

THE REPUBLIC OF TRINIDAD AND TOBAGO

**IN THE HIGH COURT OF JUSTICE
Port of Spain**

Claim No. CV 2016-03556

BETWEEN

DINANATH RAMNARINE

DAREN GANGA

ANIL KAMAL

CAMAL BASDEO

SAMUEL BADREE

ST. SERVIOUS CLINT PAMHILE

Intended Claimants

AND

TRINIDAD AND TOBAGO CRICKET BOARD OF CONTROL

Intended Respondent

Before the Honourable Mme. Justice Jacqueline Wilson

Date of Delivery: December 17, 2018

APPEARANCES:

Mr. Ramesh Maharaj S.C., Mr. Vivek Lakhan-Joseph, Mr. Kiel Taklalsingh and Ms. Priya Ramsahai Attorneys at law for the Intended Claimants

Mr. Fyard Hosein S.C. and Mr. Anil Maraj Attorneys at law for the Intended Respondent

JUDGMENT

BACKGROUND

1. This is the Claimants' judicial review application challenging the decision of the Respondent, the Trinidad and Tobago Cricket Board of Control (the TTCB), to conduct the election of its Executive Officers

in conformity with the procedures under Articles 4.01(i) and (iii) of TTCB's constitution (the impugned provisions).

2. The election was scheduled to take place at an Annual General Meeting on 22 October 2016 but was deferred by consent of the parties pending the determination of these proceedings
3. The Claimants argue that the impugned provisions promote an inherently unfair electoral process and give incumbent officers and persons nominated by them a material advantage over other persons who are contesting the elections.
4. The Respondent argues that the unfair advantage alleged by the Claimants is based on assumptions that are fundamentally flawed and, in any event, contrary to the Claimants' evidence.

THE TTCB

5. The TTCB is incorporated under the Trinidad and Tobago Cricket Board of Control Act (Incorporation) Act, 1989 (the Act). Under section 3 of the Act, its aims and objects are:
 - (a) *to advance and improve cricket in Trinidad and Tobago by the organisation, promotion and control of first class and other cricket competitions;*
 - (b) *to arrange, control and regulate inter-territorial and international tournaments promoted or sanctioned by the West Indies Cricket Board of Control directly or through appointed agents or representatives;*

(c) to promote, control, regulate and supervise all cricket in Trinidad and Tobago organised under the auspices of the Cricket Board; and

(d) to perform all such other acts or things as may seem to the Cricket Board to be necessary or conducive to the welfare of cricket in Trinidad and Tobago in particular and the West Indies in general.

6. Prior to its incorporation, TTCB existed for more than thirty years as a sporting organisation. Its membership, structure and governing rules have been subject to periodic reform as a result of its growth and expansion.¹ TTCB is governed by a constitution that was first issued on 31 January 1980 and was amended on several occasions, the most recent being on 1 July 2013.²
7. Section 8 of the Act confers power on TTCB to make rules and regulations for the proper conduct of its proceedings and discharge of its duties. Although not addressed frontally in the arguments, it cannot be disputed that the amendments to TTCB's constitution that were made after its incorporation were in the exercise of these powers.
8. Under its constitution, TTCB's membership comprises forty-nine (49) voting members and a maximum of forty-six (46) non-voting members. The composition of members is stated in Article 3 as follows:

Article 3 – Membership

¹ See preamble to its Constitution

² See p. 65 of Constitution

The membership of the Board shall comprise:

- (i) The Patron*
- (ii) Voting members*
- (iii) Non-voting members*

3.01 The Patron

The President of the Republic of T&T shall be invited to be the Patron of the Board.

3.02 Voting Members (49)

Only citizens and legal residents of T&T, resident in T&T shall be voting members.

- (i) Officers (6)*
The President, 1st Vice President, 2nd Vice President, 3rd Vice President, General Secretary and Treasurer
- (ii) Zonal Representatives (21)*
Three (3) members from each of the seven (7) Zonal Councils elected for a three year term.
- (iii) Affiliate Representatives (10)*
 - (a) Two (2) members of the National Primary School Cricket League, elected by the said League.*
 - (b) Two (2) members from the Secondary Schools Cricket League, elected by the said League.*

- (c) *Two (2) members of the Tobago Cricket Association, elected by the said Association.*
- (d) *Two (2) members of the Trinidad and Tobago Cricket Umpires and Scorers Council, elected by the said Council.*
- (e) *Two (2) members of the Trinidad and Tobago Women's Cricket Association, elected by the said Association.*

(iv) *National League Representatives (6)*

Six (6) persons elected by clubs which have been accepted to participate in the National League Club Competition of the Board. These persons shall be elected for a three year term in accordance with Article 4.01 (ii).

