Hilary Term
[2025] UKPC 8
Privy Council Appeal No 0003 of 2020

JUDGMENT

Attorney General of Trinidad and Tobago (Respondent) *v* Tobago House of Assembly (Appellant) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Reed
Lord Lloyd-Jones
Lord Burrows
Lord Stephens
Lady Simler

JUDGMENT GIVEN ON
11 February 2025

Heard on 28 November 2024

Appellant
John Jeremie SC
Robert Strang
(Instructed by Simons Muirhead Burton LLP)

Respondent
Howard Stevens KC
Daniel Goldblatt
(Instructed by Charles Russell Speechlys LLP (London))

LORD LLOYD-JONES AND LORD BURROWS:

Introduction

1. The question which arises for decision on this appeal is whether, on the proper interpretation of the Tobago House of Assembly Act c 25.03 ("the THA Act"), the Tobago House of Assembly ("the THA") is empowered to enter into a particular type of arrangement for the purpose of developing and financing construction (called a "BOLT" arrangement), funded from the Tobago House of Assembly Fund ("the Fund"), outside the statutory scheme in the THA Act for the control of expenditure. Although that may seem to be a dry and technical question, at a deeper level its resolution determines an important aspect of the relationship in Trinidad and Tobago between, on the one hand, the THA and, on the other hand, the Government of Trinidad and Tobago as represented by the Minister of Finance and the Cabinet.

2. It was common ground at the hearing of the appeal that a BOLT arrangement is an internationally recognised form of financing and that it was accurately described by the judge at first instance, Boodoosingh J, at para 4 of his judgment of 30 April 2014, CV 2013-00135:

> "The term is an acronym for 'Build, Own, Lease, Transfer' and it, essentially, is an arrangement for the purpose of developing and financing construction projects. It can be described as [a] non-debt based form of financing for the end user whereby a private or public sector client (in this case the THA) gives a concession to an entity to build a facility, own the facility, lease the facility to the client, then, at the end of the lease period, to transfer the ownership of the facility back to the client. The client pays for the facility in the form of lease rent over an agreed period of time. The project is thus financed by the entity and constructed. The THA gets use of the facility during the lease and the land and facility is transferred back to the THA at the end of the lease."

Boodoosingh J went on to set out (at para 5 of his judgment) why a BOLT arrangement might be thought advantageous for a public sector client:

> "One of its main advantages is that the entity contracted by the client has the responsibility to raise the project financing during the construction period. This permits the client to utilise recurrent expenditure to pay for the facility over a period of

> time as opposed to upfront capital expenditure. After construction, the client leases the facility at an agreed rent for a fixed period of time. These lease/rent payments are the methods of repaying the private entity for the investment. At the end of the lease period, the ownership of the facility is transferred back to the client and the client gets an asset it has paid for over an agreed period while having had full use and occupation of the facility in the meantime."

Legislative provisions

3. Tobago is a constituent part of the unitary State of Trinidad and Tobago. The THA is not a sovereign body. It was established by the Constitution of Trinidad and Tobago ("the Constitution") and has such powers as are given to it by the Constitution and by statute. Chapter 11A of the Constitution provides:

> "141A. (1) There shall be an Assembly for Tobago to be called 'the Tobago House of Assembly', in this Chapter referred to as 'the Assembly'.
>
> (2) The Assembly shall consist of a Presiding Officer and such other members qualified and appointed in such manner and holding office upon such terms and conditions as may be prescribed.
>
> 141B. Subject to this Constitution, the Assembly shall have such powers and functions in relation to Tobago as may be prescribed.
>
> 141C. (1) There shall be an Executive Council of the Assembly consisting of a Chief Secretary and such number of Secretaries as may be prescribed, to be appointed in such manner as may be prescribed.
>
> (2) The functions of the Chief Secretary and other Secretaries shall be prescribed."

Section 141D makes provision for the creation of the Fund:

> "There is established a fund to be called 'the Tobago House of Assembly Fund' which shall consist of—
>
> (a) such monies as may be appropriated by Parliament for the use of the Assembly; and
>
> (b) such other monies as the Assembly may lawfully collect."

4. The THA Act sets out the functions and powers of the THA at section 25 which provides:

> "(1) Without prejudice to section 75(1) of the Constitution, the Assembly shall, in relation to Tobago, be responsible for the formulation and implementation of policy in respect of the matters set out in the Fifth Schedule.
>
> (2) For the better performance of its functions, the Assembly is hereby empowered to do all such acts and take all such steps as may be necessary for, or incidental to the exercise of its powers or for the discharge of its duties and in particular the Assembly may—
>
> (a) devise mechanisms to ensure the protection and security of property, buildings, or other assets under its control;
>
> (b) enter into such contracts as it deems fit for the efficient discharge of its functions;
>
> (c) obtain from international donors any grant, aid or technical assistance."

