

IN THE COURT OF THREE JUDGES OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 112

Originating Summons No 2 of 2022

Between

Law Society of Singapore

... Applicant

And

Ravi s/o Madasamy

... Respondent

SUPPLEMENTAL JUDGMENT

[Legal Profession — Disciplinary proceedings]

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Law Society of Singapore

v

Ravi s/o Madasamy

[2023] SGHC 112

Court of Three Judges — Originating Summons No 2 of 2022
Sundaresh Menon CJ, Tay Yong Kwang JCA and Belinda Ang Saw Ean JCA
9 November 2022, 24, 29 March, 10, 14 April 2023

26 April 2023

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 Following the release of our decision in *Law Society of Singapore v Ravi s/o Madasamy* [2023] SGHC 65 on 21 March 2023 (the “Judgment”), the respondent, Mr Ravi s/o Madasamy (“Mr Ravi”) wrote to the court seeking a clarification of our decision to impose a suspension of five years under s 83(1)(b) of the Legal Profession Act 1966 (2020 Rev Ed) (the “LPA”). We had ordered that the suspension was to commence on the date of the Judgment: see [145] of the Judgment. Mr Ravi observed that he had already been out of practice for a year prior to this and he asked that we rectify this. For clarity, we reproduce the material part of Mr Ravi’s e-mail dated 24 March 2023 (the “24 March 2023 Correspondence”) as follows:

I refer [to] the above judgment where I have been suspended for 5 years.

I wish to seek clarification from the [Court of Three Judges] that effectively I have been suspended for an additional 1 year on top of the 5 years making it ... a 6 year suspension.

I wish to draw the Court's attention that I was already prohibited for [*sic*] applying for practising certificate which I had consented to without challenging the suspension order from the Court in 2022.

I hope the court will rectify this.

2 This was the first time that the matter of Mr Ravi's supposed "prohibit[ion from] applying for [a] practising certificate" was raised in these proceedings and it would be helpful for us to set out some background. That "prohibit[ion]" arose from proceedings commenced by the Attorney-General (the "AG") against Mr Ravi on 11 March 2022 in HC/OS 237/2022 ("OS 237"). OS 237 was brought pursuant to s 27B(1)(a) of the LPA, which provides that:

Referral to Disciplinary Tribunal and suspension of practising certificates

27B.—(1) Upon an application to a Judge by the Attorney-General or the Council, or on the hearing by a Judge of an application made under section 27A, the Judge may —

- (a) where the Judge is satisfied that cause of sufficient gravity for disciplinary action against a solicitor exists —
 - (i) request the Society under section 85(3)(b) to refer the matter to a Disciplinary Tribunal unless the matter had been or is being dealt with under Part 7 or is to be dealt with under section 94A; and
 - (ii) order that the solicitor's current practising certificate be suspended; ...

3 In OS 237, the AG sought an order for the suspension of Mr Ravi's conditional practising certificate ("PC") for the practice year beginning on 21 May 2021 and terminating on 31 March 2022 ("PY 2021/2022"). Mr Ravi's PC for PY 2021/2022 had been issued subject to certain conditions which were designed to ensure his fitness to practice while he underwent treatment for his

psychiatric condition. The grounds for the AG’s application in OS 237 were that Mr Ravi allegedly “engaged in improper conduct or misconduct unbefitting an advocate and solicitor ... on multiple occasions, and [had] breached numerous provisions of the Legal Profession (Professional Conduct Rules) 2015 ...”. The alleged improper conduct related to Mr Ravi’s: (a) “conduct of court hearings and legal cases”; (b) “acting without clients’ instructions and yet misrepresenting that he had such instructions”; (c) “acting in *sub judice*”; (d) “failing to comply with a court order”; and (e) breaching certain conditions of his PC for PY 2021/2022. It was also stated in the supporting affidavit filed by Mr Hui Choon Kuen (“Mr Hui”) for the AG that, apart from these alleged instances of improper conduct, Mr Ravi was also facing pending disciplinary proceedings in relation to other complaints of misconduct – one of these being the present proceedings in C3J/OS 2/2022 (“OS 2”). In the AG’s view, the “gravity and frequency” of Mr Ravi’s misconduct gave rise to “grave concerns that [Mr Ravi would] persist in prejudicing the administration of justice, undermining public confidence in the integrity and honour of the legal profession, and undermining public confidence in the rule of law and the integrity of the Singapore legal system”, which warranted a suspension of his PC under s 27B(1)(a)(ii) of the LPA.

