IN THE COURT OF APPEAL OF MALAYSIA

(APPELLATE JURISDICTION)

CIVIL APPEAL NO. Q-01(NCVC)(A)-166-06/2015

BETWEEN

PENGERUSI
SURUHANJAYA PILIHANRAYA MALAYSIA
(ELECTION COMMISSION OF MALAYSIA) .. APPELLANT

AND

1. SEE CHEE HOW
2. PAULS BAYA .. RESPONDENTS

[In the matter of Kuching High Court Application For Judicial Review No. KCH-13 NCVC-3/1-2015

BETWEEN

1. SEE CHEE HOW
2. PAULS BAYA .. APPLICANTS

AND

PENGERUSI
SURUHANJAYA PILIHANRAYA MALAYSIA
(ELECTION COMMISSION OF MALAYSIA) .. RESPONDENT]

CORAM: MOHD ZAWAWI SALLEH, JCA
IDRUS HARUN, JCA
ABDUL RAHMAN SEBLI, JCA

JUDGMENT

Introduction

[1] Pursuant to the passing of the Dewan Undangan Negeri (Composition of Membership) Bill 2014, the enactment of the Dewan Undangan Negeri (Composition of Membership) Ordinance

2014 and the gazette notification of the amendment to Clause (2) of Article 14 of the Constitution of the State of Sarawak, the Election Commission (ñthe ECò) undertook a review of the division of the Federal and State Constituencies for the purpose of election in the State of Sarawak. The review was undertaken after a lapse of eight years from the date of completion of the last review. Eleven new State constituencies were proposed, increasing the number to 82 from the existing 71.

[2] On 5 January 2015, the EC published a notice on the proposed recommendations in four newspapers, namely the English language New Sarawak Tribune, the Malay language Utusan Sarawak, the New Straits Times and the Sabah Edition of the Borneo Post, both English language newspapers. It was also posted on the official website of the EC. Published together with the notice were the First and Second Schedules annexed to the notice. The notice reads:

> ñTAKE NOTICE that the Election Commission, in accordance with the requirement of Clause (2) of Article 113 of the Federal Constitution, has reviewed the division of the State of Sarawak into Federal Constituencies and State Constituencies
>
> 2. Consequent upon the review, the Election Commission proposes to recommend in their report such recommendations:
>
> (a) no alteration to the Federal Constitution for the State of Sarawak;
>
> (b) the number of State Constituencies for the State of Sarawak is increased by eleven Constituencies making the overall total of the State Constituencies for the State of Sarawak at 82 Constituencies;

(c) for the purpose of the review of the delimitation of Constituencies, there are amendments made to the name of the Federal Constituencies involving one Federal Constituency in the State of Sarawak; and

(d) there are also amendments made to the name of the State Constituencies in the State of Sarawak.

3. The total number of voters in the Electoral Rolls which was endorsed and gazetted on 30 April 2014 was used for the purpose of the review of the delimitation of the Federal and State Constituencies in the State of Sarawak.

4. Detailed particulars of the proposed recommendations for the State of Sarawak regarding the new Federal and State Constituencies in the State of Sarawak are specified in the First Schedule.

5. Detailed particulars of the proposed recommendations regarding the overall Federal and State Constituencies in the State of Sarawak are specified in the Second Schedule.

6. A copy of the proposed recommendations together with the Draft Constituencies Plan for the State of Sarawak may be inspected from 5 January 2015 during normal office hours at the places specified in the Third Schedule.

7. According to section 4(c), Part II of the Thirteenth Schedule of the Federal Constitution, representations with respect to the proposed recommendations may be made to the Election Commission within one month after the date of publication of this Notice.

8. In accordance with section 5, Part II of the Thirteenth Schedule of the Federal Constitution, parties who can make representations objecting to the proposed recommendations are:

(a) the State Government; or

(b) any local authority whose area is wholly or partly comprised in the constituencies affected by the recommendations; or

(c) a body of one hundred or more persons whose names are shown on the current electoral rolls of the constituencies in question.

9. Any representation objecting to the proposed recommendations shall be submitted in writing to the Election Commission and addressed to the Sarawak State Elections Officer as below:

Pengarah
Pejabat Pilihan Raya Negeri Sarawak
Tingkat 11, Bangunan Sultan Iskandar
Jalan Simpang Tiga
93728 Kuching, Sarawakò

[3] The publication of the notice was to comply with the requirements of section 4(a) Part II of the Thirteenth Schedule to the Federal Constitution (ñthe Constitutionò). To provide context we reproduce below the whole of section 4:

ñ4. Where the Election Commission have provisionally determined to make any recommendations under Clause (2) of Article 113 affecting any constituency, they shall inform the Speaker of the House of Representatives and the Prime Minister accordingly, and shall publish in the *Gazette* and in at least one newspaper circulating in the constituency a notice stating ï

(a) the effect of their proposed recommendations, and (except in a case where they propose to recommend that no alteration be made in respect of the constituency) that a copy of their

recommendations is open to inspection at a specified place within the constituency; and

(b) that representations with respect to the proposed recommendations may be made to the Commission within one month after the publication of such notice,

and the Commission shall take into consideration any representations duly made in accordance with any such notice.ò

[4] Thus, the procedure under section 4(a) of the Thirteenth Schedule is that where the EC has proposed to make any recommendations pursuant to Clause (2) of Article 113 of the Constitution, a notice of the proposed recommendations must be published in the *Gazette* and in at least one newspaper circulating in the constituency, and must state the following:

(1) The effect of the proposed recommendations.

(2) That a copy of the proposed recommendations is open to inspection at a specified place within the constituency (this is not necessary where the proposal is not to recommend any alteration in respect of the constituency).

(3) That any representation with respect to the proposed recommendations may be made to the EC within one month after publication of the notice.

[5] Clause (2) of Article 113 of the Constitution pursuant to which the recommendations were made stipulates as follows:

ñ(2) (i) Subject to paragraph (ii), the Election Commission shall, from time to time, as they deem necessary, review the division of the Federation and the States into constituencies and recommend such changes therein as they may think necessary in order to comply with the provisions contained in the Thirteenth Schedule; and the reviews of constituencies for the purpose of elections to the Legislative Assemblies shall be undertaken at the same time as the reviews of constituencies for the purpose of elections to the House of Representatives.ò

[6] As to where the details of the proposed recommendations can be found, they are contained in a booklet titled ñSyor-Syor yang dicadangkan bagi Bahagian-Bahagian Pilihan Raya Persekutuan dan Negeri di dalam Negeri Sarawak sebagai mana yang telah dikaji semula oleh Suruhanjaya Pilihan Raya dalam Tahun 2014ò which is displayed at the counter of the ECôs office. This document, which runs into 152 pages contains the notice, the First Schedule, the Second Schedule and the Third Schedule.

[7] Since the publication of the notice on 5 January 2015, the EC has received 64 objections from community villages, longhouses and kampongs in many State constituencies including eight from the constituency of Baram which includes Telang Usan, Long Lama and Marudi. The objections came in many forms and they were all accepted by the EC.

[8] In her Supplementary Affidavit, Suriani binti Saruji who is the Deputy Director of the Sarawak State Election Office confirmed that the first hearing of the local enquiry was conducted on 26 February 2015 to 6 March 2015 and the second from 11 May 2015 to 13 May

2015. According to her both hearings have been completed and the EC is in the midst of preparing a report in respect of the delimitation to be submitted to the Prime Minister to be tabled in Parliament.

