GULBUL A R v LAM SHANG LEEN P & ORS

2021 SCJ 378

Record No: SCR No. 117346 – 5A/287/18

THE SUPREME COURT OF MAURITIUS

Mr Abdool Raouf Gulbul

Applicant

v

1. **Mr Paul Lam Shang Leen**
2. **Mr Samioullah Lauthan**
3. **Dr Ravind Kumar Domun**

Respondents

In the presence of: -

1. **The State of Mauritius**
2. **The Honourable Attorney-General**
3. **Mr Koosiram Conhye**

Co-Respondents

JUDGMENT

The applicant, who is a barrister, is seeking by way of an application for Judicial Review the following:

i. an Order declaring that the findings concerning him contained in pages 222 to 227 of the Report of the Commission of Inquiry on Drug Trafficking in

Mauritius appointed by the President of the Republic of Mauritius on 14 July 2015, to be, as the case may be, in breach of natural justice, in breach of fairness, unreasonable, perverse, illegal and ultra vires; and/or

ii. such other Order or Orders the Supreme Court may deem fit and proper to make in the circumstances of the case, including a direction for the respondents themselves or through the co-respondents to bring up the Official Report in question and/or all the proceedings and/or files and/or records of the Commission of Inquiry (on Drug Trafficking in Mauritius).

It is averred in the motion paper, that the alleged findings contested by the applicant are set out at pages 222 to 227 of the Report of the Commission of Inquiry and they mean to impute to him the following facts:

(i) using a "black phone" to communicate with his clients detained at the Prison and that he has used his wife's phone during the electoral campaign for the 2014 General Election;

(ii) the commission of numerous offences of 'subornation' of witnesses;

(iii) the taking of drug money as his fees;

(iv) acting in conflict of interest in the exercise of his duty as barrister;

(v) receiving important sums of money from drug traffickers to finance his electoral campaign for the General Election;

(vi) using former drug offenders as his henchmen during his electoral campaign for the General Election;

(vii) he has 'suborned' witnesses who deponed before the Commission;

(viii) instructing junior counsel to put Rs 5000 in the account of one Mr Faizal Hussain, an Indian National convicted for drug trafficking;

(ix) using his position as Chairman of the Gambling Regulatory Authority to allow money laundering by accomplices of drug traffickers in casinos, gaming houses and horse racing;

(x) failing to account for fees paid in cash with the Mauritius Revenue Authority (MRA) and converting such unaccounted fees in foreign exchange;

(xi) having regard to his income and that of his wife, the immoveable properties that they own cannot be explained or justified;

(xii) acquiring property for his daughter in the United Kingdom possibly under possibly a *prête nom;*

(xiii) being in partnership with a Mauritian established in London in a hotel located in a building known as Center Point at Tottenham Court Road; and

(xiv) accepting payment in cash above the authorised amount.

The applicant has also explained at length in his affidavits why what he qualifies as findings of the Commission are in law reviewable by way of a judicial review. In that respect, he contends that on the facts put before the Commission, such findings are unreasonable and perverse. Also in law, the findings in question were made following proceedings which were tainted with breaches of the rules of natural justice and the principle of fairness. Thus they are illegal and ultra vires the terms of reference of the Commission.

He further recalls that it is a cardinal principle of law that no evidence can be used against a person unless he is confronted with it and is given the opportunity of contesting it. In that respect, he avers that he was deprived of this opportunity by the Commission, which in so doing, has flouted **Section 13** of the **Commissions of Inquiry Act 1944** and the rules of natural justice.

In law, the applicant, therefore, challenges the alleged findings of the Commission against him as they are biased, perverse, ultra vires, in breach of the rules of procedural fairness, more particularly of the rules of natural justice and contrary to **section 13** of the **Commissions of Inquiry Act 1944**. He also prays that the impugned adverse findings and comments made concerning him, be expunged from the report**.**

The respondents are resisting the application and in that respect, they have filed affidavits sworn by respondent No. 2. Although in their affidavits they acknowledge a number of facts alluded to by the applicant in his affidavits, they deny the complaints of the applicant to substantiate his application and expatiate on the reasons as to why the remedies sought are unjustified.

Thus, they contend that they were fully mandated by their terms of reference of the Commission to examine/look in the many matters they inquired into. They also contend that the facts qualified as findings are not findings as such inasmuch as they are only remarks, comments, observations or recommendations backed by evidence gathered in the course of the inquiry and

proceedings and fully justified. This being so, the remarks, comments, observations and recommendations made are not amenable to judicial review.

At this juncture, it is appropriate to observe that it arises out of the parties' affidavits that it is undisputed that on 14/07/2015 the President of the Republic, acting under the **Commissions of Inquiry Act 1944** instituted a Commission of Inquiry on Drug Trafficking in Mauritius (the "Commission")**.** The Commission was composed of respondent No. 1 as Chairman and respondents Nos. 2 and 3 as Members. Co-respondent No. 3 acted as Secretary of the Commission. The Commission began its public hearings on 4/11/2015 and completed its proceedings on 14/03/2018. It submitted its report to the acting President of the Republic on 26/07/2018.

The professional background and career of the applicant and his involvement in politics, as he avers in his affidavits, are also not seriously disputed. In that respect, he explains that he was called to the Bar of England at the Honourable Society of the Middle Temple on **28/07/1983** and he was admitted to the Bar in Mauritius on **3/10/1983**. Except from **October 1986** to **December 1987** when he served as a District Magistrate, the rest of the time he has been in private practice at the Bar. He was appointed as Chairman of the Gambling Regulatory Authority on **13/03/2015** and on **1/09/2016**, as Chairman of the Law Reform Commission. He resigned from both institutions on **22/11/2017**. He was an unsuccessful candidate of the *L'alliance Lepep* for constituency No. 3 (Port-Louis East and Port Louis Maritime) at the General Elections held on **14/12/2014**.

At the hearing of the application on the merits, learned senior counsel for the applicant and learned counsel for the three respondents Nos. 1, 2 and 3 chose to rest their respective client's case on the facts of their affidavits. They came up with elaborate and forceful submissions on the facts and on the legal principles applicable to an application of the present kind with emphasis on the rules and principles which the applicant alleges the respondent have breached in dealing with allegations made against him during the course of the proceedings of the Commission.

We do not propose to embark on the tedious task of an extensive recital of the submissions of both learned counsel. As a matter of fact, their submissions boil down to, firstly, a review of the legal rules and principles governing the proceedings of a Commission of Inquiry and to what aspects of a Commission of Inquiry report they ought to be applied and when would a report be

reviewable for breach of the rules and principles applicable. Secondly, they elaborate on the contentions of the parties to claim, as the case may be, that the alleged findings are indeed reviewable for the reasons invoked and the remedies prayed for are justified or that there is no ground to justify any review of the alleged findings and the grant of such remedies.

After careful consideration of the parties' respective contentions and the submissions of learned senior counsel for the applicant and counsel for the respondents, it is to be observed that the determination of the present application involves the thrashing out of two main issues:

i. whether the alleged findings of the respondents are indeed findings amenable to judicial review as opposed to observations which are normally not subject to such scrutiny; and
ii. in the event we conclude that the alleged findings of the respondents are indeed findings amenable to judicial review as contended by the applicant, whether it has been shown that they are in breach of natural justice and fairness, unreasonable, illegal or ultra vires.

In thrashing out the issue whether the alleged findings are indeed findings for the purpose of amenability to judicial review, we propose to examine them in the whole context in which allusion to them was made in the report of the Commission. The alleged findings concerning the applicant are to be found under paragraph 19.5.4 of Chapter 19 of the report bearing the caption "**SPECIFIC CASES"** found at pages 222-227 of the report, which is reproduced hereunder:

"Chapter 19 (pages 222-227) – which concerns Mr Abdool Raouf Gulbul

19.5.4 SPECIFIC CASES

However, the Commission would be failing in its duties if it did not comment on some of them in particular. The Commission would not have called these barristers had it not received information of potential breaches of the Code of Ethics. Most of the barristers were summoned by the Commission based on evidence of communication with prisoners. However in the case of Mr. Kandhai, Mr. Stephen and Mr. Gulbul where the Commission received no evidence that they had communicated with prisoners as per prison records, they were called on account of other reasons as explained below.

1. MR RAOUF GULBUL

The one topping the hit parade is no more that the politician cum barrister Mr. Raouf Gulbul, a former magistrate, who was heard during 4 sessions. The

Commission was somehow perplexed that its Investigating Team was unable to secure from the itemised bill from the telephony service providers any exchange of telephone communication between counsel and his clients in prison, the more so that he had stopped visiting his clients in jail and the Commission wonders how he obtains instruction from the detainees to be able to defend them in court.

The Commission noted that the names of some of his juniors did appear in the book of visitors for barristers. The Commission has no qualms if the juniors went for the purpose of seeking instructions. Ms. Shamloll, one of the juniors, apprised the Commission of a troubling fact that her senior uses a 'black phone' which would be the reason that he could not be traced. Even his nephew, who worked as his clerk, deposed against him confirming that his employer made use of several phones, which number he was not aware of. This was also confirmed by his official driver during the electoral campaign, Mr. Sabir Gungaparsad.

Much more serious was when Ms Shamloll testified that she was mistaken by somebody unknown to her for another junior (a lady) when she was in the office of Mr. Gulbul, and that person asked her whether she had already been to the prison to speak to a female prisoner who had implicated a suspect for whom Mr. Gulbul appeared.

