Re Wong Sin Yee
[2007] SGHC 147

Case Number : OS 537/2007

Decision Date : 19 September 2007

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Jimmy Yim, SC (instructed) / Darrell Low and Dennis Chua (Dennis Chua & Co) for the applicant; Mavis Chionh and Leong Kwang Ian (Attorney-General's Chambers) for the non-party

Parties : —

Administrative Law – Administrative detention – Judicial review of procedure – Detention order under s 30 of Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) – Whether detention unlawful because Minister's exercise of discretion challengeable on grounds of illegality, procedural impropriety or irrationality

19 September 2007 Judgment reserved.

Tan Lee Meng J:

1 This case involves an application by Mr Wong Sin Yee ("the applicant") under Order 54 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) for a review of his detention under the Criminal Law (Temporary Provisions) Act (Cap 67, 2000 Rev Ed) ("CLTPA").

Background

2 On 12 September 2005, the applicant was arrested by officers from the Central Narcotics Bureau ("CNB") pursuant to s 25 of the Misuse of Drugs Act (Cap 185, 2001 Rev Ed) on suspicion of having consumed a controlled drug, an offence under s 8(b)(i) of the said Act. A urine test showed that he had consumed a controlled drug. It should be noted at this juncture that he was subsequently convicted and sentenced in the Subordinate Courts on one charge of consuming a controlled drug.

3 On 13 September 2005, the applicant was detained pursuant to s 44(1) of the CLTPA. On the following day, he was detained for another 24 hours by order of an Assistant Director of the CNB under s 44(2) of the CLTPA, read with s 47(3) of the same Act. Later that day, he was ordered to be detained for an additional 14 days by a Deputy Director of the CNB pursuant to his powers under s 44(3) of the CLTPA, read with s 47(3).

4 On 29 September 2005, the Minister for Home Affairs ("the Minister"), with the Public Prosecutor's consent, issued an order pursuant to s 30 of the CLTPA, directing that the applicant be detained for 12 months at the Queenstown Remand Prison (the "Detention Order"). The Detention Order was in the following terms:

> Whereas I, WONG KAN SENG, Minister for Home Affairs, am satisfied that Wong Sin Yee NRIC No: S1328846A of Blk 467 Ang Mo Kio Avenue 10 #02-1004 Singapore 560467 has been associated with activities of a criminal nature and that it is necessary that the said Wong Sin Yee should be detained in the interests of public safety, peace and good order:

NOW, THEREFORE, I, in pursuance of the provisions of section 30 of the Criminal Law (Temporary Provisions) Act and with the consent of the Public Prosecutor, hereby direct that the said Wong Sin Yee be detained in the Queenstown Remand Prison, Singapore, for a period of twelve months commencing from the date hereof.

Made this 29th of September, 2005.

5 On the same day, the applicant was informed as follows:

… [T]he Minister for Home Affairs has in exercise of his powers under section 30(a) of the Criminal Law (Temporary Provisions) Act ordered that you be detained for a period of 12 months in Queenstown Remand Prison with effect from 29 Sep 2005.

2 The nature of your criminal activities is as follows:

(a) You have been involved in activities relating to or connected with trafficking of ketamine.

(b) Particulars of drug trafficking:

Between early 2004 and Apr 2005, you were a syndicate leader smuggling ketamine from Malaysia to Taiwan and from Malaysia to China via Hong Kong.

3 A copy of the Order of Detention is attached for your retention.

4 Your case will be referred to a Criminal Law Advisory Committee for its consideration. At the hearing, you will be given the opportunity to make representations to the Committee. The Secretary of the Committee will notify you in due course of the date of its hearing.

6 On 3 October 2005, the Minister, as is required by s 31 of the CLTPA, referred the applicant's case to the Advisory Committee, a panel of prominent private citizens, including Justices of the Peace, senior lawyers and community leaders constituted under s 39 of the CLTPA. Section 31 of the CLTPA provides as follows:

31.— (1) Every order made by the Minister under section 30 shall, together with a written statement of the grounds upon which the Minister made the order, be referred by the Minister to an advisory committee constituted as provided in section 39, within 28 days of the making of the order.

(2) The advisory committee shall submit to the President a written report on the making of the order and may make therein such recommendations as it shall think fit.

(3) The President shall consider the report and may cancel or confirm the order and in confirming the order may make thereto such variations as he thinks fit.