Objection By Respondents

[9] The respondents were among those who objected to the proposed recommendations but chose a different route. Instead of filing an objection to the EC in accordance with sections 4(b) and 5(b) of the Thirteenth Schedule, they filed for judicial review to challenge the legality of the notice. Leave was granted by the High Court on 17 February 2015.

[10] The 1st respondent is a registered voter in the electoral ward of Stampin Parliamentary Constituency and Kota Sentosa State Constituency, a lawyer by profession and an elected State Assemblyman for N.11 Batu Lintang. The 2nd respondent on the other hand is a businessman and a registered voter in Kampung Atip, Baram. Their application for judicial review was made õon behalf of themselves and others being the registered voters of the State of Sarawakò

The Prayers

[11] The orders sought by the respondents were the following:

(a) A declaration that the publication and or notification of the EC under Clause (2) of Article 113 of the Constitution to review the division of the State of Sarawak into constituencies for the purpose of election to the Sarawak State Legislative Assembly was not in compliance with the provisions

contained in the Thirteenth Schedule and is null, void and of no effect; and or alternatively

(b) A declaration that the proposed recommendation of the EC to review the division of the State of Sarawak into Federal Constituencies for the State of Sarawak for the purpose of election to the House of Representatives was unconstitutional and is null, void and of no effect;

(c) A declaration that there is a serious and considerable lacking in detailed particulars of the proposed recommendations disclosed and specified in the First Schedule, the Second Schedule and the draft Constituency Plan which were open for inspection from 5 January 2015 up to and including 4 February 2015 at the places specified in the Third Schedule annexed to the notice;

(d) A mandatory order directing the EC to republish the notice of its proposed recommendations to review the division of the State of Sarawak into constituencies for the purpose of election to the Sarawak State Legislative Assembly in full compliance with the provisions contained in the Thirteenth Schedule; and or

(e) Any further or other orders the court may deem fit and just.

The Supporting Grounds

[12] Nine grounds were proffered by the respondents in support of the application and they were as follows:

(i) That there has yet and has been no amendment to Article 46 of the Constitution to change the composition of the Dewan Rakyat and therefore the EC had acted in excess of their legal authority and or power to review the division of the State of Sarawak into Federal Constituencies.

(ii) The EC had acted *ultra vires* the Constitution in assuming legal authority and or power to make amendment to one Federal Constituency in the State of Sarawak, the shifting of State Constituencies from one Parliamentary Constituency to another and the redrawing of boundaries of constituencies not involved in the creation of the new State Constituencies.

(iii) There is a serious and considerable lacking in detailed particulars of the proposed recommendations purportedly disclosed and specified in the First Schedule, the Second Schedule and the draft Constituency Plan which were open for inspection from 5 January 2015 up to and including 4 February 2015 at the places specified in the Thirteenth Schedule annexed to the notice.

(iv) There are ñgreat discrepanciesòin the Second Schedule that was gazetted and published in the New Sarawak Tribune and Utusan Sarawak newspapers, the notice under section 4 of Part II of the Thirteenth Schedule to

the Federal Constitution, the proposed recommendations for Federal and State Constituencies in the State of Sarawak as reviewed by the Election Commission in 2014 and the one that is shown at the office counter of the Pejabat Pilihan Raya Negeri Sarawak entitled "Syor-Syor yang dicadangkan bagi Bahagian-Bahagian Pilihan Raya Persekutuan dan Negeri di dalam Negeri Sarawak sebagai mana yang telah Dikaji Semula oleh Suruhanjaya Pilihan Raya dalam Tahun 2014";

(v) The notice and the schedules do not show the effect of the EC's proposed recommendations and or provide detailed particulars of the proposed recommendations.

(vi) The notice in providing the effect of the EC's proposed recommendations and or the detailed particulars of the proposed recommendations fell short of those published effect and or detailed particulars of the proposed recommendations provided in the previous constituencies and State Constituencies review exercise which was commenced on 17 January 2005 and carried out by the EC.

(vii) There were "much discrepancies and doubts" in the detailed particulars revealed by the EC.

(viii) The EC had neglected, ignored and or willfully disregarded the importance and significance of the

detailed particulars of the proposed recommendations, and in consequence thereof the principles as specified in Clause 2 of the Thirteenth Schedule to the Constitution and required to be taken into account in dividing any unit of review into constituencies to be reflected in the detailed particulars of the proposed recommendations were breached, violated and disregarded without explanation and clarification.

(ix) Those further and other grounds appearing in the Statement pursuant to Order 53 Rule 3(2) of the Rules of Court 2012 and in the Affidavit in Support (1) of See Chee How and the Affidavit in Support (2) of Pauls Baya both affirmed on 27 January 2015.

The High Court Decision

[13] Having heard arguments on the substantive application, the learned judge on 15 May 2015 dismissed prayers (a) and (b) of the application (see paragraph 68 of the grounds of judgment) but found in favour of the respondents in respect of prayers (c) and (d). No order was made as to costs. The two orders that the learned judge made were:

(1) A declaration that there is a serious and considerable lacking of detailed particulars in the proposed recommendations purportedly disclosed and specified in the First Schedule, the Second Schedule and the draft Constituency Plan which were open for inspection from 5 January 2015 up to and including

4 February 2015 at the places specified in the Third Schedule annexed to the notice.

(2) A mandatory order directing the EC to republish the notice of the proposed recommendations to review the division of the State of Sarawak into constituencies for the purpose of election to the Sarawak State Legislative Assembly in full compliance with the provisions contained in the Thirteenth Schedule.

[14] Subsequently however, upon ñclarificationò called by the learned judge on 25 May 2015, an additional declaratory order was made in the following terms:

> ñThat the publication of the Notice of the proposed recommendation to review the division of the State of Sarawak into constituencies for the purpose of election to the Sarawak State Legislative Assembly was not in compliance with section 4 of the Thirteenth Schedule of the Federal Constitution and is therefore null and void and of no effect.ò

[15] By this additional order, the learned judge practically reversed her earlier decision to dismiss prayer (a) of the application, which we reproduce again for comparison:

> ñ(a) A declaration that the publication and or notification of the EC under Clause (2) of Article 113 of the Federal Constitution to review the division of the State of Sarawak into constituencies for the purpose of election to the Sarawak State Legislative Assembly was not in compliance with the provisions contained in the Thirteenth Schedule and is null, void and of no effect;ò

[16] Unfortunately no reason was given for the reversal of the decision. The reference to ñpublication and or notificationò in the above prayer (a) must be a reference to the publication of the notice under section 4(a) as only section 4(a) is concerned with ñpublicationò or ñnotificationò of the proposed recommendations. There was no appeal against the dismissal of prayer (a) and prayer (b) of the application. What the respondents did was to file a cross-appeal against parts of the decision.

[17] We shall deal with the cross-appeal later in this judgment but we must say at the outset that the decision by the respondents not to appeal against the dismissal of prayers (a) and (b) can only mean two things, namely:

(1) they accept that the notice published pursuant to section 4(a) of the Thirteenth Schedule is a valid notice; and

(2) they accept that the proposed recommendation by the EC to review the division of the State of Sarawak into Federal Constituencies for the State of Sarawak for the purpose of election to the House of Representatives is not *ultra vires* the Constitution (see paragraph 67 of the grounds of judgment).