Furthermore, before considering the recommendation to be made in respect of Mr. Gulbul, the Commission took into account the following:

(i) 'DEVIRE L'ENQUETE'

The complaints and allegations against Mr. Gulbul by his former clients, namely, Mr. Bottesoie and Mrs. Jeeva are as follows:

(a) The Commission notes that in spite of the adverse comments against counsel made by the trial judge in the case of State v Velvindon [2003 SCJ 319], despite the testimony under oath of Mr. Bottesoie and yet after a perfunctory enquiry, the DPP advised no further action;

(b) Mr. Bottesoie stated under oath that his then counsel, Mr. Gulbul visited him in prison to try and influence him to lie in Court and not to implicate Mr. Velvindron in return for a sum of Rs5m which averments were supported to some extent by Mr. Gulbul's nephew who was working as his clerk. Mr. Bottesoie wrote to the Master and Registrar, the Commissioner of Prisons, the Head of the ADSU complaining of the demarche of Mr. Gulbul and he even refused to see him when he called at the prison;

(c) *Mrs Parweeza Jeeva arrested for drug trafficking in connection with the notorious drug trafficker, Mr. Veeren Peroumal, explained that neither her nor her family ever retained the services of Mr. Gulbul. She maintained that Mr. Gulbul had in fact been 'instructed' by Mr. Veeren Peroumal who had paid the sum of Rs 468,000 to counsel to take up her defence which both the drug trafficker and counsel denied.*

(d) *Before the Commission she maintained that Mr. Veeren Peroumal and Mr. Gulbul told her to 'devire l'enquete'. Mr. Gulbul's nephew, Mr. Riaz Gulbul, testified that Mr. Gulbul had requested him initially to visit Mrs. Jeeva at the ADSU office to tell her not to implicate Mr. Veeren Peroumal. Mr. Gulbul also offered his nephew to rejoin his office with an increased salary but in return he would be expected to give a statement at the CID in favour of Mr. Gulbul, should the police ever convene him.*

(e) *Mr. Riaz Gulbul, who was not questioned by the police when an enquiry was carried out, deposed to the effect that he personally received cash from the mother and sister of Mr. Veeren Peroumal who told him that this money was for Mr. Gulbul to represent Mrs Jeeva;*

(f) *The testimony of the uncle of Mrs. Jeeva that he was called by Mr. Gulbul to sign a document to authorise him to appear for Mrs Jeeva and he denied having paid counsel any money despite the two VAT receipts produced by counsel as he had no means.*

(g) *The Commission has information of possible cases of interfering with witnesses not to depose against drug 'trafficker' e.g. case of Petricher and Eole.*

(ii) COUNSEL'S FEES PAID WITH DRUG MONEY

(a) *Mr Siddick Islam, his former client deposed to the effect that he retained the services of Mr Gulbul who in turn advised him to retain the services of 4 to 5 other lawyers. He maintains that in all he spent some Rs25 million, which he earned from dealing in drugs, in barristers' fees, many of whom he never retained their services but they came to him nevertheless.*

(b) Mrs. Vavra who also deposed and confirmed that this amount was paid to lawyers. She was also very bitter against Mr. Gulbul accusing him of having extorted money from her husband for his defence and contrary to their expectations, Mr. Gulbul, along with his panel of lawyers, had failed to act in his interest and represent him as was expected.

(c) Notorious drug trafficker Mr. Veeren Peroumal bragged that he became a drug trafficker in the prison because of the high fees claimed by counsel, which he paid with drug money.

(iii) CONFLICT OF INTEREST

The Commission has been apprised of instances of conflict of interest involving Mr. Gulbul. The Commission at great pain made him admit that at the time when he appeared for Mrs Jeeva who had implicated Mr. Veeren Peroumal in a drug transaction, he was also the counsel for Mr. Veeren Peroumal.

Similarly, in another case involving Mr. Agathe and Mr. Salva in a case of money laundering which has a drug transaction background, he does not deny that he did appear for them but in a different case. The Commission, after perusing the case file, does not agree with Mr. Gulbul.

(iv) FUNDING OF POLITICAL CAMPAIGN BY DRUG TRAFFICKERS

(a) The Commission received testimony that Mr. Gulbul would have received important sums of money from drug traffickers to finance his campaign. During the political campaign of Mr. Gulbul, it was alleged that he came out from a house in St. Pierre with a big black bag which he alleged contained pamphlets but which Mr. Golaumally's driver, to whom it was remitted for safekeeping in the boot, maintained it was full of money in cash;

(b) Ms. Shamloll told the Commission, supported by a print copy of her WhatsApp message received from M. Sada Curpen, a drug trafficker in the eyes of the ADSU, who became her client with the blessing of Mr. Gulbul, that he did contribute financially in the political campaign of his counsel, Mr. Gulbul. Mr. Sada Curpen before the Commission did not deny while Mr. Gulbul denied.

(c) The Commission also heard that apparently an amount of Rs 2.5 Million had been spent for the campaign. It was noted that

Mr. Gulbul and his team of some 10 people would often eat at Gloria Food, belonging to Mr Azaree, for free during the electoral campaign. The said Mr. Azaree was called by the Commission and did not deny that fact and he is presently on remand in a serious case of importation of heroin. Mr Khalil Ramoly, owner of a Spare Parts Garage was also called by the Commission and he allegedly provided several cars to Mr Gulbul during the campaign.

(v) FORMER DRUG OFFENDERS AT THE SERVICE OF MR GULBUL DURING THE ELECTORAL CAMPAIGN

Mr. S. Golaumally and Mr. A. Hurranghee his campaign manager and deputy respectively testified that their candidate was accompanied by people who were his former clients having court cases for drug offences and this was also confirmed by Mr. Noor Hossenee who was dealing with the financing aspects of the campaign. Ms. Shamloll and Mr. Sabir Gungapersad testified that they often saw Mr. Auguste, commonly known to ADSU as "Gros Patrick" evolving around Mr. Gulbul.

Mr. Riaz Gulbul further intimated than Gros Patrick was the "tapeur" and "la main droite" of Mr Raouf Gulbul. His nephew also told the Commission that Mr. Sada Curpen was a regular visitor to his employers' office.

(vi) SUBORNATION OF WITNESSES BEFORE THE COMMISSION

(a) His fellow barristers Mr. Samad Golaumally and Mr. Ashley Hurranghee testified against him. Mr. S. Golaumally testified that prior to them coming to depose before the Commission, they met Mr. Gulbul, at his request in Ebène. He effected a body search on them, before asking them in no uncertain terms that he wanted them to either be very economical with the truth or lie before the Commission. Mr. Hurranghee had no qualms in calling Mr. Gulbul a liar when he was told that Mr. Gulbul denied that there was such a meeting.

(b) Mr. Riaz Gulbul also testified that he was offered Rs300,000 by his aunt and uncle, the sister and brother of Mr. Gulbul, not to depose before the Commission and if he did, to do so in favour of Mr. Raouf Gulbul;

(vii) INSTRUCTIONS TO JUNIOR TO REPLENISH ACCOUNT OF PRISONERS

Ms. Shamloll was questioned about the replenishing of the account of a convicted drug trafficker, Mr. Faizal Hussain, an Indian National, in an amount of Rs5,000. She explained that on one occasion when he attended the office of Mr. Gulbul, the latter instructed her to put Rs 5,000 in the account of Mr. Hussain which she did. The money was provided by Mr. Sada Curpen.

Mr. Riaz Gulbul confirmed that Mr. Sada Curpen did remit Rs 5,000 to Mr. Gulbul to be deposited in the account of detainee Mr. Faizal Hussain. Mr. Gulbul accepted the money and requested one of his juniors other than Ms Shamloll to ·do the needful. The said junior refused to make the deposit in prison and Ms. Shamloll did make the deposit.

(viii) BLINKERS?

His position as the Chairperson of the Gambling Regulatory Authority, controlling the casinos, gaming houses and horse racing where the Commission has reason to believe, in the light of the various testimonies received, are the temples for money laundering by the accomplices of the drug traffickers is a matter of concern.

Mr. Gulbul appeared for Mr. Sada Curpen, who had a previous conviction for a drug offence and who is still before the Court for the offence of money laundering. His defence all throughout was that the money which the ADSU seized from him came from gains in betting at the races and casinos. He supported same by producing allegedly winning betting tickets.

As Chairperson of the GRA, he did nothing to prevent the money laundering in casinos, gambling houses and the race course. In not taking any action, the Commission wonders whether he was condoning money laundering by drug traffickers.

He did send a note to the Commission after his deposition regarding the proposed actions following the "Recommendation from Commission of Enquiry on Horse Racing" which confirms that nothing was done until the very critical remarks in the Parry report.

(ix) ET TU BRUTE!

The Commission noted that the name and position of his spouse had been referred to during the sittings. It would appear that in the mind of his confrères Messrs Golaumally, Hurranghee as well as in the eyes of

his junior, Ms Shamloll, they were more inclined to put their trust in and follow his guidance as he benefitted from the reputation of his spouse, a sitting judge of the Supreme Court. The mobile phone of his wife has also been used during the electoral campaign. But before the Commission, they had a different unflattering opinion of him ven calling him a liar..

