

**STATE v COMMISSIONER OF PRISONS, Ex parte ROKOTAMANA
VITINAQAILEVU**

HIGH COURT — REVISIONAL JURISDICTION

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SCOTT J

29 August 2002

10 [2002] FJHC 23

Professions and trades — insurance schemes — application to quash compulsory deductions — prison insurance and medical scheme — whether compulsory deduction of insurance premiums violates Constitution — Constitution s 40(1) — Interpretation Act (Cap 7) s 2 — Prison Act (Cap 86) s 8 — Prison Officer’s Association Order (Cap 86) s 8, 43(3).

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The case involved the operation of the Prisons Insurance and Medical Scheme. The Commissioner established an insurance committee pursuant to a policy directive issued by the government. The results of these changes included a fairly large undistributed surplus from the former scheme and a substantial increase in the premiums deducted from the prison officers’ wages. Some members of the Prison Officers Association including the applicant were unhappy. They initiated proceedings to quash the compulsory deductions.

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Held — (1) There is nothing in the Prisons Act authorising compulsory deductions from wages except those which specifically authorise deductions in connection with disciplinary offences and loss or damage to equipment. There is no section dealing with insurance premiums.

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(2) The 1989 government policy directive is no substitute for a law specifically authorising deductions of insurance premiums. It could be made a condition for recruitment to the service that premiums be deducted but cannot operate retrospectively. The fact that some officers apparently consented to the deductions does not regularise them. The compulsory deductions of insurance premiums from prison officers’ wages is a breach of the Constitution and is accordingly unauthorised by law.

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(3) The constitution provides that every person has the right not to be deprived of his property by the state otherwise than by law. The word property is defined as to include money thus it includes wages. The compulsory deduction of insurance premiums violates the Constitution.

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Order to quash allowed.

Cases referred to

D’Avigdor-Goldsmid v Inland Revenue Commissioners [1953] AC 347; *Russell v Scott* [1948] AC 422, cited.

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R v Greater London Council, Ex parte Blackburn [1976] 1 WLR 550, considered.

I. V. Tuberi for the Applicant

S. Sharma for the Respondent

Judgment

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Scott J. These proceedings which by consent go forward under the provisions of O 53 r 3(9) concern the operation of the Prisons Insurance and Medical Scheme.

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According to an affidavit filed by the Respondent (the Commissioner) this scheme originates in a policy directive issued by the government in 1989 which required that all members of the disciplined forces, including the Prisons Service be members of a health and medical insurance scheme.

Pursuant to this directive the Commissioner established an insurance committee. This committee included senior representatives from all divisions of the Prisons Service.

As appears from both the Applicant's and the Commissioner's affidavits the Committee explored various options. It appears that at one stage prison officers were part of the general Public Service group insurance scheme but they later opted out of the scheme and went "in house". In July 2001 the committee decided to go back to a private insurance company, Fiji Care Limited.

The results of these changes included a fairly large undistributed surplus from the former scheme and a substantial increase in the premiums deducted from the prison officers' wages. Some members of the Prison Officers Association including the Applicant were unhappy that the "in house" scheme had not been properly audited. They were also unhappy with the increased premiums and their compulsory deductions.

On 1 March 2002 the Applicant initiated these proceedings. As appears from paras 1(a)–(c) of the O 53 statement the Applicant sought (a) an order to quash the compulsory deductions (b) an order for an account of the "in house" scheme and (c) an order for the distribution of the surplus. On 22 August Mr Tuberi advised me that following discussions between the parties only the first order was being pursued.

Mr Tuberi filed an excellent written submission. Mr Sharma, who had taken over the case at short notice also made helpful oral submissions. It seems to me that there are only three questions to be considered.

The first is locus. Mr Sharma suggested that the Applicant who is the Chairman of the Prison Officers Association derived his powers, which do not include the power to initiate legal proceedings, from the Prison Officers Association Order (Cap 86 – s 43 – subs 3). The Commissioner in his affidavit expressed the view that the Applicant "cannot claim to act and represent the Association or the members of the Association without the concurrence of the Central Committee established by s 5 of the order.

Under RHC O 53 r 3 (5):

the Court shall not grant leave unless it considers that the Applicant has sufficient interest in the matter to which the application relates.

In *R v Greater London Council, Ex parte Blackburn* [1967] 1 WLR 550 Denning MR said:

I regard it as a matter of high constitutional principle that if there is good ground for supposing that a government department or a public authority is transgressing the law, or is about to transgress it, in a way which offends or injures thousands of Her Majesty's subjects, then any one of those offended or injured can draw it to the attention of the courts of law and seek to have the law enforced and the courts in their discretion can grant whatever remedy is appropriate.

The central complaint being made in this case by the Applicant is that the compulsory deduction of insurance premiums from prison officers' wages violates s 40(1) of the Constitution which provides that:

Every person has the right not to be deprived of property by the State otherwise than in accordance with a law.

The Applicant's claim is precisely a claim of the kind envisaged by Lord Denning and I am satisfied that the Applicant has standing to prosecute it.

The next question is whether the compulsory deduction of insurance premiums from wages is a compulsory deprivation of property. Although “property” is not defined in the Constitution, s 2 of the Interpretation Act (Cap 7) defines it to include money and I therefore hold that it include wages.

5 The final question is whether there is in existence any law authorising the compulsory deduction of insurance premiums from prison officers’ wages. Mr Sharma frankly conceded that the only provision upon which he was able to rely was s 8 of the Prison Act (Cap 86). This section provides that:

- 10 (1) *The (Commissioner) shall, subject to the orders and directions of the Minister, have administrative command and direction of all prisoners and officers of the Prisons Service ... and*
- (2) *The (Commissioner) may, subject to the provision of this Act, from time to time make orders for observance by all officers of the Prisons Service.*

15 Mr Sharma did not suggest that the government’s 1989 policy directive that all prison officers be insured was capable of being an order or direction within s 8(1) having the status of law and I am satisfied that it was not.

The remaining question is whether s 8(2) can legitimise an order by the Commissioner that insurance premiums be deducted. I am also satisfied that it cannot. It is a fundamental and well settled rule of law that a charge upon the

20 subject must be imposed by clear and unambiguous language (see *Russell v Scott* [1948] AC 422 and *D’Avigdor-Goldsmid v Inland Revenue Commissioners* [1953] AC 347).

There is nothing in the Prisons Act authorising compulsory deductions from wages except under ss 37 and 38. These sections specifically authorise

25 deductions in connection with disciplinary offences and loss or damage to equipment. There is no section dealing with insurance premiums.

In my opinion the 1989 government policy directive is no substitute for a law specifically authorising deductions of insurance premiums. Doubtless it could be made a condition of recruitment to the service that premiums be deducted but

30 such a condition could not be made to operate retrospectively. The fact that some officers apparently consented to the deductions does not regularise them.

In my opinion the compulsory deductions of insurance premiums from prison officers’ wages is a breach of s 40(1) of the Constitution and is accordingly unauthorised by law. I grant the first order sought.

35 Before leaving the matter I do not think it inappropriate to express the view that insurance of disciplined services personnel is clearly highly desirable. A group scheme is obviously the best way of securing cover. I do not doubt that the Commissioner and the insurance committee were only trying to do something which was obviously sensible. It is a pity that the government did not provide the

40 legal means for them to do so.

Order to quash allowed.

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