The Issue For Determination

[18] Of the three orders that the learned judge made, it is the additional order that defines the respondentsô case against the EC. The pith and substance of the judgment is that the failure by the EC

to comply with the requirements of section 4(a) of the Thirteenth Schedule by not disclosing detailed particulars of the proposed recommendations in the notice had ñabridged, restricted and or impairedò the respondentsôconstitutional right to have notice of the effect of the recommendations, thus invalidating the notice. This is the crux of the matter and the core issue for determination in this appeal.

[19] The appeal before us therefore turns on the question whether the EC had breached the provisions of section 4(a) of the Thirteenth Schedule. More specifically, the question is whether the EC had provided enough particulars in the notice to enable registered voters to make an informed decision in exercising their right to make representations under sections 4(b) and 5(b) of the Thirteenth Schedule. This is the theme that is repeated throughout in the judgment of the learned High Court judge.

[20] Sections 4 and 5 of the Thirteenth Schedule envisage two types of representation, namely:

(i) general representations under section 4(b); and

(ii) specific representations objecting to any proposed alteration of constituency under section 5.

[21] Section 5(b) of the Thirteenth Schedule which is the relevant provision for purposes of this appeal is couched in the following terms:

ñ5. Where, on the publication of the notice under section 4 of a proposed recommendation of the Election Commission for the alteration of any constituencies, the Commission receive any representation objecting to the proposed recommendation from ï

(a) é

(b) a body of one hundred or more persons whose names are shown on the current electoral rolls of the constituencies in question,

the Commission shall cause a local enquiry to be held in respect of those constituencies.ò

[22] The right to be heard on the proposed recommendations is therefore a fundamental constitutional right of every registered voter. The nub of the respondentsô argument both in the court below and before us is encapsulated in the following submissions by Datuk Cyrus Das for the respondents:

ñIn order for the public to effectively exercise their fundamental constitutional right to make representations and be heard in a local inquiry as provided in section 5(b), it is imperative that they be given detailed information so that they are informed as to where they are placed and how they will be adversely affected by the delineation.

Without the detailed particulars in the section 4(a) Notice and the Draft Constituency Plans, it would be extremely difficult for the public to exercise this fundamental constitutional right.ò

[23] It is patently clear from the above submissions that the respondentsô umbrage is with the ECôs alleged failure to disclose details of the recommendations in the section 4(a) notice as well as

in the draft Constituency Plan. What the argument amounts to in a nutshell is that without the detailed particulars, the votersô right to object to the proposed recommendations is impaired, thus rendering the notice defective in law and liable to be set aside.

[24] Datuk Cyrus Das spoke of the ñEffect Doctrineò and drew our attention to the then Supreme Court decision in *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor* [1992] 1 MLJ 697 and the decision of this Court in *Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261. We have heard of the doctrine of double effect but we must confess this is the first time we heard of the doctrine of single effect. These cases were cited for the proposition that where the detailed particulars of the proposed recommendations are lacking to such an extent that the public cannot exercise their constitutional right to object, then their constitutional right to make representations under section 5(b) is ñineffective and illusory.ò

[25] It is a repeat of the argument before the High Court and pursued with added zeal before us. In acceding to the argument the learned judge expressed her opinion as follows at paragraph 101 of the judgment:

> ñWithout disclosure of such detailed particulars, the voters of constituencies would not be able to know if any polling district boundary have been changed and in what manner; how many of the polling districts have been moved between the State Constituencies and how many State Constituencies have been moved between Parliamentary Constituencies, which constituency they are placed with, who are they sharing

constituency with and whether the principles in section 2 of the Thirteenth Schedule are complied with.ò

[26] Earlier at paragraphs 98 and 99 the learned judge lamented at the obstacles that the voters were facing when she said:

ñ[98] Few would gainsay that it is time consuming to look for the other 99 affected voters whose names are in the current electoral rolls of the constituency in question. Firstly, it is essential to get hold of the copy of electoral rolls [which, according to the 1st Applicantôs unchallenged averment in paragraph 34.2 of Enclosure 3, is not free of charge]. After getting hold of a copy of the electoral roll, he has to single out all polling districts allocated for his constituency to have an idea who are his fellow constituents and to look for and get 99 others to constitute a body to submit a representation.

[99] Any unnecessary obstacles in getting to know the effect of the proposed recommendation may cause delay in organizing 100 people to submit a representation which could not be submitted within the stipulated one month period. As a result the right to make representation and to be heard in the local inquiry would be made ineffective and illusory.ò

[27] It is unclear what the ñunnecessary obstaclesò were that the learned judge was speaking of but what is clear is that Her Ladyship was of the view that the following particulars must as a matter of law be included in the notice under section 4(a):

(i) The proposed electoral roll;
(ii) The exhaustive list of changes to the Parliamentary and State constituencies;
(iii) The polling station districts on the map;

(iv) The administrative, physical and infrastructural boundaries on the map;

(v) The electoral size; and

(vi) The land mass of the proposed constituencies.

[28] It was argued by the respondents that these particulars ought to be disclosed in the notice as they were known to the EC. It was pointed out that the EC had supplied such information before in the previous proposed recommendations of 17 January 2005. According to the respondents the disclosure of these detailed particulars is reasonable having regard to the facts and circumstances of the case. It was contended that without the detailed particulars, there would be a risk that the principles of redelineation as set out in section 2 of the Thirteenth Schedule would be ignored by the EC during the redelineation exercise.

[29] On the draft Constituency Plan, the learned judge dealt with the issue in the following manner at paragraph 106:

> ñ[106] As such, the inspection of Exhibit SCH-4 together with the Draft Constituencies Plan for the State of Sarawak at the places specified in the Third Schedule would not assist the public and the registered voters to know if the boundary of any polling district has been changed or how many polling districts have been moved between the State Constituencies or how many State Constituencies have been moved between Parliamentary Constituencies; whether the principles in section 2 are being complied with. As such they would not know whether they have been adversely affected and have locus standi to make representation.ò

[30] We should perhaps mention that the learned judge had also found the EC to be acting in bad faith when they omitted to disclose the detailed particulars of the proposed recommendations, a grave indictment indeed on the EC. This is what Her Ladyship said at paragraph 118 of the judgment:

> ñBe that as it may, when the serious substantial lacking of detailed particulars to show the effect of the proposed recommendation as referred to above is viewed together with the discrepancies averred by the 1st Applicant, it showed that the Respondent is keeping such information from public knowledge deliberately and has acted mala fide.ò

[31] Datuk JC Fong, a former State Attorney-General of Sarawak who appeared for the State Government of Sarawak and the State Legislative Assembly, being parties affected by the outcome of this appeal, submitted that the learned judge erred in law and in fact in her interpretation of section 4 of the Thirteenth Schedule. The argument is that section 4(a) does not require the notice to contain detailed particulars of the nature mentioned by the learned judge and that all that the section requires is for the notice to state the effect of the recommendations and that a copy of the recommendations is made available for inspection at the specified places.

