

Dow Jones Publishing Company
(Asia) Incorporated

Appellant

v.

The Attorney-General of Singapore

Respondent

FROM

THE COURT OF APPEAL OF THE
REPUBLIC OF SINGAPORE

REASONS FOR DECISION OF THE LORDS OF THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL
OF THE 20TH JULY 1989, UPON A PETITION
FOR SPECIAL LEAVE TO APPEAL AND
A MOTION, DELIVERED THE
5TH OCTOBER 1989

Present at the hearing:-

LORD BRIDGE OF HARWICH
LORD ROSKILL
LORD ACKNER
LORD JAUNCEY OF TULLICHETTLE
LORD LOWRY

[Delivered by Lord Bridge of Harwich]

On 20th July 1989 their Lordships heard a motion by the Attorney-General for Singapore that this petition for special leave to appeal be dismissed for want of jurisdiction. Their Lordships announced their conclusion that they had no jurisdiction to entertain the petition and indicated that they would give their reasons later. This they now do.

The petitioner applied in the High Court of Singapore for two orders of certiorari to quash decisions made by the Minister of Communications and Information relating to the Asian Wall Street Journal. The applications were dismissed by Sinnathuray J. on 15th May 1988 whose decision was affirmed by the Court of Appeal in Singapore in a reserved judgment delivered on 1st June 1989. The petitioner seeks special leave to appeal from that judgment.

The Republic of Singapore is an independent sovereign state and the jurisdiction of the Judicial Committee of the Privy Council to entertain appeals

from the Supreme Court of Singapore is purely statutory. The combined operation of Singapore and United Kingdom legislation has the effect of constituting the Judicial Committee the final Singapore Court of Appeal. Section 100 of the Constitution of Singapore provides:-

"100.- (1) The President may make arrangements with Her Majesty for reference to the Judicial Committee of Her Britannic Majesty's Privy Council of appeals from the Supreme Court.

(2) Any appeal under this Article shall be subject to such conditions as to leave or otherwise as may be prescribed by any written law or by or under the enactments regulating the proceedings of the Judicial Committee of Her Britannic Majesty's Privy Council."

To enable effect to be given in United Kingdom law to arrangements made pursuant to section 100 of the Constitution of Singapore, section 3(1) of the Singapore Act 1966 provides:-

"Her Majesty may by Order in Council confer on the Judicial Committee of the Privy Council such jurisdiction and powers in respect of appeals from ... any ... court having jurisdiction under the laws of Singapore, as appear to Her Majesty to be appropriate for giving effect to any arrangements made in that behalf between Her Majesty's Government in the United Kingdom and the government of Singapore in accordance with any provisions of those laws."

The Republic of Singapore (Appeals to Judicial Committee) Order 1966 (S.I. 1966 No. 1182) ("the 1966 Order in Council") made under section 3 of the Singapore Act of 1966 enables the Judicial Committee to exercise jurisdiction appropriately in terms which mirror and reflect the provisions of the relevant Singapore statute, the Judicial Committee Act. Section 3 of that Act, in its unamended form, provides:-

"3.- (1) An appeal shall lie from the appellate court to the Judicial Committee with the leave of the appellate court granted in accordance with the provisions of section 4 of this Act -

- (a) from any final judgment, decree or order in any civil matter where -
 - (i) the matter in dispute in the appeal amounts to or is of the value of five thousand dollars or upwards; or
 - (ii) the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right of like amount or value; or

- (iii) the case is from its nature a fit one for appeal; and
- (b) from any interlocutory judgment or order which the appellate court considers a fit one for appeal; and
- (c) from any decision in the exercise of any original or advisory jurisdiction conferred on the appellate court.

(2) An appeal shall also lie from the appellate court to the Judicial Committee in the following cases, namely:-

- (a) in any case mentioned in subsection (1) of this section where the leave of the appellate court has not been duly obtained; and
- (b) in any case arising in a civil matter other than the cases referred to in subsection (1) of this section; and
- (c) in any criminal matter,

where application for special leave to appeal has been made to the Judicial Committee, and the Judicial Committee has granted special leave to appeal."

