

ICAC v Bidianand Jhurry

2010 INT 145

ICAC v BIDIANAND JHURRY

Cause No 1186/2008

Judgment

1. □ The Accused stands charged with five counts of public official using his office for gratification (in breach of section 7 of the Prevention of Corruption Act 2002), and has pleaded not guilty. The main facts of the case occurred during the period January 2005 to June 2005. The case for the Prosecution is that the Accused used his office as chairman of the Sugar Industry Labour Welfare Fund Committee (the Committee) to cause five of his relatives to be offered employment at various Community Centres as community welfare assistants. Hence the five separate counts.

2. □ In relation to count 1, the Prosecution adduced evidence to show that Mr Devand Kumar Jhurry is the son of the Accused, and that he was issued with a letter of appointment as community welfare assistant dated 30/5/05. Mr Devand Kumar Jhurry was posted at Flic-en-Flac Community Centre. In relation to count 2, the evidence shows that Mr Chandan Kumar Jhurry is the son of the Accused and that he was issued with a letter of appointment as community welfare assistant dated 21/4/05. Mr Chandan Kumar Jhurry worked at La Source Community Centre from 22/3/05 to 25/8/05 and he was paid a monthly salary. As regards count 3, the record shows that Mr Khatick Kumar Jhurry is the son of the Accused and that he was issued with a letter of appointment as community welfare assistant dated 19/4/05. Mr Khatick Kumar Jhurry was posted at Beau Sejour Community Centre and he received a monthly salary. In relation to count 4, the undisputed evidence shows that Mr Outam Jhurry is the nephew of the Accused and that on 21/4/05 he was issued with a letter of appointment to work as community welfare assistant. Mr Outam Jhurry was posted at the Beau Songes Centre from 16/3/05 to 26/8/05. As regards count 5, the evidence shows that Mrs Jankee Jhurry is married to Mr Devand Kumar Jhurry and that she was issued with a letter of appointment as community welfare assistant dated 19/4/05. Mrs Jhurry worked at the Beau Sejour Community Centre from April 2005 to June 2005 and at Gros Cailloux from 13/6/05 to 26/8/05, and she received a monthly salary.

Public Office

3. □ The Sugar Industry Labour Welfare Fund Act 1974 established the Sugar Industry Labour Welfare Fund to advance and promote the welfare of workers in the sugar industry and their children. Section 5 of the said Act established the Committee as a body corporate and section 24 empowered the Committee to grant loans to workers in the sugar industry to build dwelling houses for occupation by the said workers. Under section 7, the Chairman of the Committee is appointed by the Minister. The record shows that on 19/9/03, the Accused was appointed as Chairman of the Committee. The term “public official” is defined in section 2 of the Prevention of Corruption Act 2002 as including, inter alia, an employee or member of a statutory corporation. In view of the manner of appointment and the statutory duties of the Committee, there is no doubt that the Chairman to the Committee is a public official for present purposes.

The Recruitment Exercise

4.□ According to the minutes of proceedings of the Committee (Doc K and Doc K2) and the correspondence between the Fund's general manager (Mr Bhungee) and the parent ministry, namely the Ministry for Social Security, National Solidarity & Senior Citizen Welfare and Reform Institutions, all of the five letters of appointment mentioned above were issued by the Committee after it had obtained approval from the parent ministry. Defence counsel submitted that the said letters did not emanate from the Accused at all and that the Accused did not participate in any manner whatsoever in the decision to employ the said persons. Moreover, the parent Ministry did not give evidence as to the basis on which they approved the recruitment of the persons mentioned above; and whether the approval was based upon anything said or done by the Accused. On the other hand, however, for all intents and purposes, the Accused was the main determining factor in the recruitment of his relatives under each count for the reasons given below.

4.□ Firstly, the Accused imposed his candidates for the vacancies on the Committee. The decision to recruit community welfare assistants for the new Community Centres was taken by the Committee as far back as its 816th Meeting on 28/2/05, but the vacancies were not advertised as before (vide Record pages 49 and 111). As a matter of good practice, the vacancies should have been advertised (vide Doc M) and interviews held by the Staff sub-committee. The names retained by the Staff sub-committee would then have been sent to the main Committee, and subsequently to the Ministry, for approval. In the present case, the Committee did not follow this procedure, but it was entitled to proceed as best it deemed fit. According to the minutes for the 816th Meeting, the Accused informed the Committee that there were fifteen new Centres waiting to be handed over to the Fund and that new staff had to be recruited to avoid, inter alia, acts of vandalism. The Accused did not expressly state that the recruitment of staff by advertisement and interview was time consuming but he impressed upon the Committee that time was of the essence. According to Mr Indur, the secretary to the Committee, the decisions at the Committee were taken unilaterally by the Accused and the Committee simply concurred in his proposal and empowered him to draw up a list of persons to be recruited (vide Doc K). In fact, the Accused never drew up such a list but instead he instructed Mr Indur to write to the Ministry to obtain approval for the names he provided.

