Wong Souk Yee
v
Attorney-General

[2018] SGHC 80

High Court — Originating Summons No 1034 of 2017
Chua Lee Ming J
22 January 2018

Administrative Law — judicial review

Constitutional Law — Constitution — interpretation

Constitutional Law — Parliament — by-election

Elections — voting — right to vote

9 April 2018 Judgment reserved.

Chua Lee Ming J:

Introduction

1 Pursuant to the 2015 General Elections, Mr Lawrence Wong, Mr Alex Yam, Mr Ong Teng Koon and Madam Halimah Yacob (as she then was) were elected as Members of Parliament ("MPs" or "Members") of the Marsiling-Yew Tee group representation constituency ("the MYT GRC").

2 On 7 August 2017, Madam Halimah Yacob ("Madam Halimah") resigned her seat in Parliament to stand as a candidate in the 2017 Presidential Election. On 14 September 2017, Madam Halimah was sworn in as the 8th

President of Singapore. The MYT GRC has been represented by the remaining three MPs since Madam Halimah vacated her seat.

3 In this Originating Summons, Madam Wong Souk Yee ("the Applicant") seeks mandatory orders that

(a) the remaining MPs in the MYT GRC vacate their seats in Parliament; and

(b) the Prime Minister advises the President to issue a writ of election for the MYT GRC.

4 Alternatively, the Applicant seeks declaratory orders to the effect that

(a) for s 24(2A) of the Parliamentary Elections Act (Cap 218, 2011 Rev Ed) ("PEA") to be consistent with Article 49(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("Constitution") so as to allow the vacancies in the MYT GRC to be filled, s 24(2A) of the PEA must be interpreted as requiring all the MPs of a GRC to vacate their seats

(i) when one or more MPs of the GRC vacate their seats; or

(ii) in the alternative, when the only MP in the GRC who belongs to a minority community vacates his or her seat; and

(b) in the alternative that s 24(2A) of the PEA is void by virtue of Article 4 of the Constitution as it is inconsistent with Article 49(1).

5 Article 49(1) of the Constitution reads as follows:

> **49.**—(1) Whenever the seat of a Member, not being a non-constituency Member, has become vacant for any reason other

> than a dissolution of Parliament, the vacancy shall be filled by election in the manner provided by or under any law relating to Parliamentary elections for the time being in force.

6 Section 24(2A) of the PEA reads as follows:

> **24.**—(2A) In respect of any group representation constituency, no writ shall be issued … for an election to fill any vacancy unless all the Members for that constituency have vacated their seats in Parliament.

7 In my judgment, this application fails for the reasons set out below.

The GRC scheme

8 In 1988, the Constitution was amended to introduce the GRC scheme to ensure the representation in Parliament of Members from the Malay, Indian and other minority communities. The GRC scheme was implemented principally through the insertion of Article 39A to the Constitution and simultaneous amendments to the PEA. Under the scheme, the President may declare any constituency as a GRC and designate that constituency as one in which any election is to be held on the basis of a group of between three to six candidates. In addition, the President is to designate every GRC as either (a) a constituency where at least one of the candidates in every group must be a person belonging to the Malay community or (b) a constituency where at least one of the candidates in every group must be a person belonging to the Indian or other minority communities.

9 When Article 49(1) of the Constitution was enacted, there was no GRC scheme. When the seat in a single Member constituency ("SMC") is vacated mid-term, *ie*, during a government's term of office, a by-election has to be held to fill the vacancy: Article 49(1) of the Constitution. The application of Article 49(1) in the case of an SMC is relatively straightforward; see, also, *Vellama d/o*

Marie Muthu v Attorney-General [2013] 4 SLR 1 ("*Vellama*"). The question in the present case is whether a by-election must similarly be held when one of the seats in a GRC is vacated mid-term.

Leave required under O 53 r 1 of the Rules of Court

10 As a preliminary matter, under O 53 r 1 (1) of the Rules of Court (Cap 332, 2014 Rev Ed) ("Rules"), leave of the High Court is required for an application for a mandatory order. Leave will not be granted unless (a) the matter complained of is susceptible to judicial review; (b) the applicant has sufficient interest or standing in the matter; and (c) the applicant shows an arguable case or *prima facie* case: *Singapore Civil Procedure* 2017 Vol 2 (Foo Chee Hock gen ed) at para 53/1/6.

