IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY

CIV-2014-476-000016
[2014] NZHC 2381

BETWEEN	ALPINE ENERGY LIMITED Appellant
AND	KEVIN MURRAY WATERS Respondent

Hearing: 29 September 2014 (By way of telephone conference)

Appearances: A Keir for Appellant
Respondent In Person
Dr MSR Palmer for the Intervener Human Rights Commission
K Evans for Privacy Commissioner

Judgment: 29 September 2014

JUDGMENT OF GENDALL J

---

[1] Before the Court is an application by the appellant Alpine Energy Limited to reconstitute the present appeal against a decision of the Human Rights Review Tribunal as an application for judicial review.

[2] This has proved necessary because the present appeal before this Court (which is to be heard on Friday next, 3 October 2014) is an interlocutory decision of the Human Rights Review Tribunal which in terms of s 123 of the Human Rights Act 1993 it seems is not jurisdictionally open to appeal to this Court.

[3] On this aspect, in *A-G v Child Poverty Action Group Incorporated*[1] Ronald Young J confirmed that the wording of s 123 of the Human Rights Act 1993 does not allow for an appeal from a ruling on an interlocutory matter.

---

[1] *A-G v Child Poverty Action Group Incorporated* (HC) Wellington 17 May 2006, CIV-2005-485-2140.

[4] Before me today there seemed to be a broad measure of agreement between the parties that, so far as this jurisdictional point was concerned, there was a strong argument that an interlocutory decision of the Tribunal such as the one before the Court here was not subject to an appeal.

[5] Notwithstanding this, in a later decision of this Court, *A-G v Human Rights Review Tribunal and Child Poverty Action Group Incorporated*,[2] Miller J concluded that, notwithstanding the sections of s 123, it was appropriate for this Court to consider by way of judicial review decisions on interlocutory applications made by the Human Rights Review Tribunal and notwithstanding that no formal appeal might lie.

[6] This conclusion it seems to me was probably reached on the basis of balance of convenience considerations, and both the need for there to be an appropriate appeal type remedy in these interlocutory situations and also to enable such matters to be properly reconsidered where appropriate.

[7] On these aspects I agree with the reasoning of Miller J in the *Attorney-General* decision that judicial review does lie in a case such as the present.

[8] It is my view that the appropriate way forward in this case is for the present (rather late) application from the appellant to have this proceeding reconstituted as an application for judicial review to be granted. This will enable the substantive hearing of arguments of the parties to proceed at the scheduled hearing date on Friday next, 3 October 2014.

[9] For these reasons I now make the following orders:

(a) the purported appeal by the appellant in this proceeding is now constituted as an application for judicial review.;

---

[2] *A-G v Human Rights Review Tribunal and Child Poverty Action Group Incorporated* (HC) Wellington 6 November 2006, CIV-2006-485-1713.

(b) the appellant by 5 p.m. on 30 September 2014 is to file and serve on all parties to this proceeding an amended pleading by way of statement of claim; and

(c) the substantive hearing of this matter in the High Court at Timaru on 3 October 2014 will proceed on the basis that this is now a judicial review application.

.....
Gendall J

Solicitors:
Young Hunter, Christchurch
Matthew Palmer, Wellington
Office of the Privacy Commissioner, Wellington
Copy to Respondent