IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC 166

Employment Claims Tribunal Appeal No 1 of 2023

Between

Hossain Rakib

… *Appellant*

And

Ideal Design & Build Pte Ltd

… *Respondent*

In the matter of Employment Claims Tribunal Claim No 10181 of 2022

Between

Hossain Rakib

… *Claimant*

And

Ideal Design & Build Pte Ltd

… *Respondent*

JUDGMENT

[Employment Law — Pay — Whether s 38(5) of the Employment Act 1968 (2020 Rev Ed) bars a claim for overtime pay exceeding the prescribed monthly limit of overtime hours]

TABLE OF CONTENTS

THE APPELLANT'S CLAIM AGAINST THE RESPONDENT 2

THE JUDGE'S DECISION AND SUBSEQUENT PROCEEDINGS 4

THE PARTIES' GENERAL POSITIONS 6

A PRELIMINARY POINT: THE APPELLANT'S CLAIM AGAINST THE RESPONDENT IS NOT BARRED BY CLAUSE 6.4 OF THE EMPLOYMENT CONTRACT 8

THE APPELLANT'S CLAIM AGAINST THE RESPONDENT IS NOT PROHIBITED BY S 38(5) OF THE EMPLOYMENT ACT 11

THE PRINCIPLES OF STATUTORY INTERPRETATION 11

THERE ARE TWO POSSIBLE INTERPRETATIONS OF S 38(5) 12

The relevant principles and the competing interpretations 12

The Judge's interpretation of s 38(5) is a possible interpretation 13

The appellant's interpretation of s 38(5) is also a possible interpretation 15

THE APPELLANT'S INTERPRETATION OF S 38(5) IS BETTER ALIGNED WITH THE LEGISLATIVE PURPOSE OF S 38 AND PART 4 OF THE EMPLOYMENT ACT 17

The relevant principles 17

The legislative purpose behind s 38(5) and Part 4 is to protect an employee and not to prejudice his or her rights against the employer 20

(1) The significance of statutory amendments in ascertaining the legislative purpose 20

(2) The general purpose of Part 4 of the Employment Act is to protect employees 23

Version No 2: 27 Jun 2023 (21:15 hrs)

(3) The specific purpose of s 38(5) of the Employment Act is also to protect employees 25

SUMMARY OF CONCLUSIONS IN RELATION TO S 38(5) OF THE EMPLOYMENT ACT 29

THERE IS NO NEED TO DECIDE ON WHETHER THE RESPONDENT CAN RELY ON S 38(5) OF THE EMPLOYMENT ACT AS A DEFENCE 30

CONCLUSION 30

Version No 2: 27 Jun 2023 (21:15 hrs)

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Hossain Rakib
v
Ideal Design & Build Pte Ltd

[2023] SGHC 166

General Division of the High Court — Employment Claims Tribunal Appeal No 1 of 2023
Goh Yihan JC
11 May 2023

15 June 2023 Judgment reserved.

Goh Yihan JC:

1 The appellant, Mr Hossain Rakib ("Mr Rakib"), is a Bangladeshi national. He was employed as a construction worker by the respondent, Ideal Design & Build Pte Ltd, from 14 December 2020 to 6 January 2022. Mr Rakib was about 30 years old when he started working for the respondent. He came to Singapore to work as a welder and flame cutter. Unfortunately, he was not paid what was due to him from the respondent. In particular, he claims that the respondent should have paid him overtime pay for over 700 hours of overtime work between February 2021 and November 2021. The respondent refuses to do so with respect to some of those hours because *it* had required Mr Rakib to work beyond the statutorily prescribed limit of 72 overtime hours on some months. In particular, the respondent argues that Mr Rakib is not legally entitled to claim for the overtime hours exceeding the statutorily prescribed limit. Based on an interpretation of the relevant statutory provisions, Mr Rakib lost in the

Employment Claims Tribunal below and did not get most of what he had claimed for.

2 This is Mr Rakib's appeal against the learned Tribunal Magistrate's ("the Judge") order in ECT/10181/2022 ("the Order"). In accordance with the permission granted for him to appeal to the General Division of the High Court, the appellant's appeal is limited to the question of whether he is prevented by s 38(5) of the Employment Act 1968 (2020 Rev Ed) ("EA") from claiming overtime pay beyond 72 hours a month, when he was required by the respondent to work overtime for more than the said 72 hours on some months.

3 Having considered the matter carefully, I allow the appeal. For reasons that I will explain in this judgment, I find that s 38(5) of the EA ("s 38(5)") was not intended to prevent an employee from claiming overtime pay beyond 72 hours per month. More specifically, I find that Parliament intended for s 38(5) (and Part 4 of the EA in which it resides ("Part 4")) to protect employees and not to prejudice their rights to payment for work done, especially when the employee had been required by the employer to work overtime.

The appellant's claim against the respondent

4 I begin with the appellant's claim against the respondent. As I mentioned above, the appellant was employed by the respondent as a construction worker. This employment was pursuant to an employment contract dated 17 January 2021 ("the Employment Contract"). The material terms of the Employment Contract are contained in clause 6 as follows:[1]

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[1] Respondent's Bundle of Documents in HC/ECTA 1/2023 ("RBOD") at p 4.

Version No 2: 27 Jun 2023 (21:15 hrs)

> **6. Working Days / Hour of work / Overtime**
>
> 6.1 Working days will be 5.5 days a week.
>
> 6.2 The normal working hours will be from 08:00 to 17:00hrs (include 1 hour break).
>
> 6.3 Rest Day on Sunday.
>
> 6.4 You will earn overtime pay if you work more than 8 hours a day, or 44 hours a week. Total overtime hours should not exceed 72 hours a month.

5 In addition, a one-page document, dated 17 January 2021 and entitled "Salary Package", sets out the terms of remuneration as follows:[2]

> **Salary Package**
>
> We will offer your salary package as following:
>
> Working hours: 8am -5pm
>
> OT: 6pm to 7pm
>
> Standard hour rate: $ 4.55
>
> OT Hour Rate: $ 6.80
>
> Sunday Hour Rate: $ 9.10

6 Between February 2021 and November 2021, the respondent required the appellant to work a fixed number of hours each day. On each workday, the appellant would be ferried to the worksite early in the morning (typically at about 8am). He would then be picked up from the same worksite (typically at 8pm or later) and ferried back to his dormitory. Despite the appellant having performed work as required by the respondent, which included overtime hours, the respondent refused to pay the appellant the overtime pay said to be due to him. As such, the appellant brought a claim before the Employment Claims Tribunal for the following sums, which included his overtime pay:

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[2] RBOD at p 7.

