

~~RC~~  
~~GMA.GJ~~

Judgment  
17, 1965

IN THE PRIVY COUNCIL

No.21 of 1964

ON APPEAL  
FROM THE SUPREME COURT OF MAURITIUS

FEB 1966

BETWEEN:-

80956

THE MAYOR AND CORPORATION OF PORT LOUIS

Appellants

- and -

THE HONOURABLE THE ATTORNEY GENERAL

Respondent

CASE FOR THE RESPONDENT

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10 1. This is an appeal from a judgment of the Supreme Court of Mauritius (Neerunjun, C.J., Rivalland and Glover, JJ.), dated the 9th December 1963, whereby the Appellants' action, for a declaration that Proclamation number 12 of 1963, so far as it related to the extension of the boundaries of the town of Port Louis, was ultra vires and null and void, was dismissed with costs. pp.63-76

20 2. The question raised in this appeal is whether, before Proclamation number 12 of 1963 was made, there had been consultation with the Appellants, as required by the Local Government Ordinance, 1962, Section 73(1). That sub-section reads:

'73(1) The Governor in Council may by Proclamation alter the boundaries of any town, district or village, after consultation with the local authority concerned.'

30 3. The Appellants issued their Statement of Claim on the 23rd September, 1963. They alleged that the boundaries of the town of Port Louis prior to Proclamation No.12 of 1963 were as defined in the Fourth Schedule to the Local Government Ordinance, No.16 of 1962, and covered an area of 1540 acres. The Town Clerk had received a letter dated the 2nd May, 1963 from the Ministry of Local Government, informing the Appellants that it was proposed to alter the existing boundaries of the town of Port Louis by adding various village areas totalling 7088 p.81

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p.82 acres, and requesting the Appellants to submit their views thereon by the 13th May, 1963. As a consequence of that letter, 11 out of the 16 Municipal Councillors had resigned on the 11th May 1963 and the Council had been left without a quorum. On the 13th May the Town Clerk had replied to the Ministry, saying that it had not been possible for the Council to discuss the matter before these resignations, so the views of the Council could not be given to the Ministry. On 11th June 6 Councillors had been appointed by the Governor, the Council's quorum being thus restored. On the 18th June, by a further letter from the Ministry to the Town Clerk, the Appellants had been informed that it was proposed to include two further areas within the boundaries of the town, making an additional 916 acres, and had been invited to express their views thereon by the 6th July, 1963. On the 3rd July, the Appellants' General Purposes Committee (a committee of the whole Council) had considered the letters of the 2nd May and 18th June, and had decided that, before expressing any view on the proposed alteration, the Appellants should ask the Ministry for certain information. On the 8th July, the Mayor had written to the Minister conveying the request for information, which was expressed in 54 questions covering seven pages; and on the 11th July the Ministry had replied, saying that the points raised by the Mayor would be considered by the Government, but asking for the Appellants' views on the proposals before the 18th July. By a letter of the 15th July, the Mayor had repeated that the Appellants would not be in a position to express their views until information requested by the Appellants had been given. On the 19th July the Ministry had written informing the Appellants that no further extension of time could be given for the expression of the Appellants' views, and on the 29th July the Mayor had written objecting to any action being taken before those views had been expressed. By a letter of the 13th August from the Ministry, the Appellants had been told that the Governor in Council had decided to make a Proclamation extending the boundaries of the town. An advance copy of the Proclamation had been enclosed with the letter. On the 14th August, Proclamation No.12 of 1963 had been made, by which the Governor in Council, purporting to have consulted the local authorities concerned, had ordered that all the areas proposed by the Ministry should be included within the town boundaries. The Appellants alleged that the information for which they had asked the Ministry had not been available to them, had been essential to allow them to express their views on the

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10 proposal, and had never been given them by the Ministry; that no effective discussion of the proposal could take place; that they had not been given sufficient time or a reasonable opportunity to express their views; and, consequently, that no "consultation" had taken place as provided by law, and Proclamation No.12 of 1963 was ultra vires and null and void so far as it related to the extension of the boundaries of the town of Port Louis.

