Chee Siok Chin v Attorney-General
[2006] SGHC 112

Case Number : OS 1017/2006, SUM 2419/2006

Decision Date : 22 June 2006

Tribunal/Court : High Court

Coram : Andrew Phang Boon Leong JA

Counsel Name(s) : M Ravi (M Ravi & Co) for the plaintiff; Jeffrey Chan Wah Teck and Leong Kwang Ian (Attorney-General's Chambers) for the defendant

Parties : Chee Siok Chin — Attorney-General

Elections – Petition – Procedure and practice – Plaintiff applying for results of general election to be declared void – Plaintiff failing to pay required security for costs within required time – Whether timelines and requirements under r 13 Parliamentary Elections (Application for Avoidance of Election) Rules mandatory – Section 90, Fourth Schedule r 13 Parliamentary Elections Act (Cap 218, 2001 Rev Ed)

22 June 2006 *Judgment reserved.*

Andrew Phang Boon Leong JA:

Introduction

1 The plaintiff had applied (pursuant to the Parliamentary Elections Act (Cap 218, 2001 Rev Ed) ("the Act"), specifically, s 90 thereof) for the following orders on 24 May 2006 (by way of Originating Summons No 1017 of 2006, naming the Attorney-General as the defendant):

(a) that the results of the General Elections 2006 be declared null and void;

(b) that the ban on podcasting during the period of the General Elections 2006 be declared unconstitutional; and

(c) such other relief and/or remedies as the court deems fit.

2 The plaintiff was, in fact, a member of the team from the Singapore Democratic Party which unsuccessfully contested the Group Representation Constituency of Sembawang during the General Elections held on 6 May 2006, although it is not altogether clear in what capacity she made her application pursuant to the Act (*cf* generally s 93 of the Act). In any event, this is not an issue in the present proceedings.

3 In the present proceedings, the defendant applied, pursuant to r 13(4) of the Parliamentary Elections (Application for Avoidance of Election) Rules (which are located at the Fourth Schedule to the Act and are hereafter referred to as the "PER"), for the following orders:

(1) That the Plaintiff's application under the Parliamentary Elections Act [referred to at [1] above] be dismissed.

(2) That the Plaintiff pay the Defendant's costs of this application forthwith.

4 The basis for the application in the present proceedings (which was filed on 31 May 2006) is that the plaintiff had failed to comply with r 13 of the PER – in particular, r 13(1). The rule itself reads as follows:

Security by plaintiff for cost, etc., of application under section 90

13.—(1) At the time of the filing of the application under section 90, or within 3 days afterwards, security for the payment of all costs, charges and expenses that may become payable by the plaintiff shall be given on behalf of the plaintiff.

(2) The security shall be to an amount of not less than $5,000. If the number of charges in any application exceeds 3, additional security to an amount of $2,500 shall be given in respect of each charge in excess of the first 3.

(3) The security required by this rule shall be given by a deposit of money.

(4) If security required by this rule to be provided is not given by the plaintiff, no further proceedings shall be had on the application under section 90, and the defendant may apply by summons to the Judge for an order directing the dismissal of the application under section 90 and for the payment of the defendant's costs.

(5) The costs of hearing and deciding the defendant's application under paragraph (4) shall be paid as ordered by the Judge, and in default of such order shall form part of the general costs of the application under section 90.

5 The central thrust of the defendant's application in the present proceedings is simple: The plaintiff had clearly failed to comply with the requirements of r 13, in particular r 13(1). She had in fact sought to remedy this by attempting to furnish security for costs after the timelines stipulated in r 13(1). However, so the defendant's argument went, the timelines were strict, indeed mandatory. Hence, it (the defendant) was entitled (pursuant to the express language of r 13(4)) to take out the present application for an order directing the dismissal of the plaintiff's application under s 90 of the Act and for the payment of its costs.

6 I now proceed to deal with the various issues raised by the parties.

Chambers or open court?

7 Counsel for the plaintiff, Mr M Ravi, argued strenuously that these proceedings ought not to be heard in chambers, but, rather, in open court. The main plank of his argument was that it was in the public interest that such proceedings be heard in open court. He also sought to argue for a more *general* rule to this effect. I have no hesitation in rejecting this last-mentioned argument. There can be no universal or all-encompassing rule to this effect. The facts and context of each set of proceedings will differ from case to case and the procedure in this regard cannot therefore be writ in stone. Indeed, the presumption in proceedings such as those in the present case is for a hearing in chambers unless special reasons can be shown.

8 Nevertheless, in view of the close linkage between this particular application and the plaintiff's substantive application (the latter of which is in fact scheduled to be heard in open court), I ruled that there was a sufficient public interest element to justify holding the hearing of these proceedings in open court. But this, as I have mentioned, sets no precedent for the future. Nor, as I have mentioned, is it wise to even attempt to set such a precedent.

The scope of the present application

9 The present application was, as I have already mentioned, premised on an alleged contravention of r 13. However, when the defendant submitted its skeletal submissions, it referred to a whole host of other alleged incurable non-compliances with the PER in so far as the present proceedings were concerned. In summary, these included the following arguments:

(a) that the plaintiff, in citing the Attorney-General as the defendant, had in fact named the wrong defendant (and citing the Malaysian High Court decisions of *Ramely bin Mansor v Suruhanjaya Pilihanraya Malaysia* [2000] 2 MLJ 500 and *Dr Lee Chong Meng v Abdul Rahman bin Hj Abdullah, Returning Officer* [2000] 6 MLJ 98);

(b) that there had been a failure on the part of the plaintiff to state (in her affidavit supporting her application under s 90 of the Act) her right to apply within s 93 of the Act – a requirement set out under r 5(1)(*a*) of the PER;

(c) that there had been a failure on the part of the plaintiff to state (in her affidavit supporting her application under s 90 of the Act) the holding and result of the election – a requirement set out under r 5(1)(*b*) of the PER;

(d) that there had been a failure on the part of the plaintiff to state (in her affidavit) the grounds upon which she was relying to sustain the relief sought (which grounds are set in ss 90(*a*) to 90(*e*) of the Act) – a requirement set out under r 5(1)(*b*) (and citing the Malaysian High Court decision of *Norbert Choong Kai Chong v Mohamed Idris bin Haji Ibrahim* [1980] 1 MLJ 316 ("the *Norbert Choong* case"));

(e) that there had been a failure on the part of the plaintiff to state (in her affidavit) the relief sought – a requirement apparently raised by virtue of r 5(4) of the PER.

10 It is immediately apparent that the arguments set out above – in particular the first – are substantive arguments in their own right (this is accentuated by the fact that the relevant case law was also invoked, as noted above). The problem, as I perceived it, was that it would have been unfair to have allowed the defendant to rely upon them in the present proceedings without more. Let me elaborate.

11 In the first instance, the present application was made pursuant to r 13(4) of the PER. It was a specific application focusing on non-compliance with a particular provision requiring that the plaintiff provide security for costs. In order, therefore, for the defendant to rely on the *other* arguments just referred to, it was incumbent on it to apply for an amendment of the present application to include these arguments. Counsel for the defendant, Mr Jeffrey Chan Wah Teck, immediately pointed to the potential pitfall in adopting such an approach. There was, he argued, a risk of mixing the applications inasmuch as an application under r 13(4) would (if successful) result in a dismissal of the plaintiff's substantive application, whereas if the other grounds were successfully established, this would result in the plaintiff's substantive application being rendered a nullity for non-compliance.

12 I did point out, however, that yet another alternative approach which avoided the pitfall just mentioned would be for the defendant to take out a separate application focusing on the other arguments from non-compliance. Both the present as well as the new application could then be heard together.

13 I also pause to note that Mr Ravi was not averse to having the other grounds being heard by this court as well, provided that he was given a short adjournment.

14 In the event, Mr Chan decided on a third option – which was to proceed with the present application pursuant to r 13(4), leaving argument with regard to the other grounds for another occasion, if necessary. However, he did point out that it was incumbent on him to raise these other grounds in the present proceedings, if for no other reason than to emphasise that the defendant was not, in any way, waiving its rights to raising these grounds in a separate application in the future.

15 I turn now, briefly, to the second reason why it would have been unfair to have allowed the defendant to rely on the other arguments without more. As the present application was made pursuant to r 13(4), it was not surprising that both the plaintiff as well as Mr Ravi expressed surprise on viewing the arguments in the defendant's skeletal submissions. In the circumstances, they were obviously unprepared to meet these other arguments. One natural solution would have been to have granted them additional time for preparation, provided the potential procedural difficulties could be ironed out. As it turned out (see the preceding paragraph), this course of action is now unnecessary. Suffice it to state that after some discussion, we were back where the original application in fact indicated we should be – focusing on the sole issue centring on the effect of the plaintiff's non-compliance with r 13.

16 I turn now to the respective arguments for the parties in so far as this particular issue is concerned, commencing with the arguments by counsel for the defendant.

