

ORAL ANSWER TO QUESTION

ICAC – PARLIAMENTARY COMMITTEE, OFFICERS, ETC

The Leader of the Opposition (Mr P. Bérenger) (*By Private Notice*) asked the Prime Minister, Minister of Defence & Home Affairs, Minister of Civil Service & Administrative Reforms and Minister of Rodrigues & Outer Islands whether, in regard to the Independent Commission Against Corruption, he will –

- (a) for the benefit of the House, obtain from the Independent Commission Against Corruption, information as to –
 - (i) the number of persons who have been found guilty in cases prosecuted before the courts by the Commission, over the last three years; and
 - (ii) the number of officers who have recently resigned from the Commission; and
- (b) obtain information as to if the Parliamentary Committee is meeting as per the requirement of the law; and
- (c) state if he will agree to replace the two members of the Commission, indicating if the Police inquiry carried out in regard to one of them has been completed.

The Prime Minister: Mr Speaker Sir, with regard to part (a) (i) of the question, I am informed six persons have been found guilty in cases prosecuted before the Court by the Commission.

Regarding part (a) (ii) of the question, I am informed since 2007, 25 officers have resigned from the Commission either for personal reasons or to take up employment elsewhere or to undergo further studies.

Regarding part (b) of the question, I am informed that since its reconstitution, the Parliamentary Committee has regularly met up to March 2008 except on two occasions as there was no quorum. In May 2008, I understand the Chairperson of the Committee has expressed her intention to resign and as soon as this is done a new Chairperson would be appointed.

Regarding part (c) of the Question, I am not in presence of any fact or report that would justify the replacement of the two members of the Commission.

I am informed that allegations of abuse of authority were levelled against one of the members of the Commission. The case was enquired into and submitted to the Director of Public Prosecutions for advice on 24 January 2008. The Director of Public Prosecutions has, on 25 February 2008, advised no further action.

Mr Bérenger: Mr Speaker, Sir, as the hon. Prime Minister knows that we fork out more than a hundred million rupees every year for the Independent Commission Against Corruption and we have been informed that over the last three years, only six persons have been found guilty before the Courts. Would not the Prime Minister agree with me that this is totally unacceptable?

Mr Speaker: There is a very fine line of demarcation as to the law which has been passed in 2002 to be observed. When we look at section 61 of the Act, more especially subsection (3) –

‘Notwithstanding this Act –

(a) the Parliamentary Committee shall not –(...)’

In fact, the Parliament has given the powers to the Parliamentary Committee and has empowered the Committee with certain powers. Even in that power which has been given to the Parliamentary Committee, there is an exception, that is, section 61 subsection (3) where the Parliamentary Committee has no right to question on certain issues as to what inquiries are being carried out, why inquiries have not been carried out etc. These are specific. As to the administration of the Commission itself, that is for the Parliamentary Committee, insofar as the financial management of the Commission, the allocation of resources etc, the manner in which the Commission is discharging its functions and exercising its powers. All these rest with the Parliamentary Committee which has to report to the Prime Minister. I don’t know whether the Parliamentary Committee has reported to the Prime Minister.

Mr Bérenger: Is it your ruling, therefore, that because we have delegated certain powers, we have given certain powers to the Commission, I am not entitled to put questions, for example, whether it is acceptable that whereas we spent more than Rs300 m. over three years, there have been only six cases before the courts? Is that your ruling?

Mr Speaker: I have gone through all the Parliamentary Questions which were asked previously by hon. Members of this House and there have been rulings. The hon. Leader of the Opposition, himself, was Prime Minister at that time and he had given his position in law. He had even quoted the advice which he had received from the State Law Office. I understand that hon. David, who was a Member of the Opposition at that time, stated that Parliament has wider powers than the Parliamentary Committee because it is Parliament which had set up the Committee. But still, the ruling was that it is for the Parliamentary Committee in law to do what has to be done.

Mr Bérenger: It is a ruling by the Speaker which you are supporting. Is that your ruling?

Mr Speaker: No, I am saying that I have looked into the matter this morning. I said that the line is very fine and the question as to how the Commission is to be administered rests with the Committee. The Committee has to do its work, and the Committee has to report to this House. Once the Committee has reported to this House, then hon. Members take cognizance of the report and see what action should be taken.

Mr Bérenger: We discussed that in the past and I have listened to you carefully, but, therefore, I will put questions and you will have to rule, Mr Speaker, Sir, whether that question is in order or cannot be put. Then my first question is: does the Prime Minister not find it unacceptable that over three years, with more than Rs300 m. spent, only six cases have reached the Courts?