(x) FOREIGN CURRENCY

The Commission heard that cash received by Mr. Gulbul was not accounted for to the MRA. It was his nephew, Mr. Riaz Gulbul, who was his clerk for several years who explained that when Mr. Gulbul's clients paid him in cash, be would request Mr. Riaz to exchange the rupees for pound sterling and on average during a week, he would exchange some 3000 pound sterling. Mr. Riaz gave the names of two shops Bambino and Shayeem one near the bus terminal and the other Caudan passerelle. In both these shops no receipts were ever delivered. More especially when Mr. Gulbul and his spouse have to travel, Mr. Riaz had to call at those money changers to get the required foreign currencies.

(xi) BANK ACCOUNTS, TAX AND VAT RETURNS DECLARED INCOME VIS ASSETS!!

In November 2014, a property in Highlands for an amount of Rs 8 Million was purchased in the name of his spouse, out of which a loan of Rs 5 .6 Million taken from Barclays Bank by his spouse.

Three properties were purchased in 1992 for Rs 49,700, Rs 198,000 and Rs 198,000 respectively and one in 1995 for Rs 600,000 but all were apparently sold.

In 1994, some Rs 18,895,000 excluding registration fees and other costs were disbursed for the purchase of several properties with loan amounting to Rs 5.6m.

From his tax return for the year 2015, which covers the period 1st January 2014 to 31st December 2014, the turnover was Rs 3,392,150 with tax liability of Rs 461,737. For the Income Tax year January 2013 to December 2013, the turnover was Rs 5,214,400 with tax liability Rs 712,260. For the Income Tax Year 2012, the turnover was Rs 3,165,580 and the tax payable was Rs 392,674.

The Commission went through his bank account statements, examined his VAT receipts most of which were illegible. The amount he obtained for his fees in criminal matters as per the VAT receipts sent to the Commission after his audition revealed that in 2013, he received Rs

200,000, in 2014, it was Rs 626,000; in 2015, the amount was Rs 928,932, for the year 2016, it was Rs 326.086 and in 2017, the amount was Rs 643,476. The figures simply do not add up, notwithstanding his loans, and despite the fact that his spouse is a judge of the Supreme Court, the sale of a property at Sterling House to counsel Anupam Khandai and his wife for Rs 1.9m in September 2013, the Commission wonders how he was able to purchase so many immoveable assets (house, flats, office spaces etc) amounting to several million rupees in spite of his spouse earning the fixed salary of a judge.

Information was also received by the Commission to the effect that Mr. Gulbul has acquired property for his daughter in the UK under possibly a prête nom and that he was in partnership with a Mauritian National established in London in a hotel in Tottenham Court Road, in a building known as Center Point. But due to the constraints faced by the Commission in terms of time and resources, it was not able to probe further in the veracity of the information. However, Mr Gulbul denied same.

(xii) HIS EXPLANATIONS

When he was confronted with the issues mentioned above, in a gist, he stated that the information in the possession of the Commission was erroneous. He went so far as mentioning that there was a conspiracy against him. He treated his former friends, the counsel mentioned above, as liars. The VAT received produced were illegible and pale out. The amount shown could not have enabled him to purchase the properties mentioned.

In the light of the above, the Commission considers that there are matters of concern. If those facts are proved after enquiry to be exact, Mr. Gulbul might have committed numerous offences like subornation of witnesses, laundering money, accepting cash above authorised amount. Consequently, the Commission recommends that an in-depth inquiry and audit trail be carried out into the affairs of Mr. Raouf Gulbul and the relevant authorities to take whatever appropriate action they may deem fit.

In considering the alleged findings in their context, it is appropriate to start with the introductory part of para 19.5.4, which as can be observed, cites the names of a number of barristers including that of the applicant. The Commission points out in that introduction that it feels duty bound to make certain "***comments"*** on the barristers concerned in view of certain information it had received revealing "***potential breaches of the Code of Ethics"***. The

information so received was mainly derived from evidence of communication of barristers with prisoners, who as it transpires from that part of the report were involved in drug related cases.

However, in so far as the applicant and two other barristers were concerned, the Commission points out that there was no evidence of such communication with prisoners, but felt the need to include him in the intended **comments** for other reasons.

This introduction, therefore, reveals the following in relation to the applicant:

(i) he was summoned by the Commission on account of ***potential breaches of the Code of Ethics*** in the first place;
(ii) unlike other barristers, no evidence was received as regard to communication of barristers with prisoners *quoad* him;
(iii) the applicant was also summoned for reasons other than what transpired from evidence in relation to communication with prisoners; and
(iv) at this stage, the Commission indicates its intention to make "**comments"** and no allusion to findings.

However, the fact remains that the Commission did make the finding that there was evidence of "***potential breaches of the Code of Et*hics"** in that introduction**.** And, in so far as the applicant is concerned, it is apparent that it considered the matter serious enough as to warrant delving into it quite lengthily in a number of sub-paragraphs devoted solely to him.

This introduction reveals more than a mere allusion to the evidence. It results from an appreciation of the evidence received by the Commission concerning the applicant that led to a finding of "***potential breaches of the Code of Et*hics"** to which the applicant was bound as a barrister.

In the sub-paras that follow, the Commission lists and expatiates on what it considers as potential breaches of the Code of Ethics. So, the introduction to the part of the report devoted to the applicant indicates a clear finding of serious ***potential breaches of the Code of Ethics of Barristers***. However, the whole question remains whether what the Commission means to be "***comments****"* on the evidence received adverse to the applicant were indeed so or bear the specific findings listed in the motion paper of the applicant.

The first impugned alleged finding of the Commission is the one making allusion to the *use of a "black phone" by the applicant*. This allusion is to be read in the very beginning of the part devoted to the applicant.

We note in the very first sentence of the introduction to this part that the applicant is described as the one *"topping the hit parade."* This kind of introduction in relation to the applicant clearly suggests pejoratively a finding that the applicant is the one on top of the list of barristers having potentially committed **breaches of the Code of Ethics** and sets the tone as to what the reader can expect in the following paragraphs in terms of adverse comments and findings whatsoever concerning the conduct of the applicant.

The Commission then goes on to make the following conclusions:

i. the rather perplexed fact that its investigative team did not find any itemised bill and exchange of calls between the applicant and his clients in prison; and

ii. this left the Commission perplex because:-

- the applicant had stopped visiting his clients in prison; and
- in the circumstances, how could he have sought instructions from them in their defence in the absence of any communication with them in prison.

We note that the Commission finds a possible explanation to this state of affairs in the evidence of one of his juniors, Ms. Shamloll, who apprised it of the *"troubling fact that her senior uses a 'black phone' which would be the reason that he could not be traced"* and *his nephew, who worked as his clerk, ….. conforming that his employer made use of several phones."*

This part of the report, in which allusion to the use of a black phone by the applicant was made, goes beyond a mere recital of evidence to that effect. As a matter of fact, one can read in it a finding of phone communications with clients in prison by the applicant, which were undetected by way of itemised bill, possibly due to the use of a black phone.

The alleged finding of numerous offences of subornation of witnesses relate to what the Commission reported in relation to the applicant under the sub-title **"DEVIRE L'ENQUETE"**. This sub-title in itself gives a pejorative tone to what is to come. It can hardly be disputed that it is indicative of adverse comments coming up with regard to the involvement of the applicant in acts aiming at unduly interfering with witnesses in enquiries. As a matter of fact, this title, couched in creole patois, means in common parlance, a deliberate interference with witnesses to unduly interfere with or pervert the course of an enquiry and justice.

Therefore, this sub-title is far from being innocent, as to a fair-minded reader, it would indicate that what is going to come would be circumstances of interference and undue influence on witnesses. Then follows a list of complaints and allegations of interference with witnesses against the applicant made by former clients involved in serious drug offences, namely, Jacharie Bottesoie, Mrs Parweeza Jeeva and Peroumal Veeren. Additionally, the Commission refers to what Riaz Gulbul**,** nephew and clerk of the applicant, told the Commission as well as other information received.

The allusion to the allegations of Bottesoie goes beyond the mere recital of his evidence before the Commission. It is accompanied by comments glaringly tantamount to the adverse finding that despite the evidence of Bottesoie under oath corroborated partly by the applicant's clerk and a perfunctory enquiry, the DPP advised no further action against the applicant.

Of note also, the absence of any allusion to the fact that the applicant was given the opportunity to challenge the allegations by way of cross-examination and his own evidence in rebuttal. So that, there is no indication that this finding has been reached after proper assessment of the credibility of Bottesoie's and after giving due consideration to any reply of the applicant to the allegations made against him.

We agree that with regard to the allegations of Mrs Parweeza Jeeva and Riaz Gulbul together with other information received by the Commission, what is stated in the report of the Commission is more or less a recital of the evidence of allegations of attempts to interfere with witnesses and certain enquiries in drug related cases. But, except for the fact that it is stated that Veeren Peroumal and the applicant denied the allegations of Mrs Jeeva and Riaz Gulbul, the recital of the evidence amounts to a one-sided account of the story they told not tested by cross-examination but accepted by the Commission as being worthy of consideration.

As a matter of fact, had the Commission not given some credibility and credence to the witnesses concerned and their evidence, it would not have deemed it necessary to include their allegations in the report. Thus, there is in that part of the report devoted to the applicant, not only a recital of evidence but also comments which are tantamount to findings adverse to the applicant.

