

Rajsoomer Lallah

September 1933 – June 2012



Mr. Rajsoomer Lallah, GOSK, former Chief Justice of this country departed this life on 3 June 2012, at the age of 79, prematurely. We say prematurely because, just before the event which led him to a very short-time sickness, he was still his usual personal and professional self.

Soomer, as he was fondly called and liked to be called, started what would turn out to be an outstanding national and international career, as a District Magistrate. He ended up as a towering personality nationally and internationally. He became the Chief Justice of this country and one of the longest serving members on the Human Rights Committee at the United Nations.

Let me at this juncture, in my personal name and on behalf of my brother and sister Judges who are by my side, and of Honourable SPJ Matadeen and Mrs Matadeen who have a bereavement in the family, and Honourable Lam Shang Leen, Chui Yew Cheong and Mungly-Gulbul who are away from Mauritius, present the deepest condolences of the Judiciary to the family of late Rajsoomer Lallah.

Born on 24 September 1933 in Mauritius, Rajsoomer Lallah, issued from a family with a strong legal pedigree. At the time when the practice of law belonged to the landed gentry, his grandfather, late Boodhun Lallah, had already made his mark as an Attorney-at-Law. His father, late Ramlochun Lallah followed suit. If family values and lineage have anything to do with the stature of men in their achievements, Soomer stands out as a signal example.

Soomer completed his secondary education at the Royal College of Curepipe before proceeding to read law as an Anderson Scholar at Balliol College, Oxford between 1954 and 1957. He obtained there his degree in jurisprudence. He was called to the bar at the Middle Temple in 1958, after which, he went back to Oxford where he obtained his Master's Degree in 1960. On his return to the country, after a short spell in private practice, he was appointed District Magistrate.

Soomer had one act of faith and no other: his commitment to fairness both in word and in action. He walked with kings but only to voice the condition of the voiceless. He attained the top of the ladder but always recognized that without the first rung, he would not be at the top. I illustrate.

He was assigned by the then Chief Justice, Sir Rampersad Neerunjun, the districts of Grand Port and Savanne. His first car, a gift from his father, was a Volkswagen Beetle. Such was his innate sense of justice, even to objects – let alone people – that when he retired as Chief Justice, he redeemed a copy from the scrapyard of a mechanic and began using it.

Many would recall that, at a time when public transport was an acute problem – but of a type different from today, District Magistrate Lallah, in the early morning, would pick up his District Clerk and Usher on his way to Mahébourg Court. His commitment to a job well done and timely and prompt dispatch of daily Court business was so strong.

The contributions of the legal and judicial personalities in the construction of the country are often imperceptible. Their value is recognized only in later generations. We pride ourselves today in echoing the words of others less fortunate, that Mauritius is a democracy and democratic principles and traditions have been the rock-bed of what has made us. But all these have not dropped upon us from the heavens. We owe a lot to many factors, not in the least, the legal and the judicial professions.

Just to give you an example, in 1966, Soomer happened to be in the Attorney-General's Office as Crown Counsel when the Governor appointed him as Deputy Electoral Commissioner. Soon after he took up the job, he offered his resignation to the Governor. The story has it that someone had decided that the best time for the registration of electors should be effected at eleven o'clock in the day. The problematic which this timing would have caused in the proper functioning of democratic institutions was that, in an agricultural economy in which Mauritius was then steeped, a large part of the population would have been constrained in the fields under the labour laws existing then. The message had been received.

The brilliance of some had been outshone by the brilliance of one. The Governor insisted that Soomer should not only stay, but be given the overall responsibility for organizing the registration of electors as he thought fit. Soomer moved the time to the evening. If anyone wants to know why today, registration of electors, whenever a new electoral list is drawn, is done by Registration Officers in the evening and on Saturdays, they have the answer.

The colonial masters recognized that Mauritius had passed the first acid test in the functioning of free and fair election. He, accordingly, sent a letter to Soomer, on 2 February 1967, informing him that the Governor wished to convey to him –

[Quote]:

“an expression of his warm appreciation of the exemplary way in which you have performed your duties as Deputy Electoral Commissioner and of the valuable contribution you have made to the performance of the Electoral Commission since your assumption of duty there on the 1st March 1966...” [End Quote]

The Chief Secretary went on to say that –

[Quote]:

“The Governor has confirmed that your services as Deputy Electoral Commissioner must be retained in the Electoral Commission, until the completion of the whole process for the election of the seventy members of the new Legislative Assembly”. [End Quote]

The Chief Secretary concluded :

[Quote]:

“The Governor is sure that you yourself appreciate both the importance he must attach to retaining your services as a Deputy Electoral Commissioner in the Electoral Commission until the completion of the whole process of the conduct of the forthcoming general election and the prejudice which the Electoral Commission would otherwise suffer during a crucial period”.
[End Quote]

I would cut it short as to what Soomer did when he moved back to the State Law Office. He successively held the positions of Senior Crown Counsel, Principal Crown Counsel, Assistant Solicitor-General and Parliamentary Counsel before being made Queen's Counsel in 1976 and elevated to the Bench as Puisne Judge in October 1980, Senior Puisne Judge in 1988 and Chief Justice on 19 September 1994 before retiring from public service on 4 August 1995.

Sectors which benefitted from his insights and foresights are not limited to the legal, judicial and constitutional. The contributions he made are many and various. To name but a few, he was involved in the uplift of the Academia as a pro-Chancellor and Chairman of the Council of the University of Mauritius from 1977 to 1980. He chaired the Commission on the Review of Legal Studies leading to the establishment of a Law School at the University of Mauritius and the Council of Legal Education in 1983. He conducted various commissions and enquiries of national importance.

