Re Beloff Michael Jacob QC
[2000] SGHC 79

Case Number : OM 6/2000

Decision Date : 05 May 2000

Tribunal/Court : High Court

Coram : Yong Pung How CJ

Counsel Name(s) : Tan Chuan Thye (Allen & Gledhill) for the applicant; Margaret George (Koh Ong & Partners) for the plaintiff in Suit 1454/1999; Jocelyn Ong (Attorney General's Chambers) for the Attorney General; Laurence Goh (Laurence Goh Eng Yau & Co) for the Law Society of Singapore

Parties : —

Legal Profession – Admission – Application for admission by Queen's Counsel – Applicant to satisfy three-stage test for admission – s 21 Legal Profession Act (Cap 161, 1997 Rev Ed)

Legal Profession – Admission – Application for admission by Queen's Counsel – Whether availability and ability of local counsel an absolute bar to admission – Whether circumstances of case warrant court's exercise of discretion in favour of admission – Defendants already engaging local Senior Counsel – Whether defendants precluded from seeking admission of Queen's Counsel – Delay in proceedings as a result of admission of Queen's Counsel

: ***Introduction***

The applicant in this case, Mr Michael Jacob Beloff, Queen`s Counsel (`Mr Beloff`), applied under s 21 of the Legal Profession Act (Cap 161) (the `LPA`), to be admitted to practice as an advocate and solicitor for Singapore Telecommunications Limited (`SingTel`) in Suit 1454/99 (the `suit`), and in connection with all proceedings relating thereto. The application was opposed by Japura Development Pte Ltd. I allowed the motion for admission. I now set forth my reasons.

Background facts of Suit 1454/99

The plaintiff in the suit is Japura Development Pte Ltd (`Japura`). SingTel is the defendant. Japura claimed that a telecommunications plant (`the plant`), which was laid in 1978 by the former Telecommunication Authority of Singapore (`TAS`), and which became vested in SingTel on 1 April 1992, is trespassing on its land (the `land`). Japura had acquired the land from the Urban Redevelopment Authority (`URA`) and they intend to build on it a prestigious residential complex, namely, the Costa Del Sol Condominium Development.

The plant in question was laid in conjunction with the construction of the East Coast Parkway, at a time when the land was still State land. The relevant legislation at that time was the Telecommunication Authority of Singapore Act (Act No 1 of 1974) (`the 1974 Act`). Section 45 of the 1974 Act empowered the TAS, at all reasonable times, to enter upon any State land, and, subject to the approval of the Commissioner of Lands, to install telecommunication installations. On 1 April 1992, all the property, rights and liabilities comprised in telecommunications undertakings of the TAS became vested in SingTel by virtue of s 31 of the Telecommunication Authority of Singapore Act (Cap 323, 1993 Ed) (Act 12 of 1992) (`the 1992 Act`). The plant was thus vested in SingTel.

SingTel`s defences in the suit are as follows: first, it contends that the plant was laid in accordance with the then prevailing statutory requirements under the 1974 Act. Further, or in the alternative, it contends that it has a complete defence to Japura`s claims under s 107(1) of the 1992 Act, which

authorises the laying and maintaining of the plant on the land. Thirdly, it is argued that Japura purchased the land with notice of the plant, and that it would be a fraud by Japura on the vendor to deny SingTel the right to maintain the plant on the land.

The issues in the suit, as identified by counsel, are as follows:

(a) whether the request by the Public Works Department (the `PWD`) in 1976 to the TAS to lay the plant satisfied the requirements of s 45 of the 1974 Act;

(b) whether the PWD`s request amounted to the grant to the TAS of an irrevocable licence to lay and maintain the plant on State land;

(c) the scope, extent and application of s 107 of the 1992 Act;

(d) whether it is a fraud by Japura on the Government of Singapore to maintain the suit against SingTel, given the terms upon which Japura purchased the land from the Government.

By way of SIC 6000239/99 (`the substantive application`), SingTel applied for a determination under O 14 r 12 of the Rules of Court (Cap 322) as to whether it is entitled to rely upon s 107(1) of the 1992 Act as authority for maintaining the plant on the land, even if the plant had been laid on the land without the approval of the Commissioner of Lands as required under the statutory provisions preceding the 1992 Act, in particular the 1974 Act. This substantive application was fixed to be heard on 26 January 2000. However, on that occasion, Japura successfully applied for an adjournment, pending the determination of the application to admit Mr Stuart Lindsay Isaacs, Queen`s Counsel (`Mr Isaacs`), to argue the case on their behalf. On 9 February 2000, I allowed Mr Isaacs`s application for admission, and admitted him under s 21 of the LPA for the purpose of appearing as counsel on behalf of Japura in the Suit, and in connection with all proceedings relating thereto. On 23 February 2000, the parties made a joint application to the court and fixed the hearing of the substantive application (ie SIC 6000239/99) on 17 and 18 April 2000.

