Persatuan Eksekutif Tenaga Nasional Berhad v Yang Berhormat Menteri Sumber Manusia, Malaysia & Anor [2020] MLJU 752

Malayan Law Journal Unreported

HIGH COURT (KUALA LUMPUR)

NORDIN BIN HASSAN, J

PERMOHONAN BAGI SEMAKAN KEHAKIMAN NO: WA-25-382-08/2019

20 January 2020

Mohan Ramakrishnan (Ramakrishnan & Assoc.) for the Applicant.
P Jayasingan, P Thavaselvi, R Arichana and SFC Aisyaf Falina Abdullah for the Respondents.

Nordin bin Hassan J:

JUDGMENTIntroduction

[1]This is the applicant's judicial review application to quash the decision of the 1st respondent ('the Minister') dated 14.5.2019 pursuant to section 9(10) of the Industrial Relation Act, 1967 ('IRA 1967').
The Salient Facts

[2]The relevant facts in the present application are the following:

(i) the applicant is an in-house trade union of employees registered under the Trade Union Act 1959 ('TUA 1959') and was accorded recognition by Tenaga Nasional Bhd ('TNB'), the 2nd respondent, on 10.4.1991.

(ii) The applicant represents all Executives of TNB who fall within the scope of the applicant's union representation with the exception of the excluded categories as specified in the applicant's recognition letter dated 10.4.1991 which its contents are as follows:

> *"Merujuk kepada surat tuan TEA 1/90 bertarikh 6hb April, 1991 sukacita dimaklumkan bahawa pihak pengurusan Tenaga Nasional bersetuju memberi pengiktirafan kepada persatuan tuan sebagai persatuan yang mewakili eksekutif-eksekutif Tenaga Nasional. Jawatan-jawatan berikut tidak diiktiraf sebagai jawatan-jawatan eksekutif :-*
>
> 1. *Jawatan-jawatan Gred 11 ke atas.*
> 2. *Ketua-ketua jabatan dan stesen.*
> 3. *Timbalan-Timbalan Ketua Jabatan yang bertaraf G10.*
> 4. *Penolong-Penolong Pengurusan Kakitangan (Perjawatan), Penolong-Penolong Tim. Pengarah Pentadiran, Kakitangan (Perkhidmatan & Tugas-Tugas Am), Penolong-Penolong Pengurus Pentadbiran Perusahaan, Penolong-Penolong Pengurus UPSTEM, Penolong-Penolong Pegawai Undang-Undang, Pegawai-Pegawai Pentadbir Kewangan, Penolong Ketua Akauntan (Lejer Am), Penolong Pegawai Perancang Kanan (Kewangan 2)."*

(iii) The applicant's Constitution which is 'Peraturan-Peraturan Persatuan Eksekutif Tenaga Nasional' provides that membership of the applicant is only open to all Executive employed by TNB and does not include employees in the managerial, confidential and security capacities. It states the following:

> ***"PERATURAN 3 Ahli Kesatuan***
>
> (1) *Keanggotaan kesatuan ini terbuka kepada semua eksekutif yang digaji oleh TENAGA NASIONAL BERHAD* ***kecuali pekerja-pekerja yang digaji dalam jawatan pengurusan, sulit dan keselamatan*** *..."*

(iv) Further, the applicant and TNB are governed by the 8th Collective Agreement (1.1.2014 - 31.12.2016) where the relevant Article for purposes of this application are Article 1 and Article 4. Article 1, *inter alia*, provides that both parties agree to observe, adhere to and comply with the provisions of the Collective Agreement which states the following :

> ***"ARTICLE 1-PARTIES TO THE AGREEMENT***
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> 1. *This Agreement is made this 25th day of February 2014, between Tenaga Nasional Berhad (TNB) (200866 W), a Company registered under the Companies Act 1965, having its registered office at No. 129 Jalan Bangsar, 59200 Kuala Lumpur (hereinafter referred to as the 'Company) of one part and the Tenaga Nasional Berhad Executive Association, a Trade Union of Employees, registered under Trade Union Act 1959 and any successor thereto (hereinafter referred to as the 'Association) of the other part.*
> 2. *WHEREAS both parties hereto* ***agree to observe, adhere to and comply with the provisions herein contained during the currency of this Agreement.***
> 3. *WHEREAS any service and term or condition of service for which provision has not been made herein shall be determined and resolved according to relevant legislation, policy or practice prevailing or in force before this Agreement comes into effect.*
> 4. *Unless otherwise qualified, effective from the date of this Agreement for such specified period, all Executives' service and terms and contitions previously entered into between the Company and the Executives shall be superceded and governed by the provisions of this Agreement.*
> 5. *Notwithstanding the provisions of this Agreement, any existing benefit provided for by the Company and not superseded by this Agreement shall continue to remain in force for executives.*
> 6. *The effect of this Agreement shall be in accordance with* Section 17(1) of the Industrial Relations Act 1967.*"*

