FEDERAL COURT OF AUSTRALIA

Alphonsus v Minister for Immigration & Multicultural Affairs [1999] FCA 289

MIGRATION – judicial review of decision of Refugee Review Tribunal refusing to grant applicant protection visa – whether finding of fact made which was based on no evidence – whether no evidence for certain findings of fact – failure to give reasons or refer to evidence – applicant the subject of extortion – Tribunal found that extortion not practised on applicant for Convention reason – whether failure to give reasons or refer to evidence – error of law – Tribunal found applicant could relocate to another area of her country of nationality – whether Tribunal applied *"reasonableness"* test having regard to particular circumstances of applicant

Migration Act 1958 (Cth) s 430(1) and s 481(1)

Paramananthan v Minister for Immigration and Multicultural Affairs (1998) 160 ALR 24 cited
Muralidharan v Minister for Immigration and Ethnic Affairs (1996) 62 FCR 402 cited
Ram v Minister for Immigration and Ethnic Affairs (1995) 57 FCR 565 cited
Perampalam v Minister for Immigration and Multicultural Affairs [1999] FCA 165 applied
Randhawa v Minister for Immigration, Local Government and Ethnic Affairs (1994) 52 FCR 437 applied

ANNAMAH ALPHONSUS v THE MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS

NG 1065 OF 1998

LEHANE J
26 MARCH 1999
SYDNEY

IN THE FEDERAL COURT OF AUSTRALIA	
NEW SOUTH WALES DISTRICT REGISTRY	NG 1065 OF 1998

BETWEEN:	ANNAMAH ALPHONSUS Applicant
AND:	THE MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS Respondent
JUDGE:	LEHANE J
DATE OF ORDER:	26 MARCH 1999
WHERE MADE:	SYDNEY

THE COURT ORDERS THAT:

1. The decision of the Refugee Review Tribunal dated 15 September 1998 be set aside.

2. The matter be remitted to the Refugee Review Tribunal, differently constituted, for determination according to law.

3. The respondent pay the applicant’s costs.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.

IN THE FEDERAL COURT OF AUSTRALIA	
NEW SOUTH WALES DISTRICT REGISTRY	NG 1065 OF 1998

BETWEEN:	ANNAMAH ALPHONSUS

	Applicant
AND:	THE MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS Respondent

JUDGE:	LEHANE J
DATE:	26 MARCH 1999
PLACE:	SYDNEY

REASONS FOR JUDGMENT

1 The applicant is a Sri Lankan national. She is a Tamil whose home, until 1994, was at Inubil near Jaffna. She is aged 68. She arrived in Australia, lawfully, on 10 March 1996. On 8 July 1996 the applicant applied for a protection visa under the *Migration Act* 1958 (Cth). On 8 March 1997 a delegate of the respondent (the Minister) refused her application and on 21 March 1997 her application for review of that decision was received by the Refugee Review Tribunal. A hearing of her application took place almost a year later, on 16 March 1998. Subsequently, the Tribunal sought and received further information and submissions from the applicant's solicitors. On 15 September 1998 the Tribunal made its decision on the review application: it affirmed the decision of the delegate not to grant a protection visa. The applicant now seeks orders, under s 481(1) of the *Migration Act*, setting aside the decision of the Tribunal and remitting the matter to the Tribunal for further consideration.

Facts found by Tribunal

2 The essential facts as found by the Tribunal can be briefly stated. The son of the applicant was a member of the Liberation Tigers of Tamil Eelam (LTTE). He acted as a bodyguard of the leader of the LTTE; in 1990 there was published in a newspaper in Colombo a photograph of the leader behind whom stood the applicant's son. The son was killed by the Sri Lankan army in 1992.

3 In 1990 the Sri Lankan air force bombed a church next to the applicant's house; her hearing since then has been impaired; her house was severely damaged. It suffered further damage when hit by a shell in 1993.

4 In 1992 the applicant travelled overseas and returned to Sri Lanka. She had previously visited India in 1989. In June 1994 she travelled to Madras to attend the wedding of one of her daughters. She returned to Colombo on 27 August 1994; she said that she could not go back to Jaffna to live, because of the damage to her house and because, since none of her family lived there any longer, there was no one to look after her. She decided to stay in Colombo until another of her daughters, who had arrived in Australia in 1992 and was recognised as a refugee in 1994, could arrange for the applicant to come to Australia. She was granted a visa in February 1996.

