Zheng Jianxing *v* Attorney-General
[2014] SGHC 120

Case Number	: Originating Summons No 991 of 2013
Decision Date	: 26 June 2014
Tribunal/Court	: High Court
Coram	: Tay Yong Kwang J
Counsel Name(s)	: S.K. Kumar (S K Kumar Law Practice LLP) for the Applicant; Ong Luan Tze, Tan Eu Shan Kevin and Nicholas Wuan (Attorney-General's Chambers) for the respondent
Parties	: Zheng Jianxing — Attorney-General

Administrative Law – Judicial Review

26 June 2014

Tay Yong Kwang J:

Introduction

1 This Originating Summons ("OS 991/2013") is an application by Zheng Jianxing ("the Applicant") for leave to file an application for a Quashing Order in respect of his admission to an approved institution, Sembawang Drug Rehabilitation Centre ("DRC"), pursuant to an Order made by the Deputy Director of the Central Narcotics Bureau ("Deputy Director") on 11 May 2006 ("the 2006 DRC Order") under s 34(2)(*b*) of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) ("MDA").

2 The application was opposed by the Attorney-General ("the Respondent"). At the conclusion of the hearing on 26 May 2014, I dismissed the Applicant's application. I now set out the grounds for my decision.

Background Facts Leading to OS 991/2013

3 On 27 March 2006, the Applicant was stopped by officers from the Central Narcotics Bureau ("CNB") at Tuas Checkpoint. He was brought to the CNB office where three bottles of his urine specimen were obtained. An Instant Urine Test ("IUT") was carried out on the Applicant's urine specimen from one of the three bottles. The IUT result was positive for Amphetamine, Opiate and Benzodiazepines. [note: 1]

4 The remaining two bottles of urine specimen were sent to the Health Sciences Authority ("HSA") for analysis on 28 March 2006. The HSA subsequently issued two certificates on 5 April 2006 and 12 April 2006 under s 16 of the MDA certifying that the two bottles of urine specimen belonging to the Applicant were found to contain 36,300 ng and 98,700 ng of N, α-dimethyl-3, 4-(methylendioxy)phenethylamine per ml of urine respectively. N, α-dimethyl-3, 4-(methylendioxy)phenethylamine is a Class A controlled drug listed in the First Schedule of the MDA. [note: 2]

5 Statements were recorded from the Applicant and other witnesses in the course of

investigations. [note: 3] The Respondent claimed that the Applicant had never denied that he had consumed drugs in the course of the investigations. [note: 4] This was not disputed by the Applicant.

6 The Deputy Director (who was delegated the authority to exercise the power vested in the Director of the CNB under s 34(1) and s 34(2) of the MDA) made the 2006 DRC order on 11 May 2006. [note: 5] The Applicant was committed to Sembawang DRC from 11 May 2006 to 2 May 2007. [note: 6]

7 Several years later, on 12 June 2013, the Applicant was charged under s 8(*b*)(ii) read with s 33A(1) of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed) ("2008 MDA") for the consumption of methamphetamine ("the LT-1 charge" or Long Term 1 charge which carries enhanced punishment). One of the bases for the LT-1 charge was the Applicant's admission to Sembawang DRC pursuant to the 2006 DRC order. [note: 7]

8 The Applicant brought this application on 17 October 2013 seeking leave to file an application to quash the 2006 DRC order.

Parties' Submissions

9 The Applicant argued that the exercise of the Director's discretion under s 34(2)(*b*) of the MDA is dependent on the existence of an objective fact. He likened the present case to *Lau Seng Poh v Controller of Immigration, Singapore* [1985 – 1986] SLR(R) 180 ("*Lau Seng Poh*") where it was held that the Controller of Immigration's discretion to make an Order of Removal under s 56(2) of the Immigration Act (Cap 81, 1970 Rev Ed) was dependent on the premise that the person against whom the order was made had unlawfully entered Singapore. The Applicant therefore argued that the exercise of the Director's discretion under s 34(2)(*b*) of the MDA is dependent on the existence of accurate and reliable results of urine tests conducted under s 31(4)(*b*) of the MDA. [note: 8]

