Belvin Lee Kim Cheong v Abdul Rasid bin Sudin Pengerusi, Lembaga Pencegahan Jenayah & Ors [2022] MLJU 479

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HIGH COURT (KUALA LUMPUR)

NOORIN BADARUDDIN J

PERMOHONAN SEMAKAN KEHAKIMAN NO WA-25-373-12/2020

26 March 2022

Mond Haijan Omar (Daljit Singh with him) (Daljit Singh Partnership) for the applicant.
Muhamad Safuan bin Azhar (Peguam Persekutuan) for the respondents.

Noorin Badaruddin J:

JUDGMENT

[1]This is the Applicant's application for certiorari order to quash inter alia the 1st and/or 2nd Respondent's decision in issuing the Police Supervision Order (the **"Order")** under section 15 of the Prevention of Crime Act 1959 **("the Act")** dated 17.9.2020.

[2]The Applicant was ordered to be placed under the police supervision at Mukim Selising, Jajahan Pasir Puteh, Negeri Kelantan for two years, from 17.9.2020 to 16.9.2022.
The Issues

[3]Three main questions were raised on behalf of the Applicant as follows:

i) Whether the condition in the Police Supervision Order dated 17.9.2020 that the Applicant shall not have access to the internet offends Article 8 of the Federal Constitution and therefore unconstitutional;

ii) Whether the finding by the Inquiry Officer that there were no reasonable grounds for believing the Applicant had committed an offence under the Act is unknown in law and therefore cannot stand; and

iii) Whether the Advisory Board **("the Board")** in exercising its discretion to reverse the finding of the Inquiry Officer under section 10A(1)(b) of the Act is bad in law.

Findings

[4]On the first issue, it is the Applicant's contention that the condition in the Order where he is prohibited from having access to the internet is illegal. According to the Applicant, the condition is harsher than the one provided under section 296 of the Criminal Procedure Code **("CPC")** and that the provisions of section 15 of the Act goes beyond the intention of section 296 of the CPC.

[5]The Applicant urges the Court to take judicial notice that access to internet should be regarded as

almost a basic right and that it is disproportionate to deny the Applicant access to the internet. It is the Applicant's case that the prohibition of internet access as a condition in the Order violates the principle of equality prescribed in Article 8 of the Federal Constitution.

[6]The relevant part of section 15 of the Act is reproduced:

> *"Police supervision*
>
> *15 (2) Any person placed under the supervision of the police by order made under this section shall also be subject to all or any of the following restrictions and conditions, as the Board may by order direct:*
>
> (i) *except so far as may be otherwise provided by the order, he shall not access the internet"*

[7]The grounds on which an administrative action is subject to control by judicial review had been classified under three heads, namely illegality, irrationality and procedural impropriety. In the landmark case of *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 apart from the three headings, the principle of "proportionality" had also been adopted under the classification for judicial review. In general, in exercising its supervisory power in judicial review, the court is to determine whether the law is being obeyed or otherwise by the decisionmaking authority in question. So long as the decision is reached in accordance with law, the general rule is that the court's own view on the correctness of such decision is outside the province of judicial review. The court is reminded that its power to interfere in matters relating to the exercise of discretion by the public authority is not an appellate authority to override the decision but as a judicial authority to see whether the public authority has contravened the law.

[8]It is trite law that first and foremost, the court must give effect to what the provisions of the law state, more so when the intention of the law is clear and unambiguous. When the law provides discretionary power to be exercised by the authorities, the court must not interfere with the exercise of such power.

