THE SUPREME COURT

McGuinness J.
Hardiman J.
Fennelly J.

107/01 & 115/01

BETWEEN

A B

Applicant

AND

THE GOVERNOR OF THE TRAINING UNIT, GLENGARIFF PARADE, DUBLIN

Respondent

AND

THE MINISTER FOR JUSTICE EQUALITY AND LAW REFORM
Notice Party/Respondent
JUDGMENT delivered the 5th day of March, 2002 by FENNELLY J.

Section 5 of the Illegal Immigrants (Trafficking) Act, 2000 governs challenges to the validity of administrative decisions affecting immigrants. Firstly, such challenges can only be brought by way of judicial review. Secondly, there is a fourteen day time limit, subject to the right to seek an extension, for making the application for leave to apply for judicial review. Thirdly, the High Court decision on such applications (including on leave) is final and can be appealed to this Court only with leave of the High Court. However, in its earlier judgment in *B and S v. Minister for Justice, Equality and Law Reform*, 30th January, 2002, Unreported, Supreme Court, this Court decided that a person who has been refused an extension of time for leave to apply for judicial review may bring an appeal without such leave. This is such an appeal. It is taken against the decision of Finnegan J, as he then was, refusing the appellant's application for an extension of time to apply for leave to challenge a deportation order.

The time limit applies *"unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made."* (section 5(2)(a) of the act of 2000).

In the ordinary case, the question is whether there is *"good and sufficient reason."* However, the present case comes before the Court in a slightly different form. The appellant's principal point is that he does not need an extension. He asks for an extension of time as an alternative. At this point it becomes necessary to mention some of the relevant facts.

The appellant, a Nigerian citizen, came to Ireland in 1999 and was permitted to work pending determination of his application for refugee status. His

application in that behalf failed and his appeal was disallowed on 19 June 2000. He was permitted to and did, in fact, make representations to the respondent ("the Minister") as to why he should not be deported. On 27 July 2000, the Minister made the relevant deportation order, that is *"an order requiring [a] non-national .... to leave the State within such period as may be specified in the order.."*
The deportation order is the only remaining object the appellant's attempt to obtain judicial review, though the grounds as drafted would have covered the original refusal of refugee status and the adverse appeal finding. It is necessary to consider both the grounds advanced in support of the proposition that there is no need for an extension of time, the alternative argument for an extension and , as it is relevant to the exercise of the court's discretion to allow an extension of time, the ground advanced to challenge the validity of the deportation order.
The appellant initially resided at 12 St. Patrick's Terrace, Russell Street, Dublin 1. That was the address notified to the Minister. He lived there until after the making of the deportation order. In August 2000, he moved to Dundalk. He did not notify the Minister.
Here, it is important to note certain provisions of the Immigration Act, 1999, as the appellant relies on them. Section 3 of the act of 1999 obliges the Minister to *"notify the person [affected by a deportation order] in writing of his or her decision and the reasons for it and, where necessary and possible, the person shall be given a copy of the notification in a language that the person understands."* Section 6 of the act of 1999, before amendment, provided that:

"6.- Where a notice is required or authorised by or under this Act to be served on or given to a person, it shall be addressed to him or her and shall be served on or given to him or her in some one of the following ways:
(a) where it is addressed to him or her by name, by delivering it to him or her, or
(b) by sending it by post in a prepaid registered letter, or by any other form of recorded delivery service prescribed by the Minister, addressed to him or her at the address most recently furnished by him or her to the Minister or, in a case in which an address for service has been furnished at that address."

The address furnished by the appellant to the Minister was his Dublin address. This was the relevant statutory address up to 5th September 2000, when the act of 2000 came into force. Section 10(c) of the act of 2000 amended section 6 of the act of 1999 *"by the substitution in paragraph (b) for "to the Minister" of "to the Registration Officer pursuant to Article 11 of the Aliens Order, 1946 (S.R. & O., No. 395 of 1946), or to the Refugee Applications Commissioner pursuant to section 9(4A) of the Refugee Act, 1996, as the case may be, ..."*

The appellant says he moved to a new address, after an initial temporary address, in Dundalk in early September 2000. The premises were let to another Nigerian, with whom the appellant and his girlfriend shared it. The appellant registered the new Dundalk address with the Gardai on 21st September 2000. Detective Garda Gerard Connor had been appointed in August 1999 as the Immigration Officer at Dundalk Garda Station with responsibility for the Dundalk district. The relevance of this is that Article 11 of the Aliens Order provides, in relevant part, as follows:

