Manjit Singh s/o Kirpal Singh and another *v* Attorney-General
[2013] SGCA 45

Case Number	: Civil Appeal No 28 of 2013
Decision Date	: 19 August 2013
Tribunal/Court	: Court of Appeal
Coram	: Chao Hick Tin JA; Judith Prakash J; Andrew Ang J
Counsel Name(s)	: The appellants in person; Ms Aurill Kam Su Chuen and Mr Russell Low Tzeh Shyian (Attorney-General's Chambers) for the respondent; Mr P E Ashokan (KhattarWong LLP) for the Law Society.
Parties	: Manjit Singh s/o Kirpal Singh and another — Attorney-General

Administrative Law

Legal Profession

[LawNet Editorial Note: The decision from which this appeal arose is reported at [2013] 2 SLR 1108.]

19 August 2013 Judgment reserved.

Chao Hick Tin JA (delivering the oral judgment of the court):

1 The present appeal relates to the High Court's dismissal of the Appellants' application in OS 107/2013 ("the OS") under O 53 r 1 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) for leave to apply for judicial review of the Chief Justice's ("CJ") refusal to revoke the appointment of a Disciplinary Tribunal ("DT") inquiring into the alleged misconduct of the Appellants. The only issue before this court is whether the Appellants have demonstrated that they meet the threshold test for leave to seek judicial review.

2 The principal object of the Appellants' application in the OS was to obtain a mandatory order compelling the CJ to exercise his power under s 90(3)(*a*) of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("the LPA") to revoke the appointment of the DT. This followed the unreserved withdrawal of the complaints lodged by one Ms Rankine against the Appellants, which had initially led to the appointment of the DT. On the same day that the OS was filed, the CJ informed the parties of his decision not to revoke the appointment of the DT so as to allow the disciplinary proceedings to take their course. [note: 1] At the hearing of the OS before the High Court, the Appellants were granted leave to amend the OS so as to seek a quashing order against the CJ's decision in addition to their prayer for a mandatory order. [note: 2]

3 The Appellants' arguments before us comprise two distinct strands. First, the Appellants contend that the CJ had abdicated his duty under s 90(3)(*a*) of the LPA by failing to make *any decision* at all. This is not so much because – as was their position in the High Court – the facts of the case must be taken as they stood at the point that the OS was filed, but because in their opinion, following the unqualified withdrawal of the complaints by Ms Rankine, and bearing in mind that the withdrawal was not disputed by the Law Society, the CJ *must* revoke the appointment of the DT. In effect, the CJ had not made any decision on the request. Second, even if it may be considered that the CJ had made a decision on the request, the Appellants contend that the CJ had breached a

duty to provide reasons for his decision. In support of this proposition, the Appellants referred to Irish, Australian and Canadian case law. We will deal with these arguments *seriatim*.

Whether the CJ had abdicated his duty under s 90(3)(*a*) of the LPA?

4 We reject the Appellants' contention that the CJ had to revoke the appointment of the DT and that his failure to do so constituted no decision at all. Indeed, the Appellants' case on this score was constructed entirely upon unsupported assumptions. The key assumption was that the CJ did not even review the matter before declining to revoke the appointment of the DT. The evidence clearly points to the contrary. In the CJ's first response to the parties, it was expressly stated that all the relevant correspondence had been placed before him. [note: 3] In a subsequent response dated 15 February 2013, the Appellants were informed that "[t]he Honourable the Chief Justice, *having considered the matter*, does not revoke the appointment of the Disciplinary Tribunal" [note: 4] [emphasis added]. The Appellants were unable to furnish any evidence that the CJ had been remiss in his review of the matter. Instead, the Appellants sought to infer from the absence of reasons that the CJ had not addressed his mind to the matter. As we will see later at [11]–[12] below, this inference is wholly unsound.

