IN THE HIGH COURT OF THE SUPEME COURT OF JUDICATURE OF GUYANA

CONSTITUTIONAL AND ADMINISTRATIVE DIVISION

2022-HC-DEM-CIV-FDA-193

In the matter of an Application for Orders of administrative relief under ***Section 4 (1) (a)*** and ***8*** of the ***Judicial Review Act, Cap 3:06***.

BETWEEN:

1. **VANDA RADZIK**

2. **DANUTA RADZIK**

3. **RAPHAEL SINGH**

Applicants

-AND-

1. **ENVIRONMENT PROTECTION AGENCY**

2. **ENVIRONMENTAL ASSESSMENT BOARD**

3. **SCHLUMBERGER GUYANA INC.** a company duly incorporated under the ***Companies Act, Cap. 89:01***, with its registered office situate at Lot 1 Area 'X', Houston, Georgetown.

Respondents

BEFORE THE HON. JUSTICE NARESHWAR HARNANAN

Appearances:

Mr. Ronald Burch-Smith for the applicants
Ms. Shareefah Parks for the 1st named respondent
Mr. Arud Gossai for the 2nd named respondent
Mr. Stephen Roberts for the 3rd named respondent

The Application:

The Applicants seek the following Orders:

a. An Order of Certiorari to quash the decision of the EPA made on the 9th June 2021 to award an environmental authorisation to SGI to construct a radioactive substances and materials storage and calibration facility at Lot 1 Area X Houston Georgetown on the ground that that decision was in breach of the EPA's statutory duty, contrary to natural justice, arbitrary, ultra vires, unreasonable, irrational, made in the absence of evidence, unfair, disproportionate, an abuse of power, whimsical, capricious, against the EPA's own policies and without any legal foundation or authority.

b. A declaration that the EPA's decision to waive the requirement of an Environmental Impact Assessment with respect to SGI's application for environmental authorisation for the construction of the said facility is in breach of the EPA's statutory duty, contrary to natural justice, arbitrary, ultra vires, unreasonable, irrational, made in the absence of evidence, unfair, disproportionate, an abuse of power, whimsical, capricious, against the EPAs own policies and without any legal foundation or authority.

c. An Order of Certiorari to quash the decision of the EPA made 26 January 2022 to award an environmental authorisation to Schlumberger Guyana Inc. to possess, use and store radioactive materials and to operate the said radioactive source storage and calibration facility on the grounds that the decision was, *inter alia*, in breach of the EPA's statutory duty and contrary to natural justice.

d. An injunction to forbid and restrain Schlumberger Guyana Inc., its agents and servants from taking any steps in furtherance of operation activities purportedly authorized under the said environmental authorisation granted 26 January 2022 by the EPA.

e. An Order of Declaration that the EPA's decision to forgo its statutory obligation to advertise notice in a newspaper of Schlumberger Guyana Inc.'s application for their intended project's environmental authorisation i.e. to possess, use and store

radioactive materials and the operation of the said facility is, *inter alia*, in breach of the EPA's statutory duty and contrary to natural justice.

f. An Order of declaration that the EPA's decision to waive the requirement of an Environmental Impact Assessment with respect to Schlumberger Guyana Inc.'s application for authorisation for the construction of the storage facility is *inter alia*, in breach of the EPA's statutory duty as well as contrary to the principles of natural justice.

Brief facts:

1. The applicants are Guyanese citizens who own property and live near facilities operated by the third-named respondent, Schlumberger Guyana Inc. [SGI] in Houston, East Bank Demerara.

2. The first-named respondent, the Environmental Protection Agency [EPA] is the statutory Agency established by the ***Environmental Protection Act, Cap. 20:05*** [the Act] with the obligation to, among other things, take such steps as are necessary for the effective management of the environment to ensure conservation, protection and sustainable use of natural resources, whilst promoting the participation of members of the public in the process of integrating environmental concerns in planning for development on a sustainable basis. See ***section 4(1)(a)*** and ***(b)***.

3. The second named respondent, the Environmental Assessment Board [EAB] is established under ***section 18 (1)*** of the Act and is authorised to conduct public hearings of appeals and objections against decisions of the Environmental Protection Agency [EPA].

