IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 163

Originating Summons No 548 of 2017 and Summons Nos 2619 and 2710 of 2017

Between

Ravi s/o Madasamy

… *Plaintiff*

And

Attorney-General

… *Defendant*

GROUNDS OF DECISION

[Constitutional Law] — [President]

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Introduction

1 This was the plaintiff's application by way of Originating Summons No 548 of 2017 ("the OS"), seeking to challenge the Elected Presidency Scheme ("EPS"). In its amended form, the OS stated that the requirements as to the qualifications of the President under Art 19 of the Constitution of the Republic of Singapore (1999 Rev Ed) ("Constitution"), as well as recent amendments to introduce a framework for reserved elections under Art 19B of the Constitution, were inconsistent with Art 12 of the Constitution.

2 The OS was filed on 22 May 2017 and named the Government (as represented by the Attorney-General) as the defendant. A hearing was scheduled on an expedited basis on 15 June 2017 as both parties agreed that there was some urgency for the OS to be heard. Indeed, I was given to understand that the

sitting President's term of office would expire on 31 August 2017 and that the writ for the upcoming Presidential election would be issued shortly.[1] Having heard the parties, I dismissed the OS. I now set out the grounds for my decision.

Preliminary applications

3 The plaintiff, a former practising lawyer, filed the OS in his personal capacity. He styled himself as a "public interest litigator". Before the hearing of the OS proper, the plaintiff made three preliminary applications. The first was an oral application for the proceedings to be heard in open court. The second, Summons No 2619 of 2017 ("SUM 2619/2017"), was an application for the Deputy Attorney-General, Mr Hri Kumar Nair *SC* ("Mr Kumar"), to be disqualified from having conduct of the proceedings on behalf of the Government. The third, Summons No 2710 of 2017 ("SUM 2710/2017"), was an application to amend the OS and to add new prayers to the same. I shall briefly address these preliminary applications *seriatim*.

The oral application for proceedings to be heard in open court

4 I start with the plaintiff's oral application for the proceedings to be heard in open court. The plaintiff contended that this was a constitutional hearing since the OS affected the "fundamental rights of all citizens". He likened it to an application under O 53 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") for judicial review, which would be heard in open court (subject to leave being granted).

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[1] Defendant's submissions, para 118.

5 Mr Kumar, who appeared on behalf of the defendant, objected and pointed out that O 28 r 2 of the Rules of Court would govern the proceedings. This rule provides as follows:

> **Hearing of originating summons (O. 28, r. 2)**
>
> **2.** All originating summonses shall be heard in Chambers, subject to any express provision of these Rules, any written law, any directions of the Court or any practice directions for the time being issued by the Registrar.

6 Mr Kumar submitted that there was no exception contemplated for "constitutional" matters and that there was no special reason why an exception should be made in the present case. Moreover, Mr Kumar highlighted that the nature of the applications before the court involved scandalous allegations and remarks which were political attacks. He submitted that the plaintiff was motivated by a personal agenda to seek a hearing in open court. That agenda was already laid bare by his posts on Facebook, where he had sought crowdfunding for his litigation.

7 For a while, the plaintiff maintained that matters of public importance going to the heart of the Constitution were being surfaced by him in the public interest. Somewhat abruptly, he then changed course and made an oral application to "convert" the OS to an application under O 53 of the Rules of Court for judicial review. He stated that he intended to seek a prohibitory order restraining the Prime Minister from proceeding with the upcoming Presidential election. Mr Kumar pointed out that this was essentially an attempt to avoid having to obtain leave to commence proceedings under O 53 of the Rules of Court and that, in any case, very different substantive reliefs were being sought.

8 I dismissed the plaintiff's oral application for the proceedings to be heard in open court and directed that the hearing of the OS before me continue

in chambers as scheduled by the registry. I saw no reason to depart from the general rule in O 28 r 2 of the Rules of Court. Moreover, I saw no basis to allow a "conversion" of the OS to an application under O 53 of the Rules of Court. This was a barefaced attempt by the plaintiff to ignore and circumvent the requirement for leave under O 53 of the Rules of Court while hoping to have the hearing conducted in open court to suit his own purposes.

The application to disqualify Mr Kumar (SUM 2619/2017)

9 In SUM 2619/2017, the plaintiff applied for Mr Kumar to be disqualified from having conduct of the proceedings on behalf of the Government. This was on the ground that Mr Kumar, being a former People's Action Party Member of Parliament ("PAP MP") from 2011 to 2015, was partisan and in a position of conflict. The relevant portion of the application stated as follows:

> Mr Hri Kumar Nair, being a former member of the People's Action Party (PAP) and Member of Parliament (MP) for Bishan-Toa Payoh Group Representation Constituency (GRC) between 2011 and 2015, has partisan interest in this matter and is therefore conflicted in his duty to serve the interest of the public as Deputy Attorney-General and ought thereby be discharged from acting further in this matter.

10 The plaintiff contended that Mr Kumar would not be able to fairly discharge his duties to the public as well as the Government. The plaintiff then went on at some length on the difficulty that various key appointment holders supposedly faced on account of the Prime Minister having the power and discretion to decide on such appointments, including the appointment and removal of judges and the Attorney-General. He also alluded to the importance of public perception and natural justice.

11 Mr Kumar responded in these terms: he was appearing as counsel for the Government and it would be for the Government to complain if he was

thought to be in a position of conflict given his former role as a PAP MP and his present role in advising and representing the Government. In any event, there was no case authority which established that public perception was a relevant consideration in determining whether he ought to be disqualified.

12 I dismissed SUM 2619/2017 as I saw no basis in support of the application other than mere speculation and conjecture. I saw no reason why Mr Kumar would be unable to conduct his case fairly and objectively without conflict, having regard to the interests of the public and the Government.

The application to amend the OS (SUM 2710/2017)

13 The third, and final, preliminary application was SUM 2710/2017. This was filed by the plaintiff on 13 June 2017, just two days before the scheduled hearing of the OS on 15 June 2017. However, before I could proceed to hear the parties on the merits of the application, the plaintiff peremptorily announced that he would appeal against my dismissal of SUM 2619/2017. He also mentioned other possible applications he was planning to make, such as seeking a declaration that the Judiciary was "not capable of being independent" since the Prime Minister had complete control over all key appointments. The plaintiff then asserted that the matter should not proceed any further until his intended application for a declaratory order was dealt with.

14 This was a rather curious and unexpected turn of events but it eventually transpired that the plaintiff was trying to seek an adjournment to read the submissions and authorities tendered by the defendant. He explained that he suffered from bipolar disorder, was a disabled person and had not slept the night before. If an adjournment was not allowed, he would have to go to see his doctor

and obtain a medical certificate. He complained that he would be hampered in conducting his case if an adjournment was not granted.

15 Mr Kumar objected to an adjournment. He pointed out that the plaintiff had agreed that the hearing should take place on an expedited basis, given that the sitting President's term of office would expire on 31 August 2017 and that the writ for the upcoming Presidential election would be issued shortly. The plaintiff had informed the registry that he would be willing to take any hearing date before 20 June 2017. As such, the hearing date was well within his contemplation. Mr Kumar also highlighted that the plaintiff had failed to comply with the registry's timelines for the filing of his submissions. In any event, the materials and authorities tendered by the defendant would not be new or surprising to the plaintiff since they related to the basic structure doctrine (arising from the decision of the Indian Supreme Court in *Kesavananda Bharati v State of Kerala* AIR 1973 SC 1461 ("*Kesavananda*")) and the ambit of various constitutional provisions. I noted that these were matters the plaintiff himself had raised in his affidavit filed and affirmed on 22 May 2017 in support of the OS ("Supporting Affidavit") and his skeletal arguments.

16 The plaintiff emphasised that he was a constitutional law expert. Mr Kumar was quick on the uptake and responded that all the relevant cases should then be familiar to him and pose no difficulty or challenge. He submitted that the application for an adjournment was sought only to delay the proceedings and to give the plaintiff more time to consider making other possible applications. It was brought to my attention that the plaintiff had made a Facebook post the night before the hearing which plainly belied his claims of being inadequately prepared and tired. In this post, the plaintiff proclaimed to all and sundry that the "guns [were] blazing", suggesting that he was ready and eager to put forward his arguments in court the next day. The plaintiff also

appeared exuberant and confident, given his broadcasted plan of "[g]oing to club street for champs [*ie*, champagne] and a cigar".

17 The plaintiff did not dispute making the Facebook post. His further response was simply that he had just texted his doctor. Presumably, if he had done so, this must have taken place in the midst of Mr Kumar's submissions. I did not seek to verify whether such text exchanges with his doctor were indeed taking place, although I had observed the plaintiff to be checking his mobile phone regularly during the hearing. I had warned him that while he could conduct research online if he needed to do so, he was not to post anything on social media in the course of the hearing or to record the proceedings. The plaintiff claimed that his doctor had informed him to proceed to see him.

18 I found the plaintiff's efforts to procure an adjournment patently contrived and unconvincing. He only had himself to blame if he was truly inadequately prepared and tired. Moreover, the defendant had complied with the registry's prescribed timelines for the filing of submissions. All said, the plaintiff's complaints rang hollow and were also ironic insofar as he had himself failed to comply with the timelines for the filing of his submissions. I should add that for the entire time I had heard submissions up until this point (which was approximately 70 minutes into the hearing), the plaintiff's energies and enthusiasm in putting forth his case certainly did not appear to wane in any way. For these reasons, I did not allow the adjournment sought by the plaintiff.

19 Returning to SUM 2710/2017 proper, it is apposite at this juncture to set out the terms of the OS as it originally stood:

> 1. The elements of the Elected Presidency Scheme ("EPS") is incapable of being construed as being consistent with Article 12 of the Constitution in that; it deprives citizens

the right to stand for public office, namely the office of the Elected Presidency ("EP"),

2. The elements of the EPS is incapable of being construed as being consistent with Article 12 of the Constitution in that; it is discriminatory on the grounds of ethnicity and is contrary to Article 12(2) of the Constitution.

