IN THE SOLOMON ISLANDS
COURT OF APPEAL

Appeal No. 5 of 1990

Connolly P
Savage JA
Goldsbrough JA

BETWEEN THE SPEAKER

Appellant

and DANNY PHILIP

Respondent

JUDGMENT OF THE COURT

Delivered the 30th day of August 1991

On 11th May, 1990 the Leader of the Opposition moved a motion of no confidence in the Prime Minister on the basis of the Prime Minister's involvement in a $250 million loan. This motion was defeated. On 7th November, the respondent, a member of the National Parliament submitted to the Speaker a motion of no confidence in the Prime Minister on the basis that the Prime Minister no longer had the support of a majority of the National Parliament. The motion was on the Provisional Order Paper and was to be debated on 16th November, but before the debate commenced, the Minister for Foreign Affairs raised, pursuant to Standing Order 36(3) the question whether the motion was out of order as being an attempt to reconsider a specific question on which the Parliament had taken a decision during the preceding meeting of the Parliament. It is common ground that this was a reference to the motion of no confidence of 11th May which was defeated. If the motion listed for debate on 16th November was indeed an attempt to reconsider the question which the Parliament decided on 11th May it would, by virtue of Standing Order 36(3) have been out of order to attempt such a reconsideration "except on a substantive motion to rescind that decision moved with the permission of the Speaker". The Speaker ruled the motion out of order, supporting his ruling with elaborate and extensive reasons. His ruling was challenged in proceedings before the High Court under section 83 of the Constitution.

The case came before Ward C.J. who accepted the view that a motion of no confidence in the Prime Minister is subject to the Standing Orders except insofar as the latter are inconsistent with a relevant provision of the Constitution. Thus in this case, the Constitution itself requires that a motion for a resolution of no confidence in the Prime Minister shall not be passed unless notice of the motion has been given to the Speaker at least seven clear days before it is introduced, see section 34(2). This provision must

obviously prevail over the time provided in the Standing Orders for notices of motion generally. His Lordship also accepted that where there is no breach of the Constitution, the courts have no power to enquire into the validity of the Parliament's internal proceedings, referring to the decision of the Privy Council in *Sanft v. Fotofile* (Appeal Number 3 of 1987, 3rd August, 1979). The main complaint in that case was of breaches of the Standing Orders and their Lordships pointed out that it is well established that compliance with the Standing Orders in the course of the passage of a Bill through the House is not a condition of the validity of the resulting Act: *British Railways Board v. Pickin* [1974] A.C. 765; *Namoi Shire Council v. Attorney-General for New South Wales* [1980] 2 N.S.W.L.R. 639.

Ward C.J. observed that most of the proceedings of Parliament do not involve constitutional questions and that when the Speaker rules on procedural matters, the court has no jurisdiction to enquire further. His Lordship however qualified that statement by observing that if the ruling interferes with the constitutional rights of the person involved, the courts do have the right to enquire. He concluded that the right to move a motion of no confidence is that of each and every Member. He considered that the Standing Orders govern the procedure in relation to motions for the purpose of section 34 of the Constitution but posed the question for his decision as being what the consequence should be if the Speaker wrongly ruled on the operation of Standing Order 36(3) and by so doing wrongly deprived a Member of the right to have it debated. His conclusion was that this would involve a far more than a procedural ruling and would contravene the Member's constitutional right to move the motion. Obviously in such a case section 83 of the Constitution would apply and would invest the High Court with jurisdiction to determine whether there had been a breach of the Constitution and to declare accordingly even though this involved examination of a ruling or rulings of the Speaker and to that extent of the internal workings of the National Parliament.

Essentially, the question for this Court is whether his Lordship was right in concluding that the respondent's constitutional right had been contravened and whether his rights were or were likely to be affected by that contravention for these are the conditions of the High Court's jurisdiction being enlivened under section 83. Although it is not disputed, it is desirable to state shortly why the respondent's interests are obviously affected by the ruling under discussion. If Mr Philip's motion had been passed on 16th November, 1990 by an absolute majority it would have been incumbent upon the Governor-General under section 34(1) to remove the Prime Minister from office, whereupon the Members of Parliament would have been required to meet as soon as possible during the same session of Parliament to elect a new Prime Minister. The Prime Minister is elected by the Members of Parliament from amongst their number: section 33(1). The respondent, as one of that number, had a two-fold interest in the outcome of the no confidence motion. He was interested as a potential elector of a new Prime Minister and as a person who was eligible for election to that office.

