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Judgment

Title: QH (Pakistan) -v- Refugee Appeals Tribunal & ors

Neutral Citation: [2015] IEHC 582

High Court Record Number: 2012 856 JR

Date of Delivery: 17/09/2015

Court: High Court

Judgment by: Eagar J.

Status: Approved



Neutral Citation [2015] IEHC 582

THE HIGH COURT

JUDICIAL REVIEW

[2012 No. 856 J.R.]

BETWEEN

Q.H (PAKISTAN)

APPLICANT

AND

**REFUGEE APPEALS TRIBUNAL, THE MINISTER FOR JUSTICE EQUALITY AND
LAW REFORM, THE ATTORNEY GENERAL AND IRELAND**

RESPONDENTS

**JUDGMENT of Mr. Justice Eagar delivered on the 17th day of September,
2015**

1. On the 30th day of July 2015, this court gave an order extending the period of time with regard to good and reasonable grounds set out by the Applicants (Q.H. and her daughter G.H).

2. The grounds upon which relief was sought in the statement of grounds in relation to Q.H. were as follows:

- 1) The Tribunal erred in law and in fact that the Applicant had not suffered persecution in the past. In the alternative the said finding is irrational.
- 2) The imposition of a requirement that one must have a high profile as an Ahmadi is irrational in light of the country reports placed before the Tribunal.
- 3) Without prejudice to the aforesaid the Tribunal erred in finding that the Applicant lacks a "profile" as an Ahmadi in circumstances where the Applicant comes from a high profile Ahmadi family.
- 4) The decision is internally inconsistent in that the Tribunal Member holds that the Applicant has never engaged in preaching or conversion while then acknowledging that the Applicant was "involved in religious education of Ahmadi children."
- 5) The finding that internal relocation is available to the Applicant was made without regard to the evidence, including country reports, placed before the Tribunal.
- 6) The Minister lacked the jurisdiction to make the decision to refuse the Applicant refugee status in circumstances where the Applicant was not afforded a lawful asylum process.
- 7) The Respondents failed to have any or any reasonable regard to the grant of leave to remain to the husband of the Applicant.
- 8) If necessary an order providing for an extension of time.

3. The statement of grounds was verified by the affidavit of Q.H. She said that she was born in Pakistan on the 30th of November 1978 into a committed and prominent Ahmadi family, and she had a life-long commitment to the Ahmadi faith. She said that she had suffered persecution since childhood on account of her faith. Her husband was forced to flee Pakistan in fear for his life in 2005. He was refused a grant of refugee status by reason of a finding that state protection would be available to him in Pakistan. Her husband had since been granted leave to remain in Ireland in circumstances where his representations were substantially directed to his faith and the treatment of the Ahmadi in Pakistan.

4. She said that as a result of the increasing persecution she experienced, she was also forced to flee Pakistan together with her daughter. They arrived in Ireland on the 8th of October 2011 and made separate and unsuccessful asylum applications.

5. She stated that, when after being notified that the Commissioner had refused her a grant of Refugee status, Notice of Appeal was submitted to the Refugee Appeals Tribunal which contained substantial country reports in relation to the treatment of Ahmadis in Pakistan. I have set out a sample of the country reports in respect of her daughter G.H. which relate to the persecution of Ahmadis in Pakistan.

The decision of the Refugee Appeals Tribunal : The applicant's claim before the first-named Respondent.

6. The first-named Respondent recited that the Applicant was born on the 30th of November 1978 in Sakhar, Pakistan. She is an Ahmadi Muslim and has had the benefit of eighteen years of education graduating with a diploma in Fine Art. The Applicant was employed between October 2006 and May 2010 at a Muslim high school as an Art teacher. The Applicant is married with one dependant child who is the subject of a separate asylum appeal. The Applicant has one brother and one sister in Pakistan and a sister in the United States of America.

