

**AJAY RISHI RAM v DIRECTOR OF IMMIGRATION and 2 Ors
(HBC0001 of 2006)**

HIGH COURT — CIVIL JURISDICTION

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SINGH J

10, 18 January 2006

10 **Civil and political rights — Constitution — Right to leave Fiji Islands — Plaintiff restricted from leaving Fiji — Right of freedom of movement infringed — Constitution of the Republic of Fiji s 34(3) — Universal Declaration of Human Rights Art 13(2).**

15 The Plaintiff filed an application for a declaration that the second Defendant's (D2) decision to restrict him from leaving Fiji infringed s 34(3) of the Constitution, which provided that every citizen has the right to leave Fiji Islands. The Plaintiff was an immigration officer since January 1995. He was suspended on 20 January 2005, pending investigation into fraudulent and corrupt practices of certain employees of the Immigration Department. He had been subjected to only one police interview in August
20 2005 and PSC had not laid any criminal or disciplinary charges against him.

Held — For 1 year, no court or disciplinary proceedings was filed before any tribunal against the Plaintiff. At the same time, he was not paid any wages and cannot seek any employment elsewhere. A year's delay was a considerable delay. The Defendants admitted the delay but suggested that witnesses were unavailable, that the investigating officer has
25 other cases to handle and that documentary records were missing. The delay persisted in spite of PSC Circular No 17, which stated that a specific timeline of 3 months was now put in place to complete and finalise all disciplinary proceedings from the date charges were laid and/or suspension as effected to the time. The High Court further explained that if the Defendants cannot move along with any proceedings then the Plaintiff should be
30 permitted to move on with his life. The court declared that the Plaintiff's constitutional right of freedom of movement has been infringed and that he be allowed to leave Fiji. Application granted.

Application granted.

Case referred to

Dhirendra Nadan v State [2005] FJHC 1, considered.

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S. Devan for the Plaintiff

S. Turaga for the Defendants

Singh J.

40 **Facts**

The Plaintiff was a civil servant employed as an immigration officer since January 1995. On 20 January 2005, he was suspended without pay pending police investigations into fraudulent and corrupt practices of certain employees at the Immigration Department. He was also prohibited from travelling out of Fiji
45 unless authorised to do so by Acting CEO Home Affairs, Immigration and National Disaster Management. Since January 2005, he has been subjected to only one police interview in August 2005. No criminal charges by police or any disciplinary charges by PSC have been laid against the applicant.

50 The applicant is seeking from this court a declaration that the second Defendant's decision to restrict the Plaintiff from leaving Fiji infringes s 34(3) of the Constitution.

Constitutional provisions

Section 34(3) provides that every citizen has the right to leave the Fiji Islands. Section 34(6) (a) provides for restrictions which can be placed on movement of a person. It states:

- 5 (6) A law, or anything done under the authority of a law, is not inconsistent with the rights granted by this section to the extent that the law:
- (a) provides for the detention of the person or enables a restraint to be placed on the person's movements, whether:
- 10 (i) for the purpose of ensuring his or her appearance before a court for trial or other proceedings;
- (ii) in consequence of his or her conviction for an offence; or
- (iii) for the purpose of protecting another person from apprehended violence.

15 The UDHR in Art 13(2) provides that "*Everyone has the right to leave any country, including his own, and to return to his country*".

Approach to interpretation

When construing a human rights provision in a constitution, one has to give it a liberal construction as a narrow literal construction of such provisions would

20 frustrate the realisation and enjoyment of such rights. For rights to be meaningful, they must be interpreted so as to render them effective. The right to freedom from movement is recognised both by UDHR and by our constitution.

Winter J in *Dhirendra Nadan v State* [2005] FJHC 1 stated:

25 The primary duty of a judge when considering such constitutional provisions must be to give them a wide and purposive interpretation to ensure that under this supreme law there is only ever a legitimate exercise of governmental power and an unremitting protection of individual rights and liberties.

I agree with his comments. It is for the state in the present proceedings to show

30 that the power it seeks to exercise is legitimate exercise of governmental power. Once a person has shown or facts reveal that prima facie a right has been infringed, it is for the state to justify the infringement of the right on balance of probability and not for the "victim" to exclude all factors of justification. The onus of justification rests on the person who violates or infringes the right.

35 Application

There are no court proceedings or any disciplinary proceedings pending before any tribunal in respect of the Plaintiff. For one year now, no charges have been laid. At the same time the Plaintiff is not paid any wages, nor can he seek

40 employment elsewhere. A year's delay is a considerable delay. The Defendants admit the delay but suggest that witnesses are unavailable, that the investigating officer has other cases to handle and that documentary records are missing. These factors seem to suggest that these difficulties will persist.

This delay persists in spite of the PSC Circular No 17 of 2005 which states

45 that:

This is to advise that a specific timeline of three (3) months is now put in place to complete and finalise all disciplinary proceedings from the date charges are laid and/or suspension as effected to the time, the Commission finally makes its decision.

50 Opposed to this is the position of the Plaintiff who has found employment in New Zealand and has got a permanent residence visa to travel to New Zealand. His family is already there including two young children.

The Plaintiff is suspended. He cannot work. He gets no wages or salary. And the Defendants for one year now are unable to move along. If the Defendants cannot move along with any proceedings, then this court shall permit the Plaintiff to move on with his life. Accordingly, I declare that the Plaintiff's constitutional right of freedom of movement has been infringed and I order that he be allowed to leave Fiji.

Application granted.

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