4. The Third-named Respondent, SGI, is a company incorporated under the ***Companies Act, Cap. 89:01*** with its registered office and place of business at Lot 1 Area 'X', Houston, East Bank Demerara.

5. SGI was issued with construction permit No. 20200831-SOGSC dated ***10 June 2021*** ["Construction Permit" or "permit"] by the EPA. The said permit was for the

construction of a *'Radioactive Source Storage and Calibration Facility'* at Lot 1 Area X Houston, East Bank Demerara ("the Facility" or "the Project).

6. In ***January 2022,*** SGI was issued with an *environmental authorisation* by the EPA to **operate** the facility which included a storage and maintenance facility for drilling tools and the possession, use and storage of radioactive materials.

The applicants:

7. The applicants, by their Amended Fixed Date Application, contend that they learned of the Project in late April 2021, and that the EPA had waived the need for SGI to do an Environmental Impact Assessment [EIA] into the Project. The applicants also claim that by a notice published by the EPA on its website dated 11 April 2021, the project was described that it "*will not significantly affect the environment or human health and [is] therefore exempt from the requirement for an environmental impact assessment.*" The notice also included that appeals against the EPA by the public are to be made within 30 days.

8. The applicants failed to appeal within the specified timeframe due to an alleged late awareness of the notice and inability to find out enough details about the project prior to the expiration date.

9. The applicants claim that the EPA failed to provide reasons for its decision to waive the requirement for an EIA, as required by ***section 11 (2)*** the Act, and thus the decision is unlawful. As a result, the applicants contend that the decision to grant authorisation for the construction of the Project should be quashed.

10. They aver that at a meeting with the EPA on the 23 June 2021, the EPA informed them that the decision to waive the requirement for an EIA was made by use of an '*environmental and social impact assessment screening tool 2020*' which it had developed. According to the EPA, the said tool attributes number values to the answers to over 30 questions which are totalled. Where the value exceeds 872, an EIA is required. The applicants were informed that the Project scored a total of 262 out of 872. The applicants also claim that they requested from the EPA a copy of the

'National Inventory of Radioactive Sources' but was informed that the document was not available to the public for security purposes.

11. They state further that on 26 January 2022, the EPA, without conducting an EIA, granted SGI an environmental authorisation to operate a "*storage and maintenance facility for drilling tools maintenance*" and to *"possess, use and store radioactive materials*."

12. The applicants claim that they were unaware that the EPA was considering an application for the operation of the Facility because the application was never made public. The applicants contend that they only became aware of the granting of the operation permit through the affidavit by Ms. Tashana Redmond [paragraph 36], filed on 28 March 2022 in these proceedings on behalf of the EPA.

13. The applicants noted in their amended application that on 31 March 2022, Counsel for the EPA, Ms. Shareefah Parks, admitted by electronic mail that "*no notice to the public pursuant to section 11 (2) of the Environmental Protection Act was published for the operation permit*."

14. The applicants contend that by failing to conduct an EIA of the operational phase of the SGI's project, the EPA has acted, *inter alia*, arbitrarily, capriciously and in violation of its duties under ***s. 4(1)(g)***, ***4(4)*** and ***11*** of the Act. Further, it was contended that even if the EPA determined that the operational phase of SGI's project by itself will not significantly impact the environment, the EPA was mandated to require a cumulative impact assessment in the terms of ***section 17(1)*** of the Act.

The respondents:

15. The EPA contends that the notice published on 11 April 2021 was in compliance with ***section 11 (2)*** of the Act and that there is no legal obligation for the EPA to advertise the Project Summary pursuant to ***section 11 (2).***

16. The EPA averred that the requirement for an EIA to determine the cumulative effects of the facility is misconceived as the construction permit granted to SGI addresses the aspect of construction only. In this regard, the EPA contends that the applicants' attempt to categorise the construction activity as the same as or similar to hazardous waste management is a further misconception.