(v) *Nominated members (6)*

Six (6) persons nominated by the Executive of the Board at the first meeting of the Executive after the Annual General Meeting at which elections are held and shall hold office until they are replaced.

The terms of the Board shall be for three (3) years.

3.03 *Non-voting members*

- (i) *Honorary Life Members:
maximum- 6*

(ii) *Honorary Members:*
maximum- 20

(iii) *Corporate members:*
Maximum- 20

3.04 Zones and Affiliates shall be entitled to alternates to represent them at meetings and activities of the Board in the absence of their elected representatives with written authorization from Zones or Affiliates accordingly.

9. TTCB is managed by an executive team that comprises the six officers described in Article 3.02(i) above (the Officers) and five members who are elected from among TTCB's general membership (the Executive). The Executive is elected at an Annual General Meeting for a three-year term and is responsible for the overall management of the TTCB including the management of its budget.
10. The election of TTCB's Officers is governed by Article 4. Under Article 4.01 (i) the six (6) officers are elected for a three (3) year term at the end of which they are eligible for re-election and to vote. Under Article 4.01 (iii) the six (6) Nominated Members are also eligible to vote for election of the six (6) officers and to stand for office. These provisions of TTCB's constitution form the basis of the Claimants' complaint.

THE CLAIMANTS' CASE

11. The Claimants are members of the cricketing fraternity. The First and Second Claimants are former national team cricketers and were

elected as members of TTCB in 2013. They are aspiring to appointment as TTCB's President and First Vice President, respectively, at the next election. The First Claimant contested the position unsuccessfully in 2013.

12. The First Claimant has advocated for the reform of TTCB's constitution by removing the provisions under which incumbent officers and Nominated Members are allowed to vote. The proposal was put to TTCB's general membership in 2015 but was defeated by twenty-six (26) votes to sixteen (16). Another proposal to impose a two-term limit on TTCB's Presidents was also defeated by twenty-six (26) votes to twelve (12). The First Claimant has since called upon TTCB to revisit the matter, but no steps so far have been taken by TTCB in this regard.
13. The Claimants challenge the lawfulness of TTCB's decision to conduct the next election under the procedures of the impugned provisions. They state that the impugned provisions are ultra vires the provisions of the Act under which TTCB is responsible for promoting the welfare of cricket and for making rules and regulations for the proper conduct of its proceedings.
14. The Claimants initially sought other relief in relation to alleged irregularities in zonal elections but those grounds were abandoned at the hearing. In the circumstances, the matter of complaint relates solely to the alleged prejudicial effect of the impugned provisions.
15. The Claimants allege that under the impugned provisions incumbent officers unfairly commence the electoral process with a block of twelve (12) votes in their favour out of a potential forty-nine (49). They argue that the system operates in a way that enables the

Executive to prevail at successive elections and to unfairly exclude new candidates from being elected.

16. The Claimants contend there has been one instance in TTCB's history where the incumbent President lost his position in an election and this occurred in circumstances where the successor was an influential member of the Executive and was thereby able to secure the votes of outgoing members. Apart from this singular incident, changes have occurred on two other occasions where the incumbent President did not seek re-election.

17. The Claimants assert that TTCB's intended reliance on the impugned provisions is an unreasonable and unlawful exercise of discretion that would give rise to a partial and unjust result: ***R v Immigration Appeal Tribunal ex p Manshoora Begym (1986) Imm AR 385; AM (Serbia) v Secretary of State for the Home Department (2007) EWCA Civ 16***. They argue that the Executive Officers are acting in bad faith and with an improper purpose or motive, which is in effect to secure re-election. The Claimants allege that the impugned provisions are in breach of the rules of natural justice and violate the principles of democracy: ***Sylvester Pino Hassanali Yatali v The Agricultural Society of Trinidad and Tobago Claim No. CV 2014-00563; R (Law Society) v Legal Services Commission (2010) EWHC 2550 (Admin); R v National Lottery Commission ex parte Camelot Group Plc (2001) EMLR 3; and Bihar v Board of Control for Cricket in India & Ors Civil Appeal No. 4236 of 2014***.

18. The Claimants contend that the impugned provisions violate sections 3 and 8 of the Act, as they fail to promote the welfare of cricket or safeguard the proper conduct of TTCB's proceedings. They submit that the impugned provisions "serve only to enshrine and ensure an unfair block of 12 votes out of a potential 49 votes for any incumbent

executive thereby almost guaranteeing re-election. It cannot be in the interest of cricket for rules to exist that which create, protect and preserve an administrative dynasty.”³ They contend that the Executive Officers are exercising their statutory powers in a manner that is inconsistent with the objectives of the Act and that their conduct constitutes an abuse of power: *R v Inland Revenue Commissioners ex p Preston (1985) AC 835, 865B*.