5 Between 1994, when she returned to Colombo, and 1996, when she left for Australia, the applicant lived in a number of lodges in and near Colombo. The applicant described a number of visits made by members of the police force to the lodges; the police demanded money, threatening that they would take the applicant to the police station if she did not pay. The Tribunal accepted that she gave the police money on three such occasions. The applicant said, as did her daughter who gave evidence to the Tribunal, that her relatives sent her money to live on and to pay bribes. The daughter gave evidence of constant complaints by her mother that she was harassed for bribes. Her daughter also gave evidence, which the Tribunal must be taken to have accepted (in part it based its findings on the evidence), that in 1992 she was taken into custody in Colombo and asked questions about her brother, whom the authorities then knew to be a member of the LTTE.

6 The transcript of the hearing before the Tribunal was not put in evidence before me. The Tribunal's file does not contain any very precise statement by the applicant, or by her solicitors on her behalf, as to the persecution she feared should she return to Colombo. The account given in the Tribunal's reasons is as follows:

"The applicant's solicitor also argued that if the applicant did not have any money there was a real chance that the applicant would be mistreated by the authorities.

The applicant said that she could not return to Jaffna as she does not have any relatives or a place to stay.

When the Tribunal put to her that she would not face harm amounting to persecution upon return, she stated that first she left Jaffna because of the imminent possibility of persecution, that there was a reign of terror and there was aerial bombing. Second, in Colombo she claims she was persecuted because she was subject to systematic bribery and this amounts to persecution. Third, she claimed she cannot afford to return to Jaffna as she has no relatives nor a house. However the Tribunal notes that in her statutory declaration dated 9 July 1996 she claimed that her house was badly damaged and that one room was destroyed and the other two rooms and possessions were damaged in 1993."

7 Perhaps nothing in particular is to be read into the Tribunal's use of the word *"however"*. There might be little difficulty in accepting that a three-roomed house, one room of which was destroyed in 1990 and the others damaged some time later, and which had been (apparently) unoccupied since 1994, would not be a house to which the applicant could now return.

8 In any event, what emerges is that the applicant's claim, as found by the Tribunal, was that she feared, should she be returned to Colombo, further extortion and mistreatment should she not pay. Additionally, as will appear, there was a suggestion that there was a real likelihood that the authorities would discover her relationship to her deceased son, a former bodyguard of the LTTE leader, and on that account would interrogate and mistreat her. It was put on the applicant's behalf that it was not reasonable to expect her to avoid extortion in Colombo by returning to Jaffna.

Findings of the Tribunal

9 The Tribunal considered certain country information. On the basis of that information, it found that Jaffna was now under the control of the Sri Lankan authorities and was *"slowly returning to some degree of normalcy"*. Destruction was widespread and there remained a strong military presence. The target of the authorities was, however, the LTTE, not the Tamil community or the citizens of Jaffna. Turning to the particular position of the applicant, the Tribunal found that the demands for bribes which had been made to her were made not for Convention reasons but because the police viewed her as *"someone who had money and who was vulnerable and able to pay the money"*. In any event, if the applicant returned to Sri Lanka it would be open to her to *"limit her exposure to demands for bribes by either living somewhere else in Colombo or by returning to her home in Jaffna"*. As for that latter possibility, the Tribunal commented:

"There is now no bombing in Jaffna and there are large numbers of Sri Lankan troops. Food is not abundant but it is available. Some two-thirds of the pre-war population has returned to the city. She would have contacts and friends in Jaffna and although her house has been damaged, she had been living in it for some time prior to her decision to move to Colombo to travel to India for her daughter's wedding."

10 The Tribunal turned to the question whether the applicant had a well-founded fear of persecution on account of her son's activities. The Tribunal, in substance, held that if she had such a fear it was not well-founded:

"When asked if she knew of the activities of the LTTE she stated that she was not aware of their activities. Further her son was only an ordinary soldier in the LTTE and not a high ranking official. She is an elderly woman and would not be thought to be an active supporter of the LTTE. She stated that she was not aware of their activities and there is no reason why this should not be accepted. She would have no information of use to the Sri Lankan authorities. She has never been detained by the authorities and questioned about his activities when she lived in Sri Lanka."

