Re Manjit Singh s/o Kirpal Singh and another
[2012] SGHC 138

Case Number : Originating Summons No 443 of 2012

Decision Date : 29 June 2012

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Applicants in-person; Low Siew Ling and Asanthi Mendis (Attorney-General's Chambers) for Attorney-General.

Parties : Re Manjit Singh s/o Kirpal Singh and another

Administrative Law – Judicial Review

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 70 of 2012 was dismissed by the Court of Appeal on 6 November 2012. See [2013] SGCA 22.]

29 June 2012

Choo Han Teck J:

1 This was an application by Mr Manjit Singh s/o Kirpal Singh and Mr Sree Govind Menon ("the applicants") under O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("RSC") for leave to be granted to apply for "a Quashing Order" against an order made by the Chief Justice dated 16 February 2012 ("the Chief Justice's order"). The applicants are advocates and solicitors and on 13 February 2012 they were notified by a letter from the Disciplinary Tribunal Secretariat that a Disciplinary Tribunal ("DT") had been appointed under s 90(1) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") to hear and investigate a complaint against them. The members of the DT were Mr Thean Lip Ping ("Mr Thean") and Mr Tan Chua Thye. Mr Thean was appointed the President for this DT.

2 The applicants wrote to the Chief Justice on the same day stating that they "cannot accept the appointment of Mr Thean Lip Ping as a member and even less as the President of the DT. We do not get along with Mr Thean Lip Ping at all". Their letter also stated that "Mr Thean is known to be close to the spouse of Mrs V.K. Rajah and have a close relationship. Mr Thean was until recently in KhattarWong LLP and only left recently. This is where counsel appointed by the Law Society, Mr P.E. Asokan is from."

3 The DT Secretariat wrote by letter dated 16 February 2012 stating that "pursuant to s 90 of the Legal Profession Act (Cap 161), the Chief Justice has revoked the appointment of Mr Thean Lip Ping as President of the DT, and appointed in his place Mr G P Selvam". The DT Secretariat's letter also stated that the Chief Justice's decision was made "without accepting the veracity of the [applicants'] letter [of 13 February 2012]". The applicants wrote two letters, one dated 24 February 2012 and the other 27 February 2012 to the Chief Justice objecting to the appointment of Mr G P Selvam as President of the DT in place of Mr Thean. It was again stated that "Mr G.P. Selvam is known to be close to the spouse of Mrs V.K. Rajah and have a close relationship". This letter of 27 February 2012 further stated that there "is no lack of available Senior Counsel able to discharge the function of President in an impartial and objective manner, having no connections to the spouse of Mrs V.K. Rajah or to Rajah & Tann". The DT Secretariat replied by letter dated 29 February 2012 to say that the applicants' request to have Mr G P Selvam be replaced as President of the DT was

rejected. Upon receipt, the applicants replied immediately reiterating their objection to the appointment of Mr G P Selvam as president of the DT. This time, the applicants expressed very strong views regarding the Chief Justice himself. First they stated that they were "shocked by the decision made". They then stated that "[i]t is known to us and anyone who keeps an impartial mind that the Honourable Chief Justice is close to the Judge of Appeal. It would not be unreasonable to say that the spouses would have met and certainly the Honourable Chief Justice would have met the spouse, Mrs V.K. Rajah." Finally, the applicants reiterated their view that the DT compositions should exclude Mr G P Selvam and that the Chief Justice should appoint any one of the 13 Senior Counsels in the list that accompanied their letter. They stated that if their request was not granted "this letter placed (sic) on record early in time, conveys that we do not expect a fair hearing with Mr G.P. Selvam as President".

4 The DT Secretariat wrote on 2 March 2012 to say that the Chief Justice had directed that the appointment of Mr G P Selvam and Mr Tan Chuan Thye shall stand. Thereafter it proceeded to convene a pre-hearing conference. Consequently, the applicants made this application before me for leave to apply for judicial review under O 53 of the RSC. I have set out all the relevant assertions of fact upon which the applicants made this application and it will be clear that up to this point, the allegation was that Mrs V K Rajah had something to do with the applicants having to appear before the DT; that the President of the DT was appointed by the Chief Justice who knows Justice V K Rajah; and Mr G P Selvam was a former High Court Judge who would have known Justice V K Rajah and would not give the applicants an impartial hearing. The story so far, in my view, was built through a series of conjectures. All the papers and submissions filed by the applicants up to the commencement of the proceedings before me did not say what it was that Mrs V K Rajah's involvement was.

