Chiam See Tong
v
Singapore Democratic Party

[1993] SGHC 294

High Court — Suit No 1762 of 1993
Warren L H Khoo J
10 December 1993

Administrative Law *— Disciplinary tribunals — Composition — Member criticised party leadership — Many members of leadership were members of disciplinary tribunal — Effect of disqualification would be to bar majority of tribunal from sitting — Bias — Whether doctrine of necessity applies as valid exception to rule that no man may sit as judge in his own cause*

Administrative Law *— Disciplinary tribunals — Fairness — Conduct — Claim for wrongful expulsion from political party — Members of disciplinary tribunal conducted hearing in confrontational and adversarial manner — Whether conduct of disciplinary proceedings fell short of norm of fairness required of disciplinary tribunal*

Administrative Law *— Natural justice — Right to be heard — Claim for wrongful expulsion from political party — Member not told clearly of case he was to meet at disciplinary hearing — Whether breach of natural justice — Exhaustion of internal remedies — Whether member had to exhaust all internal remedies before bringing matter to court*

Facts

The plaintiff sued the defendant political party, which he was secretary-general of before he resigned, for wrongful expulsion and for consequential reliefs. On 17 May 1993, the plaintiff had attended a regular meeting of the party's central executive committee ("CEC") at which he sought to table a motion of censure against one of the members, but no one supported him. He took this as a vote of no confidence in him as the secretary-general and consequently resigned his secretary-generalship. Subsequently, the plaintiff ventilated his differences with his party to the press, and elaborated on the reasons for his resignation; his statements were quoted in the newspapers. At a CEC meeting, it was decided that the plaintiff should be disciplined and on 28 July 1993, the plaintiff received a letter from the CEC ("the notice"), requiring him to appear on 6 August before the CEC sitting as a disciplinary committee. The hearing was chaired by the chairman of the party. Incomplete notes of the proceedings were taken by various members of the CEC. The plaintiff raised a preliminary objection that the hearing should not proceed because some of its members were the very persons he had criticised. His objection was overruled. The chairman repeatedly told the plaintiff that he had to "explain" his remarks to the press. These remarks were itemised in the notice. During the hearing, different members took turns in random fashion to question, challenge and refute the plaintiff on the various remarks he made. At the end of the hearing, it was decided that the plaintiff should be expelled. The real grievance against the plaintiff appeared to be that he

had been in breach of undertakings and party directives in making the remarks he had made to the press. On 25 August 1993, the plaintiff commenced this action and also obtained an interim injunction restraining the party from expelling or taking steps to expel him from the party.

Held, allowing the claim:

(1) An important element of natural justice, of fair hearing, was that the person whose conduct was sought to be impugned should be told clearly what case he was to meet. The case against him should not be left to conjecture. The plaintiff was not told of the real grievance against him, either in the notice of the inquiry, or when he appeared at the inquiry. In addition, the proceedings as conceived required the participation in an adversarial way between the adjudicators and the person under inquiry; this was unsatisfactory conduct that fell far short of the norm of fairness which a disciplinary tribunal may be expected to observe: at [35], [44], [47], [50] and [52].

(2) Where the subject of a disciplinary hearing was the propriety of criticism against a body's leaders and the disciplinary tribunal was, by necessity, made up of a majority of members who had been criticised, in the absence of an alternative tribunal, the tribunal had to and could sit in judgment in their own cause under the doctrine of necessity: at [58] and [61].

(3) The construction of the rules of such bodies, and whether the rules of natural justice had been observed, were matters of law for the courts. In the absence of an obligation separately undertaken by a member of a body, such as an oath whereby members promised not to resort to the courts until they had exhausted all internal remedies, the member could seek judicial review of the body's decisions before exhausting all internal remedies: at [68] and [70].]

Case(s) referred to

Brinkley v Hassig 83 F 2d 351 (10th Cir, 1936) (refd)

Cains v Jenkins (1978) 28 ALR 219 (refd)

Lawlor v Union of Post Office Workers [1965] Ch 712; [1965] 1 All ER 353 (refd)

Maloney v New South Wales National Coursing Association Ltd [1978] 1 NSWLR 161 (refd)

Visvasam v Singapore Toddy Tappers' Union [1968–1970] SLR(R) 275; [1965–1968] SLR 820 (refd)

White v Kuzych [1951] AC 585; [1951] 2 All ER 435 (distd)

Wong Kok Chin v Singapore Society of Accountants [1989] 2 SLR(R) 633; [1989] SLR 1129 (folld)

Edmond Pereira and Steven Lee (Edmond Pereira & Pnrs) for the plaintiff;
Peter Low and Patrick Seong (Peter Low Seong Tan & Pnrs) for the defendant.

10 December 1993 Judgment reserved.

Warren L H Khoo J:

1 The plaintiff's claim is for wrongful expulsion from the defendant political party and for consequential reliefs.

The facts

2 The Singapore Democratic Party is a political party registered as a society under the Societies Act (Cap 311). The plaintiff was its founder, or one of its founders. He served as the secretary-general until his resignation from that position on 17 May 1993 in circumstances to which I shall refer in a moment. He has since 1984 been a Member of Parliament for the Potong Pasir constituency, elected on the party ticket.

