

TRILOCHUN V. A. M. v LOBINE K. & ORS

2025 SCJ 131

Record No. 126373

THE SUPREME COURT OF MAURITIUS

In the matter of:

Vir Abhi Manuyu TRILOCHUN

Petitioner

v

1. **Kushal LOBINE**
2. **Patrick Gervais ASSIRVADEN**
3. **Mohammad Fawzi ALLYMUN**

Respondents

In the presence of:

The Electoral Commissioner & 11 Ors

Co-Respondents

JUDGMENT

General elections were held in November 2024 in Mauritius to elect members of the National Assembly. All the candidates of the “Alliance du Changement” were declared elected in the twenty constituencies. The three respondents who were candidates for the “Alliance du Changement” were declared elected for the constituency of La Caverne and Phoenix (No. 15).

The petitioner, a voter, has pursuant to section 45 (1) of the Representation of the People Act (“the Act”) entered an election petition and is praying for an order declaring the election results in constituency No. 15 void on the ground of “*undue influence and electoral malpractice stemming from the Missier Moustass leaks and associated activities*”. However, learned Counsel for the petitioner confirmed during his oral submission at the hearing of the present matter that the petition is grounded solely on “undue influence” so that there is no need for us to address the issue of electoral malpractice.

The petitioner is also praying for “*an order mandating the holding of a new election for Constituency No. 15, under conditions that ensure compliance with constitutional principles of fairness, transparency and the absence of undue influence*” and “*a declaration that the actions of the individuals and entities involved in the Missier Moustass leaks, including those who may have colluded to influence the electoral process, have undermined the integrity of the electoral system and the principles of free and fair elections.*”

The main contention of the petitioner is that the release of videos (Missier Moustass leaks) which “*contained revelations that painted a damning picture of the outgoing government’s conduct and political manoeuvres*” on social media played a crucial role in amplifying and disseminating the Missier Moustass leaks. The continuous dissemination of the leaks through the platforms controlled by the fifth co-respondent, Le Defi Media Group and influential journalists (sixth to tenth co-respondents) played a decisive role in shifting voter perceptions. The undue influence of the Missier Moustass leaks improperly swayed the freewill of voters. The “Alliance du Changement” strategically integrated the Missier Moustass leaks into its election campaign, on its social media platforms and during its public rallies.

The petitioner claims that “*the election process was compromised by an orchestrated effort involving the leaks, creating an environment where the electorate was subjected to undue influence from an external source, potentially with connections to Missier Moustass or the figure behind the leaks. This would justify the call for a legal review and potential nullification of the election results to preserve the integrity of the democratic process in Mauritius.*”

The three respondents have raised a plea *in limine litis* to the effect that the petition should be dismissed as it is misconceived and discloses no cause of action quoad them.

The second co-respondent is abiding by the decision of the Court. All the other co-respondents have moved that the petition be set aside.

The petitioner is challenging the election of the three respondents on the ground of “undue influence” pursuant to section 45 (1)(a)(ii) of the Act which reads as follows –

“45. Election petition and security for costs

(1) (a) *Subject to paragraph (b), a petition (in this Act referred to as an “election petition”) complaining of an undue election of a member to service in a council on the ground that –*

- (i) *the person whose election is questioned was not qualified or was disqualified at the time of the election; or*
- (ii) *the election was avoided by reason of bribery, treating, **undue influence**, illegal practice, irregularity, or any reason,*

may be presented to a Judge in Chambers by –

- (A) *any person who voted or had the right to vote at the election to which the petition relates;*

....”

(Emphasis added)

During the hearing learned Counsel for the petitioner submitted that the petition is grounded on “undue influence” under section 45 of the Act and the statute must be given its ordinary meaning. There is no reference in the petition to section 65 of the Act which provides for the offence of “undue influence”.

In reply, learned Senior Counsel for the second co-respondent submitted that the words “undue influence” cannot be given a plain and ordinary meaning but a technical meaning which is defined in Part V of the Act since the electoral Court is a special Court constituted to look at offences under the Act in order to avoid the election of a member. He referred to the following observations by the Judicial Committee of the Privy Council in **Jugnauth Ashok Kumar v Ringadoo Raj Direvium 2008 PRV 58 –**

“13. In the case of the equivalent legislation in Mauritius, section 45, dealing with election petitions is found in Part III which deals with Elections generally. Section 45 envisages an election being avoided by reason of bribery, treating, etc. To discover what these terms mean, you have to look in Part V which deals with Election Offences. More particularly, what is meant by “bribery” is found in section 64(1) which creates the offence of bribery under the Act. And, of course, if anyone is to be convicted of bribery under the Act in a criminal court and punished in terms of section 66, he must be found guilty according to the criminal standard of proof, beyond reasonable doubt. Moreover, under section 69, a person who is convicted of bribery “shall, without prejudice to any other punishment, be incapable during a period of 7 years from the date of his conviction ... (b) of being a candidate at an election or, if elected before his conviction, of retaining his seat.”

