

THE HIGH COURT

JUDICIAL REVIEW

[2015] No.103 J.R.

BETWEEN

S. B.

APPLICANT

AND

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

RESPONDENT

JUDGMENT of Mr. Justice MacEochaidh delivered on the 9th day of November, 2016

1. The applicant seeks an order of *certiorari* to quash a deportation order of the 26th January, 2014. The alleged infirmity in the deportation order (other grounds having been withdrawn) is that the Minister's decision that deportation would not be contrary to the rule against refoulement (in s. 5 of the Refugee Act) is irrational. The main argument advanced by the applicant is that the Minister and the Minister's officials erroneously considered the materials submitted concerning Bangladesh and ought to have given greater weight to material which suggested difficulties for the applicant in Bangladesh.

Background

2. The applicant, a Buddhist, sought asylum in the State on the 11th September, 2009, on the basis of the persecution of Buddhists in Bangladesh. His application for refugee status was refused in July 2010. The Tribunal concluded as follows:-

"It is clear from the information provided by the Applicant that he has not suffered any persecution for a Convention reason in Bangladesh, nor is he likely to face persecution upon returning to his country of origin."

3. No application for subsidiary protection was made.

4. On the 10th August, 2010, the Legal Aid Board made an application for leave to remain pursuant to s. 3 of the Immigration Act 1999. At para. 2.15.1 the Legal Aid Board said on behalf of the applicant:-

"Our client instructs that he was at risk of serious harm in Bangladesh. As set out in his Notice of Appeal, and additional submissions thereto and elsewhere on file, our client instructs that he has been a victim of past persecution as a result of this and the police authorities have been unable or unwilling to protect him. It is submitted that country of origin information is broadly supported of our client's and that he is a person in need of international protection."

5. Section 2.19 of the application is entitled 'Prohibition of Refoulement.' It sets out s. 5 of the Refugee Act 1996 and states as follows:-

"It is submitted that to return our client to Bangladesh would be in breach of section 5 of the Refugee Act 1996 (as amended) and Article 3 of the European Convention on Human Rights in that our client would face a serious risk to his life or liberty if deported. We would refer you to the documentation previously submitted on foot of our client's asylum application."

6. In the updated application for humanitarian leave to remain of the 22nd September, 2014, no express mention of s. 5 of the Refugee Act 1996 is made. However, the following submission was made:-

"Circumstances in Bangladesh

Mr. Barua instructs that he cannot return to Bangladesh because he is a practicing Buddhist, which is a minority group in Bangladesh, and he would suffer very severe discrimination. Mr. Barua has set out the details of his difficulties in Bangladesh in his asylum application. Mr. Barua emphasises that the problems of the Buddhist people in Bangladesh are very well known and documented. He instructs that Muslim groups often attack the Buddhist people. He instructs that it is a very dangerous for him and other Buddhist people. [sic] Mr. Barua instructs that has made Ireland his permanent home. He instructs that he cannot return to Bangladesh.

We refer to the enclosed Country of Origin information in support of this application.

We refer to the enclosed New Nation article, dated 10th September 2014, which states that Mr. Sajal Barua, of the Chittagong Bureau, was 'allegedly attacked and beaten by the terrorists.' It also claims that '[f]or this incident a tense and dissatisfaction is increasing among Buddhists ... The Buddhist demands their safety to the administration.'

We refer to the enclosed Bangladesh Buddhist Association article, dated 11th September 2014, which states that '[t]errorist has attacked the Jaisthapura Sakyanuni Buddhist Monastery of the village Jaisthapura under Boalkahali police station, Chittagong Division.' It describes how the 'terrorists attacked the temple and robbed the donation box, broke and destroyed the whole temple's Buddha statue goods and furniture. And while going out they burned the Buddha statue and other destroyed things.'

We further refer to the enclosed letter from the Department of Foreign Affairs, dated 9th November 2014, in which it is stated that the 'the Government has followed reports of attacks on Buddhist communities in Cox's Bazar and Chittagong and is concerned about the situation.' It further states that 'Ireland together with the EU will continue to support efforts to ensure that human rights in Bangladesh, including the right of freedom of religious beliefs and expression, are upheld and respected'

We submit that this statement from the Irish government, along with the abovementioned news articles, confirm that

Buddhists in Bangladesh are subject to attacks and discrimination.”

