

Date: 20090223

Docket: IMM-2854-08

Citation: 2009 FC 187

Ottawa, Ontario, February 23, 2009

PRESENT: The Honourable Mr. Justice Shore

BETWEEN:

MANJEET SINGH MULTANI

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] It is clear from reading the Board's reasons for decision as a whole that they are "proper, adequate and intelligible" (*Syed v. Canada (Minister of Employment and Immigration)* (1994), 83 F.T.R. 283, 50 A.C.W.S. (3d) 473). The reasons clearly show that the Board analyzed the causes of the applicant's fear but found that the evidence in the record failed to prove that he would be at risk should he return to India.

[2] In *Liang v. Canada (Minister of Citizenship and Immigration)*, 2003 FC 1501, 128 A.C.W.S. (3d) 139, at paragraph 42, Justice Carolyn Layden-Stevenson explained the duty to

provide reasons for a decision: “[T]he reasons are not to be read microscopically and held to a standard of perfection. They must be read as a whole . . .”.

II. Judicial proceedings

[3] This is an application for judicial review of a decision of the Refugee Protection Division of the Immigration and Refugee Board (Board) dated May 16, 2008, where the Board determined that the applicant was not a “Convention refugee” or a “person in need of protection” within the meaning of sections 96 and 97 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA).

III. Facts

[4] The applicant, Manjeet Singh Multani, was born in 1984 and is a citizen of India, where he lived in the village of Khatti, Kapurthala District, Punjab State. He is a member of the Shiromani Akali Dal (Badal) political party in the Kapurthala District. The Shiromani Akali Dal (Badal) political party is led by Prakash Singh Badal and is the main political organization of India’s Sikh community. Mr. Multani’s activities for this party were strictly local and consisted of going door to door to convince people to vote for his party or to attend meetings. According to Mr. Multani, he was known throughout his area for his ability to draw votes.

[5] Mr. Multani alleges that, in May 2004, Jagir Singh, a supporter of the Congress Party, visited him at his home and asked him to help his party, which Mr. Multani refused to do. During the 2004 election campaign, Jagir Singh’s associates frequently approached him to ask him to work for the Indian National Congress (Congress Party), but he continued to go door to door in support of

the Shiromani Akali Dal (Badal) party. In that election, the Congress Party was elected to National Parliament.

[6] Mr. Multani alleges that, in August 2004, tension mounted between supporters of the two parties regarding the use of school grounds for the Independence Day celebrations. He alleges that Congress Party supporters seized the opportunity to threaten him for not having helped them during the election campaign. However, he managed to escape. He further alleges that he tried to lodge a complaint, but the inspector at the police station refused to take the complaint and accused him of lying.

[7] Mr. Multani alleges that, in January 2005, the police arrested him on two occasions, claiming that he had caused problems in the village, and beat him with leather belts and wooden rods at the prison. He also confirms that he saw Jagir Singh with the police inspector but did not know why Jagir Singh was at the police station. He alleges that his father and influential people in the village secured his release and that he was treated by a physician.

[8] Mr. Multani alleges that, in January 2006, while he was going door to door to ask people to attend a meeting called by his local party leaders, members of the Congress Party, led by Jagir Singh, prevented him and his colleagues from continuing their activities. A brawl broke out between the two parties' supporters, but the police officers who were there did nothing. On that occasion, Jagir Singh told Mr. Multani that he would be among those who would suffer the consequences.

[9] According to Mr. Multani, two days later, his father was told that Jagir Singh, together with the police, was planning to falsely accuse him. He therefore left home and escaped to a friend's house in a neighbouring village. He alleges that his parents decided that he should leave his country to save his life; his father contacted an agent, who got him to Russia and England, and he returned to India twice after Russia and England, respectively, before coming to Canada. He did not arrive in Canada until after July 11, 2006.

[10] Mr. Multani arrived in Canada on July 12, 2006, and claimed refugee protection. He was married in Montréal in June 2007.

Impugned decision

[11] When asked during the hearing what he feared today should he return to India, Mr. Multani replied that he was afraid that the police were looking for him because Jagir Singh wanted revenge on him.

[12] However, the Board concluded that Mr. Multani had not shown that his fear of persecution, assessed on a forward-looking basis, was objectively well founded. The Board did not question the fact that he had been targeted by Jagir Singh and his associates, supporters of the Congress Party, and that he had been arrested by police. However, it was not satisfied that he was still specifically targeted by Jagir Singh, Congress Party supporters or the police.

