Lim Mey Lee Susan *v* Singapore Medical Council
[2011] SGHC 131

Case Number : Originating Summons No 1252 of 2010

Decision Date : 26 May 2011

Tribunal/Court : High Court

Coram : Philip Pillai J

Counsel Name(s) : Lee Eng Beng SC, Tammy Low, Christine Huang and Elizabeth Wu (Instructed counsel) (Rajah & Tann LLP) and Bernice Loo (Allen & Gledhill LLP) for the plaintiff; Alvin Yeo SC, Melanie Ho, Lim Wei Lee, Sugene Ang and Jolyn de Koza (Wong Partnership LLP) for the defendant; Chong Chin Chin and Sharon Lim for the Attorney General's Chambers.

Parties : Lim Mey Lee Susan — Singapore Medical Council

Administrative Law

Administrative law – Judicial review – Leave Application under O 53 of the Rules of Court

26 May 2011

Philip Pillai J:

Leave Application

1 This was an application for leave under O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC") to apply for:

(a) a Quashing Order against the decision of the Singapore Medical Council ("SMC") to appoint a Disciplinary Committee ("2nd DC") to hear the disciplinary proceedings relating to the purported overcharging of fees by the Applicant; and

(b) a Prohibiting Order prohibiting the SMC from taking any steps to bring disciplinary proceedings against the Applicant on the subject of matters covered by the charges in the Notice of Inquiry by the Disciplinary Committee ("1st DC") dated 20 July 2009 regarding purported overcharging of fees.

It should be noted that the Applicant has also applied, in the same originating summons, for a Declaration that the Medical Registration (Amendment) Regulations 2010 (S 528/2010) ("Amendment Regulations") are void.

2 The Court of Appeal in *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR(R) 133 explained that the requirement of seeking the leave of court (at [23]) was:

> … intended to be a means of filtering out groundless or hopeless cases at an early stage, and its aim is to prevent a wasteful use of judicial time and to protect public bodies from harassment (whether intentional or otherwise) that might arise from a need to delay implementing decisions,

where the legality of such decisions is being challenged. …

3 Leave is not granted unless the court is satisfied that: (a) the matter complained of is susceptible to judicial review; (b) the applicant has sufficient interest in the matter; and (c) the material before the court discloses an arguable or *prima facie* case of reasonable suspicion in favour of granting the public law remedies sought by the applicant. Additionally, as these orders are discretionary remedies, the court has a discretion to refuse leave where the circumstances warrant a refusal (see *Singapore Civil Procedure 2007* (G P Selvam chief ed) (Sweet & Maxwell Asia, 2007) at para 53/8/22).

4 I noted the guidance provided by the Court of Appeal in *Pang Chen Suan v Commissioner of Labour* [2008] 3 SLR(R) 648 at [56]:

> We should like to add by way of guidance to judges who hear *ex-parte* applications for leave for judicial review that the purpose of requiring leave is to enable the court to sieve out frivolous applications. A case such as the present which clearly raises issues which require more than a cursory examination of the merits should have been heard as a substantive application. There is no reason why an *ex-parte* application such as [the applicant's] could not have been heard *inter partes* and disposed of on the merits as a substantive application. ...

Both parties agreed that I could hear the leave application as well as the substantive application in order to expedite the process and leave the parties to file any appeal to the Court of Appeal thereafter.

5 The only question before me at this leave stage was whether the material before me disclosed an arguable or *prima facie* case in favour of granting the public remedies. I noted what the Court of Appeal, in *Chan Hiang Leng Colin v Minister for Information and the Arts* [1996] 1 SLR(R) 294, had to say on the meaning and scope of the phrases 'a *prima facie* case of reasonable suspicion' and 'what might on further consideration turn out to be an arguable case' (at [22]):

> This passage appears susceptible to two slightly different interpretations. One is that the court should quickly peruse the material put before it and consider whether such material discloses "what might on further consideration turn out to be an arguable case". The other is that the applicant had to make out a "*prima facie* case of reasonable suspicion". In our view, both tests present a very low threshold and it is questionable whether there is really any difference in substance between the two interpretations.

The Court of Appeal (at [25]) then ruled that what is required is not a *prima facie* case, but a *prima facie* case of reasonable suspicion (see also *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR(R) 568).

6 That the decisions of the SMC, a creature of statute engaged in the performance of public acts and duties, are susceptible to judicial review and that the Applicant has sufficient interest in the matter were not disputed. Accordingly, it was only necessary to consider if the material before me raised a *prima facie* case of reasonable suspicion in favour of granting the public law remedies sought.

7 The Applicant averred that the decision of the SMC in appointing the 2nd DC was illegal, irrational and procedurally improper (see *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 411 *per* Lord Diplock, approved in *Chng Suan Tze v Minister of Home Affairs, Singapore* [1988] 2 SLR(R) 525). I will elaborate on each ground for judicial review before considering if the material placed before me met the low threshold of a *prima facie* case of reasonable suspicion

in favour of granting the public law remedies sought.

8 At the outset, it should be clarified that the events in relation to this application are governed by the Medical Registration Act (Cap 174, 2004 Rev Ed) (the "MRA"), excluding, for the most part, the amendments enacted by the Medical Registration (Amendment) Act (Act 1 of 2010).

Illegality

9 The Applicant averred that the SMC erred in law as it did not appoint the 2nd DC in accordance with s 41(3) of the MRA. Further, the SMC acted illegally in excess of its jurisdiction under the MRA when it considered itself bound by the terms of s 41(3) of the MRA and appointed the 2nd DC irrespective of the merits of doing so. She averred that the SMC wrongly fettered its discretion over whether to appoint another disciplinary committee ("DC") by concluding that it had no discretion over the matter.

