

Law Society of Singapore v Gopalan Nair (alias Pallichadath Gopalan Nair)
[2011] SGHC 191

Case Number : Originating Summons No 947 of 2009 (Summons No 1404 of 2011)
Decision Date : 22 August 2011
Tribunal/Court : High Court
Coram : Tan Lee Meng J; Tay Yong Kwang J; Lee Seiu Kin J
Counsel Name(s) : Peter Cuthbert Low and Han Lilin (Peter Low LLC) for the plaintiff; Defendant absent and unrepresented.
Parties : Law Society of Singapore — Gopalan Nair (alias Pallichadath Gopalan Nair)

Legal Profession – Disciplinary Proceedings

22 August 2011

Tan Lee Meng J (delivering the grounds of decision of the court):

Introduction

1 The Law Society of Singapore (“the Law Society”) applied under s 82A(10) of the Legal Profession Act (Cap 161, 1990 Rev Ed) (“the LPA”) for an order that the defendant, Mr Gopalan Nair alias Pallichadath Gopalan Nair (“GN”), be “struck off the roll, prohibited from applying for a practising certificate, censured and/or otherwise punished” for misconduct unbefitting of an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession. We ordered that GN be struck off the roll and now give the reasons for our decision.

2 GN, who was admitted onto the roll on 10 August 1980, is a non-practising advocate and solicitor of the Supreme Court of Singapore. He is presently an American citizen residing in California, USA.

3 Although GN is a non-practising advocate and solicitor, he is still subject to the control of the Supreme Court as s 82(A)(2) of the LPA provides:

All Legal Service Officers and non-practising solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be punished in accordance with this section.

4 Pursuant to ss 82A(4) and (5) of the LPA, the Law Society applied in *ex parte* Originating Summons No 947 of 2009 for leave from the Chief Justice for an investigation to be made into a number of complaints about GN’s misconduct. On 4 September 2009, the Chief Justice appointed a Disciplinary Tribunal (“the Tribunal”) comprising Mr Toh Kian Sing SC and Mr Tan Jee Ming, under s 90 of the LPA.

5 The following 5 charges of misconduct were preferred by the Law Society against GN:

1st charge

That you on the 4th day of July 2008, at or about 10.35 pm, near the junction of Bukit Timah

Road and Race Course Road, Singapore, which is a public place, did use abusive words towards certain public servants, namely, police officers of the Singapore Police Force, in particular Senior Staff Sergeant Kang Wei Chain and Sergeant Noor Azhar, by shouting:

- (a) "Fuck off you policeman, don't waste my fucking time. You go and do your job properly and go catch thieves and I did nothing wrong. I am waiting for the fucking taxi";
- (b) "Fuck off, forget about my name, you fucking bastard.
- (c) "You fucking Malay bastard".

at the said police officers in the execution of their duties as such public servants, and you had thereby committed an offence punishable under section 13D(1)(a) of the Miscellaneous Offences (Public Order and Nuisance) Act, Chapter 184, for which on 5 September 2008, you were convicted and sentenced to a fine of \$2,000 in default two week imprisonment, and you are hereby guilty of conduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession which warrants disciplinary proceedings against you within the meaning of section 82A(3)(a) of the Legal Profession Act (Chapter 161).

2nd charge

That you on the 4th day of July 2008, at or about 10.35 pm, near the junction of Bukit Timah Road and Race Course Road, Singapore, which is a public place, did behave in a disorderly fashion to wit, by gesticulating with your hands and shouting loudly, and you had thereby committed an offence punishable under section 20 of the Miscellaneous Offences (Public Order and Nuisance) Act, Chapter 184, for which on 5 September 2008, you were convicted and sentenced to a fine of \$1,000 in default one week imprisonment, and you are hereby guilty of conduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession which warrants disciplinary proceedings against you within the meaning of section 82A(3)(a) of the Legal Profession Act (Chapter 161).

3rd charge

That you in your blog post at <http://singaporedissident.blogspot.com> dated 29 May 2008 entitled "Singapore, Judge Belinda Ang's Kangaroo Court", did make the following offending statement insulting the judiciary of Singapore, namely, the Honourable Justice Belinda Ang:

"The judge Belinda Ang was throughout prostituting herself during the entire proceedings by being nothing more than an employee of Mr Lee Kuan Yew and his son and carrying out their orders."

and you had thereby committed an offence punishable under section 228 of the Penal Code, Chapter 224, for which on 17 September 2008, you were convicted and sentenced to 3 months imprisonment, and you are hereby guilty of conduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession which warrants disciplinary proceedings against you within the meaning of section 82A(3)(a) of the Legal Profession Act (Chapter 161).

