

MARY ELIZABETH SCHRAMM

A

v.

1. THE ATTORNEY-GENERAL OF FIJI
 2. THE MINISTER FOR LABOUR INDUSTRIAL RELATIONS AND
 IMMIGRATION

[SUPREME COURT—Kermode J., (29 October 1982)]

B

Civil Jurisdiction

Immigration—no entitlement as of right to citizenship pursuant to S.5 of Fiji Citizenship Act—Application for Citizenship may be refused as a matter of discretion—an administrative decision not requiring Minister to consider and weigh submissions—nor was applicant entitled to prior hearing.

C

H. M. Patel for Applicant
 J. R. Flower for Respondents

Following judgment of the Court of Appeal leave was granted to the applicant to pursue an application for judicial review of the decision of the Minister for Labour, Industrial Relations and Immigration (the Minister) made pursuant to the Fiji Citizenship Act 1971 (the Act) whereby he refused an application by the appellant to reside in Fiji.

D

This refers to the fact that leave was granted by the trial Judge and then reports the application itself.

E

Section 18 of the Act reads:

“The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act the decision on which is at his discretion, and the decision of the Minister on any such application shall not be subject to any appeal or review in any court.”

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It was argued that the applicant could be entitled under S.5 of the Act to be registered as a Fiji citizen if she had been able to satisfy the Minister regarding the matters referred to in the section.

“5.—(1) Subject to the provisions of this section, the Minister, may cause any Commonwealth citizen, or British protected person, being a person of full age and capacity, to be registered as a citizen of Fiji upon making application therefor in the prescribed manner and satisfying the Minister—

G

- (a) that he is of good character;
 (b) that he has an adequate knowledge of the English language or any other language current in Fiji and of the responsibilities of a citizen of Fiji;

H

- A (c) that he has lawfully resided in Fiji throughout the period of seven years immediately preceding the date of his application, during which period he has not been absent from Fiji for a period or periods amounting in all to more than eighteen months;
- (d) that he intends, if registered, to continue to reside in Fiji.

B (2) The registration of a person under the provisions of this section shall not take effect until such person has renounced in the prescribed manner any other citizenship which he may possess and takes the prescribed oath or affirmation of allegiance."

A further argument as to whether the Supreme court was precluded by S.18 from reviewing the Minister's decision was answered by a passage cited from *Attorney-General v. Ryan* (1980) A.C. 718:

C "It has long been settled law that a decision affecting the legal rights of an individual which is arrived at by a procedure which offends against the principles of natural justice is outside the jurisdiction of the decision-making authority. As Lord Selbourne said as long ago as 1885 in *Spackman v. Plumstead District Board of Works* (1885) 10 App. Cas. 229, 240: "There would be no decision within the meaning of the statute if there were anything done contrary to the essence of justice." See also *Ridge v. Baldwin* [1964] A.C. 40."

Issues which it was considered were raised were formulated thus:

- (1) Was the Minister's decision one that affected the legal rights of the applicant, and
- E (2) Was such decision arrived at by a decision which offends the principles of natural justice if such principles have application.

However, as to 1 nowhere under the Fiji Constitution nor the Act had the applicant acquired the right to be registered as a Fiji citizen.

F There could be decisions of the Minister reviewable by the Court if they affect the legal rights of individuals, and arrived at by a procedure offensive to the principles of natural justice: this is so notwithstanding S.18 supra. See *Ryan* earlier cited.

G *Held:* The applicant's case did not fall within the category of a "right" in the sense that expression is used in *Ryan's* case. She was seeking something the Minister could in his discretion a grant or not, by an exercise of his discretion.

There may be decisions of the Minister which the court could review if they are decisions affecting the legal rights of individuals and arrived at by a procedure which offends against the principles of natural justice. This was so notwithstanding s.18(above).

H The applicant was not entitled to any hearing before the application was rejected.

Nevertheless it was clear that her application was processed and considered by the Minister and refused.

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That decision was one he was authorised to make nor was he obliged to give reasons for his refusal.

Declarations or orders for review sought by the applicant refused.

Application dismissed.

B

Case referred to:

Attorney-General v. Ryan (1980) A.C. 718.

KERMODE Mr Justice:

C

Judgment

The Fiji Court of Appeal on the 2nd April, 1982, allowed an appeal by the applicant against the Order made in these proceedings on the 3rd November, 1981, dismissing her application for leave to apply for judicial review of a decision made by the Minister for Labour Industrial Relations and Immigration under the Fiji Citizenship Act 1971.

