

# ADMINISTRATIVE LAW

# An appraisal of the Judicial Review's jurisdiction of the Supreme Court.

- The source of Judicial Review's jurisdiction

## 1. *Unuth Police service commission 1982 MR 232*

“Where, then, would our powers of review in such cases originate? The answer lies in the case-law of this Court which held, since early times, that it could issue what used to be termed the prerogative writs of mandamus, certiorari and prohibition because section 15 of the then Courts Ordinance provided that –

The Supreme Court shall be a superior Court of record and in addition to any other jurisdiction conferred by this or any other Ordinance, shall possess and exercise all the powers, authority, and jurisdiction that are possessed and exercised by the High Court of Justice in England...

## 2. *Berenger v. Goburdhun 1985 MR 209*

“The powers equivalent to those of that Court [i.e the English High Court] are vested by statute in this Court [the Supreme Court], and particularly to this Court's role in our constitutional set up...” [Reference to section 17 of the Courts Act].

### 3. Duval v. District Magistrate of Flacq 1990 MR 125

This much only goes to say that the jurisdiction of the Supreme Court has, if anything, been considerably enriched not only by preserving the English High Court supervisory jurisdiction it had inherited from the 1851 Order in Council but also by having been conferred no less important supervisory and other jurisdiction, under various provisions of the Constitution". [emphasis added].

### 4. The Courts ACT

### 5. The constitution

- Section 82- Supreme Court and Subordinate Courts
- Section 119- Saving for jurisdiction of courts

# The absence of Mauritian substantive and adjectival rules

- *CEB v. Forget 1974 MR 299.*

“We think that this application affords the Court an opportunity of removing any existing uncertainty on the question and we hold that the correct course for applicants is to comply with the present English practice”.

“We have practically no rules of our own regulating applications for *certiorari* and must turn to the English Rules of Court for guidance, if necessary. According to those rules as now in force (Order 53 rr. 1 and foll.) the first step in proceedings for *certiorari* is to ask for leave to apply for the order.

- *Betsy v. Bank of Mauritius 1992 MR 231*].

“In Mauritius also, those two classes of remedies are available since we follow and are guided by English practice, in this instance Order 53, owing to our failure to provide our own alternative rules...

“We shall consequently seek guidance from English practice, case law and doctrine”.

# The application of Order 53

- Which Order 53? - The relevance of Part 54 introduced in England by the civil procedure (Amendment No. 4) Rules S.1 2000
- Rule 4(2) of the Supreme Court Rules provides that “An action for a prerogative order shall be governed by the practice prevailing for the time being in the Courts of England and Wales”.
- Expression “for the time being”. *Seetaram v. R* 1988 MR 251
- *Ujoodah v. State* 2015 SCJ 365.
- *MES V. Mooneyan* 2005 SCJ 96.
- Order 53 of 1998- Civil Procedure Rules 1998 no. 3132

# The determination by the Supreme Court of the extent of its jurisdiction

- Order 53. The extent of compliance by the Supreme Court.
- (a) *Murdaye v. The Commissioner of Police* 1984 MR 118.
- (b) *Berenger v. Goburdhun* 1985 MR 209
- (c) *Reddy v. FSC* 2016 SCJ 31
- (d) *Domah v JLSC* 2001 MR 180 (composition of the court) Appeal to the Judicial committee- section 81(1) of The Constitution and section 69 of The Courts Act. *Jacpot V GRA* 2017 SCJ 119