

Second Reading

THE REVENUE AND VALUATION APPEAL TRIBUNAL BILL

(NO. XI OF 2013)

Order for Second Reading read.

The Minister of Agro-Industry and Food Security (Mr S. Faugoo): Mr Speaker, Sir, with your permission, I move that the Revenue and Valuation Appeal Tribunal Bill (No. XI of 2013) be read a second time.

The Government Programme 2012-2015 proclaims in no uncertain terms: Moving the Nation Forward.

By introducing the Revenue and Valuation Appeal Tribunal Bill before the House, Government is laying yet another milestone in our legal process.

Mr Speaker, Sir, as per the commitment of the Government, this Bill aims at improving the efficiency of the public service through –

- (a) rationalisation in the use of resources;
- (b) ensuring cost effectiveness, and
- (c) early disposal of cases.

This Bill will not only enhance the effectiveness of our overall justice system but also instil even more confidence in our business and commercial sectors, and ensuring that the “Ease of doing business” is further enhanced.

Indeed, Mr Speaker, Sir, the main objects of this Bill are to provide for –

1. the establishment of a Revenue and Valuation Appeal Tribunal;
2. the consolidation of the existing provisions relating to the Assessment Review Committee under the Mauritius Revenue Authority Act and the Valuation Tribunal under the Local Government Act into a single enactment, and
3. the creation of a mediation process, which is a new process whereby parties

before the Tribunal may agree to settle their dispute within a period of 90 days.

Mr Speaker, Sir, it is to be noted that the introduction of this Bill before the House is yet another step in concretely implementing paragraph 31 of Chapter 4 of the Government Programme 2012-2015, which states, and I quote -

“Several existing tribunals, including the Environment Appeal Tribunal where major projects are currently the subject of litigation, will be consolidated to enable them to sit full time so that cases are heard and disposed of expeditiously while ensuring cost effectiveness and rationalisation in the use of resources.”

In the Budget Speech 2012, it was mentioned at paragraph 326, that to speed up decisions on appeal cases, Government will be consolidating 12 appeal tribunals into 3, namely the Environment and Land Use Appeal Tribunal, a Revenue and Valuation Appeal Tribunal, and a Regulatory Authority Appeal Tribunal.

The House will recall, Mr Speaker, Sir, that last year, that is, 2012, we have passed the Environment and Land Use Appeal Tribunal Act, and I am happy to inform the House that today this tribunal is fully functional and has heard and disposed of a number of appeal cases.

With this Bill, we are moving the process further with the Revenue and Valuation Appeal Tribunal. I am also pleased announce that we will shortly introduce a legislation which will provide for the establishment of the Regulatory Authority Appeal Tribunal, as announced in the Budget speech of 2012.

Mr Speaker, Sir, with these words, let me now take the House through the salient features of the Bill.

The Tribunal is set up under clause 3(1) of the Bill, and will be chaired by Barrister of not less than 10 years' standing, appointed by the Public Service Commission.

I shall, Mr Speaker, Sir, at the outset elaborate upon the human resource and logistical aspects of the Tribunal.

Clause 3(2) (b) provides for one or more Vice-Chairpersons being Barristers of not less than 5 years' standing, appointed again by the Public Service Commission.

In addition, clause 3(2) (c) gives the Attorney General, as is the case for the Environment and Land Use Appeal Tribunal, the power to appoint members of the Tribunal who should, in this case, have experience in accountancy, economics, valuation, taxation, law or business administration.

Similar to the Environment and Land Use Appeal Tribunal, the Chairperson and the Vice-Chairperson may be called upon by the Public Service Commission to act as Chairperson or Vice-Chairperson of a Tribunal established under any other enactment. This will allow for flexibility in the membership of Tribunals at the higher echelons, rationalisation in the use of human resources, and will ensure that no Tribunal is paralysed for want of a Chairperson or Vice-Chairperson.

In order to ensure efficiency in the discharge of its functions, clause 7 provides that the Tribunal may sit in one or more divisions, and that a decision of a division shall be considered to be a decision of the Tribunal.

In terms of staffing, clause 3(8) (b) provides that the Secretary to Cabinet and Head of the Civil Service may, at the request of the Chairperson, designate such public officers as may be necessary to enable the Tribunal to discharge its functions.

Lastly, on the human resource and logistical aspects for the proper discharge of the functions of the Tribunal, the Master and Registrar may, after consultation with the Chairperson, designate such number of ushers as are required for that purpose.

Mr Speaker, Sir, I shall now proceed to elaborate on the jurisdiction of the Tribunal. Upon the Bill being voted and proclaimed, the Tribunal will subsume the functions of the Assessment Review Committee and those of the Valuation Tribunal so that essentially, all appeals that now lie to the Assessment Review Committee and Valuation Tribunal will now lie to the Tribunal.

The appellate process has now been clearly spelt out. At clause 4(2), any person lodging an appeal with the Tribunal has to forward a copy of his grounds of appeal to all parties to the appeal within 28 days, and at clause 4(3) (b), no ground other than a ground set out in the notice of appeal shall be considered at the hearing.

These provisions make the appellate process certain, in that parties to the appeal are not taken by surprise and know exactly what case they have to meet with. This will no doubt

avoid unnecessary postponements due to the unpreparedness of parties, and will ensure that appeals before the Tribunal are disposed of expeditiously.

While the Tribunal has been given the latitude to conduct its proceedings according to its own rules made under clause 12, the Bill provides, at clause 5, for a well-defined framework within which such proceedings are to be conducted.

The Tribunal has been made under clause 5(2) to sit in divisions, so that its business may be despatched with expediency. Timelines have also been set under clause 5(7). In relation to an appeal, a division has to fix an appeal for preliminary hearing within 120 days from the date the appeal was lodged. In addition, it has to make a determination not later than 45 days after the close of the hearing of the appeal, save in exceptional circumstances and with the consent of all parties. Finally, it has to endeavour to complete all proceedings and make its decision within 12 months of the lodging of the appeal.

It is also worth noting that a division has to avoid formality in its proceedings. This not only contributes in minimising unwarranted procedural objections, but also makes it more conducive to an appellant making his case before the Tribunal.

One major innovation brought in this Bill, Mr Speaker, Sir, is an in-built mediation mechanism within the Tribunal that allows parties a time frame of 90 days to settle a dispute under clause 5(9). Any agreement reached by the parties before a mediation panel is final, conclusive and binding on the parties, and considered to be a decision of the Tribunal.

Where no agreement is reached by the parties before a mediation panel, the matter is referred back to a division of the Tribunal for a determination within the set time frame.

One golden thread that runs through this Bill and the Tribunal set up under it, Mr Speaker, Sir, is efficiency, certainty, finality and predictability. To that end, clause 6 of the Bill clearly lays out that the burden of proof lies on the person liable to pay the tax or claiming that the tax has been paid.

Finally, in line with our time-honoured respect for the rule of law, there is the possibility of appealing against a decision of the Tribunal to the Supreme Court under Clause 8.