17. The EPA also claims that the granting of a construction permit does not guarantee the storage of sealed radioactive sources as the approach adopted by the EPA is to grant a separate permit for the operation of the facility pursuant to ***section 21*** of the Act. Further, the EPA contends that the project is merely an adjustment to the existing facility and is distinct in nature from any other operations conducted within the environs and thus no EIA was necessary to determine any cumulative effects. With regards to the screening tool, the EPA contends that it is not under any legal obligation to provide a copy of such to the applicants.

18. Finally, the EPA contends that to grant relief to the applicants would be unreasonable and unjust as the construction of the facility is completed and SGI is the holder of an environmental authorisation to possess, use and store radioactive materials.

19. By its affidavit in defence, SGI avers that the facility is so designed as to prevent harm to the surrounding environs and residents therein. They contend that its features include:

- Pits designed to avoid exposure to personnel and the public and security to prevent access by unauthorized persons.
- Construction of the said pits with 300mm thick reinforced concrete walls with a 300mm thick concrete base. Pits lined with an interior shell made of 7mm thick carbon steel plate.

20. SGI also contends that notwithstanding the radioactive sources posing no risk to the environs of the property it operates, it also deploys the strictest control mechanism to ensure human safety as well as safety to the environment which

includes active monitoring of radiation levels, if any, and the requirement for personnel to wear protective gear while handling radioactive sources.

21. SGI avers that it received approval in March 2021 from the Mayor and City Council of Georgetown to make additions to their commercial storage facility at its Houston location. SGI further claims that it applied for and obtained permission in May 2021 from the Central Housing and Planning Authority for the construction of the facility. SGI contends that this permission was subject to their adherence to mitigation measures stipulated by the EPA.

The Issues:

22. The main issue in this action is whether the decision by the EPA to waive the requirement of an EIA for the construction of the facility in question was unlawful on the ground that it was in breach of the EPA's statutory duty to give reasons.

23. Further, this Court must also consider whether the environmental authorisation to SGI to possess, use and store radioactive materials and to operate the said source storage and calibration facility should be quashed on the grounds that the decision was, *inter alia,* in breach of the EPA's statutory duty and contrary to natural justice.

The Applicable Law and analysis:

Manner, not merits:

24. This Court is mindful that in matters of judicial review, it is concerned with the manner of reaching a decision and not with the merits – that is, "*the facts, judgment and discretion which the public body has the role of deciding for itself*": **Michael Fordham, Judicial Review Handbook** [2nd edition, 1997] at paragraph 15-5, page 184.

25. *Bishop C.J.*, as he then was, in ***Barnwell v Attorney-General and Another*** [1993] 49 WIR 88, cited *Wade*, **Administrative Law** (6th Edition), at page 37 of the text where it states:

> Judicial review is a fundamentally different operation. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, the court of review is *concerned only with the question whether the act or order under attack should be allowed to stand or not.* [emphasis supplied]

26. Certainly, in the consideration of the issues identified, this Court is only concerned with whether decisions under review were arrived at by the EPA utilising the appropriate and lawful procedures set out by statute, and in a reasonable manner.

27. As *Bernard CJ* (as she then was) noted in ***Application by Carl Hanoman***, No. 23-M of 1999, at page 17 of her judgment when she cited ***Council of Civil Service Unions and others v Minister for the Civil Service*** [1984] 3AER 935, where it was held that:

> administrative action is subject to control by judicial review under three heads- (1) ***illegality***, where the decision-making authority has been guilty of an error of law, e.g. by purporting to exercise a power it does not possess; (2) ***irrationality***, where the decision-making authority has acted so unreasonably that no reasonable authority would have made the decision; (3) ***procedural impropriety***, where the decision-making authority has failed in its duty to act fairly. [emphasis supplied]

28. ***C.K. Thakker's, Administrative Law***, 2nd Edn., at page 872 of the text reveals an apt passage, worthy of repeat:

> The discretion conferred on a statutory or public authority is never unfettered. The powers of public authorities are essentially different and distinct from private persons. A man may act as per his wishes. He may act out of malice or a spirit of revenge, but in law, that does not affect his action unless his action is contrary to law. His discretion is absolute and unfettered. ***But it is not open for a public authority to do so. It must act legally, reasonably, in good faith and in public interest***. ***Every act of such authority must be rational, should be in accordance with***

law and informed by reason. If the action is unreasonable, i.e. such that on the facts and in the circumstances of the case, it could not have been taken, ***it can be quashed and set aside by a court of law***. [emphasis supplied]

29. ***Thakker***, continues at page 769 of the text thus:

> When discretionary power is conferred on an administrative authority, it must be exercised according to law. But as ***Markose***[1] says, '***When the mode of exercising a valid power is improper or unreasonable, there is an abuse of the power***.'

