

Vijaya Kumar s/o Rajendran and others v Attorney-General
[2015] SGHC 244

Case Number : Originating Summons No 394 of 2015
Decision Date : 17 September 2015
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Eugene Thuraisingam (Eugene Thuraisingam LLP) for the applicants; David Chong SC, Adrian Loo, Elaine Liew and Ailene Chou (Attorney-General's Chambers) for the respondent.
Parties : VIJAYA KUMAR S/O RAJENDRAN — BALASUBRAMANIAM — SATHIYAMOORTHY S/O MURUGIAH — ATTORNEY-GENERAL

Administrative Law – Judicial Review

17 September 2015

Tay Yong Kwang J:

Introduction

1 This originating summons ("OS 394/2015") was brought by the applicants, Vijaya Kumar s/o Rajendran, Balasubramaniam and Sathiyamoorthy s/o Murugiah (collectively "the applicants"), as members of the Hindu community in Singapore who participated in the Thaipusam procession in February 2015 ("the 2015 Thaipusam procession"). [\[note: 1\]](#)

2 The application was for the following orders or relief:

1. Leave be granted to apply for a Quashing Order to quash the enforcement of the condition of the police permit in respect of the Thaipusam procession of 3 February 2015 (the "**Thaipusam Procession**"), viz that no singing or music, gongs, drums or music producing equipment such as portable radio and cassette recorder shall be played throughout the procession save for the singing of religious hymns relevant to Thaipusam (the "**Music Ban**");

2. Leave be granted to apply for a Quashing Order to quash the Government's policy of continued imposition and enforcement of the Music Ban in future Thaipusam processions (the "**Government Policy**");

3. Leave be granted to apply for a Mandatory Order to mandate the Commissioner and/or the police officer granting the permit in respect of the Thaipusam procession of 2016 to authorise the playing of musical instruments during the Thaipusam procession of 2016;

4. Leave be granted to apply for a declaration that the Music Ban and/or the Government Policy are ultra vires the Public Order Act (Cap 257A, 2012 Rev Ed) and the Public Order Regulations 2009 (MHA 112/2/0108; AG/LEG/SL/257A/2009/1 Vol. 1) by reason that they are:-

a. in breach of Article 15 of the Constitution;

- b. in breach of Article 12 of the Constitution; and/or
- c. irrational.

5. Such further order or relief as this Honourable Court deems fit be granted.

3 The application implicated the Government's 42-year-old policy ("the policy") proscribing singing or music and the use of gongs, drums or music-producing equipment during Thaipusam foot processions. [\[note: 2\]](#) The policy is embodied in a condition that the police imposes – unless it authorises otherwise – whenever it issues a permit for a public procession: see s 8(2) of the Public Order Act (Cap 257A, 2012 Rev Ed) ("the Act") read with Regulation 8(2)(c) of the Public Order Regulations 2009 (S 487/2009) ("the Regulations").

4 The "music ban" did not operate to stop all music during the Thaipusam procession. Musical instruments were played on temple grounds at the start and the end of the procession. In recent times, the police authorised religious hymns to be sung throughout the procession and permitted the hymns to be broadcast from public address systems at three locations. [\[note: 3\]](#) Therefore, the applicants' case was that the authorities should allow full music accompaniment by also permitting musical instruments to be played during the procession. They sought to quash the "policy of an outright ban on the playing of any musical instrument during Thaipusam processions" [\[note: 4\]](#) and to compel the police to authorise the playing of musical instruments in issuing the permit for the 2016 Thaipusam procession (see [2] above).

5 The parties agreed to have the application for leave heard together with the substantive merits of the case. After hearing the parties, I found no ground for relief in judicial review and therefore dismissed the application. On 26 Aug 2015, the applicants appealed against the whole decision (in CA 164 of 2015). On 1 Sep 2015, the Attorney-General ("the respondent") appealed against the part of my decision that held that the applicants had "demonstrated, through their affidavits and the affidavit of Tan Sri R. Nadarajah filed on 20 July 2015, that the playing of musical instruments in the course of the Thaipusam procession is a religious practice of the Hindu religion protected under Article 15(1) of the Constitution of the Republic of Singapore" (I shall have more to say about this purported finding later). The respondent also appealed against my finding that the applicants had the legal standing to seek the reliefs set out earlier.

Background

6 The power to grant permits for proposed public processions is conferred on the Commissioner of Police ("the CP") under s 7 of the Act. Section 8(2) of the Act states that in granting a permit for a public assembly or public procession, the CP may impose conditions that in his opinion, are necessary to prevent the assembly or procession from being carried out in a way that results in any of the matters referred to in s 7(2)(a)-(g), which include public disorder or damage to property, public nuisance, obstruction in public roads, the jeopardising of human safety, and feelings of enmity, hatred, ill-will and hostility between different groups in Singapore.