4 OS 237 was filed slightly less than three weeks before Mr Ravi’s PC for PY 2021/2022 was due to expire. It was explained in Mr Hui’s affidavit that this was done to “prevent [Mr Ravi] from applying for another PC until [all the pending] disciplinary proceedings [against him] have been determined”. This was a reference to a PC for the practice year 2022/2023 (“PY 2022/2023”) and beyond.

5 In this regard, the AG relied on s 27B(6) of the LPA, which provides that:

(6) Where the suspension of the practising certificate of a solicitor under this section *has terminated by reason only of the expiry of the solicitor's current practising certificate* and not by reason of the occurrence of any of the events mentioned in subsection (4), the solicitor *must not apply for another practising certificate until any of the events mentioned in subsection (4) has occurred*; and if a practising certificate has been issued to the solicitor, that certificate ceases to be in force.

[emphasis added]

6 Section 27B(4) of the LPA in turn provides that:

(4) If, in a case where a Judge has made an order under subsection (1)(a)(ii) suspending a solicitor's current practising certificate —

- (a) the Disciplinary Tribunal determines under section 93(1)(a) that no cause of sufficient gravity for disciplinary action against the solicitor exists under section 83 or determines under section 93(1)(b) that the solicitor should be reprimanded;
- (b) the application made against the solicitor under section 98(1) is withdrawn or dismissed; or
- (c) an order has been made under section 98 that the solicitor be struck off the roll, suspended from practice or censured, or that the solicitor pay a penalty,

the suspension of the practising certificate of the solicitor terminates immediately.

7 The AG's position was that upon the expiration of Mr Ravi's PC for PY 2021/2022 and by virtue of s 27B(6) read with s 27B(4) of the LPA, Mr Ravi would not be permitted to apply for another PC until the pending disciplinary matters had concluded if the court ordered a suspension of his PC under s 27B(1)(a)(ii) of the LPA.

8 The hearing for OS 237 was fixed for hearing before Aedit Abdullah J on 30 March 2022. However, on 23 March 2022, the AG wrote in to inform the court that:

... both parties have reached an agreement for OS 237 to be discontinued by consent on the term that the Respondent confirms and undertakes to the Supreme Court of Singapore and to the Attorney-General that he has not applied, and shall not apply, for a Practising Certificate for Practice Year 2022/2023.

9 Following this, a consent order was granted by Abdullah J on 30 March 2022 in materially similar terms (the “Consent Order”), recording Mr Ravi’s undertaking not to apply for a PC for PY 2022/2023 before 31 March 2023 (“Mr Ravi’s Undertaking”). OS 237 was thereby withdrawn.

10 Returning to the events following the release of our Judgment in OS 2, in response to Mr Ravi’s 24 March 2023 Correspondence, we directed that Mr Ravi clarify: (a) what the legal significance of his undertaking in OS 237 not to apply for a PC for PY 2022/2023 was in relation to the sanction we had imposed in OS 2; and (b) what was his position on how the sanction imposed in OS 2 may be “rectif[ied]”, and the grounds upon which he contends that such “rectif[ication]” should be done. The Law Society was also invited to respond to Mr Ravi’s reply.

11 On 29 March 2023, Mr Ravi furnished his response (the “29 March 2023 Correspondence”). Referring to the Consent Order, Mr Ravi contended that:

The effect of the order of 30 March 2022 was to forbid [him] from applying for a practising certificate. The fact [that he] had consented to refrain from applying for a practicing certificate in order to save additional proceedings and wasted costs *had the same effect as the Court forbidding him from applying for a practicing certificate.* ...