7 On 13 October 2005, the applicant was notified by the secretary of the Advisory Committee that his case would be considered on 8 November 2005. He was informed that he could make representations to the Advisory Committee. The applicant's lawyer, Mr Mak Kok Weng ("Mr Mak"), who represented him at the hearing, applied for an adjournment of the case and the hearing was postponed to 8 December 2005.

8 The written representations on behalf of the applicant that were submitted to the Advisory Committee by Mr Mak were as follows:

1 The allegation against Mr Wong was that he was involved in activities relating to or connected with the trafficking of Ketamine.

2 More particularly, it was alleged that between early 2004 and April 2005, he was a syndicate leader smuggling Ketamine from Malaysia to Taiwan and from Malaysia to China via Hong Kong.

3 There was no allegation whatsoever that Mr Wong was engaged in any criminal activities in Singapore.

4 Mr Wong emphatically denies that he had been involved in any criminal activity either in Singapore or elsewhere in the world.

5 Mr Wong, an advocate & solicitor, was convicted of an offence after being involved in a scuffle with a fellow motorist. Although the offence did not involve dishonesty or professional misconduct, he was suspended from legal practice for 2 years.

6 Mr Wong well knew of the consequences of engaging in the kind of criminal activities alleged against him and would never engage in such activities.

7 During the period when he was alleged to have been involved in criminal activities, he in fact was making preparations to resume legal practice. He has a wife and 2 young children aged 12 years and 10 years respectively. He has a bright future ahead and was looking forward to practising law again. He was, in fact, issued with a Practising Certificate shortly before his arrest and detention.

8 The Criminal Law (Temporary Provisions) Act (Cap 67) ("the Act") was intended "to make temporary provisions for the maintenance of public order…" as stated in its preamble.

9 The Act was designed to deal with criminal acts in Singapore which threaten the country's public order.

10 The allegations against Mr Wong are in relation to acts outside Singapore. Additionally Mr Wong was accused of criminal activities which took place between early 2004 and April 2005. On the date of his detention ie 12 September 2005, such alleged activities had ceased. As such there cannot be any justification for detaining him "in the interests of public safety, peace and good order…".

11 It is respectively hoped that if the committee is not inclined to recommend Mr Wong's release from detention, perhaps it would recommend that he be placed under Police supervision.

12 Mr Wong's passport has already been cancelled. Under Police supervision, he would not be permitted to leave Singapore without authority. Effectively, he would not be able to engage in the criminal activities alleged.

9 The Advisory Committee heard the applicant's case on 8 November 2005, 8 December 2005 and 12 January 2006. After receiving the report of the Advisory Committee, the Detention Order was confirmed by the President on 10 March 2006.

10 In July 2006, a Review Committee, which is different from the Advisory Committee, met to consider whether or not the applicant's Detention Order should be extended. The Review Committee forwarded its recommendation to the President and on 18 August 2006, the President ordered that the applicant's Detention Order be extended for another 12 months with effect from 29 August 2006.

11 The applicant, who believes that his detention under the CLTPA is unlawful, instituted the present proceedings to challenge the basis for his detention.

Scope of judicial review

12 In *Chng Suan Tze v Minister of Home Affairs* [1988] SLR 132 ("*Chng Suan Tze*"), the Court of Appeal ruled that the scope of review by the courts varies according to whether or not a discretion granted to an authority depended on the establishment of an objective jurisdictional or precedent fact. If an objective jurisdictional or precedent fact has to be established, the scope of review extends to whether the evidence justifies the decision reached by the authority. On the other hand, where no jurisdictional or precedent fact has to be established, the scope of judicial review is strictly limited to whether the authority's exercise of discretion was illegal, procedurally improper or irrational in the *Wednesbury* sense (see *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223), namely that the decision is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it (see *Council of Civil Service Unions and others v Minister for the Civil Service* [1985] AC 374, at 410).

13 In the present case, both the applicant and the Attorney-General's Chambers accepted that the grounds for reviewing the Minister's discretion under s 30 of the CLTPA and the President's discretion under s 31 of the said Act are limited to illegality, procedural impropriety and irrationality in the *Wednesbury* sense.

Illegality

14 The applicant contended that the Minister's decision is illegal for the following reasons:

(a) The grounds of detention are outside the scope of the CLTPA;

(b) The applicant was not informed of the grounds of arrest until he was issued with the Detention Order; and

(c) There was *mala fides* on the part of the detaining authorities.

