Lawrence Khong Kin Hoong *v* Singapore Polo Club
[2014] SGHC 82

Case Number : Originating Summons No 743 of 2013

Decision Date : 21 April 2014

Tribunal/Court : High Court

Coram : Tan Siong Thye JC

Counsel Name(s) : Daniel Goh, Adrian Wee, Noel Oehlers and Yang Sue Jen (Characterist LLC) for the plaintiff; Devinder Kumar s/o Ram Sakal Rai and Adrian Teo (Acies Law Corporation) for the defendant; .

Parties : Lawrence Khong Kin Hoong — Singapore Polo Club

Administrative Law – Disciplinary Tribunals

Administrative Law – Natural Justice

21 April 2014

Tan Siong Thye JC:

Introduction

1 The Plaintiff sought to set aside the finding by five Committee Members of the Defendant in a Disciplinary Committee Meeting that the Plaintiff had acted in a manner prejudicial to the interests of the Defendant. The Plaintiff also sought to set aside the decision to suspend his membership in the Defendant for a period of 2 months pursuant to the finding by the five Committee Members. The Plaintiff argued, *inter alia*, that the five Committee Members were tainted by apparent bias. I allowed the Plaintiff's application. The Defendant is dissatisfied with the decision and has filed a Notice of Appeal. I now provide the reasons for my decision as follows.

The Defendant

2 The Defendant is the Singapore Polo Club. It is an unincorporated association established to provide social and recreational facilities. It organises the playing of Polo in Singapore and elsewhere. The Defendant is managed by a Committee, consisting of a President, a Vice-President, a Polo Captain, an Honorary Secretary, an Honorary Treasurer and four other Members. This is stipulated under Rule 30(a) of the Defendant's Constitution ("the Constitution"). Two additional Members may be co-opted into the Committee pursuant to Rule 31(1)(h) of the Constitution.

The Plaintiff

3 The Plaintiff was at all material times a Charter Polo Playing Member of the Defendant. He was elected into the Committee of the Defendant pursuant to an Annual General Meeting ("AGM") of the Members of the Defendant on 26 March 2013 ("the 2013 Committee"). He was to serve as Honorary Secretary until the next AGM in 2014.

Background

Voting rights of the Members of the Defendant

Voting rights of the Members of the Defendant

4 The background of this case concerned the counting of votes for the motion of no confidence resolution (the "No Confidence Resolution") against the 2012 Committee. Hence it is useful to set out the various voting rights of the different categories of Members of the Defendant. Under Rule 38 of the Constitution the voting rights also differ depending on the subject matter of the resolution to be voted upon. For the purposes of this case, it suffices to note that under Rule 38 of the Constitution, with regard to certain resolutions that deal with subject matters that fall under the areas listed in Rules 38(a)–(f), Charter Polo Playing Members like the Plaintiff are given ten votes while most of the other types of Members have only one vote.

Vote of no confidence against the 2012 Committee

5 On 26 March 2013 the AGM elected the 2013 Committee. The 2013 Committee comprised of six re-elected members from the 2012 Committee. The composition of the 2012 and 2013 Committees are as follows (Members of both the 2012 and 2013 Committees are in italics):

Position	2012 Committee	2013 Committee
President	*Iqbal Jumabhoy*	*Iqbal Jumabhoy*
Vice-President	*KP Lee*	*KP Lee*
Honorary Secretary	*Kevin Wilkinson*	Lawrence Khong
Honorary Treasurer	Graham Cox	Christine Foong
Polo Captain	Jeffrey Hardee	Ali Namazie
Committee Members	*Lynly Fong*	*Lynly Fong*
	Stijn Welkers	*Stijn Welkers*
	Ian Lander	*Ian Lander*
	Gary Tiernan	April Mckenna
		Kevin Wilkinson (Co-opted on 5 April 2013)

6 During the AGM on 26 March 2013, a Member of the Defendant proposed the No Confidence Resolution against the 2012 Committee. This was because some Members of the Defendant were unhappy that the 2012 Committee rejected the application of a former resident Polo professional for Charter Membership. The Plaintiff seconded this motion. The Resolution was voted upon and passed with the requisite number of votes. Charter Polo Playing Members were allowed to field ten votes for this resolution. The results were soon published on the Defendant's notice board.

Unilateral change of the results of the vote on the No Confidence Resolution by the President

7 However, two days after the AGM on 28 March 2013, the Defendant's General Manager informed the Plaintiff that the President, Mr Iqbal Jumabhoy, had, without consulting all Members of the Committee, instructed the General Manager to make certain amendments to the results of the No Confidence Resolution and another resolution. This was because Mr Jumabhoy opined that all Members should only have been allowed to field one vote for each of these resolutions as they dealt with subject matters that did not fall under the listed grounds in Rules 38(a)–(f) of the Constitution.

Therefore, the ten votes for each Charter Polo Playing Member fielded were reduced to one vote. This adjustment resulted in the final vote count for the No Confidence Resolution falling below the requisite number of votes required to pass the No Confidence Resolution, thereby defeating the No Confidence Resolution.

Endorsement of the President's action by the 2013 Committee

8 On 17 April 2013, the 2013 Committee voted at a Committee Meeting in favour of Mr Jumabhoy's amendments. All six 2012 Committee Members who were part of the 2013 Committee voted in favour of the amendments. Ms April Mckenna voted against the amendment. She was not from the 2012 Committee. Ms Christine Foong, who was also not from the 2012 Committee, abstained from voting. The Plaintiff and Mr Ali Namazie, the Polo Captain, were not present at the time of the voting as they had overseas commitments. The amendments were effectively passed by the 2012 Committee Members who were re-elected into the 2013 Committee. These Committee Members were also the subject matter of the No Confidence Resolution.