Version No 2: 27 Jun 2023 (21:15 hrs)

(a) $581.10, being payment for work on 15 rest days;

(b) $6,387.50, being payment for 625 hours of overtime performed between February 2021 and November 2021;

(c) $511.85, being short payment for 145 hours of overtime performed between February 2021 and November 2021; and

(d) $272.70, being salary for 1 to 7 May 2021.

For the purposes of this appeal, I will collectively term the claims listed in (b) and (c) as the "Overtime Pay Claim".

The Judge's decision and subsequent proceedings

7 After hearing the parties, the Judge issued his decision on 14 September 2022 (see *Hossain Rakib v Ideal Design & Build Pte Ltd* [2022] SGECT 109 ("the Judgment")). While the Judge also adjudicated on other aspects of the appellant's claim, I will focus only on the Overtime Pay Claim, being the subject of the present appeal. In this regard, the Judge found that the appellant may not claim for more than 72 hours of overtime pay per month. This is because the Judge interpreted s 38(5) as imposing a maximum cap of 72 hours that an employee may claim as overtime pay per month ("the Overtime Cap").

8 In brief, the Judge found that pursuant to s 38(5), "an employee may not work for more than 72 hours' overtime per month even if he/she wanted to" (see the Judgment at [50]). The Judge reached this conclusion for several reasons. First, the Judge did not think that the High Court had held in *Chua Qwong Meng v SBS Transit Ltd* [2022] SGHC 208 ("*Chua Qwong Meng*") that s 38(5) was meant to protect the employee. Second, the Judge referred to his own decision in *Sanjay Panday v Daelim Industrial Co Ltd* [2020] SGECT 106, in which he

Version No 2: 27 Jun 2023 (21:15 hrs)

had held that the Overtime Cap was introduced in the Employment Bill (Bill No 21/1968) "not to protect a worker from overwork, but to regulate and limit workers who absorb extra work and earn extra salary, at the expense of allowing another person to be employed by the company" (see the Judgment at [52]). After referring to the relevant parliamentary debates, the Judge concluded that s 38(5) was meant to serve "the twin objectives of *lowering unemployment* and *raising productivity*" [emphasis in original]. As such, the Judge concluded that the "public policy behind [s 38(5)] would demand that workers be prohibited from recovering pay for overtime worked beyond the first 72 hours in a month" (see the Judgment at [53]).

9 For completeness, the Judge also observed that Parliament did not intend to place the onus of adhering to s 38(5) *solely* on the employer, such that the employee who was required by the employer to work beyond the Overtime Cap could claim for overtime pay in respect of the extra hours. While this meant that an employer who required an employee to work beyond the Overtime Cap essentially gets extra work done for no extra salary, the Judge was satisfied that this consequence is addressed by "exposing the employer to criminal liability", with the outcome being that "*both* employer and employee have disincentives to agree to working beyond the permitted overtime limit" [emphasis in original] (see the Judgment at [55]). By way of context, an employer who permits an employee to work more than 72 hours overtime in a month may face criminal liability under s 53 of the EA.

10 Having justified the Overtime Cap based on the reasons above, the Judge held that the appellant was only entitled to $516.80 in respect of his Overtime Pay Claim. On 10 January 2023, the appellant was given permission to appeal

Version No 2: 27 Jun 2023 (21:15 hrs)

against the Judge's decision. However, the appellant's appeal is limited to the issue of the Overtime Cap, which was framed as such in the Notice of Appeal:[3]

> Whether section 38(5) of the [EA] prohibits an employee from claiming overtime work for more than 72 hours a month in circumstances where the employee was required by the employer to work overtime for more than 72 hours a month, i.e. the employer required the employee to work for a specific number of hours a day resulting in overtime work performed and the employee was not performing overtime work at his or her own request.

The parties' general positions

11 I turn now to state the parties' general positions in the present appeal. The appellant's primary position is that the Judge erred in finding that s 38(5) is an absolute bar against an employee claiming more than 72 hours of overtime pay in a month. In this regard, the appellant submits that s 38(5) does not contain any statutory prohibition or restriction to bar an employee from claiming for overtime pay exceeding 72 hours a month if the employee was required by the employer to perform such overtime work.

12 In support of this position, the appellant makes four submissions which I summarise below.

(a) First, the express wording of s 38(5) does not prohibit a claim by an employee for overtime pay exceeding 72 hours per month. Instead, the ordinary meaning of s 38(5) simply prevents the employer from requiring the employee to work more than 72 hours of overtime per month.

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[3] Record of Appeal Vol 1 in HC/ECTA 1/2023 at p 6.

Version No 2: 27 Jun 2023 (21:15 hrs)

(b) Second, Parliament's intended purpose for s 38(5) and Part 4 is to protect employees and not to prejudice or limit their rights to payment for work done. This is especially so in a situation where the employee had been required by the employer to work overtime.

(c) Third, s 132 of the EA provides that nothing in the EA operates to prevent an employee from enforcing its rights against his or her employer for any breach or non-performance of a contract of service.

(d) Fourth, the employer cannot rely on s 38(5) as a defence to a civil claim as it is not expressly stated to function in this way, and especially in the light of Parliament's clear pronouncement that s 38(5) is for the protection of the worker.

13 In turn, the respondent unsurprisingly disagrees with the appellant's interpretation of s 38(5). In its view, the Judge's interpretation of s 38(5), and the consequent imposition of the Overtime Cap, advances Parliament's intention. In this regard, the respondent makes four submissions, that are as follows:

(a) First, Parliament's intention in 1972, when s 38(5) was amended to adjust the Overtime Cap from 48 hours to the present 72 hours, was consistent with the rationale behind the initial implementation of s 38(5) in the Employment Act 1968.

(b) Second, the Judge's interpretation of s 38(5) is not contrary to the context of the provision in the EA as a whole.

