Abstract

The fallacy of the doctrine that judicial review is always confined to the decision-making process and is never concerned with the merits of the decision itself was exploded by the landmark ruling of the Federal Court in R Rama Chandran v The Industrial Court of Malaysia [1997] 1 MLJ 145 n1. The rationale and justification for this quantum leap in industrial law is sought to be understood from three perspectives: its legal basis, comparative law and social justice. The final section of this article focuses on the question whether such enormously increased powers of judicial review would endanger the legitimate jurisdiction of the Industrial Court.

The Entrenched Principle of Judicial Review

A perusal of local cases of judicial review of industrial court decisions shows that the primary authority relied upon for the purpose of limiting the scope of judicial review was the case of Chief Constable of North Wales v Evans [1982] 1 WLR 1155. It is noteworthy that in this landmark case, Lord Brightman of the House of Lords stipulated that:

Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power n2.

This judicial development not only limits the scope of judicial review, but also gives a reason for doing so. However, as has been revealed by Edgar Joseph Jr FCJ in Rama Chandran, even Lord Brightman had his reservations in giving his wholehearted support to this view of the House of Lords because, in his opinion, it was tantamount to sending the claimant, who establishes that he has been legally wronged, empty-handed to celebrate his barren victory n3.
Notwithstanding such reservations, this view had become the entrenched principle of judicial review, and that the principle was entrenched in our judicial system was incidentally acknowledged by Wan Yahya FCJ in *Rama Chandran* when he said that 'his dissenting judgment is written with no other motive than a sincere desire to uphold an entrenched principle of the law on Judicial Review' n4.

The landmark ruling of the House of Lords in limiting the scope of judicial review was endorsed by the Malaysian judiciary with a rigour parallel to that of the pronouncements of Lord Brightman in the House of Lords and of Lord Fraser in *Re Amin* [1983] 2 AC 818 at p 829 n5.

While Lord Brightman was the author of the oft quoted ruling above that 'Judicial Review is concerned not with the decision but with the decision-making process', Lord Fraser was more specific when he stated that:

Judicial Review is entirely different from an ordinary appeal. It is made effective by the court quashing an administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative body n6.

In Malaysia, Abdool Kader J in *Tanjung Jaga Sdn Bhd v Minister of Labour and Manpower*[1987] 1 MLJ 125, SC, echoed the House of Lords ruling stating 'it is of considerable significance to bear in mind that judicial review is of the hearing and not of the decision', whereas Seah FJ was more explicit in endorsing Lord Brightman's dictum in *Hotel Equatorial (M) Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers*[1984] 1 MLJ 363, FC, when he stated that:

In the exercise of its inherent jurisdiction over inferior tribunal of limited jurisdiction, the High Court must always remember that it is not sitting as a Court of Appeal to review the findings of the inferior tribunals. The High Court, it must be observed, has no jurisdiction to consider the merits of the case. Its only function is to consider whether the inferior tribunal has performed its duties according to law n7.

Similarly Jemuri Serjan SCJ in *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers*[1991] 1 MLJ 417 at p 421, SC, said 'on the authorities quoted above it is not the function of the High Court in the exercise of its supervisory jurisdiction to hear a dispute de novo and decide on its merits'.

Finally, it is interesting to note that even as late as 1997, in dissenting from the majority decision in *Rama Chandran v Industrial Court of Malaysia* [1997] 1 MLJ 145, FC, Wan Yahya FCJ reiterated the conservative view when he observed that 'it has to be borne in mind that the court's supervisory jurisdiction allows us the power to quash and not to act in an appellate capacity to reverse the decision of the industrial court' n8.

Be that as it may, the ruling of the Federal Court in *Rama Chandran*, is indeed a turning point in administrative law; this is because it altered the scope of judicial review radically in that a court exercising judicial review has the power to review the decision of the industrial court on its merits, quash it by certiorari, substitute the decision of the industrial court with a different decision and also mould the relief (not only to order reinstatement or payment of compensation, but in the latter case, the court can also compute the quantum of compensation).

While Sudha Pillai n9 viewed the extraordinary range of increased powers conferred on the courts in their exercise of judicial review as representing a quantum leap in industrial law, Gopal Sri Ram JCA seemed to celebrate this landmark ruling when he said 'the fallacy of the doctrine that judicial review is always confined to the decision-making process and never with the merits of the decision itself was exploded by the landmark decision of the Federal Court in *R Rama Chandran v The Industrial Court of Malaysia & Anor*[1997] 1 MLJ 145’ n10.
The following section will focus on the painstaking effort undertaken both by Eusoff Chin CJ and Edgar Joseph Jr FCJ in providing the rationale and justification for conferring this extraordinary range of increased powers of judicial review on the courts, while at the same time, sounding the caution that these powers should be sparingly used in the cause of equity and social justice.

