Mohd Sadique bin Ibrahim Marican and another *v* Law Society of Singapore [2010] SGHC 150

Case Number	: Originating Summons No 343 of 2010
Decision Date	: 13 May 2010
Tribunal/Court	: High Court
Coram	: Philip Pillai JC
Counsel Name(s)	: Tan Cheng Han SC (instructed), Mohd Sadique Bin Ibrahim Marican and Anand Kumar s/o Toofani Beldar (Intelleigen Legal LLC) for the applicants; Richard Kwek (Gurbani & Co) and Andre Maniam SC (WongPartnership LLP) for the respondent.
Parties	: Mohd Sadique bin Ibrahim Marican and another — Law Society of Singapore

Administrative Law

Courts and Jurisdiction

Legal Profession

13 May 2010 Judgment reserved.

Philip Pillai JC:

Introduction

1 This is an application for leave, pursuant to O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed), to seek a quashing order. The applicants seek to quash (a) certain disciplinary proceedings and (b) a report issued by the Disciplinary Tribunal dated 2 February 2010 containing their findings and determination.

2 The only issue raised before me is a jurisdictional issue – whether the court has power to grant leave to apply for a quashing order in light of s 91A of the Legal Profession Act (Cap 161, 2009 Rev Ed) ("LPA") which restricts judicial review of "any act done or decision made by the Disciplinary Tribunal" (see [8] below).

3 It is the Law Society's submission that s 91A of the LPA, which was introduced via the 2008 round of statutory amendments, has restricted the right of a solicitor to apply to the court for a quashing order with the consequence that the only legal recourse against the Disciplinary Tribunal's acts or decisions is to a court of 3 Judges of the Supreme Court provided for under s 98 of the LPA or a single Judge under s 97 of the LPA, as the case may be. It further submits that the words "any act done or decision made by the Disciplinary Tribunal" in s 91A encompasses the Disciplinary Tribunal's "findings and determination" under s 93 of the LPA (see [8] below).

4 The applicants' submission is that the meaning and scope of the phrase "any act done or decision made by the Disciplinary Tribunal" in s 91A of the LPA is confined only to acts and decisions of the Disciplinary Tribunal in the course of its proceedings, *ie* the rulings and conduct of the proceedings and the evidence adduced during the Disciplinary Tribunal's investigations. The applicants argue that s 91A does not apply to situations *after* the Disciplinary Tribunal has issued its findings and determination.

My Decision

5 The crux of the matter turns on the meaning to be ascribed to the words "any act done or decision made" in s 91A of the LPA. Does it have the same meaning as "findings and determination" in s 93 of the same statute? Even if the two phrases are not interchangeable, does the phrase "any act done or decision made" nevertheless encompass "findings and determination"?

Changes introduced by the 2008 amendments to the LPA

6 Prior to the 2008 amendments, under s 93 of the LPA (Cap 161, 2001 Rev Ed), the Disciplinary Committee served two functions. First, it investigated complaints and matters referred to it and made *findings* in relation to the facts of the case. Second, it *determined* whether any cause of sufficient gravity for disciplinary action under s 83 existed and, even where no such cause of sufficient gravity existed, whether the advocate and solicitor ought to be reprimanded or ordered to pay a penalty appropriate to the misconduct committed. Within the context of the pre-2008 wording of s 93, the Disciplinary Committee's findings were clearly quite separate from their determinations. The Disciplinary Tribunal (which is the modern successor to the Disciplinary Committee) functions the same way. Unfortunately, references in judicial decisions as well as in Parliament have often conveniently, but unhelpfully for the purposes of this application, loosely described the outcomes of the Disciplinary Tribunal process as "decisions" of the Disciplinary Tribunal instead of conforming to the statutory formulation, *ie* "findings" and "determination".

7 Bearing the above in mind, it was nonetheless a well-established principle, prior to the 2008 amendments to the LPA, that the findings and determination of the Disciplinary Committee could be subject to judicial review notwithstanding that the applicant might have to show cause before a court of 3 Judges (see *Re Singh Kalpanath* [1992] 1 SLR(R) 595 at [26] – [27]; *Wong Keng Leong Rayney v Law Society of Singapore* [2006] 4 SLR(R) 934 at [1] and [2007] 4 SLR(R) 377 at [15]; *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 ("*Re Shankar*")). Prior to the 2008 amendments to the LPA, the process of judicial review was a distinctly separate and independent process from that of showing cause. The difference between judicial review and show cause proceedings was canvassed in *Re Singh Kalpanath* at [27], where Chan Sek Keong J observed:

> The "show cause" proceedings are very different from judicial review proceedings, both with respect to the law as well as the procedure. In the former, the court goes into the merits of the findings and determination of the DC on the basis of the evidence recorded by the DC. It does not hear oral evidence at all. In the latter, the court does not deal with the merits of the decision but with its legality on ordinary administrative law grounds. Bias, as an aspect of procedural impropriety, is one of these grounds.

