THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. S293 of 2022
CV 2022-04530

BETWEEN

Ravi Balgobin Maharaj

Appellant/Intended Claimant

AND

The Cabinet of the Republic of Trinidad and Tobago

1st Respondent/Intended Defendant

The Minister of Rural Development and Local Government

2nd Respondent/Intended Defendant

PANEL:

P Moosai JA

G Lucky JA

JC Aboud JA

APPEARANCES:

Mr A Ramlogan SC, Ms R Rambhajan, Ms J Lutchmedial and Mr R Abdool-Mitchell instructed by Mr N Bisram and Mr V Siewsaran for the Appellant.

Mr D Mendes SC, Mr R Dass and Ms L Abdulah instructed by Ms A Niles and Ms A Mohan for the Respondents.

DATE OF DELIVERY: 10 February 2023

I have read the judgment of Moosai JA and agree with it and have nothing to add.

Justice G Lucky JA

I, too, have read the judgment of Moosai JA, and save for the comments I have made below, I agree with it.

Justice JC Aboud JA

Judgment of Justice P Moosai JA

FACTUAL BACKGROUND

1. This claim concerns legislation which purported to extend the term of office of elected officials namely, Councillors and Aldermen, and the right of electors to vote at local government elections when they are legally due. The brief facts are as follows.

2. On 2 December 2019, local government elections were held in Trinidad and Tobago. By virtue of Sections 11(4) and 12(5) of the *Municipal Corporations Act Chapter 25:04* ("*MCA*") all Councillors and Aldermen were elected for a term of 3 years, that is, until 1 December 2022.[1]

[1] By the Court's calculations, the expiration of the triennial period will be 1 December 2022 if 2 December 2019 was the date of election. The expiration of the quadrennial period will of course be one year later, occurring on 1 December 2023. Alternate and conflicting dates have been referred to by the parties in their submissions, but we will proceed on the basis of these calculations.

3. In October 2020 the *Miscellaneous Provisions (Local Government Reform) Bill*, *2020* was introduced into the Parliament and was sent before a Joint Select Committee. The Bill was eventually debated and passed by both Houses of Parliament with a simple majority (the Opposition abstaining). It was assented to on 1 July 2022 and became Act No. 11 of 2022, referred to as the *Miscellaneous Provisions (Local Government Reform) Act, 2022* ("*2022 Act*").
4. One month before the terms of office of the incumbent Councillors and Aldermen were due to expire, the Honourable Minister of Rural Development and Local Government on 3 November 2022, held a virtual press conference, wherein he disclosed the Government's intention to proclaim certain sections of the *2022 Act*, specifically those dealing with an increase in term limits from three to four years for Councillors and Aldermen. Further, the Minister asserted that the current term of office of all Councillors and Aldermen elected in the last local government elections held on 2 December 2019 was extended for one year until 1 December 2023.
5. By Legal Notice No. 206 of 2022 dated 7 November 2022, Sections 1, 2, 3(b), 3(c)(i), 3(c)(iii), 3(c)(v), 3(d)(iii) and 3(v) of the *2022 Act* were proclaimed and came into force from 8 November 2022. The relevant sections for the purposes of this appeal are Sections 3(c)(iii) and 3(d)(iii), which amended Sections 11(4) and 12(5) of the *MCA*.
6. The appellant, Ravi Balgobin Maharaj (the "appellant"), in his capacity as a political activist, filed a Notice of Application for leave to apply for judicial review on 15 November 2022. He did so as a result of his concern over the stated intention to delay the December 2022 local government elections and the consequent disenfranchisement of the electorate. In essence, he alleged that the right to vote is sacred and fundamental in nature and fundamental rights cannot be overridden by general or ambiguous words as contained in the *2022 Act*. Additionally, he alleged there must be certainty and predictability in the holding of elections.
7. The appellant stated that there are no words contained in the *2022 Act* which expressly states that the terms of current Councillors and Aldermen are to be extended by a further year or that the local government elections, which ought to be held before 3 March 2023, have been postponed or delayed by one year.

8. The issue in this case is whether the decision and/or declaration by the respondents that the current term of office of all Councillors and Aldermen has been extended for one year until 1 December 2023 by virtue of the amendments to Sections 11 (4) and 12 (5) of the *MCA* by the 2022 (proclaimed by Legal Notice No. 206 of 2022 dated the 7th November 2022), and the consequential extension of time for holding local government elections for an additional year, is illegal, null and void and of no effect.
9. On 30 November 2022 Justice Jacqueline Wilson SC, dismissed the appellant's Notice of Application for interim relief. She found that since a Corporation's functions are exercised by its Council, whose members include Councillors and Aldermen, the grant of an injunction would have a direct impact on its ability to discharge its functions. While the *2022 Act* provides for a maximum period of three months between the expiration of the term of office of Councillors and Aldermen and the date of an election, it does not follow *ipso facto* that there can be no adverse consequences during the hiatus. The Judge concluded that, having regard to the range of services that Corporations provide to the community, the potential impact of a disruption, the scope of the measures that may be taken in the absence of a functioning Council, and the fact that the unlawful consequences asserted by the appellant turn upon the construction of legislation, the validity of which was not in dispute, the refusal of an injunction was likely to cause the least irremediable harm or prejudice.
10. On 1 December 2022, the appellant filed a Notice of procedural appeal challenging the judge's dismissal of the Notice of Application for interim relief.
11. On 20 December 2022, at the hearing of the procedural appeal against the trial judge's refusal to grant interim relief, it was agreed that the Court of Appeal would address the core issue in the substantive claim, that is, whether the *2022 Act* applies to current Councillors and Aldermen. This decision was made having regard to the importance of the case, and the seriousness of the consequences involved for the following reasons:
    a. The necessity to undertake an assessment of the merits of the case as part of the balancing exercise to determine whether interim relief should be granted;
    b. The interim relief coincides with the substantive relief, namely the injunction and the declaratory orders sought under section 18 of the *Judicial Review Act* ("JRA");

c. The urgency of the matter since the appellant's case is that the local government elections ought to be held before 3 March 2023;

d. Remitting the matter to the High Court will cause unnecessary delay;

e. Both parties indicated that it may be necessary to engage the apex court and it is more likely that this can be accomplished within the 90-day period if the substantive matter is dealt with by this Court; and

f. The case raises issues which are in the public interest and that the substantive matter should be expeditiously heard and determined.

THE APPELLANT'S SUBMISSIONS ON THE APPEAL

12. The right to vote is a fundamental cornerstone of a country's democracy, as it is preservative of all other rights. There must be certainty and predictability in the holding of elections. Parliament can only postpone elections by frontally debating and passing such a measure. Clear and express language is needed because it is a fundamental change which goes to the very heart and soul of our democracy. There are no words in the amendment which expressly state that the terms of current Councillors and Aldermen are to be extended by a further year or that the local government elections have been postponed or delayed by one year.

13. The fixed term of office for Councillors and Aldermen was prescribed by law at the time of their election in the last local government elections held on 2 December 2019. It was for a term of three years only. The extension of their term of office by one year is based on an error of law because this could only be lawfully accomplished if the amendment had been drafted clearly, expressly and unambiguously so as to retrospectively effect an increase in the current elected term limit of the Councillors and Aldermen. The amendment was not drafted in these terms.

14. The appellant further argued that the Government's attempt to delay or postpone the elections is unconstitutional, undemocratic and amounts to a deception of the electorate. This is so because the Government's promotion, and the express intent of the legislation, was to

bring about prospective and wide-ranging "local government reform" and, therefore, it could not, and was not, aimed at solely increasing the terms of the incumbent Councillors and Aldermen who were elected and/or appointed in 2019.

15. Postponement of the local government elections has the serious consequence of disenfranchising the electorate by depriving them of the right to vote and violates the sacred principles of a constitutional democracy, international law and the established cannons of statutory construction.

16. The context and legislative history of the amendment does not support a retrospective interpretation. This is reinforced by the manner in which the legislation was promoted in Parliament where there was no mention of postponement of the election and the imposition of a four-year term of the current elected officials. The plain meaning of sections 3(c)(iii) and (d)(iii) is that they apply from the date the *2022 Act* is proclaimed: they do not have any retrospective effect. If Parliament wanted to legislate to change the date for local government elections by increasing the current term of office, it should say and do so expressly, that is, the statutory language must clearly state that it is to have retrospective effect.