5 This application was heard on 25 May 2012 with Miss Low Siew Ling ("Ms Low") and Miss Asanthi Mendis appearing on behalf of the Attorney-General as was required in an application under O 54 of the RSC. The applicants appeared in person. It was only in the course of their submissions before me that the connection of Mrs V K Rajah to the applicants' disciplinary matter was made known. The first applicant stated the story as follows. The applicants were lawyers for one Miss Bernadette Rankine ("Ms Rankine") and her employee, one Miss Lim Poh Yen ("Ms Lim"). Their clients were being sued by one Amin Shah. The first applicant stated that they had represented these clients for a year and they were satisfied with the professional services rendered. Then Miss Rankine spoke to Mrs V K Rajah and after that Miss Rankine told the applicants that she would like the applicants to work with Rajah & Tann LLP. The first applicant stated that at that time the applicants were working on the case together with Drew & Napier LLC and they (the applicants) preferred to continue with Drew & Napier LLC. Thereafter, Miss Rankine went to Rajah & Tann LLP and consulted Mr Murali Pillai. Miss Lim was "asked to go to Rajah & Tann and change lawyers from Manjit Govind & Partners to Rajah & Tann on 15 April 2010. She had Murali's name card as well as another law firm to be the front – NLC Law Asia, Mr Ng Lip Chee". The first applicant submitted that that was "the reason why a DT president who is connected to Mrs V K Rajah should not preside. By reason of the involvement of the spouse of an existing judge, [Justice] V K Rajah, ex judicial officers like L P Thean and G P Selvam who know the learned judge should not be appointed." Finally, the first applicant stated that his firm was replaced by Rajah & Tann LLP on 23 April 2010 after Miss Rankine had reported the applicants to the Law Society of Singapore on 21 December 2010. Her complaint, which was not relevant to the proceedings before me, was that she had entrusted $1.6m to the first applicant and $200,000 to the second applicant. The precise nature of the transactions concerning these two sums was not clear, but they will be the subject of the disciplinary hearing before the DT.

6 I dismissed the application because I was of the view that the application was misconceived in law and unsustainable on the facts. I will refer to the facts and allegations shortly. I shall deal with

the reasons why this application failed in law. First, this application was made under O 53 of the RSC. This is the procedure for judicial review by the High Court of the judicial and quasi-judicial functions of lower courts and tribunals. It is not the appropriate remedy against a decision of a High Court or the Court of Appeal. Any remedy sought is usually sought by way of an appeal if there is statutory provision for appeal. A High Court may set aside an order of another High Court but such orders are made not by way of judicial review under O 54 of the RSC but by way of an application by an Originating Summons where the law empowers the court to set aside those orders, for example, the setting aside of an interlocutory injunction, or any order which was made *ex parte*, or in circumstances in which the court could reasonably exercise its inherent jurisdiction. The procedure does not require the leave of court that the applicants sought before me. Thus, where the Chief Justice makes an order in his judicial capacity, his decision is not subject to judicial review. Further, the power to appoint the president of a DT was specifically given to the Chief Justice under s 90 of the LPA, and no one else. In this sense, Miss Low submitted that the Chief Justice was exercising an act that was "administrative" or "ministerial" in nature, and such an act is not amenable to judicial review under administrative law. Therefore, even if the Chief Justice was acting in his administrative rather than judicial capacity, his decision to appoint the members of the DT is not subject to judicial review. In the recent decision of *Lim Mey Lee Susan v Singapore Medical Council* [2012] 1 SLR 701 at [46]–[48], in discussing the review of the administrative function performed by the Director of Medical Services in appointing the Singapore Medical Council, the Court of Appeal held that remarked as follows at [47]–[48]:

> 47 Early cases on administrative law referred to duties of the kind outlined above as "ministerial" duties because they did not involve the exercise of any discretion or judgment. ...
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> 48 In the present case, the only discretion which the SMC has in the chain of ministerial duties or functions set out in ss 38-43 of the MRA is in respect of the selection of the members of a Disciplinary Committee. ... [T]he critical issue is not the role of the DMS as a member of the SMC, but whether there was a reasonable apprehension that Prof Satku caused the SMC to appoint, as members of the Second DC, persons in respect of whom there was a reasonable suspicion that they would or might, for whatever reason, be biased against the Appellant. Neither the DMS nor the SMC has any role to play in the disciplinary proceedings before the Second DC or the outcome of those proceedings, both of which are entirely matters for the Second DC. Hence, any allegation of bias (or other grounds of disqualification) should have been directed against the members of the Second DC.

