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MARULEE (M) SDN BHD

v.

MENTERI SUMBER MANUSIA & ANOR

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COURT OF APPEAL, PUTRAJAYA
JAMES FOONG JCA
ZALEHA ZAHARI JCA
ABDULL HAMID EMBONG JCA
[CIVIL APPEAL NO: P-01-87-1999]
26 JUNE 2007

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LABOUR LAW: *Trade union - Recognition - Certiorari - Prescribed time frame to respond to claim for recognition - Competency - Procedures of law - Whether rules of natural justice complied with - Industrial Relations Act 1967, s. 9(3), (4), (4A) - Trade Unions Act 1959, ss. 71A(1)(a), 74(1)(c)*

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ADMINISTRATIVE LAW: *Remedies - Certiorari - Recognition of trade union - Prescribed time frame to respond to claim for recognition - Competency - Procedures of law - Whether rules of natural justice complied with - Industrial Relations Act 1967, s. 9(3), (4), (4A) - Trade Unions Act 1959, ss. 71A(1)(a), 74(1)(c)*

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This was an appeal by the appellant against the decision of the High Court dismissing its application for an order of *certiorari* to quash the decision of the first respondent, the Minister of Human Resources ('Minister'), for the appellant to accord recognition to the second respondent. The issues requiring determination were: (i) whether it was mandatory for the appellant to respond to the claim for recognition made by the second respondent within the time frame of 21 days prescribed by s. 9(3) of the Industrial Relations Act 1967 ('Act'); (ii) whether it was necessary for the appellant to not only challenge the decision of the Minister but also the findings of the Director General of Trade Unions ('DGTU') and the Director General of Industrial Relations ('DGIR') regarding the second respondent's competency in representing the appellant's employees; and (iii) whether in arriving at the findings which the respective authorities did, and the Minister's reliance on the reports submitted by the relevant authorities after carrying out the investigations which they did, the rules of natural justice had been complied with.

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Held (dismissing the appeal)
Per Zaleha Zahari JCA delivering the judgment of the court:

(1) On the facts of this case, nothing turned on the appellant's failure to respond within the prescribed time frame of 21 days. The DGTU clearly has a statutory duty under s. 9(4A) of the Act to attempt to resolve a claim for recognition. Notwithstanding the fact that the appellant's request to the DGIR to conduct an examination on the competency of the second respondent was lodged out of the time frame provided by the law, the DGIR was nevertheless under a statutory duty to act upon the report in writing lodged by the second respondent under s. 9(4) of the Act consequent upon the appellant's failure to respond to the claim for recognition within the prescribed time frame. As the DGIR was under a statutory duty to resolve the claim of recognition upon receipt of the second respondent's report in writing under s. 9(4) of the Act, nothing turned on the appellant's request to the DGIR to investigate the competency of the second respondent to represent the appellant's employees out of the time frame prescribed by s. 9(3) of the Act. (para 17)

(2) Although the appellant had the right to appeal to the Minister against the DGTU's findings on the issue of "competency" pursuant to s. 71A(1)(a) of the Trade Unions Act 1959 ('TUA'), whether deliberately or otherwise, this right was not exercised. Even though the appellant had by letter requested the DGIR to carry out an investigation on the issue of the second respondent's competency to represent its employees, the appellant was not prepared to abide by the result of the investigations and findings of the DGTU when the findings were against it. The effect of the appellant's failure to exercise this right of appeal against the findings of the DGTU on the issue of competency within the time frame given in s. 74(1)(c) of the TUA was that the DGTU's decision that the second respondent was a competent union to represent the appellant's employees was binding upon the appellant. The learned High Court judge had not erred when, in his judgment, he took note of the appellant's failure to challenge the findings of the DGTU. By reason of the appellant's failure to exercise its right of appeal to the Minister on this issue, it was no longer open to it to

A subsequently question the competency of the second respondent to represent its employees. In any event, even if an appeal had been lodged, the appellant was not entitled to call on the DGTU to justify his findings of fact on the issue of competency nor to expect a court in judicial review B proceedings to reverse the findings of fact of the DGTU. (paras 24 & 25)

(3) From the facts, it was clear that the procedure prescribed by the law had clearly been observed by all of the relevant C authorities at the different stages of the decision-making process. On the part of the DGTU, in making the enquiries at the two-staged process, prior to giving his expert opinion for the consideration of the DGIR in attempting to resolve the claim for recognition, it was abundantly clear that the D appellant had been given the fullest opportunity to participate and state its case on the respective issue then in question. The record showed that repeated requests and opportunities were given to the appellant to furnish all relevant documents and information for the consideration of E the relevant authorities. It was very clear that the failure of the appellant to make a decision to the claim of recognition had prolonged the dispute. The information sought by the relevant authorities was only submitted after continued reminders were issued, and all parties had been kept F informed of the findings of the relevant authorities at every stage. As far as the rule of natural justice in relation to the right to be heard was concerned, this rule had been strictly observed by the DGIR and the DGTU in arriving at the conclusions that they did. (paras 34 & 35)

