Tan Liang Joo John *v* Attorney-General
[2019] SGHC 263

Case Number	: Originating Summons No 911 of 2019
Decision Date	: 06 November 2019
Tribunal/Court	: High Court
Coram	: Aedit Abdullah J
Counsel Name(s)	: Ravi s/o Madasamy (Carson Law Chambers) for the applicant; Shivani Retnam, Tang Shangjun and Beulah Li (Attorney-General's Chambers) for the respondent.
Parties	: Tan Liang Joo John — Attorney-General

Statutory Interpretation – Constitutional provisions

6 November 2019

Aedit Abdullah J:

Introduction

1 The applicant seeks a declaration that he is not disqualified from standing for election because of his conviction for contempt by scandalising the court, and the imposition of a fine of $5,000.

Background

2 The applicant, the vice-chairman of the Singapore Democratic Party, was found guilty by Woo Bih Li J of contempt by scandalising the court under s 3(1)(*a*) of the Administration of Justice (Protection) Act (No 19 of 2016) ("AJPA"): see *AG v Wham Kwok Han Jolovan and another matter* [2018] SGHC 222 ("*Jolovan Wham (Conviction)*"). A sentence of a $5,000 fine, with 1 week's imprisonment in default, was imposed on him: see *AG v Wham Kwok Han Jolovan and another matter* [2019] SGHC 111 ("*Jolovan Wham (Sentencing)*").

3 The applicant plans to run in the next general election, which apparently must be held by the first half of 2021. He seeks a declaration under O 15 r 16 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC") that he meets the eligibility requirements to stand for election as a Member of Parliament under Art 44 of the Constitution of the Republic of Singapore (1999 Reprint) ("the Constitution").

4 Before Woo J, the position taken by the applicant's former counsel was that a fine of $2,000 or more would indeed disqualify the applicant from running. [note: 1] This was, the applicant now contends, an error. In any event, the position taken by the applicant in those proceedings does not bar him from making the present application.

5 It is not disputed between the parties that the offence of scandalising contempt is a form of criminal contempt. This judgment thus uses the term "criminal contempt" to refer to the offence of scandalising contempt.

Summary of the applicant's case

6 The applicant seeks a declaration that he is not disqualified from standing for election by virtue of the punishment imposed on him for criminal contempt. Article 45(1)(*e*) of the Constitution only applies to criminal offences and not criminal contempt. The phrase "has been convicted of an offence" is ambiguous and can be read as being confined to criminal offences, excluding quasi-criminal offences such as criminal contempt. [note: 2] Interpreting Art 45(1)(*e*) to cover quasi-criminal offences would mean that even disciplinary offences potentially fall within its ambit. [note: 3] Such an interpretation would further render Art 45(1)(*g*) tautologous. [note: 4] Eligibility to run for Parliament should not be taken narrowly, and only a serious offence would result in disqualification. Furthermore, Art 45(1)(*e*) should only apply to offences for which a free pardon is available. No free pardon is available for contempt, which demonstrates that it is not an offence caught by Art 45(1)(*e*). [note: 5] The extraneous materials relied upon by the respondent do not assist the court. A purposive reading should be adopted, taking into account the whole of the Constitution. [note: 6]

7 The applicant also relies on the position previously taken in respect of Mr Jufrie Mahmood. In 1988, the then Returning Officer, Mr Ong Kok Min ("the RO"), informed the Straits Times that Mr Jufrie Mahmood's nomination paper would not be rejected if he attempted to stand for election. Mr Jufrie Mahmood had earlier been fined $3,000 for contempt of court. [note: 7] The RO took the position that disqualification in Art 45(1)(*e*) only applied to criminal offences, and that the offence of contempt of court was not criminal in nature. The applicant argues that a presumption of legality should apply to the position taken by the RO, a senior government officer. [note: 8] In oral arguments, the applicant also raised the issue of estoppel, as well as Art 9 and Art 12 of the Constitution.

Summary of the respondent's case

8 The respondent argues that the declaration sought by the applicant should not be granted. Article 45(1)(*e*) applies since the applicant has been convicted of an offence of criminal contempt and fined more than $2,000. The ordinary meaning of the term "offence" in Art 45(1)(*e*) would cover quasi-criminal offences, such as criminal contempt. [note: 9] The legislative purpose of the article is to filter out unsuitable candidates, [note: 10] and interpreting "offences" to include contempt furthers this legislative purpose. [note: 11] The available extraneous materials are neutral as to whether the term "offence" in Art 45(1)(*e*) is limited to criminal offences. [note: 12] The respondent's position is that the position taken in respect of Mr Jufrie Mahmood's nomination in 1988 does not assist in the interpretation of Art 45(1)(*e*). [note: 13] Finally, the enactment of the AJPA does not affect the analysis of Art 45(1)(*e*). [note: 14]

The decision

9 The declaration that is sought is for the applicant to be declared eligible to stand for an election as a Member of Parliament under Art 44 of the Constitution. [note: 15] This is a broad prayer, as many factors could affect eligibility. However, the applicant's affidavit and arguments make it clear that the concern raised is only as regards the finding of criminal contempt and the punishment imposed, which potentially engages Art 45(1)(*e*). My decision will thus be on that basis only.