On the alleged finding that the applicant has taken drug money as his fees, we note that allusion to such fact is made under the sub-title "*counsel's fees paid with drug money".* We further note that this allusion is based on the allegations made by Mr Siddick Islam, a former client of the applicant and his wife. The Commission also bases itself on the fact that "*Notorious drug trafficker*

Mr Veeren Peroumal bragged that he became a drug trafficker in the prison because of the high fees claimed by counsel, which he paid with drug money."

The Commission here also recites the allegations of Islam and Vavra to the effect that they gave huge sums of money to the applicant in drug cases in which the former was involved and that despite of that the applicant failed to represent him as it should be. The allegation of Veeren is not against the applicant.

But, it is to be observed that again the Commission reports a one-sided story which it took seriously enough and with some degree of credence given to it as to consider that it deserved being brought to light. And this, without showing that the applicant was confronted with the allegations in question with a view to ascertain his reply and eventually decide on what to do with them.

As shown in the relevant part of the report reproduced above, the allusion to the applicant having acted in conflict of interest in the exercise of his duties as barrister is based on two instances of which the Commission was apprised of. The first one on the fact that the applicant has, albeit with difficulty, admitted that **"***at the time when he appeared for Mrs Jeeva who had implicated Mr Veeren Peroumal in a drug transaction, he was also the counsel for Mr Veeren Peroumal."*

The second instance relates to the case (*involving Mr Agathe and Mr Salva in a case of money laundering which has a drug transaction background*). According to the Commission, the applicant did not deny that he did appear for them but in a different case. The Commission, after perusing the case file, did not agree with the applicant.

These allusions to instances of conflict of interest are glaringly findings. They are by far more than observations, comments or a recital of evidence. The commission was not satisfied with the explanations of the applicant and clearly expressed it, so that their conclusion cannot but be that the applicant had been guilty of acting in conflict of interest in the instances alluded to.

The alleged finding that the applicant had received important sums of money from drug traffickers to finance his electoral campaign to the General Elections is drawn from the part of the report under the heading *"**FUNDING OF POLITICAL CAMPAIGN BY DRUG TRAFFICKERS**".* We note that the allusion to this reprehensible act is based on the allegations of barristers and agents close to the applicant, namely, Mr Golaumally's driver and Ms Shamloll and what the

Commission came to hear. In addition to that there were allegations of the applicant having had meals at the fastfood Gloria Food, of which one Azaree a suspect on remand in a serious case of importation of heroin was the owner. There was another allegation that one Mr Khalil Ramoly, owner of a Spare Parts Garage provided several cars to Mr Gulbul during the campaign.

This part of the report devoted to the applicant no doubt amounts to a recital of allegations received in evidence which the commission has considered serious enough as to be highlighted in its report. But, for the better part of it, it is the recital of a one-sided story except for the fact that the applicant denied the allegations of Ms Shamloll.

But, nothing is said about the stand of the applicant in response to the other allegations or to show, at least, that the allegations were brought to his attention in order to allow him to defend himself.

The alleged finding that the applicant used drug offenders as his henchmen during his electoral campaign is based on the allusion to that practice under the sub-title "***FORMER DRUG OFFENDERS AT THE SERVICE OF MR GULBUL DURING THE ELECTORAL CAMPAIGN."*** The Commission based itself on the evidence of the two barristers who were his campaign managers, namely, Mr S. Golaumally and Mr A. Hurranghee and another barrister, Mr Noor Hossenee who was dealing with the financing aspects of the campaign. Additionally the Commission relied on the evidence of Ms. Shamloll, one Mr Sabir Gungaparsad and Riaz Gulbul who testified that they often saw Mr Auguste, commonly known to ADSU as "Gros Patrick" evolving around Mr Gulbul. Mr Riaz Gulbul further stated Mr Sada Curpen was a regular visitor to his employer's office.

This is another instance of recital of one-sided evidence without any allusion to any attempt to confront the applicant with the allegations and give him the opportunity to respond to such allegations.

The alleged finding that the applicant had subordinated witnesses before the Commission is based on the allusion made to the matter under the sub-title "***SUBORNATION OF WITNESSES BEFORE THE COMMISSION".*** This part of the report in relation to the applicant is based on the testimonies of barristers Mr Samad Golaumally and Mr Ashley Hurranghee that the applicant met them to ask them in no uncertain terms that he wanted them to either be very economical with the truth or lie before the Commission. Mr Riaz Gulbul alleged that he was offered Rs300,000 by

his aunt and uncle, the sister and brother of the applicant, not to depose before the Commission and if he did, to do so in favour of the applicant.

This part of the report is clearly an instance of recital of one-sided evidence with the mere indication of the fact that the applicant denied any meeting with his colleagues barristers and that he called Riaz Gulbul a liar.

The alleged finding that **the** applicant instructed junior counsel to put Rs 5000 in the account of Mr Faizal Hussain, an Indian national convicted of drug trafficking relates to what is stated under the sub-heading "***INSTRUCTIONS TO JUNIOR TO REPLENISH ACCOUNT OF PRISONERS***". What is stated under this sub-title is an account of what Ms. Shamloll stated when she was questioned about the replenishing the account of the prisoner in question in an amount of Rs 5,000. In that respect, the Commission further reports that Mr Riaz Gulbul confirmed that Mr Sada Curpen did remit Rs 5,000 to Mr Gulbul to be deposited in the account of detainee Mr Faizal Hussaint.

This is clearly an instance of recital of one-sided evidence without any allusion of any response of the applicant to such allegations.

The alleged finding that the applicant was using his position as Chairman of the Gambling Regulatory Authority to allow money laundering by accomplices of drug traffickers in casinos gaming houses and horse racing is drawn from what is stated under the sub-title "***BLINKERS?"***.

In this part of the report one can read the following clear findings:

i. *The applicant is the Chairperson of the Gambling Regulatory Authority, controlling the casinos, gaming houses and horse racing which are the temples for money laundering by the accomplices of the drug traffickers is a matter of concern.*
ii. *The applicant appeared for Mr Sada Curpen, who had a previous conviction for a drug offence whose defence had been that the money which the ADSU seized from him came from gains in betting at the races and casinos.*
iii. *Curpen had supported same by producing allegedly winning betting tickets.*
iv. *As Chairperson of the GRA, the applicant did nothing to prevent the money laundering in casinos, gambling houses and the race course. In not taking any action, the Commission wonders whether he was condoning money laundering by drug traffickers.*

v. His note sent to the Commission after his deposition regarding the proposed actions following the "Recommendation from Commission of Enquiry on Horse Racing" confirmed that nothing was done until the very critical remarks in the Parry report.

The finding that the applicant used his wife's mobile during the electoral campaign is drawn from what the Commission states under sub-title "***ET TU BRUTE!"*** This part of the report is based on the evidence of Messrs Golaumally, Hurranghee as well as his junior, Ms Shamloll to the effect that they were more inclined to put their trust in the applicant and follow his guidance as he benefitted from the reputation of his spouse, a sitting judge of the Supreme Court. But before the Commission, they had a different unflattering opinion of him when calling him a liar.

Reference to his wife's mobile phone is made in the following terms: *"the mobile phone of his wife has also been used during the electoral campaign"*.

This is again an instance of recital of one-sided evidence without any allusion of any response of the applicant to such allegations. This time the recital carries the findings that the applicant improperly abused of his position as the husband of a sitting Judge to get his colleagues barristers to trust him and that he used the latter's mobile phone in his electoral campaign.

We further note that the sub-title of this part of the report, borrowed from Shakespeare's Julius Caesar's remark to Brutus as he was about to be stabbed, has been ironically used to highlight the alleged treason of the applicant to his wife. That is unfair not only towards the applicant, but also towards his wife who certainly did not deserve such irony in respect of her relationship with the applicant.

The alleged finding that the applicant failed to account fees in cash with the Mauritius Revenue Authority and converting such unaccounted fees in foreign exchange is based on what the Commission states under the sub-title "***FOREIGN CURRENCY".*** The allusion made by the Commission to the alleged fact that the applicant had failed to account fees in cash to the MRA and had instead changed them in foreign currencies with money changers with no receipt in return is entirely based on the evidence of his nephew and clerk, *Mr Riaz Gulbul.*

This is yet another instance of recital of one-sided evidence without any allusion of any response of the applicant to such allegations.

The following alleged findings may be dealt with together as stem from what the Commission states under the sub-title "***BANK ACCOUNTS, TAX AND VAT RETURNS DECLARED INCOME VIS ASSETS!!"***:

(i) having regard to his income and that of his wife, the immoveable properties that they own cannot be explained and justified;

(ii) acquiring property for his daughter in the United Kingdom possibly under possibly a *prête nom;*

(iii) being in partnership with a Mauritian established in London in a hotel located in a building known as Center Point at Tottenham Court Road; and

(iv) accepting payment in cash above the authorized amount.

That part of the report devoted to the applicant sets out the scrutiny exercise the commission carried out of the various financial documents of the applicant in respect of fees received and tax returns and deeds in respect of immoveable properties purchased and sold by the applicant and his wife and an immoveable property purchased in the name of his wife. The Commission comes to the unfavourable conclusion that it "wonders how he was able to purchase so many immoveable assets (house, flats, office spaces etc.) amounting to several million rupees in spite of his spouse earning the fixed salary of a judge."

This is a clear finding questioning the innocent origin of the money used to acquire immoveable property.