Mr Speaker: I will have to say the question is out of order.

Mr Bérenger: The hon. Prime Minister cannot answer.

Mr Speaker: I will have to rule according to the precedents and the law; the question is out of order. It is for the Parliamentary Committee to ask for these questions and report to this House.

Mr Bérenger: Can I ask the hon. Prime Minister, since there are only six cases, whether we can know what were the cases, what were they found guilty of and whether I would be right in saying that only *six petits poissons* got caught and the *gros requins* are left free?

The Prime Minister: In fact, Mr Speaker, Sir, there are six cases; in 2006, there were two cases. One was sentenced to three months' imprisonment; one to six months' imprisonment and the last one is on appeal. In 2007, one was sentenced to six months' imprisonment, the case is on appeal - and the other one was fined Rs300,000 on two counts of money laundering. In 2008, one was sentenced to six months' imprisonment; the sentence was converted to 250 hours of community service and the other one was sentenced to nine months' imprisonment and the case is on appeal. But I should add, Mr Speaker, Sir, just to give an indication, that three years previously, that is, 2003, 2004, 2005 - the hon. Leader of the Opposition would be surprised - there were no cases at all, no conviction. This is how it is!

(Interruptions)

Mr Speaker: Order!

The Prime Minister: There were no convictions, and, at least we have got six.

I must also say, Mr Speaker, Sir, that - I have a list here with me - there are 33 cases that are pending before the Intermediate Court that have not been taken and three cases pending before the Supreme Court and there have been 12 acquittals.

Mr Bérenger: Therefore, it is only *les petits poissons*, small Policemen, small civil servants and all the *gros requins* have gone scot-free.

(Interruptions)

Mr Speaker: Order!

Mr Bérenger: With regard to the second part of my question, I am sure the hon. Prime Minister must have been quite surprised to learn that 25 officers have resigned from the Commission recently. I am sure he must have inquired into the reasons, especially, when amongst them, the latest includes – I won't give names – *le directeur des enquêtes* and the Chief legal Adviser. Will the hon. Prime Minister agree with me that this is very disturbing? He should at least try and know the reasons as to why that many officers have resigned.

The Prime Minister: I have asked, in fact, for the reasons and I have been told, Mr Speaker, Sir, that, first of all, many of them have been offered employment elsewhere where the pay is much more than they get at ICAC, and they have decided to go, there is nothing that could be done. Some of them had gone for further studies and others, I think, because of other reasons. One of them that the hon. Leader of the Opposition mentioned, I think, has indicated that he wants to take some other function.

Mr Bérenger: Does the hon. Prime Minister have information to the effect that the climate at the Commission *est invivable* with all sorts of pressures exercised, phones listened to?

The Prime Minister: Mr Speaker, Sir, I must say I did see in one of the papers or was it the hon. Leader of the Opposition himself who has said it. I have, in fact, asked whether people's phone are being tapped for any reason whatsoever and that if this has to the case, they have to get judicial agreement before they do that. And I have been told this is the case whenever they have to. I must also say, Mr Speaker, Sir, that I have been advised that the ICAC has made a number of proposals to the Parliamentary Committee for the law to be amended to enable ICAC to better discharge its investigative function. They have made these proposals to the Parliamentary Committee. As soon as these amendments are ready at the level of the Parliamentary Committee, they can then be considered by the Government and submitted to the State Law Office. Therefore, I have to wait what amendments they have proposed.

Mr Bérenger: Mr Speaker, Sir, the Prime Minister has mentioned the Parliamentary Committee whose responsibility is to follow the work of the Independent Commission Against Corruption. I am sure the hon. Prime Minister is aware that the law provides that that Committee must meet every month or more than once a month, but it cannot meet less than one month. The law is clear on that. We are told that up to March it has not been meeting. The Members are appointed by either the hon. Prime Minister or the hon. Leader of the Opposition, but the

Chairperson is appointed by the hon. Prime Minister. Can I know why, therefore, since March, there has been no meeting?

The Prime Minister: The basic reason is, if the hon. Leader of the Opposition remembers, that there have been some allegations made against the then Chairperson who then voluntarily stepped down because he felt ethically he should step down and let the investigation be done. He has been cleared of any wrongdoing; and since he has been cleared, I have indicated that he should go back to be the Chairperson of ICAC. This was transmitted to the actual Chairperson of ICAC who has indicated that she will step down in May, and this is being done now.