10 I have not been persuaded that the declaration sought should be granted. Considering the plain words of Art 45(1)(*e*) of the Constitution, I am satisfied that the disqualification applies to convictions for criminal contempt. The applicant is thus disqualified by the sentence imposed for the criminal contempt which the court in *Jolovan Wham (Conviction)* found had been committed by him. I

do not consider that the purpose can be properly construed in a way to assist beyond the plain words of the text. Neither do I find that the position taken in respect of Mr Jufrie Mahmood binds the government in any way.

Analysis

11 The distinction between civil and criminal contempt was examined in *Li Shengwu v AG* [2019] 1 SLR 1081 ("*Li Shengwu*") by the Court of Appeal. The Court of Appeal concluded that civil and criminal contempt are quasi-criminal, and that the jurisdictional basis for the law of contempt is *sui generis*: *Li Shengwu* at [123]. That decision was made in the context of determining how the court's jurisdiction was established in respect of an overseas contemnor. The Court of Appeal recognised that there could be differences between the two although the AJPA itself dispenses with the labels of "civil" and "criminal" contempt: *Li Shengwu* at [122]–[123]. It suffices for me to determine whether or not Art 45(1)(*e*) covers criminal contempt, without going into whether civil contempt is also caught. There is something to be said for the proposition that civil contempt is of a different nature; the question whether that then means that civil contempt is an offence caught under Art 45(1)(*e*) or otherwise is one that should be dealt with by another court, seised of a case actually involving civil contempt.

12 The analysis in this judgment will examine the following in turn:

(a) the interpretation to be given to the term "offence" in Art 45(1)(*e*) of the Constitution;

(b) whether the government is bound by the position taken in the prior instance involving Mr Jufrie Mahmood; and

(c) other arguments raised by the applicant.

Requirements for a declaration

13 The parties did not go into this and the requirements would seem to be made out here in any event. A declaration may be obtained if the following requirements are made out, as laid down in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 ("*Karaha Bodas*") at [14]:

> …the following are the requirements that must be satisfied before the court grants [declaratory relief]:
>
> (a) the court must have the jurisdiction and power to award the remedy;
>
> (b) the matter must be justiciable in the court;
>
> (c) as a declaration is a discretionary remedy, it must be justified by the circumstances of the case;
>
> (d) the plaintiff must have *locus standi* to bring the suit and there must be a real controversy for the court to resolve;
>
> (e) any person whose interests might be affected by the declaration should be before the court; and
>
> (f) there must be some ambiguity or uncertainty about the issue in respect of which the

declaration is asked for so that the court's determination would have the effect of laying such doubts to rest.

The Court of Appeal further elaborated on the requirement that a plaintiff have *locus standi* to bring the action, holding that the plaintiff must be "asserting the recognition of a 'right' that is personal to him": see *Karaha Bodas* at [15]. The test laid down in *Karaha Bodas* is applicable in cases involving constitutional rights: see *Tan Eng Hong v AG* [2012] 4 SLR 476 ("*Tan Eng Hon*g") at [115].

14 To my mind, the applicant satisfies the requirements to apply for declaratory relief in the present case. Article 44 of the Constitution states that a person is qualified to stand for election as a Member of Parliament if he fulfils the requirements therein and is not disqualified under Art 45. It thus appears that the right to stand for election (provided the necessary pre-requisites are met) is properly characterised as a *personal* one. There is thus no need for the applicant to show that he has suffered special damage, which would have been required had declaratory relief been sought on the basis of a *public* right: see *Vellama d/o Marie Muthu v AG* [2013] 4 SLR 1 ("*Vellama*") at [29]–[33]. One issue which arises is that the application in the present case can arguably be described as theoretical. The applicant has not yet had an application to stand for election as a Member of Parliament rejected on the basis of his being disqualified under Art 45(1)(*e*). However, I do not think that this prevents him from bringing the present application. In *Tan Eng Hong*, the Court of Appeal held that the court *may* exercise its discretion to hear cases involving applications for declaratory relief even though the facts on which the action is based are theoretical: see *Tan Eng Hong* at [143]. Here, I am satisfied that the hearing of a theoretical case in this instance is justified on the basis that a general election must be called relatively soon. It would be appropriate to determine the issue of the applicant's eligibility at this point given his undisputed intention to stand for election. In any event, the respondent does not take issue with the availability of declaratory relief, or the applicant's standing to seek the same, in these proceedings.

The meaning of "offence"

15 In construing the meaning of "offence" in Art 45(1)(*e*), the Court of Appeal's guidance in *Tan Cheng Bock v AG* [2017] 2 SLR 850 ("*Tan Cheng Bock*"), laying down a three step approach to constitutional interpretation, will have to be borne in mind. The approach can be summarised as follows (*Tan Cheng Bock* at [37], [38] and [54(c)]):

(a) First, 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.

(b) Second, ascertain the legislative purpose of the statute.

(c) Third, compare possible interpretations of the text against the purpose of the statute. An interpretation which furthers the purpose of the written text is preferred to one which does not.

The parties do not differ on the approach to be taken; where they diverge is on the application of the law to the facts.

The ordinary meaning

16 Article 45(1)(*e*) of the Constitution reads:

45.—(1) Subject to this Article, a person shall not be qualified to be a Member of Parliament who —

...

(*e*) has been convicted of an offence by a court of law in Singapore or Malaysia and sentenced to imprisonment for a term of not less than one year or to a fine of not less than $2,000 and has not received a free pardon:

Provided that where the conviction is by a court of law in Malaysia, the person shall not be so disqualified unless the offence is also one which, had it been committed in Singapore, would have been punishable by a court of law in Singapore;

17 Article 45(1)(*g*) is also material, as it provides for disqualification where a person is convicted for specific offences:

...