...

Under section 83(1) of the Legal Profession Act, the maximum period of suspension that can be ordered by the Court as a penalty is 5 years. Since [he] had been ordered by the Court to refrain from applying for a practising certificate since March

2022, the period of suspension that the Court has imposed is a total of 6 years, less 9 days.

[emphasis added]

12 In essence, Mr Ravi viewed his voluntary undertaking as substantially and legally equivalent to a suspension that may be ordered by this court pursuant to s 83(1) of the LPA upon due cause being shown. Mr Ravi therefore suggested that our order for the five-year suspension to commence *at the date of the Judgment*, taken together with his undertaking not to apply for a PC for PY 2022/2023, effectively amounted to a *six-year* suspension. In Mr Ravi’s view, this exceeded the maximum five years’ suspension that this court can impose under s 83(1)(b) of the LPA. Mr Ravi also averred that should his voluntary undertaking not be taken into account, “any period that a legal practitioner voluntarily agreed not to practise to allow complaints against him to be investigated and pursued would be in addition to any penalty, [and] that would be a significant disincentive for such a practitioner to agree in advance to a period of suspension”. He thus sought a variation of the order in OS 2 such that his suspension would be reflected as having commenced on 30 March 2022, that being the date Mr Ravi’s Undertaking was recorded under the Consent Order.

13 The Law Society disagreed with Mr Ravi’s position. In a letter to the court dated 10 April 2023 (the “Law Society’s Letter”), it submitted that “the Court of Three Judges is only prevented under Section 83(1) of the LPA from imposing a five-year suspension to commence after a first period of suspension when that first period of suspension was imposed by the Court of Three Judges” [emphasis in original omitted]. In the present case, as Mr Ravi’s “suspension” was voluntary, it could only be considered as a mitigating factor in the court’s determination on sentence. In that regard, the Law Society argued that

Mr Ravi's conduct throughout the proceedings in OS 2 indicated an utter lack of remorse, and therefore his "voluntary suspension" should be afforded no mitigating weight at all.

14 On 14 April 2023, Mr Ravi responded by e-mail to the Law Society's Letter (the "14 April 2023 Correspondence"). Mr Ravi clarified that his position was not that "the period he voluntarily refrained from applying for his practising certificate must automatically be deducted from the period of suspension. All [he] requested, since it had not been referred to in the judgment, was that it be taken into account as a mitigating factor". We should point out that, given the contents of Mr Ravi's 29 March 2023 Correspondence (set out at [11] above), it is not entirely clear that all Mr Ravi had been seeking was to raise the fact of his voluntary suspension as a mitigating factor. Indeed, even in his first communication which we reproduced at [1] above, Mr Ravi had asked that we rectify the suspension order. And in the next communication by way of the 29 March 2023 Correspondence, he had, in fact, submitted that "this period [of refraining from applying for a PC should] *be deducted from the penalty of 5 years suspension*" [emphasis added]. It appears to us that his arguments in the 29 March 2023 Correspondence were directed toward the *legal nature* of his undertaking, rather than, as he had set out in the 14 April 2023 Correspondence, a plea for this court to consider the *fact* of this undertaking in arriving at the appropriate sentence. Nonetheless, we consider both issues.

Our decision

15 While a court exercising disciplinary jurisdiction has the power to impose consecutive periods of suspension, the total of such periods cannot exceed five years pursuant to s 83(1)(b) of the LPA: *Law Society of Singapore v Yap Bock Heng Christopher* [2014] 4 SLR 877 at [39]. Mr Ravi's contention

in his 29 March 2023 Correspondence, therefore, hinges on the issue of whether Mr Ravi’s Undertaking constitutes a “suspension from practice” pursuant to s 83(1)(b).

