

Privy Council Appeal No. 21 of 1964

The Mayor and Corporation of Port Louis - - - - *Appellants*

v.

The Honourable the Attorney General - - - - *Respondent*

FROM

THE SUPREME COURT OF MAURITIUS

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 27th April 1965**

Present at the Hearing:

LORD MORRIS OF BORTH-Y-GEST

LORD PEARCE

LORD PEARSON

[Delivered by LORD MORRIS OF BORTH-Y-GEST]

This is an appeal by leave from a judgment of the Supreme Court of Mauritius (Neerunjun C. J., Rivalland and Glover JJ.) dated 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 was *ultra vires* and null and void to all intents and purposes in so far as it related to the extension of the boundaries of the town of Port Louis.

By section 73(1) of the Local Government Ordinance 1962 it is provided as follows:—

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

The question which is raised in the appeal is whether before Proclamation No. 12 of 1963 was made there had been consultation with the appellants as required by section 73(1).

By Proclamation No. 12 of 1963 the boundaries of certain towns (including the town of Port Louis, the capital of the Island of Mauritius) were extended. The appellants contended that there had been no consultation which satisfied the requirement of section 73(1) and for that reason they moved for a declaration that so far as it related to the extension of the boundaries of the town of Port Louis the Proclamation (No. 12 of 1963) was *ultra vires* and null and void.

In Ordinance No. 23 of 1903 (The Municipality Ordinance 1903) section 6(1) referred to the district of Port Louis and section 6(2) referred to the town of Port Louis, the limits of which were defined in Schedule A, No. 1. That Ordinance was amended by the Municipality (Amendment) Ordinance 1960, Ordinance No. 10 of 1960, by which to section 6(2) of the Municipality Ordinance 1903 there was added a proviso to the effect that the Governor in Council might, on the recommendation of the Municipal Council, by Proclamation, amend the Schedule. Some time prior to the 11th May 1960 the Municipal Council passed a resolution to the effect that the then limits of the Municipal area should be extended. The extension then proposed was apparently only a minor one but apart from this their Lordships are in no way concerned with any of the events or proposals of that time. When the Local Government Ordinance 1962 (Ordinance No. 16 of 1962) was enacted the boundaries of Port Louis were those defined by section 3 and the First

schedule. The boundaries were substantially the same as those in Schedule A of the 1903 Ordinance. The new enactment as to the alteration of existing areas was that which is contained in section 73. The Governor in Council may alter the boundaries "after consultation with the local authority concerned". The sole question arising in this case is whether the condition of consultation was satisfied.

In May 1963 the Governor in Council had it in mind to alter the boundaries of Port Louis. Shortly stated the idea was to include within the boundaries of Port Louis the areas within Port Louis District: under the proposal the villages surrounding Port Louis Township (which were within the District) would be embraced within and would enlarge the area of the Town of Port Louis.

On the 2nd May 1963 the appropriate Ministry addressed a letter to the Town Clerk of Port Louis. The letter was in the following terms:—

" MLG/22 Ministry of Local Government
and Co-operative Development,
Port Louis,
2nd May, 1963

Sir,

I am directed to inform you that it is proposed to alter the existing boundaries of your town, by the addition of the following areas as indicated on the attached map:—

Tonnellier Island	80 acres shaded Mauve
Roche Bois Village Council Area	678 acres shaded Orange
Ste. Croix Village Council Area	1396 acres shaded Blue
Vallee des Pretres Village Council Area	2480 acres shaded Yellow
Tranquebar V/Council Area ..	1400 acres shaded Green
Part of Grand River N.W. V/C. Area (within the district of P/Louis)	752 acres shaded Brown
Cassis Village Council Area ..	294 acres shaded Blue
Fort William & Barkly Island ..	8 acres shaded Black

TOTAL 7088 acres

2. I am to ask you to let me have your views on the proposed alteration by the 13th May.

I am,
Sir,
Your obedient servant,
(sd) F. M. Lassemillante,
Principal Assistant Secretary.

The Town Clerk,
Municipality,
Port Louis."

The map which was sent clearly set out the boundaries of the district and of the villages within the district area: the villages surrounded the town of Port Louis on the land side. There were however two areas which the map did not show as to be included within the proposed extension. That must have appeared surprising. If not included those two areas would be isolated land areas completely contained within the proposed enlarged area. An enquiry would probably have elicited the information that the omissions were inadvertent. Such they were. At a later date the mistake was corrected. At the time however the letter of the 2nd May was a request for views on the alteration as proposed and as defined in the letter.