The Fifth Schedule to the THA Act sets out the matters in respect of which the THA is given responsibility for the formulation and implementation of policy. These include:

> "1. Finance, that is to say the collection of revenue and the meeting of expenditure incurred in the carrying out of the functions of the Assembly; …

3. Land and marine parks; …

5. Public buildings …; …

11. Agriculture;

12. Fisheries;

13. Food production; …

16. Infrastructure, including air and sea transportation, wharves and airports and public utilities; …

19. Industrial development;

20. The Environment; …

27. Marketing; …

31. Housing; …

33. Such other matters as the President may, by Order, assign to the Assembly."

Section 25(1) is expressed to be without prejudice to section 75(1) of the Constitution which provides that, "There shall be a Cabinet for Trinidad and Tobago which shall have the general direction and control of the Government of Trinidad and Tobago and shall be collectively responsible therefor to Parliament".

5. The THA has limited law-making powers. Under section 29 of the THA Act, the THA may propose and adopt bills in relation to matters for which under section 25(1) it is responsible. Bills adopted by the THA may not seek to abrogate, suspend, repeal, alter, override or be contrary to any written law of the Republic of Trinidad and Tobago or impose any indirect or direct taxation. If adopted, the bills are transmitted to Cabinet with a request for their introduction in Parliament for enactment into law. If the Cabinet so decides, the bills are introduced into Parliament. If the bill is passed by Parliament, the law becomes "an Assembly Law".

6. Part IV of the THA Act (sections 38-55) is entitled "Finance" and provides in relevant part:

> "39. All expenditure incurred by the Assembly shall be paid out of the Fund.
>
> …
>
> 41. (1) The Secretary shall in each financial year submit to the Assembly for its approval, draft estimates of revenue and expenditure respecting all functions of the Assembly for the next financial year.
>
> (2) The Assembly shall approve the draft estimates submitted in accordance with subsection (1), with such modifications as it thinks fit.
>
> (3) The Chief Secretary shall transmit for consideration and approval by Cabinet, the draft estimates approved by the Assembly in accordance with subsection (2).
>
> (4) Upon the coming into force of this Act, draft estimates shall be submitted to the Cabinet in accordance with subsection (3) before the expiration of three months from the date of the first meeting of the Assembly held in accordance with section 62.
>
> (5) All draft estimates, capital and recurrent, subsequent to those referred to in subsection (4) shall be submitted to the Cabinet in accordance with subsection (3) before the end of the third quarter of each financial year.
>
> 42. (1) Where the Assembly fails to complete consideration of its draft estimates in time to allow the Chief Secretary to proceed in accordance with section 41(3), (4) and (5), there shall be allowed an extension for a period of one week.
>
> (2) Where the Chief Secretary is unable to submit the estimates within the period referred to in subsection (1), the Minister shall proceed to prepare such draft estimates as he thinks fit and may

take into account any draft estimates subsequently submitted by the Assembly.

43. In considering the estimates as submitted by the Chief Secretary, Cabinet shall give due consideration to the financial and developmental needs of Tobago in the context of Trinidad and Tobago and shall allocate financial resources to Tobago as fairly as is practicable, and in determining what is fair and practicable, the following considerations, among others, shall apply:

(a) physical separation of Tobago by sea from Trinidad and Tobago's distinct identity;

(b) isolation from the principal national growth centres;

(c) absence of the multiplier effect of expenditures and investments (private and public) made in Trinidad;

(d) restricted opportunities for employment and career fulfilment;

(e) the impracticability of participation by residents of Tobago in the major educational, cultural and sporting facilities located in Trinidad.

44. Where the Assembly is dissatisfied with the allocation or any part thereof referred to in section 43 it may refer the matter to the Commission in accordance with the provisions of Part V.

45. No later than the end of the fourth month of each financial year, the Secretary shall submit to the Assembly, a statement of accounts showing the monies paid into, and the expenditure met from the Fund in respect of the functions of the Assembly during the previous financial year, and the Chief Secretary shall, as soon as possible after the submission referred to in this section, submit a copy of the statement to the Cabinet.

…

47. Monies appropriated by Parliament for the service of the financial year of the Assembly shall be credited to the Fund in quarterly releases in advance *en bloc*.

48. Notwithstanding section 42 of the Exchequer and Audit Act, monies appropriated by Parliament to the Fund for the service of a financial year which remain unexpended at the end of that financial year shall be retained in the Fund and utilised for the purposes of capital investment.

49. (1) Notwithstanding section 13 of the Exchequer and Audit Act, all revenue collected in Tobago on behalf of the Government and payable thereto in respect of activities undertaken or discharged in Tobago shall be paid into the Fund.

