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UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
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Assignment 11/1964

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IN THE PRIVY COUNCIL

No. 23 of 1962.

ON APPEAL FROM THE SUPREME COURT
OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT KUALA LUMPUR

B E T W E E N :-

LIM LIAN GEOK

Appellant

- and -

THE MINISTER OF THE INTERIOR,
FEDERATION OF MALAYA

Respondent

CASE FOR THE APPELLANT

1. This is an appeal from a Judgment and Order of the Supreme Court of the Federation of Malaya, Court of Appeal at Kuala Lumpur, dated the 4th January, 1962, dismissing an appeal from a Judgment and Order of the High Court at Kuala Lumpur, dated the 13th October, 1961, whereby an order of prohibition nisi, made against the Respondent, on the Appellant's application, was discharged. pp.76 & 77
pp.31 & 32

The Appellant had obtained the said order nisi following the service upon him of a Notice issued by the Registrar-General of Citizens of the Federation of Malaya informing him of the proposal of the Federal Government to make an Order under Article 25 of the Federation of Malaya Constitution depriving him of his citizenship of the Federation, unless within one calendar month from the date of the service of the Notice he claimed that his case should be referred to a Committee of Inquiry under Article 27(2) of the said Constitution. pp.80 & 81
(Ex.A)

2. The main point for determination on this appeal is whether or not the said Notice was lawful and effective.

3. Relevant provisions of the Federation of Malaya Constitution (hereinafter also referred to as "the Constitution") are included in an Annexure hereto.

4. The facts are as follows:-

p.7, l.4D
to
p.8, l.4.
p.8, l.17

The Appellant, a Chinese school teacher and President of the United Chinese School Teachers' Association in Kuala Lumpur, became a Citizen of the Federation of Malaya in or about September, 1951.

p.62, l.18
p.83, l.30

On the 14th August, 1961, he was informed of the proposal of the Federal Government to deprive him of his citizenship by the service upon him of the following Notice issued by the Registrar-General of Citizens of the Federation of Malaya:-

pp.60 & 81
(Ex.A)

"CONSTITUTION OF THE FEDERATION OF MALAYA
CITIZENSHIP RULES, 1960

Rule 22 - Form Q

NOTICE

"To MR. LIM LIAN GEOK alias LIN CHAI KOO of 52/2, JALAN RAJA MUDA MUSA, KAMPANG BAHRU, KUALA LUMPUR

"WHEREAS it has been represented to the Federal Government that you LIM LIAN GEOK a Citizen of the Federation of Malaya, have shown yourself, since 1957, by act and speech to be disloyal and disaffected towards the Federation of Malaya, in that you did make:

"(a) deliberate misrepresentation and inversion of Government Education Policy in a manner calculated to excite disaffection against the Yang Di-Pertuan Agong and the Government of the FEDERATION; and

"(b) emotional appeals of an extreme communal nature calculated to promote feelings of ill-will and hostility between different races in the Federation likely to cause violence.

(3)

"AND WHEREAS the Federal Government proposes to make an Order under Article 25 of the Federation of Malaya Constitution depriving you of your Citizenship of the Federation of Malaya.

NOW THEREFORE, I, Ibrahim bin Ali, the Registrar-General of Citizens of the Federation of Malaya acting on behalf of the Federal Government DO HEREBY GIVE YOU NOTICE that unless within one Calendar month from the date of service upon you of this Notice, you inform me in writing that you claim that your case be referred to a Committee of Inquiry constituted for that purpose by the Federal Government under Article 27(2) of the said Constitution, the Federal Government will proceed to make the Order of depriving you of your Citizenship of the Federation of Malaya.

"Dated this 12th day of August, 1961.