11 I agree with the Applicant that the first requirement is clearly satisfied in this case. With respect to the second requirement, the Respondent accepts that the Applicant has sufficient interest as she is a voter in the MYT GRC and also a resident of Madam Halimah's former ward. As for the third requirement of an arguable or *prima facie* case, I agreed with both parties to deal with this together with their submissions on the principal application since the submissions are the same. For reasons set out below, in my view, leave should not be given in this case.

The Applicant's case for the mandatory orders

12 The Applicant seeks mandatory orders that the remaining MPs in the MYT GRC vacate their seats and that the Prime Minister advises the President to issue a writ of election. In her written submissions, the Applicant relied on three grounds:

(a) Article 49(1) of the Constitution requires the calling of a by-election in a GRC when the seat of an Elected MP has become vacant for any reason other than the dissolution of Parliament;

(b) Article 39A(2) of the Constitution requires that a GRC be represented by an MP belonging to a minority community, until the dissolution of Parliament; and

(c) a by-election should be called because voters have a right to be represented by an Elected MP of their choice until the dissolution of Parliament under the Singapore Constitution.

The first ground: Article 49(1)

13 This first ground raises the question as to how Article 49(1) of the Constitution should be interpreted.

14 The Applicant's case may be summarised as follows:

(a) The plain reading of Article 49(1) of the Constitution mandates a by-election to be called when one seat in a GRC falls vacant for any reason other than a dissolution of Parliament.

(b) To enable the by-election for the MYT GRC to be held, the remaining MPs in the GRC must vacate their seats.

15 At the outset, it is important to note that it is implicit in the Applicant's case that a by-election in a GRC would be for the whole group as designated by the President in respect of that GRC ("the GRC Team"). In the case of the MYT GRC, this would comprise four candidates, at least one of whom must be from the Malay community. On this point, the Applicant is on common ground with

the Respondent. This position must be correct. Under the law, it cannot be a by-election to fill just the one seat that has been vacated.

16 First, as the Respondent submits, Article 49(1) provides that the "vacancy shall be filled by election in the manner provided by or under any law relating to Parliamentary elections for the time being in force". All elections (including by-elections) in any GRC shall be held on a basis of such number of candidates as designated for that constituency by the President: ss 27A(1) and (2) of the PEA. There is no law providing for the election of a single seat in a GRC.

17 Second, the members of a GRC Team are required to be either members of the same political party or independent candidates standing as a group: Article 39A(2)(*c*) of the Constitution read with s 27A(3) of the PEA. The remaining MPs in the MYT GRC belong to the same political party. A by-election for just the single vacated seat in the present case would not be possible under the law unless it is limited to candidates belonging to the same political party as the remaining MPs in the MYT GRC. Obviously, such a limitation cannot be justified.

18 The Respondent submits that Article 49(1) of the Constitution should be interpreted to require a by-election for a GRC only when *all* the Members of the GRC have vacated their seats. The Respondent's alternative submission is that Article 49(1) does not apply to GRCs at all.

Principles of statutory interpretation

19 The principles are not in dispute. Both the Applicant and the Respondent have referred me to the Court of Appeal's decision in *Tan Cheng Bock v*

Attorney General [2017] 2 SLR 850 ("*Tan Cheng Bock*"). It is common ground that

(a) the purposive approach applies to the Constitution which should be interpreted in a way that gives effect to the intent and will of Parliament; and

(b) the purposive interpretation of a legislative provision involves three steps:

(i) first, the court should ascertain possible interpretations of the provision, having regard to the text of the provision as well as the context of the provision within the written law as a whole. This is done by determining the ordinary meaning of the words, and could be aided by rules and canons of statutory construction;

(ii) second, the court should ascertain the legislative purpose of the statute. Legislative purpose should ordinarily be gleaned from the text itself. Extraneous material may be considered in the situations set out under s 9A(2) of the Interpretation Act (Cap 1, 2002 Rev Ed) ("IA"); and

(iii) third, the court should compare the possible interpretations of the text against the purpose of the statute. An interpretation which furthered the purpose of the written text was to be preferred to one which did not.

Possible interpretations of Article 49(1)

20 As stated at [19] above, the first step is to ascertain the possible interpretations of Article 49(1). It would be useful to set out Article 49(1) again:

> **49.** — (1) Whenever the seat of a Member, not being a non-constituency Member, has become vacant for any reason other than a dissolution of Parliament, the vacancy shall be filled by election in the manner provided by or under any law relating to Parliamentary elections for the time being in force.

