

**BHADAIN S. GCSK v THE INDEPENDENT COMMISSION
AGAINST CORRUPTION**

2024 SCJ 256

Record No. 124552 (5A/139/23)

THE SUPREME COURT OF MAURITIUS

In the matter of:-

Sudarshan BHADAIN, GCSK

Applicant

v

The Independent Commission Against Corruption

Respondent

In the presence of:

The Commissioner of Police

Co-Respondent

JUDGMENT

This is an application for leave for a judicial review of respondent's decision and decision making process to conduct a further investigation without complying with the mandatory requirement of sections 47 and 50 of the then Prevention of Corruption Act (POCA) and the procedure as laid down in **Dowarkasing M v Independent Commission Against Corruption** [\[2013 SCJ 138A\]](#).

Applicant is praying for the following orders –

A. a writ of mandamus or a declaration that respondent and/ or its agents and all persons acting or purporting to act under its authority or control or instructions and all persons acting in conjunction or participation with them or otherwise, should –

(i) comply with the mandatory provisions of the then sections 47 and 50 of the POCA and the above mentioned judgment;

(ii) issue a notice setting out the information required from applicant as provided by the then section 50 (1) (d) of the POCA; and

B. such other relief as the justice of the case may require.

We have given due consideration to the submissions made by all counsel.

Ex facie applicant's affidavit and in particular Annex A therein, there was a mere request, as opposed to an order, made to applicant to attend respondent's headquarters in relation to an investigation pertaining to the appointment of a former consultant at the Ministry of Financial Services, Good Governance and Institutional Reforms. There is therefore no coercive element underlying the request.

With the coming into force of the Financial Crimes Commission Act 2023 (FCCA) which has repealed the POCA and pursuant to section 168 (2) of the FCCA any investigation or enquiry started by ICAC and pending on the commencement of the FCCA shall be taken over and continued by the Financial Crimes Commission.

It stands to reason that any investigative body, including respondent, performing its functions is bound to comply with the law. In an application for judicial review it is not the function of this Court to direct an investigative body the manner in which an enquiry should be conducted.

In the circumstances, there is clearly no arguable case and the application for leave for judicial review has no reasonable prospect of success.

Leave is accordingly refused and the application is set aside. With costs.

M. I. Maghooa
Judge

V. Kwok Yin Siong Yen
Judge

6 June 2024

Judgment delivered by Honourable M. I. Maghooa, Judge

- For Applicant** : **Mr Y Balgobin, Attorney at Law**
Mr A Domingue, Senior Counsel, together with
Mr A F Aumeer, Counsel
- For Respondent** : **Mr D Nawjee, Attorney at Law**
Mr H Ponen, Counsel, together with
Mr L Nulliah, Counsel
- For Co-Respondent** : **State Attorney**
Mr R Baungally, Assistant Solicitor General