IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2012] SGHC 210

Originating Summons No 657 of 2012

In the matter of Originating Summons No 657 of 2012

And

In the Matter of the Government's US$4 billion loan commitment to the International Monetary Fund

And

Order 53 of the Rules of Court
(Cap 322, R 5, 2006 Rev Ed)

And

Article 144 of the Constitution of the Republic of Singapore
(Cap Const, 1999 Rev Ed)

And

Section 9 of the Bretton Woods Agreements Act
(Cap 27, 2012 Rev Ed)

And

Sections 24 and 26 of the Monetary Authority of Singapore Act
(Cap 186, 1999 Rev Ed)

Between

KENNETH ANDREW JEYARETNAM

... Applicant

And

ATTORNEY-GENERAL

... Respondent

JUDGMENT

[Administrative Law] – [Judicial review]
[Administrative Law] – [Remedies]
[Constitutional Law] – [Constitution] – [Interpretation]

Jeyaretnam Kenneth Andrew
v
Attorney-General

[2012] SGHC 210

High Court — Originating Summons No 657 of 2012
Tan Lee Meng J
20 September 2012

22 October 2012 Judgment reserved.

Tan Lee Meng J:

1 The applicant, Mr Kenneth Andrew Jeyaretnam, sought leave to apply for prerogative orders and declarations against the Government of Singapore ("the Government") and/or the Monetary Authority of Singapore ("the MAS") with respect to a contingent loan of US$4 billion ("the Loan") offered by the MAS to the International Monetary Fund ("the IMF"). He claimed that the offer of the Loan by the MAS contravened Article 144 ("Art 144") of the Constitution of the Republic of Singapore (1999 Rev Ed) ("the Constitution"), which, in his view, required the Loan to be approved by Parliament and the President. His application was opposed by the respondent, who acted for the Government and contended that the Loan was outside the ambit of Art 144.

Background

2 On 20 April 2012, the MAS announced that Singapore offered the Loan as part of international efforts involving more than 30 countries, including Australia, the United Kingdom and the Republic of Korea, to ensure that the IMF had sufficient resources to deal with the ongoing financial crisis and promote global economic and financial stability. The MAS explained that its contribution was in the form of contingent loans to the IMF itself and not to countries borrowing from the IMF.

3 On 6 July 2012, the applicant, who took the view that the offer of the Loan breached Art 144, filed Originating Summons No 657 of 2012, in which he sought –

> 1 that leave be granted for the [applicant] to make:-
>
> a an application for a **Prohibiting Order** prohibiting the Government and/or the Monetary Authority of Singapore ("MAS") from giving any loan and/or guarantee to the International Monetary Fund ("IMF") unless such loan was made in accordance with the provisions of Article 144 of the Constitution (1999 Rev Ed); and/or
>
> b an application for a **Quashing Order** quashing the Government and/or the MAS' decision to make a US$ 4 billion loan commitment and/or guarantee to the IMF for contravening the provisions of Article 144 of the Constitution; and/or
>
> 2 that, further to leave being granted for either or both of the abovementioned applications in [1a] and [1b], leave be granted for the [applicant] to make:-
>
> a an application for a **Declaration** that a loan and/or guarantee may neither be raised nor given by the Government and/or the MAS save

> in accordance with the provisions of Article 144 of the Constitution; and/or
>
> b an application for a **Declaration** that a loan commitment and/or guarantee may not be given by the Government and/or the MAS save in accordance with the provisions of Article 144 of the Constitution.
>
> [emphasis in original]

Whether leave should be granted

4 An application for prerogative orders under O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC") requires the leave of the court. In *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR(R) 133 ("*Linda Lai*"), the Court of Appeal explained (at [23]) that the requirement for leave is "intended to be a means of filtering out groundless or hopeless cases at an early stage, and its aim is to prevent a wasteful use of judicial time and to protect public bodies from harassment (whether intentional or otherwise) that might arise from a need to delay implementing decisions, where the legality of such decisions is being challenged".