Subject to the relatively minor matter as to the fate of the omitted isolated pockets of land the proposal was a clear and definite one. So far as area was concerned the Township would be very considerably enlarged. So far as population was concerned the increase would be no more than from about

90,000 to about 100,000. To the Councillors responsible for the Local Government of Port Louis the nature and extent of the surrounding villages would be well known. The Councillors would also have the requisite knowledge and experience of local Government affairs to enable them to appreciate the nature of the changes that an extension of boundaries would involve. But the making of a decision as to whether there should be an alteration of boundaries lay with the Governor in Council and not with the Municipal Council. If the proposal raised difficulties or presented problems it was for the Governor in Council to solve them. If the Municipal Council had expressed their views or had raised such matters as they desired to raise it would then have been for the Governor in Council to consider such views and matters before deciding whether or not to proceed with the proposal.

Section 73(1) of the Local Government Ordinance 1962 does not prescribe any set machinery for consultation. No formalities are laid down which must be followed. Their Lordships were referred to observations made in regard to consultation in certain decided cases (*Fletcher v. Minister of Town & Country Planning* [1947] 2 A.E.R. 496, *Rollo v. Minister of Town & Country Planning* [1947] 2 A.E.R. 488, [1948] 1 A.E.R. 13, *Union of Benefices of Whippingham and E. Cowes* [1954] A.C. 245). Helpful as the citations were, the nature and the object of consultation must be related to the circumstances which call for it. The situation to which section 73(1) relates is clear. If there is a proposal to alter the boundaries of a town, or the boundaries of a district, or the boundaries of a village, such alteration must not be made until after consultation with the local authority concerned. It follows that the local authority must know what is proposed before they can be expected to give their views. This does not however involve that the local authority are entitled to demand assurances as to the probable form of the solutions of the problems that may be likely to arise in the event of there being an alteration of boundaries. The local authority must be told what alterations of boundaries are proposed. They must be given a reasonable opportunity to state their views. They might wish to state them in writing or they might wish to state them orally. The local authority cannot be forced or compelled to advance any views but it would be unreasonable if the Governor in Council could be prevented from making a decision because a local authority had no views or did not wish to express or declined to express any views. The requirement of consultation is never to be treated perfunctorily or as a mere formality. The local authority must know what is proposed: they must be given a reasonably ample and sufficient opportunity to express their views or to point to problems or difficulties: they must be free to say what they think.

The letter of the 2nd May asked for the views of the Local Authority by the 13th. It would not have been surprising if the Municipal Council had sent a reply to the effect that they wished to have a longer period within which to express their views. Events however took a different turn. The Council is a wholly elected body. There were sixteen elected Councillors. Eleven of them (who were all members of one political party) decided to resign and they did resign on the 11th May. They gave as their reason that they had no mandate to express any views. That meant that the Council could not function. There could not be a quorum unless seven were present. A situation of difficulty for the Governor in Council was therefore created. Elections to fill the vacancies could not take place until after an interval of time. Had the resignations been within six months of the day when elections would next have been held, the Governor could have made appointments so as to ensure that there would be a quorum. (See section 46 of the Local Government Ordinance 1962.) The resignations were not within such six months period. An Ordinance was then enacted by the Legislature of Mauritius to make special provision for the constitution of Local Authorities in the year 1963. That was the Local Government (Transitional Provisions) Ordinance 1963 which was enacted on the 18th May 1963. A period of eight months was substituted for six months in the provisions of section 46 in respect of the year 1963 and the Ordinance was deemed to have had effect from the 1st May 1963. It became possible therefore to appoint persons to be members of the local authority and on the 11th June six were so appointed. The Municipal Council was then in a position to operate.

As these were the events that happened their Lordships do not find it necessary to consider certain questions which otherwise would have been posed. Was there at that time in effect a refusal of the local authority to express any views? Was there an implied intimation of disapproval of the proposal that had been set out in the letter of the 2nd May? Was there a situation which compelled the Governor in Council to wait until the Municipal Council could function? These questions need not be answered. As a result of making the appointments to the Council the way was clear for the views of the Council to be conveyed. Previously the Town Clerk in a letter of the 13th May acknowledging the receipt of the letter of the 2nd May had said that he regretted "being unable to give you the views of my Council on the matter as it could not be discussed before the eleven councillors resigned on the 11th instant".

At a meeting of the Legislative Council on the 17th May the Minister of Local Government and Co-operative Development made a statement that so far as the town of Port Louis was concerned the proposal of the Government was to make the limits coincide with those of Port Louis District.

On the 18th June 1963 a further letter was addressed to the Town Clerk. It was in the following terms:—

" MLG/22/V.2

Ministry of Local Government and
Co-operative Development,
Port Louis.

