Madan Mohan Singh *v* Attorney-General
[2015] SGHC 48

Case Number : Originating Summons No 38 of 2011 (Summons No 3725 of 2014)

Decision Date : 25 February 2015

Tribunal/Court : High Court

Coram : Quentin Loh J

Counsel Name(s) : Ravi s/o Madasamy (L F Violet Netto) for the applicant; David Chong SC, Ruth Yeo, Germaine Boey, Ailene Chou and Jamie Pang (Attorney-General's Chambers) for the respondent.

Parties : Madan Mohan Singh — Attorney-General

Administrative Law – Judicial review

Civil Procedure – Striking out

25 February 2015 Judgment reserved.

Quentin Loh J:

1 Mr Madan Mohan Singh ("the Applicant") filed this Originating Summons ("the present OS") on 15 January 2014 applying for leave to bring judicial review proceedings under O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) against the Singapore Prison Service ("the SPS").

2 The Applicant sought the following prayers:

(a) a Quashing Order to quash the labelling of Sikh Prisoners as being either "practising" and/or "non-practising" ("the Quashing Order"); and

(b) a Declaration to be granted that the SPS has, contrary to Art 15(1) of the Constitution, violated the Applicant's right to propagate the Sikh religion in his capacity as the Sikh Religious Counsellor to the Sikh inmates ("the Declaration").

3 The application was resisted by the Attorney-General ("the Respondent"). The Respondent filed Summons 3725 of 2014 on 24 July 2014 to strike out the present OS under O 18 r 19 of the Rules of Court.

4 The parties appeared before me on 19 January 2015. Mr David Chong SC ("Mr Chong SC") appeared for the Respondent on the striking out application and Mr Ravi s/o Madasamy ("Mr Ravi") appeared for the Applicant. At the end of submissions, Mr Ravi invited me to treat his submissions against the striking out application as his submissions on the application for leave since the facts and arguments in this case for a striking out application and for leave under O 53 r 1 of the Rules of Court overlapped significantly. Mr Chong SC had no objections. I accordingly treated the parties as having made all the necessary submissions on the leave application as well. I pause to note that the burden of proof in the two applications are quite different but I see the sense in Mr Ravi's submission that if I strike out the application, as Mr Chong SC was urging me to, which was on a higher burden of proof, then it follows that I would not grant leave under O 53 which calls for a lower burden of proof. If I did not strike out the application, since Mr Ravi would not have raised anything new or different from his

submissions against a striking out, I could proceed to decide on the granting of leave under O 53 on those same submissions and grounds put forward by Mr Ravi.

Background

5 The facts are largely undisputed. The Applicant was a Sikh religious counsellor with the Singapore Anti-Narcotics Association Sikh Aftercare (Counselling) Services ("SANA Services"). Around July 2000, SANA Services had identified the Applicant to serve as a volunteer Sikh religious counsellor at the SPS. Upon acceptance by the SPS, the Applicant was issued a volunteer pass by the SPS to facilitate his entry into prisons. His main role was to provide religious services and counselling to prison inmates on Sikh-related matters. [note: 1] This included "teaching or making the Sikh inmates more conscious and aware of the fundamental and inviolable tenets of Sikhism." [note: 2]

6 On 31 August 2010, after serving approximately ten years as a volunteer, the Applicant wrote to the SPS for the first time requesting a review of the SPS's hair grooming policy for inmates ("the Hair Grooming Policy"). [note: 3] It is important to set out the Hair Grooming Policy in some detail as it is the very thing that the Applicant seeks to quash.

The Hair Grooming Policy

7 The SPS has a strict hair grooming policy for its inmates. In general, all inmates in the custody of the SPS are required to have their hair and beard cut close. [note: 4] The rationale for such a requirement stems from the fact that a prison is a "unique and strict environment with a strong focus on discipline, safety, security and order". [note: 5] It is meant to instil discipline in inmates by subjecting them to a regimented lifestyle and ensuring that inmates are uniform in appearance. It is further intended to prevent the concealment of weapons or other contraband items. [note: 6]

8 However, the SPS has an exception to this general rule. Inmates who declare their religion to be Sikhism and who have unshorn hair and beard at the point of admission ("unshorn Sikh inmates") would be exempted from the general rule and be allowed to keep their hair and beard unshorn during their period of incarceration. [note: 7] On the other hand, inmates who profess to be adherents of Sikhism, be it at the point of admission or subsequently during incarceration, but who had by their own volition shorn hair and/or shorn beard at the time they were admitted to prison ("shorn Sikh inmates"), will not be allowed to keep their hair and beard unshorn during their period of incarceration. [note: 8] This policy has been in place for the past 40 years or so. The concession granted to unshorn Sikh inmates is justified by the SPS as a historical one, and the SPS has maintained it since its inception.

