



Summary of Judgment

Syed Agha Raza Shah v The Director of Health HCMP 468/2020; [2020] HKCFI 770

Decision : Application for a writ of *habeas corpus* dismissed
Date of Hearing : 8 May 2020
Date of Handing Down of Reasons for Decision : 13 May 2020

Background

1. This application for a writ of *habeas corpus* concerned the Applicant who was subject to quarantine at Chun Yeung Estate Quarantine Centre (“**the Centre**”). The Applicant was a Pakistani and a Hong Kong permanent resident. He returned to Hong Kong from Pakistan on 29 April 2020, and was required to be quarantined at the Centre for 14 days under the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation, Cap. 599E (“**the Order**”).
2. The Applicant complained that the Order constituted discrimination based purely on national origin or race rather than public health reasons, contrary to Articles 1, 22 or 23 of the Hong Kong Bill of Rights (“**HKBOR**”). This complaint was made on the basis that people of other nationalities or arriving from other countries were permitted to undergo quarantine at home or in a hotel instead of at the Centre. The Applicant also relied on Article 6 of the HKBOR relating to the right to liberty.
3. The application was heard on 8 May 2020 before the Court of First Instance (“**CFI**”). At the conclusion of the hearing, the CFI announced that the application was dismissed. On 13 May 2020, CFI handed down the reasons for the decision.

Issues in dispute

4. The main issues in dispute were:
 - (a) whether the Applicant was racially discriminated; and
 - (b) whether the liberty of the Applicant was restricted and if so whether the measure imposed on him (i.e. requiring him to be quarantined at the Centre) satisfied the 4-step proportional test.



Department of Justice's Summary of the Court's rulings

(Full text of the CFI's judgment at

https://legalref.judiciary.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=127793&QS=%2B&TP=JU)

5. The CFI dismissed the application on the ground that the Applicant's complaint of racial discrimination was based on an incorrect premise. The CFI accepted the Respondent's account that compulsory quarantine at the Centre was imposed on any person who arrived at Hong Kong from Pakistan or who had stayed in Pakistan during the past 14 days before the date of arrival, in which the nationality or race of the person was never a relevant factor or consideration. (para. 8)

6. While the CFI accepted that the liberty of a person was restricted when he was subject to quarantine, it was held that the Order satisfied the 4-step proportionality test:
 - (1) **Legitimate aim:** The CFI accepted that the Order served the legitimate aim of protection of public health (para. 9(1));

 - (2) **Rational Connection:** The Order was rationally connected with the advancement of the legitimate aim (para. 9(2));

 - (3) **Proportionality:** The CFI found that the appropriate standard of review is "manifestly without reasonable foundation" instead of "no more than reasonable necessary". This was because the Respondent was in a better position than the court to assess and manage the risk of the transmission of COVID-19, which was of serious social and economic implications. Taking into account the period of time for quarantine; the multifaceted assessment by the Respondent with regular reviews based on various information such as outbreak situation, number of returnees and availability of quarantine facilities; and the special circumstances of Hong Kong, the CFI was satisfied that the Order was not "manifestly without reasonable foundation" (para. 9(3)); and

 - (4) **Fair balance between societal interest and individual rights:** The CFI found that the Respondent had struck a reasonable balance between the protection of public health in Hong Kong, which the court considered to be a matter of paramount importance, and the restriction of the Applicant's



liberty. The CFI accepted that the Applicant had been provided with adequate food of his choice, and the security at the Centre had been reasonably maintained (para. 9(4)).

7. The CFI found the Respondent's decision to require the Applicant to be quarantined at the Centre for a period of 14 days is a lawful exercise of its powers under the Regulation. The Applicant's application for a writ of *habeas corpus* was dismissed with costs to the Respondent (paras. 10 and 12).

Civil Division

Department of Justice

May 2020