IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 11

Court of Appeal / Civil Appeal No 1 of 2024

Between

(1) Masoud Rahimi bin Mehrzad
(2) Rosman bin Abdullah
(3) Iskandar bin Rahmat
(4) Roslan bin Bakar
(5) Syed Suhail bin Syed Zin
(6) Pausi bin Jefridin
(7) Ramdhan bin Lajis
(8) Saminathan Selvaraju
(9) Mohammad Rizwan bin Akbar Husain
(10) Jumaat bin Mohamed Sayed
(11) Jumadi bin Abdullah
(12) Mohammad Reduan bin Mustaffar
(13) Mohammad Azwan bin Bohari
(14) Muhammad Hamir bin Laka
(15) Lingkesvaran Rajendaren
(16) Omar bin Yacob Bamadhaj
(17) Muhammad Salleh bin Hamid
(18) Moad Fadzir bin Mustaffa
(19) Zamri bin Mohd Tahir
(20) Shisham bin Abdul Rahman
(21) Gunalan Goval
(22) Chong Hoon Cheong
(23) Mohd Akebal s/o Ghulam Jilani
(24) Steve Crocker
(25) Mohamed Ansari bin Mohamed Abdul Aziz
(26) Chandroo Subramaniam
(27) Sulaiman bin Jumari

Version No 2: 28 Mar 2024 (12:06 hrs)

(28) Kishor Kumar a/l Raguan
(29) Sanjay Krishnan
(30) A Steven Raj s/o Paul Raj
(31) Teo Ghim Heng
(32) Roshdi bin Abdullah Altway
(33) Hamzah bin Ibrahim
(34) Pannir Selvam a/l Pranthaman
(35) Tan Kay Yong
(36) Datchinamurthy a/l Kataiah

… *Appellants*

And

Attorney-General

… *Respondent*

In the matter of Originating Application No 987 of 2023

Between

(1) Masoud Rahimi bin Mehrzad
(2) Syed Suhail bin Syed Zin
(3) Roslan bin Bakar
(4) Rosman bin Abdullah
(5) Pausi bin Jefridin
(6) Iskandar bin Rahmat
(7) Mohammad Rizwan bin Akbar Husain
(8) Saminathan Selvaraju
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Version No 2: 28 Mar 2024 (12:06 hrs)

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(32) Pannir Selvam a/l Pranthaman
(33) Datchinamurthy a/l Kataiah
(34) Teo Ghim Heng
(35) Tan Kay Yong
(36) Roshdi bin Abdullah Altway

… *Applicants*

And

Attorney-General

… *Respondent*

EX TEMPORE **JUDGMENT**

[Constitutional Law — Judicial review]
[Civil Procedure — Striking out]

Version No 2: 28 Mar 2024 (12:06 hrs)

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Masoud Rahimi bin Mehrzad and others
v
Attorney-General

[2024] SGCA 11

Court of Appeal — Civil Appeal No 1 of 2024
Sundaresh Menon CJ, Steven Chong JCA, Belinda Ang Saw Ean JCA
27 March 2024

27 March 2024

Sundaresh Menon CJ (delivering the judgment of the court *ex tempore*):

1 This is an appeal against the decision of the General Division of the High Court to strike out the appellants' constitutional challenge against two provisions of the Post-appeal Applications in Capital Cases Act 2022 (Act 41 of 2022) (the "PACC Act"). The PACC Act introduces new provisions to the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the "SCJA") setting out a procedure (the "PACC procedure") for post-appeal applications in capital cases ("PACC applications"). Under this procedure, a prisoner awaiting capital punishment ("PACP") must first apply for permission ("PACC permission") from the Court of Appeal to make a PACC application.

2 The appellants contend that two aspects of the PACC procedure are inconsistent with their rights under Arts 9 and 12 of the Constitution of the Republic of Singapore (2020 Rev Ed):

(a) First, under s 60G(7)(*d*) of the SCJA, in determining whether to grant PACC permission, the Court of Appeal must consider, among other matters, whether the PACC application to be made has a reasonable prospect of success.

(b) Second, under s 60G(8) of the SCJA, the Court of Appeal may summarily deal with an application for PACC permission without an oral hearing.

3 The PACC Act has not been brought into force by notification in the *Gazette*. The provisions under challenge are therefore not yet in operation. This was the critical defect that the judge below (the "Judge") found in the appellants' challenge, and in our judgment, it remains so now. The Judge held that the appellants could not satisfy the three requirements for standing set out by this court in *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112. Since the provisions were not in operation, the appellants could not show that there was a violation of their constitutional rights, that there was a real controversy to be determined, and that they had a real interest in bringing the constitutional challenge. Since the appellants had no standing to bring the challenge, their application disclosed no reasonable cause of action and was liable to be struck out.