G **(3a)** It was common ground that the opinions and findings of the DGIR and the DGTU that were submitted to the Minister were taken into consideration by the Minister in arriving at the decision which he did under s. 9(5) of the Act. As for H the appellant's argument that the Minister was not bound by the reports of the DGIR or the DGTU and reliance on them in arriving at the decision that he did rendered such decision as being a "rubber stamp", it has been established by case law that the results of investigations carried out by I the DGIR and the DGTU's department is important material in enabling the DGIR in the first instance to resolve a dispute. The submission of these reports to the Minister

established that the Minister had been adequately informed of all the relevant facts to enable him to make a considered decision on the claim for recognition in issue, which could not be resolved by the DGIR. Thus, the Minister was clearly entitled to rely on the reports submitted and there was no necessity for the Minister himself to conduct a further enquiry as contended by the appellant. (para 36)

(3b) On the allegation that the Minister's decision was liable to be set aside by reason of a failure to give detailed reasons in arriving at the decision that he did, the record showed that the appellant was well aware that the Minister's decision was grounded on the reports submitted by the DGIR containing the findings of the DGIR/DGTU that the appellant's employees came within the membership scope of the second respondent and the result of the membership check carried out showing that 73.52% of the appellant's employees were members of the second respondent on the date that recognition was sought. (para 37)

(3c) The affidavits of the DGIR, the DGTU and the Minister disclosed that they had all acted fairly, properly and reasonably in the exercise of their respective powers under the law. There had never been the slightest suggestion that the relevant authorities, be it the DGIR or the DGTU, had acted otherwise than in good faith in arriving at the findings which they did, as well as the Minister in making the decision which he did. (para 38)

(4) On the facts of this case, the appellant was not entitled to the discretionary relief sought and the learned judge was clearly right in dismissing the claim for *certiorari*. (para 39)

Bahasa Malaysia *translation of headnotes*

Ini adalah rayuan oleh perayu terhadap keputusan Mahkamah Tinggi menolak permohonan perintah *certiorari*nya untuk membatalkan keputusan responden pertama, Menteri Sumber Manusia ('Menteri') supaya perayu memberikan pengiktirafan kepada responden kedua. Isu-isu yang menuntut keputusan adalah: (i) sama ada ianya mandatori bagi perayu untuk menjawab tuntutan untuk pengiktirafan yang dibuat oleh responden kedua dalam tempoh masa 21 hari seperti yang ditetapkan oleh s. 9(3) Akta Perhubungan Perusahaan 1967 ('Akta'); (ii) sama ada ianya

A perlu bagi perayu untuk mencabar bukan sahaja keputusan Menteri tetapi juga dapatan-dapatan Ketua Pengarah Kesatuan Sekerja ('DGTU') dan Ketua Pengarah Perhubungan Perusahaan ('DGIR') berkaitan kekompetenan responden kedua untuk mewakili pekerja-pekerja perayu; dan (iii) sama ada pihakberkuasa-pihak berkuasa
B dalam mencapai dapatan-dapatan mereka, dan Menteri dalam bergantung kepada laporan-laporan yang dikemukakan oleh pihak berkuasa-pihak berkuasa tersebut, telah mematuhi kaedah-kaedah keadilan semulajadi.

C **Diputuskan (menolak rayuan)**
Oleh Zaleha Zahari HMR menyampaikan penghakiman mahkamah:

(1) Berdasarkan fakta kes ini, tiada suatu pun yang ada sangkut paut dengan kegagalan perayu untuk menjawab dalam
D tempoh 21 hari yang ditetapkan. DGTU jelas mempunyai tanggungjawab statutori di bawah s. 9(4A) Akta untuk cuba menyelesaikan suatu tuntutan pengiktirafan. Walaupun fakta menunjukan bahawa permohonan perayu kepada DGIR untuk menjalankan penyiasatan berhubung kekompetenan
E responden kedua dibuat di luar masa yang diperuntukkan oleh undang-undang, DGIR masih mempunyai kewajipan statutori untuk bertindak atas laporan bertulis yang dibuat oleh responden kedua di bawah s. 9(4) Akta ekoran dari kegagalan perayu untuk menjawab tuntutan pengiktirafan
F dalam masa yang ditetapkan. Oleh kerana DGIR mempunyai kewajipan statutori untuk menyelesaikan tuntutan pengiktirafan sebaik menerima laporan bertulis responden kedua di bawah s. 9(4) Akta, maka tiada isu berbangkit mengenai permohonan yang dikatakan dibuat oleh perayu di
G luar masa yang ditetapkan s. 9(3) Akta, supaya DGIR menyiasat kekompetenan responden kedua untuk mewakili pekerja-pekerja perayu.