With regard to the acquisition of property for his daughter in the United Kingdom possibly under a *prête nom and* being in partnership with a Mauritian established in London in a hotel located in a building known as Center Point at Tottenham Court Road, the Commission makes allusion to information received to that effect. But, it concedes that *"due to the constraints faced by the Commission in terms of time and resources, it was not able to probe further in the veracity of the information. However, Mr Gulbul denied same."*

The Commission makes general comments on the response of the applicant to all the issues implicating him under the sub-title "***HIS EXPLANATIONS"***. They are unfavourable to the applicant since the Commission did not accept the explanations of the applicant and concluded that: "*If those facts are proved after enquiry to be exact, Mr Gulbul might have committed numerous offences like subornation of witnesses, laundering money, accepting cash above*

authorised amount". And, it recommended that *"an in-depth inquiry and audit trail be carried out into the affairs of Mr Raouf Gulbul and the relevant authorities to take whatever appropriate action they may deem fit."*

At the end of the day, after considering what the applicant considers as findings against him in the context in which they are alluded to in the report, we come to the following conclusions. Firstly, the applicant finds the alleged findings in what the Commission qualifies as **"comments**" in the report following a finding that there was "**evidence of potential breaches of the Code of Ethics"** committed by a number of barristers including the applicant in their dealing with persons involved in serious drug cases and cases of trafficking in drugs. Secondly, there was additionally evidence of the applicant having had, in circumstances other than in his relationship with drug offenders, recourse to certain practices and activities in the conduct of his electoral campaign and financial affairs, which were of dubious and reprehensible character. In relation to these practices and activities, the Commission deems it necessary to highlight them and recommend that they be subject to an in-depth enquiry by the relevant authorities in at least a few of them.

Furthermore, in the so-called **"comments",** the Commission recites quite extensively the evidence that it received to reach the conclusion that there had been "**evidence of potential breaches of the Code of Ethics"** and other improprieties and dubious practices. However, it does not confine itself strictly to a recital of evidence since, as we have observed, in a few of the **"comments",** one can read straight findings. For the rest although the Commission's so-called comments do not suggest conclusive findings, they are presented in such a manner and under captions bearing innuendoes adverse to the applicant which tantamount to indicating on the one hand, favourable consideration of one-sided allegations against the applicant and on the other hand, inferences unfavourable and adverse to him. Most of the time, when the Commission makes allusion to the reply of the applicant to the allegations against him, it is only a brief reference to same.

Additionally, the better part of the so-called **"comments"** boils down to a catalogue of allegations against the applicant emanating from barristers junior to him who had in one way or another been his close collaborators in his professional practice and electoral campaign, his nephew and clerk and a few clients in serious drug cases. A smaller part of the so-called **"comments"** relates to a perfunctory probe by the Commission into the financial affairs and assets of the applicant and his wife not linked with the drug business, which exercise the

Commission concedes was insufficient due to time constraint to come to conclusive findings and needed in-depth inquiry.

When it comes to the applicant's version, the so-called **"comments"** are quite economical in words as compared to the detailed evidence of allegations highlighted. As a matter of fact, they are confined to the mere reference to the denial of the applicant to a few allegations and a brief account of his explanations on certain transactions under the heading **"HIS EXPLANATIONS"**, which the Commission unhesitatingly brushes aside.

At this juncture, we can move on to the second issue to be thrashed out which is whether it has been shown that the so-called **"comments",** whatever be their nature, as we have seen in our observations, are reviewable for being in breach of natural justice and fairness, unreasonable, illegal or ultra vires.

In dealing with this second issue, it is appropriate to recall the legal rules and principles applicable generally to applications of the present kind and by which we intend to stand guided for the purpose of determining the present application. In that respect, it is appropriate to observe in the first place that it is hardly disputed that it is well settled that the aspects of a report of a Commission of Inquiry established under the **Commissions of Inquiry Act 1944** which are reviewable by way of Judicial Review, are those amounting to findings. So that, those aspects amounting to remarks, comments, observations or recommendations or otherwise not findings *per se,* would not be reviewable. The leading cases on the matter, which both learned senior counsel for the applicant and learned counsel for the respondents cited are **de Robillard v Yeung Sik Yuen [1992 MR 218]**, **Feillafé v. Honourable Matadeen [2001 SCJ 279]** and **Ramgoolam N. Hon. DR v K.P. Matadeen & Ors [2001 SCJ 317]**.

For instance, in the case of **de Robillard (supra),** the Court made the following observations: -

> *"Regarding the second category of complaints regarding to what were termed "observations/findings", we are not prepared to say that judicial review would lie merely in respect of observations or the use of particular words, however unfortunate they may be considered to be by the applicant. We conceive the purpose of a judicial review to be to correct or quash decisions or findings and not simply remarks used in the context of findings.*

In the same case, the Court further clarified that judicial review did not lie against the reasoning of Commissioners or the assessment of evidence by the Commissioners. On this score,

the Court explained that it cannot review examinations carried out by the Commissioners and even where Commissioners make conclusion. That will not be amenable to judicial review if the Commission subsequently clarifies that although there is a doubt, there is no conclusive proof.

With regard to the principle that only findings of a Commission of Inquiry would be reviewable as opposed to observations, one can note also that in the case of **Feillafé v Honourable Matadeen (supra),** the Court observed that judicial review does not lie against observations, or even unwarranted remarks but against findings. In that case, the Court did not impugn an observation made by the Commissioners even though the Court opined that it was an observation that was one which was unjustified. Thus, the Court agreed with learned counsel for the respondents that there were '*no actual decisions or findings but merely observations which cannot be the object of judicial review'.*

However, there were instances where aspects of a report of a Commission of Inquiry, albeit not findings *per se,* have been held to be reviewable. One of these instances is the case of **Rummun O.K (supra)**, where the Court held that what purported to be an *"observation"* was reviewable inasmuch as "*the impugned "observation" which in fact is adverse finding on the applicant is not borne out by evidence before the Commission".*

In applying the principles alluded to above to the present case, it is appropriate to recall that, as we have observed earlier, in its so-called **"comments",** the Commission comes up with clear findings as to the following:

(i) there was "**evidence of *potential breaches of the Code of Ethics*"** received against a number of barristers including the applicant**;**

(ii) the applicant topped up the list of barristers against whom it received "**evidence of *potential breaches of the Code of Ethics*"; **

(iii) phone communications of the applicant with clients in prison were undetected by way of itemised bill, possibly due to the use of a black phone**;**

(iv) there was evidence of the applicant having unduly interfered with witnesses;

(v) such evidence is presented under the title **"DEVIRE I'ENQUETE,"** which is a *innuendo* suggesting in common parlance and pejoratively undue interference to change the course of an ongoing inquiry;

(vi) the casinos, gaming houses and horse racing are the temples for money laundering by the accomplices of drug traffickers;

(vii) the applicant as Chairperson of the Gaming Regulatory Authority did nothing to prevent the money laundering in casinos, gambling houses and the race course by drug traffickers;

(viii) the mobile phone of his wife had been used during the electoral campaign*";*

(ix) there was evidence of abusing of his position as the husband of a sitting Judge to secure the unflinching trust of certain of his junior's; and

(x) the Commission qualified the evidence alluded to above as revealing treason on the part of the applicant towards his wife by using the *innuendo* "**ET TU BRUTE**".

Again, from our observations made earlier, the Commission otherwise finds in the **evidence of potential breaches of the Code of Ethics** against the applicant and in other reasons to tag him, allegations of conduct and acts from which the following inferences of reprehensible acts are to be drawn:

(i) offences of 'subornation' of witnesses in drug cases;

(ii) accepting drug money as his fees;

(iii) acting in conflict of interest in the exercise of his duty as barrister;

(iv) receiving important sums of money from drug traffickers to finance his electoral campaign for the General Election;

(v) recourse to drug offenders as his henchmen during his electoral campaign for the General Elections;

(vi) subordination witnesses who deponed before the Commission;

(vii) giving instructions to junior Counsel to put Rs 5000 in the account of Mr Faizal Hussain, an Indian National convicted for drug trafficking;

(viii) abusing of his position as Chairman of the Gambling Regulatory Authority to allow money laundering by accomplices of drug traffickers in casinos, gaming houses and horse racing;

(ix) failing to account for fees paid in cash with the Mauritius Revenue Authority and converting such unaccounted fees in foreign exchange;

(x) acquisition of immoveable properties which cannot be explained having regard to having regard to his income and that of his wife;

(xi) acquisition of property for his daughter in the United Kingdom possibly under possibly a *prête nom;*

(xii) being in partnership with a Mauritian established in London in a hotel located in a building known as Center Point at Tottenham Court Road; and

(xiii) accepting payment in cash above the authorized amount.

Therefore, inasmuch as the Commission suggests that the above inferences of fact are to be drawn from the evidence it recites, it can be said that the so-called **"comments"** adverse to the applicant, are in effect findings of fact. Such findings need therefore to be borne out by the evidence and are reviewable by way of Judicial Review. We say so in application of the principle adumbrated in **Rummun O.K (supra)** to the effect that an impugned observation, which in fact is an adverse finding, would be reviewable if it is not borne out by evidence before the Commission.

So, the two issues to be thrashed out at this stage are whether (i) it has been shown that the findings and other adverse inferences observed are, as the applicant contends not borne out by the evidence and (ii) reviewable for being in breach of natural justice and fairness, unreasonable, illegal or ultra vires.

