Lee Huay Kok v Attorney General
[2001] SGHC 291

Case Number : OS 601058/2001

Decision Date : 01 October 2001

Tribunal/Court : High Court

Coram : Choo Han Teck JC

Counsel Name(s) : Hri Kumar and Ajay Advani (Drew & Napier LLC) for the applicant; Eric Chin (Attorney General's Chambers) for the respondent

Parties : Lee Huay Kok — Attorney General

Companies – Directors – Disqualification – Disqualification to act as director on conviction for corruption – Application to court for leave to act as director or take part in management in applicant's company – Application two years and nine months after conviction and disqualification – Court's jurisdiction to grant leave where disqualification arises under s 154(1) and not s 154(2) – ss 154(1), 154(2), 154(3) & 154(6) Companies Act (Cap 50, 1994 Ed)

: The applicant was convicted in December 1998 after pleading guilty to two charges of corruption under the Prevention of Corruption Act (Cap 241, 1993 Ed). Six other charges were taken into account. The offences were each punishable with a fine of up to $100,000 and imprisonment for a term of up to five years. However, he was fined a total of $13,000. Consequently, he was disqualified under s 154(3) of the Companies Act (Cap 50, 1994 Ed) from acting as a director of a company and from taking part in the management of a company for a period of five years. Now, about two years and nine months after his conviction and disqualification he applies to the High Court for leave to act as a director, or alternatively, to take part in the management of his personal company HK Hardware and Engineering Pte Ltd. His application is made under s 154(6) of the Companies Act that provides as follows:

> *An application for leave to act as a director of a company or of a foreign company to which Division 2 of Part XI applies or to take part, whether directly or indirectly, in the management of such a company or foreign company may be made by a person* ***against whom a disqualification order has been made*** *upon that person giving the Minister not less than 14 days` notice of his intention to apply for such leave. [Emphasis is mine.]*

Mr Eric Chin appeared on behalf of the Attorney General and Mr Hri Kumar together with Mr Advani appeared on behalf of the applicant. They raised a preliminary point of law concerning the court`s jurisdiction to grant leave in cases where the disqualification under s 154(3) arose under s 154(1) and not s 154(2). It is a point that appears not to have been previously considered before a court in similar applications. For convenience, I shall set out sub-ss (1) and (2) of s 154 as follows:

> *(1) Where a person is convicted (whether in Singapore or elsewhere) of any offence involving fraud or dishonesty punishable with imprisonment for 3 months or more, he shall be subject to the disqualifications provided in subsection (3).*
>
> *(2) Where a person is convicted in Singapore of -*
>
> *(a) any offence in connection with the formation or management of a corporation; or*
>
> *(b) any offence under section 157 or 339,*

the court may make a disqualification order in addition to any other sentence imposed.

Mr Chin contended that the power of the court to grant leave to a disqualified person under s 154(6) is confined to cases in which a disqualification order had been made under s 154(2) and not to all cases of disqualification because the disqualification contemplated under s 154(1) is an automatic disqualification that applies on conviction of the offender and no court order is required whereas a person convicted for offences referred to in s 154(2) will be disqualified for a period of five years or any shorter period as the sentencing court may order. Mr Chin submitted that the court`s power under s 154(6) may be exercised only when the applicant was disqualified pursuant to a ***disqualification order*** . Mr Kumar submitted that the court`s power to grant leave under s 154(6) is unbridled. He traced the legislative history of this provision to show that in the course of evolution from its original form to the present the draughtsman inadvertently left the word ***order*** in sub-s (6) when it was clear that this word ought to have been removed. Counsel`s point was as follows. Section 154(1) prior to the amendment in 1993 reads as:

Where a person is convicted whether within or without Singapore -

(a) of any offence in connection with the promotion, formation or management of a corporation;

(b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for 3 months or more; or

(c) of any offence under section 157 or 339,

and that person, within a period of 5 years after his conviction, or if he is sentenced to imprisonment, after his release from prison, without leave of the Court is a director or promoter of or is in any way whether directly or indirectly concerned or takes part in the management of a company he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $10,000 or to imprisonment for a term not exceeding 2 years or to both.

