THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A 2044/05

Between

ALLADIN MOHAMMED

Applicant

And

COMMISSIONER OF PRISONS

Respondent

BEFORE THE HONOURABLE MR. JUSTICE PETER RAJKUMAR

APPEARANCES:

Mr. Mark Seepersad and Mr. Gerald Ramdeen for the Applicant.
Ms. Josephina Baptiste and Ms. Kavita Jodhan for the Respondent.

20th March, 2008

JUDGMENT

The Complaint

The Applicant has sought judicial review of alleged decisions or failures of the Respondent Commissioner of Prisons:

(1) To provide the Applicant with opportunities and /or make arrangements for daily outdoor exercise for a minimum of one hour known as "airing";

(2) To provide the Applicant with the special diet as prescribed by the Prison Medical Officer; and

(3) To deny to the Applicant receipt of items under a "family prescription" issued by the Prison Medical Officer.

In respect of each of these alleged decisions or failures, the grounds are that:

(1) The decision is contrary to law;

(2) The decision constitutes an unreasonable exercise of power by the Respondent;

(3) The decision conflicts with the policy of an Act, namely, the Prisons Rules made under the West Indian Prisons Act of 1838;

(4) The decision constitutes an omission to perform a statutory duty.

In addition, in respect of the complaint that the decision to deny the Applicant the receipt of items under a family prescription issued by the Prison Medical Officer, a further ground is relied upon, namely, that that decision constitutes a denial of a legitimate expectation which arose from a settled practice over the past 23 years by the Commissioner of Prisons.

Disposition

(1) I find that the frequency of airings did decline to unacceptable levels to the point where it amounted to a breach of Rule 250(1) of the Prison Rules, that an attempt was made to rectify this by the Prison Authorities in September 2006, and that subsequent to that time the frequency of airings increased for a period of 2 months and then plummeted once more in December 2006 to 4 per month and that variability continued thereafter.

(2) I find that the reasonableness of the decline in airings is a matter that can be investigated by this Court on an application for judicial review.

(3) I find that the Prison Authorities made attempts to address this situation but these efforts were not maintained. The current situation is that the frequency of airings is approximately once every other day but the situation has on occasion been allowed to deteriorate, allegedly due to staff shortages.

(4) I am therefore constrained to grant a declaration that the failure of the Respondent, his servants and/or agents to make the necessary arrangements for the Applicant to take outdoor exercise for a sufficient number of occasions

per month is in breach of the Prison Rules made under The West Indies Prison Act 1838 and illegal.

(5) I further make an order of mandamus directing the Respondent to forthwith make all necessary arrangements to have the Applicant take exercise in the open air, as often as practicable, and in any event, barring inclement weather, not less than every other day.

(6) With respect to the complaint that the special diet was stopped, I find that this issue is now academic and I decline in those circumstances to make the declaration sought in this regard.

(7) With respect to the complaint that the family prescription was stopped, I find that this was within the jurisdiction, authority and discretion of the Prison Authorities. The family prescription has expanded over time to encompass items as diverse as footwear. In its original intent it appears that it was intended to permit prisoners' families to provide for them items of a medical nature – medicines, vitamins, and even dietary items that the State could not provide. In its expanded form it raised the concerns of the Respondent that it could be used as an avenue for smuggling. Although it appears that there should exist some happy medium whereby prisoners could receive items under the family prescription in respect of medicines, vitamins, and even dietary items that the State cannot provide, (as appears to be the original intention) the court would decline to interfere with a discretion so exercised by the Respondent.

(8) I order the Respondent to pay to the Applicant costs certified fit for advocate attorney .The Applicant was successful on the majority of issues raised which were not academic at the time they were raised, and only became so during the course of these proceedings.

LAW AND ANALYSIS

<u>Airing</u>.

The statutory basis.

It is common ground that the claimed "airing" is based upon Rule 250 sub-rule 1 of the Prisons Rules made under the West Indian Prison Act of 1838. Rule 250(1) provides as follows:

> *"Arrangements shall be made as far as practicable for every prisoner who is not employed on outdoor work to take exercise daily for one hour, or for such longer periods as the Medical Officer may deem necessary in the case of an individual prisoner having regard to the state of his health and the nature of his work. The exercise shall take place in open air except in inclement weather."*

The qualifications upon this Rule appear from its language, namely,

(1) those arrangements shall be made as far as practicable,

(2) the exercise shall take place in open air except in inclement weather.