18th June, 1963.

Sir,

With reference to my letter (MLG/22) of the 2nd May, about a proposal to alter the boundaries of your town, it is regretted that the map accompanying the letter contained a few inaccuracies and that it was not stated that consideration was also being given to the advisability of including Vallee Pitot and Bell Village area within the boundaries of the town of Port Louis. As my Minister said in the Legislative Council on the 17th May, the proposal, as far as your town is concerned, is to make its limits coincide with those of Port Louis District. Another map is enclosed for your information.

2. I should be grateful if you would let me have a reply to my above-quoted letter on or before the 6th July.

I am,

Sir,

Your obedient servant,

(sd) F. M. Lasseillante.

Principal Assistant Secretary.

The Town Clerk,
Municipality,
Port Louis."

The Vallee Pitot and Bell Village areas were the two isolated and previously omitted land areas lying within the central part of the whole area of the District. The position at that date (18th June 1963) was that it was made clear that the proposal set out in the letter of the 2nd May should have referred additionally to these two areas and that it was requested that the Municipal Council would give their views on or before the 6th July.

At a Special Meeting of the Municipal Council on the 28th June the Council were informed that the letter of the 18th June had been received and that the question raised was to be considered by the Committee of the whole Council on the 3rd July. The minutes of the meeting of that Committee held on the 3rd July record that the Mayor "drew a parallel between the local and English laws concerning the alteration of Local Government areas and enumerated the factors which were taken into account in England to assess the convenience of reviewing Local Government areas". The Mayor read out certain notes which described the procedure in England for the alteration of Local Government areas and which referred to the various matters which are considered by the Commissions appointed in England under the Local Government Act 1958.

Although the Municipal Council knew that they had originally been requested to give their views by the 13th May and that by the letter of the 18th June their views on or before the 6th July were sought, it was decided on the 3rd July that prior to submitting "a recommendation one way or the other" the Ministry should be approached with a view to obtaining certain information. The letter requesting information was not sent until the 8th July. A certain contrast is to be noted between the expectations at this date and those of an earlier date. In May, after the receipt of the letter of the 2nd May, a meeting was convened for the 8th May but it had to be postponed until the 13th May. That was the very day by which the views of the Municipal Council had been requested: when it was appreciated that the meeting could not be held until that day a message was sent "to inform the Minister that the meeting would be held on the 13.5.63 and that the views of the committee would be conveyed as soon as possible afterwards—perhaps on the 14.5.63." The holding of that meeting was made impossible as a result of the resignations on the 11th of eleven Councillors.

The letter which was written by the Mayor to the Minister on the 8th July was a lengthy one. The first part contained a protest against the time limit which had been imposed on the Municipal Council. A number of instances were cited of "matters of far greater urgency and of far less complexity" which had taken months to be dealt with by the Government "without having in the end been given adequate and complete consideration." The next part of the letter consisted of an extract from the United Kingdom Local Government Commission Regulations 1958 in regard to matters to which such Commissions are to have regard in all Areas in General. The next part of the letter listed certain "main points" on which information was sought before the Municipal Council would be in a position "to start giving to your proposal the unbiased, comprehensive and thorough study which it calls for". There followed some 54 points. Most of them were raised in the form of questions. Many of them asked for information as to the intentions of the Government—including its intentions as to legislation. Many asked for information as to future policy or as to future grants-in-aid. Many asked for detailed information on a variety of matters of local administration in the areas which were proposed for inclusion within the enlarged boundary of Port Louis. There was also a question as to whether the Government intended to set up a Commission of Enquiry to ascertain the wishes of the inhabitants.

Before that long letter reached the Ministry a further letter had been sent by the Ministry. It was in these terms:—

" MLG/22 V.2.

Ministry of Local Government and
Co-operative Development,
Port Louis.

10th July 1963.

Sir,

I am directed to refer to my letter of the 18th June in which I requested the views of the Municipal Council of alterations to the boundaries of the town of Port Louis. My request was that those views should be submitted by the 6th July 1963. So far, I have not been favoured with such views and I shall be grateful if they could be submitted early for consideration by the Governor in Council. It will not be possible to wait later than the 18th July 1963, and I accordingly request that the views of your Council be submitted by that date at latest.

I am,

Sir,

Your obedient servant,
(sd.) F. M. Lassemillante.
Principal Assistant Secretary.

The Town Clerk,
Municipality.
Port Louis."