5 The Appellants' contention assumed that had the CJ considered the material before him, he would inexorably have revoked the appointment of the DT. This is because the complaint against the Appellants had been withdrawn and the Law Society did not furnish any objections to the revocation of the DT's appointment. The Appellants are of the view that in such circumstances, it was incumbent upon the CJ to revoke the appointment of the DT pursuant to s 90(3)(*a*) of the LPA. In this regard, we make the following observations. First, s 90(3)(*a*) of the LPA is an enabling provision which empowers the CJ to revoke the appointment of a DT. It confers a power which may be exercised at the discretion of the CJ after considering all the circumstances placed before him. The provision does not say that upon a particular fact situation arising, the CJ must revoke the appointment of a DT. *Prima facie*, the CJ's discretion is unfettered. Second, the disciplinary process cannot be procedurally and substantively contingent on the subsistence of a complaint. Indeed, it is settled law that a DT, once seised of jurisdiction, will be unaffected by the withdrawal of the initial complaint. The basic rationale for this is that the DT has been appointed to investigate the charges formulated by the Law Society and not the complaints which occasioned those charges (see *Law Society of Singapore v Ahmad Khalis bin Abdul Ghani* [2006] 4 SLR(R) 308, *Law Society of Singapore v Rajagopal Shan* [1994] SGDSC 2 and *Re Shan Rajagopal* [1994] 2 SLR(R) 60). By analogy with criminal prosecutions, the investigation and hearing of disciplinary charges is predicated not on the validity of the complainant's further thoughts in relation to his complaint, but on the propriety of the subject's conduct. We would also underscore that the disciplinary process cannot be held hostage to the whims of complainants, who may, in the nature of things, have a multitude of personal reasons for choosing to submit and then withdraw a complaint. The fact that a complaint has been withdrawn does not necessarily mean that there was no truth to the complaint. It follows that the CJ was not obliged to reach that conclusion. Nor was it incumbent upon him to supplant the DT and undertake the investigation personally. It was therefore entirely within his discretion to allow the disciplinary process before the DT to take its course.

6 Third, the Law Society did not actively represent that it had no objections to the Appellants' petition for the revocation of the appointment of the DT. Instead, the Law Society's position was simply that s 89(1) of the LPA imposed a duty upon the DT to hear and investigate a matter once the Inquiry Committee found that such an investigation was necessary and the CJ proceeded to appoint the DT. [note: 5] While the Law Society can, in an appropriate case, make a representation to the CJ to revoke the appointment of a DT, it is not obliged to do so. The Law Society is entitled to take all

the circumstances into account in deciding whether or not to make such a representation. We would further add that even if such a representation were made to the CJ, it does not follow that the CJ must accept that representation. The discretion to revoke the appointment of a DT under s 90(3)(*a*) vests in the CJ. Indeed, in the present case, the Law Society thought it fit to represent that the proper course was for the Appellants to make their submissions to the DT for its consideration. [note: 6] The CJ, in stating that the disciplinary proceedings should take their course and that issues should be raised in accordance with the applicable procedures set out in the LPA, [note: 7] gave broad effect to the Law Society's representation.

7 It follows from these observations that we are unable to agree with the Appellants that the circumstances before the CJ pointed inexorably to the revocation of the appointment of the DT. By the same token, we do not accept that the CJ's decision qualifies as *Wednesbury* unreasonable. The test for *Wednesbury* unreasonableness is well known – a decision is only taken to be unreasonable if it is "so unreasonable that no reasonable authority could ever have come to it" (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1938] 1 KB 223 at 229). It suffices to say that this is also the position enunciated in *Chng Suan Tze v Minister of Home Affairs and others and other appeals* [1988] 2 SLR(R) 525 at [119]. The *Wednesbury* test sets a high bar which the Appellants have manifestly failed to meet. It cannot be contended by any stretch of the imagination that the CJ's decision was one which no other reasonable authority could have made. In fact, there is a plenitude of reasons for an authority in the CJ's position to direct the continuation of disciplinary proceedings despite the withdrawal of the initial complaint. For example, the investigated conduct may be of relevance to other legal professionals in similar situations. It is also possible that impugned solicitors would prefer to complete the inquiry process so as to be fully vindicated. There is also the possibility that linking the revocation of the appointment of a DT to the withdrawal of the complaint which led to such appointment will create a moral hazard by incentivising lawyers to pay off their disgruntled clients.

8 In our opinion, the Appellants' first argument is a long way short of meeting even the low threshold required for leave to be granted.

Whether the CJ was in breach of a duty to give reasons?

9 The Appellants' initial argument here was rooted in statute. They contended that Parliament, in having assigned the power to revoke the appointment of a DT to the CJ, had intended for a legally learned authority to preside over the matter. Further, it was asserted that the CJ exercised a power of quasi-judicial nature under s 90(3)(*a*) of the LPA. It followed that the CJ would have to make a fair decision which was supported by reasons. At the hearing before us, the Appellants also drew our attention to a range of common law authorities which, on their case, indicated a strong trend towards a requirement to furnish reasons.

