Lee Hsien Loong v Singapore Democratic Party and Others and Another Suit [2006] SGHC 220

Case Number : Suit 261/2006, 262/2006, SUM 2838/2006, 2839/2006

Decision Date : 01 December 2006

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Davinder Singh SC, Tan Siu-Lin and Adrian Tan (Drew & Napier LLC) for the plaintiffs; M Ravi (M Ravi & Co) for the second and third defendants, absent

Parties : Lee Hsien Loong — Singapore Democratic Party; Chee Siok Chin; Chee Soon Juan; Ling How Doong; Mohamed Isa Abdul Aziz; Neo Ting Wei Christopher; Sng Choon Guan Gerald; Wong Hong Toy; Yong Chu Leong Francis

Civil Procedure – Rules of court – Defendants seeking second adjournment – Whether requirements for absence from court on medical grounds complied with – Whether other reasons to grant further adjournment existing – Order 35 r 2 Rules of Court (Cap 322, R 5, 2006 Rev Ed)

Civil Procedure – Summary judgment – Plaintiffs suing defendants for publishing allegedly defamatory articles about them – Whether articles defamatory in nature – Whether plaintiffs' applications for summary judgment should be allowed

Tort – Defamation – Defamatory statements – Plaintiffs members of local government – Actions brought by plaintiffs in personal capacity – Whether allegedly defamatory words referring to plaintiffs – Whether allegedly defamatory words defaming plaintiffs by implication – Whether defendants pleading common law defences of justification, qualified privilege and fair comment with sufficient particularity

1 December 2006

Belinda Ang Saw Ean J :

1 The plaintiff in Suit No 261 of 2006 is Mr Lee Hsien Loong ("LHL"), the Prime Minister of Singapore. The plaintiff in Suit No 262 of 2006 is Mr Lee Kuan Yew ("LKY"), the Minister Mentor in the Prime Minister's office and a cabinet minister. The second defendant in both suits, Ms Chee Siok Chin ("CSC"), is a member of the Central Executive Committee of the first defendant, the Singapore Democratic Party ("SDP"); the third defendant, Dr Chee Soon Juan ("CSJ"), is the secretary-general of the SDP. As CSJ is an undischarged bankrupt, leave of court was obtained on 26 April 2006 to commence these two suits against him. For convenience, Suit No 261 of 2006 and Suit No 262 of 2006 will be referred to hereafter collectively as "the present actions", and individually as "the LHL action" and "the LKY action" respectively. I should, for completeness, explain that initially, a number of other individuals were joined as defendants. The present actions were not eventually pursued against the fourth to the ninth defendants as they apologised and agreed to pay damages and costs. As for the first defendant, judgment in default was entered on 7 June 2006 after it failed to file its defence in the LHL action and the LKY action. For the purposes of this judgment, the expression "the defendants" refers to CSC and CSJ only.

2 In the present actions, the plaintiffs sued the defendants for publishing an allegedly defamatory article in an issue of the SDP's newspaper, *The New Democrat*, in or around February 2006 ("*The New Democrat Issue 1*"). The SDP was named as the publisher of *The New Democrat.* A permit under s 21 of the Newspaper and Printing Presses Act (Cap 206, 2002 Rev Ed) was issued jointly and severally to CSC as permit applicant and CSJ as chief editor of *The New Democrat*. Consequently, as the defendants admitted in their amended defence in both the LHL action and the LKY action, they were the persons in the SDP who were responsible for the publication, sale and/or

distribution of *The New Democrat Issue 1*.

3 The plaintiffs in the present actions applied for summary judgment under O 14 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) on 26 June 2006. Both O 14 summonses were listed for hearing on Monday, 11 September 2006. However, the events on 11 September 2006 ended in the hearing being adjourned to 10.00am on Tuesday, 12 September 2006. On Tuesday morning, CSJ applied for a further adjournment. The question for the court was whether or not it should again adjourn that morning's hearing. Before the court could rule on their application for an adjournment, CSC and CSJ walked out of the proceedings. I thereafter refused to grant them a further adjournment and proceeded, pursuant to O 32 r 5 of the Rules of Court, to hear the O 14 summonses in the defendants' absence. Interlocutory judgment for damages to be assessed was entered against the defendants in the LHL action as well as in the LKY action. I now state the reasons for my decision. For convenience, issues that are common to both actions are discussed together in this judgment, with coverage of plaintiff-specific matters set out under separate headings for the LHL action and the LKY action. I shall begin with my reasons for refusing a further adjournment of the O 14 hearing on 12 September 2006 before coming to the merits of the O 14 summonses proper.

Application to further adjourn the O 14 hearing

4 It is necessary to say something about the background to the present actions. Both O 14 summonses were originally fixed for hearing before Woo Bih Li J on 3 August 2006, but were subsequently re-fixed for hearing on 16 August 2006 before me. On 16 August 2006, I adjourned the hearing of the O14 summonses to after the disposal of the Notice of Appeal purportedly taken out in Originating Summons No 1203 of 2006 ("OS 1203"). The defendants later indicated that they were not going to pursue the appeal in OS 1203. Thereafter, upon receiving confirmation on 22 August 2006 from the lawyers for both sides that they would be ready to take any available hearing date in the week beginning 11 September 2006, the Registry fixed the O 14 summonses in the present actions for hearing on Monday, 11 September 2006 at 10.00am. The respective law firms were informed of this by a notice which the Registry issued on 25 August 2006.

5 On Monday, 11 September 2006, CSJ, who was accompanied by CSC, informed the court that their counsel, Mr M Ravi, was unwell to attend court. He was said to be suffering from physical and mental exhaustion. The source of counsel's exhaustion was supposedly his heavy workload. An adjournment for an unspecified duration was sought to enable Mr Ravi to recover. There was, however, no medical evidence adduced in support of Mr Ravi's condition. Given the circumstances, I stood the proceedings down to 2.30pm for a medical certificate to be produced.

6 At the resumed hearing that afternoon, CSJ tendered a note and a medical certificate from a dentist who had treated Mr Ravi for pericoronitis caused by poor oral hygiene in the area around the lower right wisdom tooth. The medical certificate stated that Mr Ravi was unfit for duty for Monday, 11 September 2006. Apart from the periodontal complaint, which was a new development, Mr Davinder Singh SC, counsel for LHL and LKY, pointed to some additional discrepancies in the medical certificate and the dentist's note. First, the note and the medical certificate were in the main not in compliance with para 13, Part II of the *Supreme Court Practice Directions* (2006 Ed) which regulates absence from court proceedings on medical grounds. Second, the dentist's note was written in black ink whereas the date on the note was written in blue ink.

7 Notwithstanding the above anomalies, since Mr Ravi's medical leave was for only one day, I adjourned the hearing of the O 14 summonses for a second time to the following day (*ie* Tuesday, 12 September 2006) at 10.00am. I also directed that Mr Ravi was to attend the adjourned hearing. Mr Singh was to inform Mr Ravi's office of the adjourned hearing and the court's direction.

8 On the morning of Tuesday 12 September 2006, CSJ informed the court that Mr Ravi would not be attending. He claimed that Mr Ravi was still unwell. No medical certificate was produced on behalf of Mr Ravi to either cover or shed light on his absence despite the court's direction the previous day. Mr Singh had earlier confirmed that he had written to Mr Ravi informing him to attend the adjourned hearing, which letter had been hand-delivered by a court clerk from Mr Singh's firm to Mr Ravi's office.

9 In the absence of medical evidence that Mr Ravi was medically unfit to conduct the case in court on 12 September 2006, and bearing in mind the requirements of the *Supreme Court Practice Directions* which had already been highlighted the previous day (a copy of the relevant provisions was even sent to Mr Ravi under cover of Mr Singh's letter dated 11 September 2006), I was of the view that Mr Ravi's absence *per se* was certainly not a ground for an adjournment. The question was then whether there was nonetheless some other good or valid reason for granting a further adjournment of the O 14 summonses.

10 Where genuine or well-founded reasons are offered in support of a request for an adjournment, the court, in the exercise of its discretion, will have to decide what would, as far as possible, be a fair outcome for all the parties. The court has to balance, on the one hand, the prejudice caused to the party opposing the adjournment if the request is granted and, on the other hand, the position of the requesting party if the adjournment is refused. An important consideration in this regard is whether the requesting party will be able to proceed with the substantive hearing if the adjournment is refused. That, however, turned out to be a non-issue as the events of 12 September 2006 unfolded.

11 CSJ changed his position several times in the course of explaining why the defendants wanted a further adjournment. Initially, he simply stated that Mr Ravi was not well enough to attend court. There was no mention of Mr Ravi having been discharged as his counsel. Later, CSJ announced that Mr Ravi was no longer his lawyer. He claimed that he had discharged Mr Ravi and had also informed the latter of the discharge. On this basis, CSJ sought an adjournment of one to two weeks to look for another lawyer. Since CSJ was also speaking on behalf of CSC, her position on the matter mirrored his. In any case, I was left in no doubt of her stance from the defendants' subsequent joint decision to walk out and not participate in the proceedings.

