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MALAYSIA AIRLINES BHD v. MENTERI SUMBER MANUSIA, MALAYSIA & ORS

COURT OF APPEAL, PUTRAJAYA
HASNAH MOHAMMED HASHIM JCA
SURAYA OTHMAN JCA
B AZIZAH NAWAWI JCA
[CIVIL APPEAL NO: W-01(A)-38-01-2019]
6 AUGUST 2020

C ***ADMINISTRATIVE LAW:*** *Judicial review – Appeal – Application to quash decision of Minister of Human Resources ('Minister') – National Union of Flight Attendant sought recognition in relation to workers – Secret ballot carried out without involving certain workers – Minister made decision, based on inquiry carried out by Director General of Industrial Relations Department, that certain workers were not employed in any managerial, executive, confidential or security* D *capacity – Whether Minister's decision suffered from infirmities of illegality, irrationality or procedural impropriety – Whether Minister's decision ought to be quashed*

The third respondent, the National Union of Flight Attendant ('Union') had sought recognition in relation to all cabin crew workers employed by the E appellant, the Malaysian Airlines Bhd ('MAB'), within the scope of its representation. Following several discussions between the Union, MAB and the second respondent, the Director General of the Industrial Relations Department ('DGIR'), a secret ballot was conducted on two occasions. This secret ballot did not involve MAB's in-flight supervisors ('IFS workers'). F Based on the secret ballot, only 35.09% of the eligible workers voted to be members of the Union. Therefore, the first respondent, the Minister of Human Resources ('Minister'), issued Borang F under s. 9(5) of the Industrial Relations Act 1967 ('IRA') that the Union was not eligible to be recognised by MAB. The Union lodged a complaint with the DGIR that MAB failed to G acknowledge that the IFS workers were not employed in any managerial, executive, confidential or security capacity and, therefore, had a right to vote to recognise the Union. The DGIR (i) informed MAB and the Union that he would conduct an inquiry on the eligibility of the IFS workers; (ii) had discussions with MAB and the Union and interviewed 62 IFS workers on seven different occasions; and (iii) informed the result of the inquiries to the H Minister. The Minister made a decision that the IFS workers were not employed in any managerial, executive, confidential or security capacity ('Minister's decision'). MAB filed an application for judicial review at the High Court to quash the Minister's decision. The High Court dismissed MAB's application on the grounds that MAB failed to demonstrate that the I Minister's decision was tainted with procedural impropriety, errors or irrationality and unreasonableness. Hence, the present appeal. In support of its appeal, MAB submitted that (i) the High Court Judge ('HCJ') had erred

in fact and in law when His Lordship failed to take into account the DGIR's failure to adhere to his own stated procedures *vis-a-vis* the interview process, which also constituted a breach of the legitimate expectation of MAB and the failure of DGIR to inform the results and findings of the interview process which constituted a procedural defect; and (ii) the DGIR failed to obtain any feedback or information from MAB, being the employer of the IFS workers prior to reaching his conclusion, on the issues of the roles and functions of the IFS workers. This, according to MAB, constituted a breach of natural justice and procedural fairness and a total failure to take into account relevant considerations.

Held (dismissing appeal with costs)
Per Azizah Nawawi JCA delivering the judgment of the court:

(1) The DGIR had fulfilled all the procedures laid down in s. 9(1B) of the IRA in the investigation process. The manner that he conducted the investigation complied with the statutory provision. The DGIR did the investigation thoroughly by conducting interviews and questionnaires at random and he also took into consideration all documents and evidence produced by both parties. Additionally, both MAB and the Union attended meetings with the DGIR and, as such, were given ample opportunities to provide all the relevant documents or explanations and information on the duties and functions of the IFS workers. All the information and documents provided by MAB and the Union during the meeting was considered by the DGIR in his investigation. As such, the HCJ did not commit any error of law in finding that the DGIR did not commit any procedural non-compliance/impropriety by not interviewing 30% of the total number of IFS workers. (paras 36, 37 & 42)

(2) MAB failed to explain if the interviews with less than 30% IFS workers was prejudicial to MAB. Unless MAB could establish that each of the 286 IFS workers had different job descriptions, role and responsibility, the interview conducted on less than a third of the total of 286 IFS workers could be said to be a fair and reasonable reflection of the job description, role and responsibility of the IFS workers across the board. (paras 43 & 44)

(3) Both MAB and the Union have a duty to assist the DGIR in his investigation and this included giving any relevant information and documents required for the investigation, bearing in mind that the findings of the DGIR were very pertinent and important to both parties. There was nothing in MAB's affidavit to explain if they had prepared the work profiles and whether the same had been given to the DGIR. The affidavits affirmed by the DGIR and the Minister showed that all the information and document provided by MAB and the Union during

A the meetings were considered by the DGIR in his investigation. The DGIR came to his conclusion after considering all the information given by both parties. (paras 51-53)