17. It is wrong for the Government to amend the law under the guise of a "local government reform package", only to attempt to apply those amendments in a piecemeal and retrospective manner to alter the term of office of Councillors and Aldermen who were elected in 2019 under and by virtue of the law that existed at the time of the election. Similar legislation in other countries shows quite clearly that specific provision is made for the incumbents to be allowed to continue in office if that is the intention of Parliament.

18. If Parliament intended to postpone the elections, extend the current term of office and for the *2022 Act* to have retrospective effect then there would have, at least, been some mention of this in the explanatory note to the Bill and a debate in that context. Reference to the Hansard is necessary to understand the legislative history of the amendments.

19. Several sections in the *2022 Act* provide for prospective reform of the *MCA*. For example, Section 3 of the *2022 Act* inserts sections 33A to 33I establishing an "executive council" with responsibility for operational matters. The 2022 amendment to section 34(2)(3) gives a Corporation the power to employ persons as it considers necessary for the due performance

of its functions, as well as the responsibility of establishing the qualifications. It further empowers the Corporation to discipline or dismiss its employees. The new subsection (3) in the *2022 Act* requires the Chief Personnel Officer to set the terms and conditions. Additionally, Section 34A as amended by the *2022 Act* establishes a pension scheme for all permanent, contracted and daily paid workers and creates a superannuation scheme which did not previously exist. Section 35A as amended by the *2022 Act* establishes Divisions and sets up a new structure for all the administrative divisions of the Corporation. New positions are created under section 35, for example, a “Municipal Planning Director" and a "Municipal Social Services Director”. The new section 37 enacted by the *2022 Act* establishes Schedule 13 which sets out the specific services which the Corporation is responsible for. Section 38(2) as amended by the *2022 Act* represents a fundamental shift in the supervisory structure and gives additional power to the Mayor to give directions to the Chief Executive Office. It also creates a new reporting line from all the Chief Officers to the Chief Executive Officer. It is therefore apparent that none of these new reforms outlined above operate retrospectively.

20. The appellant submitted that the use of general words in a statute and/or in cases where the legislation is silent as to whether it is to be applied retrospectively should not be interpreted or applied to permit an unjustifiable or excessive intrusion into fundamental rights, or the ousting of basic common law norms. Sections 3(c)(iii) and (d)(iii) of the *2022 Act* are not retrospective. Its plain meaning is that the terms of Councillors and Aldermen being extended under the *2022 Act* are only those of officeholders elected after the *2022 Act* came into force. The claim that it is retrospective contravenes the presumption that legislation will be read as a whole, and also against the general presumption against retrospectivity.

21. There must be certainty and predictability in the holding of elections. It cannot be done in an unpredictable manner at the whim and fancy of the Executive. That, the appellant submitted, provides a slippery slope to tyranny and dictatorship. The hallmark of any functioning democracy is the holding of regular and fair elections. Elections must be certain and predictable because at the heart of the democratic process is the act of campaigning by political parties and individuals who wish to contest elections. It cannot be that the

government could postpone elections "willy-nilly" and political parties and potential Councillors and Aldermen must take part in a guessing game as to when they are to be held.

22. The appellant and the electorate have a vested right to vote in elections when they are legally due. This right is a discrete one that arises from the *MCA* itself, but it is also implicit in the fundamental principles of a constitutional democracy and it is a protected fundamental right to freedom of political expression and/or is otherwise sourced within the fundamental rights and freedoms of the Constitution.

THE RESPONDENTS' SUBMISSIONS ON THE APPEAL

23. The respondents do not dispute that the effect of the amendments has been to change the term of office of Councillors and Aldermen from three to four years, with the flow-on effect of changing the election cycle from every three years to every four years. The dispute lies in the answer to the question of whether or not the amendments apply to Councillors and Aldermen who held office at the time of the proclamation of the *2022 Act*, and to the elections that would otherwise have been due to be called no later than 3 March 2023. This, it is submitted, is the sole issue before the court.

24. Inasmuch as the crux of the appellant's submissions is an alleged infringement upon the right to vote, it is necessary to firstly establish that such a right, in the manner posited by him, in fact exists. In preliminary answer to this contention, the respondents' suggest that a proper reading of the amendments does not in any way take away the appellant's right to vote in local government elections. By extending the term of office, the appellant has retained his right to vote, albeit at a date after December 2023. The appellant's submission can therefore only be that he has a vested right to vote in a local government election to be held no later than 3 March 2023 and this right has somehow been contravened by the amendments.

25. The respondents submit that there is not recognised under the common law, any right to vote. The franchise can only be exercised in accordance with what Parliamentary legislation affords.

26. It was further submitted that unlike other countries such as South Africa and Canada, Trinidad and Tobago has, through deliberate legislative action, eschewed an open-ended,

constitutionally declared right to vote. The framers of our Constitution, by section 51 specifically, set out the minimum pre-conditions which are to be met to be qualified to vote, while leaving it to the elected representatives of the people (Parliament) to establish the further particulars of the right to vote. According to the respondent, the reservation of such broad parliamentary power is inconsistent with an open-ended right to vote, the ambit of which would otherwise have to be determined by the judiciary.

27. A proper reading of the Constitution therefore reveals that what is afforded is an entitlement of properly qualified persons under section 51, and any other applicable law passed by Parliament, to vote in national elections. The parameters within which this right or entitlement is to be exercised is determined by ordinary legislation, specifically the Representation of the People Act.

28. In answer to the appellant's reliance on section 1 and the right to express political views guaranteed under section 4(e) as founding a constitutionally protected right to vote, the respondents posit that any such purported right under those sections must be read in the context of section 51, which reposes in Parliament the implicit authority to determine the manner in which the right to vote is to be exercised. Stated otherwise, sections 1 and 4(e) cannot be interpreted as guaranteeing a right that is more extensive that the rights bestowed under the only section (section 51) that expressly deals with the right to vote in general elections.

29. There is no mention in the Constitution of a right to vote in local government elections, nor the qualifications one must possess in order to vote in same. The right to vote in these elections specifically is entirely statutory. The nature and entitlement to vote in local government elections has been left entirely up to the legislature to define, which it has done via the *MCA*. The Act at section 11 (4A) provides that an election shall be held within three months of the expiration of the term of the office of the Mayor, Councillors and Aldermen comprising the Council. The exercise of the statutorily guaranteed right is therefore tied to the expiration of the term of office and there has not been otherwise established any free standing right to vote on a particular date, more so within three months of 3 December 2022 as advocated for by the appellant. No such vested right was created.

30. Given that local government is not a constitutional creature but the product of an ordinary Act of Parliament, it follows that it is logically possible for local government to be altogether abolished by an ordinary Act of Parliament. It would therefore be legally impossible and/or absurd for a right to vote in local government elections to exist if the body itself is not immune to abolishment, which is the necessary implication if any such right is found to have accrued outside of the establishing Act itself and located within the Constitution. A right to vote in local government elections cannot therefore be entrenched in the Constitution, far less can it be said that there is a guaranteed right to vote in an election to be held on or before 2 March 2023.

31. As it relates to the applicability of the principle of legality in interpreting the amending provisions, the respondents submit that there are two pre-conditions to be met before this principle may be invoked, neither of which the appellant has done in this case. The first is that the subject matter impacted by the law must be a fundamental right, and the second is that this right must have been overridden or abrogated by the law in question. The respondents submit that while the right to vote in local government elections is a very important right, it is not a fundamental right in the constitutional sense and for this reason alone the principle of legality cannot be invoked.

32. In any event, even if it were to be afforded this hallowed status, this right has not been abrogated by the legislation as amended. The right to vote remains intact and will be exercisable to its fullest extent, albeit within the three-month period ensuing after 3 December 2023. The appellant, nor any other individual for that matter, has not been disenfranchised as there is no right to vote on a specific date.

33. Even if it may be argued that there is a right to vote within a three-month period ending on 3 March 2023, it cannot be advanced that this is a right of such high constitutional significance so as to attract the principle of legality, warranting the extra scrutiny necessary to override it.

34. Furthermore, even if the right to vote exists on or before 3 March 2023, it has been overridden by the express language of the provisions of the *2022 Act*. Section 11(4A) of the *MCA* provides that an election shall be held within three months of the expiration of the term

of office. Section 11(4) as amended provides that the term of office of Councillors shall be for four years and that they shall retire together on the last day of every quadrennial period, the first of which shall be deemed to have begun on the day on which they were elected to office. As the Councillors were elected to office on 2 December 2019, the last day of the quadrennial period will be 2 December 2023. The next election is therefore to be held within three months of 2 December 2023. If the court accepts that there has been a violation of the right to vote at a particular time, the respondents submit that that violation has been expressed in clear and unambiguous terms.

