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Judgment  
17, 1965

IN THE PRIVY COUNCIL

No. 21 of 1964

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O N    A P P E A L

FROM THE SUPREME COURT OF MAURITIUS

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B E T W E E N

THE MAYOR AND CORPORATION  
OF PORT LOUIS

Plaintiffs  
(Appellants)

- FEB 1966  
80956

- and -

10 THE HONOURABLE THE ATTORNEY  
GENERAL

Defendant  
(Respondent)

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CASE FOR THE APPELLANTS

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1. This is an Appeal by leave from a Judgment of the Supreme Court of Mauritius (Sir Rampersad Neerunjun, C.J., Rivalland, Senior Puisne Judge, and Glover J.) pronounced on the 9th December 1963, which dismissed with costs an action in which the Appellants claimed a Declaration that Proclamation No. 12 of 1963 issued by the Governor in Council on the 14th August 1963, hereinafter referred to as "the Proclamation" was ultra vires and null and void to all intents and purposes so far as it related to the extension of the boundaries of Port Louis.

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p.80, l.6-33  
p.77, l.1-15

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30 2. The Proclamation purported, inter alia, to extend the boundaries of Port Louis, the Capital of the Island of Mauritius, by including within the Town, of an area hitherto of 1,540 acres, further areas totalling 8,004 acres, in exercise of powers conferred upon the Governor in Council by Section 73 of Ordinance No. 16 of 1962, hereinafter referred to as "the Ordinance" and

p.5. l.8-11

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including consequential and supplemental provisions providing for the alteration of other local authority areas, for the vesting of the property, assets, rights and liabilities of local authorities whose areas were included within the extension of Fort Louis, and for the dissolution of such authorities.

3. Section 73 of the Ordinance provides:-

(1) The Governor in Council may by Proclamation alter the boundaries of any town, district or village, after consultation with the local authority concerned. 10

(2) A Proclamation made under the foregoing sub-section may contain such consequential or supplemental provisions with respect to administrative arrangements as may appear to be necessary and proper for the purpose of such Proclamation and for giving full effect thereto and, without prejudice to the generality of the foregoing provision, may provide for all or any of the following matters, that is to say the Proclamation - 20

(a) may provide for the abolition or establishment or the restriction or extension of the jurisdiction of any local authority in or over any part of the area affected by the Proclamation;

(b) may provide for the name of any altered area; 30

(c) may provide for the adjustment or alteration of the boundaries of any area affected by the Proclamation, and for the constitution and election of the local authorities in any such area;

(d) may deal with the functions or area of jurisdiction of any local authority within the area affected by the Proclamation, and with the costs and expenses of any such authority; 40

(e) may determine the status of any area affected by the Proclamation as a component part of any larger area, and may extend to any altered area the provisions of any local enactment which

was previously in force in a portion of the area, or exclude from the application of any local enactment any part of the altered area to which it previously applied, so however, that such extension or exclusion shall not, without their consent, affect the powers or the duties of any statutory undertakers;

10 (f) may make temporary provision for disposing of the assets, or for meeting the debts and liabilities of the various local authorities affected by the Proclamation, for the management of their property, and for regulating the duties, position and remuneration of officers affected by the Proclamation;

20 (g) may provide for the transfer of any writs, process, records, and documents relating to or to be executed in any part of the area affected by the Proclamation, and for determining questions arising from such transfer;

30 (h) may provide for the adjustment of any property, debts and liabilities affected by the Proclamation and for the continuance in office of any local authority for the purposes of such adjustment.

(3) A Proclamation made under this Part of this Ordinance may, as respects any area affected by the Proclamation, contain such incidental, consequential or supplemental provision as may be necessary for the total number of councillors (if any), and the first election of councillors for any new or altered area.

40 4. The Appeal raises the questions whether the Appellants, who are a "local authority concerned" within Section 73(1) (as was not disputed), were "consulted" by the Governor in Council before the issue of the Proclamation, and whether such communications as there were between the Appellants and the Ministry of Local Government and Co-operative Development, on behalf of the Governor in Council, amounted to "consultation" within Section 73(1).

