it is made*" **[7]**. Section 119 of the Constitution provides that a "proclamation" means a proclamation published in the official Gazette of St Christopher and Nevis.

On 16 January 2015 the CBC submitted a report to the National Assembly containing maps with revised constituency boundaries. The National Assembly convened an emergency meeting that afternoon and, after heated debate, approved a draft proclamation to give effect to the recommended changes ("the boundaries proclamation") **[10]**. At 6.20pm that evening the Governor-General signed the boundaries proclamation and, at the same time, a proclamation dissolving Parliament (thus precipitating a general election). He ordered that the boundaries proclamation be gazetted, and received a printed copy of that Gazette at 6.35pm. The boundary changes and the dissolution of Parliament were announced on the government's website **[11]**.

The appellants, who were representatives of opposition political parties, sought to quash the CBC report on the basis that the changes did not comply with the boundary rules contained in Schedule 2 to the Constitution. They applied to the High Court for an interim injunction prohibiting the Governor-General from making the boundaries proclamation and a hearing took place in the early evening. An ex parte injunction was granted by Carter J at 7.38 pm **[12]**.

Printed copies of the Gazette dated 16 January 2015 containing the boundaries proclamation were first made available to the general public on 20 January 2015 **[13]**. On 27 January 2015 Carter J granted the respondents' application to discharge the interim injunction, holding that the injunction was served too late to restrain the act it sought to prohibit because the proclamation had already been made and published by its appearance in the Gazette by 6.35pm on 16 January 2015 **[16]**. On 5 February 2015 the Court of Appeal dismissed the appellants' appeal.

JUDGMENT

The Board unanimously allowed the appeal on 12 February 2015 and ordered that the general election, which took place on 16 February 2015, was to be conducted using the electoral list "*existing prior to, and apart from, the proclamation bearing the reference No 2 of 2015 purportedly issued and published by the Governor General in Extraordinary Gazette No 3 bearing the date 16 January 2015*". Lord Hodge gives the judgment of the Board setting out its reasons for that decision.

REASONS FOR THE JUDGMENT

The Board concludes that the boundaries proclamation had not come into force by the time of the general election on 16 February 2015, and therefore did not govern that election **[18]**. Under section 50(6) of the Constitution the proclamation would only come into force upon the next dissolution of Parliament after it had been "made". How a proclamation is "made" is set out in section 119; it must be published in the Gazette. Merely producing a hard copy of the text of a Gazette does not amount to publication **[21]**. The boundaries proclamation was made no earlier than 20 January 2015 when the Gazette became available to the public. The Governor-General dissolved the National Assembly with effect from 16 January 2015, which dissolution pre-dated the publication of the boundaries proclamation. Therefore, the boundaries proclamation will not have effect (if otherwise valid) until the dissolution of the current Parliament elected on 16 February 2015 **[24]**.

Although this determines the appeal, the Board goes on to consider (i) whether, if there were a deliberate attempt to exclude the court's review of the CBC report, this would be unconstitutional, and (ii) whether the publication of the boundaries proclamation in the Gazette after the grant of the interim injunction was unlawful and therefore of no effect **[5]**.

The Board makes no findings in relation to the appellants' allegation that the way in which the then governing party sought to effect boundary changes represented a deliberate attempt to deprive the opposition parties of the opportunity to mount a legal challenge **[25]**. However, the Board notes that Saint Christopher and Nevis is a democratic state based on the rule of law where the principle of separation of powers is entrenched **[31]**. Chapter II of the Constitution protects fundamental rights including, at section 3(a), the entitlement of every person to the protection of the law **[28]**. Sections 18 and 96 confer jurisdiction on the High Court to hear complaints concerning infringements of fundamental rights and other provisions of the Constitution **[29]**. There is at least a strongly arguable case that a deliberate attempt by one branch of government, in the control of a governing party, to prevent individuals from obtaining access to the High Court for the determination of a constitutional challenge would deny the protection of the law contrary to section 3(a); in such circumstances, it is strongly arguable that the impugned proclamation would be nullified as unconstitutional **[32]**.

It is well established in the common law that the court can give interim injunctive relief against a government minister and make a finding of contempt if that injunction is breached **[33]**. The legality of an act done in breach of such an injunction may be open to challenge by judicial review on the basis that the minister in so acting has failed to take into account a relevant consideration, namely the court order. If a minister were knowingly to act in defiance of the injunction and in an attempt to render it ineffective, it would be clearly arguable that he or she had exercised power for an improper purpose. On such a factual hypothesis, the making of the impugned proclamation by its publication on 20 January 2015 may be amenable to a quashing order under normal principles of judicial review **[34]** or may be the subject of a constitutional challenge **[35]**.

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.uk/decided-cases/index.html.