[9]In *Chua Kian Voon v Menteri Dalam Negeri Malaysia & Ors* [2020] 1 CLJ 747, His Lordship Mohd Zawawi Salleh FCJ in delivering the judgment of the Federal Court opined as follows:

> *"[45] In our considered opinion, the provisions of* s. 4(1) and (5) of 1985 *Act are very clear.* ***It is trite that where the words are clear and unambiguous, a court should give effect to the plain words.*** *In Megat Najmuddin Dato Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645; [2002] 1 MLJ 385, *citing the decision of the Supreme Court of India in the case of Hiralal Ratan Lai v. The Sales Tax Officer, Section III, Kanpur AIR 1973 SC 1034, this court observed:*
>
> > ***In construing a statutory provision, the first and foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision the legislative intent is clear, we need not call into aid the other rules of construction of statutes,*** *(emphasis added)."*[Emphasis added]

[10]It cannot be disputed that the Board is empowered with the discretionary power to impose the condition that the Applicant shall not have access to the internet. That has been explicitly prescribed and legislated by Parliament and although the courts are frequently reminded of the duties assigned to them and the functions which they discharge in guarding the Constitution, the court must not go beyond the intention of the Parliament in legislating such condition. It must be reminded that Parliament itself derives its legislative powers from the Federal Constitution. Parliament is empowered to make laws. By prescribing a law where the public authority can impose conditions, and in this instant matter prohibition to internet access by the Board on person placed under the police supervision, the court cannot encroach such power as it is within the Board's power to do so. As stated by His Lordship Azahar Mohamed CJM in *Letitia Bosman v PP & Other Appeals* [2020] 8 CLJ 147**:**

> *"This connotes a respect to the doctrine of separation of power and complements the independence and impartiality of the Court. As such, the Court as a guardian of constitution is expected to give effect to law duly passed by Parliament."*

[11]Since the condition imposed by the Board is allowed by the law, whether such law is harsh or unjust, it is not for the courts to go against what has been expounded by the language and clear intention of the Act. The harshness of or an unjust law must be brought to the attention of the Legislative body as it involves question of policy. This court is guided by the decision of the Federal Court in *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187 where Raja Azlan Shah FCJ (as His Royal Highness then was) had held the followings:

> ***"The question whether the impugned Act is "harsh and unjust" is a question of policy to be debated and decided by Parliament, and therefore not meet for judicial determination. To sustain it would cut very deeply into the very being of Parliament. Our courts ought not to enter this political thicket, even in such a worthwhile cause as the fundamental rights guaranteed by the Constitution,*** *for as was said by* Lord Macnaghten in *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107 *118*:
>
> > *"Some people may think the policy of the Act unwise and even dangerous to the community. Some may think it at variance with principles which have long been held sacred. But a judicial tribunal has nothing to do with the policy of any A ct which it may be called upon to interpret That may be a matter for private judgment. The duty of the court, and its only duty, is to expound the language of the Act in accordance with the settled rules of construction. It is, I apprehend, as unwise as it is unprofitable to cavil at the policy of an Act of Parliament, or to pass a covert censure on the Legislature."* [Emphasis added]
>
> *It is the province of the courts to expound the law and "the law must be taken to be as laid down by the courts, however much their decisions may be criticised by writers of such great distinction"— per* Roskill L.J. in *Henry v Geopresco International Ltd* [1975] 2 All ER 702 *718*. ***Those who find fault with the wisdom or expediency of the impugned Act, and with vexatious interference of fundamental rights, normally must address themselves to the legislature, and not the courts; they have their remedy at the ballot box."*** [Emphasis added]

[12]In the context of the legality of preventive law, further guidance can be obtained from the Federal Court's decision in *Rovin Jotty Kodeeswaran v Lembaga Pencegahan Jenayah & Ors and Other Appeals* [2021] 4 CLJ 1 where Her Ladyship Zabariah Mohd Yusof FCJ (for the majority) had explained the scheme of the Act as follows:

> "Scheme Of POCA
>
> *[81] POCA which relates to preventive detention, and was enacted pursuant to* art. 149 of the FC*, is to be treated separately from the general criminal law of detention promulgated under* art. 74 of the FC*. POCA is a Federal law, which provides that any provision in any Act of Parliament whose recital satisfies the same is valid notwithstanding that the provision maybe inconsistent with arts. 5,9, 10 or 13 of the FC.*
>
> *[82] In our present appeals, in the context of POCA, Parliament may restrict fundamental rights on grounds of public order and national security premised on* art. 149(1) (a) and (f) of the FC *which provides that:*
>
> > *Legislation against subversion, action prejudicial to public order, etc.*
> >
> > *149. (1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the federation:*
> >
> > (a) *to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or*
> >
> > (b) *to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or*
> >
> > (c) *to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or*
> >
> > (d) *to procure the alteration, otherwise than by lawful means, of anything by law established; or*
> >
> > (e) *which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or*