The aforesaid rationale and justification can be better understood if viewed from three perspectives: the legal perspective, comparative law perspective and social justice perspective.

**Legal Perspective**

Edgar Joseph Jr FCJ in his search to find a legal basis that provided the rationale and justification for the exercise of extended powers of judicial review by a reviewing court called to his aid Lord Diplock's ruling in *Council of Civil Service Unions & Ors v Minister For Civil Service* [1985] AC 374 that a decision susceptible to judicial review is not only open to challenge on the ground of procedural impropriety but also on the grounds of illegality and irrationality (Lord Diplock also mentioned proportionality as a possible fourth ground).

Illegality becomes a ground for judicial review when the industrial court or administrative authority acts outside the perimeters of its powers or, to put it differently, when the decision of the industrial tribunal (court) is ultra vires the Act. The grounds for ultra vires have been enlarged by Lord Reid's guidelines on what constitutes a jurisdictional error in *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147:

- It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity … But there are many cases where, though the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity.

- It would be of interest to students of labour law that failure to observe the principles of natural justice is classified as jurisdictional error under this *Anisminic* dispensation.

Irrationality becomes a ground for judicial review when the Industrial Court decision is tainted by *Wednesbury* unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who has applied his mind to the question to be decided could have arrived at it.

Procedural impropriety becomes a ground for judicial review not only when the industrial court or public decision-maker fails to observe the principles of natural justice but also involves failure by an administrative tribunal to observe procedural rules that are expressly laid down in the statute from which it derives its jurisdiction or power to decide, even where such failures do not involve any denial of natural justice.

Proportionality is a ground for judicial review when the punishment is altogether excessive and out of proportion to the misconduct.

According to Edgar Joseph Jr FCJ, of the four of Lord Diplock's grounds of judicial review, only procedural impropriety restricts judicial review to reviewing the decision-making process only; for the other three of Lord Diplock's grounds of judicial review, the review can be for both process and substance. To Sudha Pillai, this is a novel interpretation of Lord Diplock's grounds of judicial review displaying judicial creativity, justifiable perhaps in the name of liberalising and expanding the frontiers of judicial review n11.

Having briefly explained the above four grounds for judicial review, Edgar Joseph Jr FCJ strengthened the arguments for the legal basis justifying the exercise of extended powers of judicial review by citing Lord Bridge in *Bugdaycay v Secretary of State for the Home Department* [1987] 1 All ER 940, HL, when he said that when the result of the impugned decision may put life or liberty at risk, the duty that rests with the reviewing court is to 'submit an
administrative decision to the more rigorous examination, to ensure that it is in no way flawed' n12. As the most fundamental of all human rights is the individual's right to life and when an administrative decision may put the applicant's life at risk, the basis of the decision must surely call for the most anxious scrutiny n13. 'Life' in art 5(1) of the Constitution, as Gopal Sri Ram JCA has said in *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan and Anor* [1996] 1 MLJ 261 at 288, is wide enough to encompass the right to be engaged in lawful and gainful employment. Dismissal through loss of employment leads to loss of livelihood and therefore, legitimises the exercise of extended powers of judicial review to prevent injustice in deserving cases.

To conclude, according to Edgar Joseph Jr FCJ, the reasoning and authorities cited above amply endorsed the legal basis for reviewing the award of the industrial court for substance and not just for process n14.

**Comparative Law Perspective**

Supervisory review jurisdiction is a creature of the common law and is available in the exercise of the courts' inherent powers n15. But its extent may be determined not merely by judicial development but also by legislative intervention n16. Thus, common law restriction of the scope of prerogative jurisdiction and orders is derived from the dictum of the House of Lords in *Chief Constable of North Wales v Evans* that judicial review is concerned with the decision-making process and not with the merits of the decision. On the other hand, the review jurisdiction of the courts in Malaysia to issue prerogative orders is derived from the prerogative jurisdiction inherited from English decisions as well as from Malaysian statute n17. The relevant statute is the Courts of Judicature Act 1964, which, by s 25 read with para 1 of the Schedule to the Act, provides that the powers of the High Court include the:

- Power to issue to any person or authority, directions, orders, writs, including writs of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any others, for the enforcement of the rights conferred by part II of the constitution, or any of them, or for any purpose n18.