The applicants were thus not entitled to challenge the Chief Justice's appointment of Mr G P Selvam as the President of the DT. The applicants should have proceeded on Mr G P Selvam's apparent or actual bias against them, and challenging instead any decision by Mr G P Selvam not to recuse himself as the President of the DT if they can make out such a case.

7 This brings me to my second point. Section 91A of the LPA specifically provides for situations in which judicial review would be available in respect of disciplinary matters. Section 91A of the LPA provides:

> (1) Except as provided in sections 82A, 97 and 98, there shall be no judicial review in any court of any act done or decision made by the Disciplinary Tribunal.
>
> (2) In this section, "judicial review" includes proceedings instituted by way of –
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> (a) an application for a Mandatory Order, a Prohibition Order or a Quashing Order; and

(b) an application for a declaration or an injunction, or any other suit or action, relating to or arising out of any act done or decision made by the Disciplinary Tribunal.

Section 82A is not relevant as it deals with Legal Service Officers and advocate & solicitors who did not have a practicing certificate at the time of misconduct. Sections 97 and 98 refer to situations when a DT had made a determination after hearing, or when an application has been made for a punishment against an advocate & solicitor. The Parliamentary intention behind the enactment of this section can be gleaned from Minister for Law Mr K Shanmugam's speech during the second reading of the Legal Profession (Amendment) Bill (*Singapore Parliamentary Debates*, *Official Report* (26 August 2008) vol 84 at col 3187) where he remarked:

> There are a range of amendments to streamline the entire disciplinary process. [...] Judicial review of the Disciplinary Tribunal's decision can only be applied for after the conclusion of the Disciplinary Tribunal's deliberations.

It is thus clear that from the scheme envisioned by Parliament as encapsulated by s 91A of the LPA, that the appointment of the President of a DT is not an order amenable to judicial review. For these reasons alone the application had to be dismissed, but I also found that the factual basis upon which this application was made was without merits.

8 The affidavits filed by the applicants in these proceedings referred repeatedly to the allegations of bias and partiality of Mr G P Selvam without stating the full story as to why Mr G P Selvam would be biased or partial. The application on the facts at this point would also have to be dismissed for want of relevance and particulars. The fact that Mr Thean and Mr G P Selvam were former Supreme Court judges and would have known the Chief Justice and Justice V K Rajah, without more, cannot be sufficient reason to exclude them from acting as a president in a DT. If independence and impartiality was the concern of the applicants, I do not think that a Senior Counsel would be any more or less independent or impartial. From every such counsel and judge no less than the highest degree of professionalism is expected. That is not to say that he would always be inerrant. It means that when there is an allegation of errancy on account of bias, the person aggrieved must state his grounds and facts clearly and on oath. None of that was the case here. The involvement of Mrs V K Rajah was not made known until the hearing itself, catching Miss Low by surprise. As practising lawyers of longstanding the applicants must have known that they cannot offer evidence from the Bar, which was what they did. The full story should have been set out in an affidavit but that was not done.

9 Under the law as I explained above, if the applicants had judicial review in mind, they could apply to review the determination or applications by the DT under s 97 or s 98 of the LPA. They could, for example, have asked Mr G P Selvam to recuse himself and then have applied to judicially review his decision. But how could Mr G P Selvam know if he should so recuse himself if he did not even know what the allegations of bias or partiality against him were? The notes of evidence of the preliminary conference which the applicants exhibited before me showed that the applicants had told Mr G P Selvam that he would not be able to give them a fair hearing. Mr G P Selvam repeatedly asked them why, but they did not tell him – not the story that the first applicant narrated before me in these proceedings. There was therefore no reason for Mr G P Selvam to recuse himself. The first applicant said to Mr G P Selvam, "Deep in my heart, Sir…deep in my heart, Sir, I say, facing you in all honesty, you are not capable of giving me a fair hearing." The paradox was ironically lost on the applicants. Here they complained that they were not going to get a fair hearing yet they were not prepared to tell the president of the DT why they thought so.

10 Finally, I come to the gravamen of the applicants' charge. I set out the first applicant's narration and his letters in detail because it was necessary to show that the applicants' case implied

impropriety on the part of Mrs V K Rajah, but their case stopped short of saying exactly what that was. Furthermore, it was not even stated on oath but only through an oral submission to the court. No court can read or infer any misconduct from what was narrated. There is no reason why a judge or his spouse cannot recommend a lawyer to a friend. The applicants did not specifically state exactly what they thought the actual misconduct by Mrs V K Rajah was, and in their elliptical narrative many names had been blemished by the allusions to "connections", but not made good by particulars, let alone evidence. Accordingly, the application was dismissed.