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5. The Appellants are a body corporate

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constituted under Section 4 of the Ordinance and entrusted under section 6 thereof with the good order and government of the Town of Port Louis. They have divers functions in that behalf, and these include, under the Ordinance, functions relating to roads, sanitation, schools, water supply, levying of licence fees, making of by-laws, fire service, night soil service, lighting, public beaches, markets, slaughter houses and sale of meat. They have power to levy a rate and to impose various fees, duties and taxes. They receive various grants from Government. The First Schedule to the Ordinance describes the area administered by the Appellants prior to the issue of the Proclamation, this area amounting to 1,540 acres. There are other small areas, of insignificant size, under the Appellants' administration, these being described in Part I of the Fourth Schedule of the Ordinance. The Municipal Council comprises 16 elected councillors with a quorum of 7. (Second Schedule and Part III of the Fifth Schedule to the Ordinance).

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6. The material facts giving rise to this Appeal are as follows:-

p.81,17-p.82,  
1.10.

(a) On the 2nd May 1963, the Ministry of Local Government and Co-operative Development wrote to the Town Clerk of the Municipality of Port Louis informing him that it was proposed to alter the boundaries of the Town by adding to it areas totalling 7,088 acres, these areas being both listed in the letter and listed and indicated by different colours on a map attached to the letter, and asking for his views on the proposed alteration by the 13th May, 1963.

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opp.p.82.

p.64,1.20-23.

(b) On the 11th May 1963, 11 of the 16 Municipal Councillors resigned as a result of the letter of the 2nd May, 1963, leaving the Council without a quorum.

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p.81,17-p.82,  
1.10.

p.82,1.17-32

(c) On the 13th May, 1963, the Town Clerk informed the Ministry that he could not give the Council's views on the proposed alteration as the resignation of 11 Councillors occurred before the matter could be discussed.

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- (d) On the 11th June 1963, the Governor in the exercise of the powers conferred upon him by Section 46 of the Ordinance, as amended by Section 2 of Ordinance No. 16 of 1963, appointed 6 Municipal Councillors to fill 6 of the 11 vacancies, thereby restoring a quorum. p.64,1.45-50.  
In pocket of Appendix.
- 10 (e) On the 18th June 1963, the Ministry wrote to the Town Clerk with reference to the letter of the 2nd May 1963 regretting that the map accompanying that letter had contained a few inaccuracies and that it had not been stated that consideration was also being given to the inclusion of two other areas within the boundaries of the Town, enclosing another map and asking for a reply to the letter of the 2nd May by the 6th July, 1963. The map enclosed showed that the two new areas referred to had a combined area of 916 acres. p.83,1.5-29.  
p.81,1.7-p.82,1.10.  
opp.p.82.  
opp.p.84.  
p.81,1.7-p.82,1.10.  
opp.p.84.
- 20 (f) On the 3rd July 1963, a Committee of the whole Council considered the Ministry's letters of the 2nd May and the 18th June 1963. The Committee had before it notes prepared by the Town Clerk on the procedure obtaining in the United Kingdom for the alteration of Local Government areas and notes by the Town Treasurer and Town Engineer of matters on which members might wish to be enlightened. After discussion, it was agreed that, prior to the Committee submitting a recommendation one way or the other in connection with the proposed extension of Fort Louis, the Ministry be approached with a view to obtaining information on the lines directed by the Committee. p.98,1.8-30.  
p.81,1.7-p.82,1.10.  
p.83,1.5-29.  
pp.99-101,1.31.  
p.102,1.29-p.103,1.20  
p.101,1.36-p.102,1.24  
p.98,1.24-28
- 30 (g) On the 8th July 1963, the Mayor addressed a letter to the Minister protesting against the procedure adopted, especially as to the time limit imposed on the Council, stating that the Council were willing to consider the Ministry's proposal, quoting the United Kingdom Local Government Commission Regulations 1958 p.84,1.4-p.93,1.20.
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RECORD

