Chng Wei Meng v Public Prosecutor
[2002] SGHC 157

Case Number : MA 6/2002

Decision Date : 22 July 2002

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Parambir Singh Sekhon (Jacob Mansur & Pillai) for the appellant; Lee Lit Cheng (Deputy Public Prosecutor) for the respondent

Parties : Chng Wei Meng — Public Prosecutor

Road Traffic – Offences – Driving while under disqualification – Whether strict liability offence – Defence of reasonable care – Whether defence made out – s 43(4) Road Traffic Act (Cap 276, 1997 Ed)

Road Traffic – Offences – Driving while under disqualification – Sentencing – Imprisonment instead of fine – Whether sentence manifestly excessive – s 43(4) Road Traffic Act (Cap 276, 1997 Ed)

Road Traffic – Offences – Notice of disqualification – Written warning pursuant to s 42A Road Traffic Act (Cap 276, 1997 Ed) given to appellant – Written warning not in compliance with requirements in s 42A – Notice of disqualification order not given to appellant – Whether breach of rules of natural justice – Whether having legal right to such notice – s 42A Road Traffic Act (Cap 276, 1997 Ed)

JUDGMENT

GROUNDS OF DECISION

Introduction

The appellant, Chng Wei Meng was convicted before the district court on a charge of driving a motor car with registration number SBV 351Y on 30 December 2000 while disqualified, an offence under s 43(4) of the Road Traffic Act (Cap 276) ('the Act'). For this charge, he was sentenced to one month's imprisonment and 18 months' disqualification for all classes with effect from his release. At the same hearing, Chng was concurrently convicted of the consequential offence of using the same motor car whilst there was not in force in relation to the user of the vehicle a valid insurance policy in respect of third party risks under s 3(1) of the Motor Vehicles (Third Party Risks and Compensation) Act (Cap 189) and punishable under s 3(2) of the Act. The sentence meted out for this charge was a fine of $500 in default five days' imprisonment and 18 months' disqualification for all classes with effect from conviction. There was a third charge of inconsiderate driving causing damage to public property under s 65 of the Road Traffic Act, which he pleaded guilty to and was fined $600. Chng claimed trial on the first two charges and, being dissatisfied with the whole of the decision of the district judge, has appealed to this court. I dismissed the appeal and now set out my reasons.

The facts

2 The facts were not largely in dispute. According to the statement of agreed facts, Chng was scheduled to attend Court 13N for mentions on 14 August 2000 in respect of a Housing Development Board ('HDB') parking summons (HDBCP: 078751/2000). A warrant of arrest was issued against him when he failed to attend court on the appointed day.

3 On 12 October 2000, Chng, accompanied by his bailor Shirley Wong, surrendered himself to the

Warrant Enforcement Unit ('WEU'). He was attended to by Sergeant Loh Lai Chiang who administered a written warning to Chng in pursuance of s 42A of the Road Traffic Act. Both Chng and Sergeant Loh signed the s 42A warning. As Sergeant Loh served an average of ten to twenty s 42A warnings each day, he was unable to recall how he had administered the warning to Chng. Nevertheless Sergeant Loh was adamant that he had followed the procedures of the WEU. The gist of the procedure entailed showing accused persons the s 42A warning, informing them to read it, reading and then explaining the warning to them before specifically cautioning them that their driving licences *would be* disqualified if they failed to attend court. Chng denied that the warning had been administered to him in the manner described above. According to Chng, he was simply told by Sergeant Loh to read the s 42A warning and then to sign it. No explanations were proffered and he was never specifically informed of the possibility that, if he failed to attend court for the second time, he would be disqualified and his licence suspended.

4 Shirley Wong testified that on 12 October 2000, a white piece of paper was given to Chng to read. She said that Sergeant Loh did not say anything, only motioning for Chng to read through the paper and to sign it. She did not know what this piece of paper was as she could not see or notice what Chng was signing. She admitted that she was disinterested in the proceedings, as she was then preoccupied with her own thoughts about work.

