Michaelmas Term
[2023] UKPC 37
Privy Council Appeal No 0006 of 2023

JUDGMENT

Surendra Dayal (Appellant) *v* Pravind Kumar Jugnauth and 5 others (Respondents)

From the Supreme Court of Mauritius

Before

Lord Lloyd-Jones
Lord Sales
Lord Hamblen
Lord Stephens
Dame Sue Carr

JUDGMENT GIVEN ON
16 October 2023

Heard on 10 July 2023

Appellant
Timothy Straker KC
Nandkishore Ramburn SC
Imogen Sadler
(Instructed by Etude AO Jankee (Mauritius))

First to Third Respondents
Guy Vassall-Adams KC
Ravindra Chetty SC
Tim James-Matthews
(Instructed by Kingsley Napley LLP)

Fourth and Sixth Respondents
Helen Mountfield KC
Annabelle Ombrasine
(Instructed by RWK Goodman LLP (London))

Fifth Respondent
Rishi Pursem SC
Anwar Moollan SC
Ali Adamjee
Raza Currimjee
(Instructed by Etude A Rajah SA (Mauritius))

DAME SUE CARR:

Introduction

1. This appeal arises out of the 2019 Mauritius National Assembly election, in which the appellant ("Mr Dayal") was an unsuccessful candidate. He challenged the validity of the election of three of his political opponents on grounds of bribery, treating and undue influence for the purpose of sections 64 and 65 of the Representation of the People Act 1958 (Mauritius) ("the Act"). His petition under section 45 of the Act was dismissed by the Supreme Court of Mauritius (the Honourable Judges Mr David Chan Kan Cheong and Mrs Karuna Devi Gunesh-Balaghee) in a judgment dated 12 August 2022. He now appeals against that dismissal with the leave of the Supreme Court.

2. Mauritius is a parliamentary democracy governed by a written constitution. It has 21 electoral constituencies, 20 with three members each, and one (Rodrigues) with two. Mr Dayal and the first to third respondents ("Mr Jugnauth", "Mrs Luchoomun", "Mr Sawmynaden") were all candidates in Constituency No. 8 (Quartier Militaire and Moka) ("the constituency"). Mr Dayal belonged to L' Alliance Nationale ("LAN"); the first to third respondents belonged to L' Alliance Morisien ("LAM"). The first to third respondents ranked first, second and third in the voting and so were elected; Mr Dayal ranked fifth and so was unelected. Following the election, LAM returned to form the Government, and Mr Jugnauth resumed his position as Prime Minister. That is a position that he has held since January 2017 and continues to hold. The next general election is due to take place next year, in 2024.

3. By the time of the appeal hearing, Mr Dayal's challenge had narrowed to three grounds. He contends that the Supreme Court was wrong in law to dismiss the following allegations:

(i) That promises made by Mr Jugnauth in October 2019 to increase the basic retirement pension ("BRP"), to accelerate forms of public sector pay and terms, and to pay one-off performance bonuses to police officers, firemen and prison officers constituted bribery (grounds 1 and 3);

(ii) That the provision of free food and drink at an event on 1 October 2019 organised by the Ministry of Social Security ("MSS") constituted treating (ground 2).

4. The sixth respondent was the returning officer for the constituency. The fourth respondent ("the EC") and the fifth respondent had responsibility for supervision of the general election. No criticism is made of their conduct. No concerns were drawn to

their attention during the course of the election campaign of any facts or matters said to amount to bribery or treating. They appeared before the Board in order to assist on general matters relating to the background, scope and interpretation of the relevant legislation.

Key events

5. The Mauritius National Assembly was dissolved on 6 October 2019, and a writ of election was issued on the same day. The official election campaign period ran from 6 October 2019 to polling day on 7 November 2019.

6. On 1 October 2019, an annual event celebrating the United Nations International Day of Older Persons took place at the Swami Vivekananda International Convention Centre ("SVICC") ("the SVICC event"). It was organised by the MSS, which provided free food, drink and transport for attendees (who were predominantly old-age pensioners).

7. Mr Jugnauth attended as "chief guest" and made a keynote speech, which was covered by the Mauritius Broadcasting Corporation ("MBC") and the national media generally. Mrs Luchoomun and Mr Sawmynaden were present in the audience to hear it. During the course of the speech, which he personally prepared, Mr Jugnauth announced that LAM would, if elected, double the rate of monthly payment of the Basic Retirement Pension ("BRP") from Rs 6,210 to Rs 13,500 during LAM's next electoral mandate. He had previously announced, during his 2019-2020 budget speech on 10 June 2019, that the monthly old-age pension would increase from Rs 6,210 to Rs 6,710 as of January 2020.

