

Between:

RAJINDER PAL SINGH

– and –

THE MINISTER FOR JUSTICE AND EQUALITY

Judgment of Mr Justice Max Barrett delivered on 27th November, 2018.

1. Mr Singh has behaved dishonestly towards the Minister, the court and his solicitor. In October 2015, he applied to the Minister for a residence card as the family member of a European Union national on the basis of information/documentation that was partly false. In so applying, Mr Singh declared, *inter alia*, that the information he gave (including information he knew was false) was “*true to the best of my knowledge*” – this on a form which prominently flags that to assert a right on the basis of false/misleading information could yield criminal sanction. Because the form looked in order, on 15.04.2015 Mr Singh was granted temporary permission to reside in Ireland; on 16.11.2015 the requested card was granted. In associated communications with Mr Singh the State repeatedly highlighted the need for truthfulness and the risk of prosecution where false/misleading information was provided. Still Mr Singh persisted in his dishonest behaviour.

2. Sometime after the issuance of the residence card, the State, through further investigation, began to discover Mr Singh’s dishonesty. In September 2017, a deportation order issued against Mr Singh. Concerns about a breach of fair procedures in the issuance of same led to an *ex parte* application being made in the within proceedings on 17.10.2017, in which proceedings Mr Singh initially sought, *inter alia*, (i) an order of certiorari against the Minister, (ii) an order of *mandamus* compelling the Minister to restore to Mr Singh the residence card granted to him, and (iii) damages. (Reliefs (ii) and (iii) are especially remarkable given the dishonest behaviour that accompanied the initial application for the residence card). In what was an *ex parte* application it was incumbent upon Mr Singh to behave with candour towards the court (on which duty see, *inter alia*, *Bambrick v. Copley* [2005] IEHC 43 and *Bebenek v. Minister for Justice and Equality & ors* [2018] IEHC 323). This Mr Singh failed to do, concealing from the court the dishonest means that he had employed to obtain the residence card in the first place.

3. On 25.06.2018, the Minister issued a notice of motion seeking, *inter alia*, an order setting aside the grant of leave on the basis that Mr Singh (i) was aware of matters material to the grant of leave which he did not disclose to the court when seeking the *ex parte* order, and (ii) had therefore breached his duty of candour. Only now did Mr Singh, on 05.07.2018, swear an affidavit admitting that he had provided false information and documentation as part of his application for a residence card. (He had also of course declared that what he provided was true to the best of his knowledge when he knew it was false in part). The cynical might question the sincerity of an apology offered by an applicant (a) after he realises that a respondent has recognised the full extent of his wrongdoing, and (b) who is facing (I) the possibility of prosecution for his wrongdoing, and (II) judicial review proceedings in which his dishonesty may form a basis for the refusal of discretionary relief. The court prefers to take the apology as sincere.

4. The Minister’s set-aside motion and Mr Singh’s substantive judicial review application were due to be heard on 23.11.2018. However, shortly before the intended hearing the State indicated that it was minded to rescind the impugned deportation order, with the result that the motion/application went unheard. The only question remaining was that of costs. The Minister contended that there should be no order for costs. Counsel for Mr Singh contended that the court should order costs in favour of Mr Singh, and mark any displeasure by disallowing the costs of the leave application or reducing the costs by some percentage figure. She contended in this regard that (i) the Minister has emphasised that he makes no aspersions of any nature regarding Mr Singh’s solicitor (Mr Singh having acted with dishonesty towards her also), (ii) that solicitor has worked on the fair procedures point, which (counsel contended) sits separate from the misbehaviour, and (iii) that the end sought in the substantive proceedings has been achieved (as the deportation order has been rescinded).

5. A few factors might usefully be touched upon that have weighed in the court’s thinking as to how to award costs: (i) the court is naturally concerned to preserve the integrity of court processes from the type of dishonesty that Mr Singh manifested at the leave stage of these proceedings; (ii) no authority has been opened to the court to support the proposition that no matter how dishonestly an applicant behaves in the course of a judicial review application (and Mr Singh has behaved with notable dishonesty), to the extent that her or his un-adjudicated application may, perhaps, have had merit s/he should be allowed recoup a portion of her/his costs; (iii) the court can think of few better ways to incentivise dishonesty in the bringing of judicial review proceedings than to make an order for partial costs in favour of a dishonest applicant just because there may, perhaps, have been some merit to her or his un-adjudicated application; (iv) though there is now no way of knowing how the substantive proceedings would have ended had they proceeded, the court cannot turn a completely blind eye to the fact that Mr Singh’s dishonesty was of such seriousness as to make it possible, perhaps even probable, that the reliefs sought by him would have been refused as an inappropriate exercise of the court’s discretion, even had he succeeded in his application; (v) although one may (the court does) have sympathy for Mr Singh’s honest solicitor that her client has proven to be dishonest, it does not follow that this misfortune should now be visited in part on the Minister. Having regard to the foregoing, the court will make no order as to costs.

6. One final point: Mr Singh contends that the Minister (i) in breach of his duty of candour, did not refer to Mr Singh’s dishonesty in the statement of opposition, even though (ii) the Minister then knew enough about it to refer to same. This point would have fallen more properly to be adjudicated upon had the motion/application proceeded. Suffice it to note that (a) it is not clear that there was any breach by the Minister of his duty of candour (and not every omission by a public entity necessarily amounts to such), (b) even if there was such, Mr Singh’s dishonesty would not fall to be disregarded. The court is not persuaded by this point to alter its conclusion as to the appropriate order for costs.