The question whether there was a contravention of the Constitution by the Speaker in failing in his duty as a presiding officer of the Parliament and in depriving the respondent of the right to move his motion cannot, in our judgment, be resolved solely by a consideration of the Standing Orders. These are passed pursuant to section 62 of the Constitution and the Parliament is empowered to make them, subject to the provisions of the Constitution. They are described in section 62 as rules and orders for the regulation and orderly conduct of its proceedings and the dispatch of business and for the passing, intituling and numbering of Bills. It is obvious that it is not the intention of section 62 to empower the making of rules and orders which would in any sense impair, let alone abrogate any right given by the Constitution. The question then is whether anything of the sort has occurred here.

Solomon Islands is a representative parliamentary democracy. By section 1(1) of the Constitution it is declared to be a Sovereign Democratic State. For the purpose of the election of Members of the Parliament the country is divided into between 30 and 50 constituencies, each containing a number of inhabitants which is as nearly equal as is reasonably practicable. The Constitution is the supreme law of Solomon Islands and if any other law is inconsistent with it that other law shall, to the extent of the inconsistency, be void: section 2. Section 59 confers plenary law making power on the Parliament and, subject to certain restrictions, the legislative power of the Parliament extends to the amendment of the Constitution itself: section 61. The laws referred to in section 59 take the form of Bills passed by Parliament: section 59(2). The Members of the Parliament are thus an integral part of the law making machinery. Their function, under the Constitution, is to participate in the business of the House with the ultimate object of the effective functioning of the legislature. The source of the rights of Members of the Parliament cannot be the Standing Orders. These are made by the Parliament itself and the rights of the Members must exist prior to the coming into being of Standing Orders which they themselves enact.

Section 46 provides for the National Parliament. Section 47 provides that it shall consist of persons elected in accordance with the Constitution. Inherent in the concept of a Parliament consisting of members is that they collectively perform its functions. This they can do in one way only and that is by participating in its business, deciding questions which come before it and bringing such questions under its notice. It seems to us that the learned Chief Justice was right in describing Mr Philip's right to move his motion as a Constitutional right. If he was wrongly deprived of that right through an incorrect ruling of the Speaker it was not a mere right under Standing Orders, a mere procedural advantage of which he was deprived but a Constitutional right.

Mr Radclyffe emphasised that section 34 does not in terms confer any right to move a motion of no confidence. True, it does not. Rather does it assume the existence of a right as being inherent in the position of a Member of the Parliament; indeed it is implicit in section 34 that this is the case. The section provides for the mandatory procedure to be followed if a resolution of no confidence is passed, and for a restriction upon the way in which such a resolution may be passed by requiring that notice of the

motion has been given to the Speaker at least seven days before it is introduced. It follows there must be a right given, by necessary intendment, to all Members of Parliament to move a motion of no-confidence otherwise the mandatory consequences of the passing of such a resolution could be wholly stultified by a Standing Order made under section 62 of the Constitution effectively prohibiting the moving of motions of no confidence. Further in our opinion it is inherent in the provisions of the Constitution which establish a representative Parliamentary democracy that is members collectively and individually have the right to participate in its proceedings and to introduce matters which they consider relevant to the proper performance of its functions. Section 62 of the Constitution contemplates reasonable regulation of the exercise of those rights but, in terms, does not contemplate their abrogation and the Standing Orders cannot be given, in conformity with the Constitution, an operation which would have that effect.