3 Almost all, if not all, the events relevant to this case took place only from the beginning of this year, although the underlying causes undoubtedly went back much further. It appears that at the party conference held in January, new names were elected to the central executive committee. From the little that has been revealed in evidence in this case, it would appear that this led to an erosion of the plaintiff's hitherto unchallenged authority over the party.

4 On 17 May this year, the plaintiff attended a regular meeting of the party's central executive committee ("the CEC"). At that time, a CEC member, Dr Chee Soon Juan, had gone on a hunger strike in protest against the termination of his employment with the National University of Singapore on account of some alleged misuse of the university's research funds. The plaintiff, who had at first supported Dr Chee in his protest, became concerned about what the particular form of protest Dr Chee had chosen might do to the image of the party. At the meeting, he sought to table a motion of censure of Dr Chee. No one supported him. He could not even get leave to do so. He took this as a vote of no confidence in him as the secretary-general, something which had not happened before. He decided to resign, and on the spot wrote out a letter of resignation and handed it to Mr Ling How Doong, the chairman of the party and of the CEC. There is a minor difference in evidence as to what was said as the plaintiff walked out of the meeting. But there is no dispute that the plaintiff said something like "The press will get to know about this tomorrow" and no dispute that Mr Ling said "If you do it, I [or we] will sack you."

5 Several attempts were made to persuade the plaintiff to withdraw his resignation, but to no avail. The plaintiff would not withdraw his resignation unless Mr Wong Hong Toy, a member of the CEC, was removed from that body. The plaintiff suspected that Wong was behind a move to remove him as the leader of the party and was trying to split the party. The plaintiff's condition was not acceptable, and the efforts at persuading him to change his mind came to nothing.

6 The plaintiff told me that there had already been other differences between him and the others on the CEC, and the issue of the motion of censure of Dr Chee was the last straw. It is clear that, though apparently precipitate, the resignation was not an impulsive thing.

7 On 18 June, the CEC issued a news release announcing the plaintiff's resignation as the party's secretary-general. The statement was an attempt at putting an agreeable and positive face to the underlying differences between the plaintiff and his by now estranged party colleagues. It spoke of the plaintiff in laudatory terms and recorded his contributions to the party and the cause of opposition politics in Singapore. It described the plaintiff's departure as a "milestone" in the party's political development. The plaintiff, however, thought that all this sounded more like a political obituary, and said so to reporters who had gathered outside his home on the evening the statement was released. Compared to what he was to say later, he was rather restrained in what he said on this occasion, but he said enough to indicate that he had not been able to see eye to eye with those now in control of the party. *The Straits Times* newspaper the next morning carried a report of the interview under the headline "Chiam quits as SDP's sec-gen over 'differences'."

8 On 21 June, the remaining CEC members issued a circular to members of the party, saying that the plaintiff had been in disagreement with the rest of the CEC over a number of issues for some time. It referred to the meeting at which he resigned and also the unacceptable condition he had imposed for his return.

Singapore Press Club interview

9 The plaintiff decided to take his differences with the party to the public. On 16 July, he was invited to give a talk to the Singapore Press Club on the future of the opposition in Singapore. In answer to questions following his talk, he elaborated on the reasons for his resignation. He said that some of the party leaders were not credible while others were motivated by self-interest. In particular, he commented on Mr Wong Hong Toy's criminal record, and Dr Chee's dismissal from the university because of his misuse of research funds. He also told the press that Mr Ling and Mr Cheo Chai Chen, who were the party's Members of Parliament for Bukit Gombak and Nee Soon Central respectively, were running their respective town councils like their own "little kingdoms". He said a good deal more, all critical of those now in control of the party. What he said all came out in the newspapers. There is no suggestion that he was misquoted by any of them.

10 On 26 July, a meeting of the CEC members took place. Eight members attended. It was decided to take disciplinary action against the plaintiff. A draft letter to the plaintiff had been prepared, and the participants at this meeting worked on it.

11 On 28 July, the plaintiff received a letter signed by Dr Chee for the CEC requiring him to appear on 6 August before the CEC sitting as a disciplinary committee. I had better set out the letter, long though it may be:

You are hereby informed that you are to attend on 6 August 1993, at 7.30pm, at the party headquarters (920-A Upper Thomson Road, S 2678), before the central executive committee sitting as a disciplinary committee to explain the following:

(1) your remarks made on various occasions including the interviews, conferences, and speeches you gave to the press (see photocopies of reports enclosed) that were derogatory of the party leadership and detrimental to the party's interests. These include your statements about:

(a) disassociating yourself from CEC members 'who are definitely going in the wrong direction' when in fact that is not the reason stated in your letter of resignation;

(b) the opposition needing 'members who were credible, clean and trustworthy' and that the party's present leadership does not accept the idea of establishing an opposition party that is accepted and recognized as trustworthy;

