Ng Hock Guan v Attorney-General
[2003] SGHC 284

Case Number : Suit 953/2002

Decision Date : 18 November 2003

Tribunal/Court : High Court

Coram : Lai Kew Chai J

Counsel Name(s) : Tan Chau Yee and Cindy Sim (Tan JinHwee, Eunice and Lim ChooEng) for plaintiff; Wilson Hue Kuan Chen and Leonard Goh (Attorney-General's Chambers) for defendant

Parties : Ng Hock Guan — Attorney-General

Administrative Law – Dismissal from employment – Whether Authorised Officer's decision to dismiss plaintiff from employment was one no rational and fair-minded arbiter would have made

Introduction

The plaintiff was a Senior Investigation Officer, holding the rank of Senior Staff Sergeant, attached to the Anti-Vice Branch ("AVB"), Criminal Investigation Department ("CID"), Singapore Police Force, prior to his dismissal on 19 September 2000. On 22 September 2000 the plaintiff unsuccessfully appealed to the Commissioner of Police against the decision of the Authorised Officer, Deputy Superintendent Jacob Joy, who conducted the disciplinary hearing.

2 The plaintiff was charged with "conduct to the prejudice of good order and discipline" under section 27(1)(c) of the Police Force Act, Cap. 235, in that he had slapped 3 Filipino women on 18 November 1999 while they were being questioned at the CID for suspected vice activities.

3 Disciplinary proceedings were then instituted against the plaintiff together with 3 other police officers charged with similar assaults pursuant to Police Regulations. At the end of a 15-day hearing involving 19 witnesses, all 4 police officers, including the plaintiff, were found guilty by the Authorised Officer. Two of 4 officers were reinstated after their appeals to the Commissioner of Police. Like the plaintiff, the remaining police officer was unsuccessful in his appeal to the Commissioner of Police. Unlike the plaintiff, that other police officer did not seek judicial review of the decision of the Authorised Officer.

The reliefs claimed

4 In this action for judicial review, the plaintiff claim against the defendant for the following reliefs:-

(a) A declaration that the immediate dismissal purported to be effected on 19 September 2000 was illegal, void and inoperative as well as ultra vires the Police Force Act, Cap 2325, and being in violation of the rules of natural justice;

(b) A declaration that the plaintiff is to be reinstated as a Senior Staff Sergeant of the Singapore Police Force and consequently entitled to be remunerated as such and be entitled to such rights as to pension and other benefits as if he had retired on attaining the age of retirement;

(c) Alternatively, a declaration that the plaintiff's employment was wrongfully terminated

and for damages for wrongful termination;

(d) Recovery of the plaintiff's salary and allowances from the date of the purported termination of employment.

Grounds for judicial review

5 As pleaded, the plaintiff relied on two grounds for judicial review. First, he averred under sub-paragraph 11(a)(I) to (vii) and 11(b) that the mind of the Authorised Officer was or could reasonably be thought to have been prejudiced against the plaintiff as the results of a polygraph (lie detector) test were forwarded to the Authorised Officer. The polygraph test indicated that the plaintiff was probably not truthful. As there was no evidence to support this averment, I rejected this ground. The plaintiff applied for permission to cross examine the Authorised Officer, who had affirmed an affidavit to the effect that at all material times he did not know of the results of the polygraph test. I refused the application as the introduction and examination of controversial evidence in a judicial review over what had transpired at and during the hearing of the tribunal in question are not appropriate. Such a course would also constitute a trial of the proceedings of a tribunal in question, which is not properly the function of a judicial review which is concerned with the legality, fairness or propriety of the decision making process and not with the evaluation of the relative weight or probative value of the conflicting evidence. The latter function is within the exclusive remit of the tribunal entrusted with the task of evaluating the evidence. It is not the function of a court to consider the sufficiency of the evidence, as long as there is evidence to support the verdict arrived at.

6 Colour photographs were taken of the 3 complainants at the AVB, CID after the alleged assaults. Counsel for the plaintiff sought their production at the trial, as they would show the facial expressions of the complainants which would be relevant to the question whether there were any visible injury on their faces. I refused permission as I was mindful not to enter into the remit and role of the Authorised Officer.

7 The other and main ground for judicial review, as set out in sub-paragraph 11(c) of the Statement of Claim, was that the plaintiff's dismissal was unfair because the decision of the Authorised Officer, who constituted the Disciplinary Board, in his finding of guilt against the plaintiff was irrational for want of consideration of all relevant factors, and/or was a decision which no reasonable arbiter properly directing itself could have taken. At the conclusion of the hearing, I was of the view that this ground was made out. It was indicated by the defendant that reinstatement as a relief was not in issue. I therefore ordered reinstatement and recovery of the plaintiff's salary and allowances from the date of the purported termination of employment.