THE DEFENDANT’S CASE

19. TTCB submits that there are no grounds to justify the Court’s intervention in these proceedings.
20. TTCB argues that the Act does not specify the method for election of Executive Officers but gives the TTCB a wide berth to conduct its proceedings and discharge its duties as it sees fit, provided that its actions are not inimical to the welfare of cricket. They submit that the wide discretion conferred on TTCB to manage its affairs is an acknowledgement that due deference should be afforded to TTCB as an expert sporting body: *Flaherty v National Greyhound Racing Club Ltd [2005] LLR 571*.
21. TTCB argues that the provisions of sections 3 and 8 of the Act, on which the Claimants rely to impeach the impugned provisions, are stated in general terms that outline TTCB’s policies and objectives, leaving it to TTCB to fill in the details as it deems appropriate. TTCB argues that given the extensive scope of its statutory power, a very high threshold is required to support the illegality that is alleged by the Claimants.

³ See paragraph 36 of written submissions filed on 6 December 2016

22. TTCB argues further that the Claimants' assertion that outgoing Officers and Nominated Members are given an assured advantage of twelve votes out of a potential forty-nine is flawed, for the following reasons. First, members of TTCB's Executive may in the course of their three-year term develop ideological or other differences with an incumbent officer or officers and may choose to withhold support for such persons in an election. Second, Nominated Members are given the right to run for office and as such may also be competing for a post against an incumbent Officer. Third, the Claimants' assumptions are undermined by their own evidence attesting to changes in TTCB's presidency over the years. Therefore, it cannot be presumed that the incumbents would vote in any particular way in an election.⁴
23. TTCB contends that the argument that the voting procedure is intrinsically undemocratic must fail, as a block of twelve votes out of forty-nine does not give rise to a majority and does not preclude a change of power.
24. TTCB submits that the Claimants' case is based on the premise that the Officers and Nominated Members have an inbuilt bias towards the incumbents so as to indefinitely perpetuate their positions on the TTCB. The TTCB contends that it would be wholly inappropriate to quash the impugned provisions on the assumption that persons would be motivated to vote purely out of self-interest, rather than in the interest of promoting the welfare of cricket.
25. TTCB submits further that, historically, Nominated Members are drawn from persons in public or business life who are specialists in their field and are willing to make a contribution and give of their

⁴ See paragraphs 28 to 30 of the affidavit of Dinanath Ramnarine filed on 28 October 2016.

time. They are independent persons who understand the necessity of stable governance in the cricketing fraternity.⁵ TTCB contends that it cannot simply be presumed that Nominated Members would vote for persons who they believe may not be suited to office or that their motivation for doing so would be that they in turn were likely to be voted back into office.

26. TTCB argues further that the election process allows for a balanced power sharing exercise between the Executive, Nominated Members and other stakeholders and is consistent with promoting the welfare of cricket in Trinidad and Tobago. They submit that there are changes in the presidency when there is a consensus among its members for new leadership and direction in the management and development of cricket at a national level.
27. TTCB submits that it is uniquely well-placed to adopt its chosen system of elections and that the courts should be slow to intervene to determine the preferred approach: ***Re Election for Office in the Construction, Forestry, Mining and Energy Union; Ex Parte Sutton [2002] FCA 971 (2002)***. It argues further that, what is in fact undemocratic, is the attempt by the Claimants to impose a voting system that is not of TTCB's choice and that any change in the existing procedures must be instituted through the process of reform under article 29 of its constitution.
28. TTCB asserts that in October 2015 the First Claimant did in fact seek to bring about constitutional change on the very issues that are now before the court, but his proposals were defeated by the membership. TTCB contends that the Claimants now seek to have the court impose the very proposals for reform that were rejected

⁵ See paragraphs 42 to 44 of the affidavit of Arjoon Ramlal sworn on 28 November 2016

and that they have failed to establish any basis for intervention by the court as the matter of which voting system is appropriate is for TTCB to decide and not the court: ***Re Churchill [2001] FCA 469.***