These powers conferred on Malaysian courts by statute are far wider than those enjoyed by the courts in the United Kingdom. The provisions of para 1 of the Schedule of the Courts of Judicature Act 1964 are generally in pari materia with art 226(1) of the Indian Constitution which provides the High Court with the power to issue to any person or authority directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of the right conferred by Part III of the Constitution and for any other purpose n19.

Furthermore, in *Rama Chandran*, Edgar Joseph Jr FCJ pointed out that 'there are also Indian Supreme Court authorities which strongly support the proposition that the power of the courts there, in the field of Public Law remedies, is not limited, as in England, but much wider, so much so, that in certain circumstances, they have the power to review the decision of the authority on the merits and mould the relief according to the exigencies of the situation in order to satisfy the insistent demands for justice n20.

Consequently, Edgar Joseph Jr FCJ concludes, citing Gopal Sri Ram, that the power of the High Court in the field of public law remedies is not confined to grant of usual prerogative orders known to English law. Our courts should not consider themselves to be fettered by those antiquated shackles of restrictive traditionalism which the common law of England has imposed upon itself ... In my judgment, the wide powers conferred by the language of para 1 of the Schedule enables our courts to adopt a fairly flexible approach when they come to decide upon the appropriate remedy that is to be granted in a particular case n21.
In contrast to Edgar Joseph Jr FCJ’s attempt to justify our reviewing courts exercise of analogous powers to those of the Indian Supreme Court, Wan Yahya FCJ, in his dissenting judgment, expressed the view that, unlike in India where the power of the High Court in judicial review proceedings is conferred by the Constitution (that is, art 226), in Malaysia the source of such power is an ordinary Act of Parliament, namely the Courts ofJudicature Act 1964, and so can be modified by another Act of Parliament, for instance, the Rules of the High Court n22.

However, Edgar Joseph Jr FCJ dispelled the notion that the powers of judicial review could be modified by any subsequent legislation by citing Sir Jack Jacob QC n23 to the effect that powers conferred by the rules of court are generally additional to and not in substitution of the powers arising out of the inherent jurisdiction of the court, and thus already existing powers of review are not likely to be abridged n24.

Furthermore, it was argued that the absence of any provisions in the Courts of Judicature Act 1964 or the Rules of the High Court prohibiting the granting of consequential relief when quashing an award of the Industrial Court additionally supported a reviewing courts exercise of such powers as part of its repository of residual powers n25.

In the context of the aforesaid arguments and authorities, Sudha Pillay rightly observed that the Federal Court in Rama Chandranhas made a conscientious and calculated move to free itself from the shackles of common law by preferring to rely on the more progressive view of the Indian Judiciary n26.

Social Justice Perspective

The Federal Court ruling in Rama Chandranis an eye opener to the fact that an unquestioned adherence to the entrenched principle of judicial review, as postulated by the House of Lords, may prove to be a stumbling block to compelling observance by the Industrial Court of the principles of equity and social justice. There are many tombstones of workers who have been pilloried after unsuccessful complaints against their employers on the grounds of mala fide retrenchment, victimisation for trade union activism, and fabricated charges of misconduct on numerous grounds. All these injustices occurred because, until the ruling of the Federal Court in Rama Chandran, the scope of judicial review of industrial court decisions was limited to its decision-making process, not the merits of its decisions. As noted in the previous sections, after this case, reviewing courts have the power to review the decisions of the industrial court on the merits and mould the relief according to the exigencies of the situation in order to satisfy the insistent demands for justice. This view was more forcefully stated by Eusoff Chin CJ in Rama Chandran when he said that ‘if we were to merely grant certiorari to quash the award and nothing more, this will deprive the writ of its vital and effective meaning and may result in grave injustice being caused to the claimant’ n27.

The Federal Court was clearly of the opinion that the facts in Rama Chandran's case merited exercising this wider power after taking into account the following factors: the long drawn-out litigation, that the allegation made by affidavit by the workman had not been contradicted by a counter affidavit on behalf of the employer; that the workman had been jobless for seven years; the immense hardship that had been occasioned to the workman and his family as a result of his unemployment; the age of the workman; and the possibility that his claim would abate were he to die n28. The Federal Court argued that ‘in the very special circumstances of this case, to remit the case to the Industrial Court to assess the monetary compensation payable by the employer to the employee would seem to be a certain detachment from reality, and more importantly, it would not answer the needs of justice. We must therefore do what the industrial court should have done’ n29.