5 Leave to apply for prerogative orders will not be granted unless the court is satisfied as to the following:

(a) The subject matter of the complaint is susceptible to judicial review;

(b) 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; and

(c) The applicant has sufficient interest in the matter.

(a) Whether the complaint is susceptible to judicial review

6 It was common ground that the subject matter of the applicant's complaint in these proceedings is susceptible to judicial review. As such, this requirement need not be further considered.

(b) Whether there was an arguable case or a prima facie case of reasonable suspicion in favour of granting the remedies

7 In *Chan Hiang Leng Colin and others v Minister for Information and the Arts* [1996] 1 SLR(R) 294 ("*Colin Chan*"), the Court of Appeal held (at [25]) that to obtain leave to apply for prerogative orders, what is required to be shown is not a *prima facie* case, but a *prima facie* case of reasonable suspicion. In *Linda Lai*, the Court of Appeal explained (at [22]) that leave will be granted "if there appears to be a point which might, on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed". This is a relatively low threshold to cross.

8 Art 144(1) provides as follows:

> **Restriction on loans, guarantees, etc.**
>
> 144.—(1) No *guarantee or loan* shall be *given or raised* by the Government —
>
> (*a*) except under the authority of any resolution of Parliament with which the President concurs;
>
> (*b*) under the authority of any law to which this paragraph applies unless the President concurs with the giving or raising of such guarantee or loan; or
>
> (*c*) except under the authority of any other written law.
>
> [emphasis added]

9 The respondent submitted that Art 144(1) should be given a purposive interpretation to reflect the intention of Parliament, which is that no *guarantee* shall be *given* and no *loan* shall be *raised* without its approval and the concurrence of the President.

10 In contrast, the applicant contended that Art 144(1) should be given "a literal and dictionary reading", in which case, no loan shall be *given or raised* by the Government without the approval of Parliament and the concurrence of the President. His position was that while a purposive interpretation is appropriate for fundamental rights, a different approach should be taken in the case of the accountability of the Executive to the Legislature. This assertion cannot be countenanced because s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) provides that "an interpretation that would promote the *purpose or object underlying the written law* (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object" [emphasis added].

11 Art 2(9) of the Constitution provides that the Interpretation Act "shall apply for the purpose of interpreting this Constitution". In *Constitutional Reference No 1 of 1995* [1995] 1 SLR(R) 803 ("*Constitutional Reference No 1*"), the Constitutional Tribunal stated (at [48]) that it would be wrong to adopt a literal approach when interpreting the Constitution if the circumstances are such that this does not give effect to the will and intent of Parliament. Subsequently, in *Ng Yang Sek v Public Prosecutor* [1997] 2 SLR(R) 816, the Court of Appeal criticised (at [46]) interpretations of a statute that are "unduly formalistic and pay undue deference to the letter of the law, not its object".

More recently, in *Adnan bin Kadir v Public Prosecutor* [2012] SGHC 196, Chan Sek Keong CJ reiterated (at [52]) that "[t]he courts must always consider the purpose of the law and not simply the letter of the law".

12 Art 144 must thus be interpreted in a way that would promote its purpose or object. A quick perusal of the relevant materials concerning the enactment of Art 144 revealed that it was quite plain that this constitutional provision is only engaged when the Government raises a loan or gives a guarantee and not when it gives a loan.

Comparison between the Bill, the Explanatory Statement and the final version of Art 144(1)

13 To begin with, the intention of Parliament becomes abundantly clear when the arrangement of the relevant words "guarantee", "loan", "given" and "raised" in the following three documents is taken into account:

(a) the Constitution of the Republic of Singapore (Amendment No 3) Bill 1990 (Bill 23 of 1990) ("the Bill");

(b) the Explanatory Statement with respect to the Bill ("the Explanatory Statement"); and

(c) the amended Constitution, which incorporated Art 144(1) and Art 144(2) in 1991.

14 In the Bill, the first part of the proposed Art 144(1) was worded (at clause 20) as follows:

> No *debt, guarantee or loan* shall be incurred, given or raised by the Government ...