12 The defendants abjectly insisted that the court should grant them an adjournment without hearing the reasons for Mr Singh's objections to their request. After conferring briefly with CSC outside chambers, CSJ reiterated that the defendants did not wish to play any part in the proceedings without having a lawyer to advise them on Mr Singh's objections to an adjournment. Again, CSJ announced their joint decision to leave and thereafter promptly walked out, thus ignoring first, the court's stand that it would only rule on their application for an adjournment after hearing Mr Singh, and second, the court's warning of the likelihood of Mr Singh pressing on with the hearing of the O14 applications in the defendants' absence.

13 Consequently, I heard Mr Singh's arguments resisting the application for an adjournment in the defendants' absence. Mr Singh submitted that as no medical certificate had been produced, the inference was that Mr Ravi was no longer unwell. Yet, Mr Ravi was not in court despite the court's specific direction the previous day. To Mr Singh, that, coupled with CSJ's sentiment that Mr Ravi should continue to act for the defendants even though he was said to have been discharged as counsel, gave rise to an irresistible inference that the defendants' purpose in asking for an adjournment was simply to delay the proceedings. The purported discharge of Mr Ravi, it was submitted, was yet another deliberate ploy on the defendants' part to further stall the proceedings.

14 To support his contention, Mr Singh outlined in brief the delays in the progress of the present actions beginning with the filing of OS 1203 after the defendants learnt on 14 June 2006 that the plaintiffs were intending to apply for summary judgment. Mr Singh pointed out that having successfully obtained an adjournment of the hearing of the O 14 applications scheduled for 16 August 2006, the defendants had no further need of the Notice of Appeal (see [4] above). It was significant that on 22 August 2006, the defendants informed the Registry by letter that they were no longer proceeding with that appeal. Mr Singh maintained that the defendants' manoeuvrings of 11 and 12 September 2006 were part and parcel of their delay tactics.

15 In view of the pattern of the defendants' conduct which I have recounted in my written judgment for OS 1203 (see *Chee Siok Chin v Attorney General* [2006] 4 SLR 541), I agreed with Mr Singh. I found it difficult to explain the defendants' conduct in instituting OS 1203, which was patently unmeritorious, on any plausible basis, save on the ground that the defendants were attempting to drag out the proceedings in the present actions.

16 Above all, factually and more importantly, the defendants walked out even before the court had had an opportunity to rule on their application for an adjournment. In my view, their absence was a deliberate attempt to coerce the court into granting them an adjournment. This was decidedly material to the exercise of my discretion in refusing an adjournment. It superseded any need to consider whether the defendants would be able to proceed with the O 14 summons if the adjournment was refused (see [10] above). A court has to be astute and alert to stratagems such as the staged exit devised by the defendants; otherwise, the court would be playing into the hands of a litigant who deliberately walks out of proceedings in a fit of pique and yet manages to secure an adjournment by simply not being there. If that happens, the court will be seen to be rewarding defiant, disdainful, unruly, and disruptive behaviour. Any conduct that attempts to thwart the court's process, as was the case here, cannot be countenanced as it seeks to undermine the court's authority and brings the court into disrepute. Similar sentiments were expressed in no uncertain terms by Yong Pung How CJ in *Re Tan Khee Eng John* [1997] 3 SLR 382 at [14]:

> There are many things which a lawyer or litigant can do which do not necessarily hinder or delay court proceedings, but which nevertheless interfere with the effective administration of justice by evincing contemptuous disregard for the judicial process and by scandalising or otherwise lowering the authority of the courts. We are inviting anarchy in our legal system if we allow lawyers or litigants to pick and choose which orders of court they will comply with, or to dictate to the court how and when proceedings should be conducted.

17 For all these reasons, I refused the defendants' unmeritorious application for a further adjournment of the hearing of the O 14 summonses.

Summonses for summary judgment

18 I now turn to the substantive merits of the plaintiffs' applications for summary judgment in the present actions. The defendants filed a joint defence and a joint affidavit opposing the summary judgment application in each suit. Mr Ravi also filed written submissions on their behalf. The common question which I had to decide for both the LHL action and the LKY action was whether, based on the materials and arguments tendered by the defendants, they had shown that the claims in each action should go for trial. But before that, Mr Singh had to first establish that the passages which the plaintiffs complained of ("the Disputed Words") were defamatory of LHL and LKY. In order to do so, Mr Singh must show that: (a) the Disputed Words bore a defamatory meaning (a question of law which may be determined summarily under the O 14 procedure: see *Microsoft Corp v SM Summit Holdings Ltd* [1999] 4 SLR 529), and (b) the Disputed Words were published of the plaintiffs.

19 At this juncture, I will deal with one further argument put forward by the defendants, which was that it would be wrong to give summary judgment in the present actions as complex issues were involved. With respect, this is not an answer to a claim for summary judgment if the claim is otherwise well-founded.

The Disputed Words

20 The Disputed Words, which are set out in the statement of claim filed in each of the present actions, consisted of words from an English article ("the English Words"), words from a Chinese article ("the Chinese Words") and a photograph ("the Photograph") which were published in *The New Democrat Issue 1*. There was no issue of the Disputed Words having been taken out of context so as to affect their interpretation.

21 The English Words appeared in an article ("the English Article") which spanned pages 4–5 of *The New Democrat Issue 1*. The English Article was entitled "Govt's role in the NKF scandal" and was referred to on the cover page of the newspaper as follows:

> What's the Govt's role in the NKF [National Kidney Foundation] scandal? – page 4 Peanuts Action Party.

22 On page 5, there was a stand first which formed part of the English Article. It read as follows:

> It is impossible not to notice the striking resemblance between how the NKF operated and how the PAP [People's Action Party] runs Singapore. It would take someone foolishly blind not to be concerned with how our financial reserves and CPF [Central Provident Fund] savings are dealt with. Here are the similarities.

There was a text box on that same page, which contained the following words in bold, enlarged font:

> If you think the running of NKF was bad, read this …

23 The English Words which the plaintiffs complained of were these:

> The NKF fiasco is not about bad practices. It is not even about negligence on the Government's part.
>
> It is about greed and power.
>
> It is about the idea that the political elite must be paid top dollar, no matter how obscene those amounts are and regardless of who suffers as a result of it.
>
> It is about a system engineered over the decades by the PAP that ensures that it and only it has access to public information and by fiat decides what is allowed and what is not.
>
> It is about what a "democratic society, based on justice and equality" should not be.
>
> Singaporeans must note that the NKF is not an aberration of the PAP system. It is, instead, a product of it.
>
> …

Lack of Transparency

…

How does this compare to the PAP? The Government of Singapore Investment Corporation (GIC) is a business entity set up, and chaired, by Mr Lee Kuan Yew to manage and invest our national reserves.

Incredibly, the GIC will not give an account of its investments (how and where our money is invested, and the profits/losses they record) to the people. Even Parliament is not privy to the information. The GIC operates in secrecy.

The HDB [Housing and Development Board] is no better. It continues to stonewall longstanding questions about the actual cost of building the flats and the profits it makes when it sells these flats to the people.

What about the CPF? Many Singaporeans are still concerned that the Fund is broke and that is the reason why the Government comes up with all these schemes to retain our CPF savings even when we retire.

…

Defamation suits

Singaporeans have known this for a long time but it needed the NKF scandal to drive home the point: The use, or rather abuse, of defamation laws in this country has led to a situation where wrong-doings cannot be exposed.

…

Its [The PAP's] officials, starting from Mr Lee Kuan Yew on down, regularly sue their political opponents.

The cases of Mr JB Jeyaretnam, Mr Tang Liang Hong, and Dr Chee Soon Juan are just a few examples.

Authoritarian control

It is obvious now that the NKF was run in an autocratic manner. The KPMG report said: "Power was centred around one man, and was exercised in an ad-hoc manner through Mr Durai and his coterie of long-serving assistants."

Is not power in Singapore centred around one party, if not one individual?

With the PAP monopolizing power and making sure that no one has the means to challenge that hold on power (by banning protests, introducing GRCs [Group Representation Constituencies], suing political opponents, making legitimate democratic actions criminal offences, etc) are we not witnessing the NKF but on a larger and national scale?

…

The use of the media

…

With the control of the media, the PAP Government has likewise been able to present good news to the people and take credit for them (justified or not), hide the bad news, and portray the opposition in the most undesirable light possible.

Again, without a free media to expose the excesses of the Government, Singaporeans will never know what is going on behind the scenes and officials like Mr Durai and the PAP will continue to use their "victorious" lawsuits as a measure of competence and absence of wrongdoing.

24 The article containing the Chinese Words ("the Chinese Article") was published on page 18 of *The New Democrat Issue 1*. The Chinese Words were as follows:

这个丑闻不只是经营不当，或者政府的疏忽的结果。这最主要的原因就是贪心和权利的组合。这是因为政府坚持所谓的精英分子应该领取高薪的原则。不管这薪金是否高到不合理的地步,也不管这种高薪的结果是否影响到更应该受惠的人。

这就是行动党几十年来所塑造的制度。结果只有行动党和它所谓的精英分子,才有控制大众的财力资源和媒体信息的权力。这就是民主社会所倡导的公正和公平的极度反面。

我们必须了解全国肾脏基金会并不是行动党制度下的一个意外事件，它正是行动党制度下的产物。

。。。

全国肾脏基金会的丑闻事件当然总是会找到必须负责的人。但是，　真正的经营上的透明度，则要从政府的更高阶层来做起。

25 The defendants did not dispute the accuracy of the English translation of the Chinese Words, parts of which are reproduced below:

This scandal is not just about improper management or the result of the government's negligence. The main cause of this is the combination of greed and power. This is because the government insists on the principle of offering high salaries to the so-called [elite], regardless of whether such salaries are unreasonably high and mindless as to whether the consequences of such high salaries have affected those who deserve to receive more rewards.

