Transurban City Link Ltd v Allan
Federal Court of Australia, Full Court, 30 August, 10 December 1999
(2000) 168 ALR 687

Practice and procedure — standing — Whether applicant 'a person who is affected' by reviewable decision — Change of circumstances — Whether question of standing must be considered both at time of application and at time of hearing — Development Allowance Authority Act 1992 (Cth), ss 93O, 119

The Development Allowance Authority ('DAA') issued certificates in relation to tax incentives for the Melbourne City Link Project ('the project'), and the respondent (Allan) requested that the issue be reconsidered. Allan lived close to one of the project's proposed construction sites, and claimed that he would suffer damage if it proceeded. The DAA declined to reconsider its decision because Allan was not 'a person who is affected' by the decision to issue the certificates.

Allan applied to the AAT for review of the DAA's decision. The AAT also decided that Allan did not have standing, and a similar result was reached by the Federal Court at first instance. The Full Federal Court unanimously reversed the first instance decision. It held that, if a person would suffer special damage because of a decision, then he or she has standing. The matter was remitted to the AAT to make further factual findings.

By the time of the hearing, Allan had sold his house and moved to one that would not be affected by the project. On the rehearing of the matter, the AAT held that standing had to be established by reference to any change of circumstance between application and hearing and that Allan's changed circumstances deprived him of standing.

On appeal to the Federal Court, the primary judge set aside that decision, on the basis that:

- there exists an 'accrued right' to have it reconsidered; and
- the accrued right continues to exist even if circumstances change, and whether or not an applicant can still be advantaged or disadvantaged by the outcome.

Before the Full Federal Court, Transurban argued that the Court should reconsider and overrule the previous Full Court decision. Transurban argued that standing should, if circumstances changed, be considered both at the time of application *and* at the time of hearing. Finally, Transurban argued that Allan's change of circumstances meant that the application should be dismissed as frivolous or vexatious.

On the issue of reconsidering previous decisions, the judges said that:

> It is not in doubt that a Full Court of this court has power to decline to follow the previous decision of the differently constituted Full

> Court.... [However] Decisions of a Full Court of this court are entitled to due respect and will not be lightly departed from.

The Court took the view that there were 'some unusual features' in this case that provided a sufficient reason for the Court to reconsider its earlier decision.

The Court considered the matter of standing. It reviewed the general law tests of standing, referring to *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493, *Onus v Alcoa of Australia Ltd* (1981) 149 CLR 27, *Shop Distributive and Allied Employees Association v Minister for Industrial Affairs (SA)* (1995) 183 CLR 552 and *Bateman's Bay Local Aboriginal Land Council v Aboriginal Community Benefit Fund Pty Ltd* (1998) 194 CLR 247.

The Full Court noted that the *Administrative Appeals Tribunal Act 1975* requires only that an applicant be 'a person affected by the decision under review'. The Court considered how this test had been applied and explained in the cases referred to above. In particular, the Court referred to the judgment of Gibbs J (as he then was) in *Australian Conservation Foundation Inc v Commonwealth* (at page 530), and his explanation of the nature of a 'special interest':

> A person is not interested within the meaning of the rule, unless he is likely to gain some advantage other than the satisfaction of righting a wrong, upholding a principle or winning a contest, if his action succeeds or to suffer some disadvantage, other than a sense of grievance or a debt for costs if his action fails.

The Court noted that:

> It is inherent in the submissions on behalf of [the respondent] that... the question of special interest is to be determined without reference to the relationship between the interest of the applicant on the one hand and the relief which review of the decision complained of would, if successful, afford on the other. It would, to say the least, be somewhat strange if this were the case.

It was held that the question of standing must be:

> determined by reference to the interest which the applicant has in the decision which is under review. It is to be determined by reference to the nature and subject matter of the review and the relationship which the applicant individually or a representative body may have to it. An interest in the outcome of the review may give standing. But there will be no standing where the actual outcome of the review will not affect the applicant.

On whether standing should be considered only at the time of application, the Full Court held that:

> It would be strange if, circumstances having changed, the tribunal would be required to conduct a review where at the time an application was made to it, the interest the person had at the time the decision was made and first challenged had disappeared. The more logical construction of s 27 of the AAT Act is that the question of standing would have to be tested at the time the application is made to the tribunal, so that if there is a change of circumstances there is no accrued right which requires the tribunal to disregard that change of circumstances.

The Full Court held that, in any event, the changed circumstances deprived Allan of standing.

The appeal was allowed.

Paramananthan v Minister for Immigration and Multicultural Affairs Minister for Immigration and Multicultural Affairs v Sivarasa Federal Court of Australia, Full Court, 21 December 1998 (1999) 160 ALR 24

Migration—substantial identical passage in Refugee Review Tribunal's Reasons for Decision in both cases—arrest, detention and interrogation of Tamils from particular areas in Sri Lanka—subsequent torture in detention—Tribunal's approach of distinguishing between detention of such persons and what happened to them in detention—error of law arising from approach taken—failure to address claims made in a recent report supplied to Tribunal

This case involved two appeals to the full Federal Court, one by Mr Paramananthan and one by the Minister for Immigration and Multicultural Affairs. The two cases were very similar. In each case, the applicant for refugee status had claimed that on a number of occasions he was apprehended by the security forces, detained, beaten, tortured and interrogated. In each case, the RRT accepted his claims. In each case, the member (the same in each case) said she had reservations about whether the applicant suffered mistreatment to the extent alleged (she did not say why) but "in the absence of contrary evidence", she was "prepared to give him the benefit of the doubt". However, in each case the RRT determined that there was no real chance of persecution if the applicant was returned to Sri Lanka. The two stated reasons were:

- "there is no suggestion that such mistreatment was directed in a discriminatory way towards any particular group such as young Tamil males"; and

- the recent improvement in human rights referred to in the Amnesty 1996 report on Sri Lanka.

All three judges in this case considered that both cases should be remitted to the RRT for redetermination because the RRT had erred in determining that the fear of the applicant was not "well founded".