Version No 2: 27 Jun 2023 (21:15 hrs)

(c) Third, the appellant's interpretation of s 38(5) allows an employee to take advantage of his or her own breach of the EA and benefit from such. This would not be sustainable as a matter of law.

(d) Fourth, s 132 of the EA does not assist the appellant because his cause of action would not accrue under clause 6.4 of the Employment Contract in any event.

A preliminary point: the appellant's claim against the respondent is not barred by clause 6.4 of the Employment Contract

14 Having set out the parties' general positions, I begin with a preliminary point. This relates to the respondent's fourth submission that the appellant is prevented by clause 6.4 of the Employment Contract from bringing the Overtime Pay Claim against the respondent. In this regard, clause 6.4 provides, among others, that the appellant's "[t]otal overtime hours should not exceed 72 hours a month".[4] As such, the respondent submits that the appellant's claim "no longer lies in Clause 6.4 of the Employment Contract but falls outside of the scope of [it]"[5] as the appellant had worked more than 72 hours of overtime on some months. According to the respondent, it must therefore follow that the appellant cannot avail himself of s 132 of the EA, which allows an employee to bring a civil claim against his or her employer for breach or non-performance of a contract of service. Section 132 provides as follows:

> **Civil proceedings not barred**
>
> **132.** Nothing in this Act operates to prevent any employer or employee from enforcing the employer's or employee's respective civil rights and remedies for any breach or non-performance of a contract of service by any suit in court in any

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4 RBOD at p 4.

5 Respondent's Written Submissions at para 66.

Version No 2: 27 Jun 2023 (21:15 hrs)

> case in which proceedings are not instituted, or, if instituted, are not proceeded with to judgment under this Act.

15 In response, the appellant makes four specific points. First, his primary submission is that clause 6.4 does not impose a contractual prohibition against the appellant working more than 72 hours per month. Rather, he says that it merely restates the Overtime Cap that is prescribed by s 38(5) of the EA and does not prevent the appellant from claiming in respect of the hours of overtime that exceeded the Overtime Cap. Second, the appellant contends that even if clause 6.4 imposes any such contractual prohibition, the respondent has waived this prohibition by requesting the appellant to work beyond the Overtime Cap on some months. Third, the appellant submits that if there was such a contractual prohibition, it would mean that the respondent is in breach of the contract for requesting the appellant to work beyond the Overtime Cap. Fourth, the appellant argues that it is implied in the Employment Contract that if the respondent compels the appellant to work beyond the Overtime Cap, then the appellant ought to be paid for not only the 72 hours, but also any overtime beyond that.

16 In my judgment, I do not think that the appellant is prevented by clause 6.4 of the Employment Contract from bringing the Overtime Pay Claim against the respondent. To begin with, the appellant has characterised his claim against the respondent as a "civil contractual claim pursuant to Clause 6.4 of the Employment Contract and the [Salary Package]".[6] Thus, the fact that he worked more than 72 hours of overtime on some months between February 2021 and November 2021 goes towards his case that there was a breach of clause 6.4 of the Employment Contract by the respondent, which gives rise to a civil claim that falls under the scope of s 132 of the EA. As such, the appellant seeks

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6 Appellant's Written Submissions at para 70.

Version No 2: 27 Jun 2023 (21:15 hrs)

damages for this breach, which can be measured by the overtime pay he would have been entitled to under the Salary Package.

17 Alternatively, while clause 6.4 does provide that the "[t]otal overtime hours should not exceed 72 hours a month",[7] the fact is that the respondent ignored this clause by requiring the appellant to work more than 72 hours of overtime for a few months in the period between February 2021 and November 2021. Therefore, even if clause 6.4 was initially intended to be a contractual obligation on the part of the appellant, I find that the respondent has waived any duty on the appellant to comply with this clause. As such, I cannot agree with the respondent that the appellant cannot claim under clause 6.4 of the Employment Contract.

18 Rather, at the heart of the parties' dispute in relation to the Overtime Cap is whether the appellant's claim for damages for breach of clause 6.4 of the Employment Contract, which in essence amounts to a claim for overtime pay for hours worked beyond the Overtime Cap, is prohibited by s 38(5). In this regard, despite my overall conclusion that the appellant can bring his Overtime Pay Claim against the respondent, I disagree with the appellant that s 132 of the EA reinforces his argument that s 38(5) does not prohibit such a claim. This is because s 132 is a permissive provision: it allows for parties to bring civil claims against an employer or employee provided that such "proceedings are not instituted, or, if instituted, are not proceeded with to judgment under [the EA]". However, s 132 says nothing about whether a civil claim is prohibited by other provisions of the EA. More than that, s 132 must surely not be read as permitting a civil claim that is otherwise prohibited by the EA.

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7 RBOD at p 4.

Version No 2: 27 Jun 2023 (21:15 hrs)

The appellant's claim against the respondent is not prohibited by s 38(5) of the Employment Act

19 Having addressed this preliminary point, I turn now to consider the key issue in this appeal, which is whether s 38(5) prohibits the appellant's Overtime Pay Claim. This is essentially a question of statutory interpretation.

The principles of statutory interpretation

20 The principles of statutory interpretation in Singapore are now well settled following the seminal Court of Appeal decision of *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*"), which sets out how s 9A(1) of the Interpretation Act 1965 (2020 Rev Ed) ("IA") is to be applied. To begin with, s 9A(1) provides as follows:

> **Purposive interpretation of written law and use of extrinsic materials**
>
> **9A.**—(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) is to be preferred to an interpretation that would not promote that purpose or object.

21 While *Tan Cheng Bock* was a case involving the interpretation of constitutional provisions, the principles advanced therein were based on s 9A of the IA which applies to the interpretation of all written law (see Benny Tan, "Statutory Interpretation in Singapore – Another 10 Years On" (2021) 33 SAcLJ 987 at 994). Accordingly, it is indisputable that the principles of statutory interpretation in *Tan Cheng Bock* apply and are binding on me in the present case.

22 In particular, the Court of Appeal laid down a three-step framework (see *Tan Cheng Bock* at [37], referring to the minority judgment in the Court of

Version No 2: 27 Jun 2023 (21:15 hrs)

Appeal decision of *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373), the steps of which are as follows:

(a) first, ascertain the possible interpretations of the provision, having regard not just to the text of the provision but also to the context of that provision within the written law as a whole;

(b) second, ascertain the legislative purpose or object of the statute; and

(c) third, compare the possible interpretations of the text against the purposes or objects of the statute.