20 In SUM 2710/2017, the plaintiff sought the following prayers:

1. For leave to amend the following :

   a. The requirements as to the Qualifications of President under Article 19 of the Constitution of the Republic of Singapore (the "Constitution") are incapable of being construed as being consistent with Article 12 of the Constitutions, in that it deprives citizens of the equal right to stand for public office, namely the office of the Elected Presidency ("EP");

   b. The amendments to the Elected Presidency Scheme (the "EPS") under the new Article 19B of the Constitution are incapable of being construed as being consistent with Article 12 of the Constitution, in that it is discriminatory on the grounds of race and is contrary to Article 12(2) of the Constitution;

   c. The amendments to the EPS, as introduced by the Constitution of the Republic of Singapore (Amendment) Act 2016, are incapable of being law as the amendments were politically motivated and passed in bad faith to block the candidacy of Mr Tan Cheng Bock, the erstwhile member of the People's Action Party (PAP);

   d. The appointment of Mr Lee Hsien Loong as the third Prime Minister (12 August 2004 to present) contravened Article 12(2) of the Constitution, in that it was done pursuant to a policy that was discriminatory on the ground of race;

   e. The appointment of Mr Goh Chok Tong as the second Prime Minister (from 28 November 1990 to 12 August 2004) contravened Article 12(2) of the Constitution, in that it was done pursuant to a policy that was discriminatory on the ground of race;

> f. Mr Tharman Shanmugaratnam failed to assert his constitutional right to be considered equally for the office of Prime Minister, thereby failing in his ministerial responsibility to uphold Article 12(2) of the Constitution;
>
> g. Mr S Dhanabalan failed to assert his constitutional right to be considered equally for the office of Prime Minister, thereby failing in his ministerial responsibility to uphold Article 12(2) of the Constitution.

21 When I proceeded to deal with SUM 2710/2017, this was only in relation to prayers 1(c) to 1(g) as the defendant did not object to the amendments sought by way of prayers 1(a) and 1(b). The plaintiff went on at some length with a diatribe outlining his views on Singapore politics and policies, such as how the 2016 amendments to the Constitution were politically motivated to keep Mr Tan Cheng Bock out of the running as a potential candidate for the Presidency. Tangentially, the plaintiff then pointed to supposedly racially-discriminatory pronouncements made by former Prime Minister Mr Lee Kuan Yew in 1990, which resulted in Mr S Dhanabalan being discriminated against so that Mr Goh Chok Tong would be the Prime Minister succeeding Mr Lee Kuan Yew. He associated this with a regime of "apartheid" based on "eugenics". Hence, he argued that the appointments of Mr Goh Chok Tong and Mr Lee Hsien Loong as Prime Ministers thereafter were made in contravention of Art 12 of the Constitution. Finally, the plaintiff maintained that Deputy Prime Minister Mr Tharman Shanmugaratnam and Mr S Dhanabalan had failed to assert their constitutional rights and failed in their ministerial responsibility in not coming forward to uphold Art 12 of the Constitution.

22 Mr Kumar pointed out, firstly, that the application to amend the OS was filed late in breach of the timelines prescribed by the registry. On the substantive aspects, Mr Kumar submitted that even if the amendments in prayers 1(c) to 1(g) were allowed, the application was bound to fail. The submissions mirrored

those being made in the OS to some extent, including an argument that the plaintiff had no standing to make the application in prayer 1(c): Mr Tan Cheng Bock, a former PAP MP and Presidential election candidate, was not himself mounting a legal challenge on the same basis. With respect to prayers 1(d) to 1(g), these would also introduce matters that had nothing to do with the terms of the OS in its original form, which centred on the EPS. As the causes of action were unrelated, it would not be appropriate to add them, and it would be prejudicial to the defendant if this were to be allowed. Moreover, the appointments of Mr Goh Chok Tong and Mr Lee Hsien Loong as Prime Ministers were political in nature and were not justiciable matters. In respect of Mr Tharman Shanmugaratnam and Mr S Dhanabalan, no constitutional rights had been violated and any challenge was legally unsustainable. In addition, it was contended that the plaintiff had no factual basis for prayers 1(c) to 1(g).

23 I accepted Mr Kumar's submissions and allowed the plaintiff leave to amend the OS only insofar as the original prayers 1 and 2 were to stand amended in the terms set out in prayers 1(a) and 1(b) of SUM 2710/2017. Prayers 1(c) to 1(g) of SUM 2710/2017, which sought to add new prayers, were disallowed. The substance of the OS thus remained much the same as what was originally filed.

The OS

24 Turning now to the substantive aspects of the OS (in its amended form), the two prayers framed by the plaintiff, to recapitulate, were in the following terms:

> a. The requirements as to the Qualifications of President under Article 19 of the Constitution of the Republic of Singapore (the "Constitution") are incapable of being construed as being consistent with Article 12 of the Constitutions, in that it deprives citizens of the equal

> right to stand for public office, namely the office of the Elected Presidency ("EP");
>
> b. The amendments to the Elected Presidency Scheme (the "EPS") under the new Article 19B of the Constitution are incapable of being construed as being consistent with Article 12 of the Constitution, in that it is discriminatory on the grounds of race and is contrary to Article 12(2) of the Constitution;

25 By the first prayer, the plaintiff essentially sought to impugn Art 19 of the Constitution, which sets out the qualifications of the President, on the basis of inconsistency with Art 12 of the Constitution. By the second prayer, the plaintiff essentially sought to impugn Art 19B of the Constitution, which sets out the framework for reserved elections, on the basis of inconsistency with Art 12(2) of the Constitution. The plaintiff did not file any further affidavit in support of the OS as amended. His only affidavit before me was therefore the Supporting Affidavit. In it, the plaintiff also referred to the basic structure doctrine.

26 An overview of the relevant constitutional provisions is perhaps apposite at this point. Art 12 of the Constitution provides as follows:

> **Equal protection**
>
> **12.**—(1) All persons are equal before the law and entitled to the equal protection of the law.
>
> (2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
>
> (3) This Article does not invalidate or prohibit —
>
> (*a*) any provision regulating personal law; or
>
> (*b*) any provision or practice restricting office or employment connected with the affairs of any

> religion, or of an institution managed by a group professing any religion, to persons professing that religion.

27 As for Art 19 of the Constitution, this was originally inserted by the Constitution of the Republic of Singapore (Amendment) Act 1991 (Act 5 of 1991). Further amendments were made pursuant to the Constitution of the Republic of Singapore (Amendment) Act 2016 (Act 28 of 2016) ("2016 Constitution Amendment Act"). In its present form, Art 19 of the Constitution reads as follows:

> **Qualifications of President**
>
> **19.**—(1) No person shall be elected as President unless he is qualified for election in accordance with the provisions of this Constitution.
>
> (2) A person shall be qualified to be elected as President if he —
>
> (*a*) is a citizen of Singapore;
>
> (*b*) is not less than 45 years of age;
>
> (*c*) possesses the qualifications specified in Article 44(2)(*c*) and (*d*);
>
> (*d*) is not subject to any of the disqualifications specified in Article 45;
>
> (*e*) satisfies the Presidential Elections Committee that he is a person of integrity, good character and reputation;
>
> (*f*) is not a member of any political party on the date of his nomination for election; and
>
> (*g*) satisfies the Presidential Elections Committee that —
>
> (i) he has, at the date of the writ of election, met either the public sector service requirement in clause (3) or the private sector service requirement in clause (4); and
>
> (ii) the period of service counted for the purposes of clause (3)(*a*), (*b*) or (*c*)(i) or (4)(*a*)(i) or (*b*)(i) or each of the 2 periods of service counted for the

purposes of clause (3)(*d*) or (4)(*c*), as the case may be, falls partly or wholly within the 20 years immediately before the date of the writ of election.

(3) The public sector service requirement is that the person has —

(*a*) held office for a period of 3 or more years as Minister, Chief Justice, Speaker, Attorney-General, Chairman of the Public Service Commission, Auditor-General, Accountant-General or Permanent Secretary;

(*b*) served for a period of 3 or more years as the chief executive of an entity specified in the Fifth Schedule;

(*c*) satisfied the following criteria:

(i) the person has served for a period of 3 or more years in an office in the public sector;

(ii) the Presidential Elections Committee is satisfied, having regard to the nature of the office and the person's performance in the office, that the person has experience and ability that is comparable to the experience and ability of a person who satisfies paragraph (*a*) or (*b*); and

(iii) the Presidential Elections Committee is satisfied, having regard to any other factors it sees fit to consider, that the person has the experience and ability to effectively carry out the functions and duties of the office of President; or

(*d*) held office or served, as the case may be, for a first period of one or more years in an office mentioned in paragraph (*a*), (*b*) or (*c*) and a second period of one or more years in an office mentioned in paragraph (*a*), (*b*) or (*c*), and the 2 periods add up to 3 or more years.

(4) The private sector service requirement is that the person has —

(*a*) served as the chief executive of a company and —

(i) the person's most recent period of service as chief executive (ignoring any period of service shorter than a year) is 3 or more years in length;

(ii) the company, on average, has at least the minimum amount in shareholders' equity for the person's most recent 3-year period of service as chief executive;

(iii) the company, on average, makes profit after tax for the entire time (continuous or otherwise) that the person served as the chief executive of the company; and

(iv) if the person has ceased to be the chief executive of the company before the date of the writ of election, the company has not been subject to any insolvency event from the last day of his service as chief executive of the company until —

(A) the date falling 3 years after that day; or

(B) the date of the writ of election,

whichever is earlier, as assessed solely on the basis of events occurring on or before the date of the writ of election;

(*b*) satisfied the following criteria:

(i) the person has served for a period of 3 or more years in an office in a private sector organisation;

(ii) the Presidential Elections Committee is satisfied, having regard to the nature of the office, the size and complexity of the private sector organisation and the person's performance in the office, that the person has experience and ability that is comparable to the experience and ability of a person who has served as the chief executive of a typical company with at least the minimum amount of shareholders' equity and who satisfies paragraph (*a*) in relation to such service; and

(iii) the Presidential Elections Committee is satisfied, having regard to any other factors it sees fit to consider, that the person has the experience and ability to effectively carry out the functions and duties of the office of President; or

(*c*) subject to clause (5), served for a first period of one or more years in an office mentioned in paragraph (*a*) or (*b*) and a second period of one or more years

in an office mentioned in paragraph (*a*) or (*b*), and the 2 periods add up to 3 or more years.