Unhappiness by the Plaintiff over the change of the results of the No Confidence Resolution

9 The Plaintiff was unhappy with the actions of Mr Jumabhoy and the 2013 Committee. The Plaintiff was of the opinion that instead of unilaterally amending the results of the Resolution, the 2013 Committee should have invited the Members of the Defendant to choose whether to rectify or ratify the results of the No Confidence Resolution. He felt that the 2013 Committee was attempting to subvert the No Confidence Resolution that reflected badly on the 2012 Committee.

Purported unauthorised use of the Defendant's E-blast

10 On 28 April 2013, the Plaintiff and Mr Namazie sent a letter to the 2013 Committee demanding them to publish an attached statement regarding the amendments made to the No Confidence Resolution and the other resolution ("the Statement") on the Defendant's notice board within 24 hours of receipt and to send the Statement to all members of the Defendant by e-mail. The Statement denounced the decision of the 2013 Committee to approve Mr Jumabhoy's amendments. In particular, the Statement stated that "[t]he Committee had no authority and power to rescind and revoke the said Resolutions unilaterally" and that "the Committee's purported rescission and revocation of the said Resolutions was [*sic*] incorrect and improper". The Plaintiff and Mr Namazie had signed off at the end of the Statement as the Honorary Secretary and Polo Captain of the 2013 Committee respectively.

11 The Plaintiff and Mr Namazie also instructed the General Manager of the Defendant to disseminate the Statement to the Members of the Defendant via the Defendant's E-Blast database. The Statement was distributed on 28 April 2013, the same day the letter to the 2013 Committee was sent. The Statement was also sent to the Registrar of Societies on the same day.

Decision by the 2013 Committee to take action against the Plaintiff

12 At a Committee Meeting on 8 June 2013, the 2013 Committee decided that the Plaintiff had acted in a manner prejudicial to the interests of the Defendant. This was premised on the Plaintiff's alleged distribution of the Statement via E-Blast without authorisation from the 2013 Committee and the Plaintiff's sending of the Statement to the Registrar of Societies.

13 The Committee then, pursuant to Rule 23(a) of the Constitution, issued a letter informing the Plaintiff to attend a Committee Meeting to answer the charges. Rule 23(a) states:

If any Member shall, in the opinion of the Committee act in any way prejudicial to the interests of the Club or its Members, or shall break any Rule or Bye-Law of the Club, the Committee shall consider the conduct of such Member at a Meeting of the Committee. If at such a Meeting it is considered that there is sufficient evidence to justify calling on the Member to answer any charge made against him, a notice in writing shall be given to the Member calling on him to attend a Meeting not less than seven clear days after the date of the notice for the purpose of answering the charges. At such a Meeting the Member concerned shall be informed of the charges made against him and shall have the right to be heard in his own defense. If, after hearing the Member, a majority of the Members of the Committee present at the meeting shall vote for the expulsion of the said Member, he shall thereupon cease to be a Member of the Club.

Notice to Plaintiff to attend Disciplinary Meeting

14 On 18 July 2013, the Plaintiff received a letter from Mr Jumabhoy on behalf of the 2013 Committee. He was told to attend a Disciplinary Committee Meeting on 3 August 2013 to answer to charges that he had acted in a manner prejudicial to the interests of the Defendant.

The Disciplinary Meeting

15 The Plaintiff attended the Disciplinary Committee Meeting on 3 August 2013 ("the Disciplinary Meeting") to answer to the charges. However, only five 2013 Committee Members were present at the Meeting. All five of them, namely Mr Jumabhoy, Mr Lee, Mr Lander, Mr Wilkinson and Mr Welkers, were also from the 2012 Committee. In an exchange with Mr Jumabhoy during the Disciplinary Meeting, the Plaintiff indicated that the Committee was improperly constituted in breach of natural justice as the five Members present were directly or indirectly implicated by the contents of the Statement. The Plaintiff also demanded that the disciplinary proceedings take place before a properly constituted disciplinary tribunal. The Plaintiff subsequently refused to provide details of the conduct relating to the charges in question and made a bare denial of the charges. The Disciplinary Meeting was then brought to a close by Mr Jumabhoy.

Sanction against the Plaintiff

16 The Plaintiff received a Notice of Suspension on 6 August 2013 from Mr Jumabhoy on behalf of the 2013 Committee. The Plaintiff was informed that pursuant to the Disciplinary Meeting, the 2013 Committee had decided that he had acted in a manner prejudicial to the interests of the Defendant for the following reasons:

(a) He misused the Defendant's e-mail system to E-blast the Statement, which had not been approved by the 2013 Committee and without proper authority from the 2013 Committee;

(b) He misused his position as Honorary Secretary of the Defendant to instruct the General Manager of the Defendant to E-blast the Statement, which had not been approved by the 2013 Committee and without proper authority from the 2013 Committee; and

(c) He sent an e-mail to the 2013 Committee, giving them 24 hours to respond to his demand that they disseminate the Statement to all Members of the Defendant, when he had already sent out the Statement.

17 The Notice of Suspension further provided that the Plaintiff's membership in the Defendant was to be suspended for 2 months from 7 August 2013 although he was still allowed to keep his horses stabled at the Defendant. This was pursuant to the power of the Committee to suspend a member

under Rule 23(b) of the Constitution. The Notice of Suspension made no mention of the Plaintiff's forwarding of the Statement to the Registrar of Societies, which was one of the allegations made in the letter informing the Plaintiff to attend the Disciplinary Meeting.

18 On 19 September 2013, the Plaintiff obtained an interim injunction to restrain the 2013 Committee's decision to suspend his membership at the Defendant.

The Plaintiff's Case

19 The Plaintiff's application is based on the following:

(a) That the relationship with the Defendant is contractual and that it is an express/implied term of the contract that the disciplinary proceedings instituted against the Plaintiff should have been conducted in accordance with the rules of natural justice;

(b) That the members of the Disciplinary Tribunal were tainted by apparent bias;

(c) That the charges against the Plaintiff were duplicitous;

(d) That the disciplinary proceedings violated the *audi alteram partem* rule; and

(e) That the decision of the five 2013 Committee Members present at the Disciplinary Meeting is *ultra vires* the Defendant's Constitution.

