

MAURITIUS

Fifth National Assembly

FIRST SESSION

Debate No. 24 of 2011

Sitting of Saturday 12 November 2011

The Assembly met in the Assembly House, Port Louis,

At 11.00 a.m

ORAL ANSWER TO QUESTION

MBC – MRS REHANA AMEER - DISMISSAL

The Leader of the Opposition (Mr P. Bérenger) (*by Private Notice*) asked the Prime Minister, Minister of Defence, Home Affairs and External Communications whether, in regard to industrial relations at the Mauritius Broadcasting Corporation, he will state if –

- (a) the report of the Fact Finding Committee, chaired by Mr Denis Vellien and set up in June 2011 to inquire into the dismissal by the Corporation of Mrs Rehana Ameer, the then President of the Mauritius Broadcasting Corporation Staff Association, has been submitted to him and, if so, indicate –
 - (i) the date thereof, and
 - (ii) if consideration will be given for the rendering public thereof; and
- (b) he will consider rendering public the earlier report of Professor Torul thereon.

The Prime Minister: Mr Speaker, Sir, on 25 August 2010 Mrs Ameer, who held the post of Traffic Officer at the Mauritius Broadcasting Corporation, was interdicted from duty, following an investigation by the Management of the Corporation into the circulation of an anonymous letter containing what was considered to be highly defamatory allegations against several members of the staff of the Corporation.

Following a departmental enquiry instituted in accordance with the MBC rules and regulations made under the MBC Act, a Disciplinary Committee was set up. Mrs Ameer had the opportunity to be assisted at the hearings of this Committee by a lawyer and the President of the Federation of Parastatal Bodies and Other Unions.

In the light of the findings of the Disciplinary Committee, the Board of the Corporation decided to dismiss Mrs Ameer from the service of the Corporation on 02 December 2010.

After her dismissal, though Mrs Ameer could have had recourse to the Industrial Court for redress; she opted to report a dispute to the Commission for Conciliation and Mediation requesting her reinstatement. However, acting on the legal advice tendered by the Legal Advisers, the Corporation did not attend the conciliation and mediation meetings convened by the Commission.

In the light of the several comments and observations that have been made in public, I decided, in June 2011 to set up a Fact Finding Committee under the chairmanship of Mr Denis Vellien, former Magistrate of the Intermediate Court to establish all the facts and circumstances leading to the dismissal of Mrs Ameer from the Corporation and to submit a report thereon.

The Fact Finding Committee held 12 sittings from 22 June of this year to 28 July of this year and heard the Chairman on the MBC Board, Mr Claude Narain and other Board Members. The Committee also heard Mr Dan Callikhan, Director General of the MBC and its Legal Advisers namely Mr d'Unienville, QC and Mr Mardemoootoo. They also heard Mrs Soborun, Deputy Director General, Mr Luckraz, Team Leader of the Human Resources and Corporate Services, Mr Gopee, Director of the Office of Public Sector Governance and Mrs Ameer and her Legal Advisers, Mr Stephen and Mr Ramano. Additionally, the Management of the MBC, Mrs Ameer as well as the Ministry of Labour, Industrial Relations and Employment submitted several documents to the Committee, in relation to the case.

The Fact Finding Committee submitted its report to me on 03 October 2011.

In this report the Fact Finding Committee has found, *inter-alia* that -

- (i) Industrial relations were tense between the Management of the MBC and the Trade Unions;
- (ii) the Board and Management of the Corporation were being constantly subjected to anonymous letters and the MBC considered that it had to take actions to contain that practice;
- (c) the MBC instituted disciplinary proceedings in conformity with the MBC Act and MBC Regulations and, acting on legal advice, the Corporation carried on with disciplinary proceedings and considered that it was under no legal obligation to attend the meeting convened by the Commission for Conciliation and Mediation;
- (d) after the Disciplinary Committee has completed its proceedings, the MBC Board did not take into account, over and above the Report of the Disciplinary Committee, certain mitigating factors;
- (e) the Fact Finding Committee has also commented on certain aspects of what it terms as unfairness in the investigation that led to the dismissal of Mrs Ameer;

- (f) before the Disciplinary Committee, the stand that was taken by Mrs Ameer in respect of a charge of defamation against the Director-General of the MBC was grossly misconceived and untenable in law;
- (g) Mrs Ameer gave several versions in respect of the charges preferred against her, and was of the view that her credibility had been impaired by the absence of detained explanations.