(Seal)

Registrar-General of Citizens
of the Federation of Malaya"

5. Replying to the Registrar-General, the Appellant in his letter, dated the 5th September, 1961, said, pp.81 & 82
inter alia, as follows:- (Ex.B)

"Though it purports to be in accordance with the Form provided under the Rules made by the Minister, I am advised that the power to deprive one of his Citizenship is under the Constitution vested in the Minister alone, and he is not empowered to delegate that function to any other official or authority under any of the Sections of the Second Schedule to the Constitution. With the utmost respect, therefore, I wish to point out that there would appear to be no authority in you to issue the Notice.

"I therefore respectfully request that the Notice be withdrawn and a proper Notice served on me if it is still the Federal Government's intention to deprive me of my Citizenship."

6. In his reply, dated the 6th September, 1961, the p.83
(Ex.C)

Registrar-General said, inter alia, as follows :-

"2. I am to invite your attention to the fact that the Notice dated the 12th day of August, 1961, which was sent to you is in accordance with Rule 22 of the Citizenship Rules, 1960. This Notice is issued by the Registrar-General of Citizens of the Federation of Malaya acting on behalf of the Federal Government and is in accordance with the Constitution."

pp.1 & 2

7. Aggrieved by the said Notice, the Appellant, on the 12th September, 1961, applied to the High Court at Kuala Lumpur for "an order that the Minister of the Interior, Federation of Malaya, be prohibited from referring the Case....to a Committee of Inquiry under Article 27(2) of the Constitution for the reasons inter alia -

"(1) that it was not competent for the Registrar-General to issue the Notice that he purports to have issued under Rule 22 of the Citizenship Rules;

"(2) that the allegations made as to the basis for the said Notice assuming them to be true, are not a sufficient compliance with the requirements of para. (a) of Article 25(1) of the Constitution."

p.4

8. The application, which was made ex parte and supported by the Appellant's affidavit, resulted in an Order Nisi which, dated the 13th September, 1962, was in the following terms:-

"IT IS ORDERED that the Minister of the Interior Federation of Malaya be and is hereby prohibited from referring the Case of the above-named Applicant to a Committee of Inquiry under Article 27(2) of the Constitution until this Order shall be made absolute or be discharged.

"AND IT IS ORDERED that the said Minister of the Interior do show unto the Court good cause on or before the 4th day of October 1961 why the said prohibition should not be made absolute.

"AND IT IS ORDERED that a copy of the said Notice of

(5)

Motion and the said Affidavit together with a copy of this Order be served on the said Minister of the Interior."

9. By his Notice of Motion, dated the 18th September 1961, the Respondent (the Minister of the Interior) gave notice that he would, on the 2nd October, 1961, apply to have the said order of prohibition nisi discharged on the grounds that:- pp. 4 & 5

"(1) an order of prohibition does not lie against the decision of the Minister; p.5, 11.5 to 18

"(2) if an order of prohibition does lie-

(a) the notice issued by the Registrar-General of Citizens was in the form prescribed by and upon the instructions of the Minister of the Interior and was in compliance with the requirements of Article 27 of the Constitution;

(b) the grounds shown in the notice are a sufficient compliance with the requirements of paragraph (a) of Clause (1) of Article 25 of the Constitution."

In his affidavit in support the Minister said inter alia:-

"3. In pursuance of Article 27 of the Constitution I decided to cause a Notice..... to be sent to the Applicant. The aforesaid Notice was in the form prescribed by me in rule 22 of the Citizenship Rules, 1960. The aforesaid rules were published as Legal Notification No. 310 in the Federal Government Gazette of 1st December, 1960. p.6, 11.25 to 32

"4. The Notice in the aforesaid prescribed form was on my decision sent to the applicant by the Registrar-General of Citizens of the Federation of Malaya who is a civil servant in my Ministry.

"5. I am satisfied that the act and speech of the applicant justify my decision to proceed under Article 27 of the Federal Constitution."

10. In his counter-affidavit, dated the 2nd October, 1961, the Applicant (the present Appellant) said inter alia

p.7, l.32
to
p.8, l.1

"6. I have taken a great deal of interest in Chinese education and promoted the formation in 1949 of the Kuala Lumpur Chinese School Teachers' Association of which I became President in 1951.

