IN THE COURT OF APPEAL, FIJI
ON APPEAL FROM THE HIGH COURT OF FIJI

CIVIL APPEAL ABU 0069 of 2014
(Suva High Court Action No.HBC 240 of 2014)

BETWEEN : **THE ELECTORAL COMMISSION**

Appellant

AND : **THE SUPERVISOR OF ELECTIONS**

Respondent

Coram : **Calanchini P**
Guneratne JA
Alfred JA

Counsel : **Mr B. C. Patel for the Appellant**
Mr S. Sharma with Ms R. Mani for the Respondent

Date of Hearing : **11 November 2016**

Date of Judgment : **29 November 2016**

JUDGMENT

Calanchini P

[1] I have had the opportunity of reading the draft judgment of Guneratne JA and agree with the declarations that he has proposed and his reasoning.

Almeida Guneratne JA

Background to this Appeal

[2] On 23 August 2014 the Plaintiff (hereinafter referred to as the Appellant) filed an originating summons seeking the following main relief:-

> *"1. A DECLARATION that the Supervisor of Elections has erred in law and in fact in concluding that the Electoral Commission was bound to deliver its decision on the objections and applications for review in terms of Section 30 and 31 of the Electoral Decree 2014 by 4pm Friday 22 August 2014 and not any later time on that day.*
>
> *2. A DECLARATION that the Supervisor of Elections was bound to follow the directive of the Electoral Commission by the Electoral Commission's letter dated 22 August 2014 in compliance with Section 76(3) of the Constitution of the Republic of Fiji.*
>
> *3. A DECLARATION that the purported assignment of numbers in order in which names of the candidates should appear (pursuant to Section 36 of the Electoral Decree 2014) by the Supervisor of Elections on Saturday 23 August 2014 is void and of no effect.*
>
> *4. AN ORDER that the Supervisor of Elections assign numbers in the order in which names of the candidates should appear (pursuant to Section 36 of the Electoral Decree 2014) either on Sunday 24 August or such date permissible under the Electoral Decree 2014."*

The Impugned Judgment of the High Court

[3] After considering the matters of record and the submissions made by Counsel on behalf of the parties (vide: pp.35-42 of the Copy Record) the learned High Court Judge, for the reasons stated in his judgment, refused all four declarations.

The Grounds of Appeal

[4] The Notice of Motion dated 1 October, 2014 has urged the following grounds of Appeal.

*"**FOR AN ORDER** that part of the judgment of Honourable Mr. Justice Kamal Kumar delivered on 24 August 2014 be set aside wherein his Lordship refused to grant the following declarations:*

1. *A declaration that the Supervisor of Elections has erred in law and in fact in concluding that the Electoral Commission was bound to deliver its decision on the objections and applications for review in terms of Sections 30 and 31 of the Electoral Decree 2014 by 4 pm Friday 22 August, 2014 and not any later time on that day.*

2. *A declaration that the Supervisor of Elections was bound to follow the directive of the Electoral Commission given by the Electoral Commission's letter dated 22nd August, 2014 in compliance with Section 76(3) of the Constitution of the Republic of Fiji."*

*...**AND FOR AN ORDER** that this Court does grant these declarations*
***AND FOR A FURTHER ORDER** that each party pays their own costs of this appeal or as may seem just to this Honourable Court.*
UPON THE GROUNDS:

1. *The learned Judge having correctly stated at paragraph 3.23 of his judgment "I agree with Mr. Adish Narayan that where legislation fails to define any provision then common law should be looked for guidance. Having said that, I am of the view Court should not readily accept common law definitions if doing so will defeat or frustrate the purpose of the particular legislation" erred in law by then proceeding to reject the common law definition when that definition would not have resulted in defeating or frustrating the purpose of the Electoral Decree 2014 and when there was no other valid reason to reject the common law definition.*

2. *The Learned Judge erred in law in not holding that the Respondent was bound to comply with the directions of the Appellant given pursuant to Section 76(3) of the Constitution by letter dated 22 August 2014.*

3. *The learned Judge erred in law in holding the view that just because the Respondent had consulted the Solicitor General for an opinion, the Respondent was justified in refusing to comply with the directions of the Appellant given pursuant to Section 76(3) of the Constitution by letter dated 22 August 2014."*

Re: the Grounds urged in the Appeal

[5] It is to be noted that, as stated at paragraph [1] above, four main relief had been sought in the originating summons. However, only the first and the second urged therein were pursued in this Appeal.