Whether the grounds of detention are outside the scope of the CLTPA

15 The plaintiff asserted that s 30 of the CLTPA does not authorise the detention of a person for criminal activities *outside* Singapore. He emphasized that even if the allegations against him were true, the activities in question affected public safety, peace and good order in other countries, but not in Singapore.

16 The court was urged to consider the preamble of the CLTPA, which is as follows:

> An Act to make temporary provisions for the maintenance of public order, the control of supplies by sea to Singapore, and the prevention of strikes and lock-outs in essential services.

17 It was also pointed out that when the CLTPA (Amendment) Bill was discussed in Parliament on 4 August 1989, the then Minister for Home Affairs, Professor S Jayakumar, had informed Parliament as follows:

> Over the years, it has proved to be an effective weapon for the suppression of secret society activities, drug trafficking activities and other serious crimes *in Singapore*….
>
> The Act has substantially contributed to the maintenance of law and order *in Singapore.*
>
> [emphasis added]

18 The applicant's counsel, Mr Jimmy Yim SC, submitted that a criminal law statute generally operates within the territorial limits of the country enacting it. He referred to *PP v Taw Cheng Kong* [1998] 2 SLR 410, where the Court of Appeal approved of Lord Russell CJ's statement in *R v Jameson* [1896] 2 QB 425 at p 430 that "if there be nothing which points to a contrary intention, the statute will be taken to apply only to the United Kingdom". He also referred to other English cases, including *Air-India v Wiggins* [1980] 1 WLR 815, where Lord Diplock stated at p 819 as follows:

> [I]n construing Acts of Parliament, there is a well-established presumption that, in the absence of clear and specific words to the contrary, an "*offence-creating section*" of an Act of Parliament (to borrow an expression used by this House in *Cox v Army Council* ...) was not intended to make conduct taking place outside the territorial jurisdiction of the Crown an offence triable in an English criminal court.
>
> [emphasis added]

19 Undoubtedly, in the absence of clear and specific words to the contrary, an "offence-creating" statutory provision relates to offences committed in Singapore. However, as was rightly pointed out by Senior State Counsel Ms Mavis Chionh, the CLTPA is not an "offence-creating" statute. The true nature of the CLTPA was explained by the Court of Appeal in *Kamal Jit Singh v Minister for Home Affairs* [1993] 1 SLR 24 ("*Kamal Jit Singh*") at [20] as follows:

> The detention is … not punitive in the sense of being for the purpose of punishing a past act of the detainee, but preventive in the larger interests of society. This fundamental distinction between detention and imprisonment is well expressed in the judgment of Ray CJ giving the judgment of the Supreme Court of India in *Haradhan Saha v The State of West Bengal & Ors* [[1974] AIR SC 275] at p 2160:
>
> > The power of preventive detention is qualitatively different from punitive detention. The power of preventive detention is a precautionary power exercised in reasonable anticipation. It may or may not relate to an offence….

20 As for what is required before a person can be detained under the CLTPA, the Court of Appeal made it clear in *Kamal Jit Singh* ([19] *supra* at [20]) that detention under s 30 of the CLTPA is:

> dependent upon the satisfaction of the Minister for Home Affairs: (1) that the detainee has been associated with activities of a criminal nature, and (2) that it is necessary that the person be detained in the interests of public safety, peace and good order.

21 While the Minister must be satisfied that a detention order is required in the interests of public safety, peace and good order *in* Singapore, it does not follow that the threat to public safety, peace

and good order must result from criminal activities in Singapore. Otherwise, a person who is believed to be a threat to public safety, peace and good order in Singapore because of his criminal activities abroad must be given some time to become involved in criminal activities in Singapore before he can be detained under s 30 of the CLTPA. The applicant's first ground for challenging the Detention Order thus fails.

No notice of the grounds of arrest until the issuance of the Detention Order

22 The applicant next claimed that his rights under Art 9(3) of the Constitution, which provides, *inter alia*, that a person who has been arrested shall be informed as soon as may be of the grounds of his arrest, had been infringed because he was not informed of the grounds of arrest until he was notified of the Detention Order on 29 September 2005. Ms Chionh retorted that Art 9(3) does not apply to cases of preventive detention because of Art 9(6) of the Constitution, which provides as follows:

> Nothing in this Article shall invalidate any law –
>
> (a) in force before the commencement of this Constitution which authorises the arrest and detention of any person in the interests of public safety, peace and good order; or
>
> (b) …
>
> by reason of such law being inconsistent with clauses (3) and (4), and, in particular, nothing in this Article shall affect the validity or operation of any such law before 10 March 1978.