The defendant's arguments

Introduction

17 Mr Chan presented a number of arguments on behalf of the defendant, who was of course the applicant in the present proceedings. These arguments fell, in my view, within two broad categories, which I shall adopt for ease of analysis. The first may be classified as "Precedent" – in other words, the case law that (in Mr Chan's view) supported the defendant's application.

18 The second broad category may, in my view, be classified under the rubric of "General principle". The arguments within this category, whilst constituting substantive arguments in their own right, can also be considered simultaneously as constituting the underlying rationale or spirit behind the case for the defendant itself. In this regard, I hasten to point out that many of the arguments in this particular category overlap with and indeed constitute the underlying rationale or spirit behind many of the decisions considered in the first category. So there ought to be no rigid dichotomy as such. The categories I adopt are, as I have mentioned, primarily for the purposes of convenience as well as efficiency of analysis more than anything else.

19 Mr Chan pointed out, at a very preliminary stage of his arguments, that as the plaintiff's application was, *inter alia*, for a declaration to declare the results of an election as being null and void, it could only have been brought under s 90 of the Act. In the circumstances, therefore, if the defendant's present application was successful, and r 13 was found to be a mandatory requirement for a s 90 application**,** the plaintiff's application in Originating Summons No 1017 of 2006 would fail in its entirety. Mr Ravi did not, correctly in my view, disagree with this interpretation.

20 More importantly, Mr Chan also pointed out that the role of an Election Judge was rather more limited than that of a judge exercising his jurisdiction to adjudicate civil disputes. He referred, in particular, to the Malaysian High Court decision of *Dr Shafie bin Abu Bakar v Pegawai Pengurus Pilihan Raya N 26 Bangi (No 2)* [2005] 2 MLJ 149 ("the *Dr Shafie* case"), where VT Singham J observed thus (at [23]):

> The jurisdiction of the election judge to hear election petition is a creature of statute and judges are especially bound to keep themselves strictly within the letter of the Acts, and to abstain from any attempt to strain the law. For this reason the statutory requirements of election law must be strictly observed.

21 Indeed, this is only one of the latest cases which emphasises the points embodied in the above-mentioned quotation, and whose genesis goes back much further (see, for example, *per* Raja Azlan Shah J (as His Excellency then was) in *Tengku Korish v Mohamed bin Jusoh* [1970] 1 MLJ 6).

22 In the Indian Supreme Court decision of *Jyoti Basu v Debi Ghosal* AIR 1982 SC 983, Chinnappa Reddy J observed (in a similar vein) thus (at [8]):

> A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a Common Law Right. *It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at Common Law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to Common Law and Equity must remain strangers to Election Law unless statutorily embodied. A Court has no right to resort to them on considerations of alleged policy because policy in such matters, as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, Court is put in a straight jacket.* [emphasis added]

23 The general approach that ought to be adopted in election proceedings as embodied in the above quotations is, indeed, firmly etched in the legal landscape, and I will bear it in mind for the purpose of the present proceedings.

Precedent

24 Not surprisingly, perhaps, Mr Chan's focus in this particular regard was on the relevant *Malaysian* decisions – not least because virtually every relevant decision from this jurisdiction supported (either to a greater or lesser extent) his case. He was, in fact, at pains to point out from the outset of arguments that the relevant Malaysian elections laws not only had the same paternity as, but were also almost identical to, the relevant Singapore election laws. In the circumstances, so he argued, Malaysian decisions were persuasive and ought to be followed.

25 The *central precedent* relied upon by Mr Chan was the Malaysian High Court decision of *Chong Thain Vun v Watson* [1968] 1 MLJ 65("the *Chong Thain Vun* case"), where Lee Hun Hoe J (as he then was) held, in no uncertain terms, that a failure to comply with the Malaysian equivalent of our r 13 would result in the dismissal of an application to declare an election void as this rule was a mandatory one. In that case, motions had been taken out by the respondents to set aside three election petitions. One common ground relied upon by the respondents *vis-à-vis* all three petitions was that the notice of the filing of the petitions had not been served on them within the timeframe stipulated by the equivalent of r 16 of our PER. Another common ground relied upon by the respondents *vis-à-vis* two of the petitions was that the petitioner in each case had failed to comply with the equivalent of r 13 of our PER. This is of course the holding which Mr Chan was primarily concerned with. In so far as the former ground was concerned, Lee J, following the Malaysian Privy Council decision of *Devan Nair v Yong Kuan Teik* [1967] 1 MLJ 261; [1967] 2 AC 31 ("the *Devan Nair*

case"), held that the equivalent of our r 16 was mandatory – a proposition that was, not surprisingly, in these circumstances and in the face of the authority of the Board, conceded by counsel for the petitioners, Dato' David Marshall. Notwithstanding counsel for the petitioners' argument that his clients had done all that was reasonably possible to comply with the rule, the learned judge held (at 71) that "[s]trict compliance with the rules is necessary as [the rule] is mandatory" and that therefore the respondents were entitled to succeed on the motion on this ground. Two observations may be appropriate at this juncture.

26 The first is that the *Devan Nair* case has been applied in many decisions since, notably, in the Singapore High Court decision of *Re Telok Blangah Election* [1980–1981] SLR 509. Indeed, the holding in the *Devan Nair* case with regard to the legal status of the specific rule in question (r 16 of our PER) has stood the test of time and cannot now be seriously controverted.

27 Secondly, the specific holding just referred to is not only consistent with the language and spirit of the particular rule itself but also illustrates the important point that if a rule in the PER is held to be *mandatory*, then there is no real room for manoeuvre or flexibility, even if the sympathy of all concerned is with the party who had failed to comply with the rule itself. This is an important general point of principle, to which I shall therefore have occasion to return later in this judgment.

28 Returning to the *Chong Thain Vun* case, in so far as the latter ground was concerned (centring on the non-compliance with the equivalent of r 13 of our PER), Lee J held that, having regard to his holding with regard to the first ground, "it would be unnecessary to go into the question of insufficiency of security" (at 73). Nevertheless, the learned judge proceeded immediately to observe thus (*ibid*):

> However as the matter is of some importance and out of respect to the arguments so ably put by counsel I think I should deal with it.

29 I hasten to add that it was fortunate (particularly in the context of the subject matter of the present proceedings and for courts in future cases generally) that the learned judge did in fact delve into this particular issue in greater detail. He observed thus (*ibid*):

> Non compliance with this rule may result in the dismissal of the petition depending upon the respondent's action. The object of this rule is clearly to see that a petitioner provides adequate security for costs. *In my opinion rule 12* [the equivalent of r 13 of our PER] *is clearly mandatory.* [emphasis added]

30 Lee J's observations on this point gave rise, in my view, to the further question of why adequate security for costs was itself stipulated to be necessary under r 13. When posed with this particular question, Mr Chan responded by stating that there were two *specific* purposes underlying *r 13* itself. The first was to ensure that the plaintiff's action was not frivolous or vexatious. The second was to protect the defendant (in the event that he or she was successful) in so far as costs of defending the application under s 90 was concerned, since the action had been initiated by the other party in the first instance. But, as I shall point out below, there is an even more important reason – which goes to the very core of a *defendant's* rights in the context of an application to declare an election void (see [75] below).

31 In the *Chong Thain Vun* case, Lee J also observed (at 74) that the equivalent of our r 13(4):

> … gives the court power to make an order of dismissal. It was said that the power is discretionary. As I read the rule it seems that the power arises only on the application of a

respondent *and the court must then exercise that power*. *It is up to a respondent whether to apply for such an order or not.* [emphasis added]

32 The learned judge then proceeded to deal with an important point that also arises in the present proceedings – the position of the plaintiff or applicant under s 90 in the context of his or her position as a layperson. In this regard, Lee J set out the following very helpful observations (*ibid*), as follows:

> *Peremptory language is used by the rules and it behoves a petitioner to study the rules carefully so that every provision is complied with.* For example, a petitioner brings ten charges against a respondent and pays $500 as security when he should pay $2,250 in all. Should the court allow such a petitioner to elect three charges out of the ten on a motion for dismissal? I think not. If a petitioner knows that he would be allowed to make an election he would every time present a petition by trumping up as many charges as possible and later electing three on a motion for dismissal. Also it would throw open the door to abusing the rule which clearly provides that "no further proceedings shall be had on the petition." The court must therefore make it clear that there shall be no question of election. It is not a question of dismissing those charges a petitioner chooses to discard but the dismissal of the petition that rule 12(3) speaks of. The early determination of such matter can only be achieved if it is final. *If there is a breach of the provision of this rule, it makes no difference whether the petitioner has misinterpreted or misunderstood it he must take the risk. The respondent is entitled to take advantage of a petitioner's faults. The provisions of this rule must be strictly complied with.*
>
> *It was said that not all petitioners are rich and may require more time to find the requisite security. The remedy for this lies elsewhere. The court has no power to grant exemption from payment of security or to enlarge time.*
>
> [emphasis added]

33 The *Chong Thain Vun* case was (in so far as the specific issue of security for costs is concerned) followed in the Malaysian High Court decision of the *Norbert Choong* case ([9] *supra*) and, most recently, in the (also) Malaysian High Court decision of *Charlee Soh Cheng Hiong v Pengerusi Pilihan Raya Negeri Sarawak* [2002] 261 MLJU 1 ("the *Charlee Soh* case").

