

**SUPREME COURT OF SEYCHELLES**

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**Reportable**

[2023] SCSC 683

MC27/2023

In the matter between:

**PRAVIN DARAD**

*(rep. by B. Hoareau)*

**Petitioner**

and

**MINISTER OF EMPLOYMENT AND SOCIAL AFFAIRS**

*(unrepresented)*

**1<sup>st</sup> Respondent**

**ALLIED BUILDERS (SEYCHELLES) LIMITED**

*(unrepresented)*

**2<sup>nd</sup> Respondent**

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**Neutral Citation:** *Darad v Minister of Employment & Social Affairs & Anor* (MC27/2023)  
[2023] SCSC 683 (13 September 2023).

**Before:** E. Carolus J

**Summary:** Application for leave to proceed with application for Judicial Review

**Delivered:** 13 September 2023

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**ORDER**

Leave to proceed with petition for Judicial Review is granted.

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**RULING**

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**E. Carolus, J**

[1] The petitioner has petitioned this Court for judicial review of a decision of the Minister of Employment and Social Affairs (“the Minister”) made on 25<sup>th</sup> February 2023. The petition is supported by an affidavit sworn by Pandya Vijaykumar Vasantvihari on behalf of the petitioner by virtue of a specific power of attorney dated 4<sup>th</sup> November 2021 as the petitioner’s agent and attorney-in-fact for the specific purpose of swearing on his behalf

any necessary affidavit in respect of any litigation that he is party to, before any court in Seychelles. A copy of the power of attorney which is certified by Notary Elvis Chetty to be a true copy of the original is exhibited to the affidavit, as are certified copies of the decision sought to be canvassed and other documents material to the petition.

- [2] The events giving rise to the order as averred in the petition are as follows: The petitioner, a Seychellois national who was an employee of Allied Builders (Seychelles) Limited (“Allied Builders”) initiated the grievance procedure against the latter, outside the time prescribed under the Employment Act (“the Act”). The Competent Officer allowed the petitioner’s application for the registration of the grievance procedure out of time, in the exercise of the Competent Officer’s discretion granted under the Act. Allied Builders appealed to the Minister against the decision of the Competent Officer to allow the petitioner’s application for the registration of the grievance procedure out of time. The Minister, in accordance with the Act, consulted the Employment Advisory Board, which heard arguments in respect of the appeal. The petitioner advanced arguments that the appeal had not been lodged by Allied Builders within 14 days after the decision of the Competent Officer and was therefore out of time and ought to be dismissed. The Minister in allowing the appeal and reversing the decision of the Competent Officer to allow the registration of the petitioner’s grievance out of time, came to the following decision on 25<sup>th</sup> February 2023:

*... in respect of the issue of the appeal having been lodged out of time raised by the Respondent’s Representative, section 18(1) of the COA Rules establishes the deadline for appeal. Section 2(1) of the of the COA Rules states, “ court day” means any day other than a Saturday, Sunday or Public Holidays. And further section 2(2)(3) of the Rules states, In the computation of time – “days” means court days and same principle would apply to the Employment Act too, hence [the Minister] is satisfied that the appeal was lodged within time.*

- [3] The grounds for review as stated in the petition are as follows:

**Illegality/Ultra Vires**

8. *It is averred and contested that the decision of the 1<sup>st</sup> Respondent is illegal and/ or ultra vires in that-*

**Particulars of Illegality and / or ultra vires**

- 8.1 *In coming to the decision the 1<sup>st</sup> Respondent relied on the provision of the Seychelles Court of Appeal Rules, which was not applicable and relevant to the appeal for the purpose of the Act;*
- 8.2 *The 1<sup>st</sup> Respondent failed to apply and rely on the relevant and applicable provision of the law, namely the Interpretation and General Provisions Act;*
- 8.3 *The 1<sup>st</sup> Respondent ought to have held that the appeal had been lodged out of time and ought to have dismissed the appeal on the ground; and*
- 8.4 *on the basis of all the above, the 1<sup>st</sup> Respondent ought to have dismissed the appeal.*

