REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2014-00813

IN THE MATTER OF JUDICIAL REVIEW ACT CHAPTER 7:08
IN THE MATTER OF THE ENVIRONMENTAL MANAGEMENT ACT, CHAPTER 35:05

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW OF THE DECISION DATED THE 11TH OF DECEMBER 2013 AND MADE BY AND/OR ON BEHALF OF THE ENVIRONMENTAL MANAGEMENT AUTHORITY PURPORTEDLY PURSUANT TO SECTION 36(1) OF THE ENVIRONMENTAL MANAGEMENT ACT, CHAPTER 35:05, AND/OR RULE 7(1) (A) OF THE CERTIFICATE OF ENVIRONMENTAL CLEARANCE RULES TO GRANT A CERTIFICATE OF ENVIRONMENTAL CLEARANCE TO PETROLEUM COMPANY OF TRINIDAD AND TOBAGO LIMITED

BETWEEN

BHADOSE SOOKNANAN

First Applicant

FISHERMEN AND FRIENDS OF THE SEA

Second Applicant

AND

THE ENVIRONMENTAL MANAGEMENT AUTHORITY

Respondent

MINISTER OF ENERGY AND ENERGY AFFAIRS

Interested Party

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JUDGMENT

Before the Honourable Madame Justice N. Kangaloo
Dated the 4th day of March, 2016 and the 3rd day of July, 2016 (the latter decision on costs)

Appearances: **Reginald Armour S.C. leading Vanessa Gopaul and Kirk Bengochea instructed by Tamilee Budhu for the Applicants**

Russell Martineau S.C. leading Shalini Rampersad-Campbell instructed by Ashleigh Jardine and Tracy Rojas for the Respondent

Avory Sinanan S.C. leading Kelvin Ramkissoon instructed by Leslie Ann Almorales for the Interested Party

The Application

1. The Applicants seek to review the December 11th, 2013 decision of the Environmental Management Authority ("EMA") to grant a Certificate of Environmental Clearance ("CEC") to the Petroleum Company of Trinidad and Tobago ("Petrotrin") without requiring an Environmental Impact Assessment ("EIA").

2. In deciding to grant the CEC to Petrotrin, the Applicants contend that the EMA did not properly exercise its discretion nor did it take into consideration the impact and/or the possible effect on the fishing community and marine life of allowing Petrotrin to carry out a 3-Dimensional Seismic Survey to cover an area of approximately 510 kilometres within Soldado Fields and North Marine Field located in the Gulf of Paria off the West Coast of Trinidad.

3. Among other relief, the Applicants have come before this Court seeking primarily to have quashed the decision to grant the CEC.

The Parties

4. The First Applicant is a fisherman and Vice President of the Claxton Bay Fishermen Association ("CBFA").

5. The Second Applicant is a non-profit organisation which seeks to represent communities that lack the necessary resources to deal with public interest matters which relate to environmental and social issues which impact on the communities' health, economy and safety.

6. The Respondent is established by the provisions of the Environmental Management Act, No. 3 of 2000 ("the Act").

7. Leave was granted for the Ministry of Energy and Energy Affairs ("MOE") to be added as an Interested Party.

The Applicants' Evidence

8. The Applicants filed several Affidavits in this matter setting out their evidence in support of their challenge to the EMA's decision.

9. The First Applicant deposes that:

   a) He is a fisherman who owns two boats which would be used out at sea in the Gulf of Paria to catch fish either by himself or his employees.

   b) He has been in the business of fishing for some fifty (50) years.

   c) His catch at sea was made up of a variety of fish which was sold wholesale at different prices, earning an average income of approximately $1,500.00 per day per boat. This income was prior to December 2013 and it was through this income that he maintained a livelihood for himself and his family.

   d) Post December 2013, he observed a noticeable decrease in the amount of fish that was brought in after a day at sea from the two boats. This decrease affected his livelihood and his ability to maintain his family.

   e) Upon learning of a seismic survey being conducted by Petrotrin in the Gulf of Paria, he linked this activity to the decrease in catch he was experiencing as there is a risk that these surveys will have potentially damaging the impact on the fishing industry in the Gulf of Paria.

   f) There were compensation packages offered to other fisherfolk but not to the members of the CBFA.

   g) There was no extensive discussions and consultations with the fisherfolk explaining the details of the proposed activity, the location and duration, prior to the activities taking place.