35. The appellant in his submissions suggests that the proclaimed amendments affect vested rights or impose obligations and therefore should only be construed as applying to sitting Councillors and Aldermen if the clearest of words to that effect were used. He invokes the presumption against retrospectivity and posits that the proclaimed amendments are not in sufficiently clear or express terms to have the effect contended for by the respondents. It is therefore necessary to establish what the proclaimed amendments actually effected.

36. The amendments increase the term of office of Councillors from three to four years, and it is clear from the provisions themselves that the new four-year term is to be measured from a past occurrence, namely the date on which the Councillors were elected to office. In this case, it would be from 2 December 2019. As the right to vote is tied directly to the term of office, the impact on any right to vote is also tied to an event which occurred in the past. The impact of the proclaimed amendments is therefore prospective, occurring in the future, albeit based upon events which occurred prior to the proclamation of the amendments. In the premises, the respondents say that the presumption against retrospectivity does not apply.

LEGISLATION

The Constitution of Trinidad and Tobago

Whereas the People of Trinidad and Tobago—

(a) have affirmed that the Nation of Trinidad and Tobago is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator;

(b) respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;

(c) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;

(d) recognise that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

(e) desire that their Constitution should enshrine the above-mentioned principles and beliefs and make provision for ensuring the protection in Trinidad and Tobago of fundamental human rights and freedoms.

Now, therefore the following provisions shall have effect as the Constitution of the Republic of Trinidad and Tobago:

PRELIMINARY

1. (1) The Republic of Trinidad and Tobago shall be a sovereign democratic State.

…

2. This Constitution is the supreme law of Trinidad and Tobago, and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency.

CHAPTER 1

THE RECOGNITION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

PART I

RIGHTS ENSHRINED

4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;

(c) the right of the individual to respect for his private and family life;

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;

(e) the right to join political parties and to express political views;

(f) the right of a parent or guardian to provide a school of his own choice for the education of his child or ward;

(g) freedom of movement;

(h) freedom of conscience and religious belief and observance;

(i) freedom of thought and expression;

(j) freedom of association and assembly; and

(k) freedom of the press.

5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

…

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.

PART IV

EXCEPTIONS FOR CERTAIN LEGISLATION

13. (1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

(2) An Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House.

(3) For the purposes of subsection (2) the number of members of the Senate shall, notwithstanding the appointment of temporary members in accordance with section 44, be deemed to be the number of members specified in section 40(1).

…

51. Subject to such disqualifications as Parliament may prescribe, a person shall be qualified to vote at an election of members to serve in the House of Representatives if, and shall not be qualified to vote at such an election unless, he— (a) is a Commonwealth citizen (within the meaning of section 18) of the age of eighteen years or upwards; and (b) has such other qualifications regarding residence or registration as may be prescribed.

…

PART II

POWERS, PRIVILEGES AND PROCEDURE OF PARLIAMENT

53. Parliament may make laws for the peace, order and good government of Trinidad and Tobago, so, however, that the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) the Trinidad and Tobago Independence Act 1962 of the United Kingdom may not be altered except in accordance with the provisions of section 54.

54. (1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962.

(2) In so far as it alters—

(a) sections 4 to 14, 20(b), 21, 43(1), 53, 58, 67(2), 70, 83, 101 to 108, 110, 113, 116 to 125 and 133 to l37; or

(b) section 3 in its application to any of the provisions of this Constitution specified in paragraph (a),

a Bill for an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House.

(3) In so far as it alters—

(a) this section;

(b) sections 22, 23, 24, 26, 28 to 34, 38 to 40, 46, 49(1), 51, 55, 61, 63, 64, 68, 69, 71, 72, 87 to 91, 93, 96(4) and (5), 97, 109, 115, 138, 139 or the Second and Third Schedules;

(c) section 3 in its application to any of the provisions specified in paragraph (a) or (b); or

(d) any of the provisions of the Trinidad and Tobago Independence Act, 1962,

a Bill for an Act under this section shall not be passed by Parliament unless it is supported at the final vote thereon—

(i) in the House of Representatives, by the votes of not less than three-fourths of all the members of the House; and

(ii) in the Senate, by the votes of not less than two-thirds of all the members of the Senate.

(4) For the purposes of subsections(2) and (3) the number of members of the Senate shall, even though circumstances requiring the appointment of temporary members in accordance with section 44(1) have arisen, continue to be the number of members specified in section 40(1).

(5) No Act other than an Act making provision for any particular case or class of case, inconsistent with provisions of this Constitution, not being those referred to in subsections (2) and (3), shall be construed as altering any of the provisions of this Constitution, or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act, 1962, unless it is stated in the Act that it is an Act for that purpose.

(6) In this section references to the alteration of any of the provisions of this Constitution or the Trinidad and Tobago Independence Act, 1962, include references to repealing it, with or without re-enactment thereof or the making of different provisions in place thereof or the making of provision for any particular case or class of case inconsistent therewith, to modifying it and to suspending its operation for any period.

Act No. 11 of 2022

AN ACT to amend the Municipal Corporations Act, Chap. 25:04, the Burial Grounds Act, Chap. 30:50, the Cremation Act, Chap. 30:51, the Advertisements Regulation Act, Chap. 30:53, the Recreation Grounds and Pastures Act, Chap. 41:01, the Highways Act, Chap. 48:01, the Dogs Act, Chap. 67:54, the Property Taxes Act, Chap. 76:04 and the Planning and Facilitation of Development Act, No. 10 of 2014.

[Assented to 1st July, 2022]

ENACTED by the Parliament of Trinidad and Tobago as follows:

1. This Act may be cited as the Miscellaneous Provisions (Local Government Reform) Act, 2022.

2. This Act shall come into operation on such date as is fixed by the President by Proclamation.

3. The Municipal Corporations Act is amended—

…

(c) in section 11—

(i) in subsection (2), by inserting after the word "Government" the words "and Tobago House of Assembly";

(ii) by deleting subsection (3);

(iii) in subsection (4), by deleting—

(A) the word "three" and substituting the word "four"; and

(B) the word "triennial" and substituting the word "quadrennial";

…

(d) in section 12—

(i) in subsection (1), by deleting the words ", Aldermen shall be persons who qualify to be Councillors and who possess" and substituting the words, "An Alderman shall be a person who qualifies to be a Councillor and who possesses";

(ii) by repealing subsection (3) ; and

(iii) in subsection (5), by deleting the words "three years and they shall retire in the last day of every triennial" and substituting the words "four years and they shall retire together on the last day of every quadrennial"

ANALYSIS

37. The issue in this case is whether the current term of office of all Councillors and Aldermen has been extended for one year until 1 December 2023 by virtue of the amendments to Sections 11 (4) and 12 (5) of the *MCA* by the *2022 Act*, and as proclaimed by Legal Notice No. 206 of 2022 on 7 November 2022. The Court is therefore tasked with ascertaining the intention of Parliament, which requires the identification of the meaning borne by the words in question in the particular context of their use. Discerning the intention of Parliament is an objective exercise, that is, what the court may reasonably impute to Parliament with respect to the language it has used: *R (Spath Holms) v Secretary of State for the Environment [2001] 2 AC 349*.[2]

38. The appellant relies on the principle of legality as the basis of his submission that it cannot be gleaned from the amendments that Parliament intended its application to sitting Councillors and Aldermen. For this to have occurred, clear language was required to make it known that that their tenure in office was being extended for an additional year, and/or that local government elections were being postponed or delayed by a further year. Such precise and unambiguous language was necessary, because, if applicable to sitting Councillors and Aldermen, the appellant's constitutional right to vote in local government elections would be adversely affected.

39. As already mentioned, the respondents have accepted that the natural effect of the extension of the term of office of Councillors and Aldermen would be the altering of the election cycle from every three years to every four years. From this concession it can be gleaned that it is not in dispute that the relevant amendments impact upon the holding of local government elections. Their preliminary position however, is that save for national elections, no general right to vote exists in the Constitution, far less a right to vote in local government elections on a specific date no later than 2 March 2023.

40. In answering the question of whether or not the amendments apply to sitting or future Councillors and Aldermen, given how the challenge has been framed by the appellant, it is

[2] See pp 397-398.

common ground that the issue of whether or not there exists a right to vote in local government elections requires a preliminary determination. Before embarking on this exercise however, a brief look at the course of local government legislation by way of background, may be helpful.