16 In our judgment, this is plainly not the case. Mr Ravi’s Undertaking was entirely voluntary and did not arise from an order of the Court of Three Judges (“C3J”) upon “due cause shown” (pursuant to s 83(1) of the LPA). There is therefore no statutory basis to view Mr Ravi’s voluntary cessation from practice as a suspension under the LPA. While Mr Ravi placed emphasis on the fact that his undertaking was recorded as a “Court order” (this being the Consent Order), we are unable to see how this fact alone has *any* bearing on the sentence imposed in the present proceedings. Consent orders are “the formal result and expression of an agreement already arrived at between the parties to proceedings embodied in an order of the court” (*Singapore Court Practice* (Jeffrey Pinsler gen ed) (LexisNexis Singapore, 2020) at para 42/1/6, cited by the Court of Appeal in *Siva Kumar s/o Avadiar v Quek Leng Chuang and others* [2021] 1 SLR 451 (“*Siva Kumar*”) at [34]). Consent orders, such as that recorded in OS 237, generally do not involve a determination of the substantive merits of the case and are recorded simply to allow the parties to enforce the order in the event of non-compliance without having to institute a fresh action: *Siva Kumar* at [32] and [54]. There is, as such, no grounds to read the order in OS 237 as a suspension that proceeds from due cause shown under s 83(1)(b) of the LPA.

17 Mr Ravi further highlighted in the 29 March 2023 Correspondence that if he had “disobeyed the [Consent Order] ... he would have been in contempt of court and liable to the usual punishments for failing to comply with a Court order”. He also averred that, had he failed to give the undertaking or “reneged upon it, ... that would have been a disciplinary offence in and of itself and considered an aggravating factor in [OS 2]”. To this, we agree with the point

made by the Law Society that these consequences cannot and do not change the fundamentally *voluntary* nature of Mr Ravi’s Undertaking. In short, there is plainly no merit to Mr Ravi’s attempt at characterising his voluntary undertaking as a “suspension order”.

18 For the sake of argument, we consider that even if the Judge *had* made an order to suspend Mr Ravi’s PC for PY 2021/2022 under s 27B(1)(a)(ii) of the LPA, this *would not* be considered a “suspen[sion] from practice” for the purpose of s 83(1)(b) of the LPA. The power to suspend an advocate and solicitor under s 83(1)(b) is an exercise of the disciplinary jurisdiction vested in the C3J: *Iskandar bin Rahmat v Law Society of Singapore* [2021] 1 SLR 874 (“*Iskandar*”) at [85]; *Re Nalpon Zero Geraldo Mario* [2013] 3 SLR 258 at [67]. In this regard, the power of the C3J to sanction solicitors upon due cause shown is “unique” and not “ordinarily available to the High Court”: *Iskandar* at [85]. The order of suspension under s 27B(1)(a)(ii) is of a different legal nature. Section 27B of the LPA was introduced to “protect the public interest” by “pre-empt[ing] any wrongdoing” by errant solicitors: *Singapore Parliamentary Debates, Official Report* (10 October 1996) vol 66 at col 630 (Prof S Jayakumar, Minister for Law) (“*Parliamentary Debates*”). As Prof S Jayakumar explained in the *Parliamentary Debates* (at col 631):

...[T]his [power] will be for ***urgent cases and cases of sufficient gravity where action must be taken promptly***. In other words, it is not appropriate to wait for the more elaborate and time-consuming procedures set out in the other provisions of the Act such as waiting for the Inquiry Committee to have its deliberations, the report and a Disciplinary Committee may have to be formed, and so on.

...