23 I now proceed to go through each of these three steps in the context of s 38(5), which provides:

> **Hours of work**
>
> …
>
> (5) An employee must not be permitted to work overtime for more than 72 hours a month.

There are two possible interpretations of s 38(5)

The relevant principles and the competing interpretations

24 The first step of the *Tan Cheng Bock* framework requires me to ascertain the possible interpretations of s 38(5). In doing so, I must determine the ordinary meaning of the words of s 38(5), "aided in this effort by a number of rules and canons of statutory construction, all of which are grounded in logic and common sense" (see *Tan Cheng Bock* at [38]).

25 In this regard, the appellant admits that there are two possible interpretations of s 38(5), namely, the Judge's interpretation and his (the

Version No 2: 27 Jun 2023 (21:15 hrs)

appellant's) interpretation. For convenience, I summarise these two interpretations as follows:

(a) The Judge's interpretation: s 38(5) is an absolute bar to an employee claiming more than 72 hours of overtime pay per month (*ie*, the Overtime Cap).

(b) The appellant's interpretation: s 38(5) prevents an employer from requiring, requesting, or even allowing their employee to carry out overtime work for more than 72 hours per month. However, s 38(5) does not contain any statutory prohibition or restriction to bar or otherwise prevent an employee from claiming for overtime pay performed beyond 72 hours a month, if the employee was required or compelled by the employer to perform such overtime work.

Beyond understandably submitting that the Judge's interpretation is correct, the respondent does not dispute the existence of these two possible interpretations.

26 Yet, notwithstanding the respondent's seeming agreement that there exists two possible interpretations of s 38(5), I need to be independently satisfied that these interpretations are indeed possible. For the reasons that I will now explain, I am satisfied that both the Judge's interpretation and the appellant's interpretation of s 38(5) are each *possible*. Of course, which is the *correct* interpretation of s 38(5) is separate question.

The Judge's interpretation of s 38(5) is a possible interpretation

27 First, it is possible to arrive at the Judge's interpretation of s 38(5) from the text of the provision alone. This is because if an employee "must not be permitted to work overtime for more than 72 hours a month", then it may follow

Version No 2: 27 Jun 2023 (21:15 hrs)

that he cannot claim any overtime pay exceeding the prescribed 72 hours. Put differently, an employee cannot be paid for the extra hours that he or she is prohibited from working, because he or she should not have worked those hours to begin with.

28 Moreover, the other provisions surrounding s 38(5) might support this interpretation as well. In this regard, s 38(5) is located in s 38 of the EA, which is entitled "Hours of work". Thus, on a plain reading of s 38, the section (as well as its numerous subsections) is meant to address the hours an employee, who comes within it pursuant to s 35, is permitted to work. More particularly, as the respondent submits, s 38 primarily provides for the following:

(a) the statutorily prescribed limit of an employee's regular working hours (s 38(1));

(b) the exceptions when an employee may legally exceed that statutorily prescribed limit (s 38(2));

(c) the employee's entitlement to overtime pay (s 38(4));

(d) the statutory limit for overtime work per month (*ie*, the Overtime Cap) (s 38(5)); and

(e) the calculation of the rate of overtime pay (s 38(6)).

29 In particular, as the respondent submits, s 38(5) is positioned between ss 38(4) and 38(6) of the EA. In this regard, s 38(4) provides that an employee is entitled to be paid overtime pay subject to the restrictions set out in ss 38(4)(*a*) and 38(4)(*b*) read with s 38(1). Section 38(5) follows immediately to state that an employee cannot work beyond the Overtime Cap. Section 38(6) then provides how an employee's rate of pay for overtime is to be calculated based on his basic hourly rate of pay. As such, it is arguable that an employee's

Version No 2: 27 Jun 2023 (21:15 hrs)

entitlement to overtime pay as provided for by s 38(4) is capped at 72 hours in accordance with s 38(5), and calculated by reference to the formula provided in s 38(6).

The appellant's interpretation of s 38(5) is also a possible interpretation

30 As for the appellant's interpretation of s 38(5), I find that this is *also* a possible interpretation for the following reasons. In the first place, as the appellant points out, s 38(5) does not expressly prohibit an employee from claiming for overtime pay beyond the prescribed 72 hours a month. Thus, just as s 38(5) can be read to prohibit such a claim on the basis of the Judge's interpretation, so too can it be read to *not* prohibit such a claim because it says nothing about such a prohibition.

31 Furthermore, the appellant's interpretation of s 38(5) is possibly supported by the words used in surrounding provisions. This is because, as the appellant submits, it is possible that the words "required", "request" or "permitted" are used in s 38 to prevent the employer from allowing or requiring an employee to work beyond a stipulated number of hours in a certain timeframe. In other words, these provisions are specifically targeted towards the conduct of the employer and not the employee. For instance, s 38(1) provides that an employee "must not be *required* under his or her contract of service to work" [emphasis added] more than certain defined hours. Since it is the *employer* who requests the employee to do the work, this suggests that the focus of s 38(1) is on the conduct of the employer. As such, it is possible that s 38(5) does not contain any statutory prohibition or restriction to bar or otherwise prevent an *employee* from claiming for overtime pay performed beyond 72 hours a month if the employee was required or compelled by the employer to perform such overtime work.

Version No 2: 27 Jun 2023 (21:15 hrs)

32 Relatedly, the appellant also relies on similar wordings in other parts of s 38 which, by the same reasoning, can support the appellant's interpretation. In particular:

(a) s 38(2) provides that an employee "may be *required* by his or her employer to exceed the limit of hours prescribed in subsection (1)" [emphasis added] in certain defined situations;

(b) s 38(4) provides that if an employee works overtime "at the *request* of the employer" [emphasis added], then he or she must be paid at prescribed rate; and

(c) s 38(5) provides that an employee "must not be *permitted* to work overtime for more than 72 hours a month" [emphasis added].