After the receipt of the long letter the Ministry wrote again. Their letter of the 11th July was as follows:—

“ MLG/22 V.2. Ministry of Local Government and
Co-operative Development,
Port Louis.
11th July 1963.

Sir,

I am directed to refer to your letter TC63/982 of the 8th July concerning the proposal to alter the boundaries of the town of Port Louis and to inform you that it is requested that the views of the Municipal Council on the proposed alteration of the boundaries be submitted. In this connection, I would refer you to my letter of even number of yesterday's date on the subject.

2. As to the points raised in your above mentioned letter, they will be considered by Government.

I am,
Sir,
Your obedient servant,
(sd.) F. M. Lassemillante.
Principal Assistant Secretary.

His Worship the Mayor of Port Louis,
Port Louis ”.

The Mayor wrote again to the Minister on the 15th July. He expressed regret that there had been no personal reply by the Minister and in the course of his letter he said:—

“ I thought my letter made it very clear—but in case it does not I am going to repeat—that the Committee of the whole Council, at its meeting of July the 3rd last, decided that, before being in a position to express its views on the matter of the extension of the Municipal boundaries, it was essential that it should have the information I have listed in pages 3 to 9 of my letter TC63/982 of July 8th last.

I am therefore looking forward to receiving that information at your earliest convenience to convey it to the Committee ”.

The Ministry sent a letter on the 19th July in the following terms:—

“ MLG/22 V.2. Ministry of Local Government and
Co-operative Development,
Port Louis.
19th July 1963.

Dear Sir,

I am directed to refer to your letter (TC63/1017) of the 15th July about the proposal to alter the boundaries of the town of Port Louis and to inform you that it is regretted that no further extension of time can be given.

I am,
Sir,
Your obedient servant,
(sd.) F. M. Lassemillante.
Principal Assistant Secretary.

His Worship the Mayor of Port Louis,
Port Louis ”.

The Mayor wrote again to the Minister on the 29th July. The letter was as follows:—

“ TC63/1100 29th July, 1963

Dear Sir,

Extension of Town Boundaries

With reference to letter MLG/22 V.2 of the 19th instant from your Principal Assistant Secretary on the above subject I beg to inform you that, having been requested by the Committee of the whole Council to correspond with you on the matter, I feel it my duty to record my strong

objection to any action being taken by Government in connection with the proposed extension of town limits before the Municipal Council has expressed its views on the proposal, I therefore urge you to supply us with the information asked for in my letter TC63/982 of the 8th instant so that a comprehensive study of your proposal can be started as early as possible.

Yours faithfully,
(sd) J. Raymond Hein.
Mayor of Port Louis.

The Honourable
The Minister of Local Government and Co-operative Development,
Port Louis ”.

In the following month, by a letter dated the 13th August, the Ministry informed the Town Clerk that after careful consideration the Governor in Council had decided to issue a Proclamation extending the boundaries of Port Louis. The Proclamation was issued on the 14th August 1963. The boundaries of other towns were also altered but their Lordships are only concerned with the town of Port Louis.

In their statement of claim the Mayor and Corporation as plaintiffs averred that the information requested by them in the letter of the 8th July was not available to them and that such information was essential in order to enable them properly to study the proposal and to express their views on it, and that as the requested information was not imparted “ no effective discussions of the aforesaid proposals could take place or ever did take place ”. They further pleaded that “ they were not given sufficient time and a reasonable opportunity to express their views on the said proposal ”.

Their Lordships have thought it desirable to refer somewhat fully to the sequence of events in order to give careful consideration to the claim of the plaintiffs and to the judgment of the Supreme Court. Their Lordships consider that the letter of the 2nd May was a clear invitation to the Council to express their views upon a proposal which was itself quite clear. There is no reason to conclude that the views of the Council were not genuinely sought nor that if proffered such views would not have been reasonably and fairly considered. The time within which the views were originally requested does seem to their Lordships to have been remarkably short and particularly so in the absence of stated reasons which pointed to a measure of urgency. Even however if this was so it does not alter the fact that the proposal itself was clearly stated and would at once be readily understood. This would be so whether the Municipal Council considered that the areas of Vallee Pitot and Bell Village were intentionally or were inadvertently omitted. It might have been unreasonable to refuse a request on the part of the Municipal Council, if it had been made, for a longer period of time within which to express their views. There was however no such request. The period available for the expression of views was tacitly prolonged. The Ministry probably considered that the resignation of the eleven Councillors compelled delay. The remaining Councillors knew that views had been sought by the letter of the 2nd May and the six new Councillors probably knew (because of the statement that had been made in the Legislative Council on the 17th May) that a proposal for the extension of boundaries had been put forward. The new Councillors were appointed on the 11th June. The letter from the Ministry of the 18th June was a clear renewal of the request to have the views of the Council. The date of the 6th July mentioned in the letter was a date over two months later than the initiation of the matter by the letter of the 2nd May.