5 Chng was informed on 13 November 2000 at Court 13N that he had to attend court again on 11 December 2000. He failed to do so and the prosecution applied to the court for an order disqualifying him from driving, pursuant to s 42A of the Act. The application was granted and, consequently, Chng was disqualified from driving with effect from 11 December 2000 until such time as the case HDBCP 078751/2000 was resolved. A second warrant of arrest was also issued against him. Chng was not expressly notified by the WEU of the order of disqualification that was made against him.

6 On 12 December 2000 Chng submitted written representations to the Subordinate Courts citing work commitments for his failure to attend court on 11 December 2000. On 3 January 2001, the court rejected his representations and directed that the second warrant of arrest was to stand. On 30 December 2000 at about 1.15 a.m., Chng was involved in a traffic accident. The motor car which he was driving had veered out of control and mounted a curb before colliding into an electrical box and the sheltered walkway pillars on the pedestrian walkway.

The case for the defence

7 Although Chng admitted that he understood the s 42A warning to mean that his driving licence *might* be forfeited if he did not attend court, his defence was that he was never specifically informed that he had actually been disqualified. He did not receive a notice of disqualification, as it was not the practice of the WEU (confirmed by Sergeant Loh) to send out such notices. He also denied knowing where and when the order of disqualification would be made and he believed that he could drive until the court sent him a notice of disqualification as "everything in Singapore was in black and white". Consequently he did not recall that a s 42A warning was administered to him until he was stopped on 30 December 2000. It was also argued on his behalf that the requisite warning under s 42A of the Act was not given to him as it had not complied materially with s 42A(d) and this was, accordingly, fatal to a conviction.

The decision below

8 In his judgement, the district judge disagreed with the submission that the differences in the wording in the s 42A written warning administered to Chng and the requirements of s 42A was fatal to the possibility of a conviction. After all, Chng had conceded that the order of disqualification made on

11 December 2000, which was founded upon the s 42A warning, was validly made and in force on 30 December 2000. Furthermore, he was also of the opinion that the differences were immaterial and insignificant as no prejudice was caused to him. The district judge accepted Sergeant Loh's evidence, in preference to that of Chng, whom he found not to be entirely truthful, that notwithstanding the written s 42A warning, he would warn each offender that their driving licence would be disqualified if he or she did not attend court. The district judge rejected any suggestions that the rules of natural justice had been breached as there was clear and undisputed evidence that Chng had been informed, despite of the unsatisfactory wordings of the s 42A warning, of the very possibility that a disqualification order would be ordered by the Court in the event that he failed to attend court on the date stated.

9 The district judge also concluded, after examining case authorities and the intention of the legislature as evidenced in the Parliamentary Debates, that s 43(4) of the Act (driving under disqualification) was a strict liability offence. He accepted that, following *M V Balakrishnan v PP* [1998] 1 CLAS News 357, the defence of reasonable care was available to a defendant who had been convicted of a strict liability offence. However, the district judge felt that the defence was clearly not made out on the facts. Even if Chng might not have been specifically aware that the court had disqualified him when he failed to attend court on the specified date, he nonetheless should have known that, as a consequence of the s 42A written warning, the court had disqualified him when he failed to attend court on the specified date, yet he made no inquiries at all and continued to drive.

10 With respect to the s 3(1) charge under the Motor Vehicles (Third Party Risks and Compensation) Act, the district judge observed that this was an offence that would stand or fall together with the offence of driving under disqualification. Since the offence under s 43(4) of the Act was made out, it followed that Chng must also be guilty of the s 3(1) charge.

The appeal

11 Several grounds of appeal were marshaled on behalf of the appellant. The arguments with respect to the appeal against conviction were:

> 1 the district judge erred in law and in fact in finding that the prosecution had proved its case beyond reasonable doubt
>
> 2 s 43(4) did not create a strict liability offence and even if s 43(4) did create a strict liability offence, Chng had made sufficient inquiries about his status to avail himself of the defence of reasonable care.
>
> 3 the material discrepancies between the written warning and the requirements of s 42A(d) of the Act coupled with a failure to serve a notice of disqualification on Chng constituted a breach of natural justice.

