

THE QUEEN

v.

THE RIGHT HONOURABLE HAROLD EDWARD HOLT
AND DANIEL RAYMOND DWYER

EX PARTE NEIL REHEIRI GLOVER

JUDGMENT

TAYLOR J.

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TAYLOR J.

This is an application made on behalf of one Neil Reheiri Glover for an order calling upon the first-named respondent, the Minister for Immigration, to show cause why he should not be required to authorise and direct an officer, within the meaning of the Passports Act 1938, to issue a passport to the applicant, or, alternatively, why the Minister should not be required to consider and determine according to law an application for a passport made by him. The claim for relief against the second-named respondent, who is said to be "an authorised officer" within the meaning of the Act is for an order calling upon him to show cause why he should not be ordered to issue a passport to the applicant, or, alternatively, why he should not be ordered to consider and determine the applicant's application for a passport according to law.

The evidence shows that the applicant's application was refused and the matters which were argued upon this application were concerned with the question whether the Minister, or the officer concerned, had any discretion to refuse the issue of a passport to the applicant and, if so, whether in refusing to issue a passport the statutory discretion had been exercised according to law.

The Passports Act 1938-1948 provides, by S. 7, that, subject to the regulations, any officer authorised in that

behalf by the Minister may issue Australian passports to Australian citizens and to British subjects who are not Australian citizens. Unlike the Passports Act 1920 the present Act contains no prohibition against the departure from Australia of any person without a passport but, in fact, departure is virtually impossible for any person not in possession of a passport as travelling facilities are not available for such a person. The reason for this is that shipping or airline companies will have difficulty in foreign countries in disembarking persons who do not hold passports.

In support of the application the applicant argued that the Passports Act 1938-1948 does not confer any discretion upon the Minister or upon authorised officers and that once an application is made it is the imperative duty of the officer to whom the application is made to issue a passport. In my opinion there is no substance in this contention. If authority is required for the proposition that the Act confers a discretion it is to be found in the observations of Evatt J. in The King v. Paterson Ex parte Purves (1937 A.L.R. 144). The Act under consideration in that case was the Passports Act 1920 but the remarks then made apply with at least equal force to the present Act. I have no doubt that there is a discretionary power under that Act to refuse an application for the issue of a passport.

The alternative argument assumes that the Act confers discretionary power and asserts that in the present instance the Minister, or his subordinates, have exercised it on grounds extraneous to the Act, and, indeed, upon grounds irrelevant to the legislative power or powers which constitute the foundations of the statute. The substance of this argument, as I understand it, is that a passport may be refused only upon grounds which are relevant to the power to make laws for the peace, order and good government of the Commonwealth with respect to emigration and matters incidental thereto. Stating

his contention in a positive form counsel for the applicant contended that there was no discretionary power to refuse a passport to a person who is a fit and proper person to bear Australian credentials and to be commended to a foreign government. What matters should be regarded as disqualifying any particular person or as removing him from the category of fit and proper persons was not specified by counsel for the applicant. The argument, no doubt, is based upon considerations not unlike those which led Evatt J. in the case above cited to remark that "It may well be held that the Minister's discretion has to be exercised upon grounds conformable with the general objects of the Act". While this may be so it is beyond argument that the discretion conferred by the Act is of an extremely wide nature and that within its wide and unspecified limits it is for the Minister, or officer concerned, to satisfy himself whether or not any particular application should be granted or refused.

In the present case the passport was refused upon grounds which may be compendiously referred to - and which were referred to in argument - as grounds directly connected with the security of the Commonwealth. No discussion took place concerning the cogency of the matters which actuated the refusal. Indeed, no such discussion could have been relevant to this application for their cogency was entirely a matter for the Minister or officer concerned. The contention was that no grounds of such a nature, in law, can justify the refusal of a passport to an Australian citizen who is shown to be a person of good repute. I may have failed to appreciate the full significance of the applicant's argument on this point, but I can see no reason to suppose that a passport may not lawfully be refused upon such grounds. On the contrary I am satisfied that whatever limits to the statutory discretion may be suggested by a consideration of "the general objects of the Act", or the constitutional powers which support it, none could be assigned which would exclude such grounds.

In the circumstances and since there is nothing to suggest that the discretion of the Minister was not exercised in good faith, it is fruitless to embark upon a discussion of the facts of the case.

A further argument was advanced by the applicant. It was, it was contended, the duty of the second respondent/^{now} to exercise his discretion as an "authorised officer", and, quite independently of the course the matter has taken, make up his mind whether or not he should issue a passport to the applicant. For obvious reasons this contention must also fail. The facts do not establish that it ever was the duty of the second respondent to consider the applicant's request, but even if it was, the applicant, in effect, took the matter out of his hands and made his representations directly to the Minister. I am at a loss to understand why at this stage any further public duty can be said to devolve upon the officer named.

For these reasons I am of the opinion, as I intimated upon the conclusion of argument, that the application must be dismissed.

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

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REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Thursday, 7th April, 1955.

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