

ICAC v BEEGOO KUNAL

2009 INT 166

Cause No: 586/08

IN THE INTERMEDIATE COURT OF
MAURITIUS

ICAC

V/S

KUNAL BEEGOO

JUDGMENT

Accused stands charged with the offence of 'Conflict of interests' in breach of Section 13 (2) & (3) of the Prevention of Corruption Act. He pleaded not guilty to the charge was assisted by counsel at his trial.

The charge against the accused is that on or about 1 December 2006 at MSPCA, Rose Hill he did wilfully, unlawfully and criminally, whilst being a public official having a personal interest in a decision which a public body was to take, ***did take part*** (emphasis is mine) in proceedings of that public body concerning a decision to renew the working contract of his father, Mr Premchand Beegoo.

In support of its case the Prosecution produced the birth certificate of the accused – **Doc A**.

Witness 1 Vishal Deepchand, Investigator at **ICAC**, deposed and produced the statement recorded from the accused on 24/8/07 at **ICAC** office – **Doc B**.

Upon cross-examination he admitted that at the meeting of 1/12/06 representatives of different ministries were present and he did not check with them the participation of the accused in the proceedings being given that the **ICAC** had sufficient evidence in hand. However he agreed that there was need for an element of fairness towards the accused during the course of the enquiry. Hence he did not verify the participation of the accused in the deliberations of the said meeting.

Witness 4 Sashi Shanto testified to the effect that he was the President of the MSPCA as from September 2006 and he was also the Chairman of the Council of the MSPCA. During 2006 the accused was an elected member of both the Council and the Human Resources Committee of the MSPCA. He stated that there was a meeting of the Human Resources Committee on 25/11/06 which he chaired where the renewal of the working contract of Premchand Beegoo was discussed, amongst other matters. The latter is the father of the accused and the accused was present during that committee without disclosing his relationship with Premchand Beegoo. The renewal of the said working contract was approved and that decision was ratified by the Council at its meeting of 1/12/06 which he chaired where the accused was present without disclosing his relationship with Premchand Beegoo. He produced certified copies of the minutes of proceedings of the two meetings – **Docs C-C1**.

When cross-examined he confirmed that the minutes of the meeting of 25/11/06 were faithful reproductions of the decisions taken at the said meeting. All the important decisions were unanimously approved by the Council save one. Regarding the renewal of the working contract of Premchand Beegoo he agreed that the accused did not participate in that decision. Hence the word “**unanimously**” is not used in the minutes regarding that decision. He also admitted that though the accused did not formally inform the members of his relationship with Premchand Beegoo but everyone knew that the accused was the son of Premchand Beegoo.

In re-examination he made it clear that the accused was physically present at the Council meeting of 1/12/06 but he did not speak at all during that meeting when the issue of Premchand Beegoo was canvassed and decided.

The case was then closed for the prosecution.

The accused did not depose under solemn affirmation but Mrs Krishnawtee Bhuckory was called as a witness on behalf of the defence. The witness stated that she is a member of the MSPCA and on 1/12/06 she attended its Council meeting where the accused was also present. The renewal of the working contract of Premchand Beegoo was discussed. The accused did not participate in that decision although being present. She added that Premchand Beegoo was previously employed by the MSPCA and upon his retirement he was re-employed on contract at the hospital of the MSPCA. He was badly needed by the MSPCA and he was an exemplary officer. She personally thought it fit that the working contract of Premchand Beegoo should be renewed.

The said witness was not cross-examined.

I have carefully considered the whole of the evidence on record as well as the submissions made by both Counsels.

Section 13(2) of the Prevention of Corruption Act provides the following:-

“Where a public official or a relation or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.”

In this section the underlined words are very important and the precise interpretation has to be given to those words. It is on evidence that the accused was present in both the

Human Resources Committee and the Council committee of the MSPCA when the decision of renewing the working contract of his father Premchand Beegoo was discussed, agreed and ratified. It is also on record that the accused did not talk at all nor did he intervene in that decision. In fact he stayed mute when the decision for the renewal of the contract of his father was taken. Indeed by not using the word 'unanimously' in the minutes of proceedings (Doc C1) shows that not all the members took that decision thereby confirming that the accused did really not participate in the said decision. Besides it is on all fours that the members in the two committees did know that the accused was related to Premchand Beegoo and he was not formally asked to momentarily leave the meetings when the decision regarding Premchand Beegoo was discussed and taken.