(*g*) is disqualified under any law relating to offences in connection with elections to Parliament or the office of President by reason of having been convicted of such an offence or having in proceedings relating to such an election been proved guilty of an act constituting such an offence.

The rest of Art 45(1) refers to various other events of disqualification.

The applicant's arguments

18 The applicant argues that there is ambiguity on whether the term "offence" includes quasi-criminal offences, which requires the Court to adopt an approach that promotes the object of the law. Article 45(1)(*e*) has to be taken together with Art 45(1)(*g*), which disqualifies a person convicted of offences in connection with elections. Applying the principle that tautologies are to be avoided, given that Art 45(1)(*g*) applies to quasi-criminal offences, Art 45(1)(*e*) should not cover such offences, and thus must be read to exclude quasi-crimes. [note: 16] There are numerous types of offences, many of which are not criminal: see *Seldon v Wilde* [1911] 1 KB 701 at 707; *Li Shengwu* at [56]. The AJPA does not change the status of criminal contempt as a non-criminal offence.

The respondent's arguments

19 The respondent argues that on a plain reading, Art 45(1)(*e*) applies to any offence, as long as the penal consequences provided for are imposed (*ie*, a fine of $2,000 or imprisonment term of one year). No distinction is made in Art 45(1)(*e*) between criminal and other offences. Absent clear Parliamentary intention, the text should not be modified by the addition of the word "criminal" to "offence" in the guise of interpreting it purposively. [note: 17] Where offences are to be limited to criminal offences, these are expressly provided for in various acts. That Art 45(1)(*e*) uses the terms "convicted" and "has not received a free pardon" does not mean that it is limited to criminal offences only. [note: 18] A finding of guilt for criminal contempt is a conviction for the purposes of Art 45(1)(*e*). Criminal contempt is capable of attracting a pardon under Art 22P of the Constitution. [note: 19] The Malaysian case of *Wee Choo Keong v Ketua Pengarah Perkhidmatan Awam Malaysia* [2015] 1 MLJ 45 ("*Wee Choo Keong*") should not be followed. [note: 20]

The plain text

20 Starting first with the plain words of the text, the term "offence" is not defined in the

Constitution. Nor is there any express stipulation either covering or excluding contempt of court. In the *New Shorter Oxford English Dictionary* (Oxford University Press, 1993) ("*New Shorter Oxford*"), the term "offence" is defined (in sense 7) to include:

> A breach of law, rules, duty, propriety or etiquette; an illegal act, a transgression, a sin, a wrong, a misdemeanour, a misdeed; a fault.

The plain language certainly is sufficient on its own to cover contempt of court.

21 I do note that *Black's Law Dictionary* (Thomson Reuters, 10th Ed, 2014) defines "offense" (to use the American spelling), as

> A violation of the law; a crime, often a minor one. See CRIME. Cf. Misbehavior [sic]. – Also termed *criminal offense*.
>
> [emphasis in original]

The second limb of the definition links the term "offence" to a crime, but the first limb is in line with the *New Shorter Oxford*.

22 I am satisfied that the definition in the *New Shorter Oxford* better reflects the ordinary usage of the term "offence", at least in the Commonwealth. The usage of *Black's Law Dictionary* in the common law world is more recent, and the drafters of the Constitution would have had the general usage of the term in the Commonwealth in mind when drafting Art 45(1)(*e*).

The context

23 The applicant argues that the context shows that a restricted meaning should be applied. The term "offence" should be limited to criminal offences as Art 45(1)(*e*) restricts disqualification to offences for which a free pardon has not been obtained; only offences for which a free pardon is available are caught by Art 45(1)(*e*). Furthermore, tautology has to be avoided: Art 45(1)(*g*) already covers offences relating to elections, which must mean that Art 45(1)(*e*) for its part must be concerned with a different situation.

24 The respondent argues that the context shows that quasi-criminal offences are included. The term "offence" should be given the same meaning throughout the Constitution. Article 35(8), which specifies the Attorney-General's powers to institute or discontinue proceedings for an offence, includes quasi-criminal offences such as criminal contempt. Adopting a similar interpretation would require Art 45(1)(*e*) to apply to criminal contempt. [note: 21]

(1) References to free pardon and conviction

25 The applicant argues that the reference to a free pardon and conviction in Art 45(1)(*e*) shows that it is meant to cover only criminal offences and not quasi-criminal offences such as criminal contempt. It is said, citing *Wee Choo Keong*, that quasi-criminal offences cannot be the subject of a free pardon.

