Attorney-General v Ng Hock Guan
[2004] SGCA 21

Case Number : CA 76/2003

Decision Date : 14 May 2004

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Tan Lee Meng J; Yong Pung How CJ

Counsel Name(s) : Jeffrey Chan, Wilson Hue and Leonard Goh (Attorney-General's Chambers) for appellant; Tan Chau Yee and Cindy Sim (Tan JinHwee Eunice and Lim ChooEng) for respondent

Parties : Attorney-General — Ng Hock Guan

Administrative Law – Judicial review – Role of court in judicial review proceedings

Administrative Law – Remedies – Declaration – Declaration of trial judge ordering respondent's reinstatement and repayment of salary from date of dismissal – Whether declaration rightfully made

14 May 2004

Chao Hick Tin JA (delivering the judgment of the court):

1 This was an appeal by the Attorney-General ("the appellant") against a decision of the High Court (reported at [2004] 1 SLR 415) which declared that the dismissal of the respondent from the Singapore Police Force ("the Force") was null and void and ordered his reinstatement. The respondent was then a senior investigation officer of the rank of Senior Staff Sergeant, attached to the Anti-Vice Branch ("AVB") of the Criminal Investigation Department ("CID"). After hearing arguments presented by the Principal Senior State Counsel ("PSSC") for the appellant, we dismissed the appeal and affirmed the decision of the court below. We now give our reasons.

The facts

2 On 18 November 1999, pursuant to a written complaint by the management corporation of a condominium that prostitution was being carried out in an apartment, three police officers from the AVB, Sergeant Tea Ai Huay, Staff Sergeant Eve Boon Yen Kian and Sergeant Vicneswaran s/o Ramakrishnan, raided the apartment. The officers brought eight Filipinas found in the apartment back to the AVB. The eight Filipinas were Cristina Papa Hoyohoy ("Cristina"), Riza Consingnado Sanchez ("Riza"), Gerson Melendres Bairing ("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 who had entered 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.

3 At the AVB, the respondent interviewed the Filipinas. However, no evidence of any vice activity was uncovered. Following their release, three of the Filipinas, Cristina, Riza and Gerson, lodged complaints of assault committed against them by the respondent. They also made complaints of assault against the three officers who arrested them and brought them back to the CID. The complaints of assault against the three officers were distinct from, and not related to, the complaints of assault lodged against the respondent.

4 Following the complaints of the three Filipinas, and in accordance with reg 6 of the Police

Regulations (Cap 235, Rg 1, 1990 Rev Ed), Deputy Superintendent of Police Jacob Joy ("DSP Joy") was appointed as an authorised officer to hear the case against the respondent as well as the other three officers. Three charges were brought against the respondent and each charge was in respect of the allegation of each complainant.

5 Cristina alleged that the respondent had asked her if she was a prostitute. When she replied in the negative, she was slapped on the left cheek. Riza claimed to have been slapped on both cheeks and hit on the left buttock. Gerson complained of being slapped on both cheeks.

6 The authorised officer, having heard the witnesses for the Prosecution as well as those for the respondent, found the respondent guilty of the three charges and recommended that he be dismissed. This recommendation was accepted by the Commanding Officer, the Director of the CID, and the respondent was duly dismissed from the Force. It was against this dismissal from the Force that the respondent brought the present action.

7 The action came on for hearing before Lai Kew Chai J. Two grounds were advanced to challenge the findings of the authorised officer. The first was that the authorised officer was prejudiced against the respondent as a result of a polygraph test (lie detector test) having been shown to him. This allegation was rejected. It was not further pursued in this appeal. However, the judge found merits in respect of the second ground, namely, that the finding of guilt by the authorised officer was irrational and unreasonable. It was against this determination of the judge that the appellant took the matter up to this court.

Scheme of disciplinary action

8 It was not in dispute that the scheme of disciplinary process against an officer of the respondent's rank is set out in s 27 of the Police Force Act (Cap 235, 1985 Rev Ed) ("the PF Act") and regs 6 and 9 of the Police Regulations. The respondent fell within the rank of "junior officer". Under those provisions, such disciplinary proceedings are to be conducted by an authorised officer and the alleged misconduct is required to be set out in the form of a charge or charges.

