

**BHADAIN S. v INDEPENDENT COMMISSION AGAINST CORRUPTION
(ICAC)**

2004 SCJ 70

IN CHAMBERS

IN THE SUPREME COURT OF MAURITIUS

In the matter of:

S. Bhadain

Applicant

v.

**The Commission, Independent Commission
Against Corruption (ICAC)**

Respondent

JUDGMENT

This is an application for an injunction prohibiting and restraining the respondent from appointing a Director of the Corruption Investigation Division pending the hearing and determination of the application for a judicial review.

Suffice it to state for the purpose of this application that the applicant has averred that he had been holding the post of Director of the Corruption Investigation Division of the respondent until he was interdicted on 3 December 2003 in a manner and circumstances which he describes as most unbecoming to the post he held. He then read in the press a statement by the official spokesman of the respondent to the effect that that he was soon going to be dismissed. On 22 December 2003, he applied for

leave for a judicial review of the respondent's decision to interdict him and two days later, he received a letter from the respondent terminating his employment.

He then sought leave of the Court to amend his initial application for a Judicial Review to include his dismissal so that the Court would review both the respondent's decisions concerning his interdiction as well as his dismissal. The applicant has further averred that in the course of arguments on his proposed amendment, the respondent's lawyers observed that there was no injunction preventing the respondent from taking any action against the applicant. The applicant has now contended that he fears that the respondent would appoint a new Director of the Corruption Investigation Division before the outcome of his application for a Judicial Review.

Counsel for the respondent has raised a preliminary objection on the ground that this application is misconceived and should be set aside with costs.

The issues raised are whether it was proper for the applicant to apply for an injunction before the Judge in Chambers or whether he ought to have asked for interim relief in his application for a judicial review.

Counsel for the respondent argued in substance that applicant cannot move for equitable remedies before the Judge in Chambers after having initiated proceedings under administrative law. It is the contention of counsel for the applicant that the applicant is merely seeking to protect his private rights under his contract of employment with the respondent and praying for a status quo pending the determination of the Supreme Court.

I agree with counsel for the respondent. If the applicant wishes to obtain an interim relief against the respondent pending the determination of his application for a judicial review, he should have included such a prayer in his application so that the Court would have been in presence of all the materials relating to the public rights invoked as well as the private rights of the applicant that may be involved in the process so as to enable the Court to decide on whether to grant injunctory relief or not

On this point, the pertinent observation of *Lord Diplock in O'Reilly v Mackman* (1983) 2 AC 237 (285) is worth reproducing. It is to the following effect.

“Now that all remedies for infringements of rights protected by public law can be obtained upon an application for judicial review, as can also remedies for infringements of rights under private law if such infringements should also be involved, it would in my view as a general rule be contrary to public policy and as such an abuse of the process of the Court, to permit a person seeking to establish that a decision of a public authority infringed rights to which he is entitled to protection under public law to proceed by way of an ordinary action and by this means to evade the provisions of Order 53 for the protection of such authorities.”

(Vide also *Mille et Une Nuits Cie Ltee v Mauritius Freeport Authority* [\[1998 SCJ 359\]](#) ; *Le Petit Morne Ltee v The Town & Country Planning Board* [\[1998 SCJ 141\]](#)

By that same token the applicant has made an abuse of the process of the Court by seizing the equitable jurisdiction of the Judge in Chambers for an injunction in connection with a judicial review application which is already before the Court - in the

absence of any evidence calling for the urgent intervention of the Judge in Chambers in such circumstances.

He was dismissed on 23 December 2003 and had ample opportunity of praying for interim relief firstly, when he moved to amend his application and secondly, when his motion was objected to and fixed for argument. Applicant should indeed have been wiser following the contention of counsel for the respondent when arguing on the motion for amendment that no application for an injunction had been made by the applicant preventing the respondent from dismissing him.

The two cases cited by counsel for the applicant, namely *Clark v University of Lincolnshire and Humberside (2000) IWLR 1988* and *Roy v Kensington and Chelsea and Westminster Family Practitioner Committee [1992] 1AC 624* have no relevance to this application as they relate to the propriety of a claim being litigated against a public authority by way of an ordinary action which is predominantly based on the claimant's private rights such as a breach of contract.

For the above reasons the preliminary objection is upheld and the application is accordingly set aside. With costs.

I certify as to counsel.

P. Balgobin
Judge

11 March, 2004

For Applicant:

**Mrs. Attorney A. Jeewa
Mr. Y. Mohamed, S.C**

For Respondent:

**Mr. P. Balnano, S.A
Mr. R. d'Unienville, Q.C
Mr. D. Ramful, of Counsel**