11 The Tribunal then referred to the applicant's various trips overseas: on no occasion had she been questioned on her return, including when she returned from her second trip shortly after the publication of the photograph of her son with the LTTE leader.

12 The Tribunal considered a submission by the solicitor for the applicant that, having retaken Jaffna, the authorities were now better able than previously to link the applicant with her son, with the consequence that if she were to return to Sri Lanka she would be at greater risk than she was before she left for Australia:

"The Tribunal agrees that the local Tamil population has only relatively recently returned to Jaffna in late 1996 and 1997 and [there] are a lot of informers operating identifying LTTE sympathisers. The Tribunal is of the view that it is farfetched to claim that this development would significantly increase any risk for the applicant. The photo was published in 1990. She left Sri Lanka in March 1996 and up until this time no one had shown any interest in her because of the publication of the photo. There is only a most remote possibility that the Sri Lankan authorities would remain interested in the son and because of this interest be interested in her. The [applicant's] solicitor's claims would require the authorities to take this photo and show it to the pro-Government sympathisers in Jaffna and find one who recognised the son in the background of the photo and who could inform against the mother. Even then the authorities would still need to decide that they were interested in locating her and then do so."

13 The Tribunal, finally, referred to the daughter's arrest and detention in 1992; the Tribunal considered it significant that neither at that time nor since had the authorities, knowing that the applicant's son had been with the LTTE, displayed any interest in the applicant:

"The Tribunal is not satisfied that the applicant is of any interest to the authorities. As such there is only a remote possibility that she would be interrogated by the Sri Lankan security forces as the [applicant's solicitor] claims."

Submissions; discussion

14 The grounds relied upon by the applicant in seeking review of the Tribunal's decision were, first, that the Tribunal had made an error of law and, additionally, had failed to observe procedures required by the Act to be observed in that it:

"… failed to address the case put by the applicant in that the decision was based on an assumption that the applicant's relationship to [her] son who was a bodyguard to the leader of the [LTTE] would have been known to the authorities, whereas the [applicant's] case was that this relationship was unlikely to have been discovered until after the time she left the country in 1996."

15 Secondly, the Tribunal, it is said, failed to observe procedures required by the Act to be observed in that it failed to give reasons and to refer

to evidence or other material upon which it based two findings: that the applicant would be of no interest to the authorities; and that the extortion practised upon the applicant was not practised for a Convention reason. Thirdly, there is a *"no evidence or other material"* ground. That relies, in turn, on two circumstances. One is that the Tribunal *"based its decision in part upon an implied finding of fact that the Sri Lankan authorities would be able to identify the applicant's relationship with her deceased son when she was leaving and entering Sri Lanka through Colombo Airport, and that fact did not exist"*. The other is that the Tribunal based its decision in part upon a finding of fact that the Tamil citizens of Jaffna are *"under the protection of the Sri Lankan authorities"*, when that fact did not exist.

(a) First ground: likelihood of discovery of relationship

16 The submissions in support of the first ground were straightforward. The Tribunal's findings about the prospects of persecution as a result of an imputation of the applicant's son's political opinion were based, it was said, on an assumption that, before the applicant left Sri Lanka, the security forces knew of their relationship. In fact, the submission proceeded, there was no evidence that the security forces were aware that the applicant was the mother of the former bodyguard of the LTTE leader. The submission put to the Tribunal, with which the Tribunal was said not to have dealt, was that the relationship was:

"… unlikely to have been discovered prior to the consolidation of government power in Jaffna, simply because the numbers of informers available to the government who had inside knowledge of Jaffna was limited. Thus, [the applicant] could travel to and from India in 1989 and 1994 and be relatively safe from detection."

17 The Tribunal thus, the submission continued, had both failed to address a central question going to the merits of the case put by the applicant and failed to give proper reasons for its decision. The applicant relied on statements of the law such as that of Merkel J in *Paramananthan v Minister for Immigration and Multicultural Affairs* (1998) 160 ALR 24 at 57, where his Honour said:

"… in my view, at the least, s 420 imposes a duty to determine the 'merits of the case' and in doing so make [findings] on the questions central to that determination: see Calado v Minister for Immigration and Multicultural Affairs (Fed C, Moore, Mansfield and Emmett JJ, 2 December 1998, unreported) at 21-2 and Buljeta v Minister for Immigration and Multicultural Affairs (Fed C, Katz J, 4 December 1998, unreported) at 13-14 and the authorities there referred to."

