

CHAPTER IX - THE OMBUDSMAN

96. Office of Ombudsman

(1) There shall be an Ombudsman, whose office shall be a public office.

(2) The Ombudsman shall be appointed by the President, acting after consultation with the Prime Minister, the Leader of the Opposition and such other persons, if any, as appear to the President, acting in his own deliberate judgment, to be leaders of parties in the Assembly.

(3) No person shall be qualified for appointment as Ombudsman if he is a member of, or a candidate for election to, the Assembly or any local authority or is a local government officer, and no person holding the office of Ombudsman shall perform the functions of any other public office.

(4) The offices of the staff of the Ombudsman shall be public offices and shall consist of that of a Senior Investigations Officer and such other offices as may be prescribed by the President, acting after consultation with the Prime Minister.

97. Investigations by Ombudsman

(1) Subject to this section, the Ombudsman may investigate any action taken by any officer or authority to which this section applies in the exercise of administrative functions of that officer or authority, in any case in which a member of the public claims, or appears to the Ombudsman, to have sustained injustice in consequence of maladministration in connection with the action so taken and in which –

- (a) a complaint under this section is made;
- (b) he is invited to do so by any Minister or other member of the Assembly; or
- (c) he considers it desirable to do so of his own motion.

(2) This section applies to the following officers and authorities -

- (a) any department of the Government;
- (b) the Police Force or any member thereof;
- (c) the Mauritius Prison Service or any other service maintained and controlled by the government or any officer or authority of any such service;

- (d) any authority empowered to determine the person with whom any contract or class of contracts is to be entered into by or on behalf of the Government or any such officer or authority;
- (e) the Rodrigues Regional Assembly or any officer of the said Assembly;
- (f) any local authority or any officer of such local authority;
- (g) such other officers or authorities as may be prescribed by Parliament:

Provided that it shall not apply in relation to any of the following officers and authorities -

- (i) the President or his personal staff;
- (ii) the Chief Justice;
- (iii) any Commission established by this Constitution or its staff;
- (iv) the Director of Public Prosecutions or any person acting in accordance with his instructions;

(v) any person exercising powers delegated to him by the Public Service Commission or the Disciplined Forces Service Commission, being powers the exercise of which is subject to review or confirmation by the Commission by which they were delegated.

(3) A complaint under this section may be made by an individual, or by any body of persons whether incorporated or not, not being -

- (a) an authority of the government or a local authority or other authority or body constituted for purposes of the public service or local government; or
- (b) any other authority or body whose members are appointed by the President or by a Minister or whose revenues consist wholly or mainly of money provided from public funds.

(4) Where any person by whom a complaint might have been made under subsection (3) has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as specified in this subsection, a complaint shall not be entertained unless made by the person aggrieved himself.

(5) The Ombudsman shall not conduct an investigation in respect of any complaint under this section unless the person aggrieved is resident in Mauritius (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in Mauritius or in relation to rights or obligations that accrued or arose in Mauritius.

(6) The Ombudsman shall not conduct an investigation under this section in respect of any complaint under this section in so far as it relates to -

(a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any law in force in Mauritius; or

(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that -

(i) the Ombudsman may conduct such an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect

him to avail himself or to have availed himself
of that right or remedy; and

- (ii) nothing in this subsection shall preclude
the Ombudsman from conducting any
investigation as to whether any of the provisions
of Chapter II has been contravened.

(7) The Ombudsman shall not conduct an investigation in respect
of any complaint made under this section in respect of any action if he is
given notice in writing by the Prime Minister that the action was taken by
a Minister in person in the exercise of his own deliberate judgment.

(8) The Ombudsman shall not conduct an investigation in respect
of any complaint made under this section where it appears to him -

- (a) that the complaint is merely frivolous or vexatious;
- (b) that the subject-matter of the complaint is trivial;
- (c) that the person aggrieved has no sufficient interest
in the subject-matter of the complaint; or
- (d) that the making of the complaint has, without
reasonable cause, been delayed for more than
12 months.

(9) The Ombudsman shall not conduct an investigation under this section in respect of any matter where he is given notice by the Prime Minister that the investigation of that matter would not be in the interests of the security of Mauritius.