9 Under regs 6(7) and 6(8), if the authorised officer should find the officer charged not guilty of the allegations, he should acquit the officer forthwith. That would conclude the disciplinary action against the officer. However, if the authorised officer should make a finding of guilt, he is required to record a conviction against the officer and may impose on the officer such punishment as he thinks appropriate (as set out in ss 27(1) and 27(2) of the PF Act), other than that of dismissal or retirement from the Force.

10 In this case, since the authorised officer thought that the appropriate penalty for the misconduct of the respondent warranted his dismissal, he accordingly recommended it to the Commanding Officer, who endorsed it. Here, we should point out that under reg 9, the Commanding Officer is empowered to order a rehearing of any disciplinary proceedings against a junior officer if he is of the opinion, *inter alia*, that "the proceedings have not been conducted in a proper manner".

Cause for this action

11 In his report on the disciplinary proceedings, the authorised officer set out briefly the evidence which was adduced from all the prosecution witnesses as well as the witnesses for the Defence. He chose to accept the evidence of the prosecution witnesses in respect of each of the

charges against the respondent. His reason for this preference was almost identical in respect of all the three charges and we need only cite that in relation to the alleged assault on Cristina:

> 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.

12 Towards the end of the report, the authorised officer again reiterated the same comment:

> The defence has produced as witnesses officers from AVB and CID lock-up … I have to be cautious in that they are fellow officers and colleagues who are not likely to testify against the [respondent], especially in serious charges like this case.

13 It was in relation to these statements of the authorised officer ("offending phrases") that the action was based.

14 Three officers from the CID lock-up ("lock-up officers") were called by the respondent to testify. They said that they did not see any of the Filipinas being assaulted by any police officer; neither did they see any injury on the Filipinas. Nor did any of the Filipinas complain to them.

15 Another officer called by the respondent to testify was one Sergeant Chan Kok Yeen ("Sgt Chan"). He was present when the Filipinas were being interviewed by the respondent. He assisted in the recording of two statements. None of the Filipinas accused Sgt Chan of being involved in any assault. He did not see any of the Filipinas being assaulted. Neither did he notice any injuries on any of them. Nor did they complain to him. But he did go out of the AVB for a while to buy food for the Filipinas.

16 Dr Teo Eng Swee, the Consultant Forensic Pathologist and Head of Clinical Forensic Services at the Institute of Science and Forensic Medicine, was called by the Defence. He had studied the medical reports put up by the medical officers on the three complainants. Basically what Dr Teo said was that most of the medical findings made by the medical officers were subjective, based on what their patients had told them. He also opined that, based on the medical evidence before him, self-infliction of the injuries could not be excluded. We now set out the authorised officer's perception of Dr Teo's evidence:

> Dr Teo first commented on Dr Foo Chik Loon's report (P16) on Gina. According to Dr Teo the opinion of Dr Foo that "the injury is consistent with blow(s) from a blunt object" is not supported. According to Dr Teo pain, softness and tenderness are subjective based on what the patient told the doctor. There is no visible or objective injuries reported. That being so, it is not correct for Dr Foo to say that injury is consistent with blow(s) from a blunt object.
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> Dr Teo commented also on the medical report (P14) on Gina by Dr Maninder Singh. Dr Singh has reported tenderness, spasm and swelling. According to Dr Teo tenderness and spasm are subjective while swelling is not specific to trauma. Dr Teo also disagrees with Dr Singh's opinion that the injuries were not self-inflicted and probably caused by assault. Dr Teo's view is that self-infliction cannot be ruled out and there is no objective medical evidence that the injuries were caused by assault.
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> Dr Teo then commented on the medical report (P19) on Gerson by Dr Mohan Tiru. Gerson had swelling on both cheeks which according to Dr Mohan was not likely to have been self-

inflicted. Dr Teo's opinion is that self-infliction cannot be ruled out. Also it is unusual to have the swelling last 3 days without any bruising.

Dr Teo's comments on the medical report (P21) on Riza by Dr Mohan Tiru is that self-infliction cannot be ruled out. Also there is [no] medical evidence to support slapping on the cheeks.