[32] It was submitted that the effect of the recommendations had in fact been stated in the notice and so too was the fact that a copy of the recommendation is open for inspection at the specified places. It was pointed out that the learned judge herself at paragraph 107 of the judgment acknowledged that a notice that

does not contain the detailed particulars is not necessarily invalid if the detailed particulars are made available for inspection at the specified places. To appreciate the argument, we reproduce paragraph 107 of the judgment in its entirety:

> ñ107. It cannot be gainsaid that when the Respondent undertake a constituencies review exercise, they are performing a public duty to ensure that it is carried out in accordance with the principles listed out in section 2 of the Thirteenth Schedule and to ensure that the public bodies and the registered voters can exercise their right to make representation to the Respondent should they find themselves adversely affected by the proposed recommendation. In this connection, it is therefore an integral part of the public duty of the Respondent to disclose an exhaustive list of changes to the parliamentary and State Constituencies which include details of the changes to the polling districts, proposed electoral rolls, boundaries of polling districts, electorate size and land mass of the proposed constituencies in the Notice and in the Draft Constituency Plan. **If, for any reason, these detailed particulars cannot be published due to sheer size, then such information should be readily made available, free of charge, for inspection at the specified places**.ò (emphasis added)

[33] We agree with Datuk JC Fong. In holding the notice to be bad in law for lacking in detailed particulars, the learned judge contradicted her own view that where such details cannot be published due to sheer size, the details need not be stated in the notice itself but must be made available for inspection at the specified places. It is therefore the learned judgeôs own view that it is not a mandatory constitutional requirement for the detailed particulars to be disclosed in the body of the notice.

[34] In point of fact the EC had already done what the learned judge expected them to do by disclosing the detailed particulars of the proposed recommendations in the First and Second Schedules to the notice, which were open for inspection during normal office hours at the places specified in the Third Schedule. The question of acting in bad faith by hiding anything does not arise as the notice itself contained the following information in paragraphs 4 and 5:

> ñ4. Detailed particulars of the proposed recommendations for the State of Sarawak regarding the new Federal and State Constituencies and amendments to the existing names of the Federal and State Constituencies in the State of Sarawak are specified in the First Schedule.ò
>
> ñ5. Detailed particulars of the proposed recommendations regarding the overall Federal and State Constituencies in the State of Sarawak are specified in the Second Schedule.ò

[35] It is therefore factually wrong to say that the details of the proposed recommendations have not been disclosed by the EC. The notice itself does not provide the details of the proposed recommendations but the First Schedule provides the names of the eleven proposed new State constituencies and their constituency numbers, apart from providing the names of the Federal and State constituencies with the existing names in brackets and their constituency numbers. The Second Schedule then shows the overall effect of the changes by showing:

(a) each Federal constituency and its constituency number;

(b) each State constituencies that come within each Federal constituency and their constituency numbers; and

(c) the number of electors for each Federal constituency.

The Meaning Of "effect" In Section 4(a)

[36] In our judgment the EC has no duty to disclose more details than what they have already disclosed in the First and Second Schedules to the notice. With the greatest of respect to the learned and experienced judge, Her Ladyship had stretched the meaning of the word ñeffectò in section 4(a) of the Thirteenth Schedule beyond permissible limits. There is no mystery to the word. It must be given its popular and ordinary meaning. It is a noun which in common parlance means consequence. But if at all a dictionary meaning is required, reference may be made to *The Major Law Lexicon* by P Ramanatha Aiyar where the word is defined to mean:

> ñA result which follows a given act; consequence; event and sometimes used as synonymous with weight (as) Effect of evidence. The ñEffectò of a cause, is anything which would not have happened but for that cause; and it is none the less an Effect of such a cause, because it has been developed or accelerated by something supervening.ò

[37] It is a cardinal rule of statutory interpretation that words in a statute ought to be construed in a way in which they will best harmonise with the object of the statute. Where the meaning of words is plain and unambiguous, judges must not read words into the statute in order to give it a different meaning.

[38] In our view the word ñeffectò in section 4(a) of the Thirteenth Schedule means no more than the consequence or the resulting changes brought about by the proposed recommendations following the ECôs determination under Clause (2) of Article 113 of the Constitution. Contextually, the word has no causal link to the requirement to disclose detailed particulars of the proposed recommendations, let alone particulars of the nature mentioned by the learned judge.

[39] Of course particulars must be given (the proposed recommendations cannot be barren of particulars) but only so much as is necessary to allow registered voters to know the changes affecting their constituencies resulting from the review exercise undertaken by the EC. So long as the First and Second Schedules contain such particulars, the requirements of section 4(a) would have been met.

[40] We note that there is nothing in section 4 nor indeed in the whole of the Thirteenth Schedule that can be construed as to require ñdetailed particularsò to be stated in the notice under section 4(a), as the respondents seem to be suggesting. These are words that the EC themselves used in paragraphs 4 and 5 of the notice in reference to the particulars given in the First and Second Schedules annexed to the notice. It is unfortunate that their choice of words, rightly or wrongly, has triggered a chain legal reaction that threatens to forestall the review process they are undertaking.

[41] Nor do we find any ambiguity in the words ñstating the effect of their proposed recommendationsò in section 4(a) of the Thirteenth

Schedule. It means what it says, that is, to state the effect or consequence of the proposed recommendations. It does not mean to state the adverse effect or adverse consequence of the recommendations. To give such construction would be to read words into the section which are not there. For all intents and purposes this is what the respondents are imploring the court to do and which the learned judge agreed to when she held at paragraph 97 of the judgment:

> ñ[97] I am of the view that in order for the public or registered voters mentioned in section 5(a) and (b) of the Thirteenth Schedule to effectively exercise their constitutional right to make representation and to be heard in the inquiry, Section 4(a) of the Thirteenth Schedule must be complied with not just verbatim. The Section 4 Notice must communicate to the public the effect of the proposed recommendation. In other words, section 4 notice must disclose detailed particulars to show the effect of the proposed recommendations that would enable the public to know whether they are adversely affected by the proposed recommendation, and whether they have locus standi to make representation.ò

[42] There is a distinction between a requirement to state the effect of a proposed recommendation and a requirement to disclose details of the recommendation in the sense understood by the respondents. The first is a requirement of law whereas the second is a requirement of the respondents. Failure to appreciate the distinction can lead to a serious misapprehension of the law, as had happened in this case.

[43] We are, therefore, unable to accept the learned judgeôs reading of section 4(a) that it requires the EC to include in the notice

the six ópparticularsô that she listed out in paragraph 101 of the judgment. Even if section 4(a) requires detailed particulars to be disclosed, we find on the facts that the EC had fully complied with the requirement by providing the details in the First and Second Schedules, over and above their statutory duty to state in the notice the following effects of the proposed recommendations:

(a) That there will be no alteration to the Federal Constituencies for the State of Sarawak;

(b) That there will be an increase in the number of State constituencies by eleven constituencies making a total of 82 from the existing 71;

(c) That there will be an amendment to the name of one Federal constituency; and

(d) That there will be amendments to the names of four State constituencies.