7 Under reg 8(2) of the Regulations, seven conditions are deemed to be imposed on every permit that the police issues for a public procession. In particular, reg 8(2)(c) states:

no singing or music, gongs, drums or music-producing equipment shall be played, and no live-streaming of any event shall be shown, during the procession unless authorised by the police officer granting the permit;

8 On 13 November 2014, the secretary of the Sri Srinivasa Perumal Temple in Serangoon Road applied for a permit to hold the 2015 Thaipusam procession from 2–4 February. [\[note: 5\]](#) The procession would start at Sri Srinivasa Perumal Temple and end at Sri Thendayuthapani Temple in Tank Road. By way of a letter dated 2 February 2015, the police granted permission subject to the following conditions (“the music conditions”) [\[note: 6\]](#), among others:

11. No singing or music, gongs, drums or music producing equipment such as portable radio and cassette recorder shall be played throughout the procession except for the singing of religious hymns in line with the HEB guidelines (Section B) for Thaipusam 2015. An exception is also made for 3 religious hymns transmission points. The conditions for the exception are listed under paragraphs 12, 13, 14, 15 and 16.

12. The permit holder shall ensure that only pre-approved religious hymns are transmitted at the 3 approved locations on 3rd February 2015 (Tues) from 0800hrs to 2030hrs, depicted in **Annex C**.

13. The permit holder shall ensure that only 1 speaker is used at each of the 3 approved locations, depicted in **Annex C** and these speakers must be tilted downwards to face the audience.

14. The permit holder shall ensure that the volume of the music emanating from the 3 approved locations do not exceed 65dBA throughout the approved period.

15. The permit holder shall ensure that marshals are deployed to oversee the playing of the music at the 3 approved locations.

16. Any Police officer may direct the applicant/marshal to decrease the volume or stop the transmission of the music if Police assess that the music is excessively loud, causing an impediment to the flow of the procession or creating a potential law and order situation.

9 The first of the music conditions (“the music restriction”) was referred to as the “music ban” in this application (see [2] above). The police did not permit the playing of musical instruments during the Thaipusam procession which took place as planned on 3 February 2015. [\[note: 7\]](#) The first and second applicants marched in the procession, with the former carrying a spike kavadi and the latter carrying a milk pot. The third applicant was a spectator at a juncture of the procession. He also took photographs of the procession.

10 The applicants contended that music from the urumi (a type of drum) was a fundamental aspect of the religious practice of marching in the Thaipusam procession. They therefore alleged that the music conditions imposed breached their constitutional rights [\[note: 8\]](#) and commenced this application on 29 April 2015.

The parties’ arguments

11 Before leave is granted, the court must be satisfied that the subject matter of the complaint is susceptible to judicial review, that the applicants have sufficient interest in the matter and that the material before the court discloses an arguable case or a *prima facie* case of reasonable suspicion in favour of granting the remedies sought by the applicant: see eg, *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 at [5]. [\[note: 9\]](#)

12 The justiciability of the subject matter was not in dispute. I now set out the parties' arguments on the other two requirements.

13 For *locus standi*, the applicants submitted that they had sufficient interest to bring the action. [\[note: 10\]](#) The first and second applicants participated in the 2015 Thaipusam procession by carrying a kavadi and a milk pot respectively. The imposition of the music conditions caused them to experience a "truncated Thaipusam experience that is contrary to the prescriptions of the Hindu religion". [\[note: 11\]](#) While the third applicant did not physically participate in the procession, he was a member of the Hindu community and not a mere "concerned citizen" or "busybody". [\[note: 12\]](#) This was sufficient to establish an arguable violation of his personal constitutional rights.

14 The applicants contended that their right to freedom of religion had been breached by the policy and the police's decision to impose the music restriction in the music conditions, as the practice of participating in the Thaipusam procession with full musical accompaniment was a religious practice protected by Article 15(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) ("the Constitution"). [\[note: 13\]](#) While Art 15(4) does not authorise acts that are contrary to any general law relating to public order, the applicants questioned whether the "religion-curtailling law or exercise of power" bore a sufficiently compelling nexus to public order. [\[note: 14\]](#) They also argued that "public order" as a concern must stem from "some real threat of violence or disturbance to public safety, as opposed to say mere inconvenience or breaches of the law, that would potentially justify curtailing a fundamental Art 15(1) right". [\[note: 15\]](#)

15 Further, the applicants submitted that their right to equality before the law in Article 12(1) of the Constitution was contravened. The prohibition on musical accompaniment was absent in "materially similar" processions such as the Chingay and St Patrick's Day parades. [\[note: 16\]](#) While they did not contend that the CP was biased or acted in bad faith in imposing the music conditions on the 2015 Thaipusam procession, his decision was irrational in the *Wednesbury* sense (see *Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223) ("*Wednesbury*"). [\[note: 17\]](#)

16 The respondent submitted that leave should not be granted as: [\[note: 18\]](#)

(a) The application was a bald challenge to s 8(2) of the Act read with reg 8(2)(c) of the Regulations and offended against the principle of separation of powers as the applicants did not contend that the aforesaid legislation was unconstitutional;

(b) The applicants failed to disclose material facts and breached their duty of candour and good faith in judicial review proceedings;

(c) The application failed to meet the threshold for leave under O 53 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC") as:

(i) There was no arguable or *prima facie* case of reasonable suspicion in favour of granting the reliefs sought as the applicants' rights under Article 12 or Article 15 of the Constitution had not been infringed and the music restriction (that is, the 42 year old policy of restricting singing or music and the use of gongs, drums or music-producing instruments during the Thaipusam religious procession) was not irrational;

(ii) The applicants lacked *locus standi* as their personal and constitutional rights had not been infringed and there was no factual or legal basis for their challenge;

- (iii) The first quashing order and the mandatory order sought were legally untenable as the court had no power to grant the reliefs in the terms that the applicants sought;
 - (iv) There was no factual basis on which the second quashing order could be sought and the court had no power in any event to grant the second quashing order in the terms that the applicants sought;
 - (v) There was no legal or factual basis for the declaration sought by the applicants; and
- (d) Even if the leave requirements were met, the court should refuse leave as:
- (i) The application was premature as the Hindu Endowments Board ("HEB") had collated feedback on potential modifications to the conditions to be imposed for future Thaipusam processions and was expected to engage the Government on the matter soon;
 - (ii) The application served no useful purpose as the court could not grant the reliefs in the terms sought by the applicants; and
 - (iii) The applicants' conduct in not coming to court with "clean hands" justified the exercise of the court's discretion to refuse leave as they had breached their duty of utmost good faith in failing to disclose material facts.

The decision of the court

The applicants' expert report

17 In support of their application, the applicants tendered an affidavit dated 17 July 2015 by Tan Sri Datuk R Nadarajah ("the Hindu expert"), who had been involved with the Sri Maha Mariamman Temple Dhevasthanam in Malaysia for 43 years, including 23 years as its chairman ("the expert report"). By virtue of his position, experience in organising the Thaipusam festival in Selangor (where 1.5 million devotees participated over one week) and experience concerning the customs and traditions of Hinduism, the Hindu expert opined that the playing of musical instruments is "crucial" as it helps to keep devotees in a trance, alleviates hardship and pain from the piercings and keeps their minds trained on the divine and away from distractions. He explained: [\[note: 19\]](#)

As the procession begins and progresses it is essential for the above musical instruments to accompany the devotees throughout the procession to enable them to bear the physical burden and pain as well as continue with their devotion to God. It is important at this point to note that music is an essential part not just to the procession but in the nature of worship during Thaipusam and in the religion in general.

Taking away the musical instruments during the procession will be a traumatic experience for the Kavadi carrier as the trance will be broken and he will start feeling immense physical burden and unbearable pain from the piercings. He will also be distracted from focusing on the divine.

The playing of the above instruments are therefore a crucial and important part of the Kavadi procession and constitutes fundamental religious expression during the Thaipusam festival. It is essential to the religion and the practice of the religion of Hinduism.

18 The respondent filed no affidavit in response. However, he argued that the expert report should

be inadmissible or be accorded no weight as:

(a) The Hindu expert had not disclosed material facts that there were ongoing Malaysian proceedings to remove him as the temple chairman on the allegation of a failure to administer the temple as a charitable, cultural, religious and educational trust [\[note: 20\]](#) and that there were dissenting views on a new system of milk offering introduced at the temple;

(b) He did not qualify as an expert as he was not a Hindu priest and had not put forward evidence of qualifications or experience in the teachings and affairs of Hinduism; his position was at best a representation of the views of some members of the Malaysian Hindu community in the Batu Caves area; [\[note: 21\]](#) and

(c) The expert report was defective as it did not comply with most of the mandatory requirements in O 40A r 3(2) of the ROC. [\[note: 22\]](#)

19 I accepted the Hindu expert's opinion that, according to his understanding of the religion, the playing of musical instruments was an essential part of the Thaipusam procession. This was especially so where the practice in the Batu Caves temple was concerned. The matters that the respondent said were not disclosed had no bearing on whether the Hindu expert possessed the requisite expertise in Hinduism. While he might not be a conventional expert who possesses academic or professional qualifications, he was involved with the Batu Caves temple for more than four decades and could at least speak with a fair measure of authority about the practice there. In matters that concern religious faith, I think that the court should not adopt a legalistic approach as to who could qualify as an expert to comment on religious practices or rituals especially when such practices or rituals are not set out in writing. On the facts here, I therefore did not accept that the inability to examine the correctness of the Hindu expert's premises and reasoning process to determine content credibility and coherence necessarily rendered the expert report of little or no utility. [\[note: 23\]](#)

20 The respondent also submitted that the applicants had not tried to obtain an expert report from a Singapore Hindu temple because it would not have supported the applicants' claims and that they had failed to enlist a Hindu priest from a Malaysian Hindu temple as an expert because the playing of musical instruments during the procession was not essential to the Hindu religion. [\[note: 24\]](#) However, if the matters in the expert report are disputed and if the above contentions are correct, it could also be said that the respondent could have easily obtained evidence from a Hindu priest in Singapore or perhaps the HEB that the playing of musical instruments was not essential or at least that there were inconsistencies in the Thaipusam practices in Singapore and in Malaysia.