10 The Applicant contended that the difference between the concentration level of N, α-dimethyl-3, 4-(methylendioxy)phenethylamine shown in the two urine analysis certificates from the HSA dated 5 April 2006 and 12 April 2006 was so "vast" as to render the results of urine tests inaccurate and unreliable as a basis for the exercise of the Deputy Director's discretion under s 34(2)(*b*) of the MDA. [note: 9] He pointed out that the variance of test results was well above the "maximum 20% allowable difference". [note: 10] Therefore, he argued that the Deputy Director should not have relied on the results of the urine tests. Accordingly, the precedent requirement for the exercise of the Director's discretion under s 34(2)(*b*) of the MDA had not been established. It followed that the Deputy Director had no authority to make the 2006 DRC order which should now be quashed.

11 The Respondent argued that notwithstanding the higher than 20% variance, the test results were still valid and could be relied upon to establish the precedent requirement for the exercise of the Director's discretion under s 34(2)(*b*) of the MDA.

The Court's Decision

When will leave be granted to commence judicial review proceedings?

12 An applicant seeking judicial review must meet three conditions for leave to be granted (*Jeyaretnam Kenneth Andrew v Attorney-General* [2013] 1 SLR 619 at [5] and affirmed by the Court of Appeal ([2014] 1 SLR 345 at [5])):

(a) The subject matter must be susceptible to judicial review;

(b) The applicant must have sufficient interest or *locus standi* in the subject matter; and

(c) The material before the court must disclose an arguable case or *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant.

13 There was no dispute that the subject matter of this application is susceptible to judicial review and that the Applicant has sufficient interest in the matter to apply for judicial review. Accordingly, the only issue before me was whether the Applicant had made out an arguable or *prima facie* case of reasonable suspicion in favour of granting the Quashing Order sought.

Relevant statutory provisions

14 The relevant provisions of the MDA that govern the procurement and testing of urine specimens and the making of an order for the admission of a person to DRC are as follows:

Urine tests

31.—(1) Any officer of the Bureau, immigration officer or police officer not below the rank of sergeant may, if he reasonably suspects any person to have committed an offence under section 8(*b*), require that person to provide a specimen of his urine for urine tests to be conducted under this section.

…

(4) A specimen of urine provided under this section shall be divided into 3 parts and dealt with, in such manner and in accordance with such procedure as may be prescribed, as follows:

(*a*) a preliminary urine test shall be conducted on one part of the urine specimen; and

(*b*) each of the remaining 2 parts of the urine specimen shall be marked and sealed and a urine test shall be conducted on each part by a different person, being either an analyst employed by the Health Sciences Authority or any person as the Minister may, by notification in the *Gazette*, appoint for such purpose.

Supervision, treatment and rehabilitation of drug addicts

34.—(1) The Director may require any person whom he reasonably suspects to be a drug addict to be medically examined or observed by a Government medical officer or a medical practitioner.

(2) If, as a result of such medical examination or observation under subsection (1) or both the urine tests conducted under section 31(4)(*b*), it appears to the Director that it is necessary for any person examined or observed, or who supplied the urine specimen for the urine tests —

(*a*) to be subject to supervision, the Director may make a supervision order requiring that person to be subject to the supervision of an officer of the Bureau for a period not exceeding 2 years; or

(*b*) to undergo treatment or rehabilitation or both at an approved institution, the Director may make an order in writing requiring that person to be admitted for that purpose to an approved institution.

…

Precedent requirement for the exercise of the Director's discretion under s 34(2)(b) of the MDA

15 The only objective fact forming the condition precedent for the exercise of the Director's discretion under s 34(2)(*b*) of the MDA is that the Director must have either the result of the medical examination conducted on a subject under s 34(1) of the MDA or the results of both the urine tests conducted in accordance with the procedure prescribed by s 31(4)(*b*) of the MDA. The urine test results must be positive for the presence of controlled and/or specified drugs before the Director can exercise his discretion under s 34(2)(*b*) to have a person committed to an approved institution to undergo treatment and/or rehabilitation. This was recognised in *Lim Boon Keong v Public Prosecutor* [2010] 4 SLR 451 where it was stated at [30]:

> It is clear from this survey of legislative history that Parliament had, since 1977, laid down specific criteria in relation to the testing of urine samples for controlled drugs with the intention that they should operate as safeguards against error. … If I may say so, the safeguards which have been continually reinforced by Parliament are a very necessary part of the Act, given *the serious consequences which follow from positive urine tests done in accordance with s 31(4)(b)*. In this regard, it is to be pointed out that *positive tests* not only trigger the s 22 presumption of consumption; separately, they also *empower the Director of the Central Narcotics Bureau to detain the person supplying the urine specimen at an approved institution for treatment and/or rehabilitation, without first having to obtain a court order: see s 34 of the [MDA]*.
>
> [emphasis added]

16 The Applicant contended that where the variance of the results of the urine tests is higher than 20%, they must be regarded as being so inaccurate that they cannot even be relied upon as positive test results empowering the Director to exercise his discretion under s 34(2)(*b*). The Respondent argued that even when the variance is higher than 20%, the test results are still valid and can be relied upon to establish the precedent requirement for the exercise of the Director's discretion under s 34(2)(*b*) of the MDA.

Calculating Variance

17 When the urine specimen is divided into parts (as directed by s 31(4) of the MDA) and tested for the presence of drugs, there may be variations in the concentration levels of drug quantity that is found in each sample. In such circumstances, the variance of the test results refers to each test result's deviation from the mean of all the results obtained, calculated as a percentage of the mean: Forensic Toxicology Laboratory Guidelines – 2006 at para 8.3.9 (published by the Society of Forensic Toxicologists and the Toxicology Section of the American Academy of Forensic Sciences) ("Forensic Toxicology Laboratory Guidelines"); *Public Prosecutor v Mohammad Ashik bin Aris* [2011] 4 SLR 34 at [179] ("*Ashik* (HC)").

18 In the present case, both the HSA certificates were positive for the presence of N, α-dimethyl-3, 4-(methylendioxy)phenethylamine in the Applicant's urine specimen. One bottle of the Applicant's urine specimen was found to contain 36,300 ng of N, α-dimethyl-3, 4-(methylendioxy)phenethylamine per ml of urine and the other was found to contain 98,700 ng of , α-dimethyl-3, 4-(methylendioxy)phenethylamine per ml of urine. The mean is calculated by adding the two amounts of the drug and dividing the sum by 2. Adding 36,300 and 98,700, we have 135,000 ng. Dividing this amount by 2, we arrive at the mean of 67,500. The variance of each test result from the mean is

46.22%.

Was the Deputy Director entitled to rely on results of urine tests to exercise his discretion under s 34(2)(b) of the MDA even though the variance was higher than 20%?

19 The Applicant relied on the following authorities to support his contention that urine test results showing higher than 20% variance cannot even be relied upon as positive tests empowering the Director to exercise his discretion under s 34(2)(*b*):

(a) A newspaper article, "Accused let off over drug test discrepancy", *The Straits Times* (7 May 2013) at B4 ("the article");

(b) *Vadugaiah Mahendran v Public Prosecutor* [1995] 3 SLR(R) 719 ("*Vadugaiah*"); and

(c) *Public Prosecutor v Tan Yong Beng* (DAC 14343/96; unreported judgment dated 27 January 1997) ("*Tan Yong Beng*")

I will address each of them in turn.

The article

20 The article states that the prosecution of an accused person named Teo Heuw Choon was dropped and he was instead issued a stern warning because there was a significant variance in the quantity of drugs found in his two urine samples. I do not think the article assists the Applicant. It does not state that test results where the variance is higher than 20% are inaccurate and cannot be relied upon at all. In fact, in the article, a spokesperson from the Attorney-General's Chambers is quoted as having explained that "[if] narcotics are present in both [urine test results], it will mean that he or she has knowingly consumed illicit substances" and that the Prosecution chose not to proceed with the drug consumption charge against Teo Heuw Choon because it decided to "err on the side of caution". This suggests that the Prosecution's position was that it could have relied on the HSA certificates but it chose not to as a matter of caution.