18 I have quoted, in par 10, what the Tribunal had to say about this question. The sentence in the Tribunal's reasons immediately preceding the quoted passage reads:

"The Tribunal does not accept the applicant's solicitor's claim that the fact that the authorities are now better able to link [the applicant] with her son means she would be at greater risk."

19 In my view it is not open to me to hold that the Tribunal proceeded on the erroneous assumption which the applicant attributed to it. There could have been no point in considering whether it was now more likely than previously that the authorities would link the applicant with her son if as a matter of fact, found or assumed, the relationship was already known.

20 Immediately after the passage I have quoted the Tribunal said this:

"Further the authorities were aware that her son had been with the LTTE at least since 1992. It was in 1992 when her daughter was arrested and detained for three days and asked about her brother who she claims the authorities already knew was with the LTTE. The authorities could have investigated the applicant's relationship at any time since that time until she left the country. As the authorities knew that the applicant's son was with the Tigers since 1992 the fact that they did not question the applicant in spite of the opportunity to do so (particularly when flying in and out of the country) suggests that the authorities are not interested in pursuing her.

The authorities have not apparently sought to investigate the applicant's relationship with her son. They have been aware of his involvement with the LTTE since at least 1992 (when her daughter was questioned) and had a coloured picture of him in a newspaper in 1990. The Tribunal is not satisfied that the applicant is of any interest to the authorities. As such there is only a remote possibility that she would be interrogated by the Sri Lankan security forces as the applicant['s] solicitor claims."

21 It may be that the Tribunal's reasons are not expressed with perfect clarity and precision, but that of itself is not a ground of review. A fair reading of the reasons does not suggest, in my view, that the Tribunal found, or proceeded on an assumption that, the authorities knew of the relationship between the applicant and her son but chose not to interrogate the applicant. It suggests rather an inference by the Tribunal that the authorities had seen no reason to investigate relationships between the son and family members other than his sister: particularly, to make inquiries which might have revealed that the applicant was his mother.

(b) Second and third grounds: applicant of no interest to authorities; adequacy of reasons

22 In relation to the second ground, the applicant submits that the following passage in the Tribunal's reasons discloses reviewable error:

"The Tribunal does not accept that the applicant would be of any interest to the authorities on account of her dead son's activities. When asked if she knew of the activities of the LTTE she stated that she was not aware of their activities. Further her son was only an ordinary soldier in the LTTE and not a high ranking official. She is an elderly [woman] and would not be thought to be an active supporter of the LTTE. She

stated that she was not aware of their activities and there is no reason why this should not be accepted. She would have no information of use to the Sri Lankan authorities. She has never been detained by the authorities and questioned about his activities when she lived in Sri Lanka."

23 It was submitted that the Tribunal failed to give reasons, and to refer to evidence or other material, *"in support of its overt or implied findings of fact"* that the applicant would not be of interest to the authorities because she is an elderly woman who would not be thought to be a supporter of the LTTE; she knows nothing of LTTE activities; and the press photograph of her son appeared in a Colombo newspaper in 1990 so that there was a remote possibility that the applicant would now be of interest to the security forces. The applicant relied, particularly, on *Muralidharan v Minister for Immigration and Ethnic Affairs* (1996) 62 FCR 402, especially at 414, 415 per Sackville J.

24 But the Tribunal's reasons need not necessarily be elaborate. The finding that the applicant did not know of the activities of the LTTE was explicitly based on her own statement. The Tribunal is not to be criticised for accepting, in this respect, what the applicant said or for saying that there was no reason why it should not do so: that, of itself, is not a proposition which required more detailed exposition. The finding that the applicant would not be thought to be an active supporter of the LTTE should, in my view, be regarded as an inference from the circumstances revealed by the evidence: the applicant is an elderly woman; as a matter of fact, on her own statement, she is not aware of the activities of the LTTE; her only connection with the LTTE disclosed by the material before the Tribunal was through her son, and her son was killed in 1992. None of the circumstances to which she had referred in the material before the Tribunal – particularly her account of extortion by the police – suggested that anyone thought that she was or might be an active supporter of the LTTE. That is not an inadmissible process of reasoning; and, in my view, a fair reading of the Tribunal's reasons makes it clear that that was the process which it adopted.