Mr Nori for the respondent emphasised that an essential feature of the Constitution is that the will of the majority of Members is to prevail over the Executive Government, for the Prime Minister is elected by the Members from amongst their own numbers: section 33(1), and the other Ministers are appointed by the Governor General on the recommendation of the Prime Minister: section 33(2). Section 34, in providing for the removal of the Prime Minister from office, has the effect that this entire process may be undertaken afresh. The Constitution does not limit any time at which a motion of no confidence having this result may be moved save that seven days' notice is required. It may be questionable whether the Standing Orders could validly provide an extensive time limitation on the passing of a resolution for the purpose of section 34. The question does not really arise in this case for it has been ruled by the Chief Justice, and rightly in our opinion, that the situation was not within Standing Order 36(3).

The consequences of adopting the Speaker's approach could however be serious indeed. We were told that two consecutive meetings of the Parliament may, according to current Parliamentary practice in Solomon Islands, occupy as long as eight months. It follows that if the Speaker be correct, once a motion of no confidence for whatever reason has failed, the machinery of section 34 cannot be invoked whatever the circumstances, for what is in Parliamentary terms a very long period without the permission of the Speaker. Furthermore, if the Speaker's ruling on 16th November, 1990 was a ruling on a point of order it was not open to debate, for by Standing Order 38 the Speaker's decision on a point of order shall be final. The result could be that the mechanism provided by the Constitution for the removal of a Government may become inoperative, and even a Government which does not have the confidence of the House may continue in an unchallenged position for many months. In our judgment, such a conclusion would be quite unsatisfactory and inconsistent with the principle for which Mr Nori strongly and, as we think, rightly contended, that is, the principle of majority rule in a Parliamentary democracy. Mr Nori pressed us with the proposition that it is our duty to interpret the Constitution in a way which advances rather than impedes the principles of majority Government.

In my opinion Ward C.J. was correct in ruling that the Speaker's ruling wrongly applied Standing Order 36(3) to the motion for the reasons he gave and thus wrongly deprived Mr Philip of his constitutional right to move a motion of no confidence for the purpose of section 34 being a right to propose by motion a question for decision under section 71. We agree with his Lordship that wrongful denial of a Member's right to propose a resolution of no confidence goes beyond a mere point of order and bears so heavily on the constitutional mechanism provided by section 34 for the dismissal of a Prime Minister who does not have the confidence of the House as to amount to a contravention of the Constitution.

When one recognises the part played by section 34 in assuring that the will of the majority prevails over the Executive Government to say, as Mr Radclyffe would have it, that no constitutional right has been infringed when a Member is wrongly denied the right to move a motion of no confidence, because such a right is not spelled out in section 34, smacks of "the austerity of tabulated legalism" which the Privy Council has rejected more than once in the interpretation of Constitutions on the Westminster model, which are to be given "a generous interpretation without necessary acceptance of all the presumptions relevant to legislation of private law". See *Ong Ah Chuan v. Public Prosecutor* [1981] A.C. 648, 669h; [1980] 3 W.L.R. 855, 864F; *Minister for Home Affairs v. Fisher* [1980] A.C.319, 329; [1979] 3 All E.R. 21, 26; *Attorney General (Fiji) v. Director of Public Prosecutions* [1983] 2 A.C. 672, 682f; [1983] 2 W.L.R. 275, 281g.

The court therefore dismisses the appeal.

The case before us is one in which there was in fact no call for the operation of Standing Order 36(3) for there was in truth no attempt to reconsider the specific question on which Parliament had taken a decision on 11th May. The question whether Standing Order 36(3) can be given an operation which would deny to a Member the right to move a motion of no confidence and to the Parliament the right to pass it, by reason of a similar motion having been decided within two meetings can await another day. The practical answer is perhaps that a motion of no confidence tests the support of the House for the Prime Minister on the occasion when it is moved and debated and that will depend on the state of the support he enjoys from time to time, so that motions in general terms cannot really be regarded as raising the same question as a prior motion in general terms

We should perhaps also add that the Standing Orders should not be regarded as infringing the Constitution when they simply provide reasonable regulatiom of Parliamentary business. It is where, as here, their effect may be to deny the right to invoke fundamental constitutional machinery that the question of breach of a constitutional right may arise.

BY THE COURT

(P. D. CONNOLLY P.)