

Debate No. 18

Oral Answer to Questions - 18 June 2003

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MCB/NPF FRAUD – REFUND

The Leader of the Opposition (Dr. N. Ramgoolam) (*By Private Notice*) asked the Minister of Social Security, National Solidarity & Senior Citizens Welfare and Reform Institutions whether, in regard to the MCB/NPF fraud and the refund by the MCB of the sum owed to the NPF, he will state –

whether the refund was unconditional and, if not, the conditions attached thereto;
charges made against the NPF and its officers by the MCB in its main case and the response of the NPF;
amount currently invested by the NPF with the MCB; and
whether the NPF will review its business with the MCB in the light of these charges.

Mr Lauthan: Mr Speaker, Sir, let me first state that the responsibility for investment of NPF funds rests with the NPF/NSF Investment Committee. Prior to August 2001, an NPF/NSF Investment Committee was set up administratively to advise the Minister of Finance on the investment of surplus funds. In August 2001, the National Pensions Act and the National Savings Fund Act were amended to create statutorily the NPF and NSF Investment Committee and transfer to it the power to determine the manner in which any surplus remaining in the NPF and the NSF might be invested.

Both the Government Actuary's Department of the United Kingdom and the World Bank have recently commented positively on the investment performance of the Funds. In spite of that, Government has decided to commission a study to assess the management of the NPF, including investment management, and to carry out a valuation of its portfolio. The terms of reference of the study require the consultants to comment *inter alia* on the quality and effectiveness of existing investment policy guidelines at the NPF, and make recommendations for improvement. Any decision on the review of the Investment Committee will be taken in light of the study.

As regards investment policy, the Act requires the Investment Committee to take into account the following when making investment decisions –

- (a) need for an appropriate level of liquidity in the Funds;
- (b) the need to secure the future value of the Funds;
- (c) the need for national development; and
- (d) any advice received from the NPF Board.

To ensure that these requirements are complied with, the Investment Committee has prepared Investment Strategy and Guidelines for investment in various sectors and instruments. The Guidelines also spell out security requirements and benchmarks for performance appraisal.

As regards part (a) of the question, the refund of Rs881.5 m. already made, there was no condition attached. However, the MCB informed that the refund was being made on a without prejudice basis, and that it reserved the right to take any appropriate action, if need be, against any person concerned.

As regards part (b), the charges made against the NPF and its officers by the MCB in its main case are as follows –

- (i) failing to take any or any proper step to control and verify its fixed deposits at the Plaintiff;
- (ii) failing to request for standard Fixed Deposit Certificate;
- (iii) depositing Schedules of Investments on sheets of paper without deposit reference number;
- (iv) failing to follow up instructions as to the placement of funds at the Bank of Mauritius and the Plaintiff;

pecting renewal conditions of fixed deposits well after the maturity date of the said fixed deposits; and
idering more possible the siphoning off and fraudulent misappropriation of funds at the Plaintiff.

The response to the abovementioned charges is being drafted in consultation with the State Law Office. It would not be advisable to make any comments on the matter at this stage.

Concerning part (c), the only amount currently invested with the MCB is the Rs100 m. fixed deposit, which was renewed in November 2002 for a period of two years maturing on 31 October 2004.

As regards part (d), as I have mentioned earlier, Government has already commissioned a study that should enable decisions to be taken pertaining to investment strategies for NPF as a whole. Furthermore, I am informed that it has always been the practice to constantly review the business of the NPF not only with the MCB, but with any other commercial banks, to ensure that, at all points in time, the NPF secures the best bargain.

Dr. Ramgoolam: I thank the hon. Minister for answering all the questions. He said that the bank has refunded the money, but has stated that it would be without prejudice and that it reserves the right to sue anybody. First of all, the Minister of Finance, himself, gave a guarantee to the population that the MCB, which was a solid bank, would refund all the money it owed to the NPF; every single cent would be refunded. This was done many times. The MCB, itself, said on 20 February that – this is why I ask the question –

"Ces montants, avec les intérêts y relatifs, totalisent quelque R 866 millions, et seront restitués aux clients dès vérification".

