

[IN THE PRIVY COUNCIL]

1962 Present : Viscount Radcliffe, Lord Evershed, Lord Jenkins,
Lord Devlin, and Mr. L. M. D. de Silva

THE ATTORNEY-GENERAL, Appellant, and M. G. J.
MICHAEL DE LIVERA and another, Respondents

Privy Council Appeal No. 6 of 1961

S. C. 31 A-B—D. C. (Criminal) Colombo, N 1939

*Bribery Act (No. 11 of 1954)—Section 14 (a)—Bribery of a member of Parliament—
Quantum of evidence—" In his capacity as such member "—Ceylon (Constitution)
Order in Council, 1946, ss. 18, 27, 46, 49 (2)—Parliament (Powers and Privileges)
Act (No. 21 of 1953), ss. 7, 8.*

Section 14 (a) of the Bribery Act (No. 11 of 1954) runs as follows :—

" A person—

(a) who offers any gratification to a judicial officer, or to a member of either the Senate or the House of Representatives, as an inducement or a reward for such officer's or member's doing or forbearing to do any act in his judicial capacity or in his capacity as such member,

shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years or a fine not exceeding five thousand rupees or both. Provided, however, that "

Held, that, where the facts show clearly that a member of Parliament has come into or been brought into a matter of Government action that affects his constituency, that his intervention is attributable to his membership and that it is the recognised and prevailing practice that the Government Department concerned should consult the local M. P. and invite his views, the action that he takes in approaching the Minister or his Department is taken by him " in his capacity as such member " within the meaning of Section 14 (a) of the Bribery Act.

In interpreting the meaning of the words of the Bribery Act which speak of the capacity of a member of the House of Representatives it is proper to draw any assistance that can be obtained from practices, conventions or rulings that govern the conduct of members of the House of Commons of the United Kingdom. Although the Constitution of Ceylon is laid down by a written instrument, unlike that of the United Kingdom, this distinction is not of any significance for the determination of what is the " capacity " of a member of Parliament in either country.

APPEAL, with special leave, from a judgment of the Supreme Court reported in (1960) 62 N. L. R. 25.

Neil Lawson, Q.C., with *Dick Taverne* and *M. Kanagasunderam*, for the appellant.

E. F. N. Gratiaen, Q.C., with *S. Nadesan, Q.C.*, *Godfrey le Quesne* and *Bala Nadarajah*, for the 1st accused-respondent.

No appearance for the 2nd accused-respondent.

Cur. adv. vult.

November 5, 1962. [Delivered by VISCOUNT RADCLIFFE]—

This appeal raises for decision a single point: What is the proper interpretation of the words "in his capacity as such member" which appear in Section 14 (a) of the Ceylon Bribery Act (No. 11 of 1954)? The "member" referred to is a member of the Senate or the House of Representatives and the section, as amended by the addition of a proviso that was added in 1956, runs as follows:—

" A person—

- (a) who offers any gratification to a judicial officer, or to a member of either the Senate or the House of Representatives, as an inducement or a reward for such officer's or member's doing or forbearing to do any act in his judicial capacity or in his capacity as such member, or
- (b) who, being a judicial officer or a member of either the Senate or the House of Representatives, solicits or accepts any gratification as an inducement or a reward for doing or forbearing to do any act in his judicial capacity or in his capacity as such member,

shall be guilty of an offence punishable with rigorous imprisonment for a term not exceeding seven years or a fine not exceeding five thousand rupees or both :

Provided, however, that it shall not be an offence under the preceding provisions of this section for any trade union or other organization to offer to a member of either the Senate or the House of Representatives, or for any such member to accept from any trade union or other organization any allowance or other payment solely for the purposes of his maintenance. "

The respondents were found guilty in the District Court of Colombo of offences under this section, the first respondent, de Livera, of having offered a gratification to a Mr. Munasinghe, member for Chilaw in the House of Representatives, and the second respondent, Fernando, of having abetted the offence. They were sentenced to terms of rigorous imprisonment for 9 and 6 months respectively. These convictions were set aside on appeal to the Supreme Court of Ceylon by a judgment dated 12th April, 1960, the learned Judges of that Court being of opinion that the gratification offered to Mr. Munasinghe by the first respondent was not offered to him as an inducement for doing any act in his capacity as a member of the House of Representatives.

From this judgment, which no doubt has implications of some importance for political and constitutional questions in Ceylon, the Attorney-General of Ceylon has appealed to this Board by special leave. The first respondent was, the second respondent was not, represented at the hearing of the appeal.

