[2020] IEHC 41

THE HIGH COURT

JUDICIAL REVIEW

[2019 No. 306 J.R.]

BETWEEN

M.R. (BANGLADESH)

APPLICANT

AND

THE INTERNATIONAL PROTECTION APPEALS TRIBUNAL AND THE MINISTER FOR JUSTICE AND EQUALITY

RESPONDENTS

JUDGMENT of Mr. Justice Richard Humphreys delivered on the 29th day of January, 2020

1. The applicant lived for years in the UK and never claimed asylum there. When unable to get a renewal of his student permission, he suddenly realised that he was in need of international protection, came to Ireland and immediately on arrival alleged persecution for the first time. He produced, among other things, an incorrect and unreliable medical report. The tribunal records that, by his own admission, the applicant told his mother to tell the doctor what to put in it. He is not now seeking to stand over this document. The tribunal member who saw and heard him found his evidence confusing, inconsistent and vague and, unsurprisingly, rejected the credibility of his core account. He now comes to court raising a snowstorm of legalistic points about that process. That attempt fails. **Facts**
2. The applicant claims to have been born in Bangladesh in 1982. He applied for a UK visa on 29th November, 2010 and was granted a student permission valid from 1st December, 2010 to 30th April, 2014. He left Bangladesh on 3rd January, 2011 for the UK. On the expiry of his student permission, he sought a renewal, but that was refused.

3. He appears to have remained in the UK illegally for a period, then left that country and came to the State on 15th May, 2016. He applied for asylum the following day. The basis for that claim was an alleged dispute with an uncle over land. The applicant claimed that he was subject to threats and violence in that regard.

4. Following the commencement of the International Protection Act, 2015, he formally applied for international protection on 18th July, 2017. The International Protection Office rejected that application on 6th November, 2018. On 15th November, 2018 he submitted a notice of appeal and on 25th April, 2019 the tribunal rejected the appeal and the credibility of core elements of the applicant's account.
5. The present statement of grounds was filed on 20th May, 2019, the primary relief sought being *certiorari* of the IPAT decision. I granted leave on 27th May, 2019, and on 18th November, 2019 allowed an amendment of the statement of grounds to extend the grounds being advanced on behalf of the applicant. I have now received helpful

submissions from Mr. Michael Lynn S.C. (with Mr. James Kane B.L.) for the applicant and from Ms. Emily Farrell B.L. for the respondents.

The inappropriateness of legalistic over-analysis of decisions

6. The proceedings demonstrate a familiar pattern of legalistic micro-analysis of decisions, frequently based on semantic querulousness. One has to view an administrative decision in the round, and not place undue weight on semantic quibbles in respect of micro-sub-elements of it: see *J.B.R. v. Refugee Appeals Tribunal & ors*. [2007] IEHC 288; *O.A.A. v. Minister for Justice, Equality and Law Reform & anor*. [2007] IEHC 169. Particularly in the credibility context, Cooke J. said in *I.R. v. Minister for Justice* [2009] IEHC 510, [2015] 4 I.R. 144 at p. 152: *"…when subjected to judicial review, a decision on credibility must be read as a whole and the court should be wary of attempts to deconstruct an overall conclusion by subjecting its individual parts to isolated examination in disregard of the cumulative impression made upon the decision maker especially where the conclusion takes particular account of the demeanour and reaction of an applicant when testifying in person".*

7. More fundamentally still, any administrative decision enjoys a presumption of validity and should be read in a manner that renders it valid rather than invalid, and that makes sense rather than nonsense: see, for example, Mark de Blacam, *Judicial Review*, 3rd ed., (Dublin, 2017) at p. 113: *"[T]he presumption of validity which attaches to public acts generally … is necessary in the interests of good order and administration", Re Comhaltas Ceoltóirí Éireann* (unreported, High Court, Finlay P., 14th December, 1977); *Campus Oil v. Minister for Industry (No. 2)* [1983] I.R. 88; *The State (Divito) v. Arklow Urban District Council* [1986] I.L.R.M. 123. Listening to some applicants you would be forgiven for thinking that decisions must be read in the most erroneous way possible so that they can get their order of *certiorari*.

