

High Court Finds Bank Negara Malaysia Liable for Unfair Dismissal: Upholding Constitutional Rights in *Bank Negara vs Y. Kohila* (2024)

Freedom of speech stands as the bedrock of a just and democratic society governed by the rule of law. The government's tactics, demands, and propositions necessitate scrutiny to gauge the expansion of state authority. However, paramount to fostering good governance, the unfettered expression of ideas is indispensable for the advancement of civilization across all facets of human existence. It constitutes an integral component of personal fulfillment and societal progress. As Faruqi¹ (2018) aptly posits, freedom of speech is not merely a privilege but a fundamental right essential for human flourishing. Benjamin Franklin's profound words resonate with timeless wisdom: "Freedom of speech is the great bulwark of liberty; they prosper and die together: And it is the terror of traitors and oppressors, and a barrier against them. It produces excellent writers, and encourages men of fine genius²" (Paulsen, 2019a).

Recently, in a ground-breaking verdict, the High Court has declared Bank Negara Malaysia accountable for the unjust dismissal of its manager, Y Kohila, seven years ago, citing violations of constitutional provisions safeguarding fundamental rights, including freedom of speech, natural justice, the right to legal representation, the right to assemble, and the right to participate in political activities. Justice Ahmad Bache's ruling not only serves as a landmark in employment law but also reaffirms the pivotal role of constitutional rights in safeguarding individual liberties.

Freedom of Speech and Political Participation: Justice Ahmad highlighted Kohila's involvement in political activities, including her support for Parti Sosialis Malaysia (PSM) and participation in public rallies, as grounds for her dismissal. However, he emphasized that such activities are protected under the Malaysian Federal Constitution, which guarantees the right to freedom of speech, assembly, and political association.

Article 10(1)(c) of the Federal Constitution of Malaysia unequivocally enshrines the right to freedom of association, subject only to restrictions imposed by federal law in the interests of national security, public order, or morality. However, it is imperative to recognize that while

¹ Faruqi

² Paulsen, 2019a

freedom of association is guaranteed under Article 10(1)(c), it is not an absolute right for all Malaysians, provided it jeopardizes the peace and stability of society (Islam, 2019).

The Malaysian government's openness to the recommendations of sanction laws presents a potential clash with the fundamental association rights enshrined in Article 10(1)(c) of the Federal Constitution. The proposed sanctions, aimed at curtailing assembly rights, stand in direct contradiction to the constitutional guarantees.

In response to the proposed legislation prohibiting assembly, the Election Commission asserts that all citizens have thus far enjoyed the unimpeded exercise of their freedom of association. This assertion aligns with Article 10(1)(c) of the Federal Constitution, which unequivocally safeguards Malaysians' primary right to organize and associate freely. This fundamental freedom was affirmed in the landmark case of *Kelantan State Assembly v Nordin Salleh* (1992) 1 MLJ 697 in the Supreme Court³ (now the Federal Court) in 1992, the jurisprudence of which remains legally binding to this day⁴ (Rashid, 2018).

Natural Justice and Right to Legal Representation: Justice Ahmad unequivocally stated that Kohila was deprived of her right to be heard during both the domestic inquiry and subsequent appeal process, constituting a breach of natural justice. Kohila was denied the opportunity to testify and provide her version of events, further highlighting the denial of her right to legal representation. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in determination of his rights and obligations and of any criminal charge against him.

Natural justice was a cited precedent from UK case law, such as *Wednesbury Corporation v. Ministry of Housing and Local Government*⁵[1948], which established the principle of natural justice in administrative decisions, reinforcing the importance of fair procedures in disciplinary matters.

Right to Fair Trial and Mitigation: Justice Ahmad criticized the one-sided nature of the disciplinary proceedings, where mitigating factors, such as Kohila's commendable tenure and results-driven performance, were disregarded. He emphasized that Kohila was not given a fair

³ (1992) 1 MLJ 697

⁴ Rashid, 2018

⁵ [1948] 1 KB 223

opportunity to mitigate before the disciplinary committee, thus undermining the principles of natural justice. Referring to UK case law such as *Audi Alteram Partem*, which translates to "hear the other side," the judge emphasized the importance of affording individuals the opportunity to present their case and provide mitigating factors before disciplinary decisions are made.

Conclusion: Y Kohila was never a threat to national interest and national security when she was supporting a political party of her choice. Hence, she should not be unfairly dismissed by the national bank. The High Court's verdict in favor of Y Kohila not only holds Bank Negara Malaysia accountable for its actions but also reinforces the paramount importance of upholding constitutional rights and principles of natural justice in employment disputes. Based upon UK and Malaysian case laws and constitutional provisions, Justice Ahmad's ruling sets a significant precedent, underscoring the necessity of fair and transparent disciplinary procedures that respect individuals' fundamental rights.