

IN THE HIGH COURT OF FIJI

AT SUVA

HBM Action No. 62 of 2014

BETWEEN : **THE REGISTRAR OF POLITICAL PARTIES** of Level1,
Suvavou House, Victoria Parade, Suva.

APPLICANT

AND : **NEW LABOUR MOVEMENT** being registered as a Political
Party under the Electoral (Registration of Political Parties)
Regulation 1991.

RESPONDENT

BEFORE : **Justice Deepthi Amaratunga**

COUNSEL : **Mr. Green and Mr. Nair D. A** for the Applicant
Ms. Veretawatini for the Respondent

Date of Hearing : **18th August 2014**

Date of Decision : **22nd August 2014**

JUDGMENT

INTRODUCTION

1. The Applicant obtained an order for the winding up of the Respondent in pursuant to Political Parties (Registration, Conduct, Funding and Disclosures) Decree 2013 (The Decree). The Respondent admits that it was a political party when the Decree was gazetted on 15th January, 2013. The Decree granted 28 days for all the political parties that were in existence at that time to register under the Decree. There is no evidence of registration of the Respondent in terms of the Decree. The consequence of such non registration within the stipulated time period is that such a political party is deemed deregistered. The Registrar of the Political parties (The Registrar) brought this action to wind up the Respondent as it had failed to make an application to be registered and the

order for winding up of the Respondent was granted. The Respondent seeks to set aside the said order.

Analysis

2. The present application was made by the Respondent by way of motion to set aside the default judgment in terms of the Order 14 rule 11 of the High Court Rules of 1988 and also inherent jurisdiction. Since the order of the court to wind up was not an order made under Order 14 of the High Court which deals with the Summary Judgment there is no application of Order 14 rule 11 to the present application before me. This was not an objection raised by the counsel for the Applicant at the hearing. I am not inclined to dismiss the present application, without considering the merits for that technical irregularity.
3. The Decree allowed all the existed political parties a time period under which they needed to make application for registration in terms of the Decree. This time period was 28 days from the date of the commencement of the Decree. (see Section 4(1) of the Decree).
4. The plight of the existed political parties were clearly laid down in Section 4 of the Decree and states as follows

‘Existing political parties to register under this Decree within 28 days

4.—(1) An existing political party shall continue to operate as a political party for a period of 28 days from the date of the commencement of this Decree.

(2) Where an existing political party seeks to continue to operate as a political party after the expiry of the period mentioned in subsection (1), then it must apply to register as a political party in accordance with the provisions of this Decree within 28 days from the date of the commencement of this Decree.

(3) If an existing political party applies to register as a political party in accordance with the provisions of this Decree within 28 days from the date of the commencement of this Decree, then it shall, from the date when the application is received by the Registrar, be deemed to be a proposed

political party and it must not operate or function as a political party after the expiry of 28 days from the date of commencement of this Decree until such time when it is registered under this Decree, provided however that if the Registrar makes a determination under section 10(2) that the application by an existing political party to register as a political party should be refused, then the Registrar shall wind up any such existing political party in accordance with this Decree and any outstanding net assets of that existing political party shall vest in the State.

(4) If an existing political party does not apply to register in accordance with the provisions of this Decree within 28 days from the date of the commencement of this Decree, then it shall be deemed to be deregistered upon the expiry of 28 days from the date of the commencement of this Decree and the Registrar shall wind up any such existing political party in accordance with this Decree and any outstanding net assets of that existing political party shall vest in the State.

(5) If any existing political party, without being registered as a political party in accordance with this Decree, continues to operate or function as a political party after the expiry of 28 days from the date of the commencement of this Decree, then the office holders of that existing political party commit an offence and shall be liable upon conviction to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 5 years or to both.”(emphasis added)

5. If an existed political party failed to make an application in terms of the Decree for registration in terms of the Decree within in 28 days from the commencement of the Decree such ‘political party’ is deemed to be deregistered upon the expiry of the 28 days. So an existed political party had a time period of 28 days to make an application to be registered under the Decree (see Section 4(4) of the Decree).
6. There is no evidence of making an application under the Decree by the Respondent within the stipulated time. By virtue of Section 4(4) such a party is now deemed deregistered and the Registrar is obliged to wind up such a deregistered entity and also by law any net assets after winding up will be vested with state (See Section 4(4)).
7. The Respondent admits the receipt of the notice of this action to wind up filed by the Registrar. It had neither acknowledged nor made appearance on the date fixed for the

hearing. The Respondent political party is deregistered after the expiration of 28 days from the Decree coming in to operation, irrespective of the order of the Court.