12 As for the appeal against sentence, the submission was that the sentence of one month's imprisonment for the charge of driving under disqualification was manifestly excessive and, furthermore, the district judge had failed to adequately consider the mitigating circumstances raised in the appellant's favour.

Did the judge err in law and in fact?

13 Much of the facts were derived from the statement of agreed facts. These were not in dispute.

14 The only relevant issue in contention was whether Sergeant Loh had administered the verbal warning in the manner testified. The District Judge held that he had. In the absence of any credible evidence to prove that the District Judge had erred in arriving at this finding of fact, I was of the opinion that Chng's appeal on the basis that there had been an error in law and in fact must be dismissed.

Was s 43(4) a strict liability offence?

15 Section 43(4) Road Traffic Act (Cap 276) reads:

> If any person who is disqualified as mentioned in subsection (3) drives on a road a motor vehicle or, if the disqualification is limited to the driving of a motor vehicle of a particular class or description, a motor vehicle of that class or description, he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 3 years or to both.

16 It is one of the principles of criminal law that a crime is not committed if the mind of the person doing the act in question is innocent; *actus non facit reum, nisi mens sit rea*. Nevertheless the need for an effective policing of public welfare offences and the protection of public interest in areas such as health, safety and morals have prompted Parliament to legislate for strict liability offences: *Sherras v de Rutzen* [1895] 1 QB 918, *Lim Chin Aik v R* (1963) 29 MLJ 50.

17 It was hence recognized by the House of Lords in *Sweet v Parsley* [1969] 1 All ER 347 that the traditional presumption of *mens rea* may be displaced, either by words of the statute creating the offence or by the subject matter with which it deals. The court is also invited to look at other relevant factors such as the degree of criminality of the offence, the context in which the words are used, the presence of any statutory defences, the mischief against which they are directed, the extent of the punishment imposed and the absence of social obloquy in determining whether the public interest will be best served by a construction of strict liability. A caution has also been added to restrict the potential ambit of strict liability. In the words of Lord Diplock in *Sweet v Parsley* supra. at p 362:

> But such an inference [of strict liability] is not lightly to be drawn, nor is there any room for it unless there is something that the person on whom the obligation is imposed can do directly or indirectly, by supervision or inspection, by improvement of his business methods or by exhorting those whom he may be expected to influence or control, which will promote the observance of the obligation.

A court should hence refrain from construing an offence as one of strict liability unless it can also be shown that the creation of strict liability will be effective to promote the objects of the statute by encouraging greater vigilance to prevent the commission of the prohibited act: *Gammon (Hong Kong) Ltd. v A-G of Hong Kong* [1985] 1 AC 1. This, in turn, implies that a defence of reasonable care must be available to persons who have tried to comply with the statutory requirements. The availability of this defence was recognized in *R v City of Sault Ste Maria* (1978) 85 DLR 161, *Proudman v Dayman* (1943) 67 CLR 536 and adopted by myself in this court in *M V Balakrishnan v PP* [1998] 1 CLAS News 357.

18 Turning to s 43(4) of the Act, one observed that there are no words such as "knowingly" or "intentionally", which if present will indicate the requirement of proof of mens rea. However, I borne in mind the principle that the absence of such words was not necessarily conclusive against mens rea being required in respect of a statutory offence, and went further to determine the immediate textual context, the objectives of the statutory provision as well as the nature of the offence. In my opinion, there were several factors, which strongly suggested that Parliament intended liability to be strict. Firstly, is the absence of any statutory defences for s 43(4) of the Act. Secondly, as is the case for the majority of strict liability offences, the offence of driving under disqualification is not a truly "criminal" offence but one that is regulatory in nature. Thirdly, s 43(4) is clearly concerned with the protection and safety of the public as it prohibits persons without valid or subsisting licences from driving on our public roads and highways and endangering human lives. Further, the reality of the situation is often that a person who drives while disqualified will also not be in possession of a valid third-party insurance policy as required by s 3 of the Motor Vehicles (Third-Party Risks and Compensation) Act. Consequently, it was clear to me that the protection of public interest and the need to avoid the tremendous damage and injustice that can arise when members of public are injured by such irresponsible drivers, mandates the reading of s 43(4) as a strict liability offence. Fourthly, I found it significant that active promotion of the observance of s 43(4) is very much dependent upon personal compliance by the individual since the traffic police is often unable, save in cases where the offender has been stopped for some other offences or on the off-chance when random checks are being conducted, to identify and stop disqualified persons from driving on the roads. Applying the reasoning of this court in *M V Balakrishnan* (supra) when construing s 35 of the Traffic Offences Act – a similar offence that deals with driving a class of motor vehicle without the requisite driving licence – the prohibited act is not one which the public can easily protect by its own vigilance. Conversely, it is no great hardship for a person who intends to drive to determine whether or not he is in fact qualified (or disqualified) to do so.

