Tey Tsun Hang *v* Attorney-General
[2014] SGHC 253

Case Number : Originating Summons No 512 of 2014 (Summons No 512 of 3987 of 2014)

Decision Date : 01 December 2014

Tribunal/Court : High Court

Coram : Quentin Loh J

Counsel Name(s) : Ravi s/o Madasamy (L F Violet Netto) for the applicant; David Chong SC, Elaine Liew and Elgina Chua (Attorney-General's Chambers) for the respondent.

Parties : Tey Tsun Hang — Attorney-General

Administrative Law – Judicial review

Civil Procedure – Striking out

1 December 2014 Judgment reserved.

Quentin Loh J:

1 The applicant, Tey Tsun Hang, ("Tey") filed this Originating Summons ("OS") on 4 June 2014. He sought leave under O 53 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court") to bring judicial review proceedings against the Immigration & Checkpoints Authority of Singapore ("the ICA"), which was represented by the Attorney-General (collectively, "the Respondent").

2 Tey sought the following orders:

(a) an order quashing the cancellation of Tey's application for the renewal of his and his daughter's re-entry permits ("REPs") sometime between 23 and 24 July 2012 by the Respondent, on the grounds of a breach of natural justice ("the 1st Quashing Order");

(b) an order quashing the cancellation of Tey's application for the renewal of his and his daughter's REPs on the grounds that the cancellation was made arbitrarily and/or unreasonably ("the 2nd Quashing Order");

(c) a mandatory order against the Respondent to reinstate the permanent residency ("PR") status of Tey and his daughter ("the 1st Mandatory Order"); and

(d) a mandatory order against the Respondent to consider and process Tey's application for the renewal of his and his daughter's REPs in full accordance with the fundamental principles of due process, natural justice and procedural propriety ("the 2nd Mandatory Order").

The dates "between 23 and 24 July 2012" were used because, although Tey had applied for the REPs on 23 July 2012, he claimed to have only been informed that the applications were "cancelled" on 24 July 2012, when he accessed the online portal through which the applications were made. For the purposes of this judgment, I will assume that 24 July 2012 was the date on which the REP applications were cancelled.

3 The Respondent applied, on 14 August 2014, to strike out Tey's OS on the ground that,

amongst other things, it was an abuse of the process of the court.

4 Parties appeared before me on 5 November 2014. I first heard counsel for the ICA, Mr David Chong SC ("Mr Chong SC"), on his striking out application under O 18 r 19 of the Rules of Court. As the facts and arguments in this case for a striking out and for leave under O 53 r 1 of the Rules of Court overlapped significantly, I then heard counsel for Tey, Mr Ravi s/o Madasamy ("Mr Ravi"), on his response, in which he also included the grounds upon which he would be seeking leave. I exceptionally allowed this course of action, although the burden of a striking out under O 18 r 19 was much higher than that of seeking leave under O 53, so that if anyone wanted to take this further, both applications could be dealt with together rather than sequentially.

5 After Mr Chong SC completed his submissions on striking out the OS, Mr Ravi made an application to amend the OS by deleting the 1st and 2nd Quashing Orders, at [2(a)] and [2(b)] above. Mr Ravi also applied to amend his third prayer, the 1st Mandatory Order, to read: "A Mandatory Order against the Respondent to reconsider the PR status of the Applicant and his daughter".

6 Mr Ravi then clarified that his amended case proceeded on the supposition that there had, in fact, been no refusals of Tey's applications to the ICA thus far. This was because during the first attempt *via* the online portal, Tey was informed that his applications were "cancelled". This was as opposed to "refused" (see below at [30] and [48]). During the second attempt, Tey faced an "error message" that informed him he had an invalid REP [note: 1] (and was hence unable to apply for a renewal online: see below at [28(b)]). As there had been no valid refusals, Mr Ravi stated that the 2nd Mandatory Order should pertain to any future applications that Tey may choose to make. [note: 2]

7 Mr Chong SC had no objections subject to wasted costs. I accordingly allowed these amendments to the OS and reserved the question of costs.

Background

8 The facts are not disputed. Tey filed his affidavit on 4 June 2014 in support of his application. Senior Assistant Commissioner Kng Eng Kiat ("Mr Kng") and Superintendent Damien Gan Kwang Yeang ("Mr Gan"), employees of the ICA, filed affidavits on behalf of the ICA on 23 July 2014. Tey was asked, but declined, to file any affidavit in response to the ICA officers' affidavits.