10. Three affidavits were filed by Gary Aboud, the Secretary of the Second Applicant. Two of these affidavits supplement his original affidavit filed on March 10, 2014 (collectively "the Aboud affidavits"). The Aboud affidavits in large treat with various studies, research and publications on the effects of seismic surveys on marine environment.

11. Gary Aboud deposes that:

    a) In his capacity as Secretary, he is privy to the information and records of and in the possession of the FFOS.

    b) The FFOS is designed to promote sustainable development, ensuring proper environmental management with accountability, consultation and transparency and encouraging and facilitating community empowerment.

    c) The FFOS also operates to represent the plight of the fisherfolk who otherwise would lack the necessary resources to do so themselves and to treat with environmental and social issues affecting their livelihood.

    d) There is literature (annexed to his Affidavits) which provides valuable scientific research data in respect of the fisheries in the Gulf of Paria.

    e) In the past fishermen would complain about the decline in their catch when seismic surveys were conducted within the area in which they fish.

    f) From perusing the records of the FFOS, seismic surveys conducted in the past were responsible for significant decline in the catch rate of fisherfolk in the area by some 75%.

    g) Also from a perusal of the records in his possession, airguns used for seismic surveys cover a large portion of the ocean floor and are loud enough to penetrate an extensive portion of the ocean floor which is to be considered as a serious marine environmental pollutant. It also causes extensive damage to fish. Additionally, the seismic surveys have varying impacts on marine life and can result in behavioural changes in fish ranging from decreased foraging to displacement.

h) The effect of these complaints prompted the FFOS to embark on research concerning the effects of seismic surveys on marine environment. Part of this research included a public campaign by means of editorial letters, articles and meetings with relevant authorities advocating the use of EIAs and prudent scientific studies prior to CECs being granted for seismic surveys in the Gulf of Paria.

i) Extensive publications as annexed to the Aboud affidavits formed part of the record of the public campaign and were prepared in the years immediately preceding the instant application.

j) The Persadie study of 2011 and the Weilgart study are just two examples of recent research that were commissioned by the FFOS and published highlighting the impact of seismic surveys on marine life.

k) The National Environmental Policy 2006 (NEP) and its role in sustainable development of the environment are also important.

l) All this information was relayed to the EMA directly with an aim of persuading the EMA that no consent should be granted in relation to CECs without first requiring an EIA be done in light of all the information at hand.

m) There was a need for consultation between the authoritative bodies and the fishing community as it potentially impacted on their livelihood.

n) That the EMA's decision to grant the CEC was unlawful and that no EIA has been required by the EMA in relation to seismic surveys conducted in the waters off Trinidad and Tobago. More so in this present case, it was done without having regard for section 35(1)(4) of the EMA Act and Rule 4(1)(d) of the CEC Rules which provides for such.

o) It is unknown if the 'criteria' for determining whether a project requires an EIA as contained in the purported Practitioner's Guide and the Standard Operating Procedures was followed as no reason was given concerning the decision to grant the CEC.

p) That the EMA did not comply with the Noise Pollution Control Rules when it granted the CEC.

12. The Applicants also had the benefit of affidavit evidence from a civil and environmental Engineer who acted as a Consultant to FFOS, Cathal Healy-Singh.

13. In his affidavit, Cathy Healy-Singh deposed that:

a) He was concerned that the CEC Application before the EMA did not take into account the extensive and diverse fisheries in the area and the impact that the seismic survey will have on the species of the sea. This was all the more important in light of the heavy reliance placed on these fisheries by the fisherfolk for their livelihood.

b) That the data collected by Petrotrin of its last 3D seismic survey and on which the EMA acted on was not recent. As such he is uncertain as to how the EMA could have accurately determined whether Petrotrin's assessment of the impact on fisheries was correctly being stated as 'minor to moderate'.

c) Much of the information relied on by the EMA was archaic and not available to the Applicants or other stakeholders who would be affected by the decision.

d) The EMA disregarded information pointing to significant adverse impacts of seismic surveys on fisheries which it ought to have taken into consideration before granting the CEC to Petrotrin.