(4) The decision of the Minister did not suffer from infirmities of illegality, irrationality or procedural impropriety to merit curial intervention by the High Court. The HCJ was not plainly wrong in arriving at his decision. Therefore, there was no merit in the appeal. The order of the High Court was affirmed. (para 64)

Case(s) referred to:

Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal [2018] 2 CLJ 513 FC ***(refd)***

Alliance Bank Malaysia Bhd v. Menteri Sumber Manusia, Malaysia & Ors [2019] 9 CLJ 52 CA ***(refd)***

Bank Muamalat Malaysia Bhd v. Menteri Sumber Manusia, Malaysia & Ors [2019] 6 CLJ 281 CA ***(refd)***

Council Of Civil Service Unions & Ors v. Minister For The Civil Service [1985] AC 374 ***(refd)***

Holiday Villages of Malaysia Sdn Bhd v. Menteri Sumber Manusia & Anor [2010] 7 CLJ 683 CA ***(refd)***

Hong Leong Bank Bhd v. Menteri Sumber Manusia, Malaysia & Ors [2017] 5 CLJ 675 CA ***(refd)***

Hotel Sentral (JB) Sdn Bhd v. Pengarah Tanah Dan Galian Negeri Johor, Malaysia & Ors [2017] 6 CLJ 161 CA ***(refd)***

Minister Of Labour, Malaysia v. Chan Meng Yuen [1992] 4 CLJ 1808; [1992] 1 CLJ (Rep) 216 SC ***(refd)***

Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor [1990] 1 CLJ 44; [1990] 1 CLJ (Rep) 200 SC ***(refd)***

Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v. Mohd Noor Abdullah [2004] 2 CLJ 777 FC ***(refd)***

North East Plantations Sdn Bhd lwn. Pentadbir Tanah Daerah Dungun & Satu Lagi [2011] 4 CLJ 729 FC ***(refd)***

Pendaftar Pertubuhan v. Datuk Justine Jinggut [2013] 2 CLJ 362 FC ***(refd)***

R v. Secretary of State for Trade and Industry, ex p Lonrho pte 4 [1989] 1 WLR 525 ***(refd)***

RHB Bank Bhd v. YB Menteri Sumber Manusia Malaysia & Anor [2018] 7 CLJ 570 CA ***(refd)***

Sangka Chuka & Anor v. Pentadbir Tanah Daerah Mersing, Johor & Ors [2016] 4 CLJ 585 HC ***(refd)***

Legislation referred to:

Industrial Relations Act 1967, ss. 9(1A), (1B), (1C), (1D) (5), 12

For the appellant - Thavalingam & Rebecca Sonali Alfred; M/s Lee Hishammuddin Allen & Gledhill

For the 1st & 2nd respondents - Aisyaf Falina Abdullah; DPP

For the 3rd respondent - Lim Wei Jiet; M/s Sreenevasan

[Editor's note: For the High Court judgment, please see Malaysia Airlines Berhad lwn. Menteri Sumber Manusia, Malaysia & Yang Lain [2019] 1 LNS 225 (affirmed).]

Reported by Najib Tamby

JUDGMENT

Azizah Nawawi JCA:

Introduction

[1] This is an appeal filed by the appellant against the decision of the High Court Judge dated 10 January 2019 dismissing the appellant's application for an order of *certiorari* and *mandamus* against the decision of the first respondent with costs.

[2] Having considered the appeal records and the submissions of the parties, this court had dismissed the appeal with costs. Our decision was unanimous and these are our grounds for dismissing the appeal.

The Salient Facts

[3] The appellant, Malaysian Airlines Berhad ("MAB") is a company incorporated in Malaysia on 7 November 2014 and operates the national airline of Malaysia as a commercial entity.

[4] The first respondent is the Minister of Human Resources, Malaysia (''Minister") who is empowered under s. 9(5) of the Industrial Relations Act 1967 ("IRA 1967") to decide whether or not a claim for recognition of a trade union ought to be accorded.

[5] The second respondent is the Director General of the Industrial Relations Department ("DGIR"), who is empowered by the IRA 1967 to have general direction, control and supervision over all matters relating to industrial relations.

[6] The third respondent is the National Union of Flight Attendant, Malaysia ("union"), a union registered under the Trade Unions Act 1959.

[7] On 23 August 2016, the union had sought recognition in relation to all cabin crew workers employed by MAB falling within the scope of its representation.

[8] After several discussions between the union, MAB and the DGIR, a secret ballot was conducted on 25 April 2017 and 26 April 2017. This secret ballot did not involve the MAB's in-flight supervisors (the "IFS workers").

[9] Based on the secret ballot, only 35.09% of the eligible workers had voted to be members of the union. Therefore, on 28 July 2017 the Minister issued Borang F under sub-s. 9(5) of the IRA 1967 that the union was not eligible to be recognised by MAB.

[10] However, *vide* an email dated 29 April 2017, the union filed a complaint with the DGIR under s. 9(1A) of the IRA 1967. The union had complained that MAB had failed to acknowledge that IFS workers are not employed in any managerial, executive, confidential or security capacity, and therefore had a right to vote to recognise the union.

