

KARIYAWASAM
v
**SOUTHERN PROVINCIAL ROAD DEVELOPMENT
AUTHORITY AND 8 OTHERS**

SUPREME COURT
SHIRANEE TILAKAWARDANE, J.
DISSANAYAKE, J. AND
AMARATUNGA, J.
S.C. APPLICATION NO. 157/2006

Fundamental rights – Article 126(2) of the Constitution – Has the petitioner filed the application within the period prescribed by Article 126(2) of the Constitution ? – Section 13(1) of the Human Rights Commission Act, No. 21 of 1996 – Affidavit – Jurat.

At the hearing the respondents raised three preliminary objections, namely;

- (1) Application of the petitioner is not filed within time;
- (2) The affidavit filed by the petitioner in support of his application is defective;
- (3) The petitioner has not disclosed that he had made an application to the Human Rights Commission on the same matter.

Held:

- (1) An application for alleged infringement of a fundamental right which has been filed in the Human Rights Commission within one month from the alleged infringement of a fundamental right is pending before the Commission shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court in terms of Article 126(2) of the Constitution.
- (2) The jurat (of the affidavit) contains all necessary particulars including the date of affirmation and attestation. There is no requirement that the Justice of the Peace must put the date below his signature in addition to the date given in the jurat. Failure to put the date below the J.P.'s signature cannot affect the validity of the affidavit when the date of attestation is embodied in the jurat.

Per Gamini Amaratunga J. -

- *.....However, where the J.P. has written below his signature a date different to the date given in the jurat, such writing creates a doubt not only with regard to the exact date of affirmation and attestation, but also with regard to the other particulars given in the jurat. If this doubt is not cleared by a reasonable explanation consistent with petitioner's contention the affidavit is liable to be rejected as defective",
- (3) The failure to disclose by the petitioner in his petition that he had made an application to the Human Rights Commission on the same matter is not a ground to reject this application as he has not gained any undue advantage by his failure to refer to it.

APPLICATION under Article 126(1)

On a preliminary objection being taken.

Saliya Pieris with Sapumal Bandara for the petitioner.

D.S. Wijesinghe, P.C. with Kaushalya Molligoda for the 1st, 2nd, 3rd and 8th respondents.

July 5, 2007

GAMINI AMARATUNGA, J.

The petitioner, a Technical Training Coordinator of the Southern Provincial Road Development Authority has filed this fundamental rights application, dated 28.4.2006 and filed on 2.5.2006, challenging his transfer from the Head Office at Galle to the Regional Engineer's Office at Elpitiya. The transfer has been made by letter dated 14.3.2006. The reliefs sought by the petitioner are a declaration that the respondents have violated his fundamental right guaranteed by Article 12(1) and an order quashing the impugned transfer.

At the hearing before us the learned President's Counsel for the 1st to 8th respondents raised three preliminary objections, namely;

- (1) That the application of the petitioner is out of time.
- (2) That the affidavit filed by the petitioner in support of his application is defective for the reason that the date written below the signature of the Justice of the Peace who attested the petitioner's affidavit is different from the date given in the jurat.
- (3) That the petitioner has failed to disclose that he had made an application to the Human Rights Commission on the same matter.

After oral submissions, both parties have filed their written submissions on the preliminary objection.

The petitioner's application for relief against the impugned transfer dated 14.3.2006 has been filed on 2.5.2006. On the face of it, it is clearly out of time for not being within the period of one month prescribed by Article 126(2) of the Constitution.

The learned Counsel for the petitioner submitted that the petitioner has made an application to the Human Rights Commission seeking relief against the impugned transfer. The petitioner has not averred this fact in his application. However along with his written submissions the learned Counsel has filed a copy of the petitioner's application made to the Matara branch of the Human Rights Commission. It is dated 27.3.2006 and the date

stamp on it indicates that it has been received by the Matara branch on the same date. The Copy of a letter dated 14.6.2006 written by the Regional Co-ordinating Officer of the Matara branch of the Human Rights Commission to the 3rd respondent shows that the Commission has sent two letters dated 28.3.2006 and 24.4.2006 to the 3rd respondent calling for a report on the petitioner's complaint and that the 3rd respondent had failed to respond to those letters even by 14.6.2006.

According to section 13(1) of the Human Rights Commission Act No. 21 of 1996, **"where an inquiry into a complaint made by an aggrieved party to the Human Rights Commission within one month of the alleged infringement of a fundamental right is pending before the Commission, the period within which such inquiry is pending before the Commission shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court in terms of Article 126(2) of the Constitution."**

The petitioner's application to the Human Rights Commission was within one month of the impugned transfer. The Human Rights Commission, by calling for a report from the respondent Authority has set in motion the process of holding an inquiry into the petitioner's application, but the Authority has failed to submit its report to the Commission. In those circumstances, the petitioner is entitled to claim the benefit conferred by section 13(1) of the Human Rights Commission Act. I accordingly hold that the petitioner's application to this Court is not time barred.