The Defendant's case

20 The Defendant denied the Plaintiff's allegations for the following reasons:

(a) That there is no actual and no reasonable suspicion of bias in this case;

(b) That the principle of necessity allows the five 2013 Committee Members to sit in the Disciplinary Meeting to hear the charges against the Plaintiff;

(c) That the charges against the Plaintiff were not duplicitous;

(d) That the *audi alteram partem* rule was not violated during the disciplinary proceedings; and

(e) That the allegations of ultra vires and other allegations were baseless.

The issues

21 These were the following issues that I had to decide:

(a) What was the legal basis that governed the relationship between the Plaintiff and Defendant? Was the rule of natural justice an implied term of their relationship?

(b) What was the test for apparent bias? Was there real/apparent bias by the Disciplinary Meeting?

(c) Was the principle of necessity applicable to allow the five 2013 Committee Members to be present at the Disciplinary Meeting?

(d) Were the charges against the Plaintiff duplicitous?

(e) Was the decision to suspend the Plaintiff *ultra vires* the Defendant's Constitution?

(f) Was the *audi alteram partem* rule breached?

What was the legal basis that governed the relationship between the Plaintiff and Defendant? Was the rule of natural justice an implied term of their relationship?

22 In an unincorporated association such as in this case, the basis of the relationship between member and social club is founded on contract: *Haron bin Mundir v Singapore Amateur Athletic Association* [1991] 2 SLR(R) 494 at [20]; *The Stansfield Group Pte Ltd (trading as Stansfield College) and another v Consumers' Association of Singapore and another* [2011] 4 SLR 130 at [114]–[115]. The terms of the contract between the Plaintiff and Defendant are embodied in the Constitution.

23 The rules of natural justice are universal rules that govern the conduct of human behaviour. These rules are widely accepted to be of paramount importance. Contracting parties accept the rules of natural justice as obvious terms which are often not mentioned in their contract. Hence, courts assume that parties must have intended these rules to govern their contractual terms even if the contract is silent as to such rules. Therefore the rules of natural justice are implied terms of the contract between the Plaintiff and the Defendant. The rules of natural justice require the Defendant to act fairly against its Members, such as the Plaintiff, especially when the disciplinary proceedings may result in sanctions. This view was affirmed by the Court of Appeal in *Kay Swee Pin v Singapore Island Country Club* [2008] 2 SLR(R) 802 ("*Kay Swee Pin*") at [2] and [6]:

> The legal relationship between any [social] club and its members lies in contract, and the rights of members are determined by the terms of the contract, which are found in the constitution or the rules of the club. The traditional approach of the courts to social clubs is to leave such clubs to manage their own affairs. *However, where a club expels a member, it may only do so in compliance with the rules of natural justice*
>
> …
>
> *A duty to act in accordance with natural justice is nowadays considered as a duty to act fairly* … All disciplinary bodies have a duty to act fairly as expulsion, suspension or other punishment or the casting of a stigma may be involved.
>
> [emphasis added]

24 The application of the implied rules of natural justice varies with the factual matrix of each case. In *Kay Swee Pin*, it was held at [10] that the more extensive and coercive the disciplinary powers of the committee in question, the more rigorous the application of the rules of natural justice. The rules of the Singapore Island Country Club in *Kay Swee Pin* provided the general committee with powers of expulsion and suspension as well as the ability to impose lesser penalties on members: *Kay Swee Pin* at [10]. This is exactly the same as the disciplinary powers of the Committee of the Defendant as established by Rules 23(a) and 23(b) of the Constitution. Rule 23(a), as laid out above, provides the power of expulsion whereas Rule 23(b) stipulates that:

> The Committee may at the conclusion of such hearing suspend the Member or impose any other lesser penalty.

25 Therefore, a more rigorous application of the rules of natural justice, in the form of contractual terms implied by law, should apply in this case. Has the Plaintiff made out a case on the balance of probabilities?

What is the test for apparent bias? Was there real/apparent bias by the Disciplinary Meeting?

Apparent bias

26 Natural justice involves a duty to act fairly which encompasses a duty to act impartially: *Kay Swee Pin* at [6] and [7]. This requires that "the tribunal tasked with determining the dispute shall be disinterested and independent": *Re Shankar Alan s/o Anant Kulkarni* [2007] 1 SLR(R) 85 ("*Shankar*") at [42]. This encompasses both the rules against actual and apparent bias. The Plaintiff's contention was that the Defendant had breached the rule against apparent bias.

27 In *Kay Swee Pin* at [77], it was held that the participation of a party who had earlier disqualified himself from hearing the complaint in the deliberation process amounted to procedural impropriety. It is evident from this that the involvement of an interested party in disciplinary proceedings of private associations is in breach of the rules of natural justice. The Court of Appeal reached such a finding without determining whether the decision was actually biased. The rule against apparent bias must therefore apply to social and recreational clubs such as in this case.

What is the test for apparent bias?