(2) Upon the coming into force of this Act, any company, financial institution or a person operating a business in Tobago shall pay in Tobago all taxes, fees, duties, levies and other imposts in respect of its operations in Tobago.

(3) Monies credited to the Fund in accordance with subsections (1) and (2) shall be set-off against the annual allocation appropriated by Parliament to the Fund.

50. (1) Subject to subsection (2), where in any financial year, monies paid into the Fund in accordance with section 49 exceed the quantum appropriated by Parliament to the Fund for that year, the Assembly shall retain fifty per cent or such larger portion as the Minister may by Order specify in respect of that year, of such excess to be applied towards such projects as it considers fit.

(2) The Assembly shall surrender the balance of the excess to the Consolidated Fund within the first quarter of the following financial year.

51. The Secretary may—

(a) with the approval of the Assembly, borrow by way of overdraft, such sums as the Assembly considers fit for the discharge of its functions; or

(b) with the approval of the Minister, borrow sums by way of term loans for the purposes of capital investment."

7. Part V of the THA Act (sections 56-61) establishes a Dispute Resolution Commission which shall undertake to resolve disputes between the THA and the Government of Trinidad and Tobago on budgetary allocations to the THA and matters in connection therewith.

Factual and procedural background

8. In 2011 the THA decided to enter into a BOLT arrangement with a company called Milshirv Properties Limited ("Milshirv") for the development of a new complex of administrative buildings ("the administrative complex") for the Division of Agriculture, Marine Affairs, Marketing and the Environment of the THA. Under this arrangement, the THA would lease land owned by it to Milshirv for a term of 199 years at a nominal rent. By the lease, Milshirv would undertake to construct the administrative complex in accordance with agreed specifications. Upon completion of the construction, Milshirv would sub-lease the administrative complex to the THA for 20 years and at the end of that period, upon satisfaction of the terms and conditions of the sub-lease, would surrender to the THA the remainder of the 199 year term.

9. By an Executive Council Minute on 13 April 2011, the THA accepted "the construction and financing arrangements of the Administrative Complex for the Division of Agriculture, Marine Affairs, Marketing and the Environment" in the BOLT arrangement.

10. On 15 November 2011, the THA bought three parcels of land for TT$12,000,000. By a lease agreement dated 21 November 2011, the THA leased those parcels of land to Milshirv for 199 years. Milshirv undertook, on completion by it of the administrative complex, to sub-lease the premises to THA for 20 years. The THA was required to pay an annual rent of TT$14,379,499.32 (plus VAT) and to advance 18 months' rent by way of a security deposit.

11. On 27 August 2012 (with the consent of the THA), Milshirv mortgaged its interest under the lease to First Citizens Bank Limited in order to secure lending of TT$100,000,000 advanced under a loan agreement of the same date.

12. By an application dated 10 January 2013, the Attorney General brought judicial review proceedings to challenge the THA's decision to enter into a BOLT arrangement to build the administrative complex, contending inter alia that:

(1) the BOLT arrangement was intended to circumvent the statutory framework for the allocation of funds and control of expenditure under the THA Act and amounted to the use of the THA's powers for an improper purpose;

(2) the decision committed the Fund established under the THA Act to recurrent expenditure which had not been included in estimates or approved by the Minister of Finance or Cabinet and could potentially lead to the loss of State-owned land; and

(3) the BOLT arrangement was irrational, not least because the Minister of Finance had approved prior purchases of other land in the vicinity.

13. However, the basis of that judicial review challenge was removed when, in July 2013, the Minister of Finance gave his approval to the THA to enter into the BOLT arrangement with Milshirv.

14. As a consequence of that Ministerial approval, by order dated 25 July 2013, Boodoosingh J ordered that the judicial review proceedings be converted into an interpretation summons to consider questions of statutory interpretation concerning the powers of the THA under the THA Act.

15. By an amended claim form dated 6 September 2013, the Attorney General sought a declaration, inter alia, that upon a true construction of the THA Act, the THA is not empowered to enter into BOLT arrangements for the purpose of developing and financing construction without the consent of the Minister of Finance. The issues before Boodoosingh J included whether upon a true construction of the THA Act the THA was empowered to enter into BOLT arrangements for the purpose of developing and financing construction without the consent of the Minister of Finance and/or outside the statutory framework in the THA Act for the control of expenditure.

16. Save for the agreement as to the nature of a BOLT arrangement, the case then proceeded without evidence or an agreed factual basis (albeit various documents, including documents relating to the BOLT arrangement which led to the application for judicial review, were exhibited to the affidavit of the Attorney General in support of the application and are included in the Record). However, the Court of Appeal found that there was a common assumption, namely that the BOLT arrangement in question would concern lands in Tobago with which the THA could lawfully deal and that the

construction in question would be similar to the administrative complex project undertaken by the THA.