21 I proceeded on the basis that four Hindus – the Hindu expert and the applicants (who filed an affidavit each) – firmly believed that the playing of musical instruments is essential to the Thaipusam procession. There was no evidence to show that such belief was an aberration in Hinduism and neither was there any objective evidence to show that such belief was totally unjustified. My decision does not mean that I accepted that such a belief is universal to all Hindus in Singapore or elsewhere. It may well be that most or some Hindus, whether here or abroad, do not hold the same view or belief as the applicants. Religious practices and rituals do vary from place to place and among different groups of believers in the same faith. As I have stated above, there was no evidence to indicate that the belief of the applicants was totally foreign to the religion or that musical instruments never featured in such processions.

The applicants' locus standi

22 I accepted that the applicants had *locus standi* to take out this application on the ground that they professed to be Hindus and there was no evidence to show otherwise. The legal standing of the first and second applicants was even stronger as they participated in the 2015 Thaipusam procession by carrying a kavadi and a milk pot respectively. While the position of the third applicant was more tenuous as he was merely a spectator and photographer during a part of the procession, I accepted that he too, had sufficient *locus standi* as a Hindu. As a Hindu watching the Thaipusam procession, he could not be said to be a mere “concerned citizen” or “busybody” with no real interest in wanting the procession to be conducted in accordance with his religious beliefs.

23 The respondent, apart from submitting that the applicants had no factual or legal basis to claim that their constitutional rights had been infringed, argued that the applicants lacked legal standing as they were not the applicants for the police permit and were therefore not directly affected by the restrictions in the organisation of the Thaipusam procession. [\[note: 25\]](#) I did not accept that the applicants could have sufficient standing only if they were the applicants for the permit. While the permit applicants shouldered the responsibility of organising the Thaipusam procession (eg, the permit holders had to ensure that more than 170 auxiliary police officers, route marshals and security officers were deployed at any point in time) and would also have *locus standi* to take out such an application if they wanted to, [\[note: 26\]](#) Thaipusam is celebrated by Hindus. People who profess to be adherents of a religion would have the legal standing to challenge decisions affecting what they believe to be the proper practice of that religion. It is open to the authorities in issue to adduce evidence to show that a particular applicant is in fact a charlatan pretending to profess a certain religion for ulterior purposes. However, there was no dispute in the present case that the three applicants are Hindus.

24 The respondent also argued that the applicants lacked standing because the prerogative orders and declaration they sought were legally untenable. [\[note: 27\]](#) Essentially, the respondent was saying that the reliefs sought were either premature (as the application for the permit for the 2016 Thaipusam procession had not been made) or moot (there was no live controversy as the 2015 Thaipusam procession was over). Without an application, the police could not make a decision and without a decision, there was nothing against which the court could issue a mandatory or a quashing order.

25 The application for the 2015 Thaipusam procession was made on 13 November 2014. [\[note: 28\]](#) The approval for the procession started on 2 February 2015. [\[note: 29\]](#) Although the music conditions accompanying the permit would have been disclosed before 2 February 2015, the timeframe might well have been too tight for the applicants to seek judicial review before the Thaipusam procession ran its course by 2359 hours on 3 February 2015. If the timeframe for the 2015 Thaipusam procession is representative of future applications, the applicants would be placed in an untenable position as they will always be too early or too late in seeking judicial review. Moreover, the applicants were challenging a declared policy that had been in place for 42 years and not merely the police’s decision to impose the music restriction as part of the conditions accompanying the grant of the permit in a given year. The Thaipusam procession would continue to be held every year. Therefore, it was proper for the applicants to be challenging policies and conditions which applied in the past and which would in all likelihood be applied to future processions. However, I accepted that prayer 1 of the application as drafted was defective as it sought to quash the enforcement of something which had already been done and which was impossible to undo because the event was long over by the time the present application was taken out on 29 April 2015.

26 In summary, I found that the three applicants had sufficient interest in the matter on the ground that they professed to be Hindus and there was no evidence to show otherwise. In particular,

because the first and second applicants were participants in the 2015 Thaipusam procession, they had even stronger grounds to claim *locus standi*. There was some suggestion that the first applicant's motive in taking out this application was questionable as he did not disclose that he is related to three persons who have been charged in court for disorderly behaviour during the 2015 Thaipusam procession and that a group had been hired to play urumi drums during the procession. In my view, this would not deprive the first applicant of his right in law as a Hindu to challenge what he perceived to be an unlawful restriction on his practice of the religion, even if a successful challenge would have aided some persons in other court proceedings.

Whether there was an arguable or prima facie case of reasonable suspicion

27 On the issue of an arguable case or a *prima facie* case of reasonable suspicion, the Court of Appeal said in *Chan Hiang Leng Colin and others v Minister for Information and the Arts* [1996] 1 SLR(R) 294 (at [22]):

This passage appears susceptible to two slightly different interpretations. One is that the court should quickly peruse the material put before it and consider whether such material discloses "what might on further consideration turn out to be an arguable case". The other is that the applicant had to make out a "*prima facie* case of reasonable suspicion". In our view, both tests present a very low threshold and it is questionable whether there is really any difference in substance between the two interpretations.