The Legislative History of Local Government

41. In 1927, Trinidad was divided into eight counties by the *Division of Trinidad Act*. These counties were sub-divided into wards, which functioned as administrative units. In 1945 County Councils were established. Local government was managed through the County Council system under the *County Council Act (Act 22 of 1967)* ("CCA"). Under the CCA, wards were replaced by electoral districts with one Councillor per district; the position of Alderman was introduced into the system and a role for a Minister with responsibility for local government was created. The CCA did not provide for the period in which local government elections were to be held. The CCA at section 8(1) merely provided for the term of Councillors as follows:

> *"8. (1) Except in the case of any member who has resigned or whose term of office has been previously determined by virtue of the provisions of this Act, the term of office of members of a County Council shall expire on the last day of every successive triennial period the first of which shall be deemed to have begun on the day upon which such councillors were elected to office. In the event of a vacancy, the person elected to fill such vacancy shall hold office until the time when the person whose vacancy he filled, would have gone out of office."*

42. This position remained until 1990 when the *MCA* came into force. The *MCA* repealed the CCA. The *MCA* establishes the legislative framework for local government. It provides for the division of the country into various municipalities which are each governed by a separate Municipal Corporation. The original *MCA* (Act 21 of 1990) did not include a provision as to when local government elections were to be held. Section 11(4)(A) which provides for the holding of elections within three months of the expiry of the term of office of the Mayor, Councillors and Aldermen comprising the Council was inserted in 1992 by Act 8 of 1992. Act

8 of 1992 was passed in the House of Representatives on 24 June 1992 and on 7 July 1992 in the Senate.

43. On 1 October 2020, the *Miscellaneous Provisions (Local Government Reform) Bill, 2020* (the "2020 Bill") was introduced into the Parliament by the then Minister of Rural Development and Local Government, Senator the Honourable Kazim Hosein. The 2020 Bill was sent to a Joint Select Committee on the same day and was eventually reported back to the House on 2 July 2021. The Report of the JSC was debated in the House of Representatives on 23 March, 8 April, and 23 May 2022 and the 2020 Bill was passed on 23 May 2022 with a simple majority (the Opposition abstaining).

44. The 2020 Bill was then piloted in the Senate by new Minister of Rural Development and Local Government, the Honourable Faris Al-Rawi. The 2020 Bill was debated in the Senate on 31 May, 7 June and 14 June 2022 and passed with a simple majority (the Opposition again abstaining). It was assented to on 1 July 2022 and became Act No. 11 of 2022, referred to as the *Miscellaneous Provisions (Local Government Reform) Act, 2022*.

45. By Legal Notice No. 206 of 2022 dated 7 November 2022, Sections 1, 2, 3(b), 3(c)(i), 3(c)(iii), 3(c)(v), 3(d)(iii) and 3(v) of the *2022 Act* were proclaimed and came into force from 8 November 2022. The *2022 Act* amended the *MCA*. Relevant to this appeal are sections 3(c)(iii) and 3(d)(iii), which amended sections 11(4) and 12(5) of the *MCA*.

As amended by those provisions, sections 11 and 12 of the *MCA* now read as follows:

> "*11. (1) Councillors shall be elected by the electors for each Municipality in the manner provided for in the Representation of the People Act.*
>
> *(2) The number of Councillors to be elected to the Council of each Corporation shall, subject to the provisions of the Elections and Boundaries Commission (Local Government) Act, be as set out in the Third Schedule, or in any Order made pursuant to section 5(2).*
>
> *(3) One Councillor shall be returned for each electoral district.*
>
> *(4) The term of office of Councillors shall be four years, and they shall retire together on the last day of every quadrennial period, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office.*

(4A) An election referred to in subsection (1) shall be held within three months of the expiry of the term of office of the Mayor, Councillors and Aldermen comprising the Council.

…

12. (1) Save for the requirement that Councillors be residents or owners of property within a Municipality, Aldermen shall be persons who qualify to be Councillors and who possess demonstrated knowledge, expertise or experience in professional or vocational occupations suitable to the development focus of the Municipality

…

(5) The term of office of Aldermen shall be four years and they shall retire together on the last day of every quadrennial period, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office."

Interpreting the Constitution

46. As mentioned previously, it is common ground that the court would have to consider the issue as to whether there is a constitutional right to vote. Thus, the court must address the issue of the interpretation of the Constitution. One of the latest decisions emanating from the Privy Council is that of *Commissioner of Prisons v Seepersad [2021] UKPC 13* where Sir Bernard McCloskey, delivering the judgment on behalf of the Board, opined that the most comprehensive guidance on the approach to be adopted in construing the Constitution is found in the judgment of Lord Bingham in *Reyes (Patrick) v R [2002] UKPC 11*. The Board in *Seepersad* provided the following guidance at [21] and [22]:

> "*When (as here) an enacted law is said to be incompatible with a right protected by a Constitution, the court's duty remains one of interpretation. If there is an issue (as here there is not) about the meaning of the enacted law, the court must first resolve that issue. Having done so it must interpret the Constitution to decide whether the enacted law is incompatible or not. Decided cases around the world have given valuable guidance on the proper approach of the courts to the task of constitutional interpretation: see, among many other cases,* Weems v United States, *217 US 349 at 373 (1909);* Trop v Dulles, *356 US 86 at 100, 101 (1958);* Minister of Home Affairs v Fisher *(1979) 44 WIR at 112;* Union of Campement Site Owners and Lessees v Government of Mauritius *[1984] MR 100 at 107;* Attorney-

> General of the Gambia v Momodou Jobe *[1984] AC 689 at 700, 701;* R v Big M Drug Mart Ltd *[1985] 1 SCR 295 at 331;* The State v Zuma *1995 (2) SA 642;* The State v Makwanyane *1995 (3) SA 391;* and Matadeen v Pointu *[1999] 1 AC 98 at 108. It is unnecessary to cite these authorities at length because the principles are clear. As in the case of any other instrument, the court must begin its task of constitutional interpretation by carefully considering the language used in the Constitution. But it does not treat the language of the Constitution as if it were found in a will or a deed or a charterparty. A generous and purposive interpretation is to be given to constitutional provisions protecting human rights. The court has no licence to read its own predilections and moral values into the Constitution, but it is required to consider the substance of the fundamental right at issue and ensure contemporary protection of that right in the light of evolving standards of decency that mark the progress of a maturing society (see* Trop v Dulles*, at 101). In carrying out its task of constitutional interpretation the court is not concerned to evaluate and give effect to public opinion.'*
>
> *Lord Bingham added, at para [28], that it is appropriate to take into account international instruments incorporating relevant norms to which the state in question has subscribed. The Board will elaborate on this in considering the s 4(b) ground of appeal.*
>
> *[22] One of the main reasons for the generous and purposive approach advocated by Lord Bingham is readily ascertainable. The terms in which individual rights and guarantees are formulated in constitutional instruments are typically broad and open textured, unaccompanied by definition or particularity. Thus, while the exercise of construing a statute has certain similarities, a court engaged in the construction of constitutional provisions must adopt a somewhat broader perspective. The analogy with construing a legal instrument such as a contract or a will is, as Lord Bingham makes clear, inappropriate. Furthermore, the Board considers that the court engaged in the interpretation exercise must be alert to the historical context of the constitutional instrument in question. It is trite to add that the constitutional provision under scrutiny must be construed by reference to the whole of the instrument in which it is contained."*

47. As the Board postulates, history informs the interpretive exercise. With respect to the system of governance, in what must necessarily be limited to a concise summary, the Wooding Constitution Commission, entrusted in 1971 with the responsibility of making recommendations for the revision of the 1962 Constitution for matters of constitutional reform, including the provision of a draft Constitution for consideration, noted:

> "*Trinidad and Tobago has had throughout most of its history a nominated system of government. Prior to 1925 no elected person sat in the Legislative Council. In that year seven elected members joined the Council, but they were a minority among the twelve senior officials and the six officials nominated by the Governor. The Governor was himself President of the Council with an original as well as a casting vote. By 1946 the elected members were equal to the nominated members – nine of each, three of the nominated members being officials and six officials – the Governor retaining his casting vote. Elected members achieved a majority in the Legislative Council only in 1950. There is therefore a strong tradition of government by nomination, a fear that the elected person will not be as educated or as intelligent as the nominated member and consequently will not be as capable of making decisions for the country*."[3]

48. Specific to local government, the Constitution Commission noted that the 1962 Constitution made no reference to local government: [301]. It set out a brief history, noting that the earliest form of local government was the Cabildo, an institution established by the Spanish government, for the area now included in the City of Port of Spain. It traced the development of the Port of Spain City Council, the San Fernando Borough Council (established in 1846) and the Arima Borough Council founded by Royal Charter in 1888: [304] – [305]. With respect to the counties it stated at paragraphs 306 and 307:

> "*In the counties local Government administration developed out of a system of Wardship – a replica of the French "Prefect". The warden or District Administrator was virtually the "Governor" of the County, co-ordinated all the services and was responsible to the central government for revenue collection, security, allocation of Crown lands, roads and health. He submitted monthly administrative reports to the Governor. In 1946 County Councils were established as advisory bodies to advise the Warden in some of his administrative duties. Later in 1952, they were invested with executive powers, their principal functions being the maintenance of local roads and crown traces, sanitation under the Public Health and Malaria Abatement Ordinances, the maintenance and control of burial grounds, recreation grounds and markets and the emergency distribution of water in areas devoid of a pipe borne supply.*
> *307. Throughout the history therefore local authorities had been Complementary to central government and, because of the smaller geographical area under their control, were expected to provide a more personalized service serving local needs and aspirations.*"

[3] See 1974 Report of the Constitution Commission, [177].