5.□ Secondly, the Accused played a sinister role in seeking approval from the Ministry for the persons chosen by him. According to Mr Indur, he met the Accused at the office of the Chairman, and the General Manager, Mr Bhungee, was also present. The Accused told them that the normal procedures to appoint community welfare assistants for employment at the new Community Centres would take too long and that he would draw up his own list of candidates. Although the Committee expressly authorised the Accused to draw up such a list, the list was never circulated to the Committee. No list was shown to the Committee and according to Mr Indur there was no list at all (vide Record page 86). On 8/4/05, Mr Indur wrote to the Ministry to seek approval to employ the persons listed in his letter (vide Record page 52). All of the names in the said letter were given to him by the Accused. This fact is confirmed by Mr Bhungee (vide Record page 109). The Ministry approved all of the names on the list except for the five relatives of the Accused -vide Doc Q1 where the Ministry informs the General Manager of the Fund that

“You may wish to note that the appointment of the five candidates bearing the same family name in the list of Community Welfare Assistant in respect of serial nos 05,10,15,18 and 21 has not been approved. It would be appreciated if further clarifications could be furnished with regards to the five abovenamed persons.”

Mr Bhungee saw this letter and as usual he re-directed it to Mr Indur for necessary action. Mr Indur informed the Accused that the five persons were not approved by the Ministry and the Accused instructed Mr Indur to write to the Ministry as follows (vide Doc P2):

□“Further to your letter No MSS/SWF/CF/147 dated 14th April 2005 and to the observation made therein, we now seek approval for the enlistment of the following as it is a mere coincidence that they all bear the same family name –

- (i) Mr Katick Kumar Jhurry
- (ii) Mr Outam Jhurry
- (iii) Mr Chandan Kumar Jhurry.”

The above letter amply shows that the intention of the Accused was to cause the Ministry to approve the appointment of his two sons and nephew as community welfare assistants by clearing any doubts which the Ministry may have had that they were related. This letter was signed by Mr Indur on behalf of the General Manager of the Fund but the Accused was the true author: Mr Indur testified to that effect and, similarly, Mr Bhungee testified that he never saw Doc P2 and that he never gave instructions to Mr Indur to write it. Both Mr Indur and Mr Bhungee deponed in a clear and consistent manner and there is no reason to doubt their word. In the circumstances, it can be safely inferred that the Accused deliberately misstated the facts to conceal his family ties so as to obtain the Ministry’s approval for the appointment of his relatives. There is no other explanation.

6.□ Similarly, in relation to Mr Devand Kumar Jhurry, the Accused instructed Mr Indur to write two letters to the Ministry to state “that Mr Devand Kumar Jhurry is a resident of Albion and the Chairman of the Fund resides at Beaux Songes” and “that Mr Devand Kumar Jhurry is not closely related to the Chairman of the Fund.” (vide Doc P5 and Doc P6). Given that the Ministry simply informed the Committee that Mr Devand Kumar Jhurry had not been approved without giving any explanations, the purpose of the two letters must have been to dispel any potential objections which the Accused perceived might have cropped up in the light of the previous correspondence.

Gratification

7.□ Under section 2 of the Prevention of Corruption Act, a “gratification” is defined as including the offer of employment. Furthermore, in relation to counts 1, 2 and 3, there is a presumption in section 7(2) of the said Act that a public official has made use of his office for a gratification where he has taken any decision in which he or his linear descendents have an interest. This statutory presumption would therefore apply under Counts 1, 2 and 3 in addition to the evidence already on record.

Conclusion

8.□ For the reasons given above, the Accused was instrumental in securing employing for his relatives under each of the five counts by using his office as

Chairman to circumvent the normal procedure for recruitment and by misstating the facts. The Accused clearly acted intentionally, true to his statement that he would do as he wished (vide Record page 51). The Accused is therefore found guilty as charged under all five counts.

Delivered by Mr Denis Mootoo,
Magistrate, Intermediate Court
Delivered on 19th July 2010