Interpreting The Constitution

[44] In our deliberation on the contentious legal issues, we have reminded ourselves that interpreting the Federal Constitution requires a different approach from interpreting an ordinary statute, in that no provision of the supreme law bearing on a particular subject should be interpreted in isolation from the other provisions. In *Hinds & Ors v The Queen; Director of Public Prosecution v Jackson; Attorney General of Jamaica (Intervener)* [1976] 1 All ER

353 the Judicial Committee of the Privy Council gave a poignant reminder that to apply to constitutional instruments the canons of construction applicable to ordinary legislation in the fields of substantive criminal or civil law would be misleading.

[45] Each Article of the Constitution must be construed so as to give meaning to the other provisions: see *Dato' Seri Ir Hj Mohammad Nizar Bin Jamaluddin v Dato' Seri Dr Zamry Bin Abdul Kadir (Attorney General, Intervener)* [2010] 2 MLJ 285. In *Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus* [1981] 1 MLJ 29 Raja Azlan Shah Ag. L.P. (as his late Royal Highness then was) made the following pertinent observations:

> ñIn interpreting a constitution two points must be borne in mind. First, judicial precedent plays a lesser part than is normal in matters of ordinary statutory interpretation. Secondly, a constitution, being a living piece of legislation, its provisions must be construed broadly and not in a pedantic way ï ñwith less rigidity and more generously than other Actsò(see *Minister of Home Affairs v Fisher* [1979] 3 All ER 21. A constitution is *sui generis*, calling for its own principles of interpretation, suitable to its character, but without necessarily accepting the ordinary rules and presumptions of statutory interpretation. As stated in the judgment of Lord Wilberforce in that case: ñA constitution is a legal instrument given rise, amongst other things, to individual rights capable of enforcement in a court of law. Respect must be paid to the language which has been used and to the traditions and usages which have given meaning to that language. It is quite consistent with this, and with the recognition that rules of interpretation may apply, to take as a point of departure for the process of interpretation a recognition of the character and origin of the instrument, and to be guided by the principle of giving full recognition and effect to

those fundamental rights and freedoms.ò The principle of interpreting the constitution ñwith less rigidity and more generosityò was again applied by the Privy Council in *Attorney-General of St Christopher, Nevis and Anguilla v Reynolds* [1979] 3 All ER 129, 136.ò

[46] In *Danaharta Urus Sdn Bhd v Kekatong Sdn Bhd (Bar Council Malaysia, Intervener)* [2004] 2 MLJ 257 the Federal Court quoted with approval the following passage in Bindra's *Interpretation of Statutes* (7th Ed) at pages 947ï 948:

ñThe Constitution must be considered as a whole, and so as to give effect, as far as possible, to all its provisions. It is an established canon of constitutional construction that no one provision of the Constitution is to be separated from all the others, and considered alone, but that all the provisions bearing upon a particular subject are to be brought into view and to be so interpreted as to effectuate the great purpose of the instrument (*Old Wayne etc Association v McDonough* SI L ed 345; *Doconers v Bidwell* 82 (US) 244:45 L ed 1088; *Myers v United States* 272 US 52:71 L ed 60, 180). An elementary rule of construction is, that if possible, effect should be given to every part and every word of a Constitution and that unless there is some clear reason to the contrary, no portion of the fundamental law should be treated as superfluous (*Williams v United States* 289 US 553:77 L ed 1372; *Marbury v Madison* I Cranch (US) 137:2 L ed 60; *Myers v United States* 272 US 52:71 L ed 60; *United States v Buffer* 297 U SI: 80 L ed 477).ò

[47] The learned judgeôs construction of section 4(a) of the Thirteenth Schedule will render meaningless and superfluous the enquiry procedure prescribed by section 5(b) of the Thirteenth Schedule. Registered voters who wish to object to the proposed recommendations can then short circuit the constitutional process by going directly to the court for relief instead of going through the

process under section 5(b), on the pretext that the particulars in the First and Second Schedules are not detailed enough to their liking.

[48] It is trite principle that no portion of the supreme law should be treated as superfluous: Bindra's *Interpretation of Statutes* (supra); *His Royal Highness Sultan Ismail Petra v His Royal Highness Tengku Mahkota Tengku Muhammad Faris Petra* [2011] 1 MLJ 1 F.C.

The Enquiry Process

[49] An enquiry under section 5 of the Thirteenth Schedule is a mandatory constitutional requirement. It must be followed. The object plainly is to hear objections, if any, to the proposed recommendations. Contrary to what the respondents seem to be suggesting, there is no requirement that a person wishing to object to the proposed recommendations must know that he is adversely affected before he can make the representations.

[50] The only requirement is that he and the 99 other persons who make up a ñbody of one hundred or more personsò are registered voters in the constituencies in question. It is a fallacy to think that the enquiry is only to hear objections on the adverse effect the proposed recommendations have on the registered voters. The objection could be on a proposed change in the name of a constituency.

[51] In any event, whether or not the proposed recommendations have any adverse effect on the registered voters is a fact within the knowledge of the voters themselves and not the EC. It is therefore

unrealistic to expect the EC to provide details in such format and in such a way as to suit every individual voterôs need to be alerted of the adverse effect the proposed recommendations will have on them.

[52] Despite the respondentsôcomplaint that the notice does not, to borrow Datuk Cyrus Das, ñgive the Sarawak voters sufficient information and sufficient opportunityò to know the adverse effect the proposed recommendations have on them, the truth is the notice attracted 64 representatives objecting to the proposed recommendations. This to our mind is sufficient proof that the notice has achieved its intended objective, which is to inform the voting public that there will be changes to the State constituencies due to the proposed recommendations and that they have a right to object to the changes by making representations under section 5(b) of the Thirteenth Schedule.

[53] Learned counsel for the respondents however downplayed the representations made by the 64 representatives by pointing out that the first 20 names were of government officials and well placed individuals. With due respect we do not find any point of significance in the argument. We do not think the intelligence quotient of the voting public nor their status in society have any bearing on the issue.

[54] The undisputed and incontrovertible fact is that some of the objections came from voters in the remote constituencies of Baram, Telang Usan and Marudi and those who made the representations included those from the constituencies of Long Lama, Selirik and

Sebuyau other than Telang Usan, constituencies which the respondents claimed were beyond the reach of the notice.

[55] In our considered view, the particulars disclosed in the First and Second Schedules and in the copy of the proposed recommendations are sufficient material for the registered voters to know the effect of the proposed alterations on their constituencies, based on which they will be in a position to decide whether or not to object to any of the proposed recommendations. From these particulars a voter would know that his existing State constituency has been moved to another Federal constituency, for example the State constituency of N11 Batu Lintang has been moved to the Bandar Kuching Parliamentary constituency from the Stampin Parliamentary constituency.

[56] The First and Second Schedules also show the number of electors for each Parliamentary constituency and the number of electors for each State constituency. This should be sufficient information for a voter to raise questions on weightage that was given by the EC, regard being had to the rule that electors for each constituency in the State ought to be approximately equal in number as required by section 2(c) of the Thirteenth Schedule.

Purpose Behind Section 4 Of The Thirteenth Schedule

[57] Having regard to the legislative scheme of Part II of the Thirteenth Schedule, it is clear that the purpose behind the requirement to publish the notice under section 4(a) is merely to kick start the process of public consultation between the EC and the registered voters. The process does not end with the publication of

the notice. It is only the beginning of the process. The consultation process itself will take place at the enquiry held under section 5(b) of the Thirteenth Schedule. This is the proper forum to thrash out any objection to the proposed recommendations, not the court.