19 For the reasons above, I was of the view that the imposition of strict liability is required for the protection of the public and to promote the observance of s 43(4) by shifting the obligation of compliance to the individual: *Gammon (Hong Kong) Ltd. v A-G of Hong Kong*. Such a conclusion is consistent with Lord Evershed's decision in *Lim Chin Aik* where at p 52 he said,

> Where the subject matter of the statue is the regulation for the public welfare of a particular activity … it frequently has been inferred that the legislature intended that such activities should be carried out under conditions of strict liability. The presumption is that the statue or statutory instrument can be effectively enforced only if those in charge of the relevant activities are made responsible for seeing that they are complied with. When such a presumption is to be inferred, it displaces the ordinary presumption of mens rea.

20 The severity of the penalties which s 43(4) attracts – a maximum prison term of three years – does not necessarily bar a construction of strict liability. This same argument was made and rejected in *Gammon (Hong Kong) Ltd. v A-G of Hong Kong* and by me in *Tan Cheng Kwee v PP* (unreported MA No. 332 of 2001), on the basis that the legislature could reasonably have intended severity to be a significant deterrence and there is nothing inconsistent with imposing severe penalties for offences of strict liability.

Other considerations

21 In determining the nature of s 43(4), I also derived much assistance from the speech of the then Minister for Home Affairs, Mr. Wong Kan Seng, during the second reading of the Road Traffic (Amendment No. 2) Bill in Parliament on 20 January 1999 when he explained the rationale behind the

government's move to implement tougher measures against recalcitrant motorists against whom there are outstanding warrants of arrest in connection with traffic or parking offences and which ultimately culminated in the enactment of s 42A. He said,

> There were 54,000 outstanding warrants of arrest relating to traffic and parking offences as at 30 November last year. 300 motorists had 10 or more outstanding warrants of arrest.
>
> Warrants of arrest are issued against persons who fail to turn up in Court when ordered to do so by the Courts. We should take a serious view of such people because they basically have no regard for our Courts. On its part, the Police mounts regular operations to arrest motorists with outstanding warrants of arrest, including paying house visits to their homes. But it is not always able to arrest them because the motorists concerned may have either shifted homes or do not reside at the addresses provided in the official records.
>
> Currently a motorist with an outstanding warrants of arrest relating to an offence under the Road Traffic Act or Parking Places Act is allowed to renew his driving licence as soon as he has executed his warrant of arrest. Execution here means surrendering himself to a Police station or the Warrant Enforcement Unit, and he is formally arrested. But during the period when the motorist is released on bail pending the Court hearing, some jump bail and do not attend the scheduled Court hearing, thus necessitating the issue of a fresh warrant of arrest. This is a blatant abuse of the Court process.

Hence it was clear to me that Parliament had empowered the courts to disqualify motorists possessing valid licences from driving if they had failed to attend court after being arrested under a warrant and released under a bail, as a censure for their blatant disregard for the law and to obviate practical difficulties in enforcement. Reading s 43(4) as requiring mens rea e.g. knowledge of one's disqualification status necessarily implied that a notice of disqualification would then have to be brought to the attention of the recalcitrant motorist. This would inevitably initiate another rigmarole of locating and serving these motorists with the notices of disqualification; a substitution of one meaningless procedure for another. The legislative intention of s 42A, as a tool against errant absentees, would be wholly defeated if the police or the court were still required to chase after the offender to inform him of the disqualification order before it took effect.