[emphasis added]

15 The Explanatory Statement did not use the words "debt, guarantee or loan" in the same order as in the Bill. Instead, it explained that the new financial provisions in Part XI of the Constitution, which introduced Art 144, were intended –

> (*a*) to provide that no *loan, debt or guarantee* may be raised, incurred or given by the Government except with the concurrence of the President or under the authority of law.
>
> [emphasis added]

16 In the Bill, the words that followed the words "debt, guarantee or loan" were "incurred, given or raised". In contrast, when the order of these words in the Bill was changed to "loan, debt or guarantee" in the Explanatory Statement, the words that followed these rearranged words were also rearranged to "raised, incurred or given". This rearrangement indicated that "loan" was linked to "raised", "debt" was linked to "incurred" and "guarantee" was linked to "given". If it was intended that both the words "given" and "raised" in Art 144(1) were to apply to "loan", there would have been no need to rearrange the order of the words "given" and "raised" in the way it was done in the Explanatory Statement.

17 It is also pertinent to note that when Art 144 was enacted, the word "debt" was left out of Art 144(1) on the recommendation of the Select Committee. Notably, when the word "debt" was not included in Art 144(1), the word "incurred" was also deleted. This confirms that Parliament intended to link "incurred" to "debt", "given" to "guarantee" and "raised" to "loan" and that only the giving of guarantees and the raising of loans by the Government are within the ambit of Art 144.

Art 144 must be viewed in the context of the Elected Presidency

18 When determining the intention of Parliament, Art 144 must be viewed in the context of the Elected Presidency as it was enacted when the Constitution was amended to provide for an elected President. The Explanatory Statement explained the purpose of the proposed constitutional amendments as follows:

> This Bill seeks to amend the Constitution of the Republic of Singapore –
>
> (a) to provide for the election of a President directly by the citizens of Singapore;
>
> (b) to confer upon the elected President certain functions and powers for the *purpose of safeguarding the financial reserves of Singapore* and *the integrity of the Public Services*;
>
> ....
>
> [emphasis added]

19 In his opinion, which was forwarded to the Government in 1998 when an offer of a loan was made to a neighbouring country, the then Attorney-General Chan Sek Keong ("AG Chan"), who advised that the *giving* of a loan by the Government is outside the ambit of Art 144, explained the purpose of the constitutional amendments in question as follows:

> 2 Article 144 of the Constitution is one of the many constitutional provisions enacted to safeguard the nation's accumulated reserves against profligate public spending by an irresponsible government. An elected Presidency was established as the institution for this purpose, and Article 148G provides the machinery whereby the President may be able to do so. Article 148G imposes a duty on the Accountant General and the Auditor General to inform the President of any proposed transaction likely to draw on accumulated reserves
>
> ...

> 4 Transactions captured by Article 144 are, logically, those that increase the financial liability of the Government or lead to a drain on its past reserves. *The giving of a guarantee or the raising of a loan* by the Government on public credit are obvious cases. Hence, they were made subject to scrutiny by Parliament and the President.
>
> 5 The giving of a loan by the Government is not an obvious case because it creates a liability for the borrower and a corresponding asset for the Government. *In the context of safeguarding past reserves, the mere giving of a loan by the Government cannot, in law and in fact, give rise to the mischief that Article 144 was enacted to deal with.*
>
> 6 The text of Article 144 itself has reflected the legislative intent in Article 144(2) in that it refers only to guarantees given and loans raised by the Government and not loans given by the Government. This is not the only place where the intention of the legislature with respect to Article 144 is manifested...
>
> ...
>
> [emphasis added]

20 AG Chan's opinion on the purpose of Art 144 was endorsed by the Government (see *Parliamentary Reports* Vol 68 Cols 84–85) and circulated to Members of Parliament. In my view, his opinion is amply supported by two White Papers in 1988 and 1990. The 1988 White Paper *Constitutional Amendments to Safeguard Financial Assets and the Integrity of the Public Services* (Cmd 10 of 1988) ("the 1988 White Paper") stated as follows (at para 1):

> This White Paper describes proposals to amend the Constitution to provide that:
>
> (a) The President shall be elected directly by the electorate ...
>
> (b) If the Government wants to *spend any reserves which it has not itself accumulated,* it must obtain the concurrence of the elected President...