- pp.99-103,1.20. as an indication of what was considered in the United Kingdom to be a normal and responsible approach to the important question of alteration of local government administrative areas, and listing a number of points on which the Council wanted to be enlightened before being in a position to consider the proposal. The points listed largely followed those contained in the notes before the Committee at its meeting of the 3rd July, 1963. 10
- p.93,1.25-p.94,1.13. (h) On the 10th July 1963 the Ministry wrote to the Town Clerk pointing out that the Council's views on the proposal had not yet been received and asking for their submission by the 18th July 1963. This letter must have crossed the letter of the 8th July 1963. 20
- p.65,1.32-34.  
p.84,1.4-p.93,1.20.
- p.94,1.18-p.95,1.2.  
p.84,1.4-p.93,1.20. (i) On the 11th July 1963, the Ministry replied to the letter of the 8th July 1963 by a letter to the Mayor asking that the Council's views be submitted and stating that the points raised in the letter of the 8th July would be considered by the Government.
- p.84,1.4-p.93,1.20.
- p.95,1.7-36. (j) On the 15th July 1963, the Mayor wrote to the Minister regretting that the latter had not thought it proper to reply personally to the former's letter to him, repeating that the Committee of the whole Council had on the 3rd July 1963 decided that, before it could express its views, it was essential to have the information requested in the letter of the 8th July, 1963 and stating that he was looking forward to receive that information. 30
- p.84,1.4-p.93,1.20.
- p.84,1.4-p.93,1.20.
- p.96,1.5-20. (k) On the 19th July 1963, the Ministry wrote to the Mayor saying that it was regretted that no further extension of time could be given. 40
- p.96,1.25-p.97,1.12. (l) On the 29th July, 1963 the Mayor wrote to the Minister recording strong objection to any action being taken by the Government before the Council had expressed its views and urging the Minister to supply the information requested. 50

- (m) On the 13th August 1963, the Ministry wrote to the Town Clerk stating that, after careful consideration, the Governor in Council had decided to issue a Proclamation, of which an advance copy was enclosed, and which was to be published on the 14th August, 1963. The letter added that it had not been possible to meet the wishes of the Municipal Council but that every effort had been made to reach a comprehensive solution satisfactory as a whole to the population of Mauritius. p.97,1.17-p.98,1.3.
- (n) On the 14th August 1963, the Proclamation was issued. p.65,1.49-50

7. On the 28th October 1963, the Supreme Court mentioned the case in order that Counsel could consider the questions whether the Court had jurisdiction to make a declaratory judgment, whether it had power to decide on the validity of an act of the Executive, and what, if any, was its discretion to make or refuse to make a declaration. At the hearing, Counsel for both parties were agreed that the Court had power in its judicial discretion to give declaratory judgments, that it could decide on the validity in law of an act of the Executive and that this was a proper case for the exercise of the judicial discretion if the relief sought was not unconstitutional or inequitable. The Court in its Judgment left these questions open, deeming it proper to dispose of the substantial question between the parties. p.19,1.12-p.20.1.7.

p.66,1.7-9.

p.24,1.16-24.  
p.29,1.24-25.  
p.25,1.31-33.  
p.30,1.12-23.

8. At the hearing of the action, it was argued on behalf of the Appellants that:- p.33,1.30-p.37.

- (a) There had been no "consultation" as required by Section 73(1) of the Ordinance before the issue of the Proclamation because:- (i) the extremely short time allowed, and the contents of the letters of the 2nd May and the 18th June 1963, were indicative of an intention in the Government to rush through the Ministry's proposal and to treat the obtaining of the Appellants' views as a mere formality, an impression borne out by the Minister's evidence in Court; (ii) by reason of the failure of the Minister to impart to the Appellants any of the information requested by the In pocket of Appendix. p.81,1.7-p.82,1.10. p.83,1.5-29.

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p.84,1.4-p.93,1.20.  
p.95;1.7-36.

letters of the 8th and 15th July 1963, no effective discussion of the Ministry's proposals could or ever did take place; and no views on such proposals could consequently be expressed by them; (iii) the Appellants were given neither sufficient time nor a reasonable opportunity to express their views on the proposal.

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p.84,1.4-p.93,1.20.

(b) The Appellants were fully justified in seeking the information asked for in the letter of the 8th July 1963 because:-

(i) such a major extension of the boundaries of Port Louis meant a considerable addition to administrative and financial obligations of the Municipality;

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p.84,1.4-p.93,1.20.