25 I have already quoted (in par 10) what the Tribunal had to say about the photograph in this context. I cannot hold that, in that part of its reasons, the Tribunal failed to disclose its reasoning process. Certainly the Tribunal does not mention, as a possibility, that an informer who knew of the son's activities up to 1992 might, unprompted by the photograph, inform upon the mother in the sense of drawing attention to a relationship previously unknown to the authorities. But the Tribunal is not obliged expressly to consider every theoretical possibility. It was entitled, in my view, to reach the conclusion on the material before it that, of those about whom information might be given by an informant to the authorities, the risk was slight that the applicant would be mentioned by an informer and thought, by the authorities, to be of interest.

26 The submission about the question whether the applicant might have been identified and detained at Colombo airport on any of her trips to or from Sri Lanka raises a different question. The Tribunal said of the applicant:

“She has never been detained by the authorities and questioned about [her son’s] activities when she lived in Sri Lanka. Her passport shows that in 1989 she flew to Trichy in India and then returned. Again in 1992 she travelled out [of] Sri Lanka and returned. On neither [occasion] does she claim that she was detained and questioned upon her return to Sri Lanka about her son’s activities. In relation to the second trip this occurred after the photo of her son with the leader of the LTTE was published in the Colombo newspaper in 1990.”

The Tribunal also said:

“The authorities could have investigated the applicant’s relationship at any time since [1992] until she left the country. As the authorities knew that the applicant’s son was with the Tigers since 1992 the fact that they did not question the applicant in spite of the opportunity to do so (particularly when flying in and out of the country) suggests that the authorities are not interested in pursuing her.”

27 The applicant’s submission was that there was no material before the Tribunal – and the Tribunal referred to none – supporting the conclusion that the failure to question the applicant suggested any such thing. In support of that proposition the applicant tendered, without objection, a departmental cable dated 14 December 1995 forming part of the country information available to the Tribunal (there is no indication that the Tribunal actually considered it). The cable considered the question of the likelihood that the Sri Lankan authorities would discover the whereabouts of members of a particular group. The particular question was whether, if a member of the group returned to Sri Lanka, the authorities would come to know of it. The cable gave the following information:

“There is no special alert list as such. The area police (who arrested the person in the first instance) would have a file but there is no centralised system for automatically passing on information from files. …

Unless area police have made the effort to inform immigration authorities or police at the airport they would not automatically pick up the person on arrival. (We know, from consular cases, examples of people who have had outstanding warrants who have entered and left Colombo several times unchallenged as a result of such a lack of coordination).”

28 Counsel for the Minister submitted, correctly in my view, that that piece of information does not lead to the conclusion that, in this respect, the Tribunal made a reviewable error. All that it shows is that there is no *“alert list”* automatically available to authorities at the airport. It also makes it clear, however, that a traveller may well be detained at the airport if he or she is of interest to the police and they have so informed the immigration authorities or the police at the airport. I do not think it is necessary for the Tribunal to refer to particular evidence in support of the proposition that surveillance at airports is one of the means by which authorities detect persons who are *“wanted”*. No doubt it is not at all surprising that the applicant was not sufficiently of interest to the authorities that they found it worthwhile to give information about her to

immigration officials or police at the airport. But to say that is not to impugn the Tribunal's reasoning.

(c) Third ground: "protection" in Jaffna

29 The matter with which I have just dealt was relied upon in relation to both the second and the third ground upon which the application seeks review of the Tribunal's decision. Before returning to the other matter on which the second ground is based – the question whether extortion was practised on the applicant for a Convention reason – it is convenient to mention the other basis of the third ground. It relates to what the applicant's solicitor referred to as the *"bizarre conclusion"* that *"the Tamil citizens of Jaffna are under the protection of the Sri Lankan authorities"*. It is sufficient to say of that finding that it was relevant only to the Tribunal's conclusion that, if the applicant feared extortion in Colombo, she might move to the North of Sri Lanka, particularly Jaffna. It does not go to the more fundamental question which the Tribunal decided adversely to the applicant, that is whether she had a well-founded fear of persecution, should she be returned to Sri Lanka, for a Convention reason. Unless the decision of the Tribunal on that fundamental matter is to be set aside, its findings about the attitude of authorities in Jaffna to Tamils living there will not affect the outcome of this application for judicial review.