The Facts

8 The plaintiff joined the Singapore Police Force as a Constable. Upon completing his 6 month's basic training at the then Police Academy in July 1990 he was posted to Jurong Police Division. In 1992 he was posted to Hong Kah North Neighbourhood Police Post. In March 1993 he was awarded the Certificate of Commendation for achieving excellent service to the public.

9 In March 1993 the plaintiff was transferred to AVB where he remained in service until his dismissal, as recited above. He began by carrying out the duties of a field detective. He was also promoted to the rank of Corporal. In the following year, he received commendation from the Commissioner of Police for excellent teamwork, tenacity of purpose, alertness and dedication. In 1996 he received the Testimonial from the Commissioner of Police for devotion to duty and detective ability. He was promoted to the rank of Sergeant.

10 In 1997 he was promoted to the rank of Staff Sergeant, having received 3 dossier entries for good arrests. In May that year, he was promoted to be Officer in Charge of Team 1, AVB, responsible for leading and supervising a team of 4 officers. He was also an investigation officer. In 1999 the plaintiff received dossier entry for good arrest. He was nominated Senior Investigating Officer. In August, 1999 he received the Ministry of Home Affairs Award. In October the same year, he was promoted to the rank of Senior Staff Sergeant and was made Senior Investigating Officer of AVB.

11 At the material time, the plaintiff was nominated as candidate for appointment to the rank of Acting Inspector of Police.

The alleged incidents

12 On 18 November 1999 Sgt Tea Ai Huay, W/Sgt Eve Boon Yen Kian and Sgt R K Vicneswaran brought to the AVB 8 Filipinas. They had raided the apartment in which they were found in response to a written complaint by the management corporation of the condominium that prostitution was going on in the apartment. The 8 Filipinas were Christina Papa Hoyohoy ("Christina"). Riza Consingnado Sanchez ("Riza"), Gerson Melendres Bariring ("Gerson"), Gina Sepagan Mareon ("Gina"), Maria Rosalyn Marano Papa ("Maria") whose mother is Gina, Evangeline Mangurdun ("Evangeline"), Ely Glor Calibo ("Ely") and Alicia Francisio ("Alicia"). Six of them, excluding Gina and Maria, were arrested on suspicion that they were prostitutes entering Singapore illegally. Gina was arrested on suspicion of being the person who had arranged for their entry into Singapore. Maria was asked to go to AVB to assist in the investigation.

13 The plaintiff was not involved in the raid operation and arrests.

14 The 3 complainants were Christina, Riza and Gerson. They alleged that the plaintiff slapped them on their cheeks during the interview conducted in the Detective Room.

15 All 7 suspects were referred to the Ministry of Manpower for investigation into possible illegal entry into Singapore.

16 Following complaints of assault by some of the female Filipinos, police investigations were carried out.

Expert Opinion against bare medical reports

17 On 19 November 1999, a day after the alleged assault, Christina was medically examined by Dr Maninder Singh Shahi of 81 Family Clinic. She was found to have the following injuries: (1) 6 cm diameter bruise on the left cheek; (b) swelling and erythema (ie redness) on the proximal (ie the end nearer the wrist), dorsal (ie back) left little finger, with painful movement of the metacarpo-phalangeal joint (ie the knuckle joint); (3) tenderness over the anterior (ie front) of the right 3rd rib, with no bruising or swelling; and (4) right shoulder tenderness with pain on movement, and without swelling or bruising.

18 Dr Maninder Singh Shahi was not called to give evidence and he was therefore not subjected to cross examination. However, the plaintiff in his defence called as witness in his defence Dr Teo Eng Swee ("Dr Teo"), the Consultant Forensic Pathologist, and Head, Clinical Forensic Services, Institute of Forensic Science and Medicine. According to Dr Teo, the only relevant "objective medical findings" are the left cheek bruise. All the other medical findings of Dr Maninder Singh Shahi were subjective. In other words, they were based on what Christina had told Dr Maninder Singh Shahi. The crucial point was that, on any view, these other medical findings had nothing to do with the plaintiff, against

whom the only allegation was that he had slapped her on the cheek.

19 Dr Teo opined that the other medical findings were not specific, and did not support Dr Maninder Singh Shahi's opinion that the "injuries" were "probably" caused by assault.

20 Dr Teo opined that the bruise on the cheek was consistent with light blunt force trauma to the cheek. In contrast to Dr Maninder Singh Shahi's written report, which was untested by any cross examination, he significantly opined that self infliction could not be excluded.