This is the system that the People's Action Party has moulded over the decades. As a result, only the People's Action Party and its so-called [elite] have the financial resources to control the public and the power to control the media. This is the extreme opposite of the justice and impartiality advocated by a democratic society.

We must understand that the National Kidney Foundation is not an accidental event under the PAP system. It is precisely a product of the PAP system.

…

There will, of course, be those found to be responsible for the National Kidney Foundation scandal. However, true operational transparency will have to begin from a higher level in the government.

26 As for the Photograph, it appeared on page 9 of *The New Democrat Issue 1*. It depicted four protestors, one of whom was CSC, holding a protest. Two of the protestors wore T-shirts with the words "National Reserves" and "HDB GIC" inscribed on either side. The other two protestors wore T-shirts with the words "Be Transparent Now" and "NKF CPF" inscribed on either side. The protestors also held a placard. The caption to the Photograph reads:

> Calling for transparency: The protest outside the CPF Building. Following the NKF scandal Singaporeans must press the Government for transparency and accountability.

(a) Matters admitted by the defendants

27 It is pertinent that I highlight, at this juncture, those parts of the statement of claim in the LHL action and the LKY action which have been admitted by the defendants. As I shall explain below, these admissions were material to my finding that the Disputed Words were defamatory of the respective plaintiffs.

28 In respect of the LHL action, the defendants admitted that the averments in paras 11–17 of the statement of claim relating to (a) past defamation suits by the plaintiff ("the past Defamation Actions") and (b) what the plaintiff's counsel termed "the NKF Saga" were in the public domain and were of general knowledge. The past Defamation Actions and the NKF Saga were set out in the section of the statement of claim headed "Background and Context" as follows:

> 11. The following matters in this Part are in the public domain and/or are of general knowledge. At trial, the Plaintiff will refer to the relevant articles and programmes published in the local print and broadcast media.
>
> 12. The Plaintiff has at various times sued for defamation (the "**Defamation Actions**"). A list of a number of the Defamation Actions, the relevant defendants, the gist of the allegations in each of the Defamation Actions and the result of the proceedings is set out at Annex A. The Plaintiff has also successfully obtained damages and/or apologies from others where, *inter alia*, allegations of nepotism and/or corruption were made against him.
>
> 13. From July 2005 to the date of this Writ, there has been widespread interest in Singapore in what has come to be known as the "NKF Saga".
>
> PARTICULARS OF NKF SAGA
>
> (a) On 11 July, 2005, trial of a libel action ("**NKF Suit**") brought by the National Kidney Foundation ("**NKF**") and its the [*sic*] Chief Executive Officer T.T. Durai ("**Durai**") against Singapore Press Holdings commenced. The proceedings of the NKF Suit were extensively reported in the local press. In the course of and after the trial, issues arose in relation to NKF's funds and their use, the benefits enjoyed by its former management, the characterisation of Durai's salary and defamation suits brought by NKF and/or Durai.
>
> (b) Over the next few days, public outrage erupted on an unprecedented scale across Singapore. It culminated on 14 July, 2005 when Durai and his entire 15-member board of the NKF resigned.
>
> (c) In August 2005, the interim board of the NKF invited the police and the Inland Revenue Authority of Singapore to investigate into the activities of the former board of the NKF.

(d) On 19 December, 2005, an independent auditor appointed by the interim board of the NKF released a 332-page report criticizing the manner in which the former NKF board and Durai managed the financial affairs of the NKF.

(e) On 17 April, 2006, Durai was arrested by the Corrupt Practices Investigation Bureau, released on police bail and ordered to appear in court the following day.

(f) On 18 April, 2006, Durai, three former directors and an employee of the NKF were charged in court for, inter alia, corruption and breach of fiduciary duties.

(g) On 24 April, 2006, it was reported that the NKF had commenced civil proceedings against Durai and some former members of the NKF board of directors for, inter alia, breach of fiduciary duties.

14. The NKF Saga including the facts and circumstances set out herein were extensively reported in the local print and broadcast media and were widely known in Singapore.

15. On 11 August 2005, 4 protestors (the "**Protestors**") comprising the 2nd Defendant, Yap Keng Ho ("**Yap**"), N Gogelavany ("**Gogelavany**") and Tan Teck Wee ("**Tan**") conducted a protest (the "**Protest**") outside the Central Provident Fund ("**CPF**") Building. The 2nd Defendant and Yap wore T-shirts with the words "National Reserves" and "HDB GIC" inscribed on either side. Gogelavany and Tan wore T-shirts with the words "Be Transparent Now" and "NKF CPF" inscribed on either side. The Protestors also held a placard. The Protestors were dispersed by the police who also seized their placard and T-shirts.

16. By Originating Motion 39 of 2005, the 2nd Defendant, Yap and Gogelavany (the "**Applicants**") filed an application in the High Court for a declaration that the police and the Minister for Home Affairs acted in an unlawful and unconstitutional manner when the Applicants were ordered to disperse by the police during the Protest. After a full hearing, the High Court held:

> *An objective view of the printed words on the T-shirts and the placards would leave no doubt that the protestors were neither affably nor gently raising queries; rather they were patently attempting to undermine the integrity of not just the CPF Board but also the GIC and the HDB by alleging impropriety against the persons responsible for the finances of these bodies ('the institutions'); in addition, they were calling into question the dealings of the institutions with the "National Reserves". This was a conscious and calculated effort to disparage and cast aspersions on these institutions and more crucially on how they are being managed. I cannot but take judicial notice of the fact that any attempt to link the institutions to the NKF at that point of time, 11 August 2005 and pending further public clarification, would be tantamount to an insinuation of mismanagement and financial impropriety. The governance and finances of the NKF were in July and early August 2005 caught in a swirl of negative and adverse publicity. Information and material that entered the public domain as a consequence of litigation involving its former chief executive officer, became the source of widespread and grave public disquiet. A toxic brew of inexplicable accounting practices, corporate unaccountability, lack of financial disclosure and questionable management practices created an atmosphere cogently suggesting financial impropriety. On 20 July 2005, the Minister of Health, Mr Khaw Boon Wan, announced in Parliament that the new NKF Board had appointed an accounting firm, KPMG, to commission a detailed review of the NKF's financial controls; see s 59(1)[(d)] of the Evidence Act (Cap*

97, 1997 Rev Ed). To associate or link the institutions (and in particular the CPF) with the NKF, as it was then perceived, is to tarnish them with financial impropriety and sully their standing and integrity. Such an association does not merely allege impropriety. It was a patent attempt to scandalize the institutions and their management by association. Leaving aside for present purposes the question as to whether the words are per se defamatory of these corporate entities and/or their management, the issue is whether these words are prima facie insulting and/or abusive within the meaning of ss13A and/or 13B of the [Miscellaneous Offences Act].

[original in italics]

17. The facts and circumstances relating to the Protest, including those set out herein, were extensively reported in the local print and broadcast media and were widely known in Singapore.

29 The averments in the LHL action in respect of the NKF Saga were reproduced in paras 17 to 21 of the statement of claim in the LKY action. The defendants likewise admitted the facts alleged in those paragraphs. In addition, they did not dispute that it was a matter of general knowledge that: (a) LKY had successfully obtained damages and apologies in previous defamation actions against persons who, *inter alia*, had made allegations of nepotism and/or corruption against him; and (b) CSJ had issued an apology pursuant to one such defamation suit brought by LKY in 2001 ("the CSJ Suit"). The salient matters concerning the CSJ Suit were described in paras 12 to 16 of the statement of claim filed in the LKY action as follows:

12. The Plaintiff has at various times sued for defamation (the "**Defamation Actions**"). A list of a number of the Defamation Actions, the relevant defendants, the gist of the allegations in each of the Defamation Actions and the result of the proceedings is set out at Annex A. Among the Defamation Actions is Suit No. 1459 of 2001 (the **"CSJ Suit"**). The Plaintiff has also successfully obtained damages and/or apologies from others where, inter alia, allegations of nepotism and/or corruption were made against him.

13. In the CSJ Suit, the Plaintiff sued CSJ for defamation in respect of CSJ's allegations that the Plaintiff is dishonest, unfit for office and had misled Parliament. After the Plaintiff issued his letter of demand, the Plaintiff and CSJ entered into a compromise (the **"Compromise"**) on the following terms:

(a) CSJ would publish an apology (the **"Apology"**) at his expense with appropriate prominence in the Straits Times and the Today newspaper by 3 November 2001;

(b) CSJ would read out the Apology at an SDP election rally no later than 10 p.m. on 2 November 2001;

(c) CSJ would make an offer of damages to the Plaintiff by 10 a.m. on 2 November 2001 and compensate the Plaintiff by way of damages;

(d) CSJ would indemnify the Plaintiff in respect of costs incurred by the Plaintiff in connection with the CSJ Suit; and

(e) In consideration of the above, the Plaintiff would agree not to ask for the full damages that he would otherwise be entitled to.