9 According to the Applicant, somewhere in 2010, the SPS began to label unshorn Sikh inmates as "practising Sikhs" and shorn Sikh inmates as "non-practising Sikhs", and applied the Hair Grooming Policy accordingly. [note: 9] This was what allegedly prompted the Applicant to request a review of the Hair Grooming Policy. It is important to note that the SPS abandoned the "practising" and "non-practising" terminology in February 2013. They have instead adopted the terms "unshorn" and "shorn" to distinguish between the inmates for the purposes of the Hair Grooming Policy.

The subsequent events

10 During the period between November 2010 and March 2011, the Applicant continually engaged the SPS, the Sikh Advisory Board ("SAB"), SANA Services and the Ministry of Home Affairs ("MHA") on

the Hair Grooming Policy. [note: 10] The Applicant sought, *inter alia*, to have the Hair Grooming Policy reviewed, especially the terminology of "practising" and "non-practising" adopted by the SPS. The Applicant also wanted certain incidents in which the Hair Grooming Policy was allegedly not complied with to be looked into. [note: 11] The Applicant was of the view that "religiosity is a very personal decision and a Sikh inmate should be allowed, if he wishes and in accordance with his constitutional right, to keep unshorn hair, even if he decides to do so only after his admission to prison." [note: 12]

11 Between 5 March 2011 and 9 March 2011, the SPS noticed a sudden spike in the number of Sikh inmates requesting to keep their hair long. The SPS then proceeded to commence investigations as such a sudden spike was "unusual". [note: 13] The SPS interviewed the Applicant and 27 Sikh inmates who had attended the Applicant's counselling sessions. The Applicant was also requested to stop providing counselling to the inmates during the course of the investigations. The Applicant agreed to this. [note: 14]

12 At the conclusion of investigations, the SPS decided that it was no longer appropriate for the Applicant to continue volunteering at the SPS. The SPS was of the view that the Applicant had "actively and persistently encouraged [the inmates] to keep their hair and beard unshorn in prisons and to challenge the Hair Grooming Policy by putting up requests to this effect". [note: 15] The SPS deemed the Applicant's alleged actions to be a serious threat to the discipline, security, safety and order of the prison.

13 Undeterred by this, the Applicant continued to write to the various organisations seeking review of the Hair Grooming Policy. On 7 July 2011 and 19 July 2011, SANA Services, the SPS and the MHA had two dialogue sessions, during which the MHA and the SPS accounted for the implementation of the Hair Grooming Policy for specific Sikh inmates. At the end of the sessions, SANA Services was satisfied that the SPS had acted fairly towards Sikh inmates and had not deviated from its Hair Grooming Policy. [note: 16]

14 The SPS officially informed the Applicant in a letter dated 27 December 2011 that his volunteer pass would expire on 31 December 2011 and that it would not be renewed. [note: 17] After the expiry of the Applicant's volunteer pass, there appeared to be a period of silence lasting almost one year. It was only on 6 November 2012 and 8 November 2012 that the Applicant filed two police reports in relation to two separate incidents where an inmate's hair was allegedly forcibly cut. [note: 18]

15 In January 2013, the Applicant started writing again to the SPS. On 8 February 2013, the SPS sent an email to the Applicant reiterating the Hair Grooming Policy and informing the Applicant that it would no longer be responding to the Applicant's emails regarding this matter. On 25 February 2013, the Applicant acknowledged receipt of the SPS's email of 8 February 2013, and indicated to the SPS that he was in talks with some senior Sikh community leaders. According to the Applicant, these leaders had requested the Applicant to refrain from engaging this issue at least until the end of March 2013 while they attempted to resolve it at their level. [note: 19]

16 On 23 January 2013 and 18 June 2013, two separate dialogue sessions were held between the Sikh Welfare Council, the SAB, the SPS and the MHA, during which the MHA and the SPS stated that a review of the Hair Grooming Policy had been undertaken and that both organisations concluded that it was inappropriate to grant the existing concession given to unshorn Sikh inmates to shorn Sikh inmates. [note: 20]

17 On 18 December 2013, the Applicant filed Originating Summons No 1212 of 2013 ("OS 1212/2013") with a Sikh inmate, Jagjeet Singh, on the same subject matter as the present OS, seeking declarations under O 15 r 16 of the Rules of Court that Jagjeet Singh's constitutional rights have been violated by the SPS. However, the Applicant and Jagjeet Singh through their counsel, Mr Ravi, applied to withdraw OS 1212/2013 prior to the hearing. On 15 January 2014, the Applicant filed the present OS. For some unexplained reason, Jagjeet Singh was not a party to the present OS.

My decision

18 Having considered the circumstances of this case, I find and hold that the present OS should be struck out under O 18 r 19(1)(*a*), (*b*) or (*d*) of the Rules of Court as the Applicant lacks the requisite *locus standi*. Further, there was a delay by the Applicant in bringing the present OS.

Striking out

19 An application can be struck out under O 18 r 19(1) of the Rules of Court on the ground that: (*a*) it discloses no reasonable cause of action; (*b*) it is scandalous, frivolous or vexatious; (*c*) it may prejudice, embarrass or delay the fair trial of the action; or (*d*) it is otherwise an abuse of the process of the Court. The burden is on the party applying to strike out to prove that one of the grounds under O 18 r 19(1) applies. As reiterated by the Court of Appeal, the threshold for striking out is a high one (*Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong* (CA)") at [20]).