Similarly, in *Re Shankar* at [34], Sundaresh Menon JC stressed that he "[did] not think it [was] correct to view the court of three judges as an alternative remedy to the seeking of judicial review".

8 The 2008 amendments to the LPA, however, introduced a number of significant changes, including s 91A. Also, as already mentioned above, the Disciplinary Committee was renamed the Disciplinary Tribunal. The introduction of s 91A was concurrently accompanied by amendments to ss 97 and 98 of the LPA. For convenience, the changes to ss 91A, 93, 97 and 98 of the LPA are tabulated below:

LPA (Cap 161, 2001 Rev Ed)	**LPA (Cap 161, 2009 Rev Ed)**

No equivalent provision.	**Restriction of judicial review** 91A. — (1) Except as provided in sections 82A, 97 and 98, there shall be no judicial review in any court of any act done or decision made by the Disciplinary Tribunal. (2) In this section, "judicial review" includes proceedings instituted by way of — (a) an application for a Mandatory Order, a Prohibiting Order or a Quashing Order; and (b) an application for a declaration or an injunction, or any other suit or action, relating to or arising out of any act done or decision made by the Disciplinary Tribunal.
Findings of Disciplinary Committee 93. —(1) After hearing and investigating any matter referred to it, a Disciplinary Committee shall record its findings in relation to the facts of the case and according to those facts shall determine — (a) that no cause of sufficient gravity for disciplinary action exists under section 83; (b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded or ordered to pay a penalty sufficient and appropriate to the misconduct committed; or (c) that cause of sufficient gravity for disciplinary action exists under that section. … (4) The findings and determination of the Disciplinary Committee under this section shall be drawn up in the form of a report of which — (a) a copy shall be submitted to the Chief Justice and the Society; and (b) a copy shall on request be supplied to the advocate and solicitor concerned. …	**Findings of Disciplinary Tribunal** 93. — (1) After hearing and investigating any matter referred to it, a Disciplinary Tribunal shall record its findings in relation to the facts of the case and according to those facts shall determine that — (a) no cause of sufficient gravity for disciplinary action exists under section 83; (b) while no cause of sufficient gravity for disciplinary action exists under that section, the advocate and solicitor should be reprimanded or ordered to pay a penalty sufficient and appropriate to the misconduct committed; or (c) cause of sufficient gravity for disciplinary action exists under that section. … (4) The findings and determination of the Disciplinary Tribunal under this section shall be drawn up in the form of a report of which — (a) a copy shall be submitted to the Chief Justice and the Society; and (b) a copy shall on request be supplied to the advocate and solicitor concerned. …

Procedure for complainant dissatisfied with Disciplinary Committee's decision 97. — (1) Where a Disciplinary Committee has determined — (a) that no cause of sufficient gravity for disciplinary action exists under section 83; or (b) that while no cause of sufficient gravity for disciplinary action exists under that section the advocate and solicitor should be reprimanded or ordered to pay a penalty, and the person who made the complaint, the advocate and solicitor or the Council is dissatisfied with the determination, that person, advocate and solicitor or the Council may, within 14 days of being notified of the Disciplinary Committee's decision, apply to a Judge under this section. (2) Such an application shall be made by originating summons and shall be served on the Society and the secretary of the Disciplinary Committee who shall thereupon file in court the record and report of the hearing and investigation by the Disciplinary Committee. …	**Application for review of Disciplinary Tribunal's decision** 97. —(1) Where a Disciplinary Tribunal has made a determination under section 93(1)(a) or (b), the person who made the complaint, the advocate and solicitor or the Council may, within 14 days of being notified of that determination or any order under section 93(2) or (2A), apply to a Judge for a review of that determination or order. (2) An application under subsection (1) shall be — (a) made by originating summons; and (b) served on — (i) the person who made the complaint, if he had the conduct of the proceedings before the Disciplinary Tribunal and is not the applicant; (ii) the advocate and solicitor, if he is not the applicant; (iii) the Society, if the Council is not the applicant; and (iv) the secretary of the Disciplinary Tribunal. …

Order to show cause. 98. — … (7) The application to make absolute and the showing of cause consequent upon any order to show cause made under subsections (1) and (2) shall be heard by a court of 3 Judges of the Supreme Court, and from the decision of that court there shall be no appeal.	**Application for order that solicitor be struck off roll, etc**. 98. — … (7) The application under subsection (1) shall be heard by a court of 3 Judges of the Supreme Court, and from the decision of that court there shall be no appeal. (8) The court of 3 Judges — (a) shall have full power to determine any question necessary to be determined for the purpose of doing justice in the case, including any question as to the correctness, legality or propriety of the determination of the Disciplinary Tribunal, or as to the regularity of any proceedings of the Disciplinary Tribunal; and (b) may make an order setting aside the determination of the Disciplinary Tribunal and directing — (i) the Disciplinary Tribunal to rehear and reinvestigate the complaint or matter; or (ii) the Society to apply to the Chief Justice for the appointment of another Disciplinary Tribunal to hear and investigate the complaint or matter.

