ICAC v Mohammud Nizam Domah & Anor

2026 INT 73

FCD CN: 100/2020
CN: 960/18

IN THE INTERMEDIATE COURT OF MAURITIUS
(FINANCIAL CRIMES DIVISION)

In the matter of:

Independent Commission Against Corruption

v/s

1. **Mohammud Nizam Domah**
2. **Azur Medical Ltd**

JUDGMENT

1. Accused no.1 has been prosecuted for the offence of Receiving gift for a corrupt purpose in breach of section 15(a) of the Prevention of Corruption Act 2002 (POCA) under counts 1 & 2 of the Information. Accused no.2 has been prosecuted for the offence of Treating of Public Official in breach of section 14 of POCA, under counts 3 & 4 of the Information. Both accused parties pleaded not guilty to the Information and were represented by their respective counsels throughout the proceedings.

CASE FOR THE PROSECUTION

2. Witness no.13, WPS Thomas, produced **Docs C** and **C1**. They showed the travel movements of accused no.1. The witness confirmed that accused no.1 travelled to France from Mauritius on 17.05.15 and back on the 29.05.15. He also flew to South Africa from Mauritius on 17.08.15 and back to Mauritius on 19.08.15.

3. Witness no.14, Mrs Ashvinee Seeburn was deputed by the Registrar of Companies to produce **Docs D, D1** and **D2**. The documents showed that the accused no.2, Azur Medical Ltd was incorporated on 09.05.07. It was an operating company at the time of trial.

4. Witness no.2, Investigator Goonjur, produced the defence statement of accused no.2, represented by Mr Bhoomesh Banydeen, as **Doc E**. Under cross-examination on behalf of accused no.2, the witness stated that the accused no.2 was informed of its caution and constitutional rights through the first question of the defence statement. The accused was informed of the circumstances related to the case against but same was not recorded in the said statement. It was inserted as a Diary Book entry.

5. Witness no.1, Investigator Bhatoo, was the one of the enquiring officers of the case. He produced the following documents:

    a. **Doc F** – Official status and employment history of the accused no.1 in the public service.
    b. **Doc G** – Record of casual leave granted to the accused no.1 from 2013 to 2016. A letter is attached stating that there is no indication, as per the personal file of the accused, that he proceeded to any official mission.
    c. **Doc H** – (2 pages) Return of leaves taken by the accused no.1 from 2013 to 2016.
    d. **Doc E1** – Defence statement of accused no.2 dated 19.06.15.
    e. **Doc E2** – Defence statement of accused no.2 dated 20.06.17.
    f. **Doc E3** – Defence statement of accused no.2 dated 01.08.18.
    g. **Doc J** – Defence statement of accused no.1 dated 06.07.17.
    h. **Doc J1** – Defence statement of accused no.1 dated 10.07.17.
    i. **Doc J2** – Defence statement of accused no.1 dated 10.07.17.
    j. **Doc J3** – Defence statement of accused no.1 dated 13.07.17.
    k. **Doc J4** – Defence statement of accused no.1 dated 02.08.18.
    l. **Doc J5** – Defence statement of accused no.1 dated 16.08.18.
    m. **Doc K** – A list of procurement from the Ministry of Health. The witness referred to the one Ref MHPQ/MDSP/2014/Q8 found on the eighth page of the document.

6. Under cross-examination on behalf of accused no.1, the witness agreed that the accused no.1 worked both, for the public and private sector. He further stated that accused no.2, as a supplier of medical equipment regularly visited doctors

in the public or private sector. They do so as a means to promote and sell their products. Medication can only be used by medical practitioners in the public sector, if there have been proper procurement exercises. The witness did not agree, when suggested that he did not enquire into the private clinics where the accused no.1 worked. He stated that the enquiry centred on the trips the accused went on, by using his capacity as a medical practitioner in the public sector. Doc J4 was shown to the witness. The latter stated that Question 6 of the defence statement was where the circumstances for the offence laid at count 1 of the Information was confronted to the accused. Question 7 would relate to count 2 of the Information. They were both linked to the tender exercise MHPQ/MDSP/2014/Q8. The accused no.2 had successful bids for numerous tender exercises prior to the accused no.1 being part of the Bid Evaluation Committee (BEC). The accused no.1 has not or is not being prosecuted for any other trip, except the two currently the subjects of the two charges. The other trips enquired into did not reveal an offence known to law. The two trips were received as a gift after a tender exercise. The two tender exercises concerned a number of items, which were awarded to the accused no.2 and other suppliers.

7. The accused no.1 did not volunteer to be on the BEC, but was appointed by his employer, the Ministry of Health because he was the consultant in charge of the relevant department. The committee made recommendations for all items on the tenders. Likewise, the accused no.2 was the recommended supplier. The items were recommended on the basis that the accused no.1 had prior knowledge of them and of the accused no.2 being a supplier of them. The witness went on to state that the accused no.1 admitted that those items were chosen because he had knowledge and training on them. He made the distinction between those suppliers who could not afford to provide training and those could. The former would not be selected to supply those products requiring training. The training was not a requirement of the tenders in question. The said tender exercises were carried out before 2015. For period 2012 to 2015, there were other tenders which resulted in contracts awarded to the accused no.2.

8. It was put to the witness that the Ministry of Health was reliant upon the accused no.1 to be trained by the medical suppliers in order for tender exercises be decided by the BEC. He denied that that was the case. He explained that it was made clear by the Ministry that sponsorship offered to any officer of the

Ministry by any supplier or bidder cannot be accepted without the consent of the Ministry of Health.