Mr Speaker, Sir, the Fact Finding Committee made proposals for amending section 11 of the MBC Act, because its application, coupled with existing MBC Regulations, result in significant unfairness, that is, the law, as it stands, makes the MBC judge and party.

The Fact Finding Committee has also recommended that the Employment Rights Act be amended, so that an employer may not proceed with disciplinary proceedings and dismiss an employee if that employee has chosen in the meantime to report a dispute to the Commission for Conciliation and Mediation.

In the light of those findings, I have called the Director-General of the MBC to consider whether it would not be in the in the interest of the smooth functioning of the organisation for Mrs Ameer to be convened by the MBC, to see what are the possible solutions on humanitarian grounds. I am not intending to depone the two reports. The Torul report, I had said in the past, Mr Speaker, Sir, will not be deponed, because - perhaps I had not said it - certain witnesses had deponed on the strict condition that their anonymity and evidence would be preserved. I think I had indicated this.

As for the Fact Finding Committee, the reason I set up the Fact Finding Committee was that it could assist me, the person who had asked for the report, to be better informed to come to a conclusion, because we were hearing different versions. That is what I have done so far.

I am hopeful that the MBC will be calling Mrs Ameer soon, and discuss what possibilities there are.

Mr Bérenger: It seems that the Fact Finding Committee has taken the management of MBC to task on several points, and yet the hon. Prime Minister suggests, as a way forward, that the same MBC should convene Mrs Ameer and discuss with her. I don't think it is the right way forward. We hear that the Fact Finding Committee made recommendations for amending the

MBC Act, the Employment Relations Act. Can I ask the hon. Prime Minister whether it made a recommendation for the reinstatement for Mrs Ameer?

The Prime Minister: No, it did not make a recommendation for her reinstatement. In fact, the Fact Finding Committee is critical of both of them, and it didn't make any such recommendation.

Mr Bérenger: Hearing between the lines, it seems that the MBC was taken to task on several points, without precise recommendation being made. Can the hon. Prime Minister tell me whether the Fact Finding Committee had access to the verbatim tape-recording of the proceedings of the Disciplinary Committee? Because the trade unionists, the lawyer and Mrs Ameer could not get access to that.

The Prime Minister: My belief is that they did, Mr Speaker. In fact, they criticised the MBC, and one of the issues is that they did not give the full verbatim report. It was a summary of the report, and they were critical of the MBC on that. They wanted to see the whole verbatim report. I don't know whether they heard tape.

Mr Bérenger: Did the Fact Finding Committee come to the conclusion that Mrs Ameer was targeted in her capacity as a trade unionist?

The Prime Minister: They did not actually say that, although they say that there were different versions. If they had looked at it properly, they should have seen that she was acting as a trade unionist instead of acting on her own, because she did say to somebody that she wanted to have a meeting organised by the trade union. That seems to have escaped some of the people on the Board when they were looking at it, although, as I said, she also gave different versions, which did not help at the beginning.

Mr Bérenger: I think I heard the hon. Prime Minister say that the Fact Finding Committee came to the conclusion that, as the MBC Act stands at present, the MBC management is called upon or the Board to act as judge and party. Did the Fact Finding Committee in that respect comment on the fact that the new Chairperson of the Board also chaired the Disciplinary Committee; therefore, removing his hat as Chair of the Disciplinary Committee to put his hat as Chair of the Board, thus acting, as the Fact Finding Committee says,

as judge and party? To me, that behaviour is totally unacceptable. Was it commented upon by the Fact Finding Committee?

The Prime Minister: Yes, in fact, it was commented by the Fact Finding Committee. That is why they said that, in the name of fairness, you cannot be judge and party at the same time. However, that's why they said we should look at the MBC Act, because section 11(3) of the MBC Act says -

“Subject to subsection 4, a Committee shall consist of -

- (i) the chairman, and
- (ii) members selected by the Board

and to be presided by the Chairman and, in the absence of the Chairman, any member elected from among the members.”

The MBC Act, obviously, has to be relooked at. This has been there for a long, long time, but we need to look at that in the light of what Mr Vellien has said.

Mr Bérenger: Did the Fact Finding Committee make comments on the way the Disciplinary Committee carried out it works, blaming some, blaming the chair, and commenting on the performance of the legal advisers of the MBC?

The Prime Minister: They made comments on both sides of legal advice. For example, they say that they do not agree on certain things that Mr d’Unienville said. At the same time, they did not agree also on the stand taken by the legal advisers of Mrs Ameer.