The Respondent's Evidence

14. The Respondent responded by way of several affidavits of Travis Sooknanan (Environmental Programme Officer I, Energy Unit at the EMA), Gregory De Souza (Assistant Manager, Technical Services Department of the EMA) and Wayne Rajkumar (Manager, Technical Services Department of the EMA).

15. Travis Sooknanan deposes that:

a) Upon receipt of the application he conducted an evaluation to determine whether an EIA was required. He considered the application along the broad parameters of the nature, scale and location of the proposed activity as well as mitigation measures proposed to limit any potential significant negative impact.

b) The mitigation measures he assessed would be sufficiently dealt with in the manner proposed by Petrotrin which would include dissemination of information on the survey, proper disposal of solid waste, notices, visual observers who will be on the lookout for marine mammals and compensation to fishermen.

c) He asserted that his research has unearthed pertinent information which shows that the area in question is an area of high activity for oil exploration with frequent movement of oil tankers and fishing vessels thereby not making it of such an immaculate nature to the extent that it can be concluded that a seismic survey would significantly increase the impact on marine life beyond that of a temporary nature.

d) He concluded that the Noise Pollution Control Rules did not arise for consideration and therefore were not applicable.

e) Ultimately, he formed the view that although there were potential negative impacts associated with the seismic survey, they were not significantly adverse environmental impacts that would trigger the need for an EIA and further that there was no mandatory requirement to do so, the EMA having properly and fully considered all the information placed before it.

16. Gregory De Souza deposes that:

a) He served as Assistant Manager, Technical Services of the unit which processed applications for CECs for development in the energy based industries in Trinidad and Tobago.

b) As such the recommendation of Mr. Sooknanan to grant approval to Petrotrin without the need for an EIA, first came to him for his consideration.

c) Guided by his own extensive knowledge from fisheries research as well as his practical knowledge as a recreational fisherman, he recommended approval of the CEC.

d) He was satisfied that concerns of mitigation measures were adequately addressed, that marine life under the ocean floor would not be affected, that there were not any anticipated potential significant adverse impacts associated with the seismic survey and that the compensation framework would have satisfactorily addressed any potential reduction of fish.

e) While acknowledging that there were anticipated potential significant adverse impacts, he was satisfied that they were properly mitigated and found no need for an EIA.

f) Treating specifically with the claims of the Aboud affidavits pertaining to the Weilgart study on the reasons proffered for a drastic reduction in fisheries catch rate, that a decline in marine fish catches could be as a result of numerous factors such as overfishing and pollution amongst others and not simply stemming from seismic surveys.

g) There is no correlation between seismic surveys and a reduction in marine catches and that to make such a connection would be erroneous. He also noted that fishing does not take place in the immediate area during the conduct of a seismic survey and although reduction in catches can be reasonably expected it is not documented and that in any event the fish return to the area of the survey when the disturbance of the survey ceases.

h) There was no breach of the Applicants' rights to natural justice as section 20 of the EMA Act only provides for public consultation once it is determined that an EIA is required. In this instance there was no need for an EIA and thus no breach of the statute.

17. Gregory De Souza's Supplemental affidavit seems to be more in the form of a reply to that of the Aboud affidavits, addressing some of the concerns raised therein. Essentially Gregory De Souza reiterates:

a) That seismic survey on its own is not the sole cause for a decline in marine fish catches. He attributed various factors such as overfishing and marine pollutions just to name a few as contributors.

b) That fishing does not take place in the immediate area during the conduct of a seismic survey and although reduction in catches can be reasonably expected it is not documented and in any event the fish return to the area of the survey when the disturbance of the survey ceases.

c) The EMA did consider the potential adverse impacts associated with the proposed seismic survey and assessed it to be moderate.

d) The mitigation measures employed were deemed to be acceptable and it is for the duly authorised assigned officer to determine whether the mitigation impacts are acceptable or whether there is need for stronger statutory protection of the environment. In this instance no such additional protection was required.

e) Consultation is only required when it has been determined that an EIA is necessary and it is erroneous to say that no EIA has been required by the EMA in respect of seismic surveys conducted in waters off Trinidad and Tobago as there was one such instance whereby an EIA was required, however that application was subsequently withdrawn.

f) The non-compliance with Noise Pollution Control R which the Aboud affidavits allege does not in any event relate to submarine noise characteristic of seismic surveys.

