

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CIVIL JURISDICTION**

**Civil Action No. HBC 123 of 2011**

**BETWEEN** : **PREM SINGH , RAKESH PRAMOD KUMAR and ELLE NARSHEA**  
as lawful Trustees of the Bhartiya Mitra Mandali, the governing body of  
Tilak High School.

**Plaintiffs**

**AND** : **GANGA REDDY, JAGDISH SINGH , SUREND VENKAT, DAYA  
NAND, NAVEEN KUMAR, ANIL PRASAD, JANEND SINGH ,  
RAKESH CHAND, SATYA DASS, KUMAR SAMI NAIKER and  
PRAKASH NAIR** as office bearers and members of the Bhartiya Mitra  
Mandali Management Board.

**1st Defendants**

**AND** : **THE ATTORNEY-GENERAL OF FIJI**

**2<sup>nd</sup> Defendant**

**AND** : **SWAMI KUMAR MAHARAJ**

**Interested Party**

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Counsel : Ms Natasha Khan for the Plaintiffs  
Mr. D.S. Naidu for the 1<sup>st</sup> Defendants  
Mrs. Lee for the 2<sup>nd</sup> Defendant  
Interested Party in Person

# **ORDERS**

1. The parties all desire that the management of the TBMM be restored to a Management Committee.
2. These Orders are to clarify the previous Orders made on 23 September 2016 on the issue of who of the 2011 members are eligible to vote in the election of a new Management Committee.
3. As I have said, the members of the TBMM are bound by its constitution. The constitution and the rules and procedures stipulated therein all embody a contract. The terms of this contract are what the members have agreed to abide by upon becoming members of the TBMM.
4. As such, the constitution of course stipulates who is eligible to vote.
5. I emphasise that the contract is one between the members for the time being. While every new post-2011 member who has paid his or her subscriptions up

to date to 2016 is entitled by contract to vote at the next SGM, in the particular circumstances of this case, in light of previous orders of Mr. Justice Fernando to “**preserve the status quo**”, members who are to vote at the next SGM to appoint the next Management Committee are to be those 2011 members only who have paid their annual subscription fees up to date (i.e. up to 2016). I understand that there are some 2011 members who may have been prevented from paying their fees for one reason or another. These members must be allowed to update and regularise their subscriptions and membership so that they can participate in voting in the next SGM.

6. At the moment, the principal goal is to restore the management of the TBMM and the school to a Management Committee.
7. The TBMM constitution, as I have said, constitutes the contract between the members for the time being. By all means, it is to be interpreted literally.
8. But I think that to approach the TBMM constitution with the same degree of rigour as one would approach a carefully drafted contract between two multinational corporations, at the present moment, may be a hinderance in terms of taking TBMM forward.
9. There are times when the courts may have to be flexible in allowing themselves to be guided by notions of reasonableness, fairness and common sense in addressing the problems that hinder a club or an unincorporated association such as the TBMM. Such times when the court should adopt this approach are not part of the rule. Rather, they are exceptions to the rule. In **In re GKN Bolts & Nuts Ltd Sports and Social Club** [1982] 1 W.L.R. 774 at p. 776, Megarry V.-C. observed:

“In such cases, the court usually has to take a broad sword to the problems, and eschew an unduly meticulous examination of the rules and resolutions. I am not,

of course, saying that these should be ignored; but usually there is a considerable degree of informality in the conduct of the affairs of such clubs, and I think that the courts have to be ready to allow general concepts of reasonableness, fairness and common sense to be given more than their usual weight when confronted by claims to the contrary which appear to be based on any strict interpretation and rigid application of the letter of the rules. In other words, allowance must be made for some play in the joints.”