[13] The Board noted that, in the 2004 national elections, the Shiromani Akali Dal (Badal) party won two seats in the Council of States and eight seats in the House of the People, whereas the

Congress Party won 145 seats in the House of the People and appointed Manmohan Singh, who is of Sikh origin, to the position of Prime Minister. During the February 2007 elections in Punjab, the Shiromani Akali Dal (Badal) party, in an alliance with another party, won 67 seats, and the Congress Party won 44.

[14] Therefore, since Mr. Multani's arrival in Canada, the Congress Party is no longer in power in Punjab. Since February 2007, his political party, Shiromani Akali Dal (Badal), has been in power in his state.

[15] Moreover, the Board concluded that Mr. Multani's activities were strictly local and were carried out in association with a small number of people. Mr. Multani stated that Jagir Singh's work for the Congress Party was also at a local level, with a small number of people. Mr. Multani does not know whether Jagir Singh still works for the Congress Party, and, in his opinion, the police have not been looking for him since January 2005.

[16] The Board concluded as follows:

In light of all of the claimant's testimony and in light of the fact that since February 2007, the claimant's party, Akali Dal (Badal), has been in power in Punjab, the panel concludes that the claimant has not shown that, on a balance of probabilities, he would face a serious possibility of persecution should he return to his country.

IV. Issue

[17] (a) Did the Board err in failing to explain how the change of government in the state of Punjab could affect the fear of persecution?

- (b) Did the Board breach its duty of procedural fairness by denying him the opportunity to explain in his own words the change of government that took place and the underlying implications in his case?
- (c) Did the Board err in failing to address the content of the affidavit of the Sarpanch of Khatti that Mr. Multani filed in evidence?

V. Analysis

Standard of Review

[18] In light of the decision of the Supreme Court of Canada in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the issue to be decided is whether or not the decision is reasonable. In the affirmative, this Court must refuse to intervene and must dismiss the application. According to the Supreme Court of Canada, the factors to be considered mostly concern justification for the decision through its transparency and intelligibility. The outcomes must be defensible in respect of the facts and law (*Dunsmuir*, at paragraph 47).

[19] With respect to the duty of procedural fairness, the appropriate standard of review is correctness (*Sharma v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 908, [2008] F.C.J. No. 1142 (QL) at paragraph 15; also, *Rivas v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 317, [2007] F.C.J. No. 436 (QL)).

[20] Whether the Board provided adequate reasons for its decision is a question of procedural fairness for which the applicable standard is correctness (*Weekes (Litigation guardian) v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 293, 165 A.C.W.S. (3d) 4; also, *Canadian*

Union of Public Employees (C.U.P.E.) v. Ontario (Minister of Labour), 2003 SCC 29, [2003] 1 S.C.R. 539).

[21] Moreover, not having allowed the applicant an opportunity to respond to certain concerns could constitute a breach of the rules of procedural fairness (*Bonilla v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 20, 154 A.C.W.S. (3d) 692 at paragraph 27; also, *Rukmangathan v. Canada (Minister of Citizenship and Immigration)*, 2004 FC 284, 247 F.T.R. 147 at paragraph 22).

[22] As for the standard of correctness, if there is a disagreement, the reviewing court will substitute its own view and provide the correct answer. It will rather undertake its own analysis of the question and decide whether the decision of the tribunal was correct: “From the outset, the court must ask whether the tribunal’s decision was correct” (*Dunsmuir*, at paragraph 50). Therefore, a breach of the duty of procedural fairness will result in the decision being set aside.

(a) Did the Board err in failing to explain how the change of government in the state of Punjab could affect the fear of persecution?

[23] Mr. Multani submitted that the Board failed to explain how the change of government in the state of Punjab could mean that he would no longer be persecuted by Congress Party supporters. On the contrary, in Mr. Multani’s view, that he was able to contribute to his local party’s victory in Punjab provides Congress Party members with additional reasons for wanting to rid themselves of an opponent who had helped to defeat their party at the state level.

[24] The applicant cited a passage from *Syed*, above, in which Associate Chief Justice James Alexander Jerome noted the following:

[8] The function of written reasons is to allow an individual adversely affected by an administrative tribunal's decision to know the underlying rationale for the decision. To that end, the reasons must be proper, adequate and intelligible and must give consideration to the substantial points of argument raised by the parties.

