Lee Kuan Yew v Chee Soon Juan
[2002] SGHC 122

Case Number : OM 600028/2002, OM 600029/2002

Decision Date : 07 June 2002

Tribunal/Court : High Court

Coram : Lee Seiu Kin JC

Counsel Name(s) : Chee Soon Juan in person; Jeffrey Chan and Leong Wing Tuck for the A-G chambers; Yang Lih Shyng (Khattar Wong & Partners) for the Law Society; Davinder Singh SC and Hri Kumar (Drew & Napier LLC) for the plaintiffs in the suits

Parties : Lee Kuan Yew — Chee Soon Juan

Judgment

GROUNDS OF DECISION

1 The two Originating Motions before me concern applications by two Queen's Counsel for ad hoc admission to practise as advocates and solicitors in the High Court. The applicant in O.M. 600028/2002 is Mr. Martin Lee Chu Ming, Q.C. and in O.M. 600029/2002, Mr. William Henric Nicholas, Q.C. They apply to be admitted to represent the defendant, Dr. Chee Soon Juan, in two actions in the High Court, viz. Suit No 1459/2001 in which the plaintiff is Mr. Lee Kuan Yew and Suit No 1460/2001 in which the plaintiff is Mr. Goh Chok Tong. Dr. Chee appeared before me to make the applications on behalf of Mr. Martin Lee and Mr. William Nicholas.

2 The applications are made under s 21 of the Legal Profession Act ("the Act") which provides as follows:

> (1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one 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
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> > (c) has special qualifications or experience for the purpose of the case.

3 The law relating to admission under this provision is settled. The Court of Appeal held in *Price Arthur Leolin v A-G* [1992] 2 SLR 972 that there is a three-stage test. This was elaborated in *Re Caplan Jonathan Michael (No 2)* [1998] 1 SLR 440, where the Court said at 11:

> 11. The requirements of [s 21(1)] were considered at length by the Court of Appeal in *Price Arthur Leolin v A-G & Ors*

> [1992] 2 SLR 972. In its judgment, the court articulated a three-stage test for admission under s 21(1). At the first stage, the applicant must demonstrate that the case in which he seeks to appear contains issues of law and/or fact of sufficient difficulty and complexity to require elucidation and/or argument 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 discretion. At the second stage, therefore, the applicant must persuade the court that the circumstances of the particular case warrant the court exercising its discretion in favour of his admission. Finally, he has to satisfy the court of his suitability for admission.

These stages can be summarised as: (i) whether the case is of sufficient difficulty and complexity; (ii) whether the circumstances of the case warrant admission; and (iii) whether the applicant is a suitable person for admission.

4 The present applications are the second by both applicants for admission in the two suits. They first applied in O.M. 600021/2002 and O.M. 600023/2002. Their applications were dismissed by Tay Yong Kwang J.C. on 18 April 2002 on two grounds:

> (i) the suits in question were not of sufficient difficulty and complexity to warrant admission of Queen's Counsel; and
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> (ii) there was no evidence of anything in the circumstances of the case that warranted the court to exercise its discretion in favour of admission of Queen's Counsel.

5 In respect of the first ground, that of difficulty and complexity, Tay Yong Kwang J.C. said as follows at 39 to 41:

> 39. The affidavits in support of the two applications merely assert that these cases are extremely complex defamation matters without explaining how they are so. The issues listed are general in nature and case law and legal writing on such issues must abound both here and in other common law jurisdictions. It seems to me that the cases here only require the application of established principles to the facts. As Chan Sek Keong J said in *Re Oliver David Keightley Rideal Q.C.* (at page 402G – H):
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> > "With reference to the first requirement, it is the judge, and not the parties, or their counsel, or other interested parties, who has to be satisfied that a case is of sufficient difficulty and complexity. The considered views of instructing solicitors on the issues raised are relevant and should be given their proper weight, but mere assertions that cases or issues are difficult and complex are of no assistance