(ii) the letter of the 8th July, 1963 raised a number of extremely important and essential points, the answers to which would affect the Appellants' consideration of the proposal;

(iii) none of the information requested was known to the Appellants; whereas such information was either within the knowledge of, or available to, the Minister and could easily have been supplied by him to the Appellants;

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(iv) the change in procedure brought about by the Ordinance from that previously obtaining (whereby the boundaries of the Town could be altered by the Governor in Council only on the initiative of the Municipal Council) made it all the more important that the Appellants should be in a position to formulate and express their considered views on the proposal of the Governor in Council supported by facts and figures.

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(c) The failure of the Minister to answer any of the questions asked denied to the Appellants an opportunity to express their views on the proposal.

(d) The time allowed by the Ministry for the Appellants to give their views was far too short.

10 (e) The conduct of the Ministry could be contrasted with the "consultation" which had taken place in Fletcher -v- Minister of Town and Country Planning, (1947) 2 All E.R. 496, Rollo -v- Minister of Town and Country Planning (1948) 1 All E.R. 13, and Re Union of Benefices of Whippingham and East Cowes. (1954) A.C. 245.

20 (f) It was not fair to infer deliberate obstruction or delaying tactics by the Appellants; in particular from the resignation of 11 Councillors as a result of the letter of the 2nd May 1963. These matters were not pleaded in the Respondent's Statement of Defence. p.81,1.7-p.82,1.10. pp.14-16.

9. At the hearing of the action, it was argued on behalf of the Respondent that:- p.30,1.23-p.33, 1.28.

(a) the meaning attached to "consultation" in decided cases is not of universal application;

30 (b) "consultation" is the seeking of the views of a party and the giving to that party of an opportunity of expressing his views, but not necessarily awaiting such views if the party is obstructive and refuses to give them;

(c) the Mayor had used dilatory tactics, and the Council refrained from giving their views in order to cause obstruction;

40 (d) the Council was in as good a position as the Government to obtain information on the questions put in the letter of the 8th July 1963 except on matters of Government policy; p.84,1.4-p.93,1.20

(e) Rather than cooperate with the Government,

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the Appellants used dilatory tactics. They were convinced that the Government would not take action so long as the Appellants would not have expressed their views;

- (f) the Government could have proceeded twice with its proposal, on the 13th May and on the 6th July, 1963, and in fact had given ample time and opportunity for the Appellants to express their views; 10
- (g) "consultation" began when the Government gave the Appellants an opportunity to express their views and was ended by the Appellants' obstructiveness and failure to express such views;
- (h) the Appellants had therefore been "consulted" and the Proclamation was valid;
- (i) the Court should not exercise its discretion in favour of the Appellants because such an exercise would be inequitable, since the latter's obstructiveness amounted to coming to Court with unclean hands. 20

p.77,1.1-15.

10. The Supreme Court dismissed the action with costs on the 9th December 1963, giving its decision in the form of a Judgment by Neerunjun, C.J., with which the two other learned Judges agreed.

pp.63-76.

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11. In the said judgment, the Court held that:

- (A) with reference to the Appellants' reliance on the cases of Fletcher, Rollo and the Union of Benefices of Whippingham and East Cowes (supra), the Appellants' contention that the requirement as to "consultation" in section 73(1) meant a full investigation to an extent comparable with what took place in those cases was open to the following objections: 40

p.67,1.2-8.  
1.36-40.

p.67,1.40-43.

- (a) "the nature of the "consultation" required by section 73(1)... must be determined with reference to its context and according to the intention of the legislator in

enacting the Ordinance." On the other hand, "the decision in the cases of Fletcher and Rollo makes it clear that the extent of the consultation was such as was required by the particular sections of the law imposing that requirement. The same observations applies to the Whippingham case."

p.68,1.6-9.

10 (b) "the context of the New Towns Act, 1946, as well as that of the Pastoral Reorganisation Measure Act 1949 gives a sufficient indication of the extent of consultation required, since it specified the various steps in the procedure and matters which should be taken into consideration".

p.68,1.10-14.

20 (c) There was a right of appeal from an order made under the New Towns Act, 1946, or under the Pastoral Reorganisation Measure Act, 1949, while there was no right of appeal from an order made by the Governor in Council under Section 73(1) of the Ordinance. In the former case, the Court had more latitude to enquire into the reasonableness and justification of the executive act; 30 in the latter case, the Court was restricted to the question whether the Executive had acted within the four corners of the enabling power.

p.68,1.21-29

p.68,1.36-43.