It is clear therefore that the Rule makes concessions to the possibility that weather or other contingencies may make those arrangements for airing not practicable.

Issue:

What reliefs if any exist in relation to a decision and/or failure to provide suitable arrangements for "airing".

(i) Is there a cause of action for damages for breach of Prisons Rules.

I note the case of ***Hague v Deputy Governor of Parkhurst Prison and Others [1991] 3 All England Reports 733 House of Lords*** and the statement by Lord Jauncey at page 750 j that:

> *"The Prison Act, 1952 (UK) is designed to deal with the administration of prisons and the management and control of prisoners. It covers such wide-ranging matters as central administration, prison officers, confinement and treatment of prisoners, release of prisoners on licence, provision and maintenance of prisons and offences."*

Having considered the entirety of the Prison Act, Lord Jauncey found that*:*

> *"I find nothing in any of the other sections of the Act to suggest that Parliament intended thereby to confer on prisoners a cause of action sounding in damages in respect of a breach of those provisions."*

I have reviewed the entirety of the Rules made under the West Indian Prisons Act of 1838 and considered whether any of the provisions contained therein suggests that Parliament intended to confer on prisoners a cause of action sounding in damages.

I find that though they address in part treatment of prisoners, the Rules are mainly regulatory in character and provide a framework within which the prison regime operates. I conclude from a review of their framework and the content thereof that they are not intended to give prisoners a right of action sounding in damages in respect thereof. I am therefore constrained to conclude that a breach of the Prisons Rules does not per se create any cause of action sounding in damages at the suit of a prisoner who claims that these rules have been infringed in relation to him.

(ii) Other causes of action associated with breaches of Prisons Rules

The ***Hague*** case supra, however, recognises:

(1) The possibility of a right of action in negligence against prison authorities; and

(2) The possibility of public law remedies.

No private law remedy akin to damages for negligence is sought in this Action. However, at page 752(h), (ibid) Lord Jauncey found that:

> *"He, (*the prisoner*), may also challenge any administrative decision of the Secretary of State or the Governor which he considers to contravene the provisions of the Act or the Rules by judicial review proceedings. In the case of a continuing wrong done to him, a prisoner could expect that a hearing in judicial review proceedings could be obtained with little delay. These public law remedies are additional to any private law remedies which would be available to him such as damages for misfeasance in public office, assault or negligence."*

I find therefore, that judicial review is in principle available in a suitable case at the suit of a prisoner who claims there has been a continuing wrong done to him by a breach of the Prisons Rules.

Airing – The Facts

I turn, therefore, to consider the question of airing. The Rule is aimed at ensuring the health and welfare of prisoners through the provision of a daily one-hour opportunity for outdoor exercise. See Jamadar J. in ***Thomas v Baptiste*** at first instance, ***High Court Action No. 1373 of 1998***.

The evidence as to airings.

The Applicant deposes that:

(1) While on remand between 1996 and 1998, he was aired two to three times per week.

(2) When transferred to Death Row/Condemned Division in 1998 and early 1999, he was aired daily for one hour.

(3) From late 1999, opportunities for airing began to dwindle initially to three times per week in 1999.

(4) Between 2001 and 2005 he was not afforded the opportunity for airing for weeks at a time. He was aired on average twice per week.

(5) In 2005, he was aired once every two weeks.

(6) He brought his desire to be aired to the attention of the Supervisor on duty.

Further affidavits were filed by

(a) the applicant who was detained in the Condemned Division from 1998 to date

(b) Sangit Chaital who was detained in the Condemned Division from 1983 to 1994

(c) Bhim Ram who was detained in the Condemned Division from 1994 to 1998.

Each Deponent testified that airing was infrequent and irregular, not a daily procedure, and that weeks sometimes passed before they were afforded airing opportunities. It is contended that the Applicant has therefore brought evidence covering a continuous period of over 25 years.

According to the Applicant the reasons that were proffered for a lack of airing were

(1) staff shortages; and

(2) a lack of handcuffs.