[9] Here, the reasons set out a summary of the applicant's evidence, a summary of the documentary evidence considered by the Refugee Division, followed by a conclusion which makes no reference to any of the evidence given by the applicant. There is no mention of the applicant's arrest in November of 1991, the outstanding arrest warrant that was issued against him, the threats received by himself and his family, the beating he testified he was subjected to while in police custody, or that the billiard club he was running was destroyed. Although it is within the tribunal's jurisdiction to accept or reject this information, it cannot simply ignore it. The Refugee Division is obligated, at the very least, to comment on the evidence adduced by the applicant at the hearing. If that evidence is accepted or rejected, the applicant should be advised of the reasons why.

[25] In *Liang*, above, at paragraph 42, Justice Carolyn Layden-Stevenson explained the duty to provide reasons for a decision: "[T]he reasons are not to be read microscopically and held to a standard of perfection. They must be read as a whole . . .".

[26] It is clear from reading the Board's reasons for decision as a whole that they are "proper, adequate and intelligible" (*Syed*, above). The reasons clearly reveal that the Board analyzed the causes of Mr. Multain's fear but found that the evidence in the record failed to prove that he would be at risk should he return to India.

[27] First, the Board's conclusion clearly demonstrated that it is based not only on the political changes in Punjab but also on the applicant's testimony as a whole. The burden is on applicants to establish that their fear or personalized risk is still objectively well founded. The Board found that Mr. Multani did not know whether Jagir Singh was still working for the Congress Party. Thus, he did not know whether Jagir Singh was still particularly interested in targeting him. In addition, he stated at the hearing that the police have not been looking for him since January 2005. Mr. Multani provided no evidence to prove that the police or Jagir Singh would seek him out should he return to India. Absent evidence that they are still looking for him today, it was reasonable for the Board to find that the risk invoked by the applicant was no longer objectively well founded. Therefore, even if one discounts the fact that his political party was in power in Punjab, the Board's reasons were reasonably supported by the facts.

[28] Mr. Multani identified the Congress Party supporters who allegedly exerted influence over the police as being his agents of persecution. In *Hassan v. Canada (Minister of Employment and Immigration)* (1992), 147 N.R. 317, 36 A.C.W.S. (3d) 635 (F.C.A.), Justice Darrel Heald concluded:

In finding as it did that the situation in Uganda had changed, however, it is clear the Board was simply concluding that the appellant's fear of persecution, no matter how sincerely it was held, did not have the objective element necessary to make it well-founded. That this is so is made plain by the Board's decision.

[29] Given that the risk alleged by Mr. Multani arises from supporters of the Congress Party, the party in power at the time, it was open to the Board to find that the political changes in Punjab could have modified the risk to Mr. Multani should he return to India.

(b) Did the Board breach its duty of procedural fairness by denying him the opportunity to explain in his own words the change of government that took place and the underlying implications in his case?

[30] Administrative decision-makers are not generally required to provide applicants with opportunities to clarify or further explain their applications (*Bonilla*, above, at paragraph 22). Nevertheless, under certain circumstances, procedural fairness requires that an applicant be given the opportunity to respond to an administrative decision-maker's concerns (*Li v. Canada (Minister of Citizenship and Immigration)*, 2008 FC 1284, [2008] F.C.J. No.1625 (QL) at paragraph 35).

[31] The case law is not clear regarding when an administrative decision-maker's concerns must be put to the applicant where those concerns are based on the information submitted by the applicant to the decision-maker (*Hassani v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1283, [2007] 3 F.C.R. 501 at paragraph 21). In *Liao v. Canada (Minister of Citizenship and Immigration)*, 101 A.C.W.S. (3d) 998, [2000] F.C.J. No. 1926 (QL), Justice Pierre Blais stated that administrative decision-makers fulfill all duties, such as giving an applicant the opportunity to respond to concerns, when they adopt an appropriate line of questioning:

[15] Visa officers have the duty to give an immigrant the opportunity to answer the specific case against him. This duty of fairness may require visa officers to inform an applicant of their concerns or negative impressions regarding the case and give the applicant the opportunity to disabuse them.

...

[17] However, this duty to inform the applicant will be fulfilled if the visa officer adopts an appropriate line of questioning or makes reasonable inquiries which give the applicant the opportunity to respond to the visa officer's concerns. . . .

[32] In this case, the Board gave Mr. Multani the opportunity to respond to its concerns during the hearing. Moreover, counsel for Mr. Multani addressed the political changes in his oral submissions.

[33] The transcript shows that the Board asked Mr. Multani questions to determine whether a political change would alter his risk of persecution should he return to India:

BY PRESIDING MEMBER (to person concerned)

...

Q. Could you tell me when was the last election at the federal level? When the last election has been held if you know for the Parliament?

