Yap Keng Ho and others *v* Public Prosecutor
[2011] SGHC 39

Case Number : Magistrate's Appeals Nos 101-108 and 110-111 of 2010

Decision Date : 22 February 2011

Tribunal/Court : High Court

Coram : Woo Bih Li J

Counsel Name(s) : The appellants in person; Isaac Tan, John Lu Zhuoren and Thiagesh Sukumaran (Attorney-General's Chambers) for the respondent.

Parties : Yap Keng Ho and others — Public Prosecutor

Criminal Law

Constitutional Law

22 February 2011 Judgment reserved.

Woo Bih Li J:

Introduction

1 The appellants, namely Yap Keng Ho ("Yap"), Chee Soon Juan ("Dr Chee"), Chee Siok Chin ("CSC"), John Tan Liang Joo ("Tan"), Ghandi s/o Karuppiah Ambalam ("Ghandi"), Seelan s/o Palay ("Seelan"), Chong Kai Xiong ("Chong"), Muhammad Shafi'ie Syahmi Bin Sariman ("Shafi'ie"), Go Hui Leng ("Go") and Mohamed Jufrie Bin Mahmood ("Jufrie") had been convicted by a District Judge of two charges under s 5(4)(b) of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap 184, 1997 Rev Ed) ("MOA"). The first charge against each appellant ("the Assembly Charge") read as follows:

> You, [name of appellant] are charged that you on the 15th day of March 2008, at about 2.31 pm on the drive way leading to the main entrance of the Parliament House, North Bridge Road, together with [the other nine Appellants and nine other accused persons], did participate in an assembly without a permit in a public place within the area described in the Schedule to the Miscellaneous Offences (Public Order and Nuisance)(Prohibition of Assemblies and Processions – Parliament and Supreme Court) Order ["MO(PAPPSC)O"], where you ought reasonably to have known that the assembly was held without the prior permission of the Deputy Commissioner of Police in writing in contravention of paragraph 2 of the [MO(PAPPSC)O] and you have thereby committed an offence punishable under Section 5(4)(b) of the [MOA].

The second charge against each appellant ("the Procession Charge") read as follows:

> You, [name of appellant] are charged that you on the 15th day of March 2008, at about 2.31 pm on the drive way leading to the main entrance of the Parliament House, North Bridge Road, together with [the nine other appellants and eight other accused persons], did participate in a procession without a permit in a public place within the area described in the Schedule to the [MO(PAPPSC)O], where you ought reasonably to have known that the procession was held without the prior permission of the Deputy Commissioner of Police in writing in contravention of

paragraph 2 of the [MO(PAPPSC)O] and you have thereby committed an offence punishable under Section 5(4)(b) of the [MOA].

Yap, Dr Chee, CSC and Ghandi had similar antecedents and were each fined $1,000 (in default one week's imprisonment) on each charge, amounting to a total fine of $2,000 (in default two weeks' imprisonment) being imposed on each of them. Tan, Seelan, Chong, Shafi'ie, Go and Jufrie were each fined $900 (in default six days' imprisonment) on each charge, amounting to a total fine of $1,800 (in default 12 days' imprisonment) being imposed on each of them.

2 With the exception of Dr Chee and CSC, both of whom withdrew their appeals against conviction and sentence for the Assembly Charge only, as well as Tan, who withdrew his appeal against conviction and sentence for the Procession Charge only, all the other appellants appealed against their conviction and sentence for both charges.

The law

3 Section 5 of the MOA provided as follows:

> **Assemblies and processions**
>
> 5. —
>
> ...
>
> (2) The Minister may by order prohibit or restrict, subject to such conditions as may be specified in the order, the holding of any assembly or procession in any public road, public place or place of public resort specified in the order.
>
> ...
>
> (4) Any person who —
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> ...
>
> (b) participates in any assembly or procession in any public road, public place or place of public resort where he knows or ought reasonably to have known that the assembly or procession is held in contravention of an order under subsection (2) ... shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000.

4 Paragraph 2 of the MO(PAPPSC)O stated:

> **Prohibition on holding assembly and procession**
>
> 2. No person shall hold any assembly or procession (other than a funeral procession in respect of which a permit has been granted under the Miscellaneous Offences (Public Order and Nuisance) (Assemblies and Processions) Rules (R 1)) consisting of 2 or more persons —
>
> (a) in any public road, public place or place of public resort within the area described in the Schedule; or
>
> (b) in or near any public road forming the boundary of that area,

unless he has obtained the prior permission of the Deputy Commissioner of Police in writing.

