

IN THE FEDERAL COURT OF MALAYSIA

Coram: Ahmad Maarop, CJM

Petroliam Nasional Berhad (Petronas) v Kerajaan Negeri Sarawak

Citation: [2018] MYFC 25 Suit Number: Permohonan No. BKA-7-06/2018(W)

Date of Judgment: 22 June 2018

Constitutional law – Scope of Articles 4(3) and 4(4) of the Federal Constitution – Whether the declaratory reliefs sought by the applicant within the exclusive original jurisdiction of the Federal Court

JUDGMENT

[1] Article 4 of the **Federal Constitution** provides:

"4. Supreme law of the Federation.

(1) ...

(2) ...

(3) *The validity of any law made by Parliament or the Legislature of any State shall not be questioned on the ground that it makes provision with respect to any matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws, except in proceedings for a declaration that the law is invalid on that ground or-*

(a) if the law was made by Parliament, in proceedings between the Federation and one or more States;

(b) if the law was made by the Legislature of a State, in proceedings between the Federation and that State.

(4) *Proceedings for a declaration that a law is invalid on the ground mentioned in Clause (3) (not being proceedings falling within paragraph (a) or (b) of the Clause) shall not be commenced without the leave of a judge of the Federal Court; and the Federation shall be entitled to be a party to any such proceedings, and so shall any State that would or might be a party to*

proceedings brought for the same purpose under paragraph (a) or (b) of the Clause.”

[2] Article 128 of the **Federal Constitution** provides:

“128. Jurisdiction of Federal Court.

(1) The Federal Court shall, to the exclusion of any other court, have jurisdiction to determine in accordance with any rules of court regulating the exercise of such jurisdiction-

*(a) any question whether a law made by Parliament or by the Legislature of a State **is invalid on the ground that it makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws;***
and

(b) disputes on any other question between States or between the Federation and any State.”

[3] Articles 4(3), 4(4) and 128(1)(a) apply only where the validity of a law is challenged on the ground that it *“makes provision with respect to a matter with respect to which Parliament or, as the case may be, the Legislature of the State has no power to make laws”*. [See **Gin Poh Holdings Sdn Bhd v The Government of the State of Penang & Ors** [2018] 4 CLJ 1].

[4] Clause (3) of Article 4 provides that the validity of any law made by Parliament or by a State Legislature may not be questioned on the ground that it makes provision with respect to any matter with respect to which the relevant legislature has no power to make law, except in three types of proceedings as follows:

(a) **in proceedings for a declaration that the law is invalid on that ground;** or

(b) if the law was made by Parliament, in proceedings between the Federation and one or more states; or

(c) if the law was made by a State Legislature, in proceedings between the Federation and that State.

It will be noted that proceedings of types (b) and (c) are brought by Government, and there is no need for any one to ask specifically for a declaration that the law is invalid on the ground that it relates to a matter with respect to which the relevant legislature has no power to make law. The point can be raised in the course of submission in the ordinary way. Proceedings of type (a) may however be brought by an individual against another individual or against Government or by Government against an individual, **but whoever brings the proceedings must specifically ask for a declaration that the law impugned is invalid on that ground.**

Clause (4) of Article 4 provides that proceedings of the type mentioned in (a) above may not be commenced by an individual without leave of a judge of the Federal Court and the Federation is entitled to be a party to such proceedings, and so is any State that would or might be a party to

proceedings brought for the same purpose under type (b) or (c) above. This is to ensure that no adverse ruling is made without giving the relevant government an opportunity to argue to the contrary.

Clause (1) of Article 128 provides that only the Federal Court has jurisdiction to determine whether a law made by Parliament or by a State Legislature is invalid on the ground that it relates to a matter with respect to which the relevant legislature has no power to make law. This jurisdiction is exclusive to the Federal Court, no other court has it. This is to ensure that a law may be declared invalid on this very serious ground only after full consideration by the highest court in the land. [See **Gin Poh** (supra); **Ah Thian v Government of Malaysia** [1976] 2 MLJ 112].

