A Kanesananthan v Singapore Ceylon Tamils' Association
[2003] SGHC 93

Case Number : OS 19/2003, SIC 268/2003

Decision Date : 15 April 2003

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : Liew Teck Huat (Niru & Co) for the plaintiff; R Chandra Mohan (Rajah & Tann) for the defendant; Vivien Teng (Rajah & Tann) for the defendant

Parties : A Kanesananthan — Singapore Ceylon Tamils' Association

1 The plaintiff, a retired air-force captain, has been a member of the defendant association for over 30 years. The defendant is a community association for Sri Lankan Tamils in Singapore and manages a temple at Ceylon Road. On 5 July 2002 the plaintiff was involved in an altercation with the chairman of the temple trust in the presence of several members of the management committee of the defendant association. The cause of the incident as described by counsel for both sides does not appear to me to be very serious, nor, for that matter, the incident itself. Mr Liew, who appeared for the plaintiff, and Mr Chandra Mohan, who appeared for the defendant, seem to agree that the incident concerned the refusal of the chief priest of the temple to perform some rites for the plaintiff. The defendant, however, alleged that the plaintiff literally threw a book at the chairman but this was denied by the plaintiff. His version was that he had merely placed the book before the chairman.

2 The defendant convened a disciplinary committee to inquire into the conduct of the plaintiff over the abovesaid incident. Shortly before the hearing date, the plaintiff applied by originating summons to nullify the Constitution and Rules of the defendant association, and also to annul the initiation of the disciplinary proceedings.

3 At the same time, an *ex parte* injunction was sought to restrain the disciplinary committee from hearing the matter. An interim injunction was granted on 6 January 2003. The defendant applied to discharge the injunction and the plaintiff applied to have the originating summons heard. Both applications came before me on 10 April 2003. I stood down the application to discharge the injunction and proceeded to hear the originating summons.

4 The thrust of the plaintiff's case is that the defendant had no authority under the Constitution of the association to convene a disciplinary hearing because relevant provision that is cl 11(b) in the Constitution before its amendment provides the only way a member may be disciplined and that provision reads as follows:

> '11(b) Any member acting in a manner prejudicial to the interest of the Association and/or in contravention of any of these Rules may be expelled from the Association by the members at a General Meeting.'

The plaintiff accepts that as of 21 January 2002 the Constitution was amended after the Registrar of Societies had approved the draft submitted to it and had made some changes as the Registrar was empowered to do. Section 11(b) of the original Constitution thus became broader and now comes in four sub-clauses namely 11(a), 11(b), 11(c) and 11(d). Under the present Constitution (as amended) the Management Committee may convene a disciplinary committee to inquire into the conduct of any member who, in the opinion of the Management Committee, has acted in a manner prejudicial to the association. The Management Committee, may after considering the report of the disciplinary committee, suspend or expel the member. The member, however, may appeal against any such

orders to the General Meeting of the association. Clause 11(d) as it now stands after amendment and approval by the Registrar of Societies reads as follows:

> '11(d) The member being expelled shall be entitled to appeal to a General Meeting against the decision of the Management Committee made pursuant to the aforementioned. A General Meeting shall be convened by the Management Committee as soon as practicable for that purpose on request by such Member, provided that such request shall be made within two (2) weeks of receipt of the decision of the Management Committee. The decision of the General Meeting shall be by way of a simple majority and shall be final and binding on such member. If no such request is made or such request is not made within the prescribed time period, the decision of the Management Committee shall be final and binding on such member.'

5 The key passage is the last sentence of cl 11(d) – 'if no such request is made or such request is not made within the prescribed time period, the decision of the Management Committee shall be final and binding on such member'. The plaintiff's case is that this passage, admittedly re-drafted by the Registrar of Societies, was submitted to the latter for approval in a form that was contrary to what the General Meeting had endorsed. Mr Liew submitted that when the proposal to amend the original cl 11(b) was placed before the 84th General Meeting of the association, the members agreed to a suggestion that there be provision for an appeal to the courts. Accordingly, the draft amendment that was approved read as follows:

> 'If the member refuses, omits or neglects to attend the Disciplinary Committee meeting in answer to the notice calling upon him to do so, the Disciplinary Committee may nevertheless proceed in his absence. The Disciplinary Committee, at the conclusion of such hearing shall report to the Management Committee its findings and recommendations. The Management Committee may, after considering the findings and recommendations of the Disciplinary Committee, expel or suspend the member or impose any other appropriate penalty. Notice of this shall be sent to the member. An appeal shall lie from the decision of the Management Committee to a General Meeting *or to* any Court of Law.'