9 Tey is a Malaysian citizen. Tey became a permanent resident of Singapore on 31 December 1997.

10 The expression "permanent resident" refers to a person who has been issued with an entry permit pursuant to s 10 of the Immigration Act (Cap 133, 2008 Rev Ed) ("the Act"), the act in force at the time the decisions being impugned in this OS were made. An REP is required for a permanent resident who temporarily leaves Singapore to return to Singapore as a permanent resident, pursuant to s 11 of the Act. A permanent resident who leaves Singapore without a valid REP will lose his PR status.

11 Tey's relevant REP was granted on 4 January 2003 and was valid until 4 January 2013. His daughter, too, was a permanent resident holding an REP that was valid until 4 January 2013. She left Singapore in November 2012. [note: 3]

12 On 27 March 2012, the ICA was informed that Tey was under investigation by the Corrupt

Practices Investigation Bureau ("the CPIB"). [note: 4] On 23 July 2012, Tey made an application for new REPs to be issued to him and to his daughter ("the 1st Attempt"). These applications were rejected. When Tey checked on the application status on 24 July 2012, he was informed that both applications were "cancelled". The ICA did not inform him of the reasons for which his applications were "cancelled".

13 On 28 May 2013, Tey was convicted of six charges of corruption under the Prevention of Corruption Act (Cap 241, 1993 Rev Ed) by the District Court.

14 On 6 June 2013, after Tey's REP had expired, he made a second online application for an REP ("the 2nd Attempt"), this time only for himself. This, too, was unsuccessful.

15 The ICA afforded no reasons at the time, although it was apparent from the error message that appeared on the online portal, that the 2nd Attempt failed because, as at 6 June 2013, Tey was not holding on to a valid REP, and as such was not eligible to apply online (see below at [28(b)]).

16 On 10 October 2013, Tey went to the ICA headquarters to submit an application for an REP ("the 3rd Attempt"). This time, too, he made no application for his daughter. Along with his application form, he presented a handwritten letter to the ICA, wherein he stated that he required an REP to travel out of Singapore on 15 October 2013 to visit his frail parents and his family who were overseas. [note: 5]

17 On the same day (10 October 2013), he was interviewed by two ICA officers, Mr Gan and Mr Ng Kwok Fai. Mr Gan was the Head (Re-Entry Permit) of the Permanent Resident Services Centre at the ICA. He was authorised by the Controller of Immigration, under s 3(2) of the Act, to exercise and discharge the duties of the Controller. During the interview, the ICA officers informed Tey that his application was being processed, and that he would be notified of the outcome in due course. Tey asked about the PR status of his wife and daughter. Mr Gan informed him that both his wife and daughter were no longer permanent residents of Singapore as they remained outside of Singapore without valid REPs. After the interview, the ICA issued Tey three letters – the first informing him that his application for an REP was receiving attention [note: 6] and the next two informing him that his wife and daughter had lost their PR status. [note: 7]

18 Mr Gan then consulted his superior, the Director of the Permanent Resident Services Centre, Mr Kng, to ask if an REP could be granted to Tey on compassionate grounds. This was because the policy of the ICA was not to grant an REP to a permanent resident who had been convicted of an offence (see below at [28(d)]).

19 On 12 October 2013 at 2.24pm, Tey sent an email to the ICA Commissioner and Mr Kng. He requested, among other things, a decision on his application dated 10 October 2013. [note: 8]

20 On 14 October 2013, Mr Gan, acting on behalf of the Controller of Immigration, approved Tey's application for an REP on compassionate grounds. The REP was valid for a month. At 3.50pm on the same day, Mr Gan contacted Tey by telephone and informed him that his application was successful and asked him to visit the ICA headquarters by 5.30pm (the end of the working day) to complete the formalities for the REP to be issued, namely, to pay a $10 administrative fee. Tey agreed to visit the ICA headquarters. He did not suggest that he needed more time. [note: 9]

21 However, by 5.20pm, Tey had not arrived at the ICA headquarters. Mr Gan telephoned Tey to ask if he still intended to complete the formalities. Tey responded that he would not be doing so as he

felt that a one-month REP was "meaningless". [note: 10] Tey did not turn up at the ICA headquarters on 14 October 2013. At 6.46pm, Mr Gan sent an email to Tey to confirm their conversation which took place at 5.20pm. [note: 11]

22 On 15 October 2013 at about 9am, Tey attempted to leave Singapore through the Tuas checkpoint. He was doing so without an REP. The ICA officers reminded him of this at the checkpoint, as well as the consequences of doing so, namely, that he would lose his PR status. At that point, it was open to him to choose not to leave. However, Tey chose otherwise. It is important to note that Tey signed an ICA acknowledgement form indicating that he was aware of the consequences of his departure without an REP [note: 12] and left Singapore. As a result of his departure, Tey lost his PR status.