20 Under O 18 r 19(1)(*a*), a reasonable cause of action is one with some chance of success when only the allegations in the pleadings are considered (*The "Tokai Maru"* [1998] 2 SLR(R) 646 at [44]). An application discloses no chance of success if the applicant is unable to establish the requisite *locus standi*, and may be struck out as being without legal basis under this ground (see *Tan Eng Hong v Attorney-General* [2011] 3 SLR 320 at [5], citing *Abdul Razak Ahmad v Majlis Bandaraya Johor Bahru* [1995] 2 MLJ 287).

21 Depending on the context and circumstances, the lack of the requisite *locus standi* can also form the basis of striking out under O 18 r 19(1)(*b*) for being frivolous or vexatious or under O 18 r 19(1)(*d*) as an abuse of the process of the Court (*Hong Alvin v Chia Quee Khee* [2011] SGHC 249 at [17]).

22 Further, it is pertinent to note that one of the three requirements necessary for the granting of leave to bring judicial review proceedings under O 53 r 1 of the Rules of Court is that the applicant has sufficient interest in the matter, *ie*, the requisite *locus standi* (*Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [5]).

23 I now turn to consider whether the Applicant has the requisite *locus standi* to bring the present OS.

Preliminary Issues

24 First, it must be remembered that the Applicant is applying for leave under O 53 r 1 of the Rules of Court to seek two prayers – the Quashing Order and the Declaration. Order 53 r 1(1) of the Rules of Court provides:

> **No application for Mandatory Order, etc., without leave (O. 53, r. 1)**
>
> **1.**—(1) An application for a Mandatory Order, Prohibiting Order or Quashing Order (referred to in

this paragraph as the principal application) —

(a) may include an application for a declaration; but

(b) shall not be made, unless leave to make the principal application has been granted in accordance with this Rule.

25 Order 53 r 1(1) is explained in *Singapore Civil Procedure 2015* (G P Selvam gen ed) (Sweet & Maxwell, 2014) ("*Singapore Civil Procedure 2015*") at para 53/1/4:

> An applicant can only obtain declaratory relief under O.53 *if the applicant first succeeds* in obtaining leave of the court to apply for a Mandatory Order, Prohibiting Order or Quashing Order (see r.1(1)(b)). Once leave is granted, and upon hearing the parties on the substantive merits, the court may grant (a) the prerogative order and a declaration; (b) only the prerogative order; or (c) only a declaration (*Vellama d/o Marie Muthu v. Att.-Gen.*) …
>
> [emphasis added]

26 The Declaration that the Applicant seeks in the present OS is therefore contingent upon leave being granted to the Applicant to apply for the Quashing Order. Hence, if the application for leave to apply for the Quashing Order fails, the application for the Declaration must accordingly fail. I therefore need only consider whether the Applicant has the requisite *locus standi vis-à-vis* the Quashing Order for the purposes of the striking out application.

27 This was recognised by the Applicant himself. Paragraph 98 of his written submissions states:

> The Declaration sought by the Plaintiff in the current application is contingent upon the Quashing Order sought under Order 53 of the Rules of Court. The Plaintiff therefore has to only show that he has sufficient interest or *locus standi* to apply for the principle [*sic*] application of a Quashing Order.

28 Secondly, it is not entirely clear what the Applicant is seeking to quash in the present case. The Quashing Order sought is "…to quash the labelling of Sikh Prisoners as being either 'practising' and/or 'non-practising.'"

29 On its face, it appears that the Applicant is taking issue with the *terminology* that the SPS had used to identify unshorn Sikh inmates and shorn Sikh inmates ("the Plain Reading Interpretation"). This is supported by different parts of his affidavit. For example, he states at para 71 of his second affidavit:

> … I had before correctly advised the inmates in accordance with the directive which applied the correct test of full head of hair or not. Latterly, however, with SPS labelling practice, I was faced with a conundrum, namely, could I and should I, in defiance of my conscience and religious conviction validate the new practice of SPS of labelling Sikh inmates as "practising" and "non-practising Sikhs"? The answer had to be an irrefutable and resounding 'no'. …

30 On the other hand, there are other parts of the Applicant's affidavit and written submissions where it appears he is going further by seeking to quash the *substance* of the Hair Grooming Policy ("the Substantive Interpretation"). For example, at para 122 of his written submissions, the Applicant contends that "the SPS policy infringes on the rights of Sikh inmates to practice [*sic*] their religion". At paras 123–124, he goes on to state that the SAB's position on the matter is that a Sikh inmate

should be allowed to keep his hair long in accordance with his constitutional right, even if he decides to do so only after his admission into prison. At para 125, he then states that "[i]t is therefore very clear that the position of SAB is aligned with the [Applicant's] position that the policy is in contravention to Art 15(1) of the Constitution." From these paragraphs, it is evident that the Applicant is also challenging the substance of the Hair Grooming Policy, *ie*, that Sikh inmates who had shorn hair and/or beards at the time of their admission into prison are not allowed to subsequently keep their hair long during incarceration.