8. Mr Dayal relies heavily on the detail of the speech, the material parts of which are therefore set out in full:

> "My colleague, Ivan Collendavelloo, Deputy Prime Minister, all colleagues, ministers PPS, members of the National Assembly, members of the diplomatic corps, the Lord Mayor of the City of Port Louis, the president and all the members of the Senior Citizen Council, all distinguished guests and all elders who are here…
>
> For our elders what we have done, and you know I have already said it in the past, I had wished that we could make the pension come at the same level with the minimum salary ie Rs 9,000. And you know, I must remind you 2014, the old

> age pension was 3,623 rupees and we had promised as soon as we come in power we will increase it to Rs 5,000. We kept our promise. Others were saying it could not be done, it would not be done, we kept our promise, we brought it to Rs 5,000 and the government is working. We have reached almost 5 years and we did not get any problem. On the contrary, we have improved year after year, we have further and after January you will receive a pension of 6,710 monthly. I must say, I heard the President's speech, he said, well I agree with many things which he said but there are things which I do not agree, he said "do not touch our pension". But I can't do that, unfortunately for him, *I can tell you that in our next mandate, next government we will double your pension, we will bring it to Rs 13,500*. Now just imagine, may be among you there are surely two elders in your home, two elders, look how many are raising their hands. Two elders in a house who are over 60 years old, that will make Rs 27,000 which you will receive every month. *Therefore let me tell you, you know my undertaking, you know when I give my words as we had given our word in 2014. Some people had said it cannot be, we cannot make it. We increased year by year. This is my undertaking. Rs 13,500 during our next mandate.* Therefore let me finish, let me finish, I am going to tell you a very important thing…I will look after your grandchildren, your children like my children. I will take care of women, girls…I will take care of all workers in order to be able to give consideration they need in our society…we must especially look after people at the bottom of the ladder. I am already doing it, you can rely on me for the future *and for our elders what I have already said I have absolutely no doubt, you know I am a man of my word, we will keep our promise* and together we move, hand in hand so that progress can be continued because together everything is possible, thank you."
> (emphases added)

9. On 15 October 2019, at a public meeting of LAM at Belle Rose, Quatre Bornes, Mr Jugnauth announced further that the rate of monthly payment of the BRP would increase to Rs 9,000 from December 2019 (and that was the increase subsequently implemented in fact). During the same speech, Mr Jugnauth also announced that police officers, firemen and prison officers would be paid a one-off performance bonus.

10. On 23 October 2019 Mr Jugnauth announced that the implementation of recommendations in a report by the independent public sector pay review body, the Pay Research Bureau ("PRB"), would be accelerated to January 2020. As he had identified

in his budget speech on 10 June 2019, the PRB report had previously not been due for publication until October 2020, with implementation from 1 January 2021 onwards.

11. The October 2019 announcements in relation to BRP and public sector pay increases, and one-off performance bonuses, as set out above, all formed part of LAM's electoral manifesto issued on 23 October 2019.

12. Mr Dayal issued his petition under section 45(1)(a) of the Act on 28 November 2019. He alleged that Mr Jugnauth's announcements in relation to the BRP, acceleration of the PRB report implementation and performance bonuses for public officers amounted to bribery under section 64(1) of the Act; and that the first to third respondents were guilty of treating under section 64(2) of the Act because of the provision of mass feeding and drink at the SVICC event. Further allegations of bribery, no longer pursued, related to arrangements relating to an alleged promise to pay Rs 3billion to induce the votes of investors who had suffered financially due to the collapse of the British American Investment group. There was also an allegation that there was an abusive use of the MBC, which was said to have become the "propaganda machine" of Mr Jugnauth and "his whole team", in order unduly to influence voters across the nation, including in the constituency. This was said to offend section 65 of the Act. Again, this allegation is no longer pursued.

The findings of the Supreme Court

13. The hearing before the Supreme Court took place in July 2021 and lasted some 12 days. It accommodated oral evidence from both Mr Dayal and Mr Jugnauth, alongside evidence from a large number of other witnesses. The Supreme Court made a number of central factual findings on matters relevant to this appeal.

14. In relation to the *announcements concerning an increase to the BRP*, those findings were, in summary, as follows:

(i) The increase in the BRP was one of the "15 mesures phares" of LAM's electoral manifesto. It was one of the prime subjects of the electoral 2019 campaign, as evidenced by the fact that the LAN also undertook in its electoral manifesto to increase the BRP as from December 2019;

(ii) Mr Jugnauth had based his proposal to increase the BRP on a working paper prepared by the Ministry of Finance. His explanations as to why the increase in the BRP was an important theme of the 2019 electoral campaign were, in essence, that the proposal was a continuation of the policy adopted in 2014 by a new incoming government, of which the first to third Respondents had

formed part. Mr Jugnauth had stated his wish to increase the BRP on numerous occasions before 1 October 2019, in recognition of the elders' immense contribution to the economy and to the maintenance of moral and religious values, for which they deserved due consideration and respect. It was in line with his philosophy continually to increase the standard of living and the general welfare of vulnerable elders. LAN had also stated the need to enquire better conditions for elders. In any case, given that such a philosophy lies at the heart of any caring government, the validity and soundness of Mr Jugnauth's explanations could hardly be disputed;