(2) Walaupun perayu mempunyai hak untuk merayu kepada
H Menteri terhadap dapatan-dapatan DGTU atas isu "kekompetenan" di bawah s. 71A(1)(a) Akta Kesatuan Sekerja 1959 ('TUA'), hak tersebut, sama ada disengajakan ataupun tidak, telah tidak dilaksanakan. Walaupun perayu melalui surat memohon supaya DGIR menjalankan
I penyiasatan berkaitan isu kekompetenan responden kedua untuk mewakili pekerja-pekerjanya, perayu tidak bersedia

untuk mematuhi keputusan penyiasatan serta dapatan-dapatan oleh DGTU apabila dapatan-dapatan tidak berpihak kepadanya. Kesan dari kegagalan perayu melaksanakan hak rayuannya terhadap dapatan-dapatan DGTU atas isu kekompetenan dalam tempoh masa yang diberikan oleh s. 74(1)(c) TUA adalah bahawa, keputusan DGTU bahawa responden kedua adalah sebuah kesatuan yang berkompeten untuk mewakili pekerja-pekerja perayu adalah mengikat perayu. Yang arif hakim Mahkamah Tinggi tidak khilaf bilamana, dalam penghakimannya, beliau mengambilkira kegagalan perayu untuk mencabar dapatan-dapatan DGTU. Disebabkan kegagalan perayu untuk melaksanakan hak merayunya kepada Menteri atas isu ini, maka adalah tidak terbuka kepada perayu untuk kemudiannya mempersoalkan kekompetenan responden kedua untuk mewakili pekerja-pekerjanya. Walau apapun, jikapun satu rayuan telah dikemukakan, perayu tidak berhak untuk memanggil DGTU untuk menjustifikasikan dapatan-dapatan faktanya atas isu kekompetenan, ataupun untuk mengharapkan sebuah mahkamah dalam prosiding semakan kehakiman untuk mengakas dapatan-dapatan fakta DGTU tersebut.

(3) Berdasarkan fakta, jelas bahawa prosedur yang ditetapkan oleh undang-undang telah dipatuhi oleh semua pihak berkuasa yang relevan di berbagai peringkat proses membuat keputusan. Di pihak DGTU, ketika membuat inkuiri di proses dwi-peringkat, iaitu sebelum beliau memberikan pendapat pakarnya untuk pertimbangan DGIR untuk cuba menyelesaikan tuntutan pengiktirafan, jelas bahawa beliau telah memberikan perayu seluas-luas peluang untuk mengambil bahagian dan mengemukakan kesnya berhubung isu-isu yang berbangkit ketika itu. Rekod menunjukkan bahawa permintaan demi permintaan dan peluang demi peluang telah diberi kepada perayu untuk mengemukakan dokumen-dokumen dan maklumat yang relevan untuk dipertimbang oleh pihak berkuasa-pihak berkuasa berkenaan. Adalah jelas bahawa kegagalan perayu untuk membuat keputusan berkaitan tuntutan pengiktirafan telah memanjangkan lagi pertikaian. Maklumat yang diminta oleh pihak berkuasa-pihak berkuasa relevan hanya dikemukakan setelah beberapa peringatan diberi, dan semua pihak telah diberitahu mengenai dapatan-dapatan pada setiap peringkat

A ianya dibuat oleh pihak berkuasa-pihak berkuasa tersebut. Maka berhubung dengan kaedah keadilan semulajadi terutama yang berkaitan dengan hak untuk didengar, ia telah dipatuhi dengan ketatnya oleh DGIR dan DGTU dalam mencapai dapatan-dapatan mereka.

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(3a) Tidak dinafikan bahawa pandangan dan dapatan-dapatan DGIR dan DGTU yang dikemukakan kepada Menteri telah dipertimbang oleh Menteri apabila membuat keputusannya di bawah s. 9(5) Akta. Berhubung hujah perayu bahawa Menteri tidak terikat dengan laporan-laporan DGIR atau DGTU dan bahawa kebergantungan Menteri kepada laporan-laporan tersebut telah menjadikan keputusan Menteri sebagai "rubber stamp" sahaja, undang-undang kes telah membuktikan bahawa keputusan dari penyiasatan yang dibuat oleh jabatan DGIR dan DGTU adalah bahan penting bagi membolehkan DGIR menyelesaikan pertikaian pada awalnya. Pengemukaan laporan-laporan ini kepada Menteri menunjukkan bahawa Menteri mempunyai pengetahuan secukupnya mengenai fakta-fakta relevan sekaligus membolehkannya membuat keputusan dengan pertimbangan ke atas tuntutan pengiktirafan, yang tidak boleh diselesaikan oleh DGIR. Menteri, dengan itu, berhak untuk bergantung kepada laporan-laporan yang dikemukakan dan tiada keperluan untuk Menteri sendiri menjalankan satu siasatan lanjut seperti yang dihujah oleh perayu.