(c) the 'control and running' of the town councils run by the party's MPs causing 'problems which split the party' and 'central control' over the party's town councils which was originally meant by you to be an arrangement in which you attempted to involve the other MPs in a scheme whereby the central control would be through a private company run by Mr William Lau with the three MPs as shareholders;

(d) CEC members being employed by the town councils as 'people who cannot find a job outside' and that these CEC members could not 'vote according to conscience – but obligation – when it came to party matters';

(e) CEC members having questionable records such as Mr Wong Hong Toy's previous criminal conviction, who was the co-accused with Mr JB Jeyaretnam, without clarifying that the convictions had been criticized by Singapore's highest judicial authority, the Privy Council, as wrong, and that these two persons were convicted of offences for which they were not guilty of and when in fact you and Mr William Lau were the ones who invited him to join the party;

(f) Mr Wong Hong Toy's dishonesty and that you gave him 'the benefit of a doubt but things did not turn out as expected';

(g) Dr Chee Soon Juan's dismissal by the NUS 'over $200' when you had in fact defended him previously including in a Parliamentary debate and had subsequently bargained with him to cross over to 'your' side even after

your resignation was made public including an offer you made to ask Dr Chee's wife to go over to work in PPTC;

(h) your dropping of Dr Chee's case whom you were representing when he refused to go 'over' to your side and Dr Chee's;

(i) the party's present leadership collapsing as a result of clashes in personalities' self-interests and that Mr Ling How Doong, MP (Bukit Gombak) and Mr Cheo Chai Chen, MP (Nee Soon Central) were building 'little kingdoms' to serve their own self-interests;

(j) Mr Tan Peng Kuan, former Potong Pasir Town Councillor, whom you implied was too busy to attend council meetings when in fact he had attended almost all of the meetings since his appointment in December 1991 and your bargaining with Mr Tan and Dr Chee that if they crossed over to 'your' side, you would step down to stand with them in a GRC;

(k) the PPTC only employing one party member when in fact there are two and not mentioning the fact that the PPTC was the first to employ party members;

(l) your claim that the PPTC annual turnover is much less that $2m when in fact the PPTC's turnover itself is well over that amount;

(m) the CEC blocking you on 'many issues';

(n) Mr Ling How Doong not allowing the CEC to debate on the motion to censure Dr Chee when in fact the CEC did discuss the issue even though no CEC member seconded your motion;

(2) your opening of a bank account in your own name and that of another and paid in party funds collected from an SDP arranged dinner into that account which was in breach of the party constitution;

(3) your failure to contribute 10% of your MP's allowance to the party despite the fact that you had signed a pledge to do so during the 1984, 1988 and 1991 general elections;

After hearing your explanation and all other evidence, the committee will decide on the course of action to take which may include a suspension, demotion, or expulsion. Should you fail to be present at the appointed date and time, the committee may proceed to deliberate the case in your absence.

12 Enclosed with the letter were copies of press cuttings of various dates in June and July containing the remarks to which the CEC took exception.

13 On 3 August, the plaintiff by letter asked for an adjournment on the ground that the time allowed was not enough for him to prepare his

defence. He made other requests about the procedure, but his requests were all turned down.

14 On 6 August, the plaintiff duly appeared before the disciplinary committee. All 13 members of the CEC were present. Mr Ling How Doong chaired the proceedings. He played the leading role at the hearing.

The record of proceedings

15 At the commencement of the hearing, the plaintiff requested that the proceedings be taped, giving the reason that he might wish to take the matter to court. Mr Ling, the chairman, refused his request. Mr Ling told me that the reason why he refused the request was that the constitution did not provide for it. He told me that he had never seen it done in other disciplinary proceedings (including two previous ones within the party) in which he had been involved. It did not occur to him to arrange for a verbatim record of the proceedings to be made. Instead, he appointed three CEC members, Ashleigh Seow, Chee Soon Juan and Jimmy Tan, to take notes of the proceedings. It was left very much to them how they would go about their task. In the result, Chee's notes, when transcribed, consist of only one and a half pages, and Tan's notes only three pages. Ashleigh Seow's notes are more substantial, they consist of about 12 typewritten pages, but the utterances as recorded by him are rather cryptic, and the plaintiff also complains that some parts of the proceedings were not captured at all.

16 This is all a pity. As the proceedings were probably the most important disciplinary proceedings in the history of the party, and as the plaintiff had indicated that he required a full record for the purpose of legal proceedings, it is a matter of regret that the chairman should have turned down the request. These cryptic notes do not show the atmosphere in which the proceedings were carried on and much of the flavour of the proceedings is lost. There seems to have been an attempt to make it difficult for the plaintiff to seek a judicial review of the proceedings.

17 I must mention in this connection that after the hearing the plaintiff asked for the notes of the proceedings. He wrote for them on 14 August, but the defendants did not accede to his request. Ling told the court, implausibly, that he did not know why the defendants did not accede to the plaintiff's request, and that he did not know whether the CEC discussed his request.

