

**IN THE ANTI CORRUPTION DIVISION OF THE MAGISTRATE'S COURT AT
SUVA**

CRIMINAL JURISDICTION

Criminal Case No. MACD 04 of 2023

FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION

-v-

ANIRUDHA VASANTRAO BANSOD

Prosecution: Mrs Vaganalau. A of FICAC

Accused: Mr Sharma. D – R. Patel Lawyers

Date of Sentence: 7th August, 2024

SENTENCE

1. The accused was charged for the following offence;

AMENDED CHARGE

STATEMENT OF OFFENCE

ABUSE OF OFFICE: Contrary to section 139 of the Crimes Act of 2009

PARTICULARS OF OFFENCE

ANIRUDHA BANSOD between 1 August 2022 and 31 December 2022 at Suva, in the Central Division, whilst being employed in the civil service as the Chief Executive Officer of Post Fiji Pte Limited in the abuse of the authority of his office, did arbitrary acts, namely provided a false Confidentiality and Conflict of Interest Declaration for the tender of the Design, Development and Implementation of the Post Fiji Mobile Application and breached the confidentiality of the tender procedure which were acts prejudicial to the rights of Post Fiji Limited.

2. The matter proceeded to trial on 14/5/2024 and as few witnesses of the FICAC were left to testify the accused after consulting his counsel decided to change his initial not guilty plea to guilty on 29/5/2024.
3. The court found plea of guilty of the accused as unequivocal and convicted the accused on one count of the abuse of office contrary to section 139 of the Crimes Act of 2009.

Summary of facts – some excerpts from the admitted summary of facts

4. *The Accused commenced his employment as Chief Executive Officer (CEO) with Post Fiji Pte Ltd on 18th August 2019 for a term of 3 years. On 29 July 2022, a renewal offer was made to Mr. Bansod for a term of 2 years for the same position. On 23 September 2022, Mr. Bansod's contract of appointment as CEO of PFPL was renewed for a further 2 years as per the approval of the then Acting Prime Minister and Minister of Economy – Mr. Aiyaz Sayed Khaiyum.*
5. *The Accused held the position of CEO and was also the Chairman of the Tender Board Committee of PFPL at all times material to this case.*
6. *The Accused was a person employed in the civil service within the definition set out under Section 4 of the Crimes Act 2009, at all times material to this case.*
7. *PFPL is a government enterprise and the government owns 100% shares of the company. The accused was the CEO of PFL, whose appointment was made by the Board of Directors of PFPL. The Board of Directors of PFPL were created under section 30 of the Public Enterprise Act 2019 and by virtue of section 51 (1) of the same act, the Board is delegated with the authority to appoint its CEO. Therefore, the appointment of the accused as the CEO of PFL is governed by the above provisions which qualifies him to be a person employed in the civil service.*
8. *The Accused by continuing to act as the Chairperson of the tender committee, being part of the decision making process to approve the tender being awarded to Technobase IT Solutions and by failing to declare that he had a conflict of interest or potential interest in that he knew the bidding company and the Director of Technobase IT Solutions Pvt Limited, Mr. Deshpande, he ought to have declared this conflict of interest and thus abused the authority of his office.*
9. *The Accused acted in abuse of the authority of his office by communicating with Mr. Deshpande since signing the Confidentiality and Conflict of Interest Form as Mr. Deshpande was continuously asking him for updates on this tender process. This communication was in the form of WhatsApp messages between the Accused and Mr. Deshpande. The Accused was using mobile number: 679 9999648 and Mr. Deshpande was using mobile number: 919970180147.*

10. *The Accused breached the confidentiality of the tender procedure by continuously communicating with Mr. Deshpande throughout the tender process of this E-Wallet tender.*
11. *As allude to by PW 4, Mr. Ashneel Singh, all members of the tender board should declare if they have any conflict of interest in any of the bidders to ensure that the tender is carried out in a transparent manner and to avoid any fraudulent activities during and after the tender process.*
12. *The Accused was aware of this given that he was the CEO and the Tender Board Chairperson and he had the utmost responsibility to abide by the rules and the procedures for this tender process. Instead, the Accused breached the rules surrounding the conflict of interest declaration by engaging with Mr. Deshpande since the tender opened on 24 August 2022 and responding to queries on the progress in the tender process as well as the raising of the Purchase Order after the Agreement was signed with Technobase IT Solutions Pvt Limited. The relevant messages are set out above.*
13. *By providing a false declaration and breaching the confidentiality of the tender procedure, is deemed to have prejudiced the rights of PFPL. The failure of the Accused to declare that he knew Mr. Deshpande and the company Technobase IT Solutions Pvt Limited had prejudiced the rights of PFPL as the tender process for the E-Wallet tender was compromised given that the CEO, as the Chairperson of the PFPL tender committee had failed to declare his conflict of interest with Mr. Deshpande and the company Technobase.*

