

PRESS COMMUNIQUE

The Independent Commission Against Corruption (ICAC) has, pursuant to section 47(6) of the Prevention of Corruption Act (POCA), referred case file ICAC/FIR/105/11 to me to decide whether to bring prosecution against :

- (a) Honourable Santi Bai Hanoomanjee also known as Maya Hanoomanjee the Minister for Health at the relevant time;
- (b) Om Kumar Dabidin, the Acting Permanent Secretary at the Ministry for Health and Quality of Life;
- (c) Yodhun Bissessur, Director of Valuation Offices; and
- (d) Aneerood Jeebodhun, Government Valuer,

for offences under section 7(1) and 9 of the Prevention of Corruption Act 2002.

After consultation with the senior officers of my office, I have reached the conclusions that follow:

The investigation of the ICAC arose out of a tender exercise for the sale of a hospital to the Mauritian government following an open advertised bidding process. Two bidders were considered to be responsive to the bidding exercise. The successful bidder was Med Point Hospital Ltd, who was awarded a contract for the purchase of Med Point Hospital for the sum of Rs 144,701,300.

Based on the materials sent to this office, I am satisfied that the Independent Commission Against Corruption has carried out a thorough and careful investigation. I now have to decide whether:

- (i) there are reasonable prospects of securing a conviction for a breach of sections 7(1) of the Act, (the evidential test); and
- (ii) a prosecution would be in the public interest (public interest test).

The Evidential Test

- Section 7 of the Prevention of Corruption Act 2002 distinguishes between two situations. The first is where a public official or a relative or associate of his can be shown to have a direct or indirect interest in the matter in respect of which he has taken a decision or action. In these cases it is for the accused to prove that he did not make use of his position for gratification of himself or another person.
- The second situation is where a public official cannot be shown to have a direct or indirect interest in the matter in respect of which he has taken a decision or action. In such cases it is necessary to show directly that the accused has made use of his office or position for a gratification for himself or another person. The second situation is relevant for the present case.

The question under consideration is whether any of the persons referred to above has made use of his or her office or position in relation to the award of a contract to Med Point Hospital Ltd for the acquisition of Med Point Hospital with a view to offering a financial advantage to the shareholders of Med Point. It would be important in that respect to demonstrate two things; first that the accused acted in bad faith and second that he or she took deliberate steps for the purpose of a gratification for the shareholders of Med Point.

There is a need to draw a clear demarcation line between evidence which shows failures to follow appropriate procedures or of officials feeling under pressure and evidence which goes to satisfy the evidential test. A genuine error or even a series of negligent acts is not corruption.

Honourable Santi Bai Hanoomanjee

Mrs. Hanoomanjee was appointed Minister of Health and Quality of Life after the 2010 general election. She monitored the implementation of the National Geriatric Hospital. From the investigation carried out by ICAC, the salient aspects of her involvement can be summarised as follows:

- (a) Meeting of 8 July 2010;
- (b) Presence of Yodhun Bissessur in the Ministry on 15 September 2010; and
- (c) Pressure on Mr. Hauroo.

I shall consider each of these in turn.

On the 8 July Mrs. Hanoomanjee called an *ad hoc* meeting to discuss the reallocation of Rs150m which had been set aside for the Women and Children Hospital since government had decided not to proceed with the hospital. The meeting was attended by several high officials of the Ministry. During the meeting it was mentioned that the National Geriatric Hospital would cost more than the Rs 100m earmarked and that one of the bids was around Rs150m. It is also alleged that among the projects discussed during the meeting, mention was made of the acquisition of Med Point Hospital for the National Geriatric Hospital. The inference here is that reallocation of funds for a further Rs 50m was made to meet the amount which Med Point had bid. In other words, it was decided in advance that Med Point would be the successful bidder.

The accounts given by those who attended the meeting are not wholly consistent on these matters. They even conflict with one another. On balance therefore, I am bound to conclude that there is insufficient evidence to support an irresistible inference that the increase in budget for the National Geriatric Hospital was the result of an intention that Med Point should be the successful bidder.

