

IN THE SUPREME COURT OF NAURU

ORIGINAL JURISDICTION

Civil Miscellaneous Cause  
No. 6/1985

In the matter of: Police Service Appeal  
No. 1 of 1985

TYSON AGIR vs. DIRECTOR OF  
POLICE

AND

Police Service Appeal  
No. 2 of 1985

VENOS AGEGE vs. DIRECTOR OF  
POLICE

Date of Hearing: 15/11/85

Date of Decisions:

Chowdhury for Director of Police

Appellants in person.

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Decision of Donne, Chief Justice

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This petition involves a reference to the Supreme Court pursuant to Rule 63, of the Civil Procedure (Amendment) Rules 1985 praying for the opinion of the Court on certain questions arising out of appeals to the Police Service Board by Mr. Tyson Agir and Mr. Venos Agege (hereinafter called "the appellants") against their dismissal from the Nauru Police Force. Since the questions really revolve round one point, namely, whether the Board has jurisdiction to entertain the appeals, I do not propose to enumerate them since it will become clear that this decision will answer them all without the necessity of specific reference to each.

The dismissals were consequent upon the presentation to Cabinet of a Report of a Commission of Inquiry set up by it on the 27th October, 1983 to inquire into and investigate certain complaints against the Nauru Police Force in general and any officer or member in particular. The Report was received by Cabinet early in 1985 and contained (inter alia) a finding that the Appellants were not fully suited to be police officers and a recommendation that their services should no longer be retained. Cabinet decided to adopt this recommendation and on the 22nd January, 1985 decided the Appellants be dismissed from the Force.

The Director of Police, on the 24th January, 1985 was instructed by the Honourable Minister for Justice to implement the decision of Cabinet and on the same day, he saw the Appellants in his office, told them of the decision of Cabinet and the reasons for it and notified them they were dismissed. On the same day, he formally issued an Order No. 02/85 as follows:

"DIRECTOR'S ORDER NO. 02/1985

NAURU POLICE FORCE ACT 1972

(SECTION 22 and 36)

TO: ALL OFFICERS AND RANKS  
NAURU POLICE FORCE  
REPUBLIC OF NAURU

With immediate effect as from Thursday, 24th January, 1985, the following Police Officers are hereby dismissed from the Nauru Police Force:

- 1) A/Sgt. 2/c TYSON AGIR ; and
- 2) Const. 1/c VENOS AGEGE

Please be guided accordingly.

D.A. DANIEL  
DIRECTOR OF POLICE

24th January, 1985."

On the 24th January, 1985, the Honourable Minister for Justice notified Parliament of the Cabinet decision by making the following statement:

"MR. SPEAKER AND HONOURABLE MEMBERS,

IT MAY BE RECALLED THAT ON 22ND OCTOBER 1983 A COMMISSION WAS ISSUED BY THE CABINET TO ENQUIRE INTO THE WORKING OF THE NAURU POLICE FORCE AND TO INVESTIAGE INTO SPECIFIC COMPLAINTS AGAINST THE POLICE.

THE COMMISSION WHICH WAS CHAIRED BY THE CHIEF SECRETARY, MR. T.W. STAR, HAS COMPLETED ITS INQUIRY AND HAS FILED ITS REPORT, THE FIRST REPORT AND THE SECOND REPORT WITH THE WORKING OF THE NAURU POLICE FORCE.

WITH REGARD TO THE FIRST REPORT, THE COMMISSION INVESTIAGED TEN SPECIFIC COMPLAINTS AGAINST VARIOUS POLICE OFFICERS. ACCORDING TO THE COMMISSION, THREE OFFICERS OF THE NAURU POLICE FORCE WHO FIGURED IN THE REPORT HAVE CONDUCTED THEMSELVES IN SUCH A MANNER WHICH NECESSITATES THEIR REMOVAL FROM THE FORCE. THE COMMISSION IS OF THE VIEW THAT A/SGT. TYSON AGIR AND CONST. VENOS AGEGE ARE

"NOT FULLY SUITED TO BE POLICE OFFICERS IN THE NAURU POLICE FORCE AND THEIR SERVICES SHOULD NO LONGER BE RETAINED. THE COMMISSION HAS ALSO CONCLUDED AS A RESULT OF ITS FINDINGS THAT INSPECTOR JOHN OLSSON SHOULD NOT BE CONTINUED IN HIS PRESENT POSITION AND SHOULD BE TRANSFERRED FROM THE NAURU POLICE FORCE.

THE CABINET HAS DECIDED TO ACCEPT THE FIRST REPORT OF THE COMMISSION OF ENQUIRY AND TO DEAL WITH ITS CONTENT AS IT DEEMS FIT AND PROPER. THE CABINET HAS ALSO DECIDED THAT THE SECOND REPORT OF THE COMMISSION SHOULD BE STUDIED FURTHER AND DECISIONS THEREON TAKEN BY THE CABINET IN DUE COURSE. THE CABINET HAS NOW DECIDED TO CARRY OUT CERTAIN RECOMMENDATIONS IN THE FIRST REPORT OF THE COMMISSION WHICH REQUIRE IMMEDIATE IMPLEMENTATION.