The decision at first instance

17. Although he was also dealing with another issue (under the Central Tenders Board Act c 71.91) with which this Board is not concerned on this appeal, Boodoosingh J held as follows on the issue with which this appeal is concerned:

> (1) The THA did have the power to enter into a BOLT arrangement for the purpose of developing and financing construction without requiring the consent or approval of the Minister of Finance, and in doing so it was not acting outside the statutory framework for finance and expenditure under the THA Act.
>
> (2) Having noted that it was common ground between the parties that the BOLT arrangement under consideration did not amount to an attempt to borrow money for capital expenditure, he found that although "the overall arrangement" was a form of financing arrangement, it did not involve a loan within the meaning of section 51 of the THA Act, and that the consent of the Minister was therefore not required for the purposes of section 51.
>
> (3) He held that the THA had power over State lands in Tobago by virtue of section 54 and the Fifth Schedule of the THA Act and that it was clearly entitled to enter into contracts as laid down in section 25(2) of the THA Act.
>
> (4) He held that a BOLT arrangement fell within the powers of the THA. It was made up of a series of contracts, and he agreed with counsel for the THA that the THA had an express and/or implied power under section 25(2) of the THA Act to enter into such contracts as would constitute a BOLT arrangement.
>
> (5) As to the provisions of Part IV of the THA Act, Boodoosingh J found that the statutory arrangements for control of expenditure and borrowing provided a framework for the approval of annual expenditure and revenue based upon estimates supplied and revenue received by the THA and, where funds were insufficient, the THA could borrow with the appropriate approvals under section 51 of the THA Act. Within Part IV, and the THA Act as a whole, the THA was given a level of autonomy.
>
> (6) Boodoosingh J further noted that it would be prudent for the THA to engage with central government regarding BOLT arrangements, as ultimately the cost

would be met primarily from central government funding, and it would commit the THA to recurrent expenditure. Without consultation, the THA risked a situation in which the Minister of Finance did not allocate recurrent expenditure each year to cover the cost thereby causing the THA to default on a BOLT arrangement with the loss of its land. Such (non-mandatory) engagement was, in his view, envisaged by sections 30-31 of the THA Act.

(7) He concluded, however, that the THA Act did not impose a legal requirement upon the THA to discuss or consult or to obtain the Minister's approval before entering into BOLT arrangements. The THA was empowered to do so without the consent or approval of the Minister and in doing so was not acting outside the statutory framework for finance/expenditure under the THA Act.

The decision of the Court of Appeal

18. The Attorney General appealed against that decision to the Court of Appeal. In its judgment, Civil Appeal No P 169 of 2014, delivered on 21 October 2019, the Court of Appeal (Mendonça JA, Smith JA, des Vignes JA) allowed the Attorney General's appeal. Mendonça JA gave the leading judgment, with which Smith JA and des Vignes JA agreed.

19. Mendonça JA's reasoning was as follows.

(1) It was common ground that the THA is not a sovereign body; it has such powers as are given to it by the Constitution and by statute, namely the THA Act, or as are incidental thereto.

(2) Section 25(2) of the THA Act did not give the THA an express power to enter into a BOLT arrangement. While section 25(2)(b) gave a power to the THA to enter into such contracts as it deemed fit for the efficient discharge of its functions, the section did not expressly speak to BOLT arrangements. The sub-section had to be read in the context of the general power given by the section to do all such acts and take all such steps as may be necessary for, or incidental to, the exercise of its powers and the discharge of its duties. The question was whether the THA had either an incidental or necessary power to enter into a BOLT arrangement without the consent of the Minister of Finance and/or outside the framework of the THA Act for the control of expenditure.

(3) As there was no suggestion that a BOLT arrangement was necessary to the exercise of the THA's power or for the discharge of its duties, the question was whether it fell within an incidental power. In this context, "incidental" did not mean "in connection with" or "related to", but had a narrower meaning of being

derived by reasonable implication from the language of the THA Act. It was not enough if the proposed power was convenient, desirable or profitable. Further, a power could not be incidental if it would be contrary to or inconsistent with any express or implied statutory provision. Whether the power in question could be said to be incidental to the powers expressly conferred on the THA therefore required interpretation of the THA Act.

(4) The THA Act subjected the revenue and expenditure of the THA to statutory controls. The Fund, established by section 141D of the Constitution, and sections 41-43 of the THA Act were material to understanding those controls. The monies allocated to the Fund were determined on the basis of annual estimates of income and expenditure provided by the THA. Due consideration was to be given to the financial and development needs of Tobago and, if dissatisfied with the allocation or any part thereof, the THA could refer the matter to the Dispute Resolution Commission under Part V of the THA Act.