4th charge

That you in your blog post at <http://singaporedissident.blogspot.com> dated 28 November 2008

entitled "Hello from Freemont, near San Francisco, California", did make the following offending statement amounting to contempt of court:

".... I am defying the undertaking that I gave in court on September 12, 2008 when I admitted being in contempt of court. .. I had also given an undertaking to remove the 2 blog posts, of Sept 1 2008 and Sept 6, 2008 which referred to my trial and conviction before Judge James Leong in the Subordinate Courts for disorderly behaviour and insulting a policeman, charges entirely made up by the police to discredit me. I will be re-posting those 2 blog posts and stand by every word that I had written in them ..." (Sic).

and you are hereby guilty of conduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession which warrants disciplinary proceedings against you within the meaning of section 82A(3)(a) of the Legal Profession Act (Chapter 161).

5th charge

That you in your blog post at <http://singaporedissident.blogspot.com> dated 30 November 2008 entitled "Justice Judith Prakash, Another Kangaroo Judge", did make the following offending statement insulting the judiciary of Singapore, namely, the Honourable Justice Judith Prakash:

"Judge Judith Prakash of the Singapore High Court has prostituted herself in the hearing of the Kangaroo T shirt case on November 24, 2008 by being nothing more than an employee of Lee Kuan Yew and his son, whom he appointed Prime Minister. By her actions in sending these young men to prison and making them pay crippling court costs of \$5,000 each, she has shamelessly disgraced herself, her office as a judge, disgraced the Singapore Constitution and disgraced Singapore."

and you are hereby guilty of conduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession which warrants disciplinary proceedings against you within the meaning of section 82A(3)(a) of the Legal Profession Act (Chapter 161).

6 GN sent, by way of emails to the Disciplinary Tribunal Secretariat, his Defence and his Amended Defence on 1 December 2009. However, although he knew that his case was being heard by the Tribunal on 20 and 21 September 2010, he did not appear for the hearing.

7 The Tribunal found GN guilty of all 5 charges brought against him and determined that there was cause of sufficient gravity for disciplinary action to be taken against him. The Chief Justice then appointed Mr Peter Low, the plaintiff's counsel, under s 82A(10) of the LPA to make the present application in Summons No 1404 of 2011.

Decision of the Court

8 GN did not attend and was not represented by counsel at the hearing before this Court on 25 July 2011. The Court was satisfied that he had been duly served the requisite papers and that he was fully aware of the hearing scheduled for 25 July 2011.

9 The issues before this Court were whether due cause for disciplinary action against GN under s 82A(3)(a) of the LPA had been shown and if so, the appropriate penalty to be imposed on him.

Due cause

Due cause

10 As for what constitutes “due cause”, the relevant part of s 82A(3) provides:

Such due cause may be shown by proof that a Legal Service Officer or a non-practising solicitor, as the case may be —

(a) has been guilty in Singapore or elsewhere of such misconduct unbefitting a Legal Service Officer or an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession ...

11 The Law Society rightly submitted that for the purpose of considering whether there has been “misconduct unbefitting an advocate and solicitor as an officer of the Supreme Court or as a member of an honourable profession” under s 82(3)(a) LPA, the meaning accorded to the identical phrase in s 83(2)(h) LPA should be adopted. As such, both misconduct in the solicitor’s professional capacity as well as misconduct in the solicitor’s personal capacity are relevant to this inquiry (see *Law Society of Singapore v Heng Guan Hong Geoffrey* [1999] 3 SLR(R) 966 at [24]). The same standard applies to non-practising lawyers.

12 The Law Society relied on the findings of the Tribunal to support its assertion that “due cause”, as defined in s 82A(3)(a) of the LPA, had been shown.

