

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

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION

PROCEEDINGS FOR JUDICIAL REVIEW

2021-HC-DEM CIV SOC-226



THE TOWN CLERK OF GEORGETOWN

Claimant

-and-

THE LOCAL GOVERNMENT COMMISSION

Defendant

Before: Hon. Madam Justice Jo-Ann Barlow

Appearances: Mr. T. Housty, Ms K Sandiford and Mr. R Daniels for the Claimant
Mr. C.V. Satram and Mr. R. Motilall for the Defendant

Background

1. An action brought in the name of the Town Clerk of Georgetown (Claimant) sought several administrative orders directed at a decision of the Local Government Commission (the Defendant) dated 27th July, 2021 which sought to appoint Ms Candace Nelson as the Interim Town Clerk of the Municipality of Georgetown. Among the reliefs sought were Declarations concerning the decision, Certiorari quashing the said decision and an Order of Prohibition prohibiting the Commission from in any form whatsoever causing Ms. Nelson to perform the duties of Town clerk of the City of Georgetown.
2. This decision was made by the Chairman and the Deputy Chairman of the Commission after a statutory meeting had ended.

3. While that matter and interim applications were engaging the attention of the Court, the Commission at a specially convened meeting held on 23rd August 2021, by a majority of three to four voted to have Ms. Nelson act in the position of Town Clerk of the Mayor and City Council of the City of Georgetown.
4. The Claimant with leave of the Court amended its Claim to include a challenge to the procedural correctness of the decision of 23rd August, 2021. The Claimant contended that the decision of the 23rd August 2021 was tainted with the illegality of the decision of 27th July and was therefore itself bad in law.
5. Apart from the contention by the Claimant that the decision did not follow the statutory requirements, the Claimant also contended that the decision was arrived at without due consultation and was another fatal flaw in the decision making process.
6. The Defendant contended that the decision of the 27th July was overtaken by the meeting of 23rd August 2021 where a properly constituted Commission cogitated on the issue of the appointment of Candace Nelson and voted to have her perform the functions of Town Clerk of the Municipality of the City of Georgetown.
7. The Defendant further contended that the Commission has a Constitutional mandate to act as it sees fit and there was no duty to consult before making an appointment for any municipality.



Issues

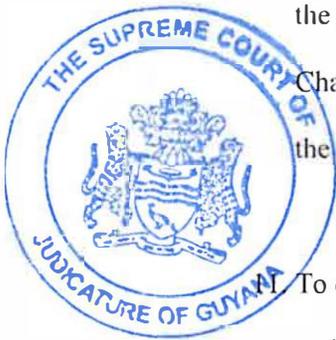
8. The issues that the Court decided were:
 - a. Was the decision of the 27th July 2021 lawful?
 - b. Was the decision of 23rd August a fresh decision unaffected by the decision of 27th July, 2021?
 - c. If the decision of 23rd August was a valid one, what was the effective date of Ms. Nelson's appointment?

- d. Was the Defendant under a duty to consult with the Municipality before arriving at a decision?

First Issue

9. Nickalai Pryce, was the only witness for the Defendant. He is the Secretary of the Commission. According to this witness, the Defendant is responsible for matters touching and concerning “over seventy (70) local government organs, ten(10) municipalities and well over seventy (70) Amerindian Villages”. According to Mr Pryce, it was necessary to find ways of treating with the “overwhelming volume of matters that the Commission is obligated to deal with.”¹

10. Among the measures adopted by the Commission to treat with the matters to which it must attend is to have the Chairman and Deputy Chairman make decisions between statutory meetings and then have the Commission at the next statutory meeting ratify the particular decision. While Mr Pryce says this in his witness Statement and the Chairman of the Commission said that at the meeting of 23rd August 2021, not all of the Commission’s members accept this to be true.²



To determine whether a body or persons other than the Commission can act for and on behalf of the Commission, the Court examined the statutory framework.

- a. Article 78A of the Constitution of the Co-operative Republic of Guyana provides that, "*Parliament shall establish a local government Commission, the composition and rules of which empower the Commission to deal with as it deems fit, all matters related to the regulation and staffing of local*

¹ Paragraphs 4 and 9 of his Witness Statement

² See answer of Commissioner Sooba on page 2 of Minutes of Meeting held 23rd August, 2021

government organs and with dispute resolution with and between local government organs.”