7. The Applicant complained of discrimination generally that she suffered throughout her life, particularly in school; she claimed she would receive less attention than other non-Ahmadi children. She claimed that they could not participate in religious or social programmes and that other children would shun them in the school yard. She claimed that her father was a district head (leader of District Lahore) of the Ahmadi group. Her father died in a car accident when she was only two and half years of age. Her mother, as a result, had to start working in a factory school, and the applicant claimed that her mother did not receive promotion because of her Ahmadi faith and claims that other teachers were hostile to her.

8. The Applicant's mother was president of the Sakhar district Ahmadis Women's Group. She claimed that she would tour every area but started having problems with an Arabic teacher, and a particular Mullah put up posters outside their colony with names of all the Ahmadi residents on it including the Applicant's mother with a threat stating that they would be killed if they moved outside. This poster posting exercise took place in approximately 1995 or 1996. It was in 2000 that the Applicant's mother quit her job and moved to Karachi.

9. The Applicant was asked why her mother continued to do what she did if she felt that she was under threat. The Applicant stated that her mother was the only source of income and had no choice but to go to work in defiance of this edict. Her mother became president of the Ahmadi women's society, and the Applicant was the secretary of the Ahmadi Girl's Group which meant she was responsible for religious education. She claimed that they would meet once a week and they could either come to her or she would go to them. The age group concerned was approximately six to fourteen years of age, and the numbers in the group were six to seven and this was her position from 2001.

10. The Applicant claims that, in general, they suffered difficulties in Pakistan. She claimed that people would throw stones at their house and that people shunned them. The Applicant herself married in 2003 and moved to Faisalabad. The Applicant claimed that her husband was active in the Ahmadi community, and she started participating in the Faisalabad area. She claims that her husband started

receiving threatening telephone calls and ultimately arranged to leave. He obtained a study visa and came to Ireland and applied for asylum. The Applicant's husband was refused asylum, in an appeal which was heard by the same Respondent. He found that there was no basis to overturn the original decision in the Applicant's husband's decision and the first-named Respondent said this was tangentially relevant to this Applicant's case, in the sense that they are part of the same family unit (although he left Pakistan in 2005, and she and her daughter left in 2011 when the situation had deteriorated in Pakistan). He stated that the evidence in the Applicant's husband's case clearly showed that neither the Applicant's husband's home nor his business were ever targeted, despite the fact that he claimed to have a higher profile than any of the remainder of his family. The Applicant's husband also claimed that none of his family suffered any serious problems in Pakistan despite them being members of the Ahmadi faith. The Applicant's husband gave evidence that he did not suffer any problems in Lahore apart from the discrimination he suffered at work.

11. The Applicant stated that at her school she had difficulties. The school principal suggested that she obtain a job elsewhere, as parents had threatened to withdraw their children. She claimed that this man did not want to sack her; he simply suggested she should perhaps look elsewhere for work. There was some discrepancy in the Applicant's evidence in relation to this particular aspect of her story, between the questionnaire and the previous evidence. At the hearing, the Applicant claimed that the incident with the principal took place after a series of attacks on Ahmadi mosques in May 2010. The Applicant claims it was as a result of the particular heated feelings following the attacks on mosques and the increased publicity that resulted, that teachers started requesting the Applicant not to teach at the school any more. When this was put to the Applicant, she claimed there was a series of discussions that she would have spoken with him in April 2010 and then again after the attacks on the mosques, which she describes as May 2010.

12. The Applicant explained that one of the attacks on the Ahmadi mosques was quite near where they were living and the situation in Lahore had deteriorated significantly. Thus she went to Karachi on the 10th of July 2010. The Applicant claimed that she started receiving threatening phone calls, and that rocks were thrown at their house, and that people would ring the door-bell at night. The Applicant, in fact, returned to live with her mother in Karachi at this time. She claimed that there was a mother who they had problems with and indeed her mother had had problems with them for a previous eight to ten years. The Applicant claims also that people would shout at her, and they would be abusive and make threats, but this happened both in Lahore and Karachi. Ultimately a friend helped her to get an agent so she could leave the country.

