HIGH COURT OF AUSTRALIA

JAGOT J

IN THE MATTER OF AN APPLICATION BY HEIDI MICHELLE WARD FOR LEAVE TO ISSUE OR FILE

[2025] HCASJ 10
Date of Judgment: 20 February 2025
C18 of 2024

ORDER

1. *The ex parte application filed on 20 December 2024 for leave to issue or file a writ of summons dated 27 November 2024 is dismissed.*

Representation

The applicant is unrepresented

1 JAGOT J. By ex parte application filed on 20 December 2024 the applicant, Heidi Ward, seeks leave to issue or file a writ of summons dated 27 November 2024 naming the Commonwealth, the Federal Court of Australia and Senator Mehreen Faruqi as defendants.

2 The proposed writ concerns the judgment of the Federal Court of Australia in *Faruqi v Hanson* [2024] FCA 1264. The relief sought by the applicant includes a writ of prohibition directed to the judges of the Federal Court of Australia contending a lack of jurisdiction to have made that decision, declarations to the effect that s 18C of the *Racial Discrimination Act 1975* (Cth) ("Racial Discrimination Act") is invalid, and a declaration that Senator Faruqi is ineligible to sit in the Parliament.

3 On the initial lodging of the writ of summons, the Registrar sought the direction of a Justice and Edelman J on 28 November 2024 directed that the Registrar refuse to issue or file the proposed writ without the leave of a Justice first had and obtained by the applicant pursuant to r 6.07.2 of the *High Court Rules 2004* (Cth). The ex parte application now made for that leave is supported by an affidavit sworn by the applicant and filed on 20 December 2024.

4 For the following reasons leave to file the proposed writ should be refused without listing the application for hearing.

Relevant principles

5 The criteria governing the exercise of the discretion to refuse leave to issue or file a document under r 6.07.3 are the same as those which inform the decision of the Registrar to seek direction from a Justice under r 6.07.1. That is, leave to issue or file the document will ordinarily be refused where it "appears ... 'on its face' to be an abuse of the process of the Court, to be frivolous or vexatious or to fall outside the jurisdiction of the Court".[1]

6 While the actions that will constitute an abuse of this Court's process are not defined by "closed categories", the concept is plainly engaged by an attempt to invoke the jurisdiction of the Court on a basis that is "confused or manifestly untenable".[2] Clearly enough, the discretion to refuse leave to issue or file a writ and thereby "nip a proceeding in the bud" should be exercised "only in the clearest of cases".[3]

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1 *Re Young* (2020) 94 ALJR 448 at 451 [11]; 376 ALR 567 at 570.

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

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

Consideration

7 The applicant claims entitlement to the relief sought on the following bases.

8 First, the applicant claims that she has sent communications to Senator Faruqi using language that she believes the Senator would consider "offensive" and that she intends to continue to engage in such conduct. For those reasons she is "interested to know" whether her conduct would fall within the scope of s 18C of the Racial Discrimination Act, which she asserts is an invalid exercise of Commonwealth legislative power by reason of the implied freedom of political communication.

9 Second, the applicant claims that *Faruqi v Hanson* is an erroneous decision which the Federal Court of Australia had no jurisdiction to make. She asserts that a "collateral attack" on the judgment is necessary to prevent the decision "becom[ing] entrenched in the mind of Australian people" and to restrain the commencement or continuation proceedings based on the decision.

10 Third, the applicant claims that Senator Faruqi has "paid lip service" to the oath or affirmation of allegiance which is required of every senator before taking their seat pursuant to s 42 of the *Commonwealth Constitution.* She says that the Senator has "in practical terms failed" to comply with the oath or affirmation and she is therefore sitting unlawfully as a member of the Parliament.

11 None of these claims, nor anything else in the applicant's materials, reveal any intelligible basis upon which the relief sought could be granted. They do not suggest any legal error in the exercise of jurisdiction by the Federal Court of Australia in *Faruqi v Hanson*. Nor do they disclose any grounds upon which Senator Faruqi could possibly be deemed ineligible to sit in the Parliament.

12 Moreover, this Court has no jurisdiction to entertain requests for an advisory opinion on a purely hypothetical question.[4] The applicant's claim for declaratory relief in respect of s 18C of the Racial Discrimination Act is such a request. The question the applicant seeks to ventilate involves hypothetical facts which have not arisen and may never arise. It is divorced from any real dispute or concrete situation. It presents no justiciable matter that is capable of determination by this Court.

13 The bases upon which the applicant seeks to invoke the Court's jurisdiction are manifestly untenable. The proposed writ is both frivolous and vexatious on its face. It would be an abuse of process if filed and should not be permitted to be filed.

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4 *CGU Insurance Ltd v Blakeley* (2016) 259 CLR 339 at 350 [26]. See also *Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334 at 356-357 [47]-[49].

14 The applicant's ex parte application dated 20 December 2024 for leave to issue or file the proposed writ of summons is therefore dismissed.