34 In so far as the *Charlee Soh* case is concerned, the following observations by Clement Skinner J are particularly apposite and merit quotation in full (and which ought, in the main, to be read together with the observations of Lee J in the *Chong Thain Vun* case quoted at [32] above):

> Mr. Soh's explanation for failing to [furnish the requisite security for costs] is that on his enquiry at the registry as to how much he had to pay to file his petition, he was informed that the filing fees was RM80.00 which he duly paid. Mr. Soh's explanation implies that he is not to be blamed for not having given security for costs as the registry did not inform him about this requirement of law. It is a matter of some regret that the assistance rendered to Mr. Soh by the court registry in informing him of the amount of filing fees payable should now be used by him as an excuse for not having given security for costs. I regret that I must reject any attempt by him to blame the registry. *In the first place, it is incumbent on Mr. Soh as a person who wishes to avail himself to the right to challenge the result of an election to acquaint himself with the relevant provisions of law which gives him that right to do so because that right being a 'special kind of right', must be subject to the 'limitations imposed' by the statute that creates it. In the second place, I agree with learned Senior Federal Counsel that ignorance of the law is no excuse for noncompliance therewith. In the third place, it is not the function of the court to advise any party on how to go*

about bringing a petition and thereafter to prosecute it. The reason the court does not do so is that it cannot be seen to descend into the arena and take part in the litigation between the parties. In the fourth place, Mr. Soh seems to be confused between paying filing fees for lodging a document in court and giving security for the payment of all costs, charges, and expenses that may become payable by him, which are two different things. *As far as the giving of security for costs on the presentation of an election petition is concerned, rule 12(1) of the Election Petition Rules are clear and the words used in the rule are that such security for costs 'shall be given'.* And rule 12(2) goes on to provide that the security 'shall be given' by a deposit of money of not less than RM2,000.00 and rule 12(3) goes on to state that if security for costs is not given by the petitioner, no further proceedings 'shall be had on the petition' and the respondent may apply to the judge for a dismissal of the petition.

I have deliberately referred to the provisions of rule 12 in some detail to show that it uses peremptory language and also stipulates the consequences for non-compliance therewith – dismissal of the petition on application by the respondent, which all the respondents have applied for now. In Chong Thain Vun v Watson & Anor. (1968) 1 MLJ 65, this is what Lee Hun Hoe J. (as he then was) had to say about rule 12 (at pg. 74):

'Peremptory language is used by the rules and it behoves a petitioner to study the rules carefully so that every provision is complied with […] If there is a breach of the provision of this rule, it makes no difference whether the petitioner has misinterpreted or misunderstood it he must take the risk. The respondent is entitled to take advantage of a petitioner's faults. The provisions of this rule must be strictly complied with.'

I fully agree with what was stated above by his Lordship Lee Hun Hoe J. *Mr. Soh has so very clearly not complied with the mandatory requirements of rule 12* and his request to treat the filing fees of RM80.00 as part payment of the security for costs cannot be entertained as the Election Petition Rules, 1954 do not allow for security for costs to be given in such a manner. *The petition must be dismissed on this ground alone.*

[emphasis added]

35 Mr Chan also relied on certain other Malaysian decisions, albeit for more *general* (and, as it turned out, no less important) points which centred on the public interest as embodied in the policy background to our present electoral laws. One such decision – and the focus of Mr Chan's argument in this particular regard – has already been referred to above. This was the *Devan Nair* case. In particular, Mr Chan relied on the following observations by Lord Upjohn, delivering the judgment of the Board, as follows ([25] *supra* at 264–265):

The circumstances which weigh heavily with their Lordships in favour of a mandatory construction are:

(1) *The need in an election petition for a speedy determination of the controversy*, a matter already emphasised by their Lordships. The interest of the public in election petitions was rightly stressed in the Federal Court, but *it is very much in the interest of the public that the matter should be speedily determined*.

(2) In contrast, for example, to the Rules of the Supreme Court in this country, the rules vest no general power in the election judge to extend the time on the ground of irregularity. Their Lordships think this omission was a matter of deliberate design. In cases where it was intended that the judge should have power to amend proceedings or postpone

the inquiry it was expressly conferred upon him, see for example rules 7, 8 and 19.

(3) If there is more than one election petition relating to the same election or return, they are to be dealt with as one (rule 6). It would be manifestly inconvenient and against the public interest if by late service in one case and subsequent delay in those proceedings the hearing of other petitions could be held up.

(4) Respondents may deliver recriminatory cases (rule 8) and speedy service, in order that the respondent may know the case against him, is obviously desirable so that he may collect his evidence as soon as possible.

[emphasis added]

36 Whilst Mr Chan's emphasis was on the relevant Malaysian decisions, he also cited a number of English decisions. In this regard, whilst citing two decisions, Mr Chan focused, in the main, on the first. This is perhaps not surprising in view of the fact that the second, the English Divisional Court decision of *Absalom v Gillett* [1995] 1 WLR 128, was in fact reaffirmed in the first, that of the English Court of Appeal in *Ahmed v Kennedy* [2003] 1 WLR 1820. I note, in passing, however, that *Absalom v Gillett* dealt, *inter alia*, with the effects of non-compliance with s 136(3) of the Representation of the People Act 1983 (c 2) (UK) ("the UK Act"), which provided as follows:

> Within the prescribed time after giving the security the petitioner shall serve on the respondent in the prescribed manner — (*a*) a notice of the presentation of the petition and of the amount and nature of the security, and (*b*) a copy of the petition.

In the event, the court held that the above requirement was mandatory and not merely directory and that non-compliance with it therefore rendered the petition incompetent. Laws J, who delivered the judgment of the court, observed (at 138) that "a petition is not competent for the purpose of obtaining relief whose effect would be to unseat an elected candidate unless the candidate in question has been made a respondent". Whilst this court is not presently concerned with whether the plaintiff breached a mandatory provision by failing to join the successful electoral candidates as defendants, Laws J's comments (albeit made in a specific context) underscore the more general point I have emphasised above (at [30]) and will return to below (at [75]), to the effect that an application under s 90 to declare an election void does impact, in the final analysis, on a successful election candidate's rights, which should therefore also be given effect to as far as is possible.

37 In *Ahmed v Kennedy*, there had also been a failure to comply with s 136(3) of the UK Act (reproduced above at [36]), read with r 6 of the Election Petition Rules 1960 (SI 1960/543) (UK) ("1960 Rules"), which reads as follows:

> 6(1) Within five days after giving the security the petitioner shall serve on the respondent within the meaning of … section 128(2) of the Act and on the Director of Public Prosecutions a notice of the presentation of the petition and of the nature and amount of the security which he has given, together with a copy of the petition and of the affidavit accompanying any recognisance.
>
> (2) Service shall be effected in the manner in which a claim form is served and a certificate of service shall be filed as soon as practicable after service has been effected.

38 The court held that the provisions concerned were mandatory. It should be noted, however, that the UK Act contains a rule for which there is no apparent equivalent in the Singapore context.

This is r 19(1) of the 1960 Rules, which reads as follows:

> Any period of time prescribed by rules 5, *6* or 7 shall be computed in accordance with section 119 of the Act *and shall not be enlarged by order or otherwise*, but save as aforesaid rules 2.8 to 2.11 of the Civil Procedure Rules 1998 shall apply to any period of time prescribed by these Rules as if it were prescribed by the Civil Procedure Rules. [emphasis added]

39 However, what is significant in the context of the present proceedings is that, *notwithstanding* the clear provisions of r 19(1) as reproduced above, the court in *Ahmed v Kennedy* nevertheless endorsed decisions such as the *Devan Nair* case, *despite* acknowledging (at [36]) that there was *no equivalent of* r 19(1) in those decisions.

General principle

40 Mr Chan also canvassed several arguments which were premised on general principle – many of which were (as I have already mentioned) in fact related to (and even arose out of) the cases he relied on, and which have been referred to in the preceding part of this judgment.

41 Firstly, he pointed to the fact that every challenge mounted by every plaintiff must comply with all the timelines laid down in the PER strictly (including that contained in r 13) in order for there to be the requisite certainty. This argument, in fact, overlaps completely with the reasoning of the courts in several cases which have been referred to in the preceding part of this judgment. In other words, there is the need for the speedy determination of any controversy concerning election results.

42 Secondly, and in a related vein, he argued that if the timelines laid down in the PER were not mandatory and extensions of time were (as a consequence) possible, it would not be possible to draw the line and undesirable uncertainty would result once more.