31 The Quashing Order based on the Plain Reading Interpretation can be dealt with shortly. If this interpretation of the Quashing Order is what the Applicant is seeking, then the Applicant's objection fails to get off the ground. This is because the SPS has discarded the "practising" and "non-practising" terminology in February 2013 and has since adopted the terms "unshorn" and "shorn" to differentiate between the Sikh inmates for the purposes of the Hair Grooming Policy (as mentioned above at [9]). The Applicant brought the present OS on 15 January 2014, almost a year after the old terminology was discarded. The very thing that the Applicant seeks to quash did not exist when he brought the present OS. Consequently, if the prayer for the Quashing Order is based on the Plain Reading Interpretation, I find and hold that the present OS should be struck out under O 18 r 19 of the Rules of Court.

32 I now turn to consider the Quashing Order based on the Substantive Interpretation. It is undisputed that the substance of the Hair Grooming Policy is currently still in effect. The issue is thus whether the Applicant has the requisite *locus standi* to seek an order to quash it.

Locus Standi

33 In *Vellama d/o of Marie Muthu v Attorney-General* [2013] 4 SLR 1 ("*Vellama*"), the Court of Appeal set out the test to determine *locus standi* under O 53 r 1 of the Rules of Court. The Court of Appeal held at [29] that "[t]he appropriate test for determining standing turns on the *nature of the rights* at stake although, whether it is a public or private right, it can be prosecuted by private citizens." [emphasis in original]. In the context of private rights, the test was set out in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 and applied in *Tan Eng Hong* (CA) at [72]–[76] to applications under O 53 r 1 of the Rules of Court as follows:

(a) the declaration or prerogative order sought must relate to a right which is personal to the applicant and which is enforceable against an adverse party to the litigation (*ie*, there must be a violation of a personal right);

(b) the applicant must have a "real interest" in bringing the action; and

(c) there must be a "real controversy" between the parties to the action for the court to resolve.

34 This applies equally even if the right is a constitutional one. An applicant must hence demonstrate an actual or arguable violation of his constitutional rights before *locus standi* can be established. This is to prevent "mere busybodies" (see *Vellama* at [33]), whose rights are unaffected from being granted standing to launch unmeritorious challenges. Once an applicant is able to demonstrate an actual or arguable violation of his constitutional rights, then the applicant has a *prima facie* "real interest" in bringing the action (see *Tan Eng Hong* (CA) at [82]–[83]).

35 Mr Ravi submits that the Applicant has *locus standi* to seek the Quashing Order based on the Substantive Interpretation for three reasons: [note: 21]

(a) the Applicant owed a duty to the Sikh inmates who came to him for religious guidance and counselling;

(b) the Sikh inmates' right to practice their religion is inextricably linked to the Applicant's right to propagate his faith; and

(c) the Applicant had a very personal and close relationship with the Sikh inmates.

36 I will address each of these in turn.

Duty owed by the Applicant to the Sikh inmates

37 Mr Ravi submits that the Applicant, through his "deep sense of devotion to his faith" and his "role as a Sikh Religious Counsellor", owed a duty to the Sikh inmates to propagate the Sikh faith "in its truest and correct form and in no other way". [note: 22] He concludes that "by unduly failing to renew [the Applicant's] volunteer pass, [the] SPS has in effect curtailed his right to propagate his religion to a group of Sikhs to whom he owed a duty to rehabilitate". [note: 23]

38 It appears that the personal right of the Applicant, which Mr Ravi is submitting has been violated, is his right to propagate his religion under Art 15(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint). This right has been allegedly violated because the SPS failed to renew his volunteer pass, thereby preventing him from propagating to the Sikh inmates in prison.

39 This argument is misplaced on a number of grounds. First and foremost, the remedy that the Applicant is seeking is to quash the substance of the Hair Grooming Policy. There is a lack of a logical link between the Hair Grooming Policy and the non-renewal of the Applicant's volunteer pass. Whether the Applicant's volunteer pass would be renewed or not depends on the SPS's assessment of the suitability of the Applicant and, *inter alia*, his compliance with the SPS's rules and conditions. The Hair Grooming Policy, on the other hand, applies to the prison inmates. The quashing of the substance of the Hair Grooming Policy would in no way lead to the renewal of the Applicant's volunteer pass and thereby vindicate his alleged right to propagate to the Sikh inmates.