(f) *which is prejudicial to public order in, or the security of, the federation or any part thereof,*

(g)

(h) *any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of art. 5, 9, 10 or 13, or would apart from this article be outside the Legislative power of Parliament; and art. 79 shall not apply to a Bill for such an Act or any amendment to such a Bill, (emphasis added)*

(2) A law containing such a recital as is mentioned in Clause (1) shall, if not sooner repealed, ceased to have effect if resolutions are passed by both Houses of Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of Parliament to make a new law under this article.

[83] The aforesaid article provides that Parliament may legislate in a manner contrary to the fundamental liberties provisions of the FC if Parliament believes that action has been taken or is being threatened to cause any of the circumstances listed in items (a) to (f) of art. 149(1). *In this respect, it is pertinent to look at the preamble of POCA which states:*

An Act to provide for the more effectual prevention of crime throughout Malaysia and for the control of criminals, members of secret societies, terrorists and other undesirable persons, and for matters incidental thereto.

WHEREAS action has been taken and further action is threatened by a substantial body of persons both inside and outside Malaysia to a cause, or to cause a substantial number of citizens to fear, organised violence against persons or property.

AND WHEREAS Parliament considers it necessary to stop such action;

NOW THEREFORE, pursuant to Article 149 of the Federal Constitution *IT IS ENACTED by the Parliament of Malaysia as follows:..*

(emphasis added)

[84] As the preamble of POCA states that it was enacted pursuant to art. 149 of the Constitution, it validates laws passed notwithstanding that it is inconsistent with any of the provisions of arts. 5, 9, 10, and 13. Of concern are the fundamental liberties provisions of art. 5 and art. 9. ***However fundamental liberties although enshrined under the FC, are not absolute and can be taken away by the passing of laws by the Legislature pursuant to art. 149. That validly enacted law in our present context is s. 15B(1) of POCA which prohibits judicial review of the Board's decision save and except on procedural non-compliance.***

[85] It is to be observed that there is a similarity in the preamble of POCA and the desired objective as expressed in art. 149(1), in particular item (a) thereof, namely, "action has been taken or threatened by a substantial body of persons both inside and outside Malaysia to cause a substantial number of citizens to fear, organised violence against persons or property".

[86] This is the additional condition which the FC expressly provides for, that must be met before a piece of legislation which limits the rights of a person, may be enacted. Thus, ***POCA satisfies this condition and it is a special law, of an entirely different Legislative regime relating to preventive detention enacted pursuant to art. 149 FC.*** *The Legislative scheme of s. 15B of POCA is to limit the judicial review power of the High Courts to procedural non-compliance by the decision maker."* [Emphasis added]

[13]As such, the restriction to internet access provided under section 15 (2) (i) of the Act is therefore valid and in accordance with law.

[14]Next, the Applicant contends that section 15(2)(i) of the Act is in contrast with section 296 CPC as it imposes condition which is heavier or harsher than the conditions provided under the later and that the Applicant is therefore denied of his right to equal protection under the law guaranteed under Article 8 of the Federal Constitution.

