Gan Lai Hock v Singapore School Transport Association and Others
[2003] SGHC 179

Case Number : OS 1690/2002

Decision Date : 25 August 2003

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Alfred Y S Tan (Alfred Tan & Co) for the plaintiff; Raymond Lye (Tay Lye & Ngaw Partnership) for the defendants

Parties : Gan Lai Hock — Singapore School Transport Association; Wong Ann Lin; Lim Koh Beng; Neo Lye Siah; Tan Nam Soon; Ong Teck Tiong; Chew Chi Yong; Koh Chin Tee; Seah Phiak Cheow; Neo Kui Hock; Ng Kim Hock; Chua Hock Sing; Ang Yong Choon; Lee Chin Kiaw; Lee Thiam Chai; Luah Sing Heng; Ng Beng Twan; Neo Lian Huat; Ng Peng Hock; Chiam Shiun Phenp; Chow Kok Hiang; Heah Ah Lick

Courts and Jurisdiction – Court judgments – Declaratory – Whether inordinate delay in seeking declaration may deprive claimant of declaratory judgment.

1 The plaintiff, Mr Gan Lai Hock ("Gan"), a school bus operator and a member of the first defendants, the Singapore School Transport Association ("SSTA"), commenced a representative action against SSTA and the remaining defendants, who are members of SSTA's management committee. Gan sought a declaration nullifying the management committee election held more than one and a half years ago in December 2001 on the ground of irregularities. He also sought an order that the 2nd to 22nd defendants be restrained from acting or holding themselves out as members of SSTA's management committee or expending any part of SSTA's funds and that a fresh election for management committee members be held.

2 SSTA's members are Singapore citizens who are working in "any legal school vehicles transport line". The background of the present dispute between its members is as follows. In mid-November 2001, members of the SSTA were invited to vote for 21 members of the management committee, who would serve for a period of 24 months until the end of 2003. 50 members of SSTA, including Gan, stood for election. The then secretary of SSTA, Mr Che Buck Seah ("Che"), who was also a candidate in the said election and is one of the four persons represented by Gan in this action, stated as follows in the relevant notice to SSTA's members:

> Attached is a Nomination Form with the names of the Candidates. You may select 21 candidates and use the business reply envelope to return the form to the Association by post or submit the form personally at the Association premises.
>
> Closing Date: 16-12-2001 (Sunday) at 2.00 pm sharp….
>
> Balloting Box Opening Date: 16-12-2001 (Sunday) at 2.00 pm sharp. (emphasis added)

3 SSTA's Annual General Meeting ("AGM") was also scheduled for 16 December 2001. On 16 December 2001, there was no quorum for the AGM. In accordance with SSTA's rules, the AGM was postponed to 23 December 2001. After the postponement of the AGM, the incumbent management committee gave the green light for the ballot box to be opened. As has been mentioned, it was stated in the voting instructions forwarded to SSTA's members that the ballot box would be opened on 16 December 2001. The votes were duly counted and Che formally recorded the results of the election. It is the defendants' case that apart from Che, Gan was also present when the ballot box was opened and the votes were counted.

4 308 of SSTA's members voted in the said election. The top candidate obtained 271 votes while the candidate who secured the last seat on the management committee received 192 votes. Gan, Che and the incumbent chairman of the SSTA, Mr Seet Toh Chi Heng ("Seet"), failed to secure a seat on the management committee. Gan received less than 61 votes while Seet and Che obtained 70 votes and 80 votes respectively.

5 Gan sought legal advice. On 20 December 2001, four days after the votes were counted, his solicitors, Alfred Tan & Co, wrote a letter to the chairman and secretary of the management committee. The first portion of this letter contained the following incomplete sentence:

> We understand that the Annual General Meeting of the Association will be convened this Sunday, 23rd December 2001 and the election of the 21 members to the Executive Council of the said Association

In essence, the rest of the letter merely complained that certain members of the SSTA, who had stood for election, were not entitled to do so as they had not paid their subscription fees for more than 3 months. Furthermore, it was alleged that one Mr Tan Nam Soon (TNS), who is the secretary of the present management committee, was not entitled to be a member of SSTA because he no longer operates a school bus.

6 On 4 February 2002, the present management committee's lawyers, Tay Lye & Ngaw Partnership, replied to Alfred Tan & Co's letter and denied that the members referred to in his letter had not paid their subscriptions. It was also pointed out that TNS was entitled to be a member of the SSTA.

7 Nothing further was heard from Gan's solicitors until 5 November 2002, almost one year after the election of the present management committee on 16 December 2001. In this letter, Alfred Tan & Co asserted for the first time in writing that the election was irregular because the ballot box was illegally opened on 16 December 2001. On 22 November 2002, Tay Lye & Ngaw Partnership replied and denied that the election of the management committee on 16 December 2001 was null and void. The letter made it clear that the decision to open the ballot box was made by the previous management committee.