- b. On the 6th November, 2013 the Local Government Commission Act No.18 of 2103 (the Act) was assented to by the then President and on 23rd October, 2017 the Local Government Commission became effective by order of the then Minister of Communities.
- c. Section 2 of the Act provides in the exercise of its functions, the Commission shall not be subject to the direction or control of any authority
- d. Among its functions the Commission shall deal with matters relating to staffing of local government organs and in particular it shall be responsible for the employment, transfer, discipline and dismissal of staff ...³
- e. Section 15 of the Act provides that the Commission may meet as may be necessary and expedient for the transaction of its business. Section 15 (3) specifically provides that a quorum shall be three members.
- f. Section 30(1) provides that, *“The Commission may make rules and regulations prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for the better carrying out of, or giving effect to the provisions of this Act and in particular for-*
 - a) *the form and matter or procedure in which matters may be brought before it; and*
 - b) *the procedure of the Commission”*
- g. Section 30(2) of the Act provides that *“until the rules relating to subsection 1(a) and (b) are made the Commission may regulate its own procedure.”*



³ See section 13(2) of the Act

12. These rules mentioned in section 30(1) (a) and (b) are subject to affirmative resolution of the National Assembly. There is no dispute that this has not been done. The Defendant however contends that section 30(2) allowed the Commission to create its own rules which included the Chairman and Deputy Chairman making decisions on behalf of the Commission. With this the Court could not agree.

13. A reading of all the provisions stated above makes clear that the Commission in fulfilment of the Constitutional mandate which is repeated in the Act must perform those functions as a Commission. The Commission is only constituted when there is a quorum at a properly summoned meeting.

14. There is no room in the statutory framework for the Commission to opt out of that statutory framework. Decisions that must be made by the Commission are only lawful if made at a meeting of a properly constituted Commission-that is, a meeting

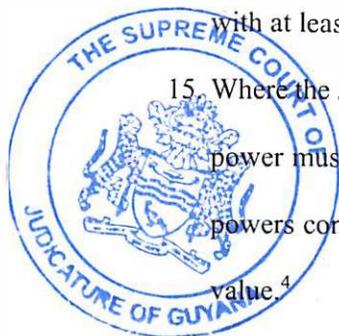
with at least a quorum.

15. Where the statute stipulates that a particular body must exercise a certain power, that power must be executed by that body. Statutory authority cannot travel beyond the powers conferred on it and any action outside of its statutory mandate has no legal

value.⁴

16. Individual members of the Commission may arrive at their individual views but those views cannot be seen as binding on the Commission. Such views may be brought to a properly constituted meeting of the Commission for its deliberation. After the Commission has deliberated on such matters and a vote taken only then can that decision be seen as being a decision of the Commission.

17. The statutory power with which the Commission is vested to regulate its procedure is not a power which vests in the Commission authority to craft procedures that are



⁴ Marathwada University v Seshrao Balwant Rao Chavan Civil Appeal No. 3927/86 (Supreme Court of India)

outside the scope and intent of the legislation which created it. Whatever procedures are arrived at must reflect an understanding that the Commission derives its power from the statute and cannot opt out of those statutory provisions.

18. If therefore the testimony of the Secretary of the Commission is true as he stated at paragraph 13 of his witness statement, that practice should be discontinued and matters that require the sanction of the Commission must always be treated with at a duly constituted Commission meeting.

19. It follows therefore that the decision of the 27th of July, 2021 made by the Chairman and Deputy Chairman of the Commission acting without other members of the Commission lack legal validity.

Issue No2

20. Ratification is defined as “Confirmation and acceptance of a previous act, thereby making the act valid from the moment it was done.”⁵ There is no dispute that if the first act was unlawful, it could not be ratified. To determine whether the decision of the 23rd of August 2021 was a mere ratification of the decision of the 27th of July

2021, the Court undertook an examination of the minutes of the meeting of the 23rd of August 2021. If an examination of those minutes show that the members of the meeting simply adopted the decision that was taken on the 27th of July 2021, accepting that those two Commissioners had the authority to make the decision and ratified it in the true sense of the word, then the decision of the 23rd of August 2021 would itself be tainted.⁶ If on the other hand, there was deliberation on the issue at a duly constituted meeting of the Commission with members expressing independent



⁵ Blacks Law Dictionary 9th Ed

⁶ R v Rochester upon Medway City Council, ex parte Hobday[1989] 2 PLR 38

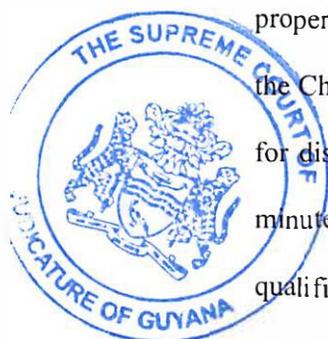
positions and voting on the issue, then, the decision may be seen as a legal decision of the Commission.

21. The fact that parties to those proceedings referred to what was to take place or did take place at the August meeting as a ratification or confirmation is not by itself conclusive of the nature of the decision that was arrived at. It is the finding of this Court that it is the nature and substance of what took place at the August meeting that will determine the complexion of the decision of the 23rd of August 2021.