33 Beyond the appellant's arguments that centre on s 38 of the EA, the same reasoning can possibly also apply in respect of s 53 of the EA, which makes it an offence for the *employer* to "[employ] any person as an employee contrary to the provisions of [Part 4]", in which s 38(5) resides. Separately, it is also important to refer to s 41A(1) of the EA, which I highlighted to parties at the hearing before me. This section provides as follows:

> **Power to exempt**
>
> **41A.**—(1) The Commissioner may, after considering the operational needs of the employer and the health and safety of the employee or class of employees, by written order exempt an employee or any class of employees from sections 38(1), (5) and (8) and 40(3) subject to such conditions as the Commissioner thinks fit.

Section 41A(1) allows the Commissioner for Labour ("the Commissioner") to exempt an employee from s 38(5). In practice, this means that the

Version No 2: 27 Jun 2023 (21:15 hrs)

Commissioner can allow for an employee to work beyond the Overtime Cap, presumably with the payment of overtime pay. In my view, this bolsters the appellant's interpretation of s 38(5) even further, as it shows that it is possible for employee to work beyond the Overtime Cap and yet be able to claim overtime pay for such work. Thus, it is possible to interpret s 38(5) as not prohibiting such a claim.

34 Accordingly, I find that the first stage of the *Tan Cheng Bock* framework yields two possible interpretations. It is with this in mind that I move to the second and third stages of this framework, where the correct interpretation of s 38(5) will turn on the legislative purpose of the provision and Part 4 of the EA.

The appellant's interpretation of s 38(5) is better aligned with the legislative purpose of s 38 and Part 4 of the Employment Act

The relevant principles

35 It is helpful to begin with the relevant principles. As a preliminary point, it may be said that, in practice, the second and third stages of the *Tan Cheng Bock* framework will often merge. This is because, in reasoning what the legislative purpose of a statutory provision should be, a court is necessarily comparing the possible interpretations of the text against the purposes of the statute. Indeed, even in *Tan Cheng Bock*, the Court of Appeal in effect combined the second and third stages of its prescribed three-stage framework (at [134]). With this in mind, I come to the relevant principles at the second (and third) stage of the *Tan Cheng Bock* framework, which is summarised at [54] in the Court of Appeal's decision and which I now set out.

36 First, in ascertaining the legislative purpose of a provision, it may be necessary to distinguish between the specific purpose of the provision

Version No 2: 27 Jun 2023 (21:15 hrs)

concerned, and the general purpose of the part of the statute in which the provision is found (see *Tan Cheng Bock* at [54]). In this regard, if the general purpose of the part in which the provision is situated does not shed light on the purpose of the specific provision concerned, it may then be necessary to examine the specific purpose of the provision separately. This suggests that in ascertaining the legislative purpose of a provision, a court should first pay heed to the *general* purpose of the part of the statute in which that provision appears, before looking to the *specific* purpose behind the provision concerned.

37 Second, in an apparent overlap with the first stage of the *Tan Cheng Bock* framework, the Court of Appeal held in *Tan Cheng Bock* at [54] that the legislative purpose should ordinarily be gleaned from the text itself. In this regard, while the first stage involves ascertaining the possible *interpretations* of the provision by looking to its text and its context within the statute as a whole, and the second stage involves ascertaining the *purpose* behind the provision by again looking to its text and its context, it will be difficult in practice to break down the analysis so cleanly. This is because once one strays beyond the text and starts looking to the surrounding textual context to ascertain the interpretation of a provision, one is inevitably engaging in a contextual interpretative exercise that involves ascertaining the purpose behind a provision as gleaned from the textual context. This much can be seen from the arguments considered at [25]–[34] above. Thus, at the second stage of the *Tan Cheng Bock* framework, it may well be that a court would already have a good sense of the purpose behind a provision, as well as the purpose of the part of the statute in which it appears, as gleaned from the ordinary meaning of the provision in its context.

38 Third, the Court of Appeal held in *Tan Cheng Bock* at [54] that a court can consider extraneous material in the ascertainment of the legislative purpose

Version No 2: 27 Jun 2023 (21:15 hrs)

of the provision concerned, and the part of the statute in which it appears, in the following three situations: (a) if the ordinary meaning of the provision is clear, extraneous material can only be used to confirm that ordinary meaning but not to alter it; (b) if the provision is ambiguous or obscure on its face, extraneous material can be used to ascertain the meaning of the provision; and (c) if the ordinary meaning of the provision leads to a result that is manifestly absurd or unreasonable, extraneous material can be used to ascertain the meaning of the provision. This in essence echoes s 9A(2) of the IA.

39 Fourth, the Court of Appeal held in *Tan Cheng Bock* at [54] that in deciding whether to consider extraneous material, and if so, the weight to be placed on it, a court is to have regard to the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision, and the need to avoid prolonging legal or other proceedings without compensating advantage. This, in essence, echoes s 9A(4) of the IA. In addition, the court also held that regard should be had to: (a) whether the material is clear and unequivocal; (b) whether it discloses the mischief aimed at or the legislative intention underlying the statutory provision; and (c) whether it is directed to the very point of statutory interpretation in dispute.

40 Apart from these principles, there will be other more specifically applicable principles that may arise depending on each case. Be that as it may, these principles from *Tan Cheng Bock* represent the clear and binding principles that a court should apply in the interpretation of a statutory provision.

Version No 2: 27 Jun 2023 (21:15 hrs)

The legislative purpose behind s 38(5) and Part 4 is to protect an employee and not to prejudice his or her rights against the employer

(1) The significance of statutory amendments in ascertaining the legislative purpose

41 Applying these principles, I am of the view that, broadly speaking, the legislative purpose behind s 38(5) and Part 4 is to protect an employee and not to prejudice his or her rights against the employer. As the parties agreed with me during the hearing, the question to be asked in the present case is whether the purpose of s 38(5) when it was originally enacted remains the same today, or whether it has changed? This question arises because s 38(5), while first enacted in 1968, was subsequently amended in 1972 to its present form. More specifically, as alluded to above at [13(a)], the Overtime Cap was increased from 48 hours in its originally enacted form to 72 hours in its present form. Moreover, s 35 of the EA, which prescribes the scope of application of Part 4 in which s 38(5) resides, was also amended in 2013 and 2018. In light of these developments, the appellant argues that the purpose of s 38(5) has changed since its original enactment in 1968. In contrast, the respondent argues that the original purpose of s 38(5) has not changed, which was to lower unemployment by limiting the number of overtime hours that an individual employee can work, thereby allowing more workers to be hired.