(5) If a person proposes to rely on clause (4)(*a*) for one or both periods of service under clause (4)(*c*), the following provisions apply:

(*a*) if the person proposes to rely on one period of service as the chief executive of a company —

(i) instead of clause (4)(*a*)(i), the period of service relied on must be the most recent period that the person served as the chief executive of the company (ignoring any period of service less than a year);

(ii) instead of clause (4)(*a*)(ii), the company must, on average, have at least the minimum amount in shareholders' equity for that period of service; and

(iii) clause (4)(*a*)(iii) and (iv) applies without modification in relation to the company;

(*b*) if the person proposes to rely on one period of service as the chief executive of one company and one period of service as the chief executive of another company —

(i) instead of clause (4)(*a*)(i), the period of service relied on for each company must be the most recent period that the person served as the chief executive of that company (ignoring any period of service less than a year);

(ii) instead of clause (4)(*a*)(ii), each company must, on average, have at least the minimum amount in shareholders' equity for the period of service relied on; and

(iii) clause (4)(*a*)(iii) and (iv) applies without modification in relation to each company;

(*c*) if the person proposes to rely on 2 periods of service as the chief executive of one company —

(i) instead of clause (4)(*a*)(i), the 2 periods of service must be the 2 most recent periods of service that the person served as the chief executive of the company (ignoring any period of service less than a year);

(ii) instead of clause (4)(*a*)(ii), the company must, on average, have at least the minimum amount in shareholders' equity for each period of service; and

(iii) clause (4)(*a*)(iii) and (iv) applies without modification in relation to the company.

(6) The Legislature may, by law —

(*a*) specify how the Presidential Elections Committee is to calculate and determine shareholders' equity for the purposes of clauses (4)(*a*)(ii) and (*b*)(ii) and (5)(*a*)(ii), (*b*)(ii) and (*c*)(ii);

(*b*) specify how the Presidential Elections Committee is to calculate and determine profit after tax for the purposes of clause (4)(*a*)(iii); and

(*c*) prescribe what constitutes an insolvency event for the purposes of clause (4)(*a*)(iv).

(7) The minimum amount mentioned in clauses (4)(*a*)(ii) and (*b*)(ii) and (5)(*a*)(ii), (*b*)(ii) and (*c*)(ii) is $500 million and this amount can be increased if —

(*a*) a committee consisting of all the members of the Presidential Elections Committee presents to Parliament a recommendation that the amount be increased; and

(*b*) Parliament, by resolution, decides to increase the amount by the extent recommended by the committee or by any lesser extent.

(8) A resolution under clause (7)(*b*) cannot be passed —

(*a*) when the office of President is vacant; or

(*b*) during the 6 months before the date on which the term of office of an incumbent President expires.

(9) The committee mentioned in clause (7)(*a*) —

(*a*) may regulate its own procedure and make rules for that purpose;

(*b*) may from time to time, and must at least once every 12 years (starting from the date of commencement of section 7(*b*) of the Constitution of the Republic of Singapore (Amendment) Act 2016), review the minimum amount of shareholders' equity required under clauses (4)(*a*)(ii) and (*b*)(ii) and (5)(*a*)(ii), (*b*)(ii) and (*c*)(ii); and

(*c*) must present a report of its conclusions to Parliament (even if it does not recommend an increase).

(10) In clauses (3), (4) and (5), unless the context otherwise requires —

"chief executive", in relation to an entity or organisation, means the most senior executive (however named) in that entity or organisation, who is principally responsible for the management and conduct of the entity's or organisation's business and operations;

"company" means a company limited by shares and incorporated or registered in Singapore under the general law relating to companies;

"period" means continuous period.

28 Finally, Art 19B of the Constitution was similarly introduced by the 2016 Constitution Amendment Act. It states as follows:

Reserved election for community that has not held office of President for 5 or more consecutive terms

19B.—(1) An election for the office of President is reserved for a community if no person belonging to that community has held the office of President for any of the 5 most recent terms of office of the President.

(2) A person is qualified to be elected as President —

(*a*) in an election reserved for one community under clause (1), only if the person belongs to the community for which the election is reserved and satisfies the requirements in Article 19;

(*b*) in an election reserved for 2 communities under clause (1) —

(i) only if the person satisfies the requirements in Article 19 and belongs to the community from which a person has not held the office of President for the greater number of consecutive terms of office immediately before the election; or

(ii) if no person qualifies under sub-paragraph (i), only if the person satisfies the requirements in Article 19 and belongs to the other community for which the election is reserved; and

(*c*) in an election reserved for all 3 communities under clause (1) —

(i) only if the person satisfies the requirements in Article 19 and belongs to the community from which a person has not held the office of President for the greatest number of consecutive terms of office immediately before the election;

(ii) if no person qualifies under sub-paragraph (i), only if the person satisfies the requirements in Article 19 and belongs to the community from which a person has not held the office of President for the next greatest number of consecutive terms of office immediately before the election; or

(iii) if no person qualifies under sub-paragraph (i) or (ii), only if the person satisfies the requirements in Article 19 and belongs to the remaining community.

(3) For the purposes of this Article, a person who exercises the functions of the President under Article 22N or 22O is not considered to have held the office of President.

(4) The Legislature may, by law —

(*a*) provide for the establishment of one or more committees to decide, for the purposes of this Article, whether a person belongs to the Chinese community, the Malay community or the Indian or other minority communities;

(*b*) prescribe the procedure by which a committee under paragraph (*a*) decides whether a person belongs to a community;

(*c*) provide for the dispensation of the requirement that a person must belong to a community in order to qualify to be elected as President if, in a reserved election, no person who qualifies to be elected as President under clause (2)(*a*), (*b*) or (*c*) (as the case may be) is nominated as a candidate for election as President; and

(*d*) make such provisions the Legislature considers necessary or expedient to give effect to this Article.

(5) No provision of any law made pursuant to this Article is invalid on the ground of inconsistency with Article 12 or is considered to be a differentiating measure under Article 78.

> (6) In this Article —
>
> "community" means —
>
> (*a*) the Chinese community;
>
> (*b*) the Malay community; or
>
> (*c*) the Indian or other minority communities;
>
> "person belonging to the Chinese community" means any person who considers himself to be a member of the Chinese community and who is generally accepted as a member of the Chinese community by that community;
>
> "person belonging to the Malay community" means any person, whether of the Malay race or otherwise, who considers himself to be a member of the Malay community and who is generally accepted as a member of the Malay community by that community;
>
> "person belonging to the Indian or other minority communities" means any person of Indian origin who considers himself to be a member of the Indian community and who is generally accepted as a member of the Indian community by that community, or any person who belongs to any minority community other than the Malay or Indian community;
>
> "term of office" includes an uncompleted term of office.

Summary of the parties' submissions

Summary of the plaintiff's submissions

29 Much of the plaintiff's submissions were found in the Supporting Affidavit. It is worth setting out the contents of the Supporting Affidavit at some length:

> …
>
> 3. I make an application that the Elected Presidency Scheme ("EPS") as well as recent amendments to the EPS are in violation of Article 12 of the Constitution.
>
> 4. As such, the EPS also stands to be in contravention of the Basic Structure Doctrine in that it imposes on our fundamental rights as Singapore Citizens and is therefore unconstitutional.

5. The EPS is in contravention of Article 12 of the Constitution in that it deprives citizens the right to stand for public office; and that it also causes discrimination on the grounds of ethnicity and is therefore contrary to Article 12(2) of the Constitution.

Article 12 Violation

6. In respect of Article 12(1), the EPS stands in opposition to this arm of the Constitution in that the fundamental rights of Singapore citizens as being equal citizens before the law are being breached.

7. The right of an equal citizen before the law includes the fundamental right to vote as a basic political right in Singapore – as so inferred in the Constitution from its text and structure, and the adaptation of the Westminster model of democracy. It is the onus on the judiciary to protect this explicit right to vote where arisen before the courts; and accordingly, the right to political participation and to stand for any public office, including an Elected Presidency, once they meet the right qualifications, just like the right qualification to stand in general election (or by-election), whatever the case may be.

Basic Structure Doctrine & Right to Stand for Public Office

8. The EPS goes against the Basic Structure Doctrine as it goes against the fundamental rights of a Singapore citizen, herein their right to stand for public office. Per *Kesavanda* it was written "A constitutional amendment that sought to destroy the basic structure of the constitution would be beyond the power of parliament could be struck down by the courts", and "every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same". The EPS seeks to destroy the basic structure of the Constitution and pose a risk of it being significantly altered and changed – thereby going against the very construct of the Singapore Constitution as so framed.

9. The Basic Structure Doctrine connotes that any constitutional amendment that goes against the basic structure or key tenets of the constitution will be deemed invalid. I purport that the EPS is a constitutional amendment that goes against the basic structure doctrine as an overarching parliamentary power, that mandated a constitutional amendment independently, separate of the other two organs of state.

10. As such, this is also a breach of the rule of law – as a key part of the Constitution. The rule of law where interpreted as a key principle of constitutionalism, assumes a division of governmental powers or functions that inhibits the exercise of arbitrary state power. The Basic Structure Doctrine is also accepted and recognised by the Malaysian Courts, in the landmark case of *Sivarasa Rasiah*.

Discrimination on grounds of ethnicity

11. The recent amendments made to the EPS where an election will be reserved for a particular racial group goes against Article 12(2) of the Constitution, which states, "Except as expressly authorised by this Constitution, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority ...". Thus, the racial requirement in the upcoming reserved election and the hiatus-trigger status serves as discrimination on the above prohibited classification as highlighted by the Constitution and is therefore constitutionally prohibited in its execution.

12. I therefore submit that the EPS as per Article 12 of the Constitution causes discrimination on the grounds of ethnicity. No citizen of Singapore or candidate of the presidency should be discriminated against grounds of race for reasons of applying for elected presidency.

13. The selection of the elected candidate should be based upon merit, all other relevant requirements being fulfilled and withstanding.