[11] Thereafter, the DGIR had informed MAB and the union that he would be conducting further inquiries in respect of the disputed eligibility of the IFS workers pursuant to s. 9(1B) of the IRA 1967.

[12] The DGIR (Selangor branch) had a discussion with MAB on 8 June 2017, with both the union and MAB on 6 July 2017 and again with MAB on 28 August 2019. For the purposes of the DGIR's enquiry, MAB had given the list of 286 IFS workers to the DGIR on 21 August 2017.

[13] The DGIR also proceeded to interview the IFS workers on seven different occasions, between 6 September 2017 to 4 October 2017. The DGIR had interviewed around 62 IFS workers.

[14] Pursuant to sub-s. 9(1C) of the IRA 1967, the DGIR had informed the result of the inquiries to the Minister on 19 January 2018.

[15] On 6 February 2018, pursuant to sub-s. 9(1D) of the IRA 1967, the Minister made a decision that IFS workers are not employed in any managerial, executive, confidential or security capacity.

[16] On 20 February 2018, the union filed another claim for recognition to MAB. This can be done after six months from the date of decision of the last attempt at recognition, pursuant to s. 12 of the IRA 1967.

[17] On 1 March 2018, MAB filed this application for judicial review to quash the decision of the Minister dated 6 February 2018.

[18] On 10 January 2019, the High Court had dismissed MAB's application to review the Minister's decision.

[19] *Vide* a notice of appeal dated 22 January 2019, MAB lodged its appeal to the Court of Appeal against the decision of the High Court.

[20] On 22 April 2019, the High Court granted MAB's application for a stay of execution of the order granted by the High Court on 10 January 2019, pending the disposal of this appeal.

Decision Of The High Court

[21] The core issue before the High Court (and in this appeal) is whether the Minister has erred in law in reaching his decision to recognise MAB's IFS workers are workmen who are not employed in any managerial, executive, confidential or security capacity, for the purposes of a trade union recognition.

[22] MAB takes the position that the Minister's decision is tainted with procedural impropriety and that the Minister has failed to adhere to the relevant principles of law which renders his decision liable to be quashed in this judicial review application.

[23] The respondents take the position that the Minister had not committed any error in law warranting the reviewing of the Minister's decision.

[24] The High Court, having heard the said application on 10 January 2019, dismissed MAB's application, stating *inter alia* as follows:

> Berdasarkan huraian di atas, saya dapati pemohon gagal menunjukkan keputusan responden pertama dicemari dengan ketidakaturan prosedur, kesilapan undang-undang atau keputusan yang tidak rasional atau munasabah.

The Grounds Of Appeal

[25] MAB's grounds of appeal can be summarised as follows:

(i) that the learned High Court Judge had erred in fact and in law when he failed to take into account DGIR's failure to adhere to its own stated procedures *vis-a-vis* the interview process which also constituted a breach of the legitimate expectation of MAB and the failure of DGIR to inform MAB the results and findings of the interview process which constituted a procedural defect ("ground 1")

(ii) that the learned High Court Judge had erred in fact and in law when he held that the decision of the Minister did not breach the rules of natural justice and procedural fairness as follows:

(a) the learned High Court Judge had failed to take into account the DGIR's failure to consider the key differences in the duties and functions of the IFS and general cabin crew;

(b) the learned High Court Judge had failed to take into account that no direct information was garnered from MAB as to the duties and functions of the IFS;

(c) the learned High Court Judge had failed to consider the binding authorities which provide that it is incumbent on the Minister and/or the DGIR to provide a copy of their findings in respect of their investigations; and

(d) the learned High Court Judge had failed to consider that the non-production of any reasons by which the Minister had reached his decision, including but not limited to the report of the DGIR constituted a fatal error by the Minister. ("ground 2")

Our Decision

Ground 1

[26] MAB's argument is that the learned High Court Judge had erred in fact and in law when he failed to take into account the DGIR's failure to adhere to his own stated procedures *vis-a-vis* the interview process, which also

A constituted a breach of the legitimate expectation of MAB and the failure of DGIR to inform MAB the results and findings of the interview process which constituted a procedural defect.

[27] MAB relied on the letter dated 15 August 2017 issued by the DGIR, which reads:

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> Pihak jabatan akan menemuduga sekurang-kurangnya 1/3 daripada jumlah kakitangan berjawatan In Flight Supervisor dalam tempoh dan tarikh-tarikh diatas. Sesi temuduga akan dilanjutkan, sekiranya sepanjang tempoh tersebut, bilangan peserta yang ditemuduga tidak mencapai sasaran yang diperlukan.

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[28] MAB takes the position that the DGIR has failed to follow its own procedures when the DGIR only interviewed around 62 IFS workers, out of the total 286 IFS workers. This is approximately 33 below the aspired one-third (1/3) target as stated in the DGIR's letter dated 15 August 2017. As such, MAB submits that there has been a procedural non-compliance, which is a ground for judicial review.