[58] This includes, if the voters so wish, to draw to the ECõs attention ña surreal tale of one bed two constituenciesò that happened in Segamat, Johor in 2003 which the 1st respondent related in paragraph 34.3 of his Affidavit in Support (1). It is an interesting story and we reproduce below the 1st respondentõs account of the incident, and perhaps the lessons to be learnt from it:

> ñ34.3 An incidence in 2003 has been documented and often used to highlight the shortcomings of such opaque delimitation, delineation and or redelineation exercise. In that infamous exercise, an Ong family living in Kampung Abdullah, Segamat, Johore was erroneously, mistakenly and or negligently divided. Up until 1999, members of the said family were registered voters in the parliamentary constituency of Segamat. After a delimitation, delineation and or redelineation exercise by the Respondent EC, one Mr Ong found himself remaining as a voter in a smaller parliamentary constituency of Segamat, while his siblings and his wife were shifted to the newly created parliamentary constituency of Kijang. There is a clear breach of ñlocal tiesò within Clause 2(d) of the Thirteenth Schedule than this surreal tale of ñone bed, two constituenciesò. The Kampung Abdullah fiasco would not likely have happened if a proposed electoral roll were also displayed and people could easily search if their constituency had been changed and filed in roll-related objection in a delimitation, delineation and or redelineation exercise.ò

[59] A quick look at document 8 of the Core Bundle of Documents, which is the ñObjection and Appeal to Boundary and Name of Proposed N.78 Long Lama By 100 Votersò will tell us that the procedure prescribed by section 4(a) read together with section 5(b) of the Thirteenth Schedule does provide for an effective mechanism through which registered voters can ventilate their concerns and opposition to the proposed recommendations and to make counter proposals.

[60] In the case of the 100 voters who filed the representation through document 8 of the Core Bundle of Documents, they expressed no objection to the proposed creation of a new constituency in Baram, i.e. N.78 Long Lama, but objected to the proposed boundary and name. They want the new constituency to be renamed N.78 Mulu instead of N.78 Long Lama. They have given their reasons for objecting to the proposed change to the boundary and name. The EC is legally bound to consider the objection. The process must be allowed to take its course.

[61] However learned co-counsel for the respondents made light of the representation by the 100 voters, saying that if one were to look at the way the representation was drafted, someone must have given help. With due respect to learned counsel, we can only describe the argument as malapropos. With or without help the law applies to all asunder, be it the village idiot or a man of the world and we say this without being derogatory.

[62] The votersôright to object to the proposed recommendations is a constitutional right guaranteed by section 4(b) of the Thirteenth

Schedule which in mandatory terms provides that the EC ñshall take into consideration any representations duly made in accordance with any such notice.ò The question of being disadvantaged by the technicalities of the law does not arise at all. Although no one is presumed to know the law, lawyers and judges included, ignorance of the law is no excuse.

[63] It is not hard to understand why it is made mandatory for the EC to hold an enquiry under section 5(a) upon receiving any representation of objection to the proposed recommendations. It is to give the voters, who have a stake in the election process, to argue for a revision of the proposed recommendations or even to drop any of the recommendations before they are passed into law by the House of Representatives. The ECôs power to revise the proposed recommendations is provided by section 6 read with section 7 of the Thirteenth Schedule which respectively provide:

> ñ6. In relation to any enquiry held under section 5 the Election Commission shall have all the powers conferred on the Commissioner by the Commissions of Enquiry Act 1950 [Act 119].
>
> 7. Where the Election Commission revise any proposed recommendations after publishing a notice thereof under section 4, the Commission shall comply again with that section in relation to the revised recommendations, as if no earlier notice had been published;
>
> Provided that it shall not be necessary to hold more than two local enquiries in respect of any such recommendations.ò

[64] Meaning must be given to the words ñproposed recommendationsò used in sections 4, 5 and 7 of the Thirteenth Schedule. These words connote the preliminary nature of the recommendations. We agree with the learned Senior Federal Counsel that the delimitation exercise is a continuous process which is eventually to be decided by the House of Representatives. It is not the function of the court to conduct its own inquiry into the objections and to come to its own decision. To do so would be to usurp the powers of the EC as provided under the Constitution.

[65] Section 5 of the Thirteenth Schedule was inserted in the Federal Constitution by the Constitution Amendment Act, 1962 (Act 14/1962). The then Deputy Prime Minister, the late Tun Haji Abdul Razak in moving for the Bill intituled ñan Act to amend the Constitution of the Federationòto be read for a second time *inter alia* said:

> ñUnder the present proposals, the Election Commission, after holding a review as the Constitution provides, will formulate provisional recommendations, framed in accordance with the principles set out in Part I of the new Thirteenth Schedule introduced by Clause 31. The recommendations will be published, and the Commission will revise them in the light of any representations received and submit them to the Prime Minister. The results of the Commissionôs work will be laid before the Dewan Raôayat and unless the Commission has recommended no change the Prime Minister will lay a draft Order giving effect to the Commissionôs recommendations, with or without modifications.ò

[66] He then concluded this part of his speech by saying:

ñThe procedure for altering boundaries is based upon that adopted in the United Kingdom, by the House of Commons (Redistribution of Seats) Acts, 1949 and 1958 and I am sure Honourable Members will agree that the proper authority for deciding on the delimitation of constituencies is this House.ò

Whether Respondents Adversely Affected

[67] It will be recalled that the respondentsô application for judicial review was made ñon behalf of themselves and others being the registered voters of the State of Sarawakò. They say that their right, and this must include the right of all the registered voters of Sarawak whom they purport to represent, to make a representation under section 5(b) of the Thirteenth Schedule has been impaired and rendered illusory by the ECôs failure to state the detailed particulars in the section 4(a) notice.

[68] Is that so? We think not because if it were so, the 64 representatives and the 100 voters who made the representations would not have been able to do so without a hitch. The respondents have not shown how the alleged shortcomings in the particulars provided in the First and Second Schedules and in the draft Constituency Plan has hampered them in the exercise of their constitutional right to make a representation so much so that their right has been rendered ñineffective and illusoryò.

[69] More importantly, the alleged impairment of right is a bare allegation unsupported by evidence. There is nothing in the affidavit in support of either respondent to aver to this fact. Neither has it been stated in the supporting grounds of application for review. The

truth is, the respondents did not even file any representation under section 5(b) of the Thirteenth Schedule to object to the proposed recommendations. They are now way out of time to do so.

[70] It is obvious that the allegation is based purely on their belief that the lack of detailed particulars in the notice would have such effect, not only on them but amazingly, on all other Sarawak voters. In paragraph 34 of his Affidavit in Support, this is what the 1st respondent said:

> ñ34. I verily believe that, for the general voters to know whether they are negatively affected by the proposed recommendations, they need to know firstly which constituency they are placed within, secondly, who are they sharing the constituency with. This knowledge is not attainable without the preparation of the electoral rolls, the polling districts on the map and the administrative, physical and infrastructural boundaries of the draft Constituency Plan for the State of Sarawak prepared and proposed by the Respondent EC.ò

[71] But for all the strong words, the 1st respondent failed to come up with any factual basis for entertaining such belief. Such statement of belief without disclosing the source of the belief and without collaboration from anyone who is able to confirm the belief is pure conjecture. Under Order 53 rule 3(2) of the Rules of Court 2012, an affidavit filed should be for the purpose of verifying the facts relied upon.

