

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

TAN CHOON CHYE

Appellant

- and -

SINGAPORE SOCIETY OF ACCOUNTANTS

Respondents

CASE FOR THE APPELLANT

Record

10 1. This is an appeal against the dismissal by the Court of Appeal in Singapore on 6th November, 1979, (Chua, Choor Singh and A.P. Rajah, JJ.) of an appeal against the judgment and order of the Honourable the Chief Justice of Singapore, Mr. Justice Wee Chong Jin, whereby he on 27th March, 1979, dismissed the Appellant's appeal against the order and grounds of decision of the Disciplinary Committee of the Singapore Society of Accountants dated respectively 22nd September and 30th November 1977.

p.92
p.77-82
p.64-65
p.66-70

20 2. The issues in this appeal depend upon the following provisions of the Accountants Act (Cap.212) (hereinafter called "the Act"), Section 33:-

(1) Any person who seeks to make a formal complaint that any member of the Society has done anything which renders the exercise of the powers of the Disciplinary Committee expedient in the interests of the public or of the Society shall make the complaint in the first instance to the Registrar of the Society.

30 (2) Every such complaint (other than a complaint made by a court) shall be in writing and shall be supported by such statutory declarations as the Registrar may require.

(3) Where the Registrar has received any complaint as aforesaid or where facts are brought to his knowledge which satisfy him that there may be grounds for such a complaint it shall be the duty of the Registrar to lay the complaint or facts, as the case may be, before the Investigation Committee which shall investigate the matter and determine whether or not it is to be referred to the Disciplinary Committee.

Record

(6) Before any investigation begins in respect of any matter -

(a) the Registrar shall post or deliver to the member concerned -

(i) copies of the written complaint (if any) and of all statutory declarations that have been made in support of the complaint;

Section 34:

(1) If any member of the Society -

(a) is convicted of an offence involving dishonesty; 10
or

(b) is judged by the Disciplinary Committee to have been guilty of grave impropriety or infamous conduct in a professional respect or to have been guilty of gross carelessness or gross neglect or gross incapacity in the performance of his professional duties or to have been guilty of any act or default discreditable to an accountant or to have conducted himself in such a manner as to render the exercise of the powers of the Disciplinary Committee expedient in the interests of the public or of the Society - 20

the Disciplinary Committee may if it deems fit, on the matter being referred to it by the Investigation Committee and after due inquiry has been made in accordance with the rules of the Society, exercise in respect of that member all or any of the disciplinary powers conferred upon it by subsection (3) of this section.

p.109 1.4-5

3. The Appellant is a public accountant practising since 1958 as Tan Choon Chye & Co., in Singapore. In October, 1971 he was appointed accountant and management consultant to M/s Yung Woh Industrial Co., Pte. Ltd. 30

p.109 1.13-16

pp. 2 & 3

4. On 1st April, 1976, the Corrupt Practices Investigation Bureau ("CPIB") wrote to the Registrar of the Singapore Society of Accountants ("the Society") stating inter alia that:-

"2. it would appear from the results of the investigation that the said Tan Choon Chye, an accountant of M/s Tan Choon Chye & Co., did collect \$50,000 from Lou Chih Chung, an Industrialist, and give the money as a bribe to Wan Ming Sing, a Project Officer of EDB (Economic Development Board) for considering his application for registration under the Control of Manufacture Act for the manufacture of synthetic knitted garments, knitted fabric and textured yarn and Tan Choon Chye has admitted so in a statement made by him. 40

5. Your Society may wish to take action against Tan Choon Chye who acted as the go-between for the purpose of obtaining the bribes and giving them to Wan Ming Sing."

5. On 28th June, 1977, the Registrar of the Society wrote to the Appellant inter alia as follows:-

pp.15 & 16

"You have already been supplied with a copy of the complaint of C.P.I.B.

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I am therefore directed to inform you that the Disciplinary Committee has deemed fit to hold an enquiry into the complaint made against you by the Director of CPIB.

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The charge against you is that you acted as intermediary in your capacity as a practising accountant in connection with a bribery offence, to wit, you collected \$50,000 from one Lou Chih Chung, an Industrialist, and gave this money as a bribe to Wan Ming Sing, a Project Officer of (EDB) as a favour for showing consideration for an application for registration under the Control of Manufacture Act, thereby committing grave impropriety infamous conduct in a professional respect in the performance of your professional duties that is discreditable to an accountant so as to render the exercise of the power of the Disciplinary Committee expedient in the interest of the public or of the Society."

p.16 1.10

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6. On 26th July, 1977 upon the Chairman of the Disciplinary Committee asking the Appellant if he admitted the charge, the Appellant through Counsel said that he did not and the society was thereby put to proof.

p.17 1.20

7. On 22nd September, 1977, the Disciplinary Committee made an order finding the charge against the Appellant proved "and that he has been guilty of grave impropriety in a professional respect."