[5] In Enclosure 1, the Applicant prayed that it be given leave to commence proceedings against the Respondent pursuant to Article 4(4), **Federal Constitution** in the Federal Court in the exercise of its original jurisdiction under Articles 4(3) and 128(1)(a), **Federal Constitution** by way of a petition for declaratory relief to the following effect:

1.1 A declaration that by virtue of Article 74(1) read with item 8(j), List I, Ninth Schedule, Federal Constitution, Parliament has exclusive legislative competence to enact laws pertaining to the exploration, exploitation, winning and obtaining of petroleum throughout Malaysia, be it onshore or offshore ("Upstream Activity");

1.2 Consequentially:

a. a declaration that the **Petroleum Development Act 1974** ("PDA") was duly enacted by Parliament and that by virtue of section 7, **PDA**, and regulations 3 and 5, **Petroleum Regulations 1974**, and the Order made under section 7A, **PDA** dated 28.11.1980, the Chairman and Chief Executive of the Applicant have exclusive regulatory authority over Upstream Activity;

b. a declaration that the **Sarawak Oil Mining Ordinance 1958** was impliedly repealed by the PDA;

2. The Applicant is to commence said proceedings within fourteen (14) days from the date of the Order herein;

3. Costs of and incidental to this application be costs in the cause; and

4. Further and/or other orders this Honourable Courts deems fit and just.

[6] It is clear that in the Enclosure 1, the Applicant does not specifically ask for declaration that certain law is invalid on the ground that the legislature which made that law had no legislative power to make the law. In prayer 1.1, the Applicant sought a declaration that Parliament has exclusive legislative competence to enact laws pertaining to the exploration, exploitation, winning and obtaining of petroleum throughout Malaysia, be it onshore or offshore, and that in prayer 1.2(a), declaration that the PDA was duly enacted. Indeed, the Respondent did not dispute the entitlement of Parliament

to enact the PDA. In prayer 1.2(b), the Applicant does not seek a declaration that the Sarawak Oil Mining Ordinance 1958 was invalid on the ground that the legislature had no competency to legislate that law. What was prayed for was a declaration that the Ordinance was impliedly repealed by the PDA.

[7] In my view, the declaratory reliefs sought by the Applicant do not come within the ambit of Articles 4(3) and 4(4) of the **Federal Constitution**. Hence, the declaratory reliefs sought by the Applicant are not within the exclusive original jurisdiction of the Federal Court. The declaratory reliefs sought are within the original jurisdiction of the High Court. Thus, the question of leave under Article 4(4) of the **Federal Constitution** does not arise.

[8] In the result, the application in Enclosure 1 is dismissed.

sgd

TAN SRI DATO' SRI AHMAD BIN HAJI MAAROP

Chief Judge of Malaya

Putrajaya

Dated: 22 June 2018

COUNSEL

For the Applicant: Dato' Malik Imtiaz Sarwar, En. Surendra Ananth and Cik Khoo Suk Chyi, Messrs. Malik Imtiaz Sarwar

For the Respondents: Datuk Talat Mahmood Abdul Rashid (State Attorney General, Sarawak); Dato Sri JC Fong (State Legal Counsel); En. Saferi bin Ali (Deputy State Attorney General); En. Mohd Adzrul Adzlan (State Legal Officer)

Watching Brief: Puan Hajah Zaleha Rose Datuk Haji Pandin (State Attorney General, Sabah); Puan Dayangku Fazidah Hatun bt. Pg. Bagul (State Counsel - Sabah); Pn. Rafidah bt. Maqbool Rahman (State Counsel - Sabah); En. Shamsul Bolhassan (Penolong Kanan Pendaftar - Attorney General Chamber)

LEGISLATION REFERRED TO:

Federal Constitution, Articles 4, 4(3), 4(4), 74(1), 128, 128(1), 128(1)(a); Article 74(1) read with item 8(j)

Petroleum Development Act 1974, Sections 7, 7A

Petroleum Regulations 1974, Regulations 3, 5

JUDGMENTS REFERRED TO:

Ah Thian v Government of Malaysia [1976] 2 MLJ 112

Gin Poh Holdings Sdn Bhd v The Government of the State of Penang & Ors [2018] 4 CLJ 1

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