(iii) In terms of a candidate's duty, under the ESC's Code of Conduct, to abstain from resorting to electoral promises that were untrue and unrealisable, it was an admitted fact that when LAM formed the new government, the proposal to increase the BRP to Rs 9,000 as from December 2019 had been effected;

(iv) Mr Jugnauth's announcements to increase BRP were made openly in public to a "crowd coming from all over the island, and not just [the constituency]";

(v) The announcements were a proposal of what LAM intended to do if re-elected and successful and forming a new government. It was the promise of a future government, and not of an individual candidate. It would have remained a mere statement of intention not binding on any future government. Even if LAM came into power, the increase in the BRP would still have to be approved and voted in by a new Parliament;

(vi) If implemented, the increase would apply "across the board to all old-age pensioners in the whole of Mauritius, not just [the constituency]". Whether an old-age pensioner had voted for the first to third Respondents, or LAM, would not affect their entitlement to the increase;

(vii) There was no quid pro quo or private arrangement between the first to third respondents and the voters of the constituency whereby the latter would have obtained an increase in the BRP only if they had voted in favour of the former;

(viii) There was nothing sinister, "remarkable, spectacular [or] unprecedented", in the SVICC event. The International Day of Older Persons (on 1st October), declared by the United Nations in 1990, had been celebrated annually in Mauritius at national level since 2007. The MSS was in charge of organising the event, and providing transport, food and drinks. Old-age persons were invited through numerous associations, as well as dignitaries such as ministers,

diplomats and the United Nations representative. The Prime Minister (or President) were often the "chief guest". Mr Jugnauth had attended every year since 2017 as Prime Minister and "chief guest". It was usual for the "chief guest" to speak last. The organisation of the SVICC event was thus in pursuance of the annual celebration of the International Day of Older Persons. The absence of Mr Jugnauth's name on the invitation letter did not make his appearance in any way "surprising or untoward";

(ix) There was also nothing "surprising or untoward" in the fact that Mr Jugnauth addressed the audience at the SVICC event. He spoke on several other topics, beyond the BRP, of interest both to old-age pensioners and the population in general;

(x) Whilst the announcement in relation to the BRP at the SVICC event was covered extensively by the MBC, it was also, unsurprisingly, widely covered by the private radios and press which had a wider circulation and audience;

(xi) Contrary to Mr Dayal's submission that the first to third Respondents had to resort to bribery, the situation was, as Mr Jugnauth stated, "very good" for them, as demonstrated by the comfortable margin by which they were elected;

(xii) In short, the announcement of an increase in the BRP was "part of normal electoral campaigning".

15. The Supreme Court went on to comment that the general election took place more than a month after the SVICC event, giving old-age pensioners who had attended time to reflect and decide. It stated that the courts should be "wary" of giving the impression that it was their function to select which issues were "worth discussing" in the course of a political campaign.

16. The Supreme Court concluded, having regard to all the circumstances, that it had not been established on a balance of probabilities that the announcement of an increase in the BRP constituted an act of bribery under section 64(1) of the Act. It was an electoral promise contained in an electoral manifesto and made in the course of normal electoral campaigning. It was "no more, no less" than a statement of intention of a future eventual government.

17. In relation to the *announcements concerning accelerated implementation of the PRB Report and payment of performance bonuses*, the Supreme Court made similar findings, whilst acknowledging at the outset that the proposals amounted to proposals to accelerate previous plans. It went on to find, in summary:

(i) The PRB Report was an important theme of the electoral campaigns of both the LAM and the LAN for the 2019 general election. This was unsurprising, given that, as Mr Dayal himself stated, the PRB was a matter of utmost importance to all employees of the public sector;

(ii) The proposals relating to the PRB Report were contained in both parties' electoral manifestos and were made openly in public;

(iii) They were addressed to the whole of Mauritius and not just the constituency, and would apply to public officers throughout Mauritius and irrespective of how they voted;

(iv) They were promises of a future government, and not of individual candidates. They were proposals of what each alliance would do if elected and successful in forming a new government. They were no more than mere statements of intention, and not binding on any future government;

(v) There was no evidence of any *quid pro quo*, bargaining or private arrangement between the first to third respondents (or Mr Dayal) and the public officers of the constituency. Nor could there have been, given the element of uncertainty arising out of the fact that the PRB had not yet been published. Some public officers might have refused to accept the new recommendations when signing their option forms;

(vi) The payment of performance bonuses to police officers, firemen and prison officers was a recommendation of the 2016 PRB Report. It was therefore not a new proposal; rather it was "simply a question of whether and when it would be implemented". Mr Jugnauth explained that the recommendation would normally have taken effect in 2018, but payment was delayed by the need for performance appraisals, upon which payment was conditional, and which were time-consuming and "tedious";

(vii) The proposal for bonuses was not misleading or unrealisable. LAN's electoral manifesto contained a similar proposal, and the proposal was approved by Cabinet after the formation of the new government in 2019;

(viii) Moreover, the proposal for bonuses was not a decision or policy measure that had been approved by Cabinet at the time. Mr Jugnauth announced the proposal in the name of LAM, not in his own individual name.