Mr Speaker, Sir, what characterises the Tribunal set up under this Bill is certainty and expediency in, and the streamlining of, the appellate process, whilst respecting the sacrosanct principle of the rule of law.

This will, no doubt, ensure that a citizen who feels aggrieved by an administrative decision relating to revenue and valuation has a sound and efficient mechanism whereby he can appeal against such a decision.

With these words, Mr Speaker, Sir, I commend this Bill to the House.

The Vice-Prime Minister, Minister of Finance and Economic Development (Mr X. L. Duval) rose and seconded.

At this stage the Deputy Speaker took the Chair.

(6.11 p.m.)

The Leader of Opposition (Mr A. Ganoo): Mr Deputy Speaker, Sir, on this side of the House we welcome this Bill. We welcome the setting up of the Revenue and Valuation Appeal Tribunal.

I shall be very brief. In fact, I will take less time than the hon. Minister and my two other friends on the Opposition will have the occasion to elaborate more on our position in this Bill. I have to make a few points, Mr Deputy Speaker, Sir.

Mr Deputy Speaker, Sir, we welcome this Bill because we are in agreement with the objects of the Bill, which are to consolidate the ARC and the Valuation Tribunal into a single enactment and especially to provide this mediation mechanism, where parties will settle their disputes within a period of 90 days. This is a laudable initiative as the hon. Minister just underlined, Mr Deputy Speaker, Sir, and we are at ease with this proposal.

Mr Deputy Speaker, Sir, with the following proviso, unless the institution is properly resourced with adequate staffing, I believe that it is illusory to believe that matters can be settled within so many days. Already from our experience, Mr Deputy Speaker, Sir, at the Bar, we know that the ARC is functioning inadequately, being grossly under-resourced and this is why I wish to make the point that, unless staffing issues are addressed, the aims, the objects of legislation however laudable and noble they are, are unlikely to be met.

Concerning other Sections of the Bill, Mr Deputy Speaker, Sir, Section 3(2) and Section 3(4), the question I wish to raise is that it is now becoming a habit, because in the previous Bill that was referred to by the hon. Minister; the Environment and Land Use Appeal Tribunal, in that case also, members sitting on the Tribunal were appointed by the

Attorney General. And we find this again in this present Bill, Mr Deputy Speaker, Sir, that the members who going to assist the Chair or the Deputy Chair, will, according to the section 3 of the present Bill, be appointed by the Attorney General.

We should be guarded against this, Mr Deputy Speaker, Sir. I think we should not ring the alarm bells, but we should try - and this is an appeal to Government - to find an alternative solution to the appointment of members on Tribunal. We have nothing against any Attorney General. *On parle dans l'absolu*, Mr Deputy Speaker, Sir, but we know that in our country, the Attorney General is more or less a political appointee. The Attorney General is a politician although he is the Principal Adviser to Government by virtue of the Constitution, but the Attorney General is a political appointee if he is not elected, and if he is elected, of course, he comes from the rows of the majority. So, I think we should be careful about legislating to empower the Attorney General in our context, in our situation, to appoint members who will sit on an independent Tribunal which is a quasi judicial body, Mr Deputy Speaker, Sir.

The other point I would wish to make, Mr Deputy Speaker, Sir, concerns Section 3(8) with regard to the record of proceedings.

I read section 3(8)(a), Mr Deputy Speaker, Sir -

“There shall be a Clerk to the Tribunal who shall be appointed by the Public Service Commission and who shall be responsible for -

(i) keeping a record of the proceedings of the Tribunal”.

Now, the point I wish to make, Mr Deputy Speaker, Sir, is that the record of the proceedings of this particular Tribunal should be kept in a register that should go also online, and should be available for consultation to the public during business hours, either free of charge or at a reasonable fee. Mr Deputy Speaker, we know what will be the ambit of this Tribunal, what will be its jurisdiction, how important that jurisdiction will be. So, I repeat, I am submitting that the record of the proceeding of this Tribunal should be kept in a register that should also go online and be available for consultation to the public, to litigants, to Counsels during business hours either free of charge or at a reasonable fee.

One of the practical difficulties presently at the ARC, Mr Deputy Speaker, Sir, is to obtain proper access to previous decisions of the ARC. Therefore, the reason for my

submission is that this would assist those who wish to enter a litigation to know what the precedents are.

Finally, Mr Deputy Speaker, Sir, I come to the Section concerning the mediation panel. Section 5(9)(a), I quote –

“Where, before the hearing of an appeal, the parties jointly state in writing to the Chairperson that they are willing to settle the dispute by way of mediation, the Chairperson may refer the matter a mediation panel.”

Here again, Mr Deputy Speaker, Sir, I come to the issue of under-resourcing. According to me, the same persons are being asked to carry out numerous functions and this within time limits. I again make the point I just made a few minutes ago, Mr Deputy Speaker, Sir, unless staffing issues are addressed, the aims and objects of legislation can be nullified, can run the risk of not being met.

With these words, Mr Deputy Speaker, Sir, I wish good luck to the Tribunal and, as I said, my two other friends from the side of the House will make their comments later on.

Thank you.

(6.09p.m.)

The Vice-Prime Minister, Minister of Finance and Economic Development (Mr X. L. Duval): Mr Deputy Speaker, Sir, I thank the Leader of the Opposition for welcoming this Bill which appears therefore non-controversial. I will reply to some of the points that the Leader of the Opposition has raised in a moment. I must say, Mr Deputy Speaker, Sir, the idea that the Government is putting into effect today, and I think it was in May 2012, last year at this time, we also passed the Environment and Land Use Appeal Tribunal and coming up next is a Regulatory Authority Appeal Tribunal, but the grand design of Government is to dissociate the appeal process from the licensing and the taxing process, because previously many Ministries or authorities were themselves – Tourism Authority or whatever, ICT Authority – awarding permits and having to - maybe the Minister himself or someone - should not be totally independent from the authority, having to decide on an appeal process. Now, Mr Speaker, Sir, it is very laudable that we are, as much as possible, dissociating the

appeal process, formalising the appeal process, professionalising the appeal process, making it more efficient, making it quicker and that is the whole point of this Bill that I welcome today as well which is the Revenue and Valuation Tribunal Bill.

I take the very valid point made by the Leader of the Opposition that you can have good intention, but it is, in fact, in practice as when you resource the Tribunal that you will find whether the Tribunal is effective or not. I can assure the hon. Leader of the Opposition that we will provide the additional resources that are necessary. Already, there is going to be one Chairman, of course, appointed by the PSC, one or more Vice-Chairpersons - and that is important - and up to 10 members. So, already the Tribunal will have more people than before and, also, Mr Deputy Speaker, Sir, they will be more flexible, they can move from one case to another wherever there is a backlog - because there is backlog.