21 In any event, it is not safe to draw the inference suggested by the Applicant from the Prosecution's decision to drop the consumption charge against Teo Heuw Choon because the Public Prosecutor ("PP") is entitled to and would likely have taken various factors into consideration when deciding whether to prosecute him. These include the legal guilt of the offender, his moral blameworthiness, the gravity of the harm caused to the public welfare by his criminal activity, the sufficiency of the available evidence against the offender and the personal circumstances of the offender that may merit showing a degree of compassion towards him: see *Ramalingam Ravinthran v Attorney-General* [2012] 2 SLR 49 at [63].

Vadugiah

22 *Vadugiah* involved an appeal against a drug consumption charge. The Applicant only referred to a portion of the judgment where the High Court summarised the evidence that was led in the course of the trial in the court below at [6]:

> Dr Lui, a scientific officer, gave evidence that the urine sample of the appellant he tested contained 11-nor-delta-9-tetrahydrocannabinol-9-carboxylic acid, which is a cannabinol derivative and a Class A controlled drug. The content was 730 [nanogram] per ml of urine. Ms Ong, another scientific officer, testified that the content of her sample of the appellant's urine

was 848.2 [nanogram] per ml. Her evidence was that a variation of between 10% to 20% was an inherent characteristic of the analysis for such drugs. The variation was within the acceptable limits. Dr Lui also told the court that the drug would remain in the user's system for about one to three days.

All this paragraph states is that Ms Ong, a scientific officer, had given evidence that a variance of between 10% and 20% is within "acceptable limits". It does not go further to answer the question of whether test results showing a variance higher than 20% are so inaccurate that the certificates lose their value altogether and cannot be relied upon. This case therefore also does not assist the Applicant.

Tan Yong Beng

23 *Tan Yong Beng* would appear to support the Applicant's case. In that case, the accused faced a drug consumption charge. Both tests conducted on the urine specimens that the accused provided found the presence of morphine, a controlled drug. The variance of the results of the urine tests was stated to be 39%. There was evidence that the Investigating Officer ("IO") had allowed the accused to wash the bottles that were given to him for the purpose of collecting his urine specimens. The IO then gave the accused a rag, which he obtained from a member of the lock-up staff, for him to dry the bottles.

24 In his Grounds of Decision, the District Judge summarised the evidence of Dr Lee Tong Kooi ("Dr Lee"), the Head of the Narcotics Laboratory, Department of Scientific Services in the following terms at [5]:

> … [Dr Lee] explained that 10% to 20% variation is allowed because of experimental or biological factors. When asked to explain the 39% difference in the present case he said that one possible factor would be the time of collection of the urine specimens. If they were collected at different times different concentrations can result. Another factor will be the presence of water in the bottles if they had been washed but not drained after the wash. Water can dilute the urine specimens and yield different results. He also said that if excess water from the bottles had been drained off after washing but the bottles were not dried the concentration of morphine should not differ. He testified that under the Misuse of Drugs (Urine Specimens and Urine Tests) Regulations 1990 there was provision for washing the bottles but there was no provision for wiping them dry with a cloth after they had been washed. To the question asked by Defence Counsel whether any impurity in the cloth or rag that was used to dry the bottles could contribute to the presence of morphine as well as the difference in its concentration in the specimens Dr Lee answered that if the cloth contained morphine and it was used to wipe the bottle it is possible that some of the contents of the cloth would be transferred to the bottle.

25 The District Judge proceeded to consider whether the presumption of consumption in s 22 of the Misuse of Drugs Act (Cap 185, 1985 Rev Ed) ("1985 MDA") was invoked. Section 22 of the 1985 MDA provides:

> **Presumption relating to urine test**
>
> 22. If any controlled drug is found in the urine of a person as a result of both urine tests conducted under section 31, he shall be presumed, until the contrary is proved, to have consumed that controlled drug in contravention of section 8(b).