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[29] In administrative law, whenever one relies on procedural non-compliance/impropriety as a ground to nullify a public body's decision, such non-compliance/impropriety is in relation to the procedure expressly laid down in the legislative instrument by which its jurisdiction is conferred.

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[30] This principle can be seen from the case of *Akira Sales & Services (M) Sdn Bhd v. Nadiah Zee Abdullah & Another Appeal* [2018] 2 CLJ 513; [2018] 2 MLJ 537, where the Federal Court had endorsed Lord Diplock's pronouncement in the *locus classicus* of *Council Of Civil Service Unions & Ors v. Minister For The Civil Service* [1985] AC 374 as follows:

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> I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. **This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred**, even where such failure does not involve any denial of natural justice. But the instant case is not concerned with the proceedings of an administrative tribunal at all. (emphasis added)

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[31] Added to that, the Federal Court case of *Nordin Hj Zakaria (Timbalan Ketua Polis Kelantan) & Anor v. Mohd Noor Abdullah* [2004] 2 CLJ 777 has made a similar finding, where Siti Norma Yaakob FCJ held as follows:

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> Reading the provisions of the 1970 Regulations in its entirety, I see no requirement that entitles the respondent to be informed of the possibility of him being dismissed or reduced in rank in the event he is convicted of any of the charges preferred against him in either the show cause letter or prior to the start of the disciplinary enquiry. There is no provision imposing a similar obligation as that prescribed by reg. 28(1) of the 1993

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Regulations. *Since the 1970 Regulations impose no duty on the 1st appellant to inform the respondent at the first opportunity of the likelihood of his dismissal or reduction in rank, the 1st appellant cannot be said to have deprived the respondent of any procedural fairness as there cannot be any breach of duty where none exists in law*. (emphasis added)

[32] It is common ground that the whole process of the union's complaint is governed by s. 9 of the IRA 1967, which reads:

9. Claim for recognition:

(1) No trade union of workmen the majority of whose membership consists of workmen who are not employed in any of the following capacities, that is to say:

(a) managerial capacity;

(b) executive capacity;

(c) confidential capacity; or

(d) security capacity,

may seek recognition or serve an invitation under section 13 in respect of workmen employed in any of the abovementioned capacities.

(1A) Any dispute arising at any time, whether before or after recognition has been accorded, as to whether any workman or workmen are employed in a managerial, executive, confidential or security capacity may be referred to the Director General of a trade union of workmen or by an employer or by a trade union of employers.

(1B) **The Director General, upon receipt of a reference under subsection (1A), may take such steps or make such enquiries as he may consider necessary or expedient to resolve the matter**.

(1C) Where the matter is not resolved under subsection (1B) the Director General shall notify the Minister.

(1D) Upon receipt of the notification under subsection (1C), the Minister shall give his decision as to whether any workman or workmen are employed in a managerial, executive, confidential or security capacity and communicate in writing the decision to the trade union of workmen, to the employer and to the trade union of employers concerned.

(emphasis added)

[33] As can be seen from s. 9 of the IRA 1967, there is no procedural requirement that 30% of the workers must be interviewed for the purpose of the DGIR's inquiry. What is provided is sub-s. 9(1B), which empowers the DGIR to take such steps or make such enquiries as he may consider necessary or expedient to resolve the matter in the circumstances of the case. The discretion rests with the DGIR as to the manner he wants to make the enquiries.

[34] In his affidavit affirmed on 14 August 2018, the DGIR has affirmed the following facts:

> 15. Merujuk kepada perenggan 21 di Afidavit Sokongan Pemohon, saya sesungguhnya menyatakan bahawa dalam melaksanakan siasatan di bawah Seksyen 9(1B) Akta Perhubungan Perusahaan 1967 (Akta 177) saya telah melaksanakan bidangkuasa tugas saya dengan peruntukkan undang-undang. Selain daripada itu, saya juga telah mengambil kira skop kerja seseorang penjawat, fungsi dan tugas-tugas sebenar mereka dalam menentukan kapasiti seseorang jawatan pekerja yang dipertikaikan.
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> 16. Dalam melaksanakan siasatan di bawah Seksyen 9(1B) Akta 177 saya sesungguhnya telah mengambil kira dokumen-dokumen yang dikemukakan serta fungsi dan tugas-tugas sebenar yang dijalankan oleh pekerja bagi jawatan-jawatan yang dipertikaikan tersebut melalui siasatan (temuduga dan soal selidik) yang dijalankan secara rawak.
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> 17. Dalam melaksanakan siasatan di bawah Seksyen 9(1B) Akta 177, saya telah membuat pertimbangan setelah menjalankan siasatan secara temuduga secara rawak terhadap setiap seorang jawatan pekerja yang dipertikaikan.
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> 18. Dalam menjalankan siasatan di bawah Seksyen 9(1B) Akta 177, saya telah memberi peluang kepada Pemohon untuk mengemukakan dokumen yang berkaitan seperti cabin crew responsibility dan melalui mesyuarat yang dijalankan. Saya juga telah memberi peluang kepada Pemohon untuk berbincang mengenai senarai nama pekerja-pekerja yang dipertikaikan termasuk jawatan-jawatan yang dipertikaikan oleh Responden Ketiga melalui mesyuarat rundingan damai yang telah pun ditetapkan.