9. The witness confirmed that medical specialist practitioners have the right to work in private practice, and the accused no.1 did so, as an interventionist cardiologist. He performed surgeries in the private sector and thus used consumables. The witness could not confirm whether they would be the same consumables as he would use in the public sector. He denied that the accused no.1 knew the suppliers from the dealings he had with them when working in the private sector. **Docs L** and **L1** were produced. It was alleged by the defence that the two letters were fully drafted letters sent to the accused no.1 for him to affix his signatures. The witness stated that it was enquired from the accused no.1 if that was so. The latter said that he could not recollect. When questioned as to whether the documents bore the seal of the Victoria Hospital, the witness answered affirmatively and supported it with a reference at Doc J1, folio 191762. He further stated that, one Mr Kheblall from the Victoria Hospital, confirmed same. He agreed that the explanation of the accused no.1 was that he used his stamp to officialise his acceptance. The two documents were printed by the supplier, the accused no.2. He further confirmed that there were subsequent tenders to August 2015, where the accused no.2 was granted contracts and the accused no.1 sat as chairman of the BEC. He did not know if the accused no.1 recommended the use of consumables in private clinics.

10. Under cross-examination on behalf of accused no.2, the witness agreed that the medical industry had established some practices among stakeholders of the industry. But he added that there was also a set of procedures established by the Ministry of Health and Quality of Life (MOHQL). When suggested that Docs L and L1 were two standard format letters sent to every medical practitioner, the witness stated that the authorship of the documents was enquired into from both accused parties. Their versions were that they could not recollect. It was put to the witness that the MOHQL could not have been ignorant of the practice that companies dealing in pharmaceutics, in inviting specialists directly to conferences or training. The witness stated that the case for the prosecution, through the versions of the MOHQL, was that any such invitation would have to be addressed to the Ministry, not directly to the medical practitioner. There was a procedure made by the MOHQL, and thus they must have been aware of the practice of the pharmaceutical companies. It is noted that Senior Counsel for the accused no.2, had used the phrase 'Big Pharma' for such companies during his questioning. It was a marketing

strategy for the companies, and the witness was of the view that they knew of the procedures set by the Ministry. There was no absolute prohibition that medical practitioners from the public sector could attend training organised by a private company. However, there was a procedure to follow before doing so.

11. Witness no.6, Mr Sacheedanand Tahalooa, was a member of the procurement policy office (PPO) in 2015. He stated that the PPO was set up under the Public Procurement Act and its main role was to act as a policy making organisation and was responsible for compliance monitoring whenever the procurement exercises were carried out in the public sector. He added that the Bid Evaluation Committee (BEC) is to assess bids, recommend successful bidders and prepare a bid evaluation report accordingly. When asked whether members of the BEC could have contact with bidders without the consent of the authority, he replied that members should not have any sort of communication with the supplier during the bid evaluation process. The process starts when the evaluators are appointed and ends when the bid evaluation report is submitted to a high-level committee. He was asked whether members of the BEC could accept sponsorships from bidders with regards to overseas travel with or without the consent of the procurement authority. He answered in the negative. The same would apply to bidders and he quoted sections 51 and 52 of the Public Procurement Act.

12. During cross-examination on behalf of accused no.2, the witness stated that the policies devised by the PPO are meant to regulate public bodies, but they might take into account the specificities of some industries. With regards to the medical sector, the procurement rules were made to fit its specificities. He agreed that medical practitioners require continued training and remain updated on new technology. The procurement policy creates dedicated bidding documents for the purchase of pharmaceutical products. He was asked whether it would make sense that the medical professional would have to suspend an ongoing relationship with the suppliers during an evaluation process. The witness agreed that the bidders should not have any dealing with those who evaluate. The evaluators have to follow a certain code of conduct when they are aware that they are evaluating certain suppliers.

13. Witness no.7, Mrs Mylavadee Mudliar, was the permanent secretary at the MOHQL in 2015. She stated that there is a procedure to be followed whenever a medical practitioner has to follow training overseas. The correspondence has to go through different levels at the Ministry for approval. The same procedure

applies if the training is provided by the Ministry or by a private institution, where the costs are borne by them. During cross-examination, the witness rectified that she was not at the MOHQL in 2015, but started as permanent secretary of the said Ministry in 2016.

14. Witness no.9, Dr Ravind Kumar Domun, was the director of health services at the MOHQL in 2015. As such he was in charge of all the hospitals and other medical institutions for the department for which he was responsible. As far as visits of medical representatives in public hospitals are concerned, he started by saying that there was a regional director for each hospital and he or she would implement the policy of the Ministry. He added that in general, a medical representative has to seek permission from the regional health director before effecting visits of the hospital in question. The regional health director would then transmit the request to the Ministry. But there was some flexibility given to the regional health director. The practice was tolerated to some extent. To his knowledge there was no circular expressly forbidding private companies from informing consultants in charge of new equipment in their respective fields. Ethically, the consultant in charge should inform the regional health director (RHD) before meeting with a private supplier of equipment. The witness was candid enough to say that doctors were not very conversant with the law and did things which may not be ethical. However, whenever a doctor informs the RHD that he wishes to meet with a private supplier, permission would always be granted. He concluded by stating that the practice was not allowed by the Ministry, but tolerated.

15. Witness no.3, Mr Navindranath Poonye, was the Deputy Permanent Secretary at the MOHQL in 2015. He was responsible for the administration of procurement exercises. He was the chairman of the Departmental Bid Committee (DBC), and thus carried out the 'opening of the bids' exercise. The BEC was independent from the DBC. Prior to the evaluation of bids, there is a specific clause which requires all members of the BEC to disclose any interest they might have with any of the bidders. Such should be disclosed to the Ministry. When asked whether the offer of sponsorship of training would amount to an interest, he stated that anything which is related to the bid evaluation must be disclosed. He further stated that a bidder with regards to a tender exercise, is not allowed to offer sponsorship for training or workshop to a BEC member without prior authorisation. A BEC member who has a dealing with, or has been offered a training sponsorship by, a private supplier of medical items, must disclose his interest prior to the bid evaluation.