7. The Minister communicated the decision to make a deportation order by letter as follows:-

“In reaching this decision the Minister has satisfied herself that the provisions of section 5 (prohibition of refoulement) of the Refugee Act, 1996 (as amended) are complied with in your case. The reasons for the Minister’s decision are that you are a person whose application for a declaration as a refugee has been refused. Having had regard to the factors set out in section 3(6) of the Immigration Act, 1999 (as amended), including the representations received on your behalf, the Minister is satisfied that the interest of the public policy and the common good in maintaining the integrity of the asylum and immigration systems outweigh such features of your case as might tend to support your being granted leave to remain in this State.”

8. The letter is accompanied by an “examination of file” setting out the decision making process which is under challenge in these proceedings. It is dated 21st of January, 2015, it is signed by an executive officer and countersigned by three officials from the relevant government department.

9. The “examination of file” contains a section entitled “s. 5 Refugee Act 1996 (as amended) (Prohibition of Refoulement).” This comprises of approximately 3.75 pages of an 8 page document. It is a detailed consideration of whether returning the applicant would violate the rule against refoulement.

10. The applicant had expressly referred to the content of his asylum application in the context of his application for humanitarian leave to remain. The examination of file summarises that application and indicates that the application was unsuccessful. I note the neutral language in the examination of file as to the basis upon which the application for refugee status was rejected. It does not indicate that the Refugee Appeals Tribunal rejected the applicant’s credibility.

11. The opening text of the consideration of the application of s. 5 of the Refugee Act in this case says that:-

“[The applicant] is a Buddhist from the Chittagong region of Bangladesh, an area where the statistically small and ethnically distinct Buddhist population finds itself subjected to ongoing attacks by gangs of Muslim Bengalis settled in the area by the government of the 1970s and the 1980s. These attacks have led to loss of life and property and the destruction of many Buddhist temples. In many instances, there is an overlap between the leadership of these gangs and office-holders in the Bangladesh National Party (BNP) and their Islamist Allies, Jamaat-e-Islami. Although split along ethno-socio-religious lines, the main source of division between the communities appears to be the issue of land. In the aftermath of the general election held in January, 2014, supporters of the twenty party opposition, led by the BNP, which had boycotted the election, engaged in violent attacks on religious minorities, including Buddhists, on the basis of their presumed support of the Awami League (AL), the governing party, which was returned to power. Members of the Bangladeshi security forces reacted forcibly (in some cases, excessively) to the escalation in violence, for which, Jamaat-e-Islami, the main Islamism party belonging to the opposition alliance was widely considered to be chiefly responsible.”

12. The examination of file further refers to material (media reports) which reported that Buddhist people and Buddhist properties were subject to attack. The author of the examination of files says as follows:-

“While it is not in doubt that these attacks have occurred, it is noted, however, that these same articles also describe the largely effective attempts by local police, supported by border guards, and the army to deal with the outrages. In addition reference is made in the articles to the intention of the Government to pay compensation to the victims and support the temple reconstruction financially.”

13. Particular complaint is made about the last quotation. It is cited as an example of irrationality, being insufficiently supported by the material examined.

14. The author of the examination of file refers to reportage of violent acts directed at Buddhists in Cox’s Bazar perpetrated by Muslims. Material (New Age Online, 1 October 2012) available to the author of the examination of file noted that:-

“The police had to open fire on a mob... as unruly people were advancing towards Buddhist temples after hearing of a reported Facebook post desecrating the Qur’an. Twelve persons including two policemen were injured in the violence in Ukhiya and five persons shot. The authorities struggled to contain the violence that continued overnight and clamped s. 144 in Ramu since Sunday morning. People in Ramu alleged that the law enforcers failed to contain the attackers and the fire service too did not respond immediately. The Deputy Commissioner of Cox’s Bazar, Jainul Bari, told New Age in the evening, ‘we’ve called in army who have joined the paramilitary troopers of Border Guard Bangladesh and police to intensify patrol in the troubled areas.’”

The article continues:-

“The additional deputy commissioner, Jashim Uddin, said ‘The administration restricts gatherings of more than four persons for an indefinite period till normalcy returns. Cox’s Bazar’s superintendent of police, Selim Mohammed Jahangir, said the situation was brought under control by 3.00am though tension was mounting.’

The article continued describing how a mob of apparently Muslim persons perpetrated further attacks on the homes of Buddhist persons and on a 250 year old Buddhist temple and that Buddhists started to flee their homes “as the fire services failed to reach the spot amidst increasing violence.” The article reports that seven temples were burnt to ashes and attacks continued to 4.00am. The article [notes:-](#)

“Another mob also attacked Buddhist temple Maricha in Ukhiya thana in the morning but police and members of the BGB thwarted them.”