DISCUSSION

29. The issue before the court is a narrow one. There is no real dispute about the applicable legal principles. Therefore the need for a discussion of the authorities cited by Counsel does not arise.
30. The central issue for determination is whether the impugned provisions of TTCB's constitution impose requirements that are unfair, unreasonable or unjust or are otherwise inconsistent with the Act.
31. It bears repeating that TTCB is the authority that is responsible for advancing and promoting the welfare of cricket in Trinidad and Tobago. It is given a wide discretion to manage its own procedures for the discharge of its duties and may develop and amend its governing rules, as it sees fit, to address the changing needs of its membership and to meet the requirements of the sport in general.
32. It is inevitable that the values, interests and ideals of some of TTCB's members may not always be aligned with those of the Executive. Whatever factors may ultimately serve as a catalyst for reform, the course to be adopted resides with the TTCB, as the governing body responsible for the welfare of the sport.
33. It is well established that the court in judicial review proceedings would not interfere with the exercise of a public authority's discretionary power unless its decisions transgress beyond the boundaries of fairness, reasonableness or legality. Judicial review is

not intended to take away from those authorities the power and discretion properly vested in them by law and to substitute the court as the body making the decision: ***Chief Constable of the North Wales Police v Evans [1982] 1 WLR 1155, 1160E-H.***

34. The central argument advanced by the Claimants is that a block of twelve votes out of a majority of forty-nine is assured to TTCB's outgoing officers and that this constitutes an unfair advantage that yields an unjust result.
35. However, an examination of the Claimants' argument demonstrates that it finds very little support in fact or law.
36. First, a block of twelve votes out of a maximum of forty-nine does not, by any standard, give rise to a majority. If TTCB's full membership were to participate in an election, the incumbent officers would require a minimum of twenty-five votes to prevail - far in excess of the stipulated block of twelve.
37. Second, as the evidence demonstrates, it cannot be presumed that incumbent officers would submit themselves for re-election or that they and the Nominated Members would vote in the manner forecast by the Claimants. The history of election results does not vindicate the Claimants' primary assumption but in fact contradicts it. Further, there is nothing in the evidence to establish that the historical results are not simply reflective of the collective will of TTCB's voting members but are instead attributable to an unfair advantage held by incumbent officers.
38. Third, the procedure under which TTCB's officers are entitled to appoint Nominated Members does not carry with it the consequence that Nominated Members will surrender their independent decision-

making and act otherwise than in accordance with their own assessment of TTCB's best interests. The Claimants' argument that Nominated Members will not maintain the freedom or ability to exercise their discretion independently and will dance to a tune called by the persons nominating them cannot be accepted. The Claimants' own evidence does not support this conclusion.

39. Fourth, no substantive unfairness in TTCB's election system could reasonably be alleged in circumstances where eligible voting members have the right to vote and no actual or threatened deprivation of the right has been alleged. There is nothing to suggest that the impugned provisions hinder the full participation of TTCB's eligible voting members or that any member has been disenfranchised. The Claimants' dissatisfaction with the provisions in question and their failed efforts at constitutional reform do not justify the intervention of a reviewing court. The court must not allow itself to become an umpire to resolve a controversy in which TTCB and its members may be embroiled.
40. Additionally, there is no inconsistency between the impugned provisions of TTCB's constitution and the Act, as alleged by the Claimants. TTCB's rule-making power conferred by the Act clearly embraces the power to make rules governing the election and re-election of its officers. The impugned provisions fall squarely within the scope of such power and accord fully with TTCB's statutory role.
41. As discussed above, it is for TTCB to decide what rules it considers to be in the best interests of its members and the sport in general. There is nothing to suggest that the rules are inherently unfair or deviate from established principles of democracy or public policy.

42. I would go further to say that, had the Claimants' application for leave to apply for judicial review not been combined with the substantive hearing, leave would not have been granted as the Claimants have not met the threshold requirements of demonstrating that they have an arguable case with a realistic prospect of success.
43. The following passage from the decision of Thakur J of the Supreme Court of India, Civil Appellate Jurisdiction, in ***Board of Cricket Control in India v Cricket Association of Bihar & Ors. Civ App. No 4235 of 2014*** at paragraph 93, provides an appropriate conclusion:

“In K Murugon v Fencing Association of India, Jabalpur and ors (1991) 2 SCC 412 this Court held that sports in India have assumed great importance for the community while international sports have assumed greater importance over the past few decades. Despite this, however, several sports bodies in this country have got involved in group fights leading to litigation in the process losing sight of the objectives which such societies and bodies are meant to achieve. This Court therefore emphasized the need for setting right the working of societies rather than adjudicating upon the individual's right to office by reference to provisions of law relating to meetings (and) injunctions...”

44. For the reasons given above, the judicial review proceedings are hereby dismissed. The Claimants shall pay the Defendant's costs certified fit for Senior Counsel to be assessed by the Registrar in default of agreement.

Jacqueline Wilson

Judge