**Irrationally/ unreasonableness**

9. *Further or in the alternative to paragraph 8 of the Petition, the Petitioner avers and contends that the decision of the 1<sup>st</sup> Respondent – as set out in paragraph 7 of the Petition – is irrational and/ or so unreasonable and that no reasonable tribunal or authority would have come to such a finding and decision, in that –*

**Particulars of Irrationally and Unreasonableness**

- 9.1 *there was no evidence or facts laid before the 1<sup>st</sup> Respondent upon which the Respondent could have come to the finding and decision; and/ or*
- 9.2 *further or in the alternative to paragraph (i) above, the 1<sup>st</sup> Respondent took irrelevant matters into consideration and/ or failed to take in consideration relevant matters, in coming to the findings and decisions.*

[4] In terms of the petition, the petitioner prays the Court to:

- (i) *grant leave to the Petitioner to proceed with the Petition in accordance with Rules 5 and 6 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals ad Adjudicating Authorities) Rules;*
- (ii) *after hearing the petition, issue a writ of certiorari quashing the decision of the Respondent; and/or*
- (iii) *order the Respondent to pay costs to the Petitioner.*

[5] At this stage, the Court has to decide whether or not to grant leave to the petitioner to proceed with the petition. Rule 6 of the Supreme Court (Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudicating Authorities) Rules, 1995 (“the Rules”) provides that in order for the Court to grant leave to proceed, it must be satisfied that the petitioner has sufficient interest in the subject matter of the petition and that the petition is made in good faith.

[6] The petitioner is directly affected by the decision of the Minister in that it prevents him from proceeding with the grievance procedure. Therefore, in my view, he has sufficient interest in the subject matter of the petition.

[7] The second matter which the Court has to be satisfied is that the petition is made in good faith. In order to show good faith, the petitioner has to show that it has an arguable case on the basis of the material available to the Court that is, the petition, affidavits and other documents submitted. In *Karunakaran v Constitutional Appointment Authority* [2017] SCCA 9, the Court stated at paragraph [34] that:

*“...Once an applicant shows that he has sufficient interest, the application passes the first test. The second test is that the application should be made in good faith. The applicant should show by his affidavit and the materials he has attached thereto that the case he makes on the material produced is a genuine case as opposed to a frivolous one. Our law uses the word "good faith" just like many other comparable jurisdictions. When addressing good faith, the applicant should show that the issue/s he raises in his application is/are arguable. ... The ripeness doctrine holds that a case is justiciable if the harm asserted has matured sufficiently to warrant judicial intervention: see *Warth v Selding* 422 U.S 490 1975.”*

[8] On a reading of the petition, I note that the petitioner has provided grounds for judicial review which are mainly the illegality and irrationality/unreasonableness on the part of the Minister. It is the view of this Court the issues raised are arguable, in particular in

regards to the illegality of the Minister's decision for not applied the correct provision of the law.

[9] I note that the petition also complies with rules 2, 3 and 4 of the Rules.

[10] Accordingly I grant leave to the petitioner to proceed with his petition for Judicial Review and I make the following Orders:

- (i) I direct the Registrar to serve a copy of the petition, supporting affidavit and connected documents and exhibits on the 1<sup>st</sup> respondent.
- (ii) The Ministry of Employment and Social Affairs is directed to forward the record in respect of the decision of the 1<sup>st</sup> respondent canvassed in the petition, to the Registry of the Supreme Court not later than 14 days after the date of this Order.
- (iii) I direct the Registrar upon receipt of the record referred to at subparagraph [9](ii) above, from the Ministry of Employment and Social Affairs, to allow the parties to peruse it and obtain copies thereof.
- (iv) The respondents are to file their objections to the petition in the Registry of the Supreme Court on or before the next mention date and serve a copy thereof on the petitioner.

[11] A copy of this Ruling is to be served on the respondents.

Signed, dated and delivered at Ile du Port on 13<sup>th</sup> September 2023

**E. Carolus**