There is, at present, some 2,300 cases pending before the Assessment Review Committee alone. These are many, many cases. Most of these cases are to do with the registration duties and land transfer tax, but about 500 cases are for the other taxes under the control of the Mauritius Revenue Authority and some of these cases have been pending since 2006. So, we are talking about a system that is working reasonably well but, however, it is taking too much time for the likes of the Government. So, we wish to have this new system which will streamline the whole procedure. There is something very important, I think that my colleague mentioned it, I would like to say again the requirement to submit statements in writing which will do away with a lot of the advocacy and other delays that take place when these Tribunals sit and also the necessity for the Tribunal to sit in a fairly non-formal manner and hear cases in a non-formal manner.

Mr Deputy Speaker, Sir, the importance of this Tribunal cannot be understated, under-stressed, it is going to deal with the income tax, it is going to deal with customs and excise duties, with cases dealing with appeals, dealing with VAT, appeals dealing with taxes and gambling, appeals dealing with registration duties and appeals dealing with land transfer taxes and municipal rates. It is a big responsibility for the Tribunal. As I mentioned, we are going to ensure that it is properly staffed.

As far as the delays are concerned, the Tribunal must endeavour to deal with all cases within 12 months maximum and that it has within the law time limits for each deadline - if you wish - 120 days to fix a hearing for each step and 45 days for determination of the case after that hearing has closed. So, we are doing what we can to ensure that all the cases -

except maybe some exceptional cases - are dealt within the one year which is important so that the taxpayer and the licensee or ex-licensee knows exactly in this case the taxpayer knows where he is.

Mr Deputy Speaker, Sir, if I can deal with just, maybe one or two points raised by the Leader of the Opposition, concerning appointments on this Tribunal, the Chairperson and Vice-Chairperson, of course, appointed by the PSC, but the other Members up to 10 appointed by the Attorney General, after consultation with the Ministry of Finance. Previously, Mr Deputy Speaker, Sir, if I take the case of the Assessment Review Committee, I was myself appointing the Members without any consultation, so, it is going to be quicker than going to the PSC, but it has more safeguards than previously. Firstly, it is not the Minister of Finance appointing in appeals committee to deal with financial cases, it is now appointed by the Attorney General, but again, there is some consultation that is necessary. The point raised by the Leader of the Opposition, Mr Speaker, Sir, I accept, the desirability of having the decisions readily available on line and I will certainly endeavour to have these done if it is possible.

Thank you very much.

(6.15 p.m.)

Mr P. Roopun (Third Member for Flacq & Bon Accueil): Mr Deputy Speaker, Sir, in fact, the philosophy of this Bill to consolidate two institutions, is a philosophy I have personally espoused for many years.

It is my humble view that in a country like Mauritius, we have too many institutions, bodies or authorities. It is high time that, as the hon. Minister stated, we should try to consolidate those various authorities, try to see and ensure that we are cost-effective, not only in terms of cost, but also we have got limited human resources and it is vital that we make the best of what we have. I know how often we have problems to find officers or Chairman to fill certain important institutions. I think that one way of looking at things, is to try to see that we consolidate as many as possible, both in terms of cost, but also to be more effective.

Having said so, Mr Deputy Speaker, Sir, I also have some hesitation about the prominent role the Attorney General will have to play as regards the power being conferred to him. As the hon. Vice-Prime Minister himself also stated that this Tribunal will be considering nearly the biggest part of Government's revenue, starting from income tax up to Customs. I think that we should try to find some mechanism so that this institution is perceived as being more independent. In fact, when we are appointing through the PSC, it may give the impression that you are appointing civil servants, instead of appointing judicial officers, to deal with issues where there are interests at stake and also when we consider that, in those particular cases, more importantly than others, because the Government itself is concerned, because here, we are trying to see what is the best means to bring money into the coffers of Government. There might be that impression that Government is arm-twisting, there is not that level playing field insofar as taxpayers are concerned.

In fact, we know that revenue is the backbone of Government. It is the duty of Government to tax so that it can raise money, not only for its current expenditure, but also to take from the rich and try to distribute it to those who are in need. It is a very important exercise. I think that we should, so far as possible, try to see that each and everyone who has got the means should contribute, because it is unfair to those who are contributing, when others who have the means and should be contributing, are not contributing. It is our role here, as Parliamentarians, to ensure that each and every citizen of this country who has the means do, in fact, contribute one with another so that the country can move forward.

Having said so, Mr Deputy Speaker, Sir, I heard the hon. Minister stating the amount of backlog we have at the ARC. I agree. But, should we, because there are certain *dysfonctionnements* at the level of the institution, give the impression that we are squeezing the taxpayers? The same argument came when we set up the Tax Appeal Tribunal decades ago. At that time, taxpayers had to go to the Supreme Court, it was being claimed that there was so many cases pending; we created a Tax Appeal Tribunal. At some point in time, there were certain restrictions being put, what matters can go to the Supreme Court. It was limited to only questions of law. Subsequently, for some other reasons again, it was being claimed that the Tax Appeal Tribunal is not that effective, we came with the ARC. Again, the same types of comments were being debated.

What we have now is that whenever there is any assessment and somebody is dissatisfied, before going to the Assessment Review Committee, there should be a payment of 30% of the amount being claimed. All these different hurdles which are being put on the taxpayers give the impression that we are trying to create a situation where they feel that they are being deprived of their right to question any assessment made by officers. Because, just to remind, we know that the basis of all assessment being contested is this very beautiful term that we have in the law that those officers, to the best of their judgement, are going to make an assessment. It is something quite subjective. They have got their means of calculating. This cannot be reviewed. They make an assessment and it is up to the taxpayer to question this assessment and even if he is not satisfied, at the initial moment that he wants to question he will have to make a deposit of 30%. I take it that there are certain exceptions where this amount is not claimed.

But, what is the mechanism to ensure that, initially, the assessment that is being made is being made in a fair manner? I must tell the hon. Minister and also the hon. Vice-Prime Minister and Minister of Finance and Economic Development that there is a perception that the initial assessment is being inflated deliberately. Deliberately inflated! Expecting that the taxpayer will come and try to settle and at the end of the day, money enters the coffers of Government. What is more disturbing is that there is also a claim that those officers get rewards. I do not know if the hon. Vice-Prime Minister, Minister of Finance and Economic Development can come and give further clarifications on it. There is a perception and it is being said loud and clear in many quarters that those officers are being given reward and if the hon. Minister can reassure everybody that there is no reward, it will be good. But there is

this perception that this initial exercise of assessment is not being done in a fair manner. I hope that one and all can be reassured about this issue.

Also, if there is a backlog - we have backlogs not only before this tribunal, we have got backlogs in all courts of law - the situation is to deal with the backlogs and not to try to put on mechanisms to see how we can try to avoid these issues. I am not saying that it is through bad faith and that it is this particular Government, this has been the trend for many years now - trying to squeeze here and there and, at the end of the day the taxpayer gets the impression that he is being extorted. I think we should try to see this proper balance and give them the opportunity to make their case, express what they have to do, do it in a fair manner so that there is fairness and there is this feeling of a level playing field between, on one side, the Government which has to tax and also the taxpayers who are bound to pay so that there is not this feeling that he is being pressurised.