(d) Extortion

30 I have mentioned that the Tribunal accepted that the applicant paid bribes on three occasions while in Colombo after returning to Sri Lanka in August 1994. The Tribunal did not make any specific finding as to other occasions when the applicant claimed to have been asked for bribes but did not make any payment. The Tribunal's findings about the claims of extortion were as follows:

"The applicant's solicitor also argued that if the applicant did not have any money there was a real chance that the applicant would be mistreated by the authorities. Demands for bribes are often made with some implied or explicit threat being made but this does not change the motivation underlying the threats. The Tribunal is of the view that the police were corrupt and that their motivation was disinterestedly individual and was not be [sic] for a Convention related reasons [sic]. While it is accepted that extortion in some circumstances may amount to persecution, the Tribunal is of the view that this is not one such case. The police viewed the applicant as someone who had money and who was vulnerable and able to pay the money. There is nothing to suggest that the police were motivated to extort money for a Convention related reason.

The Federal Court held that victims of extortion are not members of a particular social group. Burchett J (O'Loughlin and R D Nicholson JJ agreeing) in Ram v MIEA & Anor (1995) 57 FCR 565 said:

> Plainly, extortionists are not implementing a policy; they are simply extracting money from a suitable victim. Their forays are disinterestedly individual. … (at 469)
> [The appellant] does not fear persecution for reasons of membership of a particular social group, but extortion based on a perception of his personal wealth and aimed at him individually. (at 570)"

31 The Tribunal proceeded to hold that in any event it was open to the applicant to avoid demands for bribes by returning to *"the Tamil dominated areas in the north of Sri Lanka including Jaffna"*.

32 It is important that the Tribunal did not proceed on the basis that the extortion described by the applicant, a repetition of which she feared should she be returned to Sri Lanka, amounted to something less than persecution. The reasons given by the Tribunal are not, in this respect, entirely clear. First, the Tribunal appears to say that while extortion may sometimes amount to persecution, the extortion found to have happened in this case did not. However, the reasons go on to make it clear, I think, that by *"persecution"* the Tribunal meant persecution for a Convention related reason. That is because the only reason given by the Tribunal for its conclusion that the extortion did not amount to *"persecution"* was that, in the Tribunal's view, the police targeted the applicant simply as someone perceived to have money: they were not *"motivated to extort money for a Convention related reason"*.

33 The applicant's submission was that, in that portion of its reasons, the Tribunal failed to comply with the procedures required by s 430(1) of the *Migration Act*. The requirements of that section are:

"Where the Tribunal makes its decision on a review, the Tribunal must prepare a written statement that:

(a) sets out the decision of the Tribunal on the review; and

(b) sets out the reasons for the decision; and

(c) sets out the findings on any material questions of fact; and

(d) refers to the evidence or any other material on which the findings of fact were based."

34 The applicant's submission was that the Tribunal failed to explain why it reached its conclusions about the character of the extortion and to refer to the evidence or other material on which the Tribunal's findings about it were based. The respondents, on the other hand, submitted that the basis of the Tribunal's finding was clearly, if briefly, stated:

"There is nothing to suggest that the police were motivated to extort money for a Convention related reason."

The Tribunal thus compendiously stated that it reached the conclusion it did because there was nothing in the material before it which suggested that the police, in extorting money from the applicant, were motivated by the fact that she was of a particular race or that she belonged to a particular social group or for any other *"Convention related"* reason.

35 *Ram v Minister for Immigration and Ethnic Affairs* (1995) 57 FCR 565 certainly is not authority for the proposition that extortion is always *"disinterestedly individual"*. The majority of the Full Court (Burchett and Lee JJ) in *Perampalam v Minister for Immigration and Multicultural Affairs* [1999] FCA 165 said at par 16, after citing *Ram*:

"But this was in the context … of an express finding by the Tribunal that 'the applicant has not satisfied me that the extortion was anything other than a criminal act, or that he was targeted for any reason other than he was known to have money'. Here, the Tribunal's finding is the opposite: it says 'there is no doubt that the LTTE approaches Tamil[s] for funding'. The additional fact that the particular Tamils approached are chosen 'because of their perceived wealth' is no more legally relevant than the fact (in Paramanantham) that the security forces targeted, among Tamils, young males from Jaffna who might be thought more likely to be guerrillas. Extortion directed at those members of a particular race from whom something might be extorted cannot be excluded from the concept of persecution within the Convention, and Ram does not suggest it can."