49. In the text, *Fundamentals of Caribbean Constitutional Law by Robinson, Bulkan and Saunders (2015 ed.)*, at 3 – 008, the authors recognise the formative place of the franchise in the constitutional and political development of the Caribbean, stating:

> "*Not only was the franchise fundamental in securing the advance of democracy in the Caribbean. It represents a seminal form of recognition of the majority population – people of colour who had been dehumanised, the object of brutal forms of government and deemed unfit for representative political institutions.*"

The learned authors approved of jurisprudence coming from the Eastern Caribbean Supreme Court identifying the right to vote as "the very fabric of our parliamentary system of democracy", further stating:

> "*[Professor] Ralph Carnegie tried to grapple with the contradiction of the failure in many Caribbean constitutions to constitutionally entrench universal adult suffrage, which is so essential to the democracy and the integrity of the very constitutions. He asked candidly: 'How can one rationalise the existence of a Constitution which entrenches much of its contents but omits from that scheme of entrenchment a feature as important as that of universal adult suffrage?' He resolved this issue by distinguishing between the actual constitutional text (for him, the Constitution with a big "C") from principles that, despite being outlined in ordinary legislation, are "clearly constitutional in functional effect." The latter is the Constitution with a little "c". Universal adult suffrage and the right to vote are plainly presumed by and implied in Caribbean constitutions. Despite being outlined in ordinary legislation, the foundational right to vote is "clearly constitutional in effect"*."

50. It is an accepted canon of interpreting constitutions that the preamble can provide guidance on its meaning: *Attorney General of Guyana v Richardson [2018] CCJ [23]* per Sir Dennis Byron P. By this Nation's preamble the People formally adopted, enacted and gave themselves a Constitution. In *Seepersad* the Privy Council concluded that the preamble overarches the entire Instrument: see [24]. Thus we the People, *inter alia*:

> "*(a) have affirmed that our nation is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms… the dignity of the human person and the equal and inalienable rights which all members of the human family are endowed by their Creator;*
>
> *…*

> *(c) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;*
> *(d) recognise that persons and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;*
> *(e) desire that their Constitution should enshrine the above-mentioned principles and beliefs and make provision for ensuring the protection in this nation of fundamental human rights and freedoms.*"

51. As is evident, the People of Trinidad and Tobago have proclaimed, *inter alia*, their belief in human dignity, equality, fundamental human rights and freedoms, democracy and the rule of law. In *Francis v The State (2014) 86 WIR 418* (CA TT) Bereaux JA at [273], in his insightful analysis of the effect of the Preamble stated:

> "*These are fundamental precepts on which our democracy is founded. They inhere in our values as a people, imbue our spirit and are drawn from our belief in God's Supremacy and the Order he has ordained. Those precepts, inter alia, inform any interpretation of the proviso in s 13 (1) of the Constitution. It recognises that notwithstanding the 'permitted limitations and derogations in the Constitution', there must remain in any law an inherent respect for the fundamental rights and freedoms and the dignity of our humanity.*"

The Preamble may therefore be regarded as embodying the philosophy and the fundamental norms of the Constitution.

The Constitutional Right to Vote

52. Mr. Ramlogan's principal's submission is that the right to vote under the *MCA* is a protected constitutional right. Alternatively, it is a statutory right which, by virtue of its nature and importance, sits at the apex of statutory rights. Accordingly, he submits that Parliament did not use sufficiently clear words which would allow the Court to find that the impugned amendments applied to sitting Councillors and Aldermen.

53. Mr. Mendes' primary submission is that as far as the date on which elections are to be held is concerned, that it is entirely within the reach and remit of the legislature to change by ordinary legislation and there is no constitutional restriction on the legislature to do so.

54. In his written submissions, Mr. Ramlogan also appeared to rely on a common-law right to vote. However, it is only necessary on this point to say that it is firmly established that there is no common-law right to vote. In *Moohan v Lord Advocate (Advocate General for Scotland intervening) [2015] AC 901*, Lord Hodge in his majority judgment stated at [34]:

> "*Like the courts below I do not think that the common law has developed so as to recognise a right of universal and equal suffrage from which any derogation must be provided for by law and must be proportionate. It is important to bear in mind… the historical development of the right to vote. Parliaments were initially summoned and the franchise created by the King's writ. In the fifteenth century parliamentary legislation in both Scotland and England and Wales sought to regulate the franchise. In Scotland the Election of Commissioners Act 1681 establish the county franchise which survived until 1832. Since then the franchise has been extended by statute. It is thus been our constitutional history that for centuries the right to vote has been derived from statute. The UK Parliament through its legislation has controlled and controls the modalities of the expression of democracy. It is not appropriate for the courts to develop or override the common law in order to supplement or override the statutory rules which determine our democratic franchise.*"

55. Viewed from a historical context, there was a marked absence of the franchise for the indigenous, enslaved, indentured and other disadvantaged members of our society. *Robinson, Bulkan and Saunders* make the point at 3 – 008 of their text that:

> "*In doing so, the case [Ingraham] discounts the formative place of the franchise in the constitutional and political development of the Caribbean. Not only was the franchise fundamental in securing the advance of democracy in the Caribbean. It represents a seminal form of recognition of the majority population – people of colour who had been dehumanized, the object of brutal forms of government and deemed unfit for representative political institutions.*"

56. In 1945 the franchise of universal adult suffrage was extended to every person twenty-one years and older in Trinidad and Tobago. The 1950 *Order in Council* established, *inter alia*, a Legislative Council, the majority of which comprise of elected members (the minority thereof nominated members). Section 46 which contained an express entitlement to vote, provided:

> "*Every person who is registered as an elector in any electoral district shall, while so registered, be entitled to vote at any election for that district and*

> *no person shall vote at any election for any electoral district who is not registered as an elector in this district."*

Surprisingly there was a marked absence in the 1961 *Order in Council* of any reference to the qualifications of a voter or an entitlement to vote.

57. The framers of the 1962 Constitution eschewed the inclusion of an express entitlement to vote similar to that included in the 1950 *Order in Council*. The formulation used is identical to that found in section 51 of the 1976 Constitution which provides:

> " *Subject to such disqualifications as Parliament may prescribe, a person shall be qualified to vote at an election of members to serve in the House of Representatives if, and shall not be qualified to vote at such an election unless, he—*
> *(a) is a Commonwealth citizen (within the meaning of section 18) of the age of eighteen years or upwards; and*
> *(b) has such other qualifications regarding residence or registration as may be prescribed.*"

58. At this juncture it is noteworthy that both the 1962 Constitution (at section 1 (e)) and the 1976 Constitution (at section 4 (e)) included, among the fundamental rights and freedoms, the express right to join political parties and to express political views. The Board in *Panday v Gordon [2006] 1 AC 427* (UKPC TT) considered the provenance of the fundamental rights as included and the drafting history of this extraordinary provision, Lord Nicholls stating at [20]:

> "*This is confirmed by the drafting history. Unlike the constitutions of other Caribbean countries, this part of the Constitution of Trinidad and Tobago was modelled on the Canadian Bill of Rights 1960 [which] did not contain any provision corresponding to section 4 (e)…… Section 4 (e), together with some other rights listed in section 4, was added to the draft Constitution at an advanced stage in the course of the Trinidad independence conference held in London in May and June 1962, immediately before Trinidad and Tobago became independent on 1 August 1962. No doubt those who successfully sought to have the right to express political views included specifically in the Constitution thought this would provide added reassurance*."