"11. (1) An alien shall comply with the following requirements as to registration:-
(a) he shall, as soon as may be, furnish to the registration officer of the registration district in which he is resident, particulars as to the matters set out in the Second Schedule to this Order, and, unless he gives a satisfactory explanation of the circumstances which prevent his doing so, produce to the registration officer, either a valid passport, or some other document satisfactorily establishing his nationality and identity.
(b) ....
(c) he shall, if he is about to change his residence, furnish in the registration officer of the registration district in which he is then resident, particulars as to the date on which his residence is to be changed, as to his intended place of residence, and on effecting any change of residence from one registration district to another, within forty-eight hours of his arrival in the registration district into which he moves, report his arrival to the registration officer of that district."

The Minister gave notice of the making of the deportation order by a letter dated 4th December 2000 addressed to the appellant at his former Dublin address. This would have been correct but for the amendment of section 6 of the act of 1999. The appellant says that, in the new situation, the notice should have been given to him at the address he notified in September 2000 to the Immigration Officer at Dundalk Garda Station and that, without that, the deportation order was never notified to him. The Minister, of course, knew nothing about the Dundalk address. Detective Garda Connor swore an affidavit to the effect that, in every case, he advised applicants of the necessity to notify the Department of Justice, Equality and Law Reform of their change of address. The appellant denies that he received any such advice. In any event, he says that the notice had to be given to him at the Dundalk address, since he had registered there in accordance with the amendment to the act of 1999 made by section 10 of the act of 2000. He also says that the decision of this Court in *Gabrel v Governor of Mountjoy Prison* (Unreported 8th February 2001) demonstrates that service must comply precisely with the statutory requirements. The Minister's letter required the appellant to attend at the Garda National Immigration Bureau on 8th December 2000 for the purpose of arranging his deportation.

The appellant says he could not have received the deportation order, as he was no longer living at the Dublin address. In fact, the Minister sent a copy of the deportation order to the appellant's solicitor in Dublin, but he had not notified the latter of his move to Dundalk either. Sometime after Christmas, 2000, the appellant says that he realised he had not notified his solicitor. Upon contacting him, he discovered that the deportation order had been made. On 7th February 2001, the appellant was taken into custody at his place of work in Dundalk by Gardai from the Garda National Immigration Bureau.

There was also some disputed evidence before the High Court. Garda Lua O'Scolaidhe of the Garda National Immigration Bureau, who arrested the appellant on 7th February 2001 swore that, while travelling to Dublin, he said that he had been in touch with a Spanish girl living at his Dublin address and was aware that he had received a letter in relation to his deportation. The appellant denies having made that or any similar statement. On 8th February, the appellant's solicitor swore an affidavit seeking an extension of the time for making an application for leave to apply for judicial review. He did not say when he had informed the appellant of the making of the deportation order except that more than fourteen days had elapsed from the date upon which he would have been deemed to have been notified of the making of the order and that it was after Christmas. He then says that he was unable due to pressure of work in other cases to pursue a judicial review application. The appellant, in his own affidavit, does not give any greater precision to the date when he learned of the making of the deportation order than that it was after Christmas.

The first point to address is whether the appellant needs an extension of time. It is clear that notice of the making of the deportation order was not served upon him at the address referred to in the amended provisions of section 6 of the act of 1999. It is not easy to discover the reason for this legislative change. It may have been considered that the need to ensure that the Minister has an up-to-date address is too onerous a requirement. On the other hand, it is at least as likely that immigrants will find it difficult to learn how to comply with the rather obscure terms of the Aliens Order. In any event, the real difficulty is for the Minister. The legislation , as it now stands, does not provide for any means other than personal service of notifying a person who has not furnished information about his change of address to the Immigration Officer. This is an unsatisfactory state of affairs. It is clearly desirable that a machinery be established for ensuring that the Minister is made aware of the addresses of persons liable to be served with deportation orders.

The Minister contends that it is sufficient, in this case, that the appellant actually knew of the deportation order from some unspecified date after Christmas.