28 Though the threshold is a low one, the applicants would not cross it if any restriction on their constitutional rights was clearly legally justified or otherwise permissible. [\[note: 30\]](#) In that event, leave for judicial review would be refused.

29 Article 15(1) of the Constitution confers on every person the right to profess, practise and propagate his religion. However, Article 15(4) states that the Article does not authorise any act contrary to any general law relating to public order, public health or morality. In the present case, we are concerned with only the public order exception.

30 In respect of Article 15(1), I have not found that the playing of musical instruments during the Thaipusam procession is a universal Hinduism practice. However, I accepted that at least four Hindus firmly believed that the playing of musical instruments is essential to the Thaipusam procession. The next question was whether the restriction on the playing of music during the procession was a justified derogation from Article 15(1). It would not be justified if there were no public order concerns or if the music restriction, as imposed under reg 8(2)(c) of the Regulations, was unrelated to public order.

31 Public order is a broad concept. In the Malaysian case of *Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia and others* [1976] 2 MLJ 83, the court stated at (p 86D-F):

The expression 'public order' is not defined anywhere but danger to human life and safety and the disturbance of public tranquillity must necessarily fall within the purview of the expression. It is used in a generic sense and is not necessarily antithetical to disorder, and is wide enough to include considerations of public safety within its signification. The Supreme Court of India exhaustively discussed the import of the term 'public order' in *Romesh Thappar v. State of Madras*⁽¹²⁾ (in particular at page 127) when it established the principle that the maintenance of public order is equated with the maintenance of public tranquillity, that 'public safety' is a part of the wider concept of 'public order', that 'public safety' ordinarily means security of the public or their freedom from danger and in that sense will include the securing of public health, that is to

say, anything which tends to prevent dangers to the public health may also be regarded as securing public safety.

32 *Chan Hiang Leng Colin and others v Public Prosecutor* [1994] 3 SLR(R) 209 held (at [68]) that the concept of public order was not dissimilar to the notion of public peace, welfare and good order in s 24(1)(a) of the Societies Act (Cap 311, 1985 Rev Ed). It was not necessary to show clear and immediate danger before the right of freedom of religion could be curtailed (at [59]). [\[note: 31\]](#)

33 The respondent stated that the music conditions which restricted the playing of musical instruments during the Thaipusam procession were imposed given the risks for communal disturbance and strife. The magnitude of potential public order issues arising from crowd build-ups, traffic congestion, unhappiness and conflicts among participants could not be underestimated and must be viewed against the scale of the procession and its religious aspect. Every year, the procession involves about 9,000 to 10,000 devotees carrying kavadis or milk pots along a route of about 3km. The procession lasts for more than 24 hours, accompanied by thousands of supporters and spectators. [\[note: 32\]](#) In the 2015 Thaipusam procession, the organiser stated in his permit application that 40,000 persons would be in the foot procession. [\[note: 33\]](#) The 2015 Thaipusam procession took place for 26 hours between 2 February 2015 at 10pm and 3 February 2015 at 11.59pm, passing through major roads including Serangoon Road, Selegie Road, Bras Basah Road, Penang Road and Clemenceau Road. The respondent pointed out that religious foot processions were “fundamentally different” from non-religious ones as religion is a sensitive issue in Singapore’s multi-religious context; riots had arisen out of a religious foot procession in 1964. [\[note: 34\]](#) In this regard, the procession route was close to three places of worship: the Angullia Mosque on Serangoon Road, the Great Shepherd Assembly of God Church on Selegie Road and the Orchard Road Presbyterian Church. In fact, at Serangoon Road, the pedestrian crossing directly in front of the Angullia Mosque had to be closed for the entire 26 hours. [\[note: 35\]](#)

34 Superintendent Koh Tee Meng (“Superintendent Koh”), an assistant director of the police’s operations management branch, filed an affidavit for the respondent. He was involved in assessing the application for the 2015 Thaipusam procession. [\[note: 36\]](#) In assessing the application, the police met the HEB, temple organisers and security providers on matters which included security deployment, traffic control and crowd management. The police also worked with the Land Transport Authority and the Traffic Police as the procession entailed road closures and changes in vehicular traffic direction, given the length and nature of the route. Superintendent Koh stated that in the police’s assessment, the restriction on the playing of musical instruments would reduce the opportunities for friction among the various participants in the procession and among the participants and the residents in the affected neighbourhood, the motorists and other road users along the affected procession route, the on-lookers and other visitors to the procession. [\[note: 37\]](#) It was only after the assessment that the procession, if conducted in compliance with the police conditions (including the music conditions), would not raise law and order issues that the permit was granted.