Similar English provision

22 There is a provision in England that is in *pari materia* with our s 43(4). Section 103(1) of the English Road Traffic Act (UK, 1988) reads:

> A person is guilty of an offence if, while disqualified from holding or obtaining a licence, he – (a) obtains a licence, or (b) drives a motor vehicle on a road.

The leading English text on the subject – *Wilkinson's Road Traffic Offences* – states that, in England, the offence of driving while disqualified is one of strict liability. It cites the case of *Taylor v Kenyon* [1952] 2 All ER 726 as authority for the principle that it is no defence that the offender did not know of the disqualification. Although the appellant accepted this, he argued that the facts in *Taylor v Kenyon* were "vastly different" from those in the present appeal and hence distinguishable.

23 In *Taylor v Kenyon*, the respondent was charged with driving a motor vehicle at an excessive

speed. Like the appellant in our case, the respondent failed to attend the hearing, at which he was convicted, fined and disqualified for three months. What was different was this: the respondent's licence was retained by the court and a letter was sent informing him of the disqualification together with a notice of fine enclosed in the same envelope. The respondent paid the fine, but subsequently drove without his licence. When charged with driving while disqualified for holding a licence, he denied any knowledge of the disqualification. Chng hence argued that the decision in *Taylor* was largely predicated upon the fact that the respondent in that case had notice of the disqualification and could not then be heard to plead ignorance. He further invited me to infer a requirement in English law that notice of any disqualification will have to be given to the person disqualified and, in the absence of such a notice, any subsequent prosecution will fail.

24 I disagreed with the appellant's reading of the case on several counts. Firstly, the language of the court in *Taylor* was clearly unequivocal. Lord Goddard C.J., giving the leading judgement of the court, pronounced that "in s 7(4) of the Road Traffic Act 1930, there is an *absolute* prohibition against a person driving when he is disqualified…." Secondly, in *Taylor* itself, the suggestion that a notice of disqualification is mandatory in English law to secure a conviction was also doubted. Lord Goddard C.J., while noting that it was a very proper thing for the court clerk to send the respondent a notice of disqualification, questioned its necessity in law as the decision of the justices once pronounced in open court and entered in the court register became the judgment of the court. Thirdly, the *ratio decidendi* of *Taylor v Kenyon* has since been universally accepted and assumed by subsequent courts in that jurisdiction to be that lack of knowledge of disqualification is no defence. This is regardless of whether a notice of disqualification had been sent to the accused or not. For support of this principle, I need only refer to *R v Bowsher* [1973] RTR 202 where the English Court of Appeal upheld a conviction although the defendant in that case had his licence returned to him in error by the licencing authority. Other notable examples included: *R v Lynn* [1971] RTR 369, *R v Miller* [1975] RTR 479, *Singh (Jaspal) v Director of Public Prosecutions* [1999] RTR 424.

25 As both principle and authorities supported reading s 43(4) as a strict liability offence, I was firmly of the view that Chng's argument to the contrary should be rejected. Once it was established that Chng drove while disqualified, he was liable regardless of whether he had knowledge of the disqualification order or not. In any event, I shared the opinion of the district judge that Chng probably did have the requisite knowledge that he had been disqualified on 11 December 2000 since he wrote to the Court the next day applying to have his second warrant of arrest cancelled.

Did Chng exercise reasonable care?

26 Since s 43(4) did not create an *absolute* liability offence, once the prosecution had proved the elements of the offence beyond reasonable doubt i.e. Chng drove a motor vehicle and he drove it while he was disqualified, the burden then shifted to Chng to prove that he had exercised reasonable care to comply with the requirements of the provision. In order to succeed, Chng must show that he had made diligent inquiries about his qualification status or had an honest or reasonable belief that he could still drive.

27 From the evidence that had been adduced in the court below, there was little to show that Chng had indeed exercised due care and diligence. Chng absented himself from court on the first occasion on 14 August 2000. He was arrested and then warned by Sergeant Loh in October 2000 to attend court, failing which he would be disqualified. A written warning under s 42A was also served upon him. Despite both the verbal and written warnings, Chng saw fit not to attend court again on 11 December 2000 as he said he was too busy with work. Although Chng did subsequently manage to go to the Subordinate Courts the next day, he took little effort to inquire about his disqualification status. What inquiry he made was limited to asking a counter-staff about what would happen to his warrant of

arrest. While it was true that the staff should have informed Chng of his disqualification status, however, when told that she did not know, Chng asked no further questions as he had apparently forgotten all about the s 42A written warning. In fact, Chng admitted that he did not ask anyone if he had been disqualified.