The preliminary objections and the hearing

18 The plaintiff then raised a preliminary objection that the hearing should not go on because some of the members were the very persons he had criticised. I shall refer more fully to this when dealing with the question of bias, but for the moment it suffices to say that his preliminary objection

was overruled, and the committee proceeded with the hearing proper. This started at about 8.55pm.

19 The plaintiff had prepared a six-page written submission in answer to all the points raised in the letter of 28 July. He wished to make a general submission on the basis of his written submission dealing with all the points. But the chairman insisted on going through the items mentioned in the letter individually. He repeatedly told the plaintiff that the plaintiff had to "explain" the remarks to the press itemised in the letter. The plaintiff then read the first two pages of his written submission, dealing with the opening words of para 1 of the letter and item (a) of para 1. The chairman again reminded him that he should "explain" the remarks he had made to the press. From then on, different members took turns, in a rather random fashion, to question, challenge and refute the plaintiff on the various remarks he had made. Ling was the main protagonist, but others also took part, including Ashleigh Seow, Chee Soon Juan, Low Yong Nguan, Jimmy Tan, and two or three others.

20 The hearing ended at about 11.40pm. Deliberations ended at about 1.30am, whereupon a sheet of paper was passed around for members to indicate whether they accepted the plaintiff's explanations. Twelve indicated that they did not accept the explanations, and one said she did not agree with the remarks he made to the press. The committee than deliberated until about 3.00am on the punishment to be meted out. Eleven were in favour of expulsion and two (Jimmy Tan and Michelle Toh) were in favour of demotion. So the decision was to expel the plaintiff.

21 However, the Committee was anxious to see if some way could be found of not having to carry out the decision. It was decided that a delegation of three (Seow, Jimmy Tan and Kwan Yue Keng) be sent to see the plaintiff. Later that morning, at about 11.00am, Seow and Tan met the plaintiff. I accept Seow's evidence that the meeting was an exploratory one, but the idea of the plaintiff retracting his press remarks was mentioned as one possible way of reconciliation, although Seow was quite conscious that it would be difficult from the point of view of the plaintiff's own credibility for him to contemplate doing so. The plaintiff, however, did afterwards ask that the CEC put in writing which remarks they would like him to retract. The CEC decided not to respond to this request, as they were afraid that the plaintiff might use their reply as evidence against them. There was evidently not much trust and confidence between the two sides.

22 The efforts at reconciliation thus failed. On 20 August the plaintiff was formally notified in writing of his expulsion from the party. The letter reads:

> The central executive committee of the party after listening to you has unanimously decided that your explanation of your conduct is not acceptable. Accordingly, the Committee is of the opinion that it is in

> the interests of the party that you be expelled from the party forthwith. You may, if you wish, appeal to the ordinary party conference.

Events after expulsion

23 The Speaker of Parliament was informed by the defendants of the plaintiff's expulsion. The plaintiff in turn informed the Speaker that he did not accept the validity of his expulsion.

24 On 20 August, some of the plaintiff's supporters who were cadre members sent to the defendants a requisition for a special party conference to discuss and vote on motions seeking to replace the membership of the CEC and the retraction of the letter of expulsion. A requisition in slightly different terms had been made earlier, on 6 August. The CEC did not accede to either requisition.

25 On 25 August, the plaintiff commenced this action. It was then against Ling and Chee on their own behalf and on behalf of all others on the CEC. He obtained an interim injunction restraining the defendants from expelling or taking steps to expel him from the party.

26 On 28 August, following a notice in the press, a meeting described as a "special party conference cum party congress" was held by the plaintiff's supporters. The meeting purported to dissolve the CEC and elect a new CEC in its place. The plaintiff was also purportedly elected chairman of the party, and other office bearers were elected. The validity of this meeting and related matters are the subject of another suit, yet to be heard.

The constitutional provisions

27 Before I deal with the issues in this case, I must refer to the provisions of the party's constitution concerning disciplinary matters.

28 Clause IV(d) of the constitution provides:

> Discipline
>
> It shall be the duty of the central executive committee if at any time it shall be of the opinion that the interests of the party so require, to consider the question of the suspension or expulsion of any member or demotion of any cadre member at a special committee meeting convened for that purpose. Such member shall be given notice in writing of such meeting and shall be informed in such notice that he may offer an explanation of his conduct to such meeting in person. If at such meeting, after considering the explanation offered, two-thirds of the members of the central executive committee present and voting shall vote for his suspension, demotion or expulsion, he shall thereupon be suspended for such period as the Committee may specify or cease to be a member or a cadre member as the case may be of the party. An expelled member shall have the right of appeal to the ordinary party conference.

29 Clause VII(c)(vi) provides that the CEC has the duty to maintain party discipline and to make rules and regulations governing the appointment, duties and discipline of cadre members and ordinary members. It is common ground that no rules and regulations have been made under this provision.

The plaintiff's complaints

30 The plaintiff's complaints about the disciplinary proceedings are, firstly, that they did not comply with the rules of natural justice and, secondly, the CEC did not act in good faith in the best interest of the party but were actuated by indirect and improper motives unconnected with the plaintiff's conduct or they acted maliciously in order to injure the plaintiff.