> (c) The President shall also have powers to safeguard the integrity of the Civil Service.
>
> [emphasis added]

21 Significantly, the 1990 White Paper *Safeguarding Financial Assets and the Integrity of the Public Services* (Cmd 11 of 1990) ("the 1990 White Paper") stated in its section on restriction on loans and guarantees (at para 42) as follows:

> **Restriction on Loans, Guarantees, etc.**
>
> The Government may not *raise loans*, incur debts, *or give guarantees*, except with the concurrence of the President or under the authority of law. The President will have discretion to withhold assent to any Bill for these purposes if, in his opinion, it is likely to deplete assets or reserves which were accumulated before the current government's term of office.
>
> [emphasis added]

22 Notably, there was no reference to the giving of loans in para 42 of the 1990 White Paper. As was rightly pointed out by AG Chan at para 6 of his opinion to the Government in 1998, the first sentence in para 42 of the 1990 White Paper was enacted as Art 144(1) and the second sentence as Article 144(2), which provides as follows:

> The President, acting in his discretion, may withhold his assent to any Bill passed by Parliament providing, directly or indirectly, for the borrowing of money, the *giving of any guarantee* or the *raising of any loan* by the Government if, in the opinion of the President, the Bill is likely to draw on the reserves of the Government which were not accumulated by the Government during its current term of office.
>
> [emphasis added]

23 Art 144(2) augments Art 144(1) and elaborates on what the President may do if Parliament passes a Bill that is likely to draw on reserves not accumulated by the Government during its current term of office. The fact that

Art 144(2) refers to the "*giving* of any *guarantee*" and the "*raising* of any *loan*" and does not mention the "*giving* of any loan" supports the conclusion that Art 144(1) is not engaged when loans are given by the Government.

Legislation referred to in Art 144(3) supports the respondent's interpretation

24 The respondent also asserted, and I agree, that the conclusion that Art 144 does not concern the giving of loans by the Government is further reinforced by a consideration of two of the statutes referred to in Art 144(3), which provides that Art 144(1)(*b*) shall apply to, *inter alia*, the Financial Procedure Act (Cap 109, 2012 Rev Ed) ("the FPA") and the Bretton Woods Agreements Act (Cap 27, 2012 Rev Ed) ("the BWAA").

25 Section 15 of the FPA provides:

> **Guarantees and loans**
>
> **15**.—(1) No guarantee involving a financial liability shall be binding upon Singapore unless given with the written authority of the Minister with which the President concurs or in accordance with law.
>
> (2) No loan raised by the Government shall be binding upon Singapore unless it is raised in accordance with Article 144 of the Constitution.

26 Section 15(1) of the FPA concerns the *giving* of guarantees while s 15(2) governs the *raising* of loans. Section 15 of the FPA was enacted by way of the Financial Procedure (Amendment) Act (Act 25 of 1991), which was passed by Parliament on 28 June 1991, *after* Art 144 was passed by Parliament on 3 January 1991. The absence of any reference in s 15 of the FPA to the giving of loans confirms that Parliament had intended that such loans fall outside the ambit of Art 144(1).

27 In the context of loans to the IMF, s 9 of the BWAA, which was enacted to enable Singapore to become a member of the IMF, provides:

> **Power to raise loans**
>
> **9.** For the purpose of providing any sums required for making any payments under the Fund Agreement, Bank Agreement, or the membership resolutions set out in the First and Second Schedules, *the Minister with the President's concurrence under Article 144(1)(b) of the Constitution* may, on behalf of the Government, *raise* loans by the creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he may think fit and the principal and interest of such securities and the charges and expenses incurred in connection with their issue shall be charged on and paid out of the Consolidated Fund.
>
> [emphasis added]

28 The fact that s 9 of the BWAA states that the raising of loans requires Presidential concurrence and does not provide that the giving of loans requires such concurrence supports the view that Art 144 is not engaged when loans are given by the Government.