The second objection is that the date given in the jurat of the petitioner's affidavit is different from the date written by the Justice of the Peace (the J.P.) below his signature and therefore the affidavit is defective. The date given in the jurat is "27th day of April 2006" and the date written below the J.P.'s signature is 2006.4.12. The learned Counsel for the petitioner submitted that the petitioner has signed the affidavit on 27th April 2006 before the JP but the latter in writing the date below his signature had made a mistake by writing the date as 2006.4.12. On the other hand the contention of the learned President's Counsel for the 1st to 8th respondents was that the date given by the J.P. coincides with the one month requirement as the period of one month from the impugned transfer

letter expired on 14.4.2006. The learned President's Counsel submitted that the 13th and 14 April being public holidays on account of the New Year, the probabilities are that the J.P. signed the affidavit on 12th before the onset of the holidays.

A jurat "is a certificate of officer or person before whom writing was sworn to. In common use the term is employed to designate the certificate of the competent administering officer that writing was sworn to by the person who signed it. "Black's Law Dictionary – 5th Ed.p.765. In other words, the jurat is the J.P.'s attestation clause which is essential to the validity of an affidavit.

The jurat in the petitioner's affidavit states that it was read over and explained to the affirmant; that he understood its nature and contents and that he affirmed and signed it on 27th day of April 2006 at Colombo. On the right hand side of the jurat the J.P. has signed below the printed words "before me." Thus the jurat contains all necessary particulars including the date of affirmation and attestation. There is no requirement that the J.P. must put the date below his signature in addition to the date given in the jurat. The failure to give the date below the J.P.'s signature cannot affect the validity of the affidavit when the date of attestation is embodied in the jurat.

However where the J.P. has written below his signature a date different to the date given in the jurat, such writing creates a doubt not only with regard to the exact date of affirmation and attestation, but also with regard to the other particulars given in the jurat. If this doubt is not cleared by a reasonable explanation consistent with the petitioner's contention that the date 2006.4.12 written below the J.P.'s signature was a mistake made by the J.P., the affidavit is liable to be rejected as defective.

The learned Counsel for the petitioner submitted that the petitioner has signed the affidavit on 27.4.2006. The petition filed in this Court is dated 28.4.2006, which was a Friday. The next two days i.e. 29th and 30th April, 2006 were Saturday and Sunday. The 1st of May was a public holiday. The petitioner's application has been filed on 2.5.2006, which was the first working day after 28.4.2006. This sequence of events supports the petitioner's contention that the petitioner signed the affidavit on 27.4.2006.

In the body of the affidavit, in paragraph 14, (paragraph 13 in the petition) there is a reference to a letter dated 19.4.2006, sent by the 3rd respondent to the petitioner. A copy of that letter is attached to the petition marked P10. It is the 3rd respondent's reply to the petitioner's appeal dated 16.3.2006 sent to the 3rd respondent to get the transfer cancelled (P8). The 3rd respondent in his affidavit has admitted that the petitioner's appeal against the transfer was rejected by P10. If the affidavit had been prepared and signed by the J.P. by 12.4.2006, the petitioner could not have referred to P10 dated 13.4.2006 in his affidavit. This intrinsic evidence contained in the affidavit clearly shows that the affidavit had been prepared on a date subsequent to 19.4.2006.

In considering the submission of the learned Counsel for the petitioner that the date 2006.4.12, written below the J.P.'s signature was a mistake, this Court can taken into account ordinary human conduct as well. The date "27th day of April 2006" is printed in the jurat. The J.P. had placed his signature parallel to the printed jurat, towards the right hand edge of the same paper. In the absence of reasons so compelling, this Court is unable to hold that the J.P. had consciously and deliberately put the date as 2006.4.12 when the jurat, parallel to his signature, has the date '27th day of April' in the printed form.

The learned Counsel for the petitioner also submitted that the date written by the J.P. appears to be 2006.4.17 and not 2006.4.12. In fact in the way the date is written it is not clear whether the date is 12 or 17. The learned Counsel for the petitioner submitted that the J.P. in writing the date 27th had written figure 1 instead of figure 2. If the second figure in the date written by the J.P. is taken as 7, it is consistent with the second figure of the date given in the jurat. As pointed out earlier, in considering the ordinary human conduct it is not possible to rule out the possibility of human error.

The petitioner's reference in his affidavit to P10 dated 19.4.2006 is a clear indication that the affidavit could not have been prepared and signed on a date prior to 19.4.2006. The date given in the Jurat (27.4.2006) is consistent with the position that the affidavit had been signed on 27.4.2006 (which is a date subsequent to P10 dated 19.4.2006). On the other hand the date 2006.04.12 (or 17) written by the J.P. cannot be a correct date in view of the reference

in the body of the affidavit to P10 dated 19.4.2006. Thus the only reasonable conclusion this Court can come to is that the date written by the J.P. below his signature was an inadvertent error and as such it cannot affect the validity of the jurat. Accordingly I hold that the affidavit of the petitioner is not defective and the second preliminary objection is also overruled.

The third preliminary objection is that in his petition the petitioner has failed to disclose that he had made an application to the Human Rights Commission on the same matter. It is true that in his application the petitioner has not referred to his communication to the Human Rights Commission. However by his failure to refer to it, the petitioner has not gained any undue advantage and as such the 3rd preliminary objection is not a ground to reject the petitioner's application. Accordingly I direct to list the petitioner's application for hearing on its merits.

SHIRANEE TILAKAWARDANE, J. - I agree.

DISSANAYAKE, J. - I agree.

Preliminary objections overruled.

Matter set down for argument.