21 So far as Riza was concerned, she was examined by Dr Mohan Tiru of Changi General Hospital on 21 November, 1999, 3 days after the alleged incident. She claimed to have been slapped on both cheeks and hit over the left buttock. The only medical finding was swelling over the right malar area.

22 Dr Mohan Tiru was not called to give evidence and there was therefore no cross examination of the doctor.

23 Dr Teo, in defence of the plaintiff, opined that one could only say that the injury to the face was perhaps due to light blunt force. A person who slapped himself or herself on both cheeks could just as well cause swelling of both cheeks. Dr Teo further made the significant point that it would be unusual to have the swelling last for 3 days without any bruising. He further opined that self-infliction could not be excluded, based solely on the medical evidence. He therefore said that Dr Mohan Tiru's view that "the injury was not likely to have been self-inflicted" was not supported by the medical evidence.

24 I now turn to the medical evidence relating to Gerson, the third complainant. She was examined by Dr Mohan Tiru at the Changi General Hospital on 21 November 1999, also 3 days after the alleged incident. She complained of being slapped on both cheeks. On examination she was found to have swelling on both cheeks (bilateral malar swelling). The doctor's opinion was that this injury was "not likely to have been self-inflicted".

25 Again, Dr Mohan Tiru was not called to give evidence. Only his written report, which was not re-affirmed before the Authorised Officer, nor subjected to cross examination, was produced as evidence.

26 Dr Teo opined in evidence that Dr Mohan Tiru's views were not supported by the medical evidence. He told the tribunal what could be reasonably inferred. Dr Teo said that one could only say that the injury to the face was perhaps due to light blunt force. He told the Authorised Officer that a person who slapped himself or herself on both cheeks could just as well cause swelling of both cheeks. He further opined that it would be unusual to have the swelling last for 3 days without any bruising.

27 In the circumstances, Dr Teo opined that self-infliction could not be excluded, based on the evidence.

28 I shall later in this judgment return to the Authorised Officer's treatment of the medical evidence and to the reasons behind the conclusions of the Authorised Officer.

The Material Evidence before the Authorised Officer

29 Before I analyse the grounds of decision of the Authorised Officer and the impact of his reasoning on his decision making process and on the right of the plaintiff to a fair hearing, I shall summarise the material evidence adduced in the case against the plaintiff. The plaintiff faced three charges before the Authorised Officer. He pleaded not guilty and claimed trial.

30 The first charge was that he slapped Christina on her cheek in the AVB office, CID. The plaintiff told her to answer his questions truthfully. He then asked her if she was a prostitute to which she replied she was not. He then slapped her on her left cheek.

31 Gerson, Riza, Evangeline and Ely testified that they witnessed the slapping.

32 The plaintiff denied slapping Christina. The other police officers, who were in the office, testified that they did not see any of the Filipinas being slapped. They were the 3 co-accused and Sgt Chan Kok Yeen, Stanley. He had been in the Singapore Police Force for 8 ½ years.

33 Sgt Chan was not accused of any assault by any of the Filipinas. He was not involved in the raid but he assisted the team in the investigations of the 8 Filipinas. He assisted in the recording of two statements. In evidence, he stated that did not see any of the officers assaulting any of the Filipinas. He further testified the significant point that he did not notice any injuries on them. He also gave important evidence that he did not notice any injuries on any of the Filipinas. None of them had complained of any assault to him. He also did not see any girl standing on a chair. There was not even any shouting at the girls. He had left AVB to buy food for the girls as lock-up food was not arranged for them. After buying, he sent the 8 packets of chicken rice to the 8 Filipinas.

34 By paragraph 19 of the defendant's closing submissions, State Counsel made two points. First, it was contended that "(s)ome of the assaults could very well have taken place while Sgt Chan was still out buying their dinner." On the evidence, Gerson at AB74 was recorded to have given evidence of the plaintiff slapping the three complainants, starting with Evangeline. Gerson said: "while eating, (plaintiff) called Evangeline and told her 'do you know this hand of mine? I use it only for people who tell lies.' He asked Evangeline if she was working. She replied 'No'. I saw him (Ng) slap Evangeline on her face. Don't remember which side. The same thing happened to all of us. He called Riza, Evangeline, Christina, Ely and myself. The slaps were hard slaps. I was slept once on my left cheek. He used his hand, but don't recall which one. We hardly ate the food, were barefooted and cold. Some of the girls were brought out from the room. The only one left were myself, Riza, Evangeline. The 3 of us were taken to another room for about 20 minutes. We were in the earlier room for 3 hours". That was one conjecture that did not stand up.

