IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE OF GUYANA

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION

2018-HC-DEM-CIV-FDA-961

In the Matter of the Constitution of the Republic of Guyana.

-and-

In the Matter of Articles 13, 40, 141, 142, 147 and 153 of the Constitution of the Republic of Guyana.

-and-

In the Matter of Guyana Cricket Administration Act No. 14 of 2014.

BETWEEN:

1. THE GUYANA CRICKET BOARD.
2. THE GUYANA CRICKET BOARD, represented herein by its Secretary, ANAND SANASIE.
3. THE DEMERARA CRICKET BOARD
4. THE DEMERARA CRICKET BOARD, represented herein by its President, RAJENDRA SINGH.
5. THE ESSEQUIBO CRICKET BOARD.
6. THE ESSEQUIBO CRICKET BOARD, represented herein by its President, FIZUL BACCHUS.
7. THE EAST BANK CRICKET ASSOCIATION.
8. THE EAST BANK CRICKET ASSOCIATION, represented herein by its Vice President, ROHAN SARJOO.
9. THE ECCLES CRICKET CLUB.
10. THE ECCLES CRICKET CLUB, represented herein by its Vice President, JOHNNY AZEEZ.
11. CRICKET GUYANA INC.

Applicants

-and-

1. THE ATTORNEY GENERAL OF GUYANA.
2. THE MINISTER OF CULTURE, YOUTH AND SPORT.

Respondents

-and-

ROGER HARPER

Interested Party

Mr. Roysdale Forde representing the Applicants.
Ms. Utieka John representing the Respondents.
Mr. Arudranauth Goosai representing the Interested Party
Delivered September 12th 2018

DECISION

The Applicants have applied for several Declarations and other relief which revolve around one central assertion, that is, that the Guyana Cricket Administration Act; CAP 21:03 of the Laws of Guyana is unconstitutional.

The Applicants therefore seek judicial review of legislative action.

With respect to the validity of Statues, the Legislature must have the competence to enact the statute and the Statute must not conflict with the Constitution. A Statute would be invalid to the extent of its repugnancy with the Constitution.

The Applicants claim that the Guyana Cricket Administration Act conflicts with the Constitution of Guyana, or rather that it is "**likely**" to contravene the Applicants' rights enshrined in the Constitution.

The Guyana Cricket Administration Act was assented to on August 4th 2014, some forty six months prior to the filing of this Fixed Date Application (hereinafter referred to as FDA) and yet the Declarations sought speaks of "**likely**" contraventions of the Applicants' constitutional rights.

In challenging the constitutionality of a Statute, an Applicant must state which section/s of the Statute is repugnant to the Constitution, which article of the Constitution is contravened and establish that the Legislature lacked the authority to pass such legislation.

Some of the reliefs sought, as drafted, can be construed as speculative and even vague, however, the Court is resolute in its aim to have the disputes regarding the administration of cricket in Guyana determined on their merits and thereby clear the way for the development of the sport nationally and in this regard will hear and determine the FDA.

It must also be noted that the Applicants had previously instituted High Court Action No. 2014-HC-DEM-CIV-CM-106 on October 20th 2014 seeking the identical Declarations and reliefs sought in this Application.

Orders made in that Action currently engage the Full Court of the High Court (an Appellate Division of the High Court), however at the first hearing of this Application on June 4th 2018, Mr. Roysdale Forde, Attorney-at-Law for the Applicants (in both Actions) elected to withdraw and discontinue the proceedings pending before the Full Court and pursue this Action.

The Court proceeds with the hearing and determination of this FDA on the basis, that, for all intents and purposes the Full Court Appeal is wholly withdrawn and discontinued.

Before examining the reliefs sought in the FDA, the Court must address certain procedural issues which, unfortunately, is not unique to this FDA and seems to be a practice developing in the High Court.

The grounds stated in the FDA stretch out over 40 pages, containing 98 substantive paragraphs, mainly containing evidence in support of the FDA. In fact the only real difference between the stated grounds and the Affidavit in Support of the FDA is that one is written using the first person pronoun and the other, the third person pronoun.

A ground in an Application to a Court is the legal principle or claim being advanced or relied upon to justify the granting of the relief being sought. It is the reason/s specified in law that form/s the basis for the relief claimed.

The **grounds**, therefore, cannot be a full discourse of the evidence relied upon.
As drafted and filed there really is no clearly stated ground in the FDA which leaves the Court with the task of wading through 98 paragraphs to determine if grounds have in fact been set out and what they are.

An Application drafted in the form of the present Application can and, maybe, ought to be struck out for not clearly stating a **ground**.

Nevertheless, notwithstanding all of the foregoing the Court will proceed with the hearing and determination of this Application since, as stated before, resolution and determination of these issues is a matter of national importance.