In the light of the above principles, it is clear that the submission of learned Counsel for the petitioner that “undue influence” under section 45 of the Act should be given its ordinary meaning holds no water. **Jugnauth** (supra) has clarified that the terms mentioned in section 45 of the Act have to be defined as per Part V of the Act, so that “undue influence” has to be defined as provided by section 65 which is found in Part V of the Act.

Now, it is also not the case of the petitioner that the respondents have directly by their acts and doings exercised undue influence on voters in constituency No. 15. The main argument of the petitioner is that the undue influence of the Missier Moustass leaks improperly influenced the freewill of voters and that the three respondents benefitted from the Missier Moustass leaks.

It must be noted that there is no definition of “undue influence” in section 45 of the Act but section 65 provides for the offence of “undue influence” and reads as follows –

“65. Undue influence

(1) Any person who, directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of, any force, violence, or restraint, or inflicts, or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel that person to vote or refrain from voting, or on account of that person having voted or refrained from voting, at an election, or who by abduction, duress or any fraudulent contrivance, impedes or prevents the free exercise of the franchise of an elector, or thereby compels, induces, or prevails upon, an elector to give or refrain from giving his vote at an election, shall be guilty of undue influence.

(2) Any person who on polling day —

- (a) annoys, molests or otherwise interferes with an elector;*
- (b) attempts to obtain information as to the candidate for whom an elector is about to vote or has voted, or as to the number on the ballot paper given to an elector;*
- (c) remains outside a voting room except for the purposes of gaining entry to the voting room in order to vote; or*
- (d) within 200 metres of the precincts of a polling station —*
 - (i) loiters in any street or open place; or*
 - (ii) by word, message, writing or in any other manner, endeavours to persuade any person to vote for a candidate or party or dissuades any person from voting or from voting for a candidate or party,*

shall be guilty of undue influence.

(3) Any person who, as from the day of election appointed under section 41(1) (b) and until the expiry of 3 days after the day appointed for the taking of a poll under section 41 (1) (a) (ii), opens or maintains, within 200 metres of the precincts of a polling station, for the purpose of any activity directed towards promoting or procuring the election of a candidate at an election, an office in any room, building or place whatsoever, whether public or private, open or closed, shall be guilty of undue influence.”

Learned Counsel for the first and third co-respondents submitted that the term “undue influence” can only have the specific meaning ascribed to it by the legislator under section 65 of the Act. She referred to **Dayal S. v Jugnauth P.K. & Ors** [2022 SCJ 279]; **Perrine and Ors vs Foogooa and Ors and The Returning Officer for the Constituency No. 4 (Port Louis North - Montagne Longue)** [1967 MR 171] and **Chatharoo and Ors vs Bappoo** [1968 MR 74] and submitted that the findings of the Supreme Court in those cases lend support to the interpretation that, undue influence, when invoked as a ground to bring an election petition under section 45 of the Act, can only be as defined in section 65 of the Act.

We have duly considered the submissions in law of all Counsel and the authorities in respect of election petitions to determine whether the plea *in limine* raised by the respondents to the effect that there is no cause of action quoad them should succeed.

It is worth highlighting that the stand of learned Counsel for the petitioner is not clear insofar as the definition of “undue influence” is concerned. In his oral submission on the day of the hearing of the present matter he submitted that the petition “is not a classical” one and is grounded on “undue influence” under section 45 of the Act. There is no mention of section 65 of the Act in the petition and according to him the words “undue influence” should be given an ordinary meaning and are not to be restricted to “undue influence” under section 65 of the Act. However, we note the following in his written submissions which he filed on the day of the hearing itself-

“The Application of Section 65 in the Context of Section 45 of the Representation of the People Act

*26. Section 45 of the Representation of the People Act provides the general framework for election petitions, stating that an election may be declared void if the election was affected by undue influence. The law does not impose any requirement that all elements of Section 65 must be satisfied concurrently for an election to be annulled. **Instead, proving any one of the four independent grounds under Section 65 is sufficient.**”*

Conclusion

32. *In light of the clear statutory wording of Section 65, read in conjunction with Section 5(5) of the IGCA, the Respondents' attempt to impose a cumulative requirement for proving undue influence is legally unsound. **The court must adopt a disjunctive interpretation, ensuring that each of the distinct forms of undue influence outlined in Section 65 remains a separate and sufficient ground for invalidating an election under Section 45.***

(Emphasis added)

We find that the written submissions of learned Counsel for the petitioner suggest that the petitioner agrees that section 65 of the Act must be taken into account although the petition does not refer to section 65 of the Act.

In view of the link between section 45 and section 65 of the Act, as highlighted in **Dayal, Chatharoo, Jugnauth** (supra), we cannot but find that the petitioner has failed to identify the specific limb amongst the limitative possibilities enunciated under section 65 (1) of the Act on which he relies to ground his petition on "undue influence". The legislator has provided that for there to be "undue influence" under section 65 (1) of the Act, one of the following methods as highlighted by learned Counsel for the first and third co-respondents must be present, namely –

- (a) use of, or threat to make use of, any force, violence or restraint;
- (b) infliction of, or threat to inflict, any temporal or spiritual injury, damage, harm or loss upon or against any person; or
- (c) abduction, duress or any fraudulent contrivance.