From the point of view of the need to exercise extended powers of judicial review to compel the observance of the right to livelihood n30, the case against the decision of the Industrial Court in Harris Solid State (M) Sdn Bhd v Bruno Gentil s/o Periera n31 was compelling. In building a case for social justice in Industrial Law, Gopal Sri Ram JCA stated:

s 30(5) of the Industrial Relations Act 1967 imposes a duty upon the Industrial Court to have regard to the substantial merits of a case
rather than to technicalities. It also requires the Industrial Court to
decide a case in accordance with equity and good conscience. Parliament
has imposed these solemn duties upon the Industrial Court in order to
give effect to the policy of a democratically elected government to
dispense social justice to the nation's work-force. It is therefore our
bounden duty to ensure that the industrial court applies the Act in a
manner that best suits the declared policy of the elected government.
Where, as in the present case, there has been an obvious failure to do
so, it is for us, the judicial arbiters, to set matters right n32
.
When the proved or admitted facts of a case are such that, when
objectively viewed, they would lead a reasonable tribunal to conclude
that the exercise of managerial powers -- such as the closure of a
business -- was for a collateral purpose, aimed at depriving a workman
of his fundamental right to earn a livelihood, then, any termination of
employment in consequence of such exercise may be struck down as
constituting unfair labour practice n33

It is interesting that, in chastising the Industrial Court, Gopal Sri Ram CAJ came close to labeling the Chairman's
decision as suffering from ideological bias n34.

Reminding itself of the finding that the appellants had victimised the respondents, because of the latter's trade union
activities, and as the purported termination of the respondents' services amounted to a dismissal without just cause or
excuse, the Court of Appeal in the *Harris Solid State* case was satisfied that the ends of justice would not be met by
remitting the matter to the Industrial Court. In this regard, the court noted:
Some six years have passed since the appellants wrote their letter
terminating the services of the respondents. If we were to affirm the
remission of the case to the Industrial Court, it may take another six
years or more for the matter to reach us, with a possible further
appeal to the Federal Court. Such a consequence would produce the
diametrically opposite result to that intended by Parliament, namely,
the speedy adjudication and settlement of trade disputes. We are unable
to see any justification for prolonging the agony of the respondents.
The case, therefore, warrants the variation of the order made by the
learned judge by the making of appropriate consequential orders.
We have before us a case of an employer who has chosen to dismiss his
workmen purely because of their trade union activities. There can, in
our judgment, be no clearer case of victimization and unfair labour
practice ... In the circumstances of the case, we do not consider that
compensation is the proper remedy. For otherwise, employers will be
encouraged to terminate the services of their unionized workmen,
confident in the expectation that all that they have to face is an
award of compensation -- a small price to pay for being rid of trade
unionists. The remedy of reinstatement is therefore the only just and
proper remedy that is appropriate to meet the facts and circumstances
of the present case n35.

In brief, the factual matrix of the aforementioned cases and the reasoning in their judgments, amply justify the
maximum exercise of the substantially enhanced powers of judicial review. The next section will consider whether such
powers, even as a remote possibility, involve the risk of abuse of power.
Emasculation of the Industrial Court

Common law restriction on the powers of the court in judicial review proceedings has always been grounded on the premise that unless restrictions are imposed and observed the court will, under the guise of preventing the abuse of power, be itself guilty of usurping power n36. However, one view is that the stringent stipulation of the English House of Lords that judicial review is always concerned with the decision making-process and never with the merits of the decision, has stifled fulfillment of the role of superior courts of law to ensure equity and social justice and to compel observance of the right of livelihood, which is one of the fundamental rights under Part II of the Malaysian Federal Constitution n37. In comparison, Indian courts function under no such constraints because review courts derive their inherent jurisdiction from art 226 of India's constitution and the legislature cannot impose limitations on these constitutional powers. Therefore, Indian review courts function within self-imposed limitations that they will not exercise such jurisdiction unless substantial injustice has ensued or is likely to ensue.

Thus, fear of abuse of power is not a sufficient justification for an inflexible standpoint in relation to judicial review. In Rama Chandran, the majority of the Federal Court, instead of subscribing to the ruling of the House of Lords, chose instead to caution that a reviewing court should use extended powers of judicial review sparingly with utmost caution and circumspection in the cause of equity and social justice. It may be argued that when exercised in the spirit in which the Federal Court sanctioned it, it is not necessary to confine reviewing powers within a legal straight jacket. In fact, any self-imposed limitation on the exercise of these extended powers of judicial review would translate into a compelling guideline where courts succeed at striking a balance between caution and compulsion in ensuring social justice n38. The Indian Supreme Court in Gujarat Steel Tubes Ltd v G.S. Tubes Mazdoor Sabah(1980) 2 SC 593 at p 624 seems to have operationalised this rather difficult norm with a picturesque turn of phrase when it stated that 'Article 226 is a sparing surgery but the lancet operates when injustice suppurates’ n39.

