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Guyana High Court Says It Has Jurisdiction to Hear Election Injunction

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Acting Chief Justice, Roxane George-Wiltshire By. CMC

GEORGETOWN, Guyana, CMC – Acting Chief Justice, Roxane George-Wiltshire, Sunday ruled that the High Court has jurisdiction to hear an injunction filed by a supporter of the main opposition People’s Progressive Party/Civic (PPP/C) as Guyana awaits the outcome of last Monday’s regional and general elections.

“I am therefore cognizant that the restriction that would require the approach to the courts by way of election petitions. However there can clearly be cases where the courts supervisory jurisdiction can be invoked to ensure ...the smooth operation or progress of the election proceedings or process,” the Acting Chief Justice said.

“A court cannot shirk its duty in this regard and shelter behind the contention that an election petition should be filed when the case clearly does not so warrant.

“As such having found that there is prima facie evidence to support the court having jurisdiction to hear this application, the respondents must be given a chance to be heard in response through any evidence they may wish to file,” The Acting Chief Justice added.

Last Thursday, Justice Navindra Singh granted an injunction against the Guyana Elections Commission (GECOM) the Chief Election Officer, Keith Lowenfield and Returning Officer for Region Four Clairmont Mingo after the application had been filed by Reeaz Holladar.

The PPP/C had earlier secured an injunction to block GECOM from declaring the results for last the elections on the grounds that the votes declared for Region Four were not completely verified.

Holladar had sought a number of remedies including an order from the High Court that the declaration of the Region Four votes by the Returning Officer is in breach of the provisions of the Representation of the People’s Act and as such it is unconstitutional.

He also wants a declaration that GECOM cannot legally or constitutionally declare the results of the regional and general elections unless and until the Returning Officer or the Deputy Returning Officer for Region Four, complies with the process set out in Section 84 of the Representation of the People’s Act.

On Saturday, GECOM attorney, Senior Counsel Neil Boston, argued that the PPP/C had been premature in going to the High Court asking it to intervene in an electoral process that has not yet been completed.

“It must be dealt with by way of an election petition and that election petition only arises after the elections. So any issue as to whether the election has been conducted lawfully or whether there is any act or omission which may or might affect the results has to be dealt with by an election petition.”

But Trinidad-based Senior Counsel, Douglas Mendes, disagreed saying “we are not asking the Court to intervene (in the elections)...and it is no comfort to anyone to say, as my learned friend has suggested “well let us suffer an election official who on the evidence is apparently deliberately flouting section 84 (1), let us suffer that, let us have an election declared, let us have a government put into power which on the evidence should not be there because you can then launch an election petition and let that go through the normal processes of the court to reverse it at some point in time down the road”.

Boston told reporters after the ruling that he is disappointed at the decision but will move ahead with preparing his submissions.

Former attorney general, Anil Nandlall, representing the opposition party said the ruling on Sunday keeps everything as is since all parties will have to await her final ruling on the matter.

“She has made a decision that the court has jurisdiction to hear a matter that we raised, which is whether or not Mingo (Returning Officer) should have complied with Section 84. The court said yes and the Chief Justice said that the injunctions are going to remain in place so obviously whatever is beyond the jurisdiction of the court, the court will not hear it, but the court has pronounced that it has the jurisdiction to hear and determine the relevant issue”, he added.

Last Thursday, GECOM released to the media, results for Region Four, and if, certified would result in the ruling coalition, A Partnership for National Unity plus the Alliance for Change (APNU+AFC) defeating the main opposition People's Progressive Party Civic (PPP/C) by more than 59,000 votes and securing another term in office..

GECOM public relations officer, Yolanda Ward, had forwarded without comment images of Statutory Declaration Form 24. The Form shows the incumbent APNU+AFC securing 136,335 votes while the PPP/C has earned 77,258 a difference of 59,077.

The substantive matter will come up for hearing on Tuesday.

Meanwhile, GECOM Sunday said as the constitutional agency responsible for the conduct of regional and general elections here it is cognizant of the series of events which unfolded since the close of the polling last Monday.

“While it is unfortunate how things have escalated, it is the intention of the Guyana Elections Commission to abide by all legal and procedural requirements to conclude its work,” it said in a statement.

It said that the mandatory injunction granted against the Commission and Lowenfield last Thursday, has “as a consequence impeded the finalization of the Commission’s work.

“The recent action of the Chief Election Officer indicating to the Chairperson and Commissioners that his report in the relation to the final declaration was completed was not intended to disregard the Court proceedings but rather apprising the Chairperson of the completion of the document and that she may convene a meeting at her convenience. In relation to this matter, no meeting was scheduled.

GECOM remains resolute in the fulfillment of its constitutional and statutory obligation.”