[15]Section 296 of the CPC stipulates:

> *"Obligations of persons subject to supervision*
>
> *296.- (1) Every person subject to the supervision of the police*
>
> *who is at large within Malaysia shall—*
>
> (a) *notify the place of his residence to the officer in charge of the police district in which his residence is situated;*
>
> (b) *whenever he changes his residence within the same police district notify such change of residence to the officer in charge of the police district;*
>
> (c) *whenever he changes his residence from one police district to another notify such change of residence to the officer in charge of the police district which he is leaving and to the officer in charge of the police district into which he goes to reside;*
>
> (d) *whenever he changes his residence to a place beyond the limits of Malaysia notify such change of residence and the place to which he is going to reside to the officer in charge of the police district which he is leaving;*
>
> (e) *if having changed his residence to a place beyond the limits of Malaysia he subsequently returns to Malaysia notify such return and his place of residence in Malaysia to the officer in charge of the police district in which his residence is situated.*
>
> ***(2) Every person subject to the supervision of the police, if a male, shall once in each month report himself at such time as is prescribed by the Chief Police Officer of the State in which he resides either to the Chief Police Officer himself or to such other person as that officer directs, and the Chief Police Officer or other person may upon each occasion of such report being made take or cause to be taken the finger prints of the person so reporting."***

[16]It must be borne in mind that section 296 of the CPC is a general provision of the law relating to restrictions of persons placed under the police supervision whilst section 15(2)(i) of the Act is a specific provision for offences under the Act. It is therefore clear that the maxim *"generalia specialibus non deroganf* cannot be ignored and is applicable in the instant matter. In *Public Prosecutor v. Chew Siew Luan* [1982] CLJ (Rep) 285, reference to the Federal Court arose as a result of the granting of bail to the respondent by the President, Sessions Court, Penang applying the proviso of s. 388(i) of the CPC pending the hearing of the case against the respondent for an offence under s. 39B of the Dangerous Drugs Act 1952. The Public Prosecutor appealed to the High Court against the order of granting bail but the learned Judge dismissed it stating that s. 41 B(1) and (2) of the Dangerous Drugs Act 1952 does not override the proviso to s. 388(i) of the CPC. The Federal Court had held that

> *"[1] The provisions regulating the granting of bail under the Dangerous Drugs Act must be construed in the context of that Act and not in that of the CPC and to that extent the general provisions of the CPC must ex necessitate yield to the specific provision of* s. 41B of the Dangerous Drugs Act *in that regard.*
>
> *[2] Section 388 of the CPC does not override the provisions of* s. 41B of the Dangerous Drugs Act *1952 (Act 234) and accordingly the first question must be clearly in the negative and the second a non sequitur."*

[17]In that case, Raja Azlan Shah CJ (Malaya) (as His Royal Highness then was) had stressed upon the maxim *"generalibus specialia deroganf* as follows:

> "We *further note in particular that s. 41B of the Act is an entirely new section introduced by the Dangerous Drugs (Amendment) Act 1978 (Act A426) and became operative on 10 March 1978. Generalibus specialia derogant is a cardinal principle of interpretation. It means that where a special provision is made in a special statute, that special provision excludes the operation of a general provision in the general law. [See also PP v. Chu Beow Hin* [1982] CLJ (Rep) 288 *at p. 291]. The provisions of* s. 3 of the Criminal Procedure Code *which counsel for the respondent seeks to rely on has no relevance whatsoever to the matter in issue before us."*

[18]The intention of Parliament is therefore clear in that the provision of section 15(2) (i) of the Act is meant to prevail over the general provision of the restrictive conditions of person under the police supervision in section 296 of the CPC. The maxim cannot be a mere surplusage when a specific provision was iegisiated to override a general provision of the law. It must not be overlooked that the scheme of the CPC itself provides that all offences shall be inquired into and tried according to it (the CPC) subject to any written law for the time being in force regulating the manner or place of inquiring into or trying such offences. In the instant matter, the written law in force is the Act.

[19]Since section 15 (2) (i) of the Act provides that internet access can be restricted upon the Applicant, in applying the maxim *"generalia specialibus derogant',* such condition overrides the provision of section 296 of the CPC as the latter is a general provision of the law.

