



REPUBLIC OF MAURITIUS

SIXTH NATIONAL ASSEMBLY**PARLIAMENTARY****DEBATES****(HANSARD)****FIRST SESSION****SATURDAY 14 MARCH 2015**

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MAURITIUS

Sixth National Assembly

FIRST SESSION

Debate No. 11 of 2015

Sitting of 14 March 2015

The Assembly met in the Assembly House, Port Louis at 2.00 p.m.

The National Anthem was played

(Madam Speaker in the Chair)

PAPERS LAID

The Prime Minister: Madam Speaker, the Papers have been laid on the Table -

A. Office of the Speaker

The Report of the Standing Orders Committee.

B. Prime Minister's Office –

Certificate of Urgency in respect of the Construction Industry Development Board (Amendment) Bill (No. II of 2015). (In Original)

C. Ministry of Local Government –

- (a) The City Council of Port Louis (Fees for Classified Trades) (Amendment) Regulations 2015 (Government Notice No.19 of 2015).
- (b) The District Council of Moka (Fees, Dues and other charges for Classified Trades) (Amendment) Regulations 2015 (Government Notice No. 20 of 2015).
- (c) The District Council of Flacq (Fees, Dues and other charges for Classified Trades) (Amendment) Regulations 2015 (Government Notice No. 21 of 2015).
- (d) The District Council of Grand Port (Fees for Classified Trades) (Amendment) Regulations 2015 (Government Notice No. 22 of 2015).
- (e) The District Council of Black River (Fees for Classified Trades) (Amendment) Regulations 2015 (Government Notice No. 23 of 2015).
- (f) The District Council of Rivi  re du Rempart (Fees for Classified Trades) (Amendment) Regulations 2015 (Government Notice No. 24 of 2015).

PUBLIC BILL*First Reading*

On motion made and seconded the Construction Industry Development Board (Amendment) Bill (No. II of 2015) was read a first time.

*Second Reading***THE CONSTRUCTION INDUSTRY DEVELOPMENT BOARD (AMENDMENT)****BILL****(NO. II OF 2015)**

Order for Second Reading read.

(2.10 p.m.)

The Minister of Public Infrastructure and Land Transport (Mr N. Bodha):

Madam Speaker, I move that the Construction Industry Development Board (Amendment) Bill be read a second time.

The Bill comes at a time when Government is committed to reviewing existing legislations with a view to improving upon existing provisions and introducing new provisions to meet the exigencies and realities of the economic sectors. It is our duty, Madam Speaker, to redress the situation and create a proper conducive legal environment for the different economic sectors to develop and to contribute to the economic growth of the country.

Madam Speaker, however, the construction industry is viewed, as we know, as a very dynamic sector. The growth rate of the industry has plummeted from 11% in 2008 to 9.4% in 2013, and subsequently to 6.7% over the last year. This situation has become alarming over the past two years and this is adversely impacting on the economic and social development of our country.

Madam Speaker, the importance of the construction industry is found not only in infrastructure developments, but also in the creation of employment in the country. The construction industry in itself employs around 50,000 people, representing almost 10 per cent of the working population, and over the last 10 years it has been contributing to an average of 6 per cent of our GDP. As we know, economic development is much needed, and the construction industry will help to give a boost to the economic development agenda of the Government.

However, Madam Speaker, year in and year out, the construction industry has to face a number of challenges and it has to evolve in an ever-changing economic, social, technological and legal environment. It, therefore, requires constant adjustment. Thus, all the sectors in the construction industry will have to be properly regulated. Members of the House may be aware that already all the professions in the construction industry ranging from professional architects, professional engineers to professional quantity surveyors are regulated. The last Council of Quantity Surveyors has been recently constituted, Madam Speaker. The different Acts provide for defined bodies that regulate and control the professions and promote advancement in their respective fields. Likewise, there is a need to regulate consultants and contractors.

Such provisions, Madam Speaker, find its place in the Construction Industry Development Board Act. In fact, the CIDB Act 2008 sets the legal framework which, amongst others, regulates and registers providers of construction works and construction services, be it consultants or contractors. However, the relevant sections of the Act pertaining to the registration of consultants and contractors were not timely proclaimed due to the fact that appropriate regulations were not made.

Madam Speaker, it took the preceding Government almost six years to come forward with the required regulations. It is only last year, more precisely on 01 August 2014, that the CIDB (Registration of Consultants and Contractors) Regulations came into operation. Consultants and contractors were then given a transitional period of six months ending 31 January 2015 to be registered with the CIDB.

However, Madam Speaker, by that date, it is surprising to note that 60 consultants out of a number of 200 and 100 contractors out of around 1500 have so far apply for registration. Thus, most of them are not yet registered and are, therefore, in an illegal situation while bidding and implementing large infrastructural projects. Should we have recourse to the current legislation and apply the provisions of the law, they would not be able to operate, with the result, Madam Speaker, that quite a fairly large number of employees of these consultants and contractors would be laid off and find themselves in a very difficult financial situation, and also such action might impede the implementation of important public infrastructure works.