40 (B) Regarding the nature of the condition to be fulfilled before the Governor in Council exercised the power altering the boundaries of a local government area, the decision to alter the area was conferred on the Governor in Council and the time and expediency for doing so were left to him and not to the local authority concerned. The only condition precedent prescribed by the law was that such authority be consulted. No procedure was laid down for such consultation and no other conditions were laid down for the exercise of the power. The law did not require the Governor in Council to act in accordance with the wishes of the Municipal

p.69,1.35-p.70,  
1.11

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Council. He might disregard their views. In those cases where he was fully informed from other sources of the merits of a case for extension, his obligation to consult the local government authority concerned might become a mere formality.

- p.70,1.12-16. (C) The Appellants' case was not that there had been no consultation but that there had been no sufficient consultation, i.e. that the Governor in Council did not make sufficient enquiry from the Municipal Council regarding the proposal to extend the limits of the Town of Port Louis. 10
- p.70,1.16-p.73. (D) If a statute declared that a minister may make regulations or orders when he is of opinion, or is satisfied, that a certain state of affairs exists, the Courts had no jurisdiction to enquire into whether he had sufficient grounds or material to hold such an opinion or to be so satisfied, and his making of such regulations or orders could not be questioned. (Vide Hart's Introduction to the Laws of Local Government and Administration 6th Ed. p. 307 Craies on Statute Law 5th Ed. p. 277 et seq. Robinson & ors. v. Minister of Town and Country Planning. 1947 1 A.E.R. p.851.) 20 30
- (E) On the facts of the case and regarding the interpretation to be placed on the resignation of 11 Councillors on the 11th May, 1963:
- p.74.1.1-4. (a) "consultation" presupposed readiness and willingness to co-operate on the part of the local authority concerned;
- p.74,1.4-7. (b) the Mayor and 11 Councillors, all belonging to the same majority party in the Municipal Council, had decided to evade the issue; 40
- p.74,1.9-12 (c) the resignation of the 11 Councillors and the Mayor's attitude at the time on the plea that they had no mandate from the electorate, could

only be construed as an emphatic  
"no" to the extension proposal.

- (F) Under the circumstances of the resignation described above,
- (a) the Governor in Council was fully entitled to proceed with the issue of the Proclamation, as the condition precedent, i.e. the statutory consultation, had been complied with. p.74,1.13-15
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- (b) any further enquiry which he considered necessary was entirely within his discretion. He must be assumed to have acted bona fide when he offered the Municipal Council another opportunity to make their comments or express their views. p.75,1.18-26
- (G) Regarding the questionnaire put to the Minister in the letter of the 8th July 1963, such questionnaire proceeded on a misconception of the law but was useful in imparting to the Central Government the difficulties which could, in the opinion of the Council, arise in the event of the extension of the boundaries. In consequence, "the Governor in Council, after leaving it for some time still open to the Municipal Council to express their views, must then have studied, as he stated he would do, all the points raised by the Mayor and must have been satisfied "after careful consideration" "that no further enquiry was needed from the Municipal Council. The Governor had reached the conclusion that there had been sufficient consultation." p.74,1.27-40  
p.84,1.4-p.93,  
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- p.75,1.1-6.
- (H) Under the circumstances, and applying the legal principles examined above (sub-para. D) the Court had no power to decide on the sufficiency of the consultation which had in fact taken place on two occasions. It was within the sole discretion of the Governor in Council to decide about the extent of the consultation and whether further consultation was necessary. This could p.75,1.9-12.
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- p.75,1.17-20
- p.75,1.25-27.

not be controlled by the Court.

p.76,1.23-26

- (I) In all the circumstances of the case, "there was sufficient compliance with the law by the Governor in Council before he exercised his power to extend the limits of the Town of Port Louis by Proclamation No. 12 of 1963 which is accordingly valid."