18. In short, the Supreme Court again concluded that it had not been established on a balance of probabilities that acts of bribery under section 64(1) of the Act had been committed with regard to these events.

19. In relation to the allegation of treating, based on the provision of food (mass feeding) and drink at the SVICC event, the Supreme Court made the following findings, in summary:

(i) (As it had already identified,) the International Day of Older Persons was celebrated annually in Mauritius at national level with transport, food and drinks being provided. There was nothing "surprising or untoward" in the SVICC event, either in terms of the distribution of food or the attendance of Mr Jugnauth as "chief guest";

(ii) It was the MSS that was in charge of organising the annual celebration, every year providing transport, food and drinks to the old-age pensioners attending;

(iii) Catering for the event had been the subject of a procurement exercise since 2015. For the SVICC event, the contract for the provision of biryani was awarded to Metos Company Limited following a tender exercise;

(iv) The MSS did not form part of the ministerial portfolio of any of the first to third respondents at the material time. There was no evidence that they participated or were involved in the organisation of the SVICC event and the distribution of biryani, which were under the responsibility of the MSS. Nor, on the evidence, could it be said that the officers of the MSS were acting as agents of the first to third respondents. There was in any event no evidence that the distribution of biryani was effected with their consent and authorisation;

(v) As for Mr Dayal's emphasis on the fact that biryani, a radically different (and superior) type of food from previous years, had been distributed at the SVICC event, in fact, biryani had been distributed at the same event in 2014. And in 2019 only one portion per person was allowed, and to a crowd from "all corners of Mauritius". Nothing suspicious or untoward was involved;

(vi) There was also no evidence to show the distribution of biryani had influenced any old-age pensioner to vote in a particular way. The fact that the distribution was disorganised did not establish corrupt treating.

20. In short, the Supreme Court concluded that there was no merit in the allegation that the first to third respondents had committed an act of treating under section 64(2) of the Act.

Mr Dayal's position on appeal in overview

21. Mr Dayal's challenge focusses on Mr Jugnauth's activities, and primarily on Mr Jugnauth's October 2019 announcements in relation to the BRP.

22. It is submitted that the terms of section 64 of the Act are "all-important". The relevant exercise is simply to determine whether someone, in order to induce someone to vote (or abstain from voting), had promised to procure (or to endeavour to procure) money or a valuable consideration for electors. In construing the statute, full effect to the plain meaning of the words in section 64 must be given, without subtle distinction or refinement (see *Simpson v Yeend* (1869) LR 4 QB 626, 629 ("*Simpson*")). The relevant statutory language does not use the word "corruptly".

23. It is argued that the Supreme Court was therefore wrong to adopt the test identified in *Ringadoo v Jugnauth* [2007] SCJ 80 ("*Ringadoo*") (referred to below); it should instead have applied the straightforward language of the statute.

24. Thus, it is said, on the basis of the facts found by the Supreme Court, the offence of bribery was made out. The speech contained a promise relating to money on a sensitive issue, contingent on a new mandate. It was made to electors as part of electoral campaigning. As it was put rhetorically, what else was Mr Jugnauth doing other than promising to endeavour to procure sums by way of an increase in the BRP in order to induce electors to vote (or refrain from voting)?

25. It is argued that the Supreme Court was wrong in limiting the effectiveness of section 64(1) of the Act. There was a want of recognition of the difference between an individual candidate standing for election and the political party to which that candidate belonged. The fact that pledges were repeated in a party manifesto did not dilute the original promises made. Liability for bribery under section 64 attaches to a person, not, for example, an unincorporated association such as the author of a party manifesto. Further, it is said that the Supreme Court was wrong to look for an element of bargaining. There is no requirement for any quid pro quo in the language of section 64, and the case law does not support the existence of any such requirement.

26. As for the allegation of treating, it is submitted that the Supreme Court failed to note the "highly significant" timing of the SVICC event, being only a few days before the dissolution of Parliament. The legislation was, it is submitted, obviously intended to

forbid an event with free food and drink a few days before dissolution at which a campaigning speech was made with promises to those provided with free food and drink. Mr Jugnauth "could have secured there was no treating".

The relevant legislation and case law

27. The Act came into force on 16 August 1958. Section 45(1) provides materially as follows:

> "(1)(a)…[A] petition…complaining of an undue election of a member to service in a council on the ground that:
>
> …(ii) the election was avoided by reason of bribery, treating, undue influence, illegal practice, irregularity, or any other reason,
>
> may be presented to a Judge in Chambers by:
>
> (B) any person who claims to have had a right to be returned or elected at the election to which the petition relates; or
>
> (C) a person who alleges he was a candidate at the election to which the petition relates."

