Re Raffles Town Club Pte Ltd
[2008] SGHC 46

Case Number : OS 603/2007, SUM 2147/2007

Decision Date : 01 April 2008

Tribunal/Court : High Court

Coram : Choo Han Teck J

Counsel Name(s) : David Chong Gek Sian (Principal Senior State Counsel) and Janice Wong for the Attorney-General; K Shanmugam SC, Muthu Arusu and Tay Yong Seng (Allen & Gledhill LLP) for the Applicant; Foo Hui Min (Inland Revenue Authority of Singapore) for the Comptroller of Income Tax

Parties : —

Administrative Law – Judicial review – Whether s 79(3) of Income Tax Act (Cap 134, 2008 Rev Ed) preventing taxpayer from seeking judicial review on appointment of chairman and deputy chairman of Income Tax Board of Review

Administrative Law – Natural justice – Apparent bias – Whether deputy chairman of Income Tax Board of Review ought not to sit because of his prior resignation from membership in taxpayer

1 April 2008 Judgment reserved.

Choo Han Teck J:

1 The applicant, Raffles Town Club ("the Club"), had appealed to the Income Tax Board of Review ("the Board") against an assessment by the Comptroller of Income Tax ("the Comptroller") in respect of various assessments made by the latter. The amount involved in the appeals (there are six of them) is more than $500m. The chairman of the Board, Mr Goh Joon Seng ("Mr Goh"), appointed Mr Leslie Chew ("Mr Chew"), a District Court judge, as the deputy chairman of the Board constituted to hear the Club's appeals. The solitary ground of the application was that Mr Chew's past connections with the Club could give rise to a reasonable apprehension of bias or prejudice. Two questions arose from this application. The first is strictly a question of law and the second a mixture of fact and law. The first question is whether s 79(3) of the Income Tax Act (Cap 134, 2008 Rev Ed) ("the Act") renders this application futile; and the second, if the application could be heard, whether on the facts, Mr Chew ought not to sit on the Board for the Club's appeals in question.

2 The Club was formed in 1996 and was publicised as a "premier club" with an assertion that it was to be an exclusive club. Mr Chew paid $28,000 and became a founder member of the Club. When it opened, it had 19,000 members, making it the biggest club in Singapore in terms of membership. This seemed contrary to its promoter's representation of exclusivity. Consequently, a group of about 5,000 members commenced a civil suit against the Club. The Club was found liable for not providing a premier and exclusive club to its members. Damages were eventually assessed at $3,000 for each of the plaintiffs. Mr Chew was not one of the plaintiffs but was described by the Club in this application as one of the aggrieved members in that he was one of the members who participated in the Scheme of Arrangement offered by the Club to pay the plaintiffs and other members who, like Mr Chew, joined the Club on the representation of exclusivity. Mr Chew qualified as a "scheme creditor" under this scheme. The High Court gave leave to the Club to convene a scheme creditors' meeting and this decision was upheld by the Court of Appeal on 28 September 2005. The Club filed its appeals against the Comptroller on 26 October 2005. On 30 November 2005, the scheme creditors' meeting was held and 90% of the scheme creditors voted in favour of the scheme which would result in payment of

$3,000 to each scheme creditor by way of cash instalments, vouchers, reduction of transfer fees or a combination of all these. The scheme was approved by the High Court on 6 January 2006 and Mr Chew submitted a claim for vouchers under the scheme. His claim was approved by the Club on 9 February 2006.

3 In the meantime, the chairman of the Board, Mr Goh, fixed the Club's appeals to be heard from 29 to 31 March 2006. On 28 February 2006, the Club 's counsel and the Comptroller's counsel appeared for a pre-hearing conference. At this time, the chairman had appointed Mr S Rajendran ("Mr Rajendran"), Associate Professor Stephen Phua and Associate Professor Khoo Teng Aun to hear the appeals. From that date to February 2007, several more pre-hearing conferences were conducted and new hearing dates were given. When Mr Rajendran asked to be excused from hearing the appeals (February 2007), the Chairman enquired if Mr Chew would take over. Mr Chew had resigned from the Club in October 2006; he did not transfer his membership as it appeared that the transfer fee was higher than the market value of the Club's membership at that time. According to the Club, Mr Chew then informed the parties that he had resigned his membership in the Club after he had agreed to sit in the appeals in place of Mr Rajendran as the deputy chairman.