23 On 28 February 2014, the High Court allowed Tey's appeal against the decision of the District Court, and acquitted him of his charges for corruption. Soon after, on 4 June 2014, Tey filed this OS.

ICA Procedures

24 This case involves the granting of REPs. As noted above (at [10]), an REP is required by a permanent resident to leave and return to Singapore while retaining his PR status. Should a permanent resident choose to leave Singapore without an REP, he would lose his PR status.

25 REPs are defined in s 11 of the Act. The version of s 11 that was in force as at 24 July 2012 ("the Old s 11") read as follows:

> **Re-entry permits**
>
> **11.**—(1) Any person lawfully resident in Singapore, not being the holder of a valid pass or a citizen of Singapore, who seeks to leave Singapore temporarily, or within one month of so leaving Singapore, may make an application to the Controller in the prescribed manner for the issue to him of a re-entry permit authorising him to re-enter Singapore.
>
> (2) Upon application being made under subsection (1) and upon payment of the prescribed fee, the Controller may issue to the applicant a re-entry permit in the prescribed form and shall, if the applicant is required by the provisions of any written law relating to passports for the time being in force in Singapore to have a visa to enter Singapore, issue a visa to the applicant on the production by him of his passport or other travel document and on payment of the fee prescribed by that written law and the visa shall remain valid until the expiry or cancellation of the re-entry permit issued to him.
>
> (3) Any person aggrieved by the refusal of the Controller to issue to him a re-entry permit under this section may, within 30 days of the notification of the refusal to him, appeal by petition in writing to the Minister whose decision shall be final.

26 Section 11 was amended in 2012. The amended provision ("the New s 11") took effect from 19 December 2012. It reads:

> **Re-entry permits**
>
> **11.**—(1) Any person lawfully resident in Singapore, not being the holder of a valid pass or a citizen of Singapore, who seeks to leave Singapore temporarily, or within one month of so leaving Singapore, may make an application to the Controller in the prescribed manner for the issue to

him of a re-entry permit authorising him to re-enter Singapore.

(2) Subject to subsection (3), upon an application made under subsection (1) and upon payment of the prescribed fee, the Controller may issue to the applicant a re-entry permit in the prescribed form and shall, if the applicant is required by the provisions of any written law relating to passports for the time being in force in Singapore to have a visa to enter Singapore, issue a visa to the applicant on the production by him of his passport or other travel document and on payment of the fee prescribed by that written law and the visa shall remain valid until the expiry or cancellation of the re-entry permit issued to him.

(3) The Controller may, in his discretion —

(*a*) at the time of issuing a re-entry permit under subsection (2), impose any condition as he thinks fit; or

(*b*) at any time after the issue of a re-entry permit under subsection (2), vary or revoke any condition to which the re-entry permit is subject or impose any condition thereto.

(4) For the avoidance of doubt, the power of the Controller to vary, revoke or impose any condition under subsection (3)(*b*) may be exercised whether or not he is entitled to cancel the re-entry permit under this Act.

(5) Before varying, revoking or imposing any condition on a re-entry permit under subsection (3)(*b*), the Controller shall notify the holder of the re-entry permit of the Controller's intention to do so and shall give the holder an opportunity to be heard as to why the condition of his re-entry permit should not be varied or revoked or the additional condition should not be imposed.

(6) Any person who is aggrieved by the decision of the Controller under this section may, within 30 days after being notified of the decision of the Controller, appeal by petition in writing to the Minister whose decision shall be final.

27 In both versions, it is clear that the granting of an REP is subject to the discretion of the Controller. The Controller is permitted, pursuant to s 3(2) of the Act, to authorise immigration officers to act on his behalf. In this case, Mr Gan and Mr Kng both had the requisite authority. This was not disputed by Tey.

28 The ICA adheres to certain policies when issuing REPs. These include the following: [note: 13]

(a) First, REPs are usually issued with a validity of five years or ten years.

(b) Secondly, before the expiry of an REP, the permanent resident may apply for a new REP either through the online ICA portal or by paying a visit to the ICA headquarters. If the applicant chooses to apply online, he must log in to the online portal which can be accessed through the ICA website and fill in the requisite fields. He will generally be notified immediately of the outcome. However, where the application requires further consideration, the applicant will be advised to check the application status through the same online portal within five working days of the application date. Also, after the expiry of an REP, the permanent resident may no longer apply online, and must pay a visit to the ICA headquarters to apply for an REP.

(c) Thirdly, a permanent resident who has sponsored his dependants for their PR status may apply on behalf of his dependants for REPs to be issued to them.