Consideration of the Grounds of Appeal

[6] The learned High Court Judge correctly formulated the crucial issue pertaining to the grounds of appeal at paragraph 3.18 of his Judgment thus:

> *"Whether (the) three day time limit in Sections 30(5) and 31(4) of the Electoral Decree ... means 72 hours from the objection or Application ... was received by the Commission or ... is three (3) whole days with the expiry at midnight on the third day."*

Sections 30(5) and 31(4) of the Electoral Decree (the Decree).

> *"30(5) The Electoral Commission must take a decision on the objection with written reasons, as soon as possible and in any event within 3 days upon receipt of the objection.*
>
> *31(4) The Electoral Commission must make a decision on the application as soon as possible and in any event within 3 days upon receipt of the application."*

[7] Before I proceed to consider the learned Judge's conclusions on that crucial issue, I pause to make the comment that while I saw no reason to quarrel with the learned Judge's references to Section 100(3) and (4) of the Constitution and the High Court's statutory cum constitutional jurisdiction, the *"crucial issue"* being as to the computation of the time limits within which a statutory authority had to execute its statutory cum constitutional duty.

The High Court Judgment

[8] The learned Judge while agreeing with the Appellant's Counsel's submission that, "where legislation fails to define any provision then common law should be looked for guidance ..." in the same breath, said:-

> *"Having said that, I am of the view that Court should not readily accept common law definitions if doing so will defeat or frustrate the purpose of the particular legislation (and) ...The meaning of any provision or word in any legislation should first be determined in light of the other provision of the legislation, the intention, purpose and nature of the legislation."*

(vide: Paragraphs 3.22 to 3.24 of the High Court Judgment).

[9] Having perused the said Judgment carefully I could not find anywhere in it where the learned Judge finds expressly how the legislative purpose would be defeated if the Common Law was adverted to.

[10] The Learned Judge appears to have thought that, the time limit of 3 days decreed in the Electoral Decree was a period of 72 hours and not 3 days ending at midnight on the third day.

[11] The communication of the Electoral Commission (Appellant) having been received by the Supervisor of Elections (Respondent) at 7.40 pm on that "last day" (viz: 22nd August, 2014) why then did the Supervisor of Elections only wait until 5.50pm to receive the Electoral Commission's decision as the Supervisor's letter in the High Court Record reveals? (vide: P.13 of the HCR).

[12] To this question, the Respondent had no answer.

[13] Thus, the matter boiled down to one of interpretation. That is, how "*3 days*" referred to in Section 30(5) was to be interpreted. Neither the Decree nor the Interpretation Act Cap 7 defines what "*a day*" is. The Constitution also provides no definition.

[14] If so, what was the basis for the learned High Court Judge to hold that, if Common Law definitions were to be accepted that, it "will defeat or frustrate the purpose of the particular legislation"? Particularly, in the light of Section 22 of the High Court Act? (Cap. 13).

Section 22 of the High Court Act

[15] *"22.(1) The common law, the rules of equity and the statutes of general application which were in force in England at the date when Fiji obtained a local legislature, that is to say, on the second day of January, 1875, shall be in force within Fiji subject to the provisions of section 24 of this Act.*

(2) For the removal of doubt, it is hereby declared that the provisions of sections 24 and 25 of the Supreme Court of Judicature Act, 1873, are in force in Fiji notwithstanding that the commencement of that Act was postponed in England until after the said second day of January, 1875.

(3) For the removal of doubt, and notwithstanding anything contained in subsection (1), any amendment made on or after the second day of January, 1875 to the statutes of general application which were in force in England on the second day of January, 1875, shall not apply to Fiji and shall not be in force in Fiji."

[16] I have therefore looked at English judicial precedents and found some helpful decisions.

[17] In **Re Hector Whaling, Ltd** [1936] Ch. 208, the wording of Section 117(2) of the Companies Act 1929, which referred to a general meeting "of which not less than twenty one days notice ... has been duly given" needed to be interpreted. **Bennet, J** in giving judgment said:

"I do not think there is any doubt about its meaning and I propose to found my decision on ***R v. Turner*** *[1910] 1 KB 346 and* ***Chambers v. Smith*** *[1843] 12 M&W.2 and to decide that the phrase means twenty-one clear days exclusive of the day of service and exclusive of the day on which the meeting is to be held." (at p.210).*

[18] "Where a statutory period runs from a named date to another, or the statute prescribes some period of days or weeks or months or years within which some action has to be done, although the computation of the period must in every case depend on the intention of Parliament as gathered from the statute, generally the first day of the period will be excluded from the reckoning, and consequently the last day will be included." (See: Maxwell on Interpretation of Statutes 12th ed. At p.309).