Objective of sentence and public interest

- 14.57. Section 4(1) of the Sentencing and Penalties Act inter alia identifies the following purposes which may be imposed by the Sentencing Court:

“(a) to punish offenders to an extent and in a manner which is just in all the circumstances;

(b) to protect the community from offenders;

(c) to deter offenders or other persons from committing offences of the same or similar nature;

(d) to establish conditions so that rehabilitation of offenders may be promoted or facilitated;

(e) to signify that the court and the community denounce the commission of such offences; or

(f) any combination of these purposes.”

Maximum Penalty

15. Section 139 of the Crimes Act of 2009 stipulates on the maximum penalty for the abuse of office as follows;

"139 - A person commits an indictable offence which is triable summarily if, being employed in the civil service, the person does or directs to be done, in abuse of the authority of his or her office, any arbitrary act prejudicial to the rights of another

Penalty – 10 years imprisonment

If the act is done or directed to be done for gain –

Penalty – 17 years imprisonment."

Current Tariff

16. In the matter of **FICAC v Ana Lagere & Others**, Criminal Case No. HAC 056 of 2014, High Court, Suva, on 10 May 2017, His Lordship Mr. Justice Rajasinghe reviewed previous cases on "abuse of office", that is, **Naiveli v The State**, Criminal Appeal No. 2 of 1992, Court of Appeal; **State v Kunatuba**, Criminal Case No. HAC 018 of 2006, High Court, Suva; **State v Sorovakatini**, Criminal Case No. HAC 018 of 2005, High Court, Suva; **State v Bola**, Criminal Case No. HAC 029 of 2005, High Court, Suva and **FICAC v Mau**, Criminal Case No. HAC 089 of 2010, High Court Suva.

17. His Lordship Mr. Justice Rajasinghe continued as follows in **FICAC v Ana Lagere & Others** (supra):

"24 In view of the above sentencing precedents, it appears that the courts of Fiji have considered the level of authority and trust reposed in the position held by the accused, and the level of prejudice caused to the victim in sentencing. If the level of authority and trust, and the prejudice caused are high, the court could go to the higher starting point and vice versa.

25. I would like to adopt the same approach in setting an appropriate tariff, allowing the sentencing court to determine the appropriate starting point based on the level of culpability and the prejudice/harm caused. Accordingly, I find a tariff limit of one (1) year to twelve (12) years would adequately serve the above purpose. The sentencing court could consider the following ranges of starting point based on the level of culpability and the harm caused;

	High Level of Culpability	Medium Level of Culpability	Lesser Level of Culpability
High Level of Harm/Prejudice with gain	8-12	6-10	4-8
Medium Level of Harm/Prejudice either with medium level gain or without gain	6-10	4-8	2-6
Lesser Level of harm/Prejudice either with less gain or without gain	4-8	2-6	1-4

26. *In order to determine the level of culpability, the court could consider the following factors; however, this is not an exhaustive list. They are:*

- a) *The level of contribution or the influence made by the accused in the commission of the offence,*
- b) *The level of authority, trust and the responsibility reposed in the position held by the accused,*
- c) *Has the accused influenced or pressured others to involve in the offence,*
- d) *Nature and the manner in which the offence was committed or planned,*
- e) *Number of victims,*
- f) *Whether the accused involved in the offence through force, coercion, exploitation or intimidation,*
- g) *Not motivated by personal gain,*
- h) *Opportunistic "one-off" offence with little or no planning.*

18. Tariffs acts a guide to maintain a consistent approach towards sentencing, however every case is decided on its own facts together with the aggravating and mitigating factors.

19. In adopting Mr. Justice Rajasinghe's suggested tariff, I will use the sentencing tariff between 2 to 6 years imprisonment based on the circumstance of offending together with the aggravating and mitigating factors.