8. In any event by virtue of Section 4(4) the 'deeming provision' had already made the political party that was in existence at the time of the commencement of the Decree deregistered and the Registrar is obliged to take steps to wind up such deregistered political party and any net asset is vested with the state by virtue of law.
9. Even if the Respondent appeared at the hearing of this application for winding up by virtue of its failure to make an application under the Decree for registration as a political party, it had already become deregistered, and winding up cannot be stalled. So, the deregistration of the Respondent Political party was a *fiat accompli* at the hearing of this winding up. The winding up follows from this legal scenario of deregistration.
10. In the absence of making an application to Registrar there was nothing left for the Respondent to object to the winding up as it was already deregistered. Though the judgment was obtained in the absence of the Respondent there appearance could not have made a difference.
11. In *Alpine Bulk Transport Co Inc v Saudi Eagle Shipping Co Inc* [1986] 2 Lloyd's Rep 221, it was held that in order to set aside the default judgment, the proposed defence advance "**must carry some degree of conviction**" and this principle was further advanced in judgment of *Moore-Bick J in International Finance Corporation Utxafrica S.p.r.l* (2001) CLC 1361 at p 1363 it was held
"A person who holds a regular judgment even a default judgment, has something of value, and in order to avoid injustice he should not be deprived of it without good reason. Something more than merely arguable case is needed to tip the balance of justice to set the judgment aside. In my view, therefore Mr. Howard is right in saying the expression "realistic prospect of success" in this context means a case which carries a real conviction." (emphasis is added)

12. The abovementioned judgments were not relating to a winding up orders of the court, but the principle in setting aside of a judgment obtained in the absence of a party is that there should be 'realistic prospect of success' or 'must carry some degree of conviction'. A mere defence without merit cannot be accepted. Since the Respondent political party is already deemed deregistered in the eyes of law, the contention taken by the Respondent cannot hold water.
13. The contention of the Respondent is that deregistration was illegal. This cannot be challenged in the winding up as it was a *fiat accompli* under the Decree upon expiry of 28 days from 13th January 2013. The winding up follows the deregistration and at the winding up hearing, deregistration by virtue of the Decree cannot be challenged.
14. The Respondent admitted the affidavit of service of the winding up action as well as the winding up order of the court. The order to wind up was made on the 3rd of June, 2014. According to the affidavit of service of winding up action was effected on 21st May, 2014. The deregistration of the Respondent political party happened on the lapse of 28 days from the commencement of the Decree (i.e 13th January, 2013). So the deregistration of the Respondent was more than 18 months ago. It is an offence to function or operate as a political party after expiration of 28 days from the date of commencement of the Decree without making an application to register under the Decree. So, the winding up was inevitable even if the Respondent appeared at the hearing as it is an offence to function Respondent political party.
15. It failed to appear or acknowledge the notice or file any objection for the winding up at the hearing and accordingly an order for winding up was made, but even if it made the objection stated in the affidavit it cannot be considered as having a 'realistic prospect of success'.
16. The Respondent was again served with winding up order, but filed the present motion seeking setting aside of the judgment, dated on 3rd June, 2014 filed on 24th June, 2014. This again shows the lack of interest on the part of the Respondent. The affidavit did not

contain reason for the delay, of this application. Since the delay cannot be considered as inordinate I will not consider it as a factor to dismiss this application.

CONCLUSION

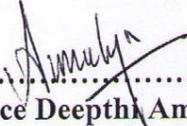
17. The commencement of the Decree according to the affidavit in support was 13th January, 2013 and the Respondent had failed to make an application within the time stipulated under the Decree. In terms of the Section 4(4) of the Decree such a failure was fatal and the resultant position is such entity is deemed deregistered, and the registrar is obliged to wind up such a party and the net assets vested with the state. It should also be noted that it is an offence for such a deregistered political party to function or operate, The Respondent had failed to establish a "realistic prospect of success" to oppose the winding up in the affidavit in support of this application for setting aside. It cannot challenge the deregistration of it, happened 18 months ago. The winding up order was not a summary judgment, hence the O 14 r. 11, has no application, to this action. The motion seeing setting aside is struck off. The cost is summarily assessed at \$1,000.

FINAL ORDERS

- a. The motion dated 13th June, 2014 filed on 24th June, 2014 struck off.
- b. The cost of this application is summarily assessed at \$1,000.

Dated at **Suva** this **22nd** day of August, **2014**.




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Justice Deepthi Amaratunga
High Court, Suva