[emphasis added in underline]

Purpose of s 91A of the LPA

9 The Explanatory Statement in the Legal Profession (Amendment) Bill No 16 of 2008 is the starting point for determining the purpose of s 91A:

> Clause 36 introduces a new section 91A, which provides that there will be no judicial review in any court of any act done or decision made by a Disciplinary Tribunal except in accordance with sections 82A, 97 and 98. The court hearing an application under section 82A (10), 97 or 98 will have the power to consider any matter which might otherwise have been raised at an application for judicial review of a decision of a Disciplinary Tribunal, including any question as to the legality o r propriety of the determination of the Disciplinary Tribunal, or as to the regularity of any proceedings of the Disciplinary Tribunal.

Section 91A is clearly intended to place restrictions on applications for judicial review. However, how has s 91A affected access to judicial review?

10 As amended, s 97 of the LPA has enlarged the powers of the single Judge by expressly providing for "review" where the Disciplinary Tribunal has made a determination that there is no need for a show cause proceeding before the court of 3 Judges. The powers of the court of 3 Judges were also expanded under the amended s 98 of the LPA so as to include, in addition to the powers it previously had to hear show cause proceedings, the power to determine "any question as to the correctness, legality or propriety of the determination of the Disciplinary Tribunal, or as to the regularity of any

proceedings of the Disciplinary Tribunal". The words "correctness, legality or propriety" and "regularity" are directly referable to the three grounds of judicial review – illegality, irrationality and (procedural) impropriety (see *Council of Civil Services Unions v Minister for the Civil Service* [1985] AC 374 at 410 per Lord Diplock). An examination of the amended s 98 of the LPA reveals that the court of 3 Judges now has, in addition to its power to adjudicate on the merits of the case, the power of judicial review over the Disciplinary Tribunal. In other words, the court of 3 Judges now presides over the show cause proceedings and also proceedings relating to judicial review. Where the Disciplinary Tribunal has not determined that show cause proceedings are necessary, the single Judge will now also have the power of judicial review *after* the findings and determination of the Disciplinary Tribunal are made, pursuant to s 97 of the LPA.

11 Seen in the light of the operation of ss 97 and 98, it would appear that the purpose of s 91A is to restrict judicial review by consolidating the judicial review process with the hearings on merit into one process, instead of maintaining them as distinctly separate processes. What this means is that judicial review remains available but only through the single Judge process under s 97 (in the event there are no show cause proceedings) or the court of 3 Judges under s 98 (in the event there are show cause proceedings). Given the provisions in ss 97 and 98 and how they relate to s 91A, in my view, Parliament could not have intended to preserve both an entirely redundant round of judicial review of the findings and determination of the Disciplinary Tribunal (as per what the applicants are submitting), *and*, additionally, judicial review a second time under the now enlarged single Judge process under s 97 or the court of 3 Judges process under s 98, as the case may be. I have not found anything in the parliamentary speeches to convince me otherwise.

Interpretation of s 97 of the LPA

12 It bears repeating that post-2008, pursuant to s 91A, judicial review of "any act done or decision made by the Disciplinary Tribunal" is no longer available except as provided for in ss 82A, 97 and 98 of the LPA. However, ss 82A, 97 and 98 never once refer to the "act" of the Disciplinary Tribunal. Instead, the words "determination" and "finding" appear in those provisions. The legislative draftman's insertion of the statutory formulation of "any act done or decision made" in s 91A infelicitously led to the uncertainty raised in this application, as the functions and processes of the Disciplinary Tribunal to which it refers are described in ss 93, 97 and 98 not as "act done" or "decision" but as, *inter alia*, "findings" and "determination[s]".

13 Nonetheless, the sole reference (within ss 82A, 97 and 98) to a "decision" of the Disciplinary Tribunal at s 97 is, in my view, revealing and buttresses my findings at [11] above. The heading of s 97 is "Application for review of Disciplinary Tribunal's *decision*" (see [8] above). Yet, the wording of the provision proper does not once mention the word "decision". Instead it deals with applications to the Judge for review where "a Disciplinary Tribunal has made a *determination* under section 93(1)(*a*) or (*b*)". This supports the interpretation that the phrase "any act done or decision made by the Disciplinary Tribunal" in s 91A ought to be construed widely to encompass the Disciplinary Tribunal's "findings and determination" under s 93 of the LPA such that judicial review of all acts and decisions of the Disciplinary Tribunal are restricted to the extent that they can now only be invoked by way of applications under ss 97 and 98 of the LPA.