pp. 64 & 65

8. By a Petition of Appeal dated 27th December, 1977, the Appellant appealed to the High Court against the said Order of the Disciplinary Committee upon (inter alia) the following grounds:-

pp. 72-74

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(1) The Committee had wrongly treated the C.P.I.B. letter of 1st April, 1976, as a (formal) complaint within Section 33(1) of the said Act, since it was no more than a statement of facts arising in criminal proceedings involving a third party.

p.73 1.13-23

(2) The said letter ought to have been supported by a statutory declaration under Section 33(2) of the said Act, as the Registrar had no discretion to dispense with the same.

p.73 1.24-33

- Record
- p.73 1.34-40 (3) The charge (contained in the Registrar's letter of 28th June, 1977) was bad in that it treated Section 34(1)(b) of the Act as a single offence whereas the same creates several distinct offences.
- p.74 11.1-9 (4) The Committee ought not to have embarked on the enquiry in the absence of the procedural rules contemplated by the Act as to the formulation of charges and the conduct and procedure of the Committee.
- p. 77-81 9. On 27th March 1979, the Honourable the Chief Justice, Mr. Justice Wee Chong Jin gave judgment in and dismissed the said appeal upon the said grounds, to the effect that:- 10
- p.80 11.14-19 (1) "Formal" in Section 33(1) of the Act means "explicit and definite" and the letter of 1st April 1976, was a "formal complaint" within the said sub-section.
- (2) Not dealt with
- p.81 11.44-47 (3) The requisite particulars are set out in the charge. No rule of natural justice is offended by framing in one charge two separate offences in the alternative. The charge gave adequate notice of the case against the Appellant to enable him to have a fair opportunity of answering it. 20
- p.81 11.1-20
- p.80 11.20-43 (4) The Committee can lawfully exercise the disciplinary powers conferred on it by Section 34 of the Act if it conducts the enquiry in accordance with the rules of natural justice.
- pp.84-86 10. By a Petition of Appeal dated 1st June, 1979, the Appellant appealed to the Court of Appeal in Singapore from the said judgment upon the following grounds:-
- p.85 1.35-40 (1) the learned judge ought to have interpreted the words "formal complaint" strictly; 30
- p.85 11.41-45 (2) he wrongly held that natural justice would govern the Committee's procedure in the absence of the rules for which the Act provides;
- p.86.11.1-10 (3) he failed to deal with the ground at 8(3) above set out.
11. On 6th November, 1979, the Court of Appeal dismissed the said appeal on the following grounds:-
- p.89 11.21-46 (1) "Formal" in Section 33(1) of the Act does mean "explicit and definite". The letter of 1st April, 1976 was a "complaint" and is a "formal complaint". 40
- p.91 11.3-26 (2) In the absence of rules the Committee should conduct the enquiry in accordance with the rules of natural justice.

(3) The charge was not bad for duplicity. It conformed to the rule of natural justice that a person must be given adequate notice of the case against him.

Record

p.90 11.37-45
p.91 11.15-20

The Court further dealt with a submission that Section 33(2) of the Act required a formal complaint to be supported by a statutory declaration, by holding that the Registrar has a discretion whether or not to require such a declaration.

p.90 11.

10 12. "Formal Complaint"

The Appellant respectfully submits:-

(1) That a complaint under Section 33(1) must be that a member of the Society has done something which renders the exercise of the powers of the Disciplinary Committee expedient in the interests of the public or the Society and any document which omits those words is no "complaint" within that sub-section.

20 (2) It is an essential feature of a "complaint" that it is a statement by injury or grievance for the purpose of prosecution or redress (O.E.D.).

(3) The requirement that the complaint be "formal" is a reference to the formal-parts identified in (1) above, to such other formal-parts as rules might require (had they been made) and, arguably, to the general need to be explicit and definite in the dictionary sense.

30 (4) The nearest point to such a formal complaint in the C.P.I.B. letter of 1st April, 1976 is its 5th paragraph: "Your Society may wish to take action against Tan Choon Chye ..." which is an invitation to take unspecified action unrelated to the criteria laid down by Section 33(1). This invitation is by definition no complaint, still less a formal complaint.

p.3 11.7-9

(5) If the letter of 1st April 1976, is taken as a whole, including the "Summary of Essential Facts" which was enclosed with it it is in substance a report of the prosecution of Wan Ming Sing, a third party, and not a complaint of any sort.

pp. 3-15

(6) No "written complaint" as required by Section 33(6) (a)(i) was given to the Appellant.

40 (7) Accordingly, the learned Chief Justice and the Court of Appeal each erred in finding that the letter of 1st April, 1976, was a "formal Complaint" within the meaning of Section 33(1) of the Act.

13. Effect of the Absence of Rules

The Appellant respectfully submits:-

Record

(1) Section 8 of the Act enables the Society at a general meeting to make such rules as may be necessary or expedient to give effect to the provisions of the Act and for its due administration and in particular for the manner in which members of the Society shall cease to be members (Section 8(1)(b) of the procedure of the Disciplinary Committee.) Such rules must be presented to Parliament (Section 8(2)).

(2) However, notwithstanding Section 8, by Section 12(1) of the Act, the first Council had power to make the rules described in Section 8(1)(b) otherwise than at a general meeting.