28. Section 64 of the Act provides materially as follows:

> "64 Bribery and treating
>
> (1) Any person who-
>
> (a) directly or indirectly, by himself or by any other person on his behalf gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector, or to or for any person on behalf of any elector, or to or for any other person in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of any

> elector having voted or refrained from voting at any election;…
>
> (c) directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement as is mentioned in paragraph (a)…to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person as an elected member of a council or the vote of any elector at any election;…
>
> shall be guilty of bribery under this Act.
>
> (2) A person who-
>
> (a) corruptly by himself or any other person, either before, during or after an election, directly or indirectly gives or provides, or pays in whole or in part the expenses of giving or providing, any food, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person, or any other person, to vote or refrain from voting at such election;…
>
> shall be guilty of treating under this Act."

29. The normal principles of statutory interpretation are engaged. The words of the statute should be interpreted in the sense which best reflects their ordinary and natural meaning and accords with the purposes of the legislation. It is always necessary to consider not just the ordinary meaning of the words used but the context in which the words appear and the underlying policy of the legislation (see *R (The Good Law Project) v Electoral Commission* [2018] EWHC 2414 (Admin); [2019] 1 All ER 365, paras 33 and 74. Further, a statute cannot be interpreted according to its literal meaning without testing that meaning against the practical outcome of giving effect to it (see *R v Committee of Lloyd's; Ex p Moran* (1983) The Times, 24 June 1983 and *In re British Concrete Pipe Association* [1983] 1 All ER 203 at 205). The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the legislature. Absurdity is given a very wide meaning, covering, amongst other things, unworkability, impracticality, inconvenience, anomaly or illogicality (see *R v McCool* [2018] UKSC 23; [2018] NI 181, para 24).

30. The meaning of bribery for the purpose of section 64(1) was considered by the Supreme Court of Mauritius in *Ringadoo* where, having reviewed the authorities, the court stated that "it [was] clear…that it [was] only mala fide act with corrupt motive that would be censored.":

> "The test may be stated as follows: A candidate does not fall foul of our electoral law against bribery where he is selling so to speak government performance or electoral programme or party manifesto to attract votes. That is normal electoral campaigning. The candidate must convince the voters why they should vote for him or his party. He will however fall foul of the law when he is involved in buying votes i.e. exchange vote for money or any other valuable considerations instead of using cogent argument to influence the voters. There must be an element of bargaining and the corrupt motive will stand out so obviously from the facts….making electoral promises or blowing one's own trumpet during an election campaign cannot be said to be corrupt practices of bribery…There is obviously a marked distinction between blowing one's own trumpet and calling upon the voters to continue voting for that party and bribery in the sense of gratifying or endeavouring to procure valuable consideration to the voter or putting [it] bluntly buying the votes or inducing the electors to vote for him or his party which is no doubt reprehensible and illegal…"

31. The Supreme Court went on to find on the facts that the Minister of Health and Quality of Life had committed two acts of bribery such as to render his election null and void. The decision was upheld on appeal (see *Jugnauth v Ringadoo* [2008] UKPC 50; [2009] 4 LRC 271). Although the focus of the appeal related to the relevant standard of proof (which the Judicial Committee of the Privy Council confirmed to be the civil standard), no reservation was expressed in relation to the Supreme Court's approach to the question of bribery in section 64 as set out above.

32. There have been a number of decisions dealing with electoral practices and/or similar (though not identical) legislation in other jurisdictions, including the following:

(i) *Cooper v Slade* [1856] 6 HL Cas 746: the court addressed the meaning of "corruptly" in 17 and 18 Vict. c. 102. A promise to pay a voter his travelling expenses on condition that he voted for the party promising to pay was an offence of bribery. "Corruptly" did not equate with "dishonestly"; rather it meant "purposely doing an act which the law forbids as tending to corrupt voters, whether it be to give a pecuniary inducement to vote, or a reward for having

voted in any particular manner. Both the giver and the receiver in such a case could be said to act "corruptly" (at p 773);

(ii) *Kingston-upon-Hull* (1911) 6 O'Malley & Hardcastle 372: the court held that corrupt practices were not limited to cases where moral corruption was the governing motive. A corrupt practice existed when "a man does a thing which must produce an effect upon an election which is contrary to the intention of the Act of Parliament – an improper thing, influencing the electors in a manner contrary to the intention of Parliament" (at p 373). There the distribution of coals to certain individuals in the candidate's constituency and the provision of boxes of sweets in certain schools was held to amount to corrupt practice;

(iii) *Iqbal Singh v Gurdas Singh* (1976) 3 SCC 284: this involved an electoral challenge under section 123 of the (Indian) Representation of People Act 1951. Neither the issuing of gun licences or the grant for construction of dharamshalas for Harijans was held to amount to corrupt practice. In relation to the gun licences, the court relied, amongst other things, on the fact that there was no evidence "regarding bargaining for votes by the promise of gun licences" (at paras 11 and 13);