Abuse of Office – Arbitrary act prejudicial rights of another defined in Common Law

20. In **Devo v Fiji Independent Commission Against Corruption [2017] FJSC 16; CAV0005.2017 (20 July 2017)** as succinctly defined doing an arbitrary act prejudicial rights of another follows;

*[22] In relation to whether the act complained was in abuse of authority of office, the Court of Appeal cited the decision of the Supreme Court in **Naiveli v The State** (CAV 001 of 1994 (20 November 1995) where it was held:*

“Central to the commission of an offence under S.111 is the doing or directing to be done of an arbitrary act, “in abuse of the authority of” the accused’s “office”. What differentiates something done in abuse of office from something not done in abuse of office in many cases will be the state of mind of the accused. An act done or direction given, which is otherwise within the power or authority of an office of the public service, will constitute an abuse of office if it is done or given maliciously with the intention of causing loss or harm to another or with the intention of conferring some advantage or benefit on the officer. They are just two instances of abuse of office. No doubt other instances may be given. But it would be unwise for us to attempt an exhaustive definition of what constitutes an abuse of office, to use a shorthand description of the statutory expression “abuse of the authority of his office.”

*[23] The interpretation given in **Naiveli’s** case (supra) is a clear exposition of the aspect of ‘abuse of authority’ which also reveals the fact that such instances of abuse of authority are very wide, incapable of a precise definition and would depend on the particular case in hand.*

[24] As regards to whether the act complained of was ‘prejudicial to the rights of another person’, the Court of Appeal stated as follows;

*“[24] This has been described by the Supreme Court in Fiji as an act, which would result in some advantage of favour to oneself, friends, relations, individuals or corporate (**Patel v FICAC** (CAV 007 of 2011 (26 August 2013) and **Qarase** (supra).*

21. The offence of abuse of office is designed to guide public office holders in Fiji in simple terms which is to do “the right thing in the right way.” The abuse of office charge is established by law to have criminal consequences if they are not followed.
22. Public office holders in authority holding powers are held to account for breach of public or institutional trust which could derail good governance, accountability and transparency.

23. It is equally important to note that a public official can breach public trust even if they don't gain any advantage for themselves but do an overt act by way of knowledge and conduct for someone else to gain an advantage over others. It is not always financial gain or loss, but a desire to see some getting an advantage over others.

Aggravating factors

24. The accused in this matter by providing false confidentiality and conflict of interest declaration that he knew no one at Technobase IT Solutions PVT Limited, when in fact he knew this bidding company's one key personnel grossly breached the trust which was bestowed upon him, and that was to act in the best interest of Post Fiji Limited at all times.

25. I further find that the accused holding the position of Chief Executive Officer of the Post Fiji Limited and Chairman of the tender committee with an attractive remuneration working against the best interest of his company by systematically communicating with one Vaibhav Deshpande from Technobase IT Solutions PVT Limited in regards to tenders.

26. The accused failed to declare his conflict of interest that he knew Vaibhav Deshpande of Technobase IT Solutions PVT Limited in India when in fact he was well acquainted with from before, yet he provided false confidentiality and conflict declaration that he knew no one from this bidding company.

27. The communication exchange between the accused and Vaibhav Deshpande through "WhatsApp" messages clearly shows how insider information of a Government Enterprise in leading up to the tender processes were leaked to Technobase IT Solutions PVT Limited in India.

28. It also important to note that the company policy was succinctly clear to declare any conflict of interest on all bidders by those on sitting on Post Fiji Limited board before the tenders were opened and awarded. The accused was given a form yet he went ahead and made false declaration that he knew no one from Technobase IT Solutions PVT Limited.

29. It is also important to note that in the end, the Technobase IT Solutions PVT Limited whose key personnel was well acquainted with the accused eventually got awarded the contract to provide services for e-wallet out of all other bidders.

30. Objectively, the accused being the CEO of a Government Enterprise eventually got what he intended, that the successful bidder be of his preference and that was Technobase IT Solutions PVT Limited from India. This preference amounts

to systematic and cleverly executed corruption by a CEO of a Government Enterprise working against the best interest of the company.

31. The rights of Post Fiji Limited being a Government Enterprise in selecting the best bidder in terms of quality and service delivery was therefore deprived off, since the accused's actions throughout the tender process evidently were not transparent.
32. The accused therefore as rightly pointed out by prosecution breached the trust of a Government Enterprise, which gave him powers to make good corporate decisions in the best interest of the company, but with full knowledge of his actions acted arbitrarily and contrary to law.

Mitigating Factors

33. Accused a first offender.
34. Accused eventually pleaded guilty at almost at the end of the prosecution case.
35. Accused is deeply remorseful of his actions.