40 Secondly, even if I were to accept Mr Ravi's argument that the Hair Grooming Policy was the very cause of the non-renewal of the Applicant's volunteer pass, the non-renewal of his volunteer pass does not lead to an infringement of the Applicant's right to propagate his faith or religion under Art 15(1) of the Constitution of Singapore. The starting point is that a prison is an enclosed, secure and restricted building. They are purpose-built for the confinement of persons who have been convicted of criminal offences and sentenced to terms of imprisonment or arrested persons who are awaiting trial and have been denied bail. There are also prisoners convicted of serious crimes who are considered a danger to society. Prison inmates share a common characteristic, *viz*, they have all committed an offence deemed serious enough to justify their removal from society for a specified period and in some cases indefinitely, see *Regina (Chester) v Secretary of State for Justice and another* [2014] AC 271 at [91], per Baroness Hale. Security is tight and controlled, the inmates are not free to wander around or do as they please, discipline is instilled amongst inmates and a strict regime is appropriately in force. Prison inmates suffer a temporary exclusion from society and members of the public certainly do not have a right to free access to prisons or the inmates.

41 A person would thus ordinarily have no access to a prison, much less to free access to propagate his religion to the inmates. He/she would only be able to do so if he/she applied to be a religious counselling volunteer, the SPS accepts him/her, and then issues him/her with a volunteer pass. This does not and cannot then give rise to a constitutional right to demand access into prison

to propagate his/her religion. As pointed out by Goh Leng Chuang Terrence, the present Director of the Rehabilitation and Reintegration Division of Prison Service ("Mr Goh"), the volunteer pass was issued to the Applicant "solely for the purposes of identifying the [Applicant] as a volunteer and to facilitate his entry into prisons." [note: 24] I find that the non-renewal of the Applicant's volunteer pass clearly does not result in a violation of the Applicant's right to propagate his religion under Article 15(1) of the Constitution. He is free to do so, within the bounds of the law, to all others in the land, but certainly not within institutions like a prison. Art 15(1) is not an absolute right and has its limits; Art 15(4) provides that Art 15 does not authorise any act contrary to any general law relating to public order, public health or morality.

42 Thirdly, if the Applicant's real complaint is that his volunteer pass was not renewed, then he ought to challenge the decision not to renew his volunteer pass directly. The prayers sought under the present OS are wholly inappropriate if this is indeed his purpose.

Inextricable link between the Sikh inmates' constitutional rights and the Applicant's

43 Mr Ravi further submits that the Hair Grooming Policy violates the right of Sikh inmates to practise their religion, and this leads to a violation of the Applicant's right to propagate his religion. He submits that the effect of the Hair Grooming Policy "barred [the Applicant] from propagating his religion with respect to one of the cardinal principles of Sikh religion – 'kesh'". [note: 25]

44 This submission is also without any basis and entirely misplaced. It is common ground that one of the "fundamental tenets" of Sikhism is the keeping of the five K's—the *Kesh* (unshorn hair and beard), the *Kirpan* (dagger), the *Kachhehra* (prescribed shorts), the *Kanga* (comb tucked in the tied up hair), and the *Karha* (steel bracelet). [note: 26] It is *not* just the keeping of the *Kesh*. No one has sought to argue that a Sikh is also entitled to have his *Kirpan* (dagger), *Kanga* (comb tucked in the tied up hair) or the *Karha* (steel bracelet) whilst he is serving his prison sentence (I have not mentioned the *Kachhehra* as this has not been raised in the arguments made to me). This is because it is plain and obvious that prisoners cannot be allowed to have these items that can cause hurt to others or to themselves. The Applicant obviously accepts this fact. He cannot do otherwise as he also has to accept that inmates of a prison are denied some of their rights which they would have enjoyed if they were free men and not in prison—like the freedom of movement to go where they please, the freedom to wear what they choose and to get up in the morning at whatever time they fancy. Yet the Applicant chooses to pick only *one* of five fundamental tenets to underpin his complaint that Sikh inmates are denied their constitutional rights to profess and practise their religion. The Applicant appears to have accepted these restrictions before (see [48]—[50] below), but for reasons best known to him, chosen after more than ten years to raise this as a complaint.

45 Insofar as Mr Ravi is contending that the Hair Grooming Policy violates the right of Sikh inmates, it is clear that the Applicant has no *locus standi* to pursue this issue. Despite his role as their religious counsellor, the Applicant is not an inmate and the Hair Grooming Policy does not apply to him. This is obviously not a right that is personal to the Applicant.

46 Mr Ravi also brings up the argument that the Hair Grooming Policy is *ultra vires* reg 88 of the Prisons Regulations (Cap 247, Rg 2, 2002 Rev Ed). [note: 27] Regulation 88 provides as follows:

> **Grooming for Asian prisoners**
>
> **88.**—(1) Asian prisoners sentenced to imprisonment for any period exceeding one month, who are in the habit of shaving their heads, shall be shaved once a week.

(2) The hair of other Asian prisoners, except Sikhs, shall be cut close.

(3) Tamil prisoners admitted with long hair shall be allowed to retain it.

47 I note that reg 88(2) appears to provide an exception for Sikh inmates to keep their hair long during their incarceration. This is perhaps why the Applicant chooses to only take issue with Sikh inmates being unable to keep the *Kesh*, and not the other four Ks. Although Mr Chong SC addressed me on reg 88, and I find his submissions cogent, I do not propose to say more about it as it is unnecessary for me to do so in order to dispose of the matter. It is patently clear that reg 88 and the Hair Grooming Policy applies only to inmates, and the Applicant has no standing to argue that the Hair Grooming Policy is *ultra vires* reg 88.