26 The respondent takes the contrary position, arguing that criminal contempt may be the subject of a free pardon. Article 22P of the Constitution, which deals with the constitutional power to pardon, does not restrict the offences for which a free pardon may be granted. Citing *Yong Vui Kong v AG* [2011] 2 SLR 1189 at [27], the respondent highlighted that the basis for the granting of a pardon is a

broad one. In *AG v James and Others* [1962] 2 WLR 740, the English court recognised the power of the Crown to grant a discharge for criminal contempt. [note: 22] The Ghanaian Supreme Court similarly recognised, in *Agbemava v AG* [2019] 2 LRC 424 ("*Agbemava*"), that the prerogative of mercy under the Ghanaian Constitution extended to the granting of a pardon to persons convicted for contempt of court. In reaching this conclusion, the Ghanaian Supreme Court considered that the prerogative of mercy under the Ghanaian Constitution was derived from the royal prerogative of mercy in English law, relying on *Halsbury's Laws of England* vol 9(1) (Butterworths, 4th Ed Reissue, 2003) at para 404 for the proposition that such power extended to the remission of a sentence for criminal contempt (*Agbemava* at p 444). The respondent's position is that the constitutional power to pardon also extends to civil contempt, [note: 23] arguing that the Malaysian Court of Appeal's decision in *Wee Choo Keong* should not be followed as there was insufficient reasoning in that case. [note: 24]

27 I would not read Art 22P narrowly: there is nothing in that article which would curtail the constitutional power of the President to grant a pardon for offences, including criminal contempt. The plain words do not expressly exclude contempt, whether civil or criminal.

28 The Malaysian decision in *Wee Choo Keong* is, with respect, not persuasive. In *Wee Choo Keong*, the Malaysian Court of Appeal held that Art 48(1)(*e*) of the Federal Constitution of Malaysia (2010 Reprint) (M'sia) ("the Malaysian Constitution"), which for present purposes is *in pari materia* with Art 45(1)(*e*) of the Constitution, did not operate to disqualify a person convicted of civil contempt. The Malaysian Court of Appeal agreed with the trial judge that the wording and context limited its operation to criminal offences as only they could be subject to a free pardon (*Wee Choo Keong* at [19]–[20]). With respect, the Malaysian Court of Appeal's decision was arrived at without reference to any authority that a person convicted and sentenced of civil contempt could not obtain a free pardon, with the result being that a civil contemnor would not be disqualified under Art 48(1)(*e*) of the Malaysian Constitution.

29 A few points arise from *Wee Choo Keong*. First, in so far as the Malaysian Court of Appeal concluded that civil contempt is excluded, that is an issue that must be disposed of on another occasion. The issue before this court is whether disqualification under Art 45(1)(*e*) applies to *criminal contempt*. Different considerations may or may not apply to civil contempt, for which fuller arguments and consideration may be required.

30 Second, the decision in *Wee Choo Keong* suggested that disqualification in Art 48(1)(*e*) of the Malaysian Constitution applies to criminal contempt. At [19], the Malaysian Court of Appeal referred to s 1 of the Representation of the People Act 1981 (c 34) (UK), which states:

> A person found guilty of one or more offences…and sentenced or ordered to be imprisoned or detained indefinitely or for more than one year, shall be disqualified for membership of the House of Commons…

The Malaysian Court of Appeal, while noting that the provision appeared broader than Art 48(1)(*e*) of the Malaysian Constitution, nevertheless found that the English position was helpful in interpreting the provision, observing that it "would appear to apply to criminal but not civil contempt".

31 Third, the Malaysian Court of Appeal linked the interpretation of Art 48(1)(*e*) of the Malaysian Constitution to the availability of a free pardon, reasoning that an offence only disqualifies a person if the offence is capable of being subject to a free pardon. As mentioned above at [27], I am doubtful that the decision in *Wee Choo Keong* accurately defines the scope of the President' Constitutional power to pardon under Art 22P. But aside from that, I am, with respect, uncertain that this is the

appropriate reading. It controls the meaning of the term "offence" by linking it to a quality, namely the ability to be pardoned. If that had been the intention of the drafters of the Constitutional provision, it would have been relatively easy to define "offence" expressly as an offence for which a pardon is available. That the drafters did not do so would seem to point against this interpretation. In fact, the more natural reading to my mind would simply be that an offence disqualifies if the punishment prescribed is imposed, but the disqualification does not operate if a free pardon is obtained. If a free pardon is in fact not available, then the disqualification is not capable of being removed. I am aware that my approach here means that there is a divergence between the law in Malaysia and Singapore. But that issue alone cannot control the interpretation of Art 45(1)(*e*) in the present case.

32 I should note in passing that there does not seem to be much that needs to be made out of the phrase "free pardon" as opposed to a pardon *simpliciter*: the term would seem to connote an unconditional pardon.

33 As for the reference to a conviction in Art 45(1)(*e*), this could point to a narrow meaning. However, the term "convict" has always been used in relation to criminal contempt, specifically for the offence of contempt by scandalising the court: see, *eg*, *AG v Shadrake Alan* [2011] 2 SLR 445 at [137]; *Au Wai Pang v AG* [2016] 1 SLR 992 at [9].

(2) Article 45 as a whole

34 I do not agree with the applicant's arguments that considering Art 45, particularly Art 45(1)(*g*), as a whole leads to the conclusion that the term "offence" must be given a narrower meaning, excluding criminal contempt. Article 45(1)(*g*) provides for disqualification where a person commits various election-related offences. It does not follow that Art 45(1)(*e*) should be read narrowly to avoid tautology. As argued by the respondent, Art 45(1)(*g*) is concerned with a specific basis of disqualification relating to offences or proceedings concerning elections, such as those found in s 55 of the Parliamentary Elections Act (Cap 218, 2011 Rev Ed) ("PEA"). It does not follow that there is any tautology or needless duplication. In other words, Art 45(1)(*e*) is concerned with general situations, whereas Art 45(1)(*g*) deals specifically with election-related offences. The overlapping nature of the various bases for disqualification in Art 45 may also be seen in the relationship between Art 45(1)(*e*) and Art 45(1)(*d*), referred to by the applicant. The various subsections of Art 45 may refer to overlapping categories of offences and events; it does not follow that they have to be construed as being entirely distinct and segregated.