43 Thirdly (and, once again, in a related vein), Mr Chan argued that, in any event, the Rules of Court (Cap 322, R 5, 2006 Rev Ed) were not applicable. In response to a possible argument that r 3 of the PER could in fact introduce the Rules of Court (and, hence, the further possible argument to the effect that the time under r 13 could be extended), he responded by relying upon O 1 r 2(4) of the Rules of Court**,** which excluded the application of the Rules of Court in the context of the Act and the PER. On the other hand, and in order to explain r 3 of the PER, Mr Chan argued that this particular rule (*ie*, r 3) referred to the *entire* Rules of Court which, in turn, stated (specifically, in O 1 r 2(4)) that the Rules of Court were not applicable, except in the limited circumstances stated therein (at the right-most column in O 1 r 2(4) of the Rules of Court themselves: see below at [45]). Indeed, the precise relationship between O 1 r 2(4) of the Rules of Court on the one hand and r 3 of the PER on the other is, in my view, far from clear. In the circumstances, I shall have occasion to return to this relationship once again – if nothing else, because (as we shall see below) Mr Ravi (not surprisingly) argued the precise opposite. In particular, he (Mr Ravi) argued that r 3 of the PER indeed introduces the provisions of the Rules of Court and that, therefore, the time under r 13 can, and ought to be extended by recourse to O 3 r 4 of the Rules of Court (see [56] below).

44 It would be appropriate at this juncture to set out the relevant provisions. First, r 3 of the PER reads as follows:

> **Application of Rules of Court**
>
> **3 .** Subject to the provisions of these Rules and of the Act, the Rules of Court (Cap. 322, R 5) shall apply, with the necessary modifications, to the practice and procedure in any

proceedings under the Act to which these Rules relate.

45 Order 1 r 2(4) of the Rules of Court reads as follows:

> These Rules shall not apply to proceedings of the kind specified in the first column of the following Table (being proceedings in respect of which rules may be made under the written law specified in the second column of that Table), except for the provisions specified in the third column of that Table:

Proceedings	*Written Law*	*Applicable Provisions*
3. Proceedings under Part IV of the Parliamentary Elections Act (Chapter 218).	Parliamentary Elections Act, s.100.	Order 63A and items 71D to 71I and 75 of Appendix B.

46 Although one particular rule was not in fact canvassed by counsel for either party, it is, in my view, of at least some relevance. It is in fact O 1 r 2(5) of the Rules of Court and of course follows directly on from O 1 r 2(4), which has been set out in the preceding paragraph. Order 1 r 2(5) itself reads as follows:

> In the case of the proceedings mentioned in paragraph (4), nothing in that paragraph shall be taken as affecting any provision of any rules (whether made under the Act or any other written law) by virtue of which these Rules or any provisions thereof are applied in relation to any of those proceedings.

My analysis of this particular (third) issue is set out in detail below (at [99]–[109]).

47 Fourthly, Mr Chan, whilst acknowledging that in a "normal" election petition, the interest of the *defendant* was clearly important in order to confirm his or her election in the face of an application by the plaintiff, emphasised that the *overriding* interest was that of the *nation or country* itself. By a "normal" election petition, he meant one that was brought against the *successful candidate* in a *particular* constituency. According to Mr Chan, the plaintiff's present application under s 90 of the Act was not "normal" in so far as: (a) it sought to impugn the *entire* General Election; and (b) it was brought against the Attorney-General and not the successful candidates in question. As regards Mr Chan's arguments concerning the overriding national interest in proceedings under s 90 of the Act, there is, once again, an overlap with the argument from precedent inasmuch as Mr Chan relied heavily on the observations of Lord Upjohn in the Privy Council decision in the *Devan Nair* case (reproduced above at [35]) – especially with respect to the need for a speedy resolution of the controversy concerned. Whilst Mr Chan's emphasis on the public interest is both valid and persuasive, he does not, in my view, pay sufficient attention to the interests of the *defendant* in a "normal" election petition, *ie*, the successful candidate, having regard to the specific language and context of the Act and the PER in general and of r 13 in particular. I shall elaborate upon this later (at [75]).

48 I turn, now to the arguments made by Mr Ravi on behalf of the plaintiff.

The plaintiff's arguments

Introduction

49 As with the defendant's arguments, the plaintiff's arguments could also be classified under the two broad headings referred to above. This is not surprising in view of the fact that the parties needed to join issue and, in particular, in view of the fact that the plaintiff had also to respond to the arguments made by the defendant.

Precedent

50 Contrary to the approach adopted by Mr Chan, Mr Ravi argued that this court was not bound by the Malaysian decisions. This approach was probably due to the fact, as I have already mentioned, that the weight of Malaysian authority supported the defendant. Nevertheless, Mr Ravi did draw my attention to one Malaysian High Court decision which supported the plaintiff. This is the decision of *Sulaiman v Choong Yoon Chong* [1957] MLJ 170 ("the *Sulaiman* case"). In that case, the plaintiff deposited security within the time specified but made the deposit with the wrong officer. The defendant argued that the rules on security had not been complied with and therefore applied for the election petition to be dismissed. According to Smith J (at 171):

> Regulation 12(3) [the equivalent of r 13(4) of our PER] does not say that a petition shall automatically be dismissed if deposit is not made. It enjoins that no further proceedings shall be had on the petition and that the respondent may apply for the petition to be dismissed. The action which the Judge takes is entirely discretionary. In this case I am satisfied that sufficient security has been given and that there has been such sufficient compliance with the spirit of the Regulations that it would be inequitable to refuse the petitioner a hearing of his petition. This application is therefore refused.

51 Mr Ravi also referred to *wider* arguments, albeit still in the Malaysian context. In particular, he argued that Malaysia possessed alternative avenues by which persons aggrieved in the context of elections could have recourse to. I did not verify the various avenues referred to by Mr Ravi. I am prepared to assume that he is correct and hence take his case in this particular regard at its highest. It followed, so his argument continued, that the Malaysian courts could afford to adopt a stricter approach towards contravention of the equivalent of our PER because aggrieved persons had the alternative avenues just referred to. Although I have refrained thus far from expressing my views on the arguments tendered before me as I will be dealing with them holistically below, I make an exception in the present instance as it seems to me that counsel's argument is, with the greatest respect, neutral at best and misconceived at worst.

52 In the first instance, the focus must always be on the statutory language concerned (here, that to be found in r 13). Surrounding material is useful only in so far as it assists in throwing light on the provision in its *specific* context. To this end, the wider arguments and considerations raised by Mr Ravi lie beyond the specific context I have just referred to and are therefore irrelevant to the interpretation of the language and intention of r 13 itself. More to the point, the integrity of the legal process ought not to be compromised in such an important context as this.

53 Secondly, the wider arguments and considerations raised by Mr Ravi might actually entail a conclusion *contrary* to what he has advocated. If, for example, alternative avenues in fact exist (in the Malaysian context) to vindicate the rights of an aggrieved person in the context of elections, why should the courts not adopt a less strict approach? While by no means conclusive, this is an at least plausible argument that militates directly against the argument proffered on behalf of the plaintiff by

Mr Ravi.

General principle

54 Mr Ravi raised several arguments from general principle. This is not surprising in view of the fact – already noted – that the case law was not really in the plaintiff's favour.

55 He argued, firstly, that speedy determination was not an issue as the plaintiff's application had already been scheduled to be heard on 27 June 2006.

56 Secondly, he argued – contrary to the approach taken by Mr Chan, and noted above – that the Rules of Court with respect to the power of the court to extend time (in particular, O 3 r 4 thereof) applied in favour of the plaintiff. As I have already alluded to above, this particular issue raises significant questions of interpretation which I will deal with below (at [99]–[109]).

57 Thirdly, Mr Ravi argued that the plaintiff had taken reasonable steps to furnish the requisite security for costs under r 13 and hence ought not to be penalised. He further argued that strictness in applying the rule should not descend into harsh rigidity.

The defendant's reply

58 In reply, Mr Chan responded specifically to some of the arguments raised by Mr Ravi.

59 He first argued, referring to the judgment of Lee J in the *Chong Thain Vun* case ([25] *supra*), that the decision in the *Sulaiman* case (which Mr Ravi had relied upon at [50] above) had been all but overruled. I will deal with this particular argument in more detail below (at [94]–[96]).

60 Secondly, he argued that the extra-legal considerations raised by Mr Ravi (see [51] above) were legally irrelevant.

61 Thirdly, and referring to the argument by Mr Ravi (at [57] above) to the effect that the plaintiff had taken reasonable steps to furnish the requisite security under r 13, Mr Chan argued that this was "only one-half of a clap", but that one needed "two hands to clap". He argued that Mr Ravi had omitted to refer to what I would (in the spirit of the current expression) refer to as the other side of the coin or equation. In particular, he (Mr Ravi) had not referred to the fact that this "other side" entailed considering whether or not the election officials and/or this court had the *legal power* in the first instance to accept or endorse the attempted (late) payment by the plaintiff.

62 Fourthly, Mr Chan argued that nowhere else do we find words similar to those found in r 13(4).

63 Finally, Mr Chan emphasised that the relevant election laws are neutral in nature.

64 I turn now to an analysis and evaluation of the various arguments made by both Mr Chan and Mr Ravi on behalf of their respective clients, and which I have set out briefly above.