The Legality Principle & Independent Judicial Review

14. In respect of the EPS and the recent changes passed by Parliament, I posit that there should be imposed legal constraints on the limitation of parliamentary power through court-adjudicated judicial review. As critically, for any legal framework to operate as it should, the Government itself had to abide by the law. The Basic Structure Doctrine further posits that there is a basic structure to the Constitution that constrains the legislature. This presents that, parliament cannot amend certain fundamental features or elements of the Constitution on its own without independent judicial review, as per the Legality Principle in *Chng Suan Tze*, which connotes that all power has legal limits. The amended changes to the EPS is therefore

> unconstitutional. It is an inherent principle that fundamental rights should be protected by an according impartial and independent judiciary.
>
> 15. Singapore remains committed to the Rule of Law as a foundational principle, with the Constitution reigning as the supreme law of the land, entrenched within this are the Separation of Powers, the Basic Structure Doctrine. The EPS therefore goes against the basic structure doctrine and is also incapable of being construed as being consistent with Article 12 of the Constitution of the Republic of Singapore, is in contravention to the Basic Structure Doctrine, depriving citizens of the fundamental right to stand for public office, and promotes discrimination on the grounds of ethnicity, thereby proving it to be unconstitutional.
>
> …

30 The plaintiff tendered skeletal arguments during the hearing, in which he outlined his arguments. He began by stating that his application entailed addressing "the question of our inalienable right to equality enshrined under Article 12 of the Constitution, namely Singapore citizen's equal right to stand for elections regardless of class, status, position of institutional power in society or wealth" and "regardless of our colour or variety of speech or belief, namely, race, language or religion". I reproduce below the following paragraphs of the plaintiff's skeletal arguments:

> **Notion of representative democracy**
>
> 2. Our constitution is founded on the notion of representative democracy which essentially encompasses the notion of of inalienable rights as citizens, that is, the equal right to stand to stand for election regardless of status or colour and the right to equal treatment before the law is preserved within Dicey's principle of rule of law in that all are equal before the law and are entitled to equal protection and that no one is above the law.
>
> **Separation of powers**
>
> 3. The notion that the aforesaid inalienable right to equality as enumerated under paragraph 1 above cannot be impeached or limited by way of a legislation

> brings us to the notion of separation of powers which forms the foundation of modern constitutional democracy inspired by Montesqieu's doctrine of separation of powers. that the Executive Legislature and the Judiciary as being independent arms of the state. This doctrine recognises the fundamental role of the judiciary to curb the excesses of the Executive.
>
> 4. Hence the amendments under Article 19B is not capbable of being construed as law because it essentially removes the power of the judiciary to check on the constitutional breaches of fundamental guarantees like the right to equality as explained earlier. The notion of inalienability of fundamental rights, namely, right to equality under article 12 and 12(2) are non derogable rights. Any attempt to redefine the notion of equality like the case of the EPS is a surreptitious attempt to dismantle fundamental right (to equality) and put into disrepute the notion of inalienable rights and fundamental guarantees like the right to vote and the equal right to stand for elections.
>
> **Basic Feature Doctrine**
>
> 5. The notions of representative democracy and separation of powers brings us to the next foundation of constitutional democracy, namely the Basic feature Doctrine. in other words there are certain basic features of the constitution like the separation of powers and inaliable rights which form the gundamental gurantees of the Singapore constitution cannot be abrogated, amended or removed by way of parliamentary enactment or legislation. This is the position in the common wealth countries including India, South African and Malaysia.
>
> **Is Basic Feature Doctrine recognised in Singapore?**
>
> **The answer is yes:**

31 The plaintiff then went on to quote an article by Asst Prof Swati Jhaveri in its entirety. The plaintiff did not state the provenance of this article, but I gathered that it was a blog post that was downloaded and printed off the Internet (Swati Jhaveri, "Recent Judicial Comments on the Basic Structure of the Constitution" (20 April 2016) (https://singaporepubliclaw.com/2016/04/20/recent-judicial-comments-on-the-basic-structure-of-the-constitution/)). The

plaintiff then went on to assert, without further elaboration, that "Basic Feature Doctrine was also recognised by the Malaysian courts recently".

32 During the hearing, the plaintiff tendered a second article written by Calvin Liang and Sarah Shi which was published in the Singapore Law Gazette (Calvin Liang & Sarah Shi, "The Constitution of Our Constitution: A Vindication of the Basic Structure Doctrine" (http://www.lawgazette.com.sg/2014-08/1104.htm) ("The Constitution of Our Constitution")). Relying on both articles, and also on Chan Sek Keong CJ's paper based on his lecture delivered at the Rule of Law Symposium 2012 (Chan Sek Keong, "The Courts and the 'Rule of Law' in Singapore" [2012] Sing JLS 209 ("The Courts and the 'Rule of Law' in Singapore")), the plaintiff asserted that the basic structure doctrine was central to a framework of constitutional democracy and was part of Singapore law. The basic structure doctrine, as formulated by the Indian Supreme Court in *Kesavananda*, operates to invalidate constitutional amendments in violation of the "basic structure" of the Constitution. In the present case, it would therefore have operated to prevent attempts to abrogate or amend the non-derogable and fundamentally-guaranteed rights in the Constitution. The plaintiff appeared to contend that this would include the right to equal protection in Art 12 of the Constitution, flowing from which the right to vote and the right to stand for elections ought to be guaranteed as fundamental and inalienable rights for all citizens.

33 The plaintiff further contended that the three recent decisions of the Court of Appeal cited in The Constitution of Our Constitution supported his submission that the basic structure doctrine was recognised in Singapore, namely *Yong Vui Kong v Attorney-General* [2011] 2 SLR 1189 ("*Yong Vui Kong 2011*"), *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*") and *Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1

("*Vellama*"). He had acted as counsel in all three cases. He maintained that the notion of a constantly-evolving Constitution could not be right as the Constitution could not simply be changed willy-nilly. In his view, the less one changed the Constitution, the more stable it was.

34 In his reply submissions, the plaintiff disputed Mr Kumar's point that he had no standing to bring the application. Relying on *Tan Eng Hong*, he submitted that it was not necessary for him to assert a private right or show that he had suffered special damage. He maintained that he had a real and genuine interest in the subject-matter. Notwithstanding that he had no personal interest in politics or in becoming a candidate for the Presidency, even as a bystander or "busybody", he could come to court to seek to correct a "flagrant abuse by the State".

35 The plaintiff further claimed that his challenge was premised on Art 12 of the Constitution as the appointment of the President was made by the Prime Minister on the ground of race and the former came under the "puppetry" of the latter. Finally, the plaintiff asserted that wool was being pulled over the eyes of the electorate. He maintained that Art 19B of the Constitution excluded the possibility of other minorities (such as Eurasians, Sri Lankans and Sikhs) being considered within the reserved elections framework, and that a race issue "suddenly" emerged overnight.

Summary of the defendant's submissions

36 The defendant's written submissions proceeded on certain assumptions as to the basis for the plaintiff's application, given that it was unclear what was being sought in the OS. Aside from arguing that the plaintiff had no standing to bring the application, the defendant's primary arguments were as follows. First,

it was submitted that the basic structure doctrine was not recognised in Singapore and was incompatible with our constitutional framework. Next, it was submitted that there was no unqualified constitutional right to stand for President. Lastly, it was submitted that the reserved elections framework (introduced by Art 19B of the Constitution) was not racially discriminatory.

37 In his oral submissions, Mr Kumar made the preliminary point that the plaintiff had no standing as it was not suggested that any of his private rights had been violated. Mr Kumar submitted that the plaintiff's own rights under Art 12 of the Constitution had not been violated, since the plaintiff had disavowed any interest in running for the Presidency. In addition, the plaintiff had not demonstrated any exceptionally grave or widespread illegality or an egregious breach of law that might afford him standing to maintain the action.

38 In *Teo Soh Lung v Minister for Home Affairs and others* [1989] 1 SLR(R) 461 ("*Teo Soh Lung*"), F A Chua J rejected the application of the basic structure doctrine in Singapore, and Mr Kumar submitted that this remained good law and ought to be followed. A key aspect of Chua J's reasoning was that the basic structure doctrine, if adopted, would amount to judicial usurpation of the legislative function. Mr Kumar accepted that it could be broadly postulated that there was a "basic structure" to the Constitution in the sense that the Constitution rested on overarching principles such as the rule of law and the separation of powers. However, the basic structure doctrine went further to prevent Parliament from amending certain "basic features" of the Constitution, even if all prescribed procedures for amendment had been lawfully complied with. He added there had been no universal acceptance of the basic structure doctrine, which was, in any event, controversial.

39 Mr Kumar contended that the basic structure doctrine would not apply to the EPS. In particular, it was pointed out that Art 368 of the Constitution of India ("the Indian Constitution") only provided for amendment, while Art 5 of the Constitution specifically contemplated that an amendment to the Constitution included a repeal of its provisions. On the basis of an equivalent provision in the Constitution of the Democratic Socialist Republic of Sri Lanka, the Sri Lankan court had refused to adopt the basic structure doctrine.

40 Mr Kumar traced the legislative history to Art 5 of the Constitution which showed that the power to amend the Constitution was not substantively limited. If the basic structure doctrine were found to be applicable, it would sanction a retrograde concept which impeded progressive changes to the Constitution, including changes to remove disenfranchisement. Should it be found to apply, it could only prevent amendments which were fundamental and essential to the political system, for instance, where judicial powers were being removed by such amendments. Tracking the origins of the EPS, Mr Kumar further highlighted that, historically, there was no popularly-elected Presidency until 1991 when the Constitution was amended. This exposed the logical flaw in the plaintiff's arguments: how could there have been a breach in 1991, when the pre-1991 position in fact did not even allow for an elected Presidency and the corresponding right to stand for elections? Art 19 of the Constitution could not be characterised as a derogation of rights when the changes enabled a more open system where a President could be elected, compared to the pre-existing system which did not allow for such.

41 As for the plaintiff's contention (or supposed contention, since he was not clear) that the requirements for pre-qualification of Presidential election candidates were discriminatory and in violation of Art 12(1) of the Constitution, Mr Kumar submitted that this was unobjectionable as Art 19 of the Constitution

was rationally related to the purpose of identifying qualified candidates and did not violate Art 12 of the Constitution as intelligible differentiators had been employed. It was not sufficient for the plaintiff to merely suggest that he might have a different opinion on the qualifying criteria.