But I have talked about Soomer's local involvement. Of equal importance is his international stature, at the level of the United Nations, the Commonwealth, with international professional organisations and regionally. Let me not mention all.

He remained a Member of the United Nations Human Rights Committee for over 20 years: that is from 1977 onwards. After a short spell, he was re-elected in 2008 for a further terms of 4 years. Indeed, he had 2 more sessions to complete his current mandate. He has been a Rapporteur of Human Rights Committee for many years and for a host of matters.

He served as a member of the High-Powered Commission, appointed by Commonwealth Heads of State and Government for the setting up of human rights machinery for the Commonwealth in 1980 and 1981. He assisted international NGOs and professional organisations having to do with protection of the law and justice. He was a member of the Advisory Council of Interights, London from 1988 to 1994 and a member of the International Commission of Jurists, Geneva from 1988 to 1998.

He produced a number of papers before judicial colloquia of Chief Justices, Judges and Law Associations on the domestic application of international human rights norms.

He was an intervenor at numerous seminars organized by governmental and non-governmental organisations in the field of human rights, including Islam and Human Rights in the Middle East and North Africa.

He was one of the members of the Group of three Eminent Persons appointed by the Secretary-General of the United Nations in 1998 to assess existing material relating to genocide in Cambodia and to recommend appropriate measures; Chairman of a workshop of National Integrity Systems organized by Transparency International and the Economic Development Institute of the World Bank [1998]; Chairman of a Commission of Enquiry appointed by the Governing Body of the ILO in 1998 to investigate certain industrial complaints in Nigeria; Special Rapporteur on the situation of human rights in Chile in 1983 and 1984, and in Myanmar from 1996 to 2000, with responsibility to report to the United Nations Human Rights Commission and the General Assembly of the United Nations; Member of the London Court of International Arbitration since 1995;

Member of the Fact-Finding and Conciliation Commission appointed by the ILO to investigate industrial complaints made by COSATU against the then Government of South Africa (1991-1992); Member of a working group on a Post-Apartheid Constitution for South Africa at the invitation of the Constitutional Committee of the African National Congress in 1991; Legal Adviser in the delegation of Mauritius at the United Nations Law of the Sea Conference and in negotiations with international financial institutions (World Bank and African Development Bank); and with other governments for double taxation agreements and air services (Madagascar, Malawi, Zambia, United Kingdom and Germany) (1968-1970, 1976-1980); Member of the Resources Team of the Headquarters Group under the Commonwealth Fund for Technical Cooperation from 1971 to 1974 and Special Legal Adviser with the Commonwealth Fund for Technical Cooperation from 1974 to 1976.

While in the service of the Commonwealth Secretariat as Special Adviser in legal matters, Mr Lallah was deputed to advise the Government of the Seychelles at the Seychelles Constitutional Conference which took place at Marlborough House.

Endowed with a remarkable process of fine intellectual reasoning, Rajsoomer Lallah has written a number of authoritative judgments. He was acclaimed by his peers and by the legal fraternity for his profound knowledge of the law and his erudition. It would simply be too exhaustive to list the impressive number of well researched judgments which bear his hallmark. I shall mention but a few.

I

In 1984, in ***Union of Campement Site Owners & Others versus The Government of Mauritius [1984 MR 100]***, Lallah, Acting Chief Justice as he then was, held that “*taxation policies and measures are matters of political philosophy and judgment and not matters of judicial review*”. He added, however, that “*these were subject to the use of a taxation provision as a colourable device to get round a constitutional prohibition or in breach of the principle of equality before the law*”.

It is a matter of fact that the term “*colourable device*” used in 1984 gained national notoriety when it was again used in 1993 in a different context.

In ***Bhewa and Alladeen versus The Government of Mauritius and The Director of Public Prosecutions [1990 MR 79]***, the two questions which the Court had to decide were –

- (i) *whether the right to freedom of religion compulsorily requires the enactment of personal laws, and*
- (ii) *whether any law, such as our Civil Code, which conflicts with the provisions which are or might be contained in personal laws, would be in violation of religious freedom.*

Lallah, SPJ., answered both questions in the negative in conformity with the principle that Mauritius is a secular state.

In *Ex-Parte : Electoral Supervisory Commission & Others [1991] MR 166*, Lallah, SPJ., together with Glover CJ. and Ahmed J., had to decide on the allocation of seats following the general elections which had seen the majority party winning 57 seats and the minority party winning only three seats. In an elaborate judgment which reveals how that task can be a real headache, the Court held that the Electoral Supervisory Commission should proceed to allocate the first four additional seats only.

In *Heeralall versus The Commissioner of Prisons [1992 MR 70]*, the issue was whether there was an extradition treaty between Mauritius and France. It was held that an extradition will only operate where there is evidence of a binding extradition treaty between the parties. Whether an extradition treaty is binding is a matter which must be established by expert evidence.

The Judiciary of Mauritius salutes the memory of Rajsoomer Lallah, a former colleague, as a man of many accomplishments, gifted with an incisive intelligence, wide culture, great personal charm enhanced by a proverbial courtesy, humility and affability – a man who played an eminent role in the public life of Mauritius and who left his marks as one on the most remarkable personalities of his generation and whose stature extended well beyond the shores of Mauritius. A man for all seasons indeed!!

Yeung Kam John **YEUNG SIK YUEN**
Chief Justice
Supreme Court of Mauritius
13 July 2012