The question is not one that is covered by any previous judicial authority. Their Lordships have not derived any aid to its solution from the several decisions that were canvassed in argument or are noticed in the Supreme Court judgments. In their view its answer depends ultimately upon the special facts proved at the trial.

A member of the House of Representatives in Ceylon derives his constitutional status from the Ceylon (Constitution) Order in Council, 1946, which prescribed the existing Constitution of the Island. The system thereby established is that of a bi-cameral legislature in the form of a Parliament, which itself consists of the Sovereign, represented by the Governor, the Senate and the House of Representatives; an independent Judiciary; and an Executive, the powers of which are vested in the Governor. The general direction and control of government are, however, entrusted to a Cabinet of Ministers under a Prime Minister, and the Cabinet is by section 46 of the Order declared to be "collectively responsible to Parliament". Moreover, Section 49 (2) provides that a Minister must cease to hold his office at the expiration of any period of four consecutive months during which he has not been a member of either Chamber. Thus the Constitution is explicitly designed to secure the subordination of the Executive to the Legislature through their common meeting ground in the procedures of Parliament and, although there are many variations in matters of detail, its general conceptions are seen at once to be those of a Parliamentary democracy founded on the pattern of the constitutional system of the United Kingdom.

With immaterial exceptions, members of the House of Representatives are elected as such by electoral districts which are provided for by Part IV of the Order in Council. So far as this Order itself goes, there is nothing in it that lays down either the powers or the duties of a member, except that Section 18 inferentially confers the right of voting in the Chamber by enacting that any question proposed for decision for either Chamber is to

be determined by a majority of votes of those members present and voting. There is also a section, S. 27, which deals with the privileges of the Senate and House of Representatives by declaring (sub-section 1) that "The privileges, immunities and powers of the Senate and House of Representatives and of Senators and Members of Parliament may be determined and regulated by Act of Parliament, but no such privileges, immunities or powers shall exceed those for the time being held or enjoyed by the Commons House of Parliament of the United Kingdom or of its Members".

The affinity between the Parliamentary conceptions and practices of the United Kingdom and of the Island of Ceylon is underlined by two further considerations. The Parliament (Powers and Privileges) Act (No. 21 of 1953), which was enacted under the authority of Section 27, contained among other provisions two sections, sections 7 and 8, of which one declared that the House and its members should have, in addition to privileges, immunities and powers conferred by the Act, the same immunities as those enjoyed by members of the House of Commons in the United Kingdom, and the other enacted that in any enquiry touching the privileges, immunities and powers of the Ceylon Parliament or its members, an authorised printer's copy of the Journals of the House of Commons or of its proceedings or of a report of one of its Committees should be received in evidence without further proof. Further, the Standing Orders of the House of Representatives are closely modelled on the detailed procedures of the United Kingdom House of Commons and the influence of passages in Erskine May's "Parliamentary Practice" can be traced with certainty both in the 1953 Act and in the Standing Orders.

Their Lordships think that what has been said is sufficient to show that in seeking to interpret the meaning of the words of the Ceylon Bribery Act which speak of the capacity of a member of the House of Representatives it is proper to draw any assistance that can be obtained from practices, conventions or rulings that govern the conduct of members of the House of Commons of the United Kingdom. The Constitution of Ceylon, it is true, is laid down by a written instrument, unlike that of the United Kingdom, but this distinction is not in their view of any significance for the determination of what is the "capacity" of a member in either country. It is not the purpose of the 1946 Order in Council to set out or lay down any list of the functions of an elected member of Parliament beyond providing for the constitutional means of bringing such persons into existence and for their right as a body to legislate through the medium of a majority vote. It would be misleading therefore to confine the idea of a member's capacity entirely within the limit of those activities which the written Constitution specifically notices as falling within his constitutional function, in effect the sole activity of voting upon motions or resolutions of his Chamber. The

Standing Orders themselves envisage a wider range of action as appropriate to an individual member, as, for instance, the presentation of petitions to the Chamber, the institution of motions and the putting of questions for answer by the Prime Minister, Minister or Parliamentary Secretary. All these specific activities are certainly tied to what takes place in proceedings on the floor of the House: but Their Lordships are satisfied that in determining what a member does in his "capacity as such" within the meaning of those words in the Bribery Act the answer must be found in what can be learnt of the constitutional conventions and practices of the day rather than by exclusive reference to the wording of the Constitution or the Standing Orders of the House or any similar document.