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(3b) Berkaitan alegasi bahawa keputusan Menteri boleh diketepikan berdasarkan kegagalannya memberikan alasan-alasan terperinci bagi keputusannya itu, rekod menunjukkan bahawa perayu amat menyedari bahawa keputusan Menteri adalah diasaskan kepada laporan-laporan yang dikemukakan oleh DGIR yang mengandungi dapatan-dapatan DGIR/ DGTU, bahawa pekerja-pekerja perayu terangkum ke dalam skop keahlian responden kedua dan bahawa pemeriksaan keahlian yang dibuat menunjukkan bahawa 73.52% dari pekerja perayu adalah ahli responden kedua pada tarikh pengiktirafan dipohon.

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(3c) Afidavit-afidavit DGIR, DGTU dan Menteri mendedahkan bahawa semua mereka bertindak secara adil, wajar dan munasabah dalam melaksanakan kuasa masing-masing di bawah undang-undang. Tidak ada segelumit pun tanda-tanda

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bahawa pihak berkuasa-pihak berkuasa relevan, sama ada DGIR, DGTU mahupun Menteri, telah bertindak secara tidak jujur dalam mencapai dapatan-dapatan mereka.

(4) Berdasarkan fakta kes ini, perayu tidak berhak kepada relif berdasar budi bicara yang dipohon dan yang arif hakim betul dalam menolak tuntutan untuk *certiorari*.

Case(s) referred to:

Euromedical Industries Sdn Bhd v. Menteri Sumber Manusia & Yang Lain [1999] 5 CLJ 171 HC ***(refd)***

Menteri Sumber Manusia v. Association of Bank Officers, Peninsular Malaysia [1999] 2 CLJ 471 FC ***(refd)***

Minister of Labour & Manpower v. Paterson Candy (M) Sdn Bhd [1980] 2 MLJ 122 ***(refd)***

Pahang South Union Omnibus Co Bhd v. Minister of Labour And Manpower & Anor [1981] 2 MLJ 199 ***(refd)***

Perusahaan Otomobil Kedua Sdn Bhd v. Ketua Pengarah Kesatuan Sekerja & Anor [2000] 5 CLJ 351 HC ***(refd)***

Legislation referred to:

Industrial Relations Act 1967, s. 9(2), (3)(a), (b), (c), (4), (4A), (4B)(a), (b), (5)

Industrial Relations Regulations 1980, regs. 4(1)(a), 5(a), Forms A, B, C, D

Public Authorities Protection Act 1948, s. 2(b)

Trade Unions Act 1959, ss. 2(1), (2), 26(3), 71A(1)(a), 74(1)(c)

Trade Unions Regulations 1959, reg. 44

For the appellants - Edward Saw (Edmund Saw with him); M/s Goh Eng Kee & Co

For the 1st respondent - Munahyza Mustafa FC

For the 2nd respondent - K Kumarathiraviam; M/s Shan & Gooi

[Appeal from High Court, Pulau Pinang; Originating Motion No: 25-39-1998 (MT-4)]

Reported by Suresh Nathan

JUDGMENT

Zaleha Zahari JCA:

[1] Unless expressly stated, reference to any legal provision refers to the provisions of the Industrial Relations Act 1967 ("the Act"). The Industrial Relations Regulations 1980 (P.U. (A) 254/80) shall be referred to as "the regulations" and the Trade Unions Act 1959 as "the Trade Unions Act".

A [2] The appellants obtained leave on 24 June 1998 to apply for an order of *certiorari* to quash the decision of the first respondent, the Minister of Human Resources ("the Minister"), dated 21 March 1998 for Marulee (M) Sdn. Bhd ("the appellant") to accord recognition to Kesatuan Sekerja Pembuatan Barangan B Galian Bukan Logam ("the second respondent"). The substantive motion for *certiorari* filed on 2 July 1998 was dismissed by the Penang High Court Judge on 27 August 1999 and the matter now comes on appeal before us.

C [3] The appellants' case essentially rests on whether in arriving at the findings which the respective authorities did, and the Minister's reliance on the reports submitted by the relevant authorities after carrying the investigations which they did, had complied with the rule of natural justice. The duty to act fairly, D one of the prime functions of judicial control of executive and administrative action, is to ensure that the fundamentals of fair play have been observed. The requirements of natural justice vary in their content and ambit of application depending on the circumstances of the case. In the application of the concept of fair E play, there must necessarily be flexibility to the different situations in which it is to be applied. Regard must be given to the scope of the proceedings, the source of jurisdiction, the way it normally falls to be conducted and its objective.

F [4] In respect of a claim for recognition of a trade union the decision making process is statutory as prescribed by Part III of the Act. An employee union may, at any time, serve on an employer a claim for recognition in respect of all employees or class of employees employed by the employer under s. 9(2) of the G Act. The employer upon whom the claim is served has the option to do either one of the following. The employer may accede to the claim and accord recognition, in which case, the matter is resolved. The employer may also reject the claim within the prescribed period of 21 days and notify the union in writing of the H grounds for not according recognition. Alternatively, within the prescribed 21 days, the employer may refer the matter to Director General of Industrial Relations (DGIR) to ascertain whether their workmen were members of the union claiming recognition (s. 9(3)(b) and 9(3)(c)). Should the union not be accorded I recognition, or where the union fails to comply with s. 9(3) of the Act, it was open to the union claiming recognition to file a report in writing to the DGIR (s. 9(4)).