With regard to the law of evidence applicable to proceedings before a Commission of Inquiry, we agree with learned senior counsel for the applicant that the matter stands to be governed primarily by **section 13** of the **Commissions of Inquiry Act 1944.** It is clear that it arises out of this provision that the law applicable to evidence generally before a court of law applies to a Commission of Inquiry. The Court in the case of **Gopee v Sir Maurice Rault QC & Ors [1987 MR 181]** recalled this rule in the following terms: -

> *It is perhaps necessary to recall at the outset that the provisions of section 13 of the Commissions of Inquiry Act require that the law of evidence shall apply to proceedings before a Commission. It is in particular a cardinal principle of law that no evidence can be <u>used</u> against a person unless he has been confronted with it and been given the opportunity of contesting it.*

On the same point, it is also relevant to quote the following from **Ramjeeawon v Rault and Attorney General [1988 MR 83]**:

> ***First, once the Commission had decided to interpret its broad terms of reference in such a way as to take up and consider allegations against individuals as such and make specific findings ad hominem on their***

> ***conduct, a particular duty thereby arose to comply with the terms of section 13 of the Commissions of Inquiry Act which requires the Commission to act in accordance with the law of evidence and, equally importantly, to observe the rules of natural justice. The Commission was very much aware of the obligations thus cast upon it by law. In the very introduction to the chapter on drug traffickers, the Commission set itself the high standards required in the assessment of evidence and in ensuring that the interests of justice, with regard to the individual, were fully met. The Commission further recognised the principle that "it would have been unfair to convict (sic) any man unless he had been given the opportunity to confront and cross-examine his accuser"****.*

As regards the quality of evidence on which a Commission of Inquiry ought to rely upon, it is also relevant to refer to the Privy Council case of **Mahon v Air New Zealand Ltd & Ors [1984] 3 All ER 201** cited by learned senior counsel for the applicant. In that case, Diplock LJ applying the *dictum* in the case of **R v Deputy Industrial Injuries Commissioner, Ex parte Moore [1965] 1 ALL ER at 94** stated the following: -

> *A tribunal making a finding in the exercise of an investigative jurisdiction (such as a royal commission) was required to base its decision on evidence that had some probative value, in the sense that there had to be some material that tended logically to show the existence of facts consistent with the finding and that the reasoning supporting the finding, if disclosed, was not logically self-contradictory.*
>
> ……
>
> *The appeal to this Board can, in their Lordships' view, be disposed of on the ground that in the process of arriving at the finding set out in para 377, which was the reason why he made the costs order, the judge failed by inadvertence to observe the rules of natural justice applicable to a decision to make a finding of this gravity that, put at its highest in the judge's favour, was collateral but not essential to his decisions on any of those matters on which his terms of reference required him to report. The rules of natural justice be reduced to those two that were referred to in* **R v Deputy Industrial Injuries Comr, ex p Moore [1965] 1 All ER 81 at 94-95. [1965] 1 QB 456 at 488-490** … *The first rule is that the person making a finding in the exercise of such a jurisdiction must base his decision on evidence that has some probative value in the sense described below. The second rule is that he must listen fairly to any relevant evidence conflicting with the finding and any rational argument against the finding that a person represented at the inquiry, whose interests (including in that term career or reputation) may be adversely affected by it, may wish to place before him or would have so wished if he had been aware of the risk of the finding being made*. **[emphasis is added by applicant]**

The first two main principles to draw from the above citations are that (i) the prevailing law of evidence applies to proceedings before a Commission of Inquiry and (ii) the findings of a Commission of Inquiry have to be based on evidence of some probative value. It further arises out of the citations alluded to that evidence of a probative value in relation to a finding of fact should be construed in the sense of evidence material to and tending to show the existence of facts consistent with that finding.

In relation to the reliance on evidence to reach a finding, the rule of natural justice dictates that a Commission cannot use any piece of evidence against a person unless the latter has been confronted with it and has been given the opportunity of contesting it. Additionally, before making a finding adverse to a person, a Commission ought to deal fairly with "*any relevant evidence conflicting with the finding and any rational argument against the finding"* that person may wish to place before it *"or would have so wished if he had been aware of the risk of the finding being made."*

Applying the principles enunciated above, the first point to be considered is whether the Commission's impugned findings we have identified are based on evidence of some probative value or considered in observance of the law of evidence and the rules of natural justice highlighted above.

As we have observed earlier, all the findings, save and except the ones we are enumerating below, are based essentially on the allegations of barristers junior to the applicant, who had in one way or another been his close collaborators in his professional practice and electoral campaign, namely, Ms Shamloll, Mr Haranghee and Mr Golaumally. The other parties having made allegations recited by the Commission are the applicant's nephew and clerk Mr Riaz Gulbul, Mr Golaumally's driver during the electoral campaign and applicant's former clients in serious drug cases Mr Islam, his wife and Mrs Jeeva.

The findings not based on the evidence of the witnesses mentioned just above are the following:

i. abusing of his position as Chairman of the Gambling Regulatory Authority to allow money laundering by accomplices of drug traffickers in casinos, gaming houses and horse racing;
ii. acquisition of immoveable properties which cannot be explained having regard to having regard to his income and that of his wife;

iii. acquisition of property for his daughter in the United Kingdom possibly under possibly a *prête nom;* and
iv. being in partnership with a Mauritian established in London in a hotel located in a building known as Center Point at Tottenham Court Road.

We have noted also that in certain instances, the Commission relied on information it had received. However, the source of such information is not indicated in the report.

We have no difficulty to conclude that the impugned findings listed below fall short of being supported by probative evidence:

i. using a black phone so that his calls exchanged could not be traced out;
ii. under the caption ***"DEVIRE L'ENQUETE"*** at sub-paragraph ***[(i)(g)]****: "The Commission has information of possible cases of interfering with witnesses not to depose against "drug trafficker" e.g case of Petricher and Eole";*
iii. the casinos, gaming houses and horse racing are temples for the offence of money laundering and the applicant as Chairperson of the GRA did nothing to prevent that and as a result it wonders whether he was condoning money laundering by drug traffickers; and
iv. the applicant was using the mobile of his wife during his electoral campaign.

As a matter of fact, *ex-facie* the report, the use of a *"black phone"* is based primarily on the fact that no itemized bill could be secured from the service providers in respect of calls exchanged with prisoners and on the allegations of Ms Shamloll and the applicant's clerk.

In reply to the contentions of the applicant in relation to the finding that he used a *"black phone",* the respondents aver in their affidavit three things. Firstly, they state that the explanations of the applicant were sought. Secondly, there was no finding as such. Thirdly, they have at the end of the day recommended that the matter be referred to the relevant authorities for an in-depth enquiry.

However, one may note the absence of reference to evidence explaining the terminology *"black phone".* Neither is it suggested in the relevant part of the Commission's report that Ms Shamloll and the applicant's clerk testified that the so-called *"black phone"* was used to conceal exchange of calls with prisoners.

Therefore, it seems that the Commission had no evidence that the expression *"black phone"* is a technical term or one particularly used in common parlance to designate a phone designed to render communications exchanged on it undetectable in any way. This being so, it cannot be said that such evidence was material enough as to logically and reasonably lead to the conclusion that the applicant was using a *"black phone"* to avoid his calls exchanged with prisoners being traced out.

Furthermore, we have already observed that the reference to the use of a *"black phone"* as it is presented in the report amounts to a finding that the use of such type of phone was the probable reason why his calls exchanged with prisoners were not recorded in the itemized bill. So, we do not accept the contention of the respondent that it is not a finding. We further note in relation to this issue that no mention is made in the report of the explanations of the applicant when confronted with the incriminating allegations. As a result, it is difficult to say that the Commission dealt fairly and with due consideration with whatever contradictory evidence the applicant came up with.

In view of the observations made just above, it was unreasonable for the respondents to make reference to the fact that the applicant possibly made use of a *"black phone"* in the manner they did. This conclusion applies whichever way one may look at it, that is, as a straight finding or a comment or observation.

As regards the finding of ***"DEVIRE L'ENQUETE"*** by interfering with witnesses like Petricher and Eole to get them not to depose against "drug trafficker", as we have pointed out, the Commission makes mention of information received to that effect with no indication of its source and whether the applicant had been confronted with the details and origin of such information. We need not dwell at length on this issue. It is sufficient to say that the kind of "material" like a vague allusion to information received cannot by any standard be admissible evidence in the state of our law of evidence or of probative value for the purpose of establishing a finding.

Therefore, the finding of *"**DEVIRE L'ENQUETE**"* by interfering with witnesses like Petricher and Eole to get them not to depose against "drug trafficker", is unreasonable.

With regard to the findings that the casinos, gaming houses and horse racing are *"temples for the offence of money laundering"* and the applicant as Chairperson of the GRA did nothing to prevent that, again we have to observe the absence of anything to suggest that reliance is placed

on tangible and admissible evidence. Whilst we are prepared to accept that there prevails a general perception that the places in question are used to launder the proceeds of illegal activities, including drug trafficking, yet it is difficult to say that it constitutes conclusive evidence that it is so. It was therefore unreasonable to make such straight finding the casinos, gaming houses and horse racing are temples for the offence of money laundering, especially in the absence of evidence of facts logically lending support to this perception.

The respondents aver in their affidavits that they relied on the case of one Sada Curpen and the report of the Parry Commission to come to the conclusions they reached. We have given due consideration to those explanations of the respondents. But, the fact remains that nowhere in their report they explain how the Sada Curpen case and the report of Parry Commission allow the inference that as Chairperson of the GRA, the applicant did nothing to prevent money laundering at the casinos, gaming houses and horse racing. At any rate, as a matter of principle the evidence led before the Parry Commission could not have been used as evidence in any criminal or civil proceedings. Likewise, such evidence could not have been used before the present Commission of Inquiry.