Reddendo singula singulis

29 The respondent also contended that the words "given" and "raised" in Art 144(1) are specific to each financial instrument contemplated and are not to be used interchangeably. It was pointed out that one does not, in common parlance, "raise" a guarantee, which is a contract under which the guarantor promises to be answerable for the liability of the debtor to a third party, the creditor. As such, "given" in Art 144(1) must relate to "guarantee" while the word "raised" must relate to "loan".

30 The respondent's assertion is supported by the *reddendo singula singulis* principle. In *Bennion on Statutory Interpretation* (LexisNexis, 5th Ed, 2008) ("*Bennion*"), this principle was explained (at pp 1247–1248) as follows:

> Where a complex sentence has more than one subject, and more than one object, it may be the right construction to render each to each, by reading the provision distributively and applying each object to its appropriate subject. A similar principle applies to verbs and their subjects, and to other parts of speech.

31 *Bennion* gave the following examples (at p 1248) of the application of *reddendo singula singulis*:

> The typical application of this principle [of *reddendo singula singulis*] is where a testator says 'I *devise and bequeath* all my *real and personal property* to B'. The term *devise* is appropriate only to real property. The term *bequeath* is appropriate only to personal property. Accordingly, by the application of the principle *reddendo singula singulis*, the testamentary disposition is read as if it were worded 'I devise all my real property, and bequeath all my personal property, to B'...
>
> If an enactment spoke of what was to happen when 'anyone shall draw or load a sword or gun ...' this would similarly be read as 'anyone shall draw a sword or load a gun...'
>
> [emphasis in original]

32 In my view, the application of the *reddendo singula singulis* principle puts loans that are given by the Government outside the ambit of Art 144.

Report of the Auditor-General for 2011/2012

33 The applicant contended that the following statement of the Report of the Auditor-General for the Financial Year 2011/12 (at paras 33–34 and 36) supports his position that Art 144 applies to a loan given by the Government:

> 33 The Constitution of the Republic of Singapore (1999 Revised Edition) includes safeguards to protect the past reserves of the Government. One such safeguard, set out in Article 144 of the Constitution requires the President's concurrence for the granting of certain loans and guarantees.
>
> 34 AGO found that the Ministry of Finance did not comply with Article 144 of the Constitution when it issued a promissory note without obtaining the required President's concurrence. The promissory note for US$16.34 million was issued on 4 January 2012 to the International Development Association. In March 2012, the Association encashed US$2.94 million from the note.
>
> ....
>
> 36 The Ministry subsequently obtained the President's concurrence and issued a fresh promissory note in place of the one issued on 4 January 2012 which is invalid.

34 The promissory note issued by the Ministry of Finance ("MOF") to the International Development Association ("the IDA") must be viewed in the context of the relationship between Art 144 and the International Development Association Act (Cap 144A, 2003 Rev Ed) ("the IDAA"), which governs Singapore's membership of the IDA. Art 144(3) specifically provides that the IDAA falls within the ambit of Art 144(1)(*b*). Section 5(1) of the IDAA, which gives the President a role in approving contributions by Singapore to the IDA, provides:

> **Issue of non-negotiable notes and creation of other obligations**
>
> **5**.—(1) To the extent to which the Association is prepared to accept from the Government notes or other obligations that are non-interest bearing and non-negotiable and that are payable at their par value on demand in place of any payment that the Government has made, intends to make or is required to make to the Association under section 4, the Minister may, *with the concurrence of the President* under Article 144(1) of the Constitution, create and issue to the Association in such form as the Minister thinks fit and as is acceptable to the Association, any such notes or other obligations.

[emphasis added]

35 In any case, the respondent rightly pointed out that a distinction must be made between a promissory note issued by the Government to the IDA, which creates a liability, and a loan given by the Government, which remains an asset. In these circumstances, the Auditor-General's opinion on the promissory note in question is not relevant to the present case, which concerns a loan to the IMF.

Conclusion on the scope of Art 144

36 A quick perusal of the material before the court showed that Art 144(1) was obviously intended to apply to the raising of loans and not the giving of loans. It follows that the approval of Parliament and the concurrence of the President are not required for the Loan. As such, the present application did not disclose a *prima facie* case of reasonable suspicion in favour of granting the remedies sought and it could not be said that there appeared to be a point which might, on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed. On this ground alone, the application for leave must be dismissed.