The events in the period after the 18th June call for particular consideration. As recounted above the request for information was not despatched until the 8th July—which was after the new date by which the views were sought. The elaborate and detailed interrogatories were stated to be presented in order to enable the Municipal Council “ to start giving ” study to the proposal. In all the circumstances and having in mind the fact of the resignations in the earlier period the Ministry may well have thought that the Municipal Council were employing delaying tactics in order to create difficulties.

There is no reason to suppose that the Government did not genuinely consider that the Municipal Council were in a position to give their views. The Governor in Council doubtless thought that the Municipal Council had at their disposal or could themselves readily and speedily secure all necessary information to enable them to express their views. But as to all these matters their Lordships must be guided only by the facts. Their Lordships are in no way concerned to impugn or in any way to question the good intentions of any of the parties. Certain misunderstandings do however seem to have arisen. The Municipal Council were in effect considering that they had to work out how certain problems which could arise would be solved. Accordingly they sought to ascertain Government policies and intentions. Many of the denoted problems would however be in the first place and primarily the concern of the Government and not of the Municipality. The elaborate letter of the 8th July did however constitute a helpful appreciation and valuable review of the situation. It stated problems that would or might arise. It directed attention to a variety of considerations. As to much of it the letter was in effect saying that certain matters should be considered before a decision was reached and that if a decision to extend was reached those or other or additional matters would later have to be further considered. The letter was a useful statement of the view of the Council that attention should be directed to various topics.

When asked for their views the Municipal Council might have expressed their approval of the plan and given their reasons: they might have expressed disapproval of the plan and given their reasons: they might have recorded that if the plan was adopted certain problems would arise or that in such event the enlarged municipality would require assistance, financial or otherwise, in certain ways. They were not however either required or expected to formulate detailed plans for the future administration of an enlarged area or to point the way to the future solution of all new problems that would or might arise.

The value of the letter of the 8th July was recognised by the Ministry. In their letter of the 11th July it was stated that the points raised would be considered by the Government. It was still open to the Municipal Council if they so wished to state their views in positive terms. They were again invited to give them. Had they sent some further communication it would doubtless have been carefully considered and it would have been open to the Ministry to invite elaboration or clarification of any view expressed. The difference between an ability to express a view as to a proposed extension of boundaries and an ability to express a view as to how to deal with all the problems that an extension would create must be a matter of degree, but their Lordships are unable to accept the submission that it was not reasonably practicable for the Municipal Council to express their views without having detailed answers to all the questions raised in the letter of the 8th July. The implications of that letter must also be considered. The Government (for reasons which must have seemed right to them) had it in mind to make a decision whether or not to enlarge the boundaries. The views of the Municipal Council were first sought by the 13th May and later were sought by the much later date of the 6th July. The long letter which was only sent on the 8th July made answers to the questions a condition of the "start" of the Council's study of the proposals. If the Government (despite its belief that the Council were in a position to state its views) had sent a long letter in reply it might well have been that further questions would be asked with the result that matters would be held up. It would not be reasonable to allow a situation to develop in which all initiative and all control of timing would pass from the Government. Nor would it be reasonable if their desire to reach the moment for decision could be frustrated. The course adopted by the Government was to acknowledge that points were raised in the letter of the 8th July which the Government would consider, to request that any views of the Council should be submitted, but to say that the Government could not wait beyond the further extended date of the 18th July. In fact a decision was not notified until the 13th August. In all the circumstances their Lordships are unable to accede to the submission that the

Municipal Council were not in a position to express views. They could not be compelled to express views but they cannot complain if, having had both time and opportunity, they limited the extent to which they availed themselves of the opportunity and the extent to which they gave expression to their views. The requirement of consultation with the local authority concerned must be subject to a condition or assumption that the local authority will be ready and willing to avail itself of a reasonable opportunity to state its views. The recital of the dates and events shows that there was time and that there was opportunity. Despite the most helpful and cogent submissions of Mr. Raffray their Lordships consider that the result reached by the Supreme Court was correct.

Their Lordships will humbly advise Her Majesty that the appeal be dismissed. The appellants must pay the costs of the appeal.

In the Privy Council

THE MAYOR AND CORPORATION OF PORT
LOUIS

v.

THE HONOURABLE THE ATTORNEY
GENERAL

DELIVERED BY
LORD MORRIS OF BORTH-Y-GEST

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