21 The parties have submitted three different interpretations of Article 49(1) with respect to its application to GRCs:

(a) Article 49(1) requires the calling of a by-election for the whole GRC Team whenever a seat in the GRC becomes vacant mid-term ("the Applicant's Interpretation").

(b) Article 49(1) requires the calling of a by-election for the whole GRC Team only when all the seats in the GRC become vacant mid-term ("the Respondent's Interpretation").

(c) Article 49(1) applies only to SMCs and does not apply to GRCs ("the Respondent's Alternative Interpretation").

The Applicant's Interpretation

22 The Applicant's Interpretation faces an immediate hurdle. A by-election for the whole GRC Team cannot be held unless the remaining MPs in the MYT GRC vacate their seats. The Applicant herself acknowledges that the remaining MPs must first vacate their seats; one of the orders that she seeks is a mandatory order to that effect. It is clear then that whether the Applicant's Interpretation is a possible one depends on whether the remaining MPs can be compelled to vacate their seats.

23 Article 46(2) of the Constitution provides the grounds upon which the seat of a Member is vacated. Article 46(2) states as follows:

> **46.** — (2) The seat of a Member of Parliament shall become vacant —
>
> (*a*) if he ceases to be a citizen of Singapore;
>
> (*b*) if he ceases to be a member of, or is expelled or resigns from, the political party for which he stood in the election;
>
> (*c*) if, by writing under his hand addressed to the Speaker, he resigns his seat in Parliament;
>
> (*d*) if during 2 consecutive months in each of which sittings of Parliament (or any committee of Parliament to which he has been appointed) are held, he is absent from all such sittings without having obtained from the Speaker before the termination of any such sitting permission to be or to remain absent therefrom;
>
> (*e*) if he becomes subject to any of the disqualifications specified in Article 45;
>
> (*f*) if he is expelled from Parliament in the exercise of its power of expulsion; or
>
> (*g*) if being a nominated Member, his term of service as such a Member expires.

Article 45 of the Constitution (referred to in (*e*) above) provides for various disqualifications (including *eg,* unsoundness of mind and bankruptcy). It is indisputable that the fact that a seat in a GRC has been vacated does not result in the remaining MPs being disqualified under Article 45.

24 None of the grounds in Article 46(2) applies in the present case. There is therefore nothing in Article 46(2) that requires the remaining MPs in the MYT GRC to vacate their seats.

25 The Applicant submits that the remaining MPs in the MYT GRC must vacate their seats by resigning. However, the Applicant is unable to point to any provision upon which the remaining MPs can be compelled to resign. The Applicant's argument is simply that because Article 49(1) has triggered a by-election in the present case, the remaining MPs must vacate their seats by

resigning because otherwise a by-election cannot be held. In my view, this is a circuitous argument and is tantamount to saying that (a) the Applicant's Interpretation depends on it being possible to compel the remaining MPs to resign, and (b) therefore, the remaining MPs must vacate their seats so that the Applicant's Interpretation can succeed. Clearly, such an argument lacks logic and must fail.

26 Since there is no basis in law to compel the remaining MPs to resign, the Applicant's Interpretation is simply unworkable. It is a rule of statutory construction that Parliament is presumed not to have intended an unworkable or impracticable result, so an interpretation that leads to such a result would not be regarded as a possible one: *Tan Cheng Bock* at [38]. In my judgment, it is unarguable that the Applicant's Interpretation is not a possible interpretation of Article 49(1) for this reason.

The Respondent's Interpretation

27 The Respondent submits that the Respondent's Interpretation is justified by applying either an updating construction or a rectifying construction of Article 49(1). The Respondent further submits that although the Respondent's Interpretation may be strained, it is justified because it gives effect to Parliament's express intent.

(1) Updating construction

28 An updating construction is based on the presumption that the Legislature intends the court to apply to an ongoing statute a construction that continuously updates its wording to allow for changes since the statute was framed: *Comptroller of Income Tax v MT* [2006] 3 SLR(R) 688 ("*CIT*") at [44],

citing FAR Bennion, *Statutory Interpretation: A Code* (Butterworths, 4th Ed, 2002) at p 762.