36 The difficulty in the present case is this. The applicant said, in her statutory declaration lodged in support of her application for a protection visa, that while she was at the second of the lodges at which she stayed in (or near) Colombo the police, when they came asking for money, asked also whether the applicant knew anything about the LTTE. Secondly, the solicitor for the applicant, in written submissions, drew the Tribunal's attention to a number of reports concerning the situation in Colombo which suggested that Tamils in Colombo were frequently subjected by the authorities to various forms of harassment. Particularly, the applicant's solicitor referred to a passage from the 1997 report *"Fact finding mission to Sri Lanka"* of the Danish Immigration Service:

"A Tamil wishing to remain anonymous took the view that many people were arrested and detained by the police for the sole purpose of blackmailing their family into paying bribes to have them released. According to a number of interviewees, common knowledge that many of the Tamils living in Colombo received money from relations abroad made them soft targets for that kind of blackmail by the police."

37 There was, therefore, material before the Tribunal on the basis of which it could have found that the extortion to which the applicant was subjected fell within a pattern of behaviour of certain police in Colombo directed not simply against individuals perceived to be wealthy but at Tamils, particularly those thought to receive money from overseas: a particular aspect of police harassment directed at Tamils. On the footing that it was equally open to the Tribunal to reach the conclusion it did reach (and the evaluation of evidence and the making of findings on questions of fact are matters for the

Tribunal, acting in accordance with its obligations under the *Migration Act*, not for the Court) there were therefore at least two factual findings open to the Tribunal: one was the finding it made; the other was that the extortion was, in the words of the Convention (*Convention Relating to the Status of Refugees* 1951 as amended by the *Protocol Relating to the Status of Refugees* 1967, Art 1A), *"for reasons of"* the applicant's race. Beyond the statement, in my view incorrect, that there was nothing (before it) to suggest that the police were motivated to extort money for a Convention related reason and the reference, in my view misleading, to the decision in *Ram*, the Tribunal simply does not explain why it made one available finding rather than another or refer to any of the material, relevant to that finding, which was before it. The finding was one on a material question of fact. It is not to read the Tribunal's reasons narrowly or pedantically to say – indeed, in my view it must follow – that in this respect the Tribunal did not follow the procedures which s 430(1) required it to follow. So to hold is, in my opinion, consistent with the approach of the Full Court in *Paramananthan* and in *Perampalam*; see also *Thevendram v Minister for Immigration and Multicultural Affairs* [1999] FCA 182. The grounds of review on which the applicant relies being to that extent made out, it is necessary to consider the Tribunal's further finding on the question of relocation.

(e) Relocation

38 This issue arises because the Tribunal, while leaving open the question whether the particular forms of extortion which the applicant feared were properly to be regarded as *"persecution"*, proceeded to hold that if the extortion amounted to persecution it was not persecution for a Convention reason. The Tribunal reached that conclusion, I have held, in a way which involved reviewable error. The Tribunal, in that context, considered the question whether, if the feared extortion were to be regarded as persecution for a Convention reason, the applicant could reasonably avoid it by moving to some other part of Sri Lanka. It dealt with that matter as follows:

"Further the applicant's difficulties concerning demands for bribes have occurred only during the time she stayed in Colombo following her return from India. She returned from India on 27 August 1994 and left for Australia in February 1996, a period of some 18 months. There is no indication that she would experience any difficulties concerning demands for bribes were she to return to the Tamil dominated areas in the north of Sri Lanka including Jaffna.

The Tribunal is of the view that the applicant could return to Sri Lanka and it would be open to her to take measures to limit her exposure to demands for bribes by either living somewhere else in Colombo or by returning to her home in Jaffna. When asked why she could not go home to Jaffna the applicant said that her son had been killed, she had no relatives in the city and that her house had been destroyed. She also claimed that she left Jaffna because of the imminent possibility of persecution and that there was a reign of terror and there was aerial bombing. There is now no bombing in Jaffna and there are large numbers of Sri Lankan troops. Food is not abundant but it is available. Some two-thirds of the pre-war population has returned to the city. She would have contacts and friends in Jaffna and although her house

has been damaged, she had been living in it for some time prior to her decision to move to Colombo to travel to India for her daughter's wedding."

39 That squarely raises the question whether the Tribunal properly applied the test discussed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437, recently applied in *Perampalam*. This question was not discussed at length in submissions, though the solicitor for the applicant referred me to one of the relevant passages in *Perampalam*, in the joint judgment of Burchett and Lee JJ at par 17.