The defence

31 At the forefront of their defence, the defendants rely on certain undertakings and directions to keep secrecy and refrain from making public criticisms of the party and its leaders.

32 They refer, firstly, to an oath taken by the plaintiff on 25 May 1992 not to "do or say anything which may be detrimental to the SDP or undermine the standing of the leadership of the party within or without the party"; secondly, to a deed signed on the same day whereby he undertook "to keep absolute secrecy in relation to all information obtained from the party, its meetings, activities, members or documents or in any way whatsoever" and not to "criticize, say or comment [*sic*] anything adversely on the party's policies, publications, acts, organisation or its chairman, vice-chairman, secretary-general, assistant secretary-general, treasurer, assistant treasurer or any member of the CEC, cadre member or member of the party". It is not disputed that the oath and the deed were introduced by the plaintiff himself when he was secretary-general. The defendants also refer to a directive issued on 13 January 1993 by the plaintiff, who was then the secretary-general, to all CEC members and cadre members of the party in which he reminded everyone of the constitutional provision that only the chairman and the secretary-general may issue press statements on behalf of the party. It concluded:

> If party members have any complaint, please hand them to the secretary-general, chairman or CEC member with specific instructions to table them at the next available CEC meeting for discussion and decision. Please do not wash our party's dirty linen in public. It will only hurt the reputation of our party. Leaking confidential information to the press is an anti-party activity and no member who is loyal to the party should do that. The party shall take disciplinary action against those members who disobey party directions and orders.

33 The Defence states:

> In breach of the said oath and of the terms of the said deed, and in total disregard of the directive issued by himself in the said notice, the plaintiff, in subsequent public statements which were reported in the newspapers circulating in Singapore in June and July 1993, criticized the defendant and its central executive committee ('CEC') members and gave different reasons for his resignation. The plaintiff has thereby committed acts of indiscipline as a member of the defendant.

34 In evidence, Mr Ling said that all these undertakings and the directions were very important. He also told the court that during the deliberations after the hearing on 6 August, these undertakings and directions were considered. Hence the word "pledge" in Ashleigh Seow's notes. At this point, it might be noted that the word "pledge" which appeared in Seow's handwritten notes below the subject "sentence", appears in the typewritten version under "Deliberation". Unfortunately, Mr Seow was not asked in evidence about this.

Real complaint not heard

35 If the real grievance against the plaintiff was that he was in breach of these undertakings and party directives, it is plain that he was never told of it. The letter of 28 July 1993 initiating the disciplinary proceedings contained no hint of it. It merely required the plaintiff to "explain" these statements. The plaintiff evidently took this to mean that he had to justify the rightness of what he had said to the press. He thus went to great lengths to explain in his written submission what he meant by the various statements he made, and give reasons in support of the statements he made, all directed to showing that what he had said to the press was right.

36 It is clear that he did not misunderstand what he was required to do in response to the letter of 26 July. Mr Ling himself at the commencement of the hearing told the plaintiff that he was there to "explain" the statements he had made to the press. In evidence Mr Ling said that that meant the plaintiff should explain the meaning of what he said to the press and why he said it. The hearing was thus focused on the contents of the statements, rather than on the allegation that the plaintiff had been in breach of the oath, the deed and the directive and had committed a disciplinary offence in making the statements, regardless of the truth or correctness of them.

37 The following two examples are typical of how the hearing was conducted. The debate about central party control over the affairs of town councils of constituencies with SDP Members of Parliament, *ie* Potong Pasir, Bukit Gombak and Nee Soon Central, went like this:

Ling:	Central control – why you say we oppose?
Chiam:	I did not.
Ling:	We said we are bound by the Town Councils Act.

Chiam:	Must have central control. If any town council defaults we can check on them.
Ling:	What about the Auditor-General, Penal Code?
Chiam:	Must have a mechanism. It was only one suggestion.
Ling:	Recall 1989 – you refused to allow CEC scrutiny into your town council.
Chiam:	I was wrong there. If [there are] problems, must take steps.

38 The debate then moved on to the plaintiff's statement about SDP Members of Parliament taking care of their own interests and running their town councils like "little kingdoms". This is how it went:

Ling:	You painted picture of little kingdoms doing something improper. You started it all. Ashleigh Seow, Low Yong Guan worked at Potong Pasir town council.
Chiam:	Not [big] enough number to control the CEC. Now [there are] eight [who are] employed directly or indirectly.
Ling:	Seow came to me with your blessings.
Chiam:	You said you'd sack him.
Ling:	We had one month to start town council. [Cheo and I] saw you, asked you for Seow. I said I'd remove him eventually because I wanted a full-time GM. But couldn't get one. He could go to Nee Soon Central town council … I do not take in people because [of] wanting to control the CEC … You and WL since 1984 called in many cadres. I only one.