35 Tautologies are to be avoided, but some overlap and redundancy is to be expected, especially where some provisions deal with specific situations and others are of more general applicability. I do not think that the rule that Parliament shuns tautology and does not legislate in vain goes so far as to prevent any overlap in enacted legislation; some redundancy is human and is to be expected out of an abundance of caution. An example of this can be found in the Penal Code (Cap 224, 2008 Rev Ed) ("PC"). Lesser offences such as voluntarily causing hurt under s 323 PC overlap with more serious ones such as voluntarily causing grievous hurt under s 325 PC; in cases where the more serious offence is made out, the elements of the lesser offence would inevitably be satisfied as well. It cannot be the case that such provisions must be interpreted in a way such as to avoid any element of overlap, as the applicant appears to argue. To do so is an incorrect application of the interpretive rule and would lead to absurd results.

(3) The Constitution as a whole

36 As argued by the respondent, the rest of the Constitution contains references to offences

which must be taken to include criminal contempt. Article 35(8), which deals with the powers of the Attorney-General, states:

> The Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.

It is not disputed that this power extends to cover contempt of court, meaning that the term "offence" in Art 35(8) includes criminal contempt. The respondent, citing *Woon Brothers Investments Pte Ltd v MCST Plan No 461 and others* [2011] 4 SLR 777 at [19], relies on the presumption that the same word is to bear the same meaning throughout a particular statute. [note: 25] There is indeed force in this argument, but the presumption may be displaced by other considerations.

(4) Statute

37 Statutes use the term "offence" to mean criminal offences, but this is inherent in the statutes specifying non-compliance as criminal matters to be dealt with through the criminal justice system. I do not therefore take the general usage of the term "offence" in the statute books to control its meaning in the Constitution, since what is in issue before me is whether that term can extend to a quasi-criminal matter. There do not appear to be other similar quasi-criminal offences under our laws.

(5) Disciplinary offences

38 The applicant raises the example of disciplinary offences as indicating ambiguity. Interpreting the term "offence" widely would mean that even disciplinary proceedings resulting in the imposition of a fine of more than $2,000 would lead to disqualification under Art 45(1)(*e*). For example, a finding by a disciplinary tribunal that a doctor is guilty of disreputable conduct under s 53(1)(*c*) of the Medical Registration Act (Cap 174, 2014 Rev Ed) ("MRA") would potentially disqualify him from standing for election as a Member of Parliament if a fine of more than $2,000 is imposed. [note: 26] A disciplinary tribunal appointed under s 50 of the MRA is a court of law as the decision of a tribunal appointed under Art 74 of the Constitution to determine whether a member of the Presidential Council for Minority Rights has vacated his seat is final and cannot be questioned in any court. [note: 27]

39 The respondent argues that there is no doubt that the High Court, which convicted the applicant in *Jolovan Wham (Conviction)*, is a court of law. A disciplinary tribunal, on the other hand, is not a court of law: *Wong Keng Leong Rayney v Law Society of Singapore* [2007] 4 SLR(R) 377 at [50]. Section 51(8) of the MRA makes it clear that a disciplinary tribunal appointed under the Act is not a court of law as it specifically provides that witness immunity would apply *as if* the hearings were proceedings in a court of law. Article 74 does not assist as that tribunal is clearly not a court of law. Art 74(3) states that any decision is not to be questioned in any court. [note: 28]

40 I accept the arguments of the respondent. Findings by a disciplinary tribunal that disciplinary offences are made out do not lead to a disqualifying offence under Art 45(1)(*e*). Such tribunals are not courts of law. I would also note that s 53(2)(*e*) of the MRA empowers the disciplinary tribunal to impose a penalty as opposed to a fine, though there does not appear to be a significant difference between the two. Article 74 does not assist the applicant as it refers to a specific tribunal established under the Constitution. In any event, Art 74 distinguishes the tribunal from the courts. No ambiguity or risk of disqualification for a minor matter arises.

(6) Strict interpretation

41 Although not couched as such, there are parts of the applicant's arguments which can be taken as advancing the point that the disqualification criteria in Art 45 should be construed strictly because they affect an important right or capacity, namely, the ability to stand for an office. The applicant referred to this as a fundamental right, mirroring the right to vote, which had to be vindicated by the court; this is considered below (at [66]). In this portion, the focus will be instead on whether the words in Art 45(1)(*e*) have to be strictly construed or interpreted to avoid, wherever possible, infringement of that right or capacity.

42 Such a strict interpretation is adopted in relation to ambiguous criminal provisions where there are two plausible ways of interpreting a statutory provision, even after it has been purposively interpreted. In such a scenario, the principle against doubtful penalisation applies and the provision is construed strictly in a way that is in favour of leniency to the accused: see *Kong Hoo (Pte) Ltd and another v PP* [2019] 1 SLR 1131 at [140], citing *PP v Low Kok Heng* [2007] 4 SLR(R) 183 at [31]

43 While there would be some sympathy for the view that restrictions against running should be narrowly construed, it is doubtful that there is such a level of ambiguity in Art 45(1)(*e*) that would attract a strict construction. Furthermore, as argued by the respondent, there are in fact various restrictions on qualification to run. Even leaving aside the qualifications under Art 19 for those running for President, the stipulations in Art 45 are quite wide. Excluding Art 45(1)(*e*), Art 45 contains no less than six other different grounds on which a person can be disqualified from standing for election as a Member of Parliament including: unsoundness of mind; bankruptcy; holding an office of profit; failure to properly lodge returns of election expenses; foreign citizenship or allegiance; and election-related offences.

