

TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. Cv. S1931 OF 2004

BETWEEN

IN THE MATTER OF AN APPLICATION BY DULARIE JAGMOHAN OF NO. 13 SUCHIT TRACE PENAL, FOR JUDICIAL REVIEW AS OF RIGHT PURSUANT TO SECTION 39 OF THE FREEDOM OF INFORMATION ACT (AS AMENDED) ("THE SAID ACT")

AND

IN THE MATTER OF THE ILLEGAL AND/OR UNLAWFUL FAILURE AND/OR REFUSAL BY THE SOUTHWEST REGIONAL HEALTH AUTHORITY TO MAKE A DECISION ON THE APPLICANT'S APPLICATION OR REQUEST FOR CERTAIN INFORMATION PURSUANT TO THE PROVISIONS OF THE SAID ACT

AND

IN THE MATTER OF THE UNREASONABLE DELAY ON THE PART OF THE RESPONDENT IN MAKING A DECISION ON THE APPLICANT'S REQUEST FOR CERTAIN INFORMATION PURSUANT TO AND UNDER THE PROVISIONS OF THE FREEDOM OF INFORMATION ACT AND/OR PROVIDING THE REQUESTED INFORMATION TO THE APPLICANT

BETWEEN

DULARIE JAGMOHAN

APPLICANT

AND

SOUTHWEST REGIONAL HEALTH AUTHORITY

PROPOSED RESPONDENT

Before The Honourable Mr. Justice Stollmeyer

Appearance: Mr. N. Lalbeharry Ex-Parte for the Applicant

REASONS

On 27th October 2004 an application was made *ex parte* for leave to apply for judicial review in this matter.

The following relief was sought:

- "(a) An application of mandamus to compel the Respondent to provide the Applicant with the requested information as set out in her application made under the provisions of the Freedom of Information Act dated the 5th day of August, 2004.
- (b) A declaration that the Applicant is entitled to the information set out in the said application.
- (c) Alternatively, an order directing the Respondent to forthwith prepare and supply notice in accordance with section 23 of the said Act.
- (d) An order directing the South West Regional Health Authority to publish a statement in accordance with the statutory requirements of section 7 of the Act.
- (e) A declaration that there has been unreasonable delay on the part of the SWRHA in making a decision on the Applicant's request under the Freedom of Information Act".

I granted leave in respect of (a), (b) and (e) above. I refused leave in respect of the orders sought at (c) and (d), however, for the reasons set out hereunder.

What lay of the heart of the application was the Applicant seeking an order that the Respondent provide her with copies of all medical reports and notes relating to her, as well as those in relation to her infant daughter, for the period 2nd July 2004 to the time of the application.

This information had been requested of the Respondent by a request made under the Freedom of Information Act the ("the F.I.A.") on 5th August 2004 to which there had been no response. Similarly, there had been no response to a letter from the Applicant's attorney of 6th October 2004 giving notice of her intention to apply for judicial review under the provisions of the F.I.A.

This information was requested for the specific purpose of enabling the Applicant to ascertain the precise cause of her baby's injuries and to seek legal advice on the issue of the Respondent's liability in negligence. The baby had been injured at, or during, birth on 2nd July 2004 and her condition had deteriorated since then.

The obtaining of these reports and notes was apparently necessary to enable a decision to be made as to whether an action in negligence should be commenced against the Respondent, with claims being made by either or both the Applicant and (on behalf of) her infant daughter.

This was the interest of the Applicant in the application. On that basis I was satisfied that leave should be granted in relation to the relief sought at (a), (b) and (e).

The Applicant, however, also sought orders compelling the Respondent to:

- (1) "...forthwith prepare and supply notice in accordance with section 23 of the said Act";
- (2) "...publish a statement in accordance with the statutory requirements of section 7 of the Act".

Both of these orders were at best peripheral to the thrust of the application, the latter being to obtain the information that the Applicant saw as being necessary to obtain advice and pursue an action in negligence, if warranted. In my view, these additional orders would not further assist the Applicant, and I regarded them as superfluous.

As to the first order, Counsel could proffer no cogent argument as to why leave should be granted, given that there had been no refusal to supply the information requested. The application for leave sought to compel production of the documents, which the Respondent had obviously failed to do, but more to the point, the Respondent had failed totally to respond to the Applicant's request. It was this failure that underlay the application before me, not a refusal to supply copies of the documents requested.

Given Counsel's failure to put forward any cogent argument as why the Respondent should be ordered to give reasons for a refusal which had never occurred, and as to why leave should be granted to pursue this relief, I refused it.

As to the second order, I pointed out to Counsel that failure to publish information in accordance with the provisions of section 7 resulted in the responsible Minister being required to publish in the *Gazette* reasons for that failure (see S.7 (4)), and that this appeared to be the only recourse or remedy in respect of such a failure. I also enquired of Counsel whether his client had the necessary *locus standi* to seek this particular relief.

As to this enquiry, I was told that the Applicant had come before the Court in the public interest, but Counsel conceded that the application was not being made under the provisions of section 7 of the Judicial Review Act 2000.

Further, he was unable to put forward any cogent submission as to where or how the Court might come to have the jurisdiction or, rather, the discretion, to order the Respondent to publish this information in any event. Additionally, the only evidence put before me as to the failure to publish had been obtained eight months previously by the Applicant's Attorney-at law from the Ministry of Public Administration and Information (the ministry of the "responsible minister"). The Ministry indicated to the Applicant's Attorney (in an apparently unrelated matter) that it had not been notified by the Respondent of it having published as required by S.7; that no such notification was required; and that the Respondent could be contacted directly on this matter. There was no evidence of any such contact being made, or even attempted.

Counsel not having advanced any submissions to persuade me that leave should be granted to pursue this order, I also refused it.

20th December 2004

C.V.H. Stollmeyer
Judge