In an affidavit filed on behalf of the Respondent, he denies that a lack of handcuffs was an applicable reason. He does contend, however, that there were staff shortages, which he made an attempt to address by increasing the number of prison officers on duty in the Condemned Section from four to ten. This was done on 7th September 2006.

The Respondent sets out the Applicant's records as to airing and these are set out below in the form of a Table.

Months	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**
January	3	9	-	1	7	4
February	10	-	10	-	6	1
March	8	-	4	-	4	5
April	12	-	8	-	7	4
May	13	3	7	6	2	-
June	14	-	-	4	3	4
July	8	9	-	10	3	4
August	13	8	-	10	6	2
September	13	3	-	6	5	9
October	9	9	-	4	6	15
November	15	5	-	-	-	18
December	6	5	-	8	4	4

The Applicant contends that the Table shows that:

(1) There has been a continuous breach of Rule 250(1); and

(2) Such breach has increased with the passage of time;

(3) Each prima facie breach of Rule 250(1) amounts to:

  (a) an illegality and a conflict with the policy of the Rule; as well as

  (b) the prima facie breach of statutory duty imposed by Rule 250(1) actionable under the Judicial Review Act, 2000

  (c) an unreasonable exercise of power in the circumstances.

As already pointed out, the Rule contains qualifications. The Applicant accepts that Rule 250(1) is not absolute but states *"as far as practicable"*. The question therefore arises whether such a failure constitutes an unreasonable exercise of power or whether any failure to provide airings or airing opportunities is justified in the circumstances.

Analysis of the Table

It is clear that from the Table provided by the Respondent himself that the airings afforded to the Applicant were in fact irregular and did vary from year to year. For example, in the month of November 2006, the Applicant was aired 18 times. In October 2006, he was aired 15 times. In May 2006, he was not aired at all. In December 2006, he was aired 4 times.

Similarly, when one examines the 2001 figures, the Applicant was aired 12 times in April 2001, 13 times in May 2001, 14 times in June 2001, 15 times in November 2001 but not at all in any month (according to his records) in June, July, August, September, October, November and December 2003, once in January 2004 and not at all in February, March or April 2004.

The Applicant contends that in 2001, the average airing times were 10.33 per month. In 2002, he received an average of 4.25 airings per month; in 2003, 2.58 airings per month; 2004, 4.08 airing times per month; 2005, 4.4 airings per month and 2006, 6 times per month.

There was no explanation provided for the erratic nature of the airings afforded to the Applicant, save for the suggestion by the Respondent that from September 2006 the number of officers assigned to duty in the Condemned Section was increased from four to ten and that at present there are now 11 prison officers attached to the condemned prisoners airing squad. This may provide an explanation as to why airings increased dramatically in the months following September 2006 from a low of zero in May 2006, 1 in February 2006 and 2 in August in 2006, but provides no explanation as to why in December 2006, after the increase in the strength of the squad, airings declined once again to 4, a number consistent with the pre-7th September 2006 squad increase. This is the same as in December 2005 and less than the 5 airings in December 2002 and the 6 airings in 2001.

It is clear from this Table that inclement weather cannot be the reason for no airings at all in February, March and April in 2004, or for no airings at all in May 2006, or for no airings at all from June to December 2003.

It is also clear from the Table that staff shortages may not be the only reason why airings do not take place with equal regularity in each month given the December 2006 figure of 4.

Staff shortages.

The Respondent cited the case of ***R v Governor of Brixton Prison and Another ex parte Walsh [1985] Appeal Cases 154, House of Lords***. In that case, the House of Lords dismissed an appeal by an applicant who, facing a number of charges before two Magistrates' Courts, was not produced by the prison authorities to attend Court on the dates of hearing. The House of Lords, in dismissing the appeal, held that neither the Secretary of State nor the Prison Governor under the Magistrates' Court Act, 1980 (UK) was under an:

> *"unconditional duty to produce them at court"* and that the *" duty of the Secretary of State or of the Governor, was to consider whether he was satisfied that it was desirable in the interests of justice that such prisoners should be so produced and, if he was so satisfied, not unreasonably to refuse to produce them."*

That case was based upon the Court's finding that:

> *"the duty of the Secretary of State or of the Governor acting under powers delegated to him, is to consider, in accordance with the Criminal Justice Act 1961, Section 29, whether he is satisfied that it is desirable in the interest of justice that such prisoners should be so produced and, if he is so satisfied, not unreasonably to refuse to produce them."* See page 166F-H.