The medical reports

8. To explain the applicant's numerous complaints, there are three different medical reports with which we are concerned here:

   (i) A "report" of 18th May, 2016, which is not really a report but rather a summary document regarding health screening for asylum seekers. It is not altogether clear who produced it but it seems to be the medical officer of Balseskin Health Centre. It refers to "PHx [which seems to mean past medical history] knife wound to back of head and left arm" and says this happened in Bangladesh.

   (ii) A mangled report dated 15th February, 2017 is produced from Delta Medical College and Hospital. This is the unreliable report referred to above, and refers to a head injury and a broken hand rather than a cut hand. It also gets the applicant's date of birth wrong. The tribunal says that the applicant himself admitted that he told his mother what to put in it. That specific finding is not challenged in the pleadings, although the applicant seems to have a slightly different version of what

he actually said to the tribunal.

(iii). A "report" from a G.P. in Sligo stating that the applicant has a knife injury to the left side of the neck and reporting his allegations that he was attacked by an uncle. It also notes the applicant's various medical conditions and medications.

Ground 1: benefit of the doubt

9. Ground 1 alleges that "*the first named respondent erred in law in its consideration of the benefit of the doubt principle and its application to the facts of the present case. The first named respondent erroneously stated that 'the benefit of the doubt should only be given where evidence is cogent, the appellant is generally credible and the narrative does not contrary to generally known facts (sic)'. This is not the correct test in law and in particular the statement that the applicant must tender evidence which is cogent is incorrect in law".*

10. The tribunal did not apply the incorrect test. The benefit of the doubt only applies if the applicant's general credibility is established, which was not the case here. That is clear both in s. 28 (7) of the International Protection Act, 2015 and Council Directive 2004/83/EC of 29 April 2004, O.J. L304/12, 30.9.2004; see also, *M.Z. (Pakistan) v. IPAT* [2019] IEHC 125; UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection HCR/1P/4/ENG/REV.4 (Geneva, February 2019), at paras. 196, 203 and 204. Here, the tribunal found that the applicant's general credibility was not established; that his evidence was "*confusing*" (para. 4.3) and "*inconsistent and vague*" (para. 4.8), and that his account was "*fundamentally undermined by his own inconsistent narratives*" (para. 4.4).

11. Reference to cogency is a semantic issue and does not amount to an error of law in this context. It is clear that the tribunal in fact followed the correct test here.

Ground 2: report of a local village chairman

12. Ground 2 alleges that "*the decision of the first named respondent is ultra vires, unreasonable or irrational in failing to consider properly, or at all, the document submitted by the applicant confirming that the local chairman … found the applicant's uncle guilty of an assault on the applicant and which was corroborative of his claim. The first named respondent failed to engage in any consideration of the document, it failed to fulfil its duty in law to carefully consider the document and its contents. Further or in the alternative the first named respondent acted unlawfully in failing to disclose the reasons why this document was rejected and failed to disclose or explain why the document was discounted, dismissed or rejected, or somehow found not to have corroborative effect".*

13. The complaint that the document was not considered falls flat because it is clear from the terms of the decision that it was considered. The tribunal is not generally obliged to engage in narrative discussion. There is no lack of reasons for the ultimate decision, taking the whole tribunal decision in the round. The tribunal member noted that "*the appellant was unable to give a cogent narrative as to how the chairman, the appellant's*

uncle and the appellant's father all interacted with each other" (para 4.3). Having noted the inconsistent accounts offered on behalf of the applicant, the tribunal stated that it did not accept the applicant's evidence on the balance of probabilities, which is the correct standard of proof: see para. 4.4. While there is a shared duty, the process is not one of continuous dialogue with an applicant.

14. A related point is made by Mr. Lynn that the reliability of the document from the chairman should have been specifically assessed and the credibility of the applicant should have been determined in the light of that. He relies on the *obiter* comment from Hogan J. in *R.A. v. Refugee Appeals Tribunal* [2017] IECA 297 at para. 62 that: "*… given the alleged provenance of the documents and their obvious relevance to his claim, if true, it was incumbent in these circumstances on the Tribunal member to assess such documentary evidence – if necessary, by making findings as their authenticity and probative value - so that that very credibility could be assessed by reference to all the relevant available evidence."* The words "*if necessary"* here are crucial and must be taken as referring only to that very limited category of documents that are capable of definite forensic objective verification, entirely independently of the personal credibility of the individual producing them. If, contrary to my reading, Hogan J.'s *obiter* comment has the meaning that the credibility of documents can or should be more generally separated from the credibility of a person producing the document, I would have to respectfully conclude that that cannot be correct, apart, as I say, from cases, exceptional to vanishing point in the asylum context, where the document can be independently forensically validated. Leaving aside such extremely unusual cases, the credibility of any other document cannot be separated from the credibility of the person producing it. It would be an impossibility, and therefore an absurdity, to require a decision maker to make a final assessment on the reliability of a document prior to considering the reliability of the person producing it.