It is not that the underlying principle is different. Rather it is that the context of a carefully drafted legal contract between two major corporations entered into after detailed negotiations is very different from the context of the relatively informal rules adopted by a members club to govern their business. While a club is, therefore, in one sense, no more than a set of interlocking mutual contractual relations between its members, it does have a form of existence which goes beyond that and which is subject to the jurisdiction of the courts. Also, those contractual terms or rules need to be viewed against the background that they are not to be found in a carefully drafted legal document but rather represent the view of the members of the club as to the rules by which they are to be bound. Against that backdrop, it is appropriate to turn briefly to this Court's assessment as to whether counsel for both parties to this appeal were correct in disagreeing with the trial judge's view that a term should be implied into the Rules permitting amendment by simple majority.

10. In light of the above, and in the interest of taking TBMM forward to the desired goal of resuming management and control of the organisation, and allowing myself to be directed by general concepts of reasonableness, fairness and common sense, I now make the following addendum to the last ruling I made:

- (i) a Special General Meeting is to be called by the Office of the Attorney-General/Ministry of Education.
- (ii) the date, time and venue of the said SGM are as follows:

<b>Date</b>	Sunday, 18 December 2016
<b>Time</b>	10.30 a.m.
<b>Venue</b>	Tilak High School
<b>Nature of Proposed Business To Be Transacted At Meeting</b>	See Agenda Below

- (iii) **only those 2011 members** who have paid and updated their annual membership subscriptions valid and current up to **Sunday 18 December 2016** are eligible to vote at the said SGM.
- (iv) 2011 members who have not paid their annual subscription(s) for any of the years intervening (2011-2016) must settle all these before they can be allowed to vote at the next SGM.
- (v) the deadline for the settlement of these subscriptions is by **4.00 p.m. - 04 November 2016**. The subscriptions are to be paid at the Office of the Attorney-General, at Tavaiqia House, Tavewa Avenue, Lautoka. An advertisement to this effect to all 2011 members shall be placed by the Office of the Attorney-General in both local dailies on **Saturday 29 October 2016**. The costs are to be borne by the TBMM.
- (vi) all subscriptions paid to the Office of the Attorney-General shall be received by the said Office on trust for the TBMM. The A-G's Office shall account for these to the TBMM at the 18 December 2016 SGM.
- (vii) following the above advertisements and the settlement of all subscriptions (in (iv) above), the Office of the Attorney-General shall then compile a list of all 2011 members who will be voting at the Sunday 18 December 2016 SGM. This list should be ready and filed in Court by **Monday 14 November 2016**.
  - (a) Mr. Ganga Reddy shall assist by providing to the Office of the Attorney-General by **04 November 2016** a list of all members who have paid their subscriptions directly into the TBMM Account or to any other account.
  - (b) Mr. Swani Maharaj shall also assist by providing to the Office of the Attorney-General by **04 November 2016** a list of all members who have paid their subscriptions to him directly.
  - (c) any objection to the inclusion of any particular name on the list, or the non-inclusion of any name on the list, must be made to court before the SGM.
- (viii) on **03 December 2016**, the Office of the Attorney-General must cause another advertisement to be published in the two local dailies. The cost of these advertisements are to be borne by the TBMM.

(ix) This advertisement shall contain the following:

(a)	a notice of the SGM of 18 December 2016, time, and venue (see (ii) above).
(b)	the list compiled by the A-G's Office (of all members who are eligible to vote at the SGM).
(c)	Agenda of the said meeting: <ul style="list-style-type: none"><li>(i) <b>A report by the Department of Education to be tabled.</b> (on its management of Tilak High School from 24 January 2012 to 18 December 2016<sup>1</sup>).</li><li>(ii) <b>the Trustees</b> (The Trustee Act (Cap 65) makes provision under section 73 for the removal of Trustees. Members must seek their own legal advice as to when an application for the removal of Trustees may be made to Court).</li><li>(iii) appointment of Management Committee.</li><li>(iv) handing over process (between the Department of Education Officials) and the new Management Committee.</li><li>(v) The suspension of that part of the TBMM Constitution that the Trustees allegedly tampered with to give them more powers until Police Investigations are completed.</li></ul>

(x) As regards (ix)(c)(i) above, I am of the view that a report by the Department of Education should be tabled at the SGM. The Attorney-General's Office must liaise with the Department about a suitable deadline to allow for circulation to all members before the SGM.