Another issue which I want to raise is - again I am not here to substantiate or to confirm - that there has been, in certain quarters, certain professionals who can deal in a much better way with certain officers. It depends upon whom you choose as your representative and this issue will have to be looked into. I am not saying that this is so but I am just voicing out what has been stated in certain quarters. I want the hon. Minister, at least, to reassure one and all about this issue.

I will end by making a comment on a particular clause of the law which puzzles me a bit. It is clause 5 (8) and I read it, Mr Deputy Speaker, Sir -

“Where it appears to a division, upon consideration of the grounds of appeal and the statement of case of an appellant and the reply of a respondent, that an appeal is frivolous or vexatious, it may dismiss the appeal without oral hearing.”

I have got lots of uneasiness with this particular clause of the law. I know that at the level of the ARC we had initially certain means of informal meetings. This has been taken care of. Now, we have got a preliminary hearing clearly spelt out in this Bill. We have also got the mediation which is being formalised. These are, I think, good initiatives. But I want to have some clarifications about depriving a party of an oral hearing. If you have got a right of audience, even before the Supreme Court, you should be given a hearing. From my understanding of the law, I have never heard of oral hearings compared to other types of hearings. I think even if there is a frivolous or vexatious case, we should not deprive any

party of a right to make submissions. Because here, I do not see any other means, it is as if deciding a case merely on pleadings without giving legal advisers the opportunity to come forward and express themselves. Even before the Supreme Court, if I am not mistaken before the Privy Council, even if we have got a very weak case, we should be given the opportunity to stand up even for minutes. At least, justice must be seen to be done and we should not just rush out and deprive somebody of his right to an appeal by coming forward and stating that it is frivolous and we are not going to hear that person.

These are the few comments that I wanted to make on this Bill. But, in any event, we welcome the philosophy behind it and I think that we should move forward. With these few remarks, Mr Deputy Speaker, Sir, I rest my submission.

(6.28 p.m.)

The Minister of Business, Enterprise and Cooperatives (Mr J. Seetaram): Mr Deputy Speaker, Sir, at the outset I would congratulate the Attorney General for bringing this Bill to the House. As it has already been stated before this House, this Bill, in essence, is the consolidation into one single enactment, on one side of the Assessment Review Committee under the MRA Act and on the other side, the Valuation Tribunal which is under the Local Government Act. So, both of them have been consolidated into one which is the Revenue and Valuation Appeal Tribunal Bill. That is one very good start as today we are talking about cost efficiency, early judgement, early trial and fast track. I believe that this is a very good sign on the part of Government to bring forward revolutionary amendments for expeditious trials and judgements. That is on one side.

Secondly, something which is equally very commendable is the introduction of a mediation process, that is, where you have parties even before considering the appeal itself, they wish to come to terms among ourselves. They say okay they have come to an agreement. They do not want to proceed to the Tribunal, for example or maybe they have reached a settlement, they want to settle it now whereas they need to go somewhere, they need un *encadrement* and a legal person but they do not wish to go through the procedure, through the litigation of an Appellate Body or of a tribunal. And also, we do not want to go through the stress of a Tribunal. We do not want to have postponements. So we have the mediation process and also it has been rightly put in the Bill that the mediation process and the dispute to be settled within 90 days, which is a very commendable action.

In section 5(3) - that a party may sit in camera to avoid publicity so that interest of justice is not prejudiced, this has been clearly laid down in section 5(3). This is also important that where we do not want to have publicity, you want privacy to be protected. This is also very good. Further, concerning the points I raised early; fast track justice, expeditious trial in sections 5(5) and 5(6). This reminds me of the saying in the novel 'The Firm' where John Grisham mentioned that 99% of litigation is waiting. This Government wants to attack this problem and it has started very well. With this Bill, it will go further where it has obviously taken into consideration views of leading academics, leading law reformers that expeditious court proceedings should be a priority. This has been made a priority in this Bill.

Further Section 5(9) also talked about the mediation panel, and also, to settle dispute as I have mentioned. But one thing is also very crucial in that section. Section 5(9) mentions the agreement in writing, that's what comes out of the settlement of dispute before a mediation panel, there would be an agreement in writing and this agreement would be deemed to be final and conclusive, thus deemed to be a decision of tribunal. So, it is not only justice to be done, but justice seen to be done and such an agreement would encourage fast litigation, like I have said justice in fast track.

Again the point raised by hon. Roopun on the other side, stated that the 30%, that is, for the appellant to pay when he goes before the Tribunal concerning the claim, that is, the 30% of the amount has to be paid and he argued concerning this point. Mr Deputy Speaker, Sir, I would beg to differ. If we go to all the recent jurisprudence, mainly the case of Dahari against the Director General of MRA, we see that in this judgement, Chief Justice, M. Bernard Sik Yuen and Justice Domah, indeed, raised the matter in their judgement. They have stated, that is, the imposition of the 30%, must be looked at on a very wide interpretation because Dahari sets out the two points. Concerning the 30% imposed for the appellant to pay, the committee has the discretion to know whether, firstly, they have the means to pay and secondly, what is the basis of assessment. It is not as if it is compulsory for the 30% to be put as if you must pay it, otherwise you cannot appeal, it is not the case.

Being given the surrounding circumstances of the case, like the case of Ah Lee Seng against the Director-General, MRA, which has been taken in the case of Dahari, where the Chief Justice and Justice Domah stated that the basis of the assessment has to be looked at in *toto*. They said that the committee has always interpreted this matter on its discretion. They

further went and said if the tax payer can prove that he really does not have the means to pay 30% of the claim and he can prove that the claim can be exaggerated, the committee can still recommend that his objection be considered even if does not pay the claim. So, we have here a reasoning, a judgement that says that the 30% is not a bar to the claim. If the appellant can state to the committee freely that I do not have the means; here we go, I submit evidence before you, I will prove that I do not have the means, and secondly, look at me, you can assess, fair enough, so the 30% is not a bar to appeal. The right of the appellant is maintained. That was my point.

On the whole, Mr Deputy Speaker, Sir, this piece of legislation is a very commendable one and I believe that this is inspired by the vision of the hon. Prime Minister. This Bill has got all what it takes for it to be an innovation in our justice system in Mauritius.

I thank you, Mr Deputy Speaker, Sir.

(6.37 p.m.)

Mr R. Uteem (Second Member for Port Louis South & Port Louis Central): Mr Deputy Speaker, Sir, in November last year, I asked the hon. Vice-Prime Minister, Minister of Finance, to provide to this House the number of cases that were currently then pending before the Assessment Review Committee (ARC), which is being proposed to be replaced by this Tribunal today. As at mid November 2012, there were 2,462 cases pending before the ARC. So, I asked him again a few weeks ago to provide updated figures as at to date how many cases are pending. Up to now, he has not deposited the written answers before the Parliament, but I understand that the figures are now closer to 4,500 cases.

