CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

# COUR EUROPÉENNE DES DROITS DE L'HOMME
# EUROPEAN COURT OF HUMAN RIGHTS

## FOURTH SECTION

## PARTIAL DECISION

## AS TO THE ADMISSIBILITY OF

Application no. 42341/04
by Manmohan BHANDARI
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 13 December 2005 as a Chamber composed of:

Mr J. CASADEVALL, *President*,
Sir Nicolas BRATZA,
Mr M. PELLONPÄÄ,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mr J. ŠIKUTA, *judges*,
and Mr M. O'BOYLE, *Deputy Section Registrar*,

Having regard to the above application lodged on 18 November 2004,

Having deliberated, decides as follows:

## THE FACTS

The applicant, Mr Manmohan Bhandari, is a British national who was born in 1934 and lives in Isle of Man.

### A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant grew raspberries on the Isle of Man. He had a lucrative contract with the shop Marks & Spencers, but lost it in 1990 when the local environmental health officer let it be known to the shop that the applicant was packing raspberries in his kitchen. The applicant and his wife sued the Department of Local Government and the Environment ('DOLGE') for misstatement and were awarded over GBP 16,000 in damages by the Manx High Court on 1 April 1993. The applicant did not consider that this was enough, and, wishing to appeal, instructed a new (Manx) advocate, a Mr Carter, then a partner in a firm of advocates called Carter Jones McDonald ('CJM').

Mr Carter advised that there was merit in an appeal, and applied for legal aid on his client's behalf in April 1993; this application was rejected on 25 May 1993. The applicant's Petition of Appeal from the first instance judgment was rejected the next day because it had been filed two days late. Mr Carter advised (via letter and at a meeting) that it would not be unduly difficult to apply for an extension of time in which to lodge the appeal, but that, in the circumstances, the best course of action was for the applicant to cut his losses and to accept an offer put forward by DOLGE. The applicant accepted this advice and, on 17 June 1993, DOLGE's offer of GBP 20,000.

CJM issued proceedings against the applicant for payment of their fees on 7 December 1993. An advocate instructed by the applicant to defend the claim failed to file a Defence in the prescribed period, and judgment was entered for CJM on 5 January 1994. After taxation of CJM's costs, judgment was issued on 2 March 1995 for a total of GBP 929.80.

After a delay occasioned by their difficulty in obtaining legal aid, the applicant and his wife brought proceedings on 26 March 1996 against CJM in negligence, claiming that CJM's actions and omissions in April-June 1993 had deprived them of the opportunity to pursue their appeal against the first instance decision in their case against DOLGE. These proceedings are referred to hereafter as “the CJM proceedings.” In them, the applicant and his wife were represented throughout by leading Counsel from England, who had been granted a special temporary licence as a Manx advocate.

The CJM proceedings did not come to trial until 2003, at which point CJM essentially conceded liability and limited themselves to contesting quantum. By a judgment dated 17 November 2003: (1) the judgment obtained by CJM in 1995 was set aside (by consent) and these earlier proceedings dismissed; and (2) the applicant and his wife were awarded the sum of GBP 10,780.93 plus interest.

The applicant and his wife appealed against the quantum of the award; his appeal was dismissed on 25 May 2004. In a detailed 37 page judgment, the High Court of Justice of the Isle of Man (Staff Government Division) considered and dismissed each head of their challenge to the conclusions of the first instance judge. It seems that the applicants' Counsel was directed by the lead judge at the end of the hearing that his interest was now at end.

The applicant wished to apply to the Privy Council for special leave to appeal directly to the Council. He inquired from the Privy Council Registrar how he should do this; and was informed in a letter dated 5 May 2004 that: (1) on the basis of the information he gave as to his funding difficulties he might be eligible for so-called "poor person" status; and (2) that to obtain such status, he would have to file: (a) an affidavit that he was not worth more than GBP 2000 apart from his wearing apparel and the interest that he had in the subject matter of the appeal and that he was unable to provide securities; and (b) a certificate of counsel that he had reasonable grounds of appeal. By letter dated 25 June 2004, the applicant explained that, although he was in dire financial straits and living on Income Support, he would be unable to provide an affidavit that he was worth less than GBP 2000. The Registrar to the Privy Council responded by letter dated 29 June 2004 that "[f]*rom what you say it does seem that if you proceed you will have to do so without poor person status and, if you cannot afford to instruct solicitors and counsel privately, in person*;" he confirmed that the applicant would have to pay the Privy Council Office fees in respect of the petition and (if successful) the subsequent appeal. These fees amounted – at the petition stage – to GBP 120 for lodging the petition for special leave to appeal; (2) and GBP 25 per affidavit lodged (the Registrar considered that the applicant would probably have to lodge either one or two such affidavits). The Registrar also set down the normal costs consequences of success or failure in bringing a petition, including the fact that he would "*probably*" be able to recover the Privy Council Office fees from the respondents if he won.

The applicant confirmed by letter dated 30 June 2004 that he would be unable to "*contemplate undertakings of Council Office costs outlined in your letter or for that matter respondents costs of a few thousand pounds*." He asked the Registrar to confirm that, in the circumstances, he had exhausted his judicial remedies. This the Registrar refused to do by letter dated 5 July 2004. The Registrar also declined to ask the Privy Council to decide whether it should exercise its discretion to waive his liability to pay the relevant fees.