(iv) *Brown v Hartlage* 456 US 45 (1982) ("*Brown*"): this involved a challenge to an application of the Kentucky Corrupt Practices Act, § 121.055 of which prohibited a candidate from offering material benefits to voters in consideration of their votes. During a press conference, Mr Brown had pledged to lower commissioners' salaries if elected as a commissioner. It was held that the application of § 121.055 to limit speech was in violation of the First Amendment. Where a State sought to restrict directly a candidate's offer of ideas to the voters, the First Amendment required that the restriction be demonstrably supported by a compelling legitimate state interest. Amongst other things, the application of § 121.055 could not be justified as a prohibition on buying votes. Mr Brown's statements were made openly, were subject to the criticism of his political opponent and to the scrutiny of voters, were very different in character from corrupting private agreements and solicitations historically recognised as protected by the First Amendment. There was no constitutional basis on which Mr Brown's pledge to reduce his salary could be equated with a candidate's promise to pay voters privately for their support from his own pocket-book. A candidate's promise to confer some ultimate benefit on the voter, as taxpayer, citizen or member of the general public, did not lie beyond the pale of First Amendment protection. Further, the State's fear that voters might make an ill-advised choice did not provide the State with a compelling justification for limiting speech. It was not the government's function to select which issues were worth discussing in the course of a political campaign;

(v) *Subramaniam Balaji v The Government of Tamil Nadu* (2013) 9 SCC 659: this involved a challenge under section 123 of the (Indian) Representation of People Act 1951 to schemes for the distribution of free colour television sets (and other electrical goods) as part of public welfare schemes in fulfilment of election promises made by the winning political party in its election manifesto. It was held, amongst other things, that the promises in the election manifesto could not be construed as "corrupt practice". The court held that it would be wrong to declare that every kind of promise in an election manifesto was a corrupt practice and it was not for the court to legislate what kind of promises could and could not be made in an election manifesto. Secondly, a manifesto is a statement of policy only, and the promise of a future government, not of an individual candidate. There was a clear distinction in the legislation between an individual put up by a political party and the party itself. Given the penal nature of the legislation, the rule of strict interpretation had to apply;

(vi) *Erlam v Rahman* [2015] EWHC 1215 (QB) ("*Erlam*"): this case included allegations of bribery and treating under section 113 and 114 of the Representation of People Act 1983. The court identified (at paras 386 and 498) the difference between (unethical and illegal) "bribery" and (unethical but legal) "pork barrel politics", the latter not lying "in the hands of a single individual or directed to the election of an individual candidate". In that case, Mr Rahman's conduct fell on the wrong side of the line, since he was in reality the sole controller of the relevant funds, which he manipulated for his own personal electoral benefit.

33. As the Supreme Court commented in its judgment, these decisions can provide useful guidance though due circumspection is required, given the different legislative contexts.

34. The question of treating under section 64(2) was considered by the Supreme Court of Mauritius in *Mamoojee v Walter* [1964] MR 58. The Supreme Court rejected the contention that a candidate could be liable for corrupt treating by his agents. It stated (at p 61):

> "…a person is only guilty of the offence of treating if he takes part in the commission thereof in one of the ways limitatively enunciated in those sections…No person can be guilty of the offence of treating unless he has acted corruptly in the sense given to that expression by the statutes, and he cannot have acted corruptly if he was not party or privy to the commission of the offence."

35. The statutory definition makes it clear that the person must act “corruptly”; the (first) limb of section 64(2) relevant for present purposes includes the word twice. There must be corrupt intention to influence voting, and it must be shown that some person was in fact corrupted by the treating. It is relevant to consider all of the surrounding circumstances in determining whether the treating was corrupt. (See generally *Schofield’s Election Law, Volume 1,* 3rd ed, (2023), (13-008 to 13-011) and *Parker’s Law and Conduct of Elections* (1996) (20.17 to 20.20) (as before the Supreme Court and materially the same in later editions)). By way of example, in *Erlam* a political dinner was held for the sole purpose of promoting the candidate four months before the mayoral election in question. There was no evidence that any guest was influenced by the hospitality. The court held that no illegal treating had occurred, relying amongst other things on the timing of the event.

The proper interpretation of section 64: bribery and treating

36. Normal electoral campaigning, aptly described in *Ringadoo* as “the selling …[of] government performance, electoral programme or party manifesto in order to attract votes”, does not fall foul of section 64. The fact that a proposal, promise or measure to the electorate represents money or valuable consideration (and is designed to win votes) does not mean, without more, that it amounts to illegal bribery.

37. The purpose of section 64 is to prevent corrupt practices such as the buying of votes. It is directed at preventing private inducements to the electorate to vote by reference to arguments other than the public good. The words “in order to induce” (an elector to vote (or refrain from voting)) are central and important: there must be some quid pro quo between the conduct of the candidate and the actions of the elector, some bargain between the candidate and the elector such that money is paid (or valuable consideration conferred) to the elector in return for voting in a particular way.

38. Once the significance of the phrase “in order to induce” is properly understood, it can be seen that this approach does not offend the judicial remarks in *Simpson* that full effect to the plain meaning of the words of the statute should be given. It is not a question of drawing subtle distinctions in the language. (In any event, the remarks in *Simpson* were made in a very different context, where the existence of a private bargain was obvious on the facts, and in circumstances where the present issues of construction did not arise.) It is also an approach consistent with the principle of free and fair elections underpinning a sovereign democratic state and the right to freedom of expression enshrined in sections 1 and 12 of the (later) Constitution.

