Nankissoon Boodram (also known as Dole Chadee)

and Others

Petitioners

v.

Cipriani Baptiste (Commissioner of Prisons) and Others *Respondents*

FROM

THE COURT OF APPEAL OF TRINIDAD

AND TOBAGO

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REASONS FOR DECISION OF THE LORDS OF THE

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

UPON A PETITION FOR SPECIAL LEAVE TO APPEAL

AS POOR PERSONS, OF THE 10th May 1999,

Delivered the 30th June 1999

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Present at the hearing:−

Lord Browne−Wilkinson

Lord Nicholls of Birkenhead

Lord Hoffmann

Lord Hobhouse of Woodborough

Lord Millett

*[Delivered by **Lord Hobhouse of Woodborough**]*

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On 10th May 1999 their Lordships' Board heard an application for special leave to appeal pursuant to the amended petition lodged by Nankissoon Boodram and eight other petitioners. The matter came before the Board on petition from the Court of Appeal of the Republic of Trinidad and Tobago and arose from the constitutional motions by the petitioners filed in November and December 1998. On 10th May their Lordships' Board dismissed the petition with reasons to be delivered later.

In order to understand the questions raised upon the petition it is necessary to give a short chronological outline of the relevant events. On 3rd September 1996, after a lengthy trial (which had been preceded by an unsuccessful constitutional motion and appeal to the Privy Council, *Boodram (also called Dole Chadee) v. Attorney−General of Trinidad and Tobago* [1996] A.C .842), the petitioners were each convicted of murder and, in accordance with the law, sentenced to death by hanging. They all appealed to the Court of Appeal which dismissed their appeals and affirmed their convictions and sentences on 16th April 1997. They then further petitioned the Privy Council for special leave to appeal but their petitions were refused on 1st April 1998. On the same day they petitioned the United Nations Human Rights Committee seeking relief under the International Covenant. On 29th July 1998 the United Nations Human Rights Committee held that there had been no breach of the International Covenant and dismissed their petitions. On 10th August 1998 the petitioners then petitioned the Inter−American Commission on Human Rights but on the 19th of the same month the Commission declined to admit their petitions.

On 6th November the Advisory Committee on the Power of Pardon met and on the 12th death warrants for the petitioners were read giving execution dates for 17th, 18th and 19th November. However, also on 6th November but after the meeting of the Advisory Committee, the petitioners had served their first constitutional motion. This notice of motion was filed under section 14 of the Constitution. It alleged breaches of sections 4(a), (b) and (d) and 5(2)(a), (b), (c) and (h). The notice of motion sought various declarations in the terms of the allegations made, orders vacating the sentences of death that had been passed and staying the executions; they also asked for interim or conservatory orders staying the executions until after the hearing and determination of the motion. Pursuant to this notice of motion the petitioners applied for and, on 13th November, obtained from Mr. Justice Bharath a stay of execution.

After certain further procedural steps to which it is not necessary to refer, the petitioners filed a second notice of motion on 17th December which added to the allegations of breaches of constitutional rights and claimed similar relief in respect of the alleged breaches. Each of the notices of motion was supported by extensive affidavit evidence. The motions were heard on a succession of days between December and 5th March 1999 when Mr. Justice Bereaux delivered his judgment. During the course of the hearings the judge had to deal with a number of objections to the affidavit evidence. He heard oral evidence which was subjected to cross−examination and he heard oral submissions. The judgment which he delivered

occupies 51 pages and examines and rejects each of the allegations made by the petitioners. He refused the relief asked for.

The petitioners appealed to the Court of Appeal. Before the Court of Appeal, a rather different procedure was followed. The Attorney General had throughout taken the view and submitted that the motions were without substance and should be struck out or dismissed as frivolous. When the appeal was called on for hearing the Court of Appeal itself indicated that it had read the papers and wished to consider whether the appeal should not be dismissed *in limine*. They heard full argument on this question from those representing the petitioners. They concluded that the right course was for the appeals to be summarily dismissed.

It is from that decision that the petitioners have sought leave to appeal to their Lordships' Board. The petitioners have accepted by their amended petition that they do need leave but nevertheless their Lordships directed that there should be a full *inter partes* hearing at which the petitioners could fully deploy all their arguments before the Board, with a further stay of execution meanwhile, and this is what has occurred. It will be appreciated that this procedure was adopted as a matter of urgency. The Board has been greatly assisted by the submissions both in writing and orally of Mr. Blake QC and Mr. Starmer who appeared on behalf of the petitioners.

Each of the grounds of appeal urged upon the Board on behalf of the petitioners had been considered and rejected by the judgment of the Court of Appeal delivered by de la Bastide C.J. It is common ground that the right approach to the question whether or not there should have been a further stay of the execution of these petitioners was to be decided in accordance with the law as stated in a judgment of the Privy Council in *Reckley v. Minister of Public Safety and Immigration* [1995] 2 A.C. 491 at page 497:−

> "… their Lordships would emphasise that a refusal of a stay in a death penalty case is only proper where it is plain and obvious that the constitutional motion must fail."