[35] This court is of the considered opinion that the DGIR had fulfilled all the procedures as laid down in sub-s. 9(1B) of the IRA 1967 in the investigation process. The DGIR did the investigation thoroughly by conducting interviews and questionnaires at random and he also took into consideration all documents and evidence that had been produced before him by both parties.

[36] Added to that, both MAB and the union had attended meetings with the DGIR on 6 July 2017, whilst MAB had two additional meetings with the DGIR, on 8 June 2017 and 25 August 2017. As such, both MAB and the union were given ample opportunities to provide all the relevant documents or explanations and information on the duties and functions of the IFS workers. All the information and documents provided by MAB and the union during the meeting was considered by the DGIR in his investigation.

[37] As such, this court finds that the learned High Court Judge did not commit any error of law when he made the finding that the DGIR did not commit any procedural non-compliance/impropriety when the DGIR did not interview 30% of the total number of IFS workers.

[38] However, learned counsel for MAB went further to submit that based on the same DGIR's letter dated 15 August 2017, a legitimate expectation arose that the DGIR will interview one third (1/3) of the IFS workers, and not merely less than the numbers that was communicated to MAB. MAB relied on the case of *Sangka Chuka & Anor v. Pentadbir Tanah Daerah Mersing, Johor & Ors* [2016] 4 CLJ 585, where the High Court held as follows:

> [85] *This is not to mention the documentary evidence in the form of letters authored by officials of the first and fourth respondents referred to earlier, clearly giving rise to at the very least a legitimate expectation on the part of the applicants that they would be consulted or afforded the opportunity to be heard*. In *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374, Lord Fraser identified two situations that could give rise to a legitimate expectation. First is where there is an express promise by the relevant authority and secondly, where there exists a regular practice that an applicant may reasonably expect would continue. (emphasis added)

[39] However, one of the issues in *Sangka Chuka* (*supra*) is the denial of the right of the applicants to be heard despite the documentary evidence before the court that they would be consulted or afforded the opportunity to be heard. In the present case, there is no issue of a denial of a right to be heard as MAB was consulted by the DGIR in the process of the investigation.

[40] In any event, we are of the considered opinion that the acts of the DGIR pursuant to sub-s. 9(1B) of the IRA 1967 is an exercise of statutory power, which cannot be overridden by the doctrine of legitimate expectation. The discretion rest with the DGIR in the manner that he conducted the investigation. In *Hotel Sentral (JB) Sdn Bhd v. Pengarah Tanah dan Galian Negeri Johor, Malaysia & Ors* [2017] 6 CLJ 161; [2017] 5 MLJ 116, the Court of Appeal held as follows:

> [26] The second impugned decision is the actual alienation of the reserved land to the fourth respondent which is also being challenged by the applicant. *Whilst the courts are at liberty to support and enforce the doctrine of legitimate expectation in the course of dealings between the first and second respondent and the applicant, the act of alienation of the reserved road to the fourth respondent is an exercise of unfettered statutory power as provided for under the NLC*.
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> [27] *The general rule appears to be the doctrine of estoppel and legitimate expectation is not ordinarily available against the Government nor is the Government bound by any representation which may have been made expressly or by conduct which if needed to be acted upon would invoke a breach of statute*. That position in law has been affirmed in Federal Court decision of *Government of the State of Negeri Sembilan & Anor v. Yap Chong Lan & Ors & Another Case* [1984] 2 CLJ 150; [1984] 1 CLJ (Rep) 144; [1984] 2 MLJ 123 particularly in judgment of Abdoolcader FJ at p. 149 (CLJ) pp. 127 (E right hand) (MLJ) - 128 and we quote:

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[29] In the light of these authorities, we are of the view that the court will not grant the orders sought pertaining to the revocation of the transfer of the Road Reserve to the fourth respondent as *the act of alienating the said Road Reserve to the fourth respondent remains vested with the* B *State Authority and for so long as the relevant authority had acted within the bounds of statute, the court would not by way of judicial intervention intervene in the exercise of its statutory powers and duties.* (emphasis added)

[41] Added to that, it is trite law that the doctrine of legitimate expectation cannot override the express statutory powers vested in the authorities. In C *North East Plantations Sdn Bhd lwn. Pentadbir Tanah Daerah Dungun & Satu Lagi* [2011] 4 CLJ 729, the Federal Court held as follows:

[29] Kami juga berpendapat bahawa keputusan majority Mahkamah Rayuan adalah tepat apabila dinyatakan '**Whether or not the doctrine of legitimate expectation applies depends on the facts of each case, it cannot** D **and should not override the express statutory power vested in the State Authority**'. (emphasis added)

[42] On the factual matrix of this case, the DGIR had explained the manner he conducted the investigation under sub-s. 9(1B) of the IRA 1967 in paras. 15 to 18 of his affidavit, as narrated above. The manner that he did the E investigation has complied with the statutory provision. Therefore, so long as the DGIR had acted within the bounds of statute, the court would not by way of judicial intervention intervene in the exercise of his statutory powers and duties.

