

IN THE INTERMEDIATE COURT OF MAURITIUS
(Criminal Division)

In the matter of :-

C.No. 265/2014

Independent Commission Against Corruption ["ICAC"]

v

Pravind Kumar JUGNAUTH

SENTENCE

For all the reasons set forth in the judgment, Accused who had been a Government Minister at the time of the offence and was a Minister in the Government of the day at the time of conviction has been **found guilty** of a section 13(2) Prevention of Corruption Act offence [hereinafter referred to as "POCA"] as amended by section 4(b) of Act No.1/2006.

Accused is liable to penal servitude for a term not exceeding 10 years pursuant to section 13(3) POCA. The sentencing options available to the Court are - Probation Order, Absolute Discharge, Conditional Discharge, imprisonment, a suspended sentence of imprisonment by way of Community Service Order or penal servitude not exceeding 10 years.

Accused is assisted at Pre-Sentence stage by Mr.R.Chetty SC, Mr.R.Gulbul, Mr R.Dawreeawoo and Ms.Ramdharry. And Mr K.Goburdhun appeared for the Prosecution.

The Defence called Honourable Minister N.Bodha to give evidence during the course of Pre Sentence proceedings in his capacity as Secretary General of the political party to which Accused belongs to, as regards the Accused's resignation as Minister.

No further evidence in mitigation was adduced by the defence.

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MP

There was also a formal admission from Mr Goburdhun that the Accused had indeed resigned as Minister of Information Technology and Innovation as from 1 July 2015 and of which we take due notice.

The crux of the Defence's submission in mitigation is that the Accused has been found guilty of an offence of a "technical nature", that his resignation was the ultimate sacrifice following the judgment and that being a barrister, he also faces the possibility of disciplinary action at that level. Defence counsel therefore prayed that a non-custodial sentence in the form of an Absolute Discharge was warranted and justified.

Mr Goburdhun submitted that the offence was a serious one visited by penal servitude and referred to various sentences before the Intermediate Court in respect of similar offences.

We have duly considered the submissions of counsel.

At the outset, we need to emphasise the fact that although this offence is listed under the POCA, it is nevertheless not a corruption offence *per se*.

In fact as per *OECD (2005) - Conflict of Interest Policies & Practices in Nine EU Member States "A Comparative Review" - SIGMA Papers No 36, OECD Publishing* ["OECD" stands for *Organisation for Economic Co Operation & Development.*] ***conflict of interest is not the same as corruption.***

It is pertinent to note the following extract from the above OECD document:

....

.... Sometimes there is conflict of interest where there is no corruption and vice versa. For example a public official involved in making a decision in which he has a private capacity interest may act fairly and according to the law, and consequently there is no corruption involved.

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ME

Thus, it cannot be clearer that - a case of conflict of interest may not also be a case of corruption.

We take due note that there is no evidence whatsoever of any corruption in this particular matter. Or any evidence whatsoever of any monetary gain benefitting the Accused.

It is most relevant to note that Accused is also of clean record which is a very strong mitigating feature.

It is agreed that Accused disclosed his interest in Medpoint Ltd at the very outset when the NGH project was in Cabinet.

As regards the decision making process for which he was convicted, we stress that the decision in question was not in respect of the choice of the site where the NGH project would have materialized.

Accused's participation for which he has been found guilty is solely as regards his participation in the decision as to whether to re-allocate funds to pay Medpoint Ltd following request from MOHQL.

We find that this decision was at the very last stage of the whole process, when all major steps had already been fulfilled for the acquisition of the Medpoint site and decision to pay had already been taken. The sole decision that had to be taken at that stage and in which Accused confirmed having participated is, the source of funds for the agreed payment to Medpoint Ltd.

Whilst the nature of the decision, i.e., whether it is individual or collective, major or minor, would have had no bearing as regards the finding of guilt, however, when it comes to sentencing, it has all its importance so as to reach the most justified, appropriate and individualised sentence.

cb

nk

The above are definitely mitigating features so as to make an outright custodial sentence inappropriate in the given circumstances.

However, it cannot be gainsaid that this offence is still a serious one with a severe penalty applicable.

Conflict of interest is tantamount to a breach of public duty that a public official owes to the public.

In the present matter, there is ample evidence that Accused willfully and recklessly took part in the decision making process albeit at the penultimate stage. According to him, there was no other choice than to sign and approve since all decisions had already been taken.

It is incorrect to state that the Accused had no other choice in the given circumstances. In fact, there is evidence on record from Mr. Yip to the effect that the Minister of Finance could delegate his powers to the Financial Secretary- *vide page 35 of transcript of proceedings 22-01-15.*

Accused seems to have been under the wrong and misguided impression that his act of approving and signing minute (7) was acceptable and normal in the given circumstances. But as stated in our judgment, it is not whether what he believed was right. The concrete fact is that he participated in the decision making process as regards re-allocation of funds wherein his relative had a personal interest, and this actual taking part in these given circumstances is absolutely prohibited under section 13(2) POCA.

In so doing, Accused has created a situation of conflict of interest so that there is a perception of influence or bias.

Conflict of interest is a perception issue, the test being what would a fair minded and well informed common man be reasonably entitled to conclude in the given circumstances.

Jo

MB

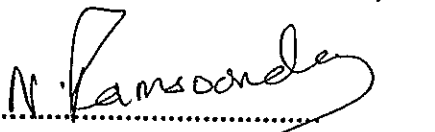
The Public expects legitimately that public officials discharge their duty in a transparent manner, hence section 13(2) POCA's absolute prohibition.

It is for these reasons that we find that a sentence under section 197 of the Criminal Procedure Act to be most inappropriate. It cannot be reasonably be said that the facts and circumstances of this case render it '*... inexpedient to inflict punishment ...*'. It goes without saying that a Probation Order would not be justified either.

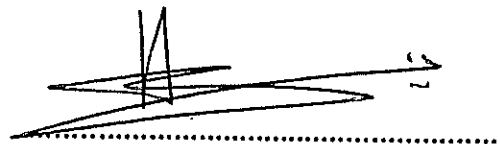
The seriousness of the offence, the perception of bias so obvious in this case in the light of the brother-sister relationship between Accused and Mrs. S.Malhotra, the ignored possibility of Accused delegating his powers to the Financial Secretary, his recklessness in taking part in the last stage of the process, are sufficient reasons for a suspended term of imprisonment with a view of making a Community Service Order. We have reached this conclusion after having duly considered the dicta in *Pem v The State [2013 SCJ 218]*.

We therefore order that Accused be sentenced to twelve months imprisonment. However, in virtue of section 3(1)(b) Community Service Order Act, the above Sentence of imprisonment of TWELVE MONTHS is SUSPENDED pending a Community Service Suitability Report from the Probation Office.

Dated this 2nd day of July 2015.



N.Ramsoondar,
Ag V.President,
Intermediate Court (Crim)



M.I.A Neerooa,
Magistrate,
Intermediate Court