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

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION

2022-HC-DEM-CIV-FDA-469

BETWEEN:

1. CHRISTOPHER JONES
2. NORRIS WITTER

Claimants

-and-

1. ATTORNEY GENERAL OF GUYANA
2. PARLIAMENT OFFICE
3. SPEAKER OF THE NATIONAL ASSEMBLY
4. CLERK OF THE NATIONAL ASSEMBLY
5. THE MINISTER OF FINANCE

Defendants

The Honourable Justice Navindra A. Singh, Puisne Judge

Messrs. Roysdale A. Forde SC and Selwyn Pieters for the Claimants

Mr. Mohabir A. Nandlall SC, Attorney General of Guyana and Mr. Nigel O. Hawke, Solicitor General of Guyana for the First and Fifth Named Defendants

Messrs. Hari. N. Ramkarran SC, Kamal Ramkarran and Sase R. Gunraj for the Second, Third and Fourth Named Defendants

Delivered June 19th 2023

DECISION

The **Natural Resource Fund Act, Act No. 19 of 2021**, [the NRF] was passed by the National Assembly on December 29th 2021 and assented to by his Excellency President Dr. Mohamed Irfaan Ali on December 30th 2021.

The Claimants claim that the enactment of the NRF by the National Assembly of Guyana was unlawful and unconstitutional for various reasons addressed hereafter.

ISSUE 1

Whether the absence of the Mace in the National Assembly during the passage of legislation invalidates the passage of such legislation.

FACTS

On December 29th 2021 during the 34th sitting of the National Assembly during the reading of the Natural Resource Fund Bill, Opposition members of Parliament forcefully took possession of the Mace, removed it from the Parliamentary Chambers and caused damage to it.

The proceedings continued with a "replacement" Mace.

LAW

The presence, absence or use of the Mace in the National Assembly is not provided for in the Constitution or the Laws of Guyana.

ANALYSIS

It is clear from the evidence that the Mace is nothing more than a relic intended only to be symbolic existence in the National Assembly.

It is illogical to believe that the presence or absence of a length of metal can determine the legitimacy of acts done by persons elected by the citizens of the country pursuant to their elected duties.

Further, it is preposterous to contend that the legislative power of the nation can be halted by the abhorrent and deplorable actions of a few miscreants.

It is startling that the Claimants assert that the Mace is an integral instrument of the authority of the Speaker and is significant to the orderly function of the National Assembly when the evidence clearly demonstrates that several Opposition Members of Parliament, including the First Named Claimant [FNC], refused to heed to the Speaker's call for order in accordance with the Standing Orders of the National Assembly [in particular, Orders 40 and 45] which in fact embodies the settled procedural rules of the National Assembly.

The FNC ought to take guidance from the maxim *quod approbo non reprobo.*

CONCLUSION

The absence of the Mace in the National Assembly during the passage of the NRF did not invalidate the subsequent passage of the NRF.

The presence of the mace in the National Assembly is not mandated by the Constitution or the Laws of Guyana and therefore its absence cannot result in the passage of the Bill being unconstitutional or unlawful.

In the circumstances the Orders sought at paragraph 1, subparagraphs (a), (b), (d), and (e) are refused.

ISSUE II

Whether the holding and/ or continuation of proceedings of the National Assembly on December 29th 2021 beyond the time stated in Resolution No. 2 of the 12th Parliament of Guyana without a Motion to so do invalidates the passage of legislation passed during such continuation.

FACTS

Order 10 of the Standing Orders of the National Assembly provides for the times of the Sitting of the National Assembly and further provides that such times may be altered by resolution.

Resolution No. 2 of the 12th Parliament of Guyana changed the times of sitting of the National Assembly resolving that sittings will end at 20:00 hrs.

The NRF was passed after 20:00 hrs on December 29th 2021.

LAW

Article 165 of the Constitution of the Republic of Guyana.

The Attorney General of Guyana *v* David Granger Et Al [Constitutional Motion No. 94 of 2012 (Guyana)]

ANALYSIS

Article 165 of the Constitution provides that the National Assembly may regulate its own procedure and may make rules for that purpose.

To this end the Standing Orders of the National Assembly were formulated to regulate its own procedure. The Standing Orders are not laws of the Republic, they are written rules formulated and agreed to by the National Assembly to regulate parliamentary business and proceedings.

The National Assembly is one of three independent arms of the State, the Judiciary and the Executive being the other two, and as such enjoys the right to not have its authority to regulate its own procedure/s impeached or questioned by another arm, in this case, the Judiciary.