The evidence from the log book of the Ministry of Health and Quality of Life confirms that Mr. Yodhun Bissessur, the Chief Government Valuer, was present on the fifth floor of Emmanuel Anquetil Building between 0930 and 1230 on the 15 September 2010. The Office of Mrs. Hanomanjee was located on the same floor. Was a meeting convened to discuss a reevaluation of Med Point? Neither Mrs. Hanoomanjee, nor Mr. Bissessur nor Mr. Dabidin has acknowledged that any meeting took place. The enquiry has not revealed any admissible evidence to the effect that a meeting between the Minister and Mr. Bissessur did take place. Any inference in that respect is purely speculative. Besides, this evidence taken at its highest is not sufficient to establish intent for the purpose of section 7.

The evidence of the alleged meeting which took place on the 15 September is based too heavily on inference and speculation for any substantial reliance to be placed on it to show that Mrs. Hanoomanjee was using her office for a gratification.

In a statement given to the investigators, Mr. Hauroo, Chairman of the Bid Evaluation committee, stated that on or about 11 October 2010, he was requested by Mrs. Hanoomanjee after a meeting, to remain in her office. Mrs. Hanoomanjee wanted to know about the status of the National Geriatric Hospital. It is alleged that she stated: *“Mo tane dire ou pe faire difficulte concernant sa projet la. Ki problem ou ena ladans? Depi trios mois pe encore*

alle meme avec sa. Ene seul l'hospital ena la dans. Dabidin avec Utchanah pas fine fini cause avec ou? “. He also stated he felt under pressure.

That was not the only occasion when Mr. Hauroo said he felt under pressure. On or about 15 November 2010 when the bid exercise was coming to a close, he was called yet again into the office of Mrs. Hanomanjee and asked about the status of the bid evaluation report. On that occasion it is alleged that she stated: *“Ki zotte pe fer avec evaluation juska l’heure mo pe gagne pression depi la haut et ou conne li ene projet government. Tout papier zotte fini gagne et li clair ki ena ene seule clinic ki pou gagner et ou konne bien c’est Clinique Med Point ki bisin gagner “.*

Mrs. Hanoomanjee makes no admissions of the above conversation.

It should be pointed out that apart from Mr. Hauroo, the Chairman of the Bid Evaluation Committee, the other members of the Committee who had a range of expertise in architecture, health, administration and finance have all given accounts in which they made no suggestion that they felt under pressure or anything was said to them which appeared to be an attempt to influence the decision of the Committee. On the contrary, the Central Procurement Board endorsed the report of the Bid Evaluation committee and approved the award of the contract.

It may be asserted that what was said was merely an expression of frustration at the slow progress of the tender exercise since there is evidence which comes out of the investigation that the National Geriatric Hospital should be dealt with on a fast track basis and nearly six months had passed since the conclusion of the bidding process.

It is relevant to consider that the Financial Secretary chaired a meeting of the Estimates Committee for 2011 at the Ministry of Finance where he instructed

that the acquisition of the land and building for the National Geriatric Hospital had to be finalized in the year 2010, and stated that funds would not be available in 2011 underpinning the explanations that there was urgency.

On balance and notwithstanding certain irregularities in the procurement exercise, and the limited evidence where Mrs. Hanomanjee expressed her views in favour of Med Point, the evidence considered as a whole against her does not constitute a sufficient basis to meet the required standard (beyond reasonable doubt) for a prosecution under section 7 of POCA for misuse of office for a gratification.

I have also considered, based on the available evidence, whether an offence under Section 9 of the POCA has been committed.

A prosecution under section 9 would have to establish that threats were made with a view to influencing the tender exercise.

The difficulties addressed above in relation to section 7 apply in large part to section 9.

I am therefore of the view that the evidence falls short of establishing an offence under section 9.

Om Kumar Dabidin

The evidence from the investigation reveals that Mr. Dabidin has breached a number of procedural safeguards and had improperly interfered in the bid evaluation process. There is however no evidence that he has taken a bribe or that he had intended to offer a gratification to the shareholders of Med Point Hospital.

I have advised disciplinary proceedings against Mr Dabidin.

Yodun Bissessur & Aneerood Jeebodhun

I am satisfied that the evidence discloses an offence under section 7 of the Prevention of Corruption Act against both of them. I have advised prosecution accordingly.

Jairaj Hauroo & Ajay Kumar Utchanah

The evidence reveals that they have both acted improperly in relation to the tender exercise carried out by the Bid Evaluation Committee. I have advised disciplinary proceedings against them.

Satyajit Boolell, SC
Director of Public Prosecutions

9th April 2013