"I was continuously re-elected President until 1960 and this year I have stood down, but I am still associated with it as its Vice-President.

"7. In 1951 all the Chinese school teachers of the whole of the Federation organised themselves as the United Chinese School Teachers' Association and I took an equally prominent part in the promotion of this all-Malayan body.

"Since 1954 I have continuously been elected annually as its president.

"8. In September, 1958 I as president represented the United Chinese School Teachers' Association at a conference in Ipoh of organisations interested in Chinese Education and served as one of the three Presidents of the Conference.

"9. In April, 1959 at a conference held in Kuala Lumpur of over 1,200 representatives of Chinese guilds in Malaya to discuss the Government's Chinese Education policy I again served as one of the Presidents of the Conference."

11. Further facts relating to the Appellant's public life and relevant to his Citizenship were thus stated by him in his said counter-affidavit:-

p.8, l.17
to
p.9, l.1

"10. I became a Citizen of the Federation in or about September, 1951 and I have actively taken part in public debates and discussions relating to Chinese education and Government's policy thereon. I have not taken part in any other public activity, nor acted in any way suggestive of disloyalty or disaffection to the Government.

(7)

"11. I have always striven through the organisations that I have been associated with to instil a sense of loyalty to the country in Chinese students and have always urged their learning the national language as a means of promoting unity among the several races in the country.

"My speeches in this connection have been repeatedly broadcast by Radio Malaya.

"12. I have also served on Government Committees relating to Education and I have always co-operated with and assisted the officers of the Government in its general policies on Education.

"13. I have never been a member of any political organisation, not even the Malayan Chinese Association, though I have at the personal request of the late Tun Sir Cheng Lock Tan served on the Central Education Committee of the Association as a representative of the United Chinese Teachers' Association."

12. The Minister's motion to discharge the order Nisi of Prohibition made against him came up for hearing in the High Court before Thomson C.J., who, by his Judgment, dated the 13th October, 1961, discharged the Order. p.9, l.20
to
p.15, l.20
pp.15 to 30

13. The learned Chief Justice said that the question as to whether the Minister's powers under Article 25 are exercisable by the Registrar-General of Citizens or any other official did not arise in the present case, as, from the Minister's affidavit, it was clear that the Minister himself had caused the said Notice to the Appellant to issue and that it had been signed by the Registrar-General "not in the purported exercise of any powers delegated to him but simply as the clerk or amanuensis of the Minister." p.22, ll.6
to 10
p.22, ll.25
to 32

14. In the learned Chief Justice's opinion the question for consideration in the instant case was-

"the extent of the power of the Minister to take a step the taking of which is a condition precedent to the making by him of an order of deprivation, that step being to cause the holding of an Inquiry under Article 27. p.23, ll.6
to 16

Such an inquiry is required to be held and the Minister is required to have regard to its report which clearly implies that the report is something he must consider in deciding whether he has attained satisfaction for the purposes of Article 25" (deprivation of citizenship for disloyalty, disaffection, etc.).

p.23, 11.31
to 37

In the view of the learned Chief Justice it was "not necessary that the Minister should have actually attained satisfaction before he takes steps to cause an inquiry to be held for he is required to have regard to its report in determining, which means finally deciding, whether to make the order of deprivation."

p.24, 11.4
to 14

15. The learned Chief Justice referred to the following four conditions which, he said, had to be fulfilled before the Minister could take steps to cause an inquiry to be held:- (1) "the Minister must have certain grounds of fact in his mind"; (2) "these grounds must consist of act or speech"; (3) "the person against whom the order is proposed to be made should be informed what these grounds are"; and (4) "these grounds of fact should be capable, if made out, of showing, as a matter of law disloyalty or disaffection towards the Federation."