It is indisputable that the time/s of the Sitting of the National Assembly is entirely an internal procedural matter.

Further, the fact that the regulation of those times are not legislated for but rather seem to have been agreed to by the National Assembly itself and set down in its Standing Orders demonstrates that this is a matter which is solely within the control of the National Assembly.

Breach of a Standing Order therefore is an issue that falls within the disciplinary powers of the Speaker and the National Assembly.

The High Court does not possess the authority under the Constitution of the Laws of Guyana to regulate or pronounce upon an alleged breach of a Standing Order of the National Assembly.

In this regard the National Assembly nor any of its members are not answerable to the Court for any allegation of a breach of a Standing Order.

The relationship of the Judiciary and the National Assembly has already been stated by Chief Justice Ian Chang in **The Attorney General of Guyana *v* David Granger Et Al**, to wit, that the Court has no jurisdiction to judicially review the workings or operations of the National Assembly except for the purpose of determining whether the National Assembly had acted unconstitutionally or contrary to law.

The National Assembly can, and must be able, to conduct its business free from judicial intervention or inquiry so long as its conduct does not run counter to any provisions of the Constitution or the Laws of Guyana.

It follows that the Court cannot inquire into this alleged breach of procedure.

The Court does observe in passing, nonetheless, that while Standing Order 10 (1) provided that the Sitting **shall** end at 10:00 p.m., Resolution No. 2 does not mandate that the Sitting end at 8:00 p.m.

CONCLUSION

The Claim for a Declaration that the holding and/ or continuation of proceedings of the National Assembly on December 29th 2021 beyond the time stated in Resolution No. 2 of the 12th Parliament of Guyana without a Motion to so do invalidates the passage of legislation passed during such continuation must be refused.

The time/s for the Sitting of the National Assembly is not mandated by the Constitution or the Laws of Guyana and nothing in this regard can result in the passage of the Bill being unconstitutional or unlawful.

In the circumstances the Order sought at paragraph 1, subparagraphs (c) is refused.

ISSUE III

Does **Articles 13 and 154A of the Constitution of the Republic of Guyana** require or mandate the National Assembly to engage in consultation with the "stakeholders" and citizenry of Guyana before enacting legislation.

ANALYSIS

The Claimants submit that **Article 13 of the Constitution** gave members of the public a constitutional right to engage in consultation on the NRF Bill before it was enacted.

Article 13 in fact provides that the State is to establish **opportunities** for the participation of citizens in the **decision making processes** of the State.

This cannot reasonably be interpreted to require the Legislature of the Executive to consult with every citizen when considering or enacting laws for the good governance of the Republic.

The Claimants further submit that by virtue of **Article 154A of the Constitution**, **Article 25 of the International Covenant of Civil and Political Rights** [ICCPR] must be adhered to in Guyana which means that the National Assembly was mandated to engage in consultation with the citizenry and stakeholders of Guyana.

It is apparent that the Claimants are contending that the thrust of those Articles, particularly Article 25 (a), demand that there be consultation with individual Guyanese citizens.

The **ICCPR** was adopted by United Nations General Assembly Resolution 2200A (XXI) on December 16th 1966 and entered into force on March 23rd 1976.

Article 25 of the ICCPR provides;

"*Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country."

The thrust and intention of **Article 25 (a) of the ICCPR** was made clear in General Comment 25 [particularly paragraph 6] which was adopted at the fifty-seventh session on July 12th 1996 and provides, in relevant part;

"*Citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office. This right of direct participation is supported by paragraph (b). Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process conducted in accordance with paragraph (b). Citizens may participate directly by taking part in popular assemblies which have the power to make decisions about local issues or about the affairs of a particular community and in bodies established to represent citizens in consultation with government ... Where citizens participate in the conduct of public affairs through freely chosen representatives, it is implicit in article 25 that those representatives do in fact exercise governmental power and that they are accountable through the electoral process for their exercise of that power. It is also implicit that the representatives exercise only those powers which are allocated to them in accordance with constitutional provisions. Participation through freely chosen representatives is*

exercised through voting processes which must be established by laws that are in accordance with paragraph (b). 8. Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association."

It is clear that any consultation with the citizenry and stakeholders is either through direct involvement by being part of the Legislature, the Executive or institutions that have the power to make decisions or indirectly through their representatives who they choose through a voting process.

It is illogical to believe that the same Constitution that set up a system of governance which provides for a Legislature to debate and enact laws, which Legislature is to comprise of **elected** representatives, would at the same time demand that each citizen essentially become a representative.