4 Mr David Chong ("Mr Chong") submitted on behalf of the Attorney-General as "Non-Party" that s 79(3) of the Act meant naturally that "no objection can be made against "any deputy chairman" of [the Board] who is assigned to hear the appeal". Counsel argued that this regulation was intended to avoid delays in the hearing of appeals. Counsel made two further points. First, that the Comptroller himself would be precluded from objecting to any deputy chairman of the Board; and second, that this reading of s 79(3) does not mean that judicial review has been ousted "because other aspects of natural justice would have to be observed". It will be useful to set out s 79 in full:

> Right of appeal
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> **79.** — (1) Any person who, being aggrieved by an assessment made upon him, has failed to agree with the Comptroller in the manner provided in section 76 (6) may appeal to the Board by lodging with the secretary —
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> (a) within 7 days from the date of the refusal of the Comptroller to amend the assessment as desired, a written notice of appeal in duplicate; and
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> (b) within 30 days of the date on which such notice of appeal was lodged, a petition of appeal in quadruplicate containing a statement of the grounds of appeal.
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> *[53/2007]*
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> (2) A notice of appeal shall contain —
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> (a) an address for service;
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> (b) a list of the names of any members of the Board to whom the appellant objects; and
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> (c) the reasons for such objection.
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> *[49/2004]*
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> (3) An appellant shall not be entitled to object to the Chairman or any Deputy Chairman of the Board and to more than one-third of the total number of members of the Board.

[49/2004]

(4) On receipt of a notice of appeal, the secretary shall immediately forward one copy thereof to the Comptroller who may, within 3 days of the receipt of such copy, lodge with the secretary a list of any members of the Board to whom he objects and the reasons for such objection.

[7/79;49/2004;53/2007]

(5) The Comptroller shall not be entitled to object to the Chairman or any Deputy Chairman of the Board and the number of members of the Board objected to by the Comptroller shall not, when added to the number objected to by the appellant, exceed one-half of the total number of members of the Board.

[49/2004]

(6) The Chairman of the Board, or such Deputy Chairman of the Board as the Chairman may authorise, shall determine whether the reason for any objection to any member under subsection (2) or (4) is valid.

[49/2004]

(7) Where the Chairman of the Board or a Deputy Chairman of the Board determines under subsection (6) that the reason for any objection is valid, the member of the Board in respect of whom the objection was made shall not attend the hearing of the appeal of the appellant.

[49/2004]

(8) Where the Chairman of the Board or a Deputy Chairman of the Board determines under subsection (6) that the reason for any objection is not valid, the Chairman or Deputy Chairman shall reject that objection and inform the appellant or the Comptroller accordingly.

[49/2004]

(9) Where an objection has been rejected by the Chairman of the Board or a Deputy Chairman of the Board under subsection (8), the member of the Board in respect of whom that objection was made may attend the hearing of the appeal of the appellant.

[49/2004]

(10) The decision of the Chairman of the Board or a Deputy Chairman of the Board under subsection (6) shall be final.

[49/2004]

(11) The Chairman of the Board may, in his discretion and on such terms as he thinks fit, permit any person to proceed with an appeal notwithstanding that the notice of appeal or petition of appeal was not lodged within the time limited therefor by this section, if it is shown to the satisfaction of the Chairman that the person was prevented from lodging the notice or petition in due time owing to absence, sickness or other reasonable cause and that there has been no unreasonable delay on his part.

(12) Except with the consent of the Board and on such terms as the Board may determine, an appellant may not at the hearing of his appeal rely on any grounds of appeal other than the grounds stated in his petition of appeal.

Mr Chong submitted on various authorities that Parliament was entitled to exclude the application of any particular rule of natural justice. In the present case, the rule in question is the rule against apparent bias. In *Rich v Christchurch Girls' High School Board of Governors (No 1)* [1974] 1 NZLR 1 ("*Rich*") for instance, the principal of a girls' school suspended two students for misconduct. A meeting was subsequently held by the board of governors of the school to discuss the action against the girls concerned. The principal was present at that meeting. Section 198 of the New Zealand Education Act 1964 expressly permitted the principal to be present at such meetings. The section provided three situations in which the principal would not be permitted to attend. These situations involved instances in which natural justice would apply, for example, the first exception precluded the principal from attending if the deliberation concerned a complaint against the principal. There is no question that the rules of natural justice provide a source of protection against unfair adjudication. The present problem arose from the tension between an interpretation of s 79(3) that excludes the application of judicial review and an interpretation that does not. What should the words "An appellant shall not be entitled to object to the Chairman or any Deputy Chairman of the Board and to more than one-third of the total number of members of the Board" be understood to mean? The straightforward meaning is that the appellant (in this case, the Club) cannot object to Mr Chew sitting as the deputy chairman of the Board on its appeals. The question is, does it also follow that the appellant cannot seek judicial review because by doing so the appellant would in fact be objecting to Mr Chew, precisely what the words in s 79(3) say it cannot do?

