

**ASSIRVADEN P G v THE MUNICIPAL COUNCIL OF VACOAS-PHOENIX**

**2016 SCJ 127**

**Record No. 112760**

**THE SUPREME COURT OF MAURITIUS**

**In the matter of:-**

**P. G. Assirvaden**

**Applicant**

**v.**

**The Municipal Council of Vacoas-Phoenix**

**Respondent**

**In the presence of:**

**The Mouvement Socialiste Militant (MSM)**

**Co-Respondent**

-----

**JUDGMENT**

This is an application for a review of the decision of the respondent taken at its council meeting of 06 January 2016 to “*accede to the request of the co-respondent to hold a public meeting on Labour Day at Sivananda Avenue, Vacoas, opposite Vacoas Market Fair*” and to refuse a similar earlier request from the applicant in his capacity as President of the Mauritius Labour Party.

The main thrust of the argument of learned counsel for the applicant before us was that the decision was, first, in breach of an alleged principle of “first come, first served” and, secondly, tainted with bias.

We shall first deal with the issue of bias which was canvassed under the broader issue of conflict of interest. The contention on behalf of the applicant on that issue was two-fold. It was contended that the decision taken by the respondent at its meeting of 06 January 2016 was a biased one inasmuch as, first the co-respondent’s letter of 04

January 2016 was signed by Mr. P.K. Ramburn, a councillor of the respondent who not only participated in the decision reached at that meeting but also did not disclose his interest in that decision, and, secondly, all the councillors who are members of the co-respondent also took part in the deliberation and decision of the respondent. Learned counsel for the applicant has also prayed in aid the provisions of section 13(1) of the Prevention of Corruption Act and has indicated that the matter has been referred to the Independent Commission Against Corruption for investigation.

Now, the documentary evidence placed before the court shows that at the last municipal elections of 2015, all the 24 candidates of “L’Alliance Lepep” were returned as councillors of the respondent and that of these 24 councillors, 16 (including Mr. P.K. Ramburn) belonged to the co-respondent, with 4 each to the “Parti Mauricien Social Democrate” and the “Muvman Liberater”.

We agree with learned counsel for the respondent that meetings and proceedings of any municipal council are governed by the provisions of section 45 and of the Seventh Schedule to the Local Government Act 2011 (“the Act”). Moreover, section 46 of that Act specifically provides for the situation in case of conflict of interest. That section reads as follows:

**“46. Disability because of interest**

(1) (a) *Subject to paragraph (b), where a Councillor or an officer having any direct or indirect pecuniary interest in any contract or other matter is present at a meeting of the local authority at which the contract or other matter is the subject of consideration, he shall, as soon as practicable after the start of the meeting, disclose his interest and shall not take part in the consideration or discussion of, and shall not vote on any question with respect to, the contract or other matter.*

(b) *Paragraph (a) shall not apply to an interest in a contract or other matter which a Councillor or an officer may have as a rate-payer or inhabitant of the area, or as an ordinary consumer of electricity or water, or to an interest in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.”*

The issue of conflict of interest is specifically governed by the above provisions by virtue of which it is clear that pecuniary interest is the only material consideration for

the application of that disqualifying section. Nowhere in the legislation is it stated that members of a political party cannot take part in a decision which directly or indirectly has a bearing on the party. As a result, we hold that section 13(1) of the Prevention of Corruption Act does not find its application to the facts of the present case. The general provisions of that latter Act cannot derogate from the specific provisions of the Local Government Act: *generalia specialibus non derogant*. In the circumstances we hold that the issue of bias or conflict of interest does not find its application to the facts of the present case.

We now turn to the breach of the alleged principle of “first come, first served”. We have used the word “alleged” advisedly because its very existence or application to the decision under consideration has been denied. Nor are we prepared to raise any such past practice, if ever that was the case, to the status of a principle which is inflexibly binding on a municipal council as that would in itself, as rightly submitted by learned counsel for the co-respondent, bring irrationality in the decision-making process. We may usefully refer to the speech of Lord Browne-Wilkinson in **Reg. v. Secretary of State for the Home Department, ex parte Venables [1998] AC 407** at pp 496 and 497:

*“When Parliament confers a discretionary power exercisable from time to time over a period, such power must be exercised on each occasion in the light of the circumstances at that time. In consequence, the person on whom the power is conferred cannot fetter the future exercise of his discretion by committing himself now as to the way in which he will exercise his power in the future. He cannot exercise the power nunc pro tunc. By the same token, the person on whom the power has been conferred cannot fetter the way he will use that power by ruling out of consideration on the future exercise of that power factors which may then be relevant to such exercise.*

*These considerations do not preclude the person on whom the power is conferred from developing and applying a policy as to the approach which he will adopt in the generality of cases: see **Rex v. Port of London Authority, Ex parte Kynoch Ltd. [1919] 1 K.B 176; British Oxygen Co. Ltd. v. Board of Trade [1971] A.C. 610**. But the position is different if the policy adopted is such as to preclude the person on whom the power is conferred from departing from the policy or from taking into account circumstances which are relevant to the particular case in relation to which the discretion is being exercised. If such an inflexible and invariable policy is adopted, both the policy and the decisions taken pursuant to it will be unlawful: see generally **de Smith, Woolf and Jowell, Judicial Review of Administrative Action**, 5th ed. (1995), pp. 506 et seq., paras. 11-004 et seq.”*

Moreover, as submitted by learned counsel for the respondent, such a principle would be unworkable inasmuch as any person or party, be it a political party, a non-political party, a trade union or any group of persons, may seek the authorisation to hold a public gathering at a place within the jurisdiction of a municipal council; and it will be for the Council to exercise its discretion according to the circumstances by taking into account all the relevant considerations and not merely limiting itself to the respective dates on which requests for authorisation are made.

In the circumstances of the present case, we are not prepared to say that the decision reached by the respondent is flawed for any of the reasons invoked by the applicant. We accordingly refuse to review that decision and set aside the present application, with costs.

**K.P. Matadeen**  
**Chief Justice**

**A.Caunhye**  
**Judge**

**31 March 2016**

-----

**Judgment delivered by Hon. K.P. Matadeen, Chief Justice**

<b>For Applicant</b>	<b>:</b>	<b>Mr T. Chedumbrum Pillay, Attorney-at-Law Mr R. Valayden and Mr. Y. Varma, of Counsel</b>
<b>For Respondent</b>	<b>:</b>	<b>Mrs K. Ghose, Attorney at Law Mr R. Chetty, SC</b>
<b>For Co-Respondent</b>	<b>:</b>	<b>Mr P. Chuttoo, Attorney-at-Law Mr K. Trilochun, of Counsel</b>