Dr Teo then commented on the medical report (P17) on Cristina by Dr Maninder Singh. The injuries reported were a bruise, swelling, [painful] movement and tenderness. According to Dr Teo the only objective medical evidence is [the] bruise on the left cheek. He states that self-infliction cannot be ruled out. In the case of the other injuries they are subjective and do not support Dr Maninder's view that the injuries were probably caused by assault.

17 Even though none of the medical officers who had examined the complainants and furnished the medical reports gave evidence, nor were they subject to cross-examination, the authorised officer viewed the evidence of Dr Teo and the reports of the Medical Officers as follows:

I have taken into consideration the testimony of Dr Teo Eng Swee (DW5). The gist of his opinion is that injuries like tenderness, softness and pain are subjective and not visible to the doctor. They are stated in the medical report based on what the patient says. They cannot be called medical evidence and it is not correct to conclude that they were caused by blows from blunt object etc. Dr Teo has also testified that such subjective injuries can be easily faked. He is also of the opinion that injuries, be it subjective or objective can be self-inflicted and so the doctors were not correct in stating that the injuries were not self-inflicted.

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.

18 The last witness whom we would like to refer to and who was called by the respondent was Ms Maricel G Fariola, a Singapore citizen and a certified interpreter in Tagalog. She said she arrived at the CID at about 6.45pm that day. At the time, some of the Filipinas were eating and some just sitting. She did not notice anything unusual about them nor did she see any injury on them. Neither did any of them complain to her about being assaulted. They were laughing and joking with the officers. At one point they even sang. The authorised officer dealt with her evidence as follows:

The reason why she did not see any assault could be because [the] Filipinas were brought to CID at about 1600 hrs while Ms [Maricel] reached at about 1845 hrs. Considerable part of questioning 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.

It is also pertinent to note that Ms [Maricel] is a regular interpreter who is called by CID officers. Her income is based on instances she is called to assist. It is therefore in her interest to be in the good books of the CID officers.

19 The judge below was clearly very concerned with the jaundiced view which the authorised officer had taken of the witnesses called by the respondent, particularly the three lock-up officers and Ms Maricel. While the judge recognised that we should not expect the authorised officer to produce a report of a similar standard as that of a professional judge, he nevertheless expected the

authorised officer to demonstrate fairness. Lai J said at [67]:

> I thought it was beyond argument that an adjudicator must not bring to bear any prejudicial, unsubstantiated motives 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 [respondent] the right that evidence led in his defence would be given fair and reasonable treatment. All the evidence was swept aside because there was a tendency to perjure and cover up for colleagues.

20 Later at [73], the judge reiterated the same point:

> I did not think that this was a difference merely in the evaluation of evidence. It was much more serious that that: the [respondent] 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.

Issues

21 Before us the PSSC submitted that the determination of the judge was erroneous on the following grounds:

(a) undue weight was placed by the judge on the offending phrases used by the authorised officer;

(b) wrong inferences were drawn by the judge from the offending phrases;

(c) failure to consider the fact that the decision to dismiss the respondent from the Force was made by the Commanding Officer; and

(d) the judge had substituted his own findings of fact for those of the authorised officer.

The law

22 It is trite law that in a case such as the present, the role of the court is one of review. The court is not sitting in an appellate capacity. The court exercises only a supervisory jurisdiction: *Wong Kim Sang v Attorney-General* [1982–1983] SLR 219 at 227–228, [34]. The court should not interfere even though on the facts it could have come to a different conclusion from that of the tribunal: *Heng Kai Kok v Attorney-General* [1986] SLR 408 at 414, [19]. Lai J was clearly conscious of these principles and the limited role of the court when he said at [74] to [76]:

> First, the court is exercising its supervisory function and is not sitting in its appellate capacity … A court therefore does not come to findings of its own to replace those of the tribunal … 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. …
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> 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.

> 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 [of] Maricel, the undisputable suggestion was that she had lied just to maintain her retainer as a Tagalog interpreter by the CID.