5 The Schedule to the version of the MO(PAPPSC)O in force on 15 March 2008 described the prohibited area referred to in paragraph 2 of the MO(PAPPSC)O as such:

> **DESCRIPTION OF AREA**
>
> Commencing from a point at the junction of North Bridge Road with Coleman Street, thence along Coleman Street to its junction with St. Andrew's Road, thence along St. Andrew's Road to its junction with Stamford Road, thence along Stamford Road to its junction with Connaught Drive, thence along Connaught Drive to its junction with *Parliament Lane*, thence along *Parliament Lane* to the *left* bank of the Singapore River, proceeding along the left bank to the junction of North Bridge Road, thence along North Bridge Road to the point of commencement at the junction of North Bridge Road with Coleman Street. [emphasis added]

From 14 November 2008, the Schedule was amended to read as follows:

> **DESCRIPTION OF AREA**
>
> Commencing from a point at the junction of North Bridge Road with Coleman Street, thence along Coleman Street to its junction with St. Andrew's Road, thence along St. Andrew's Road to its junction with Stamford Road, thence along Stamford Road to its junction with Connaught Drive, thence along Connaught Drive to its junction with *Old Parliament Lane*, thence along *Old Parliament Lane* to the *east* bank of the Singapore River, proceeding along the east bank to the junction of North Bridge Road, thence along North Bridge Road to the point of commencement at the junction of North Bridge Road with Coleman Street. [emphasis added]

The facts

6 On 28 December 2007, Dr Chee made an application on behalf of the Singapore Democratic Party ("SDP") for a police permit to hold an assembly, described as a "protest rally", on 15 March 2008 from 2.00pm to 6.00pm at the Parliament House. In a letter dated 25 January 2008, the police informed Dr Chee that the application was unsuccessful. Nevertheless, the SDP announced on its official website that it was going ahead with the planned rally. The rally coincided with World Consumer Rights Day, the theme of the rally was "Tak boleh tahan!", and the attire for the event was "red top". The public was invited to join the rally to "demonstrate your anger in a peaceful manner" against "the exploitative price hikes of the PAP Government": see *PP v Chee Soon Juan and others* [2010] SGDC 259 ("the District Judge's decision"). Apparently, no application was made for a permit to hold a procession.

7 At about 2.00pm on 15 March 2008, a group of 10–20 people gathered at the driveway in front of Parliament House. The ensuing events were recorded on videotape [note: 1] by Senior Station Inspector Amiruddin Bin Mohamed (PW4). The videotape was screened at the trial and the facts which it revealed, as well as the testimony of Dr Chee at trial, are summarised in the District Judge's decision at [43] and [46]–[48] as follows:

> 43 ... (a) at the start of the protest rally, Ghandi, [Chia Ti Lik ("Chia")], CSC and [Dr Chee] took turns to address members of the public and the media on the purpose of the assembly; (b) the group displayed common household items, posed for photographs and chanted slogans; (c) when ... placards were delivered in a car by Yong, some of the accused persons went forward immediately to collect the placards; (d) five of the accused persons then stood in a row to pose

for photographs with the placards.

...

46 ... it was not disputed that the protest rally included a procession from Parliament House to Orchard Road and back. This was mentioned explicitly by [Dr Chee] at the start of the protest rally [note: 2] ... The undisputed evidence shows that [Dr Chee] had told those present at the start of the protest rally that the group was waiting for the placards to arrive before embarking on the procession. ...