16. During the cross-examination on behalf of the accused no.2, the witness stated that the suppliers do not have to disclose offers of sponsorship to evaluators. He answered in the negative, when asked whether it was a practice that the manufacturers of medical equipment provide training to those who recommend or prescribe their equipment.

17. When questioned on behalf of the accused no.1, he confirmed that there were different stages for a procurement exercise. Bids are prepared by specific procurement sections. The bids are then advertised. The DBC is above the BEC. The latter evaluate the bids and its recommendations are sent to the DBC, which was presided by the witness. The recommendations, if endorsed, are sent to the accounting officer or the Senior Chief Executive of the Ministry, who ultimately approves them. It would be a three-tier decision making process. The list of evaluators is decided by the Ministry at the beginning of each calendar year. The list is approved by the accounting officer. The procurement manager will decide on the members of the BEC, from the list, for the evaluation of specific bids, taking into account the expertise of each member. The Ministry is aware throughout the process, how the preparation of the bids is made, and the members sitting for a BEC. Three public officers would look into the bids, to see whether they are responsive to the bids and to assess the pricing of the said bids. When asked what he understood by sponsorship, he answered; when somebody who is in the BEC would eventually be given an opportunity to undergo training. There were guidelines issued by the Ministry to that effect. He would not know if a medical practitioner, in a specialised field, is offered training abroad by a medical supplier. Once a supplier has been recommended by the BEC and approved by the accounting officer, a letter of award is issued and sent to the supplier. The procurement exercise is over once the award is made, and whatever subsequently happens with the members of the DBC, is irrelevant.

18. Witness no.10, Dr Mohammad Raffick Dhunny, was working at the public hospitals in 2015, as a cardiologist. At some point in time, the witness was also a consultant in charge at the MOHQL. He had been appointed as member and chairperson of the BEC. When asked about a particular situation where he declined to sit as a member of the BEC, his answers were slightly hazy due to a failing memory on the issue. He stated someone from the then ICAC was conducting an investigation at a hospital where he was working. He was informed that he should recuse himself from sitting as a member of the BEC

as he had attended conferences organised by one of the bidders he was supposed to evaluate. He did so by writing a letter to that effect. He was not really aware that he had to disclose his interest prior to the evaluation, but the ICAC officer convinced him to do so. A previous inconsistent statement was shown to him with regards to his disclosure of interest without mention of the ICAC officer, but he stated that both were true. He subsequently agreed that the decision to recuse himself was ultimately his. He could not be certain of the content of the recusal letter but he must have mentioned that he has been to a conference with that particular bidder. I have noted the difficulty encountered by the prosecution to examine the witness in a sensitive area to him. The prosecution could not get the witness to expressly say that he did the right thing by recusing himself, even if he was prompted to do so by the ICAC officer. He was torn by the fact that he had sit on other bid evaluation committees, as illustrated by one of his answers in the form of a question; *Do you mean when I went for one thing abroad, you can't go for any evaluation for the years to come*.

19. During cross-examination on behalf of accused no.1, the witness stated that he had already started the evaluation when he was given the relevant information from the ICAC officer, and he stepped down from the committee. The Ministry acceded to his request following a letter that he wrote. Otherwise, he would not have been aware of the rules at the time. He knew the accused. They share the same posting as consultant in charge in the field of cardiology, although they did not work in the same hospital.

20. Witness no.8, Mr Bootna, was the assistant manager of the procurement and supply department, of the specialised medical disposable section at the MOHQL. He produced **Doc M**, which is the tender exercise, including the bidding documents dated 14.11.14. He confirmed that in the above documents, there is no clause which pertains to the participation of members of the BEC in training or seminars. The witness also produced **Doc N**, the BEC report dated 22.04.15. As per the document, at page 53, the period within which consumables have to be delivered to the Ministry was in six weeks at the earliest, and ten weeks at the latest. The delivery was to be done in one consignment. Time would start to run as from the date of letter of award. The witness produced the letter of award dated 12.06.15 as **Doc P**.

21. Under cross-examination on behalf of accused no.1, the witness confirmed that the letter of award concerned items 20 and 21 of the bidding documents. There

were 14 bidders in the exercise, involving 32 items. There were also several sub items for each item. The first delivery was effected six weeks later which would lead to the end of July 2015.

22. Witness no.5, Mrs Lindeya Maya Chinneva, stated that she was the secretary to the BEC for the tender bearing ref no. MHPQ/MDSP/2014/Q8. She identified Doc N as the BEC report, of which she was the secretary and the accused no.1, the chairperson. She read Annex A as follows; *Where the Chairperson and members individually declare that they don't have any personal relation or conflict of interests with any of the bidders*. The chairperson and all members signed on the said document. Under cross-examination, she confirmed that the report was dated 28.04.15 and that the BEC was conducted in the best conditions as per the provisions of the procurement regulations.

23. Witness no.4, Mr Anundraj Seethanna, a retired employee of the MOHQL, stated that he was the human resource manager at the Ministry at the material time. He knew of the accused no.1, as a cardiologist at the Victoria Hospital. He added that medical practitioners need to seek leave from the regional health director, which would be relayed to the Ministry, whenever official overseas travels are made.

24. The witness produced **Doc Q**, to which he could not attest its authenticity due to memory lapse. Question was asked of him, as to whether the accused no.1 had travelled overseas during the year 2017. He could not recollect and a memory refreshing exercise was carried out. He confirmed his out of court statement, that the accused no.1 was not granted any official mission abroad by the Ministry, in 2015.