(d) Fourthly, REPs will not be granted automatically to applicants. Each application will be assessed on its own merits. A permanent resident who is under investigation or has been charged, convicted, and is appealing against the conviction, is generally not granted an REP unless there is a conclusion to the matter.

(e) Fifthly, in the event the Controller rejects an application for an REP, typically, no reasons are given to the applicant. Nevertheless, any person aggrieved by the decision of the Controller may appeal to the Minister, pursuant to subsection (3) of the Old s 11 and subsection (6) of the New s 11.

The Electronic Re-Entry Permit (e-REP) System User Manual for Public Module

29 In his submissions, Mr Ravi directed the court's attention to the Electronic Re-Entry Permit (e-REP) System User Manual for Public Module ("the Manual"). This is an electronic manual available on the ICA website that provides step-by-step guidelines on how to use the online portal. At paragraph 2.5, the Manual guides the user through the checking of the status of applications for the renewal of REPs. The relevant portion reads:

2.5.1 Application Listing

- Click on the hyperlink [CHECK APPLICATION STATUS] from e-REP Main Menu as shown in **Figure 2.2b**

- Renewal and Transfer applications submitted will be displayed in **Figure 2.5.1a**.

- Click on the hyperlink [APPLICATION NO.] to view the summary of the application. Likewise you can click on the hyperlinks [MAKE PAYMENT].

o Renewal Application

■ For Pending Status, refer to Section 2.5.2.

■ For Approved Status, refer to Section 2.5.3.

■ For Issued Status, refer to Section 2.5.4.

■ For Cancelled, Rejected and/or Withdrawn Status, refer to Section 2.5.5.

o Transfer Application

■ For Pending Status, refer to Section 2.5.6.

■ For Approved Status, refer to Section 2.5.7.

■ For Rejected Status, refer to Section 2.5.8.

- If you do not see your application in the listing, it may be due to the following:

o Your application has been processed more than two (2) months; or

o Your REP issued has not been printed more than two (2) months.

…

2.5.5 Renewal Application Summary (Cancelled, Rejected and Withdrawn)

- If any of the applicants in your renewal application has been cancelled, rejected or withdrawn, a summary page will be displayed as shown in **Figure 2.5.5a**.

- If you wish to return to the application listing, click on [BACK].

- If you wish to return to e-REP Main Menu, click on [RETURN TO MAIN MENU].

30 The Manual contained screenshots, which were interspersed throughout the text. An example is figure 2.5.5a, as referred to in paragraph 2.5.5, quoted above. This figure was crucial, as it was primarily what Tey referred to. The figure was a screenshot of an "Application Summary" screen, with examples of how the possible status updates would be presented. The text within figure 2.5.5a reads:

The REP application for the following has been **Rejected**:

1. KENJI …

You will be notified by email or letter.

The REP application for the following has been **Withdrawn**:

1. ALEX …

Possible reasons for withdrawal:

1. No payment made within 14 days.

2. Request from applicant.

The REP application for the following has been **Cancelled**:

1. ALFRED…

For queries on the cancelled application, kindly email ICA at ICA_REP@ica.gov.sg

31 It is important to note that references to the Manual were first made by Tey only in his written submissions. They were not contained in Tey's affidavits or his statement pursuant to O 53 r 1(2) of the Rules of Court. Mr Ravi also relied on the Manual during the oral hearing.

My decision

32 Having considered the circumstances that led up to Tey's losing his PR status, I find that Tey's OS should be struck out as it is an abuse of the court's process, pursuant to O 18 r 19(1)(*d*) of the Rules of Court.

33 Even if it were not struck out, I would not have granted leave because, amongst other reasons, Tey failed to exhaust all available remedies, *viz*, by making an appeal to the Minister under s 11(3) of the Act, before turning to the courts.

Leave and abuse of process

34 These proceedings concern both Tey's application for leave and the Attorney-General's application to strike out the OS. As submitted by Mr Chong SC, there is an overlap between the two. The former sieves out hopeless or frivolous public law claims (see *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 ("*Jeyaretnam*") at [53]–[55]). The latter weeds out cases that are legally or factually unsustainable or are improper uses of the court's machinery (see *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39] and *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 ("*Gabriel*") at [22]). Both are concerned with preventing wastage of judicial time and resources.

35 An important starting point is that the court should not ignore legal constructs such as striking out and the need for leave, as well as the principles behind them, simply because an action is commenced by way of judicial review. In the words of Chao Hick Tin JA in *Jeyaretnam* at [62], "the very notion of 'public interest' has intrinsically the risk of it running amok, depending on the whims and fancies of anyone who happens to be a citizen of Singapore". Although he was writing in the context of the law on *locus standi*, I find his words are equally apt to this case, subject to the caveat that Tey here is not a citizen of Singapore – in fact, it is precisely due to the matter of his recently altered residence status that he appeared before this court.

