

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2006-00817



BETWEEN

Magdalene Samaroo

Applicant

AND

Telecommunications Services of Trinidad and Tobago

Defendant

Before the Honourable Mr. Justice Best

Appearances:

Mr A Ramlogan for the Applicant  
Dr C Denbow for the Defendant

JUDGMENT

1 On 17<sup>th</sup> January 2006, the Applicant made an application under the provisions of the Freedom of Information Act 1999, as amended (hereinafter called the FOIA) to Telecommunications Services of Trinidad and Tobago (hereinafter called TSTT), *inter alia*:-

- A copy of the letter from the Integrity Commission to the Directors of the Board of TSTT informing them that they are not required to give annual declarations of their incomes, assets and liabilities and statements of Registrable interests in accordance with the requirements of the Integrity in Public Life Act 2000, as amended.

2 The Applicant posted two reminders to the Defendant, but up to 31<sup>st</sup> March 2006, when an Application for Judicial Review was filed herein, no decision on the Application was communicated to the Applicant.

H.C. 817/2006 SAMAROO v MAGDALENS & I.S.T.T.

3. The Short Submission of the Defendant:

- TSTT is not subject to the provisions of the FOIA, and that
- The document under consideration was an exempt document.

Section 03 (1) of the FOIA reads as follows.-

*“The object of this Act is to extend the right of members of the public to access to information in the possession of public authorities by*

- (a) *making available to the public information about the operation of public authorities and in particular ensuring that the authorities, policies, rules and practices affecting members of the public in their dealings with public authorities are readily available to persons affected by those authorities, policies, rules and practices ”*

Section 04 sets out a definition of a public authority thus:-

*“Public authority means*

- (k) *a body corporate or unincorporated entity*  
(iu) *which is supported directly or indirectly by Government funds and over which Government is in a position to exercise control”*

4. The issue that now faces this court is the Defendant Company a public Authority?

The Onus of Proof

In the matter of the **Minister for Agriculture and Food v The Information Commissioner (No. 48, CA of 1999)** in an appeal by the Minister for Agriculture and Food against a decision of the Information Commissioner, Mr. Justice O'Donovan on 17<sup>th</sup> December 1999 stated:-

*“I think it follows that save where access to records is specifically prohibited by the Act e.g. 'exempt records' within the meaning of section 2(1) of the Act, there is a very heavy onus on a public body, which refuses to grant access to records sought of it, to justify that refusal ”*



The evidence of Mr Norris Campbell

5. Mr Norris Campbell swore in an affidavit filed herein on behalf of the Defendant, that he is the Corporate Secretary of TSTT. He stated herein that TSTT was incorporated on 16<sup>th</sup> May 1968 as the Trinidad and Tobago Telephone Company Limited, (hereinafter called TELCO) and that all of its issued shares were held by the Minister of Finance as Corporation Sole. He indicated that TELCO was continued on 15<sup>th</sup> April 1999 under the Companies Act, 1955. That at the beginning of 1991, there was a merger between TELCO and the Trinidad and Tobago External Telecommunications Limited to form one composite Telecommunications Company, wherein TELCO's name was changed to TSTT.

6. Prior to the said merger a Shareholders Agreement dated 20<sup>th</sup> December 1989 was entered into by the Government of Trinidad and Tobago, Cable and Wireless (West Indies) Limited, Cable and Wireless PCL of London and TELCO whereby the Government of Trinidad and Tobago held 51% of the issued shares capital of TSTT and Cable and Wireless, West Indies the remaining 49%.

7. Mr Campbell further swore that on 27<sup>th</sup> August 1999, the Government of Trinidad and Tobago incorporated a company named the National Enterprises Limited (hereinafter called the NEL). The 51% held by the Corporation Sole was transferred to the NEL and up to the date of swearing is still so held. On 22<sup>nd</sup> August 2000, the NEL entered into a Deed of Adherence, whereby it agreed to abide with the obligations of the Government of Trinidad and Tobago.

Control of a Limited Liability Company

8. In the matter of IRC v J. BIBBY and Sons limited (1945) 1 All ER 667 at page 670 (f-g) Lord Mc Millan stated:-

*"The control of a company resides in the voting power of its shareholders. In the respondent company the ordinary shares alone confer a right to vote at a general meeting. The directors are the registered proprietors of*

*a majority of the ordinary shares It would, therefore, appear to follow that the directors have a controlling interest in the company "*

Lord Simonds agreed with this view at page 672 (h) to wit:

*"What, my Lords constitute a controlling interest in a company? It is the power by the exercise of voting rights to carry a resolution at a general meeting of the company Can the directors of the respondent company by the exercise of their voting rights carry such a resolution? Yes for they are the registered holders of more than half the ordinary shares of the company Therefore they have a controlling interest in the company "*

9. This court accepts that the true test for control of a limited liability company is the holding of a majority of ordinary shares on the register of shares

#### The Corporation Sole and TSTT

10 Under the Minister of Finance (the Incorporation) Act, Chapter 69:03 at section 3(1) stated,-

*"The Minister for the time being shall be corporation sole by the name of the Minister of Finance and all property transferred to and vested in the Minister by this Act or otherwise acquired by the Minister shall be held in trust for the state "*

11 Under the Schedule of this Act is found the Trinidad and Tobago Telephone Company, listed with the Government of Trinidad and Tobago holding 10,250,000 "A" Ordinary shares.