14. On 31 October 2001, CSJ read out an apology (the **"Apology"**) to the Plaintiff at an SDP rally. The Apology read:

> *1. On Sunday 28 October 2001, during a walkabout at Jurong GRC and, later, at a rally at Nee Soon Central, I made certain statements which were understood to mean that Senior Minister Mr Lee Kuan Yew is dishonest and unfit for office because*
>
> > *(a) Mr Lee Kuan Yew concealed from Parliament and the public and/or deliberately misled Parliament in relation to, a $17 billion loan made to Indonesia; and*
> >
> > *(b) Mr Lee Kuan Yew's continued evasion of the issue was because he had something discreditable to hide about the transactions.*
>
> *2. I admit and acknowledge that I had no basis for making these allegations and that they are false and untrue.*
>
> *3. I, Chee Soon Juan, do hereby unreservedly withdraw these allegations and apologise to Mr Lee Kuan Yew for the distress and embarrassment caused to him by my false and baseless allegations.*
>
> *4. I hereby also undertake not to make any further allegations or statements to the same or similar effect. I also wish to state that I have agreed to pay Mr Lee Kuan Yew damages by way of compensation and to indemnify him for all costs and expenses incurred by him in connection with this matter.*
>
> *(Signed)*
> *Chee Soon Juan*
>
> [original in italics]

15. CSJ published the Apology in the 2 November 2001 editions of the Straits Times and the Today newspapers. CSJ also expressly undertook to the Plaintiff not to make "any further allegations or statements to the same or similar effect" ("**CSJ's Undertaking**").

16. The facts and circumstances relating to the Defamation Actions and the CSJ Suit were extensively reported in the local print and broadcast media and were widely known in Singapore.

(b) Whether the Disputed Words referred to the plaintiffs

30 The burden was on the plaintiffs to establish that the Disputed Words were published of and concerned LHL and LKY.

31 The defendants denied that the Disputed Words either referred to the plaintiffs or would be understood to refer to LHL and LKY. They argued that the English Article (and hence the Disputed Words) referred "to the entire Government and the system of non-transparent and non-accountable governance"[note: 1] which the PAP, as the dominant ruling party, had built up over the years. References in the English Words to the PAP and the Government related to these bodies as independent entities, and not to LHL and LKY in their personal capacity. If at all, LKY was referred to descriptively by name only twice in the English Words in a limited context, namely:

(a) he was mentioned as the chairman of the GIC; and

(b) he was named as having regularly sued his politically opponents.

32 The defendants further submitted that the people of Singapore have the capacity to, and in fact generally do distinguish the Government and the PAP from the plaintiffs. In fact, a leading member of the Government had himself understood the English Article to refer to the Government as an independent entity, as evinced by the report in *The Straits Times* (24 April 2006) in which Senior Minister Goh Chok Tong had remarked that the English Article defamed the Government.

33 On these grounds, the defendants argued that the question of who was the proper plaintiff in the present actions was an issue that should be tried. In any case, so the defendants' argument developed, the Government cannot sue for defamation. The defendants cited the English case of *Derbyshire County Council v Times Newspapers* [1993] AC 534 ("*Derbyshire*") in support of their proposition that a government or public body cannot be defamed and, hence, cannot sue for defamation. The defendants pointed out that *Derbyshire* had not been raised or canvassed in Singapore before either the High Court or the Court of Appeal. They contended that since there is authority that a government cannot sue for defamation, it is questionable whether individual members within a government have *locus standi* to sue.

34 In deciding whether the Disputed Words were published of and concerning the plaintiffs, the question I had to decide was one of reference: Are the Disputed Words capable of being understood to refer to LHL and LKY? As the defendants rightly observed, LHL was not named at all in the Disputed Words, while LKY was referred to by name in only some passages of the English Article (see [31] above).

35 It could not be disputed that the present actions were not brought by the Government. Instead, they were brought by two individuals suing not in their official capacity, but as private citizens who were concerned that their individual reputation had been tarnished by the publication of the Disputed Words and who had thence separately brought these proceedings for defamation. Like any other ordinary citizens, politicians too have the same recourse to the courts to protect their reputation, especially when defamatory statements about the Government or any political institution are capable of being understood to be referring to them. There are cases in which the language used is intended to refer to a body or class of persons so much so that every individual member of the body or class so referred to (whether expressly, impliedly or inferentially) may have a cause of action. This legal principle was affirmed by VK Rajah J in *Chee Siok Chin v Minister of Home Affairs* [2006] 1 SLR 582 where *Derbyshire* was considered at [68]:

> The case [*Derbyshire*], however, makes it clear that the decision itself does not affect the right of an individual member or officer of a government body to sue if the statement about the body is capable of being interpreted as referring to the individual. Indeed, the ability of the individual to sue seems to be regarded as a reason for denying such a right to the body: *Gatley on Libel and Slander* [Sweet & Maxwell, 10th Ed, 2004] at para 8.20.

36 The Court of Appeal in *Tang Liang Hong v Lee Kuan Yew* [1998] 1 SLR 97 rejected the proposition that *Derbyshire* restricts the rights of individuals who hold public office to sue for libel. The appellate court said:

> [116] Clearly these two cases [*Derbyshire* and *City of Chicago v Tribune Co* (1923) 139 NE 86] are distinguishable from the instant case. In each of the two cases the party suing was a public authority and as a matter of policy the laws in those jurisdictions do not permit such an authority to bring an action for libel. In the case before us, the plaintiffs are individuals suing as private citizens. None of them brought the action in their official capacity. Even under English law, a

prime minister or a minister in office may sue in their private capacity for damages in respect of defamation matters published of them and depending on the circumstances may recover substantial damages. Mr Gray himself realises this crucial difference because, in the next breath, he says that Mr Tang 'is not arguing that politicians should forfeit the right to protect their reputations by means of libel actions'.

[117] As Mr Gray concedes, politicians, like any other citizens, do not forfeit the protection of their reputations merely because they have entered the political arena and assumed high offices. Freedom of expression is perfectly legitimate so long as it does not encroach upon the realm of defamation. On this point, we repeat what this court said in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 2 SLR 310 at p 332:

> It ... cannot be disputed that the freedom of speech and expression provided in art 14 is not absolute or totally unrestricted. Certainly Mr Gray is not disputing this, and is not contending that the appellant under art 14 has the right to say 'anything'. An absolute or unrestricted right of free speech would result in persons recklessly maligning others with impunity and the exercise of such a right would do the public more harm than good. Every person has a right to reputation and that right ought to be protected by law, Accordingly, a balance has to be maintained between the right of free speech on the one hand, and the right to protection of reputation on the other. The law of defamation protects such right to reputation, and, as we have shown, it was undoubtedly intended by the framers of our Constitution that the right of free speech should be subject to such law.

[118] Accordingly, if a person chooses to defame another or others, he must pay for the consequences with damages to be assessed according to the prevailing law. Any argument which calls for a reduction or moderation of damages purely on the basis that the successful plaintiff is a politician, say a minister, or that the case has a political flavour is untenable and wrong. To accept such a contention is to allow a person more latitude to make defamatory remarks of such personality and to escape with lesser consequences for the defamation he committed. Such a result, if permitted, would be in violation of art 12(1) of our Constitution ...

[119] No one is free to defame with impunity another person irrespective of whether such person is a politician or ordinary citizen. Freedom of expression comes with responsibility, and a breach of such responsibility would be visited with consequences ... sometimes serious consequences.

37 Consequently, as Mr Singh rightly submitted, if the individual reputations of members of the Government are wronged by a publication, any of these members can, in his personal capacity, bring proceedings for defamation. In the context of the present actions, it means that if the Disputed Words would reasonably be understood as having been published of each member of the current Government, then LHL and LKY, as individual members of the Government, may sue as they each have a cause of action.

(i) Reference to LHL

38 I was satisfied that the ordinary reader would have understood the Disputed Words as importing a reference to LHL. On the defendants' own contention, these words referred to the Government of the day. It is indisputable that LHL is the individual who is leading the present Government, in contrast to LKY who is the individual who led the Government in the past "for decades".

39 Dealing first with the English Words, they posed the question: "Is not power in Singapore centred around one party, if not one individual?" The ordinary reader would be aware that the "one party" is the PAP, and that the "one individual" must be the person at the top, namely, the secretary-general of the party and the Prime Minister of Singapore – *ie* LHL. Another passage in the English Article concerned criticisms against certain cabinet members over the NFK "scandal" and stated that "someone must be held accountable over the whole sordid NKF affair. However, real accountability starts much higher up." In context, that statement is referable to LHL as he is the only one "much higher up" than the cabinet members; he was also the person in charge of the Government at the time the NFK Saga became public. The English Words further mentioned that officials of the PAP "starting from Mr Lee Kuan Yew on down, regularly sue their political opponents" like Tang Liang Hong. LHL is an official of the PAP and he has sued Tang Liang Hong on three occasions.