On 23 July 2004, the applicant sought legal aid for assistance with his petition for special leave to appeal from the Isle of Man Civil Legal Aid Office. By letter dated 9 August 2004, he stated that he would require such assistance "to meet all the costs and for the sureties" as well as for purposes of funding legal representation. An impasse developed because the Isle of Man legal aid authorities maintained (most recently in a letter dated 1 November 2004) that legal aid could only be granted relevant to the payment of fees, disbursements and expenses on behalf of a person who had legal representation – that is, it could not be granted to a litigant who could not name a representative in the proceedings he wished to bring. The applicant maintained that he was unable to obtain a Manx lawyer who was willing to be so named. He also maintained that he was unable to find an

English counsel who was willing to appear on the record (with a special licence) because he could not contact such counsel directly.

It seems that the applicant and his wife have both faced proceedings brought by the Halifax Bank ('the Bank proceedings'). The applicant has provided little information in respect of these proceedings, but it seems that they relate to unpaid sums borrowed to pay for the losses incurred in 1989 as a result of the loss of sales to Marks and Spencers. The outcome of proceedings against the applicant's wife is entirely unclear; it appears that the Bank has obtained judgment against the applicant himself, but the precise outcome of the proceedings is not clear (indeed, it is not clear that they have even terminated). It does not appear that the applicant has sought to appeal against any decision in these proceedings.

## B. Relevant domestic law and practice

The procedure for appeals to the Privy Council is governed by the Rules set out in Schedule II to the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982 (1982 S.I. No. 1676) ('the Rules'). By Rule 2, a person wishing to appeal must either have leave from the lower court or special leave to appeal granted by the Privy Council. By Rule 3, a petition for special leave to appeal may be signed by an applicant in person, and may (by Rule 3(2)) include a prayer for special leave to appeal as a poor person. By Rule 8, a petitioner who seeks special leave to appeal as a poor person must lodge with his petition an affidavit that "*he is not worth more than £2000 apart from his wearing apparel and his interest in the subject-matter of his appeal and that he is unable to provide securities; and a certificate of Counsel that the petitioner has reasonable ground of appeal*." Rule 9 provides that a petitioner who has obtained special leave to appeal as a poor person is not required to lodge any security for the costs of the respondent (which may otherwise be required under Rule 6(1)(a)) or pay any court fees. Rule 10 provides that the Privy Council may order that a petitioner who does not fall to be considered as a poor person may nonetheless be excused from any fees.

Under s. 17 Advocates Act 1995, a Manx resident may apply to the Isle of Man Courts of Justice for an English barrister to be given a Temporary Licence as a Manx advocate. This procedure is designed to be used where a Manx resident cannot find a Manx advocate to act on his behalf. Materials published by the Isle of Man Legal Aid Committee and supplied by the applicant suggest that, for purposes of the procedure, the resident may approach an English barrister directly without the requirement to use the intermediary of an English solicitor.

# COMPLAINTS

The applicant complains under Article 6 of the Convention as to the length of the CJM proceedings. He complains that he has been deprived of access to the Privy Council because of his lack of means; he complains, too, as to the fairness of the hearing before the first instance and appellate courts in the Isle of Man.

In his complaint regarding his proceedings against CJM, the applicant invokes Articles 8, 13, 14 and 17, but only as Articles potentially engaged. He does not invoke any specific Convention Articles in respect of the Bank proceedings.

# THE LAW

*The CJM proceedings*

1. In respect of the CJM proceedings, the applicant complains of a violation of his right to a "fair" hearing within a "reasonable time" contrary to Article 6 § 1 of the Convention which, in so far as relevant, provides that:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair... hearing within a reasonable time by [a] ... tribunal..."

(a) To the extent that the applicant complains of the length of the CJM proceedings, the Court considers that it cannot, on the basis of the case file, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

(b) In so far as the applicant complains that the CJM proceedings lacked the guarantees of a fair trial, referring to Article 6 and also Articles 8, 13, 14 and 17 of the Convention, the Court notes that the applicant did not pursue his petition for special leave to appeal to the Privy Council, even though he could have done so without the assistance of professional advice. It thus appears that he has not exhausted domestic remedies, as required by Article 35 § 1 of the Convention. In any event, having considered the complaints concerning the fairness of the proceedings as a whole, including the issue of access to the Privy Council, the Court considers that they disclose no appearance of a violation of the Convention and are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and that they must be rejected in accordance with Article 35 § 4.

*The Bank proceedings*

The applicant does not invoke any Convention Article explicitly in relation to the Bank proceedings. Nor is it clear what, if any, Convention Articles the applicant wishes to invoke. In any event, the Court notes that the proceedings may still be ongoing, such that any complaints brought regarding them would be premature.

In the premises, the applicant's complaints regarding the Bank proceedings are manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

*Decides* to adjourn the examination of the applicant's complaint concerning the length of the CJM proceedings.

*Declares* the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Josep CASADEVALL
President