47 In his evidence in court, [Dr Chee] admitted that the procession was intended to spread the message about the "exploitative price hikes" to bystanders and other members of the public along the route. Along the way, the group would be distributing flyers similar to the flyers seized by the police. [note: 3]

48 Although the accused persons were leaving the driveway of Parliament House when [DSP William Goh Huat Beng ("DSP Goh")] approached them [at about 2.31pm to inform them that they were committing the offence of assembly in a gazetted place without a permit and would be arrested if they did not disperse immediately], the objective facts ... show that they did not intend to abandon their planned procession. There were elements in their actions which clearly suggest that they were engaging in a procession in continuation of the protest rally when they set off from the driveway of Parliament House. These include the following:

(a) The accused persons continued to move as a collective entity, moving substantially as a body of persons in succession by a common route, with those leading the group slowing down at times for those at the back to catch up;

(b) [Tan], Seelan, [Jeffrey George], Chong and [Muhammad Jufri Bin Mohd Salim] continued to hold up the placards as they were walking away from the driveway of Parliament House; [note: 4]

(c) [Lang Chin Kah Carl Coca] tried to hand a flyer to the driver of a silver taxi at the junction of High Street and North Bridge Road; [note: 5]

(d) Yap warned the group that there were "PAP mata in white T-shirts" in the vicinity; [note: 6]

(e) [Dr Chee] and [Tan], who were leading the group, had their arms linked together as they continued to walk forward (after the third warning by DSP Goh) with John still holding up the placard; [note: 7]

(f) When DSP Goh ordered the arrest of the members of the procession [at about 2.37pm], [Dr Chee] told the group, "Everybody, linkup." The participants complied immediately without any need to clarify with [Dr Chee] what he meant; [note: 8]

(g) Yap, who had linked arms with Chong, shouted "Let's march!"; [note: 9]

(h) Chia told DSP Goh, "I believe you can give us some leeway, because this is a peaceful protest"; [note: 10] and

(i) Despite DSP Goh's warning to surrender the placards, the members of the procession held on tightly to the placards and even resisted arrest. One of them, Seelan, had to be forcibly carried away by the arrest team to the police van. [note: 11]

The appellants did not challenge the above summary by the District Judge.

The issues

8 The following main issues were raised in the course of arguments at the hearing on 4 October 2010:

(a) Whether the District Judge had erred in disallowing the accused persons' questions at the trial concerning the constitutionality of the police's rejection of the SDP's application for a permit to hold the protest rally.

(b) Whether the MO(PAPPSC)O was erroneous and invalid.

(c) Whether the District Judge had erred in determining the facts with regard to Yap's conviction.

9 Go had earlier written in to inform the Court that she was unable to attend the hearing of the present appeals and wished to withdraw her appeal on a separate date. When she attended Court on 7 October 2010, however, Go applied to proceed with her appeal and adopt the submissions of the other appellants which were made at the hearing on 4 October 2010. The DPP raised no objection to this and indicated that the respondent wished to adopt its submissions made in respect of the 4 October 2010 hearing.

Decision

The appeals against conviction

(a) Whether the District Judge ought to have allowed the appellants to question the prosecution witnesses on the constitutionality of the rejection of the SDP's application for a permit to hold the protest rally

10 Dr Chee argued that the District Judge had erred in preventing the appellants from questioning the prosecution witnesses on the reasons for the rejection of the SDP's application for a permit to hold the protest rally. Dr Chee alleged that the decision not to grant the SDP a permit for the protest rally was unconstitutional. The constitutional law arguments which Dr Chee claimed may have afforded the appellants a defence to the charges had they been allowed to pursue this line of questioning revolved around Arts 12 and 14 of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution").

11 Dr Chee pointed to a statement by the Deputy Prime Minister and Minister for Home Affairs, Mr Wong Kan Seng, in Parliament in 2008, *Singapore Parliamentary Debates, Official Report* (28 February 2008) vol 84 at col 1154 which indicated that the police would not grant permits for outdoor political activities. According to Dr Chee, the accused persons had sought, at the trial, to

establish with the prosecution witnesses if, at the material time when the SDP's application to hold the protest rally was being considered, the police had a set of guidelines that was in line with this statement made in Parliament. Dr Chee alleged that if the police had indeed applied a blanket policy to reject applications for permits to hold outdoor political activities, this would have contravened Art 14 of the Constitution. Dr Chee acknowledged that Art 14 of the Constitution does not confer every citizen with an absolute right to the freedom of assembly. However, he claimed that Art 14 only provides for the restriction of a citizen's right to the freedom of assembly under certain conditions, and does not allow the imposition of an outright ban on all outdoor political activities and street demonstrations.