Sentence

36. I take starting point 3 years of imprisonment.
37. For aggravating factors I enhance your sentence by 2 years imprisonment.
38. For mitigating factors such as being first offender I reduce your sentence by 2 years.
39. For guilty plea although not at your earliest, I further given you discount of 1 year and 6 months.
40. Final sentence stands at 1 year and 6 months imprisonment.

To suspend the sentence or not

41. In **State vs. Alipate Sorovanalagi and others, Revisional Case No. HAR 006 of 2012 (31 May 2012)**, Hon. Goundar J. reiterated the following guidelines in respect of suspension of a sentence at paragraphs 22 and 23:

"[22] I accept that the Magistrates' Court has discretion to suspend a sentence if the final term imposed is 2 years or less. But that discretion must be exercised judiciously, after identifying special reason to suspend the sentence. The special reason can vary depending on the facts of each case.

42. In **DPP v Jolame Pita (1974) 20 FLR 5**, Hon. Grant Actg CJ (as he then was) held that in order to justify the imposition of a suspended sentence, there must be factors rendering immediate imprisonment inappropriate. In that case, Grant Actg CJ was concerned about the number of instances where suspended sentences were imposed by the Magistrates' Court and those sentences could have been perceived by the public as 'having got away with it'. Because of those concerns, Grant Actg CJ laid down guidelines for imposing suspended sentence at p.7:

"Once a court has reached the decision that a sentence of imprisonment is warranted there must be special circumstances to justify a suspension, such as an offender of comparatively good character who is not considered suitable for, or in need of probation, and who commits a relatively isolated offence of a moderately serious nature, but not involving violence. Or there may be other cogent reasons such as the extreme youth or age of the offender, or the circumstances of the offence as, for example, the misappropriation of a modest sum not involving a breach of trust, or the commission of some other isolated offence of dishonesty particularly where the offender has not undergone a previous sentence of imprisonment in the relevant past. These examples are not to be taken as either inclusive or exclusive, as sentence depends in each case on the particular circumstances of the offence and the offender, but they are intended to illustrate that, to justify the suspension of a sentence of imprisonment, there must be factors rendering immediate imprisonment inappropriate."

43. In **Navuki v State [2022] FJCA 25; AAU038.2016 (3 March 2022)**, Hon. JA Bandara, enunciated on the issue of deterrence factor on sentencing by stating that:

*"[25] It is well established in common law that the task of sentencing may include the following considerations. An offender should be adequately punished for the offence and the principle of proportionality operates to guard against the imposition of unduly lenient or unduly harsh sentences. **Deterrence is, and remains omnipresent in sentencing law and it is axiomatic that the purpose of the criminal law is to deter not only the offender but also others who might consider breaking the law.** (emphasis added) To protect the community from the offender is another purpose of sentencing; however, a sentence should not be increased beyond what is proportionate to the crime merely to protect the community from the risk of further offending by the offender. Rehabilitation as a purpose of sentencing is aimed at the renunciation by the offender of his or her wrongdoing and the offender's establishment or re-establishment as an honourable law-abiding citizen. Making the offender accountable too is an important purpose of sentencing. To denounce the conduct of the offender is also treated as another purpose of sentencing which is to condemn the offender for his or her conduct....."*

44. On the issue of first offenders, I echo the sentiments of Nawana J in the case of **State v Tilalevu [2010] FJHC 258; HAC081.2010 (20 July 2010)** where His Lordship said that;

*"I might add that the imposition of suspended terms on first offenders would infect the society with a situation - which I propose to invent as '**First Offender Syndrome**' - where people would tempt to commit serious offences once in life under the firm belief that they would not get imprisonment in custody as they are first offenders. The resultant position is that the society is pervaded with crimes. Court must unreservedly guard itself against such a phenomenon, which is a near certainty if suspended terms are imposed on first offenders as a rule."*

Deterrence and Public Interest

45. Court notes that the offence of abuse of office is designed to safeguard the integrity of Government Institutions from systematic corruption and abuse of powers.

46. Therefore in the public interest and on the issue of deterrence, I have decided not to suspend your sentence.

47. **ANIRUDHA VASANTRAO BANSOD** you are sentenced to 1 year and 6 months custodial sentence effective forthwith from today.

48. You have 28 days to appeal to High Court.



Yogesh Prasad
Resident Magistrate

Dated at Suva this 7th day of August, 2024.