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Singapore: J B Jeyaretnam –Defamation suits assault freedom of expression

Amnesty International today criticised the recent decision of Singapore's Court of Appeal to uphold the appeal of Prime Minister Goh Chok Tong against the S\$20,000 defamation award made against opposition leader Mr J B Jeyaretnam in July 1997, and to increase the award to S\$100,000, plus full costs.

“The court's decision is a further step in the insidious erosion of the right to free speech in Singapore,” Amnesty International said today.

The human rights organization is gravely concerned that the effect of the judgement will drive Jeyaretnam into bankruptcy and thus out of Parliament.

“By extinguishing one of the few remaining active opposition voices, it will re-reinforce a wider climate of political intimidation in Singapore that stifles the free expression of peaceful dissenting opinion,” Amnesty International said. “By planting a well-founded fear of financial ruin it may effectively deter participation in public life by Singaporeans wishing to promote views alternative to those of the ruling People's Action Party (PAP).”

Singapore's leaders claim they seek only to defend their reputations, and that they would lose the confidence of the electorate if they failed to sue when defamed. Amnesty International believes the use of civil defamation suits by the PAP is both disproportionate and politically-motivated and appears to be aimed primarily at dissenting voices regarded as having the potential to challenge the PAP's political hegemony.

In this context the PAP's tactics represent a serious assault on the ability of every Singaporean to realize and enjoy their right to freedom of expression and opinion. Freedom of expression is an important vehicle for political, social and economic development and is essential for the enjoyment of a wide range of other rights.

The Cases

In January 1997 Prime Minister Goh Chok Tong sought S\$200,000 in damages after he claimed Jeyaretnam defamed him by saying the words *‘And finally, Mr Tang Liang Hong has just placed before me two reports he has made to the police against, you know, Mr Goh Chok Tong and his people’*.

Jeyaretnam made the comment after he was interrupted during an election speech by fellow opposition Workers' Party parliamentary candidate Mr Tang Liang Hong placing documents on the podium in front of him. Mr Tang –whom Mr Goh and other senior members of the ruling People's Action Party (PAP) had publicly labelled an *‘anti-Christian, Chinese chauvinist’* during the election campaign –asserted he had been criminally defamed in that the PAP accusations were false and had incited religious groups to hate him. Calling for an investigation Tang

filed the police reports. He left Singapore shortly afterwards citing death threats and the need to organise his business affairs for his legal defence.

PAP leaders sued him *in absentia* for defamation for filing the police reports and were awarded a record S\$8.08 million damages, reduced on appeal to S\$4.53 million. Tang was subsequently declared bankrupt.

The Judgments

Amnesty International was concerned at the High Court's decision in September 1997 which found Jeyaretnam liable for defamation, not on the plain and ordinary meaning of his words, but on the lesser grounds of 'innuendo'. Acknowledging that Goh had 'overstated' his case the Judge ordered Jeyaretnam to pay S\$20,000 and 60 per cent of costs. Subsequently concerns at the PAP's political motives behind the legal pursuit of Jeyaretnam were intensified when Goh launched an appeal calling for higher levels of damages, which prompted a counter-appeal by the defendant.

Amnesty International is appalled by the decision of the Court of Appeal and regards its financial and political effects on Jeyaretnam as manifestly unjust. The organisation is also dismayed that aspects of the judgment appear to substantiate charges that the Judiciary is bending to the will of the Executive in politically 'sensitive' cases.

The Court of Appeal ruled that the trial judge had 'erred' on three key areas – firstly on the issue of 'malice' behind the statement, secondly in regards to the 'aggravating factors' affecting the amount of the award, and thirdly in relation to the level of the award being 'disconsonant' with past defamation cases.

Amnesty International is concerned that there is nothing in the evidence that would support the Appeal Court's position that the trial judge erred in not finding 'malice' in Jeyaretnam's words. The trial judge found that Jeyaretnam had acted 'recklessly' in making the comments -but this is not 'malice'. The appeal court's astonishing assertion that Jeyaretnam's statement was a '*cleverly disguised sting directed at Mr Goh...intended to cast a stain on Mr Goh's reputation in the hope that it might enhance his (Jeyaretnam's) chances in the election*' is not supported by evidence, and appears only to reflect the plaintiff's pleadings.

The Appeal Court ruled that the trial judge had '*failed to give adequate weight to the relevant aggravating factors*', that is, the manner of questioning of Mr Goh by Jeyaretnam's counsel, Mr George Carman QC, during the High Court trial. Amnesty International is concerned that the Appeal Court's position, based on the assertion '*that Mr Carman was only playing to the gallery, and not attempting to elicit evidence relevant to the issue to the court*' reflects a most worrying propensity of the Singapore courts to put the 'protection' of political leaders, above the search for the truth.

Amnesty International believes Mr Carman's questioning was necessary and justified to establish the context of the suits, and the Appeal Court's assertion that the questioning '*amounted to an attack on his integrity, character and suitability for his position as Prime Minister*' is unsupported by evidence. In effect government leaders appear to be afforded far greater protection in court than those seeking to defend themselves against serious charges by those leaders. Furthermore the Appeal Court appears to imply that when robustly examining government ministers in defamation suits defendants run a serious risk of compounding the defamation.

The ruling on aggravated damages impedes the right to fair trial and prevents the defendant on a defamation case from mounting an adequate defence. It also imputes liability on the defendant for the actions of his lawyer, without allowing a proper hearing on the issue.

On the question of increasing the level of damages Amnesty International is concerned that the Appeal Court selected only two cases as relevant precedents without a proper review of defamation awards in Singapore. The organization is concerned about the wider implications of the fact that no PAP politician has ever lost a defamation suit in Singapore, and that an examination of the overall pattern of defamation awards appears to show a marked disparity in cases involving members of the government versus private citizens.

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