(v) Article 4 provides that the Collective Agreement is binding on all Executive of TNB who are within the scope of the applicant's union representation with the exception of the excluded categories. Article 4 states as follows :

> ***"ARTICLE 4 - SCOPE OF AGREEMENT***
>
> 1. *This Agreement shall be binding on the Company and all Executives (excluding those Executives in Option 'A') who are within the scope of representation in positions represented by the Association and reorganised by the Company, with the exception of the following Executives :*
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> a) *Executives in Grade M15 and above.*
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> b) *Executives in managerial positions.*
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> c) *Executives involved in security work.*
>
> d) *Executives whose duties are of a confidential nature.*
>
> e) *Executives who are in human resource management function such as industrial relations, compensation, personnel administration and functions related thereto.*

f) *Executives who prepare Company accounts and financial statements.*

g) *Executives who are involved with corporate legal service or Company secretariat functions.*

h) *All Heads of Department.*

i) *Executives re-employed after attaining compulsory retirement age.*

j) *Executives employed under a Lecturers' scheme of service by Universiti Tenaga Nasional Sdn Bhd.*

k) *Executives appointed directly by any subsidiary of TNB.*

2. *Executives, who are assigned or seconded to subsidiaries of the Company, associate companies or agencies shall be covered by this Agreement.*

3. *In the event of the Company changing its name or merging with other companies or organisation to the effect that the Company is wholly or partly absorbed by the companies or organisations, the articles of this Agreement shall continue to cover the executives to which this Agreement is applicable at the time of change of name or merge took place, for the remaining period of validity of this Agreement.*

4. *Where an Executive is assigned or transferred or promoted to an exempted position in clause 1 of this Article, the Company may require him to resign as a member of the Association. However, when an Executive is transferred from an exempt position to a non-exempt position, he shall be eligible to be a member of the Association and the Association shall be informed."*

(vi) Moving on, in the negotiation for the conclusion 9th Collective Agreement (2017 - 2019), TNB contends that members and/or office bearers of the applicant are employees in Job Grades E12 to E17 which are within the excluded categories as they are employed in managerial, confidential and security capacity.

(vii) As such, on 6.9.2018, TNB referred the dispute to the Director General of Industrial Relation Department (DGIR) pursuant to section 9(1A) of the IRA 1967 and forwarded the same complaint to the Director General of Trade Union (DGTU).

(viii) On 26.9.2018, a discussion on the TNB's complaint was held by DGIR involving the applicant and TNB but no settlement has been achieved.

(ix) In the circumstances, the DGIR by letter dated 15.1.2019 has instructed an investigation to be carried out whether employees in Job Grade E12 – E17 fall within the excluded categories. The instruction for investigation was made pursuant to section 9(1B) of the IRA 1967.

(x) The DGIR's instruction was given to the Director of Industrial Relation of Selangor, Kuala Lumpur, Johor, Kelantan, Pulau Pinang, Pahang, Trengganu, Negeri Sembilan, Kedah/Perlis, Perak, Melaka dan Sabah.

(xi) Further, by letter dated 31.1.2019, the applicant and TNB were informed that an investigation including interview of relevant employees will be conducted at TNB from 11.2.2019 until 13.3.2019.

(xii) The investigation including the interviews was carried out as schedule and the Industrial Relations Department has also obtained the required information from TNB on the scope of duties of employees in Job Grades E12 to E17.

(xiii) Thereafter, on 13.5.2014, the DGIR issued a memorandum with an investigation report to the Minister on the capacity issue of employees Job Grades E12 to E17 pursuant to section 9(1C) of the IRA 1967.

(xiv) On 14.5.2019, the Minister, pursuant to section 9(10) decided as follows:

(a) 822 positions of the TNB's categories within Grade E12 to E17 are employed within Executive capacity; and

(b) 1306 positions of the TNB's employees within Grade E12 to E17 are not employed within Executive capacity ('excluded category of employees').

