

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION No. HBJ 34 of 2023

IN THE MATTER of an application by
PRAVEEN CHAND, Convicted Serving
Prisoner of Minimum Correction Center.

IN THE MATTER of an application
pursuant to Order 53 Rule (1), (3) of the
Fiji Correction Service (Amendment)
Act 2019 and Section 14 (2), (n) and 26
of the 2013 Constitution.

Between: **PRAVEEN CHAND**

Applicant

And: The Attorney General's Office

Respondent

The Fiji Corrections Service

Amicus Curiae

The Human Rights Commission

Amicus Curiae

Representation

Applicant: In Person.

Respondent: Ms. Liku. S (Attorney General's Office)
Mr. P. Sharma (Human Rights Commission)

Dates of Hearing: 11th September 2024

Ruling

Application for Leave to apply for Judicial Review

- [1] The Applicant filed an application for leave to apply for judicial review against the decision of one-third remission from the non-parole period of his sentence. On 8th February 2016, the Applicant was sentenced to 14 years imprisonment. The non-parole period was 12 years. A notice of opposition and an affidavit of Joeli Tuberi of Fiji Corrections Service was filed by the AG's Office. Written and oral submissions were made.
- [2] The submission for the Applicant is that he is entitled to one third remission of the head sentence of 14 years, which is 4 years 8 months. Which he takes away from the head sentence of 14 years and he says that he is to serve 9 years 4 months. In

response the Corrections have submitted that the Applicant needs to serve the 12 years non-parole set out by the Court. .

[3] The test for Application for Leave for Judicial Review was stated by Justice Scutt in *Nair v Permanent Secretary for Education & Ors in Judicial Review No. 2 of 2008* as follows:

- *Does the applicant have sufficient interest in the application?*
- *Is the decision susceptible to judicial review – that is, is it of a private or public nature?*
- *Are alternative remedies available to the applicant and, if so, have they been pursued by the applicant?*
- *Does the material available disclose an arguable case favouring the grant of the relief sought, or what might, on further consideration, be an arguable case?*

[4] The fact that Applicant has sufficient interest is not in dispute. The next issue is whether Applicant has an arguable case. The test for arguable case was stated by Lord Diplock in *Inland Revenue Commission v National Federation of Self Employed and Small Businesses Ltd [1981] UKHL 2; [1982] AC 617* as follows:-

“The whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into matter at any depth at that stage. If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him, leave to apply for that relief. The discretion that the court is exercising at this stage is not the same as that which is it is called upon to exercise when all the evidence is in and the matter has been fully argued at the hearing of the application.”

The leading Fijian authority on this issue is the Supreme Court in *Matalulu & Anor. v Director of Public Prosecutions [2003] 4 LRC 712* which stated as follows:-

“The Judge granting leave to issue judicial review proceedings has discretion, once a sufficient interest is shown by the applicant. That discretion has to be informed by the evident purpose of Order 53. It is not an occasion for a trial of issues in the proposed proceedings. The judge is entitled to have regard to a variety of factors relevant to the purpose of the rule. These include:

1. *Whether the proposed application is frivolous or vexatious or an abuse of the process of the Court.*
2. *Whether the application discloses arguable grounds for review based upon facts supported by affidavit.*
3. *Whether the application would serve any useful purpose, eg whether the question has become moot.*
4. *Whether there is an obvious alternative remedy, such as*

administrative review or appeal on the merits, which has not been exhausted by the applicant.

5. *Whether a restrictive approach to the grant of leave is warranted because the decision is one which is amenable to only limited judicial review.*

The question whether there are arguable grounds for review is not to be determined by the resolution of contestable issues of law. But where a proposed application for judicial review depends upon grounds involving assertions of law or fact which are manifestly untenable, then leave should not be granted."

- [5] The Applicant argues that Sections 27 (3), 27 (4) and 27 (5) of the Corrections Act 2006 infringe his rights under Section 14 (2) (n) of the 2013 Constitution. Section 27 of the Corrections Act 2006 was amended effective 22nd November 2019 as follows:

"(3) Notwithstanding subsection (2), where the sentence of a prisoner includes a non-parole period fixed by a court in accordance with section 18 of the Sentencing and Penalties Act 2009, for the purposes of the initial classification, the date of release for the prisoner shall be determined on the basis of a remission of one-third of the sentence not taking into account the non-parole period.

(4) For the avoidance of doubt, where the sentence of a prisoner includes a non parole period fixed by a court in accordance with section 18 of the Sentencing and Penalties Act 2009, the prisoner must serve the full term of the non-parole period.

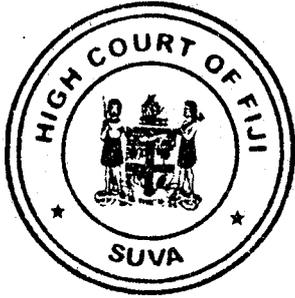
(5) Subsections (3) and (4) apply to any sentence delivered before or after the commencement of the Corrections Service (Amendment) Act 2019."

Section 14 (2) (n) of the Constitution provides that *"every person charged with an offence has the right to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time the offence was committed and the time of sentencing;"*. The Applicant has been convicted by the Court. He longer is a person charged with an offence. He has been dealt with by the Court. Section 14 (2) (n) cannot be relied upon by him. **Section 27 (4) of the Corrections Act is clear that a prisoner must serve the full term of the non parole period and subsection 5 of Section 27 states that it applies to any sentence delivered before or after the commencement of the amendment.**

- [6] The material available does not disclose an arguable case favouring the grant of the relief sought, or what might, on further consideration, be an arguable case. The application for Leave to Apply for Judicial Review is dismissed and struck out. No orders as to costs.

[7] **Court Orders:**

- (a) The application for Leave to Apply for Judicial Review is dismissed and struck out.
(b) No orders as to costs.



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Chaitanya S.C.A Lakshman
Puisne Judge

27th September 2024