According to the Mauritius Revenue Act, Mr Deputy Speaker, Sir, the Appeal Review Committee was supposed to endeavour to fix the case for hearing within six months from the date the representations were lodged. Today, cases are being fixed in 2014. I had a case last week which was postponed. The Committee does not have any dates available before November 2013. We are not talking about the Supreme Court here; we are talking about the Appeal Review Committee. Again, according to the Mauritius Revenue Act, the Appeal Review Committee was supposed to endeavour to give its decision on representation, not later than eight weeks from the start of the hearing and according to the answer given by the hon. Vice-Prime Minister, we know that as at mid November 2012, there were 2,322 cases

waiting to be fixed for hearing. I am not talking about hearing, but waiting to be fixed for hearing, we got 2,322 cases. 140 cases have already been tried and are awaiting judgment.

I have appeared myself in cases which have been heard months ago, and still awaiting judgment. The Mauritius Revenue Act did provide. I can see that the Committee makes stand the specified period where it is satisfied, and I quote 'on account of exceptional circumstances'. On account of exceptional circumstances, the hearing could not be fixed or the decision could not be given within the specified time period. Unfortunately, Mr Deputy Speaker, Sir, exceptional circumstances have today become the norm. That was delay in lodging hearing and giving judgement. But, Mr Deputy Speaker, Sir, do you know what is the amount we are talking about here? What is the amount of disputed tax, the amount of disputed registration duty that we are discussing, which are currently pending before the ARC? Rs3 billion as at November 2012! Today, this must have reached at least Rs4 billion. The hon. Prime Minister himself, earlier in this House, said that we are going through tough economic times. What could we have done with Rs3 billion? How many projects could we finance with Rs3 billion? How many houses, how many schools can we build with Rs3 billion? How many people's sufferings we can alleviate with Rs3 billion? But, unfortunately, for this Government, competence, filling jobs has never been a priority and, by the way, they have acted in relation to the ARC. It clearly shows that for this Government recovery of taxes is not a priority.

Mr Deputy Speaker, Sir, why such a backlog? We've heard terms about this Tribunal going to increase efficiency, expeditious judgement, confidence building. But let's go to the core of the problem. Why are there so many cases pending before the ARC? Why are we not recovering Rs3 billion of tax already assessed? Why? Mr Deputy Speaker, Sir, for the past three years there has been no Vice-Chairman appointed at the ARC. No Vice-Chairman! So, the Chairperson today has to do everything by himself; he has to deal with administrative issues; he has to carry out informal meetings; he has to hear formal matters, fix cases for hearing, hear the case, write the judgment, and if the judgment is appealed, he has to write the case stated. All of these for one person; no Vice-Chairman, no assistant to help him. He has been crying out 'please fill in this vacancy' for months. And we are talking about billions of rupees at stake!

Hon. Roopun and hon. Minister Seetaram mentioned that, today, before you appeal, you need to put down 30% of the claim. So, we are talking about Rs900 m. of tax payers'

money which has already been deposited, and their cases have not yet been heard because this Government has not yet find it fit to provide for a Vice-Chairperson, to fill in the vacancy.

We are talking about liens, charges which have been fixed on property of tax payers pending the outcome of the decision of the Committee. We are talking about goods which are blocked at customs pending the outcome of the appeal. And one would have expected that, with all this money at stake, with all this hardship on tax payers, it would have been a priority for this Government to have the vacancy filled. You would have expected, Mr Deputy Speaker, Sir, that the best package would be offered to attract the best candidates; that the candidates be offered a place on the establishment, with pensionable rights. *Niet!* Not with this Government! *Le summum de l'incompétence, comme dirait le Leader de l'opposition.* Today, instead of curing the disease, instead of recruiting more personnel, instead of clearing the backlog, this Government is simply scrapping the ARC and replacing it with a new tribunal, with yet other unrealistic targets.

The proposed Bill will alter the goalposts. The Tribunal will now be required to endeavour to complete all proceedings and make its decision within 12 months of the lodging of the appeal. Worse, according to the proposed clause 5(7) (c), the Tribunal must –

“make a determination not later than 45 days after the close of the hearing of the appeal, save in exceptional circumstances and with the consent of all parties;”.

Exceptional circumstances! Mr Deputy Speaker, Sir, I bet this will become the norm because we know, as at November 2012, there were already more than 150 cases pending determination.

It is simply unrealistic, Mr Deputy Speaker, Sir, to expect the Tribunal to make a determination within 45 days after the close of hearing, when the Chairman is required to sit and hear cases every day. Tax is a complex matter, and very few practitioners, I dare say, fully grasp all the subtleties of taxation. The Tribunal need time to read, digest, weight the arguments, think, discuss among its Members, and only then write a judgement. In the normal course of things, delivering a tax judgment may be quite a daunting task. But, now, given the pressure of having to deliver judgment within 45 days, that pressure can only make it worse.

Mr Deputy Speaker, Sir, the solution is not to get rid of the Assessment Review Committee and replace it by the Tribunal. No! The solution is not to impose unrealistic

deadlines and pressure the Tribunal to deliver judgement. No! The solution can only be to ensure that the Committee and the Tribunal for that matter is properly staffed. Vacancies must be filled. Unfortunately, this Government's track record, when it comes to filling vacancies, is abysmal. We have seen it in the case of the Human Rights Commission. Last week, the hon. Prime Minister answered a PQ, and stated that he still hasn't found the rare bird. We are seeing it in the case of the Equal Opportunities Tribunal, which has still not been properly constituted and cannot hear any other matters that have been referred to it by the Equal Opportunity Commission because it is not properly constituted. Let us hope, Mr Deputy Speaker, Sir, that this Tribunal enjoy better fortune because we are talking about revenue collection here; revenue which no Government can afford to lose. Whilst dodgy tax evaders should not get a free ride, honest tax payers also should not have a sort of Damocles hanging over their heads while waiting for the Tribunal to determine their appeal.

Mr Deputy Speaker, Sir, the provision relating to the proceedings of the proposed Tribunal, its decision and appeals largely mirrors those of the Environment and Land Use Appeal Tribunal set up under the Environment and Land Use Appeal Tribunal Act, which was voted last year. However, with respect to appeal from this proposed Revenue Tribunal to the Supreme Court, we are back to the old fashion appeal by way of case stated. Unlike the Environment and Land Use Appeal Tribunal which provided, and I quote -

‘An appeal under the section shall be prosecuted in the manner provided by rules in respect of an appeal from the final judgement of a District Court in civil matters.’

Maybe the hon. Minister will enlighten us during his summing up as to the reason for preferring an appeal by way of case stated now, as opposed to an appeal by way it is prosecuted from a final judgement in the District Court.

