IN THE FEDERAL COURT OF AUSTRALIA	
NEW SOUTH WALES DISTRICT REGISTRY	NG 320 of 1998

BETWEEN:	NAGARAJU TAMMANNAPPA MUNISWAMAPPA Applicant
AND:	MINISTER FOR IMMIGRATION AND MULTICULTURAL AFFAIRS Respondent

JUDGE:	SACKVILLE J
DATE:	29 JULY 1998
PLACE:	SYDNEY

REASONS FOR JUDGMENT

Background

This is an application to review a decision made by the Refugee Review Tribunal ("RRT") on 20 March 1998, whereby the RRT affirmed a decision by the Minister's delegate not to grant a protection visa to the applicant.

The applicant is unrepresented in the proceedings, although he was assisted by an interpreter in the Hindi language. As Mr Braham, who appeared on behalf of the Minister, observed in his written submissions, the application is framed in general terms and does not specify with any precision the error of law or other ground for review under the *Migration Act* 1958 (Cth)

(*"Migration Act"*) upon which the applicant seeks to rely. Not surprisingly, the applicant was unable to articulate in his oral submissions any ground of review which is available under the *Migration Act.* In these circumstances, the most convenient course is to outline briefly the history of the matter.

The applicant is a citizen of India, born on 3 April 1956. He is married, with two children. His family resides in Bangalore in the State of Karnataka, India. The applicant arrived in Australia in about July 1996. In August 1996, he lodged an application for a protection visa. In April 1997, the Minister's delegate refused to grant a protection visa. In May 1997, the applicant sought review of that decision by the RRT. As I have already indicated, on 20 March 1998 the RRT affirmed the decision of the Minister's delegate.

The Applicant's Claim

The applicant provided very little information relevant to his claim in his original application for a protection visa. The application form asks a number of questions and provides space for an applicant to give answers. The questions on the form include the following:

- Why did you leave [India]?
- What do you fear may happen to you if you go back to [India]?
- Who do you think may harm/mistreat you if you go back?
- Why do you think they will harm/mistreat you if you go back?
- Do you think the authorities of [India] can and will protect you if you go back?
- If not, why not?

In response to each of these questions the applicant wrote:

"STATEMENT TO COME."

Following rejection of his application by the Minister's delegate, the applicant sought review in the RRT. He gave as his reasons for making the application the following:

"For further submission & evidence I have not received any reminder letter from the Department. Moreover, the Department did not call me even for any oral evidence or interview."

The RRT requested the applicant to attend a hearing and he did so. The applicant was assisted at the hearing by an interpreter in the Hindi language. In the course of his oral evidence, the applicant claimed that he had been a member of the Congress Party in Bangalore in about 1993 to 1994. In about 1994, the government of the State of Karnataka changed. The previous party leader, S Bangarappa, established a new party known as the Karnataka Congress Party ("KC Party").

The applicant claimed that he joined the KC Party in 1994. He said that, as a consequence, members of the old Congress Party began to threaten and abuse him and members of his family. He also said that, although the KC Party no longer existed at the time of the RRT hearing, the old animosities continued and he feared that he would be threatened by old Congress Party members should he be required to return to India. The applicant provided to the RRT copies of several newspaper articles, one dated 4 April 1994, which reported demands made by the KC Party for fresh elections for the State Assembly.

The RRT's Decision

In his original application form, the applicant also stated that from 1974 to 1984 he worked as a sales person with a firm known as Shilpa Electronics, in Bangalore. He further said that from 1984 until his departure from India in 1996, he worked at the same firm, but as a "proprietor". The RRT found, on the basis of documents in the applicant's file, that he had travelled extensively out of India on business between 1990 and 1995. The RRT member put to the applicant that he was a successful businessman and would be able to relocate elsewhere in India, if he feared returning to Bangalore. In response, the applicant said that people from the Congress Party had even contacted him in Bombay and threatened him there.

In its reasons, the RRT quoted from a report prepared by the Department of Foreign Affairs and Trade ("DFAT") relating to the KC Party. The DFAT report noted that the KC Party was a breakaway party from the old Congress Party, and that there were undoubtedly differences of opinion arising from the split. The DFAT report acknowledged that disputes within and between various political parties in India can result in "fracas". However, such disputation was rarely anything more than at a low level of intensity. There had been a few reports of minor election-related violence during the November 1994 campaign, but none of this had involved the KC Party members. The DFAT report included the following passage:

"Whatever the level of political disagreement between regional parties in Karnataka, based on information provided, we would see no obstacle to an applicant resettling elsewhere in India."