The most practicable approach to address this Application is to consider each prayer separately.

The first Declaration that the Applicants seek is that the Guyana Cricket Administration Act is "likely" to contravene the Applicants' rights to protection from inhuman or degrading punishment or other treatment as guaranteed by Articles 40 and 141 of the Constitution of Guyana.

As stated before, when an Applicant applies to a Court to determine if certain legislation is repugnant or offensive to the Constitution, it is imperative that that Applicant states with clarity and specificity how the legislation offends the Constitution and affects the Applicant.

The Applicants have not set out one ground or a single particular in the Affidavit in Support supportive of their assertion that the Guyana Cricket Administration Act or any section of that Statute offends against Articles 40 or 141 of the Constitution.

The Applicants have not provided a single particular of how the Guyana Cricket Administration Act or any section thereof has resulted in or imposed inhuman or degrading punishment upon any of them.

In the circumstances paragraph 1, subparagraph (a) of the FDA is denied as being wholly misconceived.

The second Declaration that the Applicants seek is that the Guyana Cricket Administration Act is "likely" to contravene the Applicants' rights to protection of the Applicants' right not to be deprived of property as guaranteed by Articles 40 and 142 of the Constitution of Guyana.

In summary the Applicants contend that First Named Applicant, [which must be really what is described in the Guyana Cricket Administration Act as the former Guyana Cricket Board], passed a resolution on August 23rd 2011 that a successor of that entity would be incorporated and known as D.E.B. ESSENTIAL ORGANISATION INC.

D.E.B. ESSENTIAL ORGANISATION INC. was incorporated on August 24th 2011 and on August 29th 2011, the First Named Applicant, through its Trustees, Chetram Singh and Lionel Jaikaran transferred all of its assets to D.E.B. ESSENTIAL ORGANISATION INC.

The Applicants claim that D.E.B. ESSENTIAL ORGANISATION INC. is now known as CRICKET GUY INC., the Eleventh Named Applicant. The Applicants have failed to provide evidence to establish that claim.

Section 3(1) of the Guyana Cricket Administration Act establishes the Guyana Cricket Board as a body corporate and section 5(2) provides that "*All assets, funds, resources and other movable and immovable property held by or on behalf of the former Guyana Cricket Board on or before the commencement of this Act shall without further assurance stand transferred to the Guyana Cricket Board*.".

It is the Applicants' claim that that statutory transfer of property provided for in the Guyana Cricket Administration Act is a contravention of Article 142 of the Constitution.

The basic principles that are to be considered in considering judicial review of the constitutionality of legislative action are succinctly stated in the following extracts from cases.

There is a presumption of constitutionality of legislation and it is for those who contend otherwise to establish to the satisfaction of the Court that it is unconstitutional and it is for the party who attacks the validity of the legislation to show that it is arbitrary and unsupportable. [Attorney General *v* Caterpillar Americas Co. (2000) 62 WIR 135 @ 174]

In determining the question of constitutionality of a statute, what the Court is concerned with is the competence of the legislature to make it and not its wisdom and motives. The Court has to examine its provisions in the light of the relevant provisions of the Constitution. The presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. [Attorney General of St. Christopher and Nevis *v* Lawrence (1983) 31 WIR 176 @ 179]

The Court finds the Applicants' assertion untenable since the former Guyana Cricket Board as an unincorporated entity was not an entity separate from its members. [John *v* Rees [1970] Ch 345 @ 398].

The members at any given time of such an incorporated entity are beneficially entitled to its assets, however, a member cannot claim or sever a/ his share from the entity unless the entity is dissolved.

In this regard, the Applicants' assertion cannot be maintained for the following reasons;

I. No document has been exhibited to establish that Chetram Singh and / or Lionel Jaikaran were in fact Trustees of the former Guyana Cricket Board.

II. Assuming that the Executive Committee of the former Guyana Cricket Board did properly resolve to incorporate the former Guyana Cricket Board as D.E.B. ESSENTIAL ORGANISATION INC. then upon such act being undertaken the Guyana Cricket Board as an unincorporated entity would have effectively been dissolved.

III. Upon such dissolution, the members of the unincorporated entity, the former Guyana Cricket Board, at that instant would have each been entitled to claim their share of the assets, and certainly, the purported Trustees would have had no authority to deal with or transfer the assets to D.E.B. ESSENTIAL ORGANISATION INC.

The property would essentially have been ownerless at the date that the Guyana Cricket Administration Act came into force, some three years later and there being no claim by the members.

It is clear that the Applicants recognised this flaw in their application for this Declaration since at paragraph 66 of the Affidavit in Support of the FDA it is

asserted "*That notwithstanding the transfer of the assets and properties by the aforesaid Trustees, the **GUYANA CRICKET BOARD**, the First Named Applicant as an unincorporated entity has not been dissolved.*" Unfortunately their assertion does not make it so.

