

5 ST JAMES COURT

Surendra Dayal (Appellant) v Pravind Kumar Jugnauth and 7 others (Respondents) (Mauritius) [2023] UKPC 37

Issue

The Appellant challenges the First to Third Respondents' election to the National Assembly of Mauritius on the grounds of bribery, treating, and undue influence.

Facts

This appeal arises in the context of a general election to the Mauritius National Assembly held on 7 November 2019. The Appellant and the First to Third Respondents were all candidates in the same constituency. The Sixth Respondent was the returning officer for that constituency. The Fourth and Fifth Respondent had responsibility for supervision of the election. The First to Third Respondents were successfully elected and the alliance to which they belonged formed the Government of Mauritius with The First Respondent, Mr Jugnauth, as Prime Minister. The Appellant was not elected.

The Appellant issued an election petition under sections 45, 64 and 65 of the Representation of the People Act. The Appellant claims that the election of the First to Third Respondents should be declared invalid and void for having been obtained by reason of bribery, treating, and undue influence. In particular he alleges that promises made by the First Respondent during the election campaign to increase the basic retirement pension, 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. The Appellant also alleges that person acting on behalf of the First to Third Respondents entered into an agreement whereby the First to Third Respondents would, if elected, pay Rs 3 billion to victims of an alleged Ponzi scheme. This is also alleged to constitute bribery. The Appellant further alleges that the provision of food, drink and entertainment at an event organised by the Ministry of Social Security at which the First Respondent spoke constituted treating. In addition the Appellant alleges that the First to Third Respondents engaged in undue influence of voters by fraudulent contrivance through misuse of the Mauritius Broadcasting Corporation (the Seventh Respondent).

In 2021 the Supreme Court of Mauritius dismissed the election petition on all grounds. The Appellant now appeals to the Judicial Committee of the Privy Council with leave of the Supreme Court of Mauritius.

Decision

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.

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. 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.

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 Ministry of Social Security, 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

This summary is provided to assist in understanding the Court's decision and should not be cited as an authority. It does not form part of the reasons for that decision. The full opinion of the Court is the only authoritative document.