[43] Added to that, MAB had failed to explain if the interviews with less F than 30% IFS workers are prejudicial to MAB. In exh. MAB-10, MAB had issued a circular to all IFS workers informing them of the interview sessions that will be conducted by the DGIR. In the said circular, the IFS workers will be interviewed on the job description, roles and responsibilities of the IFS workers. In the said circular, MAB states, *inter alia*, as follows:

G The Industrial Relations Department under the Ministry of Human Resources will be conducting a series of interviews targeting our In-Flight Supervisors (IFS).

...

H *The objective of these interviews is to determine the roles and responsibilities of In-Flight Supervisors on ground and on board aircrafts.*

You may be asked about your job description and these interviews will take approximately 5 minutes. (emphasis added)

[44] Therefore, we are of the considered opinion that unless MAB can I establish that each of the 286 IFS workers has different job description, role and responsibility, the interview conducted on less than a third (1/3) of the total 286 IFS workers can be said to be a fair and reasonable reflection of the job description, role and responsibility of the IFS workers across the board.

[45] Added to that, the High Court Judge had referred to MAB's "My Transition Guidebook" which categorises the IFS workers in Grade D1-CC, which is "cabin crew" staff. This is opposed to Grade D1 and D2 workers who are categorised as "executive" staff.

Ground 2

[46] With regard to ground 2 of MAB's appeal, MAB's complaint is that the DGIR had failed to obtain any feedback or information from MAB, being the employer of the IFS workers prior to reaching his conclusion on the issues of the roles and functions of the IFS workers. This, according to MAB constitutes a breach of natural justice and procedural fairness and a total failure to take into account relevant considerations.

[47] MAB further submits that the findings of the DGIR, which was accepted by the Minister with regard to the IFS workers were made without the benefit of input from MAB, which clearly do not reflect their actual job scope, which is unique and clearly different from that of the general cabin crew. MAB submits that the job scope of the IFS worker are executive in nature as they include the duties of administration and the management of the general cabin crew during the flight, unlike the other cabin crew.

[48] It is therefore the submission of MAB that the learned trial judge has made an error in law when he failed to take into account that there was no feedback or information from MAB prior to the DGIR's findings, and subsequently the Minister's decision on the roles and functions of the IFS workers.

[49] MAB's complaint is that the DGIR had failed to obtain the relevant information from MAB. However, in their affidavits supporting the judicial review application, MAB did not disclose nor explain the documents that should have been referred to by the DGIR and the Minister. If MAB themselves have no inkling of the relevant information or documents, they cannot blame the DGIR for not having access or possession of the same. After all, it is their documents in the first place.

[50] In any event, MAB had attended three meetings with the DGIR, on 8 June 2017, 6 July 2017 and 25 August 2017. MAB had ample opportunities to provide all related documents or give any explanation or information as to the duties and functions of the IFS workers. From the meeting on 25 August 2017, MAB had affirmed the fact that it had undertaken to prepare a work profile for all the cabin staff for the DGIR. Paragraph 17(a) of MAB's affidavit reads as follows:

> 17. Pada 25 August 2017, suatu mesyuarat bersama Responden Kedua telah diadakan. Mesyuarat tersebut membangkitkan isu-isu yang dinyatakan di bawah:
>
> (a) Pemohon akan menyediakan profil pekerjaan kesemua anak-anak kapal.

[51] There is nothing in MAB's affidavit to explain if they had prepared the work profiles and whether the same had been given to the DGIR.

[52] We are of the considered opinion that both MAB and the union have a duty to assist the DGIR in his investigation. For that purpose, they have their respective duties to give any relevant information and documents that are required for the investigation, bearing in mind that the findings of the DGIR are very pertinent and important to both parties. In *RHB Bank Bhd v. VB Menteri Sumber Manusia Malaysia & Anor* [2018] 7 CLJ 570; [2017] 6 MLJ 239, the Court of Appeal held that all information should be furnished by the complainant at the earliest given opportunity and not after the impugned decision has already been communicated. The court held as follows:

> (b) When it relates to recognition under S.9 of the IRA, the court has been firm to adhere to the strict jurisprudence advocated in the *Civil Service Union's* case. *That is to say, for the purpose of the instant case, whatever information needed to be furnished, it ought to have been furnished by the relevant parties when the opportunity was given so and very importantly in the instant case by the appellant. Subsequent complaint to the court to accuse the DGIR or the Minister for not taking into consideration the relevant facts according to law will not be entertained ...* (emphasis added)