(5) The THA Act contemplated occasions where monies allocated to and collected by the THA might not meet the expenditure of the THA in the discharge of its functions. Subsections 51(a) and (b) of the THA Act provided for borrowing in those situations, subject to approval, and were the only provisions authorising the THA to borrow money.

(6) Therefore, the provisions of Part IV of the THA Act provided variously: (i) for the monies comprised in the Fund; (ii) that all expenditure of the THA was to be met from the Fund; (iii) that Parliament allocated monies to the Fund on the basis of Cabinet's approval of annual estimates of the THA's income and expenditure; (iv) for the restricted borrowing powers of the THA. It was clear from these provisions that it was the intention of the THA Act that the THA's revenue and expenditure be controlled by Cabinet and ultimately Parliament. That was the obvious purpose of the relevant provisions of Part IV of the THA Act.

(7) A BOLT arrangement was used for, inter alia, financing construction projects. It did not amount to borrowing within the meaning of section 51 of the THA Act. However, it would commit the THA to significant expenditure to be met from the Fund, dependent largely on monies appropriated by Parliament. In light of the process set out in the THA Act for the allocation of funds on the basis of THA’s estimates of revenue and expenditure, by entering into a BOLT arrangement the THA would be committing itself to significant expenditure otherwise than in accordance with the provisions of Part IV of the THA Act for the control of the THA’s expenditure in a manner inconsistent with them and the obvious purpose and intention of the THA Act.

(8) As regards Boodoosingh J's observations with respect to the THA engaging with central government before entering into a BOLT arrangement, and the risk attendant on entering into a BOLT arrangement of not being able to meet its liabilities and losing its lands if Parliament did not allocate the necessary resources, Mendonça JA stated that he could not agree that it was the intention of the legislature that the THA would be free to enter into such an arrangement given the risks. The inability of the THA to meet its financial liabilities would be embarrassing not only to the THA but to the nation as a whole, not least where the lands in question were vested by the Republic of Trinidad and Tobago in the THA.

(9) In Mendonça JA's opinion, the effect of the THA Act was to ensure that Cabinet and Parliament maintained control over the THA's revenue and expenditure. The THA could not have an incidental power inconsistent with or contrary to the provisions and clear intent and purpose of the THA Act in that regard. A BOLT arrangement committed the THA to incur expenditure without complying with the provisions for the control of expenditure and the THA did not therefore have an incidental power to enter into a BOLT arrangement.

20. For those reasons, the Court of Appeal allowed the Attorney General's appeal and held that, on a proper construction of the THA Act, the THA did not have the power to enter into a BOLT arrangement for the purposes of developing and financing construction outside the framework in the THA Act for the control of expenditure.

The issue for decision on this appeal

21. It is important to emphasise the precise issue for decision on this appeal. That issue (see para 1 above) is whether, contrary to the Court of Appeal's decision, on the proper interpretation of the THA Act, the THA is empowered to enter into a BOLT arrangement for the purpose of developing and financing construction, funded from the Fund, outside the statutory framework of the THA Act for the control of expenditure.

22. The Board is not being asked to decide the wider question as to whether the THA can ever lawfully enter into a BOLT arrangement or whether to do so will always be ultra vires. The Board is not concerned with whether, for example, the THA has the power to enter into a BOLT arrangement where the funding for that arrangement is entirely provided by grants from international organisations. We are concerned solely with a BOLT arrangement that is to be funded from the Fund (established under section 141D of the Constitution: see para 3 above) and we are determining whether Part IV of the THA Act applies to control that expenditure.

23. It is unfortunate that this case was decided below in a factual vacuum. This came about for two reasons. First, the judicial review proceedings were converted into an interpretation summons. These were clearly seen as proceedings capable of resolution at an abstract level divorced from any particular BOLT arrangement. However, the matter for decision is not simply a point of interpretation. It is necessary to consider not only the true meaning of the relevant provisions but also their application to BOLT arrangements. That requires evidence of BOLT arrangements and how they operate in practice. Secondly, it became apparent early in the appeal hearing before the Board that there was a lack of evidence as to how Part IV of the THA Act operates in practice. This is a matter on which there should have been evidence before the Board. As it was, the Board proceeded by informing itself as to the nature of the processes under Part IV, as best it could, from the statutory provisions and the materials in the bundles, which have been supplemented since the hearing by the parties at the request of the Board.