(10) In this section, "action" includes failure to act.

98. Procedure in respect of investigations

(1) Where the Ombudsman proposes to conduct an investigation under section 97, he shall afford to the principal officer of any department or authority concerned, and to any other person who is alleged to have taken or authorised the action in question, an opportunity to comment on any allegations made to the Ombudsman in respect of it.

(2) Every such investigation shall be conducted in private but, except as provided in this Constitution or as prescribed under section 102, the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case; and without prejudice to subsection (1), the Ombudsman may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or attorney or otherwise, in the investigation.

99. Disclosure of information

(1) For the purposes of an investigation under section 97, the Ombudsman may require any Minister, officer or member of any department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation, the Ombudsman shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in the public service imposed by any law in force in Mauritius or any rule of law shall apply to the disclosure of information for the purposes of any such investigation, and the State shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(4) No person shall be required or authorised by virtue of this section to furnish any information or answer any question or produce any document relating to proceedings of the Cabinet or any committee of Cabinet, and for the purposes of this subsection, a certificate issued by the Secretary to the Cabinet with the approval of the Prime Minister and certifying that any information, question or document so relates shall be conclusive.

(5) The Attorney-General may give notice to the Ombudsman, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest in relation to defence, external relations or internal security; and where such a notice is given nothing in this section shall be construed as authorising or requiring the Ombudsman or any member of his staff to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(6) Subject to subsection (3), no person shall be compelled for the purposes of an investigation under section 97 to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Supreme Court.

100. Proceedings after investigation

(1) This section shall apply in every case where, after making an investigation, the Ombudsman is of the opinion that the action that was the subject-matter of investigation was -

- (a) contrary to law;
- (b) based wholly or partly on a mistake of law or fact;
- (c) unreasonably delayed; or
- (d) otherwise unjust or manifestly unreasonable.

(2) Where in any case to which this section applies the Ombudsman is of the opinion -

- (a) that the matter should be given further consideration;
- (b) that an omission should be rectified;
- (c) that a decision should be cancelled, reversed or varied;
- (d) that any practice on which the act, omission, decision or recommendation was based should be altered;

(e) that any law on which the act, omission, decision or recommendation was based should be reconsidered;

(f) that reasons should have been given for the decision; or

(g) that any other steps should be taken,

the Ombudsman shall report his opinion, and his reasons, to the principal officer of any department or authority concerned, and may make such recommendations as he thinks fit; he may request that officer to notify him, within a specified time, of any steps that it is proposed to take to give effect to his recommendations; and he shall also send a copy of his report and recommendations to the Prime Minister and to any Minister concerned.

(3) Where within a reasonable time after the report is made no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman, if he thinks fit, after considering any comments made by or on behalf of any department, authority, body or person affected, may send a copy of the report and recommendations to the Prime Minister and to any Minister concerned, and may thereafter make such further report to the Assembly on the matter as he thinks fit.

101. Discharge of functions of Ombudsman

(1) In the discharge of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority and no proceedings of the Ombudsman shall be called in question in any court of law.

(2) In determining whether to initiate, to continue or discontinue an investigation under section 97, the Ombudsman shall act in accordance with his own discretion, and any question whether a complaint is duly made for the purposes of that section shall be determined by the Ombudsman.

(3) The Ombudsman shall make an annual report to the President concerning the discharge of his functions, which shall be laid before the Assembly.

102. Supplementary and ancillary provision

There shall be such provision as may be prescribed for such supplementary and ancillary matters as may appear necessary or expedient in consequence of any of the provisions of this Chapter, including (without prejudice to the generality of the foregoing power) provision –

- (a) for the procedure to be observed by the Ombudsman in performing his functions;
- (b) for the manner in which complaints under section 97 may be made (including a requirement that such complaints should be transmitted to the Ombudsman through the intermediary of a member of the Assembly);
- (c) for the payment of fees in respect of any complaint or investigation;
- (d) for the powers, protection and privileges of the Ombudsman and his staff or of other persons or authorities with respect to any investigation or report by the Ombudsman, including the privilege of communications to and from the Ombudsman and his staff; and
- (e) the definition and trial of offences connected with the functions of the Ombudsman and his staff and the imposition of penalties for such offences.

