

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction
ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No. GYCV2019/009
GY Civil Appeal No. 26 of 2018

Between
CHRISTOPHER RAM **APPELLANT**

And
THE ATTORNEY GENERAL **RESPONDENTS**
THE LEADER OF THE OPPOSITION
JOSEPH HARMON
GUYANA ELECTIONS COMMISSION

CCJ Appeal No. GYCV2019/010
GY Civil Appeal No. 27 of 2019

Between
BHARRAT JAGDEO **APPELLANT**
In his capacity as Leader of the Opposition

And
THE ATTORNEY GENERAL **RESPONDENTS**
DR BARTON SCOTLAND
JOSEPH HARMON
GUYANA ELECTIONS COMMISSION

CCJ Appeal No. GYCV2019/011
GY Civil Appeal No. 43 of 2019

Between

CHARRANDAS PERSAUD

APPELLANT

And

COMPTON HERBERT REID

RESPONDENTS

DR BARTON SCOTLAND

THE ATTORNEY GENERAL

BHARRAT JAGDEO

JOSEPH HARMON

GUYANA ELECTIONS COMMISSION

(Consolidated by order of this Court dated the 29th day of March 2019)

Before The Honourables **Mr Justice Saunders, PCCJ**
 Mr Justice Wit, JCCJ
 Mr Justice Hayton, JCCJ
 Mr Justice Anderson, JCCJ
 Mme Justice Rajnauth-Lee, JCCJ

Appearances

Mr Douglas Mendes, SC, Mr Chandraprakash Satram, Mr Devesh Maharaj, Mr Mohabir Anil Nandlall, Mr Manoj Narayan, Ms Kandace Bharath and Ms Marcia Nadir Sharma; Mr Kamal Ramkarran and Mr Devindra Kissoon; Mr Sanjeev Datadin, Mr Stephen Singh and Mr. Ganesh Hira for the Appellants

Mr Eamon Courtenay, SC, Mr Basil Williams, SC, Mr Nigel Hawke, Ms Iliana Swift and Jerome Rajcoomar; Mr Roysdale Forde; Mr Rex H McKay, SC, Mr Neil Aubrey Boston, SC and Mr Robert H O Corbin; Mr Rafiq T Khan, SC with Mr Teni Housty for the Respondents

Mr Stanley Marcus, SC and Ms Excellence T Dazzell for the Added Respondent

THE JUDGMENT
of
The Honourable Justices Saunders, Wit,
Hayton, Anderson and Rajnauth-Lee

Delivered
on the 12 day of July 2019

JUDGMENT OF THE COURT

[1] These cases were consolidated and heard together on 9 and 10 May 2019. On 18 June 2019, this Court rendered its judgment in which it reached a number of conclusions but stopped short of issuing any orders. Leading Counsel for the Attorney General and the Leader of the Opposition respectively had previously jointly requested that the Court should not make any consequential orders without first hearing from the parties. Accordingly, the Court ordered the Parties to make written submissions to the Court no later than 1 July 2019 on the orders and directions the Court should make in light of the conclusions arrived at in the judgment.

[2] The Court gratefully received written submissions from counsel for the Attorney General, the Leader of the Opposition, The Guyana Elections Commission, Mr Charrandas Persaud and Mr. Joseph Harmon. In choosing now not to re-hash these submissions, the Court intends no disrespect to counsel. The submissions were useful and helpful and have been fully considered by the Court.

[3] Due observance of constitutional democracy and the rule of law in Guyana rests, in large measure, with the conduct of the various branches of government, that is, the President and the Cabinet, the Parliament and the Judiciary. All must be faithful to the spirit and letter of the Constitution and operate within the parameters given to each by the Constitution.

[4] Article 106(6) and (7) of the Constitution states as follows:

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...

(6) The Cabinet including the President shall resign if the Government is defeated by the vote of a majority of all the elected members of the national Assembly on a vote of confidence.

(7) Notwithstanding its defeat, the Government shall remain in office and shall hold an election within three months, or such longer period as the national Assembly shall by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly determine, and shall resign after the President takes the oath of office following the election.