The submissions in outline

24. On this appeal the appellant submitted that there was no need for approval for a BOLT arrangement by the Minister or the Cabinet within the budgetary control scheme of Part IV. The important provision was section 25(2)(b) empowering the THA to "enter into such contracts as it deems fit for the efficient discharge of its functions". While Part IV should not be ignored, all that it required was for the THA to set out and obtain approval for an overall estimate of expenditure. Cabinet approval for specific items of expenditure was not required. It was submitted that that must be so otherwise the autonomy to make policy choices would in effect be taken away from the THA and placed in the hands of the Cabinet. It followed that there was no need to obtain specific approval for the BOLT arrangement under Part IV. Moreover, if approval was sought but refused, it would still be lawful for the THA to go ahead with the BOLT arrangement. What was important was that a single sum came to the THA and it was for the THA to decide how that sum should be spent. It was therefore a block grant arrangement.

25. The respondent submitted that the system required specific items of expenditure to be put forward in estimates for approval by the Cabinet. It was not a block grant arrangement. Part IV therefore did restrict the power of the THA as to how it spent money from the Fund.

The approval of estimates under Part IV of the THA Act

26. It is necessary to say something more concerning the approval of estimates under Part IV of the THA Act. From the material before the Board the following features of the system are apparent.

(1) The revenue and expenditure of the THA are governed by statutory control under the scheme set out in Part IV. Finances are addressed under this scheme on an annual basis.

(2) All expenditure incurred by the THA is required to be paid out of the Fund (section 141D of the Constitution).

(3) In each financial year the Secretary to the THA drafts the estimates of revenue and expenditure for the next financial year (section 41(1) of the THA Act).

(4) The THA approves the draft estimates with such modifications as it sees fit (section 41(2) of the THA Act).

(5) The Chief Secretary transmits them for consideration and approval by the Cabinet (section 41(3) of the THA Act).

(6) The Cabinet considers the estimates, giving due consideration to the financial and developmental needs of Tobago in the context of Trinidad and Tobago and allocates financial resources to Tobago as fairly as is practicable (section 43 of the THA Act).

27. The process culminates in an Appropriation Act. The papers before the Board included the Appropriation (Financial Year 2012) Act, 2011 and the Appropriation (Financial Year 2025) Act, 2024. Each statute provided that a single lump sum would be authorised to be issued from the Consolidated Fund for meeting expenditure for the service of Trinidad and Tobago for the financial year under the heads of expenditure specified in the Schedule. There was no itemisation by projects and no separate provision identified in respect of Tobago.

28. The Board was informed by Mr Jeremie, in the course of his submissions on behalf of the THA that, while the estimates would be broken down, the Cabinet response would not be approval of individual items. It would simply be approval of an allocation with a division between recurrent and capital expenditure. The practice, he said, was not to approve projects but sums of money and it was left to the THA to draw inferences from the sums approved. The Cabinet was not entitled to say that Tobago should do this project or not do that project. It decided how much money to allocate on the basis of its assessment of how much the THA needed. If the Cabinet disallowed a cost, the THA would have to obtain a grant from another source or not undertake the project. Later in his submissions, Mr Jeremie told the Board that the decision under section 43 of the THA Act is how much money to allocate. The Cabinet does not decide that the THA may or may not carry out a particular project. The decision remains an allocation of money. In

its written case the THA states (at para 11) that "While the Assembly is required to provide Cabinet with estimates of its planned expenditure, the Act does not prescribe the level of detail to be given in such estimates".

29. Nevertheless, it seems to the Board that the THA must be legally required to submit estimates which contain detailed information as to the proposed projects and their cost. This is for the following reasons.

(1) Under section 41(1) of the THA Act, the Secretary has to submit draft estimates of revenue and expenditure respecting all functions of the THA in the next financial year. This necessarily requires that estimates provide detail in relation to all functions of the THA. If the vote in the THA is to be informed and if the members are to make such modifications as they think fit, members must know where and how the money will be spent.

(2) In considering the estimates, the Cabinet could not be looking simply at a single sum of money. Otherwise, it could not perform its duty under section 43 to give due consideration to the financial and developmental needs of Tobago in the context of Trinidad and Tobago and to allocate financial resources to Tobago as fairly as is practicable. It is also required, in determining what is fair and practicable, to take account of specific considerations. At least a minimum level of detail in relation to the nature and cost of the proposed projects is required to be before the Cabinet so that it can comply with section 43. In the absence of detailed estimates, including information as to each project and its cost, it would not be possible for the Cabinet to consider the needs of the THA or the other matters specified in section 43.

(3) Similarly, monies are appropriated by Parliament for the service of the financial year of the THA (section 47). In the absence of detailed estimates, Parliament would be ignorant of what is proposed and whether it meets the THA's financial and developmental needs for that financial year.

(4) Section 44 provides for a reference to the Disputes Resolution Commission where the THA is dissatisfied with the allocation "or any part thereof". It is difficult to see how the THA could appeal against the rejection of an estimate for a specific project if the THA only receives a decision based on a single sum of money.