48 With respect to the argument that the Applicant's own right to propagate his religion was curtailed due to the Hair Grooming Policy, I find that there is no factual basis for it. Mr Goh states unequivocally that: [note: 28]

> … Prison Service had never prevented the [Applicant] from conveying the importance of the Sikh religious covenant pertaining to the keeping of one's hair and beard, and/or expected the [Applicant] to refrain from teaching the tenets and correct observance of the Sikh faith.

49 This is corroborated by the Applicant's own evidence. In the affidavits of three inmates filed by the Applicant, namely, Ranveer Singh, Harvinder Singh and Manmeet Singh, they each state that during their counselling sessions with the Applicant, the Applicant had taught them all the tenets of the Sikh faith, and that included the importance of the keeping of their hair and beard. [note: 29]

50 In fact, the Applicant has been carrying on his counselling for the first ten years of his service at prison with full knowledge of the Hair Grooming Policy, but has not raised any allegations that his right to propagate was violated in one way or another. He admitted in a statement made to the SPS during the course of the SPS's investigations that prior to 2010, when inmates approached him for an update on their requests to keep their hair long, he would respond by telling them that if the Sikh inmate came into prison with cropped hair, their requests would not be entertained. [note: 30] Taking the terminology used by the SPS for the purposes of the Hair Grooming Policy aside, it is puzzling why the Applicant only takes issue with the substance of the Hair Grooming Policy now.

51 The only restriction that the SPS placed on the Applicant was that he was to conduct counselling sessions with due regard to the Hair Grooming Policy. In other words, the Applicant was free to teach the Sikh inmates all the tenets of Sikhism, but he was expected to inform shorn Sikh inmates of the Hair Grooming Policy, and he was not to actively and/or persistently encourage them to keep their hair and beard unshorn during their incarceration. If he failed to do so, his volunteer pass would not be renewed. [note: 31]

52 If this restriction is the basis of the Applicant's complaint, I find that it is without merit. The Applicant is a prison volunteer. He was issued a volunteer pass and has access to prison only because he has assented to the rules and conditions of being a volunteer. The rules governing the conduct of volunteers in prisons ("the Prison Rules") clearly state that: [note: 32]

> … [s]afety and security is paramount in prisons and a volunteer would be taken to task if he/she commits/facilitates the commission of any act prejudicial to good order, inmate discipline, safety and security of Prisons. …

53 In this regard, the SPS had come to the conclusion that any active or persistent encouragement by volunteer religious counsellors to shorn Sikh inmates to keep their hair and beard unshorn posed a serious threat to the discipline, security, safety and order in prisons. [note: 33] Having acknowledged and accepted the Prison Rules, [note: 34] and having knowledge of the SPS's restriction towards counselling shorn Sikh inmates on the keeping of their hair and beard, the Applicant cannot now complain that his right to propagate his religion has been restricted or that his volunteer pass was not renewed if he failed to comply with the SPS's restriction. In any event, it is the Applicant's own contention that he had never actively and/or persistently encouraged the Sikh inmates to keep their hair and beard unshorn. [note: 35]

54 I emphasise again that the Applicant is currently not seeking a review of the SPS's restriction towards religious counselling in prison, nor is he seeking a review of the SPS's decision not to renew his volunteer pass. Instead, he is seeking to quash the substance of the Hair Grooming Policy. A Quashing Order in respect of the Hair Grooming Policy would not *per se* vindicate his right to propagate his religion.

55 Finally, I am unable to see how the "[Applicant's] right to propagate his religion is inextricably tied to the Sikh inmates' right to practice their religion". [note: 36] The Applicant's right to propagate is not predicated upon the Sikh inmates being able to practice what the Applicant propagates. The latter is another matter altogether.

56 It is important to point out that two prominent members of the Sikh community have filed affidavits on behalf of the Respondent. Mr Dilbagh Singh served as the Chairman of SANA Services for 15 years before its dissolution in December 2011. He deposes that he is fully aware, and accepts, that volunteer counsellors are required to fully comply with all the rules and regulations of the SPS, including its Hair Grooming Policy for Sikh inmates. He also states that SANA Services has been satisfied with the manner in which the SPS handled matters relating to its Hair Grooming Policy for Sikh inmates and that the SPS had acted fairly and reasonably towards Sikh inmates. Mr Manmohan Singh, the present Chairman of the Sikh Welfare Council's Inmate Counselling Subcommittee, filed an affidavit in the same vein. He accepts that the Hair Grooming Policy is essential to maintaining safety, security and good order and discipline in prisons and that volunteer counsellors are encouraged to focus more on strengthening the substance of Sikh inmates' character and personality and less on strict adherence to the full requirements of the outward form required of a Sikh. Both these gentlemen also refer to the positive relationship with the SPS built up through dialogue sessions; especially the dialogue sessions with representatives of the MHA, the SPS and the SAB on 23 January and 18 June 2013 over the Hair Grooming Policy. Mr Manmohan Singh deposed that the Sikh Welfare Council has always found the SPS to be pro-active, responsive and sensitive in its handling of matters relating to the Hair Grooming Policy.

