

HONG KONG / JUDGMENT

RE HEUNG CHEUK KEI

COURT

Court of First Instance

DECIDED

9 January 2007

CASE / FILE NUMBER

HCMP2660/2006

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bjbj 06 Election Committee Subsector Election AND IN THE MATTER of Section 31 of the Elections (Corrupt and Illegal Conduct), Cap. 554

Before: Hon. Lam J in Court Date of Hearing: 9 January 2007 Date of Judgment: 9 January 2007

J U D G M E N T

1. This is an application for relief under Section 31 of the Elections (Corrupt and Illegal Conduct) Ordinance. Under that section the court may grant relief to a candidate who has done or omitted to do an act that but for the exercise of the power under this section would be an illegal conduct at an election.
2. The worry of the applicant is that in the grid paper submitted for the purpose of his elections, there is a mistake as to his age. Instead of 63, it was stated to be 53 and he failed to notice that when he signed that paper, which was prepared by a clerk in the Heung Yee Kuk. Therefore the applicant has a worry that he might be accused of committing an illegal conduct under Section 26 of the ordinance.
3. Section 26 of the ordinance says: That a person engages in illegal conduct at an election if the person publishes a materially false or misleading statement of fact about a particular candidate or particular candidates for the purpose of promoting or prejudicing the election of the candidate or candidates.
4. Now, there are two elements in that section, both of which have to be satisfied before there is any illegal conduct. The first one is the publication of a materially false or misleading statement of fact. In this instance, the mistake about the age could be said to be a false statement, whether it is material or misleading I would not comment further but I would assume that it could be said to be materially false or misleading for present purposes.

5. However, there is a second element, namely, that the publication of such statement is for the purpose of promoting or prejudicing the election of the candidate or candidates.
6. Now, the grid paper was submitted by the applicant and the election was, in fact, uncontested. Before the election date the applicant has already written to correct the mistake. By a letter dated 2 December 2006, the applicant wrote to the Chief Electoral Officer informing the latter about the mistake as to age. There is no suggestion that the information in the grid paper has been used for the purpose of promoting or prejudicing the election.
7. In the circumstances I am not satisfied that the second element of section 26(1) can be fulfilled. In other words the applicant cannot be said to be guilty of any illegal conduct at the election.
8. Having come to this conclusion, there is no basis for this court to exercise any discretion to grant any relief. In the circumstances the originating summons is dismissed. In other words, there is no need for the applicant to seek any relief from this court. (M H Lam) Judge of the Court of First Instance High Court Mr Anthony Lo, of Yeung Law & Co., for the Applicant Miss Tinny Lo, SGC of Department of Justice
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