Section 22 refers to "urine tests conducted under section 31" of the 1985 MDA. The relevant parts of

that section read as follows:

> **Urine test**
>
> 31.—(1) Any officer of the Bureau, immigration officer or police officer not below the rank of sergeant may, if he reasonably suspects any person to have committed an offence under section 8(b), require that person to provide a specimen of his urine for urine tests to be conducted under this section.
>
> …
>
> (4) A specimen of urine provided under this section shall be divided into two parts and each part shall be marked and sealed in such manner and in accordance with such procedure as may be prescribed.
>
> (5) A urine test shall be conducted by a Government chemist on one part of a specimen of urine provided under this section and, at the same time or soon thereafter, a second urine test shall be conducted on the other part of the specimen of urine by another Government chemist.

The District Judge opined at [6] that in order for the s 22 presumption to operate, the "urine specimens of the accused must have been *properly obtained and tested*" [emphasis added]. He noted that the IO had given evidence that the urine specimens were taken at the same time and that there was no evidence to suggest that the accused had diluted the specimens with water. This meant that "something had gone wrong in either the obtaining of the urine specimens by the [IO] *or their testing by the Narcotics Laboratory*" [emphasis added]. Dr Lee had also acknowledged the possibility that the bottles could have been contaminated by the use of the rag to dry them. The District Judge held at [7] that the presumption in s 22 MDA did not arise if the urine tests were unreliable. He acquitted the accused without calling for his defence.

2 6 *Tan Yong Beng* appears to suggest that "urine tests" within the meaning of s 31(5) of the 1985 MDA (which is the equivalent of s 31(4)(*b*) of the 2008 MDA and s 31(4)(*b*) of the MDA) comprise both the process whereby the urine specimens are tested by scientists at the laboratory ("urine testing process") and the process whereby the urine specimens are procured from the subject by police officers ("urine procurement process"). This means irregularities in either the urine testing process or the urine procurement processes will prevent the presumption in s 22 from being triggered.

27 The condition precedent for triggering the presumption of consumption in s 22 of the MDA is the same as the condition precedent for the exercise of the Director's discretion to have a person committed to an approved institution for rehabilitation and/or treatment pursuant to s 34(2)(*b*) of the MDA. If *Tan Yong Beng* is correct, it would follow that irregularities in either the urine testing process or the urine procurement process would prevent the Director's right to exercise his discretion under s 34(2)(*b*) of the MDA from arising.

(1) Meaning of urine test within the MDA

28 The suggestion that "urine test" covers both the urine testing process as well as the urine procurement process in *Tan Yong Beng* is inconsistent with the High Court's decision in *Ashik* (HC). In *Ashik* (HC), Chan Seng Onn J ("Chan J") considered what constitutes a "urine test" within the meaning of s 31(4)(*b*) of the MDA 2008. Having regard to the plain meaning of that section, he opined that it only included the urine testing process and not the urine procurement process. He made the following observations at [241] – [243] of his judgment:

What parts constitute the "urine test"?

241 The Defence submitted that a "test" is a means, through a "process", to ascertain a certain result or conclusion. The "process" is a crucial part of the test since any error in any part of this process would lead to wrong conclusions. Thus, every part of this process has to be accurately carried out.

242 The Defence maintained that the collection of urine is also a part of this crucial process. Since the test is to determine what drug had resulted from the metabolism and excretion in the accused's urine, appropriate precautions must be taken to ensure that what is found in the urine from the test could only have originated as a result of excretion and metabolism and not from contamination. Accordingly, the urine test must cover the process of collection of the urine, the supervision of the collection and the implementation of the quality control measures governing the collection. The Defence appeared to suggest also that the HSA should have exercised supervisory jurisdiction over the urine collection process at the Police Station, to ensure that anti-contamination measures are in place so that the urine tests performed at HSA return results that are not affected by the possibility of contamination.