On 21st April 1989 the Judicial Committee (Amendment) Act 1989 ("the Act of 1989") came into force in Singapore enacting a new subsection (3) to follow subsections (1) and (2) of section 3 of the Judicial Committee Act ("the principal Act") which provides:-

"(3) Notwithstanding subsections (1) and (2), no appeal shall lie from the appellate court to the Judicial Committee in any case arising in a civil matter except between those parties to the proceedings who have at any time before the hearing of the case by the appellate court consented in writing to be bound by an appeal to the Judicial Committee in that case; and the appeal shall not affect any party to the proceedings who has not so consented."

The transitional provisions of the Act of 1989 are contained in section 4 which provides:-

"4. This Act shall not apply to any appeal, application for leave or application for special leave to appeal made under the principal Act against any decision of the appellate court given before the commencement of this Act; and the principal Act shall continue to apply to such appeal, application for leave or application for special leave to appeal as if this Act had not been enacted."

The submission made by Sir Godfray Le Quesne Q.C., for the Attorney-General, may be very shortly summarised. The jurisdiction of the Judicial Committee to entertain appeals from the Singapore courts is governed by the Singapore statute, which is the relevant "written law" referred to in section 100 of the Constitution. The decision sought to be appealed against was given after the commencement of the Act of 1989. The transitional provisions in section 4, therefore, have no application. The parties to the appeal to the Court of Appeal in Singapore did not, before the hearing of the case by that court, consent in writing to be bound by an appeal to the Judicial Committee. It follows that the jurisdiction of the Judicial Committee to entertain the petition for special leave to appeal is expressly excluded by the terms of the Singapore statute as amended.

Mr. Blom-Cooper Q.C., for the petitioner, submitted that the jurisdiction of the Judicial Committee was still governed by the terms of the 1966 Order in Council, which has not been amended, and that, in any event, the Singapore legislation could not constitutionally revoke what he described as "the special leave jurisdiction".

Their Lordships were unable to accede to either of Mr. Blom-Cooper's submissions. The 1966 Order in Council is mere machinery to give effect to arrangements made between Her Majesty's Government and the President of the Republic of Singapore to enable the Judicial Committee to act as the final Court of Appeal from the Singapore courts so far as Singapore law allows. This is clear from the concluding words of section 3 of the Singapore Act 1966 "in accordance with any provision of [the laws of Singapore]". Once the scope of the jurisdiction is restricted by the Singapore legislation the Judicial Committee can only act within that restriction.

The submission made by reference to a "special leave jurisdiction" is misconceived. The relevant jurisdiction of the Judicial Committee is, as already stated, purely statutory and is in no way derived from the prerogative of the Crown exercised by Her Majesty in Council. Moreover, there is nothing in the Constitution of Singapore which in any way restricts the power of the Singapore legislature to curtail or abolish the jurisdiction of the Judicial Committee to entertain appeals from the courts of Singapore. The language of the new subsection (3) of section 3 of the Singapore Judicial Committee Act is perfectly clear and unambiguous and is equally effective to restrict the appeals to the Judicial Committee which may be brought either by leave of the appellate court under subsection (1) or by special leave of the Judicial Committee under subsection (2).

Their Lordships understand the petitioner's sense of grievance that, after the appeal from the judgment of Sinnathuray J. had been argued and at a time when it was known that the Act of 1989 would shortly come into operation, the Court of Appeal in Singapore did not accede to an invitation to give their decision promptly, if necessary giving their reasons later, which would have enabled the petitioner to take advantage of the transitional provisions in the Act of 1989. This consideration could not, however, properly affect the outcome of the Attorney-General's motion.

It is for these reasons that the petition must be dismissed with costs.