Mr Bérenger: Did the Fact Finding Committee make comments on the MBC's Director-General’s refusal to appear before the Conciliation and Mediation Commission?

The Prime Minister: Yes, they did make comments. But it also says that they acted upon their legal advice that they did not have to go in front of that committee. That is why there are areas which need to be relooked at, I believe. That is why I think he has made some suggestions.

Mr Bérenger: I think I heard the hon. Prime Minister say that neither reports are going to be made public, unfortunately, but especially the one by Professor Torul on industrial relations at the MBC in general. We can delete the names of the employees who deponed on the condition that their names should not be mentioned. There is no problem deleting that. Does not the hon.

Prime Minister think that, to be fair to Mrs Ameer, and to know what really was going on before she was dismissed, there is a need to make public the report of Professor Torul and of the Fact Finding Committee, but especially Professor Torul, deleting the names of witnesses?

The Prime Minister: My understanding is that, in the Torul report, some witnesses have said that they only want their names but the evidence not published. But I will take legal advice on both issues.

Mr Bérenger: I am saying that, because Professor Torul, a cool head, must have made lots of comments on industrial relations at the MBC, from what I understand. The dismissal of Mrs Ameer was not without *precedent*. There have been dismissals; there has been a very bad mood at the MBC. Therefore, is the hon. Prime Minister prepared to consider deleting the names of witnesses and making public Professor Torul's report?

The Prime Minister: In principle, this should have been maybe the way to go forward but, since they said they don't want the evidence also to be public, I will take legal advice and inform the House.

Mr Jugnauth: Does not the hon. Prime Minister think that, after having taken cognizance of the report that, instead of asking the MBC to try to come to a possible solution, he should, in fact, direct the MBC for a possible solution, especially in the light of the case of the former Human Resource Manager at the MDFP, whereby there was a disciplinary committee, was found guilty, was dismissed, but then Cabinet took the decision ...

Mr Speaker: No! There is no need for the hon. Member to make reference to another case. He can just put his question whether the Prime Minister considers that or whatever it is.

Mr Jugnauth: There is a difference in the treatment that is being meted to the other party.

Mr Speaker: I am sorry. The hon. Member is making a speech.

Mr Jugnauth: So, in the case of one party, such a treatment was meted, why could there not be a decision taken by the hon. Prime Minister?

The Prime Minister: Maybe I was not clear enough. This is what I have told the MBC, they must find a solution one way or the other.

Mr Bhagwan: Sir, I have raised that issue myself on many occasions, also in a PNQ. The Prime Minister has used two terms, the term ‘unfairness’ and also he has used the term: ‘tense industrial situation’. Here, we have been talking about the MBC for months, about this case and other cases.

Is the Prime Minister aware that these days there is another case like that of Mrs Ameer? It’s the same type, a repetition, where another Chairperson has been sent in exile to Rodrigues for one year and, now again, as a punishment, he has been asked to go for another year, and that very competent person has had to resign from the MBC/TV. Doesn’t the hon. Prime Minister think that it is now in the public interest, in his own interest that Mr Callikhan be sacked at the MBC/TV?

The Prime Minister: I don’t want to go into the sacking of Mr Callikhan, but we have to look where we can improve the situation ...

(Interruptions)

Sometimes you need to have somebody who is ...

(Interruptions)

Mr Speaker: No! The hon. Member has put the question; let’s listen to the hon. Prime Minister.

The Prime Minister: I must tell the hon. Member, I am sure the hon. Leader of the Opposition when he was Prime Minister must have – I always get an anonymous letters which I shred. It’s not nice to have anonymous letters where you are actually working and this very often. That also we must look at. That is why the situation has deteriorated. I should also add that Mrs Ameer also wrote to the Permanent Secretary of my Office to ask for some help - I don’t want to go into details - which we have looked into. We have written back to her.

Mr Baloomoody: It’s clear from the reply of the hon. Prime Minister and the report on the Fact-Finding Committee that the basic principle of natural justice was not followed in this particular case. There has been unfairness with regard to the investigation. There has been mitigation. Factors have not been taken into consideration and now we know that there is tension between the parties. Can I ask the hon. Prime Minister whether Government, itself, will intervene

in this particular case, like they did in the case of Mauritius Telecom and the Bank of Mauritius where trade unionists were suspended and Government intervened personally?

Can I ask, instead of having these parties to meet - more than a month has gone now ...

Mr Speaker: Carry on!

Mr Baloomoody: ...whether Government, itself, will intervene to ensure that justice is done to Mrs Ameer.