The article notes that:-

“The Minister for Home Affairs visited the riot-ravaged Buddhist neighbourhoods in Ramu on Sunday noon and was of the opinion that the ‘heinous’ attack on minorities was ‘premeditated and deliberate.’ The Minister said traces of gunpowder and petrol were found in the burnt down monasteries, temples and houses. He assured the people that the thugs who incited at instigation of a fundamentalist axis would be traced and brought to book within fifteen days, and the

monasteries and temples would be rebuilt and the victims paid compensation. Minister for Industries, law maker, Border Guard Bangladesh's director general major general Anwar Hussain, police inspector general Hassan Mahmood Khandkar and Rapid Action Battalion's director general Mukhlesur Rahman accompanied the home minister. A five member probe body, headed by additional commissioner of Chittagong division Nurul Islam, has been formed and been asked to submit its report in ten working days. Other members of the committee are Chittagong's police superintendent, Cox's Bazar's additional district magistrate and additional police superintendent. ..."

The CNN report also says "the government formed a committee to investigate the violence, with report due in ten days."

15. The text set out at para. 12 above may not be a perfectly correct summary of the material upon which it is based. The sentence does not set out the decision which is said to be irrational and which is challenged in these proceedings. It is just a sentence in a document leading to the decision of the Minister and her officials. There may be circumstances where a sentence in a document being part of a decision making process indicates or expresses a flaw which contaminates the decision making process. Insofar as that is what is said of the particular sentence in question, in my view the sentence, paraphrasing the material upon which it is based, does not offend reason or common sense and is not so inaccurate and unreliable and unfair a description of the material upon which it is based as to attract a finding of irrationality. I reject the complaint made by the applicant about this sentence and the manner in which it allegedly infected the decision making process.

16. The examination of file then sets out a description of further material submitted on behalf of the applicant. The author says:-

"These latest submissions echo the previous articles adverted to in that it is clear from the reports that the local and national organs of the State are antipathetic to the attacks carried out by terrorists and willing to investigate them."

In respect of this sentence and insofar as a complaint of irrationality is made out, I conclude that the language and text in the examination of file is adequately supported by material and is not irrational. The s. 5 consideration in the examination of file concludes in the following manner:-

"In the application for permission to remain, pursuant to section 3, Immigration Act, 1999, as amended, submitted by [the applicant] former legal representatives, while reference is made to the prohibition of refoulement, it is done on a broad context, without specific allusion to the alleged charge against him. The latest Country of Origin information, while recognising structural weaknesses associated with request for bribes, lengthy pre-trial detention in some instances and other abuses, recognises that steps to improve police professionalism, training and discipline have been taken by the government, with some success. Similarly, while the courts are not immune from justifiable criticism, those facing trial in criminal charges were granted access to legal representation, occasionally state funded. The presumption of innocence, the right to call and question witnesses and appeal findings are enshrined in law, but not always vindicated.

The importance of tackling the shortcomings mentioned above appears to be recognised by the Bangladeshi government. Without diminishing the significance of them to anyone detained, pending trial, the effect of these shortcomings is not directed at [the applicant] on the basis of his religion or ethnic background and would have to be negotiated by anyone who finds himself or herself having to deal with the police and justice system.

I have considered all the facts of this case. Country of Origin information confirms that there is a functioning, if imperfect, police force and judicial system in Bangladesh and I am satisfied that State protection is available to [the applicant] in Bangladesh. Accordingly, I am of the opinion that repatriating [the applicant] to Bangladesh is not contrary to section 5, Refugee Act, 1996, as amended, in this instance."

17. I have carefully considered all of the voluminous country of origin information which was on file during the decision making process in suit. It is my considered opinion that the authors of the examination of file and the Minister, based on material which was before them, were entitled to conclude that s. 5 would not be breached by returning the applicant to Bangladesh. There was ample material which justified this conclusion.

18. In my view this case sought to critique the evaluative processes engaged in by the Minister and her officials. The applicant has sought to persuade me that the conclusions reached were not justified by the material considered. In this the applicant has failed. The applicant must go much further than persuading me that had I been the decision maker I might have come to a different conclusion. The applicant has to persuade me that the conclusion offended reason and common sense in a fundamental manner being unsupported by the material on file. It is not possible for me to agree with that submission in this case and in those circumstances I reject the application for judicial review.