243 In my view, *having regard to the plain reading of s 31(4)(b), I do not think the word "test" can be stretched to include the urine collection process at the Police Station. The urine "test" can only start after the urine specimens have been collected, marked, sealed and sent, in this case, to the HSA for testing and not before.*

[original emphasis omitted; emphasis added in italics]

29 The question of when a urine test under s 31(4)(*b*) begins was considered on appeal as well. However, the accused did not contend that the urine procurement process was part of the urine test on appeal: *Mohammad Ashik bin Aris v Public Prosecutor* [2011] 4 SLR 802 ("*Ashik* (CA)") at [16]. The Court of Appeal held that "urine test" within s 31(4)(*b*) only encompasses certain processes that take place at the HSA laboratory (*Ashik* (CA) at [16] – [19]). The plain language of s 31(4)(*b*) refers to the urine testing process that occurs at the HSA laboratory and not the urine procurement process. The Misuse of Drugs (Urine Specimens and Urine Tests) Regulation (1999 Rev Ed) ("MDR") also distinguishes between the urine procurement process (which is governed by reg 3 of the MDR and the detailed procedure stipulated in the First Schedule to the MDR) and the urine testing process (which is governed by reg 5 of the MDR). Regulation 5 states:

Urine test

5.—(1) Urine tests shall be carried out in accordance with paragraph (2).

(2) The Chief Executive of the Health Sciences Authority shall arrange for each of the 2 urine specimens to be tested by a different officer and the results of the 2 urine tests shall be sent to the enforcement officer in charge of the case.

I believe this makes clear that "urine test" within the meaning of s 31(4)(*b*) of the MDA refers to the urine testing process at the HSA laboratory and not the urine procurement process.

30 It follows that the presumption of consumption in s 22 is triggered as long the urine testing process has been conducted in accordance with the requirements in s 31(4)(*b*). This was what Chan J decided earlier in his judgment. He stated at [31] and [33] of *Ashik* (HC):

31 For example, if it were true, as was alleged by the Defence, that HSA was given urine specimens to analyse that were *pre-contaminated* with Methamphetamine, HSA cannot be said to have incorrectly or inaccurately analysed the contaminated specimens if its analysts were to sign a certificate stating that Methamphetamine (being the contaminant) was in fact found in the urine specimens. HSA has correctly and accurately analysed the contaminants in the specimens. The HSA certificate simply states what substance is found in the urine specimens (which is the "*matter(s) contained therein*" [emphasis added] as referred to in s 16) and does not state *why* that substance is found there or *how* that substance came to be in the specimens. From this analysis, *it can be seen that the pre-contamination as alleged, while relevant to rebut the presumption in s 22*, is irrelevant as far as s 16 is concerned because no rebuttable presumption can possibly arise under s 16 that the Methamphetamine found is the result of excretion from a person who had in fact smoked Methamphetamine since nothing of that sort has been stated by either ORS or BC in their respective HSA certificates.

…

3 3 *Hence, if pre-contamination is shown on a balance of probabilities to have accounted for all the Methamphetamine in the urine specimen, then that rebuts the presumption in s 22 of the commission of the offence of consumption of Methamphetamine. Therefore, even if s 31(4)(b) is satisfied and the s 22 presumption triggered, the accused must nevertheless be acquitted of the charge of consumption* even though the presumption in s 16 itself (*ie*, that Methamphetamine was in fact found in the urine specimens sent to HSA for testing) stands unrebutted. In other words, proof that *all* the Methamphetamine found in the urine specimens was caused by contamination does *not* rebut the rather "limited" presumption in s 16 that merely presumes the accuracy of the statement in the certificate that Methamphetamine is in the urine. Proof by the Defence of the existence of Methamphetamine contamination of both the urine specimens in fact supports what is presumed in s 16.

Chan J therefore took the view that any irregularities in the urine procurement process would not affect the triggering of the presumption under s 22 of the MDA. Evidence of irregularities in the urine procurement process would only be relevant in rebutting the presumption after it has been triggered. The Court of Appeal also appears to have implicitly accepted this analysis (see *Ashik* (CA) at [10] and [16] – [19]).

31 Similarly, I am of the view that the Director's right to exercise his discretion under s 34(2)(*b*) of the MDA arises as long as there are two urine tests conducted in accordance with the requirements in s 31(4)(*b*) whose results are positive for the presence of controlled and/or specified drugs. The Director is the sole judge in deciding whether to make an order for admission. This court should not adjudicate on the matter of whether the Director was correct in exercising his discretion "so long as the [D]irector acts fairly, in good faith and follows properly the procedure set out in [the MDA]": *Subramaniam s/o Marie and others v Superintendent, Selarang Park Drug Rehabilitation Centre* [1981 – 1982] SLR(R) 30 at [21].