29 In *CIT*, the court was faced with two statutes which had a link to each other, but only one was later amended. The question before the court was whether an updating construction should be applied to the statute (which had not been amended) by importing the effect of the amendment that was made to the other statute. The court in *CIT* applied a three-stage analytical framework (at [46]-[47]) in determining whether an updating construction should be applied:

> (a) At the first stage, the court ascertains the nature of the amendment effected in the first statute.
>
> (b) The inquiry at the second stage is directed at whether the amendment to the first statute gives rise to any ambiguity or uncertainty in the interpretation and application of the second statute as it stands, by reason of which, or for some other reason, there is potentially a need to apply an updating construction to the second statute. If the answer is in the negative, the inquiry should end there. If, however, the answer is in the affirmative, the court moves to the third stage.
>
> (c) At the third, stage, it then becomes necessary to consider whether in the circumstances an updating construction ought to be applied and, if so, how. It will be relevant to have regard to the objects of the second statue, how it has hitherto been applied, how the draftsman has chosen to frame the linkage between the two statutes, and whether an updating construction would entail such a substantive change to its operation that it would be best left to the Legislature or whether the change is such as

> may appropriately be imported into the second statute by way of an updating construction.

The court explained (at [48]) that in applying an updating construction, the court is not assuming the legislative function but is filling a gap where what is missing is self-evidently within the overall spirit of the legislation and is needed to give effect to the legislative intent.

30 The presumption that an updating construction will be applied is not confined to cases involving two statutes as was the case in *CIT*. As the court in *CIT* observed (at [45]), "[t]he problem of course can arise in a number of ways.… A change in a related law is but one facet of this." The Respondent submits that in the present case, the link is between two provisions within the same piece of legislation, *ie*, Article 39A and Article 49(1) of the Constitution. Article 39A amended the Constitution by introducing the GRC scheme. This amendment gave rise to the question of how Article 49(1) should be interpreted in the context of GRCs.

31 The Applicant submits that the updating construction principle must not be adopted to update constitutional provisions and that doing so is an unprecedented approach bereft of legal basis. I disagree with the Applicant. I see no reason in principle why this tool of statutory interpretation should not apply simply because the written law in question is the Constitution. After all, as confirmed in *Tan Cheng Bock* (at [35]), the Constitution should be interpreted purposively to give effect to the intent and will of Parliament, and as explained in *CIT* (at [48]), applying an updating construction gives effect to the legislative intent. Further, the Applicant's concern that applying an updating construction to the Constitution would be tantamount to introducing a constitutional amendment through the guise of constitutional interpretation, is addressed by

the need to consider whether an updating construction would entail such a substantive change that it would be best left to the Legislature (see [29(c)] above).

32 The Applicant next refers to FAR Bennion, *Bennion on Statutory Interpretation* (LexisNexis, 5th Ed, 2008) ("*Bennion* 5th Ed") which states (at p 894) that "[a]n updating construction will not be given to an ongoing Act where to do this would go against a presumption that the result in question is intended only where express provision for it is made". The Applicant relies on this statement to submit that there is a presumption that changes in the law should be expressed through express statutory reform. In my view, the Applicant has misunderstood the statement in *Bennion* 5th Ed. An example given in the text refers to a case in which the UK House of Lords held that s 51(1) of the Supreme Court Act 1981 (c 54) did not empower the court to order costs to be paid out of central funds where this power was not expressly provided, *since to do so would infringe the constitutional principle that no money can be taken out of the Consolidated Fund except under a distinct authorisation from Parliament itself*. In other words, an updating construction could not be applied in that case because the result would go against the principle that no money can be taken out of the Consolidated Fund except under a distinct authorisation from Parliament. In the present case, the Applicant has not identified what presumption or principle would be offended by the Respondent's Interpretation.

33 I agree with the Respondent that an updating construction can be given to a provision in the Constitution. Applying the three-stage analytical framework propounded in *CIT* to the present case, the first stage is to ascertain the nature of the amendment. In the present case, the Constitution was amended by the insertion of Article 39A. Article 39A introduced the GRC scheme by

providing that the Legislature may by law make provision for, among other things,

> (a) the President to declare any constituency as a GRC to enable any election in that constituency to be held on the basis of a group of between three to six candidates,
>
> (b) the President to designate every GRC as either a constituency where at least one of the candidates in every group must be a person belonging to the Malay community or a constituency where at least one of the candidates in every group must be a person belonging to the Indian or other minority communities, and
>
> (c) all the candidates in every group to be either members of the same political party or independent candidates standing as a group.