It held that in the circumstances, it could not be said that the Prison Governor had acted unreasonably in failing to produce the applicant to the courts. The Court accepted therefore, consistent with their description of that duty, that the Governor's excuse that due to staff shortages they were unable to accompany prisoners to the Court led to the conclusion (page 166B) that:

> *"That reply shows that the Governor was <u>not refusing</u> to allow the appellant to be produced at court but was merely explaining that he was unable to provide an escort for the purpose. It has not been alleged that that was not his real reason and in these circumstances it would be out of the question to hold that he acted unreasonably."*

In the ***Walsh*** case, the question of producing the applicant to the Courts was a matter <u>within the Secretary of State's discretion</u>. Further, his duty, if he was satisfied that it was in the interest of justice that such a prisoner should be produced, was not to

unreasonably refuse to produce him. It was clear that the Governor was not unreasonably refusing or even refusing to allow the appellant to be produced at Court. Therefore, the explanation of staff shortages went toward the reasonableness of the explanation that he was unable to provide an escort. The issue of unreasonableness was thereby negated.

I hold that this case is not therefore authority for any blanket proposition that staff shortages by themselves are a complete excuse for exoneration from breach of statutory duty if such a duty exists though they may in some circumstances address the issue of reasonableness where it arises. See further the decision of the court of appeal and the observations of De la Bastide C.J. in ***Thomas v Baptiste Civil Appeal No. 177 of 1998*** at page 7:

> *"A third principle is that if the breach by the State of a person's constitutional rights is established a plea of lack of resources will not excuse the breach or save the State from the consequences of it, or persuade the court to withhold the appropriate remedy."*

AIRINGS PRE AND POST THE FILING OF THIS ACTION

This Action was filed on 26th August 2005. I consider therefore, of relevance, the number of airings for the months of May, June and July 2005 which are 2, 3 and 3 respectively. In August 2005, the number of airings increased to 6, following with zero in November 2005, 1 in February 2006, zero in May 2006 and 2 in August 2006.

It is clear on the evidence, therefore, that for the period immediately preceding the filing of the motion there was a marked deficiency in the number of airings that could reasonably be expected.

THE INCREASE IN STAFF

I note that the Respondent avers that he increased the airing squad on 7th September 2006. I note also that he did so shortly after being posted to the Port of Spain prison from 28th August 2006. He avers, therefore, that *"this increase in the number of*

prison officers attached to the condemned prisoners airing squad has sufficiently increased the number of times prisoners are aired."

EFFICACY OF THE SEPTEMBER 2006 ARRANGEMENTS

The issue arises as to whether that situation was addressed by the actions of augmenting the airing squad in September 2006. There is some evidence that it was. I find, for example, that 18 airings in November 2006 was greater than the number of airings ever afforded to the Applicant at any point in time during his incarceration and would have been a sufficient number of airings to ensure compliance with Rule 250(1) of the Prisons Rules. The same is true for 15 airings received in October 2006. Although his affidavit was filed on 21st September 2007, there were no statistics covering the period 2007. In fact, his Table ends in December 2006 with the unsatisfactory statistic of 4 airings for the month of December 2006 after the airing squad had been augmented. Subsequently at the request of the court the Respondent filed an updated affidavit with the following statistics for airings as set out hereunder.

Months	**Aired**	**Declined Airing**
January 2007	19	01
February 2007	06	02
March 2007	06	-
April 2007	05	01
May 2007	05	-
June 2007	06	-
July 2007	07	02
August 2007	06	01
September 2007	05	01
October 2007	09	-
November 2007	05	02
December 2007	06	02
January 2008	17	01
February 2008	14	-

I turn to consider therefore

(a) whether there has been a deficiency in airings or airing opportunities afforded to the applicant

(b) if so whether such deficiency in airings constitutes a breach of the Prisons Rule

(c) whether the explanation for any such deficiency evidences unreasonable behaviour or irrationality on the part of the Respondent.

