



FISHERMEN AND FRIENDS OF THE SEA

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Fishermen and Friends of the Sea- FFOS (Applicant) v Environmental Management Authority- EMA (Respondent) and Atlantic LNG Company of Trinidad and Tobago (ALNG) (Respondent/Interested Party) CV 2148/2003

Facts:

FFOS had filed for leave for judicial review to challenge the decision of the EMA to issue a certificate of environmental clearance (CEC) CEC-0114/2002 to ALNG for the establishment of a fourth train (Train 4) for the liquefaction of natural gas to produce approximately 5 million tonnes of LNG annually. FFOS acted on behalf of the residents of areas adjacent to the ALNG facility who feared that their health had been or is likely to be seriously affected by Train IV. FFOS agreed to challenge the grant of the CEC on behalf of the residents of the area due to their disadvantaged socio-economic position.

Court: High Court.

FFOS relied on grounds such as:

1. Precautionary Principle
2. Right to a Healthy Environment (implied from the existing constitutional rights to life and enjoyment of property)
3. Environmental Justice
4. Deficiencies in the EIA -Failure to consider cumulative impacts – (in light of Trains I, II and III)

Outcome:

FFOS was unsuccessful and did not appeal the High Court decision.

Trinidad and Tobago became the first Caribbean country to judicially examine the precautionary principle and it was expounded in this matter where Justice Stollmeyer explained the 'three stages' in the application of this principle can be invoked. These are:

1. there must be a comprehensive scientific evaluation of any potential risk;
2. where scientific opinion conflicts on the potential threat, the principle places the burden of proof on developers to prove that their actions will not cause serious or irreversible harm to the environment;

3. where there is scientific uncertainty as to the existence or extent of the threats to the environment the authority or agency (in this case the EMA) may, by reason of the precautionary principle, take protective measures without having to wait until the reality and the seriousness of those threats become fully apparent.

Justice Stollmeyer accepted the role of environmental justice in the development, implementation and enforcement of environmental laws and policies. – In essence, it aims to achieve environmental justice, which is "the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies".

With regards to inadequacy of the EIA, Justice Stollmeyer stated that "The EMA is given a broad discretion to determine the scope and sufficiency of the assessment but is not provided with any guidance on how this discretion is to be exercised. The term "cumulative effect" is not specifically defined, but its importance is well recognized as being one of the more important considerations in carrying out an environmental assessment...The court limits itself to mainly procedural review seeking to ensure that the statutory requirements have been complied with and the legislative purpose is achieved. Courts only intervene to overturn the agency's findings if they are arbitrary and capricious. The approach to the judicial review of cumulative impact assessment in these cases is referred to as the "hard look doctrine" and originated in the context of court review of administrative decisions. The "hard look" requires the agency to take its statutory responsibilities seriously and take a "hard look" at all the relevant circumstances. It calls only for the Court "to ensure that the agency took a hard look at the cumulative environmental consequences". However, the test for adequacy of an EIA was deliberated in the matter of **People United Respecting the Environment and Rights Action Group v EMA, Alutrint Limited (Interested Party) and the Attorney General of Trinidad and Tobago** where Justice Dean Armorer concluded that an EIA need not be perfect but it must substantially comply with the requirements for preparation of an EIA as contained in the TOR and the environmental legal regime.

With regards to public hearings, Justice Stollmeyer stated that "The EMA has 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, and will depend on the circumstances of the case and the severity of the concerns." This is the current position of the law as supported by Section 28 of the EM Act which states that "if the Authority determined there is sufficient public interest, it may hold a public hearing for discussing the proposed action and receiving verbal comments".

FFOS sought a different route to further represent the fence-line community before the Environmental Commission for breaches in the Terms and Conditions of the CEC re:

Vijay Sookdeosingh v Atlantic LNG Company of Trinidad and Tobago, the Attorney General and the Environmental Management Authority EAA 003 of 2006