Mr Deputy Speaker, Sir, I would like to comment on the new offences that are being introduced by this Bill. Again, they seem to mirror the provisions of the Environment and Land Use Appeal Tribunal. Despite Mr Robertson's report and plea for the abolition of criminal contempt of court, I take note that the Government is persisting in its policy of criminally punishing contempt of Tribunals. Section 9 (d) makes it an offence at any sitting of the Tribunal to wilfully insert a member of the Tribunal or wilfully to interrupt the proceedings, but, Mr Deputy Speaker, Sir, the criminal code already provides for offences of insult. Why create new offences? Why provide a tool which can potentially be misused by

members of the Tribunal? But, of a greater concern for this side of the House is the new offence created in Section 9 (b) (ii), and I quote -

“Any person who -

(b) refuses to -

(ii) answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal; or
(...)

shall commit an offence (...).”

So, any person who refuses to answer fully and satisfactorily to the best of his knowledge and belief will commit an offence.

I must confess, Mr Deputy Speaker, Sir, when I intervened during the debates on the Environment and Land Use Appeal Tribunal Bill, I completely overlooked a similar provision that was being introduced in that legislation. But, what we are doing here, Mr Deputy Speaker, Sir, is very dangerous. A witness in what essentially is a civil matter relating to a dispute over quantum of tax or duty payable may now be subject to criminal prosecution if he does not answer fully and satisfactorily to the best of his knowledge and belief. But, what about the constitutional right of silence of a witness? What about the constitutional right against self-incrimination enshrined in our Constitution? Then, Mr Deputy Speaker, Sir, what amounts to fully and satisfactory to the best of his knowledge and belief? Will a witness be guilty if he says: ‘I don’t know’ or ‘I can’t remember or ‘It has been too long’. Who will decide if he has answered fully or satisfactorily? Counsels of the other side? The Counsel of the other side, if he is not happy will move that the witness be indicted on the spot. Will the Tribunal do so? Will the witness be bullied and threatened each time Counsel is not happy with his answer?

Mr Deputy Speaker, Sir, it has always been the law and practice of this land that if a witness does not depone satisfactorily and does not live up to the test of cross-examination, his testimony will either be disregarded or afforded little weight. That is the sanction. If he does not answer satisfactorily, he has failed to discharge the burden of proof. But, now, he will be also guilty of an offence. And that is my question, Mr Deputy Speaker, Sir: Is the penalty commensurate with the mischief? And, we are talking, as I mentioned before, a civil

case of recovery of debt owed to the Government. But above all, is this provision going to stand the test of constitutionality before our Supreme Court? I very doubt so. We, on this side of the House, strongly object to this clause and making it a criminal offence to penalise someone who does not fully and satisfactorily answer questions.

Mr Deputy Speaker, Sir, with your permission, I would now turn to what I consider to be probably the most controversial provision of this Bill, and it relates to the composition of the Tribunal. Section 3, Subsection 7 of the Bill provides that the Tribunal shall sit in a Division consisting of the Chairperson or Vice-Chairperson and two or more members. The Chairperson and Vice-Chairperson will be Barristers appointed by the Public Service Commission. But, why limit it to Barristers? Why not extend it to Attorneys as well? Attorneys now are required to have the same first law degree as Barristers. They undergo a similar vocational course. They have the right of audience before many forums. Why should not they be allowed also to sit on Tribunals? And since we are dealing with the Tribunal which also hears appeals from the Registrar-General and Valuation, why not allow public Notaries to be appointed? They will, of course, have to give up their practice to join the service, but I am sure that a public Notary is much more conversant with registration duty and land transfer tax than most Barristers of this country.

Mr Deputy Speaker, Sir, at least, with respect to the appointment of Chairperson and Vice-Chairperson, there is some transparency in their recruitment because it will be done through the Public Service Commission. What about the other members? Unlike the Assessment Review Committee under the MRA Act, appointment will now be made by the Attorney General and not the Minister responsible for Finance, although the Attorney General will consult him. Unlike the Environment and Land Use Appeal Tribunal which seems to be the model followed here, the Attorney General can appoint a member on a full-time basis. If we are going to appoint full-time members, why not go through the Public Service Commission? Why leave it to the Attorney General?

Mr Deputy Speaker, Sir, I am aware that in many existing legislations, power has been given to various Ministers to appoint members of various Tribunals and other quasi-judicial bodies, but that was done at a time when Ministers were acting judiciously. That was done at a time where institutions were independent and respected, that was done at a time where honour, integrity, transparency had a meaning. But today, people are increasingly being appointed to position of responsibility based on their political allegiance rather than

competence. What say I, political allegiance has become the only criteria. Appointment in highly lucrative position is used not only to reward past services but also as a bait to debauch opponents to the regime. We all heard on the radio what PPS Khamajeet says about the treatment afforded to political agents when it comes to recruitment. Jobs for the boys, Mr Deputy Speaker, Sir, and these political nominees today are clogging the system! They have become mandarins and potentates, fixtures that cannot be displaced however incompetent they may be, however, loss of human life has suffered because of their incompetence. '*Nou dimoune sa! Pas touche nou dimoune!*' Untouchables! And, it is because we are dealing with the most important institution, a Tribunal whose decision will affect not only the life but also the livelihood of taxpayers and also because we are talking about the coffers of the State that, we, on this side of the House, take strong objection to the powers being given to the Attorney General to appoint members of the Tribunal according to his whims and fancies.

It is simply unacceptable to give power to an Attorney General, who, himself may be a political appointee, to appoint other political appointees to hear and determine appeals; appeals which will directly affect revenue collection, appeals which will directly affect taxpayers.

And we know, under Section 7 (2), a decision of a Division of the Tribunal shall be that of the majority of members and we know that the Chairperson will sit with two of these political appointees. The dangers of the political appointees overruling a Chairperson or Vice-Chairperson appointed by the PSC is there and is real. Again, Mr Deputy Speaker, Sir, I repeat, why not leave it to the PSC to make the appointment to members of this Tribunal.

Can we rule out the possibility of political interference when we know that these appointees will be appointed by a political appointee and paid an allowance by the Minister of Finance and Economic Development? The fact that the members should not be actively engaged in politics is certainly not a guarantee of independence. Under the proposed Section 3 (2) (c) (iv), it is stated that the Tribunal shall consist of people who are not members, or candidates for election to the Assembly, the Rodrigues Regional Assembly or a local authority, or persons otherwise actively engaged in politics.

What do we mean by 'persons otherwise actively engaged in politics'? Do we have to be a registered member of a political party to be deemed to be actively engaged in politics? Is the person who finances a political party actively engaged in politics? Are relatives of Ministers and PPSs and other Members of this House deemed to be actively engaged in

politics? Are the people who gravitate around the hon. Prime Minister or the Attorney General or any politician for that matter actively engaged in politics? Is the person who publicly supports a party and asks members of his association to vote for a party actively engaged in politics? Is the Head of the Mauritius Broadcasting Corporation actively engaged in politics? We, on this side of the House, we think that he is biased; we think that he is acting as a political agent in his treatment of news, but will he agree that he is actively engaged in politics? Will he pass this test? Our famous, Mr S. D. – I am not going to cite his name, he is not worth citing in this House - who was the subject matter of so many PQs; is he actively engaged in politics? He is a member of the Independent Broadcasting Authority. He has not been a member or candidate as yet, I must add, through an election, but does any right-minded Mauritian who does not owe allegiance to the current Prime Minister believe that he is apolitical? Yet, I am sure that given the chance Mr S. D. will certainly be very happy to ascertain that he is not actively engaged in politics and, therefore, qualifies to sit on the Tribunal. How many of these S. Ds do we have out there waiting for a bone to chew from their master? I can use the term ‘master’ because in this very House, Mr Speaker gave a ruling that it is parliamentary to call someone master - *rodère boute*, jobs for the boys.