In fact, Madam Speaker, consultants and contractors are reluctant to register as this would imply that they would have to comply with a number of criteria which would, ultimately, determine their real capabilities in undertaking contracts for infrastructural projects. Furthermore, a grading system has been introduced allowing contractors to

undertake construction contracts up to a certain amount in accordance with their experience and capabilities.

Madam Speaker, however strong the reluctance for registration on the part of the consultants and the contractors is, this could be offset by a degree of acceptance on their part of the legislative requirement to which they would have to comply.

Madam Speaker, with the new amendments being proposed mainly for the extension of the transitional period to allow consultants and contractors to register themselves with the CIDB, and in line with the directive of the Public Procurement Office issued to public bodies requesting them to invite bids for construction works and services only from those registered consultants and contractors, then these consultants and contractors who have not registered themselves with the CIDB will be compelled to do so.

Madam Speaker, in this spirit, I am confident that all of them will have no alternative than to comply with the provisions of the law and register themselves if the deadline for registration of consultants and contractors is extended. We are being flexible enough to redress the situation which has been allowed to prevail over the years due to a laissez-faire attitude of the previous Government.

Thus, Madam Speaker, the need to bringing necessary amendments to the CIDB Act.

Madam Speaker, the main object of the Bill is to amend the CIDB Act to, amongst others, –

- (i) provide that a firm or a person that or who was providing consultancy services, or undertaking construction works, in Mauritius immediately before 01 August 2014 may continue to provide consultancy services or undertake construction works for such period as may be prescribed, without being registered as a consultant, contractor, foreign consultant or foreign contractor, as the case may be;
- (ii) provide for a change in the definition of ‘foreign contractor’ and ‘foreign consultant’, and
- (iii) provide for the review of the composition of the Construction Industry Development Council.

Madam Speaker, I shall now explain in details the amendments being proposed to the CIDB Act.

As the law stands today, a foreign consultant is defined in section 2 of the Act as a firm which provides consultancy services in the construction industry, and the control of which is vested in a person with relevant professional qualifications who is a non-citizen and

is not a resident of Mauritius. However, the Act also currently provides in section 2 (3) that an entity incorporated and that has been operating in Mauritius as a consultancy firm for an aggregate period of 4 years during the 10 years preceding the coming into force of the Act shall not be considered as a foreign consultant, but as a local consultant.

Likewise, Madam Speaker, a foreign contractor is defined in the same section 2 of the Act, in the case of an individual, as a contractor who is a non-citizen and is not a resident of Mauritius and who carries out construction works in the construction industry. The Act defines also a foreign contractor as a firm, the control of which is vested in a person who is a non-citizen and is not a resident of Mauritius and that carries out construction works in the construction industry. Thus, a contractor for an aggregate period of four years during the 10 years preceding the coming into operation of the CIDB Act shall not be considered as a foreign contractor, but as a local one, according to the law today.

Therefore, Madam Speaker, the definition given to the terms 'foreign consultant' and 'foreign contractor' are not proper. Thus, a non-citizen who is a resident in Mauritius by virtue of a residence permit and who controls a consultancy or contracting firm will not to be considered as a foreign consultant or contractor, but as a local consultant or contractor. There would be no distinction between local consultants, local contractors and these foreigners.

Madam Speaker, this Government cannot allow an unfair practice to prevail as the main difference between a local consultant and contractor and a foreign consultant and contractor is that the local ones are given registration on an annual basis whereas the foreign ones are granted registration on a project basis in two stages, namely a provisional registration before bidding for a project and a temporary registration upon award of the contract for the project and for the duration of the implementation. That is, under one case it is for a year and under the other case it is only project wise.

Madam Speaker, therefore, the first amendment being proposed is to delete the words 'is not a resident of Mauritius' in the definition of foreign consultant and foreign contractor.

The second amendment which is being proposed in section 2 of the CIDB Act, Madam Speaker, is with respect to subsections (2) and (3). These subsections were introduced in the CIDB Act in 2008, so as to consider those foreign consultants and contractors who have been operating for long in Mauritius as local consultants and contractors.

However, this Government has at heart the interest for our local consultants and contractors. We have, therefore, decided that there will be no privileged treatment given to

these consultants and contractors who have been operating in Mauritius prior to February 1999.

In this respect, Madam Speaker, it is proposed to repeal subsections (2) and (3) and to replace these provisions by a new subsection (3). Thus, these companies who have been registered prior to February 1999 shall apply for registration like any other company.