12 Dr Chee had also wanted to question the licensing officer as to whether the Consumer Association of Singapore ("CASE") had been given a permit to hold an event in the vicinity of Parliament House on 16 March 2008 (just one day later), and if so, why CASE had been given a permit whereas the SDP's application for a permit had been rejected. The CASE event involved a campaign to stop the marketing of unhealthy food to children and was held to commemorate World Consumer Rights Day. Dr Chee argued that the police had, in breach of Art 12 of the Constitution, discriminated against the SDP and allowed CASE to hold its event in the same area as the SDP's protest rally even though the nature of the CASE event and the SDP's protest rally were similar. Dr Chee referred to a statement made in Parliament by Assoc Prof Ho Peng Kee (for the Deputy Prime Minister and Minister for Home Affairs), *Singapore Parliamentary Debates, Official Report* (27 August 2007) vol 83 at col 1338 that:

> ... the reason why political parties are not allowed to organise outdoor activities has been explained in Parliament before.
>
> ...
>
> The East Coast Park is a recreational park for Singaporeans and their families. It is not meant to be used by a political party to promote its cause. ... As I have explained, Police takes a more cautious approach towards outdoor activities organised by political parties. In line with this approach, Police rejected Workers' Party's application.

Dr Chee argued that it is clear from this statement that the executive has placed a sweeping ban on outdoor political activities. Dr Chee submitted that the imposition of such a ban was harsh, arbitrary, disproportionate and inconsistent with the rule of law. Yap added that Assoc Prof Ho had also stated that the policy not to allow political parties to organise outdoor activities applied to "all political parties". He argued that this blanket ban discriminated against political parties and was unlawful. I note that the appellants' arguments were directed at the legality of the policy against outdoor political activities and *not* the validity of the requirement, in the MO(PAPPSC)O, that a permit be granted before one can participate in an assembly and/or a procession to which the MO(PAPPSC)O applied.

13 The District Judge, citing the reasoning of the High Court in *Jeyaretnam Joshua Benjamin v PP and another appeal* [1989] 2 SLR(R) 419 ("*Jeyaretnam v PP*"), had disallowed the appellants' line of questions concerning the issues discussed in [11] and [12] above on the ground that the appellants' contentions were incapable of forming any defence at law to the charges which they faced (see [62] – [66] of the District Judge's decision). In summary, the District Judge reasoned that if the licensing officer's decision was invalid, this would not alter the fact that the appellants had no permit when they held the protest rally and would still be convicted of participating in an assembly and a procession without a valid permit. Any question pertaining to the reason for the rejection of their application for the permit was completely irrelevant to the criminal proceedings. I agree with the

District Judge and adopt his reasoning.

14 It was not the appellants' case that the MOA or the MO(PAPPSC)O was in itself unconstitutional. Instead, the appellants were attacking the manner in which the discretion conferred by paragraph 2 of the MO(PAPPSC)O on the police to grant permits for assemblies and processions had been exercised. The basic proposition in judicial review is that the court will not question the merits of an exercise of discretion and cannot substitute its own view as to how the discretion should be exercised with that actually taken. As Chan Sek Keong J pointed out in *Jeyaretnam v PP* at [26], a case concerning the conviction of two appellants under s 18(1)(a) of the then Public Entertainments Act (Cap 257, 1985 Rev Ed) for providing public entertainment without a licence:

> 26 The soundness of the first appellant's submission may be tested by assuming that the licensing officer wrongfully refused the licence. What were his legal rights? The court would have quashed the decision if the appellants had commenced proceedings for judicial review. The licensing officer would then have to consider the application afresh. If he refused, the court would have the power to direct him to do so. But, the court would not have been able to grant a licence to the first appellant or direct the licensing officer to do so, as the power of court is exercisable by way of supervisory jurisdiction in these matters. Therefore, the invalidity of the decision of the licensing officer would result in nothing more than the appellants' *status quo ante* the application. *They would still have had no licence when they provided the public entertainment*. [emphasis added]

Even if the rejection of the SDP's application for a permit to hold the protest rally and the policy prohibiting outdoor political activities were unconstitutional in the present case, neither the District Court nor this court would be able to grant the appellants a permit. All that the District Court and this court could/can do would be to direct the licensing officer to consider the application afresh. The District Judge was therefore correct to refuse the appellants' line of questions at trial relating to the constitutionality of the rejection of the SDP's application for a permit to hold the rally since the constitutionality or otherwise of this decision was irrelevant to the issue of whether the appellants ought to have been convicted for having participated in an assembly and a procession without a valid permit.

