

CN: 131/2020

IN THE INTERMEDIATE COURT OF MAURITIUS [FINANCIAL CRIMES

DIVISION]

In the matter of: -

Independent Commission Against Corruption

v/s

Jogueswar Ajoodhea

JUDGMENT

Accused stands charged under 9 counts with the offence of, whilst being a public officer, wilfully, unlawfully and criminally taking part in the proceedings of a public body relating to a decision which the public body had to take and in which his relative had a personal interest in breach of section 13 (2) (3) of the Prevention and Corruption Act 2002 [POCA] as amended by section 4 (b) of Act 1/2006. Accused pleaded not guilty to the charges and was assisted by counsel at the trial.

The undisputed facts are as follows:

- Accused was employed by the Mauritius Police Force as a police officer as from 5/09/1985 until 27/04/2017 when he retired as police sergeant posted at the National Coast Guard.
- Whilst he was police sergeant, he participated in 3 different Bid Evaluation Committees [BEC] for 3 different tenders for the purpose of evaluating bids received for those tenders, namely RB 194 of 2015/2016, RB 117 of 2015/2016 and RB 07 of 2015/2016. He sat as Chairman on 9 occasions on the dates which are the subject matter of the charges and the name of SKAA Tech Ltd was retained on all 9 occasions.

- He signed a conflict of interest form on the 9 occasions before he proceeded with the evaluation and recommendation of the bidder and made a declaration that he is not conflicted with SKAA Tech Ltd.
- Mrs Soovaneer Emrit, the half-sister of Accused is the sole director of SKAA Tech Ltd.
- He vetted and signed several bidding documents, including bid letters. The name of his half-sister appears on several of the documents.
- Accused's half-sister's husband was present at Flat island.
- Mr Emrit informed Accused that he was working for SKAA Tech Ltd when he met him at Flat island.
- The Office of the Commission of Police awarded the contract in respect of tenders to SKAA Tech Ltd.

It can be gathered from the testimonies of Ps Bissessur, Ps Seetaram, CI Purmanund and Cpl Bhicoo that all the aspects of the bidding documents have to be vetted by the members of the Bid Evaluation Committee before proceeding to evaluate the bids. It was elicited from Pc Tooraneeram that it is Accused who prepared and provided a list of suppliers and that Pc Toofaneeram only typed the list.

Accused's explanations under cross-examination are as follows:

Accused's main line of defence is that he was not in a situation of conflict when he participated in the meeting of the Bid Evaluation Committee on the 9 dates which have been averred in the information since he was not aware at the material time that Soovaneer Emrit, his half-sister was the director of SKAA Tech Ltd. It is further denied by Accused that he saw the name Soovaneer Emrit on any of the documents which had been provided to him before the Committee proceeded to evaluate the bids. His version is that his duty was limited to vetting only the technical aspects and he did not need to look at all the pages of the documents. He stated that he did not check the name or signature of the

bidders before participating in the proceedings. He later stated that he only had to check the signature and seal of the bidding company but did not verify the name of the director. According to him, it was not necessary to know the name of the director of the bidding company as long as there is a signature. Accused has also denied that he did any commissioning and stated that he delegated the task to another person. He did not agree with the version of Mr Bhicoo that before signing the conflict of interests form, one has to check who is the director of the bidding company. He admitted having checked the bid letters but maintained that it was not necessary to verify who was the director of SKAA Tech Ltd before participating in the BEC. According to Accused's sworn testimony, the bidding documents [RB 117, RB 7 AND RB 194] which contain the list of probable suppliers were prepared by Mr Pouilly or Mr Toofaneeram.

In his 3 unsworn statements, Accused has denied the charges against him. His defence is that he was not aware that his half-sister was the director of SKAA Tech Ltd when he participated on 9 occasions in the meeting of the Bid Evaluation Committee.

Analysis and findings

Section 13 (2) of the POCA 2002 provides that "*where a public official or a relative or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision*".

Pursuant to section 13 (2) of the POCA and in the light of the case of **DPP v/s Jugnauth & Anor [2018] UKPC 30**, it is incumbent on the prosecution to prove firstly the elements which form the actus reus of the offence which are as follows:

1. That the Accused was at the material time a public official
2. That a public body has taken a decision;
3. That a relative of the Accused had a personal interest in the decision;
4. That the Accused has taken part in proceedings of the public body relating to that decision

Was the Accused a public official at the material time?

The first element has been satisfied since there is unshaken evidence establishing the official status of the Accused [DOC B].

Did a public body take a decision?

The second element has also been proved to the extent that the Office of the Commissioner of Police, which is a public body, took the decision to award the 3 contracts to SKAA Tech Ltd on the 9 dates which have been averred in the information.

Did a relative of the Accused have a personal interest in the decision?