39. The fact that the word “corruptly” does not appear in the relevant (first) limb of section 64(1) (and only appears in the second limb) does not point to a contrary conclusion. Corruption in the activity envisaged under the first limb is to be inferred:

the very proof of the act (of corrupt bargain) itself allows the court to draw a prima facie inference that it was done with corrupt intention. This was the approach of the Supreme Court in *Ringadoo*, drawing on the authority of *Borough of Limerick* (1869) 1 O'Malley & Hardcastle 260, where the court dealt with a provision similar to section 64(1). Mr Baron Fitzgerald there stated, at p 261:

> "…where in the former part of the 2nd section of the Corrupt Practices Act reference is made to offers and promises made before the vote is given, the legislature clearly intended the court to draw a prima facie reasonable inference from the act done as to the purpose for which it was done, leaving to the other side to rebut that inference if they could…"

Thus, the legislature did not use the word "corrupt" in those cases where the act itself afforded ground for reasonable inference that the act was done for a corrupt purpose. Only in those cases where the court should not infer the purpose simply and solely from the act had the word "corruptly" been inserted.

40. Such a purposive (in preference to a literal) approach to the correct interpretation of section 64(1) is all the more justified when the drafting origins of the Act are remembered. Its legislative text can be traced back to the Corrupt Practices Prevention Act 1854, some five years before the Office of Parliamentary Counsel was created. The same degree of accuracy or consistency that is found in modern statutes is not to be expected (see *R (Andrews) v Secretary of State for the Environment, Food and Rural Affairs* [2015] EWCA Civ 669; [2016] PTSR 112 at paras 30 - 33). A flexible approach to interpretation, focussing even more than usual on purpose, is entirely apt.

41. The literal and mechanistic approach advocated for Mr Dayal would also lead to absurd results, against which there is an interpretive presumption. It would make normal political campaigning in the run-up to an election impossible, and undermine the constitutional principle of free and fair elections. It would have the effect that a candidate could never campaign on a general policy relating, for example, to taxation or social welfare, where the impact would be to confer a financial benefit on a subset of electors. Many measures announced in political meetings or party manifestos (in order to gain votes) have financial implications for particular groups of the electoral community. The Supreme Court referred by way of example to LAN's manifesto containing proposals to remove Value Added Tax on certain products, to reduce gas and electricity prices and to increase the minimum salary as from December 2019. Equally, LAM's manifesto contained proposals to abolish the rate levy on immovable property, to give a grant to taxi owners buying a new vehicle and to increase the subvention for tax treatment abroad.

42. The Board thus rejects the narrow approach to the proper interpretation of section 64(1) of the Act as propounded for Mr Dayal.

43. On this analysis, and as was mooted during the appeal hearing, there may be a question as to whether normal electoral campaigning engages section 64 of the Act at all. If the overall purpose of the legislation is to allow free and fair elections, then ordinary political campaigning can be said to fall outside its scope. Putting it another way, it can be said to be impossible to infer the necessary purpose to induce votes in a corrupt sense. Nevertheless, for present purposes, the Board assumes, as the Supreme Court did, that section 64 is engaged.

44. Whether or not there has been illegal bribery or treating will always be a question of fact and degree. In some cases, it will be obvious that bribery has taken place. A paradigm example of a private arrangement inconsistent with democratic government is *Simpson* (where the candidate offered privately to pay the voter remuneration if he voted for him). In others, it will be necessary to consider in some detail all the relevant facts and surrounding circumstances.

45. As the Judicial Committee of the Privy Council commented in *Ringadoo* at para 19, in practice the court is unlikely to be satisfied that there has (probably) been bribery without cogent evidence to that effect. Whilst it will always be an objective assessment to be made in the light of all of the available evidence, a court will be slow to find that a political candidate, particularly when campaigning in support of a party manifesto commitment, is guilty of bribery. Amongst other things, any other approach would be antithetical to the right of freedom of expression which is inherent in the democratic process when competing for votes and is now protected by section 12 of the Constitution.

46. It follows from the above that there is no hard and fast rule – or test – to be applied in determining whether an offence of bribery under section 64 has been committed. Rather, a flexible approach, tailored to the facts of each case, is required.

47. As Justice Brennan stated in *Brown* (at p 56), it is nevertheless possible to identify factors potentially relevant to the exercise of distinguishing between "private arrangements that are inconsistent with democratic government, and those candidate assurances that promote the representative foundation of our political system". He pointed to "the precise nature of the promise, the conditions upon which it is given, the circumstances under which it is made, the size of the audience, the nature and size of the group to be benefited" as factors which might "in some instance and to varying extents bear upon the constitutional assessment". The Board agrees.

