

**APPLICANT: MR POOBALAN GOVINDASAMY**

**COURT FOR WHICH APPLICANT APPLIES: HIGH COURT:  
KWAZULU-NATAL DIVISION**

**1 The candidate's appropriate qualifications**

1.1 The candidate holds the following qualifications:

1.1.1 Bachelor of Arts (BA);

1.1.2 Bachelor of Laws (LLB);

1.1.3 Certificate in Constitutional Litigation;

1.1.4 He studied at the University of Durban Westville, University of Natal – Pietermaritzburg and the University of Natal – Durban; and

1.1.5 He has practiced as an attorney from 1 May 1984 up to the present time.

1.2 The candidate is appropriately qualified.

**2 Whether the candidate is a fit and proper person**

2.1 Concerns have been raised by members of the Bar regarding the failure of the candidate to provide full details to the JSC regarding the reasons for his having previously applied for the position of Judge on the KZN Bench (approximately 2011), having been shortlisted on that occasion, but then withdrawing his application prior to being interviewed. The

withdrawal was on account of it publicly emerging, after the candidate's shortlisting, that he had failed to disclose an ethical contravention in his previous application.

2.2 In his present application, the candidate has not disclosed the full facts and circumstances relating to the withdrawal of his prior application.

2.3 In response to paragraph 3 under **SECTION 4: GENERAL** of the JSC's questionnaire which enquired whether any legal professional body found the candidate guilty of any unprofessional or disgraceful conduct, he stated as follows:

*3.1 "At an enquiry held in June/July 1994, in respect of a complaint by Mr Patel, I was found guilty of unprofessional conduct as follows:*

*(i) I found myself in a conflict situation when I acted for the Plaintiff, Mr Patel, with instructing attorney Anand Pillay & Associates and for the Second Defendant, Mr Naidoo, in opposing the same action.*

*(ii) I found myself in a conflict situation in that I acted for Mrs S Naidoo, the mortgagee, and for Mrs Padayachee, the mortgagor, in a matter in which Mrs Padayachee had instituted foreclosure proceedings against Mrs Naidoo.*

*(iii) I failed to account properly to Mrs Padayachee;*

*I was fined R 3,500.00 on each of the 3 charges, R 1,750.00 of each fine was suspended for a period of 3 years from 1st August*

*1994 on condition that I was not convicted of any offence in terms of the Natal Law Society Rules where I acted in a conflict situation or where I failed to account properly to a client. Furthermore, I was ordered to pay the costs of the Enquiry.*

*3.2 In a complaint by Mr EC Knight I was in October 1997 fined R 750.00 for failing to reply timeously to the Society's correspondence and for acting negligently by allowing my secretary to consult with the complainant and such negligence contributed to the complainant suffering prejudice in that he was burdened with costs far in excess of his claim.*

*3.3 At an enquiry held in February 2008 in respect of a complaint by the Road Accident Fund I was found guilty of unprofessional conduct by breaching Ruling 3 (1) of the Society's rulings which provides that "a member shall treat his professional colleagues with courtesy and fairness", in that I failed to disclose my client's death to the RAF. I was fined R 4,000.00 and ordered to pay the costs of the Enquiry."*

2.4 The candidate then goes on to state that the disciplinary records were expunged by the former KwaZulu-Natal Law Society (now the Legal Practice Provincial Council) and further that he currently has a clean disciplinary record. The latter is confirmed by a certificate issued by the Legal Practice Council (KwaZulu-Natal Provincial Office) which states that the candidate is in good standing with the Legal Practice Council and further goes on to state that the candidate served as a member of the erstwhile KwaZulu-Natal Law Society's Council from

October 2000 to 31 May 2018 and further that he was the President of the Society from October 2013 to 30 September 2014.

2.5 As the Society understands the position, in his previous application (2011) the candidate did not disclose one or more of the aforesaid contraventions. It is not clear which of them, or how many of them, were not disclosed. This information will appear from his previous application. The non-disclosure was discovered after he had been shortlisted, and the candidate then withdrew his application. The non-disclosure was obviously material and would have impacted on his fitness to be appointed to the Bench on that occasion. The JSC did not have the opportunity to raise the non-disclosure with the candidate since he was not interviewed and since that application, the full facts in such regard remained unaddressed.