28 Sundaresh Menon JC (as he then was) in *Shankar* undertook a very thorough analysis of local and English jurisprudence before arriving at the test for apparent bias. He concluded that the two most common tests are based on a "reasonable suspicion of bias" and a "reasonable likelihood of bias". In *Tang Kin Hwa v Traditional Chinese Medicine Practitioners Board* [2005] 4 SLR(R) 604 ("*Tang Kin Hwa*"), Andrew Phang JC (as he then was) also dealt with these two tests. He came to the conclusion that there is "no difference in substance" in *Tang Kin Hwa* at [45]. However, Menon JC in *Shankar* explained that there are important differences at [74]–[75]:

> I would therefore, with some reluctance, differ from the view taken by Phang JC in *Tang Kin Hwa* that there is no practical difference between the two tests. In my judgment, there are indeed some important difference between them the most important of which are the reference point of the inquiry or the perspective or view point from which it is undertaken, namely whether it is from the view point of the court or that of a reasonable member of the public; and the substance of the inquiry, namely, whether it is concerned with the degree of possibility that there was bias even if it was unconscious, or whether it is concerned with how it appears to the relevant observer and whether that observer could reasonably entertain a suspicion or apprehension of bias even if the court was satisfied that there was no possibility of bias in fact. These two aspects are closely related and go towards addressing different concerns. The "real danger" or "real likelihood" test is met as long as a court is satisfied that there is sufficient degree of possibility of bias. As noted by Deane J in *Webb* this is plainly a lower standard of proof than that on a balance of probabilities. But that lower test is in truth directed at mitigating the sheer difficulty of proving actual bias especially given its insidious and often subconscious nature.
>
> The "reasonable suspicion" test however is met if the court is satisfied that a reasonable number of the public could harbour a reasonable suspicion of bias even though the court itself thought there was no real danger of this on the facts. The driver behind this test is the strong public interest in ensuring public confidence in the administration of justice.

29 After explaining the differences in the two tests, Menon JC in *Shankar* said at [76] that "[i]t is settled law in Singapore having regard to several pronouncements of the Court of Appeal that the 'reasonable suspicion' test is the law in Singapore". In applying this test the Court of Appeal in *Tang Liang Hong v Lee Kuan Yew* [1997] 3 SLR(R) 576 gave some guidance at [46]:

> The test to be applied in determining whether there is any apparent bias on the part of the tribunal hearing the case or matter in question has been settled by this court in *Jeyaretnam Joshua Benjamin v Lee Kuan Yew* [1992] 1 SLR(R) 791 at [79]–[83], and it is this: would a reasonable and fair-minded person sitting in court and knowing all the relevant facts have a reasonable suspicion that a fair trial for the litigant concerned is not possible.

30 The test is an objective one. This principle has been adequately described in *R v West Midlands and North West Mental Health Review Tribunal* [2004] EWCA Civ 311 at [6], cited with approval by Philip Pillai J in *Lim Mey Lee Susan v Singapore Medical Council* [2011] 4 SLR 156 at [54], as follows:

> Public perception of a possibility of unconscious bias is the key … The need for a Tribunal to be impartial and independent means that "it must also be impartial from an objective viewpoint, that is it must offer sufficient guarantees to exclude any legitimate doubt in this respect" …

31 Therefore, the Defendant's submission that there was no actual bias, which relates to the subjective state of mind of the arbiter, is insufficient to disprove apparent bias. The Defendant also contended that the Plaintiff's failure to raise the issue of bias at the outset of the Disciplinary Meeting leads to an inference that the Plaintiff did not actually feel that there would be bias. However, as a matter of fact he did raise it at this meeting. He felt that the conduct of the Disciplinary Meeting was unfair and he asked that the hearing be adjourned "on the basis that this is a bias [*sic*] tribunal, that you are all conflicted" as seen from the notes of the Disciplinary Meeting.

32 The most important issue in this case is not whether there was actual bias or whether the Disciplinary Meeting treated the Plaintiff fairly. The issue is whether a reasonable and fair-minded person knowing the facts and circumstances of this case would opine that there is a reasonable suspicion of bias on the part of the five 2013 Committee Members present at the Disciplinary Meeting. In other words, justice must be seen to be done in that "the appearance of the matter is just as important as the reality": *R v Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No 2)* [2000] 1 AC 119 ("*Pinochet (No 2)*") at 139.

Evidence of apparent and real bias

33 I was of the view that there was more than a reasonable suspicion of bias in the mind of a fair-minded and informed observer. In fact the circumstances and evidence point towards a real bias whereby the standing and integrity of the five 2013 Committee Members at the Disciplinary Meeting were severely compromised. It put into serious question whether the five 2013 Committee Members at the Disciplinary Meeting were actually acting honestly, fairly and in good faith. These are the basic values and foundations on which every legitimate tribunal must operate on.

Members of Disciplinary Committee were also members of 2012 Committee against which an allegation of impropriety had been raised

34 The five 2013 Committee Members present at the Disciplinary Meeting were also members of the 2012 Committee who were implicated by the No Confidence Resolution which was seconded by the Plaintiff after it was proposed by a Member of the Defendant. The President, Mr Jumabhoy, unilaterally changed the counting of the votes which resulted in the defeat of the No Confidence Resolution

which was earlier passed. On 17 April 2013, the same five 2013 Committee Members at the Disciplinary Meeting (as well as Ms Lynly Fong, herself also a 2012 Committee Member) voted in support of Mr Jumabhoy's change of the voting rights. The Statement issued by the Plaintiff and Mr Namazie called into question the propriety of the unilateral amendment of the results of the No Confidence Resolution.

Co-option of Kevin Wilkinson into the 2013 Committee

35 I noticed that Kevin Wilkinson, who was a member of the 2012 Committee, was not elected to the 2013 Committee. However, Mr Jumabhoy had proposed Mr Wilkinson's co-option to the 2013 Committee. He was co-opted to the 2013 Committee on 5 April 2013 during a Committee Meeting. This happened a few days before the 17 April 2013 Committee Meeting in which the Committee Members who were from both the 2012 and 2013 Committees endorsed Mr Jumabhoy's action to amend the voting results. Mr Wilkinson also voted in favour of Mr Jumabhoy's unilateral amendments at the same Committee Meeting. The circumstances surrounding the co-option of Mr Wilkinson and the proximity to the Committee Meeting on 17 April 2013 give rise to the suspicion that he was brought in to the 2013 Committee to ensure that Mr Jumabhoy's unilateral action to amend the voting results received strong support.

