

Ng Gino Ernest v Triathlon Association of Singapore
[2007] SGHC 183

Case Number : OS 1499/2007
Decision Date : 24 October 2007
Tribunal/Court : High Court
Coram : Choo Han Teck J
Counsel Name(s) : Christopher Anand s/o Daniel and Paul Ong Min-Tse (Allen & Gledhill LLP) for the applicant; Jeffrey Chan Wah Teck (Attorney-General's Chambers) for the Attorney-General
Parties : Ng Gino Ernest — Triathlon Association of Singapore

24 October 2007

Choo Han Teck J:

1 The applicant prayed for an order under O 53 r 1(2) Rules of Court (Cap 322, R5, 2006 Rev Ed) for leave to apply for various orders to be made against the respondent association ("the respondent"). Order 53 r 1(2) provides the procedure for an application for leave for judicial review of administrative action. In this case, the respondent nominated two persons for the Singapore national team of triathletes in the 2007 South-East Asian Games scheduled to be held in December. The applicant was not nominated and seeks a judicial review of the decision of the respondent in its original decision not to nominate the applicant as well as the decision of its Appeals Committee in rejecting the applicant's appeal.

2 Mr Christopher Daniel ("Mr Daniel") making the application for leave on behalf of the applicant stated his grounds as follows and I would summarise without detail since some of the assertions might be contentious. It was supposed to be the respondent's selection policy that athletes who wished to be considered had to compete in two time trials. The policy stated as follows:

1.3 For eligibility into the SEA Games 2007 Teams, athletes have to race in the 1st time trial in order to qualify for the 2nd time trial. Athletes will also be required to meet the minimum qualifying time in the 1st time trial to be eligible for the 2nd time trial.

1.5.2 Interested athletes who have achieved a minimum qualifying time of 2hrs 12mins for men and 2hrs 35mins for women in any ITU/ASTC sanctioned race over the last 2 years are invited to sign up with the Triathlon Association of Singapore.

1.5.3 Athletes who have successfully qualified for the 1st time trial will be able to race in the Elite category for the OSIM Singapore International Triathlon.

3 The applicant qualified under the first trial for a place to compete in the second time trial, in which he took part and was second in the race. One "Mr Phoon" who also took part in the second time trial was placed third. However, the respondent nominated one Mr Mok who was first in both time trials and Mr Phoon as the nominees for places in the national team.

4 The applicant was aggrieved, not only because he raced ahead of Mr Phoon in the second time trial, but Mr Phoon did not complete the first time trial because he retired injured. Hence, from his

standpoint, Mr Phoon was selected despite not qualifying for the second race. Furthermore, it was the applicant's contention that under the respondent's selection policy, Mr Phoon ought not to have even ran in the second time trial.

5 The applicant had a second objection to Mr Phoon's nomination, and that was that the respondent submitted Mr Phoon's name as a nominee even before the second time trial, which would have been another breach of its selection policy. On 27 August 2007 the applicant requested the respondent to reconsider its decision. The respondent replied that it would not do so. On 28 August 2007 the applicant requested the respondent to convene an appeals committee to hear his appeal against the respondent's decision. This was done and the appeal was heard on 4 September 2007.

6 The appeal itself constituted the third ground of this application. The applicant says that he was not given a fair hearing because of the "interjections and interruptions" from two of the five committee members. The applicant further stated that two of the members of the appeals committee were parties to or were involved in the respondent's original decision to nominate Mr Phoon. Hence, it would appear that these two members sat in judgment of their own decision.

7 In my view, the above statements, if proved would be breaches of natural justice, a technical term in administrative law. It is not necessary to discuss this aspect presently. This application was made *ex parte* in accordance with O 53 r 1(2) but Mr Jeffrey Chan, ("Mr Chan") appeared on behalf of the Attorney-General to state that he did not think that leave to issue was appropriate in this case for the reason that the respondent was a private association. Mr Chan submitted that judicial review was available only when a tribunal was exercising a public function.

8 Mr Chan may well be right, but it is not clear whether the respondent was exercising any public function in this case. Mr Daniel submitted that the respondent was not only selecting representatives for the national team but the selection was from participants from the public (the applicant was not a member of the respondent), and that it did so with public funds obtained through the Singapore National Olympic Council.

9 I am of the view that the applicant had sufficiently made out a case which required a response. The case made out was not only against the respondent's original decision but also against the appeal committee's conduct in the course of the appeal. I have to leave the issue of whether the appeal committee was exercising a quasi-judicial function for the substantive argument. The threshold at this stage did not require a full consideration of the issue since the respondent was not yet a party and evidence was not complete. Accordingly, I granted leave to issue.

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