[19] That passage reflects a stricter interpretation to that which **Bennet J** had adopted in **Re Hector Whaling Ltd** (supra).

[20] Nevertheless, on either interpretation, the Appellant was within the three days when it sent its decision dated 22nd August, 2014 on the objection it had received on 19th August, 2014 (vide: pp.13 and 14 of the Court Record).

[21] Although the Interpretation Act, Cap 7 does not define what "a day" is, I found the following provisions therein to be in consonance with the authorities cited above.

[22] Section 51:

"51. In computing time for the purpose of any written law, unless a contrary intention appears-

(a) A period of days from the happening of an event or the doing of any act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;

(b) If the last day of the period is a Saturday, Sunday or a public holiday (which days are in this section referred to as excluded days), the period shall include the next following day, not being an excluded day;

(c) Where any act or proceeding is directed or allowed to be done or taken on a certain day, then if that day happens to be an excluded day, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day;

(d) Where any act or proceeding is directed or allowed to be done or taken within any time not exceeding six days, excluded days shall not be reckoned in the computation of time."

[23] "I am quite aware ..." Lord Coleridge had said "... that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well known rule of Courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books." (at p.641 in **R v. Peters** [1886] 16 Q.B.D. 636.

[24] Adopting that rationale I found the Oxford Dictionary defining "day" as:

"Each of the twenty four periods, reckoned from one midnight to the next."

[25] On the basis of the aforesaid reasons I would hold that the three (3) days time limits decreed in sections 30(5) and 31(4) of the Electoral Decree end at midnight on the third day.

The Argument that the Supervisor of Elections was not obliged to comply with an Illegal / Unconstitutional direction given by the Electoral Commissioner

[26] Mr. Sharma submitted that the Commission's direction of 22nd August, 2014 was unconstitutional and therefore the Supervisor was not obliged to comply with the same.

[27] That submission flies in the face of Section 76(3) of the Constitution.

"S.76(3). The Supervisor of Elections must comply with any directions that the Electoral Commission gives him or her concerning the performance of his or her functions."

The Applicable Rule of Construction

[28] In ordinary usage, "may" is permissive and "must" is imperative, and in accordance with such usage "may" in a statute will not generally be held to be mandatory. (See: **Nicholl v Allen** [1862] 31 L.J.Q.B. 283.; Cooper v. Hall [1968] 1 WLR.360.

[29] That statement of the law shows that, sometimes "may" could be construed as "must." For example, (See **Shaw v. Reckitt** [1893] 1 QB. 779; **Baron Inchyra v. Jennings (Inspector of Taxes)** [1965] 2 ALLER 714.

[30] But, it would be doing violence to the language to construe "must" as being "permissive."

The Learned High Court Judge's Approach

[31] After citing Section 76(3) of the Constitution the learned Judge referred to Sections 4(1) and 8 of the Electoral Decree which provide as follows:-

Independence of Electoral Commission

S4.—(1) In the performance of its functions and exercise of its powers, the Electoral Commission is not subject to the direction or control of any person or authority, provided however, the Electoral Commission shall be subject to any decision of a court of law exercising jurisdiction in relation to a question as to whether the Electoral Commission performed its functions or exercised its powers in accordance with the Constitution and the law or whether the Electoral Commission should or should not perform its functions or exercise its powers.

Independence of Supervisor

S8. In the performance of his or her functions and the exercise of his or her powers, the Supervisor is not subject to the direction or control by any person, except that he or she must comply with—

(a) the directions or instructions that the Electoral Commission gives him or her concerning the performance of his or her functions; and

(b) a decision of a court of law exercising its jurisdiction in relation to a question on whether he or she has performed the functions or exercised the powers in accordance with the Constitution and the law, or whether he or she should or should not perform those functions or exercise those powers.

[32] Having made reference to the aforesaid provisions the learned Judge observed thus:-

"It is obvious that the Defendant must comply with directions of the Plaintiff in performing his functions and decision of the Court as provide in Section 8 of the Electoral Decree 2014" (Paragraph 3.12 of the Judgment)

[33] In the same breath the learned Judge held that "the Supervisor or Elections cannot be directed or instructed to do anything by the Electoral Commission only because the Decree says so. Any direction or instructions must be within the confines of the Electoral Decree, Constitution and the Law. (Paragraph 3.15 of the Judgment)

[34] With all due respect I cannot comprehend the deduction so drawn by the learned Judge. Section 76(3) of the Constitution and 8(a) of the Electoral Decree are absolutely clear.

"Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however harsh or absurd or contrary to common sense the result may be."
(vide: ***Cartledge v E. Jobling & Sons Ltd*** *[1963] AC 758.*

[35] What has been enacted in Section 76(3) of the Constitution and Section 8(a) of the Electoral Decree is clear and unequivocal. I cannot see anything harsh or absurd or contrary to common sense in what has been enacted in either.

[36] On the face of the Commission's decision dated 22nd August, 2014 (at p.14 of the Court Record) and Annexure LT2 (the Affidavit of Larry Thomas) (at pp.10 to 12), I could not see anything unconstitutional or illegal in either.

[37] As I have endeavoured to demonstrate above, I could not see anything in the Commission's directions of 22nd August, 2014 that has had the effect of defeating or frustrating the purpose of what is decreed in the Electoral Decree.

[38] The learned judge's reference to and reliance on entries as to time and dates in regard to "appeals on Nomination of Candidates" (Section 31), "List of objections to Candidate Nominations" (Section 30) and "Register of objections to Candidate Nominations" (Section 30), maintained for administrative purposes only, cannot in any way be employed to ascertain the purpose of legislation, in this instance the purpose of the Electoral Decree.

[39] Indeed, I wish to go further in saying that,

> *"Courts refuse to take notice of all fractions and divisions of a day, for the uncertainty, is always the mother of confusion and contention" (See:* ***Clayton's case*** *[1585] 5 Rep. Ia, p.1 b) cited by Maxwell (supra) at p.311.*

[40] That judicial approach, though articulated over four centuries ago has withstood the test of time and I have no hesitation in echoing it.

The Impact of Section 30(7) of the Electoral Decree

[41] That section decrees as follows:

> *"The decision of the Electoral Commission under Subsection (5) shall be final and shall not be subject to any further appeal, or review by any court, tribunal or any other adjudicating body."*

[42] If so, could the Supervisor who is constitutionally required to comply with any "directions" that the Electoral Commission gives him in terms of Section 76(3) of the Constitution and "directives or instructions" given to him in terms of Section 8(a) of the Electoral Decree have refused to comply with the same on whatever ground or for whatever reason?

[43] That is precisely what the Respondent did when he refused to comply with the directions given to him by the Appellant in the communication dated 22nd August, 2014. (LT2)

[44] The learned Judge also made the observation that "the Supervisor of Elections was right in his approach in consulting the Solicitor General for an opinion before deciding on whether to act on the Commission's direction as per Commission's letter dated 22nd August, 2014..." (at paragraph 3.16 of his Judgment)

[45] There is nothing on Record to show what that opinion was. (See: p.15 of the Court Record) Whatever that opinion was it has to be said that, there is no role assigned to the Solicitor General in the Constitution or the Electoral Decree or any other Statute in regard to the powers and functions of the Electoral Commission *vis a vis* the functions and duties of the Supervisor of Elections. The duties and powers of the Commission and the duties and powers of the Supervisor are clearly spelt out in the Electoral Decree in Part 2 thereof ending up at Section 8(a) which unequivocally declares that:

> *"8. In the performance of his or her functions and the exercise of his or her powers, the Supervisor is not subject to the direction or control by any person, except that he or she must comply with –*
> *(a) The directions or instructions that the Electoral Commission gives him or her concerning the performance of his or her functions; and*
> *(b) ___"*

[46] Given the fact that, the Solicitor General is the second principal State Officer next only to the Attorney General I cannot fault the Respondent for seeking an opinion from him.

[47] But, the bottom line is, the Respondent was mandatorily required to comply with the directions given by the Commission in terms of Section 76(3) of the Constitution read with Section 8(a) of the Electoral Decree and Section 30(7) thereof..

A further consideration – the impact of Section 30(6) of the Electoral Decree

[48] S. 30(6) states:

(6) Upon making a decision on the objection, the Electoral Commission must immediately notify its decision to the person objecting and the candidate whose nomination is objected to.

[49] To begin with Section 30(6) does not require the Commission, upon making a decision on any objection to the nomination of any candidate, to notify its decision to the Supervisor of Elections. It only requires such notification to be made to the person objecting and the candidate whose nomination is objected to.

