

FEDERAL APPEALS PANEL

IN THE MATTER OF A DISPUTE BETWEEN:

DR YUKTESHWAR KUMAR

Applicant

-and-

(1) Regional Parties Committee

(2) Mr Ben Rigby

(3) Ms Manda Rigby

Respondents

RULING ON PERMISSION TO PROCEED

DAVID GRAHAM

Chair of the Federal Appeals Panel

(Case Manager)

27 April 2021

Ruling

1. The Application is hereby dismissed for want of jurisdiction.
2. This matter may be referred back by the Appeals Panel for England pursuant to article 22.3(f) of the Federal Party Constitution.
3. The parties may make representations as to whether this ruling should be published on the Party website by 4pm on 14 May 2021.

Reasons

1. The Applicant complains here about the way his complaints against the Second and Third Respondents were handled under complaints procedures operated by the English State Party. I understand from an e-mail by the Applicant and paragraph 12 of his grounds on his application form that he originally made a complaint in 2016.
2. The Applicant appears to have been notified of the outcome of each of his complaints in an undated and unreasoned standard-form letter from the respective Panel Chairs, which

had clearly not been proof-read. Each such letter stated that 'the charges...had not been proved'. These are said to have been communicated on 14 March 2021.

3. The Applicant makes numerous criticisms which include unacceptable delays in determining the complaints, unfairness to the accused members, failure to follow the prescribed procedure, failure to investigate or to test evidence, and allegations that it was improper for a panel to consist only of white people or to include a member who it is alleged is 'an opponent of Critical Race Theory' (capitalisation in the original).
4. The Federal Appeals Panel ('FAP') does not at present have jurisdiction here under the Federal Party Constitution ('FPC') for reasons that I shall explain below.
5. The FAP is a creature of the FPC. Its jurisdiction is conferred solely by article 22.3 of that document. It is limited to adjudicating on the interpretation of the FPC, claims that rights under this have been infringed, matters provided for by the FPC or its subordinate instruments (such as the Federal Complaints Procedure, election rules or rules made by the Federal Board), appeals from a State Party appeals panel relating to an issue under the FPC, and matters referred to it by a State Party appeals panel.
6. The Federal Party was constituted by the State Parties, which are sovereign over matters not allocated by the FPC to the Federal Party institutions, except insofar as they act in a manner inconsistent with the FPC which is binding on them. See articles 2.1, 2.2 and 2.10(c). The State Parties have their own independent constitutions which are not subordinate instruments made under the FPC, and cannot enlarge or cut down the jurisdiction of the Federal Appeals Panel.
7. The interpretation of the English Party's constitution or rules is not a matter for the FAP unless that is necessary to determine a case in which we have jurisdiction, and only the Appeals Panel for England can give a definitive ruling as to its own jurisdiction unless it refers a matter to us under article 22.3(f) of the Federal Party Constitution.
8. The proper body with jurisdiction in the first instance here is the State Party's own appeals tribunal which is the Appeals Panel for England set up under article 9 of the English State Party constitution. Dr Kumar should direct his complaint to them.
9. It does not appear to me that the English State Party Membership Rules give a complainant a right of appeal on the merits in a disciplinary case. It seems to me that there is likely to be an arguable ground that his rights under that constitution have been infringed, (article 9.3(b) of the English State Party's constitution), it being an implied term

of that constitution that complaints would be handled fairly and in accordance with the disciplinary procedure in rule 7 of the Membership Rules. However, the Applicant may be out of time to apply to the Appeals Panel for England or lack standing (this being a matter to be determined according to their own procedural rules).

10. I note that the tailpiece at the end of article 9.3 of the English Party's constitution says, 'Subsequent to the adoption [sic] of Article 22 of the Federal Constitution appeals relating to disciplinary matters shall not fall within the remit of the English Appeals Panel [sic] and shall be dealt with according to articles 3 and 22 of the Federal Constitution.'
11. By way of background, the Federal Party Conference voted in motion F11 at Autumn Conference 2019 to introduce a new Federal level disciplinary process with a new constitutional provision (then article 22, now numbered as article 23) to come into force on 1 July 2019. In the meantime, the motion made clear that the Federal Party would have to recruit and train a large number of adjudicators, and set up systems for logging and handling complaints.
12. Article 23 of the FPC, and the article 23 Complaints Procedure, do not contain their own transitional or saving provisions, but article 23 begins conditionally 'If a complaint is brought against a member of the Party...' Implicitly, it appears to contemplate governing substantively fresh complaints made after it comes into force. Where a complaint was made to a State Party before the Federal Complaints Procedure came into force, it would have been logical that it should be determined according to the previous procedure rather than by starting again applying a new procedure.
13. The English Party's Membership Rules contain a disciplinary procedure in rule 7 which relates to "issues known to one or more of the bodies defined in 7.3 below before 1st July 2019". There is no inconsistency with the FPC or Federal Complaints Procedure in this rule being applied to matters complained about to the English Party before 1 July 2019. However, this transitional provision is arguably inconsistent with article 9.3 of the English constitution insofar as the Federal amendments were *adopted* in Autumn 2018 but only came into force in July 2019. In turn, it is arguable that this clause in article 9.3 is inconsistent with the FPC if read literally (because immediately after adoption of article 22 complaints could not be handled under a procedure that had not yet come into force and not yet staffed or set up, and there cannot have been intended to be a vacuum in the interim), which may lead one to have to interpret the provision less literally to avoid

absurdity. To reiterate, the English State Party's constitution cannot confer jurisdiction on the FAP regardless of what it purports to say, and the proper interpretation of the English State Party's constitution is a matter for the Appeals Panel for England unless it is referred to us by that body pursuant to article 22.3(f) of the FPC.

14. Accordingly, even if it may be argued that the wrong procedure was applied based on the wording of the English State Party's constitution or Membership Rules, that issue must be taken for adjudication by the Appeals Panel for England in the first instance.