44 I am not aware as presently advised of any authority expressly adopting the position that a strict interpretation is to be adopted with regard to Art 45.

The purpose

45 The applicant argues that caution has to be exercised in determining the purpose of a statute; otherwise, the purpose may be defined simply to support a party's preferred interpretation. The court should presume that the statute is a coherent whole, and generally, the specific purpose of a particular provision should not go against the general purpose of the statute. As far as possible, the provision in question should be read consistently with both the general purpose of the statute as well as the specific purpose of the provision. [note: 29] The applicant submits that narrowly interpreting the purpose of Art 45 to be the filtering out of candidates unsuitable for membership of Parliament would "allow Art 45(1)(*e*) to be used as a proxy by any prevailing government to restrict membership of Parliament and thereby subvert the rule of law". [note: 30]

46 The respondent argues that the legislative object is to uphold the dignity of Parliament to ensure public confidence; Art 45(1)(*e*) filters out candidates with defects in character rendering them unfit to be Members of Parliament. Such a defect is signalled by the imposition of a fine of $2,000 or imprisonment for a term of one year. The type of offence is thus immaterial. [note: 31]

47 The respondent acknowledges that the extraneous material is neutral as to whether only criminal offences are caught by Art 45(1)(*e*). The terms "crime" or "criminal offence", which were present in predecessor provisions to Art 45(1)(*e*), were removed without explanation, but such removal does not indicate that disqualification is to be tied to the punishment imposed rather than whether an offence is criminal in nature. None of the reports cited by the respondent shed any light on whether quasi-criminal offences such as criminal contempt were caught by Art 45(1)(*e*).

48 I accept that caution has to be exercised in construing meaning from the text of Art 45(1)(*e*). There is a danger of the court projecting a meaning on to the words that distorts those very words. Statutory and constitutional provisions are not living documents, to be altered or mutated according to the fashion of the times. Doing so would disregard the mechanisms and safeguards laid down in the Constitution for amendment of its provisions and the division of power between the three branches of the government.

49 What can be construed from the text of Art 45(1)(*e*) is that persons who are sentenced to a fine of more than $2,000 or imprisonment of more than a year are disqualified. This does not, however, shed light on the meaning to be given to the term "offence". The respondent's arguments that the sentence floors prescribed indicate that the nature of the offence is immaterial show one possible position; but there are insufficient grounds to regard that position as encapsulating the purpose, excluding the possibility that "offence" can be construed in a narrower sense to cover only "criminal offence".

50 I would also note that the usefulness of some of the materials cited by both sides has to be questioned. Extraneous materials that assist are those that are related or connected to the passage or adoption of the statutory or constitutional provision being examined. The Malayan *Report of the Committee appointed to examine the question of Elections to the Federal Legislative Council* (1954) cited by the respondent concerned the legislative council of a different territory; even if it considered a similar provision, its weight would not have been that great. The *Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) was in respect of the elected Presidency, a separate office. Extraneous materials are most useful when they indicate the position by the enacting body that must have accompanied the passage or adoption of the provision in question. Nothing of that nature was available here.

Furtherance of the purpose

51 The third step in the *Tan Cheng Bock* analysis calls for the preference of the interpretation that furthers the purpose of the provision. For the reasons given above, I do not think that consideration of the purpose assists in respect of Art 45(1)(*e*). I therefore find that, based on the text of the provision and the context in which it is found in the Constitution, the interpretation to be given to the term "offence" in Art 45(1)(*e*) extends to cover quasi-criminal offences such as criminal contempt.

The prior example of Mr Jufrie Mahmood

52 The applicant raises the example, through a newspaper report, of the RO in 1988 making a statement that Mr Jufrie Mahmood would not have his nomination papers rejected on the basis of his conviction for criminal contempt. The applicant relies on s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) as empowering the court to presume that evidence not produced would be unfavourable to the party withholding it. The applicant appears to be arguing that there is such evidence in the hands of the respondent which would show that such a stance was indeed taken. The principle of legality applies to the RO's decision and judicial notice should be taken of it. The government has not questioned the RO's interpretation for the past 30 years that quasi-criminal offences do not disqualify a candidate under Art 45(1)(*e*). [note: 32]

53 The respondent argues that the example does not assist in interpreting Art 45(1)(*e*). The newspaper report only states that Mr Jufrie Mahmood's nomination papers would not be rejected by the RO, and not that Art 45(1)(*e*) does not apply to criminal contempt. [note: 33] In any event the position of the RO is irrelevant, as it concerns a question of law, which is for the courts. [note: 34]

54 The difficulty with relying on the treatment of Mr Jufrie Mahmood is that all we have to go on is a newspaper report of a position reportedly taken by the RO in 1988. The adequacy of the report as a record of the position taken can be questioned on a number of grounds. First, the newspaper report only records what was told to the newspaper by the RO without providing any details on his reasoning. Second, there is no official record tendered, which would have provided some assurance against inaccuracies in reporting, though I would note that conversely nothing was tendered by the respondent to show that there was any complaint made to the newspaper by the RO subsequently. Third, this was a legal question, and to be convincing in these proceedings, the legal basis underlying that decision by the RO had to be laid bare.