(xi) As regards (ix)(c)(iv) above, once the new Management Committee is appointed, it is for it (the new Management Committee) and the Officials of the Department of Education to work out how and when they will complete the handing over process. I would suggest that at the SGM, the earliest date and time for a hand-over meeting be decided for the Department of Education Officials and the incoming Management Committee members and the mechanics of it (specific books and relevant paperwork, chequebooks, deposit books, account records, budget, general financial status of the school, keys etc. and

<sup>1</sup> On 24 January 2012, Fernando J ordered inter alia that in light of "the current inability of Management Committee and the Trustees to cooperate and act in the interest of the School....that the Attorney General and the Minister of Education may act in the interim to preserve the school ...."

discuss any particular issues that will be carried over to the new Management Committee).

11. There is just one other point that I need to clarify. Mr. Ganga Reddy has urged this court to order that Prem Singh, Rakesh Parmod Kumar and E.B. Narshea and Jagdish Singh be not allowed to vote as they are under police investigations in regard to the alleged tampering of the school constitution. In court today, Reddy concedes that there is nothing in the TBMM Constitution that disallows members faced with such allegations from voting. He argues though that section 12 of the Education Act (Cap 262) is relevant.
12. Section 12 of the Education Act states as follows:

**PART VI—MANAGEMENT OF SCHOOLS**

*Vesting of management of schools*

12.—(1) The management of every registered and recognized school or group of schools shall be vested in a properly constituted controlling authority which shall appoint a manager and submit his name, and, if a manager is appointed ex-officio, his title, to the Permanent Secretary for registration.

(2) The Permanent Secretary may register such manager or may refuse to register him if he is a person who has been or is liable to be prohibited from managing or assisting in the management of a school.

(3) The Permanent Secretary shall have power, by notice in writing, to prohibit any person from managing, or assisting in the management of, any school or group of schools if—

(a) he has been convicted of any offence involving dishonesty, fraud, violence or immorality; or

(b) he is an undischarged bankrupt; or

(c) while he was manager or assisting in the management of any school any of the circumstances mentioned in paragraphs (a), (c) and (d) of subsection (1) of section 24 arose, in consequence of which the school was closed under the powers conferred by that section.


(4) Any person who manages or assists in the management of a school or group of schools when not registered as the manager or after he has been prohibited from so doing under the provisions of subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred dollars and in default of payment to imprisonment for a term not exceeding six months.

13. There is nothing in section 12 that forbids anyone with allegations pending against them from voting. If a person is convicted of an offence involving

dishonesty, fraud, violence or immorality, then the Permanent Secretary does have power, by notice in writing, to prohibit that person from managing, or assisting in the management of, any school or group of school. The Act does not prohibit such a convicted person from voting, although, if they are convicted, the Permanent Secretary may act to remove them from their position as Trustees under section 12 – or – an application may then be filed in Court for their removal under the Trustee Act.

14. Prem Singh, Rakesh Parmod Kumar and E.B. Narshea and Jagdish Singh are all trustees of the TBMM. The allegations against them are serious and police investigations no doubt will continue. It is alleged *inter alia* that the trustees' had tampered with the Constitution by inserting some clauses which worked to increase their powers. There are also some allegations of some serious improprieties against them which I have noted in two earlier rulings/directions (see **Singh v Reddy** [2014] FJHC 724; HBC123.2011 (6 October 2014); **Singh v Reddy** [2013] FJHC 486; HBC123.2011 (26 September 2013)). Having said that, I recall that the defendants had, in the past, raised concern about the Trustees participation in voting as members in the SGM or AGM because they would thus be conflicted by their dual position. If the defendants insist so, and wish to contest that, they may apply further to Court between the time the A-G's office compiles the List and the date of the SGM.



  
Anare Tuilevuka  
**JUDGE**  
Lautoka

24 October 2016