25. Witness no.12, Mr Louis Bruno Catherine, was the in charge of accounting at Arcadia Travel Ltd in 2017. He provided three documents to the then ICAC during the enquiry. He described the first as a covering letter concerning air tickets for the period 2013 to 2016, concerning the accused no.1. The second showed an invoice for a return air ticket from Mauritius to Johannesburg, South Africa, for the amount of Rs25,580. The date of departure was 17.08.15. The price included the travel insurance. The invoice was addressed to the Azur Medical Ltd, the applicant. The third document was another invoice for the accused no.1, for a return air ticket from Mauritius to Paris, departing on 27.08.15. The invoice was addressed to the accused no.2. The said air ticket was priced at Rs62,338, including travel insurance. The documents were

produced as **Docs R, R1** and **R2**. The witness did not have personal knowledge if the accused no.2 had paid the air tickets, but to his understanding, it should logically be the case.

26. Witness no.11, Miss Marie Odile Belloaurd, was the Sales and Marketing Executive at Azur Medical Ltd for the period 2015 to 2017. As part of her portfolio, she dealt with a client of Azur Medical, named Boston Scientific. She advertised the products of Boston Scientific in Mauritius, more precisely, in hospitals and clinics. The prosecution cut short its examination of the witness following a motion from the defence on behalf of accused no.2. The witness was not cross-examined by the defence.

CASE FOR THE DEFENCE

27. The defence called, as witness, Mrs Jaya Veerapen, Senior Adviser at the MOHQL. She stated that she has served the said Ministry for 22 years in different capacities and retired in 2010. At the time of trial, she was Senior Chief Executive of the Ministry. She stated that training is usually available to doctors. The Pay Research Bureau recommends that all doctors be given Rs13,000 to enhance their knowledge in their fields. All doctors are to be registered to the Medical Council. Despite the medical council, for special doctors, the opportunities for international exposure are very limited. She stated that she was one of the persons to advise on the policies at the Ministry. She differentiated the MOHQL from other Ministries. Medicine advances very fast and Mauritius has to keep pace with it. The doctors have to receive as much training as they can. Doctors need to keep abreast with new technologies and equipment. When international training is available, some doctors need to use the opportunity.

28. At the Ministry, the accused no.1 chaired the BEC because he was a trusted specialist. It is not automatic that the recommendation of the BEC will be approved. The ultimate decision is reached after a structured procedure is carried out. It is an accepted practice that suppliers pay for the doctors to follow training. In this particular case, the accused no.2 was awarded Rs310,000 on two items, which represented 1% of the total award of Rs32M in the tender exercise. The Ministry was aware of the fact that specialist doctors would follow training, it did not have to know the details as long as the BEC was done

according to the rules. For the said two items, the bids were the lowest. It was a tolerated practice. It is a worldwide practice, where training and conferences are organised big pharmaceutical companies, not by Governments. She further stated that when doctors go abroad on training, it is not for personal gain. They put their knowledge to the benefit of the public and private sectors, and thus to the country. The policy is that the more doctors have training, the better they will serve the country.

29. Under cross-examination on behalf of the accused no.2, it was borne out that the witness was not aware of the entity known as Boston Scientific. She reiterated the worldwide practice of big pharmaceutical companies with regards to training.

30. During the cross-examination by the prosecution, she agreed that the training offered to doctors in the public sector was a practice, not a governmental policy. However, the Ministry was aware of the practice and it was accepted. She further agreed that whatever practice that might have existed, must have been within the legal framework. When asked whether she would know if the practice was within the existing legal framework or not, she replied that even though it was not within the legal framework, it assisted the Ministry and it was for the benefit of the country. She was further asked whether it would be fine if a doctor did an illegal act but was for the benefit of the country. She stated that it was a worldwide practice and the government cannot finance everything. She added that, she could be biased, but she cannot see how the practice was outside the law. She was not aware of all the legislations but she was aware of the procurement procedures and rules. She reiterated that it was an accepted practice, but admitted that whatever she knew was for the benefit of the patients. She would not be aware of doctors' personal gains. She did not agree that the training should follow the law. She stated that there are nuances and the policies should be for the benefit of the people. If the existing laws forbid such training, they should be amended. She further stated that doctors had no duty to inform the Ministry of any sponsorship they might have received to travel abroad. They would be granted vacation leave, or the PRB caters for leave for training. She saw no issue with a doctor taking leave to get training to use a machine on behalf of the Ministry. She was not aware if doctors had informed the Ministry about private sponsored training abroad. The two items procured by the accused no.2 were the subject of the lowest bids.

ASSESSMENT OF THE COURT

31. I have considered the evidence on record, as summarised and assessed above.

32. The gratification which is the subject of the first two counts laid against the accused no.1, is in the form of two air tickets, respectively, from Mauritius to South Africa amounting to Rs25,580, and from Mauritius to London amounting to Rs62,339. The last two counts are laid against the accused no.2, where the same air tickets have, allegedly been offered to the accused no.1 as gratification.

33. It is not disputed that the accused no.1 has been offered the air tickets as described above by the accused no.2, and the accused no.1 had indeed travelled to the said destinations and back to Mauritius, vide **Docs C, C1**, **R, R1** and **R2**. Likewise, the said transaction has not been disputed by the accused no.2. The purpose for which the air tickets were offered by the accused no.2 to the accused no.1 is equally not disputed. The said purpose will be more thoroughly canvassed further down. There is undisputed evidence that the accused no.1 was the chairperson of the BEC at times when the accused no.2 was one of the bidders, whose bids were to be evaluated by the BEC. The accused no.1 was a public official at the material time.

