



## Press Summary

16 October 2023

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

**[2023] UKPC 37**

*On appeal from the Supreme Court of Mauritius*

**Justices:** Lord Lloyd-Jones, Lord Sales, Lord Hamblen, Lord Stephens, Dame Sue Carr

#### **Background to the Appeal**

This appeal arises out of the general election to the Mauritius National Assembly held on 7 November 2019.

The Appellant (“**Mr Dayal**”) and the First to Third Respondents (“**Mr Jugnauth**”, “**Mrs Luchoomun**”, “**Mr Sawmynaden**”) were all candidates up for election in the same constituency. The Fourth and Fifth Respondents were responsible for supervision of the election; the Sixth Respondent was the returning officer for the constituency.

Mr Jugnauth, Mrs Luchoomun and Mr Sawmynaden were successfully elected. The party to which they belonged, L’Alliance Morisien (“**LAM**”), went on to form the Government of Mauritius, with the First Respondent, Mr Jugnauth being re-instated as Prime Minister. Mr Dayal, a member of L’Alliance Nationale (“**LAN**”), was not elected.

Mr Dayal issued an election petition under section 45 of the Representation of the People Act 1958 (Mauritius) (“**the Act**”) challenging the election of Mr Jugnauth, Mrs Luchoomun and Mr Sawmynaden. He claimed, amongst other things, that their election was obtained by reason of bribery and treating for the purpose of section 64 of the Act (“**section 64**”). He submitted that, accordingly, their election should be declared invalid and void.

Specifically, Mr Dayal alleged that promises made by Mr Jugnauth during the election campaign, namely i) to increase the basic retirement pension; ii) to accelerate forms of public sector pay and terms; and iii) to pay one-off performance bonuses to police officers, firemen and prison officers, constituted bribery. In addition, Mr Dayal alleged that food, drink and entertainment provided at an event organised by the Ministry of Social Security (“**the MSS**”), at which Mr Jugnauth spoke, constituted treating.

In August 2022, the Supreme Court of Mauritius made a number of findings of fact and, on the basis of those findings, dismissed the petition on all grounds. Mr Dayal appealed to the Judicial Committee of the Privy Council with the leave of the Supreme Court of Mauritius.

## **Judgment**

The Board unanimously dismisses the appeal on all grounds. On the basis of its findings of fact, the Supreme Court of Mauritius was right to conclude that the First to Third Respondents (Mr Jugnauth, Mrs Luchoomun and Mr Sawmynaden), were not guilty of bribery or treating. No criticism is made of the Fourth to Sixth Respondents, who appeared before the Board to assist on general matters relating to the background, scope and interpretation of the relevant legislation. Dame Sue Carr gives the judgment of the Board.

## **Reasons for the Judgment**

Section 64 is directed at preventing private inducements to the electorate to vote by reference to arguments other than the public good. The purpose of section 64 is to prevent corrupt practices, such as the buying of votes. There must be some bargain between the candidate and the voter by which money is paid to (or other valuable consideration conferred on) the voter in return for voting in a particular way. Normal electoral campaigning does not fall foul of section 64. The mere fact that a promise is made to the electorate that represents money, and is designed to win votes, does not mean that an act of bribery has been committed [36]-[37], [52].

Whether 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. In others, it will be necessary to consider all of the relevant facts and the surrounding circumstances in detail. There is no hard and fast rule or test. Rather, a flexible approach, tailored to the facts of each case, is required [44], [46], [52].

The literal interpretation of the Act advanced for Mr Dayal would make it impossible for any candidate to campaign on a general policy that would provide a financial benefit to a group of voters (such as taxation). This would produce absurd results and undermine the principle of free and fair elections [41]. A court will be slow to find that a political candidate is guilty of bribery without cogent evidence to that effect, particularly when they have campaigned in support of a party manifesto commitment [45].

In the present case, the Supreme Court of Mauritius was fully entitled to conclude that bribery was not made out on the facts and that this was normal electoral campaigning [54]. A number of factors supported this conclusion, including:

- i. The pension and public sector pay 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 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 and of nationwide impact, not limited to members of the individual constituency;

- vii. There were several weeks between the proposals and polling day, and over a month between the event at which food, drink and entertainment was provided and polling day;
- viii. The proposed benefit was not contingent on particular individuals voting in a certain way;
- ix. There was no 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 [48], [55].

With regard to the allegations of treating, the event in question took place well before polling day and the food and drink was provided by the MSS, not any of the First to Third Respondents. It was an annual event that was attended by voters from all over Mauritius, not just those in the individual constituency. There was no evidence that any voter was corrupted. Given the Supreme Court of Mauritius's findings of fact, there was only one possible conclusion, namely that none of the Respondents could be said to be guilty of illegal treating [57]-[58].

*References in square brackets are to paragraphs in the judgment.*

**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: <http://www.jcpc.uk/decided-cases/index.html>**