42 Having considered the parties' submissions, I agree with the appellant that the original purpose of s 38(5) when it was enacted in 1968 has been superseded by a new purpose in light of the aforementioned amendments. In arriving at this conclusion, I am satisfied that: (a) subsequent statutory amendments may be taken into account to ascertain the legislative purpose of a provision; and (b) even where the subsequent amendments do not relate to the

Version No 2: 27 Jun 2023 (21:15 hrs)

provision in question, they can be useful in ascertaining the purpose of that provision.

43 To begin with, I accept that the mere fact that there have been new social developments cannot allow the court to stretch the meaning of statutory provisions as it would amount to impermissible judicial legislation (see "Two Contrasting Approaches in the Interpretation of Outdated Statutory Provisions" [2010] SJLS 530 at 543–544). It is not the function of the court to extend legislation to cater for new social developments when Parliament has not done so. However, the court can and should still consider Parliamentary explanations to any subsequent *statutory amendments* to ascertain the legislative purpose behind a provision. In other words, when there has been an amendment to a statutory provision itself, it must not be readily assumed that the amended provision shares the same purpose as that of the previous version of the Act in which the provision is situated. Indeed, as the High Court in *Taw Cheng Kong v Public Prosecutor* [1998] 1 SLR(R) 78 ("*Taw Cheng Kong (HC)*") opined at [40], it is "not correct to rely on earlier material to interpret subsequent legislation as if the subsequent legislation was tailored from a retrospective standpoint as if to fit seamlessly into the schematics of the original Act". Accordingly, "the amending legislation must be looked at afresh, and only if there is no discernible intention to alter (however subtly or slightly) the original objectives, can the material pertaining to the original Act be relied upon". While *Taw Cheng Kong (HC)* was overruled by the Court of Appeal in *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR(R) 489, it is important to note that the Court of Appeal did not criticise the High Court's approach to the interpretation of amended statutory provisions. As such, I am of the view that the approach taken in *Taw Cheng Kong (HC)* is good law in Singapore.

Version No 2: 27 Jun 2023 (21:15 hrs)

44 This approach finds further support in the subsequent Court of Appeal decision of *AAG v Estate of AAH, deceased* [2010] 1 SLR 769, where the court stated that "[i]t is a settled principle that a statutory provision should be construed in a manner which will take into account new situations which may arise and which were not within contemplation at the time of its enactment" (at [30]). Since the court must have been aware that it cannot take on the role of a mini-legislature by repurposing a statute to fit with more recent social developments, it must have been referring to statutory amendments when it alluded to "new situations" which the court can take into account in interpreting the statute concerned.

45 Finally, I am also of the view that even where the subsequent amendments do not relate to the provision in question, the amendments to the surrounding provisions can be useful in ascertaining the purpose of the provision. To my mind, there are at least two reasons for this approach. First, it is clear from the *Tan Cheng Bock* framework (see [22(a)] above) that a provision must be interpreted in light of its surrounding textual context *at the time it is being interpreted*. This means that where there are amendments to other provisions in the statute, the textual context surrounding a provision likewise changes as well and should be taken into account in ascertaining its meaning. Second, even if there are subsequent changes to the surrounding textual context, a court must interpret a provision in a way that renders the provision in question compatible, and not contradictory, to the other provisions in the statute. This means that, where amendments to the surrounding textual context of a provision indicate that the purpose of that part of the Act has changed, then the fact, that the text of the provision in question is unamended, might indicate that Parliament has regarded the original text of the provision to be suitable for accommodating that *new* purpose. Accordingly, applied to the present case, it is

Version No 2: 27 Jun 2023 (21:15 hrs)

important to consider any subsequent amendment to s 38(5), as well as to Part 4 (in which it resides), to ascertain the prevailing legislative purpose of s 38(5).

(2) The general purpose of Part 4 of the Employment Act is to protect employees

46 To begin with, the relevant parliamentary debates show that the prevailing general purpose of Part 4, in which s 38(5) resides, is to afford better protection for employees and improve employment standards. Thus, in the Second Reading of the Employment, Parental Leave and Other Measures Bill, the then Acting Minister for Manpower, Mr Tan Chuan-Jin, said that "Part IV of the Employment Act provides for working hours, rest days, overtime (OT) payments, and other conditions of employment for the more vulnerable employees". Thus, in extending the coverage of Part 4 to more employees by raising the prescribed salary ranges in s 35, the Minister explained that this was to afford "better protection for more workers" (see *Singapore Parliamentary Debates, Official Report* (12 November 2013), vol 90).

47 Indeed, the purpose of Part 4 is further confirmed by other relevant Parliamentary statements. For instance, in the Second Reading of the Employment (Amendment) Bill in 2008, the then Acting Minister for Manpower, Mr Gan Kim Yong, stated that Part 4 "provides additional employment protection and benefits for the more vulnerable employees who are engaged in manual labour or are paid lower wages" (see *Singapore Parliamentary Debates, Official Report* (18 November 2008), vol 85, at col 950 ("*2008 Parliamentary Statement*")). Likewise, in the Second Reading of the Employment (Amendment) Bill in 2018, it was stated that Part 4 "provides additional protection for more vulnerable workers" and examples of that include

Version No 2: 27 Jun 2023 (21:15 hrs)

matters relating to the "hours of work, rest day and overtime pay" (see *Singapore Parliamentary Debates, Official Report* (20 November 2018)).

48 It therefore appears from these parliamentary debates that the legislative purpose behind Part 4 is very much focused on the protection of the *employee* as opposed to the employer. If so, I find it difficult to reconcile the Judge's interpretation with this overarching purpose of Part 4. If Part 4 is indeed meant to protect the employee, then it would be an inconsistent outcome if the effect of s 38(5) is to potentially allow an employer to require an employee to work beyond the Overtime Cap, but then hide behind the provision he (the employer) has knowingly breached so as to not pay the employee any overtime pay beyond the prescribed cap.