39 The point that the plaintiff was in breach of his undertakings came only at the tail-end of the inquiry (according to Jimmy Tan's notes it would have been about 11.30pm) in the following manner (per Seow's notes):

Ling:	Clause 10 – you aware?
Chiam:	Am aware.
Ling:	At the time you were not secretary-general?
Chiam:	Yes.
Ling:	Did you send this circular out on keeping confidentiality?
Chiam:	Aware of it.
…	
Ling:	You have breached constitution.

Low:	Last paragraph of circular 'if party members …' Your own words.
Ling:	Before you spoke to Press Club you told us not to wash dirty linen.
Low:	You should know better. Party kept your resignation quiet for six weeks. How can party enforce discipline if you do it yourself?
Ling:	If you resigned from party your attack would be understandable. Refer to Lee Siew Choh.

40 It is clear on the record that the point about breaches of the undertakings and directives was completely overshadowed by the arguments over the rights and wrongs of the statements made by the plaintiff to the press.

Shifts in defendants' position

41 It is in fact not all that easy to understand exactly what is the defendants' position in regard to the oath, the deed and the directive. In their pleadings, as I said, they appear to rely on plaintiff's breaches of them as the foundation for the misconduct alleged against the plaintiff. However, in their counsel's further written submissions made at my invitation after close of hearing, they say that the inquiry of 6 August was not conducted on the basis that the plaintiff was asked to explain why he broke his oath and the terms of the deed or the directive. They say that the defendants could have characterised the misconduct of the plaintiff in one of two ways:

(a) The plaintiff made public statements which appeared to be derogatory of the party leadership and detrimental to the party's interests.

(b) The plaintiff broke his oath, breached the terms of the deed and went against the directive when he made such statements.

42 They go on to say, and I could do no better than to quote:

> Whether the CEC characterized the plaintiff's misconduct under the first or second category, it did not alter the nature or substance of the misconduct, *viz*, that the plaintiff had made public statements, that those statements were criticism of the party leadership, and that such criticism appeared to be derogatory of the party leadership and detrimental to the party's interests. This is the nature and substance of the misconduct irrespective of the oath, the deed or the directive.
>
> There was only one question before the committee on 6 August 1993, namely, was the plaintiff's speech derogatory of the party's leadership and detrimental to the party's interest?
>
> If, in the process of seeking an answer to this question, the committee made reference to the oath, or the deed, or the directive, it would do

violence to the language to say that the complaint was now that the plaintiff was in breach of the oath, deed and directive.

43 I must say that this is all rather baffling. I do not think that the letter of 28 July notifying the plaintiff of the disciplinary proceedings is capable of such sophisticated reading. Nor is this reading supported by the evidence of Mr Ling, who, as stated above, says that what the plaintiff was expected to do was to explain the meaning of what he said and why he said it. Nor is it borne out by what actually transpired at the hearing.

44 An important element of natural justice, of fair hearing, is that the person whose conduct is sought to be impugned should be told clearly what case he is to meet. The case against him should not be left to conjecture.

45 In the instant case, either on the case as pleaded or as elaborated by counsel's submission, it is clear that the plaintiff was misled.

46 There is a world of difference between saying that the CEC did not accept the plaintiff's explanations and saying that he breached the terms of his undertakings and party directives. The former could simply mean no more than that the CEC disagreed with the plaintiff's views; the latter would conceivably be much clearer as a disciplinary offence.

47 It may be that the plea based on the oath, the deed and the directive is nothing but an afterthought, but I must resist speculating. The hard fact is, whatever the case was that the CEC wanted the plaintiff to answer, it was certainly not made clear in the notice to him or when he appeared at the inquiry.

48 Before I leave this subject, I must say a word about the pleadings. The point about the plaintiff not being told clearly the case he had to meet was not pleaded by the plaintiff. But it was a point that arose from the plea in the defence which I have referred to. I had all the evidence before me, including the notice of the proceedings, the evidence of what took place in the disciplinary hearing, and the evidence of the witnesses. The point presented itself so starkly that it could not be ignored if justice was to be done. I therefore invited counsel to deal with it, and they did so by further written submissions. I have had the benefit of their submissions in coming to my views on the matter.

Other unusual features

49 Another feature of the disciplinary proceedings was the extraordinary amount of intervention on the part of the adjudicators. This was foreshadowed by the form of the notice of 28 July. The notice was couched in a rather curious argumentative form. It sets out the press statements complained of, followed in quite a few instances by an argumentative statement that what the plaintiff said was not quite right or quite complete. True to what had been foreshadowed in the notice, Mr Ling told the

plaintiff at the hearing that the purpose of the hearing was for the CEC to rebut what the plaintiff had said to the press as well as to hear his explanations.

50 The proceedings as conceived required the participation in an adversarial way between the adjudicators and the person under inquiry. They required the adjudicators to enter the arena. The hearing was nothing but a confrontation between individual members of the CEC and the plaintiff over the rightness, or otherwise, of his press statements. It was a confrontation from which, on account of the sheer numbers on the other side, the plaintiff was bound to come out the loser.