The RRT gave brief reasons for concluding that it was not satisfied that the applicant was a person to whom Australia had protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees *("Refugees Convention").* Its reasons were as follows:

"The Tribunal accepts that the applicant has a subjective fear of persecution if he returns to India, but taking into account the DFAT assessment of the situation as it pertained in 1996, and the fact that the Karnataka Congress Party no longer exists, finds that his fear is not well-founded. In addition, it considers that given his

background as a businessman the applicant has the option to relocate elsewhere in India. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country. The international community is not under an obligation to provide protection outside the borders of the country of nationality if real protection can be found within those borders. Therefore, even if an applicant has a well-founded fear of persecution in their home region, the Convention does not provide protection if they could nevertheless avail themselves of the real protection of their country of nationality elsewhere within that country: Randhawa v MILGEA (1994) 53 FCR 437 per Black CJ at 440-1."

Reasoning

The RRT's reasoning is brief. However, in substance it gave two reasons for rejecting the applicant's claim. The first was that, taking into account the material provided by DFAT, it was not satisfied that the subjective fear of the applicant in his own State was well-founded. In reaching this conclusion, the RRT took into account the fact that the KC Party no longer exists in Karnataka. Secondly, the RRT found that, even if the applicant had a well-founded fear of persecution in his own State, he had the option to relocate elsewhere in India.

While the RRT's reasons are brief, there is nothing to indicate that it applied incorrect principles in determining that the applicant's fear of persecution, if he were to return to Karnataka, was not well-founded. The RRT commenced its reasons by setting out the general principles governing a claim to refugee status, including the principles governing whether an applicant's fear of persecution for a *Convention* reason is "well-founded". Moreover, the RRT specifically put to the applicant that the demise of the KC Party meant that there was no reason to fear harm if he were to return to Karnataka.

In my opinion, there was enough material before the RRT for it to conclude that the applicant's fear was not well-founded. The demise of the KC Party was a powerful factor supporting that conclusion. The applicant admitted that he had no documentary evidence to show that anyone from the old Congress Party was still threatening him or his family. Although the applicant had indicated in his original application that material to support his claim would be forthcoming, nothing was in fact provided other than the unhelpful newspaper articles and his own oral evidence at the RRT hearing. Thus, while it might have been helpful for the RRT to spell out its reasons a little more fully, I do not think any error of law or other ground for review has been established in relation to the RRT's critical conclusion, that the applicant's fear of persecution if he were to return to Karnataka is not well-founded.

The second ground for the RRT's decision invokes the principles discussed in *Randhawa v Minister for Immigration, Local Government and Ethnic Affairs* (1994) 52 FCR 437. In that case, Black CJ, with whom Whitlam J agreed, stated the relevant principles this way (at 440-441):

"Although it is true that the Convention definition of refugee does not refer to parts or regions of a country, that provides no warrant for construing the definition so that it would give refugee status to those who, although having a well-founded fear of persecution in their home region, could nevertheless avail themselves of the real protection of their country of nationality elsewhere within that country. The focus of the Convention definition is not upon the protection that the country of nationality might be able to provide in some particular region, but upon a more general notion of protection by that country. If it were otherwise, the anomalous situation would exist that the international community would be under an obligation to provide protection outside the borders of the country of nationality even though real protection could be found within those borders."

Black CJ also pointed out that the "relocation principle" (as it is sometimes called) only applies where the particular applicant can reasonably be expected to locate to another area of his or her own country. Black CJ cited with approval (at 442) the observations of Professor Hathaway (*The Law of Refugee Status* (1991) at 134):

"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."

Once again, on this issue, the RRT's reasoning is brief, almost to the point of being cryptic. However, the RRT did specifically ask the applicant why, as an educated businessman, he could not move from one State to another. The applicant gave no reason, other than asserting that he had been threatened in Bombay. In its reasoning, the RRT said that

"it considers that given his background as a businessman the applicant has the option to relocate elsewhere in India."

It is, of course, appropriate to give the reasoning of the RRT a "beneficial construction": *Minister for Immigration and Ethnic Affairs v Wu Shan Liang* (1996) 185 CLR 259, at 271-272. Adopting this approach, it seems to me that the RRT has addressed the question of whether the applicant could reasonably be expected to relocate elsewhere in India. It answered that question in the affirmative. Accordingly, I do not think that the RRT either misstated or misapplied the correct principles.

Conclusion

No error of law or other ground for setting aside the RRT's decision has been made out. The RRT's decision should be affirmed. The applicant should pay the Minister's costs.

I certify that this and the preceding five (5) pages are a true copy of the Reasons for Judgment herein of the Honourable Justice Sackville

Associate:

Dated: 29 July 1998

Counsel for the Applicant:	Unrepresented
Counsel for the Respondent:	Mr P Braham
Solicitor for the Respondent:	Australian Government Solicitor
Date of Hearing:	29 July, 1998
Date of Judgment:	29 July, 1998