[20]In line with the above findings, it is further obvious that the Act provides discretionary power to the Board to reverse the findings of the Inquiry Officer after considering the latter's findings. Section 10A of the Act provides:

> *"Decision of the Board*
>
> *10A. (1)* ***Where the Board, after considering the finding of the inquiry Officer submitted under subsection 10(1) and the complete report of the investigation submitted under section 4A, is satisfied that—***
>
> (a) *there are no sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall confirm the finding; or*
>
> (b) ***there are reasonable grounds for believing that the person is a member of any of the registrable categories, the Board shall reverse the finding.***
>
> ***(2) Where the Board, after considering the finding of the Inquiry Officer submitted under subsection 10(2) and the complete report of the investigation submitted under section 4A, is satisfied that—***
>
> (a) *there are reasonable grounds for believing that the person is a member of any of the registrable categories, the Board shall confirm the finding; or*
>
> (b) ***there are no sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall reverse the finding."***

[21]In the instant matter, the Board reversed the findings of the Inquiry Officer and had exercised its power under section 10A (1) (b) of the Act. The Chairman of the Board/the 1st Respondent in his affidavit avers the reasons as follows:

> *"19. Merujuk kepada perenggan 10,11 dan 11(c) (i) Afidavit Pemohon, saya sesungguhnya menafikan dakwaan-dakwaan Pemohon tersebut dan saya mengulangi semula pernyataan saya dalam perenggan 5 hingga 14 di atas. Saya sesungguhnya menegaskan bahawa Lembaga Pencegahan Jenayah setelah menimbangkan dapatan Pegawai Siasatan yang telah dikemukakan di bawah* seksyen 10 (1) *dan laporan lengkap yang dikemukakan di bawah 4A Akta tersebut telah berpuas hati bahawa Pemohon adalah orang yang lazimnya terlibat dalam menganggotai kumpulan seramai lebih dari dua orang yang bersekutu bagi maksud-maksud yang meliputi perlakuan kesalahan di bawah Kanun Keseksaan dan oleh itu Pemohon adalah termasuk dalam Kategori Yang Boieh Didaftarkan di bawah Perenggan 2, Bahagian 1, Jadual Pertama, Akta tersebut Sehubungan dengan itu, Lembaga Pencegahan Jenayah telah mengeluarkan Perintah Pengawasan Polis di bawah* seksyen 15 *Akta tersebut terhadap Pemohon bertarikh 17-09-2020. Lembaga Pencegahan Jenayah juga telah menterbalikkan Dapatan Pegawai Siasatan berdasarkan kepada* seksyen 10A (1) (b) *Akta tersebut. Berdasarkan kepada* seksyen 10A (1) (b) *Akta tersebut, terdapat kuasa bagi Lembaga Pencegahan Jenayah untuk menterbalikkan dapatan itu sekiranya setelah menimbangkan dapatan Pegawai Siasatan dikemukakan di bawah* seksyen 10 (1) *dan laporan iengkap yang dikemukakan di bawah* seksyen 4A *Akta tersebut pihak Lembaga Pencegahan Jenayah berpuas hati bahawa terdapat alasan munasabah untuk mempercayai bahawa Pemohon adalah seorang ahli dalam mana-mana kategori boleh didaftarkan. Sehubungan dengan itu, dakwaan bahawa pihak Lembaga Pencegahan Jenayah telah secara tidak munasabah dan/atau/tergesa-gesa dalam mengeluarkan Perintah Pengawasan Polis tersebut tanpa siasatan yang sempurna adalah tidak benar dan tidak berasas sama sekali.... Saya juga sesungguhnya menegaskan bahawa Lembaga*

Pencegahan Jenayah adalah sama sekali tidak bertindak secara arbitrary dan oppresif malahan Lembaga Pencegahan Jenayah telah menimbangkan dapatan Pegawai Siasatan yang dikemukakan di bawah seksyen 10 (1) *dan laporan lengkap yang dikemukakan di bawah* seksyen 10 (1) *dan laporan lengkap yang dikemukakan di bawah 4A Akta tersebut dengan sewajarnya dan seadilnya."*

[22]The Chairman has reiterated his averments in his further affidavit-in-reply.

