

IN THE HIGH COURT OF FIJI
AT LABASA
CIVIL JURISDICTION

Civil Action No.: 25 of 2017

IN THE MATTER of an application for an order under Section 45(4)(e) of the 2013 Fijian Constitution and Section 28(1) of the Human Rights and Anti-Discrimination Act 2009.

BETWEEN : **THE PROCEEDINGS COMMISSIONER** on behalf of **RANJEETA DEVI** of Baubale, Bulileka, Labasa, Fiji.

1ST APPLICANT

AND : **THE PROCEEDINGS COMMISSIONER** on behalf of the **HUMAN RIGHTS AND ANTI-DISCRIMINATION COMMISSION** of Naibati House, Goodenough Street, Suva, Fiji.

2ND APPLICANT

AND : **THE ATTORNEY GENERAL OF FIJI** of Level 7, Suvavou House, Victoria Parade, Suva, Fiji.

1ST RESPONDENT

AND : **THE COMMISSIONER OF THE FIJI POLICE FORCE** of Vinod Patel Building, Ratu Dovi Road, Suva, Fiji.

2ND RESPONDENT

Counsel : **Mr. W. Tokalau for the Applicant**
Mr. Pickering for the Respondent

Date of Hearing : **15th June, 2017**

Date of Judgment : **28th July, 2017**

JUDGMENT

INTRODUCTION

1. This is an application made in terms of the Rule 3(1) of the High Court Rules (Constitutional Redress) Rules 2015 for extension of time for Constitutional Redress (CR). The time limit for institution of an action for CR under High Court Rules (Constitutional

Redress) Rules 2015 is 60 days in terms of the Rule 3(2) High Court Rules (Constitutional Redress) Rules 2015. While setting a time period for CR in the said Rule, there is a discretion granted to the court to accept an application for CR outside 60 day period on 'exceptional circumstances' and if it is 'just' to do so. This is an application made by the Human Rights and Anti –Discrimination Commission (HRADC) (2nd Applicant) on behalf of 1st Applicant seeking leave to file CR in terms of Rule 3(2) High Court Rules (Constitutional Redress) Rules 2015 alleging that there are exceptional circumstances. The alleged infringement had happened on 21st January, 2017 and the victim of the alleged incident had complained the incident to the 2nd Applicant on 3rd February, 2017, but the investigation and final decision to institute action has taken more than 80 days, from the initial complaint, thus requiring leave to file CR outside 60 day time period. The alleged reason for the delay according to the Applicant is lack of manpower for investigation, but there is evidence that investigation officer had even visited the place of alleged infringement and also recorded all the statements by 2nd March, 2017. This application for extension of time was filed on 25th April, 2017. There was no reason given for delay since recording of statements and visitation of place of alleged incident, by the investigation officer on or around 2nd March, 2017 to the date of filing of this application. The alleged infringement relate to a manner in which Police conducted a search and after recording the relevant statements a decision for CR could have been taken, rather than waiting for nearly two months.

ANALYSIS

2. 2nd Respondent is a statutory body recognized under the Constitution for the protection and safeguarding the Bill of Rights contained in the Chapter 2 of the Constitution.
3. Section 44(4) of the Constitution stipulates the scope of the HRADC, thus 2nd Applicant is constitutionally empowered inter alia to investigate and institute CR in the High Court in terms of Section 44(4)(e) of the Constitution.
4. Rule 3(2) of High Court Rules (Constitutional Redress) Rules 2015 allows High Court to accept any application for CR outside 60 day time period, under 'exceptional circumstances' and if it is just to do so.