55 The applicant argues that the newspaper report demonstrates that the interpretation adopted by the RO was that the term "offence" in Art 45(1)(*e*) did not extend to criminal contempt. [note: 35] It is not evident from the newspaper report that this was indeed the position taken by the RO. The only statement attributed to the RO is that Mr Jufrie Mahmood's nomination papers would not be rejected if filed. There might be other possible explanations for the RO's position, such as a waiver of some sort having been granted.

56 Even if the position of the RO in 1988 were accurately reported and reflective of the actual legal position taken by the government then, this does not mean that the government remains bound by this position some 31 years later. While the applicant invoked the presumption of legality, it is not entirely clear how the presumption would assist in the present proceedings, which concern the interpretation of a constitutional provision. The fact that the RO in 1988 might have taken a position in relation to the interpretation of Art 45(1)(*e*) cannot be binding on the courts, which are tasked under the Constitution to interpret the law.

57 The more important question that arises here is whether the government is bound by the stance taken by the RO in 1988. The primary basis that may bind the government is estoppel. While not raised in written arguments, what I considered and asked the parties to address me on orally was estoppel.

58 For estoppel to be made out, the primary elements which the applicant has to establish are representation and detrimental reliance. It was unlikely that there was such a representation on the facts: I would not consider a newspaper report to be sufficient indication of a position being taken as to the interpretation of Art 45(1)(*e*) and forming the basis of a representation. As indicated above at [54], such reports may not be entirely accurate. Importantly, newspaper reports cater to a general audience, omitting nuance in the interest of space. Furthermore, detrimental reliance would also be difficult to make out. The applicant would have had to commit the offence of criminal contempt while relying on the RO's representation that he would not be disqualified under Art 45(1)(*e*) if convicted. However, it is clear from the position taken by the applicant in *Jolovan Wham (Sentencing)* that he believed that he would be disqualified if sentenced to a fine greater than $2,000. It follows that the applicant could not have had the RO's statements from 1988 in mind while undertaking the conduct leading to his conviction for criminal contempt, and that his estoppel claim is consequently not made out.

59 I also doubt that estoppel is available as a remedy in the present case. To allow the applicant to invoke the doctrine of estoppel would be to effectively circumvent the disqualification criteria set out in Art 45(1)(*e*). It would also go against the grain of the PEA. Section 90 of the PEA allows for the election of a candidate as a Member of Parliament to be declared void by an Election Judge on various grounds, including the candidate being disqualified from election as a Member of Parliament. This strongly suggests that the disqualification criteria in Art 45(1)(*e*) is not capable of being derogated from by the RO (or the government for that matter). Such an approach would be

consistent with that adopted in Canada, one of the jurisdictions that still retains the doctrine of estoppel against public authorities. In *Immeubles Jacques Robitaille inc. v Québec (City)* [2014] 1 SCR 784, the Supreme Court of Canada stated (at [20]):

> …the doctrine of estoppel must yield in the public law context to an overriding public interest and may not be invoked to prevent the application of an express legislative provision.

It follows, *a fortiori*, that the doctrine of estoppel cannot be invoked to bind the government to an incorrect interpretation of a constitutional provision.

60 There may also be a question as to whether estoppel should only be put forward under an application under O 53 r 1 of the ROC, rather than in an application for a declaration. However, given my assessment that estoppel cannot be made out, I need not say more at this time.

61 I do note that in *Chiu Teng @ Kallang Pte Ltd v Singapore Land Authority* [2014] 1 SLR 1047 ("*Chiu Teng*") at [83], there was some indication that estoppel in judicial review has been subsumed under the doctrine of legitimate expectation. With respect, subject to guidance on this point by the Court of Appeal, I am not convinced yet that this is so: there may be differences in the elements of the two doctrines. The doctrine of substantive legitimate expectation was not canvassed by parties before me, but will be addressed for completeness.

62 The doctrine of substantive legitimate expectation has not been firmly established in Singapore. While Tay Yong Kwang J (as he then was) in *Chiu Teng* (at [119]) was of the view that it was part of Singapore law, the Court of Appeal in *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 (at [59]) voiced some concerns about accepting the doctrine, preferring instead to leave the question open for consideration in a future case.

63 In any event, similar issues would arise under substantive legitimate expectation as for estoppel. The following requirements for a claim in the doctrine of substantive legitimate expectation were adopted by Tay J in *Chiu Teng* (at [119]) :

> (a) The applicant must prove that the statement or representation made by the public authority was unequivocal and unqualified;
>
> (i) If the statement or representation is open to more than one natural interpretation, the interpretation applied by the public authority will be adopted; and
>
> (ii) The presence of a disclaimer or non-reliance clause would cause the statement or representation to be qualified.
>
> (b) The applicant must prove the statement or representation was made by someone with actual or ostensible authority to do so on behalf of the public authority.
>
> (c) The applicant must prove that the statement or representation was made to him or to a class of persons to which he clearly belongs.
>
> (d) The applicant must prove that it was reasonable for him to rely on the statement or representation in the circumstances of his case:
>
> (i) if the applicant knew that the statement or representation was made in error and chose to capitalise on the error, he will not be entitled to any relief;

(ii) similarly, if he suspected that the statement or representation was made in error and chose not to seek clarification when he could have done so, he will not be entitled to any relief;

(iii) if there is reason and opportunity to make enquiries and the applicant did not, he will not be entitled to any relief.