[5] Upon receipt of an application under 9(3)(c), or a report under s. 9(4) of the Act, the DGIR is under a statutory duty to attempt to resolve the matter. In attempting to resolve the dispute the DGIR is authorized "to take such steps or make such enquiries as he may consider necessary or expedient to resolve the matter" (s. 9(4A). In order to perform his functions under s. 9(4A) the DGIR is empowered "to require the trade union of workmen, the employer, or the trade union of employers concerned, to furnish such information as he may consider necessary or relevant" (s. 9(4B)(a)) and "may refer to the Director General of Trade Unions for his decision any question on the competence of the trade union of workmen concerned to represent any workmen or class of workmen in respect of whom recognition is sought to be accorded" (s. 9(4B)(b)). This provision also provides that the performance of duties and functions of the Director General of Trade Union (DGTU) under this paragraph shall be deemed to be a performance of his duties under the written law relating to the registration of trade unions. There is accordingly a direct nexus of the power entrusted to the DGTU under the Act and that conferred upon him by the Trade Unions Act.

[6] A "trade union" is defined in s. 2(1) of the Trade Unions Act to mean, so far as relevant for present purposes, any association or combination of workmen within any particular "trade, occupation, or industry or within any similar trades, occupation or industries". The DGTU is the authority upon whom power is conferred to determine the scope and ambit of trade union membership whether there is similarity in trade, business and profession. Section 2(2) of the Trade Unions Act provides that for the purposes of the definition of 'trade union' in s. 2(1), and registration of a trade union, 'similar' means similar in the opinion of the DGTU. (See decision of the Federal Court in *Minister of Labour & Manpower v. Paterson Candy (M) Sdn Bhd* [1980] 2 MLJ 122).

[7] The definition of a "trade union" in s. 2(1) of the Trade Unions Act, read together with s. 9(4B)(b) of the Act, requires the DGTI, in carrying out his functions under s. 9(4A) thereof, to refer to the DGTU for his decision any question on the competence of the trade union of workmen concerned to represent any workmen or class of workmen in respect of whom recognition is sought to be accorded. This provision further provides that the

A performance of duties and functions by the DGTU under this paragraph shall be deemed to be a performance of his duties and functions made under the written law relating to the registration of trade unions.

B **[8]** Further, by virtue of s. 26(3) of the Trade Unions Act, where a trade union has served a claim for recognition under the Act, the DGTU may, at the request of the DGIR, carry out a membership check in the manner prescribed by regulations to ascertain the percentage of workmen or any class or workmen, in C respect of whom recognition is being sought who are members of the union making the claim.

[9] On recognition of a trade union, the following appears to be settled by the authorities. 'Competency' in a trade union is to be decided upon two areas. Firstly, whether the employees are within D the scope of representation of the trade union (ie, similarity in trade profession and industry) and secondly, whether the trade union has the majority members (*Euromedical Industries Sdn Bhd v. Menteri Sumber Manusia & Yang Lain* [1999] 5 CLJ 171).

E **[10]** A trade union of employees is bound by their constitution in respect of the scope of representation. A union can only represent the category or class of workmen specified in their constitution. It must be an association of workmen in similar trades, occupations or industries (See *Minister of Labour & Manpower v. Paterson Candy* F *(M) Sdn Bhd* [1980] 2 MLJ 122). Where a trade union is registered to represent employees in a particular establishment, its scope of representation is limited and confined to representing employees employed by that establishment and they cannot represent employees employed by another establishment (See G *Perusahaan Otomobil Kedua Sdn Bhd v. Ketua Pengarah Kesatuan Sekerja & Anor* [2000] 5 CLJ 351). It is for the trade union to establish that they have sufficient members to represent the employees within the scope of their representation in a particular industry, trade or profession.

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[11] The law does not require the DGIR to make a "decision" on the matter. It is not for the DGIR to decide whether or not to accord recognition. The power to accord recognition is only given to the employer under s. 9(3)(a), or the Minister under I s. 9(5). The most that the DGIR can do in resolving the matter

under s. 9(4A), is to advise the employer to accord recognition, and if the matter is not resolved, to then invoke s. 9(5) of the Act and refer the dispute to the Minister for decision.

[12] Athough the law confers upon the DGIR a discretion whether or not to seek the assistance of the DGTU when a claim for recognition is lodged, the courts have held that, where the circumstances warrants so, the DGIR should utilize the expertise of the DGTU with a view of resolving such disputes as the failure to refer to the DGTU may result in the Minister not being adequately informed or briefed on the matter in dispute. A decision made without the participation of the expertise of the DGTU is open to be analyzed by standards of unreasonableness in judicial review proceedings (See *Menteri Sumber Manusia v. Association of Bank Officers, Peninsular Malaysia* [1999] 2 MLJ 337; [1999] 2 CLJ 471. When a matter is not resolved and a report under 9(4) of the Act is referred to the Minister by the DGIR, it is incumbent upon the Minister to make a decision (See *Pahang South Union Omnibus Co. Bhd. v. Minister of Labour And Manpower & Anor* [1981] 2 MLJ 199 (FC)).

