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v.

TA HSIN ENTERPRISE SDN BHD

HIGH COURT SABAH & SARAWAK, KUCHING

b

MUHAMMAD KAMIL AWANG J

[CRIMINAL APPEAL NO: 42-02-98-11]

14 AUGUST 1998

CONSTITUTIONAL LAW: *Legislation - Federal legislation - Whether applies in Sarawak - Environmental Quality Act 1974 - Consideration of Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors & Other Appeals - Whether construction of dams and discharge of effluents in inland waters precluded from Act*

c

STATUTORY INTERPRETATION: *Construction of statutes - Whether court could restrict application of Act in view of express provision*

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The appellant appealed against the order of the Sessions Court discharging the respondent, not amounting to an acquittal. The respondent, without a license and contrary to s. 25 of the Environmental Quality Act 1974 ('the Act'), was found to have discharged effluents into the inland waters in Sarawak in excess of the amount prescribed under reg. 8(1)(b) of the Environmental Quality (Sewage and Industrial Effluents) Regulations 1979.

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The Sessions Court judge held that based on the Court of Appeal decision in *Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors and Other Appeals* ('the Bakun case'), the Act did not apply. This was because the discharge of waste from the respondent's factory was within the State of Sarawak.

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Held:

[1] Section 1(1) of the Act expressly states that the Act is applicable to the whole of Malaysia. Generally, the court has no power to restrict the application of an Act of Parliament contrary to its express provision that it shall apply to the whole of Malaysia, save in cases where such application is qualified by an amending Act or Order.

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[2] The *Bakun* case applied in the circumstances peculiar to that case. The construction of dams were excluded from the purview of the Act by an Amendment Order of 1995 made pursuant to s. 4A of the Act.

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- a* [3] The subject matter in this case was concerned mainly with the discharge of waste into the inland waters without a licence contrary to s. 25 of the Act. There was no evidence to show that the power under the Act had been ousted or precluded by any order. There was also no specific provision being made or provided for under the Sarawak Ordinance.
- b* [4] The respondent's activity was within Sarawak but was not precluded from the operation of the Act. The *Bakun* case does not propose a total ban on all activities. It is specifically applicable in cases of construction of dams in the State of Sarawak. It is a fallacy to think that the inland waters in the State of Sarawak are excluded and that the Act is not applicable.

c [Appeal allowed.]

Case referred to:

Ketua Pengarah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors And Other Appeals [1997] 4 CLJ 253 (*dist*)

- d* *Trustees of the Kheng Chiu Tin Hou Kong & Burial Ground v. Collector of Land Revenue (Housing & Development Board)* [1992] 1 SLR 425 (*cit*)

Legislation referred to:

Environmental Quality Act 1974, ss. 1(1), 4A, 25, (1), (3), 51

Environmental Quality (Sewage & Industrial Effluents) Regulations 1979, reg. 8(1)(b)

- e* For the appellant - Tun Abdul Majid, DPP
For the respondent - Leonard Shim; M/s Reddi & Co

Reported by Kavitha Gunasegaran

f **JUDGMENT**

Muhammad Kamil Awang J:

The accused was charged as follows:

- g* Bahawa kamu, Ta Hsin Enterprise Sdn. Bhd. pada 4.4.1997 jam lebih kurang 10.25 pagi di Lot 983, Jalan Tambatan, Kawasan Perindustrian Pending Kuching, dalam Negeri Sarawak, **tanpa dilesen** di bawah Seksyen 25(1), Akta Kualiti Alam Sekeliling 1974 didapati telah melepaskan buangan iaitu effluen ke dalam perairan daratan dengan kandungannya melebihi kepekatan yang ditentukan di bawah Peraturan 8(1)(b) Peraturan-Peraturan Kualiti Alam Sekeliling (Kumbahan dan Effluen-Effluen Perindustrian) 1979 iaitu –
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1. Oksigen Biokimia Yang Diperlukan (BOD 5 hari 20 degree C) yang mempunyai kepekatan sebanyak 3200 mg/L iaitu melebihi had piawai 50 mg/L yang ditentukan; *a*
2. Oksigen Kimia Yang Diperlukan (COD) yang mempunyai kepekatan sebanyak 451 mg/L iaitu melebihi had piawai 100 mg/L; *b*
3. Pepejal Terampai yang mempunyai kepekatan sebanyak 517 mg/L iaitu melebihi had piawai 100 mg/L; *b*