(e) The applicant must prove that he did rely on the statement or representation and that he suffered a detriment as a result.

(f) Even if all the above requirements are met, the court should nevertheless not grant relief if:

(i) giving effect to the statement or representation will result in a breach of the law or the State's international obligations;

(ii) giving effect to the statement or representation will infringe the accrued rights of some member of the public;

(iii) the public authority can show an overriding national or public interest which justifies the frustration of the applicant's expectation.

64 As can be observed from Tay J's formulation of the requirements for a claim in substantive legitimate expectation, the elements of representation and detrimental reliance are not preconditions, but form part of the test to be applied in determining whether relief should be granted.

65 Here, the applicant's case ran into the same difficulties as it did in the context of estoppel. The position taken by the RO in 1988 does not by itself show that a representation was made or that there was any settled practice. There was also nothing to show that the applicant had relied on such a representation or settled practice when committing the offence of criminal contempt. Finally, even assuming that the other elements were made out, relief would still not be granted as to do so would result in a breach of Art 45(1)(*e*).

Other arguments

Fundamental rights

66 The applicant referred in oral arguments to the litigation in *Vellama*, arguing that it established a right to vote, which would imply a corresponding right to be able to stand for election. However, the Court of Appeal in *Vellama* did not in fact recognise a right to vote in elections as a fundamental right. One issue in *Vellama* was the interpretation of Art 49, particularly whether it imposed on the Prime Minister a duty to call a by-election to fill casual vacancies of elected Members of Parliament. Further, as argued by the respondent, the High Court in *Tan Cheng Bock v AG* [2017] 5 SLR 424 at [41]–[43] held that the right to stand for election to the Presidency is not part of the enumerated fundamental rights in Part IV of the Constitution and hence not subject to the generous interpretation afforded to fundamental liberties in *Ong Ah Chuan v PP* [1979–1980] SLR(R) 710. In the same vein, the right to stand for election as a Member of Parliament cannot be subject to the same interpretive approach afforded to fundamental liberties under Part IV of the Constitution.

67 Article 9 was briefly referred to in the course of oral arguments. I do not think it assists the applicant. While there have been some academic arguments that Art 9 should be extended to cover "life" in a very broad sense, it is clear from various cases that Art 9 is only concerned with

punishment: see, *eg*, *Yong Vui Kong v PP* [2015] 2 SLR 1129 at [13]–[23].

68 Article 12 was not engaged either. The fact that Mr Jufrie Mahmood was treated differently, even if taken at face value, would mean that, based on the present arguments by the respondent, it was done in error of law. The fact that the respondent in the present proceedings adopts a different position from the RO does not amount to deliberate and arbitrary discrimination against the applicant: see *Eng Foong Ho v AG* [2009] 2 SLR(R) 542 at [30].

The position at the committal proceedings

69 It was not argued by the respondent that the applicant was bound by the position previously taken before Woo J that his conviction for criminal contempt disqualified him under Art 45(1)(*e*) (see [4] above). I would not have considered the applicant bound in any event.

Conclusion

70 Despite counsel's best efforts on behalf of the applicant, I am thus of the view that the declaration sought cannot be granted, and accordingly dismiss the application. I will hear the parties on costs.

[note: 1] Applicant's affidavit at para 5.

[note: 2] Applicant's written submissions at paras 22–26.

[note: 3] Applicant's written submissions at paras 24–26.

[note: 4] Applicant's written submissions at paras 31–33.

[note: 5] Applicant counsel's speaking note at paras 9–12.

[note: 6] Applicant's written submissions at para 30.

[note: 7] Respondent's written submissions at Annex B.

[note: 8] Applicant counsel's speaking note at paras 40–47.

[note: 9] Respondent's written submissions at paras 18–21, 42–46.

[note: 10] Respondent's written submissions at paras 47–53.

[note: 11] Respondent's written submissions at paras 59–62.

[note: 12] Respondent's written submissions at paras 54–56.

[note: 13] Respondent's written submissions at paras 63–65.

[note: 14] Respondent's written submissions at paras 66–72.

[note: 15] Applicant's affidavit at para 49.

[note: 16] Applicant's written submissions at paras 31–33.

[note: 17] Respondent's written submissions at para 17.

[note: 18] Respondent's written submissions at para 22.

[note: 19] Respondent's written submissions at paras 27–41.

[note: 20] Respondent's written submissions at paras 37–40.

[note: 21] Respondent's written submissions at paras 43–46.

[note: 22] Respondent's written submissions at para 31.

[note: 23] Respondent's written submissions at para 36.

[note: 24] Respondent's written submissions at para 37–40.

[note: 25] Respondent's written submissions at para 43–45.

[note: 26] Applicant's written submissions at para 24.

[note: 27] Applicant's written submissions at para 25.

[note: 28] Respondent's *aide memoire* at paras 12–13.

[note: 29] Applicant's written submissions at paras 34–36.

[note: 30] Applicant counsel's speaking note at para 20.

[note: 31] Respondent's written submissions at paras 50–52.

[note: 32] Applicant counsel's speaking note at para 45.

[note: 33] Respondent's written submissions at para 64.

[note: 34] Respondent's written submissions at para 65.

[note: 35] Respondent's written submissions at para 51.