Vested interest of the members of the Disciplinary Meeting

36 All five 2013 Committee Members who presided over the Disciplinary Meeting had a strong vested interest in seeing the No Confidence Resolution defeated as they were also Members of the 2012 Committee. Their reputation and standing in the Defendant would certainly be affected by the successful passing of the No Confidence Resolution. The content of the Statement, which is, as explained above, relevant to the subject matter of the Disciplinary Meeting, puts this interest at stake by questioning the propriety of the amendment of the results of the No Confidence Resolution. The fact that the amendment was also passed through the sole efforts of the five 2013 Committee Members and Ms Lynly Fong (who were all from the 2012 Committee) meant that the allegations of impropriety in the Statement further compromised their reputation and standing. This was another reason for finding that the five said 2013 Committee Members had an interest in the disciplinary proceedings against the Plaintiff.

37 The Defendant argued that there would be no personal liability on the part of any of the 2013 Committee Members who approved the amendment of the results of the No Confidence Resolution, even if such amendment was later found to be improper. However, the finding of whether or not there is vested interest is not confined to personal liability only. If the No Confidence Resolution had been passed, it would result in the potential loss of reputation by the Members of the 2012 Committee. It would also undermine their individual standing in the club. Even though such an interest is not pecuniary, it may nonetheless result in an arbiter being tainted by apparent bias. This has been held unequivocally by the House of Lords in *Pinochet (No 2)* which cited with approval at 145 the observation of Deane J in *Webb v The Queen* (1993–1994) 181 CLR 41 ("*Webb*") at 74:

> The area covered by the doctrine of disqualification by reason of the appearance of bias encompasses at least four distinct, though sometimes overlapping, main categories of case. The first is disqualification by interest, that is to say, cases *where some direct or indirect interest in the proceedings, whether pecuniary or otherwise, gives rise to a reasonable apprehension of prejudice, partiality or prejudgment* … The third category is disqualification by association. It will often overlap the first and consists of cases where the apprehension of prejudgment or other bias results from some direct or indirect relationship, experience or contact with a person or persons interested in, or otherwise involved in, the proceedings. [emphasis added]

38 The Defendant also relied on the dicta of Deane J in *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70 at 90 to support the view that acquaintanceship with and preconceived views about a party may be permissible and unobjectionable if the designated tribunal is entrusted with other functions which necessitate a continuing relationship with those engaged in a particular field. Any acquaintanceship with and any preconceived views of the Plaintiff *vis-à-vis* any of the five 2013 Committee Members would not be sufficient to give rise to a finding of apparent bias in this case. This must be looked at in context of the Defendant's circumstances. In this case it is a private club in which most members would know each other. However, this case relates to the first category of disqualification by interest under apparent bias described by Deane J in the passage of *Webb* quoted above rather than the third category of disqualification by association. I was not concerned with any apparent bias that may have resulted from any direct or indirect relationship, experience or contact with the Plaintiff. What is at issue here is that the interests of the five 2013 Committee Members at the Disciplinary Meeting were affected by the No Confidence Resolution which was also the subject matter of the Disciplinary Meeting.

The finding that the Plaintiff had misused the Defendant's E-blast

39 The conduct in question during the Disciplinary Meeting concerned the Plaintiff's use of the E-blast to disseminate the Statement. The content of the Statement is relevant in determining the issue of whether there was a misuse of the Defendant's E-blast. The Defendant submitted that the sole purpose of the Disciplinary Meeting was to evaluate the Plaintiff's conduct in misusing the Defendant's E-blast without authorisation. In my view the surrounding circumstances must be considered for a fair and unbiased assessment of whether the Plaintiff had acted in a manner prejudicial to the interests of the Defendant. This would necessarily question the purposes behind the purported misuse. If the contents of the Statement had contained matters not concerning the Defendant, such as an advertisement of the Plaintiff's entertainment company (to cite an illustration), the misuse of the Defendant's E-Blast would have been obvious. In this case, the purpose was for the distribution of the Statement to Members of the Defendant relating to the affairs of the Defendant. The Statement informed the Members that the No Confidence Resolution against 2012 Committee was successfully passed but was unilaterally amended by the President of the 2012 and 2013 Committees. These are matters of great interest to the Members of the Defendant. That there was still a finding against the Plaintiff by the five 2013 Committee Members at the Disciplinary Meeting despite such circumstances indicates that they were not properly considered and this gives rise to further suspicions of bias.

40 The Defendant submitted that the fair-minded and informed observer should not be unduly sensitive or suspicious. However, I would like to point out that the observer should similarly not be complacent and naïve when the objective facts point towards a reasonable suspicion of bias. As Lord Hope of Craighead enunciated in *Helow v Secretary of State for the Home Department and another* [2008] 1 WLR 2416 at [2]:

> The observer who is fair-minded is the sort of person who always reserves judgment on every point until she has seen and fully understood both sides of the argument. She is not unduly sensitive or suspicious, as Kirby J observed in *Johnson v Johnson* (2000) 2012 CLR 488, 509, para 53 … But she is not complacent either. She knows that fairness requires that a judge must be, and must be seen to be, unbiased. She knows that judges, like anybody else, have their weaknesses. She will not shrink from the conclusion, if it can be justified objectively that things that they have said or done or associations that they have formed may make it difficult for them to judge the case before them impartially.

41 Therefore, given the objective facts before me, I found that the interest of the five 2013

Committee Members presiding over the Disciplinary Meeting gave rise to more than a reasonable suspicion of bias. This is viewed in the eyes of a reasonable observer who is not unduly sensitive or suspicious and who is also not complacent. A fair-minded and informed observer, cognisant of the fact that the five 2013 Committee Members at the Disciplinary Meeting were from the 2012 Committee would have concluded that all five of them had a vested interest in the determination to be made at the conclusion of the Disciplinary Meeting. This in turn would give rise to legitimate doubt in the impartiality of the tribunal from the perspective of an observer. Justice would not be seen to be done. All five 2013 Committee Members at the Disciplinary Meeting were tainted by apparent bias. However, even if they were tainted by apparent bias, would they still be allowed to sit at the Disciplinary Meeting as a result of the application of the principle of necessity?