49 In as much as the Judge suggests that the employee should also be responsible for knowingly breaching the Overtime Cap by forgoing the affected overtime pay (see the Judgment at [54]–[55]), I respectfully disagree. This is because, as stated earlier, Part 4 of the EA is intended to "[provide] additional employment protection and benefits for the *more vulnerable employees* who are engaged in manual labour or are paid lower wages" [emphasis added] (see *2008 Parliamentary Statement*). As such, and with respect, the Judge's view overlooks the very practical power imbalance between the employer and the class of vulnerable employees who are protected by Part 4 of the EA. It would not be realistic for an employee like the appellant, who has travelled all the way from Bangladesh to find manual work in Singapore, to be in a position to reject work required of him by his employer, the respondent. It would be patently unfair and unreflective of the legislative purpose of Part 4 of the EA if the employee who has, in effect, been compelled to work beyond the Overtime Cap is then told that he or she cannot claim the overtime pay concerned. This cannot be right. Indeed, the protective purpose of Part 4 has also been recognised by

Version No 2: 27 Jun 2023 (21:15 hrs)

the courts in several cases (see, *eg*, the High Court decisions of *Hasan Shofiqul v China Civil (Singapore) Pte Ltd* [2018] 5 SLR 511 at [49] and *Chua Qwong Meng* at [27], as well as the District Court decision of *Rodney Antony Brown v Interactive Enterprises Pte Ltd trading as Morris Allen Study Centre* [2016] SGMC 61 at [45]).

(3) The specific purpose of s 38(5) of the Employment Act is also to protect employees

50 Furthermore, the relevant parliamentary debates also show that the prevailing specific purpose of s 38(5) is to afford protection for employees against onerous overtime work hours and is certainly not meant to prejudice the employee by preventing him or her from claiming for overtime pay over the Overtime Cap. This is evident from the then Acting Minister for Manpower Mr Tan Chuan-Jin's answers to the following questions in relation to the contravention of overtime work limits (see *Singapore Parliamentary Debates, Official Report* (12 November 2012), vol 89):

> … [S]ince 2005[,] (a) how many companies have applied for exemption from Section 38(5) of the Employment Act with regard to the extent of overtime work; (b) how many companies have contravened the Act due to overtime work that exceeded the limits; and (c) whether allowing for such exemptions will put workers from low-wage sectors at a disadvantage.

51 In his answer, Mr Tan Chuan-Jin explained that if employers require their employees to work more than 72 hours of overtime in a month, they must apply for an exemption from the Commissioner. He further explained that in granting this exemption, the Ministry of Manpower "takes into account the company's operational requirements and the workers' welfare[,] particularly their safety and health[,] *to make sure that they are not being compromised*" [emphasis added]. He added that the employers have to satisfy the Commissioner that they have, among others, "obtained the *consent of employees*

Version No 2: 27 Jun 2023 (21:15 hrs)

in extending their overtime hours … [and that] they have a good record for maintaining both *health and safety as well as employment standards*" [emphasis added]. As can be seen, Mr Tan Chuan-Jin's responses uniformly point to the *employee's* welfare as being the main focus of s 38(5). In fact, he also explained that the failure to comply with s 38(5) is an offence under the law, and that between 2008 and 2011, 260 employers were found to have contravened the limit of overtime work (see *Singapore Parliamentary Debates, Official Report* (12 November 2012), vol 89). As such, it is clear that the prevailing legislative purpose behind s 38(5) is to protect employees against onerous overtime hours.

52 Nevertheless, to be fair to the Judge, he is correct that the legislative purpose behind s 38(5) might have been different in the past. As I alluded to above at [41], the primary purpose of s 38(5) when it was first introduced in 1968 was not to protect an employee from working too much overtime, but to regulate and limit the amount of extra work that a worker could do in order to generate employment for more people in Singapore. This was clearly explained by the then Minister for Foreign Affairs and Minister for Labour, Mr S Rajaratnam, who had said this in Parliament (see *Singapore Parliamentary Debates, Official Report* (10 July 1968), vol 27 at col 476):

> … excessive overtime must be controlled, because it is a grievous anomaly and a travesty of justice that some employees should earn more than 200 per cent of their substantive pay as overtime at the expense of many of our unemployed citizens who have as much right as they to work, earn and live reasonably comfortable lives.
>
> There is, therefore, an urgent need that the excessive benefits enjoyed by some workers from overtime earnings should be spread over a wider field to cover more persons. …

53 Be that as it may, the specific purpose of s 38(5) changed when Parliament later amended s 38(5) to increase the permitted number of overtime hours from 48 to 72 through s 2 of the Employment (Amendment) Bill (Bill

Version No 2: 27 Jun 2023 (21:15 hrs)

No 28/1972). At the Second Reading of this Bill, the then Minister for Labour, Mr Ong Pang Boon, stated that the "amendment is necessary in view of the near full employment situation in Singapore, resulting in serious shortage of certain categories of workers" (see *Singapore Parliamentary Debates, Official Report* (3 November 1972), vol 32 at col 327). This shows that, in the light of the change in employment situation in Singapore, the purpose behind s 38(5) was no longer to spread out employment opportunities. Instead, the purpose shifted to protecting employees from onerous overtime hours, as Mr Ong Pang Boon ("Mr Ong") explained in a later speech in Parliament (see *Singapore Parliamentary Debates, Official Report* (19 March 1974), vol 33 at cols 340–341):

> … *Hours of work of employees are regulated by law so that their health and welfare can be adequately safeguarded.* The present limit on normal hours of work of eight hours a day or 44 hours a week is considered fair and reasonable. *Under normal conditions an employee must be given the choice to accept or reject a request from the employer to work overtime. … Making over-time compulsory will not be in the interest of the employees.* This is because in certain types of industry or operations prolonged hours of working would expose the workers to hazards which may be injurious to their health. Furthermore, it would be difficult to ensure that employers are justified in asking their employees to work over-time.
>
> *The problem of labour shortage cannot be solved by forcing workers to work overtime at the whim and fancy of the employers, without due regard to the health and well-being of the workers.* The maximum hours of work are specifically laid down in the Employment Act to protect the workers. All over the world the trend is towards a shorter working week. The introduction of a 44-hour working week in 1968 had already taken into account the need of industries as well as the health of the workers. *Besides, the Employment Act also provides for a maximum over-time of 72 hours a month and, in exceptional circumstances, permission may be sought to exceed this limit.* Instead of compulsion, employers should think of offering better incentives and working conditions to induce the workers to accept overtime work. …
>
> [emphasis added]

Version No 2: 27 Jun 2023 (21:15 hrs)

Indeed, it will be observed that Mr Ong again highlighted in this speech that there was a "problem of labour shortage". This signifies that the change in the employment situation in Singapore continued, and that the purpose behind s 38(5) remained to protect employees from onerous overtime hours that may be imposed "at the whim and fancy of the employers, without due regard to the health and well-being of the workers".