Sufficiency of Airings

In my view, it should not be the function of this Court to stipulate what number of airings per month would be sufficient or practicable. However, it is a function of the Court applying the purpose behind the Rule, reason and common sense to consider whether or not 2 airings as in May 2005, or 3 airings as in June and July 2005, would be sufficient compliance with the requirement to provide airing.

Is such deficiency in airings contrary to the Prisons Rules.

I find that failure to air per se constitutes a breach of 250(1) of the Prisons Rules, and per se constitutes a breach of the Prisons Rules despite the words *"arrangements shall be made as far as practicable"*. I therefore consider the sufficiency of airings in the context of practicability.

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In the Privy Council case, ***Darrin Roger Thomas and Haniff Hilaire*** *v* ***Cipriani Baptiste (Commissioner of Prisons) Appeal No. 60 of 1998*** Lord Millett, in delivering the majority judgement, opined at page 17 that:

> "*In their Lordships view, the question for consideration is whether the conditions in which the appellants were kept involved so much pain and suffering or such deprivation of the elementary necessities of life that they amounted to treatment which went beyond the harsh and could properly be described as cruel and unusual. Prison conditions in third world countries often fall lamentably short of the minimum which would be acceptable in more affluent countries. It would not serve the cause of human rights to set such demanding standards that breaches were commonplace. Whether or not the conditions in which the appellants were kept amounted to cruel and unusual treatment is a value judgment in which it is necessary to take account of local conditions both in and outside prison. Their*

Lordships do not wish to seem to minimise the appalling conditions which the appellants endured. As the Court of Appeal emphasised, they were and are completely unacceptable in a civilised society. But their Lordships would be slow to depart from the careful assessment of the Court of Appeal that they did not amount to cruel and unusual treatment."

In that same case Lord Steyn stated in his dissenting judgment at page 30 that:

"From the date of the imposition of the death sentence on Thomas he was persistently deprived of his legal right to exercise in the open air daily. The Prison Rules require that condemned men should be allowed to take exercise in the open air daily for an hour. This provision confers legal rights on such prisoners. Jamadar J. held that the purpose of the provision was to protect the health of the prisoners."

His Lordship went on further to hold at page 32 that:

"*There was a fundamental breach of irreducible minimum standards of treatment of prisoners recognised among civilised nations. And I count Trinidad and Tobago among those nations… The persistent failure to allow Thomas to take daily exercise is the more lamentable since on 29th July 1987 a High Court judge in two cases severely criticised the prison authorities for failing to allow condemned men to exercise in accordance with the Prison Rules: Thomas (Andy) v. State of Trinidad and Tobago, (unreported), Nos. 6346 and 6347 of 1985. There was no appeal against that decision. The irreducible minimum standards of treatment of prisoners have therefore been recognised in Trinidad and Tobago.*

…… The relevant provision in the Prison Rules is plainly motivated by a desire to protect health and welfare standards even of condemned men. It was not included in the rules so that the prison authorities could decide whether to obey the rules or not as they preferred. ……. Thomas had legal rights under the Prison Rules."

It is clear therefore that deficiency in airings can amount to a breach of the Prison rules, though the consequences were a matter for debate in the above case.

I find that for long periods the number of airings or opportunities afforded to the Applicant would not be sufficient, especially in the 3-month period preceding the filing of this action. I also find that the number of airings subsequent to the filing of this action, (and even subsequent to the conscious effort by the respondent to address this situation), has increased and decreased erratically depending on the staff allocated. I so find because:

(1) The evidence from the Respondent is clear that in 2001 the number of airings before the situation deteriorated drastically would be in excess of 10 per month for most months.

(2) After the Respondent/Deponent, Mr. Reynold Victor, assumed office, he saw it fit to increase the number of officers in the airing squad and increase the number of airings immediately thereafter to in excess of 10, namely, 15 for October 2006 and 18 for November 2006. It is clear, therefore, that the Respondent considered it possible to increase the number of airings and took steps to increase the number of airings.

(3) That it is not his evidence that those steps were difficult steps to take. He states: *"on my own initiative and in consultation with my Assistant Superintendent, a decision was made to increase the number of officers in the airing squad"*. He suggests that he did so on 7th September 2006, within weeks of his assuming office in Port of Spain. It is clear, therefore, that (i) this was recognised as an issue and (ii) the simple administrative act of increasing the number of prison officers was sufficient to address this issue.

