

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**CONSTITUTIONAL REDRESS JURISDICTION**

**Constitutional Redress Application HBM 44 of 2017**

**PRANIL SHARMA**  
[APPLICANT]

vs.

**THE DIRECTOR LEGAL AID COMMISSION**  
[1<sup>ST</sup> RESPONDENT]

&

**ATTORNEY GENERAL OF FIJI**  
[2<sup>ND</sup> RESPONDENT]

&

**THE COMMISSIONER OF CORRECTION**  
[3<sup>RD</sup> RESPONDENT]

**Date of Hearing** : 7<sup>th</sup> February, 2018  
**Date of Ruling** : 7<sup>th</sup> February, 2018  
**Written Reason** : 12<sup>th</sup> February, 2018

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**R U L I N G**  
[On Preliminary Objection]

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- [1] The applicant filed his, purported, Constitutional Redress application in this Court on 20<sup>th</sup> November, 2017 by way of Notice of Motion along with his affidavit dated 13<sup>th</sup> November, 2017 and 3 documents annexed thereto, moving for the following reliefs;
- a. “An order that the Legal Aid Commission (1<sup>st</sup> respondent) assist the **Pranil Sharma** in filing for Constitutional Redress in respect of Criminal Case No: 407 of 2013 as directed by the Magistrate’s ruling dated 27<sup>th</sup> January 2017 and an order that the Legal Aid Commission represented Pranil Sharma in Civil Action No:...of 2017.”

- b. A declaration (in any event) that the Legal Aid Commission has acted unfairly and or exceeded their jurisdiction.
- [2] The notice being issued, when the matter was mentioned today, the learned Counsel (Counsel) for the 2<sup>nd</sup> respondent, raising a preliminary issue, vehemently objected for this application being continued on the basis that same is clearly time barred.
- [3] The learned Counsel for the 1<sup>st</sup> respondent, while supporting the preliminary objection raised by the 2<sup>nd</sup> respondent's on the issue of time bar, joined the Counsel for the 2<sup>nd</sup> respondent in making forceful oral submission to the effect that this application does not warrant any favourable consideration on its merits too and moved to have it dismissed in *limine*.
- [4] The applicant in his affidavit, among other things, mainly averred:-
- a. That he was an accused in Nadi Magistrate's Court case No:- 407 and the learned Magistrate accepted his request and sent summons for his witnesses, who also were incarcerated at Naboro Correction Centre, to be brought to give evidence in his defence.
- b. The Correction Centre Officers by a letter mislead the learned Magistrate by saying that those witnesses had nothing to do with the applicant's case as they all had already been convicted, when the matter involving the applicant was committed and further suggested to the learned Magistrate that those defence witnesses were not really going for witnessing, but for their own agenda.
- c. As a result he was denied a fair trial as the Correction Department intervened in the Judicial Proceedings and the learned Magistrate by his Ruling dated 27<sup>th</sup> January, 2017 ruled that the High Court was the appropriate Court to such grievances and as the Legal Aid has been assigned, it should assist the applicant in filing same.
- d. Though, he wrote to the Legal Aid, his application was refused by the letters marked TAB-3 and as a result he is aggrieved by the conduct of the Legal Aid. Thus, he moves for the aforesaid reliefs.
- [5] Before moving to consider the merits and the demerits of the application, it is the duty of the Court to rule on the preliminary objection raised on the time bar. The applicant, who appeared in person, in his reply submissions, except for reiterating the averments in his affidavit, does not advance any exceptional circumstances to negate the preliminary objection.
- [6] The applicant has filed this application on 20<sup>th</sup> November, 2017 subsequent to the Ruling of the learned Magistrate of Nadi made on 27<sup>th</sup> January 2017, wherein the learned Magistrate seems to have stated that the High Court was the appropriate forum to lodge such a grievance.
- [7] It is observed that the day on which the Learned Magistrate made the Ruling, i.e. 27th January, 2017, could not have been the exact day on which the alleged matter at issue first arose, had such an event in fact occurred. Obviously, it must have been on a date well before the ruling was made.

- [8] The exact date on which the alleged matter first arose is not clear. However, the Applicant has made this application after about 10 months from the date of the ruling, wherein the learned Magistrate in paragraph 16 thereof has stated that the Applicant can file his application in the High Court with the assistance of Legal Aid. In any event the applicant is clearly out of time.
- [9] The applicant has not shown any exceptional circumstances for this Court to act upon his belated application by going into the merits of it.

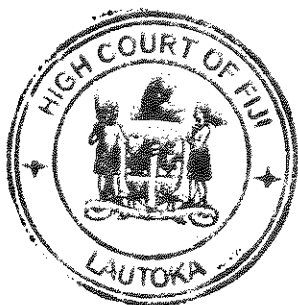
**High Court (Constitutional Redress Rules 2015, Rule 3 (2) states:**

*“An application under paragraph (1) must not be admitted or entertained after 60 days from the date when the matter at issue first arose unless a judge finds there are exceptional circumstances and that is just to hear the application outside that period “*

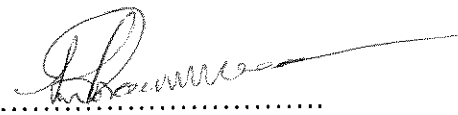
- [10] I agree with the submissions of both the respondent’s Counsel that, even if this Court goes in to the merits, that the decision of the 1<sup>st</sup> respondent Legal Aid Commission, not to grant Legal Aid to the applicant, cannot be challenged in this Constitutional Redress forum and the remedy for the applicant lies elsewhere.
- [11] The rule stated is in mandatory terms and requires the Court not to entertain an application for constitutional redress after the stipulated period. An application of this nature is bound to waste the resources that can be better utilized on matters that deserve it. This matter should not have been entertained or admitted and as such this Court is of the view that it should “act now for then”.
- [12] I do not find any exceptional circumstances in his affidavit or oral submissions for this Court to entertain and proceed to hear this application after the lapse of the mandatory 60 day period stipulated in the (Constitutional Redress) Rules, 2015. I uphold the preliminary objection and decide to dismiss this application.

**Orders**

- (a) The application for constitutional redress is hereby dismissed.
- (b) Copy of this ruling may be served on the Applicant at the relevant correction Centre.



At Lautoka  
12<sup>th</sup> February, 2018

  
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A.M.Mohammed Mackie  
**Judge**