5 If s 79(3) is interpreted the way Mr Chong suggested, the question remains whether the chairman or deputy chairman having been appointed, can be removed for misconduct? I am of the view that the words "shall not be entitled to object" cannot be extended to mean that those two appointees become immune to judicial review. Without judicial review, a strict reading of those words would mean that once appointed, it is not only the taxpayer who would have no right to object to or remove the chairman or deputy chairman however justified or imperative the reason for removing them might be, the executive and the court would also be precluded from doing so. The appointment of the chairman or deputy chairman becomes, by that fact alone, unimpeachable. That could not have been the intent of the legislature. Section 79 (3), in my view, serves a very clear and practical purpose. It prevents arbitrary and spurious objections to those two key posts. If judicial review is to be ousted, clear words to that effect must be used, as was used in the case of *Rich* ([4] *supra*). Section 79(3) does not, therefore, in my view, preclude an application to the court for judicial review. This process has its safeguards against spurious applications because leave to apply must first be made. If leave were granted, the applicant has to persuade the court that his application has merit, and if it failed to do so, the application would be dismissed and the applicant would be penalized in costs. The words in question in s 79(3) are clear and their meanings are also clear at one level, namely if one takes the word "object" in its broadest sense. What I am required to do here is not to interpret just the meaning of the words in the section concerned, but also to answer the question of law, which is, whether the words in this section had clearly ousted judicial review? Mr Chong partially answered this by submitting that there are other aspects of judicial review that would still apply, and therefore, judicial review has not been ousted. I am of the view that the importance of judicial review requires the ouster of any element or aspect of it, or any part or branch of it, must be specifically stated. In the absence of clear legislative language, the word "object" in s 79(3) must be given the narrower meaning in this case.

6 I turn now to the second issue, namely, whether there are sufficient grounds to hold that Mr Chew ought not to sit as the deputy chairman in the appeals in question. Mr K Shanmugam SC, counsel for the Club, declared that having known Mr Chew as counsel, he has the highest respect for Mr Chew's integrity and professionalism, but rightly pointed out that that was not the point here or else this application would not have been considered at all. In this case, the appearance of bias (a term which, for convenience, I employ to include prejudice) and not actual bias was the basis for the application. An allegation of bias is ever so easily made for appearance is anything to anyone. A person's bias and his preferences are inseparable. With perhaps the exception of an impulsive act, every act moves by the unseen force of bias. For a judicial or quasi-judicial officer to recuse himself on the allegation of bias, the (appearance of) bias that would disqualify him is a personal connection that links him directly or closely to the subject matter of the case that it may appear to reasonable people that his judgment might not be impartial. Loose or tenuous connections may not be a sufficient ground to infer the possibility of bias. The facts of every such case are likely to differ. Every case, therefore, involves a clearly distinct factual finding. Hence, the fact that a board member was also a member of the Club alone may be regarded as a tenuous connection, and so too, therefore, his resignation from the Club.

7 The question here was whether Mr Chew's resignation in the circumstances was significant. There can be many reasons why Mr Chew decided to resign from his membership of the Club. He might have found it no longer suitable to his needs or he might have wished to join another club without adding to the number of clubs in which he already had membership. All that cannot possibly affect his appointment to sit on the Board. But given the history of the Club, disappointment and annoyance with the Club were also possible reasons why Mr Chew resigned his membership. Whether they were in fact the reasons were not the issues in question before me. The question was whether given these circumstances members of the Club and the Club might have cause to wonder if Mr Chew might harbour some prejudice against the Club. A person acting in a judicial or quasi-judicial function should not only be impartial and seen to be impartial, but he should also not assume that his integrity or impartiality will never be questioned, or take umbrage whenever questions concerning them arise. I should explain this a little more. A fair, honest, and impartial judge or member of a quasi-judicial body may be indignant that anyone should think him otherwise. But sometimes reasonable suspicion may arise from a mix of circumstances and unfamiliarity with the reputation of the judge or member of a quasi-judicial body. Under such circumstances, the judge or member of a quasi-judicial body concerned should recuse himself from the case should there be a genuine concern regarding his connection with the case or a party to the case. There is little else he can do. For instance, if he were to swear an affidavit to explain the circumstances and give a full account of the circumstances such as to show that he really has no grievance that might affect his judgment, he might still not fully remove all trace of odour from the air of impartiality. Indeed, the more he seeks to justify his position, the stronger the smell may grow. Hence, a judge or quasi-judicial officer in these circumstances will likely recuse himself and pre-empt any cause for concern. I think that had the matter been put to Mr Chew as I had done here, he would probably have taken that route.

8 The Club applied for an order that the Board be restrained from appointing Mr Chew, but that appointment had already been made. Hence the application strictly should have been for an order that the appointment be set aside. However, it appeared that Mr Chew's membership and subsequent resignation with the Club were not known to the chairman of the Board when he appointed Mr Chew, and Mr Chew himself might not have appreciated then that that fact might give rise to uneasiness for the Club. There was, therefore, no breach of natural justice in either the appointment or the acceptance of the appointment to warrant an order for prohibition. Nonetheless, in view of the grounds that led to this finding, I will only make the following declaratory orders, namely, first, that s 79(3) does not prevent a party from seeking judicial review in the manner of this application, and, second, that by reason of his resignation from the Club, Mr Chew had a connection with the Club that

could give rise to questions concerning his impartiality as the deputy chairman of the Board hearing the Club's appeals.