Analysis and evaluation

Introduction

65 As I have already mentioned, it would be eminently appropriate to utilise the two broad headings I have adopted above in analysing as well as evaluating the respective parties' arguments

before arriving at my decision.

Precedent

66 It is clear that the relevant case law supports the conclusion that r 13 of the PER is *mandatory* and that, therefore, a failure to comply with it will result in the plaintiff's application being dismissed if the defendant chooses to apply to this effect pursuant to r 13(4). Indeed, a failure to comply with r 13 is precisely what happened in the present proceedings.

67 As already noted above, the leading decision was handed down decades ago in the *Chong Thain Vun* case ([25] *supra*). What is of added significance is that that particular decision has more than stood the test of time – right up to the present (see, in particular, the *Charlee Soh* case ([33] *supra*)). The rule relating to the furnishing of security in these decisions was, it should be further noted, identical to our r 13. However, it is essential, in my view, not to adopt an excessively legalistic approach and simply rest my decision on a "peg-hanging basis". What I mean is this: that while it is extremely common for lawyers to seek and find "comfort" in a precedent (preferably "on all fours" with the case at hand), such an approach that utilises an existing precedent without more as a "peg" to hang one's decision on, whilst helpful, ought not to be carried to extremes. Such an approach is undoubtedly an integral part of the common law process. But that ought not to be the be all and end all of the matter for, surely, the reasoning and logic of the precedent concerned must matter as well. Indeed, in the worst-case scenario, an existing precedent could in fact embody erroneous principles of law. It is therefore imperative to also examine the reasoning and rationale of the relevant precedents as well as to decide (whenever possible) the case on first principles. This is accordingly what I propose to do *vis-à-vis* r 13.

68 I commence with the finding that the reasoning in the *Chong Thain Vun* case as well as in the *Charlee Soh* case is logical and persuasive (see generally [25]–[34] above). However, I wish to go further. The logical and fair starting point is to examine the very language of r 13 itself, bearing in mind the very important caveat pointed out by Mr Chan above (at [20]–[22]) that I ought to confine myself, as far as is possible, to the language and four corners of the Act and the accompanying PER themselves.

69 Rule 13 has in fact been reproduced in full at [4] above. Of particular importance is para (1) thereof as it is that specific provision which not only sets out the general duty of the plaintiff (or someone on behalf of the plaintiff) to give security but also lays down the timelines concerned**.** Rule 13(1) reads as follows:

> *At the time of the filing of the application* under section 90, *or within 3 days afterwards*, security for the payment of all costs, charges and expenses that may become payable by the plaintiff *shall be given* on behalf of the plaintiff. [emphasis added]

The words italicised above are of particular importance. Let me elaborate.

70 One will notice right from the outset at least two important (and related) points with respect to the *timeframe* set out under r 13(1).

71 The first is that, on a general level, the timeframe is *very specific*. In other words, it is not phrased in general terms. More importantly, there is *no* exception incorporated into r 13(1) itself, for example, the provision for an extension of time if the timelines therein are not met. Indeed, the reference in r 13(1) is to two timelines, not just a single timeline. This is a point that has, to the best of my knowledge, not been canvassed in any of the case law. However, it is, as I shall point out in a

moment, a significant point that arises on a plain reading of the provision itself – which is, in fact, my second point, to which I now turn.

72 Secondly, and as I have just mentioned, there are in fact *two specific timelines prescribed* within r 13(1) itself. The first is that security shall be payable "at the time of the filing of the application". Presumably, this is the most efficient scenario envisaged. It also presupposes that the plaintiff, having taken the time and trouble to file an application under s 90 of the Act, has also taken the time and trouble to acquaint himself or herself with *all* the relevant procedure – including the provision of security as required under r 13. I pause here to note that such an application is indeed a *very specific and specialised* one. It is specific because it relates to a very special procedure impugning a result in an event that does not take place every other day, to put it mildly. It is also specific because it is not only an attempt by the plaintiff to vindicate his or her rights but is also an attempt (simultaneously) *to impugn and presumably take away the rights of another party (here, of the successful candidate who would normally be the defendant to such an application)*. I shall elaborate more on this point below as well as in the conclusion to this judgment because it goes to the very root of the concept of rights itself – viewed not merely in the abstract but in a very real and practical context. It will suffice for the present to reiterate the fact that, given, *inter alia*, the very specific and specialised nature of the context and its concomitant proceedings, there is a clear underlying assumption that the plaintiff would indeed be prepared, simultaneously with his or her filing of an application under s 90 of the Act, to furnish the requisite security pursuant to r 13.

73 *However*, and this is where *the Legislature* has in fact *built in* a *very limited exception* which takes the form of *a second (and alternative) timeline*, if the plaintiff does *not* in fact furnish the requisite security pursuant to r 13 at the time of the filing of the application, then *there is a further grace period of three days to do so*. This is embodied in no uncertain terms by the words "*or* within 3 days afterwards" [emphasis added] in r 13(1) itself. This further grace period presumably permits the plaintiff some extra time to garner the necessary funds. However, given the special nature of the proceedings and the need (as we have seen above in the relevant case law) for a speedy determination of the proceedings, it is *an extremely limited (and, I might add, extremely specific) period of three days – no more, and no less*. It is nevertheless *an additional* period that has been *expressly stipulated in* r 13(1) itself.

74 It is clear, in my view, that the Legislature, having stipulated *two* extremely specific timeframes in equally clear language, *intended that these timeframes be adhered to strictly.* In other words, the general requirement under r 13 in general and the specific timeframes stipulated in r 13(1) in particular are *mandatory*. There was no intention to provide for any further flexibility, nor is any indicated within the express language of r 13(1) itself.

75 I turn, now, to a related point, which I have in fact already alluded to above. Once again, this point does not appear to have been canvassed in the relevant case law although it seems to me to be one that arises clearly not only on the face of the language of the various provisions of the Act itself but also from the spirit underlying those various provisions. And that is the need to be conscious, not only of the plaintiff's rights, but also of *the rights or interests* of the defendant which are *impugned by an application under s 90 of the Act*. As has already been noted, the present proceedings do not constitute a "normal" election petition (see [47] above). I do not wish to state more here since this leads naturally on to issues that are not before me in the present proceedings, *viz*, whether or not the plaintiff had filed an application against the wrong defendant in the present proceedings and whether or not (as a closely related point) the thrust and spirit of the Act (read in both logical as well as historical contexts) envisaged applications under s 90 being brought only in relation to the results of specific constituencies, and not the entire General Election *in toto*. Be that as it may, it cannot, in point of fact, be denied that the present application is not "normal" inasmuch

as the defendants to s 90 applications are usually the successful candidates whose seats are being impugned. However, even assuming that the plaintiff was entitled to file her application in the present proceedings against the Attorney-General, it was nevertheless undeniable that the rights of all the elected Members of Parliament in the 2006 General Election (as *de facto* defendants) were necessarily involved as a result of the plaintiff's application. This actually *underscores* the point I have just made with respect to viewing the relevant Act and rules from *the perspective of the rights of the defendant (whether* de facto *or* de jure*)as well*. In other words, the strict timelines (*inter alia*, in r 13(1)) represented, in my view, *the Legislature's attempt to balance the plaintiff's and the defendant's rights which were*, ex hypothesi, *in irreconcilable conflict with each other*. Whilst the Legislature afforded the plaintiff the right to impugn election proceedings which, if successful, would take away the defendant's rights (including the rights of "*de facto* defendants" in proceedings such as the present), because of precisely the nature of the proceedings as I have just put it, the Legislature imposed strict timelines to ensure that the plaintiff's application was mounted seriously and in good faith. Indeed, in the specific context of r 13 itself, we have seen (at [30] above) that the purposes for requiring the furnishing of security are *not only consistent with but also buttress the point made in the preceding sentence*. It is undoubtedly the case that the *public interest* ought to be safeguarded as well. I do not wish to detract, in any way, from this particular (and extremely important) purpose and rationale – not least because it has been embodied in authorities as august as that of the Judicial Committee of the Privy Council (in the *Devan Nair* case at [35] above). However, I do need to emphasise that there is an *additional* reason which is by no means insignificant and which *also* contributes to the reason and rationale for the strict timelines embodied within, *inter alia*, r 13(1): *This is to ensure that the defendant candidate's rights are not disregarded as the plaintiff asserts his or her rights under the Act and the PER in the process*. In this regard, the following observations by Singham J in the *Dr Shafie* case ([20] *supra* at [31]) might also be usefully noted:

> I am of the view that where it is viewed contemporaneously in the context of the other provisions of the Act … r 4 of the Election Petition Rules 1954 confirms not only the intention of the legislature to expedite the early determination of election petition *but also to prevent any injustice on the defending candidates*, whose election is being challenged, against unspecific and unforeseen allegations from irresponsible challengers. [emphasis added]

76 Returning once again to the language of r 13(1) (and another point), one cannot help but notice that the requirement for the furnishing of security on behalf of the plaintiff is couched in ostensibly mandatory language. I refer, in particular, to the phrase " *shall* be given" [emphasis added]. However, in doing so, I must not be taken to be adopting a pedantic approach, much less a dogmatic one, to the effect that whenever words such as "shall" are used, the provision concerned must necessarily be mandatory. Everything depends on the specific language of, as well as the context surrounding, the provision itself. However, other things being equal, such words do suggest that the provision concerned is mandatory. I have, in fact, already canvassed not only the other parts of r 13(1) itself but also the surrounding context as well as the aims of the Act and the PER themselves, and shall therefore not repeat my analysis above. In the circumstances, it is clear to me that the word "shall" in r 13(1) means that this provision is itself mandatory.

