# SHASHE AZLEE AZIZ
**v.**
# TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ORS

High Court Malaya, Kuala Lumpur
Ahmad Kamal Md Shahid J
[Judicial Review No: WA-25-220-06/2021]
31 January 2023

**Case(s) referred to:**
*Chua Kian Voon v. Menteri Dalam Negeri Malaysia & Ors [2019] 6 MLRA 673; [2020] 1 CLJ 747; [2020] 1 MLJ 351 (refd)*
*Keng Kien Hock v. Timbalan Menteri Keselamatan Dalam Negeri Malaysia And Other Appeals [2007] 1 MLRA 807; [2007] 5 MLJ 611; [2007] 5 CLJ 171 (refd)*
*Phua Hing Lai & Ors v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors And Other Appeals [1989] 1 MLRA 299; [1990] 1 MLJ 173; [1990] 1 CLJ (Rep) 238 (refd)*
*Tai Choi Yu v. Government of Malaysia & Ors [1994] 1 MLRA 87; [1994] 1 MLJ 677; [1994] 2 CLJ 174; [1994] 1 AMR 641 (refd)*
*Wang Yong lwn. Timbalan Menteri Dalam Negeri & 3 Lagi [2021] MLRHU 2060 (refd)*

**Legislation referred to:**
Dangerous Drugs (Special Preventive Measures) Act 1985, ss 3(1), (3), 5(2), (4), 6(3)
Rules of Court 2012, O 53

**Counsel:**
*For the applicant: Luqman Mazlan (Yazzer Azzat & Rahmat Hazlan with him); M/s Suhaily, Arni & Co*
*For the respondents: Zulkipli Abdullah, SFC; Pejabat Penasihat Undang-Undang & Kementerian Dalam Negeri*

*[Allowed the applicant's application with costs.]*

## JUDGMENT

**Ahmad Kamal Md Shahid J**:

### Introduction

**[1]** The Applicant filed a judicial review application (encl 14) under O 53 of the Rules of Court 2012 (ROC) seeking *inter alia* the following reliefs:

> 1.1. Memohon satu perintah *certiorari* dan/atau mandamus untuk mengetepikan dan/atau membatalkan dan/atau mengisytiharkan tidak sah Perintah Sekatan bertarikh 9 April 2021 di bawah s 6(3) Akta

Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 (ADB (LLPK) 1985);

1.2. Bahawa Perintah Sekatan tersebut adalah tidak sah dan/atau batal dan/atau menyalahi undang-undang dan/atau bercanggah dengan prosedur mandatori;

1.3. Bahawa Perintah Sekatan tersebut yang dikenakan terhadap Pemohon untuk Pemohon disekat di Pekan Senawang, Daerah Seremban, Negeri Sembilan adalah di luar aturan, menyalahi undang-undang, sama sekali tidak dibenarkan, tidak mengikut undang-undang dan bercanggahan dengan perkara asas Perlembagaan Persekutuan;

1.4. Bahawa Perintah Sekatan tersebut yang dikenakan terhadap Pemohon yang menyekat Pemohon di Pekan Senawang, Daerah Seremban, Negeri Sembilan yang dikeluarkan oleh Responden Pertama adalah batal dan tidak sah dan tidak mempunyai kesan dan/atau efek-efek di sisi undang-undang;

1.5. Satu deklarasi bahawa Perintah Sekatan tersebut adalah tidak sah dan terbatal;

1.6. Satu perintah larangan (prohibition) bagi menghalang Responden-Responden sama ada melalui dirinya atau agennya atau wakilnya daripada terus menahan Pemohon melalui Perintah Sekatan;

1.7. Relif selanjutnya bahawa Pemohon bebas serta merta daripada syarat-syarat Perintah Sekatan tersebut;

1.8. Kos permohonan ini ditanggung oleh Responden-Responden; dan

1.9. Relif-relif seterusnya yang Mahkamah yang Mulia ini fikirkan sesuai dan/atau wajar dan/atau suai manfaat.

**[2]** In gist, the Applicant is seeking for an order of *certiorari* to quash the Restriction Order under s 6(3) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the said Act) issued by the First Respondent on 9 April 2021 against the Applicant.