5. 1st Applicant had complained of her alleged infringement to 2nd Respondent, a body recognized under the Constitution under Section 44 of the Constitution, approximately 13 days after the alleged infringement that happened on 21st January, 2017. So, if she desired to file CR directly in the court she was within time period and as of right her CR should have been dealt by the court. There is no discretion to refuse hearing of CR, if it was within 60 days time period.
6. Instead of filing a CR in the High Court, the alleged victim had complained to a body which is empowered under the Constitution and created by a statute for redress. Making a complaint to such an institution would not preclude her right to seek CR, on her own. At the same time the fact that she complained to HRADC, would not stop calculation of time period from the date of alleged incident.
7. It should also be borne in mind the power of the HRADC has wide powers under Human Rights Commission Act, 2009 regarding investigations and also for reconciliation. In terms of Section 43(b) of the said Act, even inadmissible evidence can be admitted for the purpose of proceedings before HRADC.
8. There are provisions for conciliation and make best efforts by HRADC for settlement between the parties. (See Section 36(4) of the Human Rights Commission Act, 2009). These provisions are necessary considering wide scope of power under Bill of Rights.
9. So, it is clear that while recognizing Bill or Rights under Chapter 2 of the Constitution, there is an option for a person alleging infringement of a right under Bill of Rights to go before a special statutory body which can investigate such infringements and it can also act as conciliator to explore possibility of settlement, depending on alleged infringement.
10. So, the intention of the legislators are clear, that every time a complaint is made it need not end with an application seeking CR in court.

11. First, the matter needs to be investigated by HRADC and for that some special powers are statutorily granted and it may not proceed with further if there are no merits in the complaint.
12. At the same time if the investigations revealed substance in the alleged complaint it can explore mediation between the parties and also institute action for CR, but if HRADC decide to institute an action for CR they are bound by 60 day rule as any other party, unless they can justify the delay in order seek extension of time as 'exceptional circumstances'.
13. The fact that the matter was with HRADC, itself is not a sufficient reason for grant of extension of time as an 'exceptional circumstances'. More needs to be established to seek an extension.
14. There was no delay on the part of the alleged victim, but the delay was at the hand of 2nd Applicant, HRADC, who had to investigate and institute action for CR. It is understood that an institution like HRADC, needs reasonable time for investigation and or institute proceedings for CR. In this case they had more than 45 days to do that, and did not do so.
15. The burden is with the 2nd Applicant, to establish that there were 'exceptional circumstances' that required extension of time. When the complaint was made the 2nd Applicant had more than 45 days to decide to institute CR and had failed to do so. It had also failed to explain why such a long time period was not sufficient for a fairly uncomplicated matter, such as the complaint of 1st Applicant.
16. This application for extension of time was filed more than 80 days from the receipt of the complaint to the HRADC. This is an inordinate delay that it had failed to explain reasons.
17. The affidavit in support had indicated that they had only one office and that was in the capital in Viti Levu, whereas the alleged incident had happened in Vanua Levu. It had only limited resources to cater to a country that comprised of more than 300 islands and, non-availability of the logistics to all the islands that are inhibited by people is understandable in a developing country such as Fiji, but in this case this cannot be accepted as the cause

of the delay, as investigation officer had conducted the investigations by 3rd March, 2017. There is no material before me that show that investigation officer did any investigation beyond that period, and considering the nature of the alleged infringement there was no requirement for such additional reports or investigation needed. The alleged infringement relate to a manner of search of a female by Police and alleged infringement which does not involve any physical injury. Though a Psychiatrist report was obtained it was not a requirement. So delay in obtaining that report cannot be considered as 'exceptional circumstance'.

18. Legislation relating to HRADC does not expressly exclude the time it takes for investigation from the time period to file CR. So, they needs to file CR within 60 day period, or if not should be able to explain and show that they could not do so under 'exceptional circumstances'.
19. The Applicant had stated that lack of manpower was the reason, but in my judgment that was not a reason they could rely since the investigations were done by 3rd March, 2017 and there were no further investigation done beyond that time till 25th April, 2017, by 2nd Applicant.
20. The Applicant had failed to establish that there were 'exceptional circumstances' that warrant extension of time period for CR.

FINAL ORDERS

- a. The Application for extension of time for CR is dismissed and struck off.
- b. No costs.

Dated at Suva this 28th day of July, 2017.



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Justice Deepthi Amaratunga
High Court, Suva