

CONSTITUTIONAL LAW

Right to travel – Privilege – Legitimate expectation – Fundamental liberties – Personal liberty – Whether personal liberty includes right to travel – Whether right to travel amounts to privilege – Whether right to travel subject to further laws – Federal Constitution, article 5 – Penal Code, section 124B – Immigration Act, sections 3(2) and 59A

Pua Kiam Wee v Ketua Pengarah Imigresen Malaysia & Another

[Rayuan Sivil No. W-01-(IM)-352-09/2016], Court of Appeal

Facts The appellant, a Member of Parliament, holding a valid Malaysian passport, wanted to travel by flight to Indonesia. However, whilst at the airport, an immigration officer informed him that he was not allowed to travel abroad. The appellant, through his solicitors, wrote to the respondent, the Director General of Immigration Malaysia and the Malaysian Government, for confirmation and explanation, but to no avail. The appellant filed for judicial review claiming that the declaration order barring him from leaving the country was unlawful, thus invalid and void. The application was dismissed by the High Court. Hence, this appeal.

Issue The main issue was whether the appellant has a guaranteed right or legitimate expectation to travel abroad as he is a holder of a valid passport.

Held In dismissing the appeal, it was held that any issuance of a Malaysian passport only carries with it a mere privilege and not a right to travel. This is because the meaning of ‘personal liberty’ under article 5(1)¹ of the Federal Constitution concerns the liberty of the person or body of individuals. Since the appellant was being investigated under section 124B² of the Penal Code, it would constitute a valid and legitimate reason to deny such privilege. Thus, the travel ban was in accordance with law by virtue of sections 3(2)³ and 59A⁴ of the Immigration Act 1959/63. Further, it was also held that there is no legitimate expectation to travel abroad as there is no such promise or representation made by the respondents that the appellant will never be barred from leaving the country, although he had a valid passport. In fact, there is an express term in the passport that states that it can be withdrawn at any time.

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{JULY 2017\01480407}

¹ No person shall be deprived of his life or personal liberty save in accordance with law

² Activity detrimental to parliamentary democracy

³ The Director General shall have the general supervision and direction of all matters relating to immigration throughout Malaysia.

⁴ Exclusion of judicial review