42 Finally, Mr Kumar submitted that the recently-introduced reserved elections framework in Art 19B of the Constitution was not discriminatory or in violation of Art 12(2) of the Constitution. Art 19B of the Constitution sought to ensure multiracial representation and therefore could not be said to be racially discriminatory. In any event, the Constitution was not race-neutral and the point had been specifically considered by the Presidential Council for Minority Rights ("PCMR"). In addition, Art 152 of the Constitution expressly enjoined the Government to care for the interests of racial and religious minorities.

My decision

Standing

43 I address first the issue of standing. In *Vellama*, the Court of Appeal observed (at [34]) that the rules on standing espouse an ethos of judicial review focused on vindicating personal rights and interests through adjudication rather than determining public policy through exposition. The court went on to say that matters of public policy are the proper remit of the Executive, and decoupling judicial review from the fundamental precepts of adversarial litigation would leave the courts vulnerable to being misused as a platform for political point-scoring. In *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 ("*Jeyaretnam*"), the Court of Appeal noted (at [34]) that the rules on standing in public law are put in place in order to prevent the wastage of the court's time and public money by the multiplicity of litigation brought by busybodies that could amount to an abuse of the legal process.

44 In this regard, the defendant submitted that an individual had to satisfy one of the following criteria in order to establish standing: (a) a violation of a right personal to him; (b) an interference with, or violation of, a public right which had caused him special damage which distinguished his claim from those of other potential litigants in the same class; or (c) where no correlative rights, private or public, were generated by the alleged breach of public duty, a breach of sufficient gravity such that it would be in the public interest for the courts to hear the case.[2]

45 With respect to (a), the defendant relied on *Tan Eng Hong*, where the Court of Appeal held (at [82]) that there mere fact of citizenship in itself does not satisfy the standing requirement for constitutional challenges; an applicant must demonstrate a violation of his constitutional rights (which are personal rights, as they are held and can be vindicated by individuals on their own behalf (*Tan Eng Hong* at [69])) before *locus standi* can be granted. This will prevent "mere busybodies" whose rights are not affected from being granted standing to launch unmeritorious constitutional challenges, and it is only where a person's rights have been or are threatened to be violated that that person ceases to be a "mere busybody".

46 In the present case, I was not persuaded that the plaintiff had demonstrated any violation of a right personal to him and, specifically, of his constitutional rights under Art 12 of the Constitution. Although the OS referred to Art 12 of the Constitution, the plaintiff did not complain that *his* rights thereunder were being violated. To the contrary, the plaintiff had stated in a Facebook post on 22 May 2017 that he had filed the OS "in [his] capacity as an

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[2] Defendant's submissions, para 10.

ordinary citizen of Singapore"[3] [emphasis added] – which was precisely what did *not*, in and of itself, give rise to standing.

47 With regard to (b), the defendant relied on *Vellama*, where the Court of Appeal held (at [31]) that the applicant who asserts no more than a public right must demonstrate that the interference with, or violation of, such a public right has caused him "special damage". As to the distinction between public and private rights, the Court of Appeal in *Tan Eng Hong* held (at [69]) that a public right is one which is held and vindicated by public authorities, whereas a private right is one which is held and vindicated by a private individual. In *Vellama*, the Court of Appeal elaborated on this, stating (at [32]–[33]) that:

> … Where the alleged interference with the public interest also affects an applicant's private right, the court will recognise the applicant's standing to seek relief. This is so regardless of the existence of identical private rights held by other potential litigants in the same class as the applicant …
>
> Where the applicant asserts no more than a public right which is *shared in common* with other citizens, however, standing accrues only if a nexus between the applicant and the desired remedy is established by demonstrating "special damage". Public rights are shared in common because they arise from public duties which are owed to the general class of affected persons as a whole. It is in this sense that public rights are "held and vindicated by public authorities" … As public rights are shared with the public in common, an applicant cannot have standing unless he has suffered some "special damage" which distinguishes his claim from those of other potential litigants in the same class. …
>
> [emphasis in original]

48 The Court of Appeal went on to emphasise (at [33]) that if "special damage" were not to be required, it is likely that the courts will be inundated by a multiplicity of actions, some raised by mere busybodies and social gadflies,

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[3] Affidavit of Goh Soon Poh sworn and filed on 2 June 2017, para 24.

to the detriment of good public administration; the requirement is a safeguard against essentially political issues, which should be more appropriately ventilated elsewhere, being camouflaged as legal questions.

49 In the present case, it would appear that the plaintiff was attempting to assert a public right which he shared in common with other citizens, seeing as to how he alluded to an "equal right to stand for elections"[4] and his professed real and genuine interest in the issue of the EPS. With respect, I saw no merit in this argument. There was no nexus between the plaintiff and the prayers sought in the OS, and it was impossible to see how he could be said to have suffered any "special damage" which distinguished his claim from those of other potential applicants in the same class.

50 As for (c), the defendant relied on *Jeyaretnam*, where the Court of Appeal opined (at [62]) that "special damage" might also possibly encompass those rare and exceptional situations where a public body has breached its public duties in such an egregious manner that the courts are satisfied that it would be in the public interest to hear it. However, the court reiterated that this is a very narrow avenue which concerns only extremely exceptional instances of very grave and serious breaches of legality. The court went on to hold (at [64]) that in the rare case where a non-correlative rights generating public duty is breached, and the breach is of sufficient gravity such that it would be in the public interest for the courts to hear the case, an applicant *sans* rights may be accorded *locus standi* as well, at the discretion of the courts. In this category of cases, there has to be "some exceptionally grave or widespread illegality" or "egregious breaches of the law" (*Jeyaretnam* at [60]).

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[4] Plaintiff's skeletal arguments, para 1.

51 In the present case, there was really nothing in the plaintiff's submissions which disclosed any breach of sufficient gravity to make it in the public interest for the courts to hear the case, so as to confer standing on the plaintiff. Moreover, it was undisputed that Arts 19 and 19B of the Constitution were both validly enacted in accordance with the stipulated procedures. Specifically, the amendments that brought them into effect were procedurally regular and validly effected pursuant to the power to amend as set out at Art 5 of the Constitution. In the circumstances, I was of the view that the plaintiff failed to establish standing based on this criterion as well.

52 All things considered, the plaintiff had no standing and the OS failed at this preliminary hurdle. Adopting the language used in the cases, the plaintiff was a mere busybody and a social gadfly. He was not serious about making legal arguments. Instead, by seeking to ventilate essentially political issues which were barely camouflaged as legal questions, he was patently and unacceptably attempting to misuse the court as a platform for political point-scoring. Fundamentally, he was neither directly nor personally affected by Art 19 or Art 19B of the Constitution. The plaintiff did not seriously dispute this, notwithstanding his somewhat flippant claim that, while he did not presently have any interest in standing for the upcoming Presidential election, he might later change his mind. At the same time, there was also no discernible breach of sufficient gravity to make it in the public interest for the courts to hear the case.

53 For completeness, I will nevertheless proceed to set out my views on the substantive merits of the OS. I have set out the plaintiff's submissions at some length at [29]–[35] above. The lack of clarity to the plaintiff's precise grounds of challenge was at once both troubling and bizarre. In the end, I took the view that the most sensible thing to do was to give the plaintiff the benefit of the doubt and approach matters by taking his case at its highest. In this regard, it

appeared to me that the clearest version of the plaintiff's case was to be found in the Supporting Affidavit. Using this as a point of reference, I gathered that the plaintiff's case, at its highest, comprised three separate grounds of challenge based on: (a) the basic structure doctrine; (b) Art 12(1) of the Constitution; and (c) Art 12(2) of the Constitution. Also, notwithstanding some references to the "right to vote" in the Supporting Affidavit and the plaintiff's skeletal arguments, it was clear that the plaintiff was not contending that this right had been violated. Rather, as will be seen, his complaint related to the "right" to stand for public office/elections.

The basic structure doctrine

54 In the Supporting Affidavit, the plaintiff contended that the "basic structure" offended in this case was the "right to stand for public office".[5] In his skeletal arguments, the plaintiff alluded, albeit in the context of Art 12 of the Constitution, to the "equal right to stand for elections regardless of class, status, position of institutional power in society or wealth" and the "equal right to stand for elections regardless of our colour or variety of speech or belief, namely, race, language or religion".[6] Although not entirely clear, it appeared that, to the plaintiff, this "right to stand for public office" flowed from Art 12 of the Constitution. It was not altogether clear whether this ground of challenge was targeted at Art 19 or Art 19B of the Constitution, or both. Notwithstanding, I again took the plaintiff's case at its highest and assumed that he was seeking to impugn both Arts 19 and 19B of the Constitution. Thus, this ground of challenge was premised on two assumptions: (a) that the basic structure doctrine applied

[5] Plaintiff's affidavit affirmed and filed on 22 May 2017, para 8.

[6] Plaintiff's skeletal arguments, para 1.

in Singapore; and (b) that the "right to stand for public office" formed part of the "basic structure" of the Constitution.

(1) Applicability of the basic structure doctrine in Singapore

55 The basic structure doctrine is sometimes also referred to as the basic features doctrine. Notwithstanding that there may be valid distinctions between the two terms, neither party appeared to regard the two terms as different and I will therefore proceed on this basis in these grounds of decision.

56 The basic structure doctrine has its origins in the decision of the Indian Supreme Court in *Kesavananda*. As noted by the Court of Appeal in *Yong Vui Kong v Public Prosecutor* [2015] 2 SLR 1129 ("*Yong Vui Kong 2015*") (at [69]), the basic structure doctrine postulates that there are certain fundamental features of a constitution that cannot be amended by Parliament. This is even if the prescribed procedures enabling amendment are adhered to. The basic structure doctrine has not received explicit judicial recognition as being part of Singapore law. To the contrary, it was rejected by Chua J in *Teo Soh Lung*. Chua J held (at [34], [35] and [47]) that:

> If the framers of the Singapore Constitution had intended limitations on the power of amendment, they would have expressly provided for such limitations. But Art 5 of the Constitution does not put any limitation on the amending power.
>
> If the courts have the power to impose limitations on the Legislature's power of constitutional amendments, they would be usurping Parliament's legislative function contrary to Art 58 of the Constitution. …
>
> …
>
> I am of the view that the *Kesavananda* doctrine is not applicable to our Constitution. Considering the differences in the making of the Indian and our Constitution, it cannot be said that our Parliament's power to amend our Constitution is limited in the

> same way as the Indian Parliament's power to amend the Indian Constitution. …

57 When the matter went on appeal, the Court of Appeal considered it unnecessary to consider the applicability of the basic structure doctrine (*Teo Soh Lung v Minister for Home Affairs and others* [1990] 1 SLR(R) 347 at [44]). In *Cheng Vincent v Minister for Home Affairs and others* [1990] 1 SLR(R) 38, Law Kew Chai J concurred (at [32]) with Chua J's rejection of the basic structure doctrine in *Teo Soh Lung*. A few points were clear. First, no Court of Appeal decision had squarely addressed the issue of whether the basic structure doctrine applied in Singapore. Second, the prevailing position taken by the High Court answered this question in the negative. Third, however, this position was not binding on me. That said, various subsequent cases and commentaries appeared to support the basic structure doctrine, and it is to these that I now turn.

