



25 February 2019

PRESS SUMMARY

Director of Public Prosecutions (Appellant) v Jugnauth and another (Respondents)(Mauritius) [2019] UKPC 8

On appeal from the Supreme Court of Mauritius

JUSTICES: Lord Kerr, Lord Carnwath, Lord Lloyd-Jones, Lord Kitchin, Lord Sales

BACKGROUND TO THE APPEAL

In March 2010, the Government of Mauritius approved a project for setting up a National Geriatric Hospital (“NGH”). In April 2010 the Central Procurement Board (“CPB”) launched a public call for bids for the NGH project. Four bids were received, including one by Medpoint Ltd (“Medpoint”) on 3 June 2010. It offered to provide its existing hospital, Medpoint Hospital, as a suitable medical facility. At a cabinet meeting on 18 June 2010 the NGH project was raised for discussion. Mr Jugnauth, the Vice Prime Minister and Minister of Finance and Economic Development, declared a personal interest in Medpoint and left the meeting. He held 50 shares in Medpoint, and his sister was a director and held 86,983 shares out of 368,683 shares.

On 9 July 2010 the sum of Rs 150m was allocated in the Lottery Fund budget to fund the NGH project. Mr Jugnauth instructed his senior adviser at the Ministry of Finance and Economic Development (“MOFED”) that he was to deal with the matter and that the Mr Jugnauth was not to be involved. On 14 December 2010 the CPB approved the award of a contract to Medpoint and notified the Ministry of Health and Quality of Life (“MOHQL”) of its decision. The contract required a payment to Medpoint of Rs 144,701,300 by 31 December 2010. It was not suggested by the prosecution that Mr Jugnauth had taken any part in the deliberations leading to the decision to award the contract to Medpoint, in the valuation process or in the decision that payment would be due by 31 December 2010 as part of the 2010 budget.

In the course of internal discussions at MOFED, it was decided that identified savings of Rs 200m on capital projects in MOHQL’s 2010 budget should be reallocated to the NGH project. On 23 December 2010, a minute to that effect was accordingly addressed to Mr Jugnauth in his capacity as Minister of Finance to seek his approval for the reallocation. Mr Jugnauth signed this minute. On 24 December 2010, MOFED informed MOHQL that approval had been given to reallocate the sum of Rs 144,701,300 to its budget for payment to Medpoint. On 27 December 2010 the budgets were reallocated and Medpoint was paid.

On 30 June 2015, Mr Jugnauth was convicted of the offence of “conflict of interest” contrary to section 13(2) and (3) of the Prevention on Corruption Act 2002 (“POCA”), as amended by section 4(b) of the Act No 1/2006. He was sentenced to 12 months’ imprisonment. On 25 May 2016 the Supreme Court of Mauritius (“Supreme Court”) allowed the appeal and quashed the conviction and sentence. On 15 January 2018 the Supreme Court granted final leave to appeal to the Judicial Committee of the Privy Council.

JUDGMENT

The Judicial Committee of the Privy Council dismisses the appeal. Lord Lloyd-Jones gives the advice of the Board.

REASONS FOR THE JUDGMENT

The avoidance of situations giving rise to a conflict of interest is clearly part of the purpose of the offences created by section 13. The offence created by section 13(1) and (3) creates a wide-ranging prohibition and is committed where an official fails to disclose an interest in relation to an entity with which the public body to which he belongs proposes to deal. The offence created by section 13(2) and (3), with which we are concerned, creating a duty on an official not to vote or take part in proceedings relating to a decision in which he, a relative or associate has a personal interest, is equally wide-ranging. These provisions are intended to prohibit situations in which corruption might operate [17].

In order to prove the commission of an offence contrary to section 13(2) and (3), the prosecution is required to prove to the criminal standard the following elements which form the actus reus of the offence: (1) that the defendant was at the material time a public official; (2) that a public body has taken a decision; (3) that a relative of the defendant had a personal interest in the decision; and (4) that the defendant has taken part in proceedings of the public body relating to the decision [18]. There is also an obligation on the prosecution to prove mens rea in relation to each element of the actus reus of the offence contrary to section 13(2) [20].

At the date of the acts alleged to give rise to the offence the defendant was a public official within section 13(2) [27]. The defendant's conduct in signing the minute did amount to taking part in proceedings relating to a "decision which a public body is to take". The use of the words "any proceedings" in section 13(2) and the underlying policy of the provision strongly suggest that these words are to be given a wide interpretation so as to include any proceedings, including a single event, which are capable of leading to a situation of conflict of interest of the sort described in that provision. In particular, the words are sufficiently wide to include both acts leading up to the formation of a contract and acts performed in the execution of a contract once concluded. Furthermore, the signing of the minute in this case was not a merely procedural or administrative act [29].

The crucial issue in the appeal is whether the defendant's sister, Mrs Malhotra, had a personal interest in the decision within section 13(2). An "interest" within section 13(2) is required to be "a personal interest". In the Board's view, "personal" is intended to limit the meaning of "interest" to the following extent. It draws a distinction between the individual interest of a public official, his relative or associate and the more general interest shared by members of the public at large in decisions made by public officials. This reading is consistent with and furthers the objective of the provision which is to prohibit participation in decision making where the official, his relative or associate has an interest which gives rise to a conflict. There is no good reason to give the word "personal" a more limiting effect. Moreover, the interest is not required to be a financial interest [33].

In the present case the relevant decision was to reallocate the source of the funds to be paid to Medpoint [36]. The Board considers that Mrs Malhotra cannot have had a personal interest within section 13(2) in the decision whether the payment should be made from MOFED's or MOHQL's budgeted funds. The decision, whichever way it went, cannot have affected any interest of Mrs Malhotra or the company in any way. There was already a binding contract and a legal commitment to pay the money. The funds to make the payment were available. The only question was from which pocket the funds should come. The money would have been paid from the Consolidated Fund in any event. No doubt, which internal account it came from would have been a matter of total indifference to her. It was merely concerned with a choice between two available internal sources of funding [39]. This is sufficient to dispose of this appeal. However, it should also be noted that, by the same token, Mr Jugnauth could not have had knowledge of the existence of facts giving rise to a personal interest in the decision in his sister, because there were none [41].

For these reasons, the appeal will be dismissed [42].

NOTE: This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.uk/decided-cases/index.html.