A. I really don't know.

- Okay.

Q. Do you know when the last assembly or provincial or state election within Punjab, do you know when it has been held?

A. In May 2004.

Q. You're not aware of the election which has been held in Punjab in February 2007? And from my understanding that was for the assembly, for the state. Are you aware of that?

A. No, I don't know. At the time I was there we were told to prepare for any forthcoming elections.

- No, it's okay. I only want to know if you know about the last election in Punjab.

Q. You're not aware of that?

A. I don't know.

Q. You're not aware of the fact that your party won that election within Punjab in February 2007?

A. My mother told me that that was the case.

Q. Oh, so you know?

A. When our party won I was told, I was informed by my mother.

-Okay.

(Tribunal Record, at pages 349-50).

[34] That excerpt shows that the Board took an interest in the political changes that occurred in Punjab in February 2007. After submissions from both sides, including questions on the political changes and the oral submissions of counsel for Mr. Multani, the Board asked Mr. Multani directly whether he had anything to add, and he answered in the negative.

[35] In his oral submissions, counsel for Mr. Multani specifically addressed the significance of the political changes in Punjab in February 2007:

And true, we have discussed in similar cases in the past, you can oppose to him, well, sir, since February of 2007 it's your party now that's in power in Punjab. But as we've discussed in the past, we have to be very careful with that, because, as you know, most of the repressive organizations, police, army, border security, CRPF. They're all federal entities and it's Congress that is in charge at the federal level. And, of course, it's [Manmohan] Singh, a Sikh, but I mean K.P.S. Gill was a Sikh and he is the one that killed fifty-thousand people at the time of India's fighting against the insurgency in the Punjab. Many Sikhs are favourable to Congress obviously.

So he tells you I am against the naturally governing party in India. And the naturally government party in India is the party that supervises as above uses the repressive organizations against political opponents. That essentially is his claim here . . .

(Tribunal Record, at pages 360-61).

[36] In that excerpt, counsel for Mr. Multani submits that the consequences of a change of government in the state of Punjab in no way modify the risk to Mr. Multani should he return to India. It must be recalled that the burden of proof lies in fact with the applicant (*Hassani*, above, at paragraph 22). Therefore, even though the Board did not accept Mr. Multani's claim with respect to the consequences of the political changes, it cannot be concluded that he was denied the opportunity to further explain the change of government and its implications in his case.

[37] In his memorandum for the application for judicial review, Mr. Multani quoted from Justice Louis Marceau's decision in *Mileva v. Canada (Minister of Employment and Immigration)*, [1991] 3 F.C. 398, 27 A.C.W.S. (3d) 480 (F.C.A.), where Justice Marceau found that a decision of the Board that is based on the political changes occurring in the applicant's country since he or she left it places the burden of proving that those political changes are not such as to make the applicant's fear of persecution cease to exist. According to Mr. Multani, this burden of proof may be inconsistent with rules of fundamental justice, particularly since he was apparently not questioned about the impact of such a political change.

[38] As was carefully explained in the memorandum, those statements of Justice Marceau were in *obiter*. They appeared as "an alternative argument of convenience". Justice Marceau based his conclusion on the fact that the decision-maker at first instance does not have jurisdiction to decide the question of political changes.

[39] In any event, Justice Marceau was in the minority on that question, as the two other judges on the bench found that a decision-maker at first instance had jurisdiction to consider political changes. As Justice Louis Pratte concluded at pages 404-05:

. . . The adjudicator and the member of the Refugee Division must decide whether it is possible for the Refugee Division to recognize the refugee status of the person claiming it. To arrive at this decision they must take into account any credible evidence tending to establish the facts relevant to this question. The fact that the political situation existing in a claimant's country of origin has developed in such a way as to remove the reasons causing him to fear persecution is obviously a fact relevant to the question of whether that person can validly maintain that he is a Convention refugee. The question raised by a claim to refugee status is not whether the claimant had reason to fear persecution in the past, but rather whether he now, at the time his claim is being decided, has good grounds to fear persecution in the future. . . .

While the adjudicator and member of the Refugee Division must consider evidence tending to show a change in circumstances in the claimant's country of origin, they are not required to decide whether the change in circumstances established by this evidence is sufficient to defeat the claim. . . .

[40] Even though it is not in dispute in this case, the conclusion of the majority of the Federal Court of Appeal in *Mileva* was that a decision-maker at first instance may consider political changes.

