

POTHUNNAH P v THE PUBLIC BODIES APPEAL TRIBUNAL & ANOR

2015 SCJ 163

SCR No. 108582

THE SUPREME COURT OF MAURITIUS

In the matter of:

Mr Parmanand Pothunnah

Applicant

v.

1. The Public Bodies Appeal Tribunal
2. Mr Bhoopnarain Thorul

Respondents

In the presence of:

1. Local Government Service Commission
2. Bibi Farozia Oozeer

Co-Respondents

JUDGMENT

On 23 September 2011, the Local Government Service Commission (LGSC) i.e co-respondent no. 1 in the present matter, advertised the post of Assistant Chief Executive in the local government service to be filled both by limited and open competition. For the limited competition selection, the LGSC invited applications from qualified officers of the Local Government Service and the qualifications were *inter alia* “officers not below the grade of Executive Officer possessing a Diploma in Management or related field and reckoning at least seven years’ service.” For the open competition selection, applications were invited from qualified candidates possessing a post “A” level degree preferably in management or law or equivalent qualifications acceptable to the LGSC.

Following the advertisements mentioned above, 37 candidates including Mr Bhoopnarain Thorul (i.e respondent no. 2) under the limited competition and 335 candidates including Mr Parmanand Pothunnah (i.e applicant) under the open competition were found eligible and were convened to take part in a qualifying examination conducted by the LGSC. Following the examination, 72 candidates including Mr Thorul, Mr Pothunnah and Mrs Bibi Farozia Oozeer (i.e co-respondent no. 2) were found eligible and were convened for an interview. Following the interview, the LGSC appointed four serving employees as Assistant Chief Executive in a temporary capacity with effect from 10 September 2012. The four employees

were Mr Pothunnah, Mrs Oozeer and two others who are not parties to the present case viz Mr Khemraj Prakash Ajit Kumar Dusoye and Mr Rajcoomar Seenauth.

Mr Thorul was dissatisfied with the appointments made by the LGSC and challenged these appointments before the Public Bodies Appeal Tribunal (PBAT) i.e respondent no. 1. The PBAT delivered its findings on 30 August 2013; it quashed the decision of the LGSC and remitted the matter to the Commission for the carrying out of *“a fresh selection exercise in a more fair (sic) and transparent manner.”* The quashing of the decision of the LGSC rendered the appointment of the four candidates who were successful including that of Mr Pothunnah, null and void.

Mr Pothunnah applied for and obtained leave to apply for a judicial review of the determination of the PBAT. This is the second leg of his application and he now seeks before us an order quashing and setting aside the determination of the PBAT. The grounds invoked in the application of Mr Pothunnah are that the determination is *“in breach of the Act (i.e the Public Bodies Appeal Act), unreasonable, in breach of the rules of natural justice and against the rules of fairness and transparency.”*

Before us, Mr G Glover SC rests the case for Mr Pothunnah on the following two grounds:

- (1) The PBAT had no jurisdiction to hear and determine the appeal lodged by Mr Thorul inasmuch as section 3(3) of the Public Bodies Appeal Tribunal Act 2008 (PBAT Act) provides that no appeal shall lie to the Tribunal where the appeal relates to an appointment made following a call for application for an office by public advertisement.
- (2) The PBAT had obtained information from the LGSC, which information for reasons of confidentiality, were not available to Mr Pothunnah and Mrs Oozeer who were respondents in the appeal by Mr Thorul before the Tribunal. This recourse is in complete disregard of the rights of Mr Pothunnah and Mrs Oozeer.

In relation to the point taken under ground (1), it is argued by Mr M Sauzier SC appearing for the PBAT that it should not be retained inasmuch as before the Tribunal, Mr Pothunnah stated in his defence that he was a candidate under the limited competition exercise. That Mr Pothunnah did so state is indeed a fact.

Now, at the relevant time, Mr Pothunnah was a Senior Health Inspector at the Grand Port/Savanne District Council. He was also the holder of a Diploma in Sanitary Science and a Bachelor's Degree in Law (LLB). So it is clear that Mr Pothunnah did not hold the qualifications required for selection by limited competition viz he was not "*among officers not below the grade of Executive Officer possessing a Diploma in Management or related field.....*". On the other hand, he qualified for appointment under the open competition exercise since he was the holder of a post "A" level degree in Law.

Mr Pothunnah was obviously mistaken in his statement of defence before the PBAT. And we agree with Counsel for Mr Pothunnah, that the PBAT "*should not have closed its eyes to the obvious facts before it*" especially taking into account that Mr Pothunnah was not legally represented. The stand of the LGSC, as expressed by Mrs P. Chittoo appearing for it, is also that Mr Pothunnah who held a post "A" level degree, had applied for selection by way of open competition.

The appeal entered by Mr Thorul before the PBAT was therefore against an appointment made following a call for application for an office by public advertisement and is excluded from the jurisdiction of the PBAT by section 3(3) of the PBAT Act. In hearing and entertaining the appeal, the PBAT has acted in breach of section 3(3) and in excess of the statutory jurisdiction conferred upon it.

The point taken at (1) above should therefore succeed.

The present application having succeeded on ground (1), there is no need for us to consider ground (2).

For the reasons given above, the decision of the Tribunal is quashed and set aside.

A. F. Chui Yew Cheong
Judge

P. Fekna
Judge

25 May 2015

Judgment delivered by Hon A F Chui Yew Cheong, Judge

For Applicant : Mr Appa Jala, SA
Mr G Glover, SC

For Respondent No 1 : Mr M H Salehmohamed, SA
Mr M Sauzier, SC

For Co-respondent No 1: State Attorney
State Counsel