DEPRIVATION OF CITIZENSHIP

Lim Lian Geok v. *Minister of the Interior, Federation of Malaya*[1]

The Constitution of the Federation of Malaya contained[2] various provisions governing deprivation of citizenship by the Federal Government, some applicable to all citizens and some applicable only to specified classes of citizens. Typical of the latter is Article 25(1) (a) which provided that a person registered as a citizen under Article 17[3] or who was naturalised as a citizen could be deprived of his citizenship if the Federal Government was satisfied "that he has shewn himself by act or speech

23. *Ibid*., p. 145.

24. *Ibid*. Italics added.

25. [1929] P. 131.

26. [1963] 3 W.L.R., p. 271.

27. *Ibid*.

28. [1929] P. 131.

29. [1957] N.Z.L.R. 649, [1958] N.Z.L.R. 964 (C.A.).

1. (1964) 30 M.L.J., 168, (Privy Council) (Lords Cohen, Evershed, Hodson, Donovan and Borth-Y-Gest). The decisions of the High Court and Court of Appeal are reported in (1962) 28 M.L.J. at pages 160 and 165 respectively.

2. The Malaysia Act 1963 which amended the Constitution upon the admission of the three new States has, except for minor amendments, left intact these provisions for deprivation of citizenship.

3. This Article, which provided for the acquisition of citizenship on the basis of residence, was repealed in 1962.

to be disloyal or disaffected towards the Federation". Though grounds for deprivation varied, the procedure to be followed was the same for all cases of deprivation of citizenship. The chief features of this procedure[4] are that a written notice has to be given to the citizen informing him of the ground on which the order of deprivation is proposed to be made and informing him of his right to have his case referred to a Committee of Inquiry; [5] either the citizen or the Government can cause the case to be so referred and while the report of the Inquiry is not binding, the Government is to have regard to the report before it makes the order of deprivation.

On 12 August 1961, the appellant received a Notice from the Registrar-General of Citizens which read, *inter alia,*

> ".... [That] 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 Governmental Educational 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 violance."

This Notice informed him that the Government therefore proposed to deprive him of his citizenship under Article 25 and informed him of his right to have his case heard by a Committee of Inquiry. He was told that if he did not claim such an Inquiry, the Government would "proceed to make the order" depriving him of his citizenship.

Lim Lian Geok did not refer his case to a Committee of Inquiry but instead chose to challenge the validity of the Notice by way of legal proceedings. He obtained an order nisi of prohibition from Ong J. prohibiting the Minister from referring the case to a Committee of Inquiry under Article 27. On a motion by the Minister, this order *nisi* was discharged by Thomson C.J. who held the Notice to be valid. From this decision Lim appealed to the Court of Appeal which dismissed the appeal in 1962. He then took his case to its final stage by appealing to the Privy Council. Their Lordships dismissed the appeal.

The appellant employed several arguments in his attack or the form and content of the Notice (though some arguments were not present at every stage of the proceedings [6]). In this note, the writer wishes to confine himself to comment on some aspects of the opinion of the Privy Council. Before their Lordships, the appellant's chief arguments were (1) that the Notice was lacking in particulars and details of what had been alleged against him; (2) that the matters alleged against him in the Notice, even if true, were not capable of constituting disloyalty or disaffection; (3) that the Notice was in disregard of the rule of natural justice as it expressed an unwarranted threat or indication.

(a) The first point which requires comment is the propriety of the remedy which was sought; can prohibition indeed lie against the Minister acting under the citizenship provisions of the Constitution? In the hearing before Thomson C.J. the Minister, in this affidavit, did suggest that "an order of prohibition does not lie against the decision of the Minister".[7] There is little else on the point, and neither Thomson

4. See Article 27.

5. It is a Committee of three, headed by a person possessing judicial experience.

6. For instance, the argument that particulars had not been given in the Notice was introduced only in the Court of Appeal. On the other hand, the argument that the Notice was bad because it was signed by the Registrar-General instead of the Minister was not presented to the Privy Council (having played a prominent part of the appellant's case in the lower Courts).

7. (1962) 28 M.L.J. 161.

C.J. nor the Court of Appeal nor the Privy Council indicated whether any attention at all was given to this question. The entire case seems to have proceeded on the assumption that prohibition was a proper remedy. It is unfortunate that we are not informed as to the basis of this assumption. The remedies of certiorari and prohibition have consistently been associated with technicalities, the most notorious of which is the necessity to determine whether the impugned decision is 'judicial Or quasi-judicial'. Some recent decisions[8] in Malaya and Singapore (which now come under a single judicial system in Malaysia) indicate that doubt and uncertainty exist here as to the importance which should be attached to the judicial stroke quasi-judicial requirement in the granting of prohibition and certiorari. Where in one case the application for prohibition failed because of the failure to meet this technical requirement, in another the remedy has been granted without the question ever having been discussed. It might well be that the judges who tend to disregard the judicial/quasi-judicial requirement feel that it is an archaic technicality that should have no place in the spirit of modern day judicial review.[9] If so, it should have been so stated authoritatively. It should seem, therefore, that the Privy Council missed an opportunity to clarify the position on this aspect of the law. Indeed, their omission to discuss the problem might well add to the uncertainty.