We have not seen any averments in the petition containing the above methods.

Furthermore, we agree with the submissions of learned Counsel for the first respondent that despite the express averment at paragraph 54 of the petition that there was an alleged direct link of undue influence which benefitted the three respondents "*same is not substantiated by any averment depicting either use of violence or infliction of any temporal or spiritual injury in order to induce/compel a person to vote or any form of duress that impedes on the free exercise of the franchise of an elector or any other form of compulsion or inducement upon an elector to give or refrain from giving a vote*".

We find that the description of “undue influence” which the petitioner has given in his petition at paragraph 47 to the effect that “*Undue influence refers to actions or practices that improperly sway the free will of voters, leading to decisions that do not reflect their genuine preferences*” are general and inadequate in law to substantiate an allegation of undue influence to invalidate an election under sections 45 and 65 of the Act. In fact, such a definition is alien to our laws as explained by the numerous cases cited above. It therefore goes without saying that the present action is misconceived.

The Court in ***Gutheea v Dulloo and Ors*** [\[1991 MR 191\]](#) observed that an election petition cannot be drafted in vague terms and the petitioner has an obligation to sufficiently identify which specific limb of undue influence forms the basis of his challenge and to aver facts in support of same and cannot present “*the respondents with a hotchpot in which it is impossible for them to find their way...*”

It was held in ***Dayal*** (supra) referring to ***Mamoojee & Ors v Walter*** [\[1964 MR 58\]](#) that “*an act of undue influence may be committed either by a candidate or by a person on his behalf... A returned candidate will not therefore be liable for an authorized illegal or corrupt act of his agent. We agree that an unauthorized act is to be interpreted as meaning an act which was committed without the approval, connivance or blessing of the returned candidate. And the onus is on the petitioner to prove otherwise.*”

Ex facie the petition we note that apart from averring that the respondents benefitted from the Missier Moustass leaks there is no averment in the petition linking the respondents with the commission of an act of undue influence under section 65 of the Act.

The petitioner’s complaint throughout the petition is that the Missier Moustass leaks improperly influenced the freewill of voters. However, at no point in time did the petitioner aver that the respondents were involved in making or disseminating the Missier Moustass leaks by themselves or by other persons on their behalf.

We agree with the submissions of learned Counsel for the respondents that for the petitioner to obtain an order declaring the election results in constituency No. 15 void for undue influence, he ought to have specifically averred acts on the part of the respondents, by themselves or by any other person on their behalf which unduly influenced, as per the definition under section 65 of the Act, the outcome of the election in constituency No 15.

We note, at paragraph 70 of his petition, that the petitioner has averred that “*it remains indisputable that an unknown party, acting unlawfully, has exercised undue influence over the election*”. In the circumstances, we find that the petitioner cannot seriously contend that, under our law, the respondents should be held responsible for the unauthorised acts of any other person, including an *unknown party*.

For the above reasons, we find that the petition is misconceived and *ex facie* does not disclose any cause of action against the respondents. The plea *in limine* raised should therefore succeed. The petition is accordingly set aside with costs.

V. Kwok Yin Siong Yen
Judge

M. I. A. Neerooa
Judge

28 March 2025

Judgment delivered by Hon. V. Kwok Yin Siong Yen, Judge

For Petitioner:	Mr R. Appa Jala, Attorney at Law Mr S. Trilochun, of Counsel
For Respondent No. 1:	Mr P. Rangasamy, Attorney at Law Mr R. Hardwar, of Counsel together with Mrs P. Balgobin, of Counsel
For Respondent No. 2:	Mr T. Pillay Chedumbrum, Attorney at Law Mr F. Mahomed, of Counsel
For Respondent No. 3:	Mr P. Rangasamy, Attorney at Law Mr V. Baloomoody, of Counsel
For Co-Respondents No. 1 & 3:	Mr D. Manikaran, Principal State Attorney Mrs P. Ramjeeawon-Varma, ASG together with Mrs D. Bissoondoyal, APC

- For Co-Respondent No. 2:** **Mr A. Rajah, Senior Attorney**
Mr A. Moollan, SC together with Mr A. Adamjee, of Counsel and Mr R. Currimjee, of Counsel
- For Co-Respondent No. 4:** **Mr G. Ramdewar, Senior Attorney**
Mrs U. Boolell, Senior Counsel together with Mr F. Soreefan, of Counsel and Mr N. Boolell, of Counsel
- For Co-Respondents No. 5-8:** **Mr P. A. Nathoo, Attorney at Law**
Mr R. Rault, of Counsel
- For Co-Respondent No. 9:** **Mr A. C. Mallam Hassam, Attorney at Law**
Ms. S. Jadoo, of Counsel together with Mr Y. Azaree, of Counsel
- For Co-Respondent No. 10:** **Mr J. C. Ohsan-Bellepeau, Attorney at Law**
Mr N. Hyderkhan, of Counsel
- For Co-Respondents No. 11-12:** **Mr B. Sewraj, Senior Attorney**
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