40 The Chinese Words were likewise referable to LHL. The Chinese Article spoke of the "so-called elites [sic]" of the PAP. It then went on to criticise various national institutions and pointed the finger of blame at "a higher level in the government" than cabinet ministers. The ordinary reader would understand the clear message that it was LHL - the head of the Government and part of the "elite" at a "higher level in the government" than cabinet ministers - who was being referred to.

41 As for the Photograph, its subject matter was the protestors wearing T-shirts and holding up a placard. The ordinary reader would know that LHL, as Prime Minister, is the person ultimately responsible for the custody and management of the national reserves and of government institutions such as the GIC, the HDB and the CPF Board. As such, I was satisfied that the Photograph also referred to LHL. Separately, the defendants in their written submissions had acknowledged that "the comments made about HDB and CPF relate to present concerns"[note: 2] and that, in the context of their argument, was plainly referable to LHL as the Prime Minister of the day.

(ii) Reference to LKY

42 To the extent that LKY was named in the English Article, readers would of course have taken those parts of the article to be referring to LKY. I accepted Mr Singh's submissions that the references in the English Words to a "system engineered over the decades by the PAP" were plainly references to LKY as he was the only Prime Minister, as well as the only secretary-general of the PAP, to have held office "over the decades". The reference to "[t]he cases of Mr J B Jeyaretnam, Mr Tang Liang Hong and Dr Chee Soon Juan" was, *inter alia*, a reference to the previous defamation actions filed by LKY, suits that were a matter of general knowledge as the defendants themselves admitted (see [29] above). The Chinese Words were likewise referable to LKY. They mentioned a "system that the People's Action Party has moulded over the decades" for the benefit of the "so-called elites [sic]" of the PAP. The ordinary reader would naturally conclude that LKY is certainly one of the "elite" referred to.

43 The Photograph provides the ordinary reader with yet another reference to LKY due to the inscriptions on the T-shirts depicted therein (see [26] above). It is a matter of general knowledge that LKY is the chairman of the GIC. His chairmanship was also expressly stated in the English Words. CSC and CSJ did not deny that it is a matter of general knowledge that LKY and the prime ministers who succeeded him had devised policies in connection with national issues such as housing and wages, which policies have been implemented by institutions such as the HDB and the CPF Board. However, the defendants disagreed that LKY was being referred to by the inscriptions "HDB" and "CPF" on the protestors' T-shirts. They submitted[note: 3]:

(d) It may be a matter of general knowledge that the Government, while under the leadership of

[LKY], devised policies in connection with housing and wages which were implemented by the HDB and the CPF Board. However, many years have passed since [LKY] retired from the position of Prime Minister, and the comments made about HDB and CPF relate to present concerns.

(e) It may be a matter of general knowledge, as stated by [LKY] in paragraph 26 of his Affidavit in Support of the Application for Summary Judgment, that the HDB and CPF are statutory boards controlled by and are accountable to the Government. However, neither the HDB nor the CPF is controlled by or accountable to [LKY].

44 The defendants' contentions reproduced above in [43] are not counterpoints to the issue of reference. Not only are these arguments inherently inconsistent, but the defendants have also admitted that the HDB and the CPF Board are controlled by and are accountable to the *present* Government, of which LKY is a member and LHL is the head of the Government. In this regard, I agreed with Mr Singh that the defendants' position that the Disputed Words referred to the Government actually assisted LHL and, to a limited degree, LKY.

(c) The natural and ordinary meaning of the Disputed Words

45 I now turn to the question of what interpretation ordinary, reasonable readers would have placed upon the references to LHL and LKY in the Disputed Words. The burden rests on the plaintiffs to establish that, on a balance of probabilities, the passages which they complained of were defamatory of them individually in the sense that the passages bore the defamatory meanings contended for by LHL and LKY respectively.

46 The principles applicable in determining the natural and ordinary meaning of the words complained of in a defamation action are settled. The natural and ordinary meaning may be either the literal meaning or an implied, inferred or indirect meaning. It is a meaning that does not require the support of extrinsic facts surpassing the general knowledge of the ordinary reader. As Lord Morris of Borth-y-Gest in the Privy Council's decision in *Jones v Skelton* [1963] 3 All ER 952 explained at 958:

> The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words…The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words ...

These legal principles were reiterated by the Court of Appeal in *Microsoft Corp v SM Summit Holdings Ltd* ([18] *supra*) at [53] as follows:

> The court decides what meaning the words would have conveyed to an ordinary, reasonable person using his general knowledge and common sense: *Jeyaretnam Joshua Benjamin v Goh Chok Tong* [1984-1985] SLR 516 ... The test is an objective one: it is the natural and ordinary meaning as understood by an ordinary, reasonable person, not unduly suspicious or avid for scandal. The meaning intended by the maker of the defamatory statement is irrelevant. Similarly, the sense in which the words were actually understood by the party alleged to have been defamed is also irrelevant. Nor is extrinsic evidence admissible in construing the words. The meaning must be gathered from the words themselves and in the context of the entire passage in which they are set out. The court is not confined to the literal or strict meaning of the words, but takes into account what the ordinary, reasonable person may reasonably infer from the words. The ordinary,

reasonable person reads between the lines...

(i) The plaintiffs' interpretation

47 The plaintiffs' contentions as to the ordinary and natural meaning of the Disputed Words centred on three areas: (a) the role played by LHL and LKY respectively in Singapore's political system; (b) the previous defamation actions brought by the plaintiffs; and (c) the plaintiffs' involvement in the governance of government institutions such as the GIC, the HDB and the CPF Board.

48 LHL's contention was that the Disputed Words, read in their proper context, would in their natural and ordinary meaning have been understood to bear the defamatory meanings pleaded in para 26 of the statement of claim in the LHL action, which reads as follows:

> [26] The Words, by themselves or read together with the Photograph, in their natural and ordinary meaning, meant and were understood to [mean] that the Plaintiff is dishonest and unfit for office because:
>
> (a) the Plaintiff, as Prime Minister, has perpetuated a corrupt political system for the benefit of the political elite;
>
> (b) the Plaintiff and his Government had access to the information which has since been unearthed about NKF but corruptly concealed and covered up the facts to avoid criticism;
>
> (c) the defamatory allegations made against the Plaintiff which were the subject of the Defamation Action were true and that the Defamation Action was brought not to vindicate the Plaintiff's reputation but to suppress allegations which were true and which the Plaintiff knew to be true;
>
> (d) as the allegations in the Defamation Action were true, the Plaintiff is guilty of corruption, nepotism, criminal conduct, a cover up and of advancing the interests of the Lee family at the expense of the needs of Singapore; and
>
> (e) there is corruption in institutions such as the Housing Development Board, the Government of Singapore Investment Corporation and the Central Provident Fund, and the Plaintiff condones or permits it.

49 As for LKY, his contention was that the Disputed Words, read in their proper context, would have conveyed to the ordinary, reasonable person the defamatory meanings pleaded in para 33 of the statement of claim for the LKY action, namely:

> [33] The Words, by themselves or read together with the Photograph, in context and in their natural and ordinary meaning, meant and were understood to [mean] that the Plaintiff is dishonest and unfit for office because:
>
> (a) the Plaintiff devised a corrupt political system for the benefit of the political elite;
>
> (b) the defamatory allegations made against the Plaintiff which were the subject of the Defamation Actions against among others, Mr J.B. Jeyaretnam, Mr Tang Liang Hong and CSJ were true and those actions were brought not to vindicate the Plaintiff's reputation but to suppress allegations which were true and which the Plaintiff knew to be true;

(c) as the defamatory allegations were true, the Plaintiff is guilty of corruption, nepotism, criminal conduct, and dishonesty, had advanced the interests of his family at the expense of the needs of Singapore, had misled Parliament and had covered his tracks to avoid criticism; and

(d) the Plaintiff has managed the GIC in a corrupt manner.

(ii) The defendants' interpretation

50 The defendants merely denied that the Disputed Words bore the meanings set out in [48] and [49] above. Notably, they offered no alternative meaning in either the amended defence or the joint affidavit filed in the O 14 Summonses.

51 In respect of the plaintiffs' role in Singapore's political system, the defendants argued that there was no allegation, whether explicit or implicit, that LKY had devised, and LHL perpetuated "a corrupt political system for the benefit of the political elite" as alleged in the statement of claim. For one, the phrase "corrupt political system" was never used in either the English Article or the Chinese Article. Furthermore, this expression bore a connotation of illegality and dishonesty, but there was nothing in the Disputed Words which alleged that LHL and LKY had ever acted dishonestly or inconsistently with the laws of Singapore.

52 Where the previous defamation actions brought by the plaintiffs were concerned, the defendants claimed that the Disputed Words did not mean that the subject matter of those suits were true; neither did the words imply that LHL and LKY had initiated those defamation actions to suppress allegations which they knew to be true, instead of to vindicate their reputations. They contended that[note: 4]:

> It is arguable that the apparently disapproving reference to the Plaintiff's Defamation Actions (by rhetorical linkage to the Durai defamation suit, and by enclosure of the word 'victorious' in inverted commas) is derived from political and moral beliefs about the necessity of taking legal action in certain circumstances, rather than a belief that the defamatory allegations were actually true.