D

The Court of Appeal set aside the said Order and directed that the application be remitted to this Court for rehearing ab initio on the basis that the applications for leave and for judicial review be heard together.

I interpret this direction as a direction that leave should be granted and accordingly on the 28th day of May 1982, on Mr H. M. Patel's ex parte application, I granted leave without considering the merits of the application.

E

Since the prior hearing, the applicant has filed a further affidavit and the Minister has also filed an affidavit in reply.

The Minister in his affidavit accepts the facts stated by the applicant in her two affidavits as being true but he states that he could not depose to the state of mind of the applicant as to her stated intention to reside in Fiji. The Minister, however, has not disclosed his reasons for not approving the applicant's application although he states he informed the applicant he was not obliged to do so. He was relying on section 18 of the Fiji Citizenship Act which states as follows:

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"The Minister shall not be required to assign any reason for the grant or refusal of any application under this Act the decision on which is at his discretion; and the decision of the Minister on any such application shall not be subject to any appeal or review in any court."

G

I have considered the written submissions made by Mr Patel on behalf of the applicant and Mr Flower on behalf of the respondents.

One issue that arises for consideration is whether the applicant, who on the evidence before me might be entitled under section 5 of the Fiji Citizenship Act to apply for citizenship has a right to be registered as a Fiji citizen if she can satisfy the Minister as regards the matters referred to in the section. The section provides as follows:

H

A "5.—(1) Subject to the provisions of this section, the Minister may cause any Commonwealth citizen, or British protected person, being a person of full age and capacity, to be registered as a citizen of Fiji upon making application therefor in the prescribed manner and satisfying the Minister—

(a) that he is of good character;

(b) that he has an adequate knowledge of the English language or any other language current in Fiji and of the responsibilities of a citizen of Fiji;

B (c) that he has lawfully resided in Fiji throughout the period of seven years immediately preceding the date of his application, during which period he has not been absent from Fiji for a period or periods amounting in all to more than eighteen months;

(d) that he intends, if registered, to continue to reside in Fiji.

C (2) The registration of a person under the provisions of this section shall not take effect until such person has renounced in the prescribed manner any citizenship which he may possess and takes the prescribed oath or affirmation of allegiance."

Subsection (1) is couched in permissive terms and in my view the word "may" cannot in its context be construed as "shall".

D The Fiji Court of Appeal when considering the appellant's appeal considered a submission that the Minister had no discretion but was compelled to grant the application because the applicant had complied with all the requirements of paragraphs (a), (b), (c) and (d) of the section. The Fiji Court of Appeal did not agree with this submission and pointed out a number of matters in the section which could involve the Minister's discretion. One such example is (a)—good character. At page 7 of the Judgment of the Court, the Court in considering the Minister's discretion said:

E "Also we think that when section 18 says 'the decision on which is at his discretion' it is considering a type of application, a type in which he is enabled to say yes or no rather than types to which he must say yes, or must say no, if certain facts are proved. This ground of appeal fails."

F In my view section 5 is an enabling provision and an applicant who may qualify under that section is not entitled as of right to be registered as a citizen. The Minister is given a discretion whether to approve or not approve the application. It is a form of discretion in my view which enables him to say yes or no.

Another issue which arises is whether this Court is precluded by section 18 from reviewing the Minister's decision.

G The Fiji Court of Appeal referred to the Judgment of the Privy Council in *Attorney-General v. Ryan* [1980] A.C. 718, 730, which was concerned with an ouster clause in the same terms as the Fiji section 18. Their Lordships in their judgment in that case said:

H "It has long been settled law that a decision affecting the legal rights of an individual which is arrived at by a procedure which offends against the principles of natural justice is outside the jurisdiction of the decision-making authority. As Lord Selbourne said as long ago as 1885 in *Spackman v. Plumstead District Board of Works* (1885) 10 App. Cas. 229, 240: 'There would be no decision within the meaning of the statute if there were anything done contrary to the essence of justice.' See also *Ridge v. Baldwin* [1964] A.C. 40.

The statement raises issues which I also have to decide in this application and they may be stated thus: A

- (1) Was the Minister's decision one that affected the legal rights of the applicant and
- (2) Was such decision arrived at by a procedure which offends against the principles of natural justice if such principles have application.