12. This Court accepts that the majority shareholding by the Government of Trinidad and Tobago in the Trinidad and Tobago Telephone Company (hereinafter called TELCO) made that entity a State Enterprise



13. The evidence of Mr Campbell suggests that TELCO merged with other telecommunications companies and in the process lost its identity; emerging as TSTT. This saw the majority of shares held by the Government of Trinidad and Tobago was transferred to NEL

This transfer of shares, Counsel suggested saw the termination of the *de jure* control of TSTT by the Government of Trinidad and Tobago

This loss of *de jure* control of TSTT, Counsel indicates, saw the evolution of TSTT under the wings of NEL, with *de facto* control of TSTT by NEL. (See the Annual Report of NEL for 2005, wherein the Chairman indicated that TSTT suffered a decrease in after-tax profits of \$74.9 million).

Section 04 (k) of the FOIA describes a public authority as “ . *a body corporate (iii) which is supported directly or indirectly by Government funds and over which Government is in a position to exercise control* ”

#### Ministerial Responsibility for TSTT

14 In the Trinidad and Tobago Gazette of 7<sup>th</sup> February 2002, responsibility for TSTT was assigned to the then Minister of Science, Technology and Tertiary Education as part of his responsibility as an enterprise

#### TSTT and the Public Accounts (Enterprise Committee)

15 Despite the control of TSTT by NEL; on Friday 5<sup>th</sup> December 2003, the then relevant Minister presented an Order Paper in the House of Representatives that the 2001-2003 Financial Statements for TSTT be referred to the Public Accounts (Enterprises) Committee for financial scrutiny.

16 This court accepts:

- TSTT was listed as a Government Enterprise, see the Trinidad and Tobago Gazette of 7<sup>th</sup> February 2002 at page 103.

- Responsibility for TSTT was assigned to a Government Minister, see the Trinidad and Tobago Gazette of 7<sup>th</sup> February 2002 at page 103
- On Friday 5<sup>th</sup> December 2003, the relevant Minister presented an Order Paper in the House of Representatives that the 2001-2003 Financial Statements of TSTT be referred to the Public Accounts (Enterprises) Committee

17 This court accepts that control of a Private Limited Company resides in the majority shareholding, however, with responsibility for TSTT residing with the responsible Minister, this court accepts that TSTT is a body corporate over which Government is in a position to exercise control This control is augmented by TSTT's fiscal supervision by the Public Accounts (Enterprises) Committee.

18 In the humble estimation of this court, TSTT is supported by government funds and over which Government is in a position to exercise control This court holds that TSTT is a public Authority

19. The Defendant has submitted in the alternative:-

*" if the Court does not agree with the foregoing and determines that TSTT is a public authority, the document requested is in any event not subject to disclosure since it is an exempt document having regard to the provisions of section 34 of the Integrity in Public Act ."*

20 The second issue to be determined by this court is whether the requested document is an exempt document

21 On 17<sup>th</sup> January 2006, the Claimant requested of TSTT as follows -

*" a copy of the letter from the Integrity Commission informing the aforesaid Directors that they are subject to the provisions of the Integrity in Public Act"*

There was no response to the said request

22. I have reference to section 34 of the **Freedom of Information Act, 1999** (hereinafter called the FOIA), which reads as follows -

*"A document is an exempt document if there is in force a written law applying specifically to the information of a kind contained in the document and prohibiting persons referred to in the written law from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications"*

23 Counsel for the Defendant has submitted that section 34 of the FOIA read together with section 35 of the **Integrity in Public Life Act** makes the requested document exempt

Section 35 of the **Integrity in Public life Act** reads as follows:

*"(1) the records of the commission and any information revealed by a witness or by the production of documents shall not be disclosed other than to such extent as may be necessary for the purpose of proceedings in any court relating to a charge under this Act, the prevention of Corruption Act or any other written law "*

24. This court accepts that the applicant sought a copy of a record of the Commission. However, section 34 of the FOIA goes further to state that the requested document is exempt.-

*" if there is in force a written law applying specifically to information of a kind contained in the document "*

25 In the view of this court the submission of the Defendant:- *"that disclosure is limited to criminal proceedings "* lacks the necessary specificity required by section 34 of the FOIA and therefore this alternative claim fails



26 The costs of this application are to be assessed and paid by the Defendant to the Applicant, certified fit for one Counsel.

Dated this 19<sup>th</sup> day of July 2010

Carlton Best  
Judge