p.24, 11.4
to 6
p.25, 1.39 to
p.26, 1.6
p.28, 11.28
to

In the learned Chief Justice's view, the first three of the said conditions had been fulfilled. As to the fourth, he referred to the "grounds" which had been stated in the Notice served upon the Appellant (see paragraph 4 hereof). For reasons that he gave he came to the conclusion that the said "grounds" or allegations against the Appellant which the Minister had made in paragraphs (a) and (b) of the said Notice were capable, as matter of law, of showing the Appellant to have been disloyal or disaffected towards the Federation.

p.28, 11.24
to 27

pp.31 & 32

pp.32 & 33

pp.33 to 37

16. An Order (discharging the said Order Nisi) in accordance with the Judgment of the learned Chief Justice was entered in the High Court at Kuala Lumpur on the 13th October, 1961, and against the said Judgment and Order the Appellant appealed to the Supreme Court of the Federation of Malaya, Court of Appeal at Kuala Lumpur, on the grounds stated in his Memorandum of Appeal, dated the 24th November, 1961.

(9)

17. The Appeal was heard in the said Court of Appeal by a Bench consisting of Hill J.A., Good J.A. and Hepworth J. who, by their Judgment, dated the 4th January, 1962, dismissed it. pp.62 to 76

18. Delivering the main Judgment of the Court of Appeal, Hill J.A. (with whom Good J.A. and Hepworth J. agreed) found as follows:-

- A. The formal validity of the Notice was established. p.68, ll.26 to 29
- B. As to the substance or contents of the Notice, the High Court, at the point at which the matter came before it, had no jurisdiction to investigate or consider the matter beyond the issue of the Notice. p.68, ll.30 to 38
- C. The learned Chief Justice in the Court below had correctly referred to the four conditions (see paragraph 15 hereof) which had to be fulfilled before the said Notice was issued and had correctly found that the first three of the said conditions had been fulfilled. p.69, ll.30 to 31
- D. As to the fourth condition - that the grounds set out in the Notice should, if made out, be capable of showing as a matter of law, disloyalty or disaffection towards the Federation - the Notice clearly indicated that it was intended to bring the Appellant within Article 25(1)(a) of the Constitution. p.70, ll.39 to 41

In the opinion of the learned Judge, therefore, the Notice was proper in both form and content.

19. Good J.A. was in agreement with Hill J.A. In a separate Judgment, containing "additional reasons" for arriving at the same result, he said that "the only purpose for which the supervisory jurisdiction of the Court can be invoked at this stage is to ascertain whether the essential preliminary steps had been properly taken according to law..... The Court at this stage is concerned only with the question whether the notice issued to the appellant under Clause (1) of Article 27 is good in form and content." For reasons that he gave, the learned Judge found in favour of the p.71, ll.4 & 5
p.72, ll.19 to 24
p.72, ll.43 to 47
p.73, ll.8 & 9

- p.74, 11.23 formal validity of the Notice. As to its content, he
to 29 said that the word "ground" in Article 27(1) was related
to the grounds set out in Article 25 and that both
Articles should be construed accordingly. In his view
- p.74, 11.38 it would have been sufficient if the Notice "had merely
to 48 informed the appellant that it was proposed to deprive
him of his citizenship on the ground of acts (or
speech) showing him to be disloyal (or disaffected)
towards the Federation." He thought that "there could
be no misunderstanding in the mind of any person
reading the contents of the notice that what was
intended was deprivation on ground (a) in Article 25(1)".
In his opinion, at this stage of the proceedings, it
was not necessary for the Appellant to be informed of
- p.75, 11.31 "anything more than the bare ground of intended
& 32 deprivation" which requirement had been sufficiently
complied with in the Notice.
- p.76, 11.1 20. In his separate Judgment Hepworth J. merely
to 19 expressed his agreement with the Judgments of Hill J.A.
(the President) and Good J.A.
- pp.76 & 77 21. An Order in accordance with the Judgment of the
learned Judges of the Supreme Court of the Federation
of Malaya, Court of Appeal at Kuala Lumpur, was entered
on the 4th January, 1962, and against the said Judgment
and Order this appeal is now preferred, Final Leave to
- pp.78 & 79 Appeal to H.M. the Yang Di-Pertuan Agong having been
granted by an Order of the said Court of Appeal, dated
the 15th May, 1962.