[23]Following that the discretionary power given to the Board to reverse the findings of the Inquiry Officer is permitted by virtue of section 10A (1) (b), the decision of the Board in reversing such findings is legal, regular and in accordance with law. It must also be emphasised that the decision made by the Board in reversing the findings made by the Inquiry Officer was made not purely based on the report by the Inquiry Officer but as the Chairman of the Board has averred, the Board had also considered the report under section 4A of the Act prepared by the police Investigating Officer, a fact which affirms that the Board did not act hastily, arbitrarily, mechanically in reversing the findings of the Inquiry Officer as alleged by the Applicant. Consequently, the Applicant's contention that the findings made by the Inquiry Officer that there were no reasonable grounds for believing the Applicant had committed an offence under the Act is unknown in law and therefore cannot stand is misplaced and perplexing. The Inquiry Officer is entitled to make his/her findings pursuant to section 10(1) of the Act and whatever his/her findings may be, whether it contradicts or in line with the findings made by the Investigating Officer does not make the former to be 'unknown to the law".

[24]Further, after considering the finding of the Inquiry Officer submitted under subsection 10(1) of the Act and the complete report of the investigation submitted under section 4A of the same, the satisfaction on the part of the Board that there are reasonable grounds for believing that the Applicant is a member of any of the registrable categories cannot be challenged and is outside the scope of judicial review pursuant to section 15B of the Act which states:

"Judicial review of act of decision of Board

15B. (1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Board in the exercise of its discretionary power in accordance with this Act, except in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

(2) In this Act, "judicial review" includes proceedings instituted by way of—

(a) *an application for any of the prerogative orders of mandamus, prohibition and certiorari;*

(b) *an application for a declaration or an injunction; (ba) a writ of habeas corpus; and*

(c) *any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Board in accordance with this Act."*

[Emphasis added]

[25]The Federal Court had held that the vagueness, insufficiency or irrelevancy of the allegations of fact in which the authority based its decision in issuing a detention order is not for the court to judge. This would apply to the decision made by the Board herein. The approach to judicial review is that the reviewing court is only concerned with the decision-making process and not with the substantive aspect or merits of the decision. The Federal Court by the majority in the latest decision in **Rovin Joty Kodeeswaran** (supra) had reiterated this principle enunciated in *Karam Singh v Menteri Hal Ehwal Dalam Negeri Malaysia* [1969] 2 MLJ 129 as follows:

"[140] This court has consistently held that judicial review on the decision of the tribunals exercising similar functions to the Board should not be questioned except on procedural non-compliance. Such discretion in determining the substantive/policy matter by the Board is outside the reach of the courts. Suffian LP in Karam Singh v. Menteri Hal Ehwal

Dalam Negeri (Minister Of Home Affairs), Malaysia [1969] 1 LNS 65; [1969] 2 MLJ 129 *has the occasion to decide on the similar issue when His Lordship held at p. 151 (MLJ) that:*

> *...it is not for a court of law to pronounce on the sufficiency, relevancy or otherwise of the allegations of fact furnished to him. The discretion whether or not the appellant should be detained is placed in the hands of the Yang di-Pertuan Agong acting on Cabinet advice. Whether or not the facts on which the order of detention is to be based are sufficient or relevant, is a matter to be decided solely by the Executive. In making their decision, they have complete discretion and it is not for a court of law to question the sufficiency or relevance of these allegations of fact, (emphasis added)*

Further at p. 153 (MLJ):

> *In any event it is not for the court to judge the vagueness, sufficiency or relevance of the allegations of fact on which the order of detention is based. It is for the Executive to do so.*

Of worthy to note is what Gil! FJ said in his judgment at p. 154 (MLJ):

> *There is ample authority for the proposition that it is not the function of the court to act as a court of appeal from the discretionary decision of the Cabinet and to inquire into the grounds upon which they came to the belief that it was necessary or desirable in the interests of the security of Malaysia to hold the appellant in detention (see The King v. Secretary of State of Home Affairs, Ex parte Lees). As was stated by Lord Atkinson in Rex v. Haliiday, it must not be assumed that the powers conferred upon the Executive by the statute will be abused. His Lordship went on to say (at p. 275): And as preventive justice proceeds upon the principle that a person should be restrained from doing something which, if free and unfettered, it is reasonably probable he would do, it must necessarily proceed in all cases, to some extent, on suspicion or anticipation as distinct from proof.*
>
> *With respect, I agree*