(xv) Pursuant to the Minister's decision, by letter dated 8.8.2019, the DGTU instructed the applicant to remove the excluded category of employees from the membership of the applicant's register.

(xvi) Dissatisfied with the minister's decision, the applicant filed the present judicial review application.

The Applicant's Grounds For Judicial Review

[3]The applicant's grounds for judicial review can be summarised as follows:

(i) the Minister failed to take into account that the recognition has been given to all positions within Job Grade E12 to E17 as Executives and as such had exceeded his authority;

(ii) the Minister erred in law and/or in facts in deciding that 1306 positions of the employees within Grades E12 to E17 are not employed within Executive capacity;

(iii) the Minister failed to give grounds or reasons for his decision;

(iv) the minister failed to consider the actual facts presented by the applicant to the Industrial Relations Department;

(v) the report by the DGIR and questions and answers during the interview with the relevant authorities were not disclosed for consideration of this Court.

The 1st Respondent's Submission

[4]Conversely, the 1st respondent submitted that the Minister has not committed any error in arriving to his decision pursuant to section 9(10) IRA 1967. The Minister has considered and taken into account all relevant facts forwarded to him in relation to TNB's complaint and the investigation carried out by the IRD to determine the job scope, duties and responsibilities of employees within the Job Grades E12 to E17 apart from other relevant information.

[5]It was further submitted that there is no requirement under the law for the Minister to give his reasons or grounds for his decision.

The 2nd Respondent's Submission

[6]The 2nd respondent submitted that the applicant has not established that the Minister has acted in excess of his authority or powers vested in him under section 9(10) of the IRA 1967.

[7]It was further contended that the fact recognition was given to all position with Job Grade E12 to E17 is irrelevant as the core issue is whether those employees within Job Grade E12 to E17 are within the excluded categories and this will determine the eligibility to be members of the applicant.

[8]Further, the 2nd respondent submitted that the Minister had acted within his jurisdiction and duties having considered all the facts presented before him.

[9]The 2nd respondent also submitted that the absence of the Minister grounds or reasons for his decision does not nullify his decision.

[10]Next, the 2nd respondent submitted that there is no requirement under the law for the DGIR or the Minister to disclose the investigation report to the applicant.

[11]The 2nd respondent further submitted that the applicant is not entitled to the equitable relief of certiorari since the applicant did not come before this Court with clean hands. The reasons are as follows:

(i) notwithstanding the Minister's decision and the DGTU instruction, the applicant continue to allow the excluded categories of employees to remain as the applicant's members, EXCO and/or Committee Members and candidates for nomination as EXCO or Committee Members during the applicant's Tri-Annual General Meeting on 28.9.2019;

(ii) on 28.8.2019, the applicant obtained an interim stay of the Minister's decision until the case management on 23.9.2019 and further extended until the disposal of the application without disclosing to the Court that the excluded categories are specified in the applicant's recognition letter dated 10.4.1991, Regulation 3(1) of the Applicant's Constitution and section 5(2)(b), 5(2)(c) and 9(1) of the IRA 1967.

Findings of This Court

[12]The Minister's decision under section 9(1D) of the IRA 1967 may be reviewed by the High Court on grounds of illegality, irrationality or procedural impropriety.

[13]In the Federal Court case of *Akira Sales & Service (M) Sdn Bhd v Nadiah Zee bt. Abdullah and another appeal* [2018] 2 MLJ 537**,** the liberal approach on judicial review in *R. Rama Chandran v The Industrial Court of Malaysia & Anor [1997] 1 MLJ 145* has been re-emphasized at p. 547 (CLJ); p. 571 (MLJ) as follows:

> *"**[45]** In the same appeal, Edgar Joseph Jr FCJ (Eusoff Chin in agreement) said that an award could be reviewed for substance as well as for process:*
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> > *'It is often said that judicial review is concerned not with the decision but the decision making process. (See eg Chief Constable of North Wales Police v Evans [1982] 1 WLR 1155). This proposition, at full face value, may well convey the impression that the jurisdiction of the courts in Judicial Review proceedings is confined to cases where the aggrieved party has not received fair treatment by the authority to which he has been subjected. Put differently, in the words of Lord Diplock in **Council of Civil Service Unions & Ors v Minister for the Civil Service [1985] AC 374**, where the impugned decision is flawed on the ground of procedural impropriety.*
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> > *But Lord Diplock's other grounds for impugning a decision susceptible to Judicial Review make it abundantly clear that such a decision is also open a challenge on grounds of 'illegality' and 'irrationality' and, in practice, this permits the courts to scrutinise such decisions not only for process, but also for substance.*
> >
> > *In this context, it is useful to note how Lord Diplock (at pp 410-411) defined the three grounds of review, to wit, (i) illegality, (ii) irrationality, and (iii) procedural impropriety. This is how he put it :*
> >
> > > ***By 'illegality'** as a ground for Judicial Review, I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.*
> > >
> > > ***By 'irrationality',** I mean what can by now be succinctly referred to as Wednesbury unreasonableness' (see Associated Provincial Picture Houses Ltd v Wednesbury Corp.* [1948] 1 KB 223*). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that judges by their training and experience should be well equipped to answer, or else there would be something badly wrong with our judicial system.*

> *Tojustify the courts' exercise of this role, resort I think is today no longer needed to Viscount Radcliffe's ingenious explanation in Edwards v Bairstow* [1956] AC 14*, or irrationality as a ground for a court's reversal of a decision by ascribing it to an inferred though undefinable mistake of law by the decision maker. 'Irrationality' by now can stand on its own feet as an accepted ground on which a decision may be attacked by Judicial Review.*
>
> *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 decisions. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that the 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.*
>
> *Lord Diplock also mentioned '**proportionality**' as a possible fourth ground of review which called for development."*

[14]Next, in a judicial review, the test applicable is the objective test as was held by the Federal Court in the case *Titular Roman Catholic Archbishop of Kuala Lumpur v Menteri Dalam Negeri & Ors* [2014] 4 MLJ 765**,** as follows:

> *"(1) (per* ***Arifin Zakaria Chief Justice) It is trite that the test applicable in judicial review now is the objective test****. In considering whether the Court of Appeal had applied the correct test, it is pertinent to consider the whole body of the judgments of the judges of the Court of Appeal and not by merely looking at the terms used in the judgments. The courts will give great weight to the views of the Executive on matters of national security. The Court of Appeal had applied the objective test in arriving at its decision. Had it applied the subjective test, it would not be necessary for it to consider the substance of the first respondent's decision."*

[15]As regards to the Minister's discretionary powers under the IRA 1967, it is trite principle of law that the exercise of the discretionary power should not be interfered unless the Minister had misdirected himself, taken into irrelevant considerations, had not taken into consideration relevant matters or the decision is against the object of the statute.

[16]In the Supreme Court case of ***Minister of Labour v Lie Swee Fatt [1990] 2 MLJ*** 9, Hashim Yeop Sani CJ explained as follows:

> *"A general guideline on the functions of the Court before interfering in the exercise of an executive discretion can be found in the judgment of Lord Greene MR in the celebrated case of Associated Provincial Picture Houses Ltd v. Wednesbury Corp. The courts can only interfere with an act of exercise authority if it be shown that the authority has contravened the law. Secondly, the court is not a court of appeal in such matters. Thirdly, the exercise of such discretion is governed by certain principles and so long as the exercise is within the four corners of these principles, the discretion is absolute and cannot be questioned in a court of law. Lord Greene elaborated on those principles and they are that the exercise of discretion must be a real exercise of the discretion and that the authority exercising the discretion must consider matters required to be considered and disregard irrelevant collateral matters. If the authority fails to observe these principles, the exercise of discretion cannot be said to be 'reasonable'. Lord Greene then summed up his guideline as follows :*
>
> > *'The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them'."*

[17]This court will only interfere with the Minister's decision if no reasonable person charged with his statutory responsibilities could have come to the same decision as pointed out by the Federal Court in *The Pahang South Union Omnibus Co. Bhd v The Minister of Labour & Transport & Manpower & Anor* [1981] CLJ 83**,** at page 79 as follows :

> *"We can see no reason or justification for interfering with his decision on an application of the principles governing the scope of judicial review we have adumbrated. The Court cannot substitute its own judgment for that of the 1st respondent and will invalidate the*

exercise of his judgment or discretion only if satisfied that no reasonable person charged with his statutory responsibilities and with a due and proper appreciation of his statutory duties could have exercised his power in the way he did..."