The Appellant respectfully submits that the appeal should be allowed, with costs throughout, for the following among other

R E A S O N S

1. Because, in substance and in form, the said Notice does not comply with the relevant provisions of the Constitution and is therefore defective.
2. Because the Notice did not, as contemplated by Article 27 of the Constitution, inform the Appellant of the statutory ground on which it was proposed to make the Order depriving him of his citizenship.

(11)

3. Because the Notice did not show that the Federal Government was satisfied that the Appellant had brought himself within the terms of Article 25(1)(a).
4. Because, in failing to indicate that the Federal Government was satisfied that the Appellant's continuance as a citizen of the Federation was not conducive to the public good, the Notice contravened the terms of Article 25(3) of the Constitution.
5. Because even if the allegations in the Notice as to the Appellant's conduct be regarded as being true or as not being subject to judicial enquiry at this stage they cannot reasonably be said to amount to disloyalty or disaffection within the meaning of those words in the said Article 25(1)(a).
6. Because the issue of the Notice by the Registrar-General was contrary to the relevant provisions of the Constitution and its consequential invalidity was not cured by the explanations in the affidavit of the Minister of the Interior.

NEIL LAWSON

R.K. HANDOO

A N N E X U R E

Constitution Of The Federation Of Malaya

Part III

Citizenship

17. Subject to Article 18, any person of or over the age of eighteen years who was resident in the Federation on Merdeka Day is eligible, subject to the provisions of the Second Schedule, to be registered as a citizen

upon making application to the registration authority if he satisfies that authority-

- (a) that he has resided in the Federation, during the twelve years immediately preceding the date of the application, for periods amounting in the aggregate to not less than eight years;
- (b) that he intends to reside permanently therein;
- (c) that he is of good character; and
- (d) except where the application is made within one year after Merdeka Day and the applicant has attained the age of forty-five years at the date of the application, that he has an elementary knowledge of the Malay language.

18. (1) No person of or over the age of eighteen years shall be registered as a citizen under Article 15, 16 or 17 until he has taken the oath set out in the First Schedule.

(2) Except with the approval of the Federal Government, no person who has renounced or has been deprived of citizenship under this Constitution, or who has renounced or has been deprived of federal citizenship or citizenship of the Federation before Merdeka Day under the Federation of Malaya Agreement, 1948, shall be registered as a citizen under any of the said Articles.

(3) A person registered as a citizen under any of the said Articles shall be a citizen by registration from the day on which he is so registered.

(4) For the purpose of any application for registration under any of the said Articles, a person shall be deemed to be of good character unless, within the period of three years immediately preceding the date of the application-

- (a) he has been convicted by a competent court in any country of a criminal offence for which he was sentenced to death; or
- (b) he has been detained under a sentence of

(13)

imprisonment of twelve months or more imposed on him on his conviction of a criminal offence (whether during or before the said period) by such a court,

and in either case has not received a free pardon in respect of the offence.

25. (1) Subject to Clause (3), the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 17 or a citizen by naturalisation if satisfied-

- (a) that he has shown himself by act or speech to be disloyal or disaffected towards the Federation;
- (b) that he has, during any war in which the Federation is or was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business which to his knowledge was carried on in such manner as to assist an enemy in that war; or
- (c) that he has, within the period of five years beginning with the date of the registration or the grant of the certificate, been sentenced in any country to imprisonment for a term of not less than twelve months or to a fine of not less than five thousand dollars or the equivalent in the currency of that country, and has not received a free pardon in respect of the offence for which he was so sentenced.

