

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No.: HBC 85 of 2018

BETWEEN : **SIGATOKA CLUB** a duly registered club under the Registration of Club Act with the office situated at Lot 3 & 4 Queens Road.
1ST PLAINTIFF

AND : **KRISHNA RATTAN BHAN** of Sigatoka, President of Sigatoka Club, Businessman.
2ND PLAINTIFF

AND : **VIJAY SINGH, MADEN SEN** and **NIUMAI TOGAKAI** Trustees of Sigatoka Club, first being a Businessman, the latter two Retired.
3RD PLAINTIFF

AND : **DEV ANAND SHARMA** of Sigatoka, Businessman.
1ST DEFENDANT

AND : **MARK FROST** of Korotogo, Sigatoka, occupation, unknown.
2ND DEFENDANT

AND : **BIRAN KUMAR** of Sigatoka, Businessman.
3RD DEFENDANT

AND : **SANJAY MAKANJEE** of Sigatoka, Businessman.
4TH DEFENDANT

Counsel : **Mr. S. Nandan for the Plaintiff**
Mr. N. Sharma for the 1st, 2nd and 3rd Defendants

Date of Hearing : **25th May, 2018**

Date of Judgment : **28th June, 2018**

JUDGMENT

INTRODUCTION

1. The Plaintiffs are seeking injunctive orders restraining Defendants from registering themselves as the trustees and office bearers of the 1st Plaintiff with the Registrar of Titles or any other government or public body and also restraining them being office bearers of the 1st Plaintiff and 2nd and 3rd Plaintiffs to operate as the proper office bearers of the 1st Plaintiff. The Plaintiffs state the appointment of the Defendants as office bearers

of the Club is illegal and against the constitution. The Defendants state that no AGM was held for last 4 years hence they called for meeting with the support of 35% of the members for the appointment of the office bearers and present office bearers and new trustees of the Club were appointed.

FACTS

2. According to the Constitution of the Club an AGM of 'the members shall be held at the 'Club House in the month of March or as near as possible to that month.'
3. Notice of AGM should also be posted on the 'Club House' for 21 days prior to the date of AGM. (See section 53)
4. The Annual Report, Balance Sheet and Statement of Accounts shall at least 14 days prior to the date of AGM be posted on 'Club House'. (See Section 54)
5. The Committee of the Club comprised of 2 Vice Presidents (VP), 6 Committee Members, out of 3 VPs and 7 Committee members, elected by members of the Club(see Section 30)
6. Section 31 of the Constitution of the Club state that the trustees of the Club shall be elected by general or special meeting by the members and shall continue in office till removed by death, resignation or removed by special or general meeting.
7. An 'extra ordinary general meeting' was held on 29th January, 2018 and a motion of no confidence passed unanimously and also removed the previous President the 2nd Plaintiff and also removed all the trustees and office bearers. The reason for the no confidence and or the removal was on the basis of not holding AGM for over past 4 years, as no audited financial statements for the said period and removal of snooker tables (being property of the Club) without members 'approval and placing the Club on a non operative level causing the members to lose their privileges...'

8. After removal of previous office bearers the members who attended the meeting held on 28.01.2018 appointed new office bearers and new trustees.
9. The said meeting was attended by 98 members of the Club.
10. After this meeting a purported AGM was held chaired by 1st named 3rd Plaintiff and appointments were made on the basis that the previous meeting held on 28.01.2018 was 'unconstitutional and unlawful.'
11. Even on the purported AGM held on 18.3.2018 there was no election or President for the Club whereas trustees and new committee members were appointed.

ANALYSIS

12. The removal of the previous office bearers and the 'extra ordinary general meeting' was held on 28th January, 2018. The application for injunctive relief was filed on 27th March, 2018, two months after the said removal and meeting.
13. The Plaintiffs had declared that the meeting held on 28th January, 2018 was 'unconstitutional and unlawful' in a subsequent purported AGM held on 18.03.2018.
14. In terms of the constitution of the Club the AGM should be held in the month of March, annually or near to that month as possible. There is no evidence of AGMs being held in 2017 or 2016 so there is no requirement to have a meeting to appoint office bearers only in the month of March. If the time period for the office bearers exceeded more than one year they cannot function without holding an AGM, till next year March or any subsequent month of March.
15. It is to be noted that within two months of Defendants calling for 'extra ordinary general meeting' a purported AGM was called though there was no evidence of compliance of 21 day notice being posted on the 'Club House' in terms of Section 53 of the constitution of the Club and also mandatory financial statements for all the past years, where AGMs

were not held. They were not presented and or distributed to the general membership according to minutes filed by Plaintiffs (Annexed E). In terms of Section 54 of the constitution of the Club, annual report, balance sheet and statement of accounts 'shall at least 14 days prior to the date' of AGM be posted on the notice board of 'Club House'. So this purported AGM was not an AGM held in accordance with the constitution of the Club on the evidence before me at this moment. So no reliance should be placed on the said AGM held in violation of the constitution, and appointments made pursuant to that.

16. According to the minutes of the purported AGM held on 18.3.2018 the Plaintiff was required to submit financial report after he return form America, but no such report was submitted even for this application.
17. According to the Constitution of the Club AGM should be held in the month of March or near to that month, but there is no evidence of a single AGM held in that month or near to that month in the previous years though a purported AGM was held on 18.3.2018 after Defendants had a meeting to oust the trustees and the other officials who were functioning without an AGM or reappointment annually.
18. The Defendants allege that no AGM was held for last 4 years, which meant the last AGM was held in 2014.
19. The affidavit in support of the injunction annexed evidence of the meeting held on 28th January, 2018 which was attended by nearly 98 members of the Club.
20. There is no allegation that members who attended the said meeting were not members of the Club.
21. There is no provision in the Constitution for the members of the Club to call for 'Extra Ordinary General Meeting', but that should not give the Plaintiffs to continue more than a year without going before general membership for re-election.

