TWO VIEWS ON DEPRIVIATION OF CITIZENSHIP

Re Chua Ho Ann[1]

On 19 December, 1960 by Notice of the Permanent Secretary to the Ministry of Home Affairs the applicant was advised of the intention of the Government to deprive him of his citizenship under the provisions of section 22 (3) of the Singapore Citizenship Ordinance, 1957.[2] Under the terms of that Ordinance a citizen of Singapore by either registration or naturalization could be deprived of his citizenship by the Minister. The Minister could make the order provided he was satisfied, *inter alia,* that the citizen had, at any time after the acquisition of citizenship, engaged in any criminal activities prejudicial to the interests of public safety, peace or good order. The Ordinance further directed the Minister to be satisfied that it be conducive to the public good that the person should no longer be a citizen of Singapore before he executed the order.

Prior to making the order of depriviation of citizenship, the Minister was obliged to give the affected person notice in writing informing him of the ground on which ho proposed to make the order as well as of the effected person's right to have the case referred to a Committee of Inquiry. Should the citizen not claim his right to a hearing, the Minister could, as a matter of discretion, refer the case to the Committee of Inquiry. The inquiry committee provided for consists of three persons, including the Chairman, the latter being required to possess qualifications for appointment as a judge. The function of the Committee is to report to the Minister, who is the appointing authority. The Minister determines the procedure of the Committee and is not bound to follow its advice, although the Ordinance directs him to "have regard to" the Committee's report in making his order.

In this action the applicant sought an Order of Prohibition against the Minister prohibiting him from taking any further step in pursuance of the notice of December 19, 1960. An Order of Prohibition was also sought against the Committee of Inquiry

32. *Jamait All Shah* v. *Mir Muhammad* [1916] Punjab Record 361.

33. *Salmah* v. *Soolong* (1878) 1 Ky. 421.

1. (1963) 29 M.L.J. 193.

2. No. 35 of 1957.

to prohibit it from proceeding in accordance with the statutory provisions. The substantive claim of the applicant was that both the Minister and the Committee of Inquiry were biassed against him. In support of this allegation, the applicant offered evidence of a statement by the Prime Minister, when he was campaigning for office, that he would get the applicant into trouble should he come into office. The applicant showed, also, that he was arrested and detained, two months after the Prime Minister's party assumed power, under the Criminal Law (Temporary Provisions) Ordinance 1953,[3] which provides for detention without trial. The Court chose to deal with this and several other arguments of substance, although it had, initially in its opinion, disposed of the case on procedural grounds.

The first issue the Court decided was whether the Order of Prohibition would issue either to the Minister or to the Committee of Inquiry. The Court, citing *R.* v. *Electricity Commissioners,*[4] for the principle that the order would lie to control judicial or quasi-judicial actions, found that the duties of the Committee were not judicial or quasi-judicial in nature. The Court observed that the Committee's function was to inquire and to investigate into facts, and to convey information to the Minister, which he was free to disregard. The opinion of the Court on this aspect of the case seems eminently sound. A body, however distinguished, which proceeds according to no fixed rules, which either reaches no decision or reaches one which has no binding force, even temporarily, on any person or body, fails to meet a reasonable definition of "judicial" or even of the amorphous "quasi-judicial". The Court, was obviously correct in rejecting the argument that the Committee was judicial in nature for the reason that it could subpoena witnesses and examine them under oath. As the Court pointed out, these are merely matters of procedure and are powers possessed by many committees for which the judicial claim is not made.

The Court also found that the functions here of the Minister are not judicial or quasi-judicial, but, in the language of the Court, "fundamentally administrative". No authority is cited for this holding; but two factors appeared controlling to the Court: first, that a "wide and unfettered" discretion was entrusted to the Minister, and secondly, that he "may satisfy himself by any available means at his disposal and his conclusions may be influenced by his conception as to what public policy demands". With respect, these factors, separately or together, would scarcely seem to support the Court's conclusion. Indeed, the very reasoning by which the Court properly concluded that the Committee of Inquiry was not a judicial body would, one would have thought, show that the Minister is here charged with a judicial function. Of the Committee the Court said, "It makes no decision on the result of its findings, which have no legal or binding force, affect no rights and impose neither liabilities nor obligations." Just so! But this is precisely what the Minister does do. The Court, when it was addressing itself to the Committee's function, also said, "It is to the Minister and the Minister alone that the decision to deprive a person of his citizenship is entrusted." Agreed; and, it is submitted, that decision is judicial in character.

When the Court was concerned with the Committee, it held that classification of function did not turn on procedure. But in dealing with the Minister, it characterized his function largely on a matter of procedure — the means by which he satisfies himself in reaching his conclusion. And the fact that this Minister's discretion is, as the Court says, "wide and unfettered" would seem to be an argument supporting, not negating, the appropriateness of the remedy of Prohibition on a proper substantive showing.

Of course, determining whether an act is judicial, making it amenable to control by Prohibition and Certiorari, or administrative is among the most difficult of questions coming regularly before English courts and courts following the laws of England. If one can agree that the Minister, though he may act in his discretion, is nevertheless not justified in acting without adequate cause, some help in characterization may be secured from *Vine* v. *National Dock Labour Board.*[5] There Lord Cohen said, "The determination of whether there is adequate cause seems essentially a proper matter

3. No. 26 of 1955.

4. [1924] 1 K.B. 171.

5. [1957] A.C. 488 (H.L.).

for decision judicially".[6] That case involved the power of a local labour board to disentitle a worker to payment. Lord Cohen pointed out that, "Under clause 15 (4) the local board are to *consider* any such written report and to *investigate* the matter and are empowered, if they are *satisfied* that the worker is at fault in the respect alleged, to disentitle him... .to payment. .. .

"....

"The provisions of clause 18 requiring, as I think, that if there is an appeal the local board must state the grounds on which they acted, re-inforces my view that. .. . the local board must act in a judicial manner."[7] The similarity of the functions performed by the labour board and by the Minister in depriving one of his citizenship seems very great.

Some of the English cases concerning the action of Ministers under Town and Country Planning Acts appear to have gone a long way in characterizing Ministerial acts as administrative, removing them from the control of the courts.[8] But two important elements would seem to distinguish those cases. In the first place, the question, as it is customarily raised, concerns one or more parcels of land which are a part of a scheme of development, necessitating policy decisions peculiarly administrative in nature. Secondly, the matter involved is property. But in the issue of depriviation of citizenship a highly individual and personal right, perhaps more dear than liberty itself, is the subject under consideration. Matters of "policy" can no more be applicable than the "policy" that is involved in the administration of the criminal law.

Having disposed of the case on the procedural grounds discussed, the Court, nevertheless, for reasons of an anticipated appeal, proceeded to "express its views" on the substantive issue of bias, finding "no real likelihood of bias on the part of the Minister....". Though the point seems merely one aspect of bias, the Court found separately that there was no substance in the contention that the Minister had foreclosed his mind against the applicant.

As to the decision on bias, one has no quarrel. This is a question largely of fact. But one may be permitted to wish that the Court had reached this issue of substance after holding the Minister amenable to judicial control for the reason that in deciding a matter so vital to the citizen as the depriviation of his citizenship, the Minister could only properly act by acting judicially, or, if one prefers, quasi-judicially.

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6. *Ibid,* at p. 505.
7. *Ibid,* at p. 506.
8. *E.g., Franklin* v. *Minister of Town and Country Planning,* [1948] A.C. 87 (H.L.).