12. With reference to the findings of the Court as summarised in sub-paras. 11A to I supra, the Appellants respectfully submit that : 10

- (A) (a) the cases of Fletcher, Rollo and the Union of Benefices of Whippingham and East Cowes (supra) correctly indicate that, while the nature and extent of communications between the consulting parties which are sufficient for "consultation" to have taken place will vary in each case even under the same enactment, still "consultation" in any case connotes that on the one hand, sufficient information must be supplied to the local authority to enable them to tender advice, and, on the other hand, a sufficient opportunity must be given to the local authority to tender that advice. 20 30

- (b) The procedural steps mentioned in the New Towns Act 1946 and the Pastoral Reorganisation Measure Act 1949 are distinct from the "consultation" therein prescribed, and, in any case, are not so special as to make the basic requirements of such "consultation" essentially different from those of the "consultation" prescribed in Section 73 (1) of the Ordinance. 40

- (c) The right of appeal against an order made under Section 1 of the New Towns Act 1946 is not a right to appeal on the merits of the order but on the legal validity thereof.

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So far as the Whippingham case is concerned, while the right of appeal against a scheme is a right of appeal on the merits the point taken as to consultation in that case was that since no "consultation" had occurred the scheme was null and void, quite apart from its merits.

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Likewise, all that the Appellants sought in the present case was that the Court should decide "the question whether the Executive has acted within the four corners of the enabling power."

p.68,1.42-43

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In conclusion to (a), (b), and (c) supra., it is submitted that the cases under reference may be relied on to determine the right approach to the question of what a true consultation should be.

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- (B) While it is admitted that the Governor in Council has full power, under Sec. 73(1) of the Ordinance, to decide on the merits of the extension of boundaries, even against the wishes of the Municipal Council, this is subject to the condition precedent that the said Council should have been "consulted".

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This condition precedent is an essential one and it cannot, under any circumstances whatever, be prejudged to be a mere formality, as, it is suggested, was done in this case by the Governor in Council.

In the particular circumstances of the present case where it was proposed, without any previous intimation, to multiply the area administered by the Appellants by  $5\frac{1}{2}$  times (later increased to over 6 times) consultation could in no sense be regarded as a mere formality, whether the Governor in Council was fully informed from other sources of the merits of the proposal or not.

(C) The Appellants' case was and is that there has been nothing amounting to "consultation" within Section 73(1). The Appellants' contention that there has been no sufficient consultation was wrongly interpreted by the Court as meaning that the Governor in Council did not make sufficient enquiry from the Municipal Council before making his decision to extend the Town Limits. 10  
What the Appellants meant was that sufficient opportunity was not given to the Appellants to express their views and that sufficient information was not supplied to them to enable them to do so, and that "consultation" therefore did not take place.

(D) It never was the Appellants' contention that the Court should have enquired into whether the Governor in Executive Council had sufficient grounds or material to decide on the extension of the boundaries of the Town of Fort Louis, i.e., into the merits of his decision. 20

The only question submitted by the Appellants to the Court was whether the condition precedent to the exercise by the Governor in Council of his power of delegated legislation under Section 73(1) had been fulfilled. 30

The rule of law quoted by the Court in no way precluded it from enquiring into that question.

(E) Regarding the interpretation to be placed on the resignation of the 11 Councillors, and the attitude of the Mayor and the consequences to be drawn therefrom:

p.81,1.7-p.82,1.10.

(a) the letter of the 2nd May 1963 cannot, in all the circumstances of the case be regarded as an invitation to "consult" in any reasonable and useful sense; 40

(b) the said letter did not state completely and accurately the

proposal which the Governor in Council had in mind, namely the addition of 8,004 acres to the Town of Port Louis;

- 10 (c) no 'consultation' had occurred and no reasonable opportunity for consultation had been offered by the time that the 11 Councillors resigned;
- (d) there was no ground for holding that the Mayor and the 11 Councillors had decided to evade the issue;
- 20 (e) the Court was wrong to hold that the said resignation and the attitude of the Mayor could only be construed as a most emphatic "no." to the extension proposal. The Governor in Council did not place such a construction on the said resignation and attitude. The Respondent did not rely on such a construction in his pleadings; pp.14-16.
- (f) the plea of obstructiveness or dilatoriness on the part of the 11 Councillors or of the Mayor was never raised by the Respondent in his pleadings; pp.14-16.
- 30 (g) the said resignation had a political background and could not fairly be construed as an unambiguous and final expression of opinion regarding the merits of the proposal under reference;
- (h) there was no evidence that the Municipal Council, which was the body to be consulted, had decided to evade the issue, but only, if at all, that individual Councillors had done so.
- 40 (F) As to the legal consequences arising from the resignation of the 11 Councillors :-
- (a) The Governor in Council did not acquire any right to proceed with the proposal to alter the boundaries of Port Louis, as no "consultation" had taken place.