35 In my judgment, the police has shown legitimate public order concerns and that their measures were directed at preserving public order. The applicants argued that the potential for mere traffic inconvenience or annoyance to motorists and residents did not amount to valid public order considerations and that the risk of trouble-makers disrupting the solemnity of the event did not justify restricting the religious practice. [\[note: 38\]](#) However, these factors had to be viewed against the scale, duration and the religious element of the procession. The risk of a disruption of public order was not unreal. The connection between the music restriction and the preservation of public order was neither illogical nor unreasonable. The applicants submitted that the mere possibility of communal

violence being induced by musical accompaniment during the Thaipusam procession did not provide a sufficient connection between the measures imposed and public order. [\[note: 39\]](#) However, the police was entitled to factor in the potential for communal disturbances and strife and determine that the music conditions would “go a long way in averting the potential for such disturbances and strife”. [\[note: 40\]](#) This was undoubtedly a judgment call which required an intimate understanding of all circumstances and a fair prediction of what could possibly happen during an event spreading over three kilometres and lasting some 26 hours at the fringe of the city centre.

36 The police, which would have access to ground intelligence, is in a far better position than the court to determine what is necessary for public order and safety. Insofar as the music conditions imposed under reg 8(2)(c) of the Regulations were in furtherance of the government’s policy of preserving public order, I accepted the respondent’s arguments that the subject matter of the decision or legislation concerned complex polycentric considerations such as social policy and public order and the court was not the correct authority to adjudicate on such matters. The court should therefore refrain from reviewing the merits of decisions taken in such matters. [\[note: 41\]](#)

37 The applicants themselves conceded that the police’s decision could not be held to be unconstitutional simply because the court, in exercising its own judgment, would have arrived at a different result. [\[note: 42\]](#) However, they contended that the court could still scrutinise the approach of the police or the government, including the application of the “correct legal test” and the according of sufficient consideration to fundamental liberties. [\[note: 43\]](#) The applicants stated that the correct legal test was to take as the starting point complete liberty for Hindus to engage in the religious practice of participating in the Thaipusam procession with full musical accompaniment, supplemented by targeted or focused restrictions as are necessary to address specific public order concerns. [\[note: 44\]](#)

38 It should be noted that the police’s measures served only to confine the extent to which music could be used during the Thaipusam procession and not to prohibit it altogether. The police had not imposed reg 8(2)(c), the constitutionality of which was not challenged by the applicants, in blanket fashion. [\[note: 45\]](#) Instead, it had nuanced its approach over time in response to dialogue with the Hindu community. The playing of musical instruments was banned in 1973. [\[note: 46\]](#) The playing of traditional musical instruments within the two Hindu temples at the start and at the end of the procession was unaffected. In 2011, religious hymns were allowed to be sung not only in the temples but throughout the Thaipusam procession. In 2012, a public audio system to transmit music was set up outside the Sri Srinivasa Perumal Temple on Serangoon Road and outside the Sri Thendayuthapani Temple on Tank Road (“the music points”). In 2015, the police allowed a third music point within the kavadi dismantling area along Clemenceau Avenue, just before the turn-off to Tank Road. The music points could transmit religious hymns towards the start and the end of the Thaipusam procession for more than 12 hours, from 8am to 8.30pm, provided that the volume did not breach 65 decibels. [\[note: 47\]](#) The calibrated approach to the music use showed that the police had due regard for the applicants’ rights in Article 15(1) even as it sought to balance those rights against the exigencies of public order.

The Article 12 ground and irrationality

39 Article 12(1) of the Constitution states that all persons are equal before the law and are entitled to the equal protection of the law. Equality before the law and equal protection of the law require that like be compared with like: *Ong Ah Chuan and another v Public Prosecutor* [1979–1980]

SLR(R) 710 at [35].

40 In *Eng Foong Ho and others v Attorney-General* [2009] 2 SLR(R) 542, the appellants were devotees of a temple who alleged that the compulsory acquisition of their property violated Article 12 because the land occupied by two adjacent places of worship had not been acquired, although all were adherents in a religious faith (at [24]). The court stated (at [25]) that although every person is equal in the eyes of the law, the State is entitled to differentiate between persons and their constitutional rights in the application of the law. The question was whether there is a reasonable nexus between the state action and the objective to be achieved by the law, assuming that the law itself is not in violation of Article 12. The court stated that the answer lay in the reasons why the State had chosen to acquire the temple property and not the other two properties and whether the reasons showed any discrimination against the appellants.

41 In my view, the restriction on the playing of musical instruments during the Thaipusam procession did bear a reasonable nexus to the objective to be achieved by the Act and the Regulations, which is the preservation and maintenance of public order. [\[note: 48\]](#) Given the event's scale, duration and religious element, the police had arrived at a *bona fide* assessment (there was no allegation of bad faith here) that the music restriction would minimise road congestion and facilitate the movement of persons, including the kavadi bearers, and traffic along the route, and pre-empt public order disturbances and potential conflicts. The connection was not illogical or unreasonable (see [34]–[37] above) [\[note: 49\]](#) even if some others might have decided to take more risks by giving greater latitude.