Question has to be asked as to whether the mere presence of the accused in those two meetings at the MSPCA would be sufficient for the offence under **Section 13 (2) Prevention of Corruption Act** to take place.

The words "**take part**" must be given its just interpretation. It is the rule of construction of statutes that in the first instance the grammatical sense of the words is to be adhered to – **WARBURTON V LOVELAND (1828) 1 HUD & BRO 632**.

The words of a statute must prima facie be given their ordinary meaning – **NOKES V DONCASTER AMALGAMATED COLLIERIES (1940) AC 1014**. Where there is no ambiguity in the words, there is no room for construction.

In **MILLER V SALOMONS 7 EX 475, 560 Pollock C.B.** observed –

"If the meaning of the language be plain and clear, we have nothing with its policy or impolicy, its justice or injustice, or even its 'absurdity'; we have nothing to do but to obey it, to administer it as we find it".

In **TAYLOR V CORPORATION OF OLDHAM 4 CH D 395** Jessel M. R. stated –

"Whatever I may think of the extraordinary results which are so caused, it is my duty to interpret Acts of Parliament as I find them. I must read them according to the ordinary rules of construction, that is, literally, unless there is something in the context or in the subject to prevent that reading".

Hence the duty of the Court is simply to take the statute as it stands, and to construe its words according to their natural significance. It is an elementary principle of the construction of statutes that the words have to be read in their literal sense. In **PHILIP JOHN V COMMISSIONER OF INCOME TAX (1964) 2 SCR 480** it was said that-

"if the words are unambiguous or plain, they will indicate the intention with which the statute was passed and the object to be attained by it. Therefore there is no need to call for aid".

For a breach of **Section 13 (2) prevention of Corruption Act Section 13 (4)** provides for penal servitude for a term not exceeding 10 years.

Statutes which take away the rights of parties under the ordinary law, particularly those provisions which imposes penalty have to be construed strictly – **PETTIA**

GANESHPRASAD V JAIBHAI ILR 1951 Nag 852. The well-settled rule is that the subject should be held to be free unless he can be found guilty according to the clear and unambiguous language of the statute – **BANSRAJ V STATE AIR 1956 All 27.** True, penal statutes should always be very strictly construed. However, it must be remembered that no rule of construction requires that a penal statute should be unreasonably construed or construed so as to defeat the obvious intention of the Legislature or construed in a manner as would lead to absurd results; on the other hand, it is of utmost importance that the Court should endeavour to ascertain the intention of the Legislature and to give effect thereto. While dealing with a penal provision, it would not be proper for the Courts to extend the scope of that provision by reading into it words which are not there and thereby widen the scope of that provision. Therefore it results that an Act entailing penal consequences should not be applied to anyone who is not brought within it in express language – **LONDON COUNTY COUNCIL V AYLESBURY DAIRY & CO (1898) 1 QB 106.** In the case **Wright, J.** remarked –

“Where an enactment may entail penal consequences no violence must be done to its language in order to bring people within it, but rather care must be taken that no one is brought within it who is not within its express language”.

Another accepted canon of interpretation is that a penal statute should be construed strictly and that in case of doubt the benefit should go to the accused – **PARMANAND V EMPEROR, AIR 1939 Lah 81.**

I have perused the statement given to the **ICAC** by the accused which as on record. The accused has denied the charge although admitting of being present in the two committees.

Taking all the above into consideration this Court is of the considered conclusion that the evidence adduced by the Prosecution in support of the charge as per the information falls short of establishing its case beyond all reasonable doubt. The word “**take part**” should certainly be construed as the accused taking an active part in the decision of the committees as opposed to his mere presence the more so that he did not even open his mouth during that particular deliberation. It is also worth noting that the testimony of Mrs Krishnawtee Bhuckory, a member of the Council of the MSPCA and who was present at that meeting, stood unrebutted in the sense that she was not cross-examined by the Prosecutor. She stated that the services of Premchand Beegoo were necessary at the MSPCA and that she personally thought it fit for his working contract to be renewed. In all intent and purposes this Court concludes that this is a suitable case where the accused must be given the benefit of the doubt which I accordingly give him. The charge is otherwise dismissed against the accused.

Raj Seebaluck
Senior District Magistrate
This 10 July 2009.