2.6 The fact that the candidate did not disclose the full facts relating to his previous application, and explain fully the circumstances in which he came to withdraw that application, in his current application, calls for concern. For example, the candidate does not disclose which of the contraventions he had disclosed or failed to disclose in his previous application, which of them surfaced after his shortlisting, why he had failed to make proper disclosure in the first place and what approach the persons that supported and nominated him had taken to the non-disclosure. He was under a duty to do so and the JSC questionnaire requires disclosure of such aspects. These matters are directly relevant to his credibility and his integrity to be appointed as a Judge and the candidate has not been transparent.

2.7 The candidate has received letters of support from the BLA and NADEL's Pietermaritzburg Branch. It is not clear whether these organisations are aware of the candidate's previous application and what position they adopt with respect to the candidate's previous non-disclosure and the withdrawal of his previous application, in respect of his current application. The letters of support do not detract from the candidate's obligation to make a full disclosure of matters which relate directly to his integrity to serve as a Judge. The letters from BLA and NADEL also do not support the candidate's appointment, notwithstanding the withdrawal of his previous application. As they read, the letters appear to be oblivious of the previous application and its withdrawal.

2.8 On account of the candidate's failure in his present application to fully address the withdrawal of his previous application and the non-disclosures in that application, serious questions must be raised regarding whether the candidate is a fit and proper person.

2.9 Apart from this issue, the candidate has a track record of having served on numerous bodies and held high ranking positions therein which have served not only the interests of the legal profession but also the community at large. These bodies inter alia included Lawyers for Democracy (Pietermaritzburg) which was formed in 1984 and which had as one of its then objectives, the transformation of the legal profession, National Association of Democratic Lawyers, KwaZulu-Natal Law Society and occupied responsible positions in various committees of these bodies. He has also been a member of various community organisations as set out in the JSC's questionnaire. He has

been actively involved in the sport of soccer and held responsible positions in the South African Soccer Federation (SASF). He is the President of the South African Indoor Football Association (SAIFA) and is a member of various other football associations including the Confederation of African Football (CAF) and the Confederation of Southern African Football Association (COSAFA).

**3 Whether the candidate's appointment would help to reflect the racial and gender composition of South Africa**

3.1 The candidate is a black man of Indian descent.

3.2 The candidate's appointment would help to transform the racial composition of the bench but not the gender composition.

**4 The candidate's knowledge of the law, including constitutional law**

4.1 The candidate has a Certificate in Constitutional Litigation and has two degrees as referred to above.

4.2 The candidate has appeared in civil litigation both in the Magistrates' Court and the High Court. He has served on the Commission for Conciliation, Mediation and Arbitration and has also appeared in the Labour Court and attended to review applications in that court.

4.3 He apportions his litigation work as follows:

4.3.1 Criminal Law (5%);

4.3.2 Administrative Law (5%);

4.3.3 Constitutional Law (5%);

- 4.3.4 Labour Law (10%);
- 4.3.5 Personal Injury (50%);
- 4.3.6 Family Law (5%);
- 4.3.7 Property and Commercial Transactions (10%); and
- 4.3.8 Sports Management (10%)

4.4 From his formative years as a lawyer, the candidate, through his active participation in democratic organisations such as Lawyers for Democracy and National Association of Democratic Lawyers has dedicated himself to achieving the non-racial, non-sexist, united and democratic South Africa.

4.5 The candidate has experience as an attorney on diverse legal subjects.

4.6 The judgments written by the candidate reflect that he has a good knowledge of the law and further many of his judgments give recognition of Constitutional law principles.

4.7 In the circumstances, we are of the view that the candidate has the requisite legal and Constitutional knowledge to take up a position in the High Court Bench.

## **5 The candidate's commitment to the values of the Constitution**

5.1 The candidate has had a human rights ethic from the time that he commenced practise as a young lawyer up to the present time. This is substantiated by his involvement and active participation in many

bodies which uphold the values of our Constitution as set out in the JSC's questionnaire and need not be repeated herein.

5.2 Furthermore, as mentioned above the candidate appears to give recognition to the values of the Constitution in his judgments.

## **6 Whether any judgments have been overturned on appeal**

6.1 According to the JSC's questionnaire, none of the candidate's judgments were overturned on appeal.

## **7 The extent and breadth of the candidate's professional experience**

7.1 The candidate has been an attorney of longstanding and over the years has acquired experience in various fields of the law. The candidate sat as an acting Judge in the Pietermaritzburg and Durban High Court on a number of occasions as set out hereunder, namely:

7.1.1 28 July 2006, reducing backlog in area of criminal appeals on a pro bono basis;

7.1.2 16 August 2010 – 26 September 2010 (Criminal session - Durban);

7.1.3 24 January – 17 April 2011 (Criminal/Civil sessions- Durban);