[13] The factual matrix against which the application of the appellants was dismissed is as follows. On 19 October 1996 the second respondent issued a Notice of Claim For Recognition in Form A of the Regulations from the appellant. Upon receipt of the second respondent's claim for recognition the appellants did nothing. The appellants did not accord recognition, neither did they notify the second respondent in writing of the grounds for not according recognition within the 21 days period provided in the law. The appellants did not, at that stage, deem it fit to state that the reason they were not according recognition to the second respondent was because their manufacturing activities involved "handicraft" work, or because of the usage of metals in their products, a "Non-Metallic Union" was not the right union to represent their workers. Rule 3 of the Second Respondent's Constitution limits membership to "employees … engaged in the manufacture of non-metallic mineral products …"

[14] A month lapsed before the appellants acted on the claim for recognition. The appellants issued letter dated 18 November 1996 to the DGIR requesting the DGIR to carry out an examination ("menjalankan pemeriksaan") to ascertain whether the second respondent was competent to represent their employees.

A By issuing this letter which they did, the appellants appeared: (a) to be exercising, out of time, the right conferred upon them by s. 9(3)(c) of the Act; (b) that the independent body conferred with jurisdiction in resolving matters such as this, do carry out an investigation and submit their findings to enable the appellants to B make a considered decision on the claim of recognition lodged.

[15] On the part of the second respondent, when the appellant did not respond to their claim for recognition within the 21 days period provided by s. 9(3), the second respondent lodged a C report in writing *vide* letter dated 20 December 1996 to the DGIR requesting him to intervene to the claim for recognition pursuant to s. 9(4) of the Act.

[16] We would like to address the issue of the failure of the appellants' to respond to the claim for recognition made by the D second respondent within the time frame of 21 days prescribed by s. 9(3) of the Act at this stage. The learned judge considered the appellants' failure to respond to the claim for recognition within the prescribed period of 21 days as "fatal" and held that it was E mandatory for the appellants to act within the prescribed time frame.

[17] On the facts of this case we are of the view that nothing turns on the appellants' failure to respond within the prescribed time frame of 21 days. We are not in agreement with the learned F judge's ruling on this point for the following reasons. The DGTU clearly has a statutory duty under s. 9(4A) of the Act to attempt to resolve a claim for recognition. Notwithstanding the fact that appellants' request to the DGIR to conduct an examination on the competency of the second respondent was lodged out of time G frame provided by the law, the DGIR was nevertheless under a statutory duty to act upon the report in writing lodged by the second respondent under s. 9(4) consequent upon the appellants' failure to respond to the claim for recognition within the prescribed time frame. As the DGIR was under a statutory duty H to resolve the claim of recognition upon receipt of the second respondent's report in writing under s. 9(4), we are of the view that nothing turns on the appellants' request to the DGIR to investigate on the competency of the second respondent to represent the appellants' employees out of the time frame I prescribed by s. 9(3).

[18] The DGIR then exercised the power conferred upon him by s. 9(4B)(b) of the Act. As the issue of competency of the second respondent to represent the appellants' employees had been raised, *vide* letter dated 25 February 1997, the DGIR requested the DGTU to carry out an investigation and submit a report to him, which letter was also extended to the appellants and the second respondent.

[19] The DGTU responded to the DGIR's letter dated 25 February 1997 by taking the following action. The DGTU issued letter dated 1 April 1997 informing the appellants that an officer from his Department would be present at the appellants' premises on 8 April 1997 at 10.45am to observe the industrial activities carried out by the appellants. The DGTU also requested the appellants to furnish information relating to the date of the appellants' incorporation, ownership, as well as details of their employees according to gender as at 31 March 1997, breakdown of the company's Divisions/Units, the nature of the goods produced, the manner or process of production of their goods, as well as the marketing of such goods.

[20] The DGTU then submitted a report of the result of his investigations and findings on the issue of the second respondent's competency to represent the appellants' employees to the DGIR. According to the DGTU's report dated 24 May 1997, after carrying out the investigations which he did, the DGTU was of the opinion that the second respondent was competent to represent the appellants' employees.

[21] Upon receipt of the DGTU's report, the DGIR issued letter dated 11 June 1997 informing the appellants (as well as the second respondent) of the DGTU's findings. In the same letter the DGIR informed both the appellants and the second respondent that a membership check would be carried out to ascertain whether the majority of the appellants' employees were members of the second respondent upon receipt of Forms B and C of the regulations, and that they would both be duly notified of the result of the membership check.