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(3) It is a condition precedent to the exercise of a disciplinary power that a "due" inquiry "has been held in accordance with the rules of the Society" (Section 34(2)). The conduct required to justify such an inquiry is less serious than under Section 34(1).

(4) A fortiori it is also a condition precedent to the exercise of a disciplinary power under Section 34(2) that a "due" inquiry "has been made in accordance with the rules of the Society". Accordingly, nothing short of an inquiry under such rules can suffice to enable such a power to be used.

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(5) The result of conferring upon the Disciplinary Committee jurisdiction to hear a complaint and exercise disciplinary powers in the absence of rules presented to Parliament and subject only to the broad rules of natural justice is to deprive a member of such additional rights, both substantive and procedural, as would be contained in the rules, and such deprivation is repugnant both to the Act and to the first purpose of the Society, as set out in Section 6, at (a).

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(6) Accordingly, the learned Chief Justice and the Court of Appeal each erred in holding that the Disciplinary Committee could conduct its inquiry without rules, and ought to have held that there was no jurisdiction to do so.

14. The Charge

The Appellant respectfully submits:-

(1) Section 34(1)(b) sets out a number of "offences". If any member of the Society is judged to have been guilty of any one such "offence", disciplinary powers become exercisable.

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p.16 11.10-22

(2) The letter of 28th June 1977, having set out the facts complained of, specifies the "offence" allegedly committed as follows:-

"thereby committing grave impropriety infamous conduct in a professional respect in the performance of your professional duties that is discreditable to an accountant so as to render the exercise of the

power of the Disciplinary Committee expedient in the interest of the public or of the Society".

Record

(3) This formulation is not one of the "offences" set out in Section 34(1), though it borrows words from several of them, and accordingly the disciplinary powers did not become exercisable. Nor was the defect cured by the Committee finding that part only of the charge had been proved viz: "that he has been guilty of grave impropriety in a professional respect."

p.65 11.16,17

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(4) Alternatively, the said words place in a single charge four separate "offences" viz:

(i) grave impropriety in a professional respect;

(ii) infamous conduct in a professional respect;

(iii) an act or default discreditable to an accountant;

(iv) conducting himself in such a manner as to render the exercise of the powers of the Disciplinary Committee expedient in the interests of the public or of the Society.

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(5) It is a fundamental principle of common law that no charge shall allege two or more distinct offences, and it is a cardinal principle of natural justice that an accused shall have a fair opportunity to be heard. It is not possible to deal with duplicitous charges and the said principle was thereby infringed.

(6) Accordingly, either the disciplinary powers did not become exercisable, because the Appellant was not judged guilty of an "offence" under Section 34(1)(b) (1) to (3) above, or there was no "due" inquiry by reason of the duplicitous charge.

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(7) The learned Chief Justice and the Court of Appeal each erred in holding that the charge was not bad for duplicity, and ought to have held that the framing of the charge was such as to prevent the disciplinary powers from becoming exercisable.

15. Statutory Declarations

The Appellant respectfully submits:-

(1) By Section 33(2) of the Act, every (formal) complaint "shall be supported by such statutory declarations as the Registrar may require", and by Section 33(6)(a) the Registrar shall post or deliver to the member concerned:-

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(i) copies of the written complaint (if any) and of all statutory declarations that have been made in support of the complaint.

(2) The mischief which Section 33(2) remedies is the making of a complaint not solemnly verified, and the word "shall" is therefore of necessity mandatory.

(3) The omission of the words "if any" in Section 33(6) (a)(i) after "statutory declarations" and the choice of the words "that have been made" is confirmatory of the need for at least one statutory declaration.

(4) Accordingly, the Court of Appeal erred in holding that the Registrar had a discretion whether or not to require such a declaration, and ought to have held that the absence of a supporting declaration was an additional reason for invalidating the complaint.

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p.94

16. On 25th February, 1980, the Court of Appeal of Singapore made an order granting the Appellant leave to appeal to Her Majesty in Council.

17. The Appellant respectfully submits that the judgment of the Court of Appeal of Singapore was wrong and ought to be reversed and that this appeal ought to be allowed with costs, for the following (among other)

REASONS

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1. BECAUSE the letter of 1st April 1976, upon which the subsequent steps depended was not a "formal complaint" within the meaning of Section 33(1) of the Act.
2. BECAUSE the Disciplinary Committee had no power to conduct its inquiry until it had made the rules to which Section 34(1) refers.
3. BECAUSE the letter of 28th June 1977, either did not disclose an "offence" under Section 34(1)(b) of the Act, or charged several offences and was thus bad for duplicity.
4. BECAUSE a statutory declaration in support of the letter of 1st April 1976, was not made as required by Section 33(1) of the Act.

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PAUL BATTERBURY

No. 18 of 1980

IN THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

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Appellant

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SINGAPORE SOCIETY OF
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Respondents

CASE FOR THE APPELLANT

CHARLES RUSSELL & CO.,
Hale Court,
Lincoln's Inn,
London W.C.2.

Tel: 242 1031
Ref: R/JA/12964