58 In *Mohammad Faizal bin Sabtu v Public Prosecutor* [2012] 4 SLR 947 ("*Mohammad Faizal*"), Chan CJ (sitting as the High Court) held (at [11]) that "[t]he principle of separation of powers, whether conceived as a sharing or a division of sovereign power between these three organs of state, is therefore *part of the basic structure of the Singapore Constitution*" [emphasis added]. It appeared that Chan CJ was saying, firstly, that there is a "basic structure" to the Constitution and, secondly, that the principle of separation of powers forms part of this "basic structure". However, Chan CJ made no reference to *Kesavananda* or *Teo Soh Lung* and it was therefore unclear if the "basic structure" he had in mind was the same as that contemplated by the basic structure doctrine. Indeed, it would appear that those cases would not have, in any event, been relevant in the context of *Mohammad Faizal*, which dealt with the constitutionality of certain provisions in s 33A of the Misuse of Drugs Act (Cap 185, 2008 Rev Ed). In Kevin YL Tan, "Into the matrix: Interpreting the Westminster model constitution" in *Constitutional Interpretation in Singapore: Theory and practice*

(Routledge, 2017) (Jaclyn L Neo ed) ("*Constitutional Interpretation in Singapore*") ch 3, Prof Kevin YL Tan in fact suggested (at p 69) that Chan CJ's reference to the "basic structure" of the Constitution was *not* a reference to the basic structure doctrine. Prof Tan then went on to argue (at pp 69–70) that:

> … Chan CJ's 'basic structure' argument [in *Mohammad Faizal*] is quite different and rather more limited in scope. The 'basic structure' of the Constitution derives from the Westminster model which separates or distributes state power between the three functional branches of government, and which 'adopted and codified most, if not all, of the laws, customs, conventions and practices of the British constitutional and parliamentary system'. Chan CJ's 'basic structure' derives from the matrix of the Westminster model and is grounded in history, legal precedent, and the logic of legal continuity. Put another way, so long as Singapore purports to have a constitution founded on the Westminster model, such a basic structure must exist. It would be an abuse and travesty to otherwise call it a Westminster-style constitution.
>
> By adopting the 'basic structure' argument, the court puts minimal constraints on Parliament's powers to amend the Constitution. Provided the requisite procedures are followed and the necessary majorities obtained, the Constitution may be amended. The only constraints are those imposed by the structural matrix and by the common law. This necessarily limits what the courts can do to thwart Parliament's power, unlike the much more expansive 'basic features' doctrine under which a constellation of judicially determined extra-constitutional 'features' serve to limit the amendment power of the Constitution itself. The latter is not a structural argument but was formulated by the Indian judges reading the Preamble and the whole scheme of the Constitution. Such an interpretive approach gives judges much greater latitude in determining what constraints it can place on parliamentary power.

59 In Andrew J Harding, "Does the 'basic structure doctrine' apply in Singapore's Constitution? An inquiry into some fundamental constitutional premises" in *Constitutional Interpretation in Singapore* ch 2, Prof Andrew J Harding similarly suggested (at p 32) that Chan CJ's reference to the Constitution's "basic structure" in *Mohammad Faizal* was not a reference to the basic structure doctrine. Instead, Prof Harding characterised Chan CJ's

approach – of interpreting constitutional provisions in line with the separation of powers as an aspect of "basic structure" – as "unexceptional". Pointedly, Prof Harding concluded (at p 44) that "[u]nder Singapore's current constitution, it is not convincingly arguable that the basic structure doctrine applies in Singapore".

60 However, in *Yong Vui Kong 2015*, the Court of Appeal read (at [69]) Chan CJ's remarks in *Mohammad Faizal* as a reference to the basic structure doctrine. The court further stated that "[a]n example of a feature that is part of the basic structure of the Constitution is the separation of powers (as was held in *Mohammad Faizal*)" and that "[a]nother example is possibly the right to vote". It then observed (at [71]) that "in order for a feature to be considered part of the basic structure of the Constitution, it must be something fundamental and essential to the political system that is established thereunder". These points were made in the context of the constitutionality of caning. Ultimately, however, the Court of Appeal declined (at [72]) to express any view on the applicability of the basic structure doctrine in Singapore since it was not considering the validity of a constitutional amendment.

61 In The Courts and the 'Rule of Law' in Singapore, Chan CJ stated, extra-judicially (at p 223), that:

> *The judicial power is part of the basic structure of the Constitution* and its exercise through judicial review is the cornerstone of the 'rule of law'. It is the means by which the courts check illegality, whether of legislative or executive acts. …
>
> [emphasis added]

Given the subsequent reference made by Chan CJ in this paper to *Kesavananda* and *Teo Soh Lung*, it would appear that, in this instance, Chan CJ had in mind the basic structure doctrine.

62 In The Constitution of Our Constitution, Liang and Shi relied on the Court of Appeal's decisions in *Yong Vui Kong 2011*, *Tan Eng Hong* and *Vellama*, as well as Chan CJ's decision in *Mohammad Faizal* and his extra-judicial comments in The Courts and the 'Rule of Law' in Singapore, to argue (at para 44) that "the Singapore Constitution does possess a basic structure", and (at para 51) that the separation of powers and what they term the "legality principle" (*ie*, that all power has legal limits) are "among the components of the basic structure". Insofar as the three Court of Appeal decisions were concerned, these cases referred to neither *Kesavananda* nor *Teo Soh Lung*, and I doubted that they could be said to represent the Court of Appeal's recognition or endorsement of the applicability of the basic structure doctrine in Singapore. What was noteworthy, however, were the following passages (at paras 38 and 46), which were endorsed in full by the Court of Appeal in *Yong Vui Kong 2015* (at [71]):

> The basic structure is intrinsic to, and arises from, the very nature of a constitution and not legislative or even judicial fiat. At its uncontentious minimum, a constitution sets out *how political power is organised and divided between the organs of State in a particular society*. In other words, the constitution is a power-defining and, therefore, power-limiting tool. …
>
> …
>
> *… the basic structure is a limited doctrine. It is arguable that fundamental rights are not a necessary part of the basic structure of a constitution.* This is because fundamental rights relate to rights and liberties of citizens and do not define the limits to the powers of and checks on each organ of the State. What is not fundamental to a constitution cannot form part of its basic structure. …
>
> [emphasis added]

63 I noted that the basic structure doctrine was not without its critics. As an example, the following caution sounded by Asst Prof Jaclyn L Neo in an opinion

in The Straits Times (Jaclyn L Neo, "Should constitutional principles be eternal?" *The Straits Times* (6 October 2014)) bears repeating:

> In conclusion, a note of circumspection. It is easy to support the basic features doctrine when we all agree on what these "features" are. But what if we don't? We should remind ourselves that the doctrine may fly in the face of popular sovereignty.
>
> The assertion that there is an unwritten constraint against ever altering certain features must be regarded with some suspicion lest those who assume the power to determine those features end up elevating themselves, intentionally or otherwise, to the status of demigods.

64 Asst Prof Neo's call for circumspection in supporting the basic features doctrine was echoed and indeed amplified by the defendant. Citing the decision of the United States Supreme Court in *Leser et al v Garnett et al* 258 US 130 (1922) to demonstrate the "problematic nature" of the basic structure doctrine, the defendant emphasised that no generation had an exclusive claim on constitutional wisdom. The defendant therefore submitted that, in the context of Singapore, Parliament's power to consciously change the Constitution through the prescribed constitutional procedure should be seen as an instrument by which each generation of Singaporeans could work out their constitutional destiny, and this power should not be curtailed by the court.[7]

65 When I considered the cases and commentaries cited at [58]–[62] above, what became apparent was that any ostensible support of the basic structure doctrine was rather more minimalist and related to a "thin" conception of the same. The academic niceties are perhaps best left to be canvassed and tested in other *fora*. However, what seemed clear was that any perceived support for the basic structure doctrine, whether by way of *dicta* or extra-judicial or academic

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[7] Defendant's submissions, paras 70 and 73-77.

commentary, had generally taken a conservative and limited form. Prof Tan's views (see [58] above) were paradigmatic of this approach. In this regard, Asst Prof Neo in Jaclyn L Neo, "Introduction: Judging the Singapore Constitution" in *Constitutional Interpretation in Singapore* rationalised (at p 13) Prof Tan's argument as a "modest" one premised on acceptance of "the basic structure of the Westminster constitution doctrine". Above all the nuanced distinctions, what the cases and commentaries generally agreed upon was that the basic structure doctrine did not apply in its full force in Singapore.

66 That said, the "thin" conception of the basic structure doctrine appeared to be no more than a broad restatement of the truism that the Constitution rests on an overarching principled framework embracing the precepts of the rule of law and the separation of powers. This was not altogether dissimilar from the defendant's acknowledgment in its submissions that there was a "basic structure" to the Constitution in the sense that the Constitution rested on the selfsame overarching principles. On the other hand, I noted the defendant's submission that these overarching principles essentially served to inform the interpretation of the Constitution, but that this was "no more than a specific application of the general principle of purposive statutory interpretation".[8] I noted also that the amendments which brought forth Arts 19 and 19B of the Constitution would not conceivably offend this "thin" conception of the basic structure doctrine. These amendments did not involve any curtailment of the judicial power or any other incursions into the precepts of the rule of law and the separation of powers.