[50] It is not anybody's case that Section 30(6) had not been complied with by the Commission.

[51] In contrast, Section 31(1) of the Electoral Decree states that,

Appeals on nominations

31.—(1) Any person—

(a) who applied for nomination as an independent candidate or as a party candidate on a party list; and

(b) whose nomination has not been accepted by the Supervisor, may lodge an application to the Electoral Commission for a review of the decision of the Supervisor.

[52] Section 31(2) decrees that:

"31.- (2) An application under subsection (1) must be in writing and must be delivered to the Electoral Commission before 4.00pm on the day following the close of nominations for the election".

[53] Thereupon follows Sections 31(3) and 31(4) which decree thus:

"S31.(3) Upon receipt of the application, the Electoral Commission must provide a copy of the application to the Supervisor and provide the Supervisor with an opportunity to respond to the application within such time as determined by the Electoral Commission."

"S31(4) The Electoral Commission must make a decision on the application as soon as possible and in any event within 3 days upon receipt of the application."

[54] Then comes the broadside in Section 31(5) which decrees thus:

"S.31(5)Upon making the decision on the application, the Electoral Commission must immediately notify the person making the application and the Supervisor of its decision".

[55] That section requires the Commission to notify its decision on Appeals in regard to nominating not only to the person making "the application" contemplated therein but also to the Supervisor of Elections.

The Application of the Principle "Expressio unius, excusio alterius"

[56] By this rule usually known in the form of a Latin maxim, which means, mention of one excludes any other, in its application to the instant case, leaves me in no doubt that, there was no requirement for it (the Commission) to notify its decision made under Section 30(6) of the said Decree to the Supervisor.

[57] The present appeal demonstrates two examples of the application of this maxim. Section 31(2) of the Decree requires an application to be delivered by 4.00pm on the day following the close of nominations. Section 63(1) and (2) use the expression 48 hours.

However in both section 30(5) and section 31(4) the expression used is 3 days. In a second example, section 31(5) requires the Commission to notify both the applicant and the Supervisor within 3 days. However in section 30(6) the Commission is only required to notify the objection after making its decision.

[58] I felt obliged to deal with that issue for the reason that, Mr Patel (appearing for the Appellant) addressed Court on that.

[59] My view thereon is that, although there is no statutory obligation imposed on the Commission to notify its decision to the Supervisor decreed under Section 30(5) of the Decree, it would nevertheless be good practice to notify the Supervisor for the Supervisor is tasked with carrying out his statutory role in regard to the Electoral process spelt out in Section 6 of the Decree subject to "the directions of instructions that the Electoral Commission gives him or her concerning the performance of his or her functions," (vide: Section 8(a) of the Decree).

[60] What if the Commission were not to inform its decision contemplated in Section 30(5) to the Supervisor? How would the Supervisor then see, to the smooth functioning of the electoral process? That smooth functioning of the electoral process is what the Constitution and the Electoral Decree envisage – the constitutional cum legislative purpose.

[61] Towards that end and purpose the Commission, discharged its function when it sent that communication dated 22nd August, 2014 to the Supervisor, in the interest of administrative efficacy and the smooth functioning of the electoral process.

[62] Once the Commission did that, the Supervisor was mandatorily required to carry out the decision contained in that communication in terms of Section 76(3) read with Section 8(a) of the Electoral Decreed and it was not open to him to question the legality and/or constitutionality of it, particularly in view of the provisions of Section 30(7) of the said

Decree which decrees that the Commission's decision is final, not permitting any appeal or review against the same.

[63] Consequently, Mr Patel's argument based as it were, on the *expressio unius* principle, though not without merit, the same is rendered redundant for the Commission did by its communication dated 22 August, 2014 notify the Supervisor of its decision.

[64] The Commission's said decision was within the confines of Section 30(5) of the Electoral Decree having had regard to the computation of "3 days" envisaged in that section. It therefore followed that, the Supervisor was mandatorily required to comply with the Commission's said decision as decreed in Section 76(3) of the Constitution read with Section 8(a) of the Electoral Decree.

[65] I now turn my attention to the Respondent's argument why, nevertheless, this Court should decline to grant the declarations sought in this appeal.

The premises on which the said argument was based

[66] That, the matter had become moot.

Re: the argument that the two declarations sought in this appeal had become moot

[67] I read that argument to mean that, the granting of the said two declarations sought in this appeal is rendered academic and therefore this Court ought not to involve itself in a futile exercise.