I find, therefore, that the failure of the Respondent to maintain a sufficient number of airing opportunities for the Applicant in the context of the circumstances was unreasonable since arrangements could have been made for it to be practicable for such airings to have occurred with far greater frequency than they in fact were.

Is the explanation for breach both prior to and subsequent to September 2006 sufficient.

The question therefore is: do staff shortages constitute sufficient reasons to justify the airing of prisoners on a regular basis as not being practicable? I hold that they do not. While a temporary staff shortage may constitute an explanation, a prolonged maintenance of that situation would be unacceptable. The State has a duty to staff its prisons adequately and the Respondent has a duty to manage and deploy his staff so as to comply with applicable legal obligations. Such obligations cannot be evaded by simply claiming staff shortages without further explanation of, for example, what staffing levels would be required, why those staffing levels were not in place and what temporary measures were put in place in the interim.

Further the evidence is clear that once Mr. Victor arrived, he recognised the situation and attempted to address it. It can readily be inferred (and this is supported by the evidence of airings in 2007) that the real explanation behind it not being addressed previously may not only be lack of staff but lack of will and amounts to Wednesbury unreasonable conduct on the part of the Respondent.

Remedies

In the case of ***Brennon v Governor of Portlaoise Prison [1998] IEHC 140*** at paragraphs 24 and 29, Mr. Justice Declan Budd cited the decision of Barrington J in ***Susan Richardson v Governor of Mount Joy Prison [1980] ILRM 82*** and the dicta therein that:

> *"It appears to me that the purpose of the Prison rules is to reconcile the need for security and good order in the prison with the prisoners' subsisting constitutional rights. Clearly, the prison authorities must be allowed a wide area of discretion in the administration of the prisons in the interest of security and good order. Clearly also the Rules, being made by an executive authority established under the Constitution, must be presumed to have respected the prisoners' subsisting constitutional rights. For the same reason, they should be interpreted in a manner consistent with these rights."(Para. 24)*

> *"In that case, where a female prisoner in Mount Joy Prison complained of the toilet and washing facilities available to her, the learned Judge interpreted the decision in the State* ***McDonagh v Froley*** *as imposing upon him an obligation upon an application for habeas corpus where he was satisfied that these matters constituted a deprivation of the constitutional right of the applicant to bodily integrity and the maintenance of reasonable health, to make, instead of an order for her release, an order by way of mandamus directing the Governor of the prison to remedy the defects complained of. In fact on the merits of the case, he did not make such an order but instead adjourned the matter to enable the Governor to remedy the defects, which he was willing and anxious to do of his volition." (Para. 29)*

The question, therefore, arises as to what remedy is available from the Court on this application for judicial review.

The Respondent contends that a remedy of mandamus is in some circumstances open but that in circumstances where the Respondent has itself taken steps to remedy the deficiencies and has shown itself willing and able to do so, then the Court should decline to make such an order, there being no need for the Court to exercise its jurisdiction to grant relief.

This proposition would have had greater attraction if the evidence of the number of airings afforded to the Applicant in 2007 had demonstrated a sustained effort to remedy the situation of deficient airing opportunities. I adjourned the matter to permit the Respondent to file a supplemental affidavit placing before the Court the material concerning the number of airings that the Applicant was afforded for the whole of 2007. (This is set out above.)

However, it revealed that for some months, they were still insufficient. e.g. March, May and June 2007 when the opportunities were 6, 5, and 6 respectively. I find that the deficiencies in airing revealed by that table, and the repetition of the excuse of staff shortages to be alarming, and an indication that improvements in the frequency of airings are at risk of being only temporary unless supervised by the Court.

I am therefore constrained to grant a declaration that the failure of the Respondent his servants and/or agents to make the necessary arrangements for the Applicant to take outdoor exercise for a sufficient number of occasions per month is in breach of the Prison Rules made under The West Indies Prison Act 1838 and illegal.

I accordingly make an order of mandamus directing the Respondent to forthwith make all necessary arrangements to have the Applicant take exercise in the open air, as often as practicable, and in any event, barring inclement weather, not less than every other day.

I prescribe only a minimum, not a maximum number of airings and do so with reluctance, after being convinced that only an order of the High court will ensure a sustained effort to comply with Rule 250(1).