[18]This court also acknowledged the policy of restraint with regards to the field of labour relations as stated by the Federal Court in *YB Menteri Sumber Manusia v Association of Bank Officers, Peninsular Malaysia* [1999] 2 CLJ 471**,** in the following words:

"First, we recognise that in the delicate field of labour relations, the High Courts and, indeed, the higher tiers of the Judiciary, should generally pursue a policy of restraint by not involving themselves in issues which move too far from those strict law into those with substantial labour relation elements."

[19]Having laid down the principles of law, I now move to the merits of the present application.
Issues whether the Minister exceeded his authority in deciding that 1306 positions of the TNB employees are not within the Executive capacity and whether the Minister's power was correctly exercise.

[20]On these issues, in the present case, the Minister acted upon a notification of a dispute referred by the DGIR to him pursuant to ***section 9(1C) of IRA 1967.***

[21]Upon receipt of the notification from the DGIR, the Minister is statutory required to give his decision as provided under ***section 9(1D)*** as follows:

"(10) 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."

[22]Clearly, section 9(1D) empowers the Minister to decide whether the TNB's employees within Job Grade E12 to E17 are employed in managerial, executive, confidential or security capacity.

[23]This is what happened in this case, the Minister merely carrying its duty and exercised its power pursuant to section 9(1D) having received the notification from the DGIR.

[24]In this regard, the Minister is not expected to conduct his own investigation as that is not the law and under the scheme of section 9 of the IRA 1967 the Ministry may rely on the investigation report by the DGIR referred to him pursuant to section 9(1C).

[25]In connection to this, the Court of Appeal in *Minister of Human Resources Malaysia v Diamet Klang (Malaysia) Sdn Bhd & Another Appeal* [2015] 6 CLJ 181, held as follows :

"From our reading of s.9 of the Industrial Relations Act 1967, we are of the view that the scheme of things under the said section is what if an employer is served with a notice of recognition and the employer notifies the Union that it refuses recognition, the Union may report the matter in writing to the DGIR (s.9(3) and 9(4) of the Act). Upon receiving the report, the DGIR may carry out enquiries to ascertain the competency of the Union to represent the employees and the percentage of employees who want to be represented. ... The DGIR may conduct the enquiries himself or he may refer it to the Director General of Trade Union (DGTU) to do it-(s.9(4A) and s.9(48) to the Act). ***Upon completion of the enquiries and if the matter cannot be resolved by the DGIR/DGTU, the latter shall notify the Minister and upon receipt of such notification the Minister shall give his decision thereon*** *- (s. 9(4C) and 9(5) of the Act).* ***Under the scheme of things therefore the Minister may rely on the report by the DGTUIDGIR as to the competency issue and made his decision thereon. We*** *think there is nothing fanciful or unreasonable for the Minister to do so. In fact we do not think the Act envisages that the Minister himself goes to the ground to conduct the enquiries in order to ascertain the truth of the facts contained in the report that was notified to him by the DGTU/DGIR."*

[26]In addition, the Minister may decide on the employees capacity irrespective of the fact that recognition has been given to all positions within Job Grades E12 to E17 as Executive. The decision of

the Minister is pertinent to ensure the compliance of the applicant's Constitution, in particular Regulation 3(1) and also Article 4 of the 8th Collective Agreement alluded to earlier.

[27]The findings of the Minister has shown that 1306 of the employees within the Job Grades E12 to E17 are employed in managerial, executive, confidential or security capacity and cannot be members of the applicant. The bottom line here is that the Minister's decision is pertinent to ensure the applicant's compliance of the law.

[28]In the present case, I find, there is nothing before this court to show that the Minister has exceeded his authority in exercising its power under section 9(1D) of the IRA 1967.

[29]Reverting to the DGIR powers and eventually his investigation report to the Minister, firstly, TNB has referred a dispute to the DGIR pertaining to its employees within the Job Grades E12 to E17. The issue is whether the said employees are under the managerial, executive, confidential or security capacity.

[30]The reference by TNB to DGIR is pursuant to ***section 9(1A)*** of IRA 1967, which states :

> *"(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 by a trade union of employers concerned."*

[31]This provision of section 9(1A) clearly provides that any dispute may be referred to the DGIR even after recognition has been accorded as in the present case. Recognition is not a bar for adjudication of dispute under section 9 of the IRA 1967.

[32]On the part of the DGIR, all the requirements under the law has been complied with by the DGIR. Most importantly, the DGIR has instructed an investigation to be carried out and directed almost all the States Director of Industrial Relation to do so in relation to the dispute.