The principle that a Court shall not act in vain

[68] No doubt, if the matter has been rendered academic this Court would not involve itself in a futile exercise for it would then be acting in vain. Courts are not academies of law but are institutions of justice.

[69] But, would this Court be acting in vain in granting the declarations in question?

[70] I do not think so, for the simple reason that, in future elections the granting of the said declarations would be setting a precedent in that, the Respondent (the Supervisor of Elections, being a subordinate functionary to the Electoral Commission in terms of the Constitution – 'must' act on the directions given by the said Commission as decreed by Section 76(3) of the Constitution read with Section 8(a) of the Electoral Decree.

A matter of Public and Constitutional Importance

[71] Thus, I am driven to the view that, the present appeal raises a matter of significant public and constitutional importance and the granting of declarations in this appeal would not be in vain. This judgment should ensure that the Constitution would be observed in the future. I add, in addition to Section 76(3) of the Constitution, Section 8(a) of the Electoral Decree would be observed in the future.

[72] I derived inspiration from two judicial precedents from two Commonwealth jurisdictions in that regard as well, viz:

(a) of the Supreme Court of Western Australia in Re: Honourable Chief Justice Kennedy; Ex-Parte West Australian Newspaper Ltd (2006) WASCA 172 and;
(b) of the Supreme Court of Sri Lanka: in Centre for Policy Alternatives (Guarantee) Limited and others vs. Dayananda Dissannayake, Commissioner of Elections [2003] 1 SLR 277.

[73] This approach to the issue of mootness is consistent with the observations of the House of Lords in **R –v- Secretary of State for the Home Dept. ex parte Salem** [1999] 2 All ER 42. The House of Lords held that there was a discretion to hear an appeal concerning a question of public law, even if, by the time the appeal reached the appellate court there was no longer any live issue directly affecting the rights and obligations of the parties inter se. Even where the appeal may be regarded as academic, the appellate court may

exercise its discretion where there is good reason in the public interest for doing so. However the discretion should not be exercised if there was a requirement for a detailed consideration of the facts. In this case the discretion should be exercised. In **Yabaki and Others –v- The President of the Republic of Fiji and the Attorney-General** (ABU 61 of 2001; 14 February 2003) this Court accepted the principles outlined in the Salem decision (supra) but declined to make any declarations since it required an extensive consideration of factual material.

[74] For the aforesaid reasons I reject the argument for the Respondent that this Court should decline to consider the two issues raised by this appeal.

Re: the argument that the declarations sought in this Appeal are of an ancillary nature to the declarations 3 and 4 sought in the High Court

[75] Something would be considered ancillary to another when it is not necessary thereto or as a primary part thereof. This is the proposition I was able to extract from various statutory contexts in which the word has been interpreted in case law precedents.
(See: Stroud's Judicial Dictionary of Words and Phrases, 6th ed., vol.1 pp.120-121)

[76] In the instant case, Mr Sharma's submission on the declarations 1 and 2 in question as being ancillary to declarations 3 and 4 is not one that has reference to any statute. Thus, I am guided by the statement of Lord Coleridge that "it is a well known rule of Courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books."
(vide: R v. Peters [1886] 16 Q.B.D. 636 at p.641.
(quoted by me earlier in another context as well)

[77] The Appellant has abandoned declarations 3 and 4 which it had sought in the High Court.

[78] Consequently, for the same reasons stated by me earlier in regard to the mootness issue, I would hold that, the argument advanced by the Respondent cannot hold water.

Conclusion

[79] For the aforesaid reasons I would declare that:

(i) The time limits of three days decreed in section 30(5) and section 31(4) of the Electoral Decree end at midnight on the third day

(ii) The construction to be placed on section 76(3) of the Constitution read with section 8(a) of the Electoral Decree requires the Supervisor to comply with all decisions and directions given to him concerning the performance of his functions by the Commission.

Alfred JA

[80] I have had the advantage of reading the judgment of Guneratne JA and I agree with it.

Orders of the Court

1. *The Appeal is allowed in part.*
2. *Declarations limited to those set out in paragraph 79.*
3. *No orders as to costs.*

.....
Hon Justice Calanchini
PRESIDENT, COURT OF APPEAL

COURT OF APPEAL FIJI

.....
Hon Justice Almeida Guneratne
JUSTICE OF APPEAL

.....
Hon Justice Alfred
JUSTICE OF APPEAL