dan dengan ini kamu telah melakukan satu kesalahan di bawah seksyen 25(1) Akta Kualiti Alam Sekeliling 1974 dan boleh dihukum dibawah seksyen 25(3) Akta yang sama. *c*

At the hearing before the Sessions Court Judge, the defendant raised a preliminary objection that the Environmental Quality Act 1974 (hereinafter referred to as “EQA”) did not apply to this case, and the court upheld the objection and ordered the accused to be discharged, not amounting to an acquittal. *d*

The appellant appealed against the order of the Sessions Court Judge on two grounds:

1. that the Sessions Court Judge had erred in law and in fact in holding that the Environmental Quality Act 1974 did not apply to Sarawak in respect of the offence under s. 25(1) in that – *e*
 - (a) he failed to consider the subject matter of the offence ie, discharging wastes into inland waters without license;
 - (b) he failed to consider that the act complained of is the act of discharging wastes and not the receiving end ie, the inland waters; and *f*
2. that the Sessions Court Judge erred in law in fact, in holding that the discharge of wastes from the factory lies wholly in the State of Sarawak in that – *g*
 - (a) he failed to hear the evidence proper before discharging the respondent
 - (b) he failed to consider the deeming provision of s. 25(2) of the Act.

The appellant prayed that the order of discharge be set aside or that such other order might be made thereon as justice may require. *h*

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- a* The respondent is a factory sited in Lot 983, Jalan Tambatan Industrial Estate, Kuching. On 4 April 1997 the respondent was found to have discharged into the inland waters, effluents which were in excess of the amount prescribed under reg. 8(1)(b) of the Environment Quality (Sewage & Industrial Effluents) Regulations 1979. Under s. 25(1) of the EQA, a person who discharges waste must have a licence issued to him by the relevant authority.
- b*

There is no dispute as to the facts of this case.

- Learned senior federal counsel, Tun Abdul Majid submitted that the EQA does apply to the State of Sarawak, and it is an offence under s. 25(1) thereof to discharge waste into the inland waters of Sarawak. The essence of the charge against the accused is that the accused had discharged the effluents from the factory into the inland waters.
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- Learned counsel for the respondent, Mr. Leonard Shim submitted that the learned Sessions Court Judge was correct in holding that Pending Industrial Estate lies in the State of Sarawak and that the environmental issue was to be determined by the court. He supported the view of the Sessions Court Judge that EQA had no application to this case. The learned Sessions Court Judge in his judgment said:
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- If the 'environment' upon which the activity, ie, discharge of waste from factory lies wholly within the State of Sarawak, i.e. land and water, then the *Bakun* case (i.e. *KETUA PENGARAH JABATAN ALAM SEKITAR & ANOR v. KAJING TUBEK & ORS AND OTHER APPEALS* [1997] 3 MLJ 23) is already authoritative in stating that the EQA will not apply. No more need to be said.
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- With respect, it is plain that the finding of the learned Sessions Court Judge cannot be supported as the EQA expressly applies to the whole of Malaysia. Section 1(1) of the EQA states:
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1(1) This Act may be cited as the Environmental Quality Act 1974 and shall apply to the whole of Malaysia.