Edgar Joseph Jr FCJ, while agreeing with this proposition, commented that 'the wider power enjoyed by our courts, the decision whether to exercise it n40 and if so, in what manner, are matters which call for the utmost care and circumspection ... On the other hand, having regard to the rapidly developing law in applications for Judicial Review, whenever legally permissible, we must demonstrate a willingness to mould the remedies available to suit the justice of the case’ n41. A formidable argument for restraining the exercise of the powers of judicial review is the impact of extended powers on the role of the Industrial Court. The powers bestowed on a reviewing court by virtue of the Federal Court's decision in Rama Chandran are enormous and failure to heed precautions against abuse of such powers, would result in an unnecessary emasculation of the function of the Industrial Court.

The Industrial Court was established under the Industrial Relations Act 1967 to investigate the disputes referred it or brought to its notice under the relevant statutory provisions of the Act. This is done by establishing the facts on the basis of evidence led by both parties to the dispute, analysing the facts to arrive at the finding, and finally, applying the law to the finding, in order to make the Award.

To put it succinctly, as Wan Yahya FCJ observed in his dissenting decision in Rama Chandran, 'it is apparent from ... the Act, that Parliament had intended, and it has also been judicially recognized, that the tribunal should be the final arbiter at least on question of facts. On the question of law, the judiciary has progressively maintained that it has, through the power of Judicial Review, the powers to exercise supervisory jurisdiction but not appellate jurisdiction n42.

In summary, unless reviewing courts are extremely cautious and circumspect, exercising their expanded review powers may tantamount to usurping the role of, and denying the legitimate jurisdiction of, the Industrial Court.

Conclusion

The Federal Court in Petroliam Nasional Bhd v Nik Ramli Nik Hassan n43 viewed the extended powers of judicial
review in their proper perspective. It is significant that it was observed that '... the views expressed by the majority in Rama Chandran are not the product of what some legal commentators described as 'judicial excessivism'. On the contrary they reflect the kind of controlled 'judicial activism' that is needed in order to meet, in a supervisory context, the ever-widening powers conferred upon statutory tribunals or other bodies, which have proliferated, in modern times, and affecting, quite conceivably all facets of society. I say controlled because I take the view that Rama Chandran powers should only be invoked in appropriate cases.’

While the Federal Court in Rama Chandran and the Court of Appeal in Harris Solid State adhered strictly to caution and circumspection in exercising the increased powers of judicial review, it is pertinent to ask whether the rulings in several cases in the aftermath of Rama Chandran truly reflect the spirit in which the extraordinary powers were entrusted to reviewing courts. Analysis presents an inconclusive picture.

For example, whilst, in Rama Chandran and Harris Solid State the Federal court and the Court of Appeal both took great pains to justify the need to exercise the new and wider power in those cases, in Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Nor, Gopal Sri Ram in the Federal Court did not elaborate on the reasons why a similar need arose on the facts of that case. However, in that case the Federal Court maximised application of the extended powers and calculated the compensation to be paid to the employee. It is the author's view that the ruling of the Federal Court in the Kumpulan Perangsang case is more focused on declaring the majority decisions in Rama Chandran right and that of the dissenting Judge Wan Yahya FCJ wrong, than on justifying the exercise of extended powers of judicial review.

On the other hand, there have been several cases in the aftermath of Rama Chandran where the reviewing courts have stopped short of going all the way in applying the extended powers, perhaps to safeguard against a possible accusation of making unwarranted inroads into the legitimate jurisdiction of the Industrial Court. In Amanah Butler (M) Sdn Bhd v Yike Chee Wah, Gopal Sri Ram JCA in the Court of Appeal, after looking at the merits of the case, decided that the dismissal was unjust, but remitted the case to the Industrial Court to determine the appropriate remedy to be awarded.

In Thilagavathy a/p Alagan Muthiah v Meng Sing Glass Sdn Bhd, the Industrial Court, while holding the dismissal of the claimant to be unjust, offered compensation but failed to order backwages on the ground that she had obtained employment and a salary after her dismissal. Upon review, the High Court looked at the merits of the case, stated that the principle of mitigation does not apply to industrial adjudications and ordered full backwages from the day of the claimant's dismissal to the day of the Award and calculated back wages. Thus, this was another case where the High Court, in exercising the extended powers of judicial review, considered the decision of the Industrial Court on its merits, substituted its own decision, moulded the relief and calculated its quantum. In the High Court, it was observed that remitting the matter to the Industrial Court would defeat the purpose of the Industrial Relations Act 1967, that is, to ensure that disputes are disposed of expeditiously.