AT ITS FORMAL MEETING ON 22ND JANUARY 1985, THE CABINET HAS DECIDED THAT A/SGT. TYSON AGIR AND CONST. VENOS AGEGE BE DISMISSED FROM THE NAURU POLICE FORCE IMMEDIATELY IN VIEW OF THE FINDINGS OF THE COMMISSION. FURTHERMORE, THE CABINET HAS DECIDED TO TERMINATE THE SERVICES OF INSPECTOR JOHN OLSSON AS OF 22ND JANUARY, 1985 IN LIGHT OF THE FINDINGS OF THE COMMISSION. THE CABINET HAS THEREFORE SUSPENDED INSPECTOR JOHN OLSSON FROM OFFICE AS SOON AS THIS PARLIAMENT CONSIDERS HIS CASE ONE WAY OR ANOTHER.

PURSUANT TO SECTION 9 OF THE NAURU POLICE FORCE ACT 1972, I, AS MINISTER FOR JUSTICE, THEREFORE GIVE STATUTORY NOTICE TO THIS PARLIAMENT OF THE ACTION TAKEN BY THE CABINET IN SUSPENDING THE SAID OFFICER FROM OFFICE.

IT IS NOW UP TO THIS PARLIAMENT TO DECIDE WHETHER TO APPOINT A COMMITTEE OF ITS MEMBER TO REVIEW SUCH TERMINATION OR NOT. IN CASE PARLIAMENT DOES NOT APPOINT A COMMITTEE WITHIN FOURTEEN DAYS FROM TODAY, TO REVIEW THE TERMINATION, THE SAID OFFICERS' SERVICES SHALL BE DEEMED TO HAVE BEEN TERMINATED AUTOMATICALLY ON THE DATE ON WHICH HE WAS SUSPENDED FROM OFFICE I.E., 22ND JANUARY, 1985.

MR. SPEAKER AND HONOURABLE MEMBERS, THANK YOU."

On the 6th February, 1985, Parliament met to consider this statement and to decide whether it should appoint a committee of its members to review the Cabinet's decision. No committee was appointed.

On the 14th February, 1985, the Appellant Mr. Tyson Agir filed with the Police Service Board a notice of Appeal against the decision to dismiss him from the Force. Mr. Venos Agege filed a similar appeal on the 15th February, 1985. Both appeals came before the Police Service Board on the 23rd August, 1985. The Board was concerned as to whether it had jurisdiction to hear them and in the result, this matter was referred to the Court.

The Secretary for Justice submits that there is no right of appeal under either Article 69(3) of the Constitution or Section 37 of the Nauru Police Force Act 1973. He argues that the decision to dismiss, being a Cabinet decision, made under section 9 of the Act, the right to review the decision is that of Parliament alone under the provisions of sub-sections (1)(a) and (b) thereof. The appellants contend they were dismissed by the Director, were not given the reasons for dismissal and that is why they appeal.

Section 9(1)(2) and (3) of the Nauru Police Force Act 1972 reads:

"(1) The service of any officer of the Force may be terminated by the Cabinet on the ground that having regard to the conditions of the Force, the usefulness of the officer thereto and all other circumstances of the case, such termination is desirable in the public interest;

Provided that, where the service of any officer is to be terminated under the provisions of this section, he shall first be suspended from his office and the Minister shall forthwith give notice to Parliament of such suspension and Parliament, if it thinks fit, may -

(a) within fourteen days of receiving such notice appoint a committee of its members to review such termination and;

(b) if the committee considers that the officer's service should not have been terminated, direct that his suspension shall cease to have effect.

(2) Where Parliament has directed under the last preceding subsection that a suspension is to cease to have effect, the termination of the officer's service shall be void.

(3) Where Parliament does not appoint a committee under the provisions of subsection (1) of this section, within fourteen days of receiving notice of an officer's suspension from the Minister or, having appointed a committee, does not upon receiving the report of that committee direct that the suspension shall cease to have effect, the officer's services shall be deemed to have been terminated on the date on which he was suspended from his office."

Subsection (1) of this section establishes the right of Cabinet to terminate the service of an officer of the police in the public interest. In deciding whether it is desirable in the public interest to take this step, Cabinet must have regard to the conditions of the Force, the usefulness of the officer's thereto and all other relevant circumstances. On a decision to terminate being made, the officer concerned is first suspended from office and Parliament is to be notified forthwith of the decision by a Minister. The Act does not define which Minister

has that task but it would follow that it would be undertaken by the Minister responsible for the executive control of the Police. Parliament has fourteen days after receiving the notice, if it thinks fit, to appoint a committee of its members to review the decision to terminate. The committee may direct that the officer's suspension shall cause to have effect and the officer's termination of employment is consequently void. If Parliament does not appoint a committee or the committee, being appointed, considers the suspension justified, the officer's services are deemed to be terminated as from the date of his suspension.