- g* The fundamental rule of interpretation of a statute is to ascertain the intention of Parliament. If the words of a statute are in themselves precise and unambiguous the court must give effect to them according to their natural and ordinary meaning, as the words themselves best declare the intention of Parliament. If, however, adhering to their grammatical and ordinary meaning would lead to some absurdity, or some repugnancy, or inconsistency with the other parts of the statute, the grammatical or ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further. See *Trustees of the Kheng Chiu Tin Hou Kong & Burial Ground v. Collector of Land Revenue (Housing & Development Board)* [1992] 1 SLR 425. And I
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do not think that it is the intention of Parliament when passing the EQA that it applies to all states in Malaysia except Sarawak. Parliament has enacted the EQA to be made applicable to the entire nation. Subsidiary legislations relating thereto were made the executive delegated with the powers to do so. This obviously was to give effect to the meaning and purpose of the EQA.

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Section 51 of the Act empowers the Minister to make regulations for the control or the regulation of certain acts, with more detail for the carrying out or the implementation of the provisions of the law. Thus the Environment Quality (Sewage & Industrial Effluents) Regulation 1979 was enacted.

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Generally, the court has no power to restrict the application of an Act of Parliament contrary to its express provision that the Act shall apply to the whole of Malaysia, save in cases where such an application is qualified by an amending Act or order, for the particular purpose.

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The *Bakun* case must be clearly understood in its context, that it applies in the circumstances peculiar to the case. It concerned mainly with the environmental protection in the vicinity of Bakun, and in this particular case, whether the EQA applies to Sarawak, or whether the director general of Environmental department can make an order in relation to Sarawak. The Court of Appeal held that the EQA did not apply to the environment surrounding the Bakun area in Sarawak which was subjected to the Sarawak Natural Resources & Environmental Board Ordinance 1949.

*d**e*

In that case, the Malaysian Government decided in 1986, to proceed with a hydro electric dam in Bakun in Sarawak. At 204m in height, it would be the largest dam in South East Asia. About the size of Singapore would be flooded. In 1994 a special committee was set up to study the project's impact on the environment. The environment minister gave the assurance that the detailed environmental impact assessment would be submitted to the department of environment (hereinafter referred to as the "DOE") and it would be made available to the public.

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In April 1995 the director general of the DOE stated that the ministry of environment had not approved the project because the dam project came under the purview of Sarawak Natural Resources & Environment Board Ordinance 1949. This change was effected by the Sarawak Natural Resources & Environment (Prescribed Activities) Order 1994 which came into force on 1 September 1994.

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The minister of environment by gazette notification dated the same day, 20 April 1995 excluded the construction of dams from the purview of the EQA and subjected it to the authority of the Sarawak ordinance. Prior to this, dams

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- a* are a prescribed activity to which EQA applies by virtue of Environment Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987. The exclusion of dams was made by an Amendment Order of 1995, made pursuant to s. 4A of the EQA, with retrospective effect from 1 September 1994.
- b* The chairman of the State Natural Resources & Environment Board gave approval to Ekran Bhd on 27 March 1995. On the same day, the amendment order was promulgated and came into force on 20 April 1995, the date of its publication.
- c* In the instant case, the subject matter does not relate wholly to environment as such, it is concerned mainly with the discharge of waste into an inland waters without a licence, in contravention of s. 25 of the Act. In this respect there is no evidence to show that the power under the Act has been ousted or precluded by any order, and also there is no such specific provision being made or provided for under the Sarawak Ordinance. Although Pending
- d* Industrial Estate is geographically within the State of Sarawak, it is not precluded from the operation of EQA. In other words, *Bakun* case does not propose the total ban on all activities per se, for instance, as in this case; it is specifically applicable in cases of the construction of dams in the State of Sarawak eg, the Bakun dam. It does not make sense to suggest that a factory
- e* in Sarawak may discharge its effluents far exceeding the limits prescribed in reg. 8(1)(b) of the regulation without a licence. It is a fallacy to think that, as in this case, the inland waters in the State of Sarawak are exclusive, therefore, EQA is inapplication Sarawak.
- f* In the circumstances, I would allow the appeal and the order of the lower court is hereby set aside. The case is remitted to the Sessions Court with an order for it to proceed with the hearing of the case.

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