Mr Kumar then referred to the Amendment Bill No 33 of 1992 in which the proposed amendment to s 154(1) was drafted in the following terms:

Where a person is convicted whether within or without Singapore -

(a) of any offence in connection with the promotion, formation or management of a corporation;

(b) of any offence involving fraud or dishonesty punishable on conviction with imprisonment for 3 months or more; or

(c) of any offence under section 157 or 339,

> *the Court may, in respect of an offence under paragraph (a) or (c) and shall, in respect of an offence under paragraph (b), make a* ***disqualification order*** *disqualifying that person from being a director or in any way, whether directly or indirectly, being concerned in or taking part in the management of a company for such period not exceeding 5 years as is specified in the order, to take effect after his conviction, if he is sentenced to imprisonment, after his release from prison. [Emphasis is mine.]*

Subsection (3) of s 154 in the Bill reads as: `An application for leave may be made by a person against whom a ***disqualification order*** has been made upon that person giving the Minister not less than 14 days` notice of his intention to apply for such leave.` (Emphasis is mine.) Mr Kumar argued that when the Bill was debated and even when the Select Committee studied it no discussion was recorded of confining the court`s power to grant leave only in cases when there was a disqualification order. Parliament and the Select Committee then appear to be only concerned in respect of the issue whether disqualification ought to follow a director who had been convicted outside Singapore for offences of fraud. When the amendment was eventually passed with some changes into the present form para (b) was given pre-eminence as a subsection, that is, as the new sub-s (1), and paras (a) and (b) nestled together under sub-s (2) where the words ***disqualification order*** appear. Thus, Mr Kumar submitted that the bifurcation of sub-s (1) after final changes resulted in what he regards as an inadvertent omission to remove the word ***order*** from sub-s (6). It seems to me that if that was indeed a draughtsman`s omission it can be likened to a case of a surgeon leaving a swap in the patient after surgery. Mr Kumar further submitted that it is the person disqualified under sub-s (1) who needs sub-s (6) more than a person disqualified under sub-s (2) because in the latter case the offender would already have an opportunity to address the sentencing court with the view of imposing a disqualification period of less than five years whereas in the former the disqualification will be for a period of five years without reduction, and the blow will be doubly hard to bear because he will not be able to apply for leave under sub-s (6). The other way of looking at this point is that a person disqualified under sub-s (2) will have an opportunity to plead against the imposition of the full five years` disqualification at first instance and then apply again, under sub-s (6), to have that period further reduced, that is to say, two opportunities as opposed to none for a person disqualified under sub-s (1).

Mr Kumar augmented the above points with a persuasive argument based on the illogicality of not permitting a person disqualified under sub-s (1) from applying under sub-s (6). He submitted essentially that the gravity of an offence under the sub-s (1) category cannot always be regarded as being more serious than one under the sub-s (2) category. He said, for example, that a person caught stealing a few dollars will be bound by the sub-s (1) category and therefore, if Mr Chin is right, cannot apply to reduce his five years` disqualification, but a person who commits an offence under s 157 of the Companies Act such as using his privileged position in a company for his personal gain which may reach such staggering amounts as millions of dollars, would come under sub-s (2) and may apply for a reduction of his disqualification period.

Finally, on the jurisdiction point, Mr Kumar submitted that sub-s (9) recognizes the existing rights of parties prior to the 1993 amendment and therefore, since a person who is disqualified under either categories prior to 1993 was at liberty to apply for a reduction of his disqualification period the applicant here must be seized of that right. Subsection (9) of s 154 provides as follows:

> *Any right to apply for leave of the Court to be a director or promoter or to be concerned or take part in the management of a company that was subsisting immediately before 12th November 1993 shall on or after that date be treated as subsisting by virtue of the corresponding provision made under this section.*