57 It is also important to point out that it was the SPS who approached SANA Services for volunteers who could provide religious services and counselling to Sikh inmates. This is certainly in keeping with the rehabilitative aim of imprisonment. Mr Goh deposes that the SPS recognises the potential of religious faith in facilitating and contributing to the rehabilitation of inmates in his affidavit. [note: 37]

Applicant's personal and close relationship with the Sikh inmates

58 Mr Ravi lastly contends that due to the Applicant's "very close and personal relationship with the Sikh inmates, … his involvement in this judicial review is rightly founded." [note: 38] With respect, I

do not see how this gives the Applicant any standing to bring the present OS. Regardless of how close his relationship was with the inmates he counselled, a violation of the inmates' rights does not confer on him standing to challenge that violation on his own, unless he can show that some right personal to him has been violated as a result.

Summary

59 I find that the Quashing Order sought does not relate to a right personal to the Applicant which is enforceable by the Applicant against the SPS. He also does not have a real interest in the matter *vis-à-vis* the Quashing Order. Accordingly, the Applicant does not have the requisite *locus standi* to seek the Quashing Order based on the Substantive Interpretation and his claim therefore is struck out under O 18 r 19 of the Rules of Court.

Delay

60 The Applicant's lack of *locus standi* is sufficient to dispose of the present application. In any event, I also find that the present OS was brought out of time.

61 A delay in bringing proceedings may constitute an abuse of process under O 18 r 19(1)(*d*) of the Rules of Court. This was held in *Chua Choon Lim Robert v MN Swami and others* [2000] 2 SLR(R) 589 at [42], citing *Ronex Properties Ltd v John Laing Construction Ltd* [1983] QB 398, albeit in the context of time-barred claims. In *Tey Tsun Hang v Attorney-General* [2015] 1 SLR 856 at [37], it was held that this applies equally to the three-month time limit in O 53 r 1(6) of the Rules of Court.

62 Order 53 r 1(6) of the Rules of Court provides that leave to apply for a quashing order to quash any judgment, order, conviction or other proceeding shall not be granted unless the application for leave is made within three months after the date of the proceeding. However, leave may still be granted if the delay is accounted for to the satisfaction of the Judge hearing the application for leave.

63 On the basis that the Applicant is seeking the Quashing Order based on the Substantive Interpretation, Mr Chong SC suggests a few alternatives for when the time bar for the Applicant to bring the present OS should start running: [note: 39]

(a) about 40 years ago, when the Hair Grooming Policy came into force because the Applicant's right to relief, if any at all, arose then;

(b) July 2000, when the Applicant began serving as a volunteer counsellor with the SPS and came to learn of the Hair Grooming Policy;

(c) mid-March 2011 or 31 December 2011, the former being when the Applicant was suspended from counselling and the latter being when the Applicant's volunteer pass lapsed; or

(d) at the very latest, 8 February 2013, when the SPS made clear to the Applicant that it would not be changing the Hair Grooming Policy and that it would not be replying the Applicant on this matter any further.

64 On the other hand, Mr Ravi submits that the time bar should start to run from 8 February 2013, when the Applicant was notified by the SPS that they would not be engaging him on the matter anymore. Even if I were to accept Mr Ravi's proposed start date, this would mean that the Applicant ought to have brought the present OS on 7 May 2013. Since the present OS was only filed on 15

January 2014, it was out of time by approximately 8 months.

65 Mr Ravi submits that, for two reasons, this delay of 8 months has been satisfactorily accounted for. First, the Applicant was exhausting all options that were available to him to resolve this issue. In support of this, Mr Ravi refers to the letter dated 25 February 2013 in which the Applicant indicated that the senior Sikh community leaders he was in communication with urged him to restrain from engaging in the matter until at least the end of March 2013. Secondly, the Applicant was ignorant of when his time bar started to run, and this is sufficient to account for the delay.

66 With respect to the first argument, I note that the letter Mr Ravi refers to was not included in the Applicant's affidavits, but rather was inserted into the Applicant's Core Bundle of Documents which Mr Ravi refers to in his written submissions and at the hearing. It is axiomatic that where an applicant seeks to adduce evidence in support of an originating summons, he must do so by affidavit (see O 28 r 3 of the Rules of Court). Thus, I am not obliged to consider this explanation of the Applicant. Nonetheless, even if I were to consider the letter dated 25 February 2013, I find that the letter alone does not satisfactorily account for the delay. The Applicant alleges he was requested to restrain himself until at least the end of March 2013. The time between the end of March 2013 and when the present OS was brought is still eight and a half months. Given the fervour in which the Applicant has been pursuing this matter and the urgent attention he alleges it demands, I find it difficult to accept that the Applicant's inaction during this period is simply due to the alleged request by the Sikh community leaders.