The first issue can be answered shortly by stating that nowhere under the Fiji Constitution or the Fiji Citizenship Act has the applicant acquired a right to be registered as a Fiji citizen. B

The applicant is an Australian and has the status of a Commonwealth citizen as provided by section 24 of the Fiji Constitution. Subsection (4) of section 24 provides:

"(4) Parliament may, subject to the provisions of this Constitution, make provision prescribing the rights, privileges, duties and liabilities of persons having the status of Commonwealth citizen." C

Subsection (4) is in permissive terms. Nowhere in Chapter 111 of the Constitution is there any provision for a Commonwealth citizen to become a citizen of Fiji but under section 25(a) of the Constitution Parliament is empowered to make provision for the acquisition of citizenship by persons who are not eligible or are no longer eligible to become citizens of Fiji by virtue of the provisions of Chapter 111. Under the Fiji Citizenship Act as I have already stated the applicant has not acquired a right to be registered. She has no such right under the Constitution. D

Ryan's case is clearly distinguishable. He had acquired a Bahaman status and he was entitled under Article 5 of the Constitution of the Commonwealth of the Bahamas to be registered as a citizen of the Bahamas provided he complied with the provisions of the Article. Ryan had to apply before a certain date but his right was made subject to such exceptions or qualifications as were prescribed in the interests of national security or public policy. Article 5 is similar in some respects to section 20(2) of the Fiji Constitution. E

The proviso the section 7 of the Bahamas Nationality Act 1973 sets out in what cases the Minister may refuse the application of a person who claims to be entitled to be registered as a citizen. F

The Minister in *Ryan's* case made a decision which affected a right which Ryan had under the Constitution and the Court had no difficulty in holding that the decision of the Minister was a nullity because Ryan was never given any indication of the grounds upon which the Minister contemplated rejecting his application and Ryan was not given any opportunity of answering them. It was held in *Ryan's* case that he was entitled to a fair hearing. G

The ouster clause in the Bahaman Act which is similar to section 18 of the Fiji Citizenship Act was held in *Ryan's* case not to prevent the Court from reviewing the Minister's act.

There may be decisions of the Minister which this Court can review if they are decisions affecting the legal rights of individuals and are arrived at by a procedure which offends against the principles of natural justice. This is so notwithstanding section 18. H

The applicant was seeking a right which the Minister was empowered to grant.

A His refusal to grant such right was in my view a proper exercise of his discretion provided in section 5 of the Act.

The Minister in this instance was in my view acting in an administrative capacity and not in a quasi judicial capacity. His decision in my view was an administrative decision and there was no legal obligation on him, in reaching a decision, to consider and weigh submissions and arguments.

B The grounds upon which he acted and the means which he took to inform himself before acting were matters entirely within his discretion. To emphasise that discretion the legislature in section 18 has sought to prevent any challenge to the exercise to such discretion.

C Section 18 would not prevent this Court reviewing the Minister's decision in a case such as Ryans.

In my view the applicant was not entitled to any hearing before the application was rejected. It is clear however from the Minister's affidavit that her application was processed in the normal way by officers in his Ministry. The Minister considered the application and refused it.

D His decision was one which he was authorised to make and in not giving a reason for his refusal he was not acting contrary to law. The Minister did see the applicant on the 28th November 1981, the day before she instituted these proceedings and informed her that the granting of citizenship was not automatic but was within his discretion.

Reason there must be for such refusal but the Minister still declines to disclose it.

E I do not consider I can grant the applicant any relief and certainly none of the relief that the applicant seeks. I decline therefore to make the declaration or orders sought by her.

F I do not know the reasons why a very highly qualified Obstetrician/Gynaecologist who has been in Fiji for 12 years is refused Fiji citizenship. It is public knowledge that the Fiji Medical Services is desperately short of qualified medical personnel. As a woman with her medical qualifications and experience it would appear that her service could be valuable to Fiji and welcomed in particular by the very many women of all races who would prefer to be examined by a lady doctor.

G The application is dismissed but in the circumstances of the Minister's continued refusal to disclose his reasons for refusing the application thereby allowing the applicant no opportunity to correct any misapprehensions the Minister may have as to her eligibility, I would exercise my discretion as regards costs and make no order as to costs.

Application dismissed.