30. ***Ramaswami, J.*** in the Supreme Court of India case of ***S.G. Jaisinghani v. Union of India*** [1967] AIR SC 1427, at 1434 of the report pronounced that:

> ...it is important to emphasise that the ***absence of arbitrary power is the first essential of the rule of law*** upon which our whole constitutional system is based. In a system governed by [the] rule of law, ***discretion***, when conferred upon executive authorities, ***must be confined within clearly defined limits***. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be *predictable* and the ***citizen should know where he is***. ***If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law***... [emphasis supplied]

31. This Court had cause to remark in its decision in ***The Plantation Houston Sugar Estates Company Ltd. v. The Town Clerk of Georgetown***, 2020- HC-DEM-CIV-FDA-260, at paragraph 87 that:

> It therefore follows that statutory powers, when exercised by an authority, must confine its actions within the parameters of the law, acting reasonably, and in good faith. If those statutory powers are exercised

[1] ***Judicial Control of Administrative Action*** [1956] at page 417

unlawfully, improperly, unreasonably, in bad faith or irrationally, then that decision is liable to be quashed if it comes up for review.

The Act:

32. ***Section 11*** of the ***Environmental Protection Act Cap. 20:05***, sets out the framework for the grant of an environmental permit. It reads as follows:

> 11. (1) A developer of any project listed in the Fourth Schedule, or any other project which may significantly affect the environment, shall apply to the Agency for an environmental permit and shall submit with such application the fee prescribed and a summary of the project including information on—
>
> i. the site, design and size of the project;
> ii. possible effects on the environment;
> iii. the duration of the project;
> iv. a non-technical explanation of the project.
>
> **(2) Where it is not clear whether a project will significantly affect the environment, the developer shall submit to the Agency a summary of the project which shall contain the information as required by subsection (1) and the Agency shall within a reasonable period publish in at least one daily newspaper a decision with reasons as to whether the project—**
>
> a) **will not significantly affect the environment, and therefore exempt from the requirement for an environmental impact assessment**; or
> b) may significantly affect the environment and will require an environmental impact assessment.
>
> (3) (a) Any person who may be affected by a project exempted under subsection (2)(a) may lodge an appeal with the Environmental Assessment Board established under section 18 within thirty days of the date of publication of the Agency's decision, and the Environmental Assessment

Board shall within a reasonable time publish a decision confirming or setting aside the Agency's decision. [emphasis supplied]

33. Under ***section 11(2)*** in particular, the EPA is required to publish its decision, with reasons, in the daily newspaper where an application is made by a developer for an environmental permit. As the central contention of the Applicants is that the EPA failed to give reasons for waiving the requirement for an EIA in its published notice, this Court considers that the question of any unlawfulness of the EPA's action, centres on whether the EPA provided any reasons in its notice.

Case law:

34. In ***Greenpeace Canada v. Canada (Attorney General)*** 2016 FCA 114, the Federal Court of Appeal [FCA] was tasked with reviewing the decision of the lower court to dismiss an application for judicial review in respect of a screening level environmental assessment conducted under the Canadian environmental legislation. On appeal the appellants submitted that the lower court erred in rejecting their application for judicial review as the authorities responsible for conducting the EIA did so without due regard to the probability of contamination beyond the environs of the source.

