

**ICAC V Pursun & 2 ors**

**2014 INT 218**

**ICAC V CHETANAND PURSUN & 2 ORS**

CN: 126/08

**In the Intermediate Court of Mauritius**

Pce

V

**Chetanand Pursun**

**Roshan Munee Seetohul**

**Nirendranath Kumar Chady**

Ruling

The defence has moved that all the documents submitted by Mr Vineshsingh Seeparsad to ICAC in November 2007 be disregarded by the Court. These documents include the minutes of proceedings of the Public Health Committee prior to January 2008 as well as all the application forms given by Mr Seeparsad to ICAC. The defence has submitted that these documents have only be made public during the quarterly council meeting held in January 2008 and were therefore confidential at the time they were handed over to ICAC in November 2007.

Normally, by virtue of Regulation 10 of the Committees of Urban Authorities made under the Local Government Act, all notices, reports and other documents and all proceedings of committees and sub-committees shall be treated as confidential unless and until they become public either in the ordinary course of the business of the Council or in accordance with any instruction or authority issued or given by the council. It follows that decisions of committees and sub committees do not become public until (1) the Council deals with them in the ordinary course of its business, or (2) the Council gives any other instructions. Pursuant to **S 46 (1) (c )** of the **Local Government Act** a local authority may delegate to a committee so appointed...any functions exercisable by the local authority with respect to the whole or a part of the area of the local authority. By virtue of this provision, once the Council delegates such powers to these committees and sub-committees, it is deemed that the decisions have been taken by the Council itself. Such decisions would thus no longer be confidential. Based on Doc AA, the Municipal Council of Quatre Bornes devised the Terms of Reference setting out the duties and powers of the Committee of the Whole Council, amongst which was one under item (2) providing that "*The Committee of the Whole Council shall consider the above matters and take decision under delegated powers from the Council in accordance with s 46 ( 1 ) ( c ) of the Local Government Act 1989.*" Mr Seeparsad, formerly Deputy Chief Executive, now Acting Chief

Executive Officer of the Municipal Council of Quatre Bornes explained that one of the committees set up was the Public Health Committee which was given the delegated powers of the Council pursuant to s 46 (1) (c ) of the Local Government Act to approve and recommend the decisions of sub-committees which are constituted to implement the decisions without the need of those decisions to be approved by the Council to become public.

According to Doc S, the minutes of proceedings of the Quarterly Meeting of the Council held on 23.10.07 at 17 h 00, the minutes of proceedings of the Public Health Committee held on 31<sup>st</sup> July 2007 were unanimously approved without any amendment upon the proposition of Councilor Pursun and seconded by another person.

In the meantime, on 15.11.2007 (Doc Q), ICAC addressed a letter to the Chief Executive of the Municipal Council of Quatre Bornes informing it that it was investigating into a complaint regarding the allocation of stall/ space at Quatre Bornes fair and requested it to provide several documents listed in that letter, amongst which were the minutes of proceedings relating to the allocation of stall/space, application forms /letters submitted by the holders together with documents submitted by them which the defence has asked the court to disregard.

In the course of a special council meeting held on 5.12.06, Doc R, under Her worship the Mayor Mrs Maudar, the members of the Public Health Committee were appointed and later, the Terms of Reference of each of the Committees were considered and approved. Thus, under the item 1.2.8. entitled '**Terms of Reference**', the following can be found:

*"The Committee considered the terms of reference of the different Committees and recommended that the Committees be allowed to take decision under the delegated powers from the Council in accordance with s 46( c ) of the Local Government Act 1989".*

(1)...

**"(2) Public Health Committee"**

*"Her Worship the Mayor, seconded by...proposed that the terms of reference of the Public Health Committee as circulated be approved with the following amendment:*

*To delete No.5-To consider the above matters and take decision under the delegated powers from the Council in accordance with s 46 (1)( c ) of the Local Government Act 1989".*

*Proposal unanimously carried.'*

The special council meeting was referring to the Terms of Reference 2006/2007 ( Doc AA) which empowered different committees to take decisions in different matters, amongst which were the powers conferred upon the Public Health Committee. Paragraph 5 empowered that specific committee to '*consider the above matters and take decision under delegated powers from the Council in accordance with s 46 (1) (c ) of the Local Government Act.*'"

Quite apart from the deletion of paragraph 5 during the meeting of 5.12.06, there was further confusion as it can be found that in January 2008, a quarterly meeting was held on 25.01.08 to approve and authorize the signing of the minutes of proceedings of the quarterly meeting of 23<sup>rd</sup>

October 07 ( Doc AC). Whilst Mr Seeparsad was not in attendance for that meeting and did not produce that document to ICAC for the obvious reason that this meeting was held after he remitted other documents to the ICAC in November 2006, he nevertheless in the course of cross-examination solemnly affirmed to the correctness of that document which was then produced by the defence in Court. Be that as it may, the purpose of holding the meeting of 23<sup>rd</sup> October 2007 was, amongst others, to consider the minutes of proceedings of the different committees, amongst which was the minutes of proceedings of the Public Health Committee held on 31<sup>st</sup> July 2007, the subject matter of the present case. These minutes were approved during the quarterly meeting held on 25.01.08 under item 1.4.8 ( xi). Taking into account that by 25<sup>th</sup> January 2008, the minutes had not yet been approved and therefore not be made public, this is why the defence has argued that the minutes and the documents which in the meantime the ICAC had taken possession of in November 2007 should be disregarded by the Court.

