Federal Court of Appeal  Cour d'appel fédérale

Date: 20140403

Docket: A-260-13

Citation: 2014 FCA 90

CORAM: **NOËL J.A.**
DAWSON J.A.
WEBB J.A.

BETWEEN:

VINOD KUMAR MOUDGILL

Appellant

and

THE CROWN, HER MAJESTY THE QUEEN, IN RIGHT OF GOVERNMENT OF MANITOBA

Respondent

Heard at Winnipeg, Manitoba, on April 2, 2014.

Judgment delivered at Winnipeg, Manitoba on April 3, 2014.

REASONS FOR JUDGMENT BY: NOËL J.A.

CONCURRED IN BY: DAWSON J.A.
WEBB J.A.

Federal Court of Appeal  Cour d'appel fédérale

Date: 20140403

Docket: A-260-13

Citation: 2014 FCA 90

CORAM: **NOËL J.A.**
DAWSON J.A.
WEBB J.A.

BETWEEN:

VINOD KUMAR MOUDGILL

Appellant

and

THE CROWN, HER MAJESTY THE QUEEN, IN RIGHT OF GOVERNMENT OF MANITOBA

Respondent

REASONS FOR JUDGMENT

NOËL J.A.

[1] This is an appeal from an order of the Federal Court, whereby Annis J. (the Federal Court judge) refused to interfere with a prior order issued by Prothonotary Lafrenière (the prothonotary), which allowed the motion brought by the Crown, Her Majesty the Queen, in Right of the Government of Manitoba (the respondent), to strike Mr. Vinod Kumar Moudgill's (the appellant) application for judicial review.

[2] The motion to strike invokes Rule 221(1) of the *Federal Courts Rules*, SOR/98-106 (the Rules). It was brought on the basis that the Federal Court lacks jurisdiction to deal with any of the issues which are raised in the application for judicial review. In his order, the Prothonotary described these issues as follows (reasons, p. 2) :

> [T]he [appellant] filed a Notice of Application seeking relief in the nature of *mandamus* against her Majesty in Right of Manitoba (Manitoba Crown). Although the pleading is somewhat convoluted, it appears that the [appellant] is alleging that the Manitoba Ombudsman failed to exercise its jurisdiction under the *Manitoba Ombudsman Act* to investigate the wrongful conduct of the Manitoba Human Rights Commission and the Manitoba Crown. The [appellant] seeks a declaration that provisions of various provincial laws are unconstitutional and "relief and remedy for the [appellant]'s personal and financial injuries".

[3] The prothonotary dismissed the appellant's judicial review application summarily on the basis that it was "bereft of any possibility of success" (citing *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.* (C.A.), [1995] 1 F.C. 588, [1994] F.C.J. No. 1629 (*David Bull Laboratories*)). The prothonotary noted that pursuant to the direction given by this Court in *David Bull Laboratories*, Rule 221 cannot be used to strike an application. Rather, an objection for want of jurisdiction must be pursued by invoking the Court's inherent power to summarily dismiss an application that is doomed to fail.

[4] The prothonotary took the view that this was such a case given that the Federal Court lacks jurisdiction to review the actions and/or decisions of provincial bodies or assess the constitutionality of provincial legislation.

[5] The appellant's appeal from that decision was dismissed by the Federal Court judge. In rendering his decision, the Federal Court judge adopted the second paragraph on page 3 of the prothonotary's order (first full paragraph), which laid out his reasons for holding that the Federal Court lacked jurisdiction:

> Without expressing any opinion as to the merits of the [appellant]'s complaints against the Manitoba Crown, it is plain and obvious that the Federal Court has no jurisdiction over the subject matter of the application or the parties. The Federal Court is a court of statutory jurisdiction. Sections 18.1 through 18.5 of the *Federal Courts Act* establish the regime for judicial review in respect of a federal board, commission or other tribunal. In the absence of any existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction, the Federal Court has no jurisdiction to review decisions and actions of provincial entities, or the constitutionality of provincial legislation.

[6] During the hearing and in the memorandum filed in support of his appeal, the appellant insisted on the merits of his judicial review application and the Federal Court judge's alleged failure to properly consider his constitutional challenge to particular provisions of Manitoba legislation. He also argued that the Federal Court judge erred by failing to assume jurisdiction pursuant to section 25 of the *Federal Courts Act*, R.S.C., 1985, c. F-7 and by providing insufficient reasons for his decision (appellant's memorandum, paras. 65 to 67).

ANALYSIS AND DECISION

[7] It is well established that this Court should only interfere with the decision of a motion judge, reviewing an order of a prothonotary, "where the former either had no grounds to interfere with the prothonotary's decision or, in the event that such grounds existed, if the decision was arrived at on a wrong basis or was plainly wrong" (*Z.I. Pompey Industrie v. ECU-Line N.V.*, 2003 SCC 27, para. 18 (*Z.I. Pompey*); *Merck & Co., Inc. v. Apotex Inc.*, 2003 FCA 488. para. 20). Indeed,

discretionary orders of prothonotaries should be left undisturbed, unless they are "clearly wrong, in the sense that the exercise of discretion was based upon a wrong principle or a misapprehension of the facts", or rest on an improper exercise of discretion by the prothonotary "on a question vital to the final issue of the case" (*Z.I. Pompey*, para. 18).

[8] In my view, the motion judge properly declined to interfere with the prothonotary's decision, as it was not "clearly" wrong, and did not amount to an improper exercise of discretion. Beyond this, the decision reached by the prothonotary is the only one that was open to him given the issues raised in the judicial review application.

[9] Section 25 of the *Federal Courts Act* is of no assistance to the appellant as it has no application where the superior Court of a province has jurisdiction to grant the relief sought such as is the case here (*Powderface v. Baptiste*, (1996), 118 F.T.R. 258 (T.D.)).

[10] Finally, the appellant's attack on the sufficiency of the motion judge's reasons cannot succeed in light of this Court's decision in *Turberfield v. Canada*, 2012 FCA 170, paragraph 19, which held that "a trial judge has no general duty to provide reasons for a decision 'when the finding is otherwise supportable on the evidence or where the basis of the finding is apparent from the circumstances'" (citing *R. v. Sheppard*, 2002 SCC 26, para. 4; see also *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, albeit in the context of a judicial review). Although the motion judge did not explain in his own words why the Federal Court did not have jurisdiction, he adopted as his own the reasons given by the

prothonotary, something which he was fully entitled to do. Indeed, this is a commendable example of restraint and efficiency in an appellate context.

[11] I would dismiss the appeal.

"Marc Noël"

J.A.

“I agree.
Eleanor R. Dawson J.A.”

“I agree.
Wyman W. Webb J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

(APPEAL FROM AN ORDER OF THE HONOURABLE MR. JUSTICE ANNIS OF THE FEDERAL COURT OF CANADA DATED JULY 3, 2013, DOCKET NUMBER T-555-13.)

DOCKET:	A-260-13
STYLE OF CAUSE:	VINOD KUMAR MOUDGILL v. THE CROWN, HER MAJESTY THE QUEEN, IN RIGHT OF GOVERNMENT OF MANITOBA
PLACE OF HEARING:	WINNIPEG, MANITOBA
DATE OF HEARING:	APRIL 2, 2014
REASONS FOR JUDGMENT BY:	NOËL J.A.
CONCURRED IN BY:	DAWSON J.A. WEBB J.A.
DATED:	APRIL 3, 2014

APPEARANCES:

Vinod Kumar Moudgill	FOR THE APPELLANT (SELF REPRESENTED)
Michael Bodner	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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