15 Dr Chee sought to distinguish the decision in *Jeyaretnam v PP* on the ground that there had been no statement made in Parliament, as at the date of the offence in *Jeyaretnam v PP*, that no permits would be given for outdoor political demonstrations, unlike in the present case (as discussed at [11] – [12] above). However, as pointed out at [14] above, the existence of a policy against outdoor political activities is irrelevant to the issue of whether the appellants have breached the MOA by contravening the MO(PAPPSC)O in the present case. The reasoning in *Jeyaretnam v PP* applies regardless of whether an exercise of discretion not to grant a permit or a policy not to grant permits to a particular class of people is being challenged. Dr Chee further claimed that a judicial review action would be pointless because the Deputy Commissioner of Police would still arrive at the same decision (due to the policy against outdoor political activities) even if he were ordered to consider the SDP's application for a permit afresh. In this regard, it should be noted that the function of judicial review is for the court to ensure that decision-makers exercising public power act in accordance with law, fairly and reasonably. Should the court, in a judicial review action, find that the application of the policy against outdoor political activities is unlawful, the Deputy Commissioner of Police would have to reconsider the SDP's application of the permit without applying such a policy.

16 Dr Chee referred me to the case of *Chan Hiang Leng Colin & Ors v PP* [1994] 3 SLR(R) 209 ("*Colin v PP*"). This case was cited at [66] of the District Judge's decision in the present case, where the District Judge commented as follows:

66 If the accused persons were aggrieved by the decision of SI Yeo in rejecting their application for a permit, they were at liberty to apply for a judicial review of that decision before the High Court. As held in [*Colin v PP*] , there is no provision in the Subordinate Courts Act, Chapter 321 which is equivalent to paragraph 1 of the First Schedule to the Supreme Court of Judicature Act, Chapter 322, which conferred upon the High Court the power of judicial review.

17 In *Colin v PP*, the High Court referred to the observations of Woolf LJ in *Bugg v Director of Public Prosecutions* [1993] 2 WLR 628 ("*Bugg*") and stated that whilst a criminal court had jurisdiction to consider a defence alleging that a subsidiary legislation was substantively invalid (*ie*, on its face invalid because it was *ultra vires* its enabling act or it was patently unreasonable), it could not consider whether a subsidiary legislation was procedurally invalid (*ie*, there had been non-compliance with a procedural requirement with regard to the making of that subsidiary legislation). Yong Pung How CJ noted that Woolf LJ had offered two explanations for the distinction between substantive invalidity and procedural invalidity. First, a criminal court could not inquire into allegations of procedural invalidity because it was not part of its jurisdiction to do so and a criminal court was not properly equipped to carry out the necessary investigation. Second, the evidence with respect to a particular allegation of procedural invalidity was highly significant and may result in differing outcomes in proceedings whereas there was no need for evidence to establish substantive invalidity. In the circumstances, Yong CJ stated that subsidiary legislation which was alleged to be procedurally invalid must be set aside by the appropriate court with the jurisdiction to do so (*ie*, the High Court) and should not be challenged in subordinate court proceedings.

18 As Dr Chee pointed out, the House of Lords in *Boddington v British Transport Police* [1998] 2 WLR 639 ("*Boddington*") has overruled *Bugg*. Dr Chee also referred to the English Divisional Court decision in *R (on the application of Gillan) v Commissioner of Police of the Metropolis* [2003] Po LR 397 for the proposition that courts have the power to examine the way in which public servants use discretionary powers given to them under a statutory regime. In *Boddington*, the House of Lords held that, subject to statutory limitation of a defendant's right to call the legality of an administrative act into question, it was open to a defendant to challenge the validity of a byelaw or an administrative act undertaken pursuant to it in any court in which he was being tried and that the defendant committed no crime if he had infringed an invalid byelaw. Lord Slynn commented in *Boddington* that "an application for judicial review is not a straitjacket which must be put on before rights can be asserted". The reasons given by their Lordships for their decision were, *inter alia*, that:

(a) the distinction between orders which were substantively invalid and orders which were procedurally invalid was not a practical distinction which was capable of being maintained in a principled way across the broad range of administrative action. The difficulty of drawing this distinction would undermine the constitutional principle that a clear distinction had to be made between lawful and unlawful acts;