I think that it will be convenient for me to deal with this short argument first. I am afraid that I do not agree with the interpretation by Mr Kumar as to the effect of sub-s (9). I am of the opinion that it was clearly designed to take into account cases in which persons who have just been convicted but have not yet applied or having applied not having his application yet heard as to whether he may have his disqualification period reduced. It cannot be given the wide meaning Mr Kumar ascribes to it. That would have defeated any purpose in making the amendments to the provision for leave to apply. Indeed, viewed in this way, this subsection supports Mr Chin`s contention. It reinforces the point that there are now two distinct categories under which a disqualification may be imposed - one under sub-s (1) which follows as a consequence of a conviction for fraud or dishonesty, and the other for offences concerning the formation or management of a company and those under s 157 and s 339 of the Companies Act - the first has a fixed term of five years` disqualification and the second a maximum of five years. So we return to the questions raised by Mr Kumar as to why and whether the legislature intended one to be more severe than the other.

When it comes to a legislative enactment the function of the court is to ascertain what it says and not what it ought to have said; what it means and not what it ought to mean; and whether it can be applied and not whether it is right or wrong. That is the fine but appreciable distinction between the exercise of interpretation, which is a native function of the court, and the exercise of expansion, which is not within the scope of the court`s duty or power. If a legislative provision is ambiguous the court has to decide which is the intended meaning. If the provision is vague the court has to make sense of it. The court will traditionally employ all the conventional rules of statutory interpretation in either of these situations. But if the words of Parliament are clear and has a well-defined meaning it is not permissible to query whether Parliament really intended the effect unless, of course, the effect or consequences lead to absurdity. We need, therefore, only ask whether s 154(6) as it stands is capable of a reasonable meaning. In my view, the reference to a disqualification order in s 154(6) is a reference to a disqualification order made by a court under sub-s (2). It has no reference to a disqualification under sub-s (1) because no order of court is required there. I see no reason why Parliament did not intend a disqualification under sub-s (1) to be of a fixed term of five years whereas a disqualification under sub-s (2) to be variable. On the contrary, the bifurcation can only be intended to express Parliament`s view that one is to be more seriously dealt with than the other. That is the natural and unadorned meaning I would give to a reading of s 154. The provision may appear harsh to some, but it cannot be regarded as leading to absurdity. The tracing of this provision`s legislative history by Mr Kumar is interesting and I am grateful for the effort of counsel, but legislative history in itself, however illuminating, is not an instrument of statutory interpretation. Unless we can fasten to the debates of the members of the legislature nothing more should be read into the complete and natural meaning of the legislative words simply because it is not the court`s business to forage the statute for an unexpressed intention. The mere evolution of a statutory enactment cannot be used to suggest what Parliament intended or ought to have intended. As to Mr Kumar`s other point that the presence of the word ***order*** in s 154(6) was a draughtsman`s error or omission, I am of the view that even if counsel is right, and I do not think that he is, the error or omission cannot be corrected by the court. There is no known power by which the court may correct a slip of the legislative pen. The surgeon must be recalled.

This application will be dismissed for the reasons above. However, as the parties presented submissions as to the merits of the application I shall express my opinion on them for completeness. Mr Kumar submitted that the offences upon which the applicant was convicted - essentially, bribery - though seemingly serious, ought not to be viewed too harshly because no one suffered any loss. The bribes were given to a company that the applicant`s own company had business with. The applicant`s company was soliciting sales of its construction products and he thought that he could

get the business by giving gratification to the employees of that other company. The amount involved in total was no more than $7,050. The applicant was a first offender. The company, which he founded in 1995, is now suffering a vast loss of sales without the applicant at its helm. Mr Kumar suggested that the continuing slide might eventually result in the loss of job to at least 35 employees. Counsel suggested that public interest would not be affected because this concerned a private company wholly owned by the applicant. **Lim Teck Cheng v A-G** [1995] 3 SLR 821 was cited in aid of the argument that leave was granted in a much less deserving case. In that case, the applicant was convicted under s 402(1)(a) of the Companies Act for making a false and misleading statement with intent to deceive and he was fined the maximum sum of $10,000 under that provision. This is not a helpful case. First, the jurisdiction point was not argued there. Second, the full facts behind the conviction were not before the judge who granted leave, and the applicant`s general character was glossed over because his counsel produced testimonials from various banks in his favour. However, all that was subsequently explored in greater detail in Suit 2274/93 between **Wyno Marine (in liquidation) v Lim Teck Cheng** (Unreported) . It is not necessary to now ask whether the facts that emerge in this trial would have affected the judge when he decided to allow Lim Teck Cheng`s application for leave so I shall not dwell on that case.