48. Developing these building-blocks, the Board identifies the following (non-exhaustive) list of factors as potentially relevant to an assessment of whether an electoral promise has amounted to illegal bribery:

(i) Whether the proposal was made in open and public, allowing criticism and debate;

(ii) Whether the proposal was the subject of prior political debate, with transparent underlying reasoning;

(iii) Whether the proposal related to a manifesto pledge;

(iv) Whether the proposal related to an important or sensitive topic of public interest;

(v) Whether the subject-matter of the proposal was also the subject of proposals by other candidates or political parties;

(vi) Whether the proposal was generic/of nationwide impact or affected only the candidate's particular constituency;

(vii) The distance in time between the proposal and polling day;

(viii) Whether the proposed benefit was contingent on particular individuals voting in a certain way;

(ix) Whether there was a quid pro quo and/or element of bargaining between candidate and voter;

(x) Whether the proposal involved a privately funded benefit;

(xi) Whether implementation of the proposal was contingent on future (potentially uncertain) political events, including parliamentary vote;

(xii) Whether the proposal was reasonable or carried an element of deception and/or extreme exaggeration.

49. Adopting the approach identified above, the Board now turns to the facts of this case.

50. As a preliminary observation, it is difficult to identify any proper legal basis for pursuit of the petition against Mrs Luchoomun or Mr Sawymynaden. They did not make the October 2019 announcements relied upon, nor (in fact like Mr Jugnauth) did they supply or manage the food or drink (or transport) for the SVICC event.

Alleged bribery on the facts

51. As set out above, the Supreme Court made clear findings of fact, with which there is no basis for appellate interference. In order to succeed, Mr Dayal must therefore demonstrate some material error of law.

52. For the reasons set out above, the mere fact that an offer or promise is made to the electorate that represents money or valuable consideration (and is designed to win votes) does not mean that an act of bribery has been committed. The Supreme Court was right to dismiss the proposition advanced for Mr Dayal to this effect. Rather, what was required was "due consideration of the surrounding facts and circumstances" in order to determine if there had been, put crudely, illegal vote-buying.

53. The Board does not accept that the Supreme Court in some way impermissibly elided the position of the individual candidate with that of the political party to which they belonged. Such a distinction is unreal in circumstances where no voter stood to benefit financially from the election of a single individual candidate (as opposed to the election of a particular political party to power). But in any event, a fair reading of Mr Jugnauth's speech makes it clear that he was not making a personal commitment to provide the financial benefit in question (which he was not in a position to give in any event), but rather a commitment on behalf of his party, the LAM: see for example, the following extracts from his speech: "in *our* next mandate,…*we* will double your pension, *we* will bring it to Rs 13,500"…"you know when I give my words as *we* had given *our* word in 2014"…"you know I am a man of my word, *we* will keep *our* promise…".

54. Having correctly identified the law, the Supreme Court was then fully entitled to conclude that bribery was not made out on the facts, essentially for the reasons that it gave. This was no more than normal electoral campaigning. Whilst in no way determinative, it is nevertheless illuminating that LAN also had a manifesto policy relating to the BRP, for example. Indeed, it too promised an increase in the rate of monthly payment to Rs 9,000 in December 2019.

55. The Board points in particular to the following features that support the Supreme Court's conclusion:

(i) The proposals were made in open and public, allowing criticism and debate;

(ii) The proposals had been the subject of prior political debate, and carried transparent underlying reasoning;

(iii) The BRP and PRB Report proposals related to manifesto pledges;

(iv) The proposals related to important and sensitive topics of public interest;

(v) The subject-matter of the proposals was also the subject of proposals by other candidates or political parties;

(vi) The proposals were generic/of nationwide impact, not limited to members of the constituency;

(vii) There were several weeks between the proposals and polling day, and over a month between the SCIVV event and polling day.

(viii) The proposed benefit was not contingent on particular individuals voting in a certain way;

(ix) There was no quid pro quo and/or element of bargaining between candidate and voter;

(x) There was no question of private funding behind the proposals;

(xi) Implementation of the proposal was contingent on future (potentially uncertain) political events, including parliamentary vote;

(xii) There was no finding that the proposals were unreasonable or that they carried any element of deception and/or extreme exaggeration.

Alleged treating on the facts

56. As set out above, on appeal Mr Dayal relied primarily on the fact that the SVICC event took place very shortly before the dissolution of the National Assembly.

57. The SVICC event was, however, more than a month away from polling day. In any event, any inferences to be drawn from the timing of the event cannot assist him in circumstances where it was the MSS, and not any of the first to third respondents, which provided the food, drink and transport (even if Mr Jugnauth might have had some (unspecified) power to stop the occasion). Further, given that this was an annual celebration, with nothing "unsurprising or untoward" about any of its arrangements, attended by voters from all over Mauritius (and not just the constituency), with no evidence that any voter was in fact corrupted, the Supreme Court was fully entitled to conclude that there was no basis for any finding of illegal treating.

58. Given the Supreme Court's findings of fact, there is only one possible conclusion in relation to treating, namely that none of the respondents could be said to be guilty of unlawful treating for the purpose of section 64(2) as a result of the provision of food, drink or transport at the SVICC event.

Conclusion

59. For these reasons, the Board dismisses the appeal on all grounds.