

BHADAIN S. GCSK v THE INDEPENDENT COMMISSION AGAINST CORRUPTION 2024 SCJ 256

The Applicant made an application for leave for a judicial review of respondent's decision- and decision-making process to conduct a further investigation without complying with the mandatory requirement of sections 47 and 50 of the then Prevention of Corruption Act (POCA) and the procedure as laid down in **Dowarkasing M v Independent Commission Against Corruption [2013 SCJ 138A]**.

The Applicant prayed for the following Orders:

A. a writ of mandamus or a declaration that respondent and/ or its agents and all persons acting or purporting to act under its authority or control or instructions and all persons acting in conjunction or participation with them or otherwise, should –

(i) comply with the mandatory provisions of the then sections 47 and 50 of the POCA and the above mentioned judgment;

(ii) issue a notice setting out the information required from applicant as provided by the then section 50 (1) (d) of the POCA; and

B. such other relief as the justice of the case may require.

The Court found that there was a mere request, as opposed to an order, made to applicant to attend respondent's headquarters in relation to an investigation pertaining to the appointment of a former consultant at the Ministry of Financial Services, Good Governance and Institutional Reforms. Thus, the Court believed there was no coercive element underlying the said request.

The Court also highlighted that with the coming into force of the Financial Crimes Commission Act 2023 (FCCA) which has repealed the POCA and pursuant to section 168 (2) of the FCCA any investigation or enquiry started by ICAC and pending on the commencement of the FCCA shall be taken over and continued by the Financial Crimes Commission.

The Court went further and stated that the Respondent in performing its functions is bound to comply with the law. Moreover, the Court made it clear that in an application for Judicial Review, it is not the duty of the Court to direct an investigative body the way an enquiry should be conducted.

The Court held that there is no arguable case and the application for leave for judicial review has no reasonable prospect of success. Leave for judicial review was therefore refused and the application was set aside with costs.