[5] The judiciary interprets the Constitution. But, as we intimated in our earlier judgment, these particular provisions require no gloss on the part of the Court in order to render them intelligible and workable. Their meaning is clear and it is the responsibility of constitutional actors in Guyana to honour them. Upon the passage of a vote of no confidence, the Article requires the resignation of the Cabinet including the President. The Article goes on to state, among other things, that notwithstanding such resignation, the Government shall remain in office and that an election shall be held “within three months, or such longer period as the National Assembly shall by resolution supported by not less than two-thirds of the votes of all the elected members of the National Assembly determine ...” The Guyana Elections Commission (“GECOM”) has the responsibility to conduct that election and GECOM too must abide by the provisions of the Constitution.

[6] Given the passage of the no confidence motion on 21 December 2018, a general election should have been held in Guyana by 21 March 2019 unless a two thirds majority in the National Assembly had resolved to extend that period. The National Assembly is yet to extend the period. The filing of the court proceedings in January challenging the validity of the no confidence vote effectively placed matters on pause, but this Court rendered its decision on 18 June 2019. There is no appeal from that judgment.

[7] Article 106 of the Constitution invests in the President and the National Assembly (and implicitly in GECOM), responsibilities that impact on the precise timing of the elections which must be held. It would not therefore be right for the Court, by the issuance of coercive orders or detailed directives, to presume to instruct these bodies on how they must act and thereby pre-empt the performance by them of their constitutional responsibilities. It is not, for example, the role of the Court to establish a date on or by which the elections must be held, or to lay down timelines and deadlines that, in principle, are the preserve of political actors guided by constitutional imperatives. The Court must assume that these bodies and personages will exercise their responsibilities with integrity and in keeping with the unambiguous provisions of the Constitution bearing in mind that the no confidence motion was validly passed as long ago as 21 December 2018.

[8] It is important, however, that the Court makes this point. In mandating that the Government shall remain in office notwithstanding its defeat and the resignation of the President and the Cabinet, Article 106 envisages that the tenure in office of the Cabinet, including the President, after the Government's defeat, is on a different footing from that which existed prior to the vote of no confidence. Chancellor Cummings-Edwards, citing Hogg¹, the Canadian constitutional expert, was right to note that:

“...The government continues in office as a caretaker government or an interim government until the next elections ensue and a President is appointed (or reappointed) depending on the results of that election.”

By convention, the government is expected to behave during this interim period as a caretaker and so restrain the exercise of its legal authority. It is this caretaker or interim role that explains the three month deadline, in the first instance, that the Article lays down, in principle, for the holding of the fresh elections.

[9] In all the circumstances, the Court makes the following declarations and orders:

- a) The provisions of Article 106(6) and (7) of the Constitution apply to a No Confidence motion;
- b) Thirty-three votes constitute a majority of the 65 member National Assembly;
- c) Mr Charrandas Persaud was ineligible to be elected to the Assembly by virtue of his citizenship of Canada but his vote on the motion of no confidence was valid;
- d) Nothing in the anti-defection regime established at Article 156(3) of the Constitution rendered Mr Persaud incapable of casting his vote on that motion in the manner in which he did;
- e) The National Assembly properly passed a motion of no confidence in the Government on 21 December 2018;
- f) Upon the passage of this motion of no confidence in the Government, the clear provisions of Article 106 immediately became engaged;

¹ Peter Hogg, *Constitutional Law of Canada*, 5th Edn Supplemented at 9(4)a

- g) Costs are awarded to Mr Jagdeo and Mr Persaud respectively to be taxed if not agreed. In each case those costs are to be paid by the Attorney General. In the case of Mr Jagdeo those costs are certified fit for two counsel; and
- h) Mr Ram is awarded 60% of his Costs to be taxed if not agreed. Those costs are to be paid by the Attorney General.

/s/ A. Saunders

The Hon Mr Justice A Saunders

/s/ J. Wit

/s/ D. Hayton

The Hon Mr Justice J Wit

The Hon Mr Justice D Hayton

/s/ W. Anderson

/s/ M. Rajnauth-Lee

The Hon Mr Justice W Anderson

The Hon Mme Justice M. Rajnauth-Lee