35 The other point of the State Counsel was that Sgt Chan might have been at a different place when the slapping of the 3 complainants took place. The 3 complainants were in the same room, at least according to the evidence of Gerson, for 3 hours during which the alleged slapping took place. In my view, it was idle to speculate. They were all in the immediate vicinity. If the slapping had taken place, it was fair to say that Sgt Chan would have known about it, either witnessing it personally or noticing the aftermath of the incidents, such as cries, tears, swelling or redness and other signs of distress on the faces of at least 6 Filipinas.

36 The Authorised Officer, in his Summary, stated thus: "Having heard all the testimonies I am satisfied that the Filipinas were telling the truth. However, I have to treat the testimonies of the police witnesses with caution as they will naturally try to help or cover their colleagues." He therefore found the plaintiff guilty of the first charge.

37 The 3 lock-up officers, who were SSgt Roslina Bte Suandi, SSgt Tan Chee Moy and Sgt

Zaharah Bte Mustam gave evidence for the plaintiff. They gave clear evidence that they saw no injuries on the Filipinas. The Filipinas never complained to any of them that they had been assaulted. All of them in response to questions stated that if there was any complaint of assault, the procedure was to note the allegation in the station diary and notify the Station Sergeant. The Filipinas explained that they did not do so as they were afraid, as there were police officers in the CID.

38 In addition, SSgt Tan Chee Moy disclosed her personal position on assaults by police during investigation. She said she did not condone officers who assaulted anyone.

39 Admittedly, they were not present at the AVB where the alleged slapping took place. State Counsel made two submissions. First, there was no way that any of the lock-up officers would have seen the slapping. Secondly, they submitted that just because the 3 officers did not notice any injuries whilst the Filipinas were in the lock-up did not mean that the Filipinas concerned were not slapped. I have to point out that it was never part of the case for the plaintiff that any one of them had the occasion to witness the slapping. The evidence of the lock-up officers were led to prove that in the absence of tell tale signs of injuries it was unlikely that the complainants had been slapped. I shall set out later in this judgment why I had concluded that the Authorised Officer had disregarded the evidence of the 3 lock-up officers because he was unfairly influenced by the notion that the police officers concerned would naturally cover up and lie for their fellow officers against serious charges.

40 In addition to the abovementioned evidence, the plaintiff before the Authorised Officer relied on the evidence of 2 Tagalog interpreters. They were Ms Maricel G. Fariola ("Maricel") and Ms Ester Vincoy ("Ester").

41 Maricel is a Singapore citizen, having lived here for 12 years. She is a sworn court interpreter in Tagalog. On 18 November 1999 she reported for duty at the AVB. She arrived at 6.45pm. She saw 5 girls seated on chairs. A few were having dinner; some were not. She did not notice unusual expressions or injuries. She said, as she clarified later, that the Filipinas did not complain that they had been assaulted. She also clarified that she had told the girls that the officers were playing and to play along with them. If she had seen injuries, she would have lodged a police report.

42 When asked about the mood of the Filipinas, she said they had become comfortable after their introduction. The Filipinas were seated on a row of chairs. Maricel was standing in front of them and she spoke Tagalog. She said no one complained that she was assaulted. If there was any complaint, she would not keep quiet. The Filipinas were asked their occupations. One replied she was a singer. The group got her to sing a Britney Spear number. One girl started singing and the other joined in; one solo and one duet.

43 Maricel said she interpreted for the Filipinas. They did not seem to be hiding their fears. They were normal during the time the statements were taken. They were like old friends. She did not notice any fear or threat. The girls were co-operative. They laughed and joked with the officers.

44 Maricel was told that some Filipinas had told the Authorised Officer that they had told her they had been assaulted. She replied: 'Not at all. If so, I would have initiated a police report.'

45 The second charge against the plaintiff was that he slapped Riza at the AVB office, CID. She said that the plaintiff called her and showed her his hand. He told her to look into his eyes. He said 'his hand is ready to slap anyone who is lying'. He asked her how much the customer would pay her in one pub. Then Riza told the plaintiff that he did not go with customer. Riza said thereupon the plaintiff slapped her on the left side of her face.

46 Evangline, Ely and Gerson testified that they saw the plaintiff slap Riza.

47 The plaintiff denied the allegation. He relied on the evidence I have recited in his defence, including the medical evidence that it was unlikely that the swelling could still be evident after 3 days without any bruising.

48 In the third charge, the plaintiff was alleged to have slapped Gerson. I have already recited her evidence against him. Both Evangeline and Ely testified that they saw the plaintiff slapping her.