(2) subject to Clause (3), the Federal Government may by order deprive of his citizenship any person who is a citizen by registration under Article 17 or a citizen by naturalisation if satisfied that he has been ordinarily resident in foreign countries for a continuous period of seven years and during that period has neither-

- (a) been at any time in the service of the Federation or of an international organisation of which the Federal Government was a member; nor

(14)

(b) registered annually at a Malayan Consulate his intention to retain his citizenship.

(3) No person shall be deprived of citizenship under this Article unless the Federal Government is satisfied that it is not conducive to the public good that that person should continue to be a citizen; and no person shall be deprived of citizenship under Clause (1) if, as the result of the deprivation, he would not be a citizen of any country outside the Federation.

27. (1) Before making an order under Article 24, 25 or 26, the Federal Government shall give to the person against whom the order is proposed to be made notice in writing informing him of the ground on which the order is proposed to be made and of his right to have the case referred to a committee of inquiry under this Article.

(2) If any person to whom such notice is given applies to have the case referred as aforesaid the Federal Government shall, and in any other case the Federal Government may, refer the case to a committee of inquiry consisting of a chairman (being a person possessing judicial experience) and two other members appointed by that Government for the purpose.

(3) In the case of any such reference, the committee shall hold an inquiry in such manner as the Federal Government may direct, and submit its report to the Government; and the Federal Government shall have regard to the report in determining whether to make the order.

31. Until Parliament otherwise provides, the supplementary provisions contained in the Second Schedule shall have effect for the purposes of this Part.

PART IV

The Federation

Chapter I - The Supreme Head

32. (1) There shall be a Supreme Head of the Federation,

to be called the Yang di-Pertuan Agong, who shall take precedence over all persons in the Federation and shall not be liable to any proceedings whatsoever in any court.

(2) The Consort of the Yang di-Pertuan Agong (who shall be known as the Raja Permaisuri Agong) shall take precedence next after the Yang di-Pertuan Agong over all other persons in the Federation.

(3) The Yang di-Pertuan Agong shall be elected by the Conference of Rulers for a term of five years, but may at any time resign his office by writing under his hand addressed to the Conference of Rulers or be removed from office by the Conference of Rulers, and shall cease to hold office on ceasing to be a Ruler.

(4) The provisions of Parts I and III of the Third Schedule shall apply to the election and removal of the Yang di-Pertuan Agong.

SPECIAL POWERS AGAINST SUBVERSION, AND EMERGENCY POWERS

149. (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation -

- (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or
- (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or
- (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or
- (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or
- (e) which is prejudicial to the security of the Federation or any part thereof,

any provision of that law designed to stop or prevent

THE REGISTRATION AUTHORITY

3. For the purposes of Part III and this Schedule the Election Commission shall be the registration authority.

4. The registration authority may delegate to any of its officers, or, with the consent of the Yang di-Pertuan Agong or of the Ruler or Governor of any State, to any officer of the Federal Government or of the Government of that State, any of its functions under Part III or this Schedule; but any person aggrieved by the decision of a person to whom functions of the authority are so delegated may appeal to the authority.

5. Any person aggrieved by a decision of the registration authority may appeal to the Supreme Court on a point of law, but except as aforesaid a decision of the registration authority under Part III shall not be subject to appeal or review in any court.

FUNCTIONS OF MINISTER AND REGISTRATION AUTHORITY

6. Subject to federal law, the Minister and the registration authority may make rules and prescribe forms for the purpose of the exercise of their respective functions under Part III and this Schedule.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT
OF THE FEDERATION OF MALAYA

IN THE COURT OF APPEAL AT
KUALA LUMPUR

BETWEEN

LIM LIAN GEOK Appellant

- and -

THE MINISTER OF THE
INTERIOR, FEDERATION
OF MALAYA Respondent

CASE

FOR THE APPELLANT

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