(b) the pragmatic case in favour of a rule that magistrates may not decide issues of procedural validity was questionable;

(c) the judgment in *Bugg* in effect denied the right of defensive challenge in a criminal case and was contrary to established judicial review principles laid down by decisions of high authority; and

(d) it was not a realistic or satisfactory riposte that defendants could always go by way of a judicial review. The possibility of judicial review might not compensate a defendant for his loss of the right to defend himself by a defensive challenge to a byelaw in cases where the invalidity of the byelaw might afford him with a defence to the charge as the defendant may either:

(i) be out of time with regards to an application for judicial review proceedings before he became aware of the existence of the byelaw;

(ii) lack the resources to defend his interests in two courts;

(iii) be refused leave to apply for judicial review;

(iv) have his scope for demanding examination of witnesses in the Divisional Court restricted at a substantive hearing; and

(v) be denied a remedy on a discretionary basis.

19 The reasoning in *Boddington* represents a notable development in English law but has not yet been adopted by the courts in Singapore. The issue of whether, and in what circumstances, allegations of procedural invalidity may be raised as a defence in criminal proceedings deserves detailed consideration and I prefer to express no view at this stage on this point since, as discussed at [13] – [15] above, the issue has no bearing on the appellants' convictions and sentences in the present case. The law relating to offences under s 5(4)(b) of the MOA read with paragraph 2 of the MO(PAPPSC)O was not that the appellants could participate in the assembly and procession without a permit subject to such restrictions as may be imposed or directions as may be given by the police. If this had indeed been the case, then if such restrictions or directions were wrongly imposed, that might have afforded a valid defence to the appellants subject to the consideration of the issue of whether the judicial review claim could have been brought as a defence in criminal proceedings before the District Judge. To the contrary, paragraph 2 of the MO(PAPPSC)O required the appellants to obtain the prior permission of the Deputy Commissioner of Police in writing before they could hold the assembly and procession which were the subject of the charges in the present appeal. Section 5(4)(b) of the MOA made any contravention of the MO(PAPPSC)O an offence. Since the appellants did not have a permit when they participated in the assembly and procession, they were rightly convicted and sentenced under s 5(4)(b) of the MOA regardless of the constitutionality of the rejection of their application for a permit to hold the protest rally.

20 Yap has sought to rely on the dicta of Woolf LJ in *Bugg* that:

> [w]here the law is substantively invalid ... [n]o citizen is required to comply with a law which is bad on its face. If the citizen is satisfied that that is the situation, he is entitled to ignore the law.

Since the appellants have not argued that the MOA or the MO(PAPPSC)O is invalid, this dicta cannot apply in the present case and I express no view on it.

21 At the hearing on 4 October 2010, Jufrie submitted that the arrest of the appellants was unconstitutional. According to Jufrie, the appellants were peacefully exercising their constitutional rights to freedom of speech and assembly and ought not to have been penalised. Apart from his statement that it was totally illogical that one was not allowed to gather peacefully no matter where, Jufrie did not elaborate further on what he meant by his submission that the Government should not be allowed to pass laws that contravene the Constitution. Section 5(4)(b) of the MOA and paragraph 2 of the MO(PAPPSC)O do not absolutely prohibit peaceful gatherings. Rather, the legislation require persons who wish to partake in assemblies and processions within the purview of the legislation to first obtain the permission of the Deputy Commissioner of Police in writing. Ultimately, Jufrie's argument boiled down to an attack on the rejection of the SDP's application for a permit to hold the protest rally. As discussed above (at [13]–[15] and [19]), the merits of such an argument would not

affect the appellants' conviction and sentence in the present case. In any event, I note that Rajah JA has observed, in *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 at [41]–[56] that Art 14 of the Constitution allows Parliament an extremely wide discretionary power and remit to impose, by law, restrictions on the rights of freedom of speech and expression and assembly if it considers such restrictions necessary or expedient in the interest of the security of Singapore or public order. Rajah JA held that there can be no challenge as such to the constitutionality of the MOA since Parliament has considered and has intended through the MOA to impose restrictions on the freedom of speech and/or assembly that are "necessary or expedient" to ensure public order in certain situations.