36 On the other hand, as the Court of Appeal recently reiterated, the threshold for striking out is high, and the mere fact that a case is weak is no ground for striking it out (see *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*") at [20], citing *Gabriel* at [21]). In that case, the court was concerned with O 18 r 19(1)(*a*) of the Rules of Court, the "no reasonable cause of action" ground, and O 18 r 19(1)(*b*), the "frivolous or vexatious" ground. In this case, notwithstanding that the focus is on the "abuse of process" ground under O 18 r 19(1)(*d*), the principles enunciated in *Tan Eng Hong* are equally relevant.

37 In identifying what an abuse of process is, the following guideposts are useful:

(a) Proceedings are an abuse of process when they are manifestly groundless or without foundation or serve no useful purpose (*Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 at [34]).

(b) Of particular relevance to this case, and I can do no better than to quote Lord Templeman in *In re Preston* [1985] 1 AC 835 at 862, is the rule that the "[j]udicial review process should not be allowed to supplant the normal statutory appeal procedure".

(c) Furthermore, a delay in bringing proceedings may constitute an abuse of process. This was mentioned in *Chua Choon Lim Robert v MN Swani and others* [2000] 2 SLR(R) 589 at [42], citing *Ronex Properties Ltd v John Laing Construction Ltd* [1983] 1 QB 398, albeit in the context of time-barred claims. Mr Chong SC analogised the time-barred claims to Tey's prayers for quashing orders, which were brought way beyond the stipulated three-month period in O 53 r 1(6) of the Rules of Court. [note: 14] I think this is a fair analogy and accept the same. In fact, I would extend the principle to mandatory orders as well. Applications for mandatory orders, too, should be made without delay (see *UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR 94 at [37]).

Section 39A

38 An important provision in the Act is s 39A, which goes to both the "abuse of process" and "leave" points. It reads:

> **Exclusion of judicial review**
>
> **39A.**—(1) There shall be no judicial review in any court of any act done or decision made by the Minister or the Controller under any provision of this Act except in regard to any question relating to compliance with any procedural requirement of this Act or the regulations governing that act or decision.
>
> (2) In this section, "judicial review" includes proceedings instituted by way of —
>
> (*a*) an application for a Mandatory Order, a Prohibiting Order or a Quashing Order;
>
> (*b*) an application for a declaration or an injunction;
>
> (*c*) an Order for Review of Detention; and
>
> (*d*) any other suit or action relating to or arising out of any decision made or act done in pursuance of any power conferred upon the Minister or the Controller by any provision of this Act.

39 Unlike s 11 of the Act, s 39A was not amended in 2012. Between 24 July 2012 and 4 June 2014, this was the provision in force. It is clear that s 39A purports to limit judicial review. The first question is whether ousting the jurisdiction of the court is *per se* wrong. To address this, I turn to a former decision of the High Court where the court dealt with, and gave effect to, a similar clause.

40 In *Borissik Svetlana v Urban Redevelopment Authority* [2009] 4 SLR(R) 92 ("*Borissik*"), the High Court considered s 22(7) of the Planning Act (Cap 232, 1998 Rev Ed) ("the Planning Act"). Section 22(7) provided that any decision of the Minister "shall not be challenged or questioned in any court". The High Court found at [29] that s 22(7) showed that:

> [T]he legislature intended that the courts should not interfere with issues of planning permission as these involve interrelated considerations of fact, law, degree and policy, which [were] better dealt with by an appeal procedure to the Minister.

I should note that, in discussing s 22(7), the High Court was more concerned about the applicant's failure to exhaust her remedies before proceeding to court.

41 Given the similarity in facts with this case, as Tey did not appeal to the Minister either, I pause to briefly revisit the facts in *Borissik*. In that case, the applicant was unhappy with the decision of the Urban Redevelopment Authority ("the URA") to reject the application that she and her husband had submitted for the demolition of their semi-detached house. Importantly, after the URA's rejection, the applicant did not appeal to the Minister. This appeal process was statutorily provided for in s 22(1) of the Planning Act. The High Court's analysis of the "ouster" effect of s 22(7) was conducted in the context of elucidating the applicant's failure to exhaust her remedies (by appealing to the Minister), before proceeding to court. It noted, at [30]:

> More alarmingly, the applicant took the position that she was not prepared to appeal to the Minister because s 22(7) of the Planning Act provides that the Minister's decision shall be final and shall not be challenged or questioned in any court. This is certainly not a valid reason for

failing to appeal to the Minister, who is required to accord her a fair hearing. It follows that the application must be dismissed on the ground that the applicant had failed to exhaust her remedies before coming to court.