AH FJ at p. 159 (MLJ) said that:

> *Lastly, there is also the appellant's affidavit in which he categorically denies each and every one of the allegations of fact and contends in each case that even if the allegation is true, it cannot constitute a threat to the past or future security of Malaysia. In this connection, I shall be content to say that in habeas corpus proceedings, such as this, the court is not concerned with the truthfulness or otherwise of the allegations because the question whether it is necessary that a person be detained under* s. 8(1)(a) of the Internal Security Act 1960 *is a matter for the personal or subjective satisfaction of the Executive authority. Accordingly, no consideration can be given to the appellant's denial and no opinion need be expressed on his contentions... (emphasis added)*

[141] Allegations of fact in which the order for detention had been based on alleged activities of the detenu and the satisfaction of the Executive being subjective is not open for the court to examine as to the sufficiency of the allegations. Allegations of facts deal with matters within the province of national policy in relation to the security of the nation whereby the subjective satisfaction of the Executive on those allegations cannot be substituted by an objective test in a court of law. The Indian Supreme Court has succinctly expressed its view on this precise issue on the detention order made under s. 3 of the Indian Preventive Detention Act in State of Bombay v. Atma Ram AIR 1951 SC 157 where Kania CJ held at p. 160 as follows:

> *There may be a divergence of opinion as to whether certain grounds are sufficient to bring about the satisfaction required by the section. One person may think one way, another the other way. If, therefore, the grounds on which it is stated that the Central Government or the State Government was satisfied are such as a rational human being can consider connected in some manner with the objects which were to be prevented from being attained, the question of satisfaction except on the ground of mala tides cannot be challenged in a court. Whether in a particular case the grounds are sufficient or not, according to the opinion of any person or body other than the Central Government or the State Government, is ruled out by thewording of the section. It is not open to the court to sit in the place of the Central Government or the State Government and try to determine if it would have come to the same conclusion as the Central Government or the State Government. As has been generally observed, this is a matter for the subjective decision of the Government and that cannot be substituted by an objective test in a court of law.*
>
> (emphasis added)

[142] Although our law differs from that of India as the order of detention to be lawful in India it must be in "accordance with procedure established by law" as opposed to our law which must be "in accordance with law", the principle as to judicial review on substantive matters as stated in the aforesaid case is equally applicable to our situation. In fact, Gill FJ in Karam Singh, after going through the position in India and our local provisions of the law came to the view at p. 151 (MLJ):

> *... in my opinion, it is not for a court of law to pronounce on the sufficiency, relevancy or otherwise of the allegations of fact furnished to him. The discretion whether or not the appellant should be detained is placed in the hands of the Yang di-Pertuan Agong acting on Cabinet advice. Whether or not the facts on which the order of detention is to be based are sufficient or relevant, is a matter to be decided solely by the Executive. In making their decision, they have complete discretion and it is not for a court of law to question the sufficiency or relevance of these allegations of fact.*

[143] The Supreme Court in PP v. Karpal Singh Ram Singh & Another Case [1988] 2 CLJ 587; [1988] 1 CLJ (Rep) 249 *at p. 253 held that what constitutes national security is the province of the Executive and out of the hands of the courts when it said:*

> *Since The Zamora* [1916] 2 AC 77 *courts have come to accept that the best judge of what national security is the authority which has the charge of security i.e the Government. Lord Parker said in that case: Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obviously undesirable that such matters should be made the subject of evidence in a court of law or otherwise discussed in public, (emphasis added)"*

[26]In the final analysis and as a whole, this court is of the considered view that the restriction on internet access imposed by the Board on the Applicant pursuant to section 15(2) (i) of the Act is valid and constitutional. The decision-making process had been complied with by the Board warranting no intervention of the Court byway of judicial review.

Conclusion

[27]Premised on the above, the application by the Applicant was dismissed.

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