

Kang Ngah Wei v Commander of Traffic Police
[2002] SGHC 4

Case Number : OS 601603/2001
Decision Date : 07 January 2002
Tribunal/Court : High Court
Coram : Tan Lee Meng J
Counsel Name(s) : Andrew Hanam (Hanam &Co) for the applicant; Jeffrey Chan Wah Teck (Senior State Council) for the respondent
Parties : Kang Ngah Wei — Commander of Traffic Police

Administrative Law – Remedies – Certiorari – Revocation of applicant's driving licence by Commander of Traffic Police – Application for leave to apply for order of certiorari to quash decision – Whether to grant leave – When leave will be granted – Reason for requiring leave to apply – Whether Commander's decision outrageous or defying logic

Judgment

GROUND OF DECISION

1. The applicant, Ms Kang Ngah Wei @ Charlene, whose driving licence was revoked by the Commander of Traffic Police on 15 October 2001, sought leave to apply for an order of certiorari to quash the decision to revoke her driving licence. Mr Jeffrey Chan, Senior State Counsel, who appeared for the Commander of Traffic Police, objected to leave being granted to her to apply for the said order.

Background

2. Ms Kang was involved in a motor accident along Lornie Road on 19 September 2001 at 4.30 am. Her car hit a lamp post. She filed a report with the traffic police on the same day at 7.15 pm. In it, she stated as follows:

On 19 Sept 2001 at about 4.30 am to 5 am after dropping a friend's son off at Andrew Road, I proceed to Bukit Timah via Lornie Road. I was going home. I was travelling on the left first lane.

I had an *acute asthma attack* which resulted in my car swerving up a pavement. *In my state of health* and shock I [stepped] on the accelerator and the car [moved] forward and hit a lamp post.

(emphasis added)

3. Ms Kang also forwarded to the traffic police a letter dated 19 September 2001 from a Dr Vida Chou from the Family Health Medical Centre. In it, Dr Chou stated as follows:

She has had bronchial asthma since childhood and uses inhalers when necessary. She suffered from an acute attack of asthma last night and had difficulty breathing, while driving at 4.30 am this morning. This is for your information.

4. In view of the fact that Ms Kang claimed that the traffic accident in question was caused while

she suffered from an acute attack of asthma, the Commander of Traffic Police decided to revoke her driving licence. On 15 October 2001, the traffic police sent Ms Kang a letter, which stated as follows:

It has been reported that you were involved in a traffic accident on 19 September 2001 at about 5.00 hours along Lornie Road. You were suffering from an acute attack of asthma at [the] time of the accident. A medical report from Dr Vida Chou of the Family Health Medical Centre reflects that you were suffering from an acute attack of asthma and had difficulty breathing while driving at 4.30 am.

For the safety of yourself and other road users, it has been decided to revoke your driving licence. Please surrender your driving licence ... within two weeks of the receipt of this letter.

5. Ms Kang, who decided to challenge the decision of the Commander of Traffic Police, applied for leave to apply for an order of certiorari to quash the decision.

Test for determining whether or not leave should be granted

6. The test for determining whether or not leave should be granted to a person to apply for an order of certiorari was considered by the Court of Appeal in *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR 644, 653. In that case, LP Thean JA, who adopted Lord Diplock's threshold test in *National Federation of Self Employed and Small Businesses Ltd* [1982] AC 617, said at p 653:

Leave would be granted, if there appears to be a point which might, on further consideration, turn out to be an arguable case in favour of granting to the applicant the relief claimed.

Relevant provisions of the Road Traffic Act

7. At this juncture, the relevant provisions of the Road Traffic Act (Cap 276) which empower the police to revoke the driving licence of a person who is a source of danger to the public ought to be considered. Section 37(6) of the Act provides as follows:

If it appears to the Deputy Commissioner of Police that there is reason to believe that any person who holds a driving licence is suffering from a disease or physical disability likely to cause the driving by him of a motor vehicle, being a motor vehicle of any such class or description as he is authorised by the licence to drive, to be a source of danger to the public and, *after making such inquiry as he considers necessary, the Deputy Commissioner of Police is satisfied* that the licence holder is suffering as aforesaid then, whether or not the licence holder so suffering as aforesaid has previously passed a test under this section, the Deputy Commissioner of Police may, after giving to the licence holder notice of such intention, revoke the driving licence.