**[3]** After the hearing, I allowed the Applicant's judicial review application (encl 14) and my full grounds now follow.

## Background Facts

**[4]** The narration of the background facts of this case are largely undisputed and can be summarized as follows:

4.1. On 1 February 2021, a police party conducted a raid on the Applicant's house at No 678, Jalan BSS 1/3, 71450 Kampung Dalam, Negeri Sembilan. According to the Applicant, he was never informed

of the reasons behind the raid. Nevertheless, the Applicant gave full cooperation and assisted the police party during the raid;

4.2. The police party did not find anything incriminating or in relation to the Applicant's case, any drugs or narcotics on the premise. At that material time, the Applicant informed the police party that he has no knowledge of any drug trafficking activities and denied his involvement in such activities;

4.3. Subsequently, the Applicant was arrested and remanded for 14 days for the purpose of investigation under s 39B of the Dangerous Drugs Act 1952. He was taken to the Subang Jaya Narcotics Department where he was detained with three (3) other individuals in relation to the same case. The Applicant has no relation and did not know of the three (3) other individuals prior to the arrest;

4.4. At the end of the 14 days remand, only two individuals were charged with charges under s 39B of the Dangerous Drugs Act 1952. The Applicant and another individual were further detained under s 3 of the said Act for a period of 60 days;

4.5. During the period of 60 days remand, the investigation was conducted by one ASP Nor Aznim binti Khaironniam from the Narcotics Department IPK Selangor (the IO). The Applicant alleged that he was detained in IPK Selangor lockup center for a period of 60 days without any proper and/or complete investigation conducted;

4.6. Subsequently, on 9 April 2021, a Restriction Order was issued by the First Respondent against the Applicant for a period of two (2) years from 9 April 2021. Under the Restriction Order, the Applicant's movement is restricted and for a period of two (2) years from 9 April 2021, he is only allowed to live in Senawang, District of Seremban, Negeri Sembilan; and

4.7. Dissatisfied with the First Respondent's decision, the Applicant is now applying to this Court for an order of *Certiorari* to quash the Restriction Order.

## The Applicant's Ground For The Judicial Review

**[5]** In gist, the Applicant's application herein is based on the following grounds:

5.1. That the Restriction Order issued by the First Respondent is a clear infringement of the Applicant's guaranteed fundamental rights under art 5 of the Federal Constitution;

5.2. That the Respondents failed to conduct proper and/or complete investigation in accordance with the law and/or mandatory procedural requirements;

5.3. In relation to the aforesaid, the First Respondent directed his mind to improper and/or incomplete and/or irregular investigation and investigation reports in issuing the Restriction Order against the Applicant;

5.4. That the First Respondent directed his mind to factors which are clearly irrelevant and/or prejudicial in making his decision to issue the Restriction Order;

5.5. From the outset, the Restriction Order against the Applicant is tainted with irregularities and/or procedural non-compliance; and

5.6. In view of the above, the Restriction Order against the Applicant is irregular and in clear breach of mandatory procedural requirements.

## The Issue

**[6]** The issues to be determined by this court are as follows:

a) Inordinate delay of 22 days by the Investigation Officer to submit her complete Report of Investigation under s 3(3) of the said Act to the Inquiry Officer and the First Respondent;

b) Inordinate delay of 7 days by the Inquiry Officer to conduct the Inquiry under s 5(2) of the said Act and 20 days to submit her complete Report of Investigation under s 5(4) of the said Act to the First Respondent.

## The Decision Of The Court

### Inordinate Delay Of 22 Days By The Investigation Officer To Submit Her Complete Report Of Investigation Under Section 3(3) Of The Said Act To The Inquiry Officer And The First Respondent

**[7]** It is to be noted that the Applicant was arrested under s 3 of the said Act on 9 February 2021. Only after 22 days, on 3 March 2021, the Investigation Officer (IO) submitted her complete report under s 3(3) of the said Act. The IO has given five (5) reasons as to why there was a delay on her part in submitting her report under s 3(3) of the said Act to the Inquiry Officer and the First Respondent.

