HABEAS CORPUS — MISUSE OF DRUGS OR MISUSE OF POWERS?

Daud bin Salleh v. *Superintendent, Sembawang Drug Rehabilitation Centre*[1]

Subramaniam v. *Superintendent, Selarang Park Drug Rehabilitation Centre*[2]

Two cases reported recently concerned the legality of the exercise of powers under section 33, Misuse of Drugs Act 1973.[3] The section reads as follows:

> "33.—(1) The Director of the Central Narcotics Bureau may require any person whom he reasonably suspects to be a drug addict to be medically examined or observed by a government medical officer or a medical practitioner.
>
> (2) If as a result of such examination or observation or as a result of a urine test it appears to the Director of the Central Narcotics Bureau that it is necessary for any person to undergo treatment or rehabilitation or both at an approved institution, the Director may make an order in writing requiring that person to be admitted for such purpose to an approved institution."

In the first case the applicant was arrested by officers of the Central Narcotics Bureau ("C.N.B.") and detained in a lock up at a police station. The following day he was taken to the drug rehabilitation centre and given the "cold turkey" treatment. He was seen by a doctor on the next two consecutive days but no urine sample was taken. The relevant portion of the doctor's report read as follows:

> "... I found that he had definite clinical evidence of drug withdrawal syndrome consistent with heroin addicted [sic]. In my opinion he is a heroin addict."

Acting on this report the Director of C.N.B. made an order under section 33(2) detaining the applicant for three years for treatment. The applicant applied to the High Court for a writ of habeas corpus.

The second case involved three similar applications against a similar defendant. The first applicant was arrested along with several others at a "pot party". The other two applicants were drug supervisees who were arrested after a urine test which, as supervisees, they were obliged to undergo.

The doctor's report on the first applicant read:

> "He had definite clinical evidence of drug withdrawal syndrome consistent with heroin addiction. In my opinion he is a heroin addict."

The doctor's report on the second applicant read:

> "... I observed that he had definite clinical evidence of drug withdrawal syndrome consistent with heroin addiction. In my opinion he has re-addicted to heroin."

The doctor's report on the third applicant was the same as for the second with the added remark:

> "I am of the opinion that he is a hardcore drug addict too."

1 [1981] 1 M.L.J. 191.
2 [1981] 1 M.L.I. 194.
3 Act 5 of 1973.

Acting on the these reports (all four, it would appear, were made by the same government medical officer), the Director of C.N.B. made orders under section 33(2) in respect of the applicants, and they too, applied to the High Court for writs of habeas corpus.

The thrust of all four applications related to section 33(2). It was argued in each case that the Director had acted on the bare opinion of the doctor, that there was no factual evidence on which it could appear to him necessary for the applicant to undergo treatment or rehabilitation, and that the orders were therefore invalid.

Choor Singh J. in the first case acceded to this line of argument and granted habeas corpus. In the second case counsel for the applicants was unable to persuade Chua J. to follows this decision. The judge adjourned the case to be heard by a bench of three judges, who dismissed the applications.

The principle applied by Choor Singh J. was stated as follows:[4]

> "It is a well known principle of law that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another. An authority entrusted with a discretion must not in the purported exercise of its discretion, act under the dictation of another body or person."

His Lordship pointed out that the Director had a right to decline to follow the doctor's opinion, and that he had before him no factual evidence on which he could have made up his own mind; furthermore the liberty of the subject was involved and legislation affecting a person's liberty must be strictly construed and strictly complied with.

His Lordship's reasoning is familiar and, one would have thought, indisputable. He referred to no authority, but, in view of the discrepancy between the two decisions under consideration, authority can be supplied in the form of the well known case *Lavender & Son Ltd.* v. *Minister of Housing and Local Government*.[5] The applicants applied for planning permission to extract sand, gravel and ballast from a site which was within an area of high quality agricultural land. The planning authority refused permission and the applicants appealed to the Minister. There was no evidence against the proposal except an objection from the Minister of Agriculture, who wished to see the land maintained as agricultural land, even though the evidence in favour indicated that the land could be restored to a high standard of fertility after excavation. The Minister refused planning permission on the ground that it was his policy not to allow such an application unless it was not opposed by the Minister of Agriculture. Willis J. quashed the decision on the ground *(inter alia)* that the Minister had "in effect inhibited himself from exercising a proper discretion" and had "fettered himself in such a way that in this case it was not he who made the decision for which Parliament made him responsible."