49 The plaintiff in his defence denied the allegations and led the evidence of his colleagues and the evidence of the two Tagalog interpreters, both of whom said that the Filipinas did not complain of any assault. Maricel said that in fact the 8 Filipinas were quite relaxed and were at least, with at least two of them singing in the evening of 18 November 1999.

The law of judicial review

50 It is instructive at this point to begin with a relevant passage from Volume 1(1) Halsbury's Laws of England (4th edition), 2001 Reissue, paragraph 76:

> **"**The exercise of statutory powers on the basis of a mistaken view of the relevant facts will, however, be quashed where there was no evidence available to the decision maker on which, properly directly himself as to the law, he could have reasonably have formed that view."
>
> "In other cases the statute will provide that a body is to have power or jurisdiction where 'it is satisfied' of certain matters, or where certain facts 'appear' to that body. In that case the court will generally only intervene if the body's finding that the necessary facts existed was not one which a reasonable person, properly instructed as to the question to be determined, could have come to…"

51 In the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 All ER 680 where the issue there was whether the regulations made by a local authority was *ultra vires* its authority, Lord Greene M.R. held at page 685B:

> "…the court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought not to take into account, or conversely, has refused to take into account matters which it ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that the local authority, nevertheless, have come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, I think the court can interfere."

52 Lord Greene M.R. in his judgment considered what could be regarded as 'unreasonableness', at page 682H to 683A:

> "It is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must direct himself properly in law. He must call his own attention to the matters which he is bound to consider. he must exclude from his consideration matter which are irrelevant to the matter that he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'. Similarly, you may have something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, L.J., I think it was, gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is

taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith. In fact, all these things largely fall under one head."

53 In the case of *Edwards v Bairstow and Anor* [1956] AC 14 HL, at page 36, Lord Radcliffe said:

"I do not think that inferences drawn from other facts are incapable of being themselves findings of acts, although there is value in the distinction between primary facts and inferences drawn from them. When the case comes before the court it is its duty to examine the determination having regard to its knowledge of the relevant law. If the case contains anything ex facie which is bad law and which bears upon the determination, it is obviously, erroneous in point of law. But, without such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In these circumstances, too, the court must intervene."

54 At pages 38 to 39, Lord Radcliffe said:

"I think it is possible that the English Courts have been led to be rather over-ready to treat these questions as 'pure questions of 'fact' … If so, I would say, with very great respect, that I think it a pity that such a tendency should persist. As I see it, the reasons why the courts do not interfere with commissioners' findings or determination of facts is not any supposed advantage in the commissioners of greater experience in matters of business or any other matters. The reason is simply that by the system that has been set up the commissioners are the first tribunal to try an appeal, and in the interest of the efficient administration of justice their decisions can only be upset on appeal if they have been positively wrong in law. The court is not a second opinion, where there is reasonable ground for the first. But there is no reason to make a mystery about the subjects that commissioners deal with or to invite the courts to impose any exceptional restraints upon themselves because they are dealing with cases that arise out of facts found by commissioners. Their duty is no more than to examine those facts with a decent respect for the tribunal appealed from and if they think that the only reasonable conclusion on the facts found is inconsistent with the determination come to, to say so, without more ado. I agree that the appeal should be allowed."

55 In the case of *Wong Kim Sang & Anor v Attorney-General* [1982] 1 MLJ 176, Kulasekaram J at page 180I agreed with the learned Chief Justice in the case of *V.C. Jacob v The Attorney-General* in delivering the judgment of the Court of Appeal, that "the High Court in the exercise of its supervisory jurisdiction over inferior tribunals will not interfere merely on the ground of insufficiency of evidence".

56 Kulasekaram J at page 181A said:

"The jurisdiction over inferior tribunals is supervision and ot review. Its supervision would be to ensure that the inferior tribunal acts within the jurisdiction permitted by Parliament in its mandate to the tribunal. If the tribunal on a true construction of the Act is to inquire into and finally decide questions within a certain area, this court's supervisory function is to see that it makes the authorised inquiry according to natural justice and arrives at a decision whether right or wrong. The duty of the court is twofold:

(1) to see that the tribunal makes the right inquiry or question within its permitted area and not outside that area, and

(2) that it acts according to natural justice in that the answer that it gives to a right inquiry or question though it may be wrong is still an answer that lies within its jurisdiction. In

other words, it is an answer that is open to a reasonable person to make."