Ground 3: the applicant's lack of credibility

15. This ground alleges that "*the first named respondent's finding that the appellant gave an inconsistent and confusing narrative, and one which lacked cogency, around the manner in which the appellant's uncle interacted with the chairman is unreasonable and irrational. Further or in the alternative, the first named respondent erred in law and acted ultra vires in importing a standard of proof of 'cogency' to this aspect of the applicant's case*". This point is dealt with above. The tribunal member saw and heard the applicant and is best placed to decide on his credibility. His decision in that regard is not irrational or unlawful.

Ground 4: treatment of medical report of February 2017

16. This ground alleges that "*the first named respondent acted unlawfully, unreasonably or irrationally in its treatment of the medical report dated 15th February, 2017 and in finding that the applicant was not generally credible as he provided an unreliable medical report in support of his claim"*. Unfortunately for the applicant, that aspect of the decision is totally reasonable and was entirely open to the tribunal. Dictating an incorrect medical directly or indirectly to a doctor, producing it and then only accounting for it when cross-examined *does* undermine your credibility, as does producing any document found not to

be reliable. Insofar as any alleged ambiguity in the tribunal decision goes, it is entirely clear that the medical report which was rejected by the tribunal as unreliable was the one dated 15th February, 2017 because the date is given at para. 2.4 at the outset of the discussion.

Ground 5: benefit of the doubt revisited

17. This ground alleges that "*the first named respondent acted unreasonably and irrationally in failing to extend the benefit of the doubt to the applicant's claim"*. It is not clear what if anything this adds to Ground 1 but in any event the applicant's submission under this heading again misunderstands the circumstances in which the benefit of the doubt applies. Those circumstances do not include the ones applying to the applicant's case because his credibility was not generally accepted, so the principle was not misapplied here.

Ground 6: failure to lawfully consider the medical documentation of 2016 and March 2017

18. Ground 6 alleges that "*the first named respondent acted ultra vires in failing to consider properly, or at all, (a) the medical report dated 14th March, 2017 by Dr. Zacharia or (b) the record of health screening for asylum seekers in Dublin centres dated 18th May, 2016 or (c) both".*

19. There was much emphasis in oral submissions on the tribunal having said at para. 2.2 of the decision that the medical documentation was "*considered not material*". Ms. Farrell's explanation for that comment was that (a) the medical documentation was not in fact relevant (b) in any event, the documentation provided no real support for the applicant's account and (c) the documentation was not consistent with what the applicant's actual scars were.

20. There is a great deal of unreality to the legalistic point made by the applicant under this heading. The fundamental problem for the applicant is that the tribunal member saw the actual scars: see para. 4.5. That is a much more direct form of knowledge of the injury than just reading a bare medical document about it that doesn't say much more than that there is a scar. You don't even need to be a doctor to be able to say that much. The tribunal member noted that these were small scars. Under those circumstances, there is no error, still less an error warranting my deeming the decision to be unlawful and a nullity, deserving of being quashed. Calling these documents "*medical reports"* also has an element of overstatement. A piece of paper signed by a doctor saying that the applicant has a knife wound is of very limited help. These documents do not say how the doctors knew that the scars were caused by a knife, as opposed to by any other method, and the clear inference is that they referred to a knife because that is what the applicant told the doctors concerned. In the screening report the injury gets only a passing reference. In the G.P. report it is allegedly certified but on its face that has very limited value. How does the G.P. know that the scar was caused by a knife in an incident that took place many years before? There is no attempt at forensic analysis, no statement of

even how large the scar is or of any features of it. It is simply a bland assertion, virtually worthless in the context we are talking about here, especially where the tribunal saw the scars for itself.