54 Accordingly, I respectfully disagree with the Judge's interpretation, which is premised on the legislative purpose behind s 38(5) in 1968, but which did not take into account subsequent changes, especially from 1972. In my judgment, the legislative purpose behind s 38(5) is to afford protection for employees against onerous overtime work hours.

55 Having ascertained the general purpose of Part 4 and the specific purpose of s 38(5), I turn to compare the two possible interpretations of s 38(5) against this purpose under the third stage of the *Tan Cheng Bock* framework. In my view, the Judge's interpretation would not further this purpose. It would be inconsistent to say that s 38(5) is meant to protect an employee from onerous overtime work hours but then turn a blind eye when an employee is in fact asked to perform overtime beyond the Overtime Cap. Instead, I agree with the appellant that the protection afforded to employees by s 38(5) must extend to the *consequences* of exceeding the Overtime Cap. Thus, the proper interpretation of s 38(5) must be that it does not prohibit an employee from claiming his overtime pay for hours exceeding the Overtime Cap. To conclude otherwise would allow employers to hide behind s 38(5) if the Overtime Cap were exceeded, depriving vulnerable employees of what is due to them. This would be antithetical to the purpose of s 38(5).

Version No 2: 27 Jun 2023 (21:15 hrs)

56 For completeness, while the appellant limits its interpretation of s 38(5) to situations where "the employee was required or compelled by the employer to perform such overtime work", I do not need to decide whether this qualification is correct. This is because it is undisputed in the present case that the appellant was required by the respondent to work overtime.

Summary of conclusions in relation to s 38(5) of the Employment Act

57 In summary, through the process of statutory interpretation prescribed by *Tan Cheng Bock*, I find first that the Judge's interpretation and the appellant's interpretation are both possible interpretations of s 38(5). In particular, so far as the appellant's interpretation is concerned, I find that it is a possible interpretation because s 38(5) does not expressly prohibit an employee from claiming for overtime pay beyond the Overtime Cap. Furthermore, the appellant's interpretation of s 38(5) is also possible when the provision is considered in the context of its surrounding provisions, which are all aimed at protecting the employee's interests. Finally, it is also important that s 41A of the EA allows the Commissioner to exempt an employee from s 38(5). This must mean that it is possible for employee to work beyond the Overtime Cap and yet be able to claim overtime pay for such work.

58 While the Judge's interpretation and the appellant's interpretation are both possible interpretations of s 38(5), I find that the appellant's interpretation is better aligned with the legislative purpose of s 38 and Part 4 of the EA. First, the relevant parliamentary debates show that the prevailing general purpose of Part 4, in which s 38(5) resides, is to afford better protection for employees and improve employment standards. Second, the relevant parliamentary debates also show that the prevailing specific purpose of s 38(5) is to afford protection for employees against onerous overtime work hours.

Version No 2: 27 Jun 2023 (21:15 hrs)

59 In my respectful view, the Judge's interpretation is wrong because it is premised on the previous legislative intention that has since been updated through subsequent amendments to both s 38(5) as well as Part 4 of the EA. Accordingly, it would be inconsistent to say that s 38(5) is meant to protect an employee from onerous overtime work hours but then turn a blind eye when an employee is in fact asked to perform overtime beyond the Overtime Cap and thereafter claims for overtime pay.

There is no need to decide on whether the respondent can rely on s 38(5) of the Employment Act as a defence

60 Given my conclusion above, I do not need to decide substantively whether the respondent can rely on s 38(5) as a "defence" to the Overtime Pay Claim. Instead, for the same reason in the preceding paragraph, it suffices for me to observe that it would not be consistent with the purpose of s 38(5) to conclude as such. Additionally, there is nothing in the words of s 38(5) that suggests that it is meant to operate this way. On the contrary, s 132 of the EA plainly says that the provisions of the EA do not prevent a civil claim from being brought by an employee against his or her employer for breach or non-performance of a contract of service, or *vice versa*. As such, I am inclined to think that the respondent cannot rely on s 38(5) as a defence to the appellant's civil claim that is brought under the Employment Contract. Nevertheless, as this issue does not arise before me, I say no more on this point.

Conclusion

61 In conclusion, the appellant, Mr Rakib, was required by the respondent to work hours beyond the Overtime Cap. Even though the respondent knew from clause 6.4 of the Employment Contract that Mr Rakib was not to work beyond the Overtime Cap, the respondent still required Mr Rakib to do so.

Version No 2: 27 Jun 2023 (21:15 hrs)

Mr Rakib worked those hours. He asked for his pay for overtime, albeit beyond the Overtime Cap. The respondent hid behind the Overtime Cap. It refused to pay Mr Rakib. Mr Rakib was compelled to sue the respondent. Upon an examination of the relevant legislative purpose, I find it difficult to see how s 38(5), which is ostensibly enacted to protect vulnerable employees like Mr Rakib from the effects of onerous overtime hours, can be used to shield the respondent from having to pay what is rightfully due to Mr Rakib. Mr Rakib should be rightfully paid for the overtime hours he was required to work.

62 For the reasons I have summarised, I find that s 38(5) does not prohibit Mr Rakib's claim against the respondent for overtime pay beyond the Overtime Cap. In the premises, I allow Mr Rakib's appeal on the limited basis that he is entitled to overtime pay beyond the Overtime Cap. I remit the case back to the Judge to compute the additional amount that the respondent should pay to Mr Rakib.

63 In closing, I thank Mr Melvin Chan, who appeared for the appellant, and Ms Rebecca Chia, who appeared for the respondent, for their helpful submissions. Unless the parties are able to agree on costs, they are to write in with their submissions on the appropriate order within 14 days of this decision, limited to 7 pages each.

Goh Yihan
Judicial Commissioner

Version No 2: 27 Jun 2023 (21:15 hrs)

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Version No 2: 27 Jun 2023 (21:15 hrs)