57 In the case of *Leong Kum Fatt v Attorney-General* [1984] 2 MLJ 197, at page 200G, Chua J considered the case of *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 ALR 163 where Lord Pearce said at page 192:

> "Further, it is assumed, unless special provisions provide otherwise, that the tribunal will make its inquiry and decision according to the law of the land. For that reason the courts will intervene when it is manifest from the record that the tribunal, though keeping within its mandated area of jurisdiction, comes to an erroneous decision through an error of law. In such cases, the courts have intervened to correct the error.
>
> The courts have, however, always been careful to distinguish their intervention whether on excess of jurisdiction or error of law from an appellate function. Their jurisdiction over inferior tribunals is supervision, not review…
>
> It is simply an enforcement of Parliament's mandate to the tribunal. If the tribunal is intended on a true construction of the Act to inquire into and finally decide questions within a certain area, the court's supervisory duty is to see that it makes the authorised inquiry according to natural justice and arrives at a decision whether right or wrong. They will intervene if the tribunal asks itself the wrong questions (that is, questions other than those which Parliament directed it to ask itself). But if it directs itself to the right inquiry, asking the right questions, they will not intervene merely because it has or may have come to the wrong answer, provided that this is an answer that lies within its jurisdiction."

58 In the case of *Re Yap Lack Tee George* [1992] 1 SLR 488, LP Thean J (as he then was), held at page 495E:

> "Plainly, on a close examination of the evidence discussed in the report of the inquiry committee, there was evidence which supported the decision of the staff committee. It cannot be argued that the staff committee had come to a decision so unreasonable that no reasonable committee would ever have come to."

59 In the case of *De Souza Lionel Jerome v Attorney-General* [1993] 1 SLR 882, the State Counsel conceded (at page 900B) that if the evidence taken as a whole is not reasonably capable of supporting the decision of the authorised officer as to his finding, then the decision is ultra vires. The cases of *Leong Kum Fatt v Attorney-General* and *Edwards v Bairstow* were referred to.

60 In the Hong Kong High Court case of *Chan Kim Hung v Commissioner of Police* [2001] 392 HKCU 1, M J Hartmann, J said at paragraph 10:

> "Every professional body is entitled to apply its own professional judgment to a case in which one of its members is called on to justify his conduct in (allegedly) failing to observe a standard or guideline laid down by that professional body for the protection of those dealing with members of that professional body. It is not, in my judgment, for this court to second-guess the professional judgment of a disciplinary committee such as this except where it can be seen that it has plainly misread the evidence and come to a conclusion which is contrary to the evidence of is otherwise plainly wrong."

The Grounds of Decision of the Authorised Officer

61 After summarising the evidence, more or less containing the material aspects as stated in this judgment, he stated the following in relation to each of the 3 charges (with emphasis added by me):-

First charge

"109 Having heard the testimonies of the Filipinas I am satisfied that they are telling the truth. *However I have to treat the testimonies of the police witnesses with caution as they will naturally try to help or cover their colleagues*"

"110 I therefore find SSgt Ng Hock Guan guilty of this charge."

Second charge

"116 After hearing the testimonies *of the Filipinas I am satisfied* they are telling the truth. *However I treat the testimonies of the AVB officers with caution as they are likely to try and help to cover their colleagues***.**

"117 Therefore, I find SSgt Ng Hock Guan guilty of this charge"

Third charge

"122 Having heard the testimonies of the Filipinas I am satisfied that they are telling the truth. *On the other hand, I have to treat the testimonies of the AVB officers with or [sic] caution as they are likely to try and help or cover their fellow officers.*"

"123 Therefore, I find the SSgt Ng Hock Guan guilty of this charge."

62 The Authorised Officer indicated his approach to the evidence led by the plaintiff in the following unmistakable terms:-

"180 The defence has produced as witnesses officers from AVB and CID lock-up to state that they did not see any assault on the Filipinas or that no visible injuries were seen on them. *I have to be cautious in that they are fellow officers and colleagues who are not likely to testify against the defendants, especially in serious charges like this case.***"**

63 There was, in my judgment, no justification for the Authorised Officers' unmistakable view that there was such proclivities in the witnesses for the defence. Sgt Chan and the 3 officers from the CID lock-up, who were not co-accused, were unfairly tarnished with the same, relentless brush. He stated that those witnesses would 'naturally' or were 'likely to' lie under oath so as to cover up for their fellow officers. I have summarised with care the relevant evidence given by each of them. They did not receive any complaints from any of the Filipinas. If the Filipinas did, the lock-up officers said without exception that they would note it in the Station Diary and the Station Sergeant would have been informed. Ms Maricel had graphically described the air of calm and some merriment amongst the Filipinas during the entire period she was at the AVB interpreting for them. On the Authorised Officer's view of the tendency of the police witnesses, as well as the unsubstantiated collateral motive of Maricel, the independent Tagalog interpreter, he disbelieved all the evidence of the defence.