53 As for the plaintiffs' role in government institutions such as the GIC, where LKY was concerned, the defendants argued that the Disputed Words did not bear the ordinary and natural meaning that LKY had managed the GIC in a corrupt manner. An organisation, so they submitted, might have good reasons for operating in secrecy. It did not logically follow that any organisation which operated in secrecy was corrupt. Lack of transparency might create practical problems in some circumstances, but it did not amount to corruption, nor could it be said that the chairman of a secretive organisation was necessarily managing it in a corrupt manner. The words printed on the T-shirts depicted in the Photograph did not, in their ordinary and natural meaning, indicate that the GIC and the other institutions named therein were managed in a corrupt (as opposed to a secretive) manner. The substance of the protestors' complaint related solely to transparency and did not convey the meaning attributed by the plaintiffs. Notably, the defendants did not say anything specifically about LHL in relation to the GIC, the HDB and the CPF Board. Without elaborating, they adopted and applied all that was said about LKY to LHL.

54 On the basis of the above arguments (which were expressly stated in their written submissions to apply to the LHL action and the LKY action equally), the defendants submitted that the determination of the ordinary and natural meaning of the Disputed Words was a matter which should go to trial. The defendants added that the views expressed by members of the local

community, as evidenced by political discussions on the Internet among bloggers, were (so the defendants claimed) overwhelmingly negative of the political system created and maintained by the PAP. The defendants submitted that they were entitled to call these bloggers to testify on their understanding of the meaning of the Disputed Words, and this was another reason militating against entering summary judgment for the plaintiffs.

55 I pause here to make two observations. First, the defendants' invocation of the views of bloggers was misconceived. Extrinsic evidence of what bloggers think is inadmissible in construing the Disputed Words: see *Microsoft Corp v SM Summit Holdings Ltd* ([18] *supra*) and *A Balakrishnan v Nirumalan K Pillay* [1999] 3 SLR 22 at [29]. Second, the defendants' response to para 26 of the statement of claim in the LHL action and para 33 of the statement of claim in the LKY action was essentially to set out their version of what the words were intended to mean. Again, this is irrelevant in law. It is how the Disputed Words would be understood by the ordinary, reasonable person using his general knowledge and common sense, and not how they were meant by the defendants, which is important.

(iii) Approach and conclusion to the issue of meaning

56 As mentioned above at [45], my task was to arrive at the meaning or meanings which the ordinary, reasonable reader of *The New Democrat Issue 1*, reading the English Article and/or the Chinese Article, whether with or without the Photograph, would have placed on the Disputed Words in their context. In doing so, I looked not only at the Disputed Words themselves, but also at the whole of the English Article and the translation in English of the Chinese Article. This is because the ordinary, reasonable reader's understanding as to what is being conveyed about the plaintiffs by the Disputed Words will be derived from a reading of the articles, either singly or collectively.

57 Adopting this approach, I was satisfied that the Disputed Words bore the ordinary and natural meanings asserted by the plaintiffs as a result of "defamation by implication". This type of defamation arises when the reader is invited to compare a person with another disreputable individual, for example, a historical or fictional figure perceived to be treacherous. Mr Singh cited as an example the Malaysian case of *Hasnul bin Abdul Hadi v Bulat bin Mohamed* [1978] 1 MLJ 75. There, the Malacca High Court held that it was defamatory to describe the plaintiff as "Abu Jahal", who was one of the chief enemies of Prophet Mohamed and a person of detestable qualities. The judge observed:

> [A] defamatory imputation can be conveyed by a comparison of a person's character and transactions with those of any treacherous, disgusting, odious, disreputable or contemptible person, eg, to liken a man to Judas ... I agree … that "Abu Jahal" may be used to denote a Muslim who has one of the qualities, character and attitude of …a person who tells lies and [who believes] that "one of the ways of disrupting the good work of another would be by telling lies against him."…

58 In the present actions, at the time the Disputed Words were published, the NKF had, in the defendants' own words[note: 5], become:

> *bywords for corruption, financial impropriety and the knowing abuse of unmeritorious defamation suits ...* [emphasis added]

Mention the words "NKF" and "Durai" in the same article, and the mind of the ordinary, reasonable reader, with the ordinary man's general knowledge, will naturally turn to the financial abuses and improprieties in the NKF during Durai's tenure as its Chief Executive Officer. According to the English Article, Durai was able to conceal these financial "shenanigans" because he ran the NKF in an

"autocratic" manner and kept everything "shrouded in secrecy". Furthermore, Durai exploited defamation law to silence the NKF's critics. As an example of this, the English Article cited the NKF's suits in 1997 and 1998 against Mr Archie Ong ("Mr Ong") and Ms Tan Kiat Noi ("Ms Tan") respectively. The article alleged that Mr Ong and Ms Tan "capitulated" as they were "[u]nable to fight the huge sums of money involved in a defamation suit". It was not till the NKF Suit in 2005 (see [28] above) that "[t]he truth spilled [*sic*] out" – *viz*, "Mr Ong and Ms Tan were right. The only thing they were guilty of was that they were not rich enough to fight Mr Durai in court."

59 The point made by the English Article is that (a) there were truly financial abuses in the NKF, including instances of "NKF officials ... paying themselves obscenely high salaries and bonuses, and flying first class on business trips"; and (b) in order to suppress allegations of such abuses, which allegations he knew to be true, Durai brought defamation actions against critics of the NKF. The English Article then invites the reader to associate the NKF's *modus operandi* with that of the PAP by posing the pointed question: "Doesn't this remind you of the PAP?". Another pointed question, which linked the PAP to the NKF, this time in the context of the PAP "monopolizing power and making sure that no one has the means to challenge that hold on power", was this: "[A]re we not witnessing the NKF but on a larger and national scale?". The English Article concludes that

> … Singaporeans will never know what is going on behind the scenes and officials, like Mr Durai and the PAP will continue to use their "victorious" lawsuits as a measure of competence and absence of wrong-doing.

60 The Chinese Article was likewise replete with numerous comparisons between the NKF and the PAP. For instance, it likened the way in which Durai ran the NKF with the way the PAP runs the present Government by asserting that "the National Kidney Foundation is not an accidental event under the PAP system. It is precisely a product of the PAP system." The Photograph was no different. The T-shirts and placard captured in the Photograph drew an "Abu Jahal"- type of association between, on one hand, the persons responsible for devising the policies of the HDB, the CPF Board and the GIC and, on the other hand, the NKF's discredited management.

61 In my view, the sting in the Disputed Words lies in the way they highlight the commonality between the PAP-led Government and the NKF, namely, lack of transparency and lack of accountability. By this, the Disputed Words imply that the PAP and the political elite are not transparent about the finances of the government and government institutions such as the GIC because they want to conceal their financial improprieties, just as Durai erected a shroud of secrecy around the NKF in order to hide its management's pecuniary abuses. This is evidenced by the stand first on page 5 of the English Article that highlighted the impossibility of not noticing "the striking resemblance between how the NKF operated and how the PAP runs Singapore. It would take someone foolishly blind not to be concerned with how our financial reserves and CPF savings are dealt with. Here are the similarities". The stand first as well as the suggestive statement in the text box on the same page of the English Article, "If you think the running of NKF was bad, read this…" (see [22] above), blatantly invite and encourage the ordinary, reasonable reader to indulge in some degree of conjecture about the financial improprieties practised by and in the PAP-led Government.

62 The English Article goes on to state that this system of non-accountable, non-transparent governance, which has been "engineered over the decades by the PAP", represents "what a "democratic society, based on justice and equality" should not be". A similar statement is made in the Chinese Article, which asserts, *inter alia*, that "the system that the People's Action Party has moulded over the decades ... is the extreme opposite of the justice and impartiality advocated by a democratic society". As explained above at [42], LKY is the only individual to have led the Government for "decades". As such, the ordinary, reasonable reader would understand the English

Words and the Chinese Words as implying that LKY had systemically set up a political system which is inconsistent with the ethos of justice and equality encapsulated in our national pledge – in other words, "a corrupt political system for the benefit of the political elite" as pleaded in the statement of claim. Similarly, since LHL is the leader of the present Government, the ordinary reader would also reasonably infer from the English Words and the Chinese Words that he has "perpetuated" the corrupt political system put in place by LKY. In addition, by drawing parallels between the PAP-led Government and the NKF under Durai's management, the English Article conveys to the ordinary reader the broad impression that the "benefit" enjoyed by the "political elite" under this "corrupt political system" consists of financial gains. This is because the NKF was, in the defendants' own words, a byword for "corruption, financial impropriety and the knowing abuse of unmeritorious defamation suits" at the time the English Article was published. In essence, by highlighting the 'striking resemblance' between how the NKF operated and how the PAP runs Singapore, the defendants have, by their publication of these words, all but directly accused the plaintiffs of being dishonest. In the circumstances, the ordinary, reasonable reader would take these words as meaning that both LHL and LKY are dishonest and unfit for public office.