The adoption of this test was appropriate to the consideration by the Court of Appeal whether to dismiss the appeals *in limine* and, likewise, to the consideration by the Board whether there were grounds for granting leave to appeal.

The primary way which the petitioners put their case was that they had been unfairly discriminated against in that their various appeals against their convictions and their petitions to the human rights bodies were facilitated and enabled to be determined without being subjected to delay. It is not suggested that they did not have the opportunity (of which they took full advantage) to pursue all the remedies open to them. They do not complain that they were not able to put their case to the courts and human rights bodies. Rather, the complaint seems to be that their cases were not subjected to the delays which have been experienced by others convicted of the crime of murder. It is implicit in *Pratt v. The Attorney−General for Jamaica* [1994] 2 A.C. 1 and many other cases that delay in carrying out the sentence of the court should only be permitted in so far as it is required for the proper pursuit of all rights of appeal against conviction and appeals for clemency. *Thomas and Hilaire v. Baptiste* (unreported) Privy Council Appeal No. 60 of 1998, 17th March 1999 upheld the right to petition human rights bodies and recognised the delay to which such petitions might give rise. In the present case however nothing has occurred which has interfered with these petitioners fully exercising their rights and receiving the appropriate decisions from the bodies concerned. This ground of appeal, as the Court of Appeal correctly observed,

has no substance.

Further grounds of appeal which these petitioners seek to urge upon the Board complain of the fact that, at the same time as these petitioners were about to launch their first constitutional motion in November 1998, the Minister chose to convene the Advisory Committee to consider whether the sentences should be carried out and, consequent on that meeting, the warrants were then read to the petitioners for their execution. Over two months had elapsed since the final dismissal of their petitions to the human rights bodies in which they could have made pleas for clemency. The Minister was entitled to take the view that the time had come for the Advisory Committee to be convened. The exercise of the power of pardon is in any event not justiciable. (*Reckley v Minister of Public Safety and Immigration (No.2)* [1996] A.C. 527).

The Advisory Committee met at a time before the petitioners' notice of motion had been served. Thereafter, the Minister and the Attorney General took the view that there was no substance in the constitutional points which the petitioners were seeking to raise. Their assessment has been proved to be correct. However, as the constitution provides, a court can order a stay of execution pending the hearing of a constitutional motion and this is what in fact occurred. It is submitted on behalf of the petitioners that what occurred in some way infringed their constitutional rights as opposed to being a proper implementation of the relevant constitutional provisions. It is furthermore submitted that this situation gives them an arguable case for the commutation of the sentences of death passed upon them. There is no substance in either of these submissions and they were rightly rejected by the Court of Appeal.

The remaining grounds relate to the conditions in which it is alleged that the petitioners were kept during their incarceration in 1997 and 1998. Specifically, in relation to Nankissoon Boodram it is said that he was singled out by being placed on death row and was kept there in conditions where he was constantly reminded of the threat of being hanged. This allegation was investigated factually before the judge and found to be lacking in substance. However, even if there had been some substance in the allegation, it did not suffice to provide a constitutional ground for seeking a stay or commutation of his death sentence. The decisions in *Fisher v. Minister of Public Safety and Immigration (No. 2)* [1999] 2 W.L.R. 349 and *Thomas and Hilaire* (*supra*) hold that complaints about prison conditions (even if justified) are not a ground on which, without more, commutation can or should be granted. On the argument of these petitions the petitioners sought to rely upon the dissenting judgments in those cases. They do not provide a basis for granting leave to appeal.

The same responses have to be given, and were given in the Court of Appeal, to the more general assertion that the conditions in which some or all of these petitioners were kept from time to time were far below what was acceptable. Again, the complaints did not suffice to support the remedy sought.

These were, besides, matters which, like the complaint made by Nankissoon Boodram, could have been raised before one or other of the relevant human rights bodies to which these petitioners applied. Either they chose not to raise those complaints then or those complaints were rejected by those bodies. It was suggested in the course of Mr. Blake's argument that there was new material which should now be taken into consideration in the form of the "Abdullah Report" which was seriously critical of prison conditions in Trinidad. However that report was dated February 1980 and it was published shortly thereafter having been laid before Parliament. If it had been thought to assist these petitioners' cases at any time, it could have been relied upon by them. It does not and did not provide any basis for their Lordships to give

leave to appeal or for the Court of Appeal to conclude that there was any point of substance in these petitioners' appeal to the Court of Appeal.

Despite the full and authoritative manner in which the petitioners' arguments have been presented to their Lordships by counsel, the inescapable fact remains that there is no substance in the points which they wished to raise and that no basis has been shown upon which the Court of Appeal should have entertained their appeal or granted a stay of their executions. It was therefore the duty of their Lordships to refuse these applications for leave to appeal.

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