Then, on the next day, they again said –

"Nous allons assumer pleinement nos responsabilités".

In other words, *retourner l'argent*.

On 23 February, they said again –

"Il est clairement établi que la banque a la responsabilité de retourner l'argent à son client".

Then, on 28 February, they said –

"We also wish to restate our understanding to shoulder our responsibilities towards the customers, including the NPF, but it is clear, in the light of recent developments, that the bank must reserve its rights on that matter".

This is what the Minister now confirms in his answer. I put a PNQ on 18 March to the Rt. hon. Prime Minister and I pointed out about this letter that had just come out. This is what the Prime Minister said –

"We have insisted that the whole amount, capital plus interests, be paid at one go. The bank has agreed on this, and they are working on it".

When I asked the Prime Minister whether he was aware of a letter from the bank to the shareholders, implying that they were reviewing their position, the answer was: □The bank has agreed that they will pay interests up to the time when the money is going to

be reimbursed". I took the Rt. hon. Prime Minister on his word, that is, the bank has agreed to pay, without conditions. Now, they are saying 'without prejudice' and that they would reserve the right to sue anybody. So, what is the guarantee that the NPF will not have to refund back part of the money, one way or the other?

Mr Lauthan: Mr Speaker, Sir, I suppose that this is the usual legal jargon - I am not a legal man - refunding such a huge sum of money and, at the same time, referring to the various communiqués the Bank, being the number one and very credible bank, wanted, first of all, to guarantee the refund. At the same time the Bank said that this should not be understood as if it is taking the responsibility for anything that might have happened. I think this is the usual precaution that they inserted in the letter. In fact, they eventually did reimburse the capital plus the interest.

Dr. Ramgoolam: The last letter of the Bank said that in the light of recent developments, the Bank reserved the right, in other words, there were recent developments. The recent development that the Bank is talking about is that they feel, for example, that officers - I do not want to mention names - may have acted improperly and, therefore, they will see if there has been fault on the NPF side, they might not be responsible to refund all the money and that the burden would have to be shared. That is why I want a clarification. Can he give a guarantee that this will not happen?

Mr Lauthan: Mr Speaker, Sir, the inquiry is still on. It is too early to preempt the findings of the inquiry. So, I do not think it would be proper to comment any further as the inquiry is still on.

Dr. Ramgoolam: I do not want to prejudice the inquiry, but since the Bank changed its Opposition in a way, first they said that they would return the money, the Prime Minister, the Minister of Finance and the Bank itself gave the guarantee and then they said "in the light of the recent developments". We all know what they were saying when they said "in the light of the recent developments", they thought that the NPF did not act properly. Therefore, if the fault is on the other side, why should they refund the money? That is what they are saying. Can the Minister confirm this?

Mr Lauthan: Mr Speaker, Sir, I don't think there was any change in their attitude. They gave the guarantee verbally in the first instance as everybody is aware. But from the Ministry's side, we wanted at some point in time to have a clear written commitment on black and white. Then, of course, when it came to the issue of an official document, they inserted this proviso. But I do not think they ever changed their attitude before or after.

Dr. Ramgoolam: When I was asking the question, the Rt. hon. Prime Minister was kind enough to give us a copy of the last letter that the Bank gave. We had apprehensions, he laid a copy on the Table of what the Bank gave, which says that they are not in the possession - I will not read the letter - but they want to determine the interest rate and they need all the various documents from the NPF and those which have gone to ICAC. That letter was dated 17 March 2003. Can he lay on the Table of the Assembly the last letter sent where it is mentioned "without prejudice" and they give the right to sue?

Mr Lauthan: Mr Speaker, Sir, the Leader of the Opposition has got the letter.

Dr. Ramgoolam: I mean the last letter.

Mr Lauthan: I do not have it with me, but I do not have any problem to lay it on the Table of the Assembly.

Dr. Ramgoolam: Mr Speaker, Sir, that letter that I am reading from is the letter dated 17 March 2003, which the Rt. hon. Prime Minister deponed on the Table of the Assembly. I want the next letter where they said that they would keep the right without prejudice and all that.

Mr Lauthan: There is no problem about it. By the way the sum has completely and totally been refunded.