64 In my judgment, the Authorised Officer's statements highlighted in this judgment, which directly led to his decision to find the plaintiff guilty of all 3 charges, was irrational and one which no rational and fair-minded arbiter properly directing himself would have made. It was "a decision so unreasonable that no reasonable authorised officer would ever have come to" (per LP Thean J. [as he

then was] in *Re Yap Lack Tee George*).

65 On reading through the record of the proceedings and the grounds of decision, I was ineluctably driven to the conclusion that as a consequence of the prejudicial and wholly unsupportable notion entertained by the Authorised Officer against the police colleagues of the plaintiff, and a civilian colleague, as witnesses for a colleague facing a charge under the Police Regulations, the Authorised Officer's treatment of the independent evidence of Dr Teo Eng Swee and of the evidence of Maricel was seriously impaired.

66 After summarising the evidence of Dr Teo, the Authorised Officer said in paragraph 175 of his Grounds: "My view is that the medical reports are only supporting evidence. My decisions are not based solely on the medical reports only. There are testimonies of the victims and witnesses and other evidence which are taken into consideration". Although none of the doctors who wrote the medical reports gave evidence, and were not subjected to cross examination, the Authorised Officer nevertheless regarded them as "supporting" evidence. This meant, in effect, that he did not accept the uncontroverted evidence of Dr Teo. Dr Teo's evidence clearly painted the scenario that the injuries could equally have been self-inflicted and he cast grave doubts about the swelling on the cheeks of Riza and Gerson, as I had recited above. The evidential value of all the medical reports had been demolished by the uncontroverted expert evidence of Dr Teo and yet they were treated as "supporting" evidence by the Authorised Officer.

The Defendant's submissions

67 I now turn to the submissions of the defendant, which I had considered before I formed the views referred to above. First, I was urged to give some allowance when reviewing the grounds of the Authorised Officer. I certainly did not expect the Authorised Officer to deliver a set of grounds similar in quality as that of a professional judge. But I expected fairness. I thought it was beyond argument that an adjudicator must not bring to bear any prejudicial, unsubstantiated notions of any proclivities. He must always act on the evidence; he certainly could not be permitted to rely on tendencies, natural or otherwise, and proclivities of witnesses of any description. In this case, it was not a case of any inconsequential or understandable inelegance of language. The Authorised Officer did not give the plaintiff the right that evidence led in his defence would be given fair and reasonable treatment. All the evidence were swept aside because there was a tendency to perjure and cover up for colleagues.

68 It was further submitted that the Authorised Officer was entitled to treat the evidence of the 4 accused persons and of Sgt Chan with caution. In relation to the evidence of Sgt Chan, it was argued that "if he was present at the relevant time, and failed to stop or report the assaults, he would have been implicated and would have had a vested interest in covering for the plaintiff." This argument begged the question whether there were in fact any assaults. I did not think this circular argument was valid. It was also highly speculative of the 'vested interest' of Sgt Chan. In any event, the Authorised Officer entertained the view, which he articulated in clear terms, that there was a tendency to perjure and cover up by the AVB officers and the 3 CID lock-up officers. That wholly unreasonable view, in my judgment, precluded any reasonable consideration of the entire evidence led by the plaintiff in his own defence in the proceedings before the Authorised Officer.

69 The point was further made that Sgt Chan's evidence was of limited weight as "(s)ome of the assaults could very well have taken place while Sgt Chan was still out buying their dinner." This submission did not accord with the record of evidence. So far as the evidence against the plaintiff were concerned, the alleged assaults took place after the food had been bought and the alleged victims were eating or about to eat their chicken rice.

70 Further, it was submitted that the evidence of Sgt Chan that he did not see any injuries on the Filipinas, like those of the 3 CID lock up officers, "did not per se mean that the Filipino women were not slapped". Well, if they had not been disregarded by the prejudiced view of the alleged proclivities of witnesses, they would have been some objective, third party evidence which should have assumed greater evidential value if considered in the light of Dr Teo's evidence. On any view, these are rather acute points presented in arguments which, in fact, never crossed the mind of the Authorised Officer.

71 I now refer to the submission that the Authorised Officer had other grounds as set out in paragraph 178 of the grounds of decision for disbelieving Ms Maricel. Paragraph 178 stated:

> "178 The reason why she did not see any assault could be because Filipinas (sic) were brought to the CID at about 1600 hrs while Ms Maricel reached at about 1845 hrs. Considerable part of questioning (sic) was done before she came. It could also be because she was shuttling from office to office to help the officers recording statements. The defendants may have been careful not to assault when Ms Maricel was present."

