

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150127

Docket: A-142-14

Citation: 2015 FCA 22

**CORAM: RYER J.A.
WEBB J.A.
BOIVIN J.A.**

BETWEEN:

SATHEESKARAN PRASAD

Appellant

and

**THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT AND
MINISTER OF MULTICULTURALISM, AND ATTORNEY GENERAL OF CANADA**

Respondents

Heard at Toronto, Ontario, on Tuesday, January 27, 2015.

Judgment delivered from the Bench at Toronto, Ontario, on January 27, 2015.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20150127

Docket: A-142-14

Citation: 2015 FCA 22

**CORAM: RYER J.A.
WEBB J.A.
BOIVIN J.A.**

BETWEEN:

SATHEESKARAN PRASAD

Appellant

and

**THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT AND
MINISTER OF MULTICULTURALISM, AND ATTORNEY GENERAL OF CANADA**

Respondents

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 27, 2015).

RYER J.A.

[1] This is an appeal from an order of Hughes, J. (the “Judge”) of the Federal Court (Docket T-1706-13) granting the Respondent’s Motion to Strike Out Mr. Prasad’s Notice of Application and dismiss application T-1706-3 (“the Application”).

[2] The Application arose in connection with a decision of the Employment Insurance Commission (the “Commission”) to impose an \$8,000 administrative penalty on Mr. Prasad, pursuant to paragraph 39(1) (a) of the *Employment Insurance Act*, S.C. 1996, c. 23 (“the Act”), on the basis that he had made false or misleading representations by issuing two fraudulent records of employment regarding RATNA IT CONSULTANCY INC.

[3] Rather than pursuing his right to have the Commission reconsider the imposition of this penalty, on the basis permitted by section 112 of the Act, Mr. Prasad filed the Application in which he asked the Federal Court for:

- a) a declaration that:
 - i) the Commission’s official’s decision is a perverse and capricious one based on no evidence;
 - ii) the Commission’s officials are engaging in abuse of process and misfeasance in public office;
 - iii) the decision is wrong in fact and law;
 - iv) the decision is void, *ab initio*, in its complete failure to provide reasons in accordance with, *inter alia*, the Supreme Court of Canada’s decision in *Baker v. Minister of Citizenship and Immigration*, [1999] 2 S.C.R. 819;

- b) an order (in the nature) of *certiorari* quashing the decision issued, dated September 26th, 2013;
- c) an order (in the nature) of *prohibition*, prohibiting the Commission's officials from taking any collection action on the \$8,000 until the within Application has been disposed of by the Federal Court;
- d) solicitor-client costs of the Application and such further relief as counsel may advise and the Federal Court grant.

[4] In response, the Respondents brought a motion to strike on the basis that the Application was bereft of any possibility of success because Mr. Prasad had failed to pursue the remedies provided in the Act.

[5] The Judge exercised his discretion and dismissed the Application, essentially stating that Mr. Prasad had not exhausted his remedies under the Act and that the allegation of bias was premature.

[6] This Court can only interfere with the Judge's discretionary decision if he proceeded on a wrong principle of law, gave insufficient weight to relevant factors, misapprehended the facts or where an obvious injustice would otherwise result (See *Apotex Inc. v. Canada (Governor in Council)*, 2007 FCA 374 at para 15).

[7] The Appellant asserts that the Judge's decision should be set aside because it lacks reasons and is unintelligible. While it would have been preferable if the Judge's reasons had been more fulsome, they are nonetheless sufficient for us to discern the basis upon which made his decision.

[8] The jurisprudence of this Court is clear that where Parliament has established an administrative process for the adjudication of disputes, in absence of any special circumstances, it should be followed before resort may be had to the courts by way of judicial review: see *Bonamy v. The Attorney General of Canada*, 2009 FCA 156, *The President of the Canada Border Services Agency and the Attorney General of Canada v. C.B. Powell Limited*, 2010 FCA 61 ("*C.B. Powell Limited*").

[9] The Act contains a comprehensive legislative scheme which may be used to challenge the imposition of an administrative penalty under paragraph 39(1)(a) of the Act, such as that imposed upon Mr. Prasad. These include the right under section 112 of the Act to a reconsideration of a decision of the Commission and the right under section 113 of the Act to appeal a reconsideration decision to the Social Security Tribunal established under section 44 of the *Department of Human Resources and Skills Development Act*.

[10] In the circumstances of this appeal, we are of the view that Mr. Prasad's failure to follow these procedures provides a complete justification for the Judge's decision. Moreover, Mr. Prasad has not convinced us that there are any circumstances that would meet the high threshold

for exceptional circumstances that are necessary in order to permit early recourse to the courts (See *C.B. Powell Limited* at para 33).

[11] With respect to the issues of bias, malfeasance of public office and abuse of process, the record contains little more than the assertions of counsel for the Appellant. Moreover, these are matters that could have been put forward before the Commission in a section 112 reconsideration and thereafter the Social Security Tribunal in a section 113 appeal.

[12] With respect to the issue of whether the activities of the Commission's officials prior to the imposition of the administrative penalty constitute a criminal investigation, it is sufficient to note that by virtue of subsection 135(2) of the Act, the imposition of an administrative penalty under subsection 39 of the Act precludes the possibility of any prosecution under subsection 135(1) of the Act. As a consequence, the imposition of the administrative penalty on Mr. Prasad under paragraph 39(1)(a) of the Act effectively establishes that the impugned activities could not lead to a prosecution of Mr. Prasad under the Act.

[13] Whether or not the impugned activities on the part of the Commission's officials in fact included any sharing of information with the RCMP is not a matter of concern to this Court. If any such sharing occurred, it will be open to Mr. Prasad to seek redress in another forum. The possibility that such sharing may have occurred is irrelevant to, and no bar to the imposition of, the administrative penalty that was imposed on Mr. Prasad under the Act.

[14] In conclusion, for the reasons given, we are unpersuaded that the Judge, in granting his discretionary order, made any error that would warrant our intervention. Although the Judge's order states that "This application is dismissed", in the context of dealing with the Respondents Motion to Strike Out Mr. Prasad's Application, it is clear to us that he was striking out the Application. Accordingly, the appeal will be dismissed without costs.

"C. Michael Ryer"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-142-14

APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE HUGHES OF THE FEDERAL COURT DATED FEBRUARY 18, 2014, IN DOCKET NO. T-1706-13.

STYLE OF CAUSE: SATHEESKARAN PRASAD v.
THE MINISTER OF
EMPLOYMENT AND SOCIAL
DEVELOPMENT AND MINISTER
OF MULTICULTURALISM, AND
ATTORNEY GENERAL OF
CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 27, 2015

REASONS FOR JUDGMENT OF THE COURT BY: RYER J.A.
WEBB J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

Rocco Galati FOR THE APPELLANT

Derek Edwards FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Rocco Galati Law Firm FOR THE APPELLANT
Professional Corporation
Toronto, ON

William F. Pentney FOR THE RESPONDENTS
Deputy Attorney General of Canada