42 Was the equal protection clause contravened by a "deliberate and arbitrary discrimination against a particular person" (*Howe Yoon Chong v Chief Assessor* [1990] 1 SLR(R) 78)? In *Public Prosecutor v Ang Soon Huat* [1990] 2 SLR(R) 246, the court held (at [23]) that arbitrariness implies the lack of any rationality. The applicants pointed to the difference in treatment that was accorded to the Chingay Parade on 27–28 February 2015 and the St Patrick's Day Parade on 15 March 2015. [\[note: 50\]](#) The police imposed music conditions for the Thaipusam procession but not for the other processions. It was submitted, therefore, that the decision was irrational in the *Wednesbury* sense and the police had taken into account irrelevant considerations – including the fact that the Thaipusam procession had a religious aspect – in breach of Article 12(1). [\[note: 51\]](#)

43 In his affidavit, Superintendent Koh stated that generally, as a matter of policy, the police did not grant permits for religious foot processions. Therefore, as between the Thaipusam procession and other religious processions, the grant of a permit for the Thaipusam procession every year was an exception to the rule. [\[note: 52\]](#) As stated above at [7], reg 8(2)(c) of the Regulations proscribes the singing or playing of music and musical instruments in public processions unless the police authorises otherwise. The respondent stated that the police's general position was that this condition – and the other six conditions in reg 8(2) – remained for all religious processions due to communal sensitivities and the potential for communal disturbance and strife. [\[note: 53\]](#) However, the police had also, over time, exercised the discretion to impose reg 8(2)(c) in a more nuanced fashion by allowing religious hymns to be sung during the procession and music to be broadcast from three music points near the temples. In this aspect, there was no disparity of treatment between the Thaipusam procession and other religious processions; the Thaipusam procession was in fact treated more favourably as a permit was granted annually and the restriction on the playing of musical instruments was an "extenuated version" of reg 8(2)(c). [\[note: 54\]](#)

44 As between the Thaipusam process on the one hand and the Chingay and St Patrick's Day

Parades on the other, there was no deliberate and arbitrary discrimination as there were distinguishing factors that justified different treatment. [\[note: 55\]](#) Compared to the two parades, the Thaipusam procession had a religious dimension, took place on a larger scale in a different location and had a much longer route and duration (see [33] above). [\[note: 56\]](#) This translated into a higher order of public order concerns.

45 The Chingay Parade has taken on a multi-cultural complexion and is considered a national festival that is celebrated by all races and religions in Singapore. The themes of the parade were non-religious. There were mobile decorated vehicle floats and performances by 11,000 multicultural participants. The route was about 720 metres from the F1 pit building to the Singapore Flyer. The parade took place over two hours at night, between 8pm and 10pm, on 27 and 28 February 2015 (Friday and Saturday) (unlike the Thaipusam procession which frequently took place on weekdays and during working hours).

46 St Patrick's Day is an Irish festival that has become a secular event. Besides members of the Irish community, the participants included those from the Down Syndrome Association, Gaelic Dragons Dragon Boat Team, USA Girl Scouts Overseas (Singapore) and the Samba Band. The route was about 450 metres, starting at the Raffles Landing in front of the Arts House, passing by Boat Quay and ending at the UOB Plaza. The parade was held from 2pm to 5pm on 15 March 2015 (Sunday).

47 From the above, it was evident that the Thaipusam procession attracted public order considerations of a different degree and kind. There was clearly no arbitrary and deliberate discrimination. There was also no question of the police having acted irrationally or unreasonably, notwithstanding the applicants' contention that the existence of a religious element and the fact that that might increase the risk of hostility by third parties or disorder by trouble-making participants were irrelevant considerations. [\[note: 57\]](#) History and current events in Singapore and around the world give ample justification to the police to pay special attention to events involving a religious element.

48 In *Wednesbury* (at 233–234), Lord Greene MR summarised as follows:

... The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. ...

The threshold for judicial intervention on the ground of irrationality is relatively high. As Lord Diplock observed in *Council of Civil Service Unions and others v Minister for the Civil Service* [1985] 1 AC 374 (at 410), it applies only to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

49 The imposition of the condition on the playing of music instruments during the Thaipusam procession was clearly linked to legitimate public order considerations. The police had assessed that the music restriction was required based on ground observations and past lessons that crowd build-up, disrupted traffic flows and conflicts among individuals (*ie*, matters consequential to the playing of musical instruments along the course of a religious foot procession) could lead to public disorder

among different groups, given Singapore's history of racial riots and its multi-religious make-up. [\[note: 58\]](#) This risk could not be said to be unreal. Therefore, the decision could hardly be said to be so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

50 While the applicants challenged the policy and the police's decision to impose the music conditions under reg 8(2)(c), they did not challenge the constitutionality of the regulation (on the reasoning that it allowed exceptions to be made). However, reg 8(2)(c) contained the policy proscribing the use of music during the Thaipusam procession. Therefore, the applicants were in effect making a constitutional challenge to the regulation despite disavowing any such intention. The respondent rightly pointed out that if the applicants did not challenge the legislation, they could not also challenge the policy contained in it.

51 As mentioned earlier, the police has made incremental adjustments to the music policy during the Thaipusam procession by taking into account public order concerns as well as the views of the Hindu community. The 42-year old policy was not being applied as strictly as in the years gone by in order to accommodate new realities. The HEB has collated feedback on potential modifications to the conditions to be imposed for future Thaipusam processions and was expected to engage the authorities in respect of this matter. The applicants are aware of such feedback sessions. However, any further decision to modify the music conditions after considering public order concerns and the views of the Hindu community remains with the police.