59. In the Court of Appeal decision in *Panday v Gordon CA No 175 of 2000* Chief Justice Sharma, while recognising that the section 4 (e) right is qualified and not absolute, subscribed

to the view that the right to express political views is the foundation of any democratic society, stating at [75]:

> "*The freedom to disseminate and receive information on political matters is essential to the proper functioning of the system of parliamentary democracy cherished in this country. This freedom enables those who elect representatives to Parliament to make an informed choice, regarding individuals as well as policies, and those elected to make informed decisions. Restrictions on these fundamental rights can only be justified by the strongest reasons.*"

60. Sharma CJ cited the United States Supreme Court decision and the judgment of Justice Brandeis in *Whitney v People of the State of California (1927) 274 US 357* at [42] which is apposite given the breadth and scope of governmental power in modern society:

> "*Those who won our independence believed… that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognised the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies; and that the effect and remedy of evil counsels is good ones. Believing the power of reason as applied through public discussion, they eschewed silence coerced by law – the argument of force in its worst form. Recognising the occasional tyrannies of government majorities, they amended the Constitution so that free speech and assembly should be guaranteed.*"

61. Given the fundamental right to freedom of expression in section 4 (i), together with that of the right to express political views, the intention of the framers must have been, to the extent afforded by these guarantees, to allow the greatest degree of participation by its citizens in the decision-making process, particularly in matters of political and public interest. These two freedoms together form the bedrock of any democratic system: see *Human Rights Law and Practice, Lester, Pannick and Herberg 3rd edn (2009) 4.10.10*.

62. The expression of political views would include discussion of the conduct, policies or fitness for office of government, political parties, public bodies, public officers, those seeking public office and even of those engaged in activities that have become the subject of political

debate: see *Theophanous v Herald and Weekly Times Ltd (1994) 124 ALR 1* [13] to [21] per Mason CJ, Toohey and Gaudron JJ.

63. Having regard to the broad reach of the right to express political views, a purposive interpretation of the section and the Constitution as a whole, in its appropriate historical and philosophical setting, must inexorably lead to the conclusion that the Constitution contemplates a right to vote. Casting a ballot in free and fair elections is arguably the most tangible expression of one's fundamental right to express one's political views. However, the very same historical and philosophical setting informs that this right as afforded under our Constitution is neither unqualified nor open-ended. As indicated earlier, the entitlement to vote expressed in section 46 of the 1950 *Order in Council* was not adopted by the framers. Rather, they incorporated section 51, which prescribes the qualifications of voters to elect members to serve in the House of Representatives (national elections). Pursuant to section 51, a voter must be a Commonwealth citizen and must be at least 18 years of age. The modalities of voting, even disqualifications, are left exclusively to the legislature. Moreover, section 68 of the Constitution mandates national elections every five years. Both sections 51 and 68 are deeply entrenched requiring a three-fourths majority of all the members of the House, and a two-thirds majority of all the members in the Senate for their alteration.

64. The combination of these factors have led us to draw the irresistible inference that there is an implicit right to vote contemplated by the Constitution, limited however to a right to vote in national elections only.

65. Even the most purposive and progressive approach to the interpretation of our Constitution, albeit for the venerable purpose of achieving an outcome which this Court may well view as being consistent with the tenets of a modern, democratic society of our particular background, must be approached in a manner which avoids usurping the role and function reserved for Parliament in the crafting of our laws. It is clear from our tracing of the history of the Constitution that a deliberate decision was taken to forego the inclusion of an open-ended right to vote in both the 1962 and 1976 Constitutions.

66. It was also the clearly expressed will of the framers of our Constitution that Parliament be solely responsible for the establishment of local government, and the crafting of the

relevant laws pertaining thereto, which by necessity would include the manner in which persons are to be elected to serve in that capacity and the duration of their terms of office. It is telling that, save for one tangential reference, there is no mention of local government in either of our Constitutions, even though at the time of its drafting and enacting in 1962, it was a recognised feature of our political landscape.

67. Some further observations should be noted. Firstly, the topic of local government was frontally addressed by the participant stakeholders of the 1974 Wooding Commission, with the end result being no recommendation that changes in this regard be drafted into the 1976 Constitution. Even when a more complete and comprehensive framework for the local government scheme was introduced by way of the *MCA* in 1990, again, no concurrent effort was made to afford it constitutional status. This can be contrasted with the course adopted specific to the *Tobago House of Assembly Act*, that body having been afforded constitutional status. The stark reality is that in the intervening years in which we as a nation have continued to grow and develop as a democratic society, no amendment giving constitutional recognition and protection to the structure of local government has been made. There is sufficient evidence to suggest that this was deliberate. It is pellucid that the entire existence and scope of local government was left to the legislature to define and establish by ordinary legislation. This is in fact what occurred with the drafting and proclamation of the *MCA*.

68. Against this backdrop, the Court considers that it would be a clear arrogation of the powers of Parliament if it were to decide to breathe into the Constitution a right to vote in a structure in which a pointed resolution was made and maintained to eschew constitutional status and its attendant protections.

69. For these reasons, this Court is of the view that there is no right to vote in local government elections generally, or on a specific date within three months of the expiration of a three-year term of office. Any right to vote in local government elections is to be found within the *MCA*, with the exercise of the franchise to be defined by the provisions of the Act itself, or any other Act to which it refers.

The Principle of Legality

70. The appellant invited the court, in the event that it was not persuaded that there existed such a constitutional right, to still recognise that the statutory right to vote afforded under the *MCA* was worthy of heightened deference and ought not to be wantonly disregarded. In this way, similar to the argument that the amendments were required to have been deemed to have affected a fundamental constitutional right, the language used ought to have been clear and unambiguous. Stated otherwise, so basic, fundamental, and integral is the right to vote in a democratic society, the exercise of the franchise ought to be viewed through the constitutional lens and afforded constitutional recognition, if not express protection. The respondent in turn submits that to the extent that the appellant is attempting to apply the principle of legality to what is a statutory right, that is, the requirement of clear, precise and unambiguous language, the attempt is misplaced as the principle ought only to be invoked when dealing with the potential abrogation of express, and fundamental constitutional rights.

71. The principle of legality was outlined by Lord Hoffman in *Regina v Secretary of State for the Home Department, ex parte Simms* [2000] 2 AC 115:[4]

> "*Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual.*"

72. From this it can be extrapolated that fundamental rights can only be overridden by clear and unambiguous words. Two preconditions must therefore exist before the principle of legality can be applied as an aid to interpreting the impugned amendments. Firstly, the subject matter affected by the amendments must be a fundamental right, and secondly, the right must have been overridden by the amendments in question. A positive answer to these

[4] At p 131.

questions is the necessary premise upon which the Court will proceed to assess the clarity and precision of the language used in the amending legislation.

73. We consider it helpful now to once more set out the relevant parts of section 11 of the *MCA* as amended:

> "*11. (1) Councillors shall be elected by the electors for each Municipality in the manner provided for in the Representation of the People Act.*
>
> *…*
>
> *(4) The term of office shall be four years…*
>
> *(4A) An election referred to in subsection (1) shall be held within three months of the expiry of the term of office of the Mayor, Councillors and Aldermen comprising the Council.*"

74. From the wording of the statute, we say that the right afforded to the elector is the right to vote in local government elections, when called. The elections are to be called within three months of the expiration of the term of office of the Mayor, Councillors and Aldermen comprising the Council. As we proceed, wherever reference is made to the right to vote in local government elections, this statutory statement is what informs our analysis.

75. As previously mentioned, counsel for the respondents has challenged the existence of the first precondition, suggesting that the subject matter affected by the amendments is not a fundamental right, it not having been included in the Constitution. Given our earlier conclusions, it follows that we are of the view that the right to vote in local government elections can only be statutory in nature. The respondents' supposition has not however, been fully explored before this court. It is nonetheless noteworthy that counsel for the respondents has himself not ruled out the applicability of the principle to rights created by statute, but has qualified it by stating that the right in question must be fundamental to the country's democracy.[5] In the fullness of his submissions, we find no contradiction in these two positions as it can be gleaned therefrom that, in his view, a right can only be considered 'fundamental to the country's democracy' where there is a constitutional mooring, which he has maintained there is not, specific to voting in local government elections.

[5] Submissions of the Respondents dd 4/1/23, p 31 at [73].

76. We would nonetheless hesitate to conclude definitively that the principle is inapplicable save and except where expressly stated or implicit constitutional rights are potentially engaged. Our reservations in this case are borne mainly from the fact that we view the scheme of local government as an integral feature of our democracy, even in the absence of a constitutional link. Local government has historically made up one tier of our two-tiered system of governance. As long as it continues to exist, the attendant right to vote in these elections can be viewed as nothing less than basic and important. Given this significance, it is difficult to accept that any potential impairment of the right is excluded from a higher level of scrutiny on the sole basis that it does not find its expression in the Constitution.