(See paragraph 11 of the Affidavit of ASP Noraznim binti Khaironniam dated 13 October 2021 encl 17)

**[8]** Based on the facts and allegations affirmed by the Respondents in their respective Affidavits, the chronology of events from the date the Applicant was arrested under s 3(1) of the said Act until the date of the Restriction Order can be summarized in the table below:

CHRONOLOGY OF EVENTS "TABLE 1"

| NO | PROCESS | DATE | TIMELINE |
|---|---|---|---|
| 1. | Applicant arrested under section 3(1) of the said Act | 09.02.2021 | - |
| 2. | Statement of Applicant under section 4 of the said Act | 19.02.2021 | 10 days (from the date of arrest) |
| 3. | Submission of the complete report by the IO section 3(3) of the said Act | 03.03.2021 | 22 days (from the date of arrest) |
| 4. | Inquiry under section 5(2) of the said Act | 10.03.2021 | 7 days (from the date of submission of the complete report by the IO) |
| 5. | Submission of the complete report by the Inquiry Officer under section 5(4) of the said Act | 30.03.2021 | 20 days (after Inquiry) |
| 6. | Issuance of Restriction Order under section 6(1) of the said Act | 09.04.2021 | 10 days (from the date of submission of the complete report by Inquiry Officer) |

**[9]** Section 3 of the said Act does not provide for a specific time period for which the IO must submit her complete report to the Inquiry Officer and the First Respondent. However, case laws seem to suggest that it is mandatory for the IO to submit the said report "with all convenient speed and as often as the prescribed occasion requires".

**[10]** As alluded to above, both parties shared the same view that what amounts to convenient speed is a matter of interpretation depending on the facts and circumstances of each case. The legal position of the same has been established in numerous local cases.

**[11]** In *Tai Choi Yu v. Government of Malaysia & Ors* [1994] 1 MLRA 87; [1994] 1 MLJ 677; [1994] 2 CLJ 174; [1994] 1 AMR 641, the then Supreme Court emphasized that the meaning of convenient speed to mean reasonable time according to facts and circumstances of the case. It was held that:

> "What is 'convenient speed' has been held by the courts to mean reasonable time within which an act has to be done, but always having regard to the facts and peculiar circumstances of each case."

**[12]** Furthermore, the then Supreme Court in the case of *Phua Hing Lai & Ors v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors and other appeals*

[1989] 1 MLRA 299; [1990] 1 MLJ 173; [1990] 1 CLJ (Rep) 238; held as follows:

> "Section 3 of the enactment provides for the implementation of an order made under s 2(ii). For convenience the whole of s 3(i) and (ii) are reproduced below:
>
> > i) When any such order as is referred to in s 2 subsection (ii) or s 2A has been made with reference to any person, he shall be taken before the Officer-in-Charge of the prison in which he is detained and the Officer-in-Charge shall inform him of the terms of the order and shall deliver to him a copy thereof and shall require him to state the place in which, consistently with the terms of the order, he desires in the immediate future to reside;
> >
> > ii) As soon as may be after action has been taken under subsection (i), the Officer-in-Charge shall hand over the person to whom the order relates together with a warrant of release in the Form in the Schedule to any Police Officer appointed by the Chief Police Officer to receive him, and the person shall thereupon be conveyed under police escort to the place wherein he states he wishes to reside and shall there be released.
>
> **It can immediately be observed that there is no time frame given in s 3(i) of the Enactment. Since no time is prescribed, then, according to s 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed.**
>
> There is however a time frame given by s 3(ii) of the Enactment imposed by the words "as soon as may be after action has been taken under subsection (i)" appearing in that subsection. **The words 'as soon as may be' means nearly as may reasonable In the circumstances of the case.** (See also *Aminah v. Superintendent of Prison, Pengkalan Chepa, Kelantan* [1967] 1 MLRH 495; [1968] 1 MLJ 92). **Whoever caused the delay must explain the delay; and it is for the court to decide whether the delay is reasonable under the circumstances.**
>
> [Emphasis Added]