(b) Whether the MO(PAPPSC)O was erroneous and invalid

22 The Schedule to the version of the MO(PAPPSC)O in force on 15 March 2008 is set out at [5] above.

23 Yap submitted that there were three mistakes in this description of area in the Schedule. First, the Schedule referred to Old Parliament Lane as Parliament Lane. Second, the Schedule referred to the left bank of the Singapore River whereas the Schedule in the 2008 revised version of the MO(PAPPSC)O referred to the east bank of the Singapore River. Third, Yap claimed that Old Parliament Lane did not connect with the east bank of the Singapore River such that there was an unaccounted gap in the area described in the Schedule.

24 With regard to the first mistake raised by Yap, it was not disputed that on 15 March 2008, there was no street by the name of "Parliament Lane". "Parliament Lane" had been renamed as "Old Parliament Lane" on 28 July 1999 for historical reasons without any physical change to the street in question such that "Parliament Lane" and "Old Parliament Lane" referred to the exact same physical street. However, "Old Parliament Lane" was erroneously referred to as "Parliament Lane" when the MO(PAPPSC)O was first enacted in 2002 and in its 2005 revised version. Amendments made to the MO(PAPPSC)O in 2008 (but after 15 March 2008) finally corrected this error (see [5] above). I agree with the District Judge's decision that it is evident that the reference to "Parliament Lane" in the description of area was intended to be a reference to the physical street which had been renamed "Old Parliament Lane" and that a purposive approach to the interpretation of the description of area in the Schedule of the MO(PAPPSC)O should be applied such that the driveway leading to the main entrance of the Parliament House was clearly within the area described in the Schedule to the Order.

25 Whilst the reference to the "left bank" of the Singapore River in the original version of the MO(PAPPSC)O and the amended version of the MO(PAPPSC)O which was in force on 15 March 2008 was subsequently changed to the "east bank" of the Singapore River when the MO(PAPPSC)O was amended in 2008, it is clear that the Schedule of all versions of the MO(PAPPSC)O referred to the same point of the Singapore River, regardless of whether this was labelled as the "left bank" or the "east bank" of the Singapore River.

26 Yap's third complaint was that a portion of Old Parliament Lane had been abolished such that a portion of Old Parliament Lane that used to connect to the bank of the Singapore River had been converted into a promenade for pedestrians. The DPP, on the other hand, argued that the portion of Old Parliament Lane that had been converted into a promenade was a pedestrianised road. The DPP, relying on the testimony at trial of Mdm Ng Soh Hoon (PW7) further argued that the names of public roads do not necessarily apply only to vehicular roads – they can also apply to pedestrianised roads. [note: 12] Mdm Ng had assisted the Secretary of the Advisory Committee on Street Building and Estate Names ("ACOSBEN") from March 1996 and continued to assist the Secretary of the Street and Building Names Board when it replaced the ACOSBEN on 1 January 2003. Paragraph 2 of the

MO(PAPPSC)O provided as follows:

> 2. No person shall hold any assembly or procession ... consisting of 2 or more persons –
>
> (a) in any ... public place ... *within the area* described in the Schedule; or
>
> (b) ...
>
> unless he has obtained the prior permission of the Deputy Commissioner of Police in writing. [emphasis added]

Regardless of whether there was a gap between Old Parliament Lane and the bank of the Singapore River in the area described in the Schedule, I am of the opinion that the driveway leading to the main entrance of Parliament House clearly fell *within* the area described in the Schedule.

27 At the hearing on 4 October 2010, Yap claimed that there were no signs at Parliament House to warn the public that assemblies and processions were not allowed within the gazetted area if no permits had been granted for such assemblies and processions. However, he did not make any submission on the District Judge's findings (at [68]–[72] of the District Judge's decision) that there was overwhelming evidence to indicate that each and every one of the accused persons had actual knowledge that the protest rally was being held without the requisite permit. The District Judge held that it was undisputed that Dr Chee had actual knowledge that the SDP did not have the requisite permit to hold the protest rally and that there was incontrovertible evidence (*eg*, Yap had admitted that he did not expect the SDP to be granted a permit for the protest rally and Yap had professed his intention to film the "unreasonable enforcement" of the police) which suggested, at the very least, that Yap ought reasonably to have known that the assembly and procession were held without a permit. The District Judge also listed (at [70] of his decision) the evidence which suggested that the rest of the appellants knew that the assembly and procession were held without the requisite permit: (a) the SDP had publicised extensively their correspondence with the police and Minister for Home Affairs with regard to the rejection of their appeal for a permit to hold the protest rally on their official website; (b) the SDP had publicised the fact that despite the rejection the SDP would go ahead with the planned rally; (c) none of the accused persons expressed any surprise or alarm at Dr Chee's statements at the protest rally that the police had allowed the CASE event to proceed but not the SDP's protest rally; and (d) the accused persons did not show any surprise or alarm when DSP Goh approached the group. Even if there were no warning signs within the gazetted area, the evidence shows that the appellants were aware of the need for a permit for the protest rally as well as the fact that such a permit had not been granted.