<u>The law</u>

34. The accused no.1 has been prosecuted under section 15(a) of POCA and the accused no.2 under section 14 of POCA. Both sections are reproduced below:

14. Treating of public official

Any person who, while having dealings with a public body, offers a gratification to a public official who is a member, director or employee of that public body shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

15. Receiving gift for a corrupt purpose

Any public official who solicits, accepts or obtains a gratification for himself or for any other person—

(a) from a person, whom he knows to have been, to be, or to be likely to be, concerned in any proceeding or business transacted or about to be

transacted by him, or having any connection with his functions or those of any public official to whom he is subordinate or of whom he is the superior;

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

35. It is noted that the POCA 2002 has now been repealed and replaced by the Financial Crimes Commission Act 2023 (FCCA). Whilst the wording of some offences has been altered and new offences created, the two offences laid against the accused parties in the current case, have been reproduced verbatim under sections 30 and 31 of the FCCA, save and except the sentencing part. The drafting of the two offence creating sections might indicate that a wide ambit has been conferred on the applicability of the two sections. They have yet to be interpreted by the Supreme Court, which explains the comparative study of foreign jurisdictions made by each party to the proceedings, during their respective submissions.

36. The Prevention of Corruption Act 2002 (now repealed) established the range of corruption offences as categorised under sections 4 to 16 of the Act. Whenever the accepting of a gratification by a public official is concerned, each section apart from 14 and 15, refers to a specific act with which the gratification has to be linked. Section 4, one of the most frequently used section for corruption cases, lists the different potential acts to which the gratification may be linked. The legislator chose to word the sections 14 and 15 differently and the consequences were extensively debated at trial.

37. Both, the prosecution and the defence agree that sections 14 and 15 are two sides of the same coin, similar to what section 4 is to section 5 under the Act. The demarcating feature of sections 14 and 15 from the rest of the offence creating sections, is the existence of a common element worded respectively as; *while having dealings with a public body*, and *from a person, … to have been, to be, or to be likely to be, concerned in any proceeding or business … , or having any connection with his functions*. It is construed that the law requires the proof of some kind of transactional involvement between the party offering the gratification (to a public official), and the public body where that public official carries out his functions. It is noted that that involvement must be present for section 14 and it may be past, present or likely to be in the future under section 15.

38. I propose to first consider the evidence related to such dealings with the public body where the public official would have been involved as part of his functions. Having perused the defence statements of the accused no.2, it is clear that the accused no.2 has had bids evaluated multiple times by the BEC by its own admissions. Such is confirmed by the oral evidence of witness no.1 as seen above. Documentary evidence was adduced by the prosecution as **Doc N**, to show the details of one tender exercise dated 22.04.15, Ref: MHPQ/MDSP/2014/Q8. The accused no.2, Azur Medical Ltd, was on a list of 14 bidders in the exercise. The BEC was chaired by the accused no.1. The bids tendered by the accused no.2 as the cheapest were accepted by the BEC, except one where the cheapest bid did not satisfy the required specifications. **Doc P** shows that 2 items, in multiple variants, were awarded to the accused no.2 for a total amount of Rs310,000. It is noted that the estimated cost of the whole tender exercise amounted to Rs33,200,000.

39. Aside from the dealings between the accused no.2 and the public body in question, there is evidence that there have been interactions and transactions between the accused no.2 and the accused no.1 himself. That may not be one of the elements of the offence in terms of dealings, but it is relevant to establish the surrounding circumstances leading to other elements of the offence. I have assessed the evidence of the main enquiring officer, witness no.1, as shown above at paragraphs 5 to 10. He stated that the enquiry showed that it was common practice that the accused no.2 visits doctors, including accused no.1 to advertise their products. At Doc E1, at A24, the accused no.2 confirmed the company invites doctors employed by the MOHQL based on to their competence and technical knowhow. The accused no.1 had accompanied the employees of the accused company on previous occasions to attend seminars organised by the company, Boston Scientific, which the accused no.2 represented in Mauritius. Further in the defence statement, the accused no.2 stated that the representatives of Boston Scientific have been regularly visiting Mauritius for about 20 years and they are in contact with doctors. The said representatives know the accused no.1 (Q&A 32). At Doc E2, the accused no.2 stated that "Boston Scientific provides training to these doctors as a marketing strategy so that doctors become aware of the techniques and products they are selling".

40. The accused no.1, throughout his defence statement, Doc J, had explained that he has had numerous dealings with suppliers of medical products, and he had attended many workshops and conferences upon their invitations for

educational purposes. He neither notified the MOHQL nor sought any approval. He travelled abroad on vacation leave from the Ministry. At Doc J1, the accused no.1 confirmed that there have been constant interactions between himself and representatives of the accused no.2. Whenever his name is proposed by Boston Scientific, the accused no.2 would meet him, whether in private clinics or at public hospitals to inform him of international conferences or training opportunities.

41. It is manifest that there had been dealings between the accused no.2 and the MOHQL, namely the BEC, even prior to the 2015 tender (Doc N). It is also apparent that the dealings have been ongoing and are likely to be the case in the future. Since privately sponsored training sessions abroad for doctors employed by the MOHQL, are a common practice in the industry, the dealings vis-a-vis the accused no.1 and the accused no.2 with regards to training, has equally existed and likely to continue in the foreseeable future.

42. Few commonwealth jurisdictions have retained the offences as created under sections 14 and 15 of POCA. The United Kingdom has moved away from the traditional drafting when it comes to corruption offences. It has to be emphasised nevertheless, that the legislator chose to replicate the two offences under the new FCCA 2023.

43. **Section 8** of the Hong Kong **Prevention of Bribery Ordinance 1971 (POBO)** is reproduced below:

Bribery of public servants by persons having dealings with public bodies

(1) Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, offers any advantage to any prescribed officer employed in that department, office or establishment of the Government, shall be guilty of an offence. (Amended 14 of 2003 s. 16)

(2) *Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, offers any advantage to any public servant employed by that public body, shall be guilty of an offence.*

44. The above section creates the same offence as the one encapsulated in section 14 of our own POCA. Two defences are explicitly introduced in the section. It was submitted by the prosecution that those defences would be available in our law although not expressly enacted under POCA. The cases dealing with section 8 of POBO are sparse since it is a less frequently used section.