... The Law Society or the Attorney-General would exercise these powers judiciously and invoke them when they have information to establish that ***a solicitor’s continuation in***

practice free of conditions or ***at all would not be in the interest of the public or the profession.***

The ***exercise of these powers is quite different and separate from the institution of formal disciplinary proceedings*** under the Act. It is essentially an administrative function to ***exercise control, not to punish.***

[emphasis added in bold italics]

19 A suspension under 27B(1)(a)(ii) of the LPA, therefore, cannot be seen as the imposition of a disciplinary sanction against the solicitor, but rather as an interim measure that may be taken by the court to expeditiously deal with the potential or continuing harm a solicitor may pose to the public and/or the legal profession. Accordingly, upon the application by the AG or the Council of the Law Society, and once a Judge of the General Division of the High Court is satisfied that cause of sufficient gravity for disciplinary action against a solicitor exists, the Judge may suspend a solicitor’s current practising certificate (s 27B(1)(a)(ii)), and request the Law Society to refer the matter to a Disciplinary Tribunal to investigate the matter (s 27B(1)(a)(i)). In other words, s 27B(1)(a)(ii) of the LPA *holds in abeyance* the solicitor’s authority to practice as an advocate and solicitor in Singapore while the issue of sanction (if any) is determined under the “formal disciplinary proceedings” (*ie*, the relevant procedures under Part 7 of the LPA). Put in these terms, a suspension pursuant to s 27B(1)(a)(ii) rests on an *entirely different footing* than a suspension pursuant to s 83(1)(b), and the period in which a solicitor’s PC is suspended under the former cannot have any bearing on the duration of suspension that may be ordered under the latter. In line with this analysis, it is unsurprising that s 27B(5) of the LPA provides that “[n]othing in subsection (4) is to be construed as affecting the power of the court of 3 Supreme Court Judges to suspend a solicitor from practice on an application under section 98(1)”.

20 We now turn to the issue of whether Mr Ravi’s Undertaking should be accorded any mitigating weight. We reiterate here that Mr Ravi did not raise this matter to our attention at any juncture in the course of the present proceedings. Nonetheless, *even assuming* that Mr Ravi had raised the matter of his undertaking timeously (something which he had every opportunity to do but did not), our answer to this would be in the negative.

21 Indeed, a solicitor’s voluntary cessation from practice *may* be considered a mitigating factor in the C3J’s determination on sentence. As with the assessment of all mitigating factors, the weight to be placed on a voluntary cessation from practice is ultimately a matter of the court’s discretion upon the assessment of all the relevant circumstances: *Chiong Chin May Selena v Attorney-General and another* [2021] 5 SLR 957 (“*Selena Chiong*”) at [11]. In *Selena Chiong* we observed at [11] that such voluntary cessation can only be “considered as a mitigating factor... if and to the extent the court is satisfied that it demonstrates genuine remorse and contrition on the part of the errant lawyer”. We add that this observation also resolves against Mr Ravi his complaint that there would be “significant disincentive for [practitioners] to agree in advance to a period of suspension” should such voluntary cessations not be given any weight (see [12] above).

22 Turning to the circumstances of the present case, it is clear that Mr Ravi’s Undertaking did not arise out of genuine contrition (at least in relation to the misconduct arising from the proceedings in OS 2). We had, at [123]–[125] of the Judgment, detailed Mr Ravi’s *persistent and unwavering* conduct in alleging impropriety on the part of the AG *et al* and the Law Society at each turn of the present proceedings, beginning with his baseless allegations against the AG *et al* and the Law Society in October 2020, and continuing even up till the hearing of OS 2 on 9 November 2022 where he appeared to double

down on the same. In short, at no juncture was there a *shred of evidence* to indicate any remorse on Mr Ravi's part: see also [133]–[135] and [138] of the Judgment. Set against the cumulative weight of these findings, we cannot see how Mr Ravi's Undertaking could have been made with actual contrition. Nor is there any basis for thinking that it should have any bearing on our determination on sentence in the Judgment.

23 For these reasons, we see no merit to these further points raised by Mr Ravi in his communications with the court.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Belinda Ang Saw Ean
Justice of the Court of Appeal

Lin Weiqi Wendy and Teo Guo Zheng, Titus (WongPartnership
LLP) for the applicant;
The respondent in person.