34 Pursuant to Article 39A of the Constitution, amendments were introduced to the PEA giving effect to, among other things, the matters set out at [33] above (see s 8A and s 27A of the PEA).

35 Moving to the second stage of the analysis, there is no doubt that Article 39A gives rise to ambiguity in the interpretation of Article 49(1). Does Article 49(1) apply only to SMCs or can it also apply to GRCs and if so, when? Since there is ambiguity, the third stage of the analysis is now invoked.

36 With respect to the third stage of the analysis, the Respondent submits that an updating construction ought to be applied to Article 49(1) and that Article 49(1) should be given the Respondent's Interpretation because that gives effect to the intent and will of the Legislature. The Legislature's intent in this respect is clear: a by-election in a GRC will be required only if all the MPs for

that GRC have vacated their seats. This intent was clearly expressed in Parliament during the debate on the amendments to the Constitution and the PEA (both were debated as one package): *Singapore Parliamentary Debates, Official Report* (11 Jan 1988), vol 50, cols 191-192, (12 Jan 1988), vol 50, cols 334–335. This intent is also clearly expressed in s 24(2A) of the PEA which states as follows:

> **24.** —(2A) In respect of any group representation constituency, no writ shall be issued … for an election to fill any vacancy unless all the Members for that constituency have vacated their seats in Parliament.

37 The Applicant argues that the Parliamentary debates on Article 39A did not specifically address the interpretation of Article 49(1). In my view, that argument does not advance the Applicant's case. The Parliamentary intention in question in the present case relates to whether it is intended that a by-election in a GRC should be held when one or more, but not all, of the seats in the GRC have been vacated. The Parliamentary debates are directly relevant and on point.

38 I agree with the Respondent's submissions. An updating construction should be applied to Article 49(1) so that it reflects the changes introduced by Article 39A. As explained at [15]–[17] above, a by-election in the case of a GRC has to be for the whole GRC Team which necessarily means that all the seats must first be vacated. Both the Applicant and the Respondent are in fact in agreement on this. In my view, an updating construction should be applied such that references to "the seat of a Member" in Article 49(1) are interpreted to mean "the seats of all the Members" in the case of a GRC.

(2) Rectifying construction

39 It is presumed that the Legislature intends the court to apply a construction which rectifies any error in the drafting of a statute where it is

required in order to give effect to the Legislature's intention: Oliver Jones, *Bennion* on *Statutory Interpretation: A Code* (LexisNexis, 6th Ed, 2013) at p 788.

40 Three cumulative conditions have to be satisfied before the court will read words into a statute to rectify what it perceives to be an error in legislative drafting:

> (a) first, it is possible to determine from a consideration of the provisions of the Act read as a whole what the mischief is that Parliament sought to remedy with the Act;
>
> (b) second, it is apparent that the draftsman and Parliament had by inadvertence overlooked, and so omitted to deal with, the eventuality that is required to be dealt with so that the purpose of the Act can be achieved; and
>
> (c) third, it is possible to state with certainty what the additional words would be that the draftsman would have inserted and that Parliament would have approved had their attention been drawn to the omission.

See *Nam Hong Construction & Engineering Pte Ltd v Kori Construction (S) Pte Ltd* [2016] 4 SLR 694 ("*Nam Hong*") at [55], which followed *Kok Chong Weng and others v Wiener Robert Lorenz and others (Ankerite Pte Ltd, intervener)* [2009] 2 SLR(R) 709 ("*Kok Chong Weng*").

41 In my view, the three conditions set out in *Kok Chong Weng* are easily satisfied in the present case. First, as discussed earlier, it is clearly Parliament's intent that no by-election is required in the case of a GRC unless all the seats

have been vacated. Second, it is apparent that Parliament gave effect to this intention in s 24(2A) of the PEA but inadvertently omitted to deal with Article 49(1) of the Constitution. Third, it is clear that if Parliament's attention had been drawn to the omission, it would have approved of the addition in Article 49(1) of language similar to that in s 24(2A) of the PEA. Article 49(1) can therefore also be given a rectifying construction by adding language similar to that in s 24(2A) of the PEA.