As regards this element, the contention of the defence is that Mrs Soovanee Emrit, being Accused's half-sister cannot be regarded as a "relative" of the Accused within the meaning of section 2(b) of the POCA 2002 since she was not Accused's sister. It can be gathered from Accused's unsworn statement that both the latter and Mrs Soovanee Emrit share the same biological mother.

It is apposite to refer to section 2 of the POCA 2002 which reads as follows:

"Relative" means

- (a) a spouse or conjugal partner of that person*
- (b) a brother or sister of that person*
- (c) a brother or sister of the spouse of that person*
- (d) any lineal ascendant or descendant of that person*

Learned Counsel for the prosecution submitted that since there is no definition of "sister" in the POCA or in the Interpretation and General Clauses Act 1974, this court may seek guidance from the dictionary meaning of the word "sister" and he referred to the Black's Law Dictionary where sister is defined as "a female who has a parent or both parents in common with another person". Learned Counsel for the defence on the other hand invited the court to give a literal meaning to the word "sister" and submitted that if the legislator

had intended to extend the relationship of sister to half-sister, this would have been explicitly spelt out in the law.

It is apposite to refer to the case of ICAC v/s Saumtally A.S. [2016] SCJ 47 where the Appellate court highlighted that the paramount object in statutory interpretation is to arrive at legislative intention. The Learned Judges held that it was wrong for the lower court to construe only the linguistic dictionary meaning of the word "payment" in section 5 (1) of the FIAMLA as a piece of English prose in isolation from the legal intent and the purpose for which section had been enacted. The Appellate Court referred to a pertinent observation of Lord Hoffman in the case of Moyna v/s Secretary of State of Work & Pensions [2003] 4 All ER 162 which is hereunder reproduced:

"The meaning of an English word is not a question of law because it does not have legal significance. It is the meaning to be ascribed to the intention of the national legislator in using that word which is a statement of law".

It is also apt to refer to section 5 (8) of the Interpretation of General Clauses Act which expressly stipulates that *"effect shall be given to each enactment according to its true intent, meaning and spirit"*

In the light of the above legal principles, the word "sister" must be viewed in its intended scope in the overall scheme of the legislation and this court must bear in mind the mischief which the statute was aimed at. In that respect, it is apt to reproduce the following observation of the Board in the Privy Council case of DPP v/s Jugnauth & Anor [supra] regarding the scope of section 13(2) of the POCA 2002;

"These provisions are intended to prohibit the situations in which corruption might operate. In establishing lines which must not be crossed, they are necessarily broadly drafted and wide in their scope of application. It is important to have these considerations in mind when interpreting this legislation"

It is evident that section 13 (2) aims at diligence in ensuring that lines are not crossed before one takes part in proceedings relating to a decision which a public body has to take and in which one's relative has a personal interest. It is significant that Accused himself referred to his half-sister as sister on a few occasions. In the light of the case of DPP v/s

Jugnauth & Anor [supra] and the above legal principles, I find that a narrow interpretation of the word “sister” would defeat the purpose of the legislation. I therefore conclude that “half-sister” would fall within the definition of “sister” and within the purview of section 2 (b) of the POCA.

As for the issue of personal interest, there is unshaken evidence that defendant’s half-sister was the director of SKAA Tech Ltd at the material time. In **DPP v/s Jugnauth & Anor** [supra], the Board pertinently observed that “*Section 13 (2) addresses situations in which a person has an interest in a decision, not an interest in an entity or asset. It is perfectly possible that both a company and its shareholders will have an interest in a decision*”. ... “*Thus, for example, the decision to award the contract to Medpoint, a decision in which the defendant did not participate, was undoubtedly a decision in which both Medpoint and Mrs Malhotra, as a director and owner of 23 % of its shares, had a personal interest*”. It follows that Accused’s half-sister, who was the director of SKAA Tech Ltd, had a personal interest in the decision to retain SKAA Tech Ltd as successful bidder. For the above reasons, I find that the third element has been satisfied.

Did the Accused take part in proceedings of the public body relating to that decision?

The fourth element has been satisfied in the light of the documentary evidence and Accused’s own admission.

Having found that the prosecution has proved all the elements which form the actus reus of the offence beyond reasonable doubt, the next question to be addressed is whether the defendant had the requisite mens rea when he participated in the meeting of Bid Evaluation Committee of the Police Tender Unit on 9 occasions. In the light of the case of **DPP v/s Jugnauth & Anor** [supra], the following mental elements need to be proved to the criminal standard:

- (1) *That the defendant knew that he was a public official*
- (2) *That the defendant knew, or was reckless as to the fact, that the public body was taking the relevant decision*
- (3) *That the defendant had knowledge or was reckless as to the existence of facts giving rise to his sister’s personal interest in the decision*

(4) That the defendant intentionally or recklessly carried out the act which amounted to participation in the proceedings of the public body relating to the decision.

