



## HIGH COURT OF AUSTRALIA

28 January 2015

### CPCF v MINISTER FOR IMMIGRATION AND BORDER PROTECTION & ANOR

[2015] HCA 1

Today the High Court, by majority, held that a claim for damages for false imprisonment arising out of the plaintiff's detention at sea on a Commonwealth vessel should be dismissed. The majority of the Court held that s 72(4) of the *Maritime Powers Act* 2013 (Cth) authorised a maritime officer to detain the plaintiff for the purpose of taking him from Australia's contiguous zone to a place outside Australia, being India. Section 72(4) states that a maritime officer may detain a person on a detained vessel and take the person, or cause the person to be taken, to a place outside Australia.

The plaintiff and 156 other passengers were on board an Indian flagged vessel which left India and was intercepted by an Australian border protection vessel in the Indian Ocean within Australia's contiguous zone. The plaintiff is a Sri Lankan national of Tamil ethnicity, who claims to be a refugee on the basis of having a well-founded fear of persecution in Sri Lanka. He did not have a visa entitling him to enter Australia. The Indian vessel and its passengers were detained by officers of the Commonwealth. After the Indian vessel became unseaworthy, the passengers were transferred to the Australian vessel. The plaintiff was not asked whether he claimed to be a person in respect of whom Australia owed non-refoulement obligations.

The Australian vessel sailed to India pursuant to a decision made by the National Security Committee of Cabinet, which included the Minister for Immigration and Border Protection. At this time, there was no agreement with India under which the plaintiff would be permitted to disembark there. After reaching the vicinity of India, the passengers were detained for a further period until the Minister decided that it was not practicable to discharge the plaintiff and his companions in India within a reasonable time and instructed the vessel to sail to the Australian Territory of the Cocos (Keeling) Islands. Upon their arrival, the plaintiff and the other passengers were taken into immigration detention.

The plaintiff brought proceedings in the original jurisdiction of the High Court, alleging that his detention on the Australian vessel was unlawful and claiming damages for wrongful imprisonment. A special case stated questions of law for determination by the Full Court.

The Court held, by majority, that the detention was lawful under s 72(4) of the *Maritime Powers Act* and that the power under s 72(4) was not subject to an obligation to afford the plaintiff procedural fairness. The detention was lawful even though the maritime officer detained the plaintiff in implementation of a decision by the Australian Government, and without independent consideration of whether the detention should have taken place. The detention was also lawful even though, prior to the commencement of the taking of the plaintiff to India, no arrangement existed between Australia and India concerning the reception of the plaintiff in India. The majority found it unnecessary to determine whether the detention could have been authorised by the non-statutory executive power of the Commonwealth.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*