(2) Does a variance higher than 20% impugn the propriety of the urine tests?

32 The variance of higher than 20% alone would not prevent the Deputy Director from relying on the HSA certificates when exercising his discretion under s 34(2)(b). It is crucial to note that the certificates were not invalidated by the mere fact that there was a variance of more than 20% in the test results. They still constituted evidence of the presence of the drug in question and therefore of consumption of the same by the provider of the urine specimens. It is the presence of the drug, not its quantity, which is in issue here. As noted by Dr Lui Chi Pang ("Dr Lui"), a Senior Consultant

Forensic Scientist with the HSA, (at paras 6 and 8 of his affidavit sworn on 2 April 2014 after mentioning the two possibilities for the higher than 20% variance reproduced at [33] below):

> 6 Nevertheless, this does not detract from the fact that when the results of the urine analysis are positive for a detected drug, this conclusively indicates the presence of that detected drug in the urine specimen.
>
> …
>
> 8 … Regardless of the variance between the concentration levels of the drug quantity reflected in the two HSA certificates, the fact that the results of the urine analysis reflected in both HSA certificates were positive for N, α-dimethyl-3, 4-(methylendioxy)phenethylamine indicates conclusively that N, α-dimethyl-3, 4-(methylendioxy)phenethylamine was present in both bottles of the Applicant's urine specimen.

The certificates could therefore be relied on by the Deputy Director in the exercise of his discretion whether to make an order for admission under s 34(2)(*b*).

33 The evidence provided by the Respondent suggests that the variance was more likely caused by lapses in the urine procurement process. Dr Lui explained at para 5 of his affidavit sworn on 2 April 2014:

> When there is a variance of more than 20% from the mean, two likely possibilities are:
>
> (a) one or both of the bottles containing the urine specimen was diluted by water prior to urine procurement; or
>
> (b) there was a time lapse between the procurement of the first bottle of urine and the second bottle of urine.

The Applicant did not produce any contrary scientific evidence to suggest that the variance of more than 20% could have been caused by irregularities in the urine testing process.

34 The Applicant appeared to be relying solely on the District Judge's finding in *Tan Yong Beng* that a variance which is higher than 20% could have been caused by something having "gone wrong in…the Narcotics Laboratory". Based on the District Judge's summary of Dr Lee's evidence, the possible explanations that Dr Lee gave for the variance all related to lapses in the urine procurement process. Therefore, Dr Lee's evidence is in fact consistent with Dr Lui's evidence. It should also be noted that the method of computing the 39% variance in *Tan Yong Beng* is incorrect (see my comments in *Nandakishor s/o Raj Pat Ahir v PP* [2014] SGHC 121 at [17] – [19]).

Applicant did not meet the standard of proof for granting leave

35 The Applicant bore the burden of establishing an arguable or *prima facie* case of reasonable suspicion in favour of granting the Quashing Order that he sought. The Applicant only had to meet a low threshold. However that did not mean that "the evidence and arguments placed before this court could be either skimpy or vague". Rather the "fullest evidence and strongest arguments" had to be placed before the court: *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2006] 3 SLR(R) 507 at [24]. Therefore, in order for the Applicant to succeed in his argument that the condition precedent for the exercise of the Deputy Director's discretion under s 34(2)(b) of the MDA had not been established, he had to, at the very least, produce some evidence suggesting the possibility of lapses

in the way the tests were conducted on his urine specimens. However, the Applicant did not produce any such evidence.

36 In the present case, there was no allegation that the Deputy Director had acted unfairly or in bad faith in making the 2006 DRC order. In fact, his decision would appear sensible given that the Applicant never denied in his statements to the police that he had consumed drugs. [note: 11]

Application is out of time

37 Even if the Applicant had produced some evidence suggesting possible lapses in the way the tests on his urine specimens were conducted, I would not have granted him leave to commence the judicial review proceedings because the Applicant was more than seven years late in bringing this application.