23 I will defer consideration of the effect, if any, of Art 9(6) of the Constitution on the CLTPA to another occasion when this is a material issue before the court. In the present case, the validity of the Detention Order does not depend on the validity of the arrest by CNB officers prior to its issuance on 29 September 2005. As has been pointed out at [20], what is relevant in the present case is whether or not the Minister was satisfied that the applicant had been associated with activities of a criminal nature and that his detention was necessary in the interests of public safety, peace and good order.

24 In *Shamm bin Sulong v Minister for Home Affairs & Anor* [1996] 2 SLR 736 ("*Shamm bin Sulong*"), Choo Han Teck JC adopted the same approach when he held at [16] that an illegality in an arrest under s 44 of the CLTPA does not render unlawful the Minister's Detention Order under s 30 of the Act, which is independent of the said arrest. He added that s 30 of the CLTPA allows the Minister to issue a Detention Order whether or not the person intended to be detained is "at large or in custody" and the reasonable interpretation of the phrase "at large or in custody" is "wherever the detainee may be", and even if he is under unlawful custody.

25 As the validity of the arrest by the CNB officers under the CLTPA has no effect on the validity of the Minister's Detention Order, it follows that the applicant's assertion that he had not been informed of the grounds of his arrest until the issuance of the Detention Order need not be further considered.

Mala fides

26 The applicant also contended that *mala fides* on the part of the authorities vitiated the Detention Order. His counsel, Mr Yim, pointed out that in a Malaysian case, *Karam Singh v Menteri Hal Ehwal Dalam Negeri (Minister of Home Affairs), Malaysia* [1969] 2 MLJ 129 ("*Karam Singh*"), Ong Hock

Thye CJ referred to want of good faith at p 141 in the following terms:

> In this connection, want of good faith, of course, means no more than that, in the serious matter of depriving a citizen of his liberty without trial, there was absence of care, caution and a proper sense of responsibility … If it was true that the order came to be made in a casual or cavalier fashion, it cannot properly be said that the Cabinet or the Minister concerned had been "satisfied". On the other hand, if the decision was made upon a proper evaluation of the facts and surrounding circumstances and after due deliberation, that was all which could be required for the issue of an order based on subjective satisfaction….

27 In *Yeap Hock Seng @ Ah Seng v Minister for Home Affairs, Malaysia & Ors* [1975] 2 MLJ 279 ("*Yeap Hock Seng")*, Abdoolcader J, who reiterated at p 284 that the onus of proving *mala fides* on the part of the detaining authority is on the applicant, pointed out that this onus "is normally extremely difficult to discharge as what is required is proof of improper or bad motive in order to invalidate the detention order for *mala fides* and not mere suspicion". He added that while the applicant may suggest that the circumstances surrounding his case might possibly reflect some suspicion of *mala fides*, this cannot, by itself, be sufficient proof of *mala fides*.

28 The applicant's main complaint was that the CNB officers were biased against him and had made untrue allegations against him, some of which had been reported in the newspapers. He referred to inaccurate newspaper reports about his cars and hand phones and highlighted the fact that one newspaper had reported that the CNB had taken action against him because it had feared that he was about to return to legal practice after having been suspended from practising law for a conviction relating to a scuffle with a fellow motorist. He asserted that the CNB's allegations against him, as reported in the press, had been made without sufficient care, caution and a proper sense of responsibility and that these press reports and reports by biased CNB officers might have influenced the decision of the Minister and the Advisory Committee.

29 While the applicant may have misgivings about some CNB officers, the issue before the court is whether or not the Minister, who is required to obtain the consent of the Public Prosecutor for the Detention Order under s 30 of the CLTPA, had exercised his discretion without sufficient care, caution and a proper sense of responsibility or had done so for an improper purpose. As for the applicant's contention that the Minister had based his decision to detain him on reports of CNB officers, who were biased against him, the following passage from Abdoolcader J's judgment in *Yeap Hock Seng* ([27] *supra*) at pp 284-285, which concerns allegations of *mala fides* on the part of the police, sheds much light on the legal position:

> But where an order of detention is challenged on the ground of *mala fides*, what has got to be made out is not the want of *bona fides* on the part of the police, but the want of *bona fides* as well as the non-application of mind on the part of the detaining authority which for this purpose must be taken to be different from the police …. Want of *bona fides* on the part of the Minister as well would therefore be essential, and in the circumstances of this case, although no affirmative [or] direct allegation against the Minister to this effect seems to be made by the applicant in his supporting affidavit, I find no *mala fides* established on the part of either the police or the Minister nor any evidence or proof that the latter had not applied his mind in making the detention order.