Mr Deputy Speaker, Sir, the danger is ever more the greater when we know that an appeal from the decision of the Tribunal to the Supreme Court under section 8 only lies on an issue of law, not on an issue of fact. Now, what does that mean in a layman’s term? I’ll give you an example; a political agent buys a property and declares it for, let’s say, Rs30 m. The Government Valuer estimates it to be a much higher price, but before the Tribunal, the political agent provides a valuation report. Now, we are faced with two valuation reports: one from the political appointee and one from the Revenue Authority. Is it unreasonable to envisage that the two political appointees sitting on the Tribunal will side with the valuation report presented by the taxpayers who is close to a political party? This is the risk that we are talking, Mr Deputy Speaker, Sir. The risk is there; the risk is real. This is the kind of abuse that may result from the adoption of this Bill in its current form if we allow political appointees to sit and control the majority of a Tribunal.

The Bill, unfortunately, now provides that members of the Tribunal including the political appointees will not incur any civil or criminal liability in respect of any act done or omitted in the exercise in good faith of his duties. The members go scot-free, no liability. They can’t be sued unless they can be shown to have acquired *mala fides* which is very difficult to do.

Mr Deputy Speaker, Sir, if we accept that it is possible that those political appointees can allow their judgment to be clouded in favour of a political agent, then surely we must also not discard the possibility of the judgment of these political appointees to be clouded when it comes to assessment of a taxpayer which is from the Opposition party or which do not owe allegiance to their party. Rightly or wrongly an aggrieved taxpayer may feel that he has been penalised because of his political allegiance if the decision of the independent Chairperson in his favour is overruled by the majority which consists of political appointees. This is the danger, Mr Deputy Speaker, Sir. The Chairperson, the Vice-Chairperson who are professionals, who are Barristers, who are law practitioners, they come to one decision. The two political nominees reverse that decision and because it is the majority rules, so they overrule the Chairperson.

Mr Deputy Speaker, Sir, I am prepared to give this Government *le bénéfice du doute*. We know the hard time which the former Attorney General went through; maybe they did not envisage this kind of abuse because I have many times in this august Assembly quoted the expressions viewed by the Director of Audit in one of his reports to the effect that the problem with this Government is that they do not first trigger the thought process before announcing and implementing a measure. So, maybe no one has triggered the thought process in this case; maybe no one has really thought about the risk of biasness. Maybe no one has really thought, like the hon. Minister Seetaram just said before me that justice must be seen to be done, but being given the track record of this Government when it comes to backpedalling, going back on their decision, may I make a humble appeal to this Government. Please, backpedal some more and leave it to the PSC to appoint members of this important Tribunal and give them security of tenure.

Thank you, Mr Deputy Speaker, Sir.

(7.07 p.m.)

Mr Faugoo: Mr Deputy Speaker, Sir, allow me, to start with, to thank all hon. Members from both sides of the House who have intervened on the Revenue and Valuation Appeal Tribunal Bill which is before the House.

The comments, I must say, from my friends from the other sides of the House are generally constructive and positive, except for the last orator, hon. Uteem. He speaks

depending on which side of the House he is standing. He chose to do cheap politics, I must say. I was happy to learn and to hear hon. Ganoo who is the Leader of the Opposition and I assume he is the official spokesperson of the Opposition. He said he is in agreement with the Bill, that is, with the provisions of the Bill. This is a very laudable initiative of the Government. I am asking myself after listening to hon. Uteem whether he is in agreement with hon. Ganoo when he says that he is in agreement with the Bill because he has been saying all the contrary. This is the first point.

I must say it, Mr Deputy Speaker, Sir, that Government has no hidden agenda. We have no hidden agenda. It is an initiative of the Government to improve and consolidate different institutions doing more or less the same job. It has been there in Government Programme 2012-2015 that we are going to consolidate - not one, not two, not three, not ten - 12 independent quasi-judicial institutions into three distinct separate quasi-judicial institutions. We have come last year with the Environment and Land Use Appeal Tribunal which is doing a marvellous work. It is there. It is fully functional. It is delivering as I said in my main speech, Mr Deputy Speaker, Sir. They have given so many rulings already. As I said, last year, we have set up the Environment and Land Use Appeal Tribunal; today again we are merging and consolidating two distinct and different institutions which are doing the same job. I said earlier, I announced to the House that in the very near future, we will be coming in this House to introduce another piece of legislation to set up the Regulatory Authorities Appeal Tribunal.

When we look at it from a bigger angle, there is only one thing that we have to understand, Mr Deputy Speaker, Sir. We are only making access to justice for the people and litigants of this country more accessible, more practical and making it easy for them to go before the Tribunal, be it in the first instance or as an appellate jurisdiction. This is exactly what we are minded to do, Mr Deputy Speaker, Sir. Having said that, let me now comment very briefly on the few points that have been raised by hon. Members on the other side of the House.

The first point which was raised by hon. Ganoo, the Leader of the Opposition, he said that unless the institution is fully equipped with the resources required. This is a very valid point I must say because we can bring all the changes, we can bring whatever we want in this House, get it voted, but then, if you don't give the resources which are required, definitely, it

is going to fail. This is why in this particular Bill, Mr Deputy Speaker, Sir, provisions have been made to appoint a Chairperson by the PSC. Again, it says appoint -

“One or more Vice-chairpersons (...)"

It does not stop to two, it says 10 members. Again, under Clause 3(8)(b) -

“The Secretary to Cabinet and Head of the Civil Service may, at the request of the Chairperson, designate such public officers may be necessary (...).”

Power has been given to the Secretary to Cabinet, the Head of Civil Service to designate necessary officers as it deems fit upon the request of the Chairperson of the Tribunal. Provision has been made to provide sufficient staff and members to run the Tribunal, Mr Deputy Speaker, Sir.

Again, under another clause, the Master and Registrar of the Supreme Court can designate the number of ushers which will be required to run the business of the Tribunal, Mr Deputy Speaker, Sir.

Another point which was raised under clause 3 (4) -

“Before making an appointment under subsection (2) (c), the Attorney General shall (...)"

When we say Attorney General, Mr Deputy Speaker, Sir, it is not the person we are talking about. The post of Attorney General is a constitutional post.