Around the end of February 2000, SingTel instructed its solicitors, Allen and Gledhill (A&G) to apply for a Queen`s Counsel to argue its case against Japura. Pursuant to SingTel`s directions, A&G also instructed Mr Beloff. On 28 February 2000, A&G verbally notified Japura`s solicitors, Koh Ong & Partners, of SingTel`s intentions. The following day, A&G wrote formally to Koh Ong & Partners about the same matter. On 2 March 2000, Koh Ong & Partners indicated that Japura objected to the application.

The law

Mr Beloff`s application was made pursuant to s 21 of the LPA. Under s 21(1), the court -

> *... may for the purpose of any case where the court is satisfied that it is of sufficient difficulty and complexity and having regard to the circumstances of the case, admit to practise as an advocate and solicitor any person who -*
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> *(a) holds her Majesty`s Patent as Queen`s Counsel;*
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> *(b) does not ordinarily reside in Singapore or Malaysia but who has come or intends to come to Singapore for the purpose of appearing in the case; and*

(c) has special qualifications or experience for the purpose of the case.

The case of **Price Arthur Leolin v A-G & Ors** [1992] 2 SLR 972 established a three-stage test to be applied by the court in an application for admission of a Queen`s Counsel. At the first stage, the applicant must demonstrate that the case in which he seeks to appear contains issues of fact and/or law of sufficient difficulty and complexity to require elucidation by a Queen`s Counsel. Such difficulty or complexity is not of itself a guarantee of admission, for the decision to admit is still a matter for the court`s general discretion. Thus, at the second stage, the applicant must persuade the court that the circumstances of the particular case warrant the court`s exercise of discretion in favour of his admission. Finally, the applicant has to satisfy the court that he is a suitable candidate for admission.

The present application

In relation to the first limb of the three-stage test, there was no serious dispute by Japura that the present case contains issues of sufficient difficulty and complexity to require elucidation by a Queen`s Counsel. Indeed, there could be no such dispute, for in Mr Isaacs`s earlier application for admission, Japura had itself taken the position that the issues in the suit were of sufficient difficulty and complexity to warrant the admission of Mr Isaacs to argue on its behalf. Consistent with my finding in relation to Mr Issacs`s application for admission, I also found in relation to Mr Beloff`s application that the issues in the suit are sufficiently difficult and complex to warrant the admission of a Queen`s Counsel.

Essentially, Japura`s objections to Mr Beloff`s application were two-fold. First, it was argued that SingTel was already ably represented by local Senior Counsel, Mr Michael Hwang SC (`Mr Hwang`), and therefore the admission of Mr Beloff was neither necessary nor appropriate. Secondly, it was argued that the admission of Mr Beloff would result in a protracted delay which would unjustly prejudice Japura. Mr Beloff had indicated that he would not be available on 17 and 18 April 2000, and the substantive hearing scheduled to be heard on those dates would have to be vacated. Apparently, Mr Isaacs was not available on the new dates indicated by SingTel, and he would only be available in July 2000, at the earliest.

The two objections made by Japura were really in relation to the second limb of the three-stage test. This limb requires that the applicant show the court why the circumstances of the particular case justify a Queen`s Counsel`s appearance. As was held in ***Price Arthur Leolin v A-G*** (supra), once the applicant has satisfied the first limb of the test, and the court is satisfied that the case is difficult and complex enough to warrant the assistance of a Queen`s Counsel, the next consideration must be the exercise of discretion. The court has to balance the long term need to foster a strong and independent bar in our own jurisdiction against the individual justice of each case, which may demand that a particularly specialised and skilled Queen`s Counsel be permitted to assist the court. Since circumstances vary from case to case, the second limb of the test can only be considered on a case-by-case basis.