13. The Applicant claims that she is a devout Ahmadi. However, when she was asked if she had been to the mosque in Ireland, she claimed she had not had an opportunity to do so, although the period of time suggested by the first-named Respondent was that of perhaps a month. The Applicant claimed that her daughter and herself were threatened by the man who lived under her mother's flat and that her daughter had a hard time in school. The Applicant set out some issues with regard to Ahmadis, in particular that they cannot recite the first articles of faith, and that there is no call to prayer in their religion. The Applicant claimed that she could be furnished with a three year jail sentence or indeed a death sentence if they were convicted of any of the offences under the Blasphemy laws.

14. The Applicant was asked to explain whether she had suffered any difficulties practising her religion as such. She claimed she had attended weekly meetings and

discussions in Karachi and she never had any problems there. Yet her main problem that she suffered was discrimination at school as a child and when she worked as a teacher. The Applicant claimed, at one stage, that it was immediately apparent that they were Ahmadi Muslims from the way she wore her veil, yet she claimed that the other teachers in Lahore only found out three or four months after she started working at the school that she was an Ahmadi. She claimed that she was secretary of the young girls section there from 2006 onwards. She claimed that she would teach young girls there how to pray and this would occur weekly. The Applicant claimed that she became more afraid after the media publicity following the attacks on the mosques in May 2010 and after pressure came on the principal to tell her to leave. She claimed that she received threatening telephone calls in Lahore often, perhaps three to four times a day, so much so that she would turn her phone off. She was asked how people knew she was Ahmadi, and she claimed she had given her phone number out, and she had distributed brochures in order to obtain freelance work as an artist, and they would know there and then because of her address.

15. The Applicant claims that the problems she suffered in Karachi were that people would threaten her and her daughter with death. She claimed that she kept the phone off and she changed her number but she had to give the phone number out again in order to obtain work and the threatening phone calls would start again. She says there was no point in going to the police so she never bothered. When she went to her mother's house in Karachi, she started doing a freelance contract job. This was for a training centre but it was only a fifteen day contract. She claims that after that she did nothing and her mother helped her and her sister in the United States would send money. She claims the neighbour of her mother would harass them regularly. The Applicant claimed that people would swear at them generally and one time someone grabbed her scarf from behind. Ultimately the Applicant did not want to live like this anymore so she left Karachi travelling via Abu Dhabi by air to Dublin, and she claimed that she travelled using a false passport. She claimed that she applied for a visa twice, in 2008 and 2009, to travel to the United Kingdom so she could visit her husband in Ireland. It was put to the Applicant that she had stated that she was waiting to see how her husband's claim proceeded before she came to join him, but she claimed that this was in 2008 when she had had enough of being in Pakistan by herself, and so applied for a visa to come to Ireland. The Applicant was asked why she would not go to Punjab with her mother and live there with her brother, and she claimed that she would not have obtained any work there, that there were no opportunities for her there in fine art, and she would have to live in a big city.

The Analysis of the Applicant's Claim by the First-named Respondent

16. The first-named Respondent stated that this particular Applicant had painted a picture of a certain level of discrimination. However she had clearly no difficulty in obtaining work in schools. From her own admission she left because she was simply so disheartened. The Applicant had not suffered discrimination to a serious degree. She had been able to earn a livelihood and, despite pressure coming on the principal of her school from the parents of a child, she was not sacked. He stated that the Applicant was clearly not an exceptional Ahmadi such that she would be at risk if returned to Pakistan. She gave no evidence of ever having any difficulties on account of her practising her faith. She attended weekly meetings where she taught young girls. The Applicant had given no evidence that she had suffered any harmful consequences as a result of her position.

