



FISHERMEN AND FRIENDS OF THE SEA

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Fishermen and Friends of the Sea- FFOS (Applicant) v The Minister of Planning, Housing and the Environment Privy Council Appeal No 0028 of 2016

Facts:

In 2001, the Water Pollution Rules 2001 (Legal Notice No. 230) was laid in Parliament by the Minister responsible for the Environment.

In 2001, the Water Pollution (Fees) Regulations, 2001 (Legal Notice No.142) (WPR) were also made by the said Minister pursuant to Section 96(2) of the EM Act.

The Water Pollution Rules, 2001 and Fees Regulations however were not enforced by the Authority until 2007.

On December 18, 2006, the Water Pollution (Fees) (Amendment) Regulations 2006 (Legal Notice No. 330) (**WPAR**) were issued by the said Minister.

The 2006 WPAR employed a flat fee or fixed fee structure and/or system for the calculation of annual permit fees under the WPAR without regard to the differentiating aspects of a polluter's business and levels of pollution. In other words, a small chicken farmer or a large chemical or oil and gas company were paying the same flat fee of TTD\$10,000.00 per year for the Permit

During the time period from Dec 2006 to August 2008, FFOS, through its Attorneys, were engaged in discussions with the said Ministry over the legality of the WPAR, but the Ministry refused and did not rectify the WPAR.

On 21st August 2008, FFOS issued a pre-action protocol letter to the said Ministry.

Courts: High Court, Court of Appeal, Privy Council

FFOS relied on the grounds such as:

1. Polluter Pays Principle, and
2. Enforcement of the National Environmental Policy (**NEP**)

Outcome:**High Court:**

Despite being 18 months late in challenging the decision of the Minister responsible for the Environment under the Judicial Review Act, FFOS was successful in being granted leave.

On 18th October 2012, Justice Rampersad gave judgment and allowed FFOS's claim. He ordered that the methodology used for calculation of the fees was illegal. He did not quash the fees regulations as such, but made an order that the 2006 WPAR were - "not [to] be implemented and/or enforced by the Authority unless the [Minister] has adequately and properly considered and applied the polluter pays principle in calculating and/or determining and/or fixing the annual permit fees."

Court of Appeal:

On 18 July 2014, the Minister of the Environment appealed the decision of the High Court. FFOS was unsuccessful as the Court of Appeal panel which comprised Justice Breaux, Justice Smith and Justice Mohammed who allowed the Minister's appeal by overruling the High Court.

However, on 15 February 2016 the Court of Appeal granted FFOS final leave to appeal its decision to the Privy Council.

Privy Council:

Lord Carnwath made it clear that the polluter pays principle was well enshrined in the legal regime of Trinidad and Tobago and the Minister had to comply.

Furthermore, the Privy Council has sanctioned the binding statutory power of the NEP and upheld the polluter pays principle as enshrined in it. The Environmental Management Act (EM Act), is one of most unique environmental laws in the western hemisphere as it's the only law to give a policy a legal effect. Section 31 of the EM Act endows the NEP with a force of law which must be adhered to by everyone including the government and the Authority itself.

On 27th November 2017, the Privy Council ruled that:

1. The WPAR was declared unlawful.
2. The Minister of the Environment reconsider the proper basis of the WPAR and make amended regulations within a specific timeframe.

After the judgement was handed down, the Ministry of the Environment now known as the Ministry of Planning and Development took 2 years to amend the WPAR. On the 9th October 2019, the Water Pollution Rules, 2019 (Legal Notice No. 312 of 2019) came into effect.