(3) Strained construction can be justified

42 The Respondent recognises that the Respondent's Interpretation may give the literal wording in Article 49(1) a strained construction. However, the Respondent submits that a strained construction may be justified (and in some cases positively required) for any one, or any combination, of the following reasons:

(a) a repugnance between the words of the enactment and those of some other enactment;

(b) consequences of a literal construction so undesirable that Parliament cannot have intended them;

(c) an error in the text which plainly falsifies Parliament's intention; or

(d) the passage of time since the enactment was originally drafted.

See *Kok Chong Weng* at [49]–[50], citing with approval *Bennion* 5th Ed at p 458.

43 The Respondent submits that all four reasons above overlap and apply in the present case. I do not think that repugnance between the terms of Article 49(1) of the Constitution and s 24(2A) of the PEA should be a reason justifying a strained construction of Article 49(1) in the present case. After all, under Article 4 of the Constitution, the Constitution is the supreme law and the PEA would be void to the extent of any inconsistency with the Constitution. However, I agree with the Respondent that the other three reasons overlap and apply in the present case.

(4) Respondent's Interpretation is a possible interpretation

44 For the above reasons, in my view, the Respondent's Interpretation is a possible interpretation of Article 49(1) of the Constitution.

The Respondent's Alternative Interpretation

45 The Respondent's Alternative Interpretation is based on a literal reading of Article 49(1) and is a possible interpretation.

The legislative purpose

46 Having ascertained the possible interpretations of Article 49(1), the next step is to ascertain the legislative purpose. In drawing out the legislative purpose behind a provision, primacy should be accorded to the text of the provision and its statutory context over any extraneous material. However, when the provision on its face is ambiguous, the court may consider extraneous material. See *Tan Cheng Bock* at [43] and [47].

47 As already discussed, the legislative purpose is clear. All elections (including by-elections) in any GRC shall be held on a basis of such number of candidates as designated for that constituency by the President, and no by-

election needs to be held to fill any vacancy in a GRC unless all the Members in that GRC have vacated their seats.

48 In my view, the legislative purpose can be drawn from the statutory context. Under 39A of the Constitution, elections in a GRC are to be held on the basis of a group of candidates as designated by the President. It follows that all the seats in the GRC must be vacated before an election can be held. In any event, since Article 49(1) is ambiguous as to its application to GRCs, it is permissible to consider extraneous material. In this case, as discussed earlier, the same conclusion would be reached on considering the extraneous material.

Comparing the possible interpretations against the legislative purpose

49 It is clear that of the two possible interpretations of Article 49(1) proffered by the Respondent, the Respondent's Interpretation is to be preferred because it furthers the legislative purpose.

50 I would add that even if the Applicant's Interpretation were a possible interpretation of Article 49(1), it would not be one which furthers the legislative purpose and the Respondent's Interpretation would still be preferred.

51 In my view, the Respondent's Interpretation is therefore the correct interpretation of Article 49(1).

The second ground: Article 39A(2)

52 In her written submissions, the Applicant also argues that a by-election has to be held because Article 39A(2) of the Constitution requires that a GRC be represented by an MP belonging to a minority community, until the dissolution of Parliament. It will be recalled that in the present case, the seat that

was vacated in the MYT GRC belonged to an MP belonging to the Malay community. However, during oral submissions, the Applicant clarified that her case is that a by-election must be held if *any* seat in a GRC (whether held by an MP belonging to a minority community or not) is vacated. The Applicant accepted that accordingly, her submissions on this second ground would no longer apply.

53 In any event, in my view, the Applicant's reliance on this second ground fails for the same reasons that her reliance on the first ground fails. Whether the vacated seat was held by an MP belonging to a minority community or not, a by-election for the whole GRC Team cannot be held unless the remaining MPs can be compelled to vacate their seats. As discussed, there is no basis in law to compel the remaining MPs to vacate their seats.

The third ground: The right to be represented in Parliament

54 The Applicant submits that a by-election must be held in the present case because voters have an implied right under the Constitution to be represented by an Elected MP of their choice until the dissolution of Parliament. The Applicant relies on the following observation by the Court of Appeal in *Vellama* (at [79]):

> [I]t is vital to remind ourselves that the form of government of the Republic of Singapore as reflected in the Constitution is the Westminster model of government, with the party commanding the majority support in Parliament having the mandate to form the government. The authority of the government emanates from the people. Each Member represents the people of the constituency who voted him into Parliament. The voters of a constituency are entitled to have a Member representing and speaking for them in Parliament. The Member is not just the mouthpiece but the voice of the people of the constituency.