30. No draft budget estimates were included in the bundle for the appeal hearing. However, following the hearing of the appeal, at the request of the Board, we were provided by the respondent with samples of draft estimates for 2011 and 2012 running to

more than 550 pages. The document entitled "Draft Estimates, Details of Development Programme, Unemployment Programme for the Year 2011" sets out total figures for the Development Programme, the Unemployment Relief Programme and the Community-Based Environmental Protection and Enhancement Programme. It then sets out in tabular form details of each project under the heading "Head/Sub-Head/Project Group/Project Description" followed by actual expenditure, approved and revised estimates for 2010, estimates for 2011 and an explanation. A typical example is Item 721 Milford Coastal Protection which appears under the heading "II Other Economic Services, A Drainage and Irrigation". Figures are given for actual expenditure for 2009 with approved and revised estimates for 2010 and 2011 estimates. This is then followed by an explanation: "Provides for the continuation of coastal protection work along the Old Milford Road and the commission of coastal erosion study (Shaw Park area)." These estimates contain breakdowns and explanations of each project.

31. Furthermore, at the request of the Board, there was produced during the hearing of the appeal The Tobago House of Assembly Financial Rules 1990, made under section 32(1)(f) of the THA Act with the approval of the President. These also support the conclusion that the estimates are prepared and submitted on an itemised basis. Thus, for example, Rule 12(h) provides that the Clerk as Accounting Officer shall be responsible for "ensuring that all disbursements of the [THA] are charged in the accounts under the proper heads and sub-heads of the estimates or other approved classifications". Similarly, Rule 20(1) provides that the Head of a Division shall be responsible for "(a) restricting expenditure to the amounts approved by the [THA] for each division for the financial year; (b) restricting expenditure to the amounts approved for individual projects".

32. The Board therefore proceeds on the basis that the THA is required to prepare and submit estimates identifying and providing particulars of each item of expenditure. The Part IV scheme does not operate on the basis of a block grant or allocation of a single sum.

The powers of the THA in relation to a BOLT arrangement

33. As has been indicated above, the THA submits that section 25(2) of the THA Act empowers the THA to do all such acts and take all such steps as may be necessary for, or incidental to, the exercise of its powers or for the discharge of its duties and in particular, by section 25(2)(b) to enter into such contracts as it deems fit for the efficient discharge of its functions. It further submits that the only qualification, imposed by public law, is that the THA's judgment must be rational. In its submission, a BOLT arrangement is a series of related contracts and, as a result, the THA Act empowers the THA to enter into BOLT arrangements. The THA argues that, in holding to the contrary, the Court of Appeal erred in several ways. First, the express provision in the legislation regarding entry into contracts was sufficient and there was no need for a specific reference to BOLT arrangements. Secondly, the relevant question was whether the THA could rationally take

the view that these contracts would assist in the efficient discharge of its functions. The Court of Appeal erred in posing a more general question based on the general criteria in the first part of section 25(2), ie whether BOLT arrangements are necessary or incidental to the exercise of the THA's powers or the discharge of its duties. Thirdly, even if the Court of Appeal were right to take account of the general criteria, they were in error in failing to ask in pursuit of what function the THA was entering into the particular arrangement. In the case which led to the present dispute, the THA wished to provide new accommodation for one of its administrative divisions, the Division of Agriculture, Marine Affairs, Marketing and the Environment, which carries out some of the THA's functions as set out in the Fifth Schedule, paras 3, 11, 12, 13, 20 and 27. It was a necessary activity for the THA to employ officers and servants and to provide them with offices equipped with the means to carry out their tasks. So, too, therefore, was entering into contracts to secure the same. The THA was therefore empowered to lease administrative facilities for its staff or to enter into contracts to buy or to build such administrative facilities. While acknowledging that this appeal concerns the power of the THA to enter into BOLT arrangements generally as opposed to any specific BOLT arrangement, the THA submits that the question that must be asked is not what type of contract this is, but what the contract is for.

34. The Board is unable to accept those submissions. First, applying the established approach to legislative interpretation, it is necessary to read the THA Act as a whole and to interpret the words used, in the light of their context and the purpose of the relevant provisions. Plainly, one cannot divorce section 25(2) from Part IV. Secondly, the argument founded on splitting a BOLT arrangement into a series of contracts is too simplistic. On this reasoning, the THA would have the power to enter into any arrangement and to incur any expenditure for any purpose provided that the arrangement can be reduced to a series of contracts. It is necessary to look at the substance. A BOLT arrangement comprises a financial structure by which a public body funds capital projects. The fact that a BOLT arrangement is made up of a series of contracts does not mean that it is no longer necessary to comply with Part IV of the THA Act. Thirdly, the power in 25(2)(b) is limited by virtue of the fact that it is a particular instance of the power to do acts necessary for or incidental to the exercise of the THA's powers or the performance of its duties. It cannot be necessary for or incidental to the exercise of powers or the performance of duties if it would be contrary to or inconsistent with an express or implied statutory provision.