6 However, when the Management Committee submitted the draft to the Registrar for approval, the last sentence read as:

> 'An appeal shall lie from the decision of the Management Committee to any General Committee *but not to any Court of Law*.' (my emphasis)

The rest of the sub-clause was as approved by the General Meeting. The present wording of sub-cl (d) was the result of amendments made by the Registrar of Societies who broke up the submitted sub-cl (d) into sub-cl (c), which is the unchanged part of the submitted sub-cl (d) and amending the latter part in the present form.

7 Mr Liew thus argued that the Management Committee had no right to submit a draft that was different from that approved by the General Meeting and, accordingly, the submitted draft was illegal and even though the Registrar had approved it (after amendment), the court is entitled, and ought to, strike it down as such. Consequently, he submitted, the operative clause would be the old cl 11(b). Since that clause did not have provisions for a disciplinary committee to be formed, the hearing scheduled by the disciplinary committee in the present case must be adjudged null and void. Counsel says that nothing should prevent the plaintiff in such a situation from seeking redress through the courts. Mr Liew argued as strenuously as he possibly could, without losing his usual charming disposition, that that was what Warren Khoo J had held in *Chiam See Tong v Singapore Democratic Party* [1994] 1 SLR 278. He referred to the passages at page 292 to support his contention that the

plaintiff need not, at least not in this case (nor that in *Chiam*'s), exhaust all the internal remedies before coming to court. But that is not really the issue here. The core issue before me is whether the amended Constitution ought to be nullified by the court on present facts. He also took pains to refer to *Singapore Amateur Athletics Association v Haron bin Mundir* (1994) 1 SLR 47 but here, counsel, with respect, appears to overlook the fact that this was a judgment made in the context of a judicial review of an administrative tribunal. Neither the context nor the text appears to be of any assistance to the plaintiff. But, that is not to say that Mr Liew's submission is a weak one. It was an ostensibly attractive argument, but on a deeper examination, proves untenable.

8 Mr Liew referred to a club case, *Graeme McGuire v John Rasmussen* [1998] 3 SLR 180 for the proposition that the members of a club (or association) are bound by the rules of the club and that their relationship is a contractual one. He submitted that a failure by any member to comply with the rules or Constitution of the club amounts to a breach of contract. The breach in this case, he says, is that the defendant submitted an 'entirely differently phrased r 11'. This is an exaggeration, of course, in that the proposed amendments were not *entirely* different. Only a few words were different although they were crucial words. In any event, the facts are not in any way close to the present case. I agree with the general observation on the law by JC Lee in that case. In this regard, JC Lee was right when he drew a distinction between the directors of a company and the management committee of a club. See *Graeme McGuire v John Russmusten*, at page 189. But we are here concerned with a set of rules that have come into force and it is thus a matter not only of interests to existing members but also potential members and any other interested third parties, whether for social or commercial reasons.

9 Mr Liew's reliance on the Malaysian case of *Choo Yin Loo v Registrar of Societies* [1957] 23 LLJ 228 is misplaced because that was a case for judicial review against the Registrar of Societies himself for wrongfully approving some amendments submitted to him. They were proposed amendments to the rules of the Fui Chiu Association. The judgment very plainly stated that the only issue in that case which the parties had agreed to be adjudicated at that stage was 'whether a *certiorari* lies to the Registrar of Societies in the circumstances alleged' and arguments were limited to that point. The court ruled that *certiorari* did not lie and that the internal affairs of the association was of no interest to the Registrar. Those were, the court held, matters between the members themselves. So, a reading of that case in its context in fact supports the view I had earlier expressed, that the matter of submitting a inaccurate amendment for approval is one that must be resolved by the members in the General Meeting. The General Meeting has several options including the ratification of the 'wrongly' submitted rules. What it would do is not a matter that is before me, and furthermore, the plaintiff cannot represent the General Meeting without authority to do so.