17. The only evidence the Applicant provided to the effect that she might be at risk was that she was threatened and abused on the streets of Karachi and that she

suffered difficulties with her neighbour. If these difficulties were so severe it is difficult to understand how her mother was able to live there for a period of some eight years, despite the fact that the Applicant claimed that her brother lived there with her. The man referred to was simply an issuer of empty threats and despite the fact that people would shout at her and curse her on the street that she should convert or be killed, no harm ever befell the Applicant. The first-named Respondent stated it was clear from the country of origin information that Ahmadis do suffer verbal abuse and harassment in Pakistan. He stated, however, that harassment does not constitute persecution.

18. He said that it was inconsistent that the Applicant was immediately recognisable that she was Ahmadi because of the way that she wore her veil, but that the people with whom she worked in a school did not find out she was Ahmadi for three to four months.

19. The first-named Respondent indicated that he accepted that it may be difficult to witness a child having difficulty in school. The first-named Respondent pointed out that children are subject to varying levels of discipline from teachers in school, but that does not mean that they are being persecuted. The fact that a teacher would not help her daughter to eat her meals, likewise, does not, in his view, constitute persecution.

20. He makes the point that it is important to bear in mind that discrimination per se is not enough to establish a case for refugee status. A distinction must be drawn between a breach of human rights and persecution. Not every breach of a refugee claimant's human rights constitutes persecution. He quoted from Professor Hathaway as follows:-

"as a holistic reading of the refugee definition demonstrates, the drafters were not concerned to respond to certain forms of harassment per se, but were rather motivated to intervene only where maltreatment anticipated was demonstrative of a breakdown of national protection."

21. He also quoted the opinion of Advocate-General Bot of the European Court of Justice. He cites the Advocate-General as pointing out that it was necessary to consider how the individual was likely to behave once back in the country of origin and specifically the activities he intends to carry out. In this particular case, the first-named Respondent found that the Applicant is not likely to commence preaching or trying to convert others, these having never been part of her activities. She was simply involved in the religious education of Ahmadi children. He states that he must also take into account the experience of the Applicant to date, and that this does not lead him to a conclusion that the Applicant is at risk or indeed in the past suffered any difficulties on account of her practising her religion in a manner in which she did. He also pointed out that this particular Applicant does not appear to have made any effort to engage with what appears to be by all accounts a very active Ahmadi community in Ireland since arriving here. In line with the reasoning of the Advocate-General, he found that there was no basis for the Applicant to fear persecution on account of religion if she is returned to Pakistan. He also said that it was open to her to move with her mother to Punjab, particularly to the area where her brother had taken up residence. He found that internal relocation was available because the applicant could live with her mother and brother elsewhere in Pakistan. He affirmed the recommendation of the Refugee Applications Commissioner to refuse refugee status.

Submissions by Counsel for the Applicant

22. In submissions by counsel for the Applicant, Mel Christle SC (with Gary O'Halloran BL) set out the background to the case and made the following submissions:-

i. The imposition by the First-named Respondent of a requirement of 'exceptionality' was unlawful. He referred to the decision of this court in *DA v. the Minister for Justice, Equality and Law Reform and the Refugee Appeals Tribunal* [2015] I.E.H.C. 208. In D.A. the court granted *Certiorari* notwithstanding its finding that the Tribunal would not have been aware of the pending decision of the CGEU C 71/11 and c 99/11 (judgement given on the fifth of September 2012). In this case the Tribunal had the opinion of the Advocate-General Bot, dated the 19th of April 2012, and placed reliance on it.

ii. The finding of the Tribunal that the Applicant was not likely to pursue religious activities which would expose her to a risk of persecution if she returned to Pakistan is irrational, both in circumstances where the Applicant 'taught young girls religion' as noted by the First-named Respondent, and particularly in the light of the country reports, and the finding was based on conjecture.