67 For the purposes of these grounds of decision, I do not think that it is fruitful for me to go beyond this level of generality and attempt to opine on

[8] Defendant's submissions, para 29.

whether there are further granular elements to the "basic structure" of the Constitution, and what these may be. This is all the more so given the broader power of amendment under Art 5 of the Constitution (which includes the power to repeal constitutional provisions), as compared to the Indian Constitution. This suitably recognised the need for a degree of flexibility which was necessary and appropriate in the context of our unexpected journey into nationhood.

68 I do not propose to venture a more conclusive view or to delve into a fuller exploration of this question for present purposes, as my decision in the present case did not depend on whether the basic structure doctrine was or was not part of Singapore law. As Mr Kumar rightly suggested, it was not strictly necessary for me to decide the OS on this basis: even assuming that the basic structure doctrine did apply (in its full force, and not just by means of a "thin" conception), it would not extend to the amendments that brought forth Arts 19 and 19B of the Constitution (see [69]–[73] below). As such, I declined to make a definitive ruling on this point. For the purposes of these grounds of decision, I would confine my observations solely to what I have set out above.

(2) The "right to stand for public office"

69 Even if the basic structure doctrine did apply in Singapore (in its full force, and not just by means of a "thin" conception), it was clear to me that the amendments that brought forth Arts 19 and 19B of the Constitution would not have offended the basic structure doctrine because the "right to stand for public office" would not have fallen within its ambit. Given the plaintiff's submissions on this issue (see [54] above), it was plain that the "right to stand for public office" which came within his contemplation comprised the *unqualified* right of *any* citizen to stand for elections, not only for the office of the President, but for any public office. It will be recalled that the Court of Appeal in *Yong Vui Kong*

2015 observed (at [71]) that "in order for a feature to be considered part of the basic structure of the Constitution, it must be something *fundamental and essential to the political system that is established thereunder*" [emphasis added]. The "right to stand for public office" urged by the plaintiff was clearly not such a feature.

70 I examine first the office of the President. In this regard, the defendant pointedly submitted that an unqualified right to stand for the office of the President could not be "fundamental and essential" to the Constitution when the Presidency was not even a popularly-elected office for 28 years after Singapore's independence. The defendant further pointed to the fact that an elected Presidency only came into being in 1991, with the first popular election held in 1993. Before that, therefore, no one had a right, let alone an unqualified right, to stand for the office of the President.[9] I agreed entirely with this submission. There being no pre-existing right (whether unqualified or otherwise) to stand for the office of President prior to 1991, it could not be seriously argued that a right (again, whether unqualified or otherwise) to stand for the office of President was one that was "fundamental and essential" to the political system established under the Constitution.

71 The defendant further submitted, in the context of Art 19 of the Constitution, that since the eligibility criteria for the President were introduced in 1991, there had been several popular elections for President, which Singaporeans had participated in without any challenge against the constitutionality of the process, or the individuals who held the office of President. The point was that it was incredible to say, after all this time, that some deep violence had been inflicted on the Constitution.[10] With respect, I did

[9] Defendant's submissions, para 82.

not agree that the mere fact that there had been no prior challenges to the validity of the EPS automatically amounted to a validation of its legitimacy. However, I accepted that it was relevant to consider that the EPS had withstood the test of time, at least since its introduction in 1991.

72 Insofar as the plaintiff's purported "right to stand for public office" related to *other* public offices, this was a complete non-starter. In this regard, I agreed with the defendant that an unqualified "right to stand for public office", far from being "fundamental and essential" to the political system established under the Constitution, was inconsistent with our constitutional framework. In this connection, the defendant highlighted several constitutional offices which were not popularly elected, including judges, the Attorney-General, members of the Public Service Commission and permanent secretaries.[11]

73 In the final analysis, the "right to stand for public office" urged by the plaintiff, involving as it did the unqualified right of any citizen to stand for elections, could not be said to be "fundamental and essential" to the political system established under the Constitution. Hence, even if the basic structure doctrine did apply in Singapore, the amendments that brought forth Arts 19 and 19B of the Constitution would not have offended it. I would finally also observe that the plaintiff had, in the Supporting Affidavit, accepted that any right to stand for the office of President was contingent on a person "meet[ing] the right qualifications"[12] and that the selection "should be based upon merit, all other relevant requirements being fulfilled and withstanding".[13] This flatly

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[10] Defendant's submissions, para 84.

[11] Defendant's submissions, paras 85-86.

[12] Plaintiff's affidavit affirmed and filed on 22 May 2017, para 7.

[13] Plaintiff's affidavit affirmed and filed on 22 May 2017, para 13.

contradicted his case based on the basic structure doctrine at least insofar as Art 19 of the Constitution was concerned, and was yet another example of the manifest lack of clarity that permeated his case.

Art 12(1) of the Constitution

74 The plaintiff's challenge based on Art 12(1) of the Constitution was targeted at Art 19 of the same and appeared to flow from the first prayer of the OS, which stated as follows:

> a. The requirements as to the Qualifications of President under Article 19 of the Constitution of the Republic of Singapore (the "Constitution") are incapable of being construed as being consistent with Article 12 of the Constitutions, in that it deprives citizens of the equal right to stand for public office, namely the office of the Elected Presidency ("EP");

75 In the Supporting Affidavit, the plaintiff similarly claimed that "[t]he EPS [was] in contravention of Article 12 of the Constitution in that it deprive[d] citizens the right to stand for public office".[14] I surmised that the references to Art 12 of the Constitution in these two instances were really references to Art 12(1) of the Constitution. This was consistent with the plaintiff's complaint in the context of Art 12(1) of the Constitution in the Supporting Affidavit, which was that "the fundamental rights of Singapore citizens as being equal citizens before the law [were] being breached", on the basis, it seemed, that there was a breach of "the right to political participation and to stand for any public office".[15] This appeared to relate to his reference to the "equal right to stand for elections regardless of class, status, position of institutional power in society or wealth" in his skeletal arguments.[16]

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[14] Plaintiff's affidavit affirmed and filed on 22 May 2017, para 5.

[15] Plaintiff's affidavit affirmed and filed on 22 May 2017, paras 6-7.

76 The plaintiff did not explain why Art 12(1) of the Constitution could be used to invalidate Art 19 of the same. No authorities were cited to support this proposition. However, I agreed with the defendant that, even if one were to assume, *arguendo*, that this was permissible, the plaintiff's challenge on this ground could be quite easily disposed of.[17]

77 The "well-settled" test for determining whether a law violates Art 12(1) of the Constitution is the "reasonable classification" test, under which a differentiating measure prescribed by legislation would be consistent with Art 12(1) of the Constitution only if: (a) the classification is founded on an intelligible differentia; and (b) the differentia bears a rational relation to the object sought to be achieved by the law in question (*Yong Vui Kong 2015* at [105]).

78 There was no doubt that (a) was satisfied. As for (b), I agreed that the eligibility criteria in Art 19 of the Constitution bore a rational relation to the purpose of ensuring that Presidential candidates were qualified to serve as President.[18] This object was evident from the Second Reading of the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill 23 of 1990) ("the 1990 Bill"), where then First Deputy Prime Minister and Minister for Defence Mr Goh Chok Tong explained (*Singapore Parliamentary Debates, Official Report* (5 October 1990) vol 56 at cols 559–560):

> The criteria for Elected President are very important. Some Members have argued that perhaps we are not stringent enough. But I think more have argued that perhaps the criteria are too restrictive. They want the criteria to be widened so that

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[16] Plaintiff's skeletal arguments, para 1.

[17] Defendant's submissions, para 89.

[18] Defendant's submissions, para 92.

> more can stand for election as Elected President. The list that we have in the Bill indicating who are deemed to have the qualifications, such as Ministers, Judges, Chairman of statutory boards and Boards of Directors of big companies, are *no more than a proxy for the attributes that we are looking for*.
>
> *We are actually looking for people with competence*. They must be competent people before they can stand for election. Secondly, *they must be trustworthy*. Thirdly, *they must have sound judgement*. That means, when they look at the situation they can come to the right conclusion. They assess people, they know who are opportunists, who are crooks and who are honest people. That is very important. *They must have the moral courage* because the President may come from the same party as the Prime Minister. But if he disagrees with the Prime Minister on the use of reserves for wasteful welfare programmes, then the Elected President must have the moral courage to tell the Prime Minister that he is not going to spend the reserves.
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> Lastly, and I think this is also an important quality, *the President must have physical courage*. Physical courage comes in because it is possible that a government could have won an election on the promise of spending the reserves with welfare programmes, and having been elected, that government has been stopped by the President from spending it. Can you imagine the groundswell that could be agitated, the intimidation that could be mounted on the President, the harassment that he will get, because the President is one man and he is not out there politicking? Intimidation can be exerted on the President, so you should also be looking for persons with physical courage.
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> [emphasis added]

79 Similarly, the Select Committee on the 1990 Bill stated (*Report of the Select Committee on the Constitution of the Republic of Singapore (Amendment No 3) Bill (Bill No 23/90)* (Parl 9 of 1990, 18 December 1990) at paras 6, 9 and 13):

> The Bill takes the approach that the Presidency is a post of the highest honour and responsibility. It is a custodial post of the highest importance. The President is expected to protect the country's financial reserves and safeguard the integrity of the public service. Therefore Presidential Candidates should not merely meet the minimal Constitutional qualifications and disqualifications applicable for election as an MP. *They should*

> *fulfil exacting standards of competence, experience and rectitude, which should be spelt out in the Constitution.*
>
> …
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> The issue is not the right of every citizen to stand for election as President, as some representors saw it. *It is to ensure that voters are given qualified and suitable candidates to choose from.* Only then will there be some guarantee that the right person is chosen to fulfil a most important role. …
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> …
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> These tests do not exist in the case of the Presidency. The President will be directly elected to that office. He does not even have to belong to a political party. *Safeguards are therefore necessary to guarantee that voters are given suitable candidates to choose from.* We will be more certain that the best man is elected by retaining, not abandoning, the pre-qualification approach. *The Constitution should therefore require aspirants to that office to have certain demonstrated attributes, experience and expertise.*
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> [original emphasis omitted; emphasis added in italics]

80 In the circumstances, I saw absolutely no basis for the plaintiff's attempt to impugn Art 19 of the Constitution on the basis of its purported inconsistency with Art 12(1) of the same. At this juncture, reference may once again be made to the plaintiff's contradictory acceptance of the eligibility criteria in the Supporting Affidavit (see [73] above).