Mr Dulloo: Mr Speaker, Sir, the hon. Minister has just referred to the Investment Committee and the guidelines. The last time that I asked him a question, he referred to Section 38 of the Act. May I ask him now whether it is possible to place the guidelines on the Table of the Assembly so that we could follow what are those guidelines that have been issued recently on which the Investment Committee would have to work?

Mr Lauthan: There is no problem, Sir. I am laying the guidelines for both the NPF and NSF.

Dr. Boolell: Will the Minister state whether the inquiry started by the Commissioner of Police has been completed?

Mr Lauthan: I have already stated that the inquiry is still on; and everybody reads it in the papers every day.

Dr. Boolell: No, Sir. The inquiry is still on, but the Ministry has remained indifferent to the problem.

(Interruptions)

This is a fact. In the meantime, no decision was taken to ensure proper monitoring of placement of NPF/NSF Fund. I would like to ask the Minister whether provision would be made in the legislation to ensure that a specialist in actuary is recruited to monitor proper placement of NPF Fund.

(Interruptions)

Mr Speaker: Hon. Boolell, you are having a discussion with the hon. Deputy Prime Minister. I do not want any cross talking.

Mr Lauthan: I have already announced in press conferences, in joint meetings with the Board etc. that we have taken a lot of additional measures. The staff has been reinforced by two qualified persons, etc. but I won't go into details and give the impression that we had any responsibility. However, the inquiry will establish where the responsibility lies and as a precautionary measure, we have taken some decisions to reinforce our auditing team.

Dr. Boolell: I can't understand why, in the meantime, in spite of fraudulent practices, no amendment has been brought to the legislation yet. This should have been brought as a matter of urgency, knowing perfectly well that in the past...

Mr Speaker: Hon. Boolell, you have put a question, you want to know why legislation has not been brought yet. Let the Minister reply. You should not make a speech.

Mr Lauthan: Mr Speaker, Sir, I have talked about the very important study being made. We are looking at all the aspects of the Fund, the investment strategy, etc. We cannot go piecemeal and amend the Act like this. We will come to the House in due course when we'll be in the presence of the report of this very important step.

Dr. Boolell: In the light of this management of the Fund, knowing perfectly well that Rs50 m were flushed down the drain in respect of the investment made in the La Vigie housing project, we all know that. Now, we have the NPF/MCB financial scandal which, of course, has tarnished the reputation of this country. Can I ask the Minister whether it is the policy of this Government to constantly hide behind reports which are going to be

conducted? Why is it that the Minister does not come with appropriate amendments to the legislation to ensure proper monitoring of the NPF Fund?

Mr Lauthan: Mr Speaker, Sir, so many years they have been in Government and they never thought it right to do that sort of study. I must point out to the House that we decided to do that study long before the scandal broke out. So, we are a responsible Government.

Mr Dulloo: Mr Speaker, Sir, the recent report of the actuaries was very clear and they indicated that there is a clear conflict as far as the two guidelines are concerned, that is, to maximise the return, the need for security, the need for national development and they've asked that this matter be looked into seriously. May I ask the hon. Minister whether - in the review that is being done right now - he is seriously considering those two matters to ensure that there is no such conflict of interest and to come, therefore, with the relevant amendments of the legislation to the House?

Mr Lauthan: Sir, the Investment Committee is independent and has got its own entity. The decisions are taken at the level of the Investment Committee and we can't just interfere at any point with its decisions.

Mr Dulloo: The Minister does not seem to understand and to appreciate the urgency of the situation right now when billions of rupees of the workers are at stake. Coming back to the dispute between the MCB and the NPF, may I ask him - in the light of the magnitude of the scandal of allegation of fraud and corruption, and especially in the light of the conflict of interest now existing between the MCB and the NPF, in the light of the charges that they have made in Court and in public - whether it would not be in the interest of the NPF and also for the sake of transparency, for the public that immediately the NPF should have removed all its deposits from the MCB, especially the Rs 100 m. to which he has referred.