10 The Applicant averred that under s 38(1) of the MRA, the SMC must establish a Complaints Panel from which the Chairman of the Complaints Panel may appoint the Complaints Committees ("CC") and the SMC may appoint DCs. She argued that it follows from this that there is no obligation on either the Chairman of the Complaints Panel or the SMC to establish particular CCs or DCs. They each possess discretion. In this case, she argued that the SMC upon receiving the complaint must exercise its discretion in determining whether the complaint in question is a complaint involving an allegation of professional misconduct or conduct bringing the profession into disrepute such as to bring it within s 39(1) of the MRA. Only after so determining, may the SMC refer the complaint to the Chairman of the Complaints Panel. It is further argued that where the CC orders a formal inquiry to be held, s 41(3) of the MRA required that the SMC shall immediately appoint a DC which shall hear and investigate the complaint. It is argued that there is no power for the SMC to appoint more than one DC in respect of a single order of the CC. Thus, as the CC had determined that it was necessary for a formal inquiry by a DC on or before 17 November 2008, and in light of s 41 which requires the SMC to act in respect of the order of the CC within a three month window, "it is far from clear that such necessity prevailed in September 2010 given the differential evidential basis post the 1st DC proceedings". In short, it is argued that the SMC was obliged in law to refer the complaint afresh to another CC.

Irrationality

11 The Applicant argued that this court should determine the question of whether it would be *Wednesbury* irrational for either the SMC, a fresh CC or a DC to conclude that the complaint and charges amounted to allegations of professional misconduct within s 39(1) of the MRA where there was a patient agreement on the fees and there had been no operative prescribed schedule of fees. It was argued that if the correct procedure of referring the complaint afresh to a CC had been made, such CC would have resolved pursuant to s 41(1)(a) of the MRA that no formal inquiry was necessary. This argument is being run in order to avoid such CC ordering a formal inquiry and the appointment of a fresh DC. It is argued that the court should so rule in order that the CC would be guided that it should confine its decision to either the issue of a letter of advice, the issue of a warning or a dismissal of the complaint. The CC should not proceed to order a formal inquiry by a DC, because that would in the circumstances be *Wednesbury* irrational, and would avoid yet another round of challenge before the courts.

Procedural Impropriety or Fairness / Natural Justice

12 The Applicant averred that there existed bias or a reasonable suspicion of bias such that the

SMC's decision to appoint the 2nd DC ought to be quashed.

13 On the issue of procedural impropriety or fairness / natural justice, the Applicant referred, *inter alia*, to the role and participation of the Director of Medical Services of the Ministry of Health who is, by virtue of s 18 of the MRA, the Registrar of the SMC, in (i) the SMC's decision to refer the complaint to the Chairman of the Complaints Panel, (ii) in the appointment and constitution of the 1st DC and (iii) the subsequent constituting of the 2nd DC. Given these multiple roles, and in the light of his prior role in the genesis of this complaint and charges, it is submitted that he has a conflict of interests and there is bias or a reasonable apprehension of bias on the part of the SMC.

Whether the material before me raised a *prima facie* case of reasonable suspicion in favour of the public law remedies sought

14 Based on what was presented and submitted to me for the purposes of the leave application, without making any decision relating to the substantive legal issues and certainly without making any comments relating to the merits of each party's position in the underlying professional disciplinary proceedings, I decided to grant leave for a substantive judicial review hearing as I was of the view that the low threshold of an arguable or a *prima facie* case of reasonable suspicion in favour of the public law remedies sought had been made out by the Applicant.

The Attorney-General's Chambers' disclosure

15 Counsel from the Attorney-General's Chambers' ("AGC") ("the Attorney's counsel"), who had been served with the Originating Summons and the statement in support, as prescribed by O 53, r 1(3) of the ROC, appeared before me and disclosed that the Attorney-General, Mr Sundaresh Menon, had advised and represented the Applicant as her private legal counsel in connection with the proceedings before the disciplinary committees. Since then, Mr Menon has been appointed Attorney-General, and he has, in the light of his prior role, isolated himself completely from this matter.

The Attorney-General's Chambers' application to intervene

16 The Attorney's counsel then applied for the AGC to intervene as a party to represent the Ministry of Health, Singapore ("MOHS") for the following purposes: (a) on the construction and history of reg 42 of the Amendment Regulations; (b) the construction of the MRA provisions; and (c) to put on record the circumstances why MOHS was duty bound to refer the complaint to the SMC in the light of the Applicant's submissions as to bias.

17 The Applicant had submitted that reg 42 and the Amendment Regulations were contrary to natural justice and were directed at her. I was of the view that the AGC would be able to assist the court in the legislative history and timing of reg 42 and the Amendment Regulations. However, recognising that this is a judicial review hearing based entirely on the record, whilst the MOHS may have an interest in these proceedings, I did not see any public interest arising from the construction of the MRA and its policy and purposes to support allowing the AGC to intervene in these proceedings on behalf of MOHS on the construction of the MRA. The courts regularly construe legislation and Parliament's intention without the further need for the AGC to intervene as a party to the proceedings on behalf of the relevant department or ministry in cases where that department or ministry is not a party to the court proceedings. With respect to the Applicant's submissions on bias, in this judicial review hearing on the record, the court makes no factual findings or determinations on the underlying substance or merits. The limited scope of these proceedings is whether there had been illegality in the process, *Wednesbury* irrationality or procedural impropriety / a natural justice breach.

18 Therefore, I did not fully grant the AGC's application to intervene as a party in the substantive judicial review hearing. I granted only its application to intervene in the substantive judicial review hearing in respect of the Applicant's application to declare that reg 42 and the Amendment Regulations are void.

Conclusion

19 I gave leave to the Applicant to apply for the remedies described above (see [1]). I ordered that the costs of this application were to be costs in the cause.