Mr Bérenger: This takes one or two days to abide by the law which says that the Committee must meet every month. Does the hon. Prime Minister realise that at that last meeting all the Members of Parliament sitting on that Committee, including Government, backbenchers, took to task one of the two persons – because of press articles, of information on her doings and what not – and questioned the Chairperson of the Independent Commission and that a document was promised by the Chairperson, but since then, coincidence or not, the Committee has not sat. Is the hon. Prime Minister aware of that?

The Prime Minister: No, Mr Speaker, Sir, because the Parliamentary Committee did not report this to me.

Mr Bérenger: Now the hon. Prime Minister knows. As far as the last part of my question is concerned, the hon. Prime Minister knows that he appoints a majority of Members and I appoint a minority of Members on the Committee but, at the level of the Commission itself, the Chairperson, who is also the Director General, is appointed by the hon. Prime Minister after consultation with the Leader of the Opposition. That took place and I gave my green light, as the hon. Prime Minister knows. But, unfortunately, as far as the two other members are concerned, the law does not provide that there should be any consultation. My point is that justice must be done, but also be seen to be done and the Commission must be above any doubt. One of these two members has been involved in all sorts of things. Allegation, at least, has been made of her involvement in all sorts of things, travels, *per diem*, appointments at the Commission, irregularly, and so on. Whether the DPP has found that there is sufficient ground to send to Court or not is another matter. All this around one of the members and, as far as the other one is concerned, my point is that he is totally non-existent according to information that I have. Therefore, can I ask the hon. Prime Minister whether he would be prepared

to replace these two members so that the Independent Commission be seen to be apolitical, neutral, above board, above party politics? But there should be consultations in appointing these two members as well.

The Prime Minister: First of all, Mr Speaker, Sir, as I said, the case went to the DPP and the DPP finds no case to answer. In Mauritius, all sorts of allegations are made from time to time. We have to go by what the law says. The reason we did it that way - if the Leader of the Opposition remembers when he, himself, was Prime Minister, he was getting thoroughly fed with the way ICAC was working. At one point if he remembers when he was Prime Minister, we had a problem with the way appointments are made and that is why the appointments were changed. At least, there will be no division, we can have clear-cut decisions taken, otherwise, we can get stuck. That is why it was done. Let me look at the amendments that they are being proposed and I will come back to the House.

Mr Bérenger: The hon. Prime Minister must have heard me say earlier that I am not surprised at all being given who was the Chairperson of ICAC from its creation until two years ago. But we must all plead guilty. As provided in the law, the President appointed after consultation with the then Prime Minister, and with the hon. Leader of the Opposition sitting opposite me as Prime Minister today. We all went wrong in appointing that gentleman who really made a mess of things. But, now, I think the time has come to try at least and get things done. Being given the total lack of credibility that, unfortunately, the Commission has at this stage, can I ask the hon. Prime Minister whether he will ask the Parliamentary Committee to consider urgently the recommendations made by the Chairperson of the Independent Commission so that we get value for money? We spend more than a hundred million rupees a year.

The Prime Minister: I think that is fine, Mr Speaker, Sir. I believe these amendments have been suggested there and they are examining them and as soon as they give them to me, I'll ask them to look at them urgently.

Mr Bérenger: I take it that the hon. Prime Minister is going to appoint the Chairperson as rapidly as possible so that the Committee can do its work.

The Prime Minister: It will be so, Mr Speaker, Sir.

Dr. Hawoldar: Mr Speaker, Sir, may I ask the hon. Prime Minister if he could enlighten the House as to whether the function of the ICAC is just to sue people and send them to Court or to prison or does it have other functions, like

advising organisations or giving lectures or acting as a deterrent on the population as a whole to prevent corruption in the country?

Mr Speaker: Once again the law is very clear on this. There is a series of functions which the Commission has to disclose. It is for the Parliamentary Committee to see whether the Commission is discharging its responsibility under the Act; and then it is for the Parliamentary Committee to report to the Prime Minister and this House according to law. The Prime Minister is not in a position, right now, to tell the House whether the Commission is discharging its functions or not.

Dr. Hawoldar: Mr Speaker, Sir, if you will allow me. The hon. Leader of the Opposition asked a question to the effect that we are spending Rs100 m. a year on ICAC. The way the question was put and the hon. Leader of the Opposition said that we are spending Rs100 m. a year and we have sued only 6 persons the last six years. In that line of thought, Mr Speaker, Sir, I was just asking whether the Prime Minister would enlighten the House if the function of ICAC is just to sue people or it has other functions which you can't evaluate. You cannot compare Rs100 m. to the number of people you sue. It has other functions which they are being paid to do.