Special Diet

The Applicant complained that his special diet was stopped by Superintendent Rochford in 2005. This was admitted. Up to that point in time, his special diet was being supplied and in the course of these proceedings the Applicant through his Attorney indicated that he had recently started to receive a special diet and would no longer pursue the relief claimed in respect thereof.

The question arises, therefore, was his claim for relief in this regard a reasonable one at the time of filing the application. This would be of relevance in relation to the question of costs. Rule 90 of the Prisons Rules provides as follows:

> *"The medical officer shall prescribe wherever necessary the special diets and extra food for issue to sick persons"*

> Rule 56 provides that *" The deputy superintendent and the assistant superintendent shall take care that all written instructions of the medical officer are carried out. Should these instructions interfere with the daily routine , good order and discipline of their stations they shall at once confer with the medical officer and report the case to the superintendent ."*

It is contended that the conjoint effect of Rules 90 and 56 is that the Prisons Medical Officer shall prescribe special diets and that the Superintendent and Assistant Superintendents shall take care to ensure that all written instructions of the Medical Officer are carried out unless the instructions interfere with the daily routine, good order and discipline of the station (prison).

There is evidence of a settled practice being applied between 1998 and 2005 in relation to the provision of a special diet prescribed by the Prisons Medical Doctor. It is conceded that there is no explanation for the withdrawal of the special diet. Further, there is evidence in the affidavits of Chaitlal and Bhim Ram of those Deponents receiving their special diet in the course of their detention. The Applicant contends that in July 2005 his special diet was stopped and this is confirmed by exhibit RV.1 to the affidavit of Reynold Victor. The special diet, according to that exhibit, was oats porridge, cheese, toast, milk on mornings and a vegetarian diet for lunch. In the interim, after the prescribed diet was suspended, he received oats porridge and sliced potatoes. Therefore, the effect of the suspension of his special diet was that he was deprived of cheese, toast, milk on mornings and a vegetarian diet for lunch. There is no basis for inferring that the prescription of his diet interfered with the good order, daily routine or discipline of the Port of Spain prison. In fact, it would be difficult to understand how this could be contended. I therefore conclude that there was a breach of Rule 56.

RELIEF

The issue that arises is whether the Applicant is entitled to declarations as sought in paragraphs 3 and 4 in his statement for judicial review. That relief is:

> *"3. A declaration that the failure or refusal of the Respondent, his servants or agents to carry out the instructions of the Prison Medical Officer to provide the Applicant with the diet prescribed and/or recommended by the Prison Medical Officer was in breach of the Prisons Rules and illegal;*
>
> *4. A declaration that the Applicant is entitled to receive the diet prescribed and/or recommended by the Prison Medical Office."*

Relief no. 5, on the main order of mandamus, was the relief that is not being pursued by the Applicant now. The question arises whether the Court should intervene in view of the circumstances where it is common ground that as the Applicant is now receiving his special diet this is no longer an issue. This is a case where, like in the ***Brennan*** case, the Respondent remedied the defects complained of himself and was willing and anxious to do so of his own volition. The question arises whether it is necessary for a declaration to be made or whether that relief would simply be academic at this point.

I find that there is no need now for the Court to exercise its jurisdiction in granting declaratory relief as the situation complained of has been voluntarily rectified.

Family prescriptions.

Issue.

I find that, like in the ***Richardson*** case (supra), the prisons authorities must be allowed a wide area of discretion in the administration of the prison in the interest of security and good order. On the other hand, I find that that latitude which is permitted must not be used simply as an excuse to justify arbitrary infringements of prisoners' rights under the Prisons Rules, limited though they may be, and containing as they do the concessions to practicality and administrative feasibility.