[22] Another letter was issued by the DGIR on the same date (11 June 1997) to the appellants by which letter the appellants were informed that a membership check pursuant to reg. 4(1)(a) of the regulations would be conducted. For this purpose the

A appellants were required to furnish to the DGIR a list of their employees as at 19 October 1996 in Form B of the regulations not later than 25 June 1997.

[23] The appellants' responded to the DGIR's letter dated 11 B June 1997 in terms of letter dated 1 July 1997. They disputed the findings of the DGTU and the DGIR that the second respondent was competent to represent their employees.

[24] It is necessary at this stage to deal with the learned judge's ruling that it was necessary for the appellants not only to C challenge the decision of the Minister, but also challenge the findings of the DGTU. In relation to the DGTU's decision on the issue of "competency", we note that s. 71A(1)(a) of the Trade Unions Act provides that any person dissatisfied with the opinion of the DGTU under s. 2(2) may, within 30 days from the date of D the opinion, appeal to the Minister in the manner prescribed by regulations. On this issue, reg. 44 of the Trade Unions Regulations 1959 applies. Thus, although the appellants had, at that stage, the right to appeal to the Minister against the DGTU's findings on the issue of "competency" pursuant to s. 71A(1)(a) of the Trade E Unions Act, whether deliberately or otherwise, this right was not exercised. Although the appellants had by letter dated 1 July 1997 requested the DGIR to carry out an investigation on the issue of competency of the second respondent to represent their employees, they were however not prepared to abide by the result F of the investigations and findings of the DGTU when the findings were against them.

[25] We are of the view that the effect of the appellants' failure to exercise this right of appeal against the findings of the DGTU G on the issue of competency within the time frame given in s. 74(1)(c) of the Trade Unions Act is that the DGTU's decision that the second respondent was a competent union to represent the appellants' employees was binding upon the appellants. In this situation we are of the view that the learned High Court Judge H had not erred when, in his judgment, he took note of the appellants' failure to challenge the findings of the DGTU. To conclude on this point, by reason of the appellants' failure to exercise their right of appeal to the Minister on this issue, it was no longer open for the appellants to subsequently question the I competency of the second respondent to represent the appellants'

employees. In any event, even if an appeal had been lodged, the appellants is not entitled to call on the DGTU to justify his findings of fact on the issue of competency, nor to expect a court in judicial review proceedings to reverse the findings of fact of the DGTU.

[26] What transpired next was this. The DGIR issued another letter on 9 July 1997 to the appellants, which letter was sent by registered post. By reason of the issue of "competency" having been determined in the second respondent's favour, the appellants were advised to make a decision on the claim of recognition. In para. 3 of this letter the DGIR expressly stated that should the appellants fail to make a decision, the appellants were required to furnish, in triplicate, a list of the names of appellants' employees eligible to be represented by the second respondent on the date recognition is sought (19 October 1996), which information had earlier been requested by letter dated 11 June 1997.

[27] The appellants' response was in terms of letter dated 26 August 1997. Three copies of Form B were furnished to the DGIR as requested. In the second paragraph of this letter the appellants raised for the first time the issue of their involvement in "handicraft business", and they again disputed the DGIR's findings of competency of the second respondent to represent their employees. In the light of our earlier ruling on the failure to exercise the right of appeal to the Minister on the issue of competency, in our opinion it is too late for the appellants at this stage to advance further grounds at the DGIR and DGTU level, to review their earlier findings. The DGIR and DGTU was *"functus officio"* as far as the issue of competency was concerned.

[28] On the same day, by letter dated 16 September 1997, the DGIR requested the appellants to furnish a list of their employees in triplicate in Form B particularizing the nature of the work carried out by such employees, the date when the employee ceased to be in the appellants' employment (if applicable), within 14 days of the date of the said letter pursuant to reg. 4(1)(a) of the regulations. This procedural provision is to implement the substantive provision enacted in s. 9(4B) of the Act. By reg. 4(1)(a) of the regulations the DGIR is empowered in carrying out his functions under Part III of the Act (which relates to the recognition and scope of representation of trade unions) to require

A the DGTU to ascertain and inform him as to whether or not the workmen in respect of whom the claim for recognition is made, are members of the trade union making the claim. By letter dated 13 November 1997, the DGIR requested the DGTU to carry out an investigation as to the membership of the appellants' employees in B the second respondent as at 19 October 1996, which letter was extended to the appellants as well as the second respondent. The Forms B and Forms C furnished by the appellants to the DGIR was duly forwarded to the DGTU for his further action.

C **[29]** The DGTU informed the DGIR of the result of the membership check carried out by letter dated 13 January 1998. According to this letter the membership check carried out by the DGTU shows, as at the date recognition is sought (19 October 1996), 73.52% of the appellant's employees were members of the D second respondent.