77 I turn now to the language of *r 13(4)* which is, of course, the provision under which the present proceedings have been brought by the defendant; it reads as follows:

> If security required by this rule to be provided is not given by the plaintiff, *no further proceedings shall be had* on the application under section 90, *and the defendant may apply* by summons to the Judge *for an order directing the dismissal of the application under section 90 and* for the payment of the defendant's costs. [emphasis added]

78 Mr Ravi argued, on behalf of the plaintiff, that the words "no further proceedings shall be had" in r 13(4) are not imperative in nature. Mr Chan, on behalf of the defendant, argued (not surprisingly) otherwise. If one simply reads these words alone without more, it could possibly be argued that (from a strictly literal perspective) it is inconclusive as to whether or not a non-compliance with r 13 (as was the case here) would *necessarily* result in a dismissal of the plaintiff's application. Here, again, however, I must emphasise the need to read the language of a provision not only in relation to the rest of the *language* in that (as well as related) provision but also in the context of the general intention of the Legislature in so far as that can be ascertained. Bearing these general and fundamental guidelines in mind, let us turn now to a more detailed analysis of r 13(4) itself.

79 I have already referred to Mr Ravi's argument in the preceding paragraph. With respect, however, what Mr Ravi failed to refer to were the *remaining words* in r 13(4) itself. In particular, whilst the words relied upon by Mr Ravi ("no further proceedings shall be had") occur in what I consider the first limb of r 13(4), one must also have regard to the *second* limb in that provision, *and consider both limbs in context*.

80 The second limb referred to in the preceding paragraph relates to the option on the part of the *defendant* to "apply by summons to the Judge for an order directing the dismissal of the application under section 90 and for the payment of the defendant's costs". Indeed, this is precisely what transpired, thus resulting in the present proceedings. It is important, in my view, to reiterate that the defendant has the *option or choice* as to whether or not to apply for a dismissal of the application for the plaintiff's non-compliance with r 13. What happens, then, if the defendant elects not to apply for dismissal? This question in fact gives us a clue as to why the *first* limb of r 13(4) is phrased the way it is. In particular, it is clear that if the plaintiff has failed to comply with the requirements of r 13, "no further proceedings shall be had" with respect to his or her application under s 90 of the Act, *regardless* of whether or not the defendant decides to apply for the dismissal of the plaintiff's application. This seems to me to be an eminently fair and sensible consequence. *However*, and this is where the *second* limb of r 13(4) comes into play, *if* the defendant *chooses to exercise* his or her right to apply to the court for an order directing the dismissal of the plaintiff's application under s 90 of the Act, then the plaintiff's application must necessarily be dismissed. To reiterate, if the defendant chooses not to exercise this option or choice, the *first* limb of r 13(4) makes it clear that *the plaintiff cannot nevertheless take advantage of this by continuing with his or her application under s 90 of the Act*. In other words, even if the defendant decides not to exercise his or her right to apply for dismissal under r 13(4), the proceedings initiated by the plaintiff would nevertheless cease. In my view, the entire structure and scheme of r 13(4) is eminently logical and fair. Rule 13(4) gives the defendant the right to apply to have the plaintiff's application under s 90 of the Act dismissed but if, for whatever reason, the defendant chooses not to exercise this right, the plaintiff cannot take advantage of this as "no further proceedings shall be had" in relation to the plaintiff's application under s 90 of the Act *in any event*. This interpretation of r 13(4) in fact *buttresses* the view that I have hitherto taken to the effect that r 13 is itself *mandatory* in nature. In other words, the non-compliance with r 13 is not one that can be excused – *not even* where the defendant himself or herself chooses not to take the matter to its logical conclusion by formally requesting that the plaintiff's application be dismissed.

81 I pause, at this juncture, to note that while a distinction was drawn in the not too distant past between mandatory and directory provisions, the modern approach has been to focus on the *relevant legislative intention* instead. In the words of V K Rajah J in the Singapore High Court decision of *Re Rasmachayana Sulistyo; ex parte The Hongkong and Shanghai Banking Corp Ltd* [2005] 1 SLR 483 at [24]:

> The elusive historical approach of characterising procedural provisions as either directory or mandatory is largely anachronistic today. The preferred approach in modern times in determining the validity of an Act is to understand the purpose of the relevant procedural rule as well as the scope and intent of the governing statute. This approach does not entail ignoring the usage of words such as "shall" or "must" in legislation. It suggests that any *prima facie* inference raised by such words may be dislodged after taking into consideration the scope and objectives of the legislation and the consequences arising from alternative constructions.

82 Indeed, this is precisely the approach that I have adopted in the present proceedings, and which, incidentally, was also the approach adopted by Lee J in the *Chong Thain Vun* case ([25] *supra* at 73). It might, nevertheless, be helpful to observe that words such as "mandatory" and "directory" are still helpful inasmuch as they assist in focusing on the *nature* of the provision concerned and (more importantly) on the *consequences* of non-compliance with it. However, such words do not, in and of themselves, aid substantively in the *process* of ascertaining whether or not the provision concerned is indeed "mandatory" or "directory". In this regard, there is no substitute for a close analysis of the language of the provision itself set in its legislative context.

83 The approach just suggested also finds some support in the English Court of Appeal decision of *Ahmed v Kennedy* ([36] *supra*), which was referred to earlier in this judgment. In that case, Simon Brown LJ, cited (at [29]) Lord Woolf MR (as he then was) in *Regina v Secretary of State for the Home Department, Ex parte Jeyeanthan* [2000] 1 WLR 354 at 362, where he described the then Master of the Rolls as observing that "[the] dichotomy [between "directory" and "mandatory" provisions] is 'only at most a first step' and that further questions then arise to help the court decide whether in any given case non-compliance ought properly to be held fatal so as to oust the court's jurisdiction in the matter". The learned lord justice then reiterated (*ibid*) the same approach which was endorsed in the preceding paragraph, as follows:

> Rather, however, than spend time circling around the ultimate question, I propose to address it directly: does this legislation on its true construction give the court a discretion to waive these petitioners' timeous non-compliance or must it be regarded as fatal to their proceedings?

84 Turning now to a separate point, the *historical context* is, in my view, also instructive. The (present) Act has its source as far back as 1947: see the Singapore Legislative Council Elections Ordinance 1947 (No 24 of 1947) ("the 1947 Ordinance"). In particular, r 13 of the PER (found, it will be recalled, in the Fourth Schedule of the Act) corresponds to r 12 in the Third Schedule of the 1947 Ordinance. I pause to note that there were no changes effected to this rule when the 1947 Ordinance was replaced a few years later by the Singapore Legislative Assembly Elections Ordinance 1954 (No 26 of 1954) ("the 1954 Ordinance")**.**

85 Rule 13(2) of the PER reads as follows:

> The security shall be to an amount of not less than *$5,000*. If the number of charges in any application exceeds 3, additional security to an amount of *$2,500* shall be given in respect of each charge in excess of the first 3. [emphasis added]

86 Rule 12(2) of the Third Schedule of the 1947 Ordinance (and, subsequently, of the 1954 Ordinance) read as follows:

> The security shall be to an amount of not less than *one thousand dollars*. If the number of charges in any petition shall exceed three, additional security to an amount of *five hundred dollars* shall be given in respect of each charge in excess of the first three. The security required

by this rule shall be given by a deposit of money. [emphasis added]

87 It will be seen that in *almost six decades*, there has not been an enormous change in the amount of security required. Indeed, the present amounts (in the present r 13(2) of the PER) were introduced only in 1982 via the Parliamentary Elections Petition (Amendment) Rules 1982 (S 313/1982). More significantly, perhaps, the amounts stipulated in r 12(2) of the Third Schedule of the 1947 Ordinance were extremely sizable when judged against the relative exchange rates and value of money at that particular point in time. Whilst not conclusive, this is an indication that, as originally conceived, the requirement with respect to security for costs was a seriously intended one. This, in turn, supports my finding that r 13 of the PER was intended to be *mandatory* in nature.

88 I note, also, that the other Malaysian decisions cited by Mr Chan also buttress my more specific finding with regard to r 13. Let me elaborate.

89 These other decisions related not so much to r 13 but, rather, to the Malaysian equivalent of r 16 of our PER (see, for example, the *Devan Nair* case). We have already noted that it has been clearly established in the case law (including the case just cited) that this particular rule is *mandatory* in nature.