Offending phrases

23 We shall deal with grounds (a) and (b) together. The PSSC contended that the offending phrases in the report of the authorised officer should be viewed in their proper context. This was not a judicial tribunal but a domestic tribunal conducted by a senior police officer, unschooled in the law. Furthermore, the authorised officer was not even required to give his grounds as to why he had found the respondent guilty of the charges. The written grounds were meant to assist the Commanding Officer in deciding whether to dismiss the respondent. The report should not be dissected in the manner in which an appeal court would analyse the judgment of a lower court. This court should not over-legalise informal disciplinary proceedings, and neither should it require perfection from such a lay tribunal. Reliance was placed on *Chan Kim Hung v Commissioner of Police* [2001] 3 HKC 33 and *Toy Centre Agencies Pty Ltd v Spencer* (1983) 46 ALR 351.

24 As was indicated above at [19] and [20], the judge was very conscious of the fact that the authorised officer who conducted the disciplinary proceedings was not a judicial officer. He said at [67]:

> 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.

25 It is also true that the Police Regulations do not expressly require the giving of written grounds. But reg 6(8) requires the authorised officer to forward the record of proceedings and his recommendation to the Commanding Officer. Some form of a report is therefore contemplated. In this case, since the authorised officer made a report which set out his thought process, the court could not have ignored it. The court had to examine it to determine whether the rules of natural justice had been observed: see *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997. It is unnecessary for us to go into the general question as to whether there is a duty on the part of a domestic tribunal to give reasons for its decision.

26 With respect, we could not agree that the judge had placed undue emphasis on the offending phrases. Short of disregarding them, a plain reading of those phrases would leave the reader with no doubt that the authorised officer was biased against the respondent's witnesses because, in his mind, the officers from the CID would lie to help a colleague and in the case of Ms Maricel, she would also lie in order to remain in the good books of the CID and thus ensure her continued employment. The authorised officer did not give any other reason for doubting the credibility of the lock-up officers or of Ms Maricel.

27 In our judgment, the phrases indicated a prejudiced mind which was both irrational and unreasonable. A basic tenet of natural justice is that a person like the respondent, who is faced with a disciplinary charge, should be given a fair hearing. This means that the evidence adduced by both

sides should be accorded due consideration without any preconceived notion that the evidence of one side or the other is less likely to be truthful. The situation fell squarely within the words of Lord Radcliffe in *Edwards v Bairstow* [1956] AC 14 at 36 that the court should intervene 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".

28 Logically, and to be fair, following from the notion that Sgt Chan and the lock-up officers were colleagues of the respondent and thus prone to tell lies to cover up for him, should not the authorised officer also have warned himself of the danger of accepting the evidence of the other Filipinas who supported the evidence of the complainants? Except for Maria, who did not witness any assault of the complainants by the respondent, all the other Filipinas were being arrested and investigated for alleged offences. Accordingly, they could also have had a common cause. Lai J put it extremely poignantly when he asked at [77]:

> How is an anti-vice officer, in a similar position as the [respondent], 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 holds the view that colleagues would cover up for fellow colleagues and perjure themselves?

29 This preconceived notion of the authorised officer that colleagues of the respondent could not be relied upon to tell the truth undermined the very foundation of a process which was to determine, as between two conflicting versions, which was likely to be the truth. Indeed, such sweeping sentiments of the authorised officer could have serious repercussions beyond the realm of disciplinary proceedings of police officers. Therefore, we did not think that the judge had given the offending phrases undue weight. Their meaning was clear. Neither was he wrong to have held that the offending phrases indicated a state of mind which would have the proceedings vitiated. It was a fundamental error.

30 The appellant argued that those offending phrases merely showed that the authorised officer was warning himself that he should be careful when considering the evidence of the lock-up officers and the interpreter. He said this was no different from the situation in which a judge warns himself of the dangers of acting on uncorroborated evidence. But the difference is that where a judge warns himself, there should always be a rational basis for that caution. The question here is, was the general prejudicial perception of the authorised officer as regards the reliability of such police evidence a rational basis? The answer must be in the negative.