10 In situations like this one is reminded of the famous dictum of the American jurist, Oliver Wendell Homes Jr – 'The life of the law has not been logic but experience'. Logic in itself can be misleading as the story of Achilles and the tortoise proves. Zeno told the story of the race between the great warrior Achilles and a tortoise. By giving the tortoise a ten-metre headstart, Achilles lost the race because he could not catch the tortoise. The philosopher's logic was this. Achilles must first reach the half-way mark between him and the tortoise before he can catch up with the tortoise. By the time he reaches that point, the tortoise would have moved a few more steps ahead; and to catch it, Achilles would have to reach the half way mark of the new distance between him and the tortoise. Thus, because he has to first reach the half way mark each time, Achilles will have to go on *ad infinitum* and never reach the tortoise. The flaw in this logic is that it ignores the fact that motion is both a matter of distance and time. By disregarding the element of time, Achilles had to run an endless race. The logic in Mr Liew's arguments ignores all other elements that are inextricably connected to the draft amendments that were submitted for approval. The 'logic' of Holmes does not mean merely the cold structure of reason but also the strict adherence to axioms that guides the

direction of the law, just as 'experience' in his context is the encapsulation of all that comes within our perception, or as Louis Menand describes, 'the interaction of the human organism with its environment: beliefs, values, intuitions, customs prejudices'; or as Holmes himself indicated, 'the felt necessities of the time'. Holmes, of course, was a pragmatist, so that would naturally have been his approach. But even if we adopt a more traditional approach, it will be seen that the plaintiff can find no legal principle that supports his contention. Fraud has not been proved or even alleged. If, as it appears, there was a mistake between the passing of the amendment and the final adoption into the Constitution of the association, then the error must be rectified, and until it is, the rule stands.

11 I agree entirely with counsel that it is perfectly logical to say that if the General Meeting approves version A and the Management Committee submitted version B and obtained approval for version B, that version had no connection with the General Meeting and cannot be legitimate since it was not the approved version. What Mr Liew did not take into account here, was that the Management Committee was empowered to submit drafts to the Registrar for approval, and the Registrar is entitled to accept at face value that the drafts were authorised. Once these had been approved and taken effect, the amended Constitution has legal force until ruled otherwise. Therefore, the members as well as third parties dealing with the association are bound by the Constitution as it stands. It is not for me or any single member of the association to rectify the error in these proceedings. The association itself is a party before me and is holding the view that the amended Constitution applies. The plaintiff's recourse, therefore, is to revert to the General Meeting.

12 Finally, it is not disputed that the omission in question in this case concerned the right to appeal to the courts. All the rest of the approved proposed amendments were faithfully put to the Registrar of Societies. In this regard, it is not accurate to say that because of the omission of that short segment, the entire amendment is illegal (to use Mr Liew's words) and the Constitution must be re-written by the court to revert to the old cl 11(b). Even though the right to appeal is not provided in cl 11(d) as it now stands, there is no impediment to the plaintiff to seek judicial review of the disciplinary committee or the Management Committee's decision should such be warranted. One of the fears in *Chiam*'s case was that there may be no quorum to conduct the disciplinary hearing. No such evidence or argument was placed before me save the suggestion from Mr Liew that the Management Committee members who might be witnesses may sit in the Disciplinary Committee. Mr Chandra Mohan was quick to point out that there was no evidence to suggest that this would be so. It is therefore, in my view, an unwarranted fear on the plaintiff's part at this stage to assert that the disciplinary committee is or will be bias.

13 For the reasons above, I do not think that the court ought to intervene and nullify the defendant's Constitution on account of the mistake (or even mischief) of the Management Committee in the circumstances of this case. The costs of taking out the ex parte application and the defendant's application to discharge that application shall be borne by the plaintiff.

Application dismissed.