The question, therefore, is whether the question of family prescriptions has been elevated to the status of a settled practice, such as is described in ***Thornhill v The Attorney General of Trinidad and Tobago***. At paragraphs 12, 13 and 14 of the

Applicant's affidavit, the Applicant deposes to the practice of family prescriptions and asserts that that practice has been applied to him throughout his incarceration since 1998 until August 2005. He deposes also that the Inspector of Prisons announced that there would no longer be family prescriptions. He contends that this is a clear decision which denies the Applicant the facility of the provision of family prescriptions. It is contended that the Respondent's affidavit does not controvert any of those allegations, that the Chaitlal affidavit deposes as to the practice between 1983 and 1994 in relation to family prescriptions, the Fazal Mohammed affidavit at paragraph 9 deposes as to the practice of family prescriptions between 1982 and 1994, and the Ram affidavit at paragraph 7 deposes as to his being provided with family prescriptions between 1994 and 1998 for the provision of:

(1) Personal effects;

(2) Medicines; and

(3) Toiletries.

It is contended that this represents a 23-year period where the prison service recognised family prescriptions, offered that option to inmates of the Condemned Division and sanctioned the use of family prescriptions by allowing the items prescribed once supplied by the family.

It is unclear exactly what constitutes family prescriptions. The Applicant himself in his affidavit refers to extra fruits and vegetables being supplied to him under family prescriptions as well as toiletries, disposable shavers, skin cream, sneakers, medicines, vitamins, and dietary supplements.

Reynold Victor, on behalf of the Respondent, deposes that:

> *"I viewed this (allowing family prescriptions) as an avenue for trafficking in drugs and other illicit items… this family prescription was stopped on or about August 2006 as a security precaution..."*

He states further that:

(1) The family prescription was stopped as it posed a security risk;

(2) The prison authorities supplied the entire Applicant's toiletries and other needs thus negating the need for these prescriptions;

(3) The authorities have gone even further and assisted the Applicant in pursuing his talents as an artist by supplying his needs and facilitating his educational qualifications through the provision of distance learning classes.

FINDINGS

I find that:

(1) There is evidence that the facility was afforded to inmates which was referred to as "family prescriptions" to enable an inmate's family to supply items which had been prescribed for him but which it was difficult or impossible for the Prison authorities to supply.

(2) The term "family prescriptions" referred not only to medication but included dietary supplements in the form of extra fruits and vegetables, and vitamins, and was expanded- (when is not clear) - to include personal effects, including items like disposable shavers, sneakers, and toiletries.

(3) In August 2006, family prescriptions were stopped.

(4) They were stopped due to security concerns on the part of the Respondent that smuggling could have been facilitated under the guise of supplying items under family prescriptions. Those items included drugs and weapons.

This Court finds it difficult to understand why appropriate inspection of items supplied under family prescriptions would not detect any weapons or drugs that may be included therewith. I consider it appropriate to refer to the dicta in the case of ***Brennan v Governor of Porthouse Prison [1998] 1 ECH 140,*** paragraphs 46-47:

> *"In any particular community there should be a regime which is practical, fair known and reasonably certain. In default of this then injustice, whimsy, caprice and autocratic unfairness tend to flourish … If such a system of divergence between the rules and practice persists for any length of time then this becomes unfair in an institution in which the inmates are necessarily deprived of certain basic rights."*

(5) However I am constrained to find that the consideration under which the family prescription facility was terminated was one which related to administration of the prisons in the interest of security and good order and was

ostensibly within the purview, jurisdiction and discretion of the prison authorities to administer the prisons in the interest of security and good order.

(6) A Court will not second-guess the discretion of the prison authorities on this issue save as to consider the question of reasonableness. The Court finds that it was not unreasonable to consider the possibility that the family prescription may be used for the purpose of facilitating smuggling of items into the prison.

Accordingly, I find that there is no basis for concluding that the termination of that facility was an unreasonable exercise of the Respondent's authority and the Court will decline in those circumstances to interfere.

Further, I hold that even if the Respondent may have had a legitimate expectation to benefit from the facility of family prescription, in fact his legitimate expectation was not an unqualified one, being an expectation that he could benefit from the facility of family prescription once such facility was not deemed to be a risk to the interest of security and good order in the prisons.

I find no error occurred in not allowing the Applicant an opportunity to be heard before the facility was withdrawn in this case. I hold that this is one of those circumstances where the right to be heard is not necessary, the reason being that I find that the settled practice itself was not a blanket facility but a facility which was subject always to the overriding discretion of the prison authorities to withdraw if circumstances dictated. The Rules do not suggest that a prison is intended to be operated as a democracy, and the consensus of prisoners is not required for its administration.

Peter A. Rajkumar
Judge