It is clear that the Accused knew that he was a public official when he participated in the meeting of the Bid Evaluation Committee on 9 occasions and that he was well aware that the Office of the Commissioner of Police was taking a decision to purchase equipment in respect of tenders which had been launched.

The main line of defence is that Accused was not aware that his half-sister was the director of SKAA Tech Ltd when he took part in the proceedings relating to the relevant decision.

The crucial issue which needs to be thrashed out therefore is whether the Accused had knowledge of, or was reckless as to the existence of facts giving rise to his half-sister's personal interest in the decision when he took part in the proceedings. A perusal of the evidence on record reveals that Accused was deemed to know certain facts giving rise to his half-sister's personal interest in the decision which was to be taken.

One of the salient facts is that several bidding documents which were signed by the Accused reveal the list of bidders, including SKAA Tech Ltd; c/o Souvane Emrit. Accused asserted that he did not look at all the pages because he was only concerned with the technical aspects. His version is discredited by the testimony of the prosecution witnesses who testified that the normal practice is to verify all the pages of the documents. Let alone the testimony of the prosecution witnesses, this court is of the considered view that the duty on the part of Accused to properly check all the pages of the bidding documents and verify the name of the director of the bidding company before signing the bidding documents is self-evident since he had to sign the conflict of interest form. It stands to reason that he had to ensure that he is apprised of all the relevant information before he could be positive that he is not putting himself in a situation of conflict. A thorough verification of the documents was therefore imperative. As a matter of fact, Learned Counsel for the defence readily conceded that Accused did have a duty to verify all the pages of the bidding documents which had been provided to him but added that it is questionable that it was practical to do so. I am unable to agree with the tenor of such submissions. Suffice it to say that due diligence cannot be compromised for the sake of practicality.

It is significant to note that the bid letters [DOC D17 & DOC D 34] , which are on the checklist of documents to be vetted and which were vetted by Accused reveal the name and address of Accused's half-sister as the director of SKAA Tech Ltd whilst the bid letter [DOC D6] reveal the name of Mr Rishi Emrit, who is Mrs Soovanee Emrit's husband, as Company Secretary of SKAA Tech Ltd. Accused's version that it was not important or necessary to check the name of the director of the bidding company before signing the bid letters is farfetched and implausible. Accused was in fact inconsistent in his version that he did not check the signature of the director. He denied initially that he had checked the signature of the director but yet admitted later that he only checked the signature of the director but not the name. It is inconceivable that the name of his half-sister which appears next to the signature would have escaped the attention of Accused who vetted the said bid letters. Furthermore, Accused readily conceded under oath that Mr Rishi Emrit informed him that he had a connection with SKAA Tech Ltd when he met him at Flat island.

It is apposite to highlight further material inconsistencies in the testimony of the Accused which cast serious doubts on his version that he was not aware that his half-sister was the director of SKAA Tech Ltd. Firstly, Accused was given the lie by officer Toofaneeram when he denied on his second unsworn statement that he prepared the list of probable suppliers. Pc Toofaneeram's version is to the effect that he only typed the list for the Accused and received instructions from the Accused to prepare the list of probable suppliers. Accused's answer under cross-examination that he came to know that his half-sister became the director of SKAA Tech Ltd since April 2017 is discredited by the bank deposit vouchers dated March 2017 which reveal that he had transferred funds to his sister into the account of SKAA Tech Ltd. His explanation that he did not pay attention to the name of SKAA Tech Ltd is wholly inadequate.

In view of the above circumstances, there can be no doubt that the Accused had knowledge as to the existence of facts giving rise to his half-sister's personal interest in the decision when he took part in the meeting of BEC on 9 occasions and that he acted wilfully and recklessly when he participated in the proceedings relating to the relevant decision.

I have duly considered the submissions of Learned Counsel for the defence that the enquiry was conducted in an unfair manner in view of the similarity in the statements of the police officers. Although there is indeed a similarity in the statements of the police officers, this does necessarily lead to an inference that there has been collusion on their part or that they have fabricated anything. They simply gave an outline of the procedure to be followed before sitting on the Bid Evaluation Committee. There is nothing sinister in their versions which would lead the court to believe that the enquiry was conducted in an unfair manner.

For the above reasons, I conclude that the prosecution has proved its case beyond reasonable doubt under all 9 counts and I find Accused guilty as charged.

A handwritten signature in black ink, consisting of the letters 'N S C' in a stylized, cursive font, enclosed within an oval shape. A long horizontal line extends to the right from the top of the oval.

N Senevrayar-Cunden (Mrs)

[Delivered by N Senevrayar-Cunden, Magistrate of Intermediate Court]

[Delivered this 11th of November 2022]