22. AGM of the Club must be held every year and in that following matters must be conducted accordingly,
 - a. Receipt of the Report of the Committee of the Club.
 - b. Election of President, two vice presidents and 6 committee members.
 - c. Election of the auditors.
 - d. Any other business with the permission of the President.

23. The 2nd Plaintiff who was appointed as an office bearer previously had allegedly violated the constitution and there is no evidence to show any notice of AGM being posted on the 'Club House' as required by the constitution. This obligation is fairly and squarely fell on the office bearers who were appointed in the last AGM held in or around 2014 and continued as office bearers till 2018. There was no evidence of any AGM being held in last 4 years prior to the Defendants' calling for an 'extra ordinary general meeting'.

24. The Club had some valuable properties including Snooker Tables and some of them were allegedly removed from the premises. These are serious allegations and the members were prevented from raising these issues in an AGM or any other meeting. It was also admitted by the Plaintiff that the Club premises were rented to commercial entities by the trustees of the Club. So on what terms they were given and the conditions on which they were given since the last AGMs were not revealed. This is an issue of transparency in the affairs of the Club.

25. The contention of the Plaintiffs is that that Extra Ordinary Meeting held on 28.01.2018 is unconstitutional hence all the proceedings and decisions taken are illegal.

26. There should always be a way to prevent abuse in the interpretation of constitution of the Club. The conduct of the 2nd Plaintiff and the affairs of the Club for a considerable time were not done in the transparent manner as required by the constitution of the Club. So constitution should not be utilized to continue unconstitutional acts such as violations of sections 52, 53, 54, and 32 of the constitution of the Club.

27. Even though there is no provision in the Constitution of the Club to call for an 'Extra Ordinary' meeting it is mandatory to have an AGM in the month of March or near to that month and to elect President, two vice Presidents and 6 committee members. Though there is no restriction of the number of time a person can be re-elected the time period of an elected official in AGM is to be confined to maximum term of one year unless general membership re-elect the person at an AGM.
28. In the light of Sections 52, 53 and 54 of the Constitution of the Club, the term of the appointed office bearers should be confined to maximum term of 12 months only. If not that would lead to violation of the Constitution of the Club and members are unable to call for their removal.
29. So, in my judgment the President, two vice Presidents and also Committee appointed at the last AGM held 4 years ago cannot hold the said positions beyond the 12 month period without seeking re-election at an AGM.
30. If no AGMs are held and no provision in constitution of the Club for the members to call for a Meeting to appoint office bearers a set of office bearers may function without calling for AGM till a one person dies or opt out from being a office bearer as there is no limit for a person to function in such position. This is an absurd position.
31. This can lead to abuse in the Club. It had got valuable properties with them. It is also evidenced that commercial bank had also granted a substantial loan and the obligation is on the membership to meet that. The details of the said loan were not revealed, too.
32. It is also noted that even tax returns of the Club for months in 2016 and 2017 not submitted.
33. In the circumstances the members had called for an 'Extra Ordinary General Meeting' on 28th January, 2018 and appointed new office bearers and trustees.

34. It should be noted in terms of Section 32 all members of the Committee shall retire annually and their places shall be filled at the AGM. So the Committee cannot function beyond 12 month period and if so it is illegal. This equally applies to the Defendants, if they fail to conduct an AGM before 12 months from the appointment.
35. Since there were no AGM for a period longer than one year there was no Committee and the Section 55 of the Constitution states that 25% of the effective members can call for special general meeting from the Committee. Since the term of the Committee is 12 months and there was no Committee in terms of the constitution of the Club to call for a meeting in terms of Section 55 of the constitution.
36. The removal of the office bearers can be done by general meeting after giving notice of 14 days in terms of Section 35 by the Committee. When the Committee had exceeded its mandatory time period none of these provisions can be complied as there was no legally constituted Committee in terms of the constitution of the Club.
37. Though there are some serious questions to be decided regarding the interpretation of the constitution and circumstances that had resulted in the Defendants calling for 'extra ordinary general meeting' held on 28.01.2018, the balance of convenience favours refusal to grant this injunction, till final determination of the issues or a contrary order is made by the court. The officials appointed on 28.01.2018 should continue and they should also comply with the constitution of the Club and conduct in a transparent manner of the Club in terms of its Constitution. Already 6 months had lapsed since the appointment of Defendants as officials of the Club and before expiration of 12 months, an AGM should be held in terms of the construction. Since the appointment was 28th January, 2018 an AGM should be held on or before 12 months of that date with mandatory 21 day notice of AGM and also 14 day notice (in terms of Section 54) of annual report, balance sheet and statement of accounts.

38. The balance of convenience favours the affairs of the Club be conducted in transparent manner as opposed to not holding AGMs and not submitting financial statements as done by previous office bearers including 2nd Plaintiff.
39. Injunction is a discretionary remedy and conduct of the previous office bearers and trustees prior to the meeting of the Defendants held on 28.01.2018 was unsatisfactory and 2nd Plaintiff functioned as the President of the Club. So, balance of convenience favours refusal of this application. There is a delay in this application too. In the circumstances this application for injunction is dismissed. Each party to bear their costs.

FINAL ORDERS

- a. The motion seeking injunction is struck off.
- b. No costs.

Dated at Suva this 28th day of June, 2018



Amma
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Justice Deepthi Amaratunga
High Court, Suva