77. Having said this however, we understand the respondents' concern that the level of scrutiny invited by the principle may afford the right a level of protection which is contextually unwarranted. To this we say that this Court is mindful that in the absence of constitutional underpinnings, the breath and scope of the statutorily afforded right must, by necessity, abide the four corners of the empowering legislation or any other to which it refers.

78. The second precondition is whether the right in question has been overridden. From the statute, it is readily observable that the right to vote in local government elections is exercisable within three months of the expiration of the term of office of the Mayor, Councillors and Aldermen. When the elections are to be called is therefore appended to the term of office, and the right of the elector to vote in local government elections is engaged at the expiration of that term. The amendments have sought to extend the term of office from three years to four years. The consequence of this is that the elections are now due to be called within three months of the expiration of the new term of four years.

79. The appellant relies on the fact of this "postponement" to ground his submission that his right to vote has been impugned. This argument presupposes that there existed a right to vote attached specifically to the pre-amendment term of three years. For reasons which we propose to explore more fully when dealing with the issue of the presumption against retrospectivity, we are unable to accept that this is the correct premise from which to proceed. Suffice it to say, the *MCA* has not in these sections or any other, prescribed a specific, stand-alone date or time upon which local government elections are to be called. A ready

comparison can be made to the provisions of the Constitution which mandate that national elections are to be held every five years, and are, save in defined circumstances, unimpeded or unqualified by any other considerations.

80. In the absence of such a provision, it can only be concluded from an assessment of the amended sections that the right to vote in local government elections within three months of the expiration of the term of office of the Mayor, Councillors and Aldermen remains unimpeded. The amendments have shifted the date when the right is to be exercised, which, in the context of the provision as a whole, cannot be classified as an abrogation or an overriding of the right.

81. Given the fact that at least one of the two preconditions has not been met, we are constrained to find that the principle of legality is not applicable as an aid to interpreting the scope of the 2022 amendments, that is, whether Parliament intended for the amendments to apply to sitting Councillors and Aldermen. We are of the view that whether or not it can be said that the right to vote in local government elections satisfies the first precondition, the right to vote as defined by the section has not been overridden by the amendments.

The presumption against retrospectivity

82. Lord Mustill in *L'Office Cherifien des Phosphates v Yamashita Ltd* [1994] *1 AC 486* outlined the concept as follows:

> "*Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation. They are construed as operating only in cases or on facts which come into existence after the statutes were passed unless a retrospective effect is clearly intended. It is a fundamental rule of English law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication…*
>
> *[A statute is retrospective] which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new*

duty, or attaches a new disability in respect to transactions or considerations already past." [citations omitted]

83. In *Wilson v First County Trust Ltd (No 2) [2004] 1 AC 816*, Lord Nicholls referred to the statements made by the court in *L'Office Cherifien* as to the underlying principle of the presumption against retrospectivity, which was to guard against unfairness resulting from the application of the new statute. It was there opined that the principle dictated that the greater the unfairness, the greater the expectation that Parliament would have made it clear (through precise and unambiguous language) that that degree of unfairness was intended.

84. It is the appellant's submission that the presumption applies as the amendments deny the electorate the opportunity to vote in local government elections through the retrospective extension of the term of office of Councillors and Aldermen elected before 2022. The language utilised does not make clear that this was the outcome intended by Parliament, so the presumption raised that it could not have been the intention to retrospectively affect local government elections has not been rebutted. We note also that evidence of one sitting Councillor was led on behalf of the appellant to the effect that the extension of his term of office by an additional year served to create a new and onerous personal obligation on him.

85. The question is therefore, what changes did the amendments occasion by their application? Of immediate relevance are sections 11 (4) and 12 (5) of the *MCA*.

Section 11 (4) as amended states that:

"*The term of office of Councillors shall be **four** years, and they shall retire together on the last day of every **quadrennial** period, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office.*"

Section 12 (5) as amended recites that:

"*12 (5) The term of office of Aldermen shall be **four years and they shall retire together on the last day of every quadrennial period**, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office.*"

86. The respondents contend that it is clear that not only do these sections not affect any vested right, but they in fact impact upon future obligations based upon past events, namely,

the date when they were elected to office in the 2019 local government elections. The proclaimed amendments impact upon the obligations of Councillors and Aldermen beyond the date on which they were brought into force, which necessarily has affected the period within which elections were to be held, that period being after the day of proclamation as well. The real impact is therefore prospective, occurring in the future, albeit based upon events which occurred before the amendments took effect. For these reasons alone, the respondents submit that the presumption against retrospectivity does not apply.

87. In support of this position, several authorities were placed before the court. We found the following to be particularly instructive. In *Wilson (No 2)*, the court found that, "*the mere fact that a statute depends for its application in the future on events that have happened in the past, does not offend against the presumption."*[6] In *R v Field [2003] 1 WLR 882*, when dealing with the effect of a disqualification order, the court was of the view that such an effect was entirely prospective as it only affected future conduct. It was concluded that, "*In such circumstances, a statute does not offend against the presumption against retrospective effect merely because it depends for its future application upon events that may have occurred before it came into force.*"

88. The court is persuaded by the respondents' elucidation of the import of the amendments in this regard in light of the authorities cited. When applied to the sitting Councillors and Aldermen, the amendments do not alter the nature of their appointment to the offices. It impacts upon the duration of their term in the future, while altering the future period in which elections are to be called. These alterations are based upon an event that took place before the amendments, which was their initial appointment to office in 2019. The law would operate quite differently, and not for the better, if the presumption against retrospectivity was offended in every scenario in which a future application of the law based its genesis on an event which occurred before it came into force. Furthermore, even if we were to accept that the imposition of an additional term of office was an obligation foisted upon potentially unwilling Councillors and Aldermen, we would be hard-pressed to find that such an outcome was so unfair that it could be said that Parliament could not have intended it. We agree with

[6] At [98].

the respondents that, at the very least, it ought to have been contemplated by these officeholders that the prospect existed that their terms of office may be extended as a result of a postponement of the elections. As the appellant himself helpfully highlighted, there is a long history of such postponements. Additionally, these are individuals who may rightfully be viewed as service-oriented individuals by virtue of the fact that they offered themselves up for election and appointment. The call to additional service ought not to be presumed to be too onerous a burden to bear, especially in light of the fact that, like holders of licences to drive motor vehicles, their duties and obligations are subject to the will of Parliament by ordinary legislation and likely to be altered during the term of their acquired rights. The discussion would be different however, if the term of office had been extended to four years without the commensurate assurance of remuneration for the additional year. Quite fortuitously, that has not been the case. In any event, should the prospect of an additional year prove too daunting to any particular Councillor or Alderman, the option to resign from the post remains theirs. The *MCA* provides for a particular course of action if such were to occur.

89. For the sake of completeness, we will not leave the appellant's particular argument on his right to vote under this head, unaddressed. The appellant has pointedly raised that the postponement of local government elections has saddled him for an additional year with unwanted local government representation. To be clear, he avers that at the time of the casting of his ballot, he did so with the assurance that the candidates in his district would only serve a three-year term of office. We must take account of the subjective element involved in his voting in the 2019 local government elections. If his candidate of choice was successful at the polls, he would have been in line to enjoy three years of what he could only have hoped was proper representation. If his candidate of choice was conversely unsuccessful (such being the case here), he would have addressed his mind toward enduring that same three-year period under an unwanted representative. This would therefore have given rise to a vested right to see the duration of the term of office at the time of the election be retained without alteration. Applying the amendments to sitting Councillors and Aldermen usurped this right.

90. In the case of *BG Chavan v The State of Bombay AIR 1955 Bom 334*, this very issue was raised. In that case, Councillors had been elected for a three-year period in accordance with their *Municipal Boroughs Act*. During their term of office, through legislative amendment, the life of the municipality was extended to four years. It was argued that the extension could not apply to existing Councillors as the electors had a vested right to either vote or stand for office in accordance with the former term of office. In rejecting this argument, the court opined that:

> "***It is difficult to accept the view that a voter has a vested right in the duration of the body which he elects****. His vested right is the right to vote and it may be that his vested right is also to stand as a candidate.* ***But the question as to the duration of the municipality is a question of policy which is for the Legislature to determine from time to time****.* ***When the election took place undoubtedly by statute the duration of the municipality was fixed for three years. But it was open to the Legislature on grounds of policy to extend that period and fix the duration at four years and not at three years****.*" [emphasis added]

91. We have confirmed in this judgment (to the extent that there was any doubt) that the entire scheme of local government exists within the ambit and control of Parliament by ordinary legislation. It necessarily follows that the legislature retains the right to shape the policy and scheme of local government, realised through the amendment of the provisions of the *MCA* from time to time. In view of this reality, it cannot be denied that it was open to the legislature to extend the term of office of Councillors and Aldermen, as a matter of legislative policy. By virtue of this, it would be difficult for the appellant to successfully maintain any argument which hinges upon the existence of a vested right in the prescribed duration of the term of office at the time of election.