Dismissal was by Commanding Officer

31 We now turn to the third ground. The point made by the appellant was that the respondent was dismissed not by the authorised officer but by a decision of the Commanding Officer. So even if there were some errors of law made on the part of the authorised officer, they could not have affected the decision of the Commanding Officer. The PSSC submitted that for the respondent to succeed in his application to have his dismissal nullified he must also impugn the decision of the Commanding Officer. It was not enough to merely assail the decision of the authorised officer. The respondent must prove a direct link between the alleged failings of the authorised officer and the decision of the Commanding Officer to dismiss him.

32 While it is true that the judge addressed only the actions or reasoning of the authorised officer and did not in his judgment explicitly explain how they affected the decision of the

Commanding Officer, in our opinion, the link is evident from the scheme of the disciplinary process prescribed in regs 6 and 9, read with s 27 of the PF Act. DSP Joy was appointed by the Commanding Officer to conduct the disciplinary proceedings. Under reg 6, DSP Joy was required to hear the evidence and make his findings. If the evidence did not substantiate the charges, he was entitled to acquit the respondent. If he found, as he did, that the respondent was guilty, he could have imposed an appropriate punishment other than that of dismissal or retirement from the Force.

33 However, DSP Joy, having found the respondent guilty of the charges, recommended to the Commanding Officer to have the respondent dismissed. The regulations did not empower the Commanding Officer to disturb the findings of the authorised officer except that under reg 9 he could order a rehearing if he was of the opinion that, *inter alia*, "the proceedings [had] not been conducted in a proper manner". In our opinion, the situation in the present case would fall within that exception.

34 There was no evidence at all that the Commanding Officer was aware of this error on the part of the authorised officer and had, on his own, come to an independent judgment as to the guilt of the respondent. The burden would have been on the appellant to prove all this. In any event, having regard to reg 9, we had serious doubts whether the Commanding Officer, even if he had been aware of the error, would have been entitled to take that course.

35 Therefore, we had here a situation where the Commanding Officer accepted the finding of guilt made, and the punishment recommended, by the authorised officer and nothing more. If, as discussed above, the finding of guilt by the authorised officer could not stand because of a clear error of law on the part of the authorised officer, it would necessarily follow that the decision of the Commanding Officer to dismiss the respondent must also fall. This might explain why the judge did not go into this aspect of the proceedings. It is really *a fortiori*.

Was the judge substituting his own findings of fact?

36 The above should suffice to dispose of this appeal. However, we thought it might be useful if we should also briefly address the last ground raised by the appellant, which was that the judge had sought to substitute his own findings of fact for those of the authorised officer.

37 The PSSC conceded that the judge was aware that he should not be quibbling with findings of fact of the authorised officer or over the question of sufficiency of evidence as could be seen from [74] and [75] of his judgment. However, the PSSC submitted that in some passages of his judgment, the judge seemed to have overlooked this caution. Some of the passages which the PSSC pointed out were:

> 35 The other point of the State Counsel was that Sgt Chan might have been at a different place when the slapping of the three complainants took place. The three complainants were in the same room, at least according to the evidence of Gerson, for three 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 six Filipinas.
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> 66 … 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.

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 [*sic*] 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 three CID lock up officers, "did not *per se* mean that the Filipino women were not slapped". Well, if [it] had not been disregarded by the prejudiced view of the alleged proclivities of witnesses, [it] 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.

72 This paragraph [para 178 of the authorised officer's grounds of decision] 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 three 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 eight 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.

38 In our view, it is vitally important not to lose sight of the context in which the judge made those remarks. They were made essentially to show the extent to which the preconceived prejudicial notion of the authorised officer, namely, that the police witnesses called by the respondent would "naturally try to help or cover their colleagues", had affected or coloured the way in which the authorised officer viewed their evidence, including even the evidence of Dr Teo who was not from the CID. In making those critical analyses, it seemed to us clear that the judge's object was to demonstrate why the evaluation of the evidence by the authorised officer was flawed. On Dr Teo's evidence, the judge noted at [80] that his evidence "was not accorded the importance [it deserved] as a result of the prejudicial view taken by the Authorised Officer". We did not think that the judge was attempting to substitute his own findings of fact for those of the authorised officer. It was clear that he did not do that.

Appeal dismissed.