Mr Lauthan: Mr Speaker, Sir, there is no conflict of interest. My hon. friend is speaking of conflict of interest as a lawyer. The MCB has its stand and we will take our stand in due course. We have, I think, up to 02 or 03 October to present our case. So, we will take our stand. There is no conflict of interest. All these aspects will be looked into with the forthcoming study.

Dr. David: Mr Speaker, Sir, can we know from the Minister who else is conducting the inquiry apart from ICAC? Is there any Police inquiry?

Mr Lauthan: As far as we know, the ICAC is still....

Dr. David: Apart from ICAC, who else is conducting the inquiry?

Mr Lauthan: I am not aware.

Dr. David: Mr Speaker, Sir, the Minister just said following a question asked by hon. Boolell that the inquiry from the Police is still on. Now, he adds that apart from ICAC, he doesn't know what other body is conducting the inquiry. Can the Minister clear up the confusion in his mind?

Mr Lauthan: There is no confusion at all, Mr Speaker, Sir. It is hon. Boolell who talked about Police inquiry. I said that the inquiry at the ICAC is still on.

(Interruptions)

Dr. David: This is why, Mr Speaker, Sir, I don't want to use the word "misleading", but I want to know whether apart from ICAC, there is another body conducting the inquiry. The Minister said: yes, Police inquiry is still on.

Mr Lauthan: I never said Police inquiry, Mr Speaker, Sir. I said

Dr. David: The hon. Minister said that the inquiry is still on.

(Interruptions)

Mr Speaker: Where do you think you are? Both of you cannot stand at the same time.

Dr. Ramgoolam: Can I clarify, Mr Speaker, Sir. Again, I come to this letter which is without prejudice and leaving the right to sue. If tomorrow it is found that there has been on the NPF side....

Mr Speaker: Sorry, hon. leader of the Opposition. Unfortunately, this is hypothetical. You cannot put questions on the basis of assumptions.

Dr. Ramgoolam: All right, I will rephrase the question. I will ask it differently. He has read all the charges that the MCB has put against the NPF and the officers of the NPF, including dereliction of duty. Now, with these charges being there, does he not think that it would be proper to take out the Rs100 m. that is left at the MCB and put it somewhere else? Can he still go on and be more *royaliste que le roi* and leave the money there?

Mr Lauthan: Mr Speaker, Sir, this is a fixed deposit and it will mature in 2004. At the same time, the whole country knows what has happened.

(Interruptions)

Mr Speaker: Order! Hon. Dulloo, please!

Mr Lauthan: At the same time, we can't send such a message as if we don't absolutely have any confidence in that bank. Such a huge sum of Rs800 m. has been refunded. Now, we have a fixed deposit of Rs100 m. Why should we be that scared? As far as we are concerned, it is a fixed deposit and we are in presence now of the necessary certificates, we don't have any problem.

Dr. Ramgoolam: I remind the Minister that he ought to be scared because this is public money, this is the money of some 550,000 employees.

(Interruptions)

It is their money, but we have allowed the money to be there and we have had the problem of fraud.

(Interruptions)

Let's not forget it is public money. It is there, but the Minister is in charge of the NPF. There is an Investment Committee where public officials are involved. So, let's not make a mistake as if this is a private company. It is not a private company. Can I ask the Minister whether he is aware - just to be careful of what he is saying - for example that the MCB is suing other banks, including the State Bank of Mauritius, the Barclays Bank and the Hong Kong Shanghai Bank.

(Interruptions)

No, but we must know on what basis it is suing the banks. It is suing the banks, in very strong terms, because they have honoured cheques from the MCB. In other words, the banks have honoured office cheques from the MCB. It is suing the banks on that basis. That is a dangerous precedent.

Mr Speaker: Hon. leader of the Opposition, can you allow me?

Dr. Ramgoolam: I am not asking....

Mr Speaker: No. I allowed part (b) of the question to be put, although the main case is before the Court. Being given that the question asked information, as a matter of fact, I allowed this question. But now if you go into the merits of the case, discussing what is going to happen in that case, it would be against the *sub judice* rule. So, we better abstain from going further in that direction.