iii. The failure to have any reasonable regard to the country reports and circumstances of this case was particularly egregious and quoted *M.A.U-H v. the Minister for Justice and Equality* [2012] IEHC 572, a judgement of Clark J. It was stated by Clark J. that 'Pakistani Blasphemy laws are not what is understood to be a justifiable restriction on religious freedom in accordance with the United Nations International Covenant on Civil and Political Rights or under the Geneva Convention relating to the status of refugees.' In the case of *S.R. v. the Refugee Appeals Tribunal* [2013] IEHC 26, Clark J. said:

'[14] Following the pre-leave hearing, the Court indicated its strong opinion that the Tribunal decision should be quashed without proceeding to a substantive hearing, not least because the finding on the availability of State protection to Ahmadis runs contrary to all country of origin information including the UK Tribunal determinations relied upon in the s. 13 report. The finding that the applicant failed to seek state protection or that it would be available to him because he was a man with influence is irrational on the facts of this case. The finding on internal relocation is also deeply puzzling as the applicant has lived in the designated location Rabwah, since his whole family internally relocated there in 1999.

[15] The Court expressed its view that the negative tone of the Tribunal decision, the disregard of extensive evidence of well documented, State sponsored anti-Ahmadi legislation and the poor record of the police in either investigating or prosecuting individual acts of violence and property damage directed at Ahmadis were indicative of a decision so lacking in fairness as to be a nullity in law. The decision quotes extensively from legislative guidance found in the Refugee Act 1996, the ECs (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006) ("the Protection Regulations") and

Directive 2004/83/EC ("the Qualification Directive") with respect to the assessment of credibility and of facts and circumstances, but seems not to have applied those guidelines. There is no reference of any kind to COI or to several highly relevant reports furnished by the applicant which were capable of supporting the applicant's assertions of persecution and discrimination against Ahmadis in general and the applicant's family in particular. ...

[17.] While a Court must approach judicial review of the decision of an administrative authority with care and avoid the temptation to replace its own view for that of the decision maker, the Court is obliged to determine whether or not the decision is sound in law and, in particular, whether the conclusions reached on credibility are legally sound. While it is the function of the Tribunal Member to evaluate credibility and come to a view on the validity of the claim made, he / she is not at large to arrive at such decision on the basis of instinct, pre-conceived ideas or gut feeling. The decision must be based on evidence, on an evaluation of the documents put before the decision maker including the notice of appeal, and on consideration of objective country of origin information. The decision maker at first instance and on appeal is obliged to seek out and consult relevant, up to date objective information. Regretfully, this procedure is not apparent in this case.'

iv. The Comment by the Tribunal that all country reports were considered were not an appropriate treatment of the country of origin information or in the alternative the Tribunal made its decision on the basis of a preferential regard to the country reports. With respect to the finding in respect of internal relocation, this finding was both irrational in the light of the evidence of, in particular, the country of origin reports and in any event was made without even a cursory assessment of the nominated locations of relocation resulting in a failure to make any assessment in the light of the evidence, the UNHCR Guidelines on Internal Relocations and in accordance with the requisite legal principals set out in *K.D. (Nigeria) v. the Refugee Appeals Tribunal* [2013] IEHC 481, a decision of Clark J. on the 1st of November 2013 and *I v. MJELR and RAT* [2014] IEHC 27, a decision of MacEochaidh J. dated the 30th of January 2014."

Submissions on Behalf of Counsel for the Respondents

23. Daniel Donnelly BL on behalf of the Respondents set out the background to the case, the decision of the Refugee Applications Commissioner's report, and the decision of the first-named Respondent.

24. He stated that the first-named Respondent had referred to and summarised the opinion of Advocate-General Bot, and noted the Advocate-General's view in relation to the third question posed by the referring German court which, in essence, asked whether an Applicant should reasonably be expected to abstain from religious practice which would expose him to a well-founded fear of persecution in his country of origin and, in particular, he stated that article 2 (c) of Directive 2004/83 must be interpreted as meaning that there is a well-founded fear of persecution

where the asylum seeker intends, once back in his country of origin, to pursue religious activities which expose him to a risk of persecution. In this context, and in order to ensure observance of the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, the authority responsible for examining the application for asylum cannot reasonably expect the asylum seeker to forgo these activities, and specifically to forgo manifesting his faith.