In Vadiveloo Munisamy v General Type Retreaders Sdn Bhd, the High Court quashed the Industrial Court Award, decided that the dismissal was unjust, but remitted the case back to the Industrial Court to determine the appropriate remedy (reinstatement or payment of compensation) including the determination of its quantum.

In Swedish Motor Assemblies Sdn Bhd v Haji Mohd Ison bin Baba, in relation to the merits of the case, Gopal Sri Ram JCA delivering the judgment of the Court of Appeal, found that the Industrial Court decision was tainted by Wednesbury unreasonableness. The court set aside the Industrial Court decision that the dismissal was just, substituted its own decision that it was unjust and remitted the case back to the Industrial Court to determine the appropriate remedy to be awarded. In giving a reason for exercising this power, the Court of Appeal invoked the argument of expeditious settlement of industrial disputes. It is noteworthy that the case was referred to the Industrial Court on 22 August 1993 and the Industrial Court upheld the dismissal on 26 July 1995. By the time the Court of Appeal had given its decision on 15 January 1998, five years had already passed.
In concluding this discussion, it should be emphasised that the culture for encouraging and sustaining self-imposed constraints takes time and, until such time, the Federal Court, as the superior court of law, should guard against the temptation of lower courts and tribunals to ignore or be indifferent to caution. In this context, it is revealing that the Federal Court in *Petroliam Nasional Bhd v Nik Ramli Nik Hassan* n52, confronted with such a situation, appears to have sent a clear warning to lower reviewing courts not to be over zealous or misguided in exercising the extended powers of judicial review. Specifically the Federal Court set aside the rulings of both the High Court and the Court of Appeal and restored the Industrial Court Award on the ground that it was not an appropriate case for the exercise of the extended powers of judicial review n53.

**FOOTNOTES:**

n1 *Kumpulan Perangsang Selangor Bhd v Zaid Bin Hj Mohd Noh* [1997] 1 MLJ 789 at p 797, SC, per Gopal Sri Ram JCA.

n2 *Chief Constable of North Wales v Evans* [1982] 1 WLR 1155 at p 1173, HL; quoted in *R Rama Chandran v The Industrial Court of Malaysia* [1997] 1 MLJ 145 at p 191, FC.

n3 *Chief Constable of North Wales v Evans* [1982] 1 WLR 1115 at p 1172; referred to in *R Rama Chandran v The Industrial Court of Malaysia* [1997] 1 MLJ 145 at pp 196-197, FC.

n4 *Ibid* at p 220, FC.

n5 See *ibid* at pp 191-192.

n6 *Re Amin* [1983] 2 AC 818 at p 829.

n7 *Hotel Equatorial (M) Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers* [1984] 1 MLJ 363 at p 371, FC.

n8 *R Rama Chandran v The Industrial Court of Malaysia* [1997] 1 MLJ 145 at p 200, FC.


n10 *Kumpulan Perangsang Selangor Bhd v Zaid Bin Hj Mohd Noh* [1997] 1 MLJ 789 at p 797, SC.


n12 *R Rama Chandran v The Industrial Court of Malaysia* [1997] 1 MLJ 145 at 190, FC, per Edgar Joseph Jr FCJ, citing *Bugdaycay v Secretary of State for the Home Department* [1987] 1 All ER 940 at p 952, HL, per Lord Bridge.

n13 *R Rama Chandran v The Industrial Court of Malaysia* [1997] 1 MLJ 145 at p 190.

n14 *Ibid* at p 190.

n15 A reviewing court's intrinsic jurisdiction is inhibited by the common law restriction on the scope of judicial review. It has been said that the source of inherent jurisdiction of the reviewing court is derived from its...
very nature as a superior court of law to maintain its authority over inferior courts and tribunals. As such the
limits of such jurisdiction are not easy to define, and indeed appear to elude definition (Sir Jack Jacob QC 'The
Inherent Jurisdiction of the Court' [1970] Current Legal Problems 23, quoted in R Rama Chandran v The
Industrial Court of Malaysia[1997] 1 MLJ 145 at p 237, FC, per Edgar Joseph Jr FCJ). In this context, the
common law restriction on the scope of judicial review in the United Kingdom, by confining it within a legal
straight jacket, is tantamount to stifling the role of the reviewing court in exercising its intrinsic jurisdiction as a
superior court of law.

n16 Chief Constable of North Wales v Evans[1982] 1 WLR 1155 at p 1172, HL.

n17 See R Rama Chandran v The Industrial Court of Malaysia[1997] 1 MLJ 145 at p 195.

n18 See ibidat p 195.

n19 See ibid at p 195.

n20 Ibidat p 196.


n22 See ibidat pp 204-208.


n24 See ibid at p 237.