Art 12(2) of the Constitution

81 The plaintiff's challenge based on Art 12(2) of the Constitution was targeted at Art 19B of the same and appeared to flow from the second prayer of the OS, which stated as follows:

> b. The amendments to the Elected Presidency Scheme (the "EPS") under the new Article 19B of the Constitution are incapable of being construed as being consistent with Article 12 of the Constitution, in that it is discriminatory on the grounds of race and is contrary to Article 12(2) of the Constitution;

82 In the Supporting Affidavit, the plaintiff contended that "the racial requirement in the upcoming reserved election and the hiatus-trigger status serve[d] as discrimination" contrary to Art 12(2) of the Constitution.[19] It was further submitted that the EPS "cause[d] discrimination on the grounds of ethnicity".[20] It appeared that these corresponded to his reference in his skeletal arguments to the "equal right to stand for elections regardless of our colour or variety of speech or belief, namely, race, language or religion".[21]

83 Again, the plaintiff did not explain why Art 12(2) of the Constitution could be used to invalidate Art 19B of the same. However, his case failed at the outset because Art 12(2) of the Constitution is *expressly subject* to other provisions of the Constitution:

> (2) *Except as expressly authorised by this Constitution*, there shall be no discrimination against citizens of Singapore on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
>
> [emphasis added]

84 This conspicuous qualification to Art 12(2) of the Constitution was either conveniently or carelessly glossed over by the plaintiff. The words "this Constitution" in Art 12(2) of the Constitution obviously include Art 19B of the same and there was thus no question of the two provisions being inconsistent with each other or of one having to concede to another.

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[19] Plaintiff's affidavit affirmed and filed on 22 May 2017, para 11.

[20] Plaintiff's affidavit affirmed and filed on 22 May 2017, paras 5 and 12.

[21] Plaintiff's skeletal arguments, para 1.

85 Moreover, even if one were to assume that Art 12(2) of the Constitution could be used to invalidate Art 19B of the same, this would not be tenable as the latter was not racially discriminatory and consequently not inconsistent with the former.

86 Art 12(2) of the Constitution prohibits, *inter alia*, "*discrimination against* citizens of Singapore on the ground only of … race" [emphasis added]. As the defendant rightly pointed out, this does *not* lay down a requirement of race-neutrality.[22] Indeed, the defendant pointed to various constitutional provisions which made it clear that the Constitution is not race-neutral. These included Art 152(1) of the Constitution, which states that "[i]t shall be the responsibility of the Government constantly to care for the interests of the racial and religious minorities in Singapore", as well as Art 39A of the Constitution, which establishes group representation constituencies to "ensure the representation in Parliament of Members from the Malay, Indian and other minority communities".[23]

87 In arguing that Art 19B of the Constitution was not racially discriminatory, the defendant relied heavily on the analysis of the PCMR on the reserved elections framework (*Report of the Presidential Council for Minority Rights on the Constitution of the Republic of Singapore (Amendment) Bill (Bill No 28/2016)* (Pres Co 21 of 2016, 25 November 2016) ("PCMR Report")). The PCMR's views do not, and cannot, bind the courts. Moreover, the PCMR's role does not correspond exactly with Art 12(2) of the Constitution. As pointed out by the defendant, the role of the PCMR includes scrutinising Bills passed by

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[22] Defendant's submissions, para 103.

[23] Defendant's submissions, para 115.

Parliament for "differentiating measures".[24] A "differentiating measure" is defined in Art 68 of the Constitution as follows:

> "differentiating measure" means any measure which is, or is likely in its practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly by giving advantage to persons of another community;

88 Notwithstanding, I agreed fully with the analysis of the PCMR and was of the view that its reasons for concluding that Art 19B of the Constitution would not, if enacted, be a "differentiating measure" as defined under Art 68 of the Constitution, applied equally to the question at hand, namely, whether Art 19B of the Constitution was inconsistent with Art 12(2) of the same.

89 First, the PCMR noted that the framework for reserved elections applies equally to three racial communities, namely, the Chinese community, the Malay community and the Indian or other minority communities (PCMR Report at para 4):

> The framework for reserved elections applies equally to three racial communities: the Chinese community, the Malay community, and the Indian and other minority communities. The three recognised communities fairly represent the broad racial makeup of Singapore, and each community is not advantaged or disadvantaged vis-à-vis the other communities.

90 In my view, this was the strongest argument against the plaintiff's challenge on the basis of Art 12(2) of the Constitution. The *equal* application of the reserved elections framework to the three racial communities was absolutely fatal to his case. The same hiatus applies to all three racial communities without exception. As the PCMR noted, each community is not advantaged or

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[24] Defendant's submissions, para 104.

disadvantaged vis-à-vis the other communities. There was clearly and categorically no "discrimination" to speak of.

91 Second, the PCMR stated that the purpose of reserved elections is also not discriminatory. Rather, the purpose of reserved elections is to *ensure* that the office of President will be representative of our multiracial society and to *foster* multiracialism (PCMR Report at para 5):

> The purpose of reserved elections is also not discriminatory. Reserved elections are meant to ensure that, over the long term, the office of President will continue to represent our multiracial society. The measure is borne out of a recognition that, while race neutrality is and remains a Singaporean ideal, active measures must from time to time be taken to foster multiracialism. Such measures, if tailored properly, should not be seen as disadvantaging any particular racial community.

92 Thus, far from engendering a racially-discriminatory framework, Art 19B of the Constitution in fact aims to *promote* multiculturalism. There was nothing which could be said to be discriminatory about this purpose.

93 Third, the PCMR observed that the reserved elections mechanism is tailored to be minimally intrusive (PCMR Report at para 6):

> In this regard, the reserved elections mechanism is tailored so as to be minimally intrusive. The default position will continue to be open elections for which all qualified individuals for which all qualified individuals are able to stand, regardless of their race. Reserved elections are meant to be a long-stop measure, triggered only by a five-term hiatus. The mechanism will not come into play if candidates from each of the major communities are regularly returned in open elections. In the case of elections reserved for any of the three recognised communities, the Council is satisfied that there is an adequate pool of candidates qualified to stand.

94 I accepted that this argument may not be particularly relevant in the context of Art 12(2) of the Constitution. However, it was helpful to bear in mind that open elections remain the default position, with reserved elections being

only a long-stop measure. The reserved elections framework is appropriately tailored to meet its purpose in a minimally-intrusive way. The wood should not be missed for the trees.

95 In the premises, there was similarly no basis for the plaintiff's attempt to impugn Art 19B of the Constitution on the basis of its purported inconsistency with Art 12(2) of the same.

96 At this juncture, I pause to make a final observation. If the plaintiff had intended to mount a *bona fide* and serious legal challenge to the legitimacy or constitutional validity of the EPS, it did not help that he did not seem concerned to take proper account of the facts and correctly appreciate the law before launching into sweeping and baseless allegations. Aside from vacillating over whether he was proceeding with the OS or seeking to commence judicial review proceedings (see [7] above), a simple case in point illustrates this. As mentioned earlier, the plaintiff maintained that the wool was being pulled over the eyes of the electorate and that other minorities were excluded under the reserved elections framework (see [35] above). This was plainly erroneous since Art 19B(6) of the Constitution defines a "community" to mean: (a) the Chinese community; (b) the Malay community; or (c) the Indian *or other minority* communities. Art 19B(6) of the Constitution further clarifies that a "person belonging to the Indian or other minority communities" means "any person of Indian origin who considers himself to be a member of the Indian community and who is generally accepted as a member of the Indian community by that community, *or any person who belongs to any minority community other than the Malay or Indian community*" [emphasis added]. There was simply no question of other minorities being excluded under the reserved elections framework. The plaintiff was but conjuring controversy when there was, in fact, none.

Conclusion

97 I was impelled to agree with the defendant that the OS was an "extraordinary" application.[25] The plaintiff's grounds of challenge were repeatedly unclear and there was no indication as to the specific relief or remedy being sought. What the plaintiff appeared to be primarily intent on doing was to ventilate his polemical views on politics and governance in Singapore. This much was plain from how the gravamen of his contentions pertained to political issues. Insofar as his submissions went, they were long on rhetoric but short on coherence and substantive legal merit.

98 I found that the plaintiff had no standing to bring the OS. It was insufficient that the plaintiff personally did not see eye-to-eye with the qualifying criteria in Art 19 of the Constitution or the reserved elections framework in Art 19B of the same. I also found that there was, in any event, no merit to the substantive issues raised by the OS. Even though the plaintiff had sought to portray the OS as a serious-minded constitutional challenge, the reality fell far short of this. To the contrary, the OS was unmeritorious in almost every conceivable aspect and I had no hesitation in dismissing it accordingly.

99 I did not accept the plaintiff's argument that costs should not be ordered against him on account of the OS having been brought in the public interest. The plaintiff had no standing (see [43]–[52] above). The OS was thus an abuse of process which, as the defendant pointed out, the court should not be made to suffer.[26] As such, costs ought to follow the event. I also had regard to the plaintiff's frequent gratuitous forays into irrelevant and irreverent sidebars as

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[25] Defendant's submissions, para 1.

[26] Defendant's submissions, para 6.

well as his scathingly intemperate allegations and insinuations. After one or two initial reminders that he was straying into irrelevancy, I formed the view that unless intervention was absolutely necessary, such reminders would serve little purpose as they would only result in protracted protestations and further unproductive exchanges.

100 Having regard to the plaintiff's status as a litigant-in-person, I did not think the defendant's suggested costs amount of $25,000 (excluding disbursements) for a one-day hearing was appropriate. I therefore ordered the plaintiff to bear the defendant's costs fixed at $6,000. In addition, I ordered him to bear the defendant's reasonable disbursements as quantified.

101 The parties were able to reach an understanding as to whether the costs order would be immediately enforceable and also as to the abridgement of time for filing a notice of appeal and the time-frame for the plaintiff's provision of security for costs of the appeal. The plaintiff has since filed his notice of appeal on 22 June 2017.

See Kee Oon
Judge

The plaintiff in person;
Deputy Attorney-General Hri Kumar Nair *SC*, Aurill Kam, Seow Zhixiang, Germaine Boey and Jamie Pang (Attorney-General's Chambers) for the defendant.