92. For these reasons, we would conclude that the presumption against retrospectivity does not apply as an aid to interpretation when seeking to determine the question of the applicability of the 2022 amendments.

In completing this aspect of our analysis, we would put forth the following for consideration. We have already determined that the right to vote in local government elections is not a constitutionally protected right. It is a statutory right which we agree is basic and important. The presumption against retrospectivity contemplates the potential curtailment of what the

authorities have termed a vested right. The most convenient parallel to be drawn when considering what is meant by 'vested' in this sense, is the one we understand to be advocated for by the respondents, that is, that the right must be constitutionally protected or otherwise constitutionally underpinned. For the reasons already given at paragraph 76 of this judgment, we again express our hesitancy to make any definitive statements that may be construed as excluding the higher levels of scrutiny required as aids to interpretation of the potential infringements of the right to vote in local government elections. It cannot be overemphasised that the right to vote in local government elections is a very important right in light of our particular system and history of governance and must be given the broadest scope in application permissible under the empowering legislation. But this is not such a case.

The language of the amendments

93. Having found that both the principle of legality and the presumption against retrospectivity are inapplicable as aids to interpretation of the scope and effect of the 2022 *MCA* amendments, the question remains: did Parliament intend for the amendment to the term of office to apply to sitting Councillors and Aldermen, or was it to be prospective in application?

This Court is satisfied that a plain reading of the amended provisions reveal Parliament's intention to alter the term of office from three years to four years with effect from the date of Proclamation. For the avoidance of doubt, it should also be noted that we consider the language utilised to have been clear and unambiguous in revealing this intention, and would maintain this view even had different conclusions regarding the constitutional nature of the right and any abrogation of same, been arrived at. Our reasons for these conclusions are as follows.

94. The pertinent sections of the amended *MCA* are reproduced for ease of reference: [7]

> "*11. (1) Councillors shall be elected by the electors for each Municipality in the manner provided for in the Representation of the People Act.*
> *…*

[7] The amendments to the sections are emboldened.

> *(4) The term of office of Councillors shall be **four** years, and they shall retire together on the last day of every **quadrennial** period, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office.*
> *(4A) An election referred to in subsection (1) shall be held within three months of the expiry of the of the term of office of the Mayor, Councillors and Aldermen comprising the Council.*
> *…*
> *12 (5) The term of office of Aldermen shall be **four years and they shall retire together on the last day of every quadrennial period**, the first of which shall be deemed to have begun on the day on which the Councillors were elected to office.*"

95. Section 2 of the *2022 Act*, which included the amendments to the *MCA* set out above, expressly provided that its provisions were to come into operation on such date as was fixed by the President by proclamation. The proclamation of the amendments occurred on 8 November 2022. Section 30 of the *Interpretation Act* provides that:

> "*An amendment written law shall, so far as consistent with the tenor thereof, be construed as part of the written law that it amends, and, without prejudice to section 17(1), has, as from the date on which it comes into operation, effect accordingly for the purposes of the construction and operation of any other written law that refers to, or is incorporated with, the written law that it amends.*"

96. We now consider the actual wording of the impugned provisions. Section 11 (4) plainly states that term of office shall be for four years and that Councillors shall retire together on the last day of every quadrennial period. The last day of this quadrennial period is calculated with reference to their first day of holding office, which the section states is **deemed** to have begun on the day on which they were elected to office. The same applies to Aldermen with the duration of their term of office calculable with reference to the date the Councillors were elected.

97. The current officeholders were elected to office on 2 December 2019. The last day of the quadrennial period is 1 December 2019. Therefore, the next election was to be called within three months of 1 December 2023. When this is considered against the expressly stated

intention that the provisions were to come into force on the date of proclamation,[8] and in the context of the statutorily imposed presumption that upon proclamation laws were to be treated as having always existed,[9] the answer as to when, and by extension, to whom the amendments applied, is capable of precise calculation and/or determination.

98. The following observations are also pertinent. Firstly, there has been no challenge to Parliament's right to amend the *MCA* in the manner that it did. The only challenge was to whom it was intended to apply. Secondly, there has been no challenge lodged with respect to Cabinet's right to submit for proclamation the amended legislation on the date that they did. Thirdly, the language of the amended sections 11 and 12 does not suggest that it applies only to persons elected to the office of Councillor in the future. The appellant's argument that the amendments were not intended to apply to the current officeholders would have been more persuasive if the amendments had been proclaimed after their term of office had already expired. This would have more ably supported the presumption that the extension of the term of office was to be applied to persons elected in the future.

99. In light of the above therefore, this Court is of the view that the language of the amendments was sufficient to reveal the intent of Parliament. Additionally, even if it could have been said that the amendments impacted upon the fundamental right of the appellant to vote, it cannot be concluded that any potential violation of this right was not expressed in clear and unambiguous terms.

100. We will therefore dismiss this appeal.

P. Moosai JA

[8] Section 2, *Local Government Reform Act*.
[9] Section 30, *Interpretation Act*.

Judgement of Justice JC Aboud JA

101. I agree with the judgment of the learned President of the panel and wish to add something to the reasoning.

102. I have read the Report of the Joint Select Committee of Parliament, which copiously reviewed the Bill that was intended to radically reform the structure of local government. Many written submissions were received by the Joint Select Committee from most of the Municipal Corporations. The Parliamentarians in that committee, comprising members in government and in opposition, reviewed the Bill and endorsed it, with reservations that were, in large part, taken into account when the Bill was laid in Parliament. For whatever reason, the opposition party in the House, although contributing to the debate, abstained from the vote on the Bill that was eventually presented for assent. It was therefore, according to law, passed by a simple majority.

103. The Statutes Act, Chap 3:02 says this:

> "*5.(1) Every statute that is not expressed to come into force or operation on a particular day, comes into force or operation immediately on the expiration of the date before the date of the passing thereof.*
>
> *(2) Where a statute provides that it is to come into force or operation on a day or date to be fixed by the President by Proclamation, or that it is not to come into force or operation until a day or date to be so fixed, any such Proclamation may —*
>
> > *(a) apply to the whole statute or any Part or section or other subdivision of the statute;*
> >
> > *(b) be issued at different times as to any Part or section or other subdivision of the statute; and*
> >
> > *(c) suspend until further proclamation or until a specified date, the operation of any provision contained in the statute.*"

104. It was therefore legitimately open to the Cabinet to selectively seek Presidential proclamation of any individual clauses of the 2022 Act. The piecemeal selection for proclamation of various clauses of an enactment is not without precedent in Trinidad and Tobago.

105. It was therefore open to any Parliamentarian to propose a resolution that the proclamation of the Bill would not be on an incremental clause-by-clause basis, especially the clause that extended the term of office of sitting Councillors and Aldermen from 3 years to 4 years. There are other clauses of the 2022 Act that, if selectively proclaimed, might trigger an objection, such as the one we face today. No record of such discussion or proposed amendment is found in the Hansard report of the Parliamentary proceedings in either of the Houses of Parliament, whether with respect to the extension of the term of office of sitting Councillors or Aldermen or any of the other clauses of this far-reaching and quantum-leaping jump into the future of local government reform. It is to be assumed that all Parliamentarians were aware that clauses of the 2022 Act could be, by the will of the Cabinet, selectively sent for proclamation to the President.

106. The Appellant, Mr Maharaj, is now saddled (as he describes him) with an underperforming Councillor in his district that he must endure for an additional year. His complaint—if true—does not fall on deaf ears. However, it seems to me that Parliamentarians, aware of his predicament and the provisions of the Statute Act, could have sought to insert a provision prohibiting the selective proclamation of any clause of the Bill that was laid before it for enactment. Parliamentarians did not do so. The supremacy of Parliament and the will of its elected members must not be overlooked.

Justice James Christopher Aboud JA

DISPOSITION

107. The appeal is dismissed.

108. We will hear the parties on the issue of costs.