18. Note, however, that this Court considers that Gregory De Souza's personal experience as a fisherman ought not to have played any part in the EMA's decision to grant the CEC without the need for an EIA.

19. Wayne Rajkumar deposes that:

a) He is the Manager, Technical Services Department of the EMA and it is by virtue of this position that he has management over applications which request the grant of a CEC and in particular this application of Petrotrin.

b) With an extensive stint of employment with the EMA, he had acquired sufficient knowledge and experience which rendered him qualified to identify and familiar with the main considerations which would trigger the requirement for an EIA.

c) One key consideration he stated was the location for the site with special consideration given as to whether the area is environmentally sensitive. The areas in question, the Soldado Fields and North Marine field in the Gulf of Paria, he noted are not environmentally sensitive.

d) In light of all his observations and considerations he was of the opinion that there was sufficient information before the EMA to make a determination that no EIA was required and that the CEC could be approved.

e) Having arrived at this position he states that there was no need to consider the Standard Operating Procedure ('SOP') as was recommended in the Cathy-Healy affidavit. The SOP is an internal working guide for determining whether an EIA is required and its use is discretionary based on the judgment call of the particular officer dealing with the issue at hand.

f) After he was satisfied that approval could be granted he submitted the file for the consideration of the Review Committee, a further tier in the approval process of EIAs.

g) In response to the Aboud affidavits relying on the Weilgart study that the airguns used in the seismic surveys ought to be considered as a serious marine environmental pollutant, he says any unnatural noise and not necessarily that of an airgun can be considered as a marine environmental pollutant. Further that there were mitigation measures to be put in place to treat with the impact of disruption that may occur as a result of the use of the seismic airgun on marine life.

Issue

20. The sole issue which in this Court's view is determinative of all matters raised on the evidence and supported by the submissions is whether the subject seismic surveys required an EIA before the issuance of the CEC.

Whether Relief Sought is Otiose

21. From the onset this court will state that it does not agree with the Respondent that the reliefs now sought by the Applicants would prove useless. This court agrees with the Applicants' submissions that the fact that an impugned decision which has been fully implemented prior to the trial or determination of this matter does not preclude relief being sought of the Court. Ultimately it is this Court that has the final say on whether to grant the declaratory reliefs sought.

Role of the Court in Judicial Review proceedings

22. This Court notes the unchallenged contention of the Respondent that the essence of judicial review is not to review decision itself but the process by which the decision maker arrived at the decision. (See Stollmeyer J (as he then was) in ***Friends and Fishermen of the Sea v EMA and Atlantic LNG*** HCA No. 2148 of 2004) ("**the Atlantic LNG case**").

23. Thus this Court is only concerned with examining the decision of the EMA to grant the CEC, and in so doing to consider whether the decision is flawed according to any grounds specified in section 5 of the Judicial Review Act ("**the JRA**").

24. In ***R v Social Fund Inspector Ex Parte Ali*** The Times 25 Nov 1992 it is intimated that the court should be slow to interfere in instances where Parliament has entrusted an expert body of persons to carry out its legislative intention.

25. This Court accordingly has no intention of acting as some sort of "Scientific Star Chamber" to minutely examine the decision of the EMA and supplant such decision with its own. Rather this Court is minded to review the process by which the decision to grant the CEC without need for an EIA was reached and determine whether the process followed was capricious or not.

The Decision

26. The preamble to the EMA Act envisions a collaborative approach, with the EMA working in tandem with the public to protect the environment. In the instant case, conversely, this

has turned into a battle between two self-styled heroes of the environment who are at loggerheads, with the Interested Party supporting the EMA.

27. The EMA on an application by Petrotrin granted a CEC to Petrotrin to conduct a 3-Dimensional Seismic Survey to cover an area of approximately 510 kilometres within Soldado Fields and North Marine Field located in the Gulf of Paria. This CEC was granted without an EIA. Section 35(4) of the EMA provides for an EIA if required. The use of 'if required' by the legislative drafters left it open to the expert body to determine whether one is indeed necessary upon consideration of the specific application. This discretionary power afforded to the EMA is one that allows that authoritative body to decide whether an EIA is needed having regard to the specific detail of the application.