In fact, the learned trial judge did not deal with this issue in his judgment,

but approached the matter as one simply involving an application for an extension of time. However, it is accepted that the matter was argued in the High Court. The case first came before this Court for hearing with another case. The two cases were taken together for the purpose of deciding the issue of the need for a certificate from the High Court. It is right that the Court should deal with the point raised, though not referred to in the High Court judgment.
If the fourteen-day time limit laid down in section 5 of the act of 2000 commences to run only from the moment when notice is given in one or other of the methods specified in section 6 of the act of 1999 as amended, it is clear that the appellant must succeed. On that hypothesis, no notice was given to him at the address in Dundalk he had notified to the Immigration Officer and that is the address specified in the section. Nor had the deportation order been given personally to the appellant, as envisaged by section 6(a). One strange, one might think absurd, consequence of this result would be that, even if the appellant had not moved from his Dublin address, sending notice to him there of the making of the deportation order would have been insufficient notice for the purpose of the time provision.
The wording of section 5 (2)(a) of the act of 2000 then becomes crucial. It reads:

"(2) An application for leave to apply for judicial review under the Order in respect of any of the matters referred to in subsection (1) shall -
(a) be made within the period of 14 days commencing on the date on which the person was notified of the decision, determination, recommendation, refusal or making of the Order concerned unless the High Court considers that there is good and sufficient reason for extending the period within which the application shall be made, ..."

The fourteen days commence to run when *"the person [is] notified of the decision ...."* Taken on their own, these words do not require that there have been any particular form of notification. In plain language, it is enough that the person have been notified i.e., have received notice by any means. The words do not, as they could easily have done, incorporate by reference, express or implied, the notice provisions of section 6 of the act of 1999. Nor does the act of 2000 contain any provision requiring the act to be construed as one with the act of 1999. Thus, on the normal criteria for the interpretation of statutes, there is no need for the notice to have been given in accordance with the requirements of section 6 of the act of 1999 as amended. Even if it were necessary to show compliance with that section, paragraph (a) should not be overlooked. It allows for delivery of the deportation order to the affected person. Where, as in this case, the document has been sent to a solicitor acting for that person and he learns of the fact, it may not have been delivered in a literal sense, but this fact is clearly relevant to the question of the extension of time.

Furthermore, the purpose of the provision is clear. It is, in the first instance, to impose a very short time limit on the making of applications for judicial review. However, it would be meaningless as well as unjust to make time run from a date when the appellant could not know of the decision made in his case. That is the purport of the decision in *Gabrel*. In that case, Keane C.J. considered a situation in which the High Court judge had deemed good service of a decision on a Refugee Legal Service with which the immigrant had been in contact. There appears to have been no evidence as to whether the relevant letter had been received by the applicant in that case. More tellingly, the learned Chief Justice emphasised that *"it would follow inevitably if a person entitled to receive notice of the deportation order never received notice of the deportation order they would then not be in a position to know what conditions had to be complied with ...."* That was a case of Habeas Corpus, but the gravamen is clear. The purpose of the notice provision is to enable an affected person to know the basis of a decision so as to be able to assess the chances of challenging it. That purpose is not defeated if, although the deportation order was not notified in accordance with the act of 1999, the affected person, in fact, received notice of it. Accordingly, it is clear that the application was not made within the statutory period and the appellant requires an extension of time.

The learned trial judge treated the notice as having been given by the sending of the letter of 4th December 2000 to the Dublin address and the time as having expired on 29th December. It now appears that the notice, for the purpose of section 5 was received *"sometime after Christmas."* The appellant has not furnished any more exact date thus the time expired sometime early in January. At any rate, he requires an extension of time.

The justification for the failure to institute judicial review proceedings in time is, as stated, that the appellant's solicitor was under pressure of work from other cases. The appellant also relies upon the failure of the Minister to serve the deportation order more promptly and on the failure of the latter to keep himself informed of the appellant's change of address. Reliance on the appellant's delay would, he claims, be disproportionate.