40 In *Randhawa* Black CJ, speaking of what his Honour held to be the correct question whether an applicant can reasonably be expected to relocate to another area of his or her country of nationality, said at 442:

"This … question is an important one because notwithstanding that real protection from persecution may be available elsewhere within the country of nationality, a person's fear of persecution in relation to that country will remain well-founded with respect to the country as a whole if, as a practical matter, the part of the country in which protection is available is not reasonably accessible to that person. In the context of refugee law the practical realities facing a person who claims to be a refugee must be carefully considered.

Moreover, the range of the realities that may need to be considered on the issue of the reasonableness of relocation extends beyond physical or financial barriers preventing an applicant for refugee status from reaching safety within the country of nationality … . Professor Hathaway … expresses the position thus:

> 'The logic of the internal protection principle must, however, be recognised to flow from the absence of a need for asylum abroad. It should be restricted in its application for persons who can **genuinely access** domestic protection, and for whom the reality of protection is **meaningful** in situations where, for example, financial, logistical, or other barriers prevent the claimant from reaching internal safety; where the quality of internal protection fails to meet basic norms of civil, political and socio-economic human rights; or where internal safety is otherwise illusory or unpredictable, state accountability for the harm is established and refugee status is appropriately recognised.' "

41 Earlier in its reasons, the Tribunal considered the question whether Tamil asylum seekers, returned to Sri Lanka, would be permitted to return to the north of the country, including Jaffna; the Tribunal, largely on the footing of departmental cables, concluded that ordinarily, subject to security checks, they would be able to do so. In passages which I have quoted, the Tribunal considered conditions in Jaffna. The Tribunal's findings on those matters were, I think, findings based (and explicitly based) on material before it and thus not open to review. I do not think that those findings are vitiated by the statement by the Tribunal, in the context in which it is made, that *"the authorities are now in control of Jaffna and the Tamil citizens are under the protection of the Sri*

Lankan authorities". In my view, however, the Tribunal has not applied the *"reasonableness"* test, having regard to the particular circumstances of the applicant, as authorities such as *Randhawa* and *Perampalam* require. Conditions in Jaffna were, on the Tribunal's account, at least difficult. The circumstances which the Tribunal was required to take into account included, in my view, the age of the applicant, her infirmity (the impairment of her hearing), the facts, revealed by the evidence that all the applicant's children lived abroad and that her house, even if it could be lived in until 1994, had not been occupied by the applicant for a period of five years. The Tribunal referred to the applicant's evidence that she had no relatives in Jaffna; the Tribunal expressed the view that the applicant *"would have contacts and friends in Jaffna"* but this appears to be surmise, not based upon any particular evidence.

42 In short, in my view, the Tribunal's reasons in connection with the possibility that the applicant might settle in Jaffna were covered, just as similar findings were held to have been in *Perampalam*, by the Tribunal's earlier findings about the applicant's fear of persecution. As in *Perampalam*, what has happened may, in my view, properly be characterised in each of two ways. In the words of Moore J in *Perampalam* at par 11:

"In my opinion the Tribunal did not deal with an essential aspect of the [applicant's] case as it did not appreciate the need to consider all relevant aspects of the personal circumstances of the applicant in assessing whether relocation was reasonable. This involves an incorrect application of the law to facts as found: see s 476(1)(e). It could also be characterised … as a contravention of s 430 enlivening s 476(1)(a)."

43 The Tribunal does not refer to any matter in support of its finding that the applicant could avoid extortion by moving *"somewhere else in Colombo".*

Conclusion

44 It follows that the application should succeed. The orders of the Court are that:

1. The decision of the Refugee Review Tribunal dated 15 September 1998 be set aside.

2. The matter be remitted to the Refugee Review Tribunal, differently constituted, for determination according to law.

3. The respondent pay the applicant's costs.

I certify that the preceding forty-four (44) numbered paragraphs are a true copy of the Reasons

for Judgment herein of the Honourable Justice Lehane.

Associate:

Dated: 26 March 1999

Solicitor for the Applicant:	McDonells Solicitors
Counsel for the Respondent:	Mr J D Smith
Solicitor for the Respondent:	Australian Government Solicitor
Date of Hearing:	3 March 1999
Date of Judgment:	26 March 1999