90 My analysis thus far demonstrates – unequivocally, in my view – that decisions such as the *Chong Thain Vun* case do not contain mere assertions without more but are more than amply justified by an analysis of the language as well as the context and rationale of r 13. At this juncture, we note, once again, the overlap between this broad category (entitled "Precedent") and the next (entitled "General principle").

91 I also agree with Mr Chan that the conclusion I have arrived at in the preceding paragraph is further buttressed, on a more *general* level, by the broader considerations set out by Lord Upjohn in the *Devan Nair* case (at [35] above) – in particular, the first, which centres on the need for a speedy determination of the controversy. Mr Ravi sought to meet this particular point by an argument that was more in the sphere of general principle (see [55] above). To recapitulate, Mr Ravi argued that there would, in any event, be a speedy determination of the plaintiff's application inasmuch as the plaintiff's application had already been fixed for hearing on 27 June 2006. With respect, however, I find this particular argument (whilst seemingly attractive at first blush) to be flawed for the following reasons.

92 Firstly, if not for the present summons taken out by the defendant under r 13(4), the plaintiff would have continued with her application without complying with r 13 of the PER. This issue might have then been raised as a preliminary jurisdictional point at the hearing on 27 June 2006 itself. This might then have resulted in an adjournment of the substantive hearing. I do not want to speculate but it would have been very surprising if a delay had not resulted along the lines I have just stated.

93 Secondly, and more importantly, I find Mr Ravi's argument rather disingenuous. There was no guarantee that the substantive hearing would be fixed as early as it has. The fact that we now know that the hearing has been fixed early does not necessarily mean that it would have been the case in the first instance. Hindsight, as the saying goes, is 20/20 vision. In any event, and even more importantly, the entire point of the matter is that the strict timelines contained in the PER (including that embodied in r 13) were to ensure that *no further time whatsoever beyond what was stipulated in the rules themselves* was wasted. In other words, a speedy determination of the controversy is not a "wait-and-see" situation, such as the plaintiff would have us believe. It is a direct process, if you like, *without the slightest delay contemplated*. Besides, if one were to accept Mr Ravi's argument, there is virtually no hearing that would not satisfy the rationale centring on a speedy

hearing. This would be especially so if one adopted a "wait-and-see" approach such as that advocated by Mr Ravi, where one would actually utilise *ex post facto* rationalisation *after ascertaining what the date of the substantive hearing would be* in order to argue that there has been no delay. Even more pertinently, as Mr Chan (very persuasively, in my view) put it, if time could be extended, where would one draw the line? What if further excuses were given by the plaintiff? This is *precisely* why a speedy determination in the manner stated by the Privy Council in the *Devan Nair* case ([25] *supra*) centred on *a strict adherence to the timelines which will,* ex hypothesi*, result in the certainty that is crucial in the context of elections*.

94 I turn now to the precedents proffered on behalf of the *plaintiff*. In contrast, and as I have already noted earlier in this judgment, Mr Ravi could muster but one solitary precedent which was in the plaintiff's favour. This is of course the decision of the Malaysian High Court in the *Sulaiman* case ([50] *supra*). This decision was in fact considered by Lee J in the *Chong Thain Vun* case ([25] *supra*), and this is what the learned judge had to say about the case (at 74):

> I think I should mention the case of *Sulaiman* v. *Choong Yoon Chong*. There the petitioner paid sufficient deposit within the time specified but the deposit was paid to the registrar of the Supreme Court instead of the proper officer, that is, the Supervisor of the Town Council Elections. Respondent applied for the election petition to be dismissed on the ground that no deposit by way of security for costs had been made as prescribed by the Election Petition Rules, 1954. Smith, J. thought that the action which the judge should take was entirely discretionary. He considered that as sufficient security had been paid and that there had been sufficient compliance with the spirit of the regulations it would be inequitable to refuse the petitioner a hearing of his petition. He therefore dismissed the application. *That case can be distinguished from the two petitions under consideration*. The Registrar of the Supreme Court is an officer of the court and he made the mistake of accepting the deposit when he should have directed the petitioner to make the payment to the proper officer. Although Smith J. did not say so in so many words his approach seems to suggest that where the mistake was that of the court, the blame should not fall on the petitioner. *The question of insufficiency of security did not arise. Also the question of time did not arise*. Further that case was decided before the decision of the Privy Council in *Devan Nair* v. *Yong Kuan Teik*. [emphasis added]

95 As alluded to above, Mr Chan argued that Lee J had *effectively* overruled the *Sulaiman* case, although the learned judge had sought to distinguish this decision on the two grounds set out in the above quotation. Indeed, Lee J also referred to the *subsequent* Privy Council decision in the *Devan Nair* case, thus buttressing Mr Chan's point that Lee J was not really sympathetic to the decision in the *Sulaiman* case.

96 Following from my analysis of the language and context of r 13 above (in particular, of paras (1) and (4) thereof), I do not, with respect, think that the *Sulaiman* case ought to be followed. Quite apart from Mr Chan's point that it stands alone in the entire jurisprudence of elections law in Malaysia, I would myself have arrived at the opposite conclusion from my own analysis of r 13 without more, which analysis I have set out in some detail above. Whilst I acknowledge that the *Sulaiman* case dealt (as Lee J alluded to in the *Chong Thain Vun* case (see [94] above)) with a different issue, a central thrust adopted by Smith J in the *Sulaiman* case (and which was an integral part of his overall decision) was that the equivalent of r 13 of the PER was directory rather than mandatory (see at [50] above). To that extent, and for the reasons I have already set out above, the *Sulaiman* case is wrong and ought not to be followed.

General principle

97 I turn now to the various arguments from general principle tendered by both parties. I should add, however, that most of these arguments (in particular, those relating to the public interest in the speedy resolution of the controversy concerned) have already been considered in this part of the judgment relating to an analysis of the relevant case law. Indeed, only two substantive arguments from general principle remain.

98 The first is whether or not the Rules of Court apply in the present proceedings, a point on which (as we have seen) both parties have proffered diametrically opposed views. The second relates to the more general argument made by Mr Ravi to the effect that the plaintiff, having taken all reasonable steps to fulfil her obligations to furnish security for costs under r 13, ought not to be penalised harshly. I now consider these arguments *seriatim*.

Are the Rules of Court applicable?

99 I consider, first, the issue as to whether or not the Rules of Court apply in the context of proceedings such as these. There is, to the best of my knowledge, no specific decision covering this point in the Singapore context. This issue has therefore to be decided from first or general principles.

100 In my view, the issue can be resolved without even having recourse to either Mr Chan's or Mr Ravi's arguments. This is because I have found that r 13 is a *mandatory* provision. If so, then it must, *ex hypothesi*, be complied with strictly. In other words, there can be *no room* for extension of time so that even if it were open to this court to consider the application the Rules of Court in general and the provision therein for extension of time in particular, it would make no difference to the present proceedings since it is clear, as I have elaborated upon above, that r 13 is clearly mandatory and must be complied with strictly. This interpretation is further supported by the opening words of r 3 of the PER itself (reproduced above at [44]), which state that the application of the Rules of Court, with the necessary modifications, to the practice and procedure in any proceedings under the Act is "[*s*]*ubject to* the provisions of these Rules [*viz*, the PER] and of the Act [*viz*, the Parliamentary Elections Act]" [emphasis added]. It should also be noted that the underlying philosophy and as concomitant general approach adopted in the Rules of Court are quite different, as the underlying presumption appears to be that the provisions contained therein are generally directory rather than mandatory (reference may be made, in this regard, to O 2 r 1 of the Rules of Court).

101 However, as I have already pointed out above, the precise relationship between O 1 r 2(4) of the Rules of Court and r 3 of the PER is none too clear. It is not necessary for me to attempt to clarify this relationship (assuming that this is possible in the first instance), having regard to my holding in the preceding paragraph. I will content myself with a few tentative comments, leaving it to a later court to expound on the issue in more detail when faced with it directly.

102 It seems to me that r 3 of the PER is intended to be a "gap-filling" provision. By this I mean that the PER constitute the foundational set of rules which govern proceedings under the Act, although relevant provisions of the Rules of Court might apply, with the necessary modifications, where a certain procedural issue or step is not covered by any of the specific rules within the PER themselves. That this is the case is buttressed by the language of O 1 r 2(4) of the Rules of Court (reproduced at [45] above). Indeed, a plain reading of O 1 r 2(4) clearly envisages that the Rules of Court will have little, or no, role to play in the context of the Act itself. Pausing for the moment, the view to the effect that r 3 of the PER is intended to be "gap-filling" only is perfectly consistent with my holding to the effect that r 13 is a mandatory provision which must be complied with strictly.

103 That r 3 of the PER plays a "gap-filling" role appears to be further supported by the relevant *legislative history*.