The system envisaged by the Claimants effectively nullifies the need for elected representatives since every citizen would still have to be consulted before a law can be enacted. Every Bill would essentially be subject to a referendum.

On the contrary the system envisaged under the Constitution is for the elected representatives to be the voice of their respective constituencies in the National Assembly and the manner in which that is done is provided for through the internal procedures set down by the National Assembly.

The thrust of **Article 13 of the Constitution** is easily appreciated when it is read, which it must be, in conjunction with **Article 9 of the Constitution** which provides;

"*Sovereignty belongs to the people, who exercise it through their representatives and the democratic organs established by or under this Constitution.*"

Failure of the consultative process envisaged by the law only occurs when the elected representatives, by their own actions, fail to be the voice of their constituents by adhering to and utilising the processes set down by the National Assembly.

The Second Named Claimant [SNC] alleges that he and other citizens caused a petition to be filed concerning the NRF, however, the Speaker did not deal with it on December 29th 2021.

The SNC alleges that such action amounted to a breach of his "***fundamental human right to political participation***" guaranteed by **Articles 13 and 154A of the Constitution** and **Article 25 of the ICCPR**.

The procedure regarding the presentation of a petition in the National Assembly is not governed by the Constitution or the Laws of Guyana.

The procedure is provided for in Standing Orders 15 and 16 and therefore as previously explained the Court cannot inquire into such matters.

Further, based on the previous explanation and pronouncement on the intention and effect of **Articles 13 and 154A of the Constitution** and the **ICCPR** the complaints of the SNC cannot rise to breach/es of his constitutional rights.

CONCLUSION

Articles 13 and 154A of the Constitution of the Republic of Guyana does not require or mandate the National Assembly to engage in consultation with the "stakeholders" and citizenry of Guyana before enacting legislation.

Further, the Court does not find that the SNC's Constitutional rights were breached.

In the circumstances the Orders sought at paragraph 1, subparagraphs (f), (g), (h), (i), (j), (k), (l), (n), (o) and (p) are refused.

ISSUE IV

Did the Speaker of the National Assembly fail or refuse to afford or permit members of the Opposition participation in the debate on the NRF Bill.

LAW

Article 171(1) of the Constitution of the Republic of Guyana

FACTS

The Claimants allege that the Speaker of the National Assembly failed to permit any member of the Opposition to participate in the debate on the NRF Bill on December 29th 2021.

The evidence of the First Named Claimant [FNC] revealed that when the Speaker directed the Senior Minister in the Office of the President with Responsibility for Finance, the Honourable Dr. Ashni Singh to read the NRF Bill for a second time every member of the Opposition stood up and started pounding heir desks and shouting. They, with the exception of Mr. Khemraj Ramjattan, thereafter descended into the Well of the National Assembly, despite being called upon by the Speaker to take their seats.

The FNC testified that there was a practice developed in the National Assembly whereby a Speaking List is prepared and submitted to the Speaker and during the debates the Speaker would call upon the persons listed therein to speak.

He testified that he and the Government Chief Whip, the Honourable Minister of Parliamentary Affairs, Gail Texeira, prepared a Speaking List for the debate of the NRF Bill and **he submitted** the list to the Speaker before the start of the sitting on December 29th 2021 [Exhibit "L16" - paragraph 39], however under cross examination he testified that **he did not** submit a list to the Speaker.

He testified that the list is usually submitted by the staff.

Mr. Jones testified that he retained a signed copy of the Speaking List, however such a document was not produced to the Court.

Standing Order 38 (1) provides the procedure a member of the National Assembly must adopt if he/ she wishes to speak, to wit, he/ she shall rise in his or her place.

The FNC testified that he does not recall Mr. Ramjattan standing and indicating that he would like to speak.

Khemraj Ramjattan testified in evidence in chief [by way of his witness statement] essentially that he expected to be called upon by the Speaker to speak.

Subsequently, under cross examination, for the first time, he testified that he indicated that he wanted to speak by standing and pressing the button.

Mr. Sherlock Isaacs, Clerk of the National Assembly, testified that he does not recall a Speaking List being submitted for the debate of the NRF Bill.

He testified that he had never before seen Exhibit "C" which is a purported copy of the Speaking List the FNC claims was submitted.

He testified that he is on the right of the Speaker and has a panoramic view of the National Assembly and he did not see Mr. Ramjattan attempt to get the attention of the Speaker either by standing or pressing the button.

He testified that if the button is pressed a light comes up on the board in front of the Speaker and each seat is designated a light on that board.

