

Eddy David Ventose v. The Chief Electoral Officer (Barbados)

[2018] CCJ 13 (AJ)

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PARTIES: Eddy Ventose (Appellant)

Chief Electoral Officer of Barbados (Respondent)

FACTS:

This case concerned the electoral registration of Commonwealth citizens residing in Barbados. Eligibility to vote is governed by S7 Representation of the People Act Cap 12 (“ROPA”), with procedure dictated by secondary legislation. S7 states:

Subject to this Act and any enactment imposing any disqualification for registration as an elector, a person is qualified to be registered as an elector for a constituency if, on the qualifying date, he

- a) is a citizen of Barbados; or*
- b) is a Commonwealth citizen (other than a citizen of Barbados) who has resided in Barbados for a period of at least three years immediately before the qualifying date and*
- c) is 18 years of age or over; and*
- d) has resided in that constituency for a period of at least 3 months before that qualifying date, (...)*

The appellant, a St Lucian national and Commonwealth Citizen, applied to the Chief Electoral Officer (“CEO”) head of the Electoral and Boundaries Commission (“EBC”) on numerous occasions for entry onto the electoral register of Barbados as an elector. He had been employed in Barbados since 2006 and resided in the St James South constituency from 2010, however each of the appellant’s applications were refused. Agents for the CEO advised the appellant that it was a long-standing policy of the EBC to register Commonwealth citizens only if they were Barbadian citizens, permanent residents or holders of permitted immigrant status.

PROCEDURAL HISTORY:

The appellant sought a judicial review under the Administrative Justice Act Cap 109B (“AJA”). At first instance, Sir Marsten Gibson, Chief Justice of Barbados, sitting as a High Court judge, found that the appellant satisfied the requirements under S7 ROPA, and thus qualified to be registered as an elector. Gibson CJ ordered that the CEO register the appellant as an elector. On appeal, the Court of Appeal held that whilst the appellant had satisfied the requirements under the ROPA, the Act did not mandate the CEO to register the applicant as an elector. The CEO contested that the appellant did not have locus standi under S6(a) AJA, which requires demonstration of interests having been adversely affected by an administrative act or

omission. However, the Court of Appeal determined that his standing arose from S6(b) AJA wherein his application was justified on the basis of public interest. The Court of Appeal ordered the CEO to “make a determination” on registration within 24 hours, and the appellant’s registration was refused.

The Caribbean Court of Justice (“CCJ”) under its appellate jurisdiction, considered the following:

1. Whether the appellant had locus standi under section 6(a) of the AJA?
2. Whether, upon satisfaction of the conditions laid down in S7 ROPA, the appellant was entitled as a right to be entered onto the electoral register?

RULING:

1. The appellant had locus standi in accordance with S6(a);
2. The long-standing policy of the EBC to register only those who were Barbadian citizens, permanent residents or holders of permitted immigrant status was ultra vires and thus unlawful; and
3. Once the statutory criteria had been fulfilled, it was not open for the CEO to add further criteria, investigate the details on his application form and determine that one was not qualified.

REASONING:

1. The ‘long-standing policy’ of the EBC constituted an administrative act as it was designed to preclude the appellant from obtaining registration as an elector despite his meeting the statutorily mandated requirements;
2. If there is a good reason for such a policy to exist, Parliament must alter the law prior to implementation by the EBC; and
3. The legal framework was unambiguous with regards the registration of electors. In accordance with Regulations, if an individual is eligible, the registering officer shall cause their name to be entered on the register, and if not, a refusal is issued. Where a determination of eligibility has been made, a registering officer is duty bound to cause the appellants name to be entered on the register.

IMPACT AND ANALYSIS:

1. The decision of the CCJ will have a wide-ranging impact in Barbados and potentially across the Caribbean region, depending on the construction of ROPA’s and their interpretation;
2. Discretion on the part of the EBC has been removed, and thus those eligible to vote has grown significantly;
3. The express removal of perceived discretionary power held by administrative bodies will ensure a properly executed democratic process, wherein the intention of Parliament on drafting the Act will be implemented rather than a wider, subjective

- test based on a policy determined by an administrative arm. This serves to increase transparency and ensure compliance with legislation as intended by Parliament; and
4. This case serves to reiterate the importance placed on the separation of powers, with the judiciary highlighting that only Parliament has the power to extend and amend the Act.