(emphasis added)

8. By virtue of section 2 of the Road Traffic Act, the term "Deputy Commissioner of Police" includes any police officer not below the rank of sergeant authorised by him in writing by name or office to

exercise the powers vested by the Act in the Deputy Commissioner of Police. As has been mentioned, in the present case, it was the Commander of Traffic Police who revoked Ms Kang's driving licence.

9. Section 37(8) of the Act provides a mechanism for a person whose licence has been revoked on the ground of public safety to attempt to get back his licence. It provides as follows:

The licence holder may, except in the case of such diseases and disabilities as may be prescribed, claim to be subjected to a test as to his fitness or disability to drive a motor vehicle and, if he passes the prescribed test, the driving licence shall not be revoked or, if it has already been revoked, shall be returned to the licence holder and the revocation thereof shall be rescinded.

Ms Kang's grounds for seeking leave

10. Ms Kang attacked the decision of the Commander of Traffic Police to revoke her driving licence on the grounds of procedural impropriety and/or breach of the rules of natural justice and/or unreasonableness.

Whether there has been procedural impropriety or a breach of the rules of natural justice

11. Ms Kang's assertion that the decision to revoke her driving licence was flawed on the ground of procedural impropriety or a breach of the rules of natural justice will first be considered. Her position was put as follows:

Aside from the letter from the traffic police dated 15 October 2001 and the police report filed by the Plaintiff, there were no correspondence by letter or telephone between the Plaintiff and the traffic police. Neither were there any meetings, interviews or discussions between the traffic police and the Plaintiff to ascertain her medical condition to determine whether it was severe enough to warrant revoking her licence. The decision is disproportionate to the cause of the accident and to the Plaintiff's asthmatic condition.

12. Section 37(6) of the Road Traffic Act does not require the police to hold an inquiry or an oral hearing before revoking a driver's licence in the interest of public safety. It provides that if the Deputy Commissioner of Police is satisfied after making *such inquiry as he considers necessary* that a driver is a source of danger to the public, notice of an intention to revoke that driver's driving licence may be given. Admittedly, the Deputy Commissioner's decision is not outside the ambit of judicial scrutiny altogether. In *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, 1047, Lord Wilberforce, while referring to an English statutory provision, said:

The section is framed in a 'subjective' form – if the Secretary of State 'is satisfied'. This form of section is quite well known, and at first sight might seem to exclude judicial review. Sections in this form may, no doubt, exclude judicial review on what is or has become a matter of pure judgment. But I do not think that they go further than that. If a judgment requires, before it can be made, the existence of some facts, then, although the evaluation of those facts is for the Secretary of State alone, the court must inquire whether those facts exist, and have been taken into account, whether the judgment has been made upon a

proper self-direction as to those facts, whether the judgment has not been made upon other facts which ought not to have been taken into account.

13. In the present case, the relevant facts are not in dispute. The Commander of Traffic Police did not act on the basis of a third party's uncorroborated allegation that Ms Kang caused an accident while having an acute asthmatic attack. Instead, he acted on the basis of Ms Kang's own admission that the accident was caused by her loss of control of her vehicle as a result of an acute asthmatic attack. In her police report, she used words such as "in my state of health and shock" when referring to the acute asthma attack suffered by her and her own doctor confirmed that she suffered from an acute attack of asthma at the time of the accident. The letter which was sent to her by the traffic police on 15 October 2001 referred to the fact that the accident occurred while she had an asthma attack and to the medical report submitted by her. The Commander of Traffic Police's decision to revoke her driving licence was, in Lord Wilberforce's words, made "upon a proper self-direction as to those facts" and "not upon other facts which ought not to have been taken into account".

14. There is thus no reason for suggesting that the decision of the Commander of Traffic Police to revoke Ms Kang's driving licence is flawed because of procedural impropriety or a breach of the rules of natural justice. In short, as far as Ms Kang's first ground for attacking the decision of the Commander of Traffic Police is concerned, there is no point which might, on further consideration, turn out to be an arguable case in favour of granting her the relief claimed.

Whether the decision to revoke Ms Kang's licence was unreasonable

15. I now turn to Ms Kang's second ground for leave to apply for an order of certiorari, namely the unreasonableness of the decision to revoke her driving licence. Whether or not the decision of the police to revoke Ms Kang's licence is unreasonable must be viewed in the light of what has been termed "*Wednesbury* unreasonableness". In *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, 233, Lord Greene MR explained:

The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere.