10 Our starting point is that it has been, and remains, the position in our law that there is no general duty to give reasons for administrative decisions. This was definitively set out in the House of Lords' decision of *Regina v Secretary of State for the Home Department, Ex parte Doody* [1994] 1 AC 531 ("*Doody*"). We agreed with the decision of *Doody* in *Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] SGCA 22 ("*Manjit Singh*") at [85] and see no cause to revise that position. Of the landmark cases which the Appellants have belatedly brought to our attention – *Public Service Board (NSW) v Osmond* (1986) 159 CLR 656 in the High Court of Australia, *Baker v Canada (Minister of Citizenship & Immigration)* [1999] 2 SCR 817 in the Supreme Court of Canada and *Mallak v Minister for Justice, Equality and Law Reform* [2012] IESC 59 in the Supreme Court of Ireland – we note that not one contained an outright statement that administrative decision-makers are under a general duty

to provide reasons.

11 We would also observe that the CJ's power to revoke the appointment of a DT under s 90(3)(*a*) of the LPA is a corollary of his power to appoint a DT under s 90(1) of the same statute. This court has already decided in unequivocal terms that the CJ's power under s 90(1) is "clearly administrative" and is "not conferred upon the CJ in his judicial capacity" (see *Manjit Singh* at [65]). It follows that the CJ's power under s 90(3)(*a*) is also primarily of an administrative nature. Indeed, the scheme of the LPA situates the inquisitorial process squarely within the remit of the appointed DT. This has two implications – first, the CJ is under no duty to undertake an independent inquisition of his own in exercising his administrative powers under the LPA; second, the proper course would be for the Appellants to make their representations to the DT should the CJ decide not to revoke the appointment of the DT. We would add that under the statutory scheme, it would be exceptional for the CJ to provide reasons for declining to revoke the appointment of a DT, given the possibility that this may interfere with the DT's investigations.

12 We note the fact that the Appellants had not even made a clear request to the CJ to furnish the reasons for his decision. The Appellants point to their letter to the CJ dated 6 February 2013 in which they stated that, having reviewed the CJ's decision not to revoke the appointment of the DT, they were "none the wiser". [note: 8] It could hardly be said that this single line, being an expression of the Appellants' bewilderment, constituted a request for reasons. The 6 February 2013 letter then goes on at some length to seek clarifications regarding the CJ's involvement in the subject matter of the DT's investigation whilst he was a managing partner at a law firm. Evidently, this was the principal purport of the 6 February 2013 letter, rather than a request for the CJ's reasons for declining to revoke the appointment of the DT. This is further borne out by the fact that the CJ's response was entirely centred on the clarifications sought by the Appellants, [note: 9] who, in turn, omitted in their letters on 14 and 15 February 2013 to remind the CJ of their alleged request for reasons. [note: 10] It would appear that the Appellants themselves were not convinced they had a right to require the CJ to furnish reasons for his decision.

13 Finally, while we acknowledge that there may, in some circumstances, be a requirement for administrative decision-makers to furnish reasons, this will invariably be dependent on the operative statutory context and factual matrix of each case. We have already expressed our view that the scheme of the LPA militates against the requirement of reasons for the CJ's exercise of his s 90(3)(*a*) powers. The CJ's decision not to revoke the appointment of a DT does not affect the substantive rights of the solicitor who is under investigation by that DT. The Law Society must still prove the charge(s) it has brought against the solicitor. The solicitor remains entitled to put forward his defence to the charge(s).

14 In the round, we have no hesitation in finding that the Appellants have also failed to make out an arguable case on the CJ's alleged breach of duty in failing to provide reasons for his decision.

Conclusion

15 As a postscript, we note that the parties have some disagreement as to how the threshold test for leave to seek judicial review should be precisely formulated. In the High Court, the Judicial Commissioner preferred the test of potential arguability (see [93] and [95] of *Manjit Singh s/o Kirpal Singh and another v Attorney-General* [2013] SGHC 62). We make no finding on this issue except insofar as to say that whether the test is one of potential arguability or that of a *prima facie* case of reasonable suspicion – as the Appellants prefer – the Appellants have not met the test. Their appeal must be dismissed with costs and the usual consequential orders.

[note: 1] ACB Vol 2A pp 129 – 130

[note: 2] ACB Vol 1 p 83

[note: 3] See n1

[note: 4] RSCB p 71

[note: 5] ACB Vol 2A p 54

[note: 6] ACB Vol 2 A pp 66 – 67

[note: 7] See n 1 and n 4

[note: 8] RSCB p 53

[note: 9] *Ibid* at pp 60 – 61

[note: 10] *Ibid* at pp 62 – 70