Federal Court of Australia

Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2020] FCA 1725

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| Appeal from: | *Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 774 |
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| File number: | SAD 98 of 2020 |
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| Judgment of: | **WHITE J** |
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| Date of judgment: | 17 November 2020 |
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| Catchwords: | **PRACTICE AND PROCEDURE** – jurisdiction of the Court under s 24 of the *Federal Court of Australia Act 1976* (Cth) – objection to the competency of the appeal – the Court’s jurisdiction to determine an appeal against a judgment delivered in its appellate jurisdiction – appeal dismissed. |
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| Legislation: | *Federal Court of Australia Act* *1976* (Cth) by s 24, 25(1AA)  *Migration Act* *1958* (Cth) ss 362B(1A), 362B(1B)  *Federal Court Rules* *2011* (Cth) rr 36.01(1), 36.72  *Migration Regulations* *1994* (Cth) cl 485.223, Sch 2 |
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| Cases cited: | *Griffiths v The Minister for Immigration and Border Protection* [2018] FCA 1438  *Singh v Minister for Immigration & Anor* [2019] FCCA 2862 |
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| Division: | General Division |
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| Registry: | South Australia |
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| National Practice Area: | Administrative and Constitutional Law and Human Rights |
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| Number of paragraphs: | 19 |
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| Date of hearing: | 17 November 2020 |
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| Counsel for the Appellant: | The Appellant appeared in person |
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| Counsel for the First Respondent: | Mr S Cummings |
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| Solicitor for the First Respondent: | Sparke Helmore |
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| Counsel for the Second Respondent: | The Second Respondent filed a submitting notice, save as to costs |

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| **Table of Corrections** |  |
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| 2 December 2020 | In the Appeal from field on the cover page, the decision “*Singh v Minister for Immigration & Anor* [2019] FCCA 2862” is amended to “*Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 774”. |

ORDERS

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|  | | SAD 98 of 2020 |
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| BETWEEN: | CHARANPREET SINGH  Appellant | |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| order made by: | WHITE J |
| DATE OF ORDER: | 17 NOVEMBER 2020 |

THE COURT ORDERS THAT:

1. The appeal is dismissed.
2. The Appellant is to pay the costs of the First Respondent of an incidental to the appeal fixed in the sum of $1500.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

EX TEMPORE REASONS FOR JUDGMENT

WHITE J:

1. This is a judgment on an objection to the competency of an appeal.
2. The appellant is a national of India who completed a Master of Engineering degree at the University of South Australia in 2016. The degree was conferred on 9 August 2016.
3. On 23 September 2016, the appellant applied for a Skilled (Provisional) (Class VC), Subclass 485 (Temporary Graduate) Visa. One of the prescribed criteria for the grant of such a visa specified in cl 485.223 of Sch 2 the *Migration Regulations* *1994* (Cth) was that the application be accompanied by evidence that the appellant “had applied for an assessment of [his] skills for the nominated skilled occupation by a relevant assessing authority”.
4. A delegate of the Minister refused the application for the visa on the basis that the appellant had not satisfied the cl 485.223 criteria.
5. The appellant then applied to the Administrative Appeals Tribunal (the Tribunal) for review of the delegate’s decision. However, the appellant did not attend a scheduled telephone hearing in the Tribunal on 15 May 2017. In that circumstance, the Tribunal, acting pursuant to s 362B(1A)(b) of the *Migration Act* *1958* (Cth) (the Act), dismissed the application without further consideration of it.
6. The appellant then applied, pursuant to s 362B(1B) of the Act, for reinstatement of his application, but the Tribunal confirmed its decision. It did so because it did not consider that the appellant had provided a reasonable explanation for not attending the telephone hearing on 15 May 2017 and because of the indications that the appellant had not, in any event, complied with cl 485.223.
7. The appellant’s application to the Federal Circuit Court (the FCC) for judicial review of the Tribunal’s decision was unsuccessful: *Singh v Minister for Immigration & Anor* [2019] FCCA 2862. The appellant then lodged a notice of appeal to this Court against the orders of the FCC.
8. The jurisdiction of this Court to hear and determine that appeal was that conferred by s 24(1)(d) of the *Federal Court of Australia Act* *1976* (Cth) (the FCA Act). Pursuant to s 25(1AA) of the FCA Act*,* the Court was constituted for the hearing of the appeal by a single judge (Rangiah J).
9. On 10 June 2020, Rangiah J delivered judgment dismissing the appeal: *Singh v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 774.
10. The appellant had represented himself in the FCC and on the appeal before Rangiah J.
11. On 6 July 2020, the appellant (still representing himself) filed in the Court a Notice of Appeal against the orders of Rangiah J. The Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs (the Minister) is the first respondent to the appeal. The second respondent is the Tribunal. It has filed a submitting appearance.
12. The Notice of Appeal, which is in the form prescribed by r 36.01(1)(c) of the *Federal Court Rules* *2011* (Cth) (the FCR), contains eight grounds and indicates that the appellant seeks the setting aside of the orders made by Rangiah J on 10 June 2020.
13. On 8 July 2020, the Minister filed, pursuant to r 36.72 of the FCR, a notice of objection to the competency of the appellant’s appeal. The Minister contends that the appeal is incompetent because this Court does not have jurisdiction to hear and determine an appeal from a decision of the Court constituted by a single judge exercising the appellate jurisdiction of the Court.
14. That submission is correct. Section 24 of the FCA Act which bestows (relevantly) the jurisdiction of the Court with respect to appeals, does not vest jurisdiction in this Court to hear and determine appeals against judgments of the Court delivered in its appellate jurisdiction. An appeal against the orders of Rangiah J made on 10 June 2020 can be pursued only by way of an application for special leave to appeal to the High Court of Australia.
15. The circumstances of this case are similar to those discussed in *Griffiths v The Minister for Immigration and Border Protection* [2018] FCA 1438, to which counsel for the Minister referred in the outline of submissions and to which I referred the appellant in the course of the hearing.
16. In his submissions today, the appellant stated that he commenced the appeal against the decision of Rangiah J in this Court in reliance on what he had been told by a member of the Court’s Registry staff. He said that he has an email confirming what he had been told. I have explained to the appellant that the statements by a member of the Registry staff cannot alter the jurisdiction of this Court, which is specified by an Act of Parliament, in this case the FCA Act.
17. I have also explained to the appellant that it is possible (I have emphasised that it was no more than possible), that if the High Court was satisfied that he had, by reason of something he was told by a member of this Court’s Registry, been distracted from commencing an application for special leave in the High Court within time, it *may* take that into account on an application for an extension of time. I informed him that whether or not the High Court would do so is solely a matter for that Court. However, that is not a matter which can influence the question of whether or not this Court has jurisdiction.
18. For the reasons I have already given, I am satisfied that this Court does not have jurisdiction to hear and determine the appellant’s proposed appeal against the orders of Rangiah J. His appeal is incompetent and must accordingly be dismissed. I will make an order to that effect.
19. I mention that following the delivery of this *ex tempore* judgment, the applicant provided to my Chambers a copy of the email to which he had referred. That seemed to provide some support for the applicant’s account of what he had been told by a Registry staff member.

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| I certify that the preceding nineteen (19) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice White. |

Associate:

Dated: 1 December 2020