Dr. Ramgoolam: I agree with your ruling, but I don't want to prejudice the case. What I am asking is not prejudicial. I am asking to be careful, because the MCB is suing three well-known banks in this country for having honoured the cheques of the MCB. The Minister is saying: why do we have to be scared. I think we have to be scared, because these three banks have actually issued statements and made conferences to say that it is very unbecoming of a bank to refuse normal banking practice, that is, they recognise cheques from another bank. That is the normal practice everywhere. So, you don't think

...

(Interruptions)

Because the NPF money is there my friend! Is the Minister of External Affairs deaf, blind or what? The money is there. That is why we are asking the question on behalf of the 550,000 people.

(Interruptions)

Mr Speaker: Order, please!

Mr Lauthan: Nous ne pouvons pas discuter ici le problème de la MCB avec d'autres banques. C'est leur problème, mais par rapport au NPF, *the decision rests with the Investment Committee.*

Mr Dulloo: The hon. Minister says everybody knows what has happened in this case. ICAC is still inquiring. So, I ask him whether...

Mr Speaker: I don't understand your attitude. Whenever you feel like talking, whenever you feel like saying anything, you just say it. Where do you think you are? Mind you!

Mr Dulloo: I am sorry, is this addressed to me, Mr Speaker, Sir?

Mr Speaker: It was for hon. David.

Mr Dulloo: Not to me. I am sorry. I was interrupted. I am asking the hon. Minister since he says that everybody knows what has happened, nobody knows as yet what has happened. So, may I ask the hon. Minister whether he is excluding all possibility of the MCB entering legal action against the NPF and, therefore, he says that he cannot, at this stage, as a Government, give firm directives in order to protect the interests of the pensioners who are contributing to that Fund?

Mr Lauthan: M. le président quand je disais que *everybody knows what has happened*, je ne parle pas des dessous de l'affaire. Il y a eu un scandale. Il y a eu la disparition d'une somme d'argent. C'est tout ce que je voulais dire. Par rapport à ce qui va se passer, nous sommes satisfaits avec les dispositions qui ont été prises pour veiller à la sécurité de l'argent, surtout avec la réforme de la pension que jamais l'Opposition n'a osé y toucher.

Mr Dulloo: Mr Speaker, Sir...

Mr Speaker: You have got one last minute. If the leader of the Opposition would like to ask any question, he can do so.

Mr Dulloo: Mr Speaker, Sir, there have been very serious allegations of criminal offences made by the MCB against the NPF, including allegations of syphoning off and misappropriation of Funds by the responsible officers of the NPF. So, I am asking the Minister whether in the light of the various charges - let alone the question of investment, guidelines and all that to change the approach - whether there has been an internal inquiry on those various allegations or whether the Police has been invited to inquire on these very serious allegations of fraud which may involve embezzlement, forgery and even swindling. Specially, the fact that he has expressed satisfaction concerning the management of the Funds and all that, he has not given us the criteria for examining the management of the Funds. I ask him the question whether there is an internal inquiry about those charges and whether the Police has been made to inquire on all those criminal offences and allegations made in Court and outside.

Mr Lauthan: Mr Speaker, Sir, I have said in my reply that there has been consultation and reinforcement of the accounting and auditing team, etc. We are not going to divulge anything in terms of the charges. We are liaising with the State Law Office to prepare our stand, if the need arises later on.

Dr. Ramgoolam: The hon. Minister mentioned the Investment Committee at the NPF and the NSF, which advises the Minister of Finance. He must realise that they have a fiduciary duty to act on behalf of this...

(Interruptions)

That's what he said in his answer...

(Interruptions)

That's what he answered. Correct him. That's what he said at the beginning. In any case, this Committee has a fiduciary duty to ensure that the money is well placed and is guaranteed with this letter of "without prejudice and the right to sue"? Can he give a guarantee to the House that this money, that has been refunded, is now safe with the NPF and that there is no risk for the other Rs100 m. that is with the Bank? That is all I want to know.

Mr Lauthan: Mr Speaker, Sir, for the information of the hon. Leader of the Opposition, I wish to say that the money is safe and has already been reinvested - I can give him the details if he so wishes - to the tune of Rs839.1 m. invested in treasury bills; Rs21.4 m. invested in Government bonds and Rs21 m. invested in foreign equities.