35. In the Board's view, the claimed power of the THA to enter into a BOLT arrangement to be funded from the Fund outside the statutory framework of Part IV is neither necessary nor incidental because it is inconsistent with and offends against those statutory provisions dealing with the control of expenditure and the obtaining of finance by the THA. In coming to this conclusion the Board essentially agrees with the reasoning of Mendonça JA in the Court of Appeal. In particular, he was right to draw attention to the following features of the Part IV scheme and the Fund.

(1) First, under section 141D of the Constitution the Fund comprises two elements: such monies as may be appropriated by Parliament for the use of the THA and such other monies as the THA may lawfully collect. The first element is provided for in particular by sections 41 and 43 of the THA Act. The monies allocated to the Fund are determined on the basis of annual estimates of income and expenditure approved by the THA for the next financial year in accordance with section 41. In considering the estimates the Cabinet is required under section 43 to give due consideration to the financial and development needs of Tobago in the context of Trinidad and Tobago as a whole and to allocate financial resources to Tobago as fairly as is practicable. So far as the second element is concerned, the monies which the THA can lawfully collect are required to be paid into the Fund pursuant to section 49(1) and (2). However, section 49(3) provides that all monies credited to the Fund in this way shall be set off against the annual allocation appropriated by Parliament to the Fund.

(2) Secondly, section 39 provides that all expenditure incurred by the THA shall be paid out of the Fund.

(3) Parliament allocates monies to the Fund on the basis of the Cabinet's approval of annual estimates of the THA's income and expenditure or, exceptionally, the decision of the Dispute Resolution Commission.

(4) The THA has very limited borrowing powers under section 51 of the THA Act.

In these circumstances, in line with what Mendonça JA said, it is clearly the purpose of the THA Act that the expenditure of the THA should be controlled so that it is met by allocations to the Fund from Trinidad and Tobago's limited financial resources which are to be used to meet the needs of Trinidad and Tobago as a whole. It was the obvious purpose of the THA Act that the Minister or Cabinet and ultimately Parliament should exercise control over the THA's revenue and expenditure.

36. Furthermore, section 51(a) of the THA Act makes limited provision for overdraft borrowing by the Secretary of the THA with the approval of the THA. Section 51(b) of the THA Act, by contrast, provides that the Secretary may borrow sums by way of term loans for the purposes of capital investment. Such a term loan, however, requires the approval of the Minister. On the hearing of this appeal, it was common ground that a BOLT arrangement is not a borrowing within section 51(b) of the THA Act. It does, however, achieve the same result indirectly. The contractor is the borrower but the THA provides security in the form of the land and makes repayments in the form of rent under the lease back. As Mr Jeremie accepted during his submissions, the THA gets the property without entering into a loan. In the Board's view, a BOLT arrangement is akin to a

borrowing for capital projects and yet circumvents the requirement under section 51(b) for the approval of the Minister.

37. Although the present proceedings were converted into an interpretation summons, it is instructive to consider the particular arrangement which gave rise to them. On the THA's estimate, the cost of the BOLT arrangement was in the region of $310 million. The arrangement foresaw annual rental of $14,379,499.32 plus VAT and an advance payment of 18 months' rent by way of a security deposit. In addition, had the THA defaulted on the arrangement, the resulting liabilities would have been very significant indeed, including the risk of the loss of what had been State land. While this arrangement was not borrowing falling directly within section 51(b) of THA Act, the Attorney General is correct in his submission that this was an arrangement akin to borrowing for capital projects. It would commit the THA to expenditure without the THA complying with the provisions for the control of expenditure in Part IV. Furthermore, as the Attorney General points out, on the THA's case its powers would extend to entering into arrangements for deferred payments which would not be included in the THA's estimates until they became due in later years. In the absence of Cabinet or Ministerial consent before such commitments were entered into, Parliament would effectively be committed to very significant future expenditure in later years of which it was unaware and over which there would have been no oversight, contrary to Part IV.

38. When the legislative provisions are considered in their entirety, it is clear that they did not empower the THA to commit the State to use of the Fund for such large and long-term liabilities, under a BOLT arrangement that is akin to borrowing for capital projects, without the direction or control of the Minister or Cabinet, and ultimately, Parliament as provided for in Part IV. Put another way, where the Minister or Cabinet has not approved a BOLT arrangement for a project, it is outside the powers of the THA to enter into such an arrangement for a project which depends on the use of money from the Fund.

Conclusion

39. For the reasons stated above, the appeal will be dismissed.