7.1.4 30 May 2011 – 03 July 2011 (Criminal session - Durban);

7.1.5 17 October 2011 – 13 November 2011 (Civil session – Pietermaritzburg);

7.1.6 02 July 2012 – 13 July 2012 (Criminal session - Durban);

- 7.1.7 29 August 2017 – 24 September 2017 (Civil session - Durban);
- 7.1.8 29 July 2019 – 24 August 2019 (Civil session - Pietermaritzburg);
- 7.1.9 11 November 2019 – 13 December 2019 (Criminal session - Pietermaritzburg).
- 7.2 The candidate has also quasi-judicial experience having chaired a number of committees and also acted as a Magistrate in the Regional Division of KwaZulu-Natal as set out under paragraphs 8 and 9 of the questionnaire.

## **8 The candidate's linguistic and communication skills**

- 8.1 It would appear that the candidate has good English linguistic and communication skills. This is borne out by the judgments delivered by him.
- 8.2 According to the candidate's curriculum vitae he is also versed in the languages of Isizulu and Afrikaans.

## **9 The candidate's ability to produce judgments promptly**

- 9.1 Generally, all of the candidate's judgments were handed down within two to three weeks of them being reserved.
- 9.2 We accordingly conclude that the candidate has the ability to produce judgments promptly.
- 9.3 According to the questionnaire, the candidate has penned a judgment in a civil appeal where he sat with Madam Justice Poyo-Dlwati J and is awaiting feedback from her.

## **10 The candidate's fairness and impartiality**

10.1 There is no reason to believe that the candidate is not fair and impartial to litigating parties that appear before him and to their legal representatives. The candidate's independence and open-mindedness is displayed in his judgments.

10.2 There is nothing to indicate that he was partial to any of the parties who appeared before him.

## **11 The candidate's independent mindedness**

11.1 No adverse comments were received.

## **12 The candidate's ability to conduct court proceedings**

12.1 Having regard to the various quasi-judicial bodies and the courts at which the candidate sat, we can only conclude that he has the judicial ability to conduct court proceedings.

## **13 The candidate's administrative ability**

13.1 Given the candidate's active involvement in a number of quasi-judicial and judicial bodies as set out in the JSC's questionnaire and his occupation of high-ranking positions in various NGO's, cultural and sporting bodies as well as quasi-judicial tribunals and the courts of law as referred to above, the candidate would possess the required administrative ability.

## **14 The candidate's reputation for integrity and ethical behaviour**

- 14.1 The Society refers to what is addressed above in relation to the candidate's failure to address the facts and circumstances which accompanied his withdrawal of his previous application, after being shortlisted.
- 14.2 The candidate has disclosed three categories of previous contraventions, which were not of a trivial nature. The contraventions were expunged by the Law Society but the Society of Advocates does not consider the expungement to detract from the fact that the contraventions are material to an application for judicial appointment. The candidate did not disclose one or more of these contraventions in his previous application, which would have been at a stage that they had not been expunged (and should therefore have been disclosed).
- 14.3 It is not possible to accept that the candidate possesses the required integrity and ethical behaviour of a Judge, on account of his failure to disclose and address the non-disclosures in his previous application and the circumstances in which that application was withdrawn.

## **15 The candidate's judicial temperament**

- 15.1 There is no reason to believe that the candidate does not have the required judicial temperament.

## **16 The candidate's commitment to human rights, and experience with regard to the values and needs of the community**

- 16.1 The candidate has a good track record in the campaign for human rights and the promotion of a non-racial, non-sexist, united and democratic South Africa.

- 16.2 The candidate has been actively involved in promoting human rights and meaningfully serving his community and the profession.
- 16.3 He has played an active role in promoting pro bono work and continues to do so.
- 16.4 On a professional level, he has been the principal of at least twenty candidate legal practitioners.
- 16.5 Given his contribution to the community and to the profession, we can say that he has a deep-rooted commitment to serve his community and to continue to promote human rights in accordance with the tenets of the Constitution.

## **17 The candidate's potential**

- 17.1 The candidate has already displayed his potential as a Judge.
- 17.2 There is reason to believe that if the candidate is given an opportunity to occupy the bench, he would further develop his legal skills.

## **18 The message that the candidate's appointment would send to the community at large**

- 18.1 The candidate is a black male of Indian origin and his appointment to the KwaZulu-Natal Bench would be in line with racial transformation of the courts. His appointment however would not advance gender representivity on the Bench.

18.2 For the reasons addressed above, the Society does not believe that the candidate's appointment would send a positive message to the community.