Was the principle of necessity applicable?

42 The principle of necessity in administrative law is described in *Halsbury's Laws of Singapore* vol 1 (LexisNexis Singapore, 2012) at para 10.056:

> A person subject to disqualification at common law may be required to decide the matter if there is no competent alternative forum to hear the matter or if a quorum cannot be formed without him. Thus, if all members of the only tribunal competent to determine a matter are subject to disqualification, they may be authorised and obliged to hear and determine the matter by virtue of necessity.

43 The rule of necessity was considered in *Anwar Siraj v Tang I Fang* [1981–1982] SLR(R) 391. It was unsuccessfully invoked because the relevant legislation provided for an alternative individual to act in the place of the disqualified arbiter. A P Rajah J had, in that case, impliedly accepted that the rule applied in Singapore. However, that case seems to indicate that the rule of necessity is more applicable to public bodies rather than private disciplinary tribunals. In *Laws*, Mason CJ and Brennan J described the underlying rationale of the rule of necessity at 89 as such:

> … The rule of necessity gives expression to the principle that the rules of natural justice cannot be invoked to frustrate the intended operation of a statute which sets up a tribunal and requires it to perform the statutory functions entrusted to it. Or, to put the matter another way, the statutory requirement that the tribunal perform the functions assigned to it must prevail over and displace the application of the rules of natural justice. …

44 The Defendant counsel in the course of the hearing also relied on two Malaysian cases, *Fadzil bin Mohamed Noor v Universiti Teknologi Malaysia* [1981] 2 MLJ 196 and *Datuk T P Murugasu v Wong Hung Nung* [1988] 1 MLJ 291. In those cases, the respective constitutions of the private associations stated that disciplinary powers were vested solely in the disciplinary committees of the private associations which were made up of specific individuals. The principle of necessity applied to allow such individuals to still adjudicate over disciplinary matters despite a finding of apparent bias because nobody else could make up the disciplinary committee under the Constitution. The Defendant argued that the situations in these Malaysian cases were similar to the situation here. Hence the principle of necessity should also apply in this case. Nonetheless, it is important to examine the Constitution of each organisation carefully before we come to this conclusion. I am of the view that, unlike the constitutions of the private associations dealt with in the Malaysian cases, the Constitution of the Defendant does not allow for the application of the principle of necessity in this case.

Were the five tainted members of the Disciplinary Meeting the only persons who could partake in the proceedings against the Plaintiff?

45 Whether the rule of necessity could be applied in this case depended on the Defendant's Constitution. Were the five tainted members of the Disciplinary Meeting the only persons who could have partaken in the disciplinary proceedings against the Plaintiff? The Defendant submitted that, under Rule 23(a) of the Constitution, the power to institute disciplinary proceeding rested solely with the Committee. Rule 23(a) stipulates that any disciplinary hearing shall be conducted by way of a Committee Meeting. Rule 34(b) provides that "[f]ive Committee Members, three of whom shall be Charter Polo Playing Members, shall form a quorum." It was the Defendant's case that only two 2013 Committee Members who were not from the 2012 Committee could have participated in the disciplinary proceedings. They are Ms April Mckenna and Ms Christine Foong. Mr Namazie was not eligible as he would have been disqualified by virtue of his participation in the very conduct the Plaintiff had to answer for. Given that two 2013 Committee Members are unable to form a quorum, it would then be impossible to hold a Disciplinary Committee Meeting pursuant to Rule 23(a) of the Constitution. Therefore, the Defendant argued that the rule against apparent bias should not operate to disqualify 2013 Committee Members who were needed to form a quorum.

Why did the Disciplinary Meeting not include other untainted Committee Members?

46 I was not convinced by the Defendant's all-or-nothing argument. Even if the two untainted 2013 Committee Members, Ms Mckenna and Ms Foong, were unable to form a quorum by themselves, the Defendant failed to give a proper explanation as to why they were not present at the Disciplinary Meeting. According to the minutes of the Disciplinary Meeting, they were simply absent with apologies. At this juncture, it is telling that Ms Mckenna voted against Mr Jumabhoy's unilateral amendment of the voting results while Ms Foong abstained from voting. The only two 2013 Committee Members who did not support Mr Jumabhoy's amendments did not participate in the Discplinary Meeting even though it was well within the powers of the 2013 Committee to reschedule the Disciplinary Meeting to a date when both of them would be able to attend. Instead, five 2013 Committee Members who were all tainted with apparent bias made up the quorum at the Disciplinary Meeting.

47 Even if it was not possible to form a quorum of which all five individuals were not tainted by apparent bias, having a quorum with some persons who were untainted is still preferable to one with none. Ms Mckenna and Ms Foong could have formed a quorum with three other 2013 Committee Members who were tainted by apparent bias. Justice must, as far as possible, be seen to be done. If doubts as to impartiality may arise, such doubts should be minimised. The 2013 Committee could have easily minimised such doubts by adjourning the date of the Disciplinary Meeting to a date when Ms Mckenna and Ms Foong could have taken part. It did not matter that they might only be two people unable to form a quorum of five—so long as their presence would have enhanced the perception of justice being done, their presence is required.

Could have co-opted others to sit in the Disciplinary Meeting

48 Furthermore, Rule 31(1)(h) empowers the 2013 Committee to co-opt a maximum of two Committee Members who could have contributed to the satisfaction of the quorum. I noted that Mr Wilkinson who was from the 2012 Committee was co-opted into the 2013 Committee. He was one of the five 2013 Committee Members who took part in the Disciplinary Meeting and was tainted by apparent bias. Nonetheless, the 2013 Committee could have co-opted one more neutral Committee Member. The co-opted Committee Member could then have formed a quorum with Ms Mckenna, Ms Foong and two other 2013 Committee Members tainted by apparent bias. This is an even better alternative as a majority of the quorum would be neutral.