42 The provision in *Borissik* purported to oust the court's jurisdiction in a similar fashion to s 39A of the Act. *Borissik*, however, dealt with the Planning Act. To examine the effect of ouster clauses in matters pertaining to immigration, I turn to the decision of *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan* [2002] 3 MLJ 72 ("*Pihak*"). In that case, the Federal Court (Kuala Lumpur) was faced with the cancellation of the respondent's entry permit. Six weeks before the expiry of his entry permit, the respondent was served with a notice of cancellation, pursuant to s 65(1)(*c*) of the Immigration Act 1959/63 (Act No 155 of 1975) (M'sia) ("the Malaysian Act"). In dealing with an appeal stemming from the respondent's application for judicial review, the court considered the effect of s 59A of the Malaysian Act. After the amendment, which took effect from 1 February 1997, s 59A(1) read:

Exclusion of judicial review

59A. (1) There shall be no judicial review in any court of any act done or any decision made by the Minister or the Director General, or in the case of an East Malaysian State, the State Authority, under this Act except in regard to any question relating to compliance with any procedural requirement of this Act or the regulations governing that act or decision.

43 As is evident, s 59A(1) of the Malaysian Act is similarly worded to s 39A(1) of the Act. The court in *Pihak* found, at 91, that it was clear that:

[T]he intention of Parliament … [was] to exclude judicial review by the court of any act done or any decision of the minister or the director general or the state authority under the Act except on grounds of procedural non-compliance of the Act or regulations governing the act or decision.

44 Having reviewed the authorities, I find that the first question can be answered in the negative. In matters relating to national policy, good examples of which are matters relating to land planning as in *Borissik* or immigration or defence, there are good and self-evident reasons why these matters are best left to the executive arm and not the courts which are ill-equipped to make such decisions. This underpinned Parliament's decision to enact s 39A of the Act, as is apparent from the speech by the then Minister for Home Affairs, Professor S Jayakumar, during the second reading of the Immigration (Amendment) Bill on 10 November 1993 when s 39A was inserted. The relevant extract reads (*Singapore Parliamentary Debates Official Reports* (10 November 1993) vol 61 at cols 916–917):

... Clause 15 of the Bill inserts a new section 39A to clarify that the Courts cannot substitute their decisions for the Executive's decisions in matters relating to immigration unless it is on ground of non-compliance with any procedural requirements. The intention of this amendment is that the merits of the immigration decision, that is, whether it is right or wrong, cannot be reviewed. This is to avoid a situation where the Courts can frustrate Government's decision to expel aliens under the Act or other immigration decisions concerning aliens.

Illegal entry and overstaying are problems which affect many countries. Singapore is also faced with this problem. But we must have full powers to deal with such offenders and when they are apprehended, to prosecute them and expel them after they have served their punishment. In some cases where we have caught overstayers or illegal workers and we want to repatriate them, they have brought legal action or threatened to do so claiming they have a right to stay on for various reasons. We cannot allow this.

45 This leads to the second question – what is the extent of s 39A of the Act? It is important to note that s 39A does not purport to oust the jurisdiction of the court in relation to all matters under the Act. Specifically, it does not oust matters involving compliance with any procedural requirements of the Act or the relevant regulations from the court's jurisdiction. This is a reasonable balance.

46 The third question is whether s 39A of the Act operated to oust this court's jurisdiction in considering the matters brought by Tey. Having considered the ICA procedures and policies earlier, it is clear there are no procedural requirements – at least in the Act – that deal with the exercise of the Controller's discretion in approving, refusing, or "cancelling" REP applications. Furthermore, given Tey's allegations of breach of due process and natural justice, and that the decisions made by the ICA on 24 July 2012 were arbitrary and unreasonable, it seems his case lies in the realm that is indeed precluded by s 39A. I note, however, that much of his case has now been jettisoned, given Mr Ravi's amendments to the OS on 5 November 2014.

Exhaustion of remedies

47 Allied to the s 39A point is Tey's failure to exhaust his remedies. This, too, goes both to abuse of process and leave for judicial review. Tey chose not to pursue his statutory right to appeal to the Minister against the decisions of the ICA on 24 July 2012. Not only does this jeopardise his application for leave, having come to this court as a first resort (see *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2014] 1 SLR 1047 at [39]), it also relates to an abuse of the court's process, in similar vein to the applicant's failure to appeal to the Minister in *Borissik*.

