IN THE HIGH COURT OF FIJI

AT SUVA

CIVIL JURISDICTION

CIVIL ACTION NO.: HBM 35 OF 2005

IN THE MATTER OF AN APPLICATION FOR CONSTITUTIONAL REDRESS BY JOSEFA NATA

In Person for Applicant

Mr. D. Prasad of DPP for Director Public Prosecution

Ms S. Serulagilagi for the State

Mr. M. Bilimoria for Fiji Human Rights Commission

Date of Hearing: 24th February 2006

Date of Ruling: 4th May 2006

DECISION ON STRIKING OUT

The applicant is a prisoner serving life sentence at Naboro Prison. He tried to move the court under the Constitutional Redress Rules alleging breach of a whole host of his rights and also breach of rights which did not concern him. As his application was verbose and confusing, I invited the Human Rights Commission to recast his application in a more appropriate and intelligible form.

The application in recasted form sought two declarations namely that the applicant's right as a detained person to respect for his humanity under certain

provisions of the Bill of Rights and a declaration that the applicant is unfairly discriminated inside the prison because of his political beliefs and the offence for which he has been convicted.

I was totally unimpressed by the affidavit in support drafted by the commission. It contains matters which are irrelevant to the Declarations sought. It contains unsubstantiated claims of wounds and bruises and lesions on other prisoners – see paragraph 4. It talks of another prisoner Viliame Vatu suing the State for injuring himself by slipping and falling down. The applicant says he has not been able to see the Commissioner of Prisons but recently saw Assistant Commissioner Operations. He suggests dormitories be closed temporarily and also main Awaiting Trial Block be closed as heavy traffic causes it to shake. He says wardens and prisoners have complained of mental health. He complains of lack of proper exercise. The affidavit far from putting facts reads like a submission and opinions are expressed right through the affidavit.

It is virtually impossible to respond to the type of allegations and statements made. The State has made an application to strike out the application under Order 18 Rule 18 on grounds that it discloses no reasonable cause of action, that it is scandalous, frivolous and vexatious and that it is an abuse of process. Parties have made submissions.

I had expressed some doubts at the beginning of the submissions whether Order 18 application could be resorted to in such serious a matter as constitutional redress. However my concerns are answered by Abhay Kumar Singh v. DPP & Attorney-General – ABU 37 of 2003 which states that since the High Court Rules apply to Constitutional redress proceedings, then Order 18 applications can be made to the court.

The most forceful of State's grounds was made on the grounds that there are alternative remedies available to the applicant and these must be exhausted before the applicant can resort to Section 41 application under the Constitution.

Section 41(4) of the Constitution provides that a Court may refuse to grant relief if ***"adequate alternative remedy is available to the person concerned"***. The Redress Rules do not provide for a parallel procedure to be invoked where alternative remedy is available. To use the Constitutional Redress process as a substitute for normal procedure is to devalue the utility of this Constitutional remedy. Mere allegation of constitutional breach was insufficient to invoke this remedy – Harikisoon v. Attorney General – 1979 3 WLR 62.

The Prisons Act (Cap 86) contains certain provisions for the benefit of addressing issues which concern the welfare of the inmates. Section 44 of the Act mandates a weekly visit to every prison in Fiji by a magistrate. Regulation 157 of the Prison Regulations outlines the duties of the visiting justice pursuant to Section 44 of the Act. Of particular concern to this application are provisions of Regulation 157(1)(a) and (d). These duties are -

(a) to hear and enquire into every complaint which any prisoner makes to him.

(b) ensure that any abuses in connection with any prisoner which come to his knowledge are brought to the notice of the controller.

These are wide provisions. It gives the visiting magistrate power to hear a complaint from a prisoner and make enquiry about it. Such inquiry would be from other prisoners and prison wardens. The enquiry could be conducted formally or informally.

Section 158 provides for powers of the visiting justices. The powers given are wide and if I may add quite capable of addressing the concerns of the applicant. Regulation 158 reads :

> ***"The visiting justice may visit the prison at any time and may –***

(a) *for all books, papers and records relating to the management and discipline of the prison;*

(b) *visit every ward, yard and cell, and see every prisoner in confinement;*

(c) *inspect and test the quality and quantity of prisoners' good and drink;*

(d) *ascertain so far as is possible that the provisions of the Act and of these Regulations are adhered to;*

(e) *if requested by the Controller or supervisor, exercise any of the powers conferred on him by sections 83 and 85 of the Act;*

(f) *inquire into any complaint or request made by a prisoner;*

(g) *inquire into the state of the prison buildings and report to the Controller with respect to any repairs or additions which may appear to him to be necessary."*

It is the visiting magistrate who goes to a prison. He can talk to the prisoners and look at conditions of the prison, inspect the quality of food. Given these provisions, there is no need for the High Court to conduct an enquiry at the Court House as the applicant suggests by calling of witnesses. The visiting magistrate can see first hand for himself the conditions in prison.

It also appears from a memorandum dated 30th March 2005 written on behalf of the Commissioner of Prisons that the applicant's complaints have been looked at and there is a directive in place to stop use of so called ***"dog cages"*** to convey prisoners and searching of a prisoner's cell in his absence. It also appears from the memorandum that the department is just as much concerned about the issue of overcrowding but is constrained by lack of resources.

A person lawfully convicted by court must realize that some of his constitutional rights must of necessity be abrogated or suspended. He has to accept the prison discipline and adjust himself to the routine of the prison life. The Prison Regulations are there to regulate administrative matters and also address need for security. The purpose of the regulations is to balance the need for security of public from escapees and sound orderly function of the prison against a prisoner's subsisting or inalienable constitutional rights to inherent dignity. Therefore the prison authorities must be allowed a wide discretion to reconcile the two objectives. If each time a prisoner felt that some minor right of his or of another prisoner was violated, he could come for constitutional redress, it would flood the courts with redress application. The proper authority to address the matter is the visiting magistrate. It is a process which is readily accessible and less time consuming and more suited to the types of complaints which originate from prisoners.

Accordingly I strike out the application on the ground that adequate alternative statutory remedy exists. I shall forward a copy of this ruling to the Chief Magistrate to ensure that the next visiting magistrate sees the applicant on his/her next visit.

[Jiten Singh]
JUDGE

At Suva
4th May 2006