8 On 22 November 2002, Gan finally instituted the present action against the defendants.

9 The defendants, who pointed out that they are presently serving the last few months of their term of office of 24 months, contended that undue delay on Gan's part in challenging the legality of the election in December 2001 was fatal to his application for a declaratory order. They added that in any case, the election in December 2001 was not flawed. While the AGM had been postponed, there was no reason to postpone the counting of votes, which had been scheduled for 16 December 2001. The election exercise had been completed and all that was required was the counting of votes. It was not intended that the votes be counted during the AGM. Although item 7 of the AGM agenda was "Election of office bearers for Year 2002, 2003", this must be read in the context of Rule 8 of SSTA's Rules, which provides that the Ballot Scrutineers' report on the ballot taken for the election of office bearers shall be tabled at the AGM. As for members' subscriptions, the defendants said that it had become the practice of SSTA to allow members to pay their membership fees at the end of the year or even later and this has never been an issue in previous elections. The defendants rightly pointed out that Che, the secretary of the previous committee and one of the complainants represented by Gan in this action, was fully aware of this practice. They added that he should be the last person to complain about this practice as he was the one who sent the voting instructions and voting slips to people who, he now contends, should not have voted or stood for election. He was

present when the ballot box was opened on 16 December 2001 and he dutifully observed the counting of votes and recorded in his own handwriting the official results of the election which he now says should be nullified. As for Gan, the defendants had alleged that he was present when the ballot box was opened and during the counting of votes. Gan denied this during cross-examination and claimed that he only knew that the ballot box had been opened one or two days after the event. However, it cannot be overlooked that in his three affidavits, he did not deny the defendants' assertion that he was present when the ballot box was opened and during the counting of votes.

Decision of the court

10 In *Abdul Rahim v Ling How Doong & Ors* [1994] 2 SLR 668, Warren LH Khoo J pointed out that the rights of a member of an association of persons are regulated by contract and where an election is not in order, a member's right is adversely affected. Thus, in appropriate cases, the courts have declared elections for committee members of associations null and void on the ground of irregularities in the election process. However, it must be borne in mind that it has been reiterated on innumerable occasions that a declaratory judgment is a discretionary remedy (see, for instance, the decision of the Court of Appeal in *Salijah bte Ab Lateh v Mohd Irwan bin Abdullah* [1996] 2 SLR 201) and factors such as inordinate delay may deprive the claimant of a declaratory judgment. In *The Declaratory Judgment,* 3rd ed, edited by Lord Woolf and Jeremy Woolf, the authors, while referring to some of the factors which may be taken into account to determine whether the discretion ought to be exercised in favour of the applicant, stated as follows at p 135:

> This discretion is employed, as it was originally employed with regard to all equitable remedies, primarily to do justice in the particular case before the court. It is wide enough to allow the court to take into account most objections and defences available in equitable proceedings.

11 In numerous cases, defences available in equitable proceedings were relied upon for denying a plaintiff the declaration sought. For instance, in *Everett v Griffiths* [1924] 1 KB 941, McCardie J took into account the motives of the claimant and in *Hogg v Scott* [1949] KB 759, Cassels J assumed that undue delay was another ground on which the claim in question could be dismissed. In Malaysia, the question of undue delay as a ground for refusing to grant a declaration or an injunction has been considered on several occasions. For instance, in *Periasamy s/o Karuppan & Ors v National Union of Plantation Workers & Ors* [1975] 2 MLJ 108, one of the reasons for dismissing an application by members of a trade union, the National Union of Plantation Workers, for an injunction to restrain officials of the said union from taking or holding or remaining in office as executive council members on the ground that they had not been validly elected was that there had been inordinate delay on the plaintiffs' part. This was because the application to challenge the validity of the election in question was instituted more than 2 years after the union officials had been elected.

12 Gan relied on the decision of Buttrose J in *Bernard Leow Kim Hoon v Malayan Airways/Qantas Airways Local Employees Union & Ors* [1967] 1 MLJ 60. In that case, where votes for office bearers of a trade union were cast by members who were disqualified from voting, the election of the said office bearers was nullified. However, it must be noted that in that case, the plaintiff had acted swiftly to challenge the results of the election in question. On 13th April 1966, less than one week after the election of the office bearers, the plaintiff had obtained an interim injunction to restrain the said office bearers from taking office as members of the executive committee of the union and on 18th April 1966, the plaintiff's application for the interim injunction to remain in force until the trial of the action or until further order was heard by Buttrose J.

13 The circumstances in the present case are very different from those in *Bernard Leow Kim*

Hoon v Malayan Airways/Qantas Airways Local Employees Union & Ors. While the plaintiff in that case instituted legal proceedings within one week of the election, Gan instituted his action to nullify the election of SSTA's management committee almost one year after the election results were announced on 16 December 2001. It ought to be noted that as the present committee members were elected for a term of two years in December 2001, a new election is due in four months' time. The management committee is currently serving the 20th month of its term of office of 24 months. The defendants' counsel, Mr Raymond Lye, rightly pointed out that the management committee has made innumerable decisions and entered into many bargains where positions of the contracting parties have been irretrievably altered. He added that if the election of 16 December 2001 is nullified at this late stage of the management committee's term of office, there would be immeasurable difficulty for SSTA, which represents 700 members, who serve thousands of students in Singapore.

14 Gan's failure to furnish a satisfactory explanation for his inordinate delay in instituting an action to challenge the validity of the election of 16 December 2001 undermined his case. As he had consulted his solicitors about the elections by 20 December 2001, he had no excuse whatsoever for instituting this action in November 2002. After taking all circumstances into account, including Gan's inordinate delay in instituting this action, I dismiss his application for a declaratory order that the election of members of SSTA's management committee on 16 December 2001 is null and void. In view of this, the question of restraining the 2nd to 22nd defendants from acting or holding themselves out as members of SSTA's management committee does not arise.

15 The defendants are entitled to costs.

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