16. It is important to note that Lord Greene MR added that the power of the court to interfere on the ground of unreasonableness "is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them". He added that it is not what the court considers unreasonable that matters. What is relevant is whether or not a decision is so unreasonable that no reasonable authority could ever have come to it. In *Council of Civil Service Unions v Minister for Civil Service* [1985] 1 AC 374, 411, Lord Diplock, while referring to "*Wednesbury* unreasonableness" said that it "applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it".

17. Ms Kang argued that the decision of the Commander of Traffic Police is disproportionate to the cause of the accident and to her asthmatic condition. Her position was put as follows:

The Plaintiff is under medication for her asthma and has a clean driving record since she obtained her licence in 1996. Her licence has never been suspended or revoked. Her asthmatic condition is and has always been under control and it was unfortunate that she had a particularly bad attack on 19 September 2001. The Plaintiff's condition was aggravated by the coolness of the early morning at 4.30 am. The Plaintiff will be taking greater precautions to ensure that such an accident does not occur again. The Plaintiff suffers only about 3-5 attacks a year and is not a chronic sufferer. The Plaintiff does not usually drive her car at 4.30 am. She is mainly a day driver.

18. On the facts, the decision of the Commander of Traffic Police is certainly not one that is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. As such, as far as Ms Kang's second ground for attacking the decision of the Commander of Traffic Police is concerned, there is also no point which might, on further consideration, turn out to be an arguable case in favour of granting her the relief claimed.

Ms Kang has not utilised the mechanism under section 37(8) of the Act to get back her driving licence

19. It should not be overlooked that Ms Kang has not utilised the mechanism provided for in section 37(8) of the Road Traffic Act, which has been referred to above, to get back her driving licence. In fact, after she initiated the present proceedings, the traffic police invited her to take a prescribed medical test and to furnish additional medical information as to why her licence should not be revoked. On 2 November 2001, the traffic police sent her the following letter:

I refer to my letter dated 15 October 2001.

2. To-date, we have not received your driving licence.

3. The reasons forwarded by your lawyer on your behalf have been considered by us. They are not sufficient to assure us that you would not be a danger to other road users. We are prepared to consider any additional evidence that you may have to support your claims that you should not be subjected to the revocation of your driving licence. This should be submitted to us by 18 November 2001. You should also let us know if you are prepared to undergo medical examination by a specialist nominated by us.

4. If you do not wish to provide additional medical evidence or be medically examined, then you should forthwith surrender your driving licence. In any event you should not drive any vehicle on the road until you hear from us.

20. Ms Kang did not respond to the offer. Her counsel, Mr Andrew Hanam, pointed out that the offer to her to take a prescribed test, which was made after the decision to revoke her licence, is irrelevant for the purpose of considering whether the original decision is flawed. He added that before Ms Kang is prepared to take the prescribed test or furnish additional information to satisfy the traffic police that she is not a source of danger to the public, the Commander of Traffic Police must accept

that his decision to revoke her licence is wrong and pay the costs of these proceedings. If that is her stand, she cannot complain if the traffic police have not reversed the decision to revoke her driving licence.

21. In the final analysis, it ought not be overlooked that the traffic police have a duty to act in the interest of the safety of drivers and other users of roads. As such, the power of the traffic police to revoke a driver's driving licence under section 37(6) of the Road Traffic Act to protect members of the public should not be unnecessarily fettered. So long as the Deputy Commissioner of Police, and anyone legitimately exercising his powers, is satisfied, after making such inquiry as is considered necessary, that the revocation of a person's driving licence is in the interest of the public, that person should, without more, exercise his right under section 37(8) of the Act to be subjected to a test as to his fitness to drive a motor vehicle rather than seek an order of certiorari.

Conclusion

22. Admittedly, the test for granting leave to an applicant to apply for an order of certiorari involves a very low threshold. All the same, it is pertinent to note that in *Public Service Commission v Lai Swee Lin, Linda* [2001] 1 SLR 644, 653, LP Thean JA reiterated that the requirement of leave to apply for such an order is intended to be a means of filtering out groundless or hopeless cases at an early stage, and its aim is to prevent a wasteful use of judicial time and to protect public bodies from harassment, whether intentional or otherwise. The present application is clearly one where the granting of leave will waste judicial time and unnecessarily harass the traffic police. As has been mentioned, Ms Kang has the opportunity to present further medical evidence to the traffic police and to take a prescribed medical test to show that she is fit to drive a motor vehicle. Taking all circumstances into account, her application for leave to apply for an order of certiorari is dismissed with costs.

Sgd:

TAN LEE MENG
JUDGE

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