[33]Investigation and interviews has also been conducted at TNB from 11.2.2019 until 13.3.2019. Information on job scope, duties, responsibilities and other related matters pertaining to employees within the Job Grades E12 to E17 has been obtained from TNB.

[34]Having gathered all the necessary information, an investigation report was prepared and then submitted to the Minister for his decision.

[35]Further, there is no legal requirement for the investigation report and other related information to be disclosed to the applicant. Hence, the issue of non-compliance of any procedure does not arise and is not for the Court to create the procedural requirements.

[36]The Federal Court in the case of *Lee Kew Sang v Timbalan Menteri Dalam Negeri* [2005] 3 CLJ 914, stated the following :

> *"That being the law, it is the duty of the courts to apply them. So, in a habeas corpus application where the detention order of the Minister made under s. 4(1) of the Ordinance or, for that matter, the equivalent ss. in ISA 1960 and DD(SPM) Act 1985,* ***the first thing that the courts should do is to see whether the ground forwarded is one that falls within the meaning of procedural non-compliance or not. To determine the question, the courts should look at the provisions of the law or the rules that lay down the procedural requirements. It is not for the courts to create procedural requirements because it is not the function of the courts to make law or rules. If there is no such procedural requirement then there cannot be non-compliance thereof. Only if there is that there can be non-compliance thereof and only then that the courts should consider whether, on the facts, there has been non-compliance."***

[37]Further, on the issue of disclosure of the investigation report, it has been decided by the Court of Appeal in the case of *Joseph Puspam v Menteri Sumber Manusia Malaysia & Ors* [2001] 4 CLJ 252,

where it was held that the failure to produce the investigation report did not nullify the Minister's decision. Mokhtar Sidin JCA at page 258, said as follows :

> *"[38] The decision of the High Court was affirmed by this court on 14.8.2017 but we must state that at the time of writing this judgment, the grounds have yet to be made available. Be that as it may, by affirming the decision, this Court must have agreed with the High Court that* ***the Minister's failure to produce the DGIR's report did not nullify his decision****. It is inconceivable that this court would have affirmed the decision if it had taken a contrary view."*
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> *(see also Alliance Bank Malaysia Bhd v Menteri Sumber Manusia & Ors [2019] 9 CLJ 52).*

[38]In the instant case, as the Minister has complied with all the requirements of the law, he cannot be said to have acted in excess of jurisdiction.

[39]Here, I find, there is nothing unreasonable for the Minister to decide that the 1306 of the employees within Job Grades E12 to E17 are employed in the managerial, confidential and security capacity and the Minister's decision is within the power conferred under section 9(10) of the IRA 1967.
The Issue Of The Minister's Failure To Give Reasons

[40]On this issue, it is trite law that failure to give reason for the decision is not fatal as to nullify the decision of the Minister.

[41]In the case of ***Joseph Puspam v Menteri Sumber Manusia & Anor (supra),*** the issue of requirement for Minister to give reasons for his decision is succinctly explained as page 259 in the following words :

> *"The next question is whether the Minister is required to give his reasons when challenged in certiorari proceedings. During the course of argument, several cases were cited to us but they were all cases where the Minister had given his reasons: see eg. Minister of Labour, Malaysia v National Union oif Journalists, Malaysia and Another Appeal.* ***What is clear from the decided cases, however, is that the courts cannot compel the Minister to give reasons for his decision where there is no duty to do so****: Minister of Labour, Malaysia v Sanjiv Oberoi & Anor. Indeed in R v Northumberland Compensation Appeal Tribunal, ex p Shaw, Lord Denning at p. 352 said:*
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> > *I think the record must contain at least the document which initiates the proceedings; the pleadings, if any; and the adjudication; but not the evidence, nor the reasons, unless the tribunal chooses to incorporate them. If the tribunal does state its reasons, and those reasons are wrong in law, certiorari lies to quash the decision. (emphasis added).*
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> *In R v Secretary of State for Trade and Industry, ex p Lonrho pic, Lord Keith of Kinkel in the house of Lords said at p. 529:*
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> > *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 had no rational reason for his decision.*
>
> *On what facts and circumstances should a judicial review court rely when deciding whether the Minister has exercised his discretion according to law? In like cases as the present, the real contesting parties are the employer and the workman. Both sides have presented their version of the case to the court which cannot be any different from that laid before the Director General of Industrial Relations and the Minister. That is the only material which the court has to consider.* ***In the present case, there is only the bare allegation that the Minister has acted unreasonably because he has not given reasons for his decision. That is not enough****. (emphasis added).*
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> ***From the authorities cited above, it is clear to me that the Minister in exercising his discretion under s. 20(3) of the Industrial Relations Act 1967 is not required to give any reason for exercising that discretion. The courts cannot compel the Minister to give reasons for his decision."***

[42]Although the case relates to section 20(3) of the IRA 1967 but the principle of law has an equal force to the present case.