30 There is no evidence that CNB officers had misled the Minister or the Advisory Committee or that the Minister had issued the Detention Order without applying his mind to the matter or without exercising sufficient care or caution. As such, the allegation of *mala fides* was not proven by the applicant.

Procedural impropriety

31 The applicant's allegations on procedural flaws in his initial and continued detention may be summarised as follows:

(a) There was a break in the chain of authorisation for his detention;

(b) The grounds of detention were "vague and unclear";

(c) The Advisory Committee had failed to hear his detailed factual arguments supporting his case;

(d) There had been inordinate delay in the confirmation of the Detention Order by the President;

(e) The authorities had failed to inform him of the date of the first annual review of his case by the Review Committee; and

(f) The Review Committee had failed to consider new facts and new developments since he was detained.

Whether there was a break in the chain of authorisation for the detention

32 The applicant, who said that he was arrested by CNB officers at 12.45 pm on 12 September 2005, contended that there was a break in the chain of authorisation for his detention. The position was put as follows in his counsel's written submissions at [17]:

> Under section 44(2) and (3) of the CLTPA, the Applicant could only be detained further for an additional period not exceeding 14 days after 48 hours from the time of his arrest on the 12 September 2005 at about 12.45 pm…. [The] detention period should have expired at mid-night 27 September 2005. This is calculated based on the rule that the first day of the additional 14 days is the 14 September 2005 [See *Tan Boon Aun v Timbalan Menteri Dalam Negeri, Malaysia & Another* [1991] 2 MLJ 55….] ["*Tan Boon Aun*"] At mid-night on 27 September 2005 or before that, the Applicant should either be released or issued with a fresh Detention Order…. [He] was only issued with the Detention Order on the 29 September 2005….

33 For reasons already stated, the lawfulness of the earlier detention authorised by CNB officers does not affect the validity of the Minister's Detention Order. All the same, it is worth noting that the applicant made two crucial mistakes in his calculation of the allowable period of detention. First, he was initially arrested on 12 September 2005 pursuant to powers under the Misuse of Drugs Act and not the CLTPA. As such, his arrest and detention under the CLTPA began on 13 September 2005 and he was detained under the CLTPA until 29 September 2005, after which the Minister's Detention Order was issued. The total period of detention under the CLTPA prior to the issuance of the Detention Order was thus 14 days plus 48 hours, which is permitted by law. Secondly, the applicant did not take into account the fact that as days of detention are counted in 24-hour blocks, a day does not necessarily end at midnight. As for the applicant's reliance on *Tan Boon Aun* ([32] *supra*), where Edgar Joseph Jr J held that a period of 12 days detention, which commenced at 2 pm on 1 April 1988, ended at midnight on 12 April 1988, Ms Chionh rightly noted that that case is distinguishable as there was a note on the order regarding the detention of the detainee in question to the effect that the period of remand was to end on 12 April 1988. As no reference was made in the note to the exact time for release, it was assumed that the period of detention ended at midnight on that day. In view

of the aforesaid, the applicant's complaint about a break in the chain of authorisation for his detention before he was served with the Minister's Detention Order cannot be countenanced.

Whether the grounds of detention are vague and unclear

34 The applicant also asserted that the Detention Order is defective because the grounds of detention are vague and unclear. In *Karam Singh* ([26] *supra*), Ong Hock Thye CJ said at pp 141-142 that what is relevant is whether or not it can be said that the complainant "was ever in the dark" about the grounds of detention or "that he was so embarrassed, through ignorance of the ground for his detention that he was unable to make proper representations" regarding his case. This is a question of fact.