[41] In the context of an issue of procedural fairness, the appropriate standard of review is correctness. Here, the Board had the authority to consider whether a political change affects an applicant's risk of return. The Board gave Mr. Multani the opportunity to answer questions about the political changes in Punjab since his departure. His counsel addressed this issue during the hearing. Mr. Multani had the opportunity to respond to the Board's concerns; it did not err in this regard.

[42] The Board assessed the information that Mr. Multani provided, as it was required to do in order to reach a decision. The questions that the Board asked and the information it obtained confirm that the Board's conclusion was reasonably open to it.

(c) Did the Board err in failing to address the content of the affidavit of the Sarpanch of Khatti that Mr. Multani filed in evidence?

[43] Mr. Multani submits that the evidence he filed calls for comment, particularly since the authenticity of that document is not disputed. The Board was therefore required to take into account the affidavit of Kuldip Singh, the Sarpanch of Khatti. A sarpanch is the village chief. The Board did not comment on or mention this evidence, which was subsequent to Mr. Multani's flight.

[44] Generally, the Board is assumed to have considered all the evidence, regardless of whether or not it states that it did so:

. . . The fact that some of the documentary evidence was not mentioned in the Board's reasons is not fatal to [its] decision. The passages from the documentary evidence that are relied on by the appellant are part of the total evidence which the Board is entitled to weigh as to reliability and cogency. My examination of the record before the Board persuades me that it did, in fact, consider and weigh the total evidence in a proper fashion. . . .

(*Hassan*, above).

[45] Mr. Multani cited *Gill v. Canada (Minister of Citizenship and Immigration)*, 2003 FCT 656, 129 A.C.W.S. (3d) 783, in order to point out that the obligation to comment on documentary evidence in a decision depends on the importance of that evidence: "The Board's duty to explain itself increases with the relevance of the evidence" (at paragraph 16). In *Gill*, that Court found

that the documentary evidence ignored by the Board in question in its reasons “bears on facts that are at the very heart of Mr. Gill’s claim” (at paragraph 17).

[46] In *Gill*, the Board found that Mr. Gill’s testimony was not credible. The documentary evidence, including the affidavit of a sarpanch, corroborated all of the essential points in Mr. Gill’s claim. Given the contradictions between the credibility of the testimony and the documentary evidence regarding a central issue of the application, the evidence in *Gill* was relevant, and the Board was required to comment on it.

[47] Here, Board in this case did not find that Mr. Multani or the facts in his account lacked credibility. Although his account was accepted as credible, Mr. Multani failed to satisfy the Board, on a balance of probabilities, that there is a serious possibility that he would be persecuted should he return to India.

[48] The Board did not err in not specifically addressing the affidavit of the Sarpanch of Khatti in its reasons insofar as it was irrelevant to the Board’s assessment. In his affidavit, signed July 18, 2006, one week after Mr. Multani’s departure from India, the Sarpanch of Khatti corroborated the events that Mr. Multani alleges occurred prior to his departure from India. The Sarpanch of Khatti noted that “the Police is still searching for Manjit Singh and harassing his family to produce him. It is not safe for him to come back”. However, that the affidavit was made one week after Mr. Multani’s departure limits the probative value of that statement. The Board did not question the credibility of his facts.

[49] The Board's determination was based on the assessment of the objective component of the applicant's fear for the future. In other words, the Board considered whether there was a serious possibility that Mr. Multani would be persecuted by Jagir Singh and his associates who were Congress Party supporters, or by the police, should he return to India. The Sarpanch's affidavit provides no evidence in this regard. Moreover, it makes no mention of the events that allegedly occurred subsequent to the time of Mr. Multani's departure. Given that the facts contained in the affidavit of the Sarpanch of Khatti were not central to the issue to be decided, the Board was not obligated to specifically address them in its reasons.

VI. Conclusion

[50] The Board did not err in not addressing the change of government in the state of Punjab that may have affected the applicant's fear of persecution. The Board fulfilled its duty of procedural fairness in giving Mr. Multani the opportunity to further explain the change of government and the implications in his case.

[51] For all these reasons, the application for judicial review is dismissed.

JUDGMENT

THE COURT ORDERS that

1. The application for judicial review be dismissed;
2. No serious question of general importance be certified.

“Michel M.J. Shore”

Judge

Certified true translation
Tu-Quynh Trinh

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-2854-08

STYLE OF CAUSE: MANJEET SINGH MULTANI
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AND IMMIGRATION

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: February 23, 2009

**REASONS FOR JUDGMENT
AND JUDGMENT:** SHORE J.

DATED: February 23, 2009

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