

**SZFDV v MINISTER FOR IMMIGRATION & MULTICULTURAL & INDIGENOUS AFFAIRS & ANOR (S61/2007)**

Court appealed from: Federal Court of Australia

Date of judgment: 13 September 2005

Date of grant of special leave: 9 February 2007

The appellant is an Indian citizen who arrived in Australia on 16 May 2004. On 3 June 2004 he applied for a protection visa on the basis of his (and his family's) association with the Communist Party in Tamil Nadu. The appellant claimed that his brother was killed by political rivals at a Communist Party meeting in 1998. He also said that the police had laid 'false charges' against him. The appellant further claimed that he had been physically attacked by his opponents on several occasions. He also said that he and his family had moved to Chennai to avoid further harassment.

On 11 June 2004 the first respondent's delegate refused the appellant's application, as did the Refugee Review Tribunal ("RRT") on 10 November 2004. While the RRT accepted the appellant's claims as genuine, it found that he could relocate to another state to avoid further harassment. In particular the RRT held that the appellant could relocate to neighbouring Kerala, a state where the Communist Party is one of the two main political parties. Kerala is also a state whereby the DMK, the main opposition to the Communist Party in Tamil Nadu, has little power or influence. In reaching this conclusion the RRT applied the reasonableness of relocation test of *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* ("*Randhawa*"). This was after having regard to factors such as the appellant's education, health, social capability and ethnicity.

On 16 June 2005 Federal Magistrate Scarlett rejected the appellant's application for judicial review. His Honour found that none of the grounds in the appellant's application had any substance.

On appeal to the Federal Court, the appellant submitted that there was a constructive failure of jurisdiction by the RRT. This allegedly arose due to the application of the internal relocation question. On 13 September 2005 Justice Madgwick rejected that submission. While his Honour expressed personal doubts about the continued appropriateness of *Randhawa*, he held that it was binding authority upon him. On that basis Justice Madgwick concluded that the RRT had proceeded in a legally unexceptionable way. The appellant's appeal was therefore dismissed.

The grounds of appeal include:

- The Federal Court of Australia erred in failing to find jurisdictional error in the decision of the Refugee Review Tribunal in its consideration of the issue of the appellant's possible relocation within India.
- Further or alternatively, the Federal Court of Australia erred in failing to find jurisdictional error in the decision of the Refugee Review Tribunal to the extent that it:
  - asked whether the appellant might reasonably be expected to relocate within India in order to avoid persecutory harm;

- treated the reasonable availability of protection against persecutory harm within India as determinative or conclusive of the appellant's refugee status
- failed to make findings about, and to consider, whether requiring the appellant to relocate would involve the abnegation of the attribute for which the appellant was selected for persecution; and
- failed to make findings about, and to consider, whether the appellant would be subjected to persecution following his relocation within India by reason of there being false murder charges outstanding against him in Tamil Nadu.