(c) Whether the applicant has sufficient interest in the matter

37 Although I have held that the application for leave may be dismissed for reasons already stated, I will consider the issue of *locus standi* for the sake of completeness.

38 In *Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 ("*Karaha Bodas*"), the Court of Appeal

held (at [15] and [19]) that the following requirements must be satisfied for an applicant to have *locus standi* to bring an action under O 15 r 16 of the ROC for a declaration:

(a) The applicant must have a "real interest" in bringing the action;

(b) There must be a "real controversy" between the parties to the action for the court to resolve; and

(c) The remedy sought must relate to a right which is personal to the applicant and enforceable against an adverse party to the litigation.

39 In *Tan Eng Hong v Attorney-General* [2012] SGCA 45 ("*Tan Eng Hong*"), the Court of Appeal ruled (at [76]) that the result of its decision in *Eng Foong Ho and others v Attorney-General* [2009] 2 SLR(R) 542 ("*Eng Foong Ho*") was that the threshold for *locus standi* is the same whether the case is brought under O 15 r 16 or O 53 r 1 of the ROC. As such, although the requirements outlined in *Karaha Bodas* in relation to *locus standi* concerned an application for a declaration under O 15 r 16 of the ROC, they are equally applicable to the present action. It ought to be noted, however, that in *Tan Eng Hong,* the Court of Appeal held (at [137]) that the element of real controversy goes to the court's discretion and not its jurisdiction and the court may exercise its discretion to hear a matter even in the absence of a real controversy.

40 While the respondent accepted that there was a real controversy for the court to resolve, it contended that the applicant failed to show that he had a real interest in bringing the action and that the remedy sought related to a right

which is *personal* to him and enforceable against the other party to the litigation.

41 This case concerns *locus standi* in relation to a "public right" and not a private right. In *Tan Eng Hong*, the Court of Appeal explained (at [69]) that a public right is one which is held and vindicated by *public authorities* while a private right is one which is held and vindicated by a *private individual*. Viewed in this way, *Eng Foong Ho* and *Colin Chan* were both concerned with private rights involving Arts 12 and 15 of the Constitution respectively. The recent High Court decision in *Vellama d/o Marie Muthu v Attorney-General* [2012] 2 SLR 1033 concerned a public right, namely, the public interest in the strict observance of Article 49(1) of the Constitution. However, the question of sufficient interest was not discussed in that case as the judge noted (at [11]) that this issue was not disputed by the parties.

42 The English position on *locus standi* in relation to the enforcement of public rights has become more liberal. In *Inland Revenue Commissioners v National Federation of Self-Employed and Small Businesses Ltd* [1982] 1 AC 617, Lord Diplock stated (at 644) as follows:

> It is not, in my view, a sufficient answer to say that judicial review of the actions of officers or departments of central government is unnecessary because they are accountable to Parliament for the way in which they carry out their functions. They are accountable to Parliament for what they do so far as regards efficiency and policy, and of that Parliament is the only judge; *they are responsible to a court of justice for the lawfulness of what they do, and of that the court is the only judge.*
>
> [emphasis added]

43 Other English cases which have followed this liberal approach include *Regina v Her Majesty's Treasury Ex parte Smedley* [1985] 1 QB 657 and *Regina v Secretary of State for Foreign and Commonwealth Affairs Ex parte World Development Movement Ltd* [1995] 1 WLR 386.