63 The ordinary, reasonable reader would also conclude that the plaintiffs have been dishonest in another respect – namely, in suing their critics for defamation despite knowing such criticisms to be true, thereby effectively suppressing financial abuses and improprieties in the Government in the same way as Durai used defamation suits to stop the abuses and excesses in the NKF from being made known to the public. The sting here is that LHL and LKY brought the earlier defamation actions (referred to in para 12 of the Statement of Claim for both the LHL action and the LKY action) not to vindicate their reputations but to suppress allegations which were true and which they knew to be true. What is damaging is the insinuation that even though LHL and LKY knew that their successful claims in these defamation actions were not genuine victories (as was the case with Durai in his suits against Mr Ong and Ms Tan: see [58] above), they nonetheless dishonestly continued to wear their "victorious" lawsuits as a badge of their "competence and absence of wrong-doing". In other words, as the NKF Saga starkly illustrated, the plaintiffs' and the rest of the political elite's "use, or rather abuse of defamation laws in this country has led to a situation where wrong-doings cannot be exposed".

The defences relied on

64 In paras 7 and 8 of the amended defence in both the LHL action and the LKY action, the defendants pleaded that if the Disputed Words were defamatory of the plaintiffs, the Words:

(a) were "substantially true and related to matters of public interest";

(b) were "published under qualified privilege";

(c) amounted to "fair comments relating to matters of public interest and based on proper material for comment";

(d) were "published contextually to each other, and by reason of the substantial truth of each imputation found to be justified, any imputation found not to be justified did not further injure the reputation of the Plaintiff[s]".

65 I found no merit in these arguments. As Mr Singh rightly noted, paras 7 and 8 of the amended defence in both actions were drafted in terms of the New South Wales Defamation Act 1974 which is inapplicable in Singapore. On this ground alone, the defence pleaded by the defendants fails *in limine*.

66 Apart from that, there was, in my view, a distinct lack of pleaded facts to support any of the common law defences of justification, qualified privilege and fair comment. If the defendants did intend to raise these defences, they did so merely by way of bare assertions in the amended defence, and nothing substantive was added by either the defendants' joint affidavit for the O 14 summonses or their written submissions. There was, therefore, nothing in the defendants' case which sufficed as a basis for granting them leave to defend.

(a) Defence of justification

67 As mentioned at [66] above, the defendants' case on justification was devoid of pleaded facts. Paragraph 8 of the amended defence in both the LHL action and the LKY action listed various topics which are allegedly of "public interest", namely:

(i) The governance of the State of Singapore;

(ii) The performance of the PAP as the governing party in the parliament of Singapore;

(iii) The performance of the Plaintiff as Prime Minister of Singapore[note: 6];

(iv) The NKF scandal;

(v) The use by PAP politicians of defamation litigation against political opponents;

(vi) Free speech;

(vii) Issue of whether there is corruption or perception of it in boards and corporations of the Singapore government;

(viii) Administration of public institutions or organisations subject to the control and/or supervision of the Singapore government;

(ix) Administration of the GIC;

(x) The public's right to information concerning the investments of the GIC;

(xi) The financial affairs of the CPF;

(xii) The performance of the mass media in Singapore.

6 8 The above approach does not satisfy the requirements of O 78 r 3(2), which states that a defendant wishing to rely on the pleas of justification and fair comment

> ... must give particulars stating which of the words complained of he alleges are statements of fact and of the facts and matters he relies on in support of the allegation that the words are true.

Particulars are crucial when justification is pleaded as the issues to be tried under this plea are limited to the matters referred to in the particulars (see *Aaron v Cheong Yip Seng* [1996] 1 SLR 623). –

69 Essentially, all that the defendants offered in support of their plea of justification was this: at para 29 of their joint affidavit, they brazenly maintained that the LHL action and the LKY action "cannot necessarily show that there is no corruption within the Government" because "[i]t took

several years before [Mr] Ong and [Ms] Tan were shown to be right in their criticism of Durai". Given such a scenario, they rhetorically asked: "[Is] it not premature to say that, given the opacity of the PAP system, that the comparison between the NKF and the Government is unwarranted and defamatory?" In their written submissions, the defendants reiterated that it was premature to say that the comparison of the Government to the NKF was unwarranted and defamatory. By maintaining that such a conclusion was "premature" the defendants all but admitted that they had no evidence which could remotely justify the Disputed Words.

70 The lack of particulars aside, the defendants' case was deficient in another aspect. It was incumbent on the defendants to inform the plaintiffs and the court as to the meaning or meanings which they were seeking to justify. This, the defendants failed to do. As I noted above at [50], in their amended defence, the defendants merely denied that the Disputed Words bore the meanings ascribed by the plaintiffs, but did not offer any alternative interpretation of these words. There was also nothing in their joint affidavit or their written submissions which made good this omission.

(b) Defence of fair comment

71 The defendants' plea of fair comment was likewise lacking in particulars. At para 8 of the amended defence for the LHL action and the LKY action respectively, the defendants referred to the "matters of notoriety concerning the subjects of public interest" listed in [67] above and to "facts stated in the matters complained of". I regarded such generalisation and vagueness as symptomatic of a sham defence. To raise the defence of fair comment, the defendants had to plead with particularity the very comments which they say form their fair comment defence. The defendants did not do so. Furthermore, their pleadings did not set out, either expressly or impliedly, the precise facts based on which the comments in dispute were made. This was fatal to the defendants' case because for the defence of fair comment to prevail, the comment must be based on facts that exist. If the facts purportedly relied on by the maker of the comment do not exist, the defence of fair comment fails. The defendants as much as admitted that they had no facts which could support the assertions contained in the Disputed Words when they stated in their written submissions that a trial was necessary to enable some of the material facts to emerge.

(c) Qualified Privilege

72 In their written submissions, the defendants described the English Article as[note: 7]:

> a publication on matters of public interest or of sufficient importance to the public. It raises the concern of why the NKF could have been run … in a corrupt and ruinous fashion without any action by the government and why action was only taken to uncover all these improprieties after NKF failed in its suit against SPH [Singapore Press Holdings Limited]. It expresses concern about the system of governance in Singapore and about the ways in which HDB, CPF and GIC are run. These are certainly matters of public concern.

It was argued that the publication of the Disputed Words to the world at large attracted qualified privilege because the defendants, "as participants in the electoral process [and/or] as members of the SDP", had a duty to publish the words and the public had a corresponding interest to receive the words because they concerned "matters of public interest". The defendants' argument is a distortion of the law. The mere fact that a publication relates to "political information" or "matters of serious public concern" does not entail that qualified privilege therefore attaches to its dissemination to the world at large.

73 The defendants must plead the special facts giving rise to the occasion of qualified privilege,

as there is no general media privilege at common law. In *Aaron v Cheong Yip Seng* ([68] *supra*), the Court of Appeal stated that "[t]he law does not recognise an interest in the public strong enough to give rise generally to a duty to communicate in the press; such a duty has been held to exist on *special facts"* [emphasis added]. The requisite standard for "special facts" is, so the Court of Appeal held in *Chen Cheng v Central Christian Church* [1999] 1 SLR 94, "an onerous one". The court quoted as examples of "special facts" those given in *Blackshaw v Lord* [1984] QB 1 at 27 (*eg* where there is danger to the public from a suspected terrorist or the distribution of contaminated food or drugs). Moreover, our courts have not regarded information on political and government matters as "special facts": see *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 2 SLR 310 (at [81] below). In any case, since the defendants did not in their pleadings or their joint affidavit establish any "special facts" which could give rise to qualified privilege, they were unable to show that the Disputed Words were published on an occasion of qualified privilege.

74 For completeness, I now turn to the three cases cited by the defendants. They are *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 ("*Reynolds*"), *Lange v Australian Broadcasting Corporation* [1997] 145 ALR 96 ("*Lange v ABC*") and *Lange v Atkinson* [2000] 3 NZLR 385 ("*Lange v Atkinson*"). The defendants argued that the legal propositions set out in these cases should apply in Singapore. I agreed with Mr Singh that none of the authorities were of avail to the defendants as they do not represent the law in Singapore. Besides, even if the defendants' argument is accepted, I was of the view that the amended defence and joint affidavit were devoid of facts which could support a *Reynolds*-type defence or a defence along the lines of *Lange v ABC* and *Lange v Atkinson*.