Conclusion

52 For the above reasons, although the applicants had the necessary *locus standi* to make this application, they were not able to raise an arguable case or a *prima facie* case of reasonable suspicion, whether on the ground of Article 12 or Article 15 of the Constitution or on irrationality. There was clearly no bad faith on the part of the police and none was alleged. The police had shown that there were legitimate concerns about public order and that the measures were directed at preserving public order. There was no unfair discrimination and no irrationality in the measures taken. Accordingly, there was no ground for relief in judicial review and I dismissed the application for leave to commence judicial review proceedings.

53 I also ordered the three applicants to be jointly and severally liable to pay the respondent costs fixed by me at \$6,000 and disbursements amounting to \$1,923.80 for this application.

[\[note: 1\]](#) Applicants' submissions at [9].

[\[note: 2\]](#) Respondent's submissions at [2].

[\[note: 3\]](#) Respondent's skeletal submissions at [2(a)] and submissions at [8]-[11].

[\[note: 4\]](#) Applicants' submissions at [14].

[\[note: 5\]](#) Applicants' written submissions at [6], Koh Tee Meng's affidavit at p73.

[\[note: 6\]](#) Affidavit of Koh Tee Meng at p78.

[\[note: 7\]](#) Applicants' submissions at [9].

[\[note: 8\]](#) Applicants' submissions at [10].

[\[note: 9\]](#) Respondent's Bundle of Authorities (RBA) Vol 3 at p391.

[\[note: 10\]](#) Applicants' submissions at [28]-[35].

[\[note: 11\]](#) Applicants' submissions at [32].

[\[note: 12\]](#) Applicants' submissions at [35].

[\[note: 13\]](#) Applicants' submission at [44].

[\[note: 14\]](#) Applicants' submissions at [54].

[\[note: 15\]](#) Applicants' submission at [60].

[\[note: 16\]](#) Applicants' submissions at [31].

[\[note: 17\]](#) Applicants' submissions at [80] and [81.1].

[\[note: 18\]](#) AG's submissions at [15].

[\[note: 19\]](#) Tan Sri Datuk R Nadarajah's affidavit at p10.

[\[note: 20\]](#) Respondent's submissions (preliminary matter) at [5(b)].

[\[note: 21\]](#) Respondent's submissions (preliminary matter) at [17].

[\[note: 22\]](#) Respondent's submissions (preliminary matter) at [30].

[\[note: 23\]](#) Respondent's submissions (preliminary matter) at [39].

[\[note: 24\]](#) Respondent's submissions (preliminary matter) at [7].

[\[note: 25\]](#) Respondent's skeletal submissions at [33].

[\[note: 26\]](#) Affidavit of Koh Tee Meng at p78.

[\[note: 27\]](#) Respondent's skeletal submissions at [34].

[\[note: 28\]](#) Affidavit of Koh Tee Meng at [22].

[\[note: 29\]](#) Affidavit of Koh Tee Meng at p76.

[\[note: 30\]](#) Respondent's submissions at [50].

[\[note: 31\]](#) Respondent's skeletal submissions at [24].

[\[note: 32\]](#) Respondent's submissions at [61].

[\[note: 33\]](#) Koh Tee Meng's affidavit at p73.

[\[note: 34\]](#) Respondent's submissions at [6].

[\[note: 35\]](#) Respondent's submissions at [9].

[\[note: 36\]](#) Koh Tee Meng's affidavit at [2] and [25].

[\[note: 37\]](#) Koh Tee Meng's affidavit at [14].

[\[note: 38\]](#) Applicants' submissions at [63]-[66].

[\[note: 39\]](#) Applicants' submissions at [68.2].

[\[note: 40\]](#) Koh Tee Meng's affidavit at [26].

[\[note: 41\]](#) Respondent's submissions at [24(b)].

[\[note: 42\]](#) Applicants' submissions at [59].

[\[note: 43\]](#) Applicants' submissions at [60.5].

[\[note: 44\]](#) Applicants' submissions at [72].

[\[note: 45\]](#) Respondent's submissions at [89(c)].

[\[note: 46\]](#) Respondent's submissions at [8].

[\[note: 47\]](#) Respondent's submissions at [11].

[\[note: 48\]](#) Respondent's submissions at [58].

[\[note: 49\]](#) Respondent's submissions at [60].

[\[note: 50\]](#) Applicant's submissions at [78]-[82].

[\[note: 51\]](#) Applicants' submissions at [80] and [81.1].

[\[note: 52\]](#) Affidavit of Koh Tee Meng at [7].

[\[note: 53\]](#) Respondent's submissions at [53].

[\[note: 54\]](#) Respondent's submissions at [54].

[\[note: 55\]](#) Respondent's submissions at [65].

[\[note: 56\]](#) Respondent's submissions at [65(b)].

[\[note: 57\]](#) Applicants' submissions at [81.1]-[81.2].

[\[note: 58\]](#) Respondent's submissions at [92].

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