Japura`s first objection was that SingTel was already ably represented by Senior Counsel Mr Michael Hwang SC and junior counsel, and therefore did not require the services of Mr Beloff. The first point to note is that the availability and ability of local counsel is not per se an absolute bar to admission of a Queen`s Counsel - at the second stage of the test for admission, the court is required to engage in a balancing exercise, and the ability and availability of local counsel is only one of the factors to be

placed on the scales: see **Re Caplan Jonathan Michael QC (No 2)** [1998] 1 SLR 440 . The second point to note is that there is no general rule that prohibits a litigant from engaging both a Queen`s Counsel and a local Senior Counsel to argue his case. What the court is concerned with in each case is whether, having found that the issues of fact and law are of sufficient difficulty or complexity to justify the admission of a Queen`s Counsel, there are circumstances in that particular case which point the court towards either exercising or not exercising its discretion in favour of the applicant. Each case must be decided on its own facts.

Mr Tan Chuan Thye, appearing for Mr Beloff, explained at the hearing of this application that, after the court`s indication that the suit warranted the admission of Mr Issacs, SingTel then decided that its position be elucidated by Mr Beloff`s advocacy. The decision was made shortly after Mr Isaacs was admitted, and there was no suggestion that it was a tactical move by SingTel, designed to delay the proceedings in the suit. In my judgment, having held that the factual and legal matrix of the case were sufficiently complex and difficult to warrant the admission of Mr Isaacs on Japura`s behalf, it was important to ensure a level playing field by also allowing SingTel to engage a Queen`s Counsel, if it so wished. I found no reason to penalise SingTel simply because it had already retained local Senior Counsel. After all, the fact that Japura had not made any attempt at all to engage local Senior Counsel was not held against it when it sought to admit Mr Isaacs. If I were to hold against SingTel that it had already retained local Senior Counsel and only subsequently applied to admit a Queen`s Counsel, future litigants might be discouraged from making any attempts to engage a local Senior Counsel, in the erroneous belief that these earlier attempts could thwart their subsequent desire to admit a Queen`s Counsel to argue on their behalf.

The only other objection put forth by Japura was that Mr Beloff`s admission would necessarily result in the adjournment of the substantive application in the suit, namely, SIC 6000239/99, fixed by consent to be heard on 17 and 18 April 2000. It was argued before me that the adjournment would result in an unacceptable delay of at least three months, as Mr Isaacs would not be available until July 2000, at the earliest. The delay would unfairly prejudice Japura, as they wanted an early determination of the status of the cable on the land.

Japura themselves indicated that the delay resulting from Mr Beloff`s admission would most probably be about three months. In my judgment, the expected delay was not of such magnitude that substantial injustice would be done to Japura. Moreover, the earlier admission of Mr Isaacs on Japura`s behalf had also resulted in similar delay of the substantive application by more than two months. As I have noted earlier, the substantive application was originally due to be heard on 26 January 2000. On that occasion, Japura successfully applied for an adjournment pending the determination of their application to admit Mr Isaacs. After I allowed Mr Isaacs to be admitted, the parties made a joint application to the court on 23 February 2000 and fixed the hearing of the substantive application on 17 and 18 April 2000, which were dates convenient to Mr Isaacs and Mr Hwang. Such unavoidable delay resulting from admission of the respective Queen`s Counsel can be tolerated as part and parcel of the litigation process, so long as there is no indication that the delay will be inordinate.

Counsel for both parties must bear in mind that they owe a duty to the court to conduct the proceedings diligently, and to use their best endeavours to avoid unnecessary adjournments, expense and waste of the court`s time. They should therefore endeavour to co-ordinate their schedules and proceed expeditiously with the suit. On a practical and realistic note, however, parties must expect that the final disposal of the suit will take some time. Thus, on the facts of this particular case, the expected delay of some three months was not sufficient, on its own, to convince me not to exercise my discretion in favour of Mr Beloff.

In relation to the last requirement of the three-stage test, there was no serious dispute by Japura as to Mr Beloff`s suitability for admission. In any event, having perused Mr Beloff`s resume, which was exhibited in the affidavit supporting his application for admission, and having heard submissions from all parties, I accepted that Mr Beloff has the degree of specialisation and experience that is pertinent to the issues of this case. Mr Beloff has appeared in a selection of cases relating to judicial review with public utilities issues. He advises regularly from London on instructions from many Singapore solicitors pertaining to cases being litigated or arbitrated in Singapore. He is familiar with, and experienced in law and procedure of the courts in Singapore, having been admitted to argue in previous cases in Singapore and Malaysia. Thus, I had no doubt of his suitability for admission.

Outcome:

Application allowed.