**[13]** The above decision was also followed by the Court of Appeal in the case of *Keng Kien Hock v. Timbalan Menteri Keselamatan Dalam Negeri Malaysia and other appeals* [2007] 1 MLRA 807; [2007] 5 MLJ 611; [2007] 5 CLJ 171 which held as follows:

> "[6] It is to be noted that s 54(2) of the Interpretation Acts 1948 and 1967 (Act 388) provides that **where no time is prescribed within which anything shall be done, that thing shall be done with all convenient**

> **speed and as often as the prescribed occasion arises. The term 'all convenient speed' is not defined by any statute.** However, the definition and meaning of 'all convenient speed' in the context of the scope of s 2 of the Act can be found from the judicial pronouncement made in earlier decided cases. In the Supreme Court's case of *Phua Hing Lai & Ors v. Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors and other appeals* [1989] 1 MLRA 299; [1990] 1 MLJ 173; [1990] 1 CLJ (Rep) 238, his Lordship Hashim Yeop Sani, Cj Malaya at PP 421 - 422 had this to say: It can immediately be observed that there is no time frame given in s 3(i) of the Enactment. Since no time is prescribed then according to s 38 of the Interpretation and General Clauses Ordinance 1948 (similar provision also found in s 54(2) of the Interpretation Act 1967), then anything which shall be done shall be done with all convenient speed. There is however a time frame given by s 3(ii) of the Enactment imposed by the words "as soon as may be after action has been taken under subsection (i)" appearing in that subsection. **The words 'as soon as may be' means nearly as may reasonable in the circumstances of the case.** (See also *Aminah v. Superintendent of Prison, Pengkalan Chepa, Kelantan* [1967] 1 MLRH 495; [1968] 1 MLJ 92). **Whoever caused the delay must explain the delay; and it is for the court to decide whether the delay is reasonable under the circumstances.**"
>
> [Emphasis Added]

**[14]** In the instant case, the IO has to submit the complete investigation report to the Inquiry Officer and the First Respondent with convenient speed or offer credible and cogent reasons to explain why she took 22 days to submit the investigation report to the Inquiry Officer and First Respondent.

**[15]** In *Chua Kian Voon v. Menteri Dalam Negeri Malaysia & Ors* [2019] 6 MLRA 673; [2020] 1 CLJ 747; [2020] 1 MLJ 351, the Federal Court held:

> [68] As the burden to prove the detention was lawful lies on the detaining authority, **whether the report was completed with convenient speed or without inordinate delay remains a matter for the detaining authority ie the respondents, to establish. It is trite that where there is delay on the part of the respondents to complete the report with "convenient speed", it is incumbent upon the respondents to discharge the burden of proffering a satisfactory explanation for the delay. Thus, as we have alluded to earlier, if there is no explanation given, the court will assume that there are no reasons.**
>
> [Emphasis Added]

**[16]** Having perused the reasons or excuses given by the IO in her Affidavits, I find that at that material time, the IO was based in the Narcotics Department, IPK Selangor. The reasoning provided by the IO behind the inordinate delay is that she was occupied with other duties and workloads. However, the duties mentioned by the IO were duties that she had to perform in the same office.

Only from 15 February 2021 to 17 February 2021 she was away to attend representation before the Advisory Board in Pusat Pemulihan Akhlak, Machang, Kelantan. (See **paragraph 11 (e) (v) Affidavit affirmed by ASP Noraznim Binti Khaironniam on 13 October 2021**).

**[17]** As such, I am of the considered view that the reasons provided by the IO in para 11 (e) (v) of her Affidavit is clearly not credible and unacceptable as those are simply normal day-to-day duties and workloads which every IO in her position would have to perform.

**[18]** Based on the above, I view that the inordinate delay of 22 days by the IO in submitting the complete report to the Inquiry Officer and the First Respondent is a clear breach of mandatory procedural requirements which renders the Restriction Order defective.