28. The Applicants say that they do not challenge the issue of the CEC, but rather that the CEC was issued without an EIA. The EMA contends that an EIA was not required, based on the information the EMA had available to it, both from its own resources and from Petrotrin. Consequently the EMA also submits, that in accordance with its statutory framework, no consultation was required if no EIA was needed.

29. In arriving at its decision to grant the CEC, the EMA considered various factors. According to Mr. Travis Sooknanan to whom the file was first assigned, he looked at three factors; nature, scale and location of the proposed activity, all of which are instrumental in understanding the type of activity that was to be performed.

30. With respect to the nature and location of the activity he noted that the area in question was a mature seismic survey field upon which numerous surveys had been conducted previously. The scale of the activity was confined to only 510 km of the Gulf of Paria and it was not intended to last for an extensive period of time.

31. He stated that he also considered the proposed mitigation factors of Petrotrin which would include dissemination of information on the survey, proper disposal of solid waste, notices, visual observers who will be on the lookout for marine mammals and compensation to fishermen, all in his assessment of the application. This coupled with his personal knowledge

and experience as it relates to CECs, compelled him to recommend that it be granted without needing an EIA.

32. His superiors were also of the opinion based on the evidence before them and their own personal knowledge that an EIA was not necessary. Thus the initial recommendation of Mr. Sooknanan was approved.

33. The Applicants contend that the EMA ought to have had regard to the following reports annexed to the Aboud affidavit – the Kishore, Mangal, Hutchinson and Fisheries Division Reports. The Applicants say these reports contain relevant considerations which the Respondent failed to take into account.

34. Paragraph 4 of the original Aboud affidavit also details the literature and the other communications which have been recorded as well as publications in the media which the he says the Respondent ought to have taken into consideration but did not prior to making its decision.

35. The Applicants also contend that in so far as the Respondent made reference to mitigation measures in the Persadie report in its response to the pre-action protocol correspondence, the EMA nonetheless failed to acknowledge which mitigation measures it was taking into consideration such as seasonal access restrictions, avoidance of spawning and feeding areas and avoidance of nursery areas and migratory paths.

36. The submission of the Applicants is that this is essential to note as it does not auger well for the assessment made by the Respondent that the risks were minor to moderate without referring to any known mitigation measures.

37. In response, the Applicants contend that these reports do not demonstrate a direct correlation between seismic surveys and the degradation of the fishing beds.

Precautionary Principle

38. The precautionary principle has been incorporated into the laws of this jurisdiction by virtue of Section 31 of the EMA Act and Chapter 2 of the National Environmental Policy under the rubric Goals, Objectives and Basic Principles which provides as follows:

"***Government policy will adhere to the principle that if there are threats of serious irreversible environmental damage, lack of full scientific certainty will not be used as a reason for postponing measures to prevent environmental degradation.***"

39. The Applicants contend that it is not sufficient, on a proper application of this principle, for the Respondent to say that it was incumbent on someone to persuade them that there was scientific certainty of the risk of degradation.

40. The Applicants also submit that it was only through the EIA process that an accurate picture of the risks, mitigation measures and compensation could be calculated. For this the Applicants relied on the case of **Telstra Corporation Limited v Hornsby Shire Council** [2006] NSWLEC 133.

41. This Court finds that the EMA has satisfied the burden placed on it by such principle, as admirably traversed by Stollmeyer J. in the **Atlantic LNG case**, to ensure that the seismic surveys did not pose any threat of serious irreversible environmental damage.

42. The Respondent says the Gulf of Paria is a "mature seismic survey field" as previous seismic activities have been conducted there. Both Messrs. Rajkumar and De Souza set out in their affidavits the matters they took into account in arriving at the initial decision not to require an EIA and the Review and confirmation of that decision during the EMA's second tier of consideration.

43. In this Court's view, the EMA did the "hard work" required on the facts of the instant case, to satisfy itself that it could issue the CEC without an EIA. This Court considers therefore that the statutory requirements were complied with and the legislative purpose achieved.

