

Koroitamana v Commonwealth
[2006] HCA 28

The reasoning in *Singh v Commonwealth* (2004) 209 ALR 355 was applied in *Koroitamana v Commonwealth* [2006] HCA 28 to two children (the applicants), born in Australia in 1998 and 2000 respectively, and both resident in Australia since birth. Neither parent had Australian citizenship, though they had three other children who did. The parents were citizens of Fiji and were therefore entitled to register the applicants as Fijian citizens also, but had not done so and did not wish to do so. Thus the fact that the applicants *did not* hold Fijian citizenship (though they were entitled to do so) was relied on to distinguish their case from that of Tania Singh (who under the law of India had automatically become a citizen of India by descent).

It was said for the applicants that if their case failed, their parents would in effect be compelled to register them for Fijian citizenship though they did not wish to do so. It was said in reply that if the applicants succeeded, the power of the Parliament to determine the scope of Australian citizenship would effectively be subject to control by the wishes of the parents in such a case. To avoid that latter possibility, *Singh* was treated as having settled the general propositions, applicable to *Koroitamana* as well, that there is no concept of “constitutional citizenship” arising simply from the fact of birth in Australia, and hence “[14] that it is open to Parliament to decide that a child born in Australia of parents who are foreign nationals is not automatically entitled to [citizenship]”.

Callinan J, who had dissented in *Singh*, again expressed a preference for his earlier views but accepted “[86] that *Singh* is a very recent decision of the Court and is authority for the [above] propositions”, and is “relevantly indistinguishable”. Kirby J conceded that *Singh* could technically be distinguished (in the sense that its binding authority might be confined to a case where the parents’ nationality was automatically acquired by the child on the basis of descent), but agreed that the denial in *Singh* of a “constitutional citizenship” based on birth was fatal to the applicants’ claim in *Koroitamana* as well.

In the case of a child who had neither an automatic right to foreign citizenship (as in *Singh*), nor the right to acquire such citizenship (as in *Koroitamana*), the denial of Australian citizenship might mean that the child was rendered “stateless”. In such a case the saving provisions of s 23D would presumably come into play. However, the possible scenarios that might arise under s 23D were not explored in *Koroitamana*, and only Kirby J held expressly that this case was *not* one of “statelessness”.