13 The 1st and 2nd charges against GN concerned his conviction with respect to two offences under s 13D(1)(a) and s 20 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) for uttering vulgarities when speaking to officers of the Singapore Police Force and for behaving in a disorderly manner towards the police officers who had enquired why he had knocked a number of times on a police vehicle bearing the registration number QX501H. The gravity of his use of abusive and obscene language was stressed by the Tribunal in its report at [28]-[29]:

28 It is clear beyond reasonable doubt ... that the Respondent uttered vulgarities towards the two policemen after he was stopped by them. All this happened in a public place in the full glare of members of the public. [T]he Respondent behaved in a petulant manner and apparently took grave offence when he was stopped by the police. His reaction was entirely unprovoked. Even if the Respondent was unhappy about being questioned by the police, he should have acted with self-restraint and moderation. In the entire episode, he displayed neither virtue. If he had responded to the questions in a co-operative manner, his subsequent arrest could possibly have been avoided. In our view, these vulgarities which the Respondent spewed were not only profoundly offensive, but also had the effect of lowering the dignity and professionalism of law enforcement officers.

29 We further find the *racist outburst* directed at Sergeant Daud to be wholly reprehensible and deserving of condemnation in a multi-racial society like Singapore. It demonstrates a callous, unpardonable disregard for the sensitivities of the different races that make up our society. It is not behaviour that one would expect of a member of the legal profession.

[emphasis added]

14 In regard to his disorderly behaviour in the presence of the police, the Tribunal noted at para [39] of its report:

39 Creating a ruckus in a public place, gesticulating wildly (even if a non-threatening manner), spewing vulgarities towards public officers shows a very low level of restraint and self-control as

well as a complete lack of respect for law enforcement officers. Simply put, the Respondent had made a complete nuisance of himself in public. The fine of \$1000 (or one week imprisonment in default thereof) may be marginally less serious as compared with the Respondent's offence in MAC 3211. Nevertheless, such unruly, petulant and disorderly conduct (in full view of the public) is unfitting of an advocate or solicitor as an officer of the Court and as a member of a honourable profession. After all, a solicitor is expected to exercise a high level of self restraint and a bad tempered solicitor can only bring disrepute to the legal profession.

15 As for the breach of the undertaking referred to in the 4th charge, the background for the undertaking given by GN is as follows. When the case regarding GN's abuse of the policemen, as outlined in the 1st and 2nd charges pressed by the Law Society against him, was heard before District Judge James Leong ("DJ Leong"), GN made several offending statements in open court. For instance, on 25 August 2008, he said:

... I frankly ***do not have any faith or belief that I will get a fair trial in this Court*** . Any attempt on my part to recall these witnesses would only be a waste of my time since I believe the result will be the same in any event.

16 Subsequently, GN authored two blog posts dated 1 September 2008 and 6 September 2008 on <http://singaporedissident.blogspot.com>. These were entitled, "*Another classic case of trying to use the courts to silence dissent*" and "*Convicted*" respectively and were replete with statements which attacked DJ Leong. For instance, he stated:

As for Mr. James Leong, I have this to say. I have begun to know him pretty well since it took 18 days of trial. He is a good man at heart; there is no doubt about it. If he had his way, there is no doubt he would have acquitted me immediately. But alas he is weak. He cuts a pathetic figure. A man, because of his circumstances, having to do things that he does not really want to do. He knows that his employment as a judge in the Singapore courts depends on the patronage of Lee Kuan Yew and his friends. He also knows that Lee Kuan Yew demands his judges to punish political opponents of the government. And therefore to keep his job as a judge, he has no choice but to find me guilty....

17 GN's statements prompted the Attorney-General to make an application under Originating Summons No 385 of 2008 for an order of committal for contempt. When the hearing commenced on 12 November 2008 before District Judge Leslie Chew ("DJ Chew"), GN admitted that he had made the offending statements, apologised for his behaviour and gave an undertaking to the Court not to make similar offending statements and to remove the blog posts dated 1 September 2008 and 6 September 2008. As such, DJ Chew only reprimanded him and ordered him to pay the costs of the proceedings. As soon as GN left Singapore and returned to California, he breached his undertaking to the Court.

18 What was truly unacceptable was that GN subsequently declared that he never had any intention of abiding by his undertaking and that he deliberately breached the undertaking at the first opportunity. The Tribunal stated as follows at [62]:

By flagrantly flouting his undertaking to the court in such a defiant manner, the Respondent displayed absolutely no remorse or contrition for what he had done prior to leaving Singapore for the United States. He was simply trying to make a mockery out of the entire affair. The apology he made and the undertaking he gave were both quickly withdrawn once he was safely out of Singapore. Clearly the apology and undertaking was an expedient way to a lighter sentence – the Respondent by his own admission, never intended or believed in either.