The Judicial Committee of the Privy Council approved the judgment of the courts below in the pre-1993 case of **Quek Leng Chye v A-G** [1984-1985] SLR 72 at 75 in which the various factors that a court ought to take into account in such applications were set out. One of these factors was the general character of the applicant. In this instant case before me, no evidence is adduced in respect of the general character of the applicant so that is a neutral factor in this case. I do not think that it is sufficient to say merely that sales in his company have dropped drastically in his absence. The salesman`s job in the company is not affected by the disqualification of the applicant. He was at liberty to work as the company`s salesman. If it was the applicant`s case that the company`s sales had fallen because of a lack of good management, that aspect has not been adequately explained to me in the applicant`s affidavit. Although corruption is corruption and no distinction can usefully be drawn between `big-time` corruption and petty corruption save in mitigation, I will agree with counsel that the relatively small amount involved in all the charges against the present applicant is a factor in his favour. The time of disqualification actually served when the application was made is also relevant; and in this case, the applicant had sat through a period of two years and nine months out of the five years` disqualification. It seems to me a little too soon to make the application in this case. Even if this was a disqualification under sub-s (2), it would have been a more worthy case had the application come after a full three to four years. I say this in the circumstances of this case and the actual number of years obviously may vary from case to case and circumstance to circumstance. That would be a matter for the court`s individual discretion to weigh. In an application for leave, the court must not only look at the factors set out in the ***Quek Leng Chye*** case, but also to be mindful of the basic principles in the context of such applications. First, there is nothing to suggest that the court will be exercising a delayed form of appellate function when deciding whether or not to reduce the period of disqualification. There are some who are of the view that disqualification under s 154 is not a punitive provision but a `protective` measure. I must respectfully disagree. I think that there is a strong, if not predominant, punitive element in the disqualification provision. Whether it is punitive or protective is relevant when the issue of reducing the period comes before the court. If it were a `protective` provision, then in principle, a reduction of the disqualification period would be justified when it can be shown that the protection objective is met or has been satisfied, but it is not entirely clear what interest is being protected here. In this case, for example, the company in which the applicant wishes to participate as a director and manager is his own personal company. It is virtually a sole proprietorship. What needs protection here? When will protection cease to be required, and why? It cannot be at an arbitrary fixed period whether at five years, or three, or ten. Similarly, if it was intended to protect those who may have to deal with the convicted person, in principle, there may be adequate protection if the court is satisfied that there is a layer of supervision overseeing the

acts of that person. If that were so, it requires a more explicit expression in the wording of s 154. In my view, the context of this section implies that the intention of Parliament was to inflict a period of disqualification as part of the punishment on such an offender. That there may be a measure of protection to the public or shareholders of the company is but a natural corollary to the disqualification. Second, in so far as the court has the discretion to reduce the said period, it must be mindful not to place undue weight to matters that might already have been submitted to the trial judge. In this instant case, I ought to mention that in his mitigation during sentencing, counsel for the applicant asked the judge to take into account the fact that the applicant will also have to suffer a five-year disqualification under s 154. Thirdly, taking the above two matters into consideration, leave ought to be granted in exceptional circumstances only. I use the term `exceptional` to mean something akin to ***special*** and not as in ***rare*** circumstances. It is all a question of balance. Leave should not be so liberally given such as to defeat the intention of Parliament, and yet recognize deserving cases when they appear. With all this in mind, it is my view that even if I had the discretion to consider his application in this case I would not have exercised it in his favour because I am of the view that overall, his application does not have sufficient merit even though one or two individual factors do lean in his favour.

The application is thus dismissed. I shall hear argument as to costs if parties are unable to agree between themselves.

Outcome:

Application dismissed.