4 We agree with the Judge's analysis. Even if we were to take the appellants' case at its highest and assume that the appellants' contentions are true and that the impugned PACC Act provisions will restrict their constitutional rights in some way, we do not see how the appellants have been affected at all. The appellants rely on *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*"), where this court stated (at [94]) that the existence of an allegedly unconstitutional law on the statute books could suffice to show a

Version No 2: 28 Mar 2024 (12:06 hrs)

violation of a constitutional right (and thus to found standing) in an extraordinary case. They say that the present case is such a case, particularly because PACPs have been specifically targeted by the PACC Act. In our judgment, the appellants have taken *Tan Eng Hong* out of context.

5 It is important to note that the statements in *Tan Eng Hong* were made in the context of offence-creating provisions. In that context, the point being made was that the effect of such a provision could be felt even if the applicant was not yet being prosecuted (*Tan Eng Hong* at [110]). To put it another way, the very existence of such a law may cast a shadow that affects the conduct of those affected by it, such that they may be found in such circumstances to have standing to bring a challenge against the law, even if it has not been invoked against them. While this may be true in principle, it is a fact sensitive inquiry. The true nature of that inquiry is whether and how the law being challenged *has actually affected the applicant*. In that light, the statements in *Tan Eng Hong* are irrelevant to the present case, which does not concern offences. Rather, these are procedural provisions that regulate the way in which certain applications may be made and they can only become possibly relevant if one is constrained to abide by those procedures. It does not assist the appellants to say that their rights have been violated by the very existence of the impugned provisions ostensibly on the basis that they are the target of the PACC Act. As noted above, the inquiry in this context is whether the appellants *have actually been affected by the provisions*.

6 The answer to that is plainly 'no' as can be seen by considering this question: is there an application that the appellants intend to bring today, that they cannot bring because of the impugned provisions? The clear and unequivocal answer to that is 'no'. The appellants are currently free to bring any application they wish without being affected in any way by the PACC Act

Version No 2: 28 Mar 2024 (12:06 hrs)

provisions, because these are not currently in force. Any application that the applicants may make will not be affected by the PACC Act coming into force in the future, because s 5(1) of the Act expressly provides that the Act applies only to applications filed *after* it is brought into force. In other words, the PACC Act and the impugned provisions only apply prospectively.

7 Once it is clear that the appellants *are not and will not be affected* by the impugned provisions, it becomes immediately evident that they lack standing; and this is so for good reason because in the absence of an actual or arguably, at least an intended application which it is said will be or has been fettered by the PACC procedure, we cannot meaningfully assess whether any of the appellants do in fact have a basis to object to the validity of the impugned provisions or whether they are in fact prejudiced in any way.

8 Instead, what we are being asked to do is to decide on the appellants' complaint as to how their rights may potentially be affected at an undefined point in the future when the PACC Act provisions are in force. That is a purely theoretical challenge which we see no basis or justification for determining today. That such a challenge has been brought at all and at this time speaks only to the appellants' abuse of the court's process.

9 For these reasons, we dismiss the appeal. We make no orders as to costs.

A coda on the PACC Act

10 Given that we have dismissed the appeal solely on the issue of standing, there is no need for us to determine whether the appellants had a viable claim on the merits. We will, however, make some brief observations as to the considerations that may be relevant in any review of the constitutionality of the PACC Act (or any of its provisions) which may subsequently arise.

Version No 2: 28 Mar 2024 (12:06 hrs)

11 First, it is imperative to note that the PACC procedure concerns a very limited category of applications, namely, those brought by PACPs who have already had the merits of their cases ventilated on at least two occasions – at trial and on appeal. Moreover, the PACC procedure does not affect applications to review a concluded appeal, for which permission must be sought pursuant to a separate and independent procedure under s 394H of the Criminal Procedure Code 2010 (2020 Rev Ed).

12 Second, it is clear from the tenor of the speech by Senior Parliamentary Secretary Ms Rahayu Mahzam at the second reading of the Post-appeal Applications in Capital Cases Bill (Bill No 34/2022) that the PACC procedure was designed to cover situations where new material (whether in the form of evidence or legal arguments) is raised that could not have been brought earlier, whether at the trial or on appeal. The PACC procedure is not a means to re-open the merits of the case generally.

13 In that light, the expectation of what due process requires for a PACP who has exhausted all his avenues of appeal is very likely to be different when compared to the very different situation of an accused person who is being tried for the first time.

Sundaresh Menon
Chief Justice

Steven Chong
Justice of the Court of Appeal

Version No 2: 28 Mar 2024 (12:06 hrs)

Belinda Ang Saw Ean
Justice of the Court of Appeal

The appellants in person;
Chew Shi Jun James, Teo Meng Hui Jocelyn and J Jayaletchmi
(Attorney-General's Chambers) for the respondent.

Version No 2: 28 Mar 2024 (12:06 hrs)