48 In his submissions, Tey, through his counsel, attempted to explain away his failure to appeal to the Minister. Mr Ravi emphasised the difference between the terms "cancelled", which was the stated status of Tey's application on 24 July 2012, and "refusal". His argument seemed to be two-fold:

(a) First, he argued that under the Act, the ICA was not empowered to cancel REP applications. This is because there was nothing in the Old s 11 to allow the ICA to cancel an REP application. [note: 15] "Refusal", on the other hand, was referred to in subsection (3) of the Old s 11, which dealt with appeals to the Minister. The equivalent in subsection (6) of the New s 11 uses the more general term, "decision of the Controller".

(b) Secondly, he argued that the Manual makes it clear that there is a difference between the terms "cancel", "rejected" and "withdrawn". [note: 16]

49 Although Tey's argument first came across as impugning the very authority of the ICA to cancel his renewal applications, it later became muddled. This was because his reliance on the Manual then led him to argue that the ICA must notify applicants of its refusal to renew their applications by letter or email (and that its failure to have notified him as such constituted procedural impropriety). He relied on the screenshot at figure 2.5.5a in the Manual (see above at [30]). However, the word used in the screenshot, as in the rest of the Manual, was "rejected", not "refused". The word "rejected", in any of its grammatical forms, cannot be found in the Old s 11. Tey was willing to accept refusal as a synonym for rejection, [note: 17] yet vehemently objected to the use of the word "cancelled" simply because it was not found in the Old s 11.

50 His argument became even more tenuous given his shift of position on 5 November 2014. During the oral hearing, Mr Ravi stated that Tey's new position was that he was hitherto unaware of any decision made by the ICA. This was because, he argued, cancellations were not "decisions" that could have been appealed from (whether under the Old s 11 or the New s 11). I cannot accept this

argument. Even if Tey was confused by the word "cancelled" on 24 July 2012, the screenshot at figure 2.5.5a in the Manual would have directed him to send an email to the ICA to clarify what it meant (see above at [30]). He was clearly aware of this portion of figure 2.5.5a, as he had even made reference to it in his submissions. [note: 18] Although there was no legal obligation on his part to enquire, his failure to do so, when viewed in the totality of his conduct, reduces the credibility of his claim that he had hitherto been unaware of any decision by the ICA. More importantly, if it was not apparent that "cancelled" meant "refused" on 24 July 2012, it must have become eminently apparent at least by 10 October 2013, when Tey went to the ICA headquarters. Although the ICA's use of multiple different terms may not be ideal, and may cause confusion among applicants, Tey's allegations are too far-fetched. His reliance on the Manual and the word "cancelled" were seemingly attempts to rationalise his failure to appeal to the Minister, a crucial weak point of his case.

51 When viewing Tey's conduct as a whole, it is apparent that not only did he bring this application at a rather late stage, he neglected to appeal to the Minister, and seemed to resort to this court to circumvent the appellate process prescribed by statute.

52 Furthermore, given his emphatic change of position at the eleventh hour, and his new position that there have been hitherto no "decisions" from the ICA, it is not even clear what the two mandatory orders that he now seeks leave to apply for even pertain to. I deal with this below. Nevertheless, on his conduct alone, I find that an abuse of process has been made out on the three guideposts highlighted above (at [37]).

Tey's new case

53 The most troubling aspect of Tey's new case was his position that there have hitherto been no decisions by the ICA. Given that there are now only two prayers remaining, I consider each in turn, and analyse the attendant difficulties.

54 The 1st Mandatory Order, as amended, is now sought against the Respondent to reconsider the PR status of Tey and his daughter. This is troubling for four reasons.

(a) First, Tey has said nothing to explain his conduct on 14 October 2013 – in particular, his *volte face* after agreeing, at 3.50pm, to visit the ICA headquarters that same day to complete the one month extension of his REP.

(b) Secondly, Tey never asked the ICA for a longer REP or for any other terms or changes to the 30-day REP that was granted on compassionate grounds.

(c) Thirdly, Tey has not explained why he left the country on the day that he did despite knowing the ramifications it would have on his PR status. In this regard, it is important to reiterate that, *ceteris paribus*, he would have remained a permanent resident had he not left the country, notwithstanding that his REP had expired.