75 A *Reynolds*-type defence does not require the existence of "special facts" so long as "responsible journalism" is practised in the publication. As stated at [73], that is not the law in Singapore. In *Reynolds*, the publishers of a newspaper were sued by the former Prime Minster of Ireland on the grounds that the article in question imputed that the latter had deliberately and dishonestly misled the Irish House of Representatives and his coalition cabinet colleagues, especially the Deputy Prime Minister. The defendant argued that a new category of privilege for the discussion of "political information" ought to be recognised. The House of Lords rejected this proposition and held that no generic privilege attached to publications of "political information" or other matters of "serious public concern", as such a generic privilege would not provide adequate protection of reputation. The House of Lords in *Reynolds* was, however, influenced by Art 10 of the European Convention for the Protection of Human Rights and Fundamental Freedom ("the European Convention") and s 12 of the Human Rights Act 1998 (c 42) (UK), which was then about to come into effect in England, into giving the media more latitude in its reporting provided "responsible journalism" was practised, consistent with the principles of freedom of expression: see *Gatley on Libel & Slander* (Sweet & Maxwell, 10th Ed, 2004) at para 14.84. It is to be noted that Art 10 of the European Convention is by its terms distinguishable from Art 14 of our Constitution (1999 Rev Ed). The Court of Appeal in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* ([73] *supra*) noted at 330 to 331 that:

> ... The terms of art 14 of our Constitution differ materially ... from art 10 of the European Convention on Human Rights… [T]he right of free speech and expression under cl 1(a) of art 14 is expressly subject to cl 2(a) of the same article, and the latter provides that Parliament may by law impose on the rights of free speech and expression conferred by cl 1(a) two categories of restrictions: first, such restrictions as it considers *necessary and expedient* in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality; and second, *restrictions designed* to protect the privileges of Parliament or *to provide against* contempt of court, *defamation* or incitement to any offence. While the first category of restrictions must satisfy the test of necessity and expediency in the interest of the various matters specified therein, the second category of restrictions is not required to satisfy any such test. Thus, Parliament is empowered to make laws to impose on the right of free speech

> restrictions designed to provide against defamation. ... [I]t is true that the wording in para 1 [of art 10 of the European Convention of Human Rights] is similar to cl 1(a) of art 14. However, para 2 of art 10 is in no way similar to cl 2 of art 14; para 2 provides that the exercise of the freedom under para 1 is subject to 'restrictions or penalties as are prescribed by law and are *necessary* in a democratic society … for the protection of the reputation or rights of others…'. Clearly, the terms allowing restrictions to be imposed under art 10(2) are not as wide as those under art 14(2).
>
> ...
>
> [I]t is implicit that the right of free speech under art 14 is subject to the common law of defamation as modified by the Defamation Ordinance, now the Defamation Act (Cap 75) ...
>
> [emphasis in original]

76 I agreed with Mr Singh that given the Court of Appeal's rejection of Art 10 of the European Convention, it is fairly clear that the *Reynolds* position on "responsible journalism" should not be followed and applied in Singapore.

77 The defendants also advocated that Singapore should adopt the decisions in *Lange v ABC* and *Lange v Atkinson* ([74] *supra*). Both cases recognised a special privilege for information relating to political and government matters. Interestingly, the approach there was rejected by Lord Nicholls in *Reynolds* at 200 and 204:

> The newspaper seeks the incremental development of the common law by the creation of a new category of occasion when privilege derives from the subject matter alone: political information. Political information can be broadly defined…as information, opinion and arguments concerning government and political matters that affect the people of the United Kingdom …
>
> ... The common law should not develop "political information" as a new "subject matter" category of qualified privilege whereby the publication of all such information would attract privilege, whatever the circumstances. That would not provide adequate protection for reputation. Moreover, it would be unsound in principle to distinguish political discussion from discussion of other matters of serious public concern.

7 8 *Lange v ABC* concerned the former Prime Minister of New Zealand. The plaintiff alleged that the offending publication had conveyed, *inter alia*, the imputations that: (a) he had, as Prime Minister, permitted big business donors to dictate to the Government policies that would not otherwise have been implemented by the Government; (b) he had abused his public office in that he had attempted to arrange for a debt incurred by the New Zealand Labour Party in the 1987 general election campaign to be written off by awarding Government contracts to the creditors; (c) he had corruptly accepted gifts of parcels of shares and profits on share trading transactions, in return for permitting the maker of the gifts to influence Government policy in favour of big business interests; (d) he had wrongfully allowed public assets to be sold to New Zealand businessmen as repayment in kind for election funds donated to the New Zealand Labour Party during the 1987 general election campaign; and (e) he had disgraced the office of Prime Minister of New Zealand by skulking the streets of Auckland to attend secret night-time meetings with Board members of a state-owned enterprise.

79 The Australian High Court, while accepting a special privilege for publication of information on government and political matters, also emphasised that such privilege was not without restraint.

Where the publication was made to the public at large, the defendant must additionally show that his conduct in making the publication was reasonable. To satisfy this requirement, the defendant must show that he had "reasonable grounds for believing that the imputations was true, took proper steps to verify the material and did not believe the imputation to be untrue". The High Court's decision was notably influenced by s 22 of the New South Wales Defamation Act 1974, which provides for a statutory defence of qualified privilege.

80 The plaintiff in *Lange v ABC* subsequently commenced another defamation action (*Lange v Atkinson* at [74] supra), this time against a journalist and his publisher in respect of an article and an accompanying cartoon which were said to bear the defamatory meaning that the plaintiff was dishonest, lazy, insincere and irresponsible. The New Zealand Court of Appeal declined to follow *Reynolds* and held that in the light of New Zealand's political and social fabric, political statements were matters of interest to the public and as such, publication of these matters to the public at large could come within the defence of qualified privilege. However, the defendant still had to establish that the occasion would attract privilege, and the court still had to take into account the circumstances of publication, including such matters as the identity of the publisher, the context in which publication occurred, and whether the publisher had acted responsibly or reasonably.

81 Both *Lange v ABC* and *Lange v Atkinson* were decisions born of the constitutional, political and social contexts in Australia and New Zealand. Whilst both of these cases recognised a special privilege for political information, as I have pointed out at [73] above, the legal position in Singapore is that information on political and government matters does not constitute "special facts". As the Court of Appeal explained in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* ([73] *supra*) at 332H to 333A:

> Both the decisions in *New York Times* [*New York Times Co v Sullivan* (1964) 376 US 254] and in *Lingens* [*Lingens v Austria* (1986) 8 EHRR 407] were premised on the proposition that the limits of acceptable criticism of persons holding public office or politicians in respect of their official duties or conduct are wider than those of ordinary persons. In our judgment, our law is not premised on such a proposition. Persons holding public office or politicians (we call them 'public men') are equally entitled to have their reputations protected as those of any other persons. Such persons, in the discharge of their official duties, are laying themselves open to public scrutiny both in respect of their deeds and words. In that respect, criticisms in relation to their official conduct may be 'robust' and 'wide-open' and may include 'vehement, caustic, and sometimes unpleasantly sharp attacks'. Nevertheless, such criticisms or attacks must, in our opinion, respect the bounds set by law of defamation, and we do not accept that the publication of false and defamatory allegations, even in the absence of actual malice on the part of the publisher, should be allowed to pass with impunity. The law of defamation protects the public reputation of public men as well...

82 As such, the decisions in *Lange v ABC* and *Lange v Atkinson* are inconsistent with the law of defamation in Singapore.

Breach of Undertaking and Injunction

83 I now turn to one relief which is being sought only in the LKY action, but not in the LHL action – namely, an injunction to restrain CSJ from breaching an earlier undertaking which he had agreed to.

84 In an earlier defamation action against CSJ, the latter and LKY entered into a compromise containing an undertaking from CSJ not to make "any further allegations or statements to the same or

similar effect" (referred to as "CSJ's Undertaking" in para 15 of the statement of claim in the LKY action). On 19 November 2001, LKY commenced the CSJ Suit (see [29] above) to enforce the undertaking. The High Court upheld the compromise and thus CSJ's Undertaking. CSJ breached this undertaking when he published or caused to be published the Disputed Words. In the LKY action, CSJ did not raise a separate defence to the claim for breach of the undertaking. He merely sought to rely on his defence that the Disputed Words did not bear the defamatory meaning pleaded by LKY.

85 The court has the power to grant an injunction restraining CSJ from committing further breaches of his earlier undertaking. Similarly, the court has the power to restrain both CSJ and CSC from further publication of the Disputed Words or any other similar defamatory publication. I agreed with Mr Singh that this relief is appropriate in the circumstances as the defendants had persisted in distributing *The New Democrat Issue 1* even after being sued and even after the other defendants named in the writ had apologised. Furthermore, on 28 July 2006, the defendants had, in a post-media release, concurred that the Disputed Words likened the running of NKF to the running of PAP.

Conclusion

86 Accordingly, for the reasons stated, I allowed the O 14 summonses and made the following orders.

87 In respect of the LHL action, my orders were that:

(a) Interlocutory judgment be entered for LHL against CSC and CSJ with damages to be assessed;

(b) CSC and CSJ be restrained from publishing, selling, offering for sale, distributing or otherwise disseminating by any means whatsoever the defamatory allegations in the Disputed Words, or other allegations to the same effect; and

(c) CSC and CSJ do pay LHL's costs of this action including the costs of the assessment of damages, such costs to be taxed on an indemnity basis.

88 In respect of the LKY action, my orders were that:

(a) Interlocutory judgment be entered for LKY against CSC and CSJ with damages to be assessed;

(b) CSC and CSJ be restrained from publishing, selling, offering for sale, distributing or otherwise disseminating by any means whatsoever the defamatory allegations in the Disputed Words, or other allegations to the same effect;

(c) CSJ be restrained from further breaching "CSJ's Undertaking" as defined in paragraph 15 of the Statement of Claim; and

(d) CSC and CSJ do pay LKY's costs of this action including the costs of the assessment of damages, such costs to be taxed on an indemnity basis.

[note: 1]Defendants' joint affidavit para 23

[note: 2]Defendants' written submissions para 46(d)

[note: 3]Defendants' written submission para 46(d) & (e)

[note: 4]Defendants' written submissions para 51(c)

[note: 5]Defendants' written submissions para 15

[note: 6]This assertion was made in the amended defence for the LKY action as well even though LKY is no longer the Prime Minister.

[note: 7]Defendants' written submissions para 36