

Phang Fook Seng v Attorney-General of Singapore
[2000] SGHC 98

Case Number : Suit 872/1998, RA 600130/2000
Decision Date : 30 May 2000
Tribunal/Court : High Court
Coram : Choo Han Teck JC
Counsel Name(s) : Vijay Kumar Rai [V K Rai & Partners] for the appellant/plaintiff; Tan Hee Joek [Attorney-General's Chambers] for the respondent/defendant
Parties : Phang Fook Seng — Attorney-General of Singapore

JUDGMENT:

GROUNDS OF DECISION

1. This was an appeal by the plaintiff against the order of the assistant registrar striking out his claim against the Attorney-General representing the government of Singapore. At the material time the plaintiff was a national service member of the Singapore Armed Forces. On 19 January 1996 the plaintiff was instructed to destroy some classified documents by incineration, a task that he had performed on at least 11 previous occasions. He thus proceeded to a spot within the premises of his camp where there was a large open-topped container the dimensions of which were approximately 30 cm by 30 cm by 50 cm. He placed the materials into the container and started to burn the papers. It appears that he had put in too much paper and the flames were insufficiently strong to burn them all. The plaintiff then poured some inflammable thinning liquid into the container to stoke the fire. The plaintiff was one of the camp storemen and was in charge of the camp store which carried and held various articles including the inflammable thinning liquid. This is borne out in paragraph 3a of the Statement of Claim.

2. The conflagration that resulted from the addition of the inflammable thinning liquid caused the plaintiff's uniform to catch fire and consequently burning him severely. He brought this action to recover compensation from the government. His claim is based on the allegation of a breach of duty by the Ministry of Defence in failing to provide him with a safe system of work.

3. The defendant obtained an order from the assistant registrar striking out the plaintiff's claim on the basis that the plaintiff had no cause of action by reason of three certificates issued under s 14 of the Government Proceedings Act, Chapter 121("the Act"). The said three certificates were signed by the Permanent Secretary of Defence. These certificates were issued under s 14(1)(b), s 14(2)(b), and s 14(3) respectively, and essentially to the effect that the plaintiff was at the material time a member, and was on duty as such member, of the Armed Forces, and that the injury was caused in consequence of using equipment or supplies for the purposes of the Armed Forces. Therefore, it was submitted by Mr. Tan on behalf of the defendant that, in the circumstances, no proceedings can be maintained against the government. While s 14(3) of the Act empowers the Minister for defence to issue a certificate certifying a fact under that provision, subsections (1) and (2) of s 14 empower the Minister for finance to issue certificates under the said subsections. All three certificates in the present case were signed by the permanent secretary for defence. Mr. Tan for the defendant submitted that the conditions under which a Minister may delegate his powers under s 36(1) of the Interpretation Act, Chapter 1, have been complied with. Mr. Rai for the appellant argued that the process of delegation was not properly carried out and therefore the certificates were not valid. This challenge raises issues of fact and law and cannot properly be decided in an application for striking out.

4. I now turn to the other issues raised by Mr. Rai against the contention by Mr. Tan that the defendant is entitled to strike out the plaintiff's claim. The plaintiff's application was made under Order 18 rule 19 of the Rules of Court that the Statement of Claim discloses no reasonable cause of action. Mr. Tan submitted that this application was suggested as the appropriate course when the parties appeared before the Court of Appeal previously on an appeal against the orders of Kan Ting Chiu J. It is therefore necessary for me to refer briefly to that previous appeal.

5. That matter went before the Court of Appeal on a different procedural point. It arose from the failure of the defendant to file its defence after an appearance had been entered. Counsel for the defendant took the view that the s 14 certificate gave it an invincible defence because the plaintiff had no basis for commencing the action in the light of the s 14 certificate. At that point, the defendant had only produced the s 14(1)(b) certificate signed by the permanent secretary of defence. The other two certificates were signed at a later date, after the hearing before Kan Ting Chiu J. The plaintiff applied to enter default judgment but his application was rejected by the learned assistant registrar. On appeal by the plaintiff, the learned judge, Kan Ting Chiu J held that the defendant was obliged to file its defence and gave it seven days to do so, and in default of which judgment would be entered. The defendant's appeal to the Court of Appeal was dismissed. Thereafter, the defendant filed its defence and quickly took out the present application to strike out the plaintiff's case on the strength of the three s 14 certificates. Thus we return to the point before me, which is the appeal by the plaintiff against the learned assistant registrar's order striking out his claim.

6. I must refer to the judgment of the Court of Appeal reported in [1999] 3 SLR 641, in respect of the earlier appeal. The Honourable Karthigesu JA expressed the following view on behalf of the court:

"To state the matter another way, the effect in law of the s 14 certificate is a justiciable issue. The [plaintiff] was not obliged to accept the [defendant's] or the government's *ipso dixit* on the issue, and was entitled to challenge their position as he did, either by alleging that the certificate did not have the effect contended for or by contesting its applicability altogether. We would emphasize that this is quite distinct from the question of the true effect in law of the certificate."

This passage forms part of the court's reasoning in respect of the narrow procedural issue before it, but it is also pertinent to the issue presently before me.

7. Mr. Tan submitted that the s 14 certificates effectively rules out any chance of the plaintiff succeeding at trial. He also submitted that this application to strike out was correctly made because it was so suggested in the judgment of the Court of Appeal where Karthigesu JA said,

"Even if the said s 14 certificate provided a cast-iron defence in law, the onus was still on the [defendant] to raise it by pleading it in a formal defence, or by taking out an application to strike out the statement of claim and hence dismiss the action under Order 18 rule 19." (at page 648).

I do not think that this passage can be construed as an invitation to the defendant to take out an application to strike out. The learned Judge of Appeal was merely stating the options available to a defendant generally, and not to this defendant specifically.

8. The passage I set out above makes it clear that in this instance, the effect of the s 14 certificate was not an issue before it. The question presently is, whether that issue can be determined in an

application under Order 18 rule 19. I accept that there are instances in which questions of law may be determined in a striking out application. However, these are exceptional cases. First, it must be obvious that the only issue is one of law and the determination of which will finally dispose of the action. Secondly, there are no sound reasons in delaying the determination of that issue by setting the matter along the track for trial.

9. In this case, the plaintiff says that he is not only challenging the effectiveness of the s 14 certificates, but that his case can succeed irrespective of the certificates because his claim is based on the failure of the Ministry of Defence, as an institution, to provide him a safe system of work. The plaintiff's assertion that the s 14 certificates are inapplicable because the conditions under that provision have not been satisfied raises issues of both fact and law. He also raises the issue of a previous statement from the ministry that the plaintiff was acting outside the scope of duty, an assertion which appears to be inconsistent with the s 14 certifications. The further and alternative claim that the ministry is liable to provide a safe system of work similarly raises issues of fact and law. In these circumstances, I am of the view that the matter could not be finally determined in the course of an application to strike out. The issues must be determined at trial. I therefore allow the appeal and set aside the orders below.

Choo Han Teck

Judicial Commissioner