55 The Applicant also relies on *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 ("*Yong Vui Kong*"). In that case, the Court of Appeal noted (at [69]) that the basic structure doctrine postulates that there are certain fundamental features of a constitution that cannot be amended by Parliament. However, the Court of Appeal expressed no view on whether the basic structure doctrine is part of the law in Singapore since it was not considering the validity of a constitutional amendment (at [72]).

56 Nevertheless, the Applicant relies on the Court of Appeal's observations in *Yong Vui Kong* (at [69]) that the right to vote cannot be found in the Constitution and that the Government had acknowledged in 2001 that it is part of the basic structure of the Constitution. The Court of Appeal also referred (at [70]) to the passage from *Vellama* set out at [54] above which expressed the philosophical underpinnings of the right to vote in the Westminster model of government set up by the Constitution.

57 In the present case, the Applicant is not challenging the validity of a constitutional amendment. Accordingly, as was the case in *Yong Vui Kong*, it is unnecessary for me to decide whether the basic structure doctrine is part of the law in Singapore. In any event, I agree with the Respondent that the voters in the MYT GRC have not lost their right to be represented in Parliament. Under the GRC scheme, voters in the GRC vote not for individual MPs but for the GRC Team. It is the GRC Team that represents the GRC in Parliament. In the present case, the MYT GRC has continued to be represented in Parliament by the MYT GRC Team (albeit comprising one MP less).

The Applicant's alternative case

58 The Applicant's alternative case (see [4] above) is that to be consistent with Article 49(1) of the Constitution, s 24(2A) of the PEA must be interpreted as requiring all the MPs in a GRC to vacate their seats when (a) one of more seats is vacated or (b) in the alternative when the only MP from a minority community in the GRC vacates his or her seat.

59 The alleged inconsistency with Article 49(1) arises only if the Applicant's Interpretation is correct. Since I have rejected the Applicant's Interpretation, there is no inconsistency between s 24(2A) of the PEA and Article 49(1) of the Constitution. The Applicant's alternative case therefore falls away.

60 In any event, it is difficult to see how the declaratory order sought in respect of s 24(2A) of the PEA can succeed. Section 24(2A) of the PEA expresses Parliament's intention that there will be no by-election to fill any vacancy in a GRC unless all the MPs in the GRC have vacated their seats. During oral submissions, the Applicant argued that it is implied in s 24(2A) that the remaining MPs must resign if any seat in the GRC has been vacated. In my view, it is patently clear that the plain language of s 24(2A) permits of no such interpretation.

Conclusion

61 The Applicant's case cannot succeed for the above reasons. In particular, the Applicant's Interpretation depends on the existence of a legal basis to compel the remaining MPs of the MYT GRC to vacate their seats. There is clearly no such legal basis in the present case and therefore the Applicant's Interpretation cannot be correct.

62 In my view, the Applicant has not shown an arguable or *prima facie* case and accordingly, leave is not granted for the application for the mandatory orders. In any event, even if leave were granted, the application still fails for the reasons set out above.

63 The Respondent's Interpretation is the correct interpretation of Article 49(1).

64 I therefore dismiss the application.

65 As for costs, the Applicant referred me to the High Court decision in *Vellama d/o Marie Muthu v Attorney-General* [2013] 1 SLR 797 in which the High Court made no order as to costs on the ground that the application raised public law issues of general importance and the applicant was not seeking to protect some private interest. The Respondent accepted that public interest is a relevant factor to consider. However, the Respondent submitted that in the present case, the primary focus of the application was on the mandatory order to compel the remaining MPs in the MYT GRC to vacate their seats and there was no basis at all for this. The Respondent therefore submitted that costs should follow the event. I agreed with the Respondent. As the Applicant did not disagree with the Respondent's quantification of costs, I ordered costs to be paid by the Applicant to the Respondent fixed at $10,764.35 inclusive of disbursements.

Chua Lee Ming
Judge

Peter Low, Priscilla Chia, Elaine Low, and
Ng Bing Hong (Messrs Peter Low & Choo LLC)
for the Applicant;
Hri Kumar Nair SC, Hui Choon Kuen, and
Sivakumar Ramasamy (Attorney-General's Chambers)
for the Respondent.
