



## Press Summary

18 May 2023

### **Ravi Balgobin Maharaj (Appellant) v The Cabinet of the Republic of Trinidad and Tobago and another (Respondent) (Trinidad and Tobago)**

**[2023] UKPC 17**

***On appeal from the Court of Appeal of the Republic of Trinidad and Tobago***  
**Privy Council Appeal No 0016 of 2023**

**Justices:** Lord Reed, Lord Hodge, Lord Briggs, Lord Kitchin, Lord Richards

#### **Background to the Appeal**

This appeal raises issues of statutory construction in the context of local government elections in Trinidad and Tobago. Specifically, it concerns the effect of amendments made to the Municipal Corporations Act 1990 (the “MCA”), by the Miscellaneous Provisions (Local Government Reform) Act 2022 (the “2022 Act”), regarding the periods of office of Councillors and Aldermen.

On 2 December 2019, local government elections were held in Trinidad and Tobago. Both Councillors and Aldermen were elected for a period of 3 years in accordance with the unamended provisions of the MCA. They were due to lose office in December 2022 and further local elections were due to be held by March 2023.

The 2022 Act made significant changes to the internal structure of local government, including changes to the periods of office of Councillors and Aldermen from 3 to 4 years. The 2022 Act did not immediately come into effect but provided that the whole Act or specified provisions were to come into operation on such date or dates as might be fixed by the President by Proclamation. A small number of provisions of the 2022 Act, including principally the amendments to increase the terms of office, were brought into force by Proclamation on 7 November 2022.

The issue in this appeal is whether the amendment to the periods of office of Councillors and Aldermen, from 3 to 4 years, applied to Councillors and Aldermen who were in office on 7 November 2022 (“incumbents”) as well as to those elected in the future. The Government’s position is that the amendments apply to incumbents, with the result that the incumbent representatives serve an additional term of one year until December 2023, with elections postponed for one year. The appellant challenged this interpretation by way of applications for judicial review and interim relief.

The first instance court refused the application for interim relief. The Court of Appeal dealt with the underlying issue of construction. It dismissed the appeal and granted permission to appeal to the Board.

## Judgment

The Board (by a majority of 3 to 2) allows the appeal. Lord Richards, with whom Lord Reed and Lord Hodge agree, gives the majority judgment. Lord Briggs, with whom Lord Kitchin agrees, gives a dissenting judgment.

## Reasons for the Judgment

### (i) Majority judgment

#### *(a) Breach of constitutional rights*

The appellant challenged the Government's position by contending that, if the relevant changes applied to incumbents, the amendments contravened entrenched rights to vote under the Constitution, derived from the right to join political parties and to express political views under Article 4(e).

The Board rejected this submission [20]. Whilst democratic values and the requirement for a representative democracy lie at the heart of the Constitution [17], there are no detailed provisions concerning local government elections and an increase of one year in the incumbents' terms of office did not contravene the Constitution.

#### *(b) Statutory construction*

The principal issue was whether, as a matter of construction, the amendments to the MCA apply to incumbent Councillors and Aldermen at the time that the amendments came into force [21].

Whilst the Board was of the view that, read on their own, the amended sections more naturally read as applying to representatives elected after the amendments come into force (and therefore not to incumbents) [27], it accepted that there is a degree of ambiguity in the language itself. It must therefore have regard to the context and purpose of the amendments and to the relevant principles of statutory construction [28].

The election of representatives for a fixed or maximum period is the foundation on which a democratic society is built [33]. It is inimical to a representative democracy that the representatives are chosen by anyone other than the electorate. It is not for Parliament, still less the Government, to choose the representative. However, if the effect of the relevant amendments was to apply to incumbent representatives, the effect would be that the Government, rather than the electorate, had chosen those representatives for another year [34].

General or ambiguous words are not a sufficient basis for interfering with the basis on which incumbents were elected [43]. In view of the fundamental importance of these matters to the workings of a democratic system of government, at a local as well as a national level, the courts are bound to scrutinise the legislation to discern whether it does indeed have that effect. It cannot be supposed that Parliament can have intended to compromise the electorate's right to choose their representatives without that being clearly the intention of Parliament [41]. The fact that the democratic process, and the voting rights of individuals in that process, are derived solely from statute does not diminish their fundamental importance [42].

The need for clarity also arises because of the retrospective effect of the amendments, if interpreted as applying to the incumbents. Not only would it directly interfere with and undermine the electorate's decision to elect them for a term of three years [47], but incumbents would be obliged to serve a further period of one year and could resign only on payment of a financial penalty [48].

The Board considered that a powerful indication that the amendments were not intended to apply to incumbents is that the President (which in reality means the Government) was empowered to bring these amendments into effect on a date specified in the Proclamation. If applicable to incumbents, Parliament would have conferred on the Government power to decide whether or not the terms of office of elected representatives should be extended by a year. If such a power had been intended, it is reasonable to expect that it would have done so expressly [50].

## **(ii) Minority judgment**

The minority accepted the legal principles of construction as set out by the majority [53]. However, they considered that the MCA (as amended) demonstrated the necessary clarity of intention by its express terms. This clarity, and the obstacles faced by the majority's interpretation, meant that the minority considered the provisions to apply to incumbents [59].

The minority considered a number of factors to support this conclusion, as summarised at [59]. These factors include: the plain language (and functional purpose) of the amended provisions [66]-[67]; the majority's interpretation leaves a vacuum in which there are no provisions prescribing the terms of office of incumbents [68]-[70]; the majority's view treats the amended provisions as subject to an essentially transitional special meaning from November 2022 until the next local government election, purely by implication [74]-[78]; the minority's interpretation is supported by Parliament having amended the 2022 Act on numerous occasions to extend terms of office [79]-[81]; the minority's interpretation better enables the Government to proceed to a speedy implementation of the overall move to a four-year electoral cycle [82]; the minority's interpretation does not truly have retrospective effect, because the effect of the incumbents' election was to put them in office for a period specified in the MCA which, like any other provision, was liable to be lengthened or shortened by Parliament [83].

*References in square brackets are to paragraphs in the judgment*

### **NOTE:**

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**<http://www.jcpc.uk/decided-cases/index.html>**