On the finding that the applicant was using the mobile of his wife during his electoral campaign, the applicant denies this fact in his affidavits and avers that this fact was not put to him and that his wife uses a phone provided by the Judiciary. The respondents, on the other hand, aver in their affidavits that the Commission relied on evidence before it. However, nothing is said in the report on the nature and tenor of such evidence. One may note also the fact that the respondents are silent in their report as well as in their affidavits with regard to any explanations of the applicant on the evidence they relied upon.

Therefore, it cannot be said that the respondents relied on evidence material enough to such finding or that can logically tend toward same. Furthermore, it is made in clear breach of the rules of natural justice as there is no indication that the applicant was confronted with the evidence relied upon nor that any explanation which he could have tendered in rebuttal was given due consideration. Thus, this finding fails the test of being one based on evidence of probative value.

We now move on to consider whether the other findings based on inferences drawn from allegations of conduct and acts imputed to the applicant. As we have observed earlier, these inferences are drawn from the allegations made in evidence by barristers Ms Shamloll, Mr Haranghee and Mr Golaumally, the applicant's nephew and clerk Mr Riaz Gulbul, Mr Golaumally's

driver during the electoral campaign and applicant's former clients in serious drug cases, Mr Islam and Mrs Jeeva. Of the inferences in question, the following may be dealt with together:

(i) offences of 'subornation' of witnesses in drug cases;
(ii) accepting drug money as his fees;
(iii) acting in conflict of interest in the exercise of his duty as barrister;
(iv) receiving important sums of money from drug traffickers to finance his electoral campaign for the General Election;
(v) recourse to drug offenders as his henchmen during his electoral campaign for the General Elections;
(vi) subordination witnesses who deponed before the Commission; and
(vii) giving instructions to junior Counsel to put Rs 5000 in the account of Mr Faizal Hussain, an Indian National convicted for drug trafficking.

In reply to the applicant's contentions in relation to the inferences enumerated above, the respondents aver that they are not findings and that what they have done is to make comments and observations and recommend an in-depth inquiry by relevant authorities. We have already indicated that we cannot accept the contention of the respondents as the so-called comments and observations carry in them findings of facts.

This being so, we have again to decide whether the evidence from which the inferences are drawn are of probative value in the sense it has been defined earlier by virtue of the authorities on the matter. In considering this particular issue, we do agree that if the allegations made in evidence relied upon by the respondents were to be accepted, the inferences of offences and wrongful acts enumerated would be justifiable.

But the fact remains that the respondents seem to adopt a one-sided view of the allegations put before them. In fact, it is appropriate to recall our observation made earlier that the respondents have said little about the response of the applicant to these allegations, so that on the face of the report one cannot ascertain that the respondents gave due consideration to the explanations and any evidence he put forward in rebuttal. Thus, it is difficult to say that before making the inferences of offences and wrongful acts from the allegations adverse to the applicant, the respondents dealt fairly with any relevant evidence emanating from the applicant conflicting with both the allegations and the inferences drawn from them. This constitutes a material flaw in the respondents' approach to the evidence and in their analysis and appreciation of same. This

cannot but question the reasonableness of the inferences of facts adverse to the applicant under consideration.

Still with regard to the appreciation of the probative value of the evidence relied upon by the respondent, it is also appropriate to recall yet another observation we made earlier that by virtue of **section 13** of the **Commissions of Inquiry Act,** the respondents were bound in law to apply the law of evidence as it is generally applicable to proceedings before a court of law. It is a cardinal principle of the law of evidence that in certain circumstances the evidence given by a witness need to be taken with caution and that in such circumstances the Court, may consider the desirability of corroborative evidence before accepting to act on such evidence. One of these circumstances where the evidence of a witness has to be taken with caution is where the witness has an interest of his own to serve. Although the Court is entitled to act on the sole testimony of the witness, if it believes it can safely do so, it has to show that it was alive to the danger of acting on his uncorroborated evidence.

In relation to the inferences of offences and wrongful acts under consideration, it was incumbent on the respondents to show that they were alive to the rule of evidence alluded to above in dealing with the evidence from which they drew some of those inferences. The importance of the application of this particular rule of evidence cannot be minimized even if as contended by the respondents, a Commission of inquiry is not a tribunal as such. As a matter of fact, one cannot underestimate the risk of a person privy or an accomplice to a reprehensible act or otherwise wrongful, as to which he testifies making allegations adverse to another person in order to save his skin. A person can otherwise have an interest of his own to serve by using the platform of a Commission of Inquiry to make gratuitous allegations with the sole purpose to destroy the reputation of another person. It is relevant to point out that a Commission of Inquiry should be careful as to not rely or publish evidence of any ill-intentioned person meant to either settle scores with a protagonist or destroy the reputation of another person.

We have deemed it relevant to make the above observations in the present matter in view of the relationship of the witnesses from whose evidence the inferences under consideration at this stage were drawn. In that respect, it is to be pointed out that the better part of the evidence from which these inferences were drawn emanated from barristers junior to the applicant, who had in one way or another been his close collaborators in his professional practice and electoral campaign, namely, Ms Shamloll, Mr Hurranghee and Mr Golaumally. The other witnesses who gave evidence having given rise to the inferences in question are the nephew and clerk Mr Riaz

Gulbul, Mr Golaumally's driver during the electoral campaign. The barristers spoke of acts done under the instructions of the applicant and events in which they were physically present in their collaboration with the applicant in his electoral campaign. It is clear that in their collaboration with the applicant in the manner they themselves demonstrated, they cannot be absolved of any form of culpable or otherwise incriminating participation in the acts imputed to the applicant, which according to their professional standing they could not have been unaware.

In the circumstances, the possibility of them being witnesses having an interest of their own to serve cannot be excluded. Therefore, their evidence had to be considered with the required caution before being acted upon, as the Commission of Inquiry ought to have been alive to the danger of acting on such evidence. And, this warning ought to have been considered in the particular circumstances of the present case, once the respondents had decided to set out the evidence of the witnesses concerned in the manner they did.

With regard to the evidence emanating from the applicant's nephew and former clerk, Mr Riaz Gulbul, the applicant contended that the latter witness had an axe to grind against him as he had to sack him following a fraud committed to his prejudice. Two other witnesses were former clients of the applicant in serious drug cases, Mr Islam and his wife, who complained that despite having been paid him huge sums of money, the applicant did nothing in their case. In the circumstances, one cannot overlook the fact that these witnesses have deponed as disinterested witnesses deprived of any improper motive meant to embarrass the applicant rather than for the cause of truth and justice.

In view of the observations made above, the respondents ought to have approached the evidence of the witnesses alluded to with the required caution. There is nothing to suggest that they did so. Instead, the respondents unreservedly recited their evidence in the manner they did with minimal reference to what the applicant had to say. Even, for the purpose of observations only, in view of the damaging effects of the tenor of such evidence, the respondents were bound to address the evidence in question with the degree of caution required by law, which they have failed to do.

With regard to the evidence of Mr Bottesoie, we note that the respondents were apprised of the fact that there had been an enquiry following the same allegations he made in a criminal case before the Supreme Court and the DPP advised no further action following that enquiry. Since they have recommended the re-opening of the enquiry, the respondents were clearly not

satisfied with the one that had been carried out before and the decision to advise no further action. However, no reason is given for the view taken and their recommendation for an enquiry. That is totally unfair and unreasonable on the part of the respondents, the more so that they say nothing about the response of the applicant to the allegations of Mr Bottesoie.

We can now move on to the rest of the impugned findings against the applicant, which as we have said are not based on the evidence of the witnesses we have mentioned above. They are the following:

(i) failing to account for fees paid in cash with the Mauritius Revenue Authority and converting such unaccounted fees in foreign exchange;

(ii) acquisition of immoveable properties which cannot be explained having regard to his income and that of his wife;

(iii) acquisition of property for his daughter in the United Kingdom possibly under possibly a *prête nom;*

(iv) being in partnership with a Mauritian established in London in a hotel located in a building known as Center Point at Tottenham Court Road; and

(v) accepting payment in cash above the authorized amount.

As already observed, finding (i) referred to above to the effect that the applicant failed to account fees in cash with the Mauritius Revenue Authority and converted such unaccounted fees in foreign exchange is based on the evidence of his nephew and clerk, *Mr Riaz Gulbul* and certain documents the applicant produced regarding his financial affairs which the respondents observed were hardly legible. We have already considered the probative value of the evidence of Mr Riaz Gulbul. What we have said about the danger of acting on the uncorroborated evidence of this witness applies also to the finding under consideration. Therefore, it is sufficient to say that as it cannot be said that the respondents sufficiently addressed their minds to the danger of acting on the uncorroborated evidence of the witness, this finding is based on evidence improperly assessed according to law. This being so, the finding that the applicant failed to account fees in cash with the Mauritius Revenue Authority and had converted such unaccounted fees in foreign exchange cannot be maintained.

We note that with regard to the findings referred to in (ii) - (v) above the respondents, apart from contending that they were not findings, maintained that they were remarks and comments on matters which they were fully justified to include in their report by virtue of the terms of reference of the Commission. We further note in the affidavits of the respondents that one of the reasons invoked to justify their stance was the fact that the applicant had drug traffickers in his portfolio of clients.