Their Lordships have thought it right therefore to take account of such consideration as has been given to this matter in connection with the House of Commons of the United Kingdom as well as to ascertain the practices and conventions ruling in Ceylon. In fact no direct assistance is obtainable from the United Kingdom. The words used in the Ceylon Bribery Act "in his capacity as such" have not presented themselves in that form to the House of Commons, although it is likely that they are themselves an echo of some words that appear in Erskine May's "Parliamentary Practice" (see, for instance, the current 16th Edition of Erskine May at pp. 122, 124). What has come under inquiry on several occasions is the extent of the privilege of a member of the House and the complementary question, what is a "proceeding in Parliament"? This is not the same question as that now before the Board, and there is no doubt that the proper meaning of the words "proceedings in Parliament" is influenced by the context in which they appear in Article 9 of the Bill of Rights (1 Wm. and Mary, Sess. 2, C.2); but the answer given to that somewhat more limited question depends upon a very similar consideration, in what circumstances and in what situations is a member of the House exercising his "real" or "essential" function as a member? For, given the proper anxiety of the House to confine its own or its members' privileges to the minimum infringement of the liberties of others, it is important to see that those privileges do not cover activities that are not squarely within a member's true function.

Thus, even in recent years, this question has come under debate: in the *Sandys* case in 1938, in the *Allighan* case and the *Strauss* case since the last war; and, though the occasion does not seem to be noticed in the current edition of Erskine May, in *Henderson's* case in 1945. It would not be useful to examine those debates or proceedings in any detail, since it would be impossible to extract from them any settled constitutional principle that could be regarded as governing the circumstances of this appeal. Views to some extent in conflict with each other have been expressed on different occasions and in the most recent, the *Strauss* case, the vote of the House was not in accordance with the opinion of its Committee of Privileges or of that of the Select Committee which considered the *Sandys* case in connection with the Official Secrets Act. The most perhaps that can be said is that, despite reluctance to treat a member's

privilege as going beyond anything that is essential, it is generally recognised that it is impossible to regard his only proper functions as a member as being confined to what he does on the floor of the House itself. In particular, in connection with his approaches to or relations with Ministers, whether or not on behalf of one of his own constituents, it is recognised that his functions can include actions other than the mere putting down and asking of a Parliamentary question. Indeed, in the *Strauss* debate, speakers, though differing on the issue whether a member approaching a Minister on a departmental matter affecting his constituency was taking part in a proceeding in Parliament, were at one in thinking that he would be performing his duty as a member in so acting. *Henderson's* case, moreover, can only be regarded as directly recognizing that the privilege of Parliament extends beyond the activities of questioning, voting or debate. For there the Committee of Privileges (see Reports of Committees 1945, III, at p. 615) reported in terms that are sufficiently relevant to the case under appeal to justify quotation :—

“ (Para. 2) . . . In the present case the letter invited the Member to take up a matter with a Minister. In such a case a Member need not, of course, raise the matter in Parliament, but he always can put down a question or raise the matter in other ways in the House, and it is mainly because a Member has this power that constituency cases are put to him.

“ (Para. 3). Your Committee have no doubt that an offer of money or other advantage to a Member in order to induce him to take up a question with a Minister would be a breach of privilege. . . . ”

Having said this much by way of preamble, Their Lordships are now in a position to address themselves to the facts of this appeal. They approach them on the basis, as they have now explained, that in considering whether the inducement offered by the first respondent to Mr. Munasinghe, the member for Chilaw, was offered to induce him to act in his capacity as such member, the inquiry is not confined to ascertaining whether he was to do something specifically assigned as a member's function in the Constitution Order or something which was actually a proceeding on the floor of or in the precincts of the House. They recognise that there are many things which a member may be invited to do because he is a member and enjoys as such a status and prestige which supply the motive of the invitation but in doing which he would not be acting in his capacity as a member. But, with this recognition made, they are of opinion that the circumstances of any particular case may show that in the light of prevailing practices or conventions observed by members of the House some act for which an inducement has been offered is sufficiently closely bound up with and analogous to a proceeding in the House as to be properly described as done by a member in his capacity as such.

A summary of the material facts of the case is contained in the judgment of Weerasooriya, J., delivered in the Supreme Court. There was no dispute about what had occurred and it is convenient therefore to

repeat without variation what was said in that judgment, the relevant part of which is as follows :—

“ At the material time Mr. Munasinghe was the Member for Chilaw in the House of Representatives. He was also the Chief Government Whip and General Secretary of the Sri Lanka Freedom Party. Vincent Estate is situated within his constituency and was owned by the 1st accused. On the 28th October, 1958, Mr. Munasinghe addressed to the Minister of Lands and Land Development the letter P1 strongly recommending as a matter of urgency the acquisition of the Vincent Estate for alienation to the inhabitants of certain villages in the Chilaw District who had been displaced from their homes as a result of floods. P1 bears the printed heading ‘ House of Representatives ’ and is signed by Mr. Munasinghe as ‘ M.P. Chilaw ’. At the time the Minister of Lands and Land Development, Mr. C. P. de Silva, was the authority empowered under the Land Acquisition Act, No. 9 of 1950, to initiate acquisition proceedings and to give the necessary directions in that behalf. The question whether Vincent Estate should be acquired or not was, therefore, primarily a matter for him.