The Prime Minister: When the Committee refers to the unfairness, it is particularly on the fact that not all the evidence was given; it was a summary of the evidence. He thinks that was wrong; and also of the fact that they were acting as judge and party. That is as it is in section 11 of the MBC Act which we need to change obviously. He is critical of Mrs Ameer; I don't want to go into details. That is why I have asked them - since both have been criticised - if they do not come to some form of agreement, I will certainly have to step in.

Mr Bodha: Mr Speaker, Sir, may I ask the hon. Prime Minister to enlighten us on the mitigating factors which have been brought forward in the report and whether the Prime Minister is not aware that the trade unions have asked for some financial assistance and contribution because of the dire state in which Mrs Ameer is? In the light of the unfairness, in the light of the mitigating factors and on humanitarian grounds, he can direct the MBC to reinstate the employee?

The Prime Minister: I have explained just now. I have added that she has written to my Permanent Secretary asking for help on two things: on mutual aid and on the Prime Minister's Relief Fund. Both of them, we are looking at. We have sent her forms to be filled. Hopefully, she will fill it. I will look at that sympathetically, because if somebody needs help, we will help. As for the mitigating factors, one of the things is that: for example, the MBC took the view that she was active; they did not take the view that she was as a trade unionist, but there were conflicting versions that could have led to that conclusion. It's later on that she said - and it was confirmed - that she did talk to somebody and asked for a trade union meeting. That completely escaped the MBC. These are the kind of mitigating factors that she didn't take into account, but the Committee also said that her credibility has also been impaired because of this.

Mr Obeegadoo: Mr Speaker, Sir, we have heard hon. Bhagwan. Given that the Fact-Finding Committee seems to be a vindication of a long list of complaints by the trade unions as to the totally unsatisfactory state of industrial relations at the MBC, being given that we have had public statements from the Minister of Labour, complaining as to the attitude of the Director-General of the MBC in regard to industrial relations and this particular case, does the Prime Minister intend to take to task management of the MBC, its Director-General, concerning industrial relations at the MBC, and if not, please tell the nation why not?

The Prime Minister: I don't go into the running of the MBC, but I must say also that there must be discipline. In any place we must have discipline, so we have to look at the whole picture, not do as if, on one side, they are doing everything wrong and, on the other side, they are all angels. We have to look at both sides. That is what I am saying.

Mr Jhugroo: Can the hon. Prime Minister inform the House whether, in the past, any employee of the MBC has been sacked for any case and has been reinstated in his previous post?

The Prime Minister: If I have a substantial question, I will refer into whoever it is.

Mr Bérenger: I have a question if you would allow me. I don't agree at all with the way forward that the hon. Prime Minister is suggesting. But is he, in fact, suggesting that Mrs Ameer should appear before the guilty party himself, Mr Callikhan, the Director-General of MBC? Is she to appear before him? Is that the way forward?

The Prime Minister: No that is not what I said. I asked the MBC to see, but I suppose the Chairperson would be the right person to look into the matter because he is outside this.

(Interruptions)

He is not directly involved in this, otherwise I could ask for some other people to look at it taking all into consideration.

Mr Speaker: The Prime Minister will ask somebody else to look at this; if necessary.

Mr Bérenger: Mr Speaker, Sir, my good friend, hon. Veda Baloomoody just referred to cases where trade unionists were targeted, dismissed, especially at the Mauritius Telecom, but also the Bank of Mauritius, but especially the case at Mauritius Telecom. Then Government, Prime Minister stepped in; they were reinstated and freedom of trade unionism was reinstated there.

Can I appeal to the hon. Prime Minister, instead of making that lady who has been suffering for a full year now - it's now an additional humiliation to go and appear before the same management or even Board. It is even worse in the case of the Chairperson. He chaired the Disciplinary Committee and he is blamed clearly. Both the Director-General and the Chairperson are clearly blamed by the Fact-Finding Committee. Can I appeal to the hon. Prime Minister in the name of Mauritius, our image, that that lady be reinstated at the MBC?

The Prime Minister: As I said, the report criticises both. We are forgetting on the other side. We are just saying - he does not use the word 'guilty' but he said that there have been mitigating factors, but were not taken into account; there have been judge and party; that Mrs Ameer's credibility has been impaired. It is on both sides. But I take positively what the hon. Leader of the Opposition is saying that perhaps we might have to relook at it instead of her going there. I will do that.

Mr Speaker: Next item!