Naba & Ors v. The State

No. HAC0012 of 2000L (unreported)

Country: Fiji
Region: Oceania
Year: 2001
Court: High Court
Health Topics: Prisons
Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial

Facts

N and four others were remanded in Natabua prison on 15th December 1999 on a charge of murder contrary to ss 199 and 200 of the Penal Code. In October 2000 the High Court refused the applicantsâ€™ request for bail whilst saying that if they were not released expeditiously it would have to reconsider the matter. Another application for bail was made on the grounds that their continued detention infringed their rights to be free from cruel, inhuman and degrading treatment and to have their case determined within a reasonable time as guaranteed by Articles 25(1) and 29(3) of the Constitution respectively. In particular, the applicants complained that each small cell was occupied by three prisoners and that they only enjoyed two hours per day of fresh air. The officer in charge of the prison acknowledged the over-crowding and unsanitary conditions. In March 2001 the local courts complex, which had been subject to systemic delays due to under-staffing, was closed on health and safety grounds with the result that it was unlikely that the applicantsâ€™ trial would commence before August 2001 at the earliest. The State submitted that any overcrowding was only temporary. Prior to the hearing the Court visited the Natubua remand block to assess the conditions.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

In granting the application,Â the CourtÂ held that:

(1) The Constitution was a living instrument subject to purposive and liberal interpretation which must be construed in the light of present day conditions (Muhoza v The Attorney General (DSM) Civil Case No 206 of 1993, Nawaz Sharif v President of Pakistan, PLD 1993 SC 473 and Hunter v Southam Inc (1985) 11 DLR (4th) 641 (SCC) applied).

(2) In this context what might not have been regarded as inhuman and degrading decades ago may now be viewed as such (A Juvenile v The State [1989] LRC (Const) 774 considered). The basic tenet of all human rights instruments dealing with prisoners, which must be heeded, even in the absence of ratification pursuant to s 43(2) of the Constitution, clearly reaffirmed the principle that prisoners retain fundamental rights.Â States had a positive obligation towards persons who were particularly vulnerable because of their status as persons deprived of their liberty. They not be subjected to neitherÂ torture or other cruel, inhuman or degrading treatment or punishment nor any hardship or constraint that failed to respect their dignity. This was a fundamental and universal and applicable rule not dependent on the resources available to the state.

(3) Therefore certain minimum standards regarding conditions of detention must be observed regardless of a stateâ€™s level of development and budgetary considerations (Mukon v Cameroon (Communication No. 458/1994 CCPR/C/51/D/458/1991 applied). These include, in accordance with rules 10, 12, 17, 19 and 20 of the Standard Minimum Rules for the Treatment of Prisoners (â€˜the Rulesâ€™), minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which shall be in no manner degrading or humiliating, provision of separate bed and food of nutritional value adequate for health and strength. Special standards apply to those who have yet to be tried based upon the presumption of innocence guaranteed by Art 11(1) of the Universal Declaration of Human Rights and reaffirmed in s 28(1)(a) of the Constitution. However, in this case it was clear that not only were the Rules not being complied with but both prison officers and prisoners were also unaware of their existence.

(4) Three detainees were sharing cells measuring no more than 9ft x 9ft 11 inches with only one window of

3ft x 1ft 5 inches with insufficient natural light to read. These arrangements were contrary to rule 9(1) of the Rules . Whilst overcrowding had been a perennial problem since the 1960s, the detainees in the Natabua remand block were living in atrocious conditions. It was incorrect to maintain that overcrowding was only a temporary problem since over the past 3 years there had been on average 45 persons detained in 18 cells at any given time. Bedding did not comply with the Rules which required that every prisoner should be provided with â€˜a separate bed with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.â€™ Thin foam mattresses, mostly inadequately covered, were placed on bare cement floors for sleeping. Blankets, mostly torn, were inadequate for the cooler months. This situation was even more distressing given that convicted prisoners were provided with beds.

(5) Following dinner at 4pm, all detainees were locked in their cells at 5pm and left with a bucket for their sanitary needs until 7am. This was inhumane and degrading in light of the fact that three persons are detained in a poorly ventilated cell and breached Rule 12 . It was also inhumane to make detainees have their dinner at 4pm given their socio-cultural background centering on outdoor recreational activities from 5-7pm. Moreover, the failure to provide any exercise during the weekend breaches s 121(c) of the Prison Regulations which stipulated daily exercise. In addition, they received no education or training and were only allowed to write one letter a week contrary to s 121(f) of the Regulations.

(6) In the light of these circumstances, it was clear that the regime was inhumane and ws maintained for administrative convenience rather than respect for human dignity. If society was to be judged by how we treat the most vulnerable then the remand block had failed that test. Lack of resources did not address the issue since this could not be used to justify derogation from the Bill of Rights. Derogation was only possible during a state of emergency and, in line with s 187(3)(d)Â of the Constitution, even then must not be inconsistent with an international obligation, including the rights of detainees under the Universal Declaration, International Covenant on Civil and Political Rights and the Convention Against Torture to be treated with dignity.

(7) The block should be closed immediately and, if not, the Court would consider granting bail to all current detainees. In addition, the Prisons Act and the subsidiary legislation dealing with the treatment of prisoners needed to be reviewed in order to better meet the standards of the Rules.

(8) Whether someone received a trial within a reasonable time will depend upon all the facts of the particular case, including complexity, the conduct of the defendants and prosecuting authorities (State v Peniasi Kata Cr. Action HAC0009 of 1994L (10/05/2000 unreported) applied). A more rigorous standard should apply where the defendant was in custody (Abdolla v The Netherlands 20 EHRR 585 applied). Neither a courtâ€™s workload nor shortage of resources could justify delay since states were under a duty to organize their legal systems to facilitate trials within a reasonable time (Zimmerman & Anor v Switzerland 6 EHRR 17 applied). In this case, the lack of resources â€“ both human and physical â€“ of the local courts had resulted in the applicants having already been in custody for an excessive period of 18 months.

(9) Bail would only be granted for a charge of murder in exceptional cases, usually involving delay (State v Vusonitokalau (Cr. Case HAC0005 of 1996S) and Naisake & Anor v State (Cr. Case HAM 0010D.2000S) considered). Although each case must be decided on its own facts, a delay of 12 months would be a matter of concern.

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Decision Excerpts