Now, hon. Uteem said so many things, political nominees, political friends, blue-eyed boys and what not. But back in 2004, - I think he was not in Parliament, his party was - when they passed the Planning and Development Act, it was the same provision. Power was given to the Attorney General to appoint members. So, where does he stand? Is it correct when the MMM is in power to give the power to the Attorney General to appoint members of the Tribunal and when the Labour Party, with its allies is in Government, this is being biased? They were in power, they did it. We are only repeating in a way, because it becomes a precedent. It is there in the statute book. It is there, it is being used. Again, when we came last year for the Environment and Land Use Bill, Mr Deputy Speaker, Sir, we put the same provisions. And so far nobody has questioned, it is working well, as I said earlier, Mr Deputy Speaker, Sir.

Again, on this score, we have added further provisions in this particular Bill. The Attorney General, not on his own, but he has to appoint in consultation with the Minister of Finance. Again, he has the ability to consult such other persons under Clause 5 of the Bill. So, in consultation with the Minister of Finance, further powers have been given to him, he can consult such other persons as he may deem fit, Mr Deputy Speaker, Sir.

Now, again in the particular Bill, it has been well defined. Hon. Uteem was saying that political agents will be appointed, but, it is provided black on white in this particular Bill that he has to appoint professionals in the field. There was one point which was taken by hon. Roopun as to why should the PSC appoint the Chairperson. It is because of a very simple reason that it is a quasi duty, it is not a judicial institution. It cannot be the Judicial and Legal Service Commission. It can be either the PSC or again a Minister or the Attorney General. So, what is the harm? In a way, we are giving the guarantee that there was independence in the recruitment and the selection of the Chairperson and the Vice-Chairperson. This is there black on white, Mr Deputy Speaker, Sir.

Now, there was another point which was taken up by the Leader of the Opposition, Clause 3(8) concerning Clerk of the Tribunal who is going to be the Head of the administration, the Administrative Officer of the Tribunal. Record will be kept by him. Of course, there will be a registry just like in any Tribunal or in any Ministry for that matter, records will be kept. The point which he has raised maybe is a point which can be mooted. Concerning record online, is it the practice today in any Court of law of the land or any Tribunal for that matter by extension? Today, if somebody is a party to the case, he can walk in the Tribunal, he can apply and he will get a copy of the Court records. We cannot open it to the public, because it is a civil matter, it is a matter which concerns two civil parties. A judgment, an award can be made public. But then again as I said, this is not the current practice; parties can apply and get copies of the Court records. This is open, as it exists today, to all parties. But then, maybe it is a point which has to be retained and further debated. It must be reflected upon. We can always think about it and if this is required to be so in the future, we will come up with necessary legislations.

The last point which hon. Ganoo, the Leader of the Opposition, raised, is on the question of under resources and again he said, the same persons are going to be used for mediation. As I said, it is a Tribunal where there is the Chairperson. We also have one or more Vice Chairpersons, 10 members. There will be different divisions to ensure efficiency,

and over and above there is a provision somewhere in the Bill which allows taking experts on *ad hoc* basis. If there is a case under review, if there is a case on appeal which has been lodged and which requires experts to deal with the matter, this has been taken care of.

Having answered the points raised by hon. Ganoo, let me briefly answer to some of the issues which were raised by hon. Roopun. I have already answered on the recruitment by PSC. Again, there was one interesting point which he raised. Clause 5(8) reads –

“Where it appears to a division, upon consideration of the grounds of appeal and the statement of case of an appellant and the reply of a respondent, that an appeal is frivolous or vexatious, it may dismiss the appeal without oral hearing.”

After much reflection, this has been put in the Bill, Mr Deputy Speaker, Sir, I must say. This is meant for exceptional cases, this is not the general rule. This is meant for exceptional cases where *ex facie* the document, the grounds of appeal which have been lodged, are frivolous. If this is not going to be so, then how are we going to solve the problem of clogging? How are we going to solve the problem of case management and a case being dragged for several years, Mr Deputy Speaker, Sir? This is there. Again, this is open to appeal by means of Judicial Review, by the appellant; it is not an end in itself. If the appeal is rejected on frivolous ground, the appellant can always, by leave of the Court, go to the Supreme Court for Judicial Review.

He also spoke about appointment by the Attorney General. I avoid to answer to this one. He said there is a perception that initial assessment is being inflated. He is right, there is a perception. There is only a perception because the Tribunal functions under the ambit of the law. If an assessment, Mr Deputy Speaker, Sir, is made on an erroneous basis, the Tribunal should in principle. If it was the contrary, it would have been sending the wrong signal. What is the use of having an Appellate Body, what is the use of having an Appellate Tribunal, if they are not given the power to reassess?

There is a judgment by the Supreme Court back in 2009. The case which was mentioned by my friend - Dahari 2009 SCJ 206 - which gives power to the Tribunal and Supreme Court also to intervene. So, it is not an end in itself. Again, there is a process whereby one can appeal.

Again, hon. Roopun raised the question of 30% deposit, the case of Dahari against the Director General, MRA, 2009, same case which is cited just now, Mr Deputy Speaker, Sir,

where it was said that it is not unconstitutional. He said also that the basis of assessment is sound; meaning that the Tribunal or the Supreme Court will uphold that payment where basis of assessment is sound and the persons, that is, taxpayers have a means to pay. This is also legal; there is no problem as to that.

So, having said that, I am left with only one last point maybe which I wanted to comment on or maybe answer to hon. Uteem about the offence being created under clause 9(b) which stipulates –

“Any person who refuses to –

(ii) answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him in any proceedings before the Tribunal; (...)

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to penal servitude for a term not exceeding 12 months.”

So, Mr Deputy Speaker, Sir, this Bill is creating an offence. It is not an offence *per se*, it is not a sort of strict liability offence. It is an offence which is being created here, which will be subject to enquiry, because it is a criminal offence. It is not that we are giving the power to the Chairperson or the Vice-Chairperson or whoever is chairing the Tribunal to, on his subjective opinion, condemn, to convict or to fine a person. It is only creating an offence. All the procedures of criminal law, all the procedures, which are there in our Statute Books, will apply.

Having said that, Mr Deputy Speaker, Sir, it is only - I will use the words of the hon. Leader of the Opposition - that it is a laudable initiative by this Government, because this is the second Tribunal which we are creating. As I said, the third one is in the pipeline; 12 institutions are being put together into three different distinct institutions. So, this can only be a positive action, Mr Deputy Speaker, Sir.

May I end by thanking the hon. Vice-Prime Minister who has helped a lot in the preparation of the Bill. Also my friend, Yatin Varma, who has worked a lot on this Bill and also I must thank the officers from the State Law Office who have worked on this Bill.

With these words, Mr Deputy Speaker, Sir, I commend the Bill to the House.

Question put and agreed to.

Bill read a second time and committed.

COMMITTEE STAGE

(The Deputy Speaker in the Chair)

The Revenue and Valuation Appeal Tribunal Bill (No. XI of 2013) was considered and agreed to.

On the Assembly resuming with the Deputy Speaker in the Chair, the Deputy Speaker reported accordingly.

Third Reading

On motion made and seconded, the Revenue and Valuation Appeal Tribunal Bill (No. XI of 2013) was read the third time and passed.