

Trinidad Cement Limited and TCL Guyana Incorporated v The State of the Co-operative Republic of Guyana

Citation: [\[2010\] CCJ 1 \(OJ\)](#)
Date of Judgment: 29 March 2010
Nature of Judgment: Judgment on contempt of court application
Composition of the Court: President: M de la Bastide
Judges: R Nelson, A Saunders, J Wit and D Hayton

CCJ Application No	Parties
OA 2 of 2009	Applicants Trinidad Cement Limited TCL Guyana Incorporated Respondent The State of the Co-operative Republic of Guyana

Counsel

- Applicants:
Dr C Denbow SC, Mrs D Denbow, Mr D Rohlehr and Ms K De Freitas, Attorneys-at-Law
- Respondent:
Mr Kamal Ramkarran, Attorney-at-Law
- State of Trinidad and Tobago:
Mr Douglas Mendes SC, Mr M Quamina, Mr E Pierre, Ms G Jankey and Ms S Ramhit, Attorneys-at-Law

Nature of Dispute

The underlying substantive dispute concerned an allegation by the Claimants, Trinidad Cement Limited (TCL) and TCL Guyana Incorporated (TGI,) that the State of the Cooperative Republic of Guyana (Guyana) breached Article 82 of the Revised Treaty of Chaguaramas (RTC) by suspending the Common External Tariff (CET) on cement from third States, without the requisite authority of the Council for Trade and Economic Development (COTED). In its judgment on the merits, the Court confirmed that Guyana had violated Article 82 of the RTC and ordered the reimposition of the CET within 28 days. After a delay in the re-imposition of the CET, the Claimants brought an application before the Court requesting that Guyana's Attorney-General be held in contempt of Court. The Claimants further requested a declaration

that Guyana had violated Article 215 of the RTC, which mandates compliance with the Court's orders.

Summary of Legal Conclusions and Orders

- The Court declared that the Defendant breached Article 215 of the RTC.
- The Court dismissed the claim for an order against the Attorney-General of Guyana requiring him to show cause why a finding of contempt should not be made against him and the claim for a declaration that the Attorney-General was in contempt of Court.
- The Court ordered Guyana to pay to the Claimants one-half of their taxed costs of this application.

Legal Provisions at Issue

- Article 215 of the RTC

Other Relevant Community Law / Material Relied on

- Articles XV and XXVI of the Agreement Establishing the Caribbean Court of Justice (the CCJ Agreement)
- Part 29.3 of the CCJ Original Jurisdiction Rules 2006

Past CCJ Case Law

- N/A

Other Sources of International Law

- *Australian Consolidated Press v Morgan* (1965) 112 CLR 483
- *Australia v France* (1974) ICJ Reports 253
- *Bega Beqaj* Case No IT-03-66-T-R77
- *Beggs v Scottish Ministers* [2007] 1 WLR 455
- *M v Home Office* [1994] 1 AC 377
- *Prosecutor v Tadić* Case No IT-94-1- A-R77

Facts

The first Claimant, TCL, is a company incorporated in Trinidad and Tobago. The second Claimant, TGI, is incorporated in Guyana and 80% of its shares are owned by TCL. In the underlying substantive proceedings on the merits, the Claimants had obtained an order from the Court requiring Guyana to reimpose the CET on cement from third States within 28 days, as Guyana's suspension of the CET had violated Article 82 of the RTC. Subsequently, Guyana was unsuccessful in obtaining a stay of execution of the Court's Order or an extension of time for compliance with that Order and/or a variation thereof. The Claimants applied to the Court to hold the Attorney-General of Guyana in contempt for non-compliance with the Court's

Order, and a further declaration that Guyana had violated Article 215 of the RTC, which mandates compliance with the Court's orders.

Findings

The Court found ample evidence that Guyana did not comply promptly with its Order to reinstate the CET and that Guyana's application for an extension of time for compliance was an admission that it had not complied. As such, the Court made a declaration that Guyana was in breach of Article 215 of the RTC, which mandates compliance with orders of the Court.

Concerning whether the Attorney-General of Guyana could be held in contempt for Guyana's non-compliance with the Court's Order, the Court declined to make a finding of contempt against the Attorney-General, as it was evident that the Attorney-General was not personally responsible for the breach of the Court's Order. This notwithstanding, the Court examined in detail whether it had the power to make orders for contempt of court, noting its unique nature in both common law and civil law jurisdictions. The Court found that, although Article XXVI of the CCJ Agreement conferred jurisdiction on the Court to treat with disobedience of orders, it did not confer on the Court an express power to enforce its orders by way of contempt proceedings. Moreover, the Court considered that, while an implied power to deal with civil contempt might arguably be derived from Article XXVI of the CCJ Agreement, it was prudent for the Court to reserve its position on this issue since no clear authority had been cited to sufficiently establish such an implied power.

The Court also considered whether the Guyana CCJ Act provided a basis on which the Court could make orders for contempt of court. Highlighting that orders made in the Court's original jurisdiction would require assistance from the enforcement machinery of national courts, the Court noted that the Guyana CCJ Act contained no express provision concerning the enforcement of the Court's judgments in its original jurisdiction. The Court noted that domestic legislation could not confer or diminish the powers of the Court in its original jurisdiction and that the only purpose for incorporating powers of the Court into domestic law is to facilitate the enforcement of the Court's orders in the exercise of its powers. The Court held that while incorporation into domestic law could make it possible to invoke the coercive powers of the State in support of orders made by the Court, the domestic law would have to go further and state explicitly how and in what circumstances such coercive powers might be engaged.

In light of the above, the Court held that even if the Court had jurisdiction to make orders for civil contempt for disobedience of its orders – a proposition which the Court described as “highly doubtful” – the evidence would not justify fixing the Honourable Attorney-General, an agent of Guyana but not a party to the proceedings, with any responsibility for disobedience of the Court's Order.

The Court, therefore, dismissed the Claimants' contempt of court application but granted a declaration that Guyana had violated Article 215 of the RTC by failing to comply with the Court's Order. Guyana was further ordered to pay the Claimants one-half of their taxed costs on this application.

This summary should not be used as a substitute for the decision of the Caribbean Court of Justice.