(d) Fourthly, after the 1st Attempt failed (on 24 July 2012), Tey had not applied for an REP for his daughter. The 2nd and 3rd Attempts concerned only himself. His daughter had left the country in November 2012 (see above at [11]). In fact, Tey's position was that it was his decision to send his daughter overseas shortly before the expiry of her REP. [note: 19]

55 As such, it is important to distinguish between the "REP issue" and the "PR issue". Even if there was some misconduct on the part of the ICA that led to his failed REP applications, the immediate cause of the loss of his and his daughter's PR status was their leaving, or being out of, the country

without valid REPs. In any case, I found no such misconduct on the part of the ICA. In fact, the ICA was willing to allow Tey to travel on 15 October 2013. It was Tey's unexplained refusal to visit the headquarters on 14 October 2013 to pay the very modest fee and obtain his REP that led him to be without an REP.

56 Importantly, it was also Tey's decision to leave the country on 15 October 2013 without an REP, despite being warned of the consequences of the same by an ICA officer and signing a written acknowledgement that he had been so warned, that led him to lose his PR status. Juxtaposing his conduct in this regard with his resort to this court in seeking the 1st Mandatory Order, a clear case of abuse of process is made out.

57 The 2nd Mandatory Order calls for the ICA to consider and process Tey's application for the renewal of his and his daughter's REPs in full accordance with the fundamental principles of due process, natural justice and procedural propriety. Mr Ravi mentioned during the oral hearing that this would apply to any future applications by Tey. In this sense, it is a highly unorthodox prayer because Tey is presently in no position to apply for an REP, given that he is not even a permanent resident. As such, there seems to be no practical value pursuing such an order, not least given the circumstances in which he seeks the 1st Mandatory Order.

58 I further highlight two aspects of Tey's conduct that bear mention. First, shortly after Tey filed his affidavit, he applied in Summons No 2809 of 2014 to expunge paragraphs 45 and 46 of the affidavit. The paragraphs read:

> 45. No court of rule of law would be deferential to the executive for such unreasonable Kafkaesque tactics and action –they cannot be tolerated, nor can they be sanctioned, encouraged or indulged with impunity, by a court that adheres to the rule of law.
>
> 46. The Singapore Supreme Court must not become neglectful, or be seen to be neglectful, of the proper process of the legal mind.

59 Even though these two paragraphs have been expunged, paragraph 44 remains, which reads:

> 44. Such unreasonable Kafkaesque tactics and action cannot be allowed, and must be told by the court to the executive that proclaims to adhere to the rule of law in plain terms and in an unequivocal manner – such tactics and action have no place in a country of rule of law.

60 In the face of Tey's refusal to appeal to the Minister and his vacillating conduct particularly on 14 October 2013, it is odd that he chose to take this matter directly to the court and to pitch his case this high.

61 The second aspect is that when parties appeared before me on 5 November 2014, Mr Ravi tendered four volumes of what he termed "supplementary authorities". These were in addition to the authorities he purportedly relied on in his submissions. This is either telling of shoddy preparation on Tey's part, or connivance to inundate his opponent and the court with a vast array of cases, some dating back to the 1800s and early 1900s. As mentioned above (at [34]), striking out and leave are geared towards preventing wastage of time and judicial resources. I see no reason to allow Tey to take up any more of the court's time.

Conclusion

62 The conduct of Tey's case has been highly unsatisfactory. From the lengthy delay in filing his

OS, to skipping the appeal to the Minister, to drastically changing his position at the eleventh hour, Tey's case is not simply weak; it is an abuse of the court's process. For this reason, I allow the Respondent's application to strike out the OS. If I am wrong, and this is taken up elsewhere, I would have refused leave for the reasons set out above.

63 I will hear the parties on costs for the striking out application and the application for leave. This will include costs thrown away by the last minute abandonment of the first two prayers and the amendments.

[note: 1] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at pp 37–38.

[note: 2] Minute Sheet of hearing on 5 November 2014 at p 7.

[note: 3] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at p 31.

[note: 4] Kng Eng Kiat's Affidavit dated 23 July 2014 at p 6.

[note: 5] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at p 22.

[note: 6] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at p 25.

[note: 7] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at pp 27–28.

[note: 8] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at pp 30–33.

[note: 9] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at pp 7–8.

[note: 10] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at para 20.

[note: 11] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at p 43.

[note: 12] Damien Gan Kwang Yeang's Affidavit dated 23 July 2014 at p 45.

[note: 13] Kng Eng Kiat's Affidavit dated 23 July 2014 at pp 3–5.

[note: 14] Respondent's submissions at para 31.

[note: 15] Applicant's submissions at para 25.

[note: 16] Applicant's submissions at para 25.

[note: 17] Applicant's submissions at para 34.

[note: 18] Applicant's submissions at para 32.

[note: 19] Tey Tsun Hang's Affidavit dated 10 June 2014 at p 4, para 22.