51 In *Wong Kok Chin v Singapore Society of Accountants* [1989] 2 SLR(R) 633 Yong Pung How J (as he then was) deprecated the fact that the disciplinary tribunal there descended into the arena and joined in the fray. What he said in that case is equally apt here.

52 In these circumstances, it is not surprising that the plaintiff felt that he had not been fairly heard. I think the plaintiff is justified in feeling this way. The unsatisfactory conduct of the hearing was compounded by the fact that the plaintiff had not been told with any precision the case he had to meet. I am of the view that the conduct of the disciplinary proceedings as a whole fell far short of the norm of fairness which a disciplinary tribunal in the position of the CEC may be expected to observe.

Bias

53 At the disciplinary hearing, the plaintiff raised a preliminary objection that the whole of the CEC should disqualify themselves. He called attention to a Chinese newspaper report dated 31 July quoting Mr Tan Peng Kuan, a member of the CEC, as saying that he did not think that the plaintiff would be expelled but that such a possibility could not be ruled out. He explained to the hearing that the concept of collective leadership which the party appeared to have now adopted meant that the views and preconceptions of one or some members of the CEC would represent those of the whole CEC. It was therefore not appropriate for the hearing to proceed at all. Secondly, he objected to having on the tribunal the chairman Mr Ling, Wong Hong Toy, Chee Soon Juan, Tan Peng Kuan and Cheo Chai Chen as these were individuals he had directly referred to in his Press Club comments which are the subject of the disciplinary proceedings. These individual members would therefore be judges in their own cause. Thirdly, he referred to the fact that some members of the CEC were employed in town councils of which other members (Ling and Cheo) were chairmen. They would therefore not be able to vote freely and independently.

54 Mr Ling, the chairman, overruled the plaintiff's preliminary objections. He told the plaintiff that it was not necessary to give reasons for this decision. At the trial, Mr Ling told me that the reason was the

constitution does not say that the chairman has the power to disqualify anyone on the CEC from sitting.

55 In his statement of claim, the plaintiff largely repeats these objections and alleges that it was a breach of the rules of natural justice that these persons should sit on the disciplinary committee.

56 At the hearing before me, defence counsel put individual names to the plaintiff and asked him whether the plaintiff thought they were biased. He said yes to every name except that of Abdul Rasheed, Mohamed Isa, Jimmy Tan and Michelle Toh. However, in re-examination, he said that he would have had no objection to the inquiry going on if the nine members he objected to had withdrawn, leaving the four others.

57 It seems to me that the plaintiff has formidable difficulties on this issue of bias. Defence counsel, in an able and well-researched submission, rightly reminds me that the relationship between the plaintiff and the defendants was based on contract. The plaintiff was bound by the constitution. The constitution clearly designates the CEC as the body responsible for disciplining members of the party. There is no alternative tribunal. The plaintiff, by being a member of the party, had agreed that the members of the CEC should act in an adjudicative capacity under cl IV(d) of the constitution.

58 Theoretically, of course, it would have been possible for the nine members to whose participation the plaintiff objected to withdraw, leaving four members to adjudicate. It seems to me, however, that the constitution does not contemplate that disciplinary proceedings against a member should be conducted by such an emaciated body. The CEC would not have the character of a CEC if a substantial majority of its members were left out of it. I venture to suggest that the reason for having in the constitution the CEC as the disciplinary tribunal is to have a body whose members could bring their individual views and judgment to bear on a disciplinary matter. A hearing by the remnants of the CEC cannot possibly equate in quality a hearing by the whole CEC. This does not mean that individual members cannot be disqualified. However, where it is alleged, as in this case, that the overwhelming majority, including all the office bearers, should disqualify themselves, a serious question arises whether what is left is the kind of body which the constitution contemplates should be the body to take charge of such matters.

59 The plaintiff at the Press Club interview had indeed criticised the whole of the leadership. By his own logic, the whole CEC should not have sat. Indeed, this was the stand he took when making his preliminary objections at the commencement of the hearing, although on a slightly different ground.

60 It seems to me that such a position was, and is, not a viable one in the context of this case. Plaintiff's counsel and the plaintiff himself had

difficulty suggesting what alternative tribunal would be available if the whole CEC were disqualified from sitting.

61 In the absence of an alternative tribunal, it seems to me that out of necessity the CEC had to sit in judgment of the plaintiff, as otherwise the defendants would be powerless to act against the alleged infractions of discipline. I am much encouraged in taking this view by the following statement (citing authorities) in *De Smith's Judicial Review of Administrative Action* (4th Ed, 1980) p 276:

> An adjudicator who is subject to disqualification at common law may be required to sit if there is no other competent tribunal or if a quorum cannot be formed without him. Here the doctrine of necessity is applied to prevent a failure of justice. So, if proceedings were brought against all the superior judges, they would have to sit as judges in their own cause. Similarly, a judge may be obliged to hear a case in which he has a pecuniary interest. The judges of Saskatchewan were held to be required ex necessitate to pass upon the constitutionality of legislation rendering them liable to pay income tax on their salaries.