104 It is apposite to commence by setting out s 100 of the Act, as follows:

> **Procedure and practice on applications under section 90**
>
> **100.**—(1) The procedure and practice on applications under section 90 shall be regulated by rules which may be made by the Rules Committee constituted and appointed under section 80 of the Supreme Court of Judicature Act (Cap. 322).
>
> (2) The Rules contained in the Fourth Schedule shall be deemed to have been made under the powers conferred by subsection (1) *and shall be amendable by rules made under that subsection.*
>
> [emphasis added]

105 Section 100 was in fact present in the Act right at the outset – as s 86 of the (original) 1947 Ordinance, which read as follows:

> **86.**—(1) The procedure and practice on election petitions shall be regulated by rules which may be made by the Rules Committee constituted and appointed under the provisions of section 88 of the Courts Ordinance.
>
> (2) The rules contained in the Third Schedule to this Ordinance shall be deemed to have been made under the powers herein conferred.

106 It can be seen that s 100 of the Act is, in all but one substantive respect, the same as s 86 of the 1947 Ordinance, as represented principally by the italicised words at [104] above. These italicised words serve, in my view, to underscore the view expressed below (at [108]) to the effect that s 100 was originally introduced in order to pave the way for the promulgation of a new and comprehensive set of elections rules.

107 Although the 1947 Ordinance (and, hence, the (present) Act) can be traced, in the main, to the then Ceylon (Parliamentary Elections) Order in Council 1946 (see, for example, the Objects and Reasons to the Bill for the 1947 Ordinance in the *Supplement to the Government Gazette* (S 176/1947) and the *Report of the Legislative Council Elections Drafting Committee* (Singapore, April, 1947) ("the *Report*") at pp IV–V as well as Annexure B, pp ii–iv), s 86 (and, hence, the present s 100) was completely new (see the comparative table in the *Report* at Annexure A, p 89).

108 It would appear that the present s 100 of our Act was originally introduced as a completely new provision altogether in order to pave the way for the promulgation of a comprehensive set of elections rules which would have taken the place of the rules in the then Third (and presently, Fourth) Schedule. However, this was not to be. The reasons are unclear. But one thing is clear: What is now r 3 of the PER was introduced in 1982 via the Parliamentary Elections Petition (Amendment) Rules 1982 (S 313/1982). Once again, however, the reasons for the introduction of r 3 are unclear. However, having regard to the legislative history behind s 100 of the Act, it might well have been the case that the rules in the Fourth Schedule of the Act were thought to be adequate and, hence, this resulted in the absence of a new set of elections rules. Nevertheless, the language and tenor of r 3 suggest that this provision was introduced in order to "fill in the gaps" in situations where the situation concerned was not otherwise provided for by the rules in the Fourth Schedule of the Act themselves.

109 The approach I have suggested is also consistent with Mr Chan's argument which has been

set out briefly above (at [43]) – but only in the end result (*cf*, for example, the absence of discussion of O 1 r 2(5) of the Rules of Court (reproduced at [46] above)). However, if my respective interpretations of r 3 (as a "gap-filling" provision) and r 13 (as a mandatory provision) are correct, there is no need to have recourse to Mr Chan's argument. And, in the light of my reading of, *inter alia*, these rules, Mr Ravi's argument (at [56] above) cannot succeed.

The argument that reasonable steps were taken to furnish security

110 I turn, next, to Mr Ravi's argument that the plaintiff had taken reasonable steps to furnish the requisite security for costs under r 13 and hence ought not to be penalised. With respect, I do not find this particular argument even slightly convincing in the least for the following reasons.

111 Firstly, as I have already pointed out above (at [91]), the plaintiff took steps to furnish the requisite security for costs *only after the present application* was taken out by the defendant.

112 Secondly, it was the plaintiff who had brought the substantive application in the first instance. In the words of Lee J in the *Chong Thain Vun* case (quoted at [32] above), "[p]eremptory language is used by the rules and it behoves a petitioner to study the rules carefully so that every provision is complied with"; and as the learned judge proceeded to observe (at 74):

> If there is a breach of the provision of this rule, it makes no difference whether the petitioner has misinterpreted or misunderstood it he must take the risk. The respondent is entitled to take advantage of a petitioner's faults. The provisions of this rule must be strictly complied with.

113 Reference may also be made to the equally pertinent observations of Skinner J made in a similar vein in the *Charlee Soh* case ([33] *supra*, and as quoted at some length at [34] above).

114 I should add that even on a general level, I find that the plaintiff's arguments in this particular regard have, with respect, no merit. It would be more appropriate to state them in the conclusion to this judgment, which I do (see [115]–[118] below). I will point out that one ought not to be misled by superficially attractive arguments of sympathy without also examining closely the entire context, which also includes the *rights* of *other* interested parties, amongst other considerations.

Conclusion

115 It is the duty of every court to sift the legal wheat from any (and all) irrelevant chaff. The "irrelevant chaff" in this particular instance comprised bare appeals by the plaintiff for sympathy without reference to either the relevant law or the fact that what she requested in her application involved serious legal issues and consequences. The plaintiff sought to paint the picture of one who was a mere layperson – ignorant and helpless. With respect, this was a wholly one-sided version of events which cleverly omitted to give – as common fairness required – a full as well as accurate picture that placed all the circumstances in their proper context. The fact of the matter was that this was a serious application which was submitted to the Registry of the Supreme Court in proper legal form by the plaintiff. She had initiated the main proceedings and was obviously clear about what she intended to achieve from a legal point of view (and see [1] above). To reiterate, the key issue in these proceedings was whether r 13 was a mandatory one. It clearly was for the reasons I have set out above. It was not a mere "optional extra". The plaintiff clearly failed to comply with r 13. To accommodate the plaintiff in the present proceedings out of what would in any event be a misguided and arbitrary exercise of sympathetic feelings is to ignore, blatantly, a clear and mandatory legal rule, for which (as I have pointed out above) there is an equally clear (and no less significant) rationale. Indeed, it is precisely this clear rationale that furnishes the legal rule with its underlying spirit of

justice and fairness. In the circumstances, to accede to the plaintiff's request in the present proceedings would, in effect, be to commit two related errors simultaneously, *ie*, blatantly ignoring a mandatory rule out of a misguided sense of sympathy.

116 I should add that adherence to the law is the essence of the rule of law, which centres on objectivity as opposed to arbitrary subjective feelings (in this particular instance, of misguided sympathy). And respect for the law is not merely a practical necessity; it is an ideal without which arbitrariness will rear its ugly head. Merely dressing such arbitrariness up in various labels without more is to be eschewed, for labels without substance constitute not only empty rhetoric but also exceedingly dangerous things indeed – and all the more so when they have a superficial attractiveness, and nothing more. The exercise, as well as the ideal, of freedom are legitimate and real only when they are effected in accordance with the legal rules concerned. And it bears emphasising once again that the legal rule that is the focus of the present proceedings is undergirded by a clear rationale that constitutes its underlying spirit of justice and fairness. This meets – indeed roundly refutes – the charge of technicality as well as legalism or positivism which was a major plank in the plaintiff's case in the present proceedings.

117 It is also axiomatic, commonsensical as well as just and fair that there cannot be a claim by a party for the vindication of legal rights without that party simultaneously fulfilling his or her legal responsibilities. In other words, one cannot claim one's legal rights without fulfilling one's legal responsibilities. The rhetoric of rights is not a licence for the unilateral appropriation of advantages without legitimate reciprocation; indeed, such conduct would be *the very antithesis* of the ideal underlying the very concept of rights as legitimately conceived. As I have already mentioned, one of the plaintiff's legal responsibilities when she was making her application – and a mandatory one at that – was to furnish the requisite security for costs stipulated under r 13. Indeed, there was an additional grace period of three days as well. Notwithstanding this, she did not fulfil those responsibilities and the defendant was therefore justified (under r 13(4)) in taking out the present application.

118 Lest it be thought that such an approach is excessively harsh, even when taking into account the underlying spirit of justice and fairness referred to above, I would only state that the Act and the PER are themselves *neutral* in nature inasmuch as they could be relied upon by *any party* so long as that party could bring himself or herself within the ambit and spirit of the rule(s) concerned. Indeed, in so far as a breach of r 13 was concerned, had the shoe been on the other foot, so to speak, the option would have lain with the present plaintiff to have made precisely the same application taken out by the present defendant in the present proceedings. In other words, if the present plaintiff had been the defendant *instead*, and a similar situation had arisen, it would have *clearly* been open to *her* to apply under r 13(4) for the application against her to be dismissed. When posed with this hypothetical situation, Mr Ravi really had no answer, save for a half-hearted response to the effect that he would not have advocated such an application. But, surely, this is beside the point. As is obvious from r 13(4) itself as well as the case law (see generally, and respectively, [77]–[80] and [31]–[34] above), the option is of course with the defendant. But that does not – and cannot – detract (in any way) from the fact that a breach of r 13 entitles the defendant concerned to take out an application to dismiss the plaintiff's application.

119 In the circumstances, I grant an order in terms of prayers (1) and (2) of the present application. The costs of the present application, granted to the defendant under prayer (2), are to be taxed. It follows that the plaintiff's application in Originating Summons No 1017 of 2006 is also dismissed with the costs of that application also to be taxed.