28 Neither did I think that Chng's subsequent conduct of writing to the Subordinate Courts on 12 December 2000 discharged his burden of taking reasonable care as that related exclusively to representations for the warrant of arrest to be discharged. In any event, Chng evidently did not find it necessary to wait for a reply from the courts before he decided to drive again. In addition, when queried about the basis for his expectation that a written notice of disqualification would be sent to him, Chng admitted that he had never been informed by anyone, much less Sergeant Loh, that there would be such a notice. It was purely a personal belief in a state of things; the truth of which was neither verified nor ascertained. There was hence no reasonable or honest belief substantiating his conduct to speak of. In the circumstances, I found that there was a deplorable lack of due diligence on Chng's part and, for that reason, the defence of reasonable care cannot be made out.

Was there a breach of natural justice?

29 The rules of natural justice require the bringing of an offence to the notice of the person charged. Chng's objections could be summarized as follows:

> a The offence was never brought to his notice because of the differences in the wording of the written warning and the requirements of s 42A.
>
> b Alternatively, the offence was not brought to his notice because no notice was sent informing him of the order to disqualify him.

30 The discrepancy between s 42A and the written warning should first be set out. Section 42A states:

> s 42A–(1) The Public Prosecutor *may* apply to the court for an order disqualifying a person from holding or obtaining a driving licence if –
>
> …
>
> (d) he has been duly informed by –
>
> (ii) the officer who arrested him…
>
> that should he fail to appear in court on the date next appointed for his appearance in connection with the offence of which he is accused, the *Public Prosecutor shall make an application* under this section for him to be disqualified from holding or obtaining a driving licence… (emphasis added)

However, the s 42A written warning which was administered to Chng stated that the "prosecution *may* make an application to the Court … to have his driving licence disqualified". Hence while s 42A requires the accused to be definitively informed that he will be disqualified, the warning only spoke of the possibility of disqualification.

Was notice vitiated by non-compliance with s 42A?

31 The problem was whether, as a result of the written warning not complying with s 42A, there

had been a breach of natural justice, in particular the rule, *audi alteram partem.* The rules of natural justice require that: persons liable to be directly affected by the outcome of any decision must be given prior notification of the action proposed to be taken, of the time and place of any hearing that is to be conducted, and of the charge or case they will be called upon to meet. There is also a necessary implication that notice must not only be given, but that it was sufficient and accurate.

32 I was of the opinion that, in order for notice to be vitiated by non-compliance with s 42A, the non-compliance must be fundamental, substantive and material in nature. The discrepancies must be such as to *mislead* Chng as to the consequences of his failure to attend court, hence depriving him of his right to be heard. This was not so on the facts of our case. Chng was administered with the written warning, which warned him of the possibility that his licence could be disqualified. Sergeant Loh also advised him that his licence *would be* disqualified if he failed to attend court for a second time. He was also informed of his right to be heard in court and the date, place and time of the hearing; a right which he knowingly and willingly forfeited by his non-attendance. At all times, I found that Chng was aware of the consequence of being disqualified. He himself admitted that at the time when the s 42A warning was administered to him, his understanding of the consequences of non-attendance was not, in any way, affected by the wording of the written warning. It would be overtly artificial, in the circumstances, to hold that notice of the consequences (i.e. disqualification) was *never* brought to his attention and that, consequently, there had been a breach of natural justice. The written warning though discrepant with the requirements of s 42A, had sufficiently served its purpose of informing Chng of the risk of disqualification and the sentences for the consequential substantive offence of driving while disqualified (these were stated clearly and in bold in the s 42A warning that was served on him). In any case, the written warning accurately represented the reality of the situation: the public prosecution might (and not would) apply for the driver to be disqualified.