Lord Diplock's trilogy of unlawfulness

44. The well-known dicta of Lord Diplock in the case of **Council of Civil Service Unions and Others v Minister for the Civil Service** [1985] A.C 374 ("**GCHQ**") provides the three prong test for unlawfulness upon which administrative action is subject to control by judicial review; illegality, irrationality, and procedural impropriety.

45. Taking irrationality first, Lord Diplock in **GCHQ** had this to say:

"**By "irrationality" I mean ... a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223).**"

46. Senior Counsel for the Respondent submits that taking a holistic approach to the evidence and factors that were considered prior to granting the CEC, it cannot be said that the Respondent acted irrationally or that the decision was so outrageous so as to defy logic.

47. Rather, the Respondents say, what they have done is clearly within the band of possible rational action whereby a decision was taken. More so, anyone raising the question of irrationality has to surmount great obstacles to prove irrationality on the part of the Respondent, such obstacles being compared to a mountain.

48. The Applicants reiterate that the Respondent failed to take into account germane information that would have assisted in its decision and that rather the Respondent had regard to archaic material by looking at reports some twenty years old when there existed more recent documentation in relation to the issue.

49. This Court finds that the Respondent considered relevant factors in coming to its decision to granted Petrotrin a CEC without requiring an EIA. The Respondent considered the nature, location and scale of the activity. The Respondent considered the mitigation measures in place to counter the potential risks. The Respondent considered those who would be affected.

50. Not necessarily because certain information was considered and other information not makes does this make for a conclusion that the decision was irrational. Further there is no evidence to suggest that undue weight was given to one consideration in preference to another thereby amounting to ostensible illogicality or that the considerations led to a decision that lacked comprehensible justification. Therefore this Court finds no merit on the question of irrationality.

51. Furthermore, it cannot be said that the EMA acted without procedural propriety simply because of the complaint made by the Applicants that there was a breach of natural justice

because they were of the opinion that there was no consultation, which has been made clear, is premised on the need for an EIA.

52. The submission by the Applicants is such that the duty to act fairly incorporates a duty on the part of the Respondent to give to those who may be adversely affected by the decision, namely the Applicants, an opportunity to be heard prior to the making of the decision. The Respondent says that the Applicants were in fact heard.

53. What is fair differs in relation to the particular case. As stated by Lord Bridge in **Lloyd v McMahon** [1987] AC 625, the rules of natural justice are not engraved on tablets of stone and

> "***The requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates.***"

54. It is this Court's opinion that there existed no procedural impropriety as it relates to a breach of natural justice by the Respondent in not allowing for consultation with the Applicants as will be seen below.

55. On the third tier of illegality, the Respondent submits in short that there was nothing illegal done by the Respondent as it was not mandated to consult once it determined there was no need for an EIA.

Consultation

56. The requirement of public consultation in Trinidad and Tobago is borne out in section 35(5) of the EMA Act. This is only activated and enforced when the EMA has commissioned the preparation of an EIA in relation to the application before it.

57. The Respondent is of the view that there was no express duty on the part of the EMA to consult when considering whether an EIA is required but rather, it is only when an EIA is required that such a duty arises. The case of **R (on the application of Hillingdon London**

Borough Council) v Lord Chancellor (2008) EWHC 2683 suggests that the Respondent had no legal obligation to consult with the Applicants.

58. In response to this the Applicants, relying on the case of **Ulric 'Buggy' Haynes Coaching School v The Minister of Planning and Sustainable Development** CV2013-05227, submit that the Court is not prevented from imposing such a duty of consultation on a decision maker. Further, the Applicants have lamented throughout their evidence and submissions about the lack of "meaningful" consultation with "meaningful" effect on the part of the EMA. The question that this Court is therefore obliged to pose is - what is meaningful in whose eyes and to whose standards?

59. The Applicants on the one hand contend that the EMA ought itself to have conducted consultation but then on the other hand submit that the EMA ought to have insisted that rather Petrotrin engage in "meaningful" consultation with those persons potentially affected by the activities of Petrotrin.