4. By his Defence, dated the 4th October, 1963 the Respondent admitted the correspondence which had been alleged, but denied that there had been no consultation and that Proclamation No.12 was ultra vires. p.14-16

20 5. The hearing of the action took place between the 12th and 22nd November, 1963. The Appellants called Mr. J.R. Hein, the Mayor of Port Louis, to give evidence. He proved the correspondence and said that as a result of the Ministry's letter of the 2nd May eleven members of the Municipal Council had resigned, leaving it without a quorum. On the 2nd May he had himself been ill, and had not heard of the Ministry's letter until he had returned to work on the 7th May. By then the Town Clerk had convened a meeting of the General Purposes Committee for the 8th May, but he (the witness) had had that meeting postponed to the 13th May, so that he might study the question. By the 13th May, the eleven  
30 Councillors had resigned, so the meeting could not be held. The witness thought their decision to resign had been taken on the 8th or 9th May; their reason he said, had been that they had no mandate from the electorate to express views about the proposed extension of the town boundaries. He had had no mandate either, but at a meeting of the Parti Mauricien held on the 8th or 9th May it had been decided that the Mayor and Deputy Mayor should remain in office to carry on the day to day business  
40 of the Council. The Council's General Purposes Committee had met on the 3rd July; the witness, using notes prepared by the Town Clerk, had drawn attention to the procedure followed in England for alteration of local government boundaries. A number of questions had been raised as to the effect of the proposed enlargement of the town boundaries, and those questions had been embodied in the witness' letter of 8th July. No information, p.38, 11.7-12 p.38; 11.18-29; p.46, 11.2-3; p.50, 1.1 - p.51, 1.2 pp.38, 1.38 - p.39, 1.8 p.39,1.32- p.40, 1.11

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p.40, ll. 22-27	he said, had been available to the Appellants on these questions. On the 3rd July the Committee had seen, the witness went on, that it was impossible for it to express an opinion on the Ministry's proposals without the information it was then seeking; or within	
pp.41-44	the short time allowed. The witness then went on to deal in detail with various questions raised in his letter of the 8th July. He had considered that the Appellants' views had to be received by Government before it could act, but he denied that he had ever	10
p.47, ll. 30-31	considered that he would defeat the Government measure by refusing to express his views.	
p.53, ll. 10-12		
p.53, ll. 19-23	6. The Respondent called Mr. F. Laventure, who had been Minister of Local Government at the relevant time. When the Government had proposed to extend the boundaries of Port Louis, he had written about the proposal to the local authorities concerned.	
p.54, l. 27 and ll.37-44	Having had no reply from the Appellants by the 13th May, his Ministry, by the letter of the 18th June, had asked them for a reply by the 6th July. The	20
p.55, ll. 12-18	Appellants' letter of the 8th July had asked for information some of which affected matters which were the responsibility of the Governor; on the other matters mentioned in the letter, information could just as easily have been obtained by the Municipality as by the Ministry. When he had given advance notice of Proclamation number 12 he had said that it had not	
p.55, l. 40 -	been possible to meet the wishes of the Municipality because the Municipality had been opposed to any	
p. 56, l. 6;	extension of the limits of the town from the start	30
p.62, ll. 19-22	this had been obvious to Government. In cross-examination, the witness said that, when sending the letter of the 2nd May, he had expected the	
p.58, ll. 19-35	Municipality to say whether they favoured the extension, or opposed it, or had any suggestion about the areas they wished to see included within the limits of the town. He had been Mayor of Port Louis and a Municipal Councillor, and, from that experience, considered that the Appellants had had ample time to give an answer to Government. It had not been	40
p.62, ll. 12-16	necessary for them to look into the financial implications of the extension, because Government would have looked into those as they arose. It was not true that the Government had decided to extend the boundaries irrespective of the views of the Municipality. The Councillors should have studied the matter instead of resigning.	
pp.63-76	7. Judgment was given on the 9th December 1963, dismissing the action with costs. The principal	
pp.63-65	judgment was delivered by Neerunjun, C.J. The learned	50

Chief Justice described the nature of the action and referred to Section 73(1) of the Local Government Ordinance and Proclamation No.12 of 1963 and detailed the history of the events leading up to the action, as they emerged from the correspondence and from the evidence. He referred to a question which had been raised by the Court, as to the jurisdiction of the Court to grant declaratory relief, in a case such as the present; similar to that available in England under O.XXV r.5 of the Rules of the Supreme Court. Both sides were agreed that the Court did have such jurisdiction, and, in the circumstances, the Court had deemed it proper to dispose of this matter finally.

p.66, 11.  
1-36

8. The question to be decided was: Is the Proclamation (No.12 of 1963) invalid for the reason that the Governor in Council was not authorised to exercise the power conferred by S.73(1) of the Local Government Ordinance, 1962, unless he had complied with the condition precedent therein laid down, namely, that the power could only be exercised after consultation, as understood by law, with the Municipal Council? The Plaintiffs had argued that consultation required 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", on the authority of Fletcher v. Minister of Town and Country Planning (1947), 2 A.E.R. 496, Rollo v. Minister of Town and Country Planning (1948), 64 T.L.R. 25 and In re Union of Benefices of Whippingham and East Cowes (1954), A.C. 245. However, the nature of the consultation required under S.73(1) of the Local Government Ordinance depended upon the context, and the intention of the legislator in enacting that Ordinance. Secondly, in each of the cases cited the legislation itself had specified the form of consultation required, by setting out the various steps in the procedure, and matters which should be taken into consideration. Thirdly, in each of the cases cited there had been a specific right of appeal given by the relevant statute, whereas under s.73(1) of the Local Government Ordinance there was no right of appeal.