22. An examination of the minutes of the Meeting of 23rd August 2021 shows that a Commissioner indicated to the Chairman of the Commission that he and the Deputy Chairman had no authority to act on behalf of the Commission. She further pointed out that there could be no confirmation of a matter that had not been discussed by a properly constituted meeting of the Commission. In answer to the Commissioner, the Chairman of the Commission said, “that is why... the matter is now before you for discussion and after discussion, the decision will be taken for a vote...” The minutes also revealed that discussions took place on issues connected with the qualifications and experience of Ms Nelson and dates of her previous employment.

23. The Court having examined the minutes of meeting of the Commission that was held on 23rd August 2021 found that there was discussion and opportunity for acceptance, rejection or compromise in relation to the appointment of Ms Nelson. The Court found that those Commissioners who did not participate in the discussion because they believed quite incorrectly that they were prevented from doing so because of existing court proceedings made a deliberate choice not to do so but they had an opportunity to have an input in the discussion process.

24. The Court found that while the impugned decision of 27th July 2021 was raised by the Chairman of the Commission, that decision was overtaken by the deliberation of



the duly constituted Commission. The decision of the 23rd August 2021 is therefore not tainted by the earlier decision and is legal and valid.

Third Issue

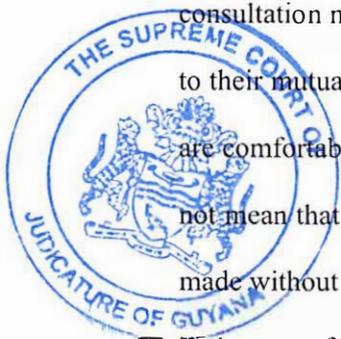
The decision of the Commission was made on 23rd August, 2021. The minutes of that meeting do not reflect a date of appointment earlier than the date of the decision. It follows therefore that the effective date of the appointment must be 23rd August, 2021.

Forth Issue

25. The Commission is a Constitutional body that is regulated by a statutory framework.

The Constitution provides that that statutory framework was to be such that the Commission carried out its functions as “it deemed fit”. In satisfaction of that Constitutional stipulation the Local Government Commission Act provided that the Commission “shall not be subject to the direction or control of any authority.”

26. Counsel for the Claimant in his submissions decried to the absence of consultation between the Commission and the Municipality. the Court is of the view that while consultation may as a general rule encourage smooth interaction between agencies to their mutual benefit and may result in decisions with which all parties concerned are comfortable, there is no legal requirement that makes it mandatory. It also does not mean that the absence of consultation renders useless or unlawful any decision made without it.



27. In the case of the Commission, consultation must be what the Commission in its own deliberate judgement determines that it needs. In the absence of a legal duty to do so, no practice or expectation can oblige the Commission to consult with any entity of the entities that it must regulate.

Due Process

28. Some members of the Commission did not agree that a discussion on Ms Nelson's appointment should have taken place since the matter was engaging the attention of the Court. It was pointed out by other Commissioners at the meeting that there was no injunction or other order preventing the Commission from remedying what was essentially a procedural mis-step that was taken by some members of the Commission.

29. This Court wishes to make clear that in the absence of some injunctive measure imposed by the Court, the Commission could properly correct a procedural mis-step. It is true that such correction may bring an end to the proceedings before the court. However, it is not the Court's wish that litigation be continued if a statutory body can put its house in order. It is quite different if a party to proceedings before the court deliberately seeks to undermine the process of the court or seeks to thwart the efforts of the party opposite. The Commission acting in the way it did cannot be faulted.

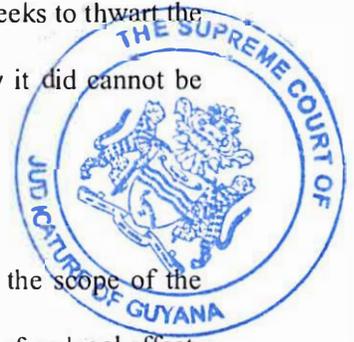
Conclusion

30. The decision of the 27th day of July, 2021 was done outside of the scope of the Commission's statutory authority and was therefore null, void and of no legal effect.

31. The decision of the 27th day of July, 2021 being null, void and of no legal effect could not be ratified.

32. The meeting of the Commission on 23rd day of August 2021 saw sufficient discussion on the issue of the appointment of Ms Nelson rendering the decision in relation to her appointment a fresh decision free of the taint of the decision of 27th July, 2021.

33. The Court finds no reason to question the procedural correctness of the decision of



23rd August 2021. The decision therefore stands and any appointment that flows from it must be from that date unless the Commission decides otherwise.

34. Issues concerning the suitability of Ms Nelson to perform in the office that she holds and matters related to her conduct cannot properly be raised in these proceedings, these being proceedings for Judicial Review.

35. All other issues raised in the Claim are dismissed.

Costs

36. There will be no order as to costs.



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Jo Ann Barlow
Puisne Judge
2022-03-17