35. The FCA, in finding that the appeal ought to be dismissed due to the unreasonableness of the appellants' assertion, referred to decisions in ***Ontario Power Generation Inc. v. Greenpeace Canada***, [2015] FCA 186 and ***Inverhuron & District Ratepayers' Assn. v. Canada (Minister of the Environment)*** [2000], 191 F.T.R. 20. In the latter, the Court noted the wide discretion of environmental authorities in cases of judicial review in matters such as these, when it remarked:

> The function of the Court in judicial review [of this sort of decision] is not to act as an 'academy of science' or a 'legislative upper chamber'. In dealing with any of the statutory criteria, the range of factual possibilities is practically unlimited. No matter how many scenarios are considered, it is possible to conceive of one which has not been. The nature of science is such that reasonable people can disagree about relevance and significance. **In disposing of these issues, the Court's function is not**

> **to assure comprehensiveness but to assess, in a formal rather than substantive sense, whether there has been some consideration of those factors which the Act requires the comprehensive study to address.** If there has been some consideration, it is irrelevant that there could have been further and better consideration. [emphasis supplied]

36. Of note also, the Court sought to make the point at paragraph 63 of the judgment that the discretion of environmental authorities is not unfettered:

> While the range of deference to be afforded to decisions like the present one is significant, it is not without bounds. There are indeed situations where decisions may be unreasonable. *For example, decisions which fail to consider the mandatory components of a project* as required by subsection 15(3) of CEAA 1992 [Canadian Environmental Assessment Act] may well be open to question. Similarly, factual determinations or determinations of mixed fact and law that are central to a decision and which are made in bad faith or for an improper purpose, in a perverse or capricious manner or entirely without regard to the evidence before the RA [regulatory authority] may prompt a court to interfere despite the broad margin of appreciation given to the decision-maker. The list is not closed. However, to establish grounds for the Court to interfere an applicant must do more than merely allege that a better analysis could have been undertaken by the RA or that a particular piece of evidence was not given adequate weight by the RA, as the appellants assert in this case. [emphasis supplied]

37. The considerations highlighted above in ***Inverhuron***, can be juxtaposed with the requirements stipulated under ***section 11*** of the Act. Under its ***subsection (4)***, where EIAs are to be carried out in projects which may significantly affect the environment, those EIAs are to be carried out by *'independent and suitably qualified'* persons who have been approved by the EPA. Further, these persons are required to have regard to multiple factors while conducting the EIA, as highlighted under ***subsection (4)(a).*** They must:

> (a) identify, describe and evaluate the direct and indirect effects of the proposed project on the environment including—

i. human beings;
ii. flora and fauna and species habitats;
iii. soil;
iv. water;
v. air and climatic factors;
vi. material assets, the cultural heritage and the landscape;
vii. natural resources, including how much of a particular resource is degraded or eliminated, and how quickly the natural system may deteriorate;
viii. the ecological balance and ecosystems;
ix. the interaction between the factors listed above;
x. any other environmental factor which needs to be taken into account or which the Agency may reasonably require to be included; and

(b) assess every project with a view to the need to protect and improve human health and living conditions and the need to preserve the stability of ecosystems as well as the diversity of species.

38. This Court is of the view that in the light of the extensive range of factors to be considered in an EIA under ***subsection (4)***, where 'reasons' must be given by the EPA for their decision to either require or exempt an EIA for a project applied for under ***section 11(1)***, these reasons should reflect the standard expressly laid out in ***subsection (4).***

39. ***Subsection 2(b)*** is clear that where the proposed project will affect the environment an EIA is required. This Court is of the view that if the EPA in the exercise of their statutory mandate under ***section 11***, determines that the proposed project will not significantly affect the environment and exempts the requirement for an EIA, then the reasons for making this determination must be published so that the object of publication as envisaged by Parliament is achieved.

40. Publication of a decision with reasons in a daily newspapers, can only be for the public's consumption and awareness. The public includes those persons who may

have an interest in the project and those who may be directly or indirectly impacted by it, as the applicants in this matter have claimed. The import of publication of the decision, with reasons, as Parliament prescribed, as to why the project will not affect the environment and therefore exempt from an EIA cannot be denuded of significance by the EPA.

41. In the EPA's notice to the public dated April 11, 2021, which was published pursuant to ***section 11(2)*** of the Act, the EPA stated that the construction phase of the project would not significantly impact the environment or human health. It failed to provide reasons for this determination in the publication. The notice does not give reason why they have determined that the project will have no significant impact on the surrounding environs or neighbouring residential communities. These considerations are important in giving effect to the intention of the notice.