62 Defence counsel also called my attention to the useful case of *Cains v Jenkins* (1979) 28 ALR 219 and a case from the United States, *Brinkley v Hassig* 83 F 2d 351 (10th Cir, 1936).

63 Defence counsel also cites authorities, particularly *Cains v Jenkins*, and *Maloney v New South Wales National Coursing Association Ltd* [1978] 1 NSWLR 161 on the question of the degree of bias required for disqualifying a member of a domestic tribunal. However, I do not think it is necessary for me to go into that. Indeed, I do not think that the issue of bias as a whole is of any consequence to this case, having regard to my finding that the plaintiff was not given a fair hearing for the reasons I have stated. I have dealt with it to the extent I have done only because it has been raised.

Bad faith point

64 There were allegations in the pleadings of bad faith and of the defendants acting maliciously in order to injure the plaintiff. There were suggestions in plaintiff's counsel's questions put to the witnesses for the defendants that the object of the disciplinary proceedings was to make the plaintiff lose his seat in Parliament, that being the consequence of the plaintiff being expelled from the party. I do not think there is very much in these suggestions, having regard to the fact that the CEC even when they had decided to expel him were making efforts to seek a reconciliation with him.

65 The bad faith point was not dwelt upon in closing submission. It did not feature as a separate point. In the circumstances, there is no need for me to say any more about it.

Exhaustion of internal remedies

66 I have now to deal with the other defences. Clause IV(d) of the party's constitution provides that an expelled member has the right of appeal to an ordinary party conference. The defendants submit that the plaintiff should have exhausted this internal remedy before coming to court. They submit that this is a contractual obligation which the plaintiff had undertaken by being a member of the party.

67 The subject of exhaustion of internal remedies has been well discussed by Ungoed-Thomas J in *Lawlor v Union of Post Office Workers* [1965] 1 All ER 353, and by F A Chua J (as he then was) in *Visvasam v Singapore Toddy Tappers' Union* [1968–1970] SLR(R) 275.

68 It is clear that the construction of the rules of the defendants is a matter of law for the courts. The question whether the rules of natural justice have been observed is also eminently a matter for the courts. It is no disrespect to say that the party conference of the defendants is hardly an appropriate forum to decide such questions. The issue of the rights and wrongs of the expulsion of a member is likely to be decided by that forum on considerations quite different from those applicable in a court of law.

69 Furthermore, the next ordinary party conference will not be held for some time. The constitution provides that one should be convened every two years, and the last one was held only in January this year. The plaintiff tells me that that would have been too late for him because his seat in Parliament was in the balance because of his expulsion from the party, and there was need to have an early resolution of his status there. He had therefore to take action in court immediately.

70 In *White v Kuzych* [1951] AC 585; [1951] 2 All ER 435, the Privy Council decided that a member of a trade union was bound to exhaust a right of appeal within the union before resorting to the courts. In that case, however, there was an oath of obligation whereby members promised not to resort to the courts until they had exhausted all remedies provided by the union's constitution and bye-laws. There is no such obligation in the present case. This is an additional reason for holding that the plaintiff is not out of order in coming to court before exhausting the right of appeal to the party conference.

The "conduct" defences

71 In their pleadings, the defendants said that the plaintiff was abusing the process of court. They said that after obtaining the interim injunction, the plaintiff stage-managed the holding of the meeting on 28 August of his supporters and got himself elected as chairman and attempted to usurp the power of the CEC, *etc*.

72 In defence counsel's opening submission, the criticism of the plaintiff was that he had failed to disclose truly and accurately the contractual obligations he had assumed by being a member of the party. Reference was made to the constitution, the oath, the deed and the directive. By criticising members of the CEC and the leadership of the party, it was said, the plaintiff was in breach of these obligations and the court should not grant him the equitable relief of an injunction. This line of argument has been repeated in defence counsel's closing submission.

73 The apparent shift in the defence position makes one uncertain how seriously the assertions should be taken. I would only make the comment that the argument based on lack of full disclosure would be more appropriate in the context of an *ex parte* application than in the trial of a contested suit. I confess that I have some difficulty understanding how it can apply in the circumstances of this case.

Conclusion

74 In the result, I grant:

(a) a declaration that the decision of the central executive committee of the Singapore Democratic Party purporting to expel the plaintiff from the Singapore Democratic Party is unlawful and invalid; and

(b) an injunction restraining the Singapore Democratic Party, whether by themselves, their servants or agents, from expelling the plaintiff from the Singapore Democratic Party or taking any steps to do so.

Costs

75 The plaintiff when he made the press statements about his party and its leader must have been aware of the possibility of a disciplinary action being taken against him. It may be fairly said that he brought the disciplinary proceedings and the court action on himself. It was a stroke of luck for him that the disciplinary proceedings were conducted in such an inept manner, and he has succeeded in court on that account. In the proceedings here, he raised the issues of bias and bad faith which he was not able to make good. Much time was wasted on these issues. I think this is a fit case for a special order as to costs. In all the circumstances, I think he should have only one third of the costs. I so order.

Headnoted by Arvin Lee.