Neutral Citation: [2017] IEHC 168

THE HIGH COURT

JUDICIAL REVIEW

[2017 No. 123 J.R.]

[2017 No. 175 J.R.]

[2017 No. 176 J.R.]

[2017 No. 177 J.R.]

IN THE MATTER OF SECTION 5 OF THE ILLEGAL IMMIGRANTS TRAFFICKING ACT, 2000 (AS AMENDED)

BETWEEN

M. A. K.

M.T.B.

K.B.

S.D.

APPLICANT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENT

JUDGMENT of Ms. Justice O'Regan delivered on the 13th day of March, 2017

1. Each of the applicant's seek leave by way of *ex parte* docket to apply for an order for *certiorari* seeking to quash a deportation order of 13th January 2017 (in respect of three of them) and 12th December 2016 together with an injunction restraining the deportation pending the determination of the proceedings.

2. The proposed statement of grounds in each matter on which the relief is claimed are:—

> a. The deportation order failed to comply with s. 3(1) of the Immigration Act, 1999 in that it failed to specify the date within the order when the applicant is to leave the State.
>
> b. By failing to specify the time on the order the respondent acted ultra vires and this cannot be cured by incorporating the date on some other document.
>
> c. The deportation order contains an error on the act of the record.

3. The applicant has tendered submissions bearing date 9th February, 2017 and in those submissions the legal question or issue to be addressed is identified as:—

> "Is the deportation order legal in circumstances where it fails to specify a date by which the applicant must leave the State?"

4. The submissions acknowledge the Supreme Court decision in *P, L & B v. Minister for Justice* [2001] IESC 107. This was an appeal from the High Court and one of the questions posed of the Supreme Court was:—

> "Is the combination of the deportation order and letter of notice taken together sufficient to satisfy the statutory requirement of s. 3 of the Act of 1999 aforesaid and in particular subs. 3(b) (ii), subss. (6) and (7)?"

5. The response by Hardiman J. in the Supreme Court on behalf of a five-member Court was brief and to the point:—

> *"The form actually employed in these cases is the form prescribed by the Immigration Act 1999 (Deportation) Regulations 1999 (SI No. 319 of 1999). Moreover, the letter in each case refers to the order, a copy of which is enclosed with it. I can see no substance whatever in any submission that there is inadequacy, technical or otherwise, in either the letter or the order or in both of them taken together."*

6. Notwithstanding the foregoing the applicant is now suggesting that this status has been altered somewhat by reason of two decisions of MacEochaidh J. namely in *Lin Qing v. Governor of Cloverhill Prison* [2016] IEHC 710 and *Parvaiz v. Garda Commissioner* [2016] IEHC 772.

7. The applicant in particular refers to para. 36 of the judgment of Lin Qing. The Court stated:—

> *"The deportation order does not, as a matter of fact, contain the date by which the applicant was required to leave the State."*

It must be remembered that in that case the intended judicial review proceedings were being heard together with *habeas corpus* proceedings. Insofar as the judicial review proceedings were concerned the Court merely extended time – it did not go so far as to afford leave.

8. In my view the problem with the applicant relying on this judgment is as contained in para. 38 of the same judgment which reads:—

> *"If this were a judicial review unconnected to a habeas corpus application, it would, I think, be difficult for an applicant to challenge a deportation order on the basis that the departure date is not in the order but in an attached notice instead. It is hard to see what prejudice an applicant suffers from this, even if it is unlawful."*

9. In *Parvais* aforesaid, this too concerned a *habeas corpus* application where apparently the Garda evidence was to the effect that the date upon which the applicant was to leave the State was contained in the deportation order, and that that was the document that the Guard had personally considered in or about a determination to arrest the applicant. It was on this basis that the habeas corpus application succeeded.

10. Counsel suggests that prejudice (see Para. 38 of *Lin Qing*) to the applicant is not and should not be a required proof of the applicant. However given the Supreme Court judgment (on behalf of a 5 member Court) I do not accept that there are reasonable, arguable and weighty grounds for the applicant now to avail of a portion only of the views of MacEochaidh J. to enable the High Court review the 2001 Supreme Court decision.

11. Counsel also complains that the Supreme Court judgment was not sufficiently reasoned (for example, no mention of the various sub-sections). I cannot accept that such argument entitles the High Court to come to an alternate conclusion to that of the Supreme Court.

12. I am satisfied therefore that the relevant legal question which is posed by the applicant, namely:—

> "Is the deportation order lawful in circumstances where it fails to specify a date by which the applicant must leave the State?"

has already been succinctly dealt with by the Supreme Court in the *P L & B. v. Minister for Justice* matter aforesaid.

13. In the events I refuse the application for leave.