Delegation of disciplinary powers could have been tasked to sub-committee under Rule 33

49 Additionally, the Plaintiff submitted that Rule 33 of the Constitution allowed for the 2013 Committee to delegate its disciplinary powers to a Sub-Committee. Rule 33 provides that:

> The Committee may appoint Sub-Committees which shall have such powers as may be delegated to them by the Committee in the Minute of Appointment or in the Bye-Laws; provided that the Committee shall always retain the right to amend or repeal these powers and any decisions made in exercise of them and at any time to dissolve a Sub-Committee but no action of the Committee to amend or repeal a decision which a Sub-Committee was duly authorised to make under its terms of reference shall retrospectively cause loss to a person who relied upon the decision.

50 I agreed with the Plaintiff's submission. Rule 33 provides another alternative for the 2013 Committee *vis-à-vis* the constitution of the tribunal. The Defendant could have appointed a Sub-Committee to exercise the disciplinary powers of the Committee under Rule 23(a) of the Constitution. Although the Defendant argued that the power under Rule 23(a) could not be delegated, there is nothing in Rule 23(a) that forbids the 2013 Committee from delegating their disciplinary powers. Rule 23(a) gave the 2013 Committee the power to conduct disciplinary hearings on matters relating to misconduct on the part of the Members of the Defendant. This power could be delegated to a Sub-Committee under Rule 33. Nothing in Rules 23(a) and 33 of the Constitution prohibit this delegation. Rule 33 does not prescribed the number of people in the Sub-Committee. Thus the Sub-Committee could comprise of the remaining two 2013 Committee Members who were untainted. If the Committee desires to have a larger Sub-Committee they could co-opt another Committee Member to sit in this Sub-Committee to hear the disciplinary proceedings against the Plaintiff.

51 The Defendant had sought to rely on a particular interpretation of the Constitution that would have allowed for the rule of necessity to displace the rules of natural justice. There must be clear and unambiguous language in the Constitution to indicate that the power to conduct disciplinary hearing rests solely with the Committee and that this could not be delegated. Unless all other interpretations are absurd, this Court should be slow to find that a particular term of a contract permits any breach of natural justice to occur via the application of the rule of necessity.

Rule of necessity was not applicable to this case

52 For the reasons stated above, I rejected the Defendant's submission that the rule of necessity applied in this case. There were other options available to the Defendant to convene a fully or partially untainted disciplinary body without contravening the provisions of the Constitution. The Defendant also did not take any measures to try to alleviate such apparent bias. The constitution of a tribunal entirely tainted by apparent bias in this case was therefore improper.

Were the charges against the Plaintiff duplicitous?

53 The Plaintiff alleged that he had been found guilty of misconduct both as a member of the Defendant and as an Honorary Secretary for essentially the same act. He contended that two of the charges related to the use of the E-blast which was essentially the same conduct and should have been framed in the alternative. Thus he submitted that the charges were duplicitous.

54 In my view, the Plaintiff might not have appreciated the meaning of duplicity. He might not have understood the difference between the findings of the Committee Members at the Disciplinary Meeting and the charges against him. A charge is an allegation requiring the Plaintiff to provide an explanation or defence against it. In the context of criminal procedure, the framing of a charge against an offender is very important as it serves to ensure that the offender understands the crime he is facing. There are strict procedures to follow under Part VII of the Criminal Procedure Code (Cap

68, 2012 Rev Ed) for the framing of a charge. Section 132 of the Criminal Procedure Code requires that every distinct offence must have a separate charge:

> 132.
>
> (1) For every distinct offence of which any person is accused, there must be a separate charge and, subject to subsection (2), every charge must be tried separately.
>
> (2) Subsection (1) does not apply —
>
> (*a*) in the cases mentioned in sections 133 to 136, 138, 143, 144 and 145;
>
> (*b*) to charges to which the accused pleads guilty; or
>
> (*c*) to charges which the accused and the prosecutor consent to be taken into consideration under section 148

Therefore, a charge that contains more than one allegation is considered duplicitous and is defective and invalid. In a criminal proceeding, an offender faces serious consequences such as fines, imprisonment, canning, etc. Hence it is vital that the charge must be correctly framed with the relevant particulars and information so that the offender can focus on the allegation preferred against him.

In a private disciplinary tribunal, it is not necessary to adopt the stringent requirements of a proper charge as stipulated in the Criminal Procedure Code. I agree with the Defendant that for a private tribunal it may not be necessary to apply the duplicity rule for criminal cases in its full force, subject to the qualification that the rule of fairness is not breached and the party answering to the charge or charges is not prejudiced. These are the values upon which the duplicity rule is founded on. For there to be fairness, the allegation must be clear and must provide sufficient facts of the event or incident so that the respondent is able to adequately meet such charges and defend himself against them. I find support for this in *Mitchell v Royal New South Wales Canine Council Ltd* (2001) 52 NSWLR 242 where Ipp A-JA stated at [50]:

> I do not suggest that the rule against duplicity that is applicable in criminal cases applies necessarily and to its full extent in disciplinary proceedings of voluntary associations. But, as the rule is one of "elementary fairness", the principles that have been developed in criminal law are useful guidelines in determining the nature of the prejudice that may flow from duplicitous charges in such proceedings and the consequences that should ensue.

55 Thus, the main question to be determined is whether such "elementary fairness" is undermined in this case such that the Plaintiff was prejudiced to the extent that he was unable to adequately answer to the charges against him. In this case the letter of notice to the Plaintiff dated 18 July contained the following allegations:

> …calling you to explain your conduct in relation to emailing to all members via the Club E-Blast database without proper authority from the Committee. The content of the E-Blast was your personal opinion and not the opinion of the Committee.
>
> The Committee found that you may have abused the authority in your capacity as Honorary Secretary and potentially bringing the Club into disrepute by writing to the Registrar of Societies.