[30] The DGIR duly notified the appellants of the result of the membership check carried out by the DGTU *vide* letter dated 20 January 1998. Paragraph 4 of this letter states that by reason of E the majority of the appellants' employees being members of the second respondent as at 19 October 1996, the appellants were advised to accord recognition to the second respondent. Paragraph 5 of this letter required the appellants to communicate their decision direct to the second respondent within 14 days of the F date of that letter, and to extend a copy thereof to the DGIR. The appellants were also informed that, should the matter not be resolved within the specified period given, s. 9(4C) of the Act would be invoked.

[31] It is common ground that the appellants did not abide by G the DGIR's advice. The time frame given for appellants to make a decision lapsed. The appellants failed to make a decision within the time frame given.

[32] This continued failure on the part of the appellants to make H a decision on the claim for recognition caused the DGIR to issue yet another letter on 18 February 1998 to them. By this letter a final opportunity of another period 14 days was given to the appellants to make a decision on the claim for recognition. The appellants were again notified that should they fail to make a I decision within the extended period given, the matter would be referred to the Minister pursuant to s. 9(4C) of the Act. This extended period of 14 days again passed by without the appellants making any decision on the claim for recognition.

[33] As the DGIR was unable to resolve the dispute, the DGIR submitted a report on the matter to the Minister together with the reports and findings of the DGTU. Based on the material provided to him, the Minister's decision dated 21 March 1998 was that the appellants was to accord recognition to the second respondent with effect from 19 October 1996. This court notes that the Minister's decision was in terms of the prescribed Form D pursuant to reg. 5(a) of the regulations which does not provide for the giving of detailed reasons. A copy of the Minister's decision in Form D was duly forwarded to the appellants *vide* the DGIR's letter dated 28 March 1998.

[34] From the facts as enumerated above, it is clear that the procedure prescribed by the law had clearly been observed by all of the relevant authorities at the different stages of the decision making process. On the part of the DGTU, in making the enquiries at the two-staged process, prior to giving his expert opinion for the consideration of the DGIR in attempting to resolve the claim for recognition, it is abundantly clear that the appellants' had been given the fullest opportunity to participate and state their case on the respective issue then in question. The record shows of repeated requests and opportunities given to the appellants to furnish all relevant documents and information for the consideration of the relevant authorities. In other words, to state their case, to enable the relevant authorities to make a considered finding on the matters in issue at the respective stages.

[35] It is very clear to us from the record that the failure of the appellants to make a decision to the claim of recognition had prolonged the dispute. The information sought by the relevant authorities, was only submitted after continued reminders were issued. All parties had been kept informed of the findings of the relevant authorities at every stage. It would appear it was for these reasons that the learned High Court Judge had, in his judgment, stated that "more than one opportunity had been given to the appellant to state their case". As far as the rule of natural justice in relation to the right to be heard is concerned, we are of the view that this rule has been strictly observed by the DGIR and DGTU in arriving at the conclusions which they did.

A **[36]** It is common ground that the opinion and findings of the DGIR and DGTU submitted to the Minister were taken into consideration by the Minister in arriving at the decision which the Minister did under s. 9(5) of the Act. As for the appellants' argument that the Minister was not bound by the reports of the B DGIR or the DGTU, and reliance on them by the Minister in arriving at the decision which he did, renders such decision as being a "rubber stamp", our views are as follows. It has been firmly established by case law that the results of investigations carried out by the DGIR and the DGTU's Department were C important material to enable the DGIR in the first instance to resolve a dispute. These reports were relevant and important material in the making of a considered decision by the Minister under s. 9(5) of the Act. The submission of these reports to the Minister established that the Minister had been adequately D informed and been appraised of all relevant facts to enable him to make a considered decision on the claim for recognition in issue which could not be resolved by the DGIR *(Menteri Sumber Manusia v. Association of Bank Officers, Peninsular Malaysia)*. The Minister was clearly entitled to rely on the reports submitted. E There was no necessity for the Minister himself to conduct a further enquiry as contended by the appellants.

[37] On the allegation that Minister's decision is liable to be set aside by reason of a failure to give detailed reasons in arriving at F the decision which he did, the record shows that the appellants were well aware that Minister's decision was grounded on the reports submitted by the DGIR containing the opinion/findings of the DGIR/DGTU, that the appellants' employees came within the membership scope of the second respondent and the result of the G membership check carried out showing that 73.52% of the appellant's employees were members of the second respondent on the date recognition was sought.

[38] The affidavits of the DGIR, DGTU and the Minister disclose that they have all acted fairly, properly and reasonably in the H exercise of their respective powers under the law. There has never been the slightest suggestion that the relevant authorities, be it the DGIR/DGTU, had acted otherwise than in good faith in arriving at the findings which they did, as well as the Minister, in making the decision which he did.

I

[39] On the facts of this case the appellants is not entitled to the discretionary relief sought and the learned judge was clearly right in dismissing the claim for *certiorari*.

[40] For the reasons given this appeal was dismissed costs. The deposit is to be paid to the respondents equally to account of their taxed costs. Costs of the first respondent will be on a solicitor client basis pursuant to the provisions of s. 2(b) of the Public Authorities Protection Act 1948.