Mr Speaker: As I said, if the hon. Member will look at section 20 of the Act, a series of functions have been listed there. The hon. Member is asking the opinion of the Prime Minister, but the law states it. Parliament has given power to the Parliamentary Committee to see whether this is being done or not. What happens to the Parliamentary Committee? The Parliamentary Committee, I am sorry to say, has to take its responsibility and do its work, report to this House and to the Prime Minister. Unfortunately, as Speaker, I have no control on the Parliamentary Committee, but then the Parliamentary Committee has to take its responsibility.

Mr Bodha: Mr Speaker, Sir, may I ask the hon. Prime Minister whether he can enlighten the House as to the number of cases for 2006, 2007 and 2008 where there were alleged fraud and corruption; the number of cases investigated into and the number of cases which have been, in fact, presented before the Court?

The Prime Minister: I never ask ICAC for details about cases, but, as I said earlier, there are 33 cases pending before the Court. There are actually 8 persons who have been prosecuted. There have been cases sent to the DPP with the recommendations of prosecution, but it will be up to the DPP to decide. There are 64 such cases. 35 persons have been arrested; 3 cases of *nolle prosequi* are filed, one person has been warned, four cases

have been dismissed, two for want of prosecution and, as I said, 6 persons convicted.

Mr Bodha: Mr Speaker, Sir, in view of the fact that we have, it seems, two problems; one at the level of the law and the second at the functioning of the Commission. May I ask the hon. Prime Minister whether he intends to review the law and, in particular, section 38 (a), where it refers to *l'immunité absolue*, because of alleged abuse of authority and what are the measures he would like to present?

Mr Speaker: Insofar as the appointment of the Commissioner is concerned.

Mr Bodha: As regards the absolute immunity given to members of the Board and members of the Commission, may I ask whether the hon. Prime Minister intends, in the review of the law, to consider that aspect and also to consider the fact that within the functioning of the Committee there is the impression today that it is not functioning? What are the measures that the hon. Prime Minister would like to take to see to it that the institution stands up to the expectation of the nation?

Mr Speaker: I fully agree with the hon. Member that this is a matter of public importance. Unfortunately, as a Speaker, I have to apply the rules and the Standing Orders. The law here is clear that it is for the Committee to report the need for further legislative reforms.

Again, I will repeat that it is for the Parliamentary Committee to sit down and not only to listen to what have to be said by the Commission but also to look at the law and see where the law is an obstacle in the proper functioning of the Commission and report to the Prime Minister and to this House.

Mr Bodha: Can I then ask the hon. Prime Minister whether he agrees that the Parliamentary Committee is not functioning the way it should function?

The Prime Minister: It was not functioning when the hon. Member was in Government either, as the hon. Leader of the Opposition said it so many time when he was Prime Minister That is why I am saying, Mr Speaker, Sir, that they have made suggestions for amendment which is going to be examined by the Parliamentary Committee and I leave it to the Parliament Committee to tell what they think.

Mr Jhugroo: M. le président, je voudrais demander au Premier ministre ce qu'il compte faire pour contrecarrer cette situation ? Parce qu'il y a une perception dans le public qu'on attrape toujours les petits poissons mais jamais les gros requins.

Mr Speaker: Cela aussi, malheureusement, d'après la loi qui a été promulguée en 2002, c'est au comité de voir.

Mr Bérenger : Mr Speaker, Sir, we have agreed, I take it, that Parliamentary Committee is going to sit, consider the suggestions made by the Chairperson and make a report to the House. Can I ask the hon. Prime Minister, apart from what is in there, we do not know yet, whether he has other things in mind? Let's go to the heart of the matter: under the previous law we went to one extreme. There was an Appointments Committee choosing the Chairperson and the members composed of the President of the Republic, the Prime Minister and the Leader of the Opposition. It was totally democratic and no one could be removed without the three agreeing. It was very democratic. It did function. There is no reason to throw the baby away with the water. Now, we have gone to the other extreme, whereas the Commission must be above party politics, now, they are all appointed by the Prime Minister. I think it goes to the heart of the matter. Is the Prime Minister prepared to rethink about the whole thing and have an Appointments Committee where maybe unanimity is not required, the majority of the members of that appointment committee choose or may revoke?

The Prime Minister: As the hon. Leader of the Opposition rightly says that when we go for too much democracy it becomes dysfunctional, absolutely dysfunctional and he knows what I am saying. After a long debate - and there had debate also in Cabinet about this - and then we decided that it should be so. I have an open mind and I will have a look, Mr Speaker, Sir.

Mr Speaker: Time is over! Next item.