33 Further, to warrant a finding of a breach of natural justice, the applicant i.e. Chng must prove that he had suffered substantial prejudice or injustice *as a result* of the non-compliance with s 42A, since there is no such thing in law as a technical breach of natural justice: *George v Secretary of State for the Environment & Anor* [1979] 38 P & CR 609. I considered that little prejudice was caused to Chng. He read the notice, he knew of the consequences for non-attendance but he promptly forgot all about it. According to Chng, the possibility of disqualification never even crossed his mind when he decided to work instead of attending court. Chng could not then be heard to argue that he had suffered injustice as a result of the wording of the written warning when he had never relied upon it. Neither was the sentence imposed by the district judge under s 43(4) a relevant prejudice, as disqualification was a risk, which Chng willingly and, to a certain extent, knowingly undertook. In any event, he had conceded that the disqualification order was validly and properly made; a concession that was inherently contradictory with his claims of there being a breach of natural justice.

Did Chng have the right to demand a notice of disqualification?

34 It had been accepted in *Banks v Transport Regulation Board (Victoria)* (1968) 119 CLR 222 and *McInnes v Onslow-Fane* [1978] 1 WLR 1520 that the revocation of a licence is a deprivation of a legal right which attracts the protection of procedural fairness. Chng hence argued that he had either the right or a legitimate expectation to be subsequently informed of the order of disqualification that had been made against him, and, in its absence, he was entitled to assume that he could continue to drive.

35 A distinction must be drawn here. Natural justice is concerned with procedural fairness prior to and during the adjudication of the courts or administrative tribunals. The maxims, *audi alteram partem* and *nemo judex in causa sua* have technically no application after a decision has been reached and the adjudication process is concluded. Therefore when the cases speak of 'notice', they

are referring to *prior* notice of the offence, the charges that will be preferred and the hearing at which a decision will be made. They do not mean that the accused or the person affected is also *entitled* to notice of the final decision of the court or tribunal if they choose to absent themselves from the proceedings and then omit to make any inquiries. Since the pronouncement of disqualification is made in open court, there should be no further need to notify the accused of the order of the court.

36 Even if I was wrong in holding that the rules of natural justice had no application when the adjudication process had been concluded, there is a decision of the Privy Council in *De Verteuil v Knaggs* [1918] AC 557 which held that the presumption of natural justice can be displaced where it is impracticable not to otherwise. Unless the court exercises its powers of suspension under s 42(3) of the Road Traffic Act, disqualification usually takes effect as from the date of the court order. Hence if this court decided that there is indeed a legal duty on the part of the WEU to send out notices of disqualification, there will be a lapse of time between the date of pronouncement in court and the date when the offender actually receives the notice. The uncertainty is augmented in those situations when an offender who has failed to attend court and who has not received the notice of disqualification, is caught driving while disqualified during this 'limbo' period. Consequent problems such as whether he should be prosecuted, what is a 'reasonable window of time' for the notices to be received, what should be done if the notices never arrive or are never read at the designated addresses and etc. will arise. There will also be an impact on the standard required to make out a defence of reasonable care. On balance, I found it more appropriate not to impose a *legal duty* on the part of the WEU to send out notices of disqualification and consequently, Chng had *no legal right* to be subsequently informed of the result of the decision of the tribunal.

37 In any case, this argument (that a notice should have been sent to Chng) was obviated by the finding of fact that Chng probably knew about his disqualification status as early as 11 December 2000.

38 With respect to legitimate expectations, the reasoning of the courts in *AG of Hong Kong v Ng Yuen Shiu* [1983] 2 AC 629 and *Re Siah Mooi Guat* [1988] SLR 766 were instructive. Since no representations or promises were ever made by Sergeant Loh or the WEU that such notices of disqualification would be sent out, it was unreasonable for Chng to have assumed otherwise. Neither was there an established practice of sending out such notices by the WEU upon which Chng could rely. On the contrary, the evidence adduced below was that it had never been the practice of the traffic police to do so. The principle of legitimate expectations arising from the existence of a regular practice which the claimant could reasonably expect to continue in *R v Secretary of State for the Home Department ex p. Asif Mahmood Khan* [1984] 1 WLR 1337 and *Council of Civil Service Unions v Minister for Civil Service* [1985] 1 AC 374 was hence inapplicable. Chng did not have either the right or the legitimate expectation that a notice of disqualification would be sent to him.