25. Counsel argued that the Tribunal interpreted that opinion by finding that the Applicant was not likely to commence preaching or trying to convert others, these have never been part of her activities, she was simply involved in the religious education of Ahmadi children. He then continues that this Applicant is not Ahmadi Muslim of profile.

26. Counsel on behalf of the Respondent also referred to the complaint by the Applicant that the first-named Respondent imposed a requirement of exceptionality on a person seeking refugee status on the basis of Ahmadi religion. However, he argued, the Applicant had misinterpreted the first-named Respondent's decision by isolating a single reference to her not being an exceptional Ahmadi.

27. He further referred to this court's decision in D.A., *cited above*, and sought to distinguish it on the basis that the first-named Respondent in this case did not rely on the out-dated U.K. decisions decided in 2005, and that the first-named Respondent, in effect, had found that the discrimination that the Applicant had suffered was not so severe as to amount to persecution.

28. He argued that the first-named Respondent found, as he was entitled to do, that if the Applicant exercised her religion in Pakistan in the manner in which she did before she left and which she was likely to do if she returned to Pakistan, she would not expose herself to a real risk of persecution.

29. He also argued that there was no valid basis to contend that the Tribunal had failed to have reasonable regard to the country of origin information before it in this case. The Tribunal had referred to the Applicant's submissions in relation to country of origin information and said that the Tribunal had stated:-

"It is clear from the country of origin information that Ahmadis do suffer verbal abuse and harassment in Pakistan, however harassment does not constitute persecution."

30. In relation to the issue of relocation, counsel argued that the first-named Respondent was entitled to find that the Applicant could avoid any problems that she felt were likely to reoccur by relocating to live with her brother and/or mother in Punjab. And that this was a reasonable finding.

Discussion

31. The first issue that strikes this court is the rather tense and hostile description of the Applicant's claim by the first-named Respondent. Everything within it was in the terms of claims that "the Applicant claims". He refers as well to the husband's decision, who he concluded did not meet the profile of an Ahmadi who would be at risk in Pakistan. He also noted that the Applicant "claims she is a devoted Ahmadi, however when she was asked if she had been to the Mosque in Ireland, she claimed that she had not had an opportunity to do so. This interview which took place in November, 2011 and the Applicant had arrived in October 2011." It appears to this court that, when the Applicant arrived with her daughter to Ireland, the first thing that she would have to deal with is adapting to a new culture and

criticising her for not attending the mosque in Ireland, which is not a place that one would expect an Ahmadi to attend, seems to this court unreasonable.

32. The basis of the decision of the first-named Respondent was that the Applicant suffered a certain level of discrimination, but had not suffered discrimination to a serious degree as an exceptional Ahmadi. This has now been disregarded as outdated, and the country of origin information suggests that not only are "exceptional" Ahmadis at risk.

33. The first-named Respondent does say that it is clear from the country of origin information that Ahmadis do suffer "verbal abuse and harassment in Pakistan", but that harassment did not constitute persecution.

34. The opinion of Advocate-General Bot, delivered on the 19th of April, 2012, in the joint cases C-71/11 and C-99/11 *the Federal Republic of Germany v. Y and Z*, at para. 54 states:-

"[54.] In order to determine the actual act of persecution, the authority responsible for examining the application for asylum must therefore examine the nature of the specific situation to which the individual is exposed in his country of origin when exercising his fundamental freedom or infringing the restrictions imposed on the exercise of that freedom in his country of origin."

35. Advocate-General Bot then says that the breach of rights must be particularly severe, such that the person concerned can legitimately no longer live in or tolerate living in his country of origin.