45. It is however clear as per the Hong Kong caselaw that a link between the gratification and a specific act is not a requirement of the offence. The following extract is of relevance from the Court of Appeal of Hong Kong, in the case of **HKSAR v Sin Kam Wah & Anor CACC520/2003**.

    A brief summary of the facts is that sexual services and free dinners were offered to a senior superintendent of police by a private club. The club was subject to routine police checks.

    It was argued that it was somehow a requirement in section 8 that the donee of the advantage should be in a position to influence the dealings which the donor has with the relevant Government department. With respect, we fail to see how this can be a requisite ingredient under section 8. That section does not require such a link, nor is this link even hinted at in that section. Were we to accede to this argument, it would have the effect of rewriting the offence and adding words to the statute which are simply not there.

46. The above case was upheld by the Hong Kong Final Appeal Court (FACC No. 14 of 2004) and the following was held:

    It is not to the point that, at the time the offers of sexual services were made to the 1st appellant, the clubs were not then subject to a particular check or scrutiny. The fact that the clubs were subject to constant and regular police scrutiny (though not continuous on a daily or even weekly basis) is enough to satisfy the sub-section. It should not be read as requiring that there should be an actual dealing on foot when the offer is made but rather that a course or pattern of regular dealings will be enough. It would make no sense at all to read the sub-section as having no application to the case where a bribe is offered in the certain knowledge that dealings are about to take place between the offeror and the Government.

There is nothing in the provision to support the suggestion that it must be shown that the person to whom the bribe is offered is in a position to influence the outcome of the dealing.

47. It is not disputed that providing training was not a term or condition attached to the contract awards, vide Doc M. In fact, at Doc J1, starting from Q6, the accused no.1 stated that the trip paid by the accused no.2 to South Africa, which is the subject of count 1 of the Information, was about the training of young cardiologists on interventional cardiology. It is clear that the said training was not connected in any way to the tender Ref: MHPQ/MDSP/2014/Q8, nor any other tender.

48. With regards to count 2 of the Information, i.e. the trip to London from 27.08.15 to 04.09.15, which was sponsored by the accused no.2. on behalf of Boston Scientific, the accused no.1 gave his explanation at A20 of Doc J1. He stated that the trip paid by Azur Medical Ltd was to attend the European Society of Cardiology Meeting of 2015. Accommodation was equally offered by the accused no.2 but he chose to stay at his niece's residence in London. Again, the sponsorship was unrelated to the contract awarded to the accused no.2 by virtue of the tender in question. The lack of connection between the sponsored trips and the tender exercise postulates that there must be another reason or purpose for them to be offered to the accused no.1. If the reasoning of the final court of appeal of Hong Kong is to be followed, that purpose is not linked with the specific tender exercise, as a 'quid pro quo', when section 14 of POCA is concerned. However, the wording of the section 15 of POCA is fairly similar to section14 in terms of purport. If the legislator had intended no specific act as a 'quid pro quo' is to be proved for the person offering the gratification, there has to be an equivalent offence for the person receiving it. The issue of corrupt purpose or the element of impropriety therefore should lie in the definition of 'gratification', which has been adjudicated upon by our Supreme Court.

49. Gratification has been defined at **section 2 of POCA** as:

(a) means a gift, reward, discount, premium or other advantage, other than lawful remuneration; and

(b) includes—

(i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;

(ii) the offer of an office, employment or other contract;

(iii) the payment, release or discharge of a loan, obligation or other liability; and

(iv) the payment of inadequate consideration for goods or services;

(c) the offer or promise, whether conditional or unconditional, of a gratification;

50. Whilst the two sponsored trips fit the above definition in terms of value, pecuniary or non-pecuniary, the Supreme Court has given further clarification on the definition of gratification. The case of **Jhurry v ICAC & Anor 2015 SCJ 258** considered the mens rea of the offence created by section 7 of POCA and the presumption under section 7(2). The following is of relevance since the offences under sections 14 and 15 equally concern the inferred corrupt purpose of a gratification by the mere function of a public official:

The definition and meaning of "gratification", which has been inserted in section 2 of the Act, further buttresses the point that an offence would not lie in respect of any innocuous act. A criminal offence is only committed under section 7(1) of the Act where the public official makes use of his office or position in order to obtain a "gratification" within the meaning of "gratification" as set out in section 2 of the Act.

The offence created by the clear statutory wording of section 7(1) of the Act, read together with the applicable definitions contained in section 2 of the Act, is formulated with sufficient precision, spelling out in detail which Acts are unlawful in order to enable a person to judge the consequences which a given Action may entail. For the purposes of the present case, paragraph b(ii) of the definition of "gratification" expressly criminalises the "offer of an employment" in respect of an offence under section 7(1).

It follows therefore from the above that the presumption created under section 7(2) of the Act does not cast the burden of proof on the appellant in respect of merely an innocuous Act which has been committed by him in the exercise of his office as a public official. Furthermore, the structure and content of the offence created under section 7(1) and the specific presumption created under section 7(2) in relation to an Action or decision involving a relative or associate of the person charged, would clearly fall within the purview of section 10(11)(a) of the Constitution. The presumption under section 7(2) which exempts the prosecution from proving "gratification" applies only in a case where it is proved that it is a relative or associate of the person charged who has an interest.

51. It is settled that a gratification or an advantage for a corruption offence cannot emanate from a mere innocuous act. The gratification, if ex facie appears to carry no wrongdoing, must be offered or accepted for a corrupt purpose. The fact that section 15 is titled 'Receiving gift for a corrupt purpose', gives an indication on the intention of Parliament.