[72] In the present case the respondents have not made available any evidence by eligible or affected voters to confirm factually that due to the lack of detailed particulars in the notice, they have not

been able to make effective representations under section 5(b) of the Thirteenth Schedule and that their right to exercise that right has been rendered ineffective and illusory.

[73] If any authority is required for the point, the following passage in the judgment of Edgar Joseph Jr SCJ delivering the judgment of the Federal Court in *Lori Malaysia Berhad v Arab-Malaysia Finance Berhad* [1999] 2 CLJ 997 at page 1006 is instructive:

> ñThe second point to note regarding this part of the case is that, it is an elementary proposition sometimes overlooked with resulting confusion and possible injustice that where statements are made by a deponent, based on information and belief **these ought not to be looked at all, unless the court can ascertain not only the source of the information and belief but also unless the deponent's statement is corroborated by someone who speaks from his own knowledge**. (See, *In re J.L. Young Manufacturing Ltd. Co.* [1900] 2 Ch. 753, 754 per Lord Alverstone CJ, applied by the old Federal Court in *Cantrans Services (1965) Ltd. V. Clifford* [1974] 1 MLJ 141, 143).ò(emphasis added).

[74] Having regard to all the circumstances of the case, we are inclined to think that the allegation of impairment of right is a red herring thrown at the court for the purpose of casting doubts on the *bona fide* of the EC in carrying out the delimitation exercise.

The Cross-Appeal

[75] We now come to the cross-appeal. The respondentsô notice of cross appeal is in the following terms:

ñTAKE NOTICE that, on hearing of the above appeal, SEE CHEE HOW (WN KP 640120-13-5635) and PAULS BAYA (WN KP 601031-13-5391), the 1st and 2nd Respondents abovenamed respectively will contend that the decision of the High Court of Sabah and Sarawak given at Kuching on the 15th day of May 2015 ought to be varied to the extent and on the grounds hereinafter set out:

1. The Learned Judge ought to have held that the Notice under Section 4 of Part II of the 13th Schedule was bad in law as it did not involve any changes to the Federal Constituencies in Sarawak under Article 113(2)(i) contrary to the declaration in the Notice.

2. The learned Judge had erred in law in not holding that the constituency delimitation exercise under Article 113(2)(i) Federal Constitution had to be carried out simultaneously for both Federal & State Constituencies and therefore the Notice under Section 4 of Part II of the 13th Schedule of the Federal Constitution that contemplated delimitation of only State Constituencies in Sarawak was null and void.

3. The learned Judge had erred in law in failing to hold that the purported Notice under Section 4 of Part II of the 13th Schedule of the Federal Constitution was factually inaccurate and misleading to the public with regards to its effect on Federal Constituencies in Sarawak.

4. The learned Judge had erred in law in failing to appreciate that there was at all material times no amendment to Article 46 of the Federal Constitution to increase the number of Federal Constituencies in the State of Sarawak and therefore Article 113(2) would not apply to justify the delimitation exercise presently undertaken by the Election Commission.

5. The order of no costs of the action to the Respondents/Applicants by the learned High Court Judge shall be varied as full costs of the action ought to have been granted to the Respondents/Applicants since the Respondents/Applicantsô claim for relief have been allowed.ò

[76] The procedure for cross-appealing to the Court of Appeal is governed by Rule 8(1) of the Rules of the Court of Appeal 1994 (ñthe RCOAò) which provides as follows:

ñ(1) It shall not be necessary for a respondent to give notice of appeal, but if a respondent intends, **upon the hearing of the appeal, to contend that the decision of the High Court should be varied**, he may, at any time after entry of the appeal and not more than ten days after the service on him of the record of appeal, give notice of cross-appeal specifying the grounds thereof, to the appellant and, any other party who may be affected by such notice, and shall file within the like period a copy of such notice, accompanied by copies thereof for the use of each of the Judges of the Court.ò(emphasis added).

[77] The words we emphasise in bold indicate that a cross-appeal is only meant for variation of ñthe decisionò appealed against and not for variation, reversal or setting aside of any other decision of the High Court unrelated to the appeal filed by the appellant. In the context of the present case there are two different sets of decision given by the learned judge, one in favour of the EC and the other in favour of the respondents. The decision that is favourable to the EC is the decision to dismiss prayers (a) and (b) of the application and the decision that is favourable to the respondents is the decision to grant prayer (c), prayer (d) and the additional order.

[78] The learned Senior Federal Counsel contended that the cross-appeal must be dismissed outright as it does not relate to the appeal brought by the EC. Reliance was placed on the decision of this court in *Leisure Farm Corporation Sdn Bhd v Kabushiki Ngu & Ors* [2015] 3 CLJ 489. Very briefly the facts are these. The appellant sued the respondents for specific performance of a contract for the sale of shares and in the alternative, for damages. The High Court found that a valid and binding contract had come into existence between the appellant and the first respondent for the sale of the shares. The court ordered compensation *in lieu* of the order of specific performance.

[79] The appellant appealed against that part of the decision refusing the order of specific performance. The first respondent on his part filed a notice of cross-appeal, appealing for a reversal of the finding that there existed a valid contract. When the appeal came up for hearing, the appellant raised a preliminary issue that since the appellantôs appeal was limited to the refusal to grant specific performance, the first respondentôs appeal must likewise be limited to that issue and that the first respondent could not be heard on other matters not raised in the substantive appeal.

[80] The Court of Appeal decided in favour of the appellant and ruled that the first respondent was precluded from raising any argument that there was no valid and concluded contract as held by the High Court. The gist of the judgment is captured in the following observations by Varghese George JCA who delivered the judgment of the court:

ñ[38] In this case the appellant (being satisfied as to the finding of fact that there was a binding contract but dissatisfied that no specific performance had been ordered) was appealing only against a part of the judgment, namely that the court ought to have in all the circumstances allowed the relief of an order of specific performance of the contract rather than that damages *in lieu* thereof be recovered from the first respondent.

[39] Given that was the scope of the appeal itself, any cross-appeal by the first respondent that could be pursued was necessarily limited, as to the dissatisfaction with the damages *in lieu* (to be assessed), the further damages in the sum of RM841,691.94 and costs of RM150,000 ordered against the first respondent.ò

[81] In the appeal before us, the High Courtôs refusal to grant prayers (a) and (b) of the application is a decision that is adverse to the respondents and appealable at their instance. The respondents should have filed a separate notice of appeal if they wanted the decision to be reversed or set aside, and not by filing a cross-appeal as was done in this case.

[82] A close look at the notice and grounds of cross-appeal will reveal that grounds (1), (2) and (4) are in fact appealing against the High Courtôs decision to dismiss prayers (a) and (b) of the application. The cross-appeal is therefore unrelated to the appeal brought by the EC, which is an appeal against that part of the High Courtôs decision granting prayer (c), prayer (d) and the additional order. Since the respondents did not file any notice of appeal against the decision to dismiss prayer (a), prayer (b) and the decision on costs, they are precluded from raising these issues in this appeal.