72 This paragraph prompted a number of comments. First, it completely missed the purport of Ms Maricel's evidence. She did not give any evidence of having seen any of the 3 assaults. She gave evidence of the absence of any tell-tale signs of the assaults. She also gave evidence of the singing by two of the Filipinas and the generally relaxed behaviour of the 8 Filipinas. There were no complaints of any assaults. Secondly, in this paragraph, the Authorised Officer was speculating on the possible reasons why Ms Maricel had not seen the assaults. The Authorised Officer, with respect, was erecting skittles and promptly knocking them down. It was evident that Ms Maricel's evidence presented serious difficulties to the Authorised Officer who had concluded that there was a collegiate cover up and perjury.

73 Finally, I refer to the direct conflict of evidence between Ms Maricel and those of the 3 victims. The 3 victims had claimed in evidence that they had told Ms Maricel of the assaults. Ms Maricel denied having been told by them. It was submitted on behalf of the defendant that the conflict of evidence might have been due to a misunderstanding, or a failure in communication. At the very worst, it was also submitted that it merely affected the credibility of the 3 victims which did not materially affect the totality of the evidence led by the prosecution below. I did not think that this was a difference merely in the evaluation of evidence. It was much more serious than that: the plaintiff as the defendant below was denied his right to a fair and reasonable consideration of his defence by reason of the preconceived notion that there was a tendency in collegiate cover-up and perjury. That fundamental error tainted the entire proceedings below.

Conclusions

74 In the law of judicial review, a few principles are well established. First, the court is exercising its supervisory function and is not sitting in its appellate capacity during which there is a new trial, except that there is no viva voce evidence taken once again. A court therefore does not come to findings of its own to replace those of the tribunal against the decision of which judicial review is sought. Secondly, the correctness or otherwise of a tribunal's decision is not in issue. That decision is left by the enabling legislation to a tribunal or a statutory person such as the Authorised Officer. In *Mohan Singh v Attorney-General* [1987] 2 MLJ 595 I would like to think that I held the line rather firmly against judicial activism under the guise of judicial review.

75 In the context of this case, I was very mindful that I was not concerned with the sufficiency of the evidence or the weight given to such evidence by the Authorised Officer.

76 I was here concerned with a review of the decision making process in general and in particular the approach adopted by the Authorised Officer in his articulated view that the police officers in question and Maricel, the Tagalog interpreter, were inclined or predisposed to perjure themselves just to cover up for their colleagues or, as in the case Maricel, the undisputable suggestion was that she had lied just to maintain her retainer as a Tagalog interpreter by the CID. In other words, she lied in order to remain in the good books of CID officers by covering up their unlawful acts.

77 The consequence of such an unfair approach is quite clear. How is an anti-vice officer, in a similar position as the plaintiff, able to demonstrate his innocence and successfully defend himself against any unwarranted charge made against him by a group of suspects for vice activities or for living on the immoral earnings of prostitutes, if the adjudicating officer starts off and always hold the view that colleagues would cover up for fellow colleagues and perjure themselves? It must be quite evident that usually in the course of police interviews the witnesses who can give evidence for an interviewing or interrogating officer, who is accused of assault or any other unlawful act, are usually, if not always, colleagues.

78 It is not justifiable to say that these witnesses are fellow officers and colleagues who are not likely to testify against a fellow officer who is accused, any more than it is to say that fellow suspects will give false evidence by covering for their fellow suspects.

79 A fortiori, if a witness is independent, such as Maricel, it is not at all defensible to conclude, by mere speculation, that a witness would perjure just to retain her employment.

80 The mindset or mental predisposition of the Authorised Officer was also remarkable when he came to treat the evidence of the complainants and their witnesses. All of them who had testified against the plaintiff, except Maria, were under investigation for prostitution or running a place of assignation. Any tribunal should view their evidence with caution, and with more caution when objectively ascertainable evidence are presented to rebut their collective oral evidence. Whilst the Authorised Officer's view that 'they (the Filipinas) were telling the truth' should ordinarily be accorded great respect and weight, in my judgment it had to be set aside if the view had been arrived at in a manner which effectively and in substance denied the plaintiff the right that evidence led in his defence should be fairly considered, without taking into account wholly unproven proclivities on the part of police officers and on the part of, for e.g. a Tagalog interpreter, to cover up and perjure themselves just to save their colleagues from the law taking its course. Dr Teo's evidence was not accorded the importance as a result of the prejudicial view taken by the Authorised Officer.

81 For these reasons, I made the orders I did.

Plaintiff's claim for reliefs allowed