It is important to recall that this Court in its judgment pursuant to Article 26 of the Constitution *In the matter of sections 5 and 10 of the Illegal Immigrants (Trafficking) Bill, 1999* [2000] 2 I.R. 360 ruled that *"the State has a legitimate interest in prescribing procedural rules calculated to ensure or promote an early completion of judicial review proceedings of the administrative decisions concerned."* It accordingly concluded *"that there were objective reasons concerning the public interest in the certainty of the validity of the administrative decisions concerned on the one hand and the proper and effective management of applications for asylum and refugee status on the other, ... [which might] justify a stringent limitation of the period within which judicial review of such decisions [might] be sought, provided constitutional rights are respected."* On further analysis, the Court

considered that they were so respected. It is also noteworthy and relevant, in my view, to the circumstance of this case, to bear in mind a matter to which the Court, at page 391 of its judgment, drew particular attention:

"As a preliminary observation, it should be recalled that a person who is the subject of a deportation order will have become aware in the course of the extended processing of his or her application that he or she is on real risk of becoming the subject of a deportation order. In addition, the person concerned will in the vast majority of cases have received almost three weeks notice of the intention to make the deportation order."

The learned trial judge said that it behoved that appellant and his solicitors to move the application for judicial review with expedition and that this was clearly not done. He considered that inactivity of an applicant's solicitors, having regard to the scheme of the act, was not a ground which would, of itself, move the court to exercise its discretion in favour of an applicant. In this connection, he remarked that the failure of the appellant to receive the deportation order was due to his change of address, which he had not notified to the Minister.

In my view, the learned trial judge was correct in making these observations. The appellant had a solicitor on record with the Minister and an address registered with the latter. He had been involved with the immigration procedures and machinery of the State more or less since his arrival, in the State. He knew that his application for refuge status had been turned down both originally and on appeal. He knew that the Minister was considering making a deportation order and he had made representations to him. In these circumstances, he moved to Dundalk without informing either the Minister or his own solicitor. He took a calculated risk. Even if it is not possible to resolve the dispute about whether he knew via a Spanish girl at his former Dublin address of the existence of the deportation order, this dispute highlights his carelessness about keeping himself informed. If he had been genuinely concerned to learn of developments, he would indeed have communicated with his former address or made arrangements to have any post forwarded or ensured that his solicitor had his current address. For all these reasons he is in an extremely weak position to ask the court to extend the time or to criticise the Minister for delay. In fact, no step at all was taken by the appellant until after his arrest on 7th February. It is not sworn by him or by his solicitor that he had formed an intention to challenge the deportation order within the statutory period. From this, it is reasonable to conclude that he merely wished to prolong his now illegal presence in the State and no wish or intention to take any further proceedings.

The learned trial judge also said that he took into account the strength of the probable case of the appellant for judicial review . He was correct in so doing (see the judgment of Hardiman J in the case of G.*K. V Minister for Justice, Equality and Law Reform*, unreported 17th December 2001 and the judgment delivered today by Denham J in *S v. Minister for Justice, Equality*

and Law Reform). In effect, two points are made by the appellant. Both are based on the lapse of time between the making of the deportation order on 27th July 2000 and its notification by letter dated 4th December.
The first argument is based on section 3(8) of the act of 1999, which provides that:

"(8) Where a person who has consented in writing to the making of a deportation order is not deported from the State within 3 months of the making of the order, the order shall cease to have effect."

The appellant argues that, in this case, a period of more than three months has elapsed. Although the appellant is not a person affected by section 3(8) -- he did not give any consent in writing to the making of the deportation order -- nonetheless, this provision should be applied by analogy to him. It would be wrong to treat him differently from a person who has given consent.
The second argument is that, due to the lapse of time, there had been a change of circumstances. In particular, the girlfriend of the appellant had become pregnant. Her child was expected at the date of the deportation order.
In my view, neither of these points merit consideration as arguable grounds for judicial review. The first involves interpolating words into the act of 1999. Alternatively, it involves rewriting section 3(8) of the act so as to delete the reference to consent. Quite obviously, the Court cannot do that. It would be usurping the prerogative of the legislator. No other basis for this argument having been advanced, I would reject it.
The second point depends on the intervention of the appellant's girlfriend's pregnancy. I cannot see how, on any basis, none having been advanced, such an event, certainly on the facts of this case, could cast doubt on the validity of the order, which is what would be in issue in any judicial review proceedings.
In summary, I believe that the appellant's application for leave to apply for judicial review is out of time, that he has not shown any good and sufficient reason to be allowed any extension of time and that, in any event, he has not demonstrated any arguable ground for judicial review. Where an applicant's case on the merits is manifestly devoid of merit, as this is, there can be no question of granting an extension of time.
I would, therefore, dismiss the appeal.