On the representations contained in P1 the Minister decided that Vincent Estate should be acquired, and he gave the following directions to the Land Commissioner : ‘ For early action. M.P. Chilaw asks this land for alienation in $\frac{1}{2}$ acre lots for people who got ruined by the floods and those people of Chilaw town who have employment but no houses to live in. Please take acquisition proceedings immediately ’. Soon afterwards the Government Agent, Puttalam, called for a report from the Divisional Revenue Officer regarding the proposed acquisition. Before that report was received, the 1st accused who, presumably, had learnt of the steps that were being taken, saw the Government Agent. The object of the visit was clearly to dissuade the authorities from proceeding with the acquisition. The 1st accused told the Government Agent that the estate, in part, was itself liable to floods and therefore not suitable for a housing scheme. The Government Agent referred the 1st accused to Mr. Munasinghe as the Member of Parliament for Chilaw and the person who put forward the proposal to acquire the estate, and he also informed the 1st accused that the final authority on the question whether it should be acquired or not was the Minister of Lands and Land Development.

It is the evidence of Mr. Munasinghe that prior to the 19th December, 1958, the 1st accused was a stranger to him, but he had known the 2nd accused well from about 1947, when Mr. Munasinghe became Chairman of the Madampe Town Council, in which office he continued till 1956 except for a short break of about three months. During that period the 2nd accused was the Secretary of the Madampe Town Council and closely associated with Mr. Munasinghe, whom he often visited in his bungalow. At the time of the alleged offences, however, the 2nd

accused was the Secretary of the Puttalam Urban Council while Mr. Munasinghe was residing in Kelaniya. It may be inferred that the 1st accused knew the 2nd accused and also the latter's previous association with Mr. Munasinghe. According to Mr. Munasinghe, the 2nd accused came to his house in Kelaniya on the morning of the 19th December, 1958. The 2nd accused said that he came at the instance of the 1st accused, who was 'pestering' him for an introduction to Mr. Munasinghe, that the 1st accused was anxious that his estate should not be acquired and was prepared to give Mr. Munasinghe or his party or any person nominated by Mr. Munasinghe a present of money if the acquisition was stopped. Mr. Munasinghe stated that he requested the 2nd accused to come with the 1st accused at 7.30 p.m. on the same day and the 2nd accused went away promising to do so. In the meantime Mr. Munasinghe got in touch with the Police and it was arranged for some Police officers to be present in concealment at the house of Mr. Munasinghe within hearing distance of any conversation that would take place between him and the accused when they met in the evening. Mr. Munasinghe has stated in evidence that at that meeting the 1st accused offered him Rs. 5,000/- in cash to stop the acquisition, that he undertook to give the 1st accused on the 22nd December, at about 9.30 or 10 p.m., being the date and time fixed for their next meeting, a letter addressed to the Minister of Lands and Land Development withdrawing his earlier application for the acquisition of the estate, in return for which the 1st accused was to hand him the sum of Rs. 5,000/-.

On the 22nd December the Police were again present, unknown to the accused, when the latter came to see Mr. Munasinghe as arranged. On that occasion Mr. Munasinghe gave the 1st accused the letter P3 addressed to the Minister in which he withdrew his application for the acquisition of the estate, stating that it was not suitable for housing purposes as a part of it gets submerged during seasonal floods. P3 is written on notepaper bearing the printed heading 'Chief Government Whip' and is signed by Mr. Munasinghe as 'M.P. Chilaw'. The 1st accused took the letter and handed to Mr. Munasinghe a wrapped parcel, P6, containing the Rs. 5,000/-. As for the 2nd accused, apart from being present, he neither did nor said anything. When the accused were about to depart the Police officers came forward, disclosed their identity and took into custody, among other things, the letter P3 and the parcel P6."

It is plain from this account that Mr. Munasinghe played a dominating part in the proposal to acquire the Vincent Estate for the accommodation of the flood victims in the Chilaw District. It was he who initiated the proposal by his letter to the Minister of Lands and Land Development dated 28th October, 1958. He might indeed have taken this step from more than one standpoint of his personal position—as a prominent local man, as an active politician, general secretary of the Sri Lanka Freedom Party, even perhaps as Chief Government Whip. In fact, however, it

is to be noted that his letter was headed "House of Representatives" and his signature at the foot had added to it the words "M.P. Chilaw".