[43]I also noted that the applicant has failed to disclose the material facts on continuing to allow the excluded categories of employees to be the applicant's members, committee members and EXCO members and the non disclosure that the excluded categories are specified in the recognition letter as well as the applicant's constitution when obtaining the interim stay order from this Court.

[44]In *Semantan Estate (1952) Sdn Bhd v Collector of Land Revenue Wilayah Persekutuan* [1987] 2 CLJ 199, this is what was said:

> *"The issue of a prerogative order is at the discretion of the High Court and it will not be made '**if the conduct of the applicant had been such as to disentitle him to the relief asked for**': see, inter alia, Badat bin Drani v Tan Kheat* [1953] 1 LNS 6*..."*

[45]In the recent Court of Appeal case of *Nazaruddin bin Mohd Sharif @ Masti & Rozidin bin Masri v Pejabat Tanah & Daerah Ulu Langat & Mohd Fawzi bin Abdul Hamid* [2020] 1 LNS 101, the Court held as follows :

> *"... It was correctly submitted by the First Respondent that the Appellants did not come to court with clean hands. The case of Continental Court Sdn Bhd v Fan Fong Hee & Ors* [2013] 1 LNS 275 *was referred to which held that:*
>
> > *'95. The court was also satisfied that the plaintiff did not come to court with clean hands.*
> >
> > ***96. It is trite law that he who seeks equity must come with clean hands**. In Wong Chun Wah v Kok Kam Chee (P) [2008] 3 CLJ 510; [2008] 3 MLJ 176, the Court of Appeal observed as follows at page 181 paragraphs [21] to [23] :-*
> >
> > > *'In this regard, two maxims of equity stand out significantly. These maxims are:*
> > >
> > > (1) ***he who seeks equity must do equity;** and*
> > >
> > > (2) ***he who comes to equity must come with clean hands.** Applying the first maxim, **the plaintiff who is now seeking the equitable relief to enforcing the trust must do equity which, in papular parlance, means being bright and fair to the defendant** (see eg. Snell's Equity, Thomson Sweet & Maxwell 2004, p 96).*
> > >
> > > *The second maxim is related to the ex turpi causa non oritur actio of the common law. It is very similar to the first maxim, except that the second maxim looks to the past rather than the future. **The plaintiff, as the claimant, not only must be prepared now to do what is right and fair, but also must shaw that his past record in the transaction is clean; far 'he who has committed iniquity ... shall not have equity':** Jones v Lenthal* [1669]1 Ch Cas 154 *and Snell's Equity.*
> > >
> > > *In Eastern Properties Sdn Bhd v Hampstead Corporation Sdn Bhd* [2007] 6 CLJ 538 *(CA), Gopal Sri Ram JCA, speaking for the Court of Appeal, in para 14 at p 547 explained the applicability of equitable maxims with unrivalled clarity as follows :*
> > >
> > > > *It is beyond argument that equitable doctrines are not to be dealt with in a rigid fashion. They are by their very nature flexible and meant to be applied in such a fashion as produres a just result on the facts and circumstances of a just result on the facts and circumstances of a given case. But there are certain basic threads that have been woven into the fabric of equitable doctrines through the pronouncements in the leading cases on the subject. One of these is that a supplicant who prays in aid equitable assistance must himself or herself be not guilty of equitable misconduct. **This is sometimes put in the form of the maxim: He who comes to equity must come with clean hands.** So a contract breaker cannot successfully invoke the remedy of specific performance."*

[46]In the instant case, I am satisfied that the applicant did not come with clean hands and as such disentitled for the equitable relief.

Conclusion

[47]Premised on the aforesaid reasons, I also find that the Minister decision does not suffer any infirmities of illegality, irrationality or procedural impropriety.

[48]As such, the applicant's judicial review application is dismissed with cost of RM8,000.00

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