p.66, 1.  
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p.69, 1.  
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9. In the present case, the learned Chief Justice continued, the decision to alter the boundaries of a local government area was conferred on the Governor in Council, as were the time and the expediency for so doing. The condition precedent was that local authorities concerned should be consulted. No procedure was laid down for the consultation with local authorities, and no other conditions were imposed for

p.69, 1.  
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p.70, 1.  
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the exercise of the power. Before the Ordinance of 1962, the initiative for making any change had lain with the Municipal Council, but the Ordinance of 1962 did not require the Governor in Council to act in accordance with the wishes of the Municipal Council. Even if the Council had raised serious objections to the proposal, the Governor in Council could have disregarded those views. He could make enquiries of other sources, so there might be circumstances in which, because he was fully informed about the merits of a case, his obligation to consult the local authority concerned would become a mere formality.

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p.70, ll.  
12-16  
p.74, l.1  
p.75, l.  
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10. The Appellants were complaining, not that there had been no consultation, but that there had not been sufficient consultation. The requirement for consultation in Section 73(1) had to be read subject to the assumption that the local authority concerned was ready and willing to co-operate in such consultations. Here the majority of the Council had decided to evade the issue. The resignation of eleven members and the attitude of the Mayor could only be taken as an emphatic "no" as a reply to the proposals made. The Governor in Council was fully entitled to issue the Proclamation thereafter, for the condition precedent of consultation had been fulfilled: any further enquiry was within his discretion. The Mayor's "questionnaire" was misconceived, for it was based upon a study of the English procedure, whereas the Ordinance which provided a far simpler procedure for altering local government areas. However, the Governor in Council must have studied, as he had stated he would, the points raised by the Mayor, and must have been satisfied that no further enquiry was needed of the Municipal Council. There was no power in the Court to decide on the sufficiency of the consultation, which had in fact taken place on two occasions. In all the circumstances of the case there had been 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 was accordingly valid.

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p,76, ll.  
23-26

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11. Rivalland and Glover, JJ. agreed with the judgment of Neerunjun, C.J. and the action was dismissed with costs.

12. The Respondent respectfully submits that the only jurisdiction which the Supreme Court could exercise was to enquire whether "consultation" had been held with the Appellants in accordance with

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Section 73 (1). Once it is proved or admitted that "consultation" has taken place, it is not within the jurisdiction of the Supreme Court to consider whether further or different consultation might have been desirable. In the present case the Appellants did not contend that no consultation had been carried out, and accordingly there was no ground on which the Supreme Court could hold that Proclamation No.12 was invalid.

10 13. What was done in the present case amounted, in the respectful submission of the Respondent, to the consultation required by S.73(1) of the Local Government Ordinance. Particulars of the proposed alterations were given to the Appellants, substantially, though with some inaccuracies, on the 2nd May, 1963, and fully on the 18th June. The Appellants were asked to give their views, and the date by which ultimately they were asked to do this was the 18th July. No more was necessary, in the Respondent's  
20 submission, to constitute "consultation" for the purposes of the Ordinance.

14. Alternatively, the Respondent respectfully submits that the Governor in Council was under no obligation to do anything more than he did for the purpose of consultation, because the conduct of the Appellants after their receipt of the letter of the 2nd May showed (as the learned Judges in the Supreme Court found) both that they intended to evade any expression of their views, and that they were opposed  
30 to any proposal for the extension of the boundaries of the town.

15. The Respondent respectfully submits that the judgment of the Supreme Court of Mauritius was right and ought to be upheld, and this appeal ought to be dismissed, with costs, for the following (among other)

R E A S O N S

- 40 (1) BECAUSE the Governor in Council made Proclamation No.12 of 1963 after consultation with the Appellants, as required by Section 73(1) of the Local Government Ordinance;
- (2) BECAUSE it was not open to the Supreme Court to enquire into the sufficiency of the consultation;
- (3) BECAUSE the Appellants showed by their conduct that they did not intend to co-operate in any consultation;

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- (4) BECAUSE the Appellants showed by their conduct what their attitude was to the proposals put to them;
- (5) BECAUSE the making of the declaration which the Appellants sought would have been a wrongful exercise of the discretion of the Supreme Court.
- (6) BECAUSE of the other reasons given by Neerunjun, C.J.

J. G. LE QUESNE

MERVYN HEALD

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No. 21 of 1964

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O N A P P E A L

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B E T W E E N:

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- and -

THE HONOURABLE THE ATTORNEY-GENERAL  
... .. Respondent

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C A S E F O R T H E R E S P O N D E N T

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