The procedure to be considered in the case of the appellant involves an examination of the following steps taken therein:

- (a) The decision of Cabinet on the 22nd, January, 1985 to terminate their services;
- (b) The notification on the 24th January, to Parliament of the decision of Cabinet to terminate by the Minister for Justice;
- (c) The notification to them of the decision on the 24th January;
- (d) The lodging of appeals by the Appellants.

As to the decision of Cabinet, there is no question but that this decision was made by Cabinet and there is nothing before this Court to suggest that in making the decision, Cabinet did not consider all matters required to be considered under section 9 (supra). The presumption is that Cabinet acted properly in arriving at its decision - "omnia rite esse acta". Cabinet had before it the report of the Commission of Inquiry set up specifically to examine complaints against the police. The report recommended that the services of the appellants be dispensed with and Cabinet after considering it, made the decision to terminate their services. It is to be noted that the implementation of the decision was not in compliance with section 9 in that it does not appear to be followed firstly by suspension pending notification to Parliament and consideration by it of the decision. I infer that from the statement made by the Minister to Parliament in which he refers to terminate in the case of the appellants and suspension in the case of the other officer of the police, the subject of Cabinet's decision. I make no finding on this, however, as no satisfactory evidence has been led on it to justify any. For the purpose of these proceedings, it is not necessary to consider the point. What has been established is that the decision to terminate the services

of the appellants was one made by Cabinet on the authority of section 9.

As to the notification to Parliament of the decision, the requirement of section 9 is that there be notification of the decision forthwith, i.e. as soon as possible. The decision was made on the 22nd January, 1985 and Parliament was notified on the 24th. January, which is well within the limits of "forthwith". The form of notification is not specified and a statement to Parliament of the decision of Cabinet to terminate the services of the officers without further explanation would suffice. In this case, a fairly lengthy statement was made by the Minister. It tells the House that the services of the appellants had been terminated. In fact, of course, the effect of the section is that they should be suspended only. However, the requirement of the notification of the decision of Cabinet was satisfied and in consequence, it was then the prerogative of Parliament as to whether or not it exercised the power of review given by subsection 1(a) and (b) of section 9 (supra).

As to the notification of the Cabinet's decision to the appellants, it is acknowledged by them that the Director of Police correctly states in his affidavit filed in the proceedings that they were told by him of it on the 24th. January, 1985. The Director then issued the Order above referred to. This purports to be issued pursuant to sections 22 and 36 of the Nauru Police Force Act 1972. Presumably the Director, aware of the requirement of a Director's Order under section 36(4) of the Act in the case of a finding of guilt under that section, felt he should issue an Order in the case of the dismissal from the service of the appellants by Cabinet. There is no such requirement by law and this Order must be regarded as surplusage and of no legal consequence in this case.

As to the appeals lodged by the appellants, these are filed pursuant to the right to appeal to the Police Service Board given by Article 69(3) of the Constitution which reads:

"3. An appeal lies to the Police Service Board from a decision of the public officer in charge of the Nauru Police Force under this Article to remove a public officer from office or to exercise disciplinary control over a public officer at the instance of the public officer in respect of whom the decision is made."

Until the enactment of the Nauru Police Force Act 1972, a dismissal of an officer of the police from the Police Force could be effected by the Chief Secretary by a decision

given on the authority of Article 68(3). Under the Nauru Police Force Act, the powers of appointment, exercise of disciplinary control and removal formerly held by the Chief Secretart were vested in the Director of Police - see section 6, 13 and 22 of the Act. This vesting was done under the authortiy given to Parliament under Article 69(1)(b) which reads:-

"69. -(1) Parliament may make provision for either or both of the following:

(a) .....  
.....  
.....

(b) subject to clause (2) of this Article, vesting in the public officer in charge of the Nauru Police Force the powers and functions of the Chief Secretary under clause (1) of Article 68, in so far as they apply to or in respect of public officers in the Nauru Police Force."

Parliament in the same Act gave Cabinet a right to dismiss a police officer in the public interest - section 9. This, of course, is not a right vested pursuant to Article 69 (1)(b).

Article 69(3) provides for a right of appeal from a decision of "the public officer" in charge of the Nauru Police Force (the Director) under this Article, i.e. exercising the powers formerly of the Chief Secretary vested in him under the Act. The decision which terminated the services of the appellants was that of Cabinet, not of the Director of Police. That decision can be the subject of purview by Parliament only (sections 9 (1)(a) and (b) (supra)). The Police Service Board has no jurisdiction to consider any appeal lodged in respect of such a decision. There is no right of the appellants to appeal in this case.

Accordingly, the Police Service Board should decline jurisdiction.

CHIEF JUSTICE