Accused no.1

52. The accused no.1 is being prosecuted under **section 15 of POCA**.

53. Having carried out the above assessment of the law, the prosecution had to prove the following:

a. The accused no.1, a public official, accepted a gratification for himself,
b. from the accused no.2, whom he knows to have been, to be, or likely to be, concerned in any proceeding,
c. having any connection with his functions.

54. The air tickets, the subject of the first two counts of the Information, were paid for by the accused no.2 and accepted by the accused no.1. The defence case theory was that accepting sponsored training by doctors in the public sector has been a common practice among all medical practitioners and suppliers of medical products. It was a tolerated practice and it meant that the MOHQL had tacitly agreed to such sponsorship. The witness on behalf of accused no.1, a Senior Chief Executive of the MOHQL stated that the Ministry did not have to know the details of the training paid by the suppliers. The doctors did not have to seek approval from the Ministry before undergoing privately sponsored training abroad. They apply for vacation leave which will normally be granted and they would be doing so for the benefit of the patients and therefore the country. She agreed that it was only a practice, not a governmental policy. She admitted that she was not aware if the doctors were incidentally receiving any personal gains. She agreed that the practice should follow the law, but candidly added that the law may be amended to fit the ongoing practice.

55. The court is well aware that the witness for the defence is a government official which forms part of the executive. It is always helpful to keep in mind that; the law is enacted by the legislature, applied by the executive and enforced by the

judiciary. Any practice or policy must comply with the law, and not vice versa, that the law must conform with an established practice.

56. The practice itself would have been rendered innocuous or indeed lawful if the required permission or authority was granted by the Ministry. It was never the case for the defence that the accused no.1 sought consent from the Ministry for every privately sponsored trip he wished to undertake. Indeed, the accused no.1 in his defence statements stated he did not need the approval of the said Ministry or any person in authority to grant such approval. He considered the sponsorships as a private matter which is undertaken at his own behest. The invitations were as a result of personal relationships cultivated over the years, with the medical suppliers. The question that beckons, is whether those relationships would have been the same had the accused no.1 not been a doctor in the public service and not a member of the BEC. The answer would clearly be in the negative. The accused no.2 in its defence statement, explained that the majority of its business was tied to government contracts. It is noted that the two acceptance letters (**Docs L** and **L1**) were signed by the accused no.1, as consultant cardiologist, Victoria Hospital.

57. The proposition by the defence that the MOHQL would have tacitly consented to the air travels, is contrary to the evidence of witness nos. 6 and 7 as canvassed above. The evidence is unshaken, in that, a member of the BEC should not have any dealing with any of the bidders. There is a set procedure to be followed whenever a doctor from the MOHQL is to undergo training abroad. The procedures make no distinction between training provided by the government or by private bodies. The fact that it is tolerated practice is irrelevant. It is unfathomable that the MOHQL would issue a blanket authorisation to any specialist doctor in the public service to accept any training, conference, workshop or seminar fully sponsored by any private body, and especially those having dealings with the Ministry. The lack of oversight by the Ministry would be rather concerning.

58. The assertion by the defence that the lack of approval from the Ministry could only lead to a disciplinary measure clouds the main issue of the offence. It is the secretive nature of the invitations and the details thereof, and the lack of accountability of the public officials which create the corrupt purpose.

59. The defence further contended that the paid air tickets were offered for a purpose in line with the function of the accused no.1 as a doctor for the public

sector. He was being trained to the benefit of the State. Therefore, they cannot be considered as gratifications since there would be no wrongful or corrupt purpose attached to them.

60. The accused no.1 has been the chairperson or member of the Bid Evaluation Committee for a number of years. He was appointed as such by the Ministry as he was one of the most experienced and respected cardiologists. That position entails a heightened responsibility to be observed by public officials. One of the functions of the accused no.1 as a member of the BEC, was to evaluate bids from medical suppliers. The acts of accepting sponsorships from one of the bidders infers a purpose which cannot be in line with his functions in the said committee. The wording of section 15 of POCA makes it a requirement that a public official cannot accept a *gift, reward, discount, premium or other advantage*, by virtue of his position or function in the public body which the donor is dealing with. The existence of those elements infers the required purpose. There is no doubt that continuous training to medical practitioners in the public sector should be encouraged. It is undeniable that the bureaucracy of the government can be cumbersome and peppered with obstacles, but it cannot be bypassed altogether. However meritorious the gratification might be, it is irrelevant to the section 15 of POCA. Unless a full disclosure is made to the Ministry, accepting such gifts or advantages in the above circumstances, inherently carries the corrupt purpose. As submitted by the prosecution, the gratification represents general sweeteners so that public officials are groomed to be favourably disposed to the donor.

61. Furthermore, submissions were offered on the fact that the BEC does not reach a final decision in the award of contracts. Since section 15 of POCA does not require a specific act to be proved, the decision whether successful or not for the bidder, is irrelevant to proving the offence. No 'quid pro quo' is required. The function of the public official, hence the accused no.1, was to evaluate bids as a member of the BEC. The evaluation would lead to recommendations which will be forwarded to other instances for a final decision. The evaluation of bids with the corresponding recommendation, was the function of accused no.1 in the proceedings at stake.

62. The evidence on record, as considered above, points to the fact that the accused no.1 had the knowledge that the accused no.2 had been bidders, in tender exercises where he was a member of the BEC, to evaluate those bids. That

knowledge has not been disputed by the defence. I thus hold that the prosecution has proved all the required elements under section 15 of POCA.

Accused no.2

63. Some detailed submissions have been offered on the ambit of section 14 of POCA, by all parties to the case. As reproduced at paragraph 43 above, the section 8 of POBO (Hong Kong legislation) closely resembles our section 14 of POCA. The cited case of **HKSAR v Sin Kam Wah & Anor** (supra) gives a clear indication on the actus reus of the offence. The judgment makes it clear that no specific act is required to be proved, as a return for the gratification.