There is indeed substance in the argument of the respondent that the terms of reference of the Commission allowed them to probe in the acquisition of assets by a party where they can reasonably suspect that such acquisition was realized with the use of the proceeds of drug trafficking or transactions that can be linked to or aiming at promoting such traffic. However, in the present case, the respondents make no reference to any direct or indirect evidence showing that the applicant could have been in receipt of such funds to make the acquisition of immoveable properties in question emanating from the drug business. The respondents' argument that the recommendation made for an in-depth inquiry into the affairs of the applicant because of his interaction with drug traffickers in the exercise of his profession is simply untenable. As a matter of fact, although certain circumstances can give rise to a perception that a barrister has benefitted funds proceeding from drug business, it would be preposterous to suspect that once the services of a barrister is retained by a drug trafficker or drug dealing offender, there is a presumption that he is or would be paid from the proceeds of the drug business.

In the present case, the respondents were in presence of the allegations of a few notorious drug traffickers that they had been paying large sums of money to barristers with one of them "bragging" that he became a drug trafficker in prison for that reason. That could not be sufficiently probative evidence for the respondents to reach the conclusions they reached with regard to the applicant and to recommend that the matter be subject to an in-depth inquiry.

As regards the finding of accepting payment in cash above the authorized amount reference to the fact that the applicant did not account for fees paid in cash with the MRA, the respondents explained in their affidavits that they based themselves on the allegations of Mr Riaz Gulbul and the fact that they could not rely on the documents produced by the applicant which they found to be illegible. But we note also that they do accept that the

applicant produced receipts and contended that he was re-assessed for a few years prior to the institution of the Commission of Inquiry in relation to the expenses he declared and not for unaccounted receipt of funds. The respondents placed reliance on the evidence of Mr Riaz Gulbul, on the probative value of which we have already commented and need not repeat. The respondents brushed aside the document produced by the applicant simply because they were illegible.

In the circumstances, it cannot be said that the respondents relied on evidence of probative value on which they could safely act and failed to come up with cogent reasons to reject the explanations and documentary evidence of the applicant. This being so the finding of the respondents that the applicant had accepted payment in cash above the authorized amount and did not account for fees paid in cash with the MRA is unreasonable.

We may now turn to what can be referred to as the general complaints of the applicant against the respondents in dealing with him:

i. refusal to provide the applicant with certified transcripts of the depositions and copies of documents of persons who implicated him directly and indirectly and to allow him or his counsel to cross-examine these persons;
ii. in doing as complained above, the respondents have acted against a cardinal principle of law that no evidence can be used against a person unless he is confronted with it and given the opportunity of contesting it;
iii. the respondents have flouted **Section 13** of the **Commissions of Inquiry Act 1944** and the rules of natural justice;
iv. the following was said to the applicant when he first appeared and deponed before the Commission on **26/10/2017** and was reported in the press: -
    - "*You'll get down in a pit*"
    - "*It's only the tip of the iceberg*"; and
v. Chapter 19 of the Report, which is about "*THE HONOURABLE PROFESSION-BARRISTERS*", seeks to convey an element of sarcasm on the part of the Commission.

In reply to the above complaints, the respondents stated in their affidavits that the Commission has been set up for the purpose of making an enquiry and it is not a Tribunal. Hence the applicant was not entitled to cross examine any of the witnesses. The respondents also claim

that they did not flout **Section 13** of the **Commissions of Inquiry Act 1944** for the following reasons: -

I. the applicant was confronted with all the evidence gathered against him and was given opportunity to provide explanations; and
II. the Commission was set to inquire into, to report, to gather evidence and to make recommendation.

The respondents further contend that the Commission was under no obligation to communicate transcripts of evidence or to give the applicant an opportunity to challenge the statements of witnesses who gave evidence against him. But, the allegations were nevertheless put to the applicant. Moreover, the Commission found it necessary to insert these details in their report.

We have duly considered the above contentions of the respondents in reply to the general complaints of the applicant. With regard to the application of **section 13** of the **Commissions of Inquiry Act 1944** to the proceedings of the commission, we need not repeat what we have already said on the point earlier after a review of the law itself and the authorities. It is sufficient to recall that the respondents ought to have confronted the applicant with the allegations against him and in the application of the rules of natural justice, given him an opportunity to reply to such allegations and to cross-examine the witnesses concerned.

In the present case, once the respondents had decided to use the evidence it received in the manner they did, which we have observed suggests clear findings and inferences of offences and wrongful facts imputed to the applicant, it was not sufficient for them to just put the allegations to him. The applicant was fully entitled in the circumstances to be provided with the full depositions of the witnesses and given an opportunity to cross-examine them and to at least put across to them his version and test their credibility and good faith. The fact that the Commission was not a tribunal or that the witnesses enjoyed immunity make no difference in view of the possible consequences adverse to the applicant both to his reputation and professional status by the findings the Commission made in its report.

The respondents maintained all along that they made no findings and restricted themselves to comments, observations and recommendations they were entitled to make and justifiable in the light of the evidence before them. Even assuming that this contention of the respondents was to be upheld, it would be incorrect to accept the departure from the application of the law of evidence and the rules of natural justice observed.

As we have observed earlier, the respondents embarked on a one-sided recital of the evidence implicating the applicant with little reference to what he stated and evidence adduced in reply and used *innuendoes,* which we agree was tainted with unnecessary sarcasm and irony unfavourable to the applicant. That is to be deplored as it is unfair towards the applicant. At any rate, a Commission of Inquiry should not be a platform for the reception of evidence without proper observance and adherence to the law of evidence and the rules of natural justice.

The respondents were entitled in appropriate cases to recommend an in-depth inquiry if they felt that the circumstances warranted same. Then it would have been sufficient for them to recite with fairness and take with the required precaution the evidence which prompted them to make such a recommendation. However, they failed to do so as they presented the evidence before recommending an in-depth inquiry in a manner which is indicative of a preferred version, which we have observed, was considered without due observance of the law of evidence and the rules of natural justice. Therefore, the respondents' contention that they were justified in recommending that an in-depth inquiry be carried out into the affairs of the applicant and in other matters is not tenable.

What is left to be decided is whether in the light of the above, the applicant is entitled to the remedies sought. In that respect, it is appropriate to recall that the applicant contested the following facts concerning him which are contained in the respondents' report:

(i) using a "black phone" to communicate with his clients detained at the Prison and that he had used his wife's phone during the electoral campaign for the 2014 General Election;
(ii) the commission of numerous offences of 'subornation' of witnesses;
(iii) the taking of drug money as his fees;
(iv) acting in conflict of interest in the exercise of his duty as barrister;
(v) receiving important sums of money from drug traffickers to finance his electoral campaign for the General Election;
(vi) using former drug offenders as his henchmen during his electoral campaign for the General Elections;
(vii) he has 'subordinated' witnesses who deponed before the Commission;
(viii) instructing junior Counsel to put Rs 5000 in the account of Mr Faizal Hussain, an Indian National convicted for drug trafficking;

(ix) using his position as Chairman of the Gambling Regulatory Authority to allow money laundering by accomplices of drug traffickers in casinos, gaming houses and horse racing;

(x) failing to account for fees paid in cash with the Mauritius Revenue Authority and converting such unaccounted fees in foreign exchange;

(xi) having regard to his income and that of his wife, the immoveable properties that they own cannot be explained and justified;

(xii) acquiring property for his daughter in the United Kingdom possibly under possibly a *prête nom;*

(xiii) being in partnership with a Mauritian established in London in a hotel located in a building known as Center Point at Tottenham Court Road; and

(xiv) accepting payment in cash above the authorized amount.

As we have come to the conclusion that all of the above findings are flawed for having been reached without due observance of the law of evidence and in breach of the rules of natural justice, they are, as contended by the applicant, reviewable. In the circumstances, we hold that the present application should succeed.

Now, in his prayers set out in the motion paper and his first affidavit, the applicant is seeking an Order:

(i) declaring that the findings concerning him contained in pages 222 to 227 of the Report of the Commission of Inquiry on Drug Trafficking to be, as the case may be, in breach of natural justice, in breach of fairness, unreasonable, perverse, illegal and ultra vires; and

(ii) directing that the findings in question be expunged from the Report of the Commission of Inquiry on Drug Trafficking.

In view of our conclusion that the application ought to succeed, we grant the above prayers of the applicant. We accordingly declare that all the impugned findings concerning the applicant which we have enumerated above and contained in pages 222 to 227 of the Report of the Commission of Inquiry on Drug Trafficking are in breach of the law of evidence and the rules of natural justice and order that they be expunged from the said Report.

J. Benjamin G. Marie Joseph
Judge

M. J. Lau Yuk Poon
Judge

09 November 2021

Judgment delivered by Hon. J. Benjamin G. Marie Joseph, Judge

For Applicant: **Mr J. Gujadhur, SA**
Mr D. Basset, SC together with Mr R. Chetty, SC, Mr K. Chetty, of Counsel and Mr K. Namdarkhan, of Counsel

For Respondents: **State Attorney**
Mrs P Goordyal-Chittoo, Asst. Solicitor General together with Ms K. Domah, State Counsel and Mrs G. Daby State Counsel

For Co-Respondents: **Chief State Attorney**
Mrs A. Pillay-Nababsing, Ag. Senior State Counsel