

In the High Court of Fiji
At Suva
Civil Jurisdiction

Civil Action No. HBM 169 of 2019

Pranil Sharma
Applicant

v

Human Rights and Anti-Discrimination Commission
First respondent

Land Transport Authority
Second respondent

Counsel: The applicant in person
Mr R. Vananlagi for the first respondent
Ms L. Malani for the second respondent

Date of hearing: 14th November, 2018

Date of Ruling: 2nd June, 2020

Ruling

1. The applicant, in his notice of motion filed on 3rd September, 2019, seeks a declaration that his human rights have been violated and compensation under sections 11 (1) and (2) and 26(1) of the Constitution of Fiji on the ground that the second respondent made an error in the issue of his provisional license, in that it states that he is Ms Pranil Sharma, instead of Mr Pranil Sharma. The first respondent is the Human Rights and Anti-Discrimination Commission. The second respondent is the Land Transport Authority.

2. This is the first and second respondents summons to strike out the application. The first respondent states that it does not disclose a reasonable cause of action and there is an alternative remedy available. The second respondents' summons states that the notice of motion and affidavit does not disclose a reasonable cause of action, is scandalous, frivolous, vexatious and an abuse of process.
3. The Manager, Customer Service of the second respondent in his affidavit in support states that the applicant was issued with a provisional license based on the information provided in his application form. The Customer Service officer was led to believe that he was a female by the way he dressed and groomed himself. In addition, he referred to himself in the form as "Ms" Pranil Sharma. He informed the applicant that the error has been rectified and since there is no evidence of any substantial damage caused to him, the second respondent is unable to provide monetary relief. He advised the first respondent of the misprint and the applicant could visit any of its branches to amend the changes. The first respondent advised the applicant that as he has an alternative remedy, it cannot proceed to investigate his complaint under section 29(1)(d) of the Human Rights and Anti-Discrimination Commission Act, 2009.
4. The applicant, in his reply states that he informed the second respondent that he was a male and gave his original birth certificate. A copy of his birth certificate is attached.

The determination

5. The applicant's grievance is that the second respondent issued a license to him with a misdescription of his title. He states that he has been tortured within the meaning of section 11(1) and (2) of the Constitution or discriminated within the meaning of section 26 thereof.
6. Section 26(1) provides that:

Every person is equal before the law and has the right to equal protection, treatment and benefit of the law.

7. Section 11(1) provides that:

Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment.

Section 11(2) provides that:

Every person has the right to security of the person, which includes the right to be free from any form of violence from any source, at home, school, work or in any other place.

8. In *Wehrenberg v Attorney General*, [2007] FJHC 157; Civil Action 0229 of 1997L (9 February, 2007) as cited by the second respondent, in his written submissions, Finnigan J stated:

The Shorter Oxford English dictionary indicates that initially one essential element of torture was "excruciating pain". The terms seems quickly to have widened its scope to mean infliction of severe pain or suffering, or grievous distress. Whatever view one takes it seems to me that the word is meant to be at the extreme end of the range of suffering.

9. The applicant has not provided any evidence in support of his claim that he has suffered physical, mental or emotional torture, any form of violence or that his right to security has been infringed, contemplated by section 11(1) and (2).

10. In my judgment, the applicant has not established his claim of torture or violence nor that he has suffered any discrimination or damages, as a result of the misdescription.

11. I would note that the applicant filled the application for the license stating his name as "*Ms Pramil Sharma*".

12. I also note that the applicants' post on Fiji Village webpage, as attached to the affidavit filed on behalf of the second respondent contains the imugned provisional license and states that he was "*a Fijian gay and called Ms pramil Sharma which I'm very proud of it*".

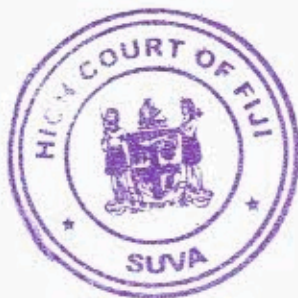
13. The first respondent informed the applicant by its letter of 29th August, 2019, that he can visit any branch of the second respondent and have the changes made and cannot investigate his complaint, in accordance with section 29(1)(d) of the Human Rights and Anti-Discrimination Commission Act.
14. Section 29(1)(d) provides that the first respondent may decide not to investigate a complaint “because..the complainant has available another remedy or channel of complaint that (he) could reasonably be expected to use”.
15. Section 44(4) of the Constitution provides that the Court may in its discretion decline to grant relief, if it considers that “an adequate alternative remedy is available”.
16. In *In the matter of an application for constitutional redress by Josefa Nata*, ((Civil Action no. HBM 35 OF 2005) Singh J declared:
- ..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 — Harrikissoon v. Attorney General — 1979 3 WLR 62.*
17. In my judgment, the applicant has an alternative remedy of having the change made at the office of the second respondent, as he was notified.
18. Finally, I would also note that the notice of motion has not been filed within the period stipulated in Rule 3(2) of the High Court (Constitutional Redress) Rules, 2015.
19. The applicant filed his application for the license with the second respondent on 1st February, 2019. By his email of 10th April, 2019, he sought damages from the second respondent for the “false printing”.

20. The applicant has not shown any reason why he should be allowed to pursue these proceedings after the lapse of over 60 days. In my view, there are no just or exceptional circumstances which call for an extension of time.

21. In my judgment, the applicant's motion is an abuse of process of Court and is struck out.

22. Orders

- (a) The applicant's notice of motion for constitutional redress is struck out.
- (b) I make no order as to costs.



A.L.B. Brito Mutunayagam

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JUDGE
2nd June 2020