Mr Seeparsad explained that during the session of 5.12.06, since the powers of delegation had just been given to the committees by virtue of s 46 (1) ( c) of the Local Government Act, this is the reason why the powers which had already been devolved earlier by the Terms of Reference were deleted. Whilst it is not clear why the councilors during the special council meeting of 5.12.06 deleted the powers of delegation which had already been conferred by the Terms of Reference 2006/2007( Doc AA) to the committees by virtue of the statutory provision embodied in s 46 (1) ( c ) of the Local Government Act, the fact remains that as per Doc R, Mr Seeparsad was present during that session and a different meaning cannot be ascribed to his evidence he gave in court. Therefore, even if the paragraph 5 contained in the Terms of Reference 2006/2007 was deleted on that day, the only conclusion that can be reached is that the Public Health Committee retained the delegated powers conferred upon it on 5.12.06 in pursuance of s 46 ( 1 ) ( c) of the Local Government Act as found under item 1.2.8 entitled "Terms of Reference" reproduced above from Doc R. As such, there was no need for the decisions taken by the Public Health Committee to be approved by the Council and hence such decisions were no longer confidential. This is the reason why soon afterwards, as Mr Seeparsad explained, the Council implemented the decisions by issuing letters to those applicants whose applications had been approved, calling them to be present for the drawing of lots. Notwithstanding the fact that these decisions were no longer confidential, yet on 25.01.08, the quarterly meeting under item 1.4.8 ( xi) approved the minutes of proceedings of the Public Health Committee held on 31<sup>st</sup> July 2007, the subject matter of the present case.

In order to address the fact that the ICAC came in possession of the documents in November 2007, we have found that Lord Cross stated in **Alfred Crompton Amusement Machines Ltd v Customs and Excise Comrs ( No 2)** that : "*Confidentiality*" is not a separate head of privilege, but it may be a very material consideration to bear in mind when privilege is claimed on the ground of public interest, **Cross and Tapper on Evidence, ninth ed, Confidential Matters p486**. In **R v Chief Constable of the West Midlands Police, ex p Wiley [1995] 1 A.C. 274** Lord Woolf said that *voluntary disclosure* should be made where ' a Secretary of State on behalf of his Department as opposed to any ordinary litigant concludes that any public interest in documents being withheld from production is outweighed by the public interest in documents being available for the purposes of litigation', **Archbold 2002 ed, para 12-44H**. A court may be more prepared to protect confidentiality of documents secured by compulsory process, such as

pre-trial discovery or disclosure, than those divulged voluntarily, for example in an arbitration, at least when disclosure is sought from the body holding the documents as a result of that process, **Cross and Tapper on Evidence** cited above, p488. It must also be noted that a claim for public interest immunity can only be raised by the local authority which in the present case is the Municipal Council of Quatre Bornes.

At no time did the Municipal Council of Quatre Bornes invoke public interest immunity to prevent materials from being disclosed and adduced in the usual way. It is worthwhile to point out that the documents were not removed by ICAC for its investigation pursuant to **s 52 of the Prevention of Corruption Act**, but rather by voluntary disclosure by Mr Seeparsad upon mere application made by ICAC by way of letter dated 15.11.07, Doc Q. According to s 52 (5) (a) of the Local Government Act 2003, the person acting in the capacity of Chief Executive officer has the overall responsibility for the administration of the local authority whose officers shall be responsible to him. In his capacity as then Deputy Chief Executive Officer, Mr Seeparsad was the holder of such statutory powers when he handed over the documents to ICAC. Even on the assumption that the documents were confidential, which the evidence on record has failed to reveal, their voluntary disclosure by the Deputy Chief Executive of the Municipal Council of Quatre Bornes in itself amounts to a waiver on the part of the Council of withholding the documents on account of their confidential nature.

In his written submissions, Counsel for ICAC referred to the unsworn statement of Accused No.1, Doc M and Counsel quite rightly highlighted that at that stage, Accused No.1 did not invoke confidentiality when he was confronted with the minutes of proceedings of 31<sup>st</sup> July 2007. Instead, it can be found in that statement that Accused No.1 made handwritten corrections and produced an amended version of the minutes of proceedings which, according to him, reflected what actually happened during the sitting of 31<sup>st</sup> July 2007.

Based on the documentary evidence produced before us, we have reached the conclusion that the minutes of proceedings were no longer confidential when they were handed over to ICAC for investigation. In any case, the Municipal Council voluntarily handed over the documents to ICAC. As such, the minutes of proceedings and the application forms which Mr Seeparsad remitted to ICAC cannot be disregarded by the Court. The defence did not mention which documents were specifically concerned with the motion, but it concerns Doc N to Z, Doc AA and Doc AB.

For all the above reasons, the motion of the defence is set aside.

R. Seetohul-Toolsee

Magistrate

18<sup>th</sup> July 2014.

R. Seebaluck

Magistrate