HIGH COURT OF AUSTRALIA

EDELMAN J

IN THE MATTER OF AN APPLICATION BY LEONARD WILLIAM CLAMPETT FOR LEAVE TO ISSUE OR FILE

[2024] HCASJ 5
Date of Judgment: 7 February 2024
B70 of 2023

ORDER

1. Application refused.

Representation

The applicant is unrepresented

1 EDELMAN J. The applicant identifies as an Indigenous Australian Aboriginal of the Dalungbara people with the tribal name of Yarraman. He brings this application following the unsuccessful 14 October 2023 constitutional referendum proposing a law to alter the *Constitution* to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice.

2 The background to this application is an application for a constitutional writ of mandamus addressed to the Australian Electoral Commissioner ("the Commissioner") that the applicant sought to file in this Court. On 19 October 2023, Gleeson J directed the Registrar pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth) to refuse to issue or file the application without the leave of a Justice of this Court. On 11 December 2023, the applicant subsequently filed an application for leave to issue or file the constitutional writ.

3 In his proposed constitutional writ, the applicant seeks to compel the Commissioner to "apply all the laws of the Commonwealth in all his duties as the Commissioner". The grounds upon which the applicant says that he bases this relief are his claims that the Commissioner: (i) failed prior to the holding of the referendum on 14 October 2023 to submit the proposed law for alteration of the *Constitution* to the electors; and (ii) failed to put a clear and concise question to the electors on the ballot paper for that referendum.

4 It seems from the content of the applicant's argument that his complaint about the failure to submit a proposed law for the alteration of the *Constitution* to the electors is a complaint about the inadequacy of the opportunity for electors, including himself, "to peruse [the] proposed law [and] study and understand its implications". The applicant argues that "the electors who voted in favour of the question may very well have not given their fully informed consent to the question asked". The applicant's affidavit in support of this application for leave to issue or file annexes a ballot paper for the referendum with "No" written as the answer to "Do you approve this proposed alteration?"

5 The proposed application for leave to issue or file is deficient in two respects. First, a writ of mandamus is a command to perform a public duty which an officer has wrongly refused to perform.[1] In circumstances where the proposed relief is sought after the referendum, the applicant provides no detail about what duty the Commissioner has failed to perform nor any specificity as to what duty the Commissioner is required to perform beyond the applicant's assertion of a need for a constitutional writ of mandamus to compel the Commissioner to apply "all the laws of the Commonwealth in all his duties as the Commissioner".

---

1 See *Re Jarman; ex parte Cook (No 1)* (1997) 188 CLR 595 at 604. See also *Re Media, Entertainment & Arts Alliance; ex parte Hoyts Corporation Pty Ltd* (1993) 178 CLR 379 at 394.

6 Secondly, to the extent that the applicant impliedly asserts that the referendum was a nullity on the basis that it failed to comply with the requirements of s 128 of the *Constitution*, there is no legal or factual basis provided for that assertion. It can be accepted that there is an implication in s 128, in the nature of an explicature from words including that "the proposed law shall be submitted in each State and Territory to the electors". That implication is of a requirement that electors be provided with a minimum or baseline content to consider the proposed law that is submitted to them.[2] But even if this could be taken to be the legal basis of an assertion by the applicant of invalidity, there is nothing in any material before this Court, or any matter about which this Court might take judicial notice, to support a conclusion that such a condition was not satisfied.

7 An application for leave to issue or file falls to be determined without an oral hearing.[3] An application that is, on its face, an abuse of process should not be issued or filed.[4] For the reasons above, the proposed application for a constitutional writ seeks to invoke the original jurisdiction of this Court on an application that is, on its face, manifestly hopeless and, therefore, an abuse of process.[5]

8 For these reasons, and in accordance with r 13.04 of the *High Court Rules*, the application for leave to issue or file is refused without an oral hearing.

---

2 See by analogy *Ruddick v The Commonwealth* (2022) 275 CLR 333 at 388-391 [146]-[153].

3 *Re Young* (2020) 94 ALJR 448 at 451 [12]; 376 ALR 567 at 570.

4 *Re Young* (2020) 94 ALJR 448 at 451 [13]; 376 ALR 567 at 570.

5 *Citta Hobart Pty Ltd v Cawthorn* (2022) 96 ALJR 476 at 487 [35], [37], 494 [72]-[73]; 400 ALR 1 at 10-11, 20.