39 In view of the above reasons, I could not accept Chng's argument that there had been a breach of natural justice.

Should the WEU nevertheless have such a practice of sending out disqualification notices?

40 The United States Supreme Court in *Mathews v Elridge* (1976) 424 US 319 held that the availability of procedural rights depended on:

i the interest of the individual

ii risk of any onerous deprivation of that interest through the procedures actually

used

iii probable value of additional procedural safeguards

iv the government interest, including the costs imposed by the additional procedural requirement.

41 Although I had stated my opinion that the WEU has no duty in law to send out disqualification notices, I considered that there may be good reasons for it to adopt such a practice administratively. First, it is possible that many Singaporeans are labouring under the mistaken assumption that notices of disqualification will be sent to them. Secondly, driving while disqualified is viewed as a serious offence attracting a custodial sentence of up to three years. Thirdly, the probable costs and manpower required for this additional procedural safeguard are unlikely to be too large. The traffic police, much like any other governmental agency, should have sufficient resources to generate notices of disqualification on a large-scale. However, a caveat must be added that these notices do not affect the date from which the order of disqualification is ordered to take effect or the nature of s 43(4) as a strict liability offence. Unless the court orders otherwise, disqualification takes effect from the date of the court order and not the date of receipt of the notice. In addition, the Traffic Police or the WEU may also wish to consider rewording the written warnings administered to the motorists to accurately reflect the requirements in s 42A(d). This will pre-empt similar arguments of breaches of natural justice by offenders in future.

Was the sentence manifestly excessive?

42 In *Samnasivam s/o Sharma v PP* [1992] 2 SLR 580, I held that unless special circumstances of the case can be shown, magistrates should not hesitate to impose a substantial sentence of imprisonment. That statement of mine should now be re-considered in the light of legislative amendments to s 43(4) in April 1993. On 25 April 1993, Parliament amended the provision by removing the words "special circumstances" hence eliminating the fetter on the court's discretion to impose a custodial sentence. The current position in the amended s 43(4) is that an offender shall be liable on conviction to a fine not exceeding $10, 000 or to imprisonment for a term not exceeding three years or to both. The courts now clearly have an absolute discretion in every situation to determine the types and extent of the various sentencing options, subject to the limits of punishment as prescribed by the legislature.

43 I was firmly of the view that the courts have an interest and a duty to the people of Singapore to ensure strict compliance with our safety regulations and promote the safety and security of our roads and highways. Driving while under disqualification is about as serious an offence as a motorist can commit. Not only does it compromise the safety of our roads; it also creates problems in ensuring adequate compensation for luckless victims. Prima facie, motorists who drive while disqualified must now expect a term of imprisonment and not merely a fine. In addition, the irresponsible motorist who has knowledge of an order of disqualification made against him but who continues to drive in blatant disregard of the law and the authority of the courts can also expect to face the full impact of the law upon him and receive enhanced custodial sentences.

44 Chng's conduct in ignoring a notice to appear in court to answer a charge, even when the offence was a relatively minor offence such as a parking infringement, was a grave matter as it showed his blatant disregard of the law. Parliament has also time and again emphasized that it takes a stern view of motorists who do not comply with such notices. Bearing in mind the maximum limits of imprisonment as imposed by s 43(4), the culpability of Chng's conduct in failing to take reasonable care and the seriousness with which the legislature views such offences, I did not consider the sentence of one

month's imprisonment to be manifestly excessive. In arriving at this decision, I had also taken into account the fact that Chng had no prior antecedents.

Conclusion

45 For the above reasons, I dismissed the appeals with respect to the first charge of driving while disqualified under s 43(4) of the Road Traffic Act and the third charge of driving without a valid insurance policy under s 3(1) of the Motor Vehicles (Third Party Risks and Compensation) Act.

Sgd:

YONG PUNG HOW

Chief Justice

Republic of Singapore