21. The tribunal did not err in law or in fact in calling the medical documentation not material. So the applicant has a couple of small scars - so what? Even if one was determined to find fault with the phrase that the medical documentation is "*not material",* judicial review is not a process for quashing decisions based on every possible infelicity or semantic quibble. It is clear where the centre of gravity of the tribunal's consideration lies. It considered all matters, saw and heard the applicant, saw his scars with its own eyes and did not find his account credible. Asylum judicial review is not a game where the respondents can score as many goals as they like, but if the applicant scores one goal, the game is over. The court must make a balanced and reasonable assessment of the overall sustainability of a decision, even if, counterfactually in the present case, there is an argument for saying that limited parts of it are arguably sub-optimal. One must take the decision in the round: see *M.Z. (Pakistan) v. IPAT* [2019] IEHC 125. In the context of medical reports specifically, the point was made in *H.E. (DRC)* [2004] UKIAT 321, where Ouseley J. at para. 17, said that "*rather than offering significant separate support for the claim, a conclusion as to mere consistency generally only has the effect of not negating the claim*."

22. Some reliance was placed on the judgment of Barrett J. in *B. v. IPAT* [2019] IEHC 767 at para. 2(2)(c), but that deals with a different situation, the difference being between what (medically) caused the trauma claimed by the applicant and the circumstances in which that trauma was allegedly inflicted. Calling a medical report "*expert opinion*" and saying that there was no suggestion it "*would be anything less than an entirely professional report from a known and reputable source" (B. v. IPAT* at para. 2) does not in itself add anything to the credibility of an applicant's account. The point remains that a medical report can establish that an account could be true, but it does not establish who caused the injury or in what circumstances, as correctly stated by the tribunal member in the decision quashed by Barrett J. in *B. v. IPAT*.

Ground 7: alleged error in failing to state which medical report is unreliable where the applicant's credibility was condemned.

23. Ground 7 alleges that *"if the first named respondent did in fact have regard to the medical report dated 14th March, 2017 of Dr. Zacharia, which for the avoidance of doubt it is the applicant's case that he did not, the decision maker acted ultra vires, irrationally and in breach of the duty to furnish reasons in failing to state which medical report was deemed to be 'unreliable' when the applicant's general credibility was condemned*". As noted above, that is a misconceived criticism of the decision. It is clear that it was the February 2017 document that is unreliable as the date is referred to in para. 4.2.

Ground 8: allegation that the tribunal acted unlawfully in failing to advert to country information.

24. This ground alleges that "*the first named respondent acted unreasonably or otherwise unlawfully in failing to advert to relevant country of origin information submitted concerning land disputes in Bangladesh or failing to consider the applicant's accounts in light of that country of origin information and the first named respondent's conclusion that the applicant's case was not strengthened by COI is irrational and unsupported by reasons".* The applicant's case here makes the classic, and at this stage fairly tedious, schoolboy error of confusing a lack of narrative consideration with a lack of lawful consideration. It does not take on board the well-established Supreme Court jurisprudence in *G.K. v. Minister for Justice, Equality and Law Reform,* [2002] 2 I.R. 418 per Hardiman J. See also *F.Z. (Pakistan) v. Minister for Justice and Equality* [2019] IEHC 368, the relevant part of which is, for what it's worth, also referred to at para. 12 of the Supreme Court determination in that case, *F.Z. v. Minister for Justice and Equality* [2019] IESCDET 234. The essential distinction was made by Clarke J., as he then was, in *Rawson v. Minister for Defence* [2012] IESC 26 at para. 6.9 where he referred to the need for a "*reasoned but not discursive ruling".*

25. As correctly put by Ms. Farrell in her written legal submissions "*the Tribunal did not reject the country of origin information. The country of origin information was incapable of informing that the personal credibility of the applicant regarding the alleged threats and violence stated to have been suffered by him [sic]*". The applicant's submission under this heading is totally misconceived. One can say after a certain amount of exposure to applicants' accounts that a significant number of applicants have unfortunately constructed their stories around publicly-known country of origin information, presumably in the belief that these "objective" elements will bolster their credibility. The fact that the applicant's story is consistent with country of origin information does not *support* the story as such; it merely removes a negative. I might add that the same goes for consistency (even though that element is missing in this case) – telling a consistent story does not make it true, rather it removes an objection. Neither self-corroboration nor consistency with country information amounts to "support" for a claim.

Order

26. The application is dismissed.