35 In the present case, the applicant had a sufficiently clear picture of what had been alleged against him. After all, in his first affidavit dated 23 March 2007 (the "first affidavit"), he complained at [40] and [41] that he had been denied an opportunity to orally submit to the Advisory Committee "detailed facts and arguments" in support of his submission that he was not involved in the alleged criminal activities. He could not have presented detailed facts and arguments unless he was aware of what had been alleged against him. The applicant had also asserted in his first affidavit that one Mr Tan Yew Siam was the "true syndicate leader of the drug trafficking" and that false accusations had been made against him by two named persons to get him into trouble. Finally, in his first affidavit, he stated at [86] as follows:

> In conclusion, I admit that I had very unwisely socialised very closely with David, Ah Chwee, Chen Kong Ming and Sam knowing fully well that they were drug traffickers. However, I categorically deny that I had been engaged in any drug trafficking activities either on my own or with these people. I also categorically deny that I was the leader of a drug trafficking syndicate as alleged in the Detention Order. As explained above, the Minister cannot possibly be reasonably satisfied that I was the leader of a drug trafficking syndicate as alleged and that I should be detained in the interest of public safety, peace and good order in Singapore.

36 It thus cannot be said that the applicant was, to use Ong Hock Thye CJ's words in *Karam Singh* ([26] *supra*), "so embarrassed, through ignorance of the ground for his detention, that he was unable to make proper representations" to the authorities regarding his detention. As such, this ground of complaint is without merit.

The applicant's proposed oral submissions to the Advisory Committee

37 The applicant asserted that his rights had been violated because the Advisory Committee had refused to allow him to make oral representations at its hearing on 12 January 2006 before making its recommendation on the confirmation of the Detention Order. He claims that although he had been represented by counsel at the hearing, he was entitled to make "detailed factual arguments", which had not been included in the written submissions tendered by his counsel to the Advisory Committee, to support his assertion that he was not involved in the alleged criminal activities.

38 This complaint is misconceived because the applicant had the opportunity to include whatever he wanted to say in his counsel's written submissions. In fact, two meetings of the Advisory Committee were adjourned at his counsel's request. In any case, apart from the fact that rule 13 of the Criminal Law (Advisory Committee) Rules (Cap 67, R1, 1971 Ed) gives the Advisory Committee full discretion to admit or reject any evidence adduced, whether oral or documentary and whether admissible or inadmissible under any written law in force, it ought to be noted that in *Najar Singh v Government of Malaysia & Anor* [1976] 1 MLJ 203, where a police officer, who had been dismissed

from the police force, alleged that he had a right to make oral submissions before the Police Service Commission, the Privy Council stated as follows:

> The word "heard" does not invariably connote an oral hearing. It can be used and is not infrequently used in relation to something written …
>
> In a number of cases, the argument has been put forward that the omission to hear a party orally was contrary to natural justice. In *Local Government Board v Arlidge* [1915] AC 120, evidence had been given on behalf of Mr Arlidge at a public inquiry but he claimed to be entitled to be heard orally by the Local Government Board to which he was appealing before they decided his appeal. The House decided that he was not so entitled, Viscount Haldane LC saying at page 134: "I do not think the Board was bound to hear the respondent [Arlidge] orally, provided it gave him the opportunities he actually had."

39 In short, as the applicant had not been deprived of the opportunity to have evidence presented by his counsel on his behalf, the argument that there had been procedural impropriety because he had not been allowed to present his detailed factual arguments orally is without substance.

Whether there had been inordinate delay in confirming the Detention Order

40 The applicant also asserted that there had been "inordinate delay" in the confirmation of the Detention Order by the President. He complained that although the Detention Order was issued on 29 September 2005, it was confirmed by the President on 10 March 2006. It must be borne in mind that when the Advisory Committee met to consider the applicant's case on 8 November 2005, it was the applicant's counsel who sought an adjournment of this meeting and when the Advisory Committee met again on 8 December 2005, the applicant's counsel requested that the second meeting be further adjourned to January 2006. The Advisory Committee met again on 12 January 2006 and after its recommendations had been submitted to the President, the Detention Order was confirmed on 10 March 2006. In these circumstances, the applicant is in no position to complain that there had been inordinate delay in the confirmation of his Detention Order by the President.

Extending the Detention Order and the alleged failure to consider new facts

41 As for the extension of his period of detention, the applicant contended that he was denied a right to be heard by the Review Committee when it met in July 2006 to consider his position and forward the first annual review report to the President. He complained that as he did not have an opportunity to present "new" facts to the Review Committee, the Committee had submitted its report to the President without a consideration of new facts, such as the arrest of one Mr Chen Kong Ming ("Mr Chen") and the possibility that Mr Chen could have exonerated the applicant.

