

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF
GUYANA
(REGULAR JURISDICTION)

2017-HC-BER-CIV-9-FDA

BETWEEN:

ALBERT SMITH ET ANOR

Applicants

-and-

ANAND SANASIE ET AL

Respondents

The Honourable Justice Navindra A. Singh, Puisne Judge

Mr. Arudranauth Goosai for the Applicants

Mr. Roysdale A. Forde for the Respondents

Delivered September 8th 2017

RULING

BACKGROUND

The Berbice Cricket Board of Control (hereinafter referred to as the BCBC) held it's Annual General Meeting on December 28th 2014 where the Office Bearers were elected.

Anil Beharry was elected President and following the election acting in accordance with Schedule III of the Guyana Cricket Administration Act; CAP 21:03 of the Laws of Guyana appointed several persons to serve as members of the Executive of the BCBC, two of whom were the Applicants herein.

On March 4th 2015, the Third and Fourth Respondents herein, Godwyn Allicock and David Black, instituted High Court Action 2015-HC-BER-CIV-W-37 against, what

appears to be, all of the Office Bearers the BCBC challenging the validity of the elections held more than two months prior and surprisingly on March 9th 2015 obtained “an ex-parte interim injunction against the said Office Bearers from acting, operating, performing, functioning and or discharging any of the functions, duties and or obligations of or belonging to the BCBC”.

The Defendants in that matter then applied ex-parte for a discharge of the ex-parte interim injunction on March 12th 2015 and the order was varied, ex-parte, to allow the BCBC to perform “administrative logistical and financial functions relating to teams participating in cricket competitions or tournaments held by and/ or representing the BCBC”.

It is not stated in the order whether this had now become an interlocutory order but a return date was not given, so that can probably be inferred.

Nothing further was done in this action and so by operation of law, Order 32 rule 9 of the Rules of the High Court; High Court Act CAP 3:02 of the Laws of Guyana, the matter was abandoned and incapable of being revived on March 21st 2016.

A few short weeks later, on April 29th 2015, Chief Justice Ian Chang ordered that the holding of elections of Office Bearers of bodies under the Guyana Cricket Administration Act be suspended until the hearing and determination of High Court Action 2014-HC-DEM-CIV-CM-106, a constitutional motion challenging the said Guyana Cricket Administration Act.

Nothing further was done in this action and so by operation of law, Order 32 rule 9 of the Rules of the High Court; High Court Act CAP 3:02 of the Laws of Guyana, the

matter was abandoned and incapable of being revived on April 30th 2016 and was formally so deemed on June 16th 2017.

In January 2017 Anil Beharry resigned as President and the Second Respondent herein, purporting to perform the functions of President of the BCBC, terminated the Applicants membership of the BCBC and issued a Notice of a Special General Meeting of the BCBC for March 19th 2017.

This action was then instituted by the Applicants on March 16th 2017 seeking declarations that the Second Respondent's performing of the functions as President of the BCBC is unlawful, null and void and also for an injunction preventing the holding of the Special General Meeting of the BCBC on March 19th 2017.

An injunction restraining the Respondents from conducting Special General Meeting of the BCBC on March 19th 2017 was granted on March 17th 2017.

Up to the filing of this action no Annual General Meetings or elections were held by the BCBC since December 2014.

LAW

The applicable law is the Guyana Cricket Administration Act; CAP 21:03 Laws Of Guyana, with particular focus on Schedule III of the Act.

ANALYSIS

The law is clear and unambiguous, that the Board's year runs from January 1st to December 31st of each year; CAP 21:03 Schedule III, rule 25 (a).

To this end, it is mandated that the Annual General Meeting is to be held no later than December 31st; CAP 21:03 Schedule III, rule 25 (a) since the Office Bearers of the Board “shall” be elected at the Annual General Meeting; CAP 21:03 Schedule III, rule 11 (a).

Further, the President elected at the Annual General Meeting may then appoint five to seven persons to serve as members of the Executive; CAP 21:03 Schedule III, rule 18.

It therefore follows that the tenure of the members of the Executive also terminates on December 31st and the next elected President would appoint persons to serve as members of the Executive.

In the circumstances of this case all of the Office Bearers and Executive members, which includes the Applicants and the Second Named Respondent, who are the key players in this action, terms of office ended on December 31st 2015 therefore any act done or performed by any of those Office Bearers or Executive member is a nullity and of no legal effect.

It is indeed fallacious to plead that these Office Bearers and Executive members would have continued to function in their office as a matter of necessity as a result of the Orders of Court issued in March and April 2015 in High Court Actions 2015-HC-BER-CIV-W-37 and 2014-HC-DEM-CIV-CM-106.

It is indeed unfortunate that having made these interim orders that affected the functioning of cricket administration in the County of Berbice and for that matter Guyana, the issuing Courts did not see it fit to efficiently and urgently have these

matters heard and issues ventilated and determined as matters of NATIONAL IMPORTANCE.

Having said that, the said Orders of Court did not in any way stop the operation of CAP 21:03 Schedule III, rule 25 (a) with respect to the termination of the various terms of office.

It was incumbent upon the Office Bearers to move to the Court and make it known that the Orders of Court served only to stultify the proper administration of cricket in Berbice and seek directions from the Court to ensure that the BCBC did not end up without a Board.

It is absurd to believe that these Office Bearers would continue in office with the sole purpose of organising cricket competitions and tournaments.

In any event, as of April 30th 2016, both actions from whence the Orders of Court emanated were abandoned and incapable of being revived which means that the said Orders of Court were no longer of any legal effect and as such the required Annual General Meeting and elections could have been held.

CONCLUSION

Based on the foregoing, the Declarations sought at paragraph 1, subparagraphs (a), (b), (c) and (d) are granted, albeit not for the reasons advanced by the Applicants.

By virtue of the authority under section 25 of the High Court Act; CAP 3:02 of the Laws of Guyana it is further declared that the terms of office of all of the Office Bearers elected and all of the Executive members (including the Applicants) of the BCBC appointed in December 2014 ended on December 31st 2015.

It is further declared that the appointment of the Second Named Respondent to act as President of the BCBC on March 19th 2017 is null, void and of no legal effect.

It is ordered that an Annual General Meeting of the BCBC be held on October 8th 2017 for the purpose of electing the Office Bearers of the Board of the BCBC.

It is ordered that the Second Named Respondent shall ensure that Notice of the Annual General Meeting is sent to all parties in accordance with Schedule III of the Guyana Cricket Administration Act.

No Order as to costs.

Justice N. A. Singh