

CHAPTER 2

LEGISLATIVE CONTROL OVER THE ADMINISTRATION

Having seen that there is much to be desired in the exercise of judicial control over the administration, it is proposed now to see what role Parliament can play in ensuring administrative justice.

Article 4 (i) declares that the Federal Constitution is "the supreme law of the Federation and any law ..... which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void". Legislative authority of the Federation is vested in Parliament. In Malaysia, both the Houses, the Dewan Negara (Senate) and the Dewan Rakyat (House of Representative) normally meet for three sessions in a year as shown in Table 2.1 below:-

DURATION OF PARLIAMENTARY SESSIONS IN MALAYSIA		
SESSION	DEWAN NEGARA	DEWAN RAKYAT
March	14 days	17 days
July	14 "	20 - 25 days
December	14 "	32 days

Table 2.1

More than 60 Bills are laid before the Houses for discussion and enactment. An average of 20 are actually passed in a year. Parliament cannot by any means discharge its obligation as a forum for the ventilation of individual grievances. It has only time to discuss the main issues in the law before it and to hear broad policies of national

interest, while planning future projects. Even the State Assemblies which sit four times a year hardly discuss individual grouses, as their scope of debate is limited to matters in the "State List" in the 9th Schedule to the Federal Constitution.

The procedure to be followed during Parliamentary Sessions is embodied in the Standing Orders of the Dewan Negara of Malaysia<sup>1</sup> and the Standing Orders of the Dewan Rakyat of Malaysia<sup>2</sup>. The provisions governing both the Houses are similar and thus for convenience the Standing Orders of the Dewan Rakyat alone are quoted. The arguments apply in both cases.

For our purposes, Standing Order 14 is significant. It deals with the 'Order of Business'. SO 14 (9) makes room for "questions to Ministers while 14 (h) deals with "Requests for leave to move the adjournment of the House on matters of urgent public importance". Any member (other than a member of the Government) who had obtained the right to do so, may address the House upon any matter of administration for which the Government is responsible and the member of the Government with whom responsibility for the matter raised rests may reply<sup>3</sup>. The member must however give seven days notice in writing to the Speaker before the sitting at which he wishes to raise the matter<sup>4</sup>. But only one motion for the adjournment of the House for

---

1 5th Edition 1972

2 5th " 1974

3 Standing Order 17 (i) of the Dewan Rakyat: Adjournment Motion.

4 S.O. 17 (2)

the purpose of discussing a definite matter of urgent importance can be raised<sup>5</sup>. Furthermore, a time limit of 7½ minutes is placed on the Member addressing and the Government replying "