[53] From the affidavits affirmed by the DGIR and the Minister, they have averred that all the information and document provided by MAB and the union during the meetings were considered by the DGIR in his investigation. Having considered all the information given by both parties, the DGIR came to the conclusion in para. 19 of his affidavit:

> 19. Merujuk kepada Perenggan 22 Afidavit Sokongan Pemohon, saya menyatakan bahawa hasil siasatan yang dijalankan oleh saya, berdasarkan siasatan melalui temuduga-temuduga yang dijalankan secara rawak oleh saya. Saya mendapati bahawa jawatan-jawatan yang dipertikaikan iaitu In Flight Supervisor tidak menjalankan tugas-tugas pengurusan, eksekutif, sulit dan keselamatan. Hasil siasatan berkaitan jawatan dan tugas yang dipertikaikan tersebut adalah seperti berikut:
>
> | Jawatan | Tugas |
> |---|---|
> | In Flight Supervisor | Hasil siasatan mendapati bahawa In Flight Supervisor tidak diberi kuasa untuk merancang dan menyelia operasi kerja, tidak membuat penilaian. prestasi kerja, tidak mempunyai pekerja bawahan, tidak terlibat dalam mengambil tindakan disiplin terhadap pekerja lain dan tidak terlibat di dalam pengesahan dokumen seperti permohonan cuti, tiada sebarang kuasa untuk mengakses maklumat sulit syarikat dan tidak boleh membuat sebarang keputusan serta harus merujuk kepada Head of Department Inflight Services. |

[54] However, MAB took the position that both the DGIR and the Minister have failed to act with procedural fairness when they failed to produce a copy of their findings in respect of their investigation before the court. MAB relied on the case of *Hong Leong Bank Bhd v. Menteri Sumber Manusia, Malaysia & Ors* [2017] 5 CLJ 675 where the Court of Appeal held that the failure of the Minister to enclose the DGIR's report which he relied on and/or the failure of the DGIR to depose a separate affidavit enclosing his report tantamount to a fatal error justifying an order of *certiorari*.

[55] In the first place, this is not a pleaded ground for judicial review. It is only during the submissions before the High Court that MAB made this complaint that the investigation report was not before the court. Added to that, there is no legal requirement under s. 9 of the IRA 1967 mandating the DGIR or the Minister to disclose the report. In *Bank Muamalat Malaysia Bhd v. Menteri Sumber Manusia, Malaysia & Ors* [2019] 6 CLJ 281, the Court of Appeal had also decided that as there is no requirement under s. 9 of the IRA 1967 obliging the Minister or the DGIR to disclose the investigation report, therefore the non-production of the DGIR's report is not fatal. Therefore, we are of the considered opinion that the failure of the DGIR and/or the Minister to produce a copy of the DGIR's investigation report before the court does not amount to procedural impropriety.

[56] In any event, the case of *Hong Leong Bank* (*supra*) is clearly distinguishable. The DGIR in *Hong Leong Bank* (*supra*) did not file any affidavit to explain the steps that he took and the considerations that he took into account in investigating the complaint lodged by the union. In the present case, the Minister had stated the relevant facts which were placed before him when coming to his decision. The Minister and the DGIR have filed separate affidavits setting out the particulars of the investigative process conducted following receipt of the union's complaint letter. There were three meetings organised by the DGIR with MAB. The DGIR's officers had also interviewed the IFS workers on seven occasions between 6 September 2017 to 4 October 2017. The results of the investigation were submitted to the Minister, and after considering the same, the Minister made his decision. As such, the Minister only made his decision after an examination of the relevant documents, the DIGR's meetings with MAB and the union and the results of the DGIR's investigations. In *Alliance Bank Malaysia Bhd v. Menteri Sumber Manusia, Malaysia & Ors* [2019] 9 CLJ 52, the Court of Appeal had distinguished *Hong Leong Bank* (*supra*) and made a finding that the DGIR is not obliged to divulge any report he may make to the Minister.

[57] Another issue raised by MAB is the alleged failure of the Minister to provide reasons for his decision. Again, this issue was not raised in the judicial review application. The Minister's decision pursuant to sub-s. 9(1D) of the IRA 1967 is in Borang E (exh. RR2). Again, there is no requirement under s. 9 of the IRA 1967 that mandates the Minister to give him reasons.

