

Communiqué

1. Following the judgment delivered by the Full Bench of the Supreme Court in the case of ***State Trading Corporation v. Betamax Ltd. (2019) SCJ 154*** on 31 May 2019, the Commissioner of Police has, on 03 June 2019, requested for our advice as follows:

“4. In the light of the above judgment, your further advice in relation to the offences already suggested and/or any other further criminal offence/s that may be disclosed against the suspects, namely:-

- (1) Navinchandra RAMGOOLAM,
- (2) Anil Kumar BACHOO,
- (3) Reshad HOSANY,
- (4) Ranjit Singh SOOMAROOAH,
- (5) Vickram BHUNJUN,
- (6) Mrs. Kalindee BHANJI.

5. Further in the light of the pronouncement of the Supreme Court Judgement 2019 SCJ 154, your further advice is sought as to the criminal liability of the Directors of Betamax Ltd and State Trading Corporation (STC) also regarding the illegal contract of affreightment referred to the said judgement (Offences by Corporate body in breach of Section 44(1)(b) Interpretation of the General Clauses Act (IGCA).

6. Would the Director of Public Prosecutions kindly advise, please.”

(reproduced verbatim)

2. The Office of the Director of Public Prosecutions (ODPP) has carefully considered the judgment of the Supreme Court. One of the issues addressed by the Supreme Court was the application of the Public Procurement Act (PPA) to the Contract of Affreightment (CoA) between the STC and Betamax. The Supreme Court came to the conclusion that this CoA was subject to the legal requirements of the PPA in conformity with section 3(2) of the PPA and, therefore, the CoA had been illegally awarded, in breach of the PPA. At pages 30 and 31 of its judgment, the Supreme Court held as follows:

“Non-compliance of the CoA with the PPA

It can hardly be disputed that the CoA failed to comply with the requirements of the PPA.

It is not in dispute that, for the purposes of the PPA –

- (1) the STC is a “*public body*”;
- (2) the CoA was a “*major contract*”; a major contract is defined, under section 2 of the PPA, as a contract for the procurement of goods or

services or the execution of works to which a public body is, or proposes to be, a party and the estimate of the fair and reasonable value of which, as in the present matter, exceeds Rs 100 million; and,

- (3) the CoA was not awarded following the procurement process and the approval of the Central Procurement Board as laid down in the PPA.

It is in fact not in dispute that there had been no compliance with section 14(3) of the PPA which required that '*the Central Procurement Board shall approve the award of every major contract*'.

There has also been a failure to comply with the provisions of both sections 14(4) and 14(5) of the PPA which provide as follows:

“(4) No public body shall –

(a) advertise, invite, solicit or call for bids in respect of a major contract unless authorised by the Board; or

(b) award a major contract unless the award has been approved by the Board.

(5) No person shall sign a major contract with a public body unless the award has been approved by the Board.”

The CoA was to all intents and purposes a contract which had been illegally awarded in breach of the PPA.”

3. The ODPP wishes to highlight the fact that this judgment has no incidence on its decision of 23 November 2016 inasmuch as, irrespective of the interpretation given by the Supreme Court to the application of the PPA, the evidence gathered by the police as contained in the file submitted to the ODPP did not reveal the commission of any offence by the suspects.
4. It is to be noted that the advice of the ODPP on 23 November 2016 was also tendered on the understanding that the amendment to the public procurement legislation (GN No. 68 of 2009), and on the strength of which the STC entered into the contract as an exempted body, had been duly vetted and approved by the Attorney-General's Office.
5. However, in the light of the pronouncement of the Supreme Court as set out at paragraph 2 above, the ODPP has advised the Commissioner of Police that he may wish to carry out further investigation with a view to determining whether offences may have been committed under the PPA in the present matter.

04 June 2019

Office of the Director of Public Prosecutions