**Inordinate Delay Of 7 Days By The Inquiry Officer To Conduct The Inquiry Under Section 5(2) Of The Said Act And 20 Days To Submit Her Complete Report Of Investigation Under Section 5(4) Of The Said Act To The First Respondent**

**[19]** Based on the chronology of events in Table 1 above and the Affidavit of Azfahanim binti Rajaluddin dated 22 October 2021 (encl 20) (Inquiry Officer) in paras 6, 7 and 12, it is clear that there was a delay of 7 days by the Inquiry Officer to conduct the inquiry under s 5(2) of the said Act and 20 days to submit her complete report of investigation under s 5(4) of the said Act.

**[20]** Having perused the reasons given by the Inquiry Officer in her Affidavit in para 8, I find that the Inquiry Officer only provided reasons for the delay of 7 days in conducting the inquiry on the Applicant. However, no reason was given for the delay of 20 days from the date of the inquiry in submitting her report to the First Respondent.

**[21]** Even if this court were to accept the explanation given by the Inquiry Officer in para 8 of her Affidavit is also in relation to the delay in submitting the complete investigation report to the First Respondent, I am of the view such an explanation is purely procedural matters and normal day-to-day duties of an Inquiry Officer.

**[22]** In the case of *Wang Yong lwn. Timbalan Menteri Dalam Negeri & 3 Lagi* [2021] MLRHU 2060, Ab Karim B Haji Ab Rahman J (as he then was) held as follows:

> "[10] Dengan itu dengan ketiadaan Menteri menetapkan dalam mana-mana peraturan apa-apa temph masa mengenai memulakan inkuiri dan pengemukakan laporan dapatan inkuiri kepada TMDN maka **Mahkamah harus mempertimbangkan samada tindakan itu telah diambil dengan kesegeraan yang mungkin berdasarkan penjelasan yang diberikan oleh Pegawai Inkuiri. Dalam kes di hadapan Mahkamah ini alasan yang diberi oleh Pegawai Inkuiri hanya merupakan alasan tugasan harian yang perlu dilakukan olen mana-**

mana Pegawai Inkuiri dan sewajarnya tidak secara praktikalnya mengganggu tugas memulakan inkuiri dan menyediakan serta mengemukakan laporan dapatannya kepada TMDN. Lebih-lebih lagi memulakan inkuiri dan penyediaan serta pengemukakan laporan dapatan inkuiri ini harus mengambil keutamaan dari tugasan lain memandangkan tahanan Pemohon dibuat dibawah undang-undang pencegahan yang perlu disegerakan.

[11] Kelewatan dalam menjalankan inkuiri dan menyediakan serta mengemukakan laporan dapatan inkuiri dengan mengambil masa 20 hari selepas menerima Laporan Lengkap Penyiasatan dan tanpa sebarang penjelasan yang munasabah ini telah mengakibatkan kelewatan TMDN untuk mempertimbangkan perintah penahanan Pemohon dan telah memprejudiskan Pemohon untuk ditahan lebih awal daripada perintah tahanan bertarikh 20 November 2020. Oleh itu kelengahan 20 dan 25 hari itu adalah satu kelengahan yang keterlaluan dan bukan dengan kesegeraan yang sepatutnya."

[Emphasis Added]

**[23]** Based on the above, I am of the view that the explanation provided by the Inquiry Officer in para 8 of her Affidavit purely procedural matters and normal day-to-day duties expected of an Inquiry Officer, if accepted would affect the interest of the Applicant.

**[24]** As for the delay, I am of the considered view that the Applicant could have been put under the Restriction Order earlier than 9 April 2021. Therefore, the inordinate delay of 20 days in submitting the complete report of investigation to the First Respondent without any credible justification is a clear breach of the mandatory procedural requirement under s 5(4) of the Act.

## Conclusion

**[25]** Premised on the aforesaid reasons, I am of the view that the Applicant has established valid grounds for this judicial review.

**[26]** As such, I allowed the Applicant's judicial review application (encl 14) with costs of RM 2,000.00 without the allocator fee.