42. Quite apart from the statutory imposition of that duty to provide reasons, as the Supreme Court of India in ***Mukherjee v Union of India*** [1990] 4 SCC 594 at pages 612-613 of the report, observed:

> Giving of reasons is an essential element of administration of justice. A right to reason is, therefore, an indispensable part of a sound system of judicial review. Reasoned decision is not only for the purpose of showing that the citizen is receiving justice, but also a valid discipline for the tribunal itself. Therefore, ***a statement of reasons is one of the essentials of justice***.

43. Even further, from a perspective of fairness, in ***Dover District Council v CPRE Kent*** [2017] UKSC 79, Lord Carnwath, following ***R v Home Secretary, ex parte Doody*** [1994] 1 AC 531 and ***Oakley v South Cambridgeshire District Council*** [2017] 2 P & CR 4, [2017] EWCA Civ 71, opined that reasons will be required where they are necessary to permit the courts to scrutinise the underlying decision effectively. He noted at paragraphs 54 and 59 of the report, respectively that:

> Although planning law is a creature of statute, the proper interpretation of the statute is underpinned by general principles, properly referred to as derived from the common law. ***Doody*** itself involved such an application of the common law principle of "fairness" in a statutory context, in which the *giving of reasons was seen as essential to allow effective supervision by the courts*. Fairness provided the link between the common law duty to give reasons for an administrative decision, and ***the right of the individual affected to bring proceedings to challenge the legality of that decision***…
>
> Typically, they will be cases where, as in ***Oakley*** and the present case, permission has been granted in the face of substantial public opposition … for projects which involve major departures from the development plan, or from other policies of recognised importance … ***Such decisions call for public explanation, not just because of their immediate impact; but also because…they are likely to have lasting relevance for the application of policy in future cases***… [emphasis supplied]

44. Now, reasons in this instance need not be lengthy, but must be sufficient, as explained by *Lord Brown* in ***South Bucks DC v Porter*** [2004] 1 WLR at [36]:

> The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues', disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inferences will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration…

45. This Court is of the view that by no stretch of imagination that the mere statement in the notice that the EPA has determined that the project will not significantly affect the environment or human health and are exempt from an EIA, could ever be interpreted as reasons, or at most, sufficient reasons to determine that exemption permitted by ***section 11(2)*** of the Act.

46. This Court is of the view that the EPA's decision to waive the requirement for an EIA cannot be found to be lawful, as it directly contravenes ***section 11(2)*** of the Act**.** This Court finds that no reasons and/or inadequate reasons were contained in the notice published by the EPA further to its application of ***section 11(2)*** of the ***EPA Act, Cap. 20:05***.

Separate permits:

47. On the issue of separate permits for the construction, and then operation of the facility in issue, the EPA has taken the view that they are mutually exclusive as construction does not guarantee storage of the radioactive sources and other sources at the facility. SGI supports this view tangentially, as they contend that the applicants have not substantiated their claim that the subsequent grant of the operating permit was itself unlawful.

48. The ***Environmental Protection Act*** provides context for the scope of both construction and operation permits:

> ***Section 2: Interpretation***
>
> > *"environmental authorisation" means an environmental permit, a prescribed process licence, a construction permit or an operation permit;*
>
> ***Sections 21(6) and (7): Permits – General Provisions***
>
> > *"(6) The Agency shall not issue a construction or operation permit unless—*
> >
> > > *(a) the Agency includes in the permit such conditions as are reasonably necessary to protect the environment; and*

(b) the Agency considers that the applicant will be able to comply with the conditions of the permit.

(7) Where there may be a substantial effect on the environment no construction permit or operation permit shall be granted unless an environmental permit is issued under Part IV.

49. This Court is of the view that the preceding sections bear out that construction permits and operation permits, while separate and distinct in and of themselves, are inextricably bound up. This is especially seen in ***section 21(6)***, where a condition precedent to the grant of either permit requires the inclusion of conditions necessary to protect the environment. Further, the Act stipulates that the EPA must be satisfied that the applicant is able to comply with the said conditions stated in ***section 21(1).***

50. This Court is of the view that it may be reasonably concluded from the foregoing sections that the EPA must have regard to the same or similar factors prior to the grant of either a construction or operation permit.