The third amendment to the CIDB Act concerns the composition of the Construction Industry Development Council. At the time of the constitution of the Construction Industry Development Council, all the three professional councils, namely the Council of Registered Professional Engineers, the Professional Architects Council and the Professional Quantity Surveyors' Council were not yet established. It is considered that these professional bodies should absolutely now be represented on the Construction Industry Development Council in view of their importance in the construction industry.

Madam Speaker, it is, therefore, proposed that a representative of each of these professionals be represented on the said Council in replacement of those professional associations, namely the Institution of Engineers of Mauritius, the Mauritius Association of Quantity Surveyors and the Mauritius Association of Architects in view of the fact that these councils are better structured now and operate under a legal framework. Thus, the Mauritius Institute of Surveyors, the Mauritius Standards Bureau, the Ministry responsible for the subject of Employment and the Ministry responsible for the subject of Human Resources Development are being replaced by the Ministry of Environment and the Ministry of Local Government as these two Ministries have a very direct interest and involvement in the construction industry.

The fourth amendment concerns the quorum of the Council in section 9 of the Act. Since the composition of the Council is being reviewed, there is need to review the quorum from seven members to six members, Madam Speaker.

Madam Speaker, the next amendment is with respect to section 19. In fact, when granting a registration to a contractor, the CIDB determines which class of works, grades and areas of specialisation are to be allocated to that contractor. Whilst the class of works and the grade apply to all contractors, the areas of specialisation on the other hand apply to specific cases where the contractor can demonstrate that it has specialised knowledge and skills to undertake such types of construction works. Hence, the words, I quote –

‘where applicable’

are being added after the words, I quote –

‘areas of specialisation’

to specify clearly that these would be allocated only where applicants justify it in cases.

Madam Speaker, the last amendment concerns section 37, which I have already explained earlier. In fact, the amendment to this section is of utmost importance as it is providing for an extension of the transitional period for registration of consultants and contractors which has already expired on 31 January 2015 and which is depriving almost 80 per cent, as I said, of the consultants and contractors the opportunity to register with the CIDB.

Madam Speaker, these amendments to the CIDB Act would, no doubt, facilitate the registration of consultants and contractors. It would also provide for a more comprehensive legislation to enable the CIDB to fulfil its role more diligently with effectiveness and efficiency.

Madam Speaker, the registration of consultants and contractors would consequently allow the compilation of a national register of consultants and contractors. These registers would serve as useful information to Government as one of the biggest clients in the construction industry, but also to the public at large.

Madam Speaker, let me now highlight a few benefits of the registration of consultants and contractors -

- (i) the register of consultants and contractors would contribute a single source of information on consultants and contractors, thus reducing wasteful duplication by clients and improving transparency;
- (ii) it would recognise the performance and capabilities of consultants and contractors in the field they are registered for and this would enhance their prospects of success as well as their status with clients and other stakeholders;
- (iii) it would save clients the costs and efforts of investigating a large number of inappropriate tenders whilst also saving the consultants and contractors the costs of bidding for inappropriate projects. It will also reduce their cost in the evaluation of bids;
- (iv) it would enhance the rate of success in delivery by matching the capabilities of consultants and contractors with appropriate works opportunity thereby reducing risks, providing confidence throughout the industry, and ensuring greater continuity of works to capable consultants and contractors;
- (v) it would enhance the ability of the consultants and contractors to identify suitable partners for joint venture initiatives, and

- (vi) the register of consultants and contractors would also provide a framework upon which training, capacity building, continuous development programmes and policy guidance could be developed.

Madam Speaker, overall the registration of consultants and contractors is going to have a substantial impact on the construction industry and would help to improve the bidding process, service delivery in the sector and the way consultants and contractors undertake construction projects.

Madam Speaker, I would go the extent of saying that the industry needs better regulations in the light of recent events where projects costing Rs100 m. have failed, and we are now investigating who is responsible. Furthermore, we should be able to see to it that projects are implemented to obtain value for money and that variations should be the exception and not the rule as has been the case in the past years. This is why we should regulate all the professionals who operate in the construction industry.

Therefore, Madam Speaker, it is necessary to amend the CIDB Act to allow the CIDB to undertake the registration of consultants and contractors in the best interest of the construction industry.

Madam Speaker, I now commend the Bill to the House.

Mr Sawmynaden rose and seconded.

Mr Uteem: Madam Speaker, I move that the debate be now adjourned.

Mr Baloomoody rose and seconded.

Question put and agreed to.

Debate adjourned accordingly.

ADJOURNMENT

The Prime Minister: Madam Speaker, I beg to move that this Assembly do now adjourn to Friday 20 March 2015 at 2.00 p.m.

The Deputy Prime Minister rose and seconded.

Question put and agreed to.

Madam Speaker: The House stands adjourned.

At 2.27 p.m. the Assembly was, on its rising, adjourned to Friday 20 March 2015 at 2.00 p.m.