The powers conferred by the Schedule to the Courts of Judicature Act 1964 upon a High Court are,
according to its terms, 'additional powers', that is to say, powers in addition to those already seized of by that
court. Resort may therefore be had to paragraphs in the Schedule to found jurisdiction to grant relief not
expressly prohibited by written law: Hong Leong Equipment Sdn Bhd v Liew Fook Chuan [1996] 1 MLJ 481 at
pp 543-544, per Gopal Sri Ram JCA, cited by Edgar Joseph Jr FCJ in R Rama Chandran v The Industrial Court
of Malaysia[1997] 1 MLJ 145 at p 226, FC.

'The inherent jurisdiction of the court may be defined as being the reserve or fund of powers, a residual
source of powers, which the court may draw upon as necessary whenever it is just equitable to do so, and in
particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do
justice between the parties and to secure a fair trial between them': Sir Jack Jacob QC 'The Inherent Jurisdiction
of the Court' [1970] Current Legal Problems 23; cited in R Rama Chandran v The Industrial Court of Malaysia
[1997] 1 MLJ 145 at p 238, FC.

n26 Sudha CKG Pillay 'The Ruling in Ramachandran -- A Quantum Leap in Administrative Law?' [1998] 3 MLJ lxii at p lxxi. However, B Lobo in his article 'Current Trends in Judicial Review in Employment Law' (2000) 2 ILR II interestingly observes that examination of the common law landscape reveals that in cases like McClelland v National General Health Services Board [1957] 1 WLR 594; Ridge v Baldwin [1964] AC 40; Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147; and Hill v Parsons & Co Ltd [1972] 1 Ch 305, consequential relief pursuant to the declaration jurisdiction of the superior courts was given. Hence, the
majority in R Rama Chandran v The Industrial Court of Malaysia[1997] 1 MLJ 145 did not make a radical
departure from the common law as has been suggested by some commentators.

n27 Ibid at p 184.

n28 See ibid at p 183, where Eusoff Chin CJ observed: '... the claimant is 51 years old, and has been jobless for seven years. Owing to his unemployment, he and his family with school-going children are suffering immense hardship. Should we remit the case back to the Industrial Court? To do this will certainly involve continued and prolonged litigation which will do great harm and injustice to the claimant, and were he to die, his claim will abate ... and this will result in his family suffering grave injustice'.

n29 Ibid at 198, where, in concurring with the consequential orders passed by the Chief Justice, Edgar Joseph Jr FCJ stated 'I trust that we have pointed the way to new horizons in the forward march of Judicial Review'.

n30 Which, as observed in R Rama Chandran v The Industrial Court of Malaysia[1997] 1 MLJ 145 at p 225, is one of the fundamental rights under Part II of the Malaysian Federal Constitution.


n32 Ibid at p 510.

n33 Ibid at p 510.

n34 See ibid at p 515, where Gopal Sri Ram JCA stated: 'As we observed very early in this judgment, the appellants were most unhappy with the appearance of the union upon the premises. They were bent upon destroying the union. All that they did ... was done merely in the pretended exercise of managerial power. The real aim of the whole charade was, apart from putting an end to the life of the union, to punish the respondents for their union activities. That they would contravene s 10(2) of the Act does not seem to have bothered them in the least. It is unfortunate that the Industrial Court ... , having found that the respondents were engaged in the protection of the union, failed to appreciate the significance of its finding. Meaning no disrespect whatsoever to the learned chairman who handed down the third award, his comments against the respondent have left us with the impression that it was quite wrong of the respondents to have sought to save the union from total destruction. Comments which carry such a tenor are wholly inappropriate when they come from the chairman of a tribunal which has been established to ensure the proper protection of the rights of workmen, whether unionized or not. It may lead one to assume, with good reason, that the particular chairman is averse to the carrying out of union activities, and this is surely not so'.

n35 Harris Solid State (M) Sdn Bhd v Bruno Gentil s/o Periera[1996] 3 MLJ 489 at pp 520-521, CA. The court ordered that all the respondents be forthwith reinstated with no loss of seniority or benefits, monetary or otherwise.