64. I propose to consider the mens rea of the offence. No clear guidance was given by the case law from the Hong Kong jurisdiction. On the other hand, the practitioner's text; **Lissack and Horlick on International Bribery and Corruption,** *Fourth edition*, *published on 08 December 2025, by LexisNexis Butterworths*, offers some useful insight.

At **Chapter 27 'Bribery and Corruption – Hong Kong'**, the following is of relevance:

27.23 *Proof of offences under POBO, ss 3 and 8 does not require proof of a corrupt intent. The purpose of these sections is to combat corruption even before it has taken place. The requirements of 'having dealings with the Government or public bodies' and there being 'no lawful authority or reasonable excuse' under POBO, s 8, however, do connote some sort of impropriety in the offer of the advantage, which may be pointers of bribery or corruption*. (Emphasis is mine)

65. For the offence laid against the accused no.2, the prosecution had to prove the following:
    a. The accused no.2, while having dealings with the BEC,
    b. offers a gratification to the accused no.1,
    c. who is a member of the BEC.

    The accused no.2 therefore must have had the knowledge that the accused no.1 was a member of the BEC when it was having dealings with the BEC. The sense of impropriety would be part of the circumstances giving rise to a gratification.

66. The main dealing between the accused no.2 and the BEC, which was adduced as evidence was the tender dated April 2015, as shown at Doc N. It is not disputed that the accused no.2 has had such dealings with the BEC before and after 2015. The offers of sponsorships were made in July 2015, as per counts 3 and 4 of the Information, and supported by Docs L and L1. The use of the words 'while' having dealings under section 14 of POCA, imply that the dealings must be in the present tense. The interval between the tender exercise and the offers of sponsored trips is only a few months apart, which is a reasonably short time frame for the circumstances of this case. It is also not disputed that the accused no.1 was a member of the BEC in question.

67. The change of stance from the accused no.2 in its defence statements regarding its knowledge that the accused no.1 was a member of the BEC was submitted upon by the prosecution and the defence. The accused no.2 initially stated that it presumed that the accused no.1 would be a member of the BEC, then switched to a complete denial that it was aware that the accused no.1 was a member of the BEC. The accused no.2 was one of the bidders in the tender exercise Ref: MHPQ/MDSP/2014/Q8, and the bids were evaluated by the BEC as chaired by the accused no.1. The invitations reached the accused no.1 about three months subsequent to the said tender. The relationship between both accused parties has been ongoing for a number of years. The accused no.2 has had bids evaluated by the BEC, of which the accused no.1 was a member, equally for a number of years. There is sufficient circumstantial evidence on record showing that the accused no.2 must have been aware that the accused no.1 was a member of the BEC at the material time.

68. The two invitations by the accused no.2, was submitted to be for educational purposes to the doctors, hence countering the impropriety aspect of it. The accused no.2, as a company, carried on business in the field of medical supplies to public and private institutions. It was not a non-profit company and thus all expenses of the company must ultimately be geared towards profit, whether directly or indirectly. Even if any proper training would be beneficial to public doctors, the fact that the said doctors would be using the medical products of those sponsoring the training, may at the outset create an improper purpose. However, to satisfy the impropriety component of the 'gratification', the whole evidence on record must be considered.

69. It has been agreed by both, the prosecution and the defence, that the defence of lawful authority or reasonable excuse should be applicable to the offence created under section 14 of POCA. They were enacted within the comparative section 8 of POBO (Hong Kong) but not in our section 14 of POCA. The two above defences are predominantly statutory creations, which imply the need to have them expressed under the statute. While that is usually the case for 'reasonable excuse', lawful authority can be implied for offences where the law permits the specific act in certain conditions. The defence is mostly used for offences where the requirement of mens rea is either non-existent or minimal. Either way, if the accused no.2 had offered the invitations to the accused no.1, believing that the latter had the required approval from the Ministry, mens rea or the gratification element for the offence would be negated.

70. Docs L and L1 were the two letters of invitation given to the accused no.1. The latter could not recollect who delivered the said letters. The key feature for the accused no.2 is the second paragraph of the letters which is reproduced below.

"I hereby state that my acceptance of this invitation is in line with applicable law and my professional code of conduct, and I acknowledge that this sponsorship is not a reward or inducement for past or future purchases of Boston Scientific's products".

Irrespective of who drafted the two letters, their contents were acquiesced by the accused no.1 when he signed them. It was therefore understood by the accused no.2 that the accused no.1 had the requisite approval and procedures followed when he accepted the invitations. The wording of the disclaimer tallies with the spirit of the section 14 of POCA, where the stated reward is not linked with a specific act, but with any past or future purchases. The prosecution did not directly address the exculpatory nature of Docs L and L1 for the accused no.2. It was submitted that the prosecution did not shoulder its case against the accused no.2 only on the two invitation letters. Having perused the evidence on record and the documentary evidence, I fail to see how the accused no.2 should have known that the accused no.1 did not receive the proper authorisation when the two letters have been drafted in that manner. In the circumstances of this case, the onus cannot be placed on the accused no.2 to ascertain that the accused no.1 had received the proper authorisation from his own Ministry. In that case, the two sponsored trips have not been tainted by any sort of impropriety. The prosecution has therefore been unable

to prove the mens rea of the accused no.2 which would lead to establishing the gratification element of the law.

CONCLUSION

71. For these reasons, I hold that prosecution has proved the case against the accused no.1 beyond reasonable doubt and I find him guilty as charged under counts 1 and 2 of the Information.

Conversely, the prosecution has been unable to prove the case against the accused no.2 beyond reasonable doubt, counts 3 and 4 of the Information are thus dismissed.

P K Rangasamy
Magistrate of the Intermediate Court
31.03.26