36. At para. 56, he says:-

"Regardless of the form that it takes, and aside from its discriminatory effect, persecution entails the denial of the human person and seeks to exclude that person from society. Persecution is based on prohibition, prohibiting a person from living in society with others on account of his or her gender, prohibiting a person from being treated equally on account of his beliefs, or from having access to health care and education on account of his race."

37. At para. 79, the Advocate-General transposes his reasoning to the situation of the Applicants in the main proceedings. They were Ahmadis from Pakistan, and he states as follows:-

"Since the entry into force of Ordinance XX of 28 April 1984, the law on blasphemy has strengthened Articles 295 and 298-A of the Pakistan Penal Code by introducing the death penalty and the penalty of imprisonment for any individual who, by words, writings, gestures or visible representations, or by making direct or indirect insinuations, insults the sacred name of the prophet Muhammad or the symbols and places associated with Islam. In addition, the code makes it an offence punishable by a term of three years' imprisonment and a fine for any individual member of the Ahmadiyya community who professes his faith in public, or identifies it with Islam, uses it for propaganda, encourages conversions, uses or borrows the epithets, descriptions, titles or greetings associated with the Muslim religion, quotes verses from the Koran in public, adopts practices associated with Islam such as funeral rites, or in any other way outrages Islam."

38. At para. 81, he says:

"[81.] In the light of this information, the criteria set out in Articles 9 and 10 of the Directive are met. The mental element of the act of persecution referred to in Article 10 of the Directive lies in the religious motive, the Ahmadists being, in fact, clearly referred to in some Articles of the Pakistani Penal Code. With regard to the factual element, it forms part of the criminal law, including the penalties.

[82.] It is for the authority responsible for reviewing the application for asylum to verify whether the legislation is actually implemented by the Pakistani authorities on the basis of regular reports issued by the States and by organisations for the protection of human rights. If it is, it can reach the level of persecution."

39. In this court's view, the failure of the first-named Respondent to properly and fully consider the country of origin information which deals with the enforcement of the law of blasphemy in Pakistan is irrational on the facts of this case.

40. Clark J. in *S.R. (Pakistan) v. the Refugee Appeals Tribunal, the Minister for Justice Equality and the Attorney General and Ireland* [2013] I.E.H.C. 26, stated:-

"...the negative tone of the Tribunal decision, the disregard of extensive evidence of well documented, State sponsored anti-Ahmadi legislation and the poor record of the police in either investigating or prosecuting individual acts of violence and property damage directed at Ahmadis were indicative of a decision so lacking in fairness as to be a nullity in law."

41. Whilst the Tribunal decision in this case does not equate to the severe degree set out in the S.R. case, the lack of any real reference to any kind of country of origin information, and particularly to several highly relevant reports furnished by the Applicant, which were clearly capable of supporting the Applicant's assertions of persecution and discrimination against Ahmadi, appears to have been ignored.

42. The court is obliged to determine whether or not a decision is sound in law, and the decision must be based on evidence on an evaluation of the documents put before the decision-maker, including the Notice of Appeal and on consideration of objective country of origin information. This procedure is not apparent in this court's view in this case.

43. The decision of the first-named Respondent on internal relocation again appears to lack a proper analysis of the country of origin information in that, in the country of origin information Punjab is one of the places where the Ahmadis have been particularly persecuted.

44. It is noteworthy that the guidance offered by the U.N.H.C.R. Handbook on Procedures and Criteria for Determining Refugee Status states, at para. 2:-

"[202.] Since the examiner's conclusion on the facts of the case and his personal impression of the applicant will lead to a decision that affects human lives, he must apply the criteria in a spirit of justice and understanding".

This is not apparent in this decision.

45. As this case was a telescoped hearing of a leave application, the court will grant leave to the Applicant and set aside the decision of the first-named Respondent and direct that the appeal be reconsidered by a different member of the Refugee

Appeals Tribunal.

Mel Christle SC and Daniel Donnelly BL

Gary O'Halloran BL Instructed by the Chief State

Instructed by Trayers Solicitors Solicitor

For the Applicants For the Respondents

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