> to the court in discharging its duty. It is therefore incumbent on counsel to identify the issues to the judge hearing the application and his views on the applicable law. A case may be difficult and complex in relation to the facts as well as the law."
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> 40. The fact that there is a Counterclaim in one of the actions here and that there are Third Party proceedings in both cases is certainly not novel. These are essentially procedural matters and even if they add to the number of parties and causes of action, they do not necessarily increase the complexity of the case. It has not been shown to me how the Counterclaim and the Third Party proceedings have raised the issues to such level of difficulty and complexity that the admission of one Q.C. is warranted, let alone two Q.C.
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> 41. In the circumstances, I am not satisfied that the two cases are of sufficient difficulty and complexity to warrant the admission of Q.C.

6 In respect of the second ground, Tay Yong Kwang J.C. said at 42 to 43 of his Grounds of Decision:

> 42. The other factor mentioned in the affidavits is "the identity and positions of the Plaintiffs are further powerful reasons why it is proper and necessary for me to engage the services of leading Counsel from outside of Singapore". By this, Dr Chee appears to be implying that no local lawyer is able and willing to act for him. There are presently more than 3000 practising advocates and solicitors and more than 20 of these are Senior Counsel. While I need not be convinced of the absolute absence of any local counsel capable of taking on or willing to take on the cases here (see *Re Caplan Jonathan Michael Q.C. (No 2)* [1998] 1 SLR 440), no evidence has been proffered on this point to assist me in the balancing exercise.
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> 43. The applications for admission therefore also fail at the "second stage".

7 The two motions before me are made by the same applicants for admission under the same provision in the Act to represent the same defendant in the same suits as the two motions before Tay Yong Kwang J.C. The only difference is that Dr. Chee had filed different affidavits in the present applications. In the new affidavits, he set out in more detail his reasons for saying that the suits were of sufficient difficulty and complexity. Additionally he had also deposed that he had approached a few lawyers but they were unable to represent him because they did not have the experience or resources or they could not afford to act for him for free.

8 The applicants have not appealed against the dismissal by Tay Yong Kwang J.C. of their previous applications. In the premises, they are bound by the findings of the judge that the suits in question are not of sufficient difficulty and complexity and that there was no evidence that the circumstances of the case

warranted admission of Queen's Counsel. They are therefore estopped from contending otherwise in this application. The doctrine of issue estoppel is summarised in the following manner in *Halsbury's Laws of England (4 Ed. Reissue) Vol. 16* at 977:

> A party is precluded from contending the contrary of any precise point which having once been distinctly put in issue, has been solemnly and with certainty determined against him. Even if the objects of the first and second actions are different, the finding on a matter which came directly (not collaterally or incidentally) in issue in the first action, provided it is embodied in a judicial decision that is final, is conclusive in a second action between the same parties and their privies. This principle applies whether the point involved in the earlier decision, and as to which the parties are estopped, is one of fact or one of law, or one of mixed fact and law. The conditions for the application of the doctrine have been stated as being that:
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> > (1) the same question was decided in both proceedings;
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> > (2) the judicial decision said to create the estoppel was final; and
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> > (3) the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

9 In the present applications the parties are the same, the issues to be decided by the court are the same as those in the previous applications. The decision is clearly set out by Tay Yong Kwang J.C. in his written grounds of decision and it is final, save that the applicants have a right to appeal against it to the Court of Appeal. If the applicants are not satisfied with the decisions of Tay Yong Kwang J.C., the proper course of action would have been to file an appeal. If they have fresh evidence, the correct procedure would be to apply to the Court of Appeal for leave to adduce such evidence. For me to entertain this second set of applications would tantamount hearing an appeal against the judge's decision in respect of the first set of hearings. I have no jurisdiction to do that. It would also mean that an applicant who is not satisfied with the dismissal by a judge of his application can make a new one to another judge and keep doing so until he obtains an outcome that he is satisfied with. Clearly this cannot be the case.

10 In view of the foregoing, I dismissed the applications.

Sgd:

LEE SEIU KIN
Judicial Commissioner