[4] [1981] 1 M.L.J. 193E. The first sentence of the passage quoted would appear to be a direct quotation from de Smith, *Judicial Review of Administrative Action* (4th ed.) p. 298; the second sentence is from Wade, *Administrative Law* (4th ed.) p. 317.

[5] [1970] 1 W.L.R. 1231. Their Lordships in *Subramaniam's* case referred to no authority save *Robinson* v. *Sunderland Corporation* [1899] 1 P.B. 751, a case which in no way supports their decision.

There are also similar decisions in cases where the authority exercising the discretion acted under dictation from a superior authority.[6]

In view of the fact that this reasoning did not appeal to the bench of three judges in *Subramanim's* case it would be well to inquire into their reasons. There appear to be three reasons why the applications were dismissed:

(i) On a plain reading of section 33(2), the meaning of "result" is the effect or outcome of the medical examination, so that the legislature, by using this word did not intend the doctor to furnish detailed facts and analysis.

(ii) As a layman the Director was entitled to be guided by the findings of medical fact, the sufficiency of which was only for the Director.

(iii) The use of the word "appears" made the Director the sole judge, and the courts should not interfere so long as he acts fairly and in good faith, and follows properly the procedure set out in section 33.

The first point is clearly wrong. On a plain reading the word "result" refers not to the affirmative or negative outcome of the examination, but the consequence of such examination with regard to the Director's opinion whether treatment is necessary. Thus the legislature has not specified whether evidence is or is not to be furnished, so that one has to fall back on the long-standing principles of administrative law. In this case they clearly provide the answer that the Director must himself be satisfied on the evidence; if there is no evidence before him he cannot in law be satisfied.

The second point is misleading and self-contradictory. The Director was certainly entitled to be guided by the doctor's report, but not so as to abdicate all responsibility for deciding the question himself. If the sufficiency of findings was a matter only for the Director, how could he be satisfied they were sufficient when they were never put before him? No doubt if it had been intended that the decision should rest purely upon the doctor's opinion whether the suspect was a drug addict, the statute would have made it plain that this was so.

The third point is a serious misstatement of the law which ignores some important established principles. Where a statute uses a phrase such as "if it appears to X" or "if X is satisfied" or "if X thinks fit", it is now clear that such tests, notwithstanding their subjective appearance, are to be regarded as objective in nature; such a test cannot therefore be regarded as satisfied unless there exist objectively reasonable grounds supporting the conclusion.[7] There were no reasonable grounds in the instant cases because there were no grounds at all.

[6] For example *Simms Motor Units v. Minister of Labour* [1946] 2 All E.R. 201; *Roncarelli* v. *Duplessis* [1959] S.C.R. 121 (Sup. Ct. of Canada); *Kent C.C.* v. *Secretary of State for the Environment* (1977) 75 L.G.R. 452.

[7] It would be impossible to cite even a fraction of the cases of this kind. The best examples are *Ashbridge Investments Ltd.* v. *Minister of Housing and Local Government* [1965] 1 W.L.R. 1320; *Maradana Mosque Trustees* v. *Mahmud* [1967] A.C. 13 and *Secretary of State for Education* v. *Tameside M.B.C.* [1976] 3 W.L.R. 641.

It is submitted that the indisputably correct statement of the law by Choor Singh J. applies without reservation to the facts of each case. The Director of C.N.B. did not apply his mind to the exercise of his discretion. He acted mechanically under dictation from the doctor, and he acted on no evidence. It is not easy to imagine a clearer case of a complete failure to exercise a discretion.

Bureaucratic short-sightedness and regard for convenience at the expense of due consideration of the right course of action is a serious matter. That the judges have failed to point out and correct the abuse is a far more serious matter, because it encourages administrative officials to act in an arbitrary fashion without regard to the rights of individual citizens and without fear of judicial scrutiny. The administration in Singapore enjoys a high reputation for vision and efficiency; this reputation cannot be maintained if judges allow exceptional cases of abuse to go uncorrected. Arbitrary exercise of authority is not only obnoxious in itself, but it perpetuates an unhealthy atmosphere, souring the public's regard for the administration. It should be realised that the proper and lawful modes of exercise of discretion create efficiency and confidence; abuses of discretion create inefficiency and mistrust.

It is fair to say that until now the principles of administrative law have been applied rigorously in Singapore, without fear or favour. The decision of the three judges in *Subramaniam's* case represents a notable failure of the rule of law. As long as it is allowed to stand the public and the legal profession must remain uncertain whether serious abuses will be rectified by the courts in accordance with accepted principles.

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