n36 Chief Constable of North Wales v Evans[1982] 1 WLR 1155 at p 1172, HL.

n37 See R Rama Chandran v The Industrial Court of Malaysia [1997] 1 MLJ 145 at p 225.

n38 Caution in the sense that the added powers would only be used sparingly and with the utmost care and circumspection and compulsion, in order to compel the Industrial Court to observe the right of a workman to livelihood, which is one of the fundamental rights under Part II of the Federal Constitution.

n39 R Rama Chandran v The Industrial Court of Malaysia[1997] 1 MLJ 145 at p 181.

n40 See ibid at p 197, per Edgar Joseph Jr FCJ: 'For example, where policy considerations are involved in administrative decisions and courts do not possess knowledge of the policy considerations which underlie such
decisions, courts ought not to review the reasoning of the administrative body, with a view to substituting their
own opinion on the basis of what they consider to be fair and reasonable on the merits, for to do so would
amount to a usurpation of power on the part of the courts.'

It is interesting that Edgar Joseph Jr FCJ took his own stricture into account when he explained that his
action in exercising the extended powers of judicial review in \textit{R Rama Chandran} was in conformity with his
cautions. At p 198, he said: 'It must be remembered, that we are here concerned with an appeal which arises from
Judicial Review proceedings whose target was an Award of the Industrial Court, an inferior court, and not an
administrative decision by bodies or persons who are charged with the performance of public acts or duties. It
cannot be said, therefore, that by intervening in the manner which we proposed to do, we would be trespassing
into the domain of the executive, thus violating the doctrine of the separation of powers, and so acting
undemocratically'.

\begin{itemize}
  \item \textit{Ibid} at p 197.
  \item \textit{Ibid} at p 218.
  \item \textit{Petroliam Nasional Bhd v Nik Ramli Nik Hassan} [2004] 2 MLJ 288, FC.
  \item \textit{Ibid} at p 295. Furthermore, the Federal Court in this case said (at p 294) that 'the progressive views
expressed in \textit{Rama Chandran} have been accepted and adopted by the Malaysian judiciary at the highest level.' It
was also stated that 'although those views are expressed in the context of decisions from industrial courts, they
are also applicable, in my view, to decisions of other statutory tribunals or bodies' (per Steve Shim CJ).
Incidentally, the highest level of the Malaysian judiciary in this reference refers to the Federal Court decision in
\textit{Kumpulan Perangsang Sdn Bhd v Zaid bin Hj Mohd Noh} [1997] 1 MLJ 789, SC, where Gopal Sri Ram did not
miss the opportunity to categorically state that 'more importantly, we accept ... that the majority judgments in
\textit{Rama Chandran} are correct and that the minority judgment of Wan Yahya FCJ is wrong' (at p 804).
  \item \textit{Harris Solid State (M) Sdn Bhd v Bruno Gentil s/o Periera} [1996] 3 MLJ 489, CA.
  \item \textit{Kumpulan Perangsang Selangor Bhd v Zaid bin Hj Mohd Nor} [1997] 1 MLJ 789, SC; also see Sudha
CKG Pillay 'The Ruling in Ramachandran -- A Quantum Leap in Administrative Law?' [1998] 3 MLJ lxii at p
1xxix.
  \item \textit{Amanah Butler (M) Sdn Bhd v Yike Chee Wah} [1997] 1 MLJ 750, CA.
  \item \textit{Thilagavathy a/p Alagan Muthiah v Meng Sing Glass Sdn Bhd} [1997] 3 MLJ 735.
  \item \textit{Seeibid} at pp 742-743, where Abdul Kadir Sulaiman J noted that it had been four years since the
dispute began and it would not be in the interest of anyone to have the matter referred back to the Industrial
Court simply for it to work out the amount due.
  \item \textit{Vadiveloo Munisamy v General Type Retreaders Sdn Bhd} [1999] 7 CLJ 596, HC.
CA.
  \item \textit{Petroliam Nasional Bhd v Nik Ramli Nik Hassan} [2004] 2 MLJ 288, FC.
  \item Not only did the Federal Court approve of the strict application of the 'contract test' by the Industrial
Court in not upholding the claim of constructive dismissal by the claimant, it also categorically stated that the
Industrial Court decision did not suffer from procedural impropriety, illegality or irrationality to justify the
usurpation by the reviewing courts of the Industrial Court's jurisdiction: see \textit{ibid} at pp 297-298.
\end{itemize}