44 In *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 ("*Lim Kit Siang*"), the Malaysian Supreme Court considered the English position on *locus standi* in relation to the enforcement of public rights. In that case, a Member of Parliament sought a declaration that a letter of intent issued by the Malaysian Government to a company for the construction of the North and South Highway was invalid as well as a permanent injunction to restrain the said company from signing the contract with the Malaysian Government. It was held, by a majority, that the applicant had no *locus standi* to initiate the proceedings against the Government because he failed to establish that a private right of his had been infringed or that he had suffered special damage as a result of the act challenged by him. Salleh Abas LP explained that the change in English law on *locus standi* resulted from the new wording of O 53 of the English Rules of the Supreme Court, which had no corresponding provisions in Malaysia. As for the law in Malaysia on this matter, he approved of the following passage from the judgment of Buckley J in *Boyce v Paddington Borough Council* [1903] 1 Ch 109 (at 114):

> A plaintiff can sue without joining the Attorney General in two cases: first, where the interference with the public right is such as that some private right of his is at the same time interfered with (eg where an obstruction is so placed in a highway that the owner of premises abutting upon the highway is specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway); and, secondly, where no private right is interfered with, but the plaintiff, in respect of

> his public right, suffers special damage peculiar to himself from the interference with the public right.

45 The approach adopted by the Court of Appeal recently in *Tan Eng Hong* suggests that the *locus standi* threshold in Singapore is unlikely to be lowered to dispense with the requirement that an applicant who seeks to enforce a public right must have been personally affected by the decision being challenged. In that case, the Court of Appeal referred to the decision of the majority of the Malaysian Supreme Court in *Lim Kit Siang* without any disapproval and stated (at [69]):

> In *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 at 27, the majority of the Malaysian Supreme Court ruled that to possess *locus standi*, an applicant must show that he had a private right which had been infringed. *If a public right was involved, the applicant must show that he had suffered special damage as a result of the public act being challenged and that he had a genuine private interest to protect or further.*
>
> [emphasis added]

46 The applicant relied on the following statement in *Colin Chan* by Karthigesu JA (at [14]) to support his contention that he has *locus standi* to institute his present application:

> If a citizen does not have sufficient interest to see that his constitutional rights are not violated, then it is hard to see who has.

47 The applicant's reliance on Karthigesu JA's statement is misplaced. To begin with, the statement was made in the context of a private right. Art 144 is not concerned with a private right. Furthermore, in *Tan Eng Hong*, the Court of Appeal pointed out (at [78]) that its earlier decision in *Colin Chan* did not accept the "far-reaching proposition" that "applicants in constitutional cases need not demonstrate a violation of or an injury to their personal rights in

order to be granted standing". In fact, in *Tan Eng Hong*, the Court of Appeal put any dispute about the requirement of a personal interest in an application for leave under O 53 of the ROC in relation to private rights beyond doubt when it stated (at [93]):

> Every citizen has constitutional rights, but not every citizen's constitutional rights will be affected by an unconstitutional law in the same way. For example, if there is a law which provides that it is an offence for any person of a particular race to take public buses, this law would clearly violate Art 12. It is uncontroversial that such a law would affect the Art 12 rights of a person belonging to that race in a way that would not apply to the Art 12 rights of a person of another race. This does not detract from the fact that *constitutional rights, including Art 12 rights, are personal to all citizens.* However, the mere holding of a constitutional right is insufficient to found standing to challenge an unconstitutional law; *there must also be a violation of the constitutional right. In this fictitious scenario, the only persons who will have standing to bring a constitutional challenge against the unconstitutional law for inconsistency with Art 12 will be citizens who belong to the race that has been singled out as only their Art 12 rights will have been violated.* Persons of other races will not have suffered violations of their Art 12 rights and will thus have no standing to bring a constitutional challenge in this scenario.
>
> [emphasis added]

48 If citizenship alone does not confer *locus standi* where fundamental liberties are concerned and it has to be established that the applicant's own rights had been violated, an applicant in a case involving a public right should certainly be required to show that he had suffered special damage as a result of the public act being challenged and that he had a genuine private interest to protect or further. As the applicant in the present case did not satisfy this requirement, his application for leave may also be dismissed on the ground that he has no *locus standi*.

Conclusion and Costs

49 For the reasons stated, the application for leave is dismissed with costs.

Tan Lee Meng
Judge

M Ravi and Louis Joseph (L F Violet Netto) for the applicant;
Aedit Abdullah SC, Darryl Soh and Vanessa Yeo (Attorney-General's Chambers) for the respondent.