[83] In any event, even if the merits of the cross-appeal were to be considered, we do not find anything in favour of the respondents. As we have alluded to earlier in this judgment, the whole basis, the backbone of the respondentsô case against the EC is their allegation that the section 4(a) notice is bad in law for lacking in detailed particulars. We have found that this is not the case. Thus, the respondentsôfailure to strike down the section 4(a) notice for being bad in law leaves the cross-appeal hanging in mid air without any leg to stand on.

[84] The cross-appeal suffers from another defect. The notice does not set out the nature of the relief claimed, which must be stated in the prescribed statutory notice in Form 2, the material parts of which are as follows:

> ñTake notice, that on the hearing of the above appeal, C.D., the Respondent above-named, will contend that the decision(s) of the Honourable Mr. Justice ..... given at ..... on the ..... day of ..... 19... ought to be varied to the extent and on the grounds hereinafter set out:
>
> (Set out in numbered paragraphs-
>
> *(a)* the nature of the relief claimed; and
>
> *(b)* the grounds relied upon.)ò

[85] The respondents merely set out the grounds of cross-appeal. Conspicuously missing is the prayer for variation of the decision. What the notice and grounds of cross-appeal contain are general averments that the learned judge ought to have decided the respondentsôway rather than the ECôs way, and that the learned

judge had erred here and erred there without identifying with precision which part or parts of the decision that they want to be varied. Litigants must understand that if they seek any relief from the court, they must state it in clear terms. Otherwise all they get may be costs that may be awarded against them.

[86] By paragraph (3) of the grounds of cross-appeal, the respondents are actually cross-appealing against a decision that is favourable to them. Paragraph (3) obviously refers to the additional order given on 25 May 2015, which is the subject of an appeal by the EC. It is perplexing to say the least why the respondents would want to cross-appeal against such order, unless it is their case that the additional order should not have been made at all. The truth is, there is nothing for the respondents to cross-appeal in respect of the decision to grant prayer (c), prayer (d) and the additional order. They are already decided squarely in their favour.

[87] As for the High Courtôs decision not to award costs to the respondents despite allowing their application for judicial review, we are of the view that in matters of discretion such as this, we should not interfere with the decision of the learned judge. Being the judge who heard the case, she was in the best position to decide whether costs should be awarded to any party to the proceedings. It was her decision not to make any order as to costs and we see no reason to depart from that decision.

Whether Leave Should Have Been Granted

[88] By paragraph 15 of the Memorandum of Appeal, the EC seeks to appeal against the grant of leave to the respondents to apply for

judicial review. In opposing this part of the ECôs appeal, it was contended by counsel for the respondents that the appeal should be rejected outright as no appeal was filed within one month of the decision on 17 May 2015. It was pointed out that the Notice of Appeal itself states that the appeal is limited to the decisions made by the High Court on 15 May 2015 and 25 May 2015.

[89] For ease of reference we reproduce below the material contents of the Notice of Appeal:

> ñ**TAKE NOTICE** that the **PENGERUSI, SURUHANJAYA PILIHAN RAYA MALAYSIA (ELECTION COMMISSION OF MALAYSIA)**, the Appellant abovenamed being dissatisfied with the decision of the Honourable High Court Judge, Yang Arif Datuk Yew Jen Kie given at Kuching, Sarawak on the 15th day of May, 2015 appeals to the Court of Appeal against part of the decision that:
>
> 1. there is serious and considerable lacking in detailed particulars of the proposed recommendations purported disclosed and specified in the First Schedule, Second Schedule (both are annexed to the Notice published pursuant to Clause 4 of the Thirteenth Schedule) and the draft Constituency Plan which are opened for inspection from 5 January 2015 up to the Notice published pursuant to Clause 4 of the Thirteenth Schedule (prayer 3 of the Application);
>
> 2. a Mandatory Order directing that the Election Commission republishes a notice of its proposed recommendations to review the division of the State of Sarawak into constituencies for the purpose of elections to the Sarawak State Legislative Assembly in full compliance with the provisions contained in the Thirteenth Schedule (prayer 4 of the Application).

> And on 25th day of May 2015 appeals to the Court of Appeal against part of the decision that:
>
> 3. the publication of the Notice for proposed recommendation to review the State of Sarawak in 2 constituencies for the purpose of election to the State Legislative Assembly was not in compliance with section 4 of the Thirteenth Schedule of the Federal Constitution and is null and void and of no effect.ò

[90] It is clear that the ECôs appeal is confined to the decisions of the High Court on 15 May 2015 and on 25 May 2015. It cannot possibly include the decision by the learned judge to grant leave on 17 February 2015 as by then the EC would already have been out of time to file the notice of appeal.

[91] In the course of argument, we enquired from the learned Senior Federal Counsel if the ECôs failure to file an appeal against the order granting leave would bar the EC from appealing against the decision but received no answer. Nor was any submission made either written or oral on the issue. It is obvious that the learned Senior Federal Counsel was more concerned with the merits of the High Courtôs decision to grant leave rather than the preliminary issue of whether the EC can be heard on the merits.

[92] In the circumstances the EC must be taken to accept the respondentsôsubmission that since no appeal was filed against the decision of the High Court granting leave on 17 May 2015, the appeal against the grant of leave is incompetent and must not be entertained by this court.

[93] That disposes of the matter but for completeness we feel obliged to say a word or two on the required threshold for the grant of leave in a judicial review application. There is sufficient adjective law on the point. Suffice it if we refer to the speech of Lord Diplock in the Privy Council case of *IRC v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 where His Lordship said at page 643:

> ñThe whole purpose of requiring that leave should first be obtained to make the application for judicial review would be defeated if the court were to go into the matter in any depth at that stage. If, on a quick perusal of the material then available, the court thinks that it discloses what might on further consideration turn out to be an arguable case in favour of granting to the applicant the relief claimed, it ought, in the exercise of a judicial discretion, to give him leave to apply for that relief.ò

[94] Applying the above principle to the facts of the present case, we are not prepared to say with conviction that the learned judge was clearly wrong in granting leave. Given the issues raised, the lengthy arguments presented and the voluminous documents laid before her, we are of the opinion that the learned judge was right in granting leave.

Conclusion

[95] For all the reasons aforesaid we are unanimous in finding that there is sufficient merit in this appeal to justify interference with the decision of the High Court. In the circumstances the appeal is allowed and the cross-appeal is dismissed. The two orders that the learned judge made on 15 May 2015 and the additional order made on 25 May 2015 are hereby set aside.

[96] Before we end, we would like to take this opportunity to record our deepest appreciation to counsel for all parties involved for their invaluable assistance in the disposal of this appeal and cross-appeal. Their input has made it so much easier for us to decide on this important constitutional issue. We now invite the parties to address us on the issue of costs.

Dated: 7 August 2015.

ABDUL RAHMAN SEBLI
Judge
Court of Appeal
Malaysia

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For the State Government
of Sarawak
and State Legislative
Assembly of Sarawak: Datuk J.C. Fong (Saferi Ali, Senior State Legal Officer with him) of the State Attorney Generalôs Chambers, Sarawak.

For the Respondents: Datuk Cyrus Das (Datuk Ambiga Sreevasan, James Au Wie Wern, See Chee How, Desmond Kho and Jamilah Baharuddin with him) of Baru Bian & Co.

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