38 The present application was made pursuant to O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("Rules of Court"). Order 53 r 1(6) of the Rules of Court provides:

> Notwithstanding the foregoing, leave shall not be granted to apply for a Quashing Order to remove any judgment, order, conviction or other proceeding for the purpose of its being quashed, unless the application for leave is made within 3 months after the date of the proceeding or such other period (if any) as may be prescribed by any written law or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Judge to whom the application for leave is made; and where the proceeding is subject to appeal and a time is limited by law for the bringing of the appeal, the Judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

39 An application to quash an order must be brought within three months from the making of that order: *Teng Fuh Holdings Pte Ltd v Collector of Land Revenue* [2007] 2 SLR(R) 568 ("*Teng Fuh Holdings* (CA)") at [16] – [17]. An exception to this rule is when the applicant can account for the delay to the satisfaction of the court. In *Teng Fuh Holdings* (CA), the appellant's application for leave to commence judicial review proceedings was out of time and the Court of Appeal held that the appellant had failed to account for the delay because the appellant "had the interest, the knowledge and the means to have acquired the information to make its application long before it filed the same".

40 The Applicant certainly had knowledge of the 2006 DRC Order. He also had an interest in challenging the Deputy Director's decision immediately if he had in fact not consumed the controlled drug and had genuinely believed its presence in his urine specimens was due to contamination. However, the Applicant did not take any action until the DRC admission was used as one of the bases for his LT-1 charge on 12 June 2013. The explanation that he gave (*ie*, that he is a lay person and did not have the benefit of legal advice [note: 12]) is not sufficient to explain the years of delay.

41 Additionally, the delay in bringing the application has unduly prejudiced the Respondent. The delay is of such a significant length that granting leave would serve no real purpose. Any physical evidence (*eg*, the Applicant's urine specimens) that may throw light on the issues at hand is no longer available. Moreover, the individuals involved in the urine procurement process and urine testing process are unlikely to be able to recall the details of what transpired in the course of obtaining the urine specimens from the Applicant and subsequently testing them in the laboratory. Lau Kok Wei, the CNB officer who was in charge of procuring and sealing the urine specimens from the Applicant on 27 March 2006, states in his affidavit sworn on 7 April 2014 (at para 3) that he is unable to recall the details of what happened in this case as it took place more than 8 years ago. This is likely to be so for the others who were involved as well.

42 The Applicant argued that any prejudice to the Respondent caused by the Applicant's delay should be ignored because it was the Public Prosecutor's ("PP") decision to use the DRC admission as one of the bases on which to prefer the LT-1 charge against him which had made it necessary for him to take out the application to quash 2006 DRC Order. [note: 13] While it may be true that the PP's decision to prefer the LT-1 charge gave the Applicant the impetus to take out the present application, this did not negate the fact that the Applicant could have challenged the 2006 DRC Order within three months from the making of that order or at least within a reasonable time after his release from the DRC. Instead, he completed serving the said order without protest and then kept silent in the years that followed.

43 This application was made way out of time and the delay has not been satisfactorily accounted for.

Conclusion

44 For the reasons stated above, I dismissed the Applicant's application for leave to commence judicial review proceedings. As the Respondent did not wish to seek costs of the hearing, I made no order as to costs.

[note: 1] Respondent's Written Submissions, para 5

[note: 2] Respondent's Written Submissions, para 6

[note: 3] Respondent's Written Submissions, para 7

[note: 4] Respondent's Reply Submissions, para 25

[note: 5] Respondent's Written Submissions, para 8

[note: 6] Submission dated 25 February 2014, para 6

[note: 7] Respondent's Written Submissions, para 3

[note: 8] Submission dated 25 February 2014, para 13

[note: 9] Submission dated 25 February 2014, para 18

[note: 10] Submission dated 25 February 2014, para 15

[note: 11] Affidavit of Zheng Jianxing dated 16 October 2013 at [6]

[note: 12] Affidavit of Zheng Jianxing dated 16 October 2013 at [6]

[note: 13] Notes of arguments dated 26 May 2014