42 As has been mentioned, the Review Committee that met to make recommendations on whether or not the Detention Order should be extended is different from the Advisory Committee that advised the President in 2006 as to whether or not the Detention Order issued by the Minister should be confirmed. Although both committees are manned by prominent citizens, membership of the two bodies is kept different to ensure independent thinking to safeguard a detainee's interest. Unlike the meetings of the Advisory Committee, which are governed by the Criminal Law (Advisory Committee) Rules, and which provide for a detainee's right to be heard, the meetings of the Review Committee do not have similar rules. This omission must have been deliberate.

43 In *Attorney-General v Thomas D'arcy Ryan* [1980] AC 718, the Privy Council accepted that a person having legal authority to determine a question affecting the right of individuals is bound to

observe the principles of natural justice when exercising that authority. In the present case, it is the President who has the power to extend the applicant's detention and under s 38(1) of the CLTPA, the President may but is not obliged to seek the views of the Review Committee. The applicant, who was fully aware of the case against him, did not allege that he had been deprived of the opportunity to make representations to the President at any time as to why the Detention Order should not be extended. As such, his complaint that he did not have a chance to present his case to the Review Committee need not be further considered.

Irrationality

44 The applicant contended that the Minister had acted irrationally in ordering his detention because it appeared from the evidence that he could not have been the boss of the alleged drug syndicate. He added that it was evident from his financial standing at the time of his arrest that he had a lifestyle that was inconsistent with that of a boss of a drug syndicate.

45 When considering irrationality as a ground for judicial review, it is worth noting that in *Teo Soh Lung v Minister of Home Affairs* [1988] SLR 676, Lai Kew Chai J stated as follows at [24]:

> Whilst a court of law must be vigilant to ensure that there is no unlawful exercise of discretionary powers which affect the liberty of persons, a court of law must be equally punctilious in giving effect to legislation, in not behaving as though it is a court of appeal and must not determine, as appellate courts do, whether the decision under challenge is right or wrong *for the simple but compelling reason that that decision has been statutorily left to an authority other than a court of law…*.
>
> [emphasis added]

46 In the present case, the Minister had asserted that the applicant had been involved in criminal activities and that it was in the interests of public safety, peace and good order that he be detained. As for whether the alleged activities endangered public safety, peace and good order, it was pointed out by the Court of Appeal in *Chng Suan Tze* ([12] *supra*) at p 163 that "it hardly needs any emphasis that the judicial process is unsuitable for reaching decisions on national security". The same rule applies to questions of public safety, peace and good order. In the light of the evidence adduced in this case, I am in no position to hold that it has been established that the Minister's exercise of discretion was irrational in the *Wednesbury* sense, namely that it was so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

Whether the applicant should be tried rather than be detained

47 As for the applicant's assertion that he should be tried by a court rather than be detained under the CLTPA, Mr Yim pointed out that the Government had stressed on a number of occasions that the main reason for preventive detention is the inability of the authorities to secure the testimony of witnesses and accomplices for a trial. He submitted that in the present case, the testimony of witnesses can be procured without difficulty. In fact, the applicant had named certain persons, some of whom are already in custody here or abroad, who will be able to testify if he faces a trial. These include Mr Chen. Mr Yim said that Mr Chen, who is in police custody, has not said that he will not testify in the applicant's case. The applicant's lawyer, Mr Dennis Chua, had tried to interview Mr Chen but had been denied this opportunity by the Prison Service on the ground that he is not Mr Chen's lawyer.

48 While the applicant's desire to face a trial rather than preventive detention under the CLPTA is understandable, the short answer to this line of argument is that in *Kamal Jit Singh* ([19] *supra*), which is binding on this court, the Court of Appeal held at p 33 that it is no ground for complaint that a person is detained rather than charged in open court and that it is not within the province of the court to determine whether a detainee ought to be tried rather than be detained.

Conclusion

49 I am grateful to both Mr Yim and Ms Chionh for their helpful and well-argued submissions on the issues before the court. What cannot be overstressed is that this court is *not* determining whether or not the applicant is guilty of the criminal activities he is alleged to have participated in. The role of the court is merely to determine whether or not the exercise of the discretion given by Parliament to the authorities to issue and extend the Detention Order may be faulted on the basis of illegality, procedural impropriety or irrationality in the *Wednesbury* sense. As the applicant has not proven his case, there are no grounds for ordering that he be released from detention.

Copyright © Government of Singapore.