56 The Defendant could have furnished more details to the Plaintiff in the allegations against him. Nevertheless these allegations were adequate for the Plaintiff to defend them. There is no evidence that he was not able to understand the allegations or charges given that the Plaintiff possessed sufficient knowledge of the events described in the letter. Hence, I found that there was no issue as to duplicity of charges.

Was the decision to suspend the Defendant ultra vires the Defendant's Constitution?

57 The findings of the Disciplinary Meeting were in the Notice of Suspension addressed to the Plaintiff and are reproduced as follows:

> Dear Mr Khong,
>
> …
>
> Having considered the facts and after taking into account your explanations, the Committee has decided that there is sufficient evidence that your actions for the points noted herein was prejudicial to the interests of the Club for the following reasons:
>
> 1. You misused the Club's email system to E-blast a personal statement, not approved by the Committee and without proper authority from the Committee.
>
> 2. You misused your position as Honorary Secretary of the Club to instruct staff of the Club to E-blast a personal statement not approved by the Committee and without proper authority from the Committee.
>
> 3 You sent an email to the Committee, giving them 24 hours to respond to you as regards your intention to send out your personal statement to members of the Club, when in fact you had already sent out the said statement, per 1 and 2 above.

58 The first two findings were levelled at the Plaintiff for the same act of using the E-blast in two different capacities. The first as a Member of the Defendant and the second as Honorary Secretary. This appears to be punishing the Plaintiff twice for the same act. When the Plaintiff sent out the E-blast, he signed the Statement as Honorary Secretary. It is clear that he did not send it in his capacity as a Member of the Defendant. Moreover, when he gave instructions to the General Manager of the Defendant to send out the Statement, it was also done in his capacity as an Honorary Secretary. That was why the General Manager of the Defendant carried out his instructions. If the Plaintiff was acting in his capacity as a Member of the Defendant, the General Manager would not have sent out the Statement unless approved by a Committee Member as the General Manager is answerable to the Committee and not to the Members of the Defendant. Hence the first finding of misconduct in the Plaintiff's capacity as a Member of the Defendant was misconceived and could not be substantiated as the Plaintiff was at all relevant times acting in his capacity as Honorary Secretary and not as a Member of the Defendant

59 Given that the first finding is flawed on the basis that the Plaintiff was acting only in his capacity as Honorary Secretary of the Defendant, the next question would be whether the Plaintiff could have been disciplined for acting in his capacity as Honorary Secretary. The Plaintiff argued that the second finding was *ultra vires* the Constitution because the Constitution did not provide for disciplinary proceedings against a Committee Member such as the Honorary Secretary. I agreed with this submission. Rule 23(a) of the Constitution cannot apply to Committee Members as it specifically refers to disciplinary matters relating to a Member of the Defendant. The only provision that deals

with Committee Members is Rule 30(c) of the Constitution which states:

> Any member of the Committee who is absent from Singapore for a cumulative period of more than three months during his period of office or who fails to attend three consecutive General Committee Meetings without an explanation satisfactory to the Committee may be called upon to resign.

60 Hence the second finding of the Disciplinary Meeting also could not stand as it would be *ultra vires* the Constitution.

61 In any event, the second finding is also flawed for another reason. The Plaintiff was the Honorary Secretary. Hence sending out the materials relating to the business of the Defendant via E-blast was within the duties of Honorary Secretary as prescribed under Rule 32 of the Constitution. Rule 32(1)(a) specifically provides that the Honorary Secretary is to "be responsible for the general management of the Club and the enforcement of the Constitution and Bye-Laws." Hence he should not require the approval of the Committee every time he uses the E-blast for sending out matters pertaining to the Defendant. The Statement contained matters relating to the Defendant in which he signed off as Honorary Secretary. Although that Statement was not approved by the Committee, the Plaintiff had the authority to use the E-blast. He had merely sought to keep the Members of the Defendant informed of a Committee decision that was highly relevant to them and which he thought was contrary to the Constitution. This is especially so given that he was the Honorary Secretary, who was responsible for the enforcement of the Constitution. Furthermore, the Defendant had provided no evidence of any Bye-Laws or Rules that prohibited the Honorary Secretary to the usage of the E-blast without authorisation from the Committee.

Was the audi alteram partem rule breached?

62 The *audi alteram partem* rule is a rule of natural justice and applies to cases involving disciplinary proceedings in voluntary associations: *Kay Swee Pin* at [7]. It requires that the party to the disciplinary proceedings be given adequate notice of the allegations made against him and that he be given a fair opportunity to be heard.

63 The Plaintiff submitted that the failure to mention particular allegations which he was subsequently charged with breached the *audi alteram partem* rule. The third finding in the Notice of Suspension was that the Plaintiff had sent an e-mail to the 2013 Committee, giving them 24 hours to respond to his demand that they disseminate the Statement to all Members of the Defendant, when he had already sent out the Statement. The Plaintiff argued that the third finding in the Notice of Suspension was not mentioned in the letter requesting the Plaintiff to attend the Disciplinary Meeting.

64 The letter requesting the Plaintiff to attend the Disciplinary Meeting requested the Plaintiff to only "explain [his] conduct in relation to emailing to all members via the Club E-Blast database without proper authority from the Committee". There was no corresponding charge *vis-à-vis* the third finding preferred to the Plaintiff when the Defendant served the Notice to the Plaintiff in the letter dated 18 July 2013. Hence, the Plaintiff was entirely unaware of the need to answer to the third finding and the *audi alteram partem* rule was breached. There was no adequate notice and correspondingly it was impossible for there to be a fair opportunity to be heard.

Conclusion

65 For the above reasons I was satisfied that the decision of the Defendant's Committee to suspend the Plaintiff's membership violated the rules of natural justice and ordered that the decision

to suspend the Plaintiff's membership be set aside. I also allowed the Plaintiff's claim for damages to be assessed. I also awarded costs of $8,000 inclusive of disbursements to the Plaintiff.

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