(b) The next interesting aspect of the case is the argument of appellant that the Notice was bad because it was lacking in particulars and details of what was alleged against him. This argument could have been disposed of, if their Lordships so desired, on the ground that particulars had in fact been given (see paragraphs (a) and (b) of the Notice). What their Lordships decided, however, was that no particulars need be given at all in the Notice, and that the word 'ground' in Article 27(2) referred to the relevant provision of the Constitution on which the Government was relying for the proposed deprivation order. According to the Privy Council, therefore, if a Notice informed the citizen that it was proposed to deprive him of his citizenship under Article 25(1) (a), such Notice would be an adequate notification of the 'ground'. The effect of this holding is, of course, that the citizen who wishes to challenge the proposed deprivation "....cannot safely neglect the opportunity which is presented to him when a Notice under Article 27(1) is given to him".[10]

But the question which springs from their decision on this point is how the citizen is expected to make representations before the Committee of Inquiry if particulars are not given to him. There are no provisions which expressly state that particulars must be given when the case comes before the Committee. The Privy Council, on this question, felt that "it is implicit in the procedure" that particulars should be given at that stage:

> "This [i.e. the holding of the Committee of Inquiry] involves that the citizen concerned is to have every reasonable and proper opportunity to deal with the 'ground' (or 'grounds') on which a deprivation order is proposed. This in turn involves that he must have such *reasonable* information as he may seek to have in regard to the case against him so as to enable him to deal

8. See: *Munusamy* v. *Public Services Commission* (1960) 26 M.L.J. 220. Here, in an application for certiorari, Ong J. remarked that it was unnecessary to decide if the Commission was acting judicially or quasi-judicially and that the remedy would lie if the Commission had transgressed the Constitution. For comment, see notes by Koh, Huang in (1962) 4 Malaya Law Review 305; (1963) 5 Malaya Law Review 166-170.

   Re Chua Ho Arm (1963) 29 M.L.J. 193 a case concerning deprivation of citizenship under the Singapore Citizenship Ordinance the provisions of which were similar, in respect of procedure, to the Constitutional provisions in the case under review. The citizen here sought prohibition against the Minister as well as the Committee. Buttrose J. dismissed the application for prohibition on the ground that the judicial/quasi-judicial test was not fulfilled. For comment, see Groves, Athulathmudali, in "Two Views on Deprivation of Citizenship" (1963) 5 Malaya Law Review 397, 399.

   Coelho v. *The Public Services Commission* (1964) 30 M.L.J. 12 where Ong J. granted certiorari to quash a decision of the Commission. There was no discussion whether the Commission was acting judicially or quasi-judicially.

9. The Courts of Judicature Act 1964 provides that the powers of the High Courts includes "power to issue to any person or authority directions, orders or writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any others, for the enforcement of any of the rights conferred by Part II of the Constitution, or any of them, or for any purpose", (see s. 1 of First Schedule).
   Quaere: Are the words "or for any purpose" sufficiently wide to enable Courts to grant certiorari or prohibition in cases where the judicial or quasi-judicial test is not fulfilled ?

10. (1964) 30 M.L.J. 158, 164.

> with it or to answer it or to make such representations in regard to it as he wish. There would not be a proper inquiry if the citizen concerned was denied such particulars as *he might need to have or as he might reasonably request* in order to be able to protect his own interests." [11]

The above passage from their Lordships' opinion indicates that not only are particulars required to be given if the case comes up before the Committee of Inquiry, but that the *sufficiency* of these particulars is a justiciable matter. (If this interpretation is correct, then there appears to be an analogy to the approach of the Indian Courts to the question of supplying particulars in preventive detention cases in India.[12]) There is no doubt that a citizen would be unable to prepare even a semblance of a case, and the Committee rendered a farce, if the particulars supplied were meagre, insufficient or vague. It would appear, therefore, that the Privy Council, while dismissing Lim Lian Geok's appeal, has in fact interpreted Article 27 in a manner which is much in favour of the citizen. It is true, of course that in this case the decision of deprivation had not been made and the Privy Council, consequently, was not called upon to review the "satisfaction" of the Minister. As a result, it would require another case to determine the effect of the provision in the Constitution which reads:

> "A decision of the Federal Government under Part III [i.e. Citizenship] shall not be subject to appeal or review in any Court." [13]

Should the Courts here ever have occasion to interpret this provision, one would be surprised, considering the approach already indicated above by the Privy Council, if the Courts showed any hesitancy in arriving at a construction which favoured judicial review.

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11. (1964) 30 M.L.J. 153, 164. Italics added.

12. See *State of Bombay* v. *Atma Bam Shridhar Vaidya* A.I.R. 1951 S.C. 157, 161; *Dr. Ram Krishnan Bhardwaj* v. *State of Delhi* A.I.R. 1953 S.C. 318, 320.

13. S. 2, Part III of Third Schedule of the Constitution.