Their Lordships think that the evidence as a whole admits of only one conclusion, that Mr. Munasinghe himself and those dealing with him, including the first respondent, regarded his intervention in the Vincent Estate matter as attributable to his rights and duties as a member of the House of Representatives and not to any other aspect of his general public position; and in their view he was rightly so regarded. As soon as his letter was received by the Minister, the latter noted on it as the opening of his instructions to the Land Commissioner—"For early action—M.P. Chilaw asks this land for early alienation. . . ."

The Minister, evidently, recognised the propriety of the local member's intervention and, however much attention modern democratic theory may accord to Edmund Burke's address to the electors of Bristol and may agree that an elected member once elected is elected to act and vote as one of the representatives of the Commons as a whole, it would be absurd not to recognise that it also accords to him a special responsibility in representing the needs and concerns of his constituents to Ministers with whom he is or may be brought into contact in the relations between the elected assembly and the political executive. The prevailing practice and understanding in Ceylon, Their Lordships think, are shown clearly enough by the two passages of evidence which record (1) that when the first respondent first learnt of the proposal to expropriate the Vincent Estate, he went to see the Government Agent who referred him to "Mr. Munasinghe as the Member of Parliament for Chilaw and the person who put forward the proposal to acquire the Estate" and (2) that the Land Commissioner followed the practice of regularly consulting the local M.P. on such questions of acquisition. To quote from the evidence of Mr. Gunawardene, Land Commissioner, "As Land Commissioner, as soon as I receive the Government Agent's report stating that the land could be acquired I write to the M. P. of the area where the land is situated to find out his views and that is a matter of routine. We write to the M.P. of the area because generally as the representative of the people of the area he might be able to advise us".

Their Lordships cannot therefore accept the view of the Supreme Court that the prosecution has failed to prove that in writing P.1 or P.3 Mr. Munasinghe was acting in the exercise of any function as member of Parliament. It is not altogether clear to them whether this view is founded on an interpretation of the words "in his capacity as such" that limits their meaning more narrowly than Their Lordships themselves think correct or on a reading of the facts which leaves it uncertain what character Mr. Munasinghe had assumed in his intervention over the Vincent Estate. The judgments of the two learned members of that Court very likely give somewhat different weight to the varying elements of law and fact that are intermixed in the case. The judgment

of Sinnetamby, J., at any rate, seems to found itself on a proposition of law which is expressed in the following passage :—

“ In interpreting Section 14, therefore, it seems to me, one must first ask oneself whether the act for the doing of which a gratification is offered is one which the member of Parliament can only do because he is a member of Parliament. If so, it is something which he does in his capacity as such member. If it is something which he could have done even though he were not a member, the mere fact that he is a member does not bring the act within the purview of the section. In the result, in order to decide whether a person is acting in his capacity as a member of Parliament, one has first to ascertain what exclusive legal rights, powers, duties, privileges and so on attach to membership of Parliament. If the act falls outside the exclusive rights, powers, etc., of a member of Parliament, then one cannot say that he is acting in his capacity as such member ”.

With all respect to this clear enunciation of principle, Their Lordships are of opinion that it puts too limited a construction on the words of the Act and might in some cases result in defeating the intention expressed by those words. To make the result depend upon an inquiry into the range of the “ exclusive ” powers and duties of a Member of Parliament is likely to hang it solely upon the actual written provisions of the prevailing Constitution, and to do this may require a virtual ignoring of the plain facts of a particular case. Where the facts show clearly, as they do here, that a member of Parliament has come into or been brought into a matter of Government action that affects his constituency, that his intervention is attributable to his membership and that it is the recognised and prevailing practice that the Government Department concerned should consult the local M.P. and invite his views, Their Lordships think that the action that he takes in approaching the Minister or his Department is taken by him “ in his capacity as such member ” within the meaning of Section 14 (a) of the Bribery Act.

Their Lordships will humbly advise Her Majesty that the appeal should be allowed and that accordingly the judgment and order of the Supreme Court of Ceylon dated 4th April, 1960, should be reversed and the convictions recorded against the respondents by the judgment and order of the District Court dated 2nd May, 1959, should be restored. With regard to the sentences imposed by that Court as a result of the convictions (which were also the subject of appeal to the Supreme Court) Their Lordships think that a convenient and proper course is that the case should be remitted to the Supreme Court to consider what punishment is required in the interests of justice, having regard to the guilt of the respondents as now established. They will humbly advise Her Majesty accordingly.

Appeal allowed.