In this regard the Applicants have failed to demonstrate that they have in fact been deprived of property and as such paragraph 1, subparagraphs (b), (e), (f), (g) and (h) are denied.

The third Declaration that the Applicants seek is that the Guyana Cricket Administration Act is "likely" to contravene the Applicants' rights to protection of the Applicants' right to freedom of assembly and association as guaranteed by Articles 40 and 147 of the Constitution of Guyana.

No evidence has been presented showing that any of the Applicants right to freedom of assembly has in any way or from been breached, hindered or restricted.

The Applicants' have not stated nor produced evidence that they have in any way been prevented from associating freely with any other legal personality.

It seems that the Applicants' issue is that a new member has been created in the form of the Upper Demerara Cricket Association, which has been proven to be an inaccurate statement through the evidence of the Interested Party.

In any event it appears that the members of the alleged new association were already members of the Demerara Cricket Board and so there is no forced association.

In this regard paragraph 1, subparagraphs (c) and (d) are refused.

Paragraph 1, subparagraph (i) is confirmed as a statement of fact notoriously known.

The Applicants also seek a corollary Declaration to the one sought in paragraph 1, subparagraph (i), that since there were matters engaging the Court's attention (extant litigation) at the time that the Guyana Cricket Administration Act came into force then the Executive and the Legislature acted contrary to the principle of the Separation of Powers since that amounted to an unconstitutional intrusion into the judicial process.

Should this proposition be accepted then it would necessarily mean that the Legislature and the Executive are barred from performing their constitutional functions upon the institution of an action in the Court.

It is a function of the Legislature to make laws for the peace, order and good government of Guyana [Article 65 of the Constitution of Guyana].

No evidence has been advanced by the Applicants to show that the Legislative or the Executive arms of the Government intervened or interfered with the Judicial arm to disrupt or in any way influence the outcome of any matter that engaged the Judiciary.

If indeed the Executive and Legislative arms perceived or recognised that there were issues regarding the administration of cricket in Guyana, whether as a result of litigation in the Courts or otherwise then it would be imperative for the said Executive and Legislative arms to do whatever it considers prudent to resolve such

issues for the peace, order and good governance of Guyana and such measures may necessarily include the making of laws.

In this regard paragraph 1, subparagraph (j) is refused.

Paragraph 1, subparagraphs (k), (l) and (m) are misconceived and therefore refused.

It appears as though the Applicants are alleging that the parts of the Guyana Cricket Administration Act referred to in paragraph 1, subparagraphs (k), (l) and (m) of the FDA are unconstitutional because those parts effectively intrudes on the internal affairs of the First and Third Named Applicants.

This is a misconception because those parts in fact implement procedures for entities created by the Guyana Cricket Administration Act and not the First and Third Named Applicants.

It is clear from the Affidavit in Support of the FDA that the Applicants do not hold themselves out to be entities formed under the Guyana Cricket Administration Act and in fact cannot be since it would not be possible for an entity to challenge the very Statute that brought it into existence.

Paragraph 1, subparagraph (n) is refused since the Court does not find that the the Guyana Cricket Administration Act contravenes the Constitution of Guyana.

The Declaration sought in paragraph 1, subparagraph (o) is illogical.

Assuming that "*ad homiem*" is a typographical error and what was intended was "*ad hominem*" which is short for "*argumentum ad hominem*" and which describes

a fallacious argumentative strategy whereby the character and attributes of a person making an argument is attacked rather than the substance of the argument itself.

In any event the Applicants have not set out one ground or a single particular in the Affidavit in Support supportive of this assertion.

Consequent to the foregoing, paragraph 1, subparagraphs (p), (q) and (r) are refused.

It is further noted that a cricket Ombudsman was appointed/ elected in accordance with the Guyana Cricket Administration Act on May 3rd 2018, which is now the subject of litigation in High Court Action No. 2018-HC-DEM-CIV-FDA-808.

In that High Court Action the First, Second, Third, Fourth, Fifth and Sixth Named Applicants herein have pleaded and relied upon the provisions of the Guyana Cricket Administration Act as per Affidavit sworn to on May 21st 2018 by Anand Sanasie.

In addition the Berbice Cricket Board pursuant to an Order of the Court in High Court Action No. 2017-HC-BER-CIV-9-FDA elected its Office Bearers in February 2018 in accordance with the provisions of the Guyana Cricket Administration Act.

It must be presumed that a legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds. [Middleton *v* Texas Power and Light Co. (1919) 249 US 152 @ 157]

In the circumstances the FDA is dismissed with costs against the Applicants to each Respondent in the sum of $150,000.00 and to the Interested Party in the sum of $75,000.00.

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Justice N. A. Singh