



CARIBBEAN COURT OF JUSTICE

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MEDIA RELEASE

(For immediate release)

No. 17:2021

29 December 2021

CCJ rules GGMC's decision to award Aremu Road Rehabilitation Contract to Chunilall Baboolall was unlawful

Port of Spain, Trinidad and Tobago: On 4 June 2021, the Caribbean Court of Justice (CCJ) dismissed an appeal against a decision of the Court of Appeal of Guyana in the consolidated matter of *Guyana Geology and Mines Commission v BK International and Chunilall Baboolall; and Chunilall Baboolall v BK International and Guyana Geology and Mines Commission* [2021] CCJ 13 AJ (GY). On that date, the Court indicated that it would give the reasons for that dismissal at a later date. Today, the Court issued those reasons.

Around June 2013, Guyana Geology and Mines Commission (“GGMC”) invited bids through public advertisement for the rehabilitation of the Aremu Road in Region 7. The advertisement stated that bidding would be conducted according to the Procurement Act Cap 73:05. GGMC shortlisted four “prequalified” entities to submit bids but only three responded to the invitation: CB&R Mining (“CB&R”); MMC Inc; and BK International Inc (“BK”). BK submitted the lowest bid and CB&R’s bid lacked certain important documentation. Nevertheless, GGMC contracted with Baboolall, on behalf of CB&R, to execute the road rehabilitation works. BK was dissatisfied with the GGMC’s decision and initiated an action in the High Court to invalidate that decision.

At the High Court, GGMC argued that it was not a “procuring entity” as defined in the Procurement Act Cap 73:05 and was therefore not required to follow the procurement procedures in the Act. The statutory definition of a procuring entity included Government agencies, but GGMC argued that it was a private body in law. The High Court rejected that argument, holding that GGMC was a public agency under the Ministry of Natural Resources and the Environment. GGMC and Baboolall, appealed this decision to the Court of Appeal but that Court agreed with the High Court and dismissed the appeal.

GGMC and Baboolall subsequently appealed to the CCJ, which identified three issues for determination: (1) was the GGMC a “procuring entity” under the Procurement Act? (2) was judicial review available to challenge GGMC’s decision to award the contract to Baboolall?; and (3) did GGMC comply with the Procurement Act?

Anderson JCCJ, who delivered the judgment of the CCJ indicated that the GGMC was a government agency because of three main factors: (1) the public nature of its functions; (2) the extensive ministerial control exercisable over it; and (3) the sources of its funding included inflows from the Government. As an agency of the Government, GGMC fell under the definition of a

procuring entity in the Procurement Act and, therefore, had an obligation to conduct bidding according to that Act. Anderson JCCJ also found that judicial review was available to BK because GGMC was conducting a public function, that is, a road rehabilitation project, where the funding came from the Government. Further, Anderson JCCJ considered that BK had a legitimate expectation that GGMC would comply with the Procurement Act. The judge then determined that there were several instances where the GGMC had not adhered to the Procurement Act; for example, the rejection of BK's bid was not done in accordance with the Procurement Act. Additionally, there was no proof of how CB&R, or any of the bidders for that matter, were "pre-qualified".

Wit JCCJ, in a concurring opinion, added that judicial review in a constitutional democracy like Guyana must be brought under the umbrella of constitutional values and principles. Doing this, broadens the scope of judicial review. Jamadar JCCJ underscored that in countries with written constitutions, courts must ensure that administrative decisions accord with fundamental constitutional and human rights values and principles.

The Hon. Mr Justice Adrian Saunders, CCJ President; the Hon. Mr Justice Jacob Wit, the Hon. Mr Justice Winston Anderson, the Hon. Mr Justice Denys Barrow, and the Hon. Mr Justice Peter Jamadar comprised the bench from the CCJ. Mr Nikhil Ramkarran and Ms Rebecca Khan appeared for the Guyana Geology and Mines Commission; Mr Edward Luckhoo SC and Mr Robin Stoby SC appeared for BK International Inc, and Mr Chandraprathesh Satram, Mr Roopnarine Satram, and Mr Ron Motilall appeared for Mr Chunilall Baboolall.

The full judgment of the Court is available on the Court's website at www.ccj.org.

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About the Caribbean Court of Justice

The Caribbean Court of Justice (CCJ) was inaugurated in Port of Spain, Republic of Trinidad and Tobago on 16 April 2005 and presently has a Bench of seven judges presided over by CCJ President, the Honourable Mr Justice Adrian Saunders. The CCJ has an Original and an Appellate Jurisdiction and is effectively, therefore, two courts in one. In its Original Jurisdiction, it is an international court with exclusive jurisdiction to interpret and apply the rules set out in the Revised Treaty of Chaguaramas (RTC) and to decide disputes arising under it. The RTC established the Caribbean Community (CARICOM) and the CARICOM Single Market and Economy (CSME). In its Original Jurisdiction, the CCJ is critical to the CSME and all 12 Member States which belong to the CSME (including their citizens, businesses, and governments) can access the Court's Original Jurisdiction to protect their rights under the RTC. In its Appellate Jurisdiction, the CCJ is the final court of appeal for criminal and civil matters for those countries in the Caribbean that alter their national Constitutions to enable the CCJ to perform that role. At present, four states access the Court in its Appellate Jurisdiction: Barbados, Belize, Dominica and Guyana. However, by signing and ratifying the Agreement Establishing the Caribbean Court of Justice, Member States of the Community have demonstrated a commitment to making the CCJ their final court of appeal. The Court is the realisation of a vision of our ancestors, an expression of independence and a signal of the region's coming of age.

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