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(b) In any case, whatever consultation may be said to have taken place only concerned 7,088 acres and not 8,004 acres which was the final proclaimed area, and such incomplete consultation could have no effect.

(c) The extent of any further enquiry by the Governor in Council was not within his discretion unless and until "consultation" had taken place.

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(d) The Respondent never pleaded that the "consultation" was completed at the time of the resignation of the 11 Councillors and that the subsequent enquiry was in the discretion of the Governor in Council.

p.86,1.35-p.93,1.16.

(G) (a) The Court was wrong in holding that the questionnaire put to the Minister was based on the misconception of the Law. Admitting that the English procedure under the Local Government Commission Regulation 1958 did not apply to the present case, yet each of the questions contained in the said questionnaire was essential to enlighten the Appellants before they could give their considered views on the matter.

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p.86,1.35-p.93,1.16.

(b) The said questionnaire was not meant to be and was not a substitute for the expression of their views by the Appellants but was to enable them to obtain sufficient information to be able to express such views.

(H) The Appellants submit that the Judgment of the learned Chief Justice reveals a confusion between the administrative functions of the Executive and the Judicial functions of the Court. Whereas the decision whether and when to alter the boundaries of Port Louis is vested in the Governor in Council, and it is for the legislature and not

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10 the Court to question the sufficiency of information on which he acts in reaching such a decision, it is the power and duty of the Court to scrutinize whether the precondition to the exercise of that executive function, namely whether consultation with the local authority concerned has taken place, is fulfilled. It was found in the judgment, that "consultation" had taken place on two occasions, but the sufficiency of the interchanges between the parties, in particular of the letters of the 2nd May and 18th June, 1963, to constitute "consultation" was nowhere examined.

20 13. The Appellants accordingly submit that this Appeal should be allowed, and that the Judgment of the Supreme Court of Mauritius should be set aside, and that it be declared that the Proclamation is ultra vires and null and void to all intents and purposes in so far as it relates to the extension of the boundaries of the Town of Port Louis, and that the Respondent should be ordered to pay the Appellants' cost of this Appeal and in the Supreme Court of Mauritius, for the following among other

R E A S O N S

- 30 (1) BECAUSE no consultation with the Appellants within the meaning of Section 73(1) of the Ordinance ever took place before the issue of the Proclamation.
- (2) BECAUSE the Governor in Council prejudged the issue as to the extension of the boundaries of Port Louis and treated the obtaining of the Appellants' views thereon as a mere formality.
- 40 (3) BECAUSE "consultation" in the context of the circumstances of this case connoted that the Governor in Council should supply sufficient information to the Appellants to enable them to tender advice on the merits of the subject matter of the Proclamation so far as it related to Port Louis and

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that the Appellants be allowed a sufficient opportunity to tender that advice.

- (4) BECAUSE the Appellants were not supplied with any of the information requested in the letter of the 8th July, 1963, and were not allowed a sufficient opportunity to tender advice.
- (5) BECAUSE the Appellants were afforded insufficient time to formulate and express any views on that part of the Governor in Council's proposals on which they were invited to comment. 10
- (6) BECAUSE neither the letter of the 2nd May, 1963 nor the letter of the 18th June, 1963 cannot be regarded as an effective invitation to "consult" in any reasonable and useful sense.
- (7) BECAUSE the Supreme Court wrongly held that the effect of the resignation of 11 Councillors on the 11th May 1963 was to give the Governor in Council a right to proceed with the proposal and that any further consultation was within his discretion. 20
- (8) BECAUSE the Supreme Court ought to have held that the interchange between the parties had not amounted to consultation within the meaning of Section 73 (1) of the Ordinance. 30

ANDRE RAFFRAY

DAVID TRUSTRAM EVE