Ministerial answers to questions raised in Parliament

14 The applicants submit that the ministerial answers to questions raised in Parliament support their proposed narrower construction of s 91A. During the second reading of the Legal Profession (Amendment) Bill in Parliament (see *Singapore Parliamentary Debates, Official Report* (26 August 2008) vol 84 at col 3187 – 3259), the Member of Parliament ("MP") for Tampines asked:

> Finally, there is just one other point that I wish to comment on the Bill. Clause 36 introduces a new section 91A which restricts judicial review in any court on any act done or declaration made by the Disciplinary Tribunal. Sir, I am just puzzled as to why the Government should choose this draconian approach in taking away the right of an affected person who is the subject of an administrative law action from seeking redress at our Courts. In the context of our Constitution, the right of an aggrieved person to seek redress at our Courts is fundamental. Restricting this right would run counter to the spirit of our Constitution even if the restriction itself is not on the face of it, *ultra vires* the Constitution. I should therefore be grateful if the Minister could explain why this restriction to judicial review in the new section was introduced in the first place.

The Minister for Law had earlier during the Second Reading outlined the purpose of the amendments:

> There are a range of amendments to streamline the entire disciplinary process. I will only outline the key changes here. Specific timelines are stipulated for each step of the disciplinary process. To deter frivolous complaints, it will be mandated that every complaint against a lawyer be made in writing and be supported by a statutory declaration, except when the complaint is made by a public officer. A limitation period of six years, in line with the general limitation in law, will be introduced to prevent stale complaints. The powers of the Inquiry Committee and Disciplinary Tribunal to order costs will be enhanced. Sentencing options will also be enhanced. Judicial review of the Disciplinary Tribunal's decision can only be applied for after the conclusion of the Disciplinary Tribunal's deliberations.

The Minister for Law later replied to the MP for Tampines's question as follows:

> …
>
> Mr Sin Boon Ann asked why do we have clause 36 which restricts judicial review. In fact, he said "ousted" judicial review. "It is an important constitutional safeguard. Why are we doing this?" *I would clarify that judicial review is not "ousted". What we are doing is deferring it, because what has happened in the past is that even before the tribunal proceedings and disciplinary proceedings are over, there were repeated applications for judicial review, which then dragged on and delayed the entire proceedings, vastly contributing to delays. So, the approach has been to finish with the process, then you go for judiciary review. Anyway, when you go before the Court of Three Judges, you can raise all the arguments that you could have raised during the judicial review. So the lawyer is, to that extent, not in any worse-off position but what he cannot do now is to try and interrupt or delay the ongoing proceedings*.
>
> [emphasis added]

15 The applicant cites the italicised portions of the Minister for Law's reply as supporting his submission that judicial review post findings and determination have been preserved in addition to ss 97 or 98 of the LPA. However, I would observe that the court's task is to construe the statutory language of s 91A purposively. As mentioned above, a purposive construction of s 91A of the LPA in light of its interaction with ss 97 and 98, and the Explanatory Statement leads to the conclusion that judicial review of all the acts and decisions (including findings and determinations) of the Disciplinary Tribunal have been restricted to the extent that they can only be invoked by way of applications under ss 97 or 98 of the LPA (see [11] and [13]). I need go no further.

16 I would add that in any event, a close reading of both the MP for Tampines's question and the Minister for Law's answer in their full context does not support the applicants' proposed construction of s 91A of the LPA. The sequence of the question and the answer in its context can be distilled and

restated as follows:

> Q: Have you ousted judicial review?
>
> A: No, we are deferring it.
>
> The problem was previous delays, so the approach now is finish with the process then go for judicial review.
>
> You can raise judicial review arguments before the court of 3 Judges. So lawyers are not in any worse-off position but what they cannot do is try and interrupt or delay the ongoing process.

Nothing in the full context of the question put to the Minister for Law and indeed the Minister's answer in its context is at variance with my earlier purposive construction of s 91A. In fact, it confirms my reading that with the 2008 amendments, the LPA now defers judicial review until after the findings and the determination of the Disciplinary Tribunal are made. Where no show cause proceedings are necessary, s 97 applies and judicial review is heard by a single Judge. Where show cause proceedings are ordered, s 98 applies and judicial review is consolidated with the show cause proceedings and heard by the court of 3 Judges.

Conclusion

17 In light of my findings above, I dismiss the applications and order costs to be agreed or taxed to be paid by the applicants to the respondent.