(c) Whether the District Judge had erred in determining the facts as regards Yap's conviction

28 According to Yap, he had attended the event on 15 March 2008 as a citizen journalist with the rest of the media and had walked about on his own, taking videos for his blog. Yap claimed that he was not part of the assembly and procession as he did not wear the same red t-shirt emblazoned with the words "TAK BOLEH TAHAN" as the other accused persons. He also said that he did not distribute flyers, give a speech, participate in the group photograph taking or yell slogans at the rally. Yap further claimed that he had not participated in the procession but had taken a different route and had only rejoined the group when he noticed DSP Goh approaching Dr Chee and the rest of the group. Whilst Yap acknowledged that he had yelled "Let's march", he claimed to have done so only after the procession had already been stopped by the police. These arguments were raised before the District Judge at the trial (see [32] – [40] of the District Judge's decision).

29 In *Ng Chye Huay v PP* [2006] 1 SLR(R) 157, Yong CJ noted that it is not necessary for every member of an assembly to be engaged in the exact same activities as long as they share the common object which identifies them as part of the group. I agree with the District Judge that, on the totality of the evidence, Yap shared an *esprit de corps* with the participants of the protest rally and was acting in concert with the group during the assembly and the procession (see [51]–[52] of the District Judge's decision). While Yap sought to distance himself from the others in his arguments, he did not address the findings made by the District Judge.

Whether there had been a miscarriage of justice caused by the joint trial of all accused persons

30 Although not argued before me, the issue of whether there had been a miscarriage of justice caused by the joint trial of all accused persons was raised in Yap's petition of appeal. Section 176 of the Criminal Procedure Code (Cap 68, 1985 Rev Ed) allows a joint trial where more persons than one are accused of the same offence or of different offences committed in the same transaction. In this case, 19 of the accused persons faced a first charge for participating in the same assembly on 15 March 2008 and 18 of these 19 accused persons also faced a second charge for participating in the same procession without a permit. The assembly and procession were alleged to have been committed on the same occasion. The joint trial of 18 of the accused persons (one accused person pleaded guilty on the first day of trial) was therefore appropriate.

The appeals against sentence

31 The prescribed punishment for the offences of assembly and procession is a fine not exceeding $1,000 each. As noted at [1] above, the appellants with prior antecedents were ordered to pay the maximum fine (in default, one week's imprisonment) per charge whereas the appellants without prior antecedents were ordered to pay a fine of $900 (in default, six days' imprisonment) per charge. Although the appeals were against both convictions and sentence, the appellants did not make any submission on sentence. Taking into consideration the fact that the appellants had deliberately planned to break the law and the absence of any regret by any of them for breaking the law, I am of the view that the sentence imposed on each appellant by the District Judge is not manifestly excessive.

Conclusion

32 The appeals against conviction and sentence are dismissed.

[note: 1] Exhibit P45.

[note: 2] Exhibit P45 at 14:24:00.

[note: 3] Notes of Evidence ("NE") at pp 1910–1912.

[note: 4] Exhibit P45 at 14:31:46.

[note: 5] Exhibit P45 at 14:34:18.

[note: 6] Exhibit P45 at 14:34:36.

[note: 7] Exhibit P45 at 14:35:50.

[note: 8] Exhibit P45 at 14:38:11.

[note: 9] Exhibit P45 at 14:39:01.

[note: 10] Exhibit P45 at 14:39:08.

[note: 11] Exhibit P45 at 14:49:36.

[note: 12] Cross-examination of PW7 on 15 December 2009, NE p 1582.