[58] In *Pendaftar Pertubuhan v. Datuk Justine Jinggut* [2013] 2 CLJ 362; [2013] 3 MLJ 16, the Federal Court held that where an Act of Parliament does not provide an express statutory duty to give reasons, then the said duty does not arise:

> With respect, I am unable to agree with the applicant. Firstly, it is *an established position of law that there is no general duty universally imposed on all decision makers to give reasons for their decision. Secondly, ss 16(1) and 13 of the Act do not require the ROS to give reasons for his decision. There is no express statutory duty imposed on the ROS to give reasons to the applicant*.
>
> (emphasis added)

[59] In *Minister Of Labour, Malaysia v. Chan Meng Yuen* [1992] 4 CLJ 1808; [1992] 1 CLJ (Rep) 216; [1992] 2 MLJ 337, the Supreme Court reiterated the general principle that the court cannot compel the decision-maker to give reasons for his decision where there is no duty imposed by law to do so. However, where the decision-maker did not give any reasons for his decision, it may be a basis for the court to make a finding that the decision was made without any rational reasons. The Supreme Court quoted the case of *R v. Secretary of State for Trade and Industry, ex p Lonrho pte 4* [1989] 1 WLR 525, where Lord Keith of Kinkel said in the House of Lords:

> The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances appear to point overwhelmingly in favour of a different decision, the decision-maker, who has given no reasons, cannot complain if the court draws the inference that he has no rational reason for the decision.

[60] In *Minister of Labour, Malaysia v. Sanjiv Oberoi & Anor* [1990] 1 CLJ 44; [1990] 1 CLJ (Rep) 200; [1990] 1 MLJ 112, Abdul Hamid LP (as he then was) said:

> As for this appeal, we are of the view that on the evidence in this case the Minister of Labour had not acted unreasonably. There is no evidence that the Minister had acted in bad faith or that he was biased against Sanjiv Oberoi. **The Minister of Labour is not required to give any reasons when he exercises his discretion under s. 20(3) of the Industrial Relations Act 1967**. (emphasis added)

[61] In *Holiday Villages of Malaysia Sdn Bhd v. Menteri Sumber Manusia & Anor* [2010] 7 CLJ 683, the Court of Appeal rejected the argument that the Minister must give reason for his decision, as the Minister has affirmed an affidavit to explain his decision. The court held that:

> [27] In this appeal before this court, the learned counsel for the appellant argued that the 1st respondent had failed to give reasons in coming to his decision to accord recognition to the 2nd respondent; thus the said decision is fundamentally flawed and should be quashed.

[28] *This court agrees with the findings of the learned judge* (in her grounds of judgment) *that the 1st respondent had sufficiently given his reasons for his decision to accord recognition to the 2nd respondent. These reasons were found in paras 6, 7, 9, 10, 13, 14 and 15 of the 1st respondent's affidavit* and were properly cited by the learned judge at p. 24 of her grounds of judgment, and read as follows: ...

...

[29] The learned counsel for the appellant also argued that in coming to his decision without giving any reasons to support it, the 1st respondent seemed to be acting mechanically and/or not directing his mind to the relevant considerations, by adopting *in toto* the recommendations of the DGIR and DGTU.

[30] *In view of the reasons given by the 1st respondent in paras 6, 7, 9, 10, 13, 14 and 15 of his affidavit and in view of the fact that this court had agreed to the findings of the learned judge on this matter, this court cannot accept the said argument put forward by the learned counsel for the appellant. There is sufficient evidence for the 1st respondent to consider and to come to his decision on 1 June 1998*. The 1st respondent decision is one which any decision maker similarly circumstanced would have made. It is not so outrageous or in defiance of logic. In other words, it is not tainted with any "*Wednesbury* unreasonableness". Therefore the said decision by the 1st respondent cannot be considered as 'irrational'.

(emphasis added)

[62] In the present case, the reasons given by the Minister can be seen from para. 24 of his affidavit, where the Minister finds that the IFS workers "tidak menjalankan tugas-tugas pengurusan, eksekutif, sulit, atau keselamatan" because:

... In Flight Supervisor tidak diberi kuasa untuk merancang dan menyelia operasi kerja, tidak membuat penilaian prestasi kerja, tidak mempunyai pekerja bawahan, tidak terlibat dalam mengambil tindakan disiplin terhadap pekerja lain dan tidak terlibat di dalam pengesahan dokumen seperti permohonan cuti, tiada sebarang kuasa untuk mengakses maklumat sulit syarikat dan tidak boleh membuat sebarang keputusan serta harus merujuk kepada Head of Department Inflight Services.

Conclusion

[63] We are mindful that in an application for judicial review, this court is not exercising an appellate jurisdiction, but a supervisory jurisdiction. Where the exercise of the powers involves the exercise of the Minister's or the DGIR's discretion, the said exercise of discretion must not be interfered unless the decision is tainted with illegality, irrationality or procedural impropriety.

A **[64]** In the present appeal, we find that the decision of the Minister did not suffer from infirmities of illegality, irrationality or procedural impropriety to merit the curial intervention by the High Court. We find that the High Court Judge is not plainly wrong in arriving at his decision and we are in full agreement with his reasons to dismiss the judicial review application. As
B such, we found no merit in the appeal unanimously dismissed the appeal with costs of RM10,000 to first and second respondents and RM10,000 to third respondent subject to the payment of allocator. We affirmed the order of the High Court Judge dated 10 January 2019.

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