ANALYSIS

Article 171(1) of the Constitution provides that Bills and Petitions shall be debated and disposed of according to the rules of procedure of the National Assembly.

In this regard, to a large extent the issue that arises here concerns the internal procedures of the National Assembly vis-a-vis the procedure put in place by the National Assembly for debating a Bill as laid down in the Standing Orders of the National Assembly [which has previously been dealt with], however, based on the evidence of the FNC and the witness, Mr. Ramjattan, there is branch issue that has arisen as to whether a member of the Opposition [Mr. Ramjattan] was denied participation in the debate on the NRF Bill as opposed to the Speaker failing to permit him to participate.

On that branch issue there are two questions to be answered;

1. Was a Speaking List submitted to the Speaker?

Based on the evidence the answer must be a resounding No.

The Claimants nor any of their witnesses submitted a Speaking List and further the Claimants nor any of their witnesses provided any evidence that a Speaking List was submitted by any person.

2. Did Mr. Khemraj Ramjattan act in accordance with the Standing Orders to get the Speaker's attention to indicate his desire to speak?

Mr. Ramjattan testified for the first time, under cross examination, that he stood and pressed the button.

The Court does not find that to be truthful for the simple reason that the thrust of the Claimants' case has always been that Mr. Ramjattan was listed to speak on a

Speaking List and he never left his seat, therefore the Speaker, whether intentionally or not, wrongly and in breach of an established practice, failed to call upon him and avail him the opportunity to speak.

It is far more logical based on the pleaded case and the witness statement of Mr. Ramjattan, to find that Mr. Ramjattan believed that he was listed to speak on a Speaking List, which he believed was submitted and so sat waiting to be called upon to speak.

If the Claimants and Mr. Ramjattan were of the honest belief that a Speaking List was submitted and he was listed thereon to speak yet he nevertheless followed the procedure laid out in Standing Order 38 (1) then certainly part of their case and more importantly at least one statement in Mr. Ramjattan's witness statement would have been that notwithstanding the submission and reliance on a Speaking List, Mr. Ramjattan, a member of the National Assembly for in excess of three decades, also followed the procedure laid down in the Standing Orders of the National Assembly to make sure that he gets to speak.

In fact the FNC testified clearly that he does not recall Mr. Ramjattan standing and indicating that he would like to speak and that seems logical in the context of the pleaded case that a Speaking List was submitted.

It was accepted by the FNC that no other member of the Opposition were in their seats and that a member can only be recognised to speak if they are in their seat.

The evidence or lack thereof on this issue by or on behalf of the Claimants, without further, demonstrates that Mr. Ramjattan was not denied participation in the debate on the NRF Bill.

Notwithstanding that the Court finds that the testimony of the Clerk of the National Assembly, Mr. Sherlock Isaacs, which was not discredited in any way, confirms the Court's findings in answering these two questions.

CONCLUSION

The Speaker of the National Assembly did not fail or refuse to afford or permit members of the Opposition participation in the debate on the NRF Bill nor did the Speaker deny any member of the Opposition participation in the debate on the NRF Bill.

In the circumstances the Order sought at paragraph 1, subparagraph (q) is refused.

ISSUE V

It was suggested to the Clerk of the National Assembly, Mr. Sherlock Isaacs that according to the Hansard the NRF Bill was only read two times before it was approved [**Exhibit "D48"** - page 96].

This was not pleaded as an issue and therefore could not have been properly raised as an issue without the pleadings being amended. In any event it was not addressed in the closing addresses.

Nevertheless the Court observed that the Honourable Minister Dr. Singh read the Bill for the second time just after 7:00 p.m. [**Exhibit "D46"** - page 92] and therefore the word "second" on [**Exhibit "D48"**] page 96 must be a typographical error and this is in fact confirmed by the documentary evidence tendered by Mr. Christopher Jones [**Exhibit "L63"**].

ISSUE VI

Claim for a Declaration that the Executive's failure to constitute the Human Rights Commission is a contravention of the Constitution.

CONCLUSION

No ground was advanced, no facts were pleaded nor was any evidence led in support of this Claim to enable the Court to adjudicate upon it.

In the circumstances the Orders sought at paragraph 1, subparagraph (r) is refused.

Based on all of the foregoing and as a consequence thereof the Orders sought at paragraph 1, subparagraphs (m), (s), (t), (u), (v), (x) and (y) are refused.

In the circumstances the Claim is dismissed in its entirety with costs in the sum of $250,000.00 to **each** Defendant against **each** Claimant to be paid on or before July 19th 2023.

Justice N. A. Singh