19 As for the offensive blog post regarding Belinda Ang J on 29 May 2008, which was the subject matter of the 3rd charge, that blog post was in the context of a defamation suit brought by Prime Minister Lee Hsien Loong against the Singapore Democratic Party. For this charge of contempt of court, GN was sentenced to three months' imprisonment by Kan Ting Chiu J. The sentence meted out gave a clear indication of the seriousness of the contempt. Yet, in his blog post in relation to Judith Prakash J on 30 November 2008, who had, at the material time, found a number of persons in contempt of court for wearing T-shirts depicting a kangaroo in judges' robes, GN continued to abuse the judiciary.

20 After taking all the circumstances into account, we found that the Law Society had shown that there was due cause for disciplinary action to be taken against GN. As such, we proceeded to consider the penalty that ought to be imposed.

The appropriate penalty

21 Disciplinary action is intended to punish the errant solicitor for his or her misconduct, deter others from misbehaving in the same manner, and protect public confidence in the administration of justice: see *Law Society of Singapore v Tham Yu Xian Rick* [1999] 3 SLR(R) 68 (at [18]) and *Law Society of Singapore v Rasif David* [2008] 2 SLR(R) 955 (at [28]).

22 Although GN had been convicted of a number of offences, which were referred to in the charges preferred against him by the Law Society, it should be borne in mind that in *Law Society of Singapore v Wee Wei Fen* [1999] 3 SLR(R) 559, the Court observed (at [25]) that it cannot be that every violation of the criminal law implies a defect of character which renders the offender unfit to be a member of the legal profession and that the nature of the offence is clearly material. Similarly in *Law Society of Singapore v Wong Sin Yee* [2003] 3 SLR(R) 209, the Court stated (at [12]):

We would, at the outset, make it quite clear that conviction of criminal offence does not *per se* imply a defect of character rendering an advocate and solicitor unfit for his profession. *It is the nature of the offence, and the circumstances under which it was committed, and in turn the punishment imposed, which are likely to be determinative... The offence must be of such a nature that it is expedient for the protection of the public and the preservation of the good name of the profession to remove the solicitor from the roll or from practice.*

[emphasis added]

23 The offences in respect of which GN had been convicted and the circumstances under which they were committed lead to the conclusion that a serious penalty must be imposed. Apart from abusing the police with foul language in public and behaving in a disorderly manner in the presence of the police, GN was imprisoned for contempt of court in relation to his blog post regarding Belinda Ang J on 29 May 2008. Furthermore, he openly defied the undertaking he had given to the District Court shortly after he was convicted by Kan J for contempt of court. He then posted offensive statements in his blog about Prakash J on 30 November 2008.

24 When considering whether or not to strike an advocate and solicitor off the rolls, it is worth noting that in *Law Society of Singapore v Amdad Hussein Lawrence* [2000] 3 SLR(R) 23, the Court held at [11]:

The earlier decisions in *Law Society of Singapore v Ravindra Samuel* [1999] 1 SLR(R) 266 at [15]; *Law Society of Singapore v Tham Yu Xian Rick* (at [18]); *Law Society of Singapore v Suresh Kumar Suppiah* [1999] 2 SLR(R) 1203 at [18]; and *Law Society of Singapore v Heng Guan Hong*

Geoffrey [1999] 3 SLR(R) 966 at [28]-[29] have consistently affirmed and applied the following principles on disciplinary sentencing:

(a) where a solicitor has acted dishonestly, the court will almost invariably order that he be struck off the roll of solicitors;

(b) if he has not acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, *he will nonetheless be struck off the roll, as opposed to being suspended, if his lapse is such as to indicate that he lacks the qualities of character and trustworthiness which are the necessary attributes of a person entrusted with the responsibilities of a legal practitioner.*

[emphasis added]

25 In the present case, the relevant question is whether or not GN should be struck off the roll on the basis that he lacked the necessary attributes of a person entrusted with the responsibilities of a legal practitioner. After taking all the charges into account, we were of the view that he lacked the said attributes. In particular, the facts in the 3rd, 4th and 5th charges disclosed a contemptuous disrespect on the part of GN towards the judges concerned. Such egregious misconduct is totally unacceptable. As there were no mitigating circumstances to persuade us that he merited a less severe penalty than striking off the roll, we ordered that he be struck off the roll of advocates and solicitors of the Supreme Court of Singapore and awarded costs to the Law Society.

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