

Bao Haiyan v Attorney-General
[2009] SGHC 224

Case Number : OS 558/2009
Decision Date : 30 September 2009
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Leonard Loo Peng Chee (Leonard Loo LLP) for the plaintiff; Mavis Chionh, May Loh and Tan En En (Attorney-General's Chambers) for the defendant
Parties : Bao Haiyan — Attorney-General
Administrative Law – Judicial review

30 September 2009

Tan Lee Meng J:

1 Mdm Bao Haiyan ("Mdm Bao"), a citizen of China, sought leave to apply for a mandatory order to quash the decision of the Ministry of Manpower ("MOM") on 17 March 2009 to cancel her "S class" work pass ("S Pass"), which allowed her to work in Singapore. After hearing the parties, I dismissed Mdm Bao's application for leave and now give the reasons for my decision.

Background

2 Mdm Bao arrived in Singapore on 24 January 2009. She was issued an S Pass to work in Singapore as a "marketing sales executive" for her employer, Bella Beaute Parlour, for two years with effect from 19 February 2009.

3 On 13 March 2009, Mdm Bao was arrested by the police at around 11 pm for soliciting customers for sex at Geylang. In her statement to the police, she admitted that she had been waiting for customers at Lorong 33, Geylang. She said that she did this as she needed money for her upkeep.

4 On 14 March 2009, Mr James Low Chay Yong, a MOM investigator, recorded a statement from Mdm Bao. In her statement, she stated at [8] and [9] as follows:

[8] After I reached Singapore, I rented a bed at Geylang ... for my lodging. I have met female friends while staying at the lodging and from there I know that they are working as a Prostitute. They told me that I can work as a Prostitute to earn extra income and at the same time can meet more people. As I have used up most of my money, I got no choice but to work as a Prostitute. I have borrowed some clothing from my roommate to work as a Prostitute.

[9] I started to work from 11/03/2009 to 13/03/2009 and I will walk around Geylang and wait for customers to approach me.... For the past 3 days, I have only provided 2 customers with the sexual service. I was arrested by Police on 13/03/2009 around 12 am..

5 After investigations were completed, Mdm Bao's S Pass was cancelled on 9 April 2009.

6 On 15 April 2009, Mdm Bao was barred from being issued with a work pass for 12 months.

7 Mdm Bao denied that she was soliciting when she was arrested at Geylang. In her affidavit filed on 19 May 2009, she stated at [4] to [7] as follows:

- [4] I was just walking past the Geylang Hup Hoe Hotel to look for supper when I was arrested.
- [5] At the time of my arrest, I did not carry any condom with me and I was alone. There was no independent witness who identified me to be soliciting....
- [6] At the time of my arrest, I was dressed casually and not scantily.
- [7] I also did not make any confession that I was soliciting. I also did not moonlight as a prostitute in Geylang or anywhere else. To the contrary, I protested my innocence throughout the investigation. My police statement was not properly translated back to me and by an independent investigation officer as I am a Chinese National. I do not understand English.

8 While Mdm Bao complained that the police statement had not been properly translated to her, she made no reference to her statement to the MOM on 14 March 2009, where she had also admitted that she had solicited at Geylang to earn some money.

The court's decision

9 In *Chan Hiang Leng Colin & Ors v Minister for Information and the Arts* [1996] 1 SLR 609, Karthigesu JA, who delivered the judgment of the Court of Appeal, stated at [25] that what is required for leave to be granted for judicial review "is not a prima facie case, but a prima facie case of reasonable suspicion". In a subsequent decision of the Court of Appeal, *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR 644, LP Thean JA said at [22] that leave "would be granted, if there appears to be a point which might, on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed."

10 Mdm Bao did not assert that the authorities had failed to comply with any procedural requirement governing the decision to cancel her S Pass nor did she claim that the decision to cancel her S Pass was illegal. What she asserted was that the decision was irrational in the *Wednesbury* sense. In *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, 410, Lord Diplock explained such irrationality as follows:

By "irrationality" I mean what can by now be succinctly referred to as "*Wednesbury* unreasonableness" (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223). It applies to a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

11 In the present case, the MOM made it clear that Mdm Bao's S Pass had been cancelled because her employer no longer wanted to employ her. In his affidavit filed on 24 July 2009, Mr Syed Ahmad Al-Shihab, an investigation officer at the Ministry of Manpower ("MOM"), stated at [3] and [4] as follows:

[3] On 17 March 2009, at about 11 am, I conducted an interview with the Applicant's employer, one Mr Lau Kok Wah ("Lau") of Bella Beaute Parlour. It is our standard practice to interview the employers of persons who are in breach of the Employment of Foreign Manpower Act (Cap 91A) or any condition of a work pass in order to investigate whether the employers are also in breach. At the interview, I told Lau that the Applicant had been arrested for working as a prostitute. I then asked Lau if he still wished to employ the Applicant and he replied that he no longer wished to employ her. I then told Lau that MOM would in that case cancel the Applicant's S Pass to which he acknowledged.

[4] Accordingly, I sent an e-mail to Ms Phoon Lin Hoe, an officer in the Work Pass Division of MOM in respect of the cancellation of the Applicant's S Pass.... The Applicant's S pass was thus cancelled on 17 March 2009.

12 Mdm Bao's case did not get off the ground as she did not explain in her affidavit or in her statement filed pursuant to O 53 r 1(2) of the Rules of Court on 21 July 2009 why the MOM's decision to cancel her S Pass was in any way irrational. All she said in her affidavit filed on 19 May 2009 and in her aforesaid statement was that there was "no basis" for the cancellation of her S Pass. While the threshold for obtaining leave is relatively low, it does not mean, as Andrew Phang J put it in *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* at [2006] 3 SLR 507 at [24], that the evidence and arguments placed before the court could be "either skimpy or vague", as was the case here. Her counsel, Mr Leonard Loo, argued that leave for judicial review should be given because it was possible her former employer had not informed the MOM that he no longer wanted to employ Mdm Bao. However, as was made clear by Sir John Donaldson MR in *Regina v Secretary of State for Home Department, ex p Swati* [1986] 1 WLR 477, 485: an applicant "must show more than that it is not impossible that grounds for judicial review exist." The said grounds must be shown to be "a real, as opposed to a theoretical, possibility". This decision was followed by Belinda Ang J in *Chai Chwan v Singapore Medical Council* [2009] SGHC 115. Mdm Bao should not have come to court with nothing more than a bare assertion that the MOM's decision to cancel her S Pass was irrational because there was no basis for its cancellation.

13 As it was evident that Mdm Bao had failed to establish a *prima facie* case of reasonable suspicion, she did not meet the low threshold for obtaining leave for judicial review. Her application was thus dismissed with costs.

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