60. The evidence of the Respondent clearly demonstrates that Petrotrin had three consultation meetings in July 2013 with the fishing community. On a reading of the **Atlantic LNG case** per Stollmeyer J. this court is satisfied that any such consultation would have been adequately carried either by Petrotrin or by the EMA in more serious cases, in particular where an EIA was required. In that case Stollmeyer J. said:

> "***EMA had a broad discretion in determining whether and when to hold public hearings. There is no express provision requiring follow up public hearings before granting the CEC. That is left up to its discretion …***"

61. Stollmeyer J. goes on:

> "***… section 28 attempts to remedy this by allowing affected communities more meaningful participation in decisions that affect them. It also provides communities with valuable information about the potential health and environmental effects of the project. It affords persons who may be affected the opportunity to voice their concerns … and correspondingly places EMA under a duty to consider what they say. These persons are given a fair hearing.***"

62. In the **Atlantic LNG case** Stollmeyer J found that the consultation process had been accomplished in three stages by virtue of three meetings and so concluded that there was consultation, going further to say that the EMA had not exercised its discretion unreasonably.

63. This court is satisfied that meetings held by Petrotrin with the fishing community demonstrated sufficient consultation in all of the circumstances of this case, particularly in light of this Court's finding that such consultation was not mandated by the legislation, no EIA having been required by the EMA.

64. Even in the absence of the requirement for an EIA, this court finds that, as per **Berkeley v Sec of State for the Environment** [2001] 2 AC 603, the Applicants were given "an opportunity to express [their] opinion on the environmental issues" by virtue of the three (3) consultative sessions held by Petrotrin.

65. As per Stollmeyer J in the **Atlantic LNG case**;

> "***It is sufficient if those affected, or likely to be affected, are put into a position that allows their views and opinions to be heard, to be ventilated fully, and that those views and opinions be considered properly in the decision making process. There is no requirement for ongoing public debate.***"

66. This Court agrees with the submission of the Respondent that consultations cannot go on forever. There must be an end at some point. Therefore the Court finds that those affected persons were indeed given an opportunity to have their concerns addressed and as such there was consultation although not mandated by legislation in this instance.

Issues arising from Interested Party's Submissions

67. Petrotrin ultimately submits to this Court in support of the Respondent that the EMA as the body regulated by the EMA Act and responsible for the environment is in the best position to conduct the mandated balancing exercise between economic development and environmental conservation.

Costs

68. The Applicants' Application for Judicial Review was dismissed on March 4th, 2016 with the issue of costs reserved.

69. To this end, this Court has given directions for and received Written Submissions on Costs filed on behalf of the Applicants, the Respondent and the Interested Party.

70. Unsurprisingly, the Applicant contends for no order as to costs while the Respondent and the Interested Party contend that they ought properly to be paid their costs, having ultimately been the successful parties in this litigation.

71. The Respondent has helpfully submitted a Statement of Costs totalling $793,357.00 for Senior and Junior Counsel and 2 Instructing Attorneys. The Interested Party tempers its submission somewhat by suggesting that this Court could apply a percentage reduction to any costs it considered ought to be paid to the Interested Party. As regards the Interested Party, it was not permitted to file evidence in this matter and its submissions very much mirrored and ultimately supported those of the Respondent.

72. The Applicants, while not having succeeded in this litigation to convince this Court on the evidence and law before it that the decision of the EMA was unlawful, pursued this claim with the full protection of section 5(6) of the JRA. Based on the unchallenged evidence before this court, both the First and Second Applicant fell within the definition of "person" or "group of persons aggrieved" such as to entitle them to access justice in a claim such as the instant.

73. The fact that the Applicants succeeded in their Leave Application, had an Interested Party apply to join the proceedings, overcame the challenge that the relief sought by them was otiose and engaged in 3 days of hearing and submissions as well as submissions on costs, all lead this court to find that this application was neither frivolous and vexatious, as referred to in section 7(8) of the JRA.

74. This Court also finds that any challenge involving the environment to the extent and nature of this Claim must be clothed with public interest.

75. In all of these circumstances, this Court considers that the appropriate order is no order as to costs.

Order

76. Claim of Bhadose Sooknanan and the Friends and Fishermen of the Sea against the Environmental Management Authority and the Minister of Energy and Energy Affairs (Interested Party) is dismissed with no order as to costs.

And the Court so orders.

Nadia Kangaloo
Judge