67 With respect to the second argument, the High Court in *Zheng Jianxing v Attorney-General* [2014] 3 SLR 1100 recently held at [40] that ignorance, in the sense that the applicant is a lay person and did not have the benefit of legal advice, is not a sufficient explanation for a delay in bringing judicial review. Mr Ravi seeks to rely on the case of *UDL Marine (Singapore) Pte Ltd v Jurong Town Corp* [2011] 3 SLR 94 ("*UDL Marine*") as support for his proposition. He quotes the judgment at [42] where Lai Siu Chiu J held that "O 53 r 1(6) of the Rules [of Court] … was sufficiently broad to admit an explanation based on ignorance." This quotation, however, must be understood in the context of the case.

68 In *UDL Marine*, the applicant's bid to lease a piece of land was rejected by the respondent on 19 May 2010. The applicant sought to bring judicial review proceedings over that decision on 2 November 2010, more than three months after it was made. The applicant's explanation was that it was only in October 2010 where it discovered that the respondent had granted leases to the applicant's neighbours despite them committing lower investment amounts, and this information was the main catalyst for bringing the judicial review proceedings. The learned judge accepted the applicant's explanation. The term "ignorance" used by the learned judge hence referred to ignorance of this information.

6 9 *UDL Marine* is wholly different from the present case. Nothing new had transpired during the period of 8 February 2013 and when the present OS was brought. In *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR(R) 568, the Court of Appeal held at [23] that the applicant had not accounted for the delay in bringing its application because "it had the interest, the knowledge and the means to have acquired the information to make its application long before it filed [its application]". Presently, I find that the Applicant had the interest, the knowledge and the means to have acquired the information to bring the present OS since 8 February 2013, when the SPS stated unequivocally that it would not be engaging the Applicant on the issue anymore. For the above reasons, I find that the Applicant has not satisfactorily accounted for his delay in bringing the present OS and that the present OS was brought out of time.

70 Mr Ravi also submits that if I were not inclined to grant the Quashing Order because of the time bar, it was always open to me to grant a prohibiting order which, as he rightly points out, has no time bar. However, due to the Applicant's lack of *locus standi*, I am not prepared to grant such a prohibiting order.

Conclusion

71 For the above reasons, I strike out the present OS under O 18 r 19(1)(*a*) of the Rules of Court because it discloses no reasonable cause of action. Alternatively, I strike it out because it is frivolous and vexatious and/or otherwise an abuse of the processes of the Court under O 18 r 19(1)(*b*) and (*d*) respectively. If I had not struck out the present OS, I would in any case, not have granted leave under O 53 of the Rules of Court.

72 I will hear the parties on costs.

[note: 1] Goh Leng Chuang Terrence's Affidavit ("GLCTA") at para 5.

[note: 2] Applicant's 1st Affidavit ("AA1") at para 4.

[note: 3] Applicant's 2nd Affidavit ("AA2") at para 71.

[note: 4] GLCTA at para 22.

[note: 5] GLCTA at para 22.

[note: 6] GLCTA at para 23.

[note: 7] GLCTA at para 24.

[note: 8] GLCTA at para 24.

[note: 9] AA2 at para 58.

[note: 10] See e.g. AA1 at pp 54, 63, 67, 74, 81, 84, 138, 101, 102, 110 & 140.

[note: 11] See e.g. AA1 at p 140.

[note: 12] AA1 at p 140.

[note: 13] GLCTA at para 33.

[note: 14] AA1 at p 64.

[note: 15] GLCTA at para 37.

[note: 16] Dilbagh Singh's Affidavit at para 6.

[note: 17] GLCTA at p 56.

[note: 18] AA1 at pp 124 & 128.

[note: 19] Applicant's Core Bundle of Documents ("ACBD") at p 73.

[note: 20] Manmohan Singh's Affidavit ("MSA") at para 11.

[note: 21] Applicant's Written Submissions ("AWS") at paras 102–116.

[note: 22] AWS at para 102.

[note: 23] AWS at para 104.

[note: 24] GLCTA at para 5.

[note: 25] AWS at para 112.

[note: 26] MSA at para 6; AA1 at p 99.

[note: 27] AWS at para 135.

[note: 28] GLCTA at para 39.

[note: 29] Ranveer Singh's Affidavit at para 9; Harvinder Singh's Affidavit at para 11; and Manmeet Singh's Affidavit at para 13.

[note: 30] GLCTA at p 36.

[note: 31] GLCTA at para 35.

[note: 32] GLCTA at p 23.

[note: 33] GLCTA at para 37.

[note: 34] GLCTA at p 31.

[note: 35] Ranveer Singh's Affidavit at para 9; Harvinder Singh's Affidavit at para 11; and Manmeet Singh's Affidavit at para 13.

[note: 36] AWS at para 159.

[note: 37] GLCTA at paras 5 and 6.

[note: 38] AWS at para 105.

[note: 39] Respondent's Written Submissions at paras 29–33.