51. With this in mind, it follows that where a developer (SGI in this instance) is granted a construction permit in accordance with ***section 21***, the EPA, in effect, would have issued that permit with a view to prospectively authorising the operation of the facility, following its construction for the purpose applied for, after verification that the facility was constructed under the terms and conditions of the construction permit.

52. This Court is of the view that this interpretation is not only predicated on the commonality of the conditions precedent within ***section 21(6),*** but is also a reasonable conclusion drawn when applying the '*Golden Rule*' of statutory interpretation.

53. This Court is of the view that it could not have been the intention of Parliament[2] to treat the operation as distinct from construction for the purpose of licensing since, operations can only commence after construction. Operations is indeed separate and apart from construction, but that distinction can only reasonably be to facilitate

[2] ***Bennion on Statutory Interpretation***, Section 163-171, at page 25

a process of assessing compliance with the terms and conditions of construction. See ***section 21(6)*** and ***(7)*** of the Act. To adopt a contrary interpretation, in this Court's view, would lead undoubtedly to an absurd result.

54. This Court is of therefore of the view that in its consideration of the applications for environmental authorisations under the ***Environmental Protection Act***, the EPA cannot treat the operations permit independent of the construction permit. The latter is a condition precedent to the former.

55. As recounted above, ***section 11(1)*** of the Act states that:

> A developer of any project listed in the Fourth Schedule, or any other project which may significantly affect the environment shall apply to the Agency for an environmental permit and shall submit with such application the fee prescribed and a summary of the project including information on:-
>
> (i) the site, design and size of the project;
> (ii) possible effects on the environment
> (iii) the duration of the project; and
> (iv) a non-technical explanation of the project.

56. The EPA by ***section 11(2)*** is mandated to determine whether the project requires an EIA or not. This Court is of the view that if the decision by the EPA to either require or waive the requirement of having an EIA done is so infected with illegality and capriciousness, was unreasonable or taken *ultra vires* the provisions of the Act for its failure to provide reasons in the notice published, then any subsequent permit granted by the EPA pursuant to the application under ***section 11(1)*** of the Act is similarly afflicted and liable to be quashed.

DISPOSITION:

57. In the circumstances, and having regard to the foregoing, this Court makes the following orders:

> a. An Order of Certiorari is issued and directed to the EPA quashing their decision made on the 9th June 2021 to award an

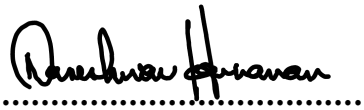
environmental authorisation to SGI to construct a radioactive substances and materials storage and calibration facility at Lot 1 Area X Houston Georgetown, on the ground that that decision was *ultra vires* and in breach of the EPA's statutory duty as set out under ***section 11(2)*** of the ***Environmental Protection Act, Cap 20:05***.

b. A declaration that the EPAs decision to waive the requirement of an Environmental Impact Assessment with respect to SGI's application for environmental authorisation for the construction of the said facility is in breach of the EPAs statutory duty for failure to provide reasons for the waiver as mandated under ***section 11(2)*** of the ***Environmental Protection Act, Cap 20:05***.

c. An Order of Certiorari is issued and directed to the EPA, quashing their decision made in January 2022 to award an environmental authorisation to Schlumberger Guyana Inc. to possess, use and store radioactive materials and to operate the said radioactive source storage and calibration facility on the grounds that the decision was in breach of the EPA's statutory duty as set out under ***section 11(1)*** and ***(2)*** of the ***Environmental Protection Act, Cap 20:05***.

d. An injunction is issued and directed to Schlumberger Guyana Inc. restraining it, its servants and/or agents from continuing the operations purportedly authorised by the EPA at the facility in issue as contained in an Environmental Permit dated in January 2022, unless and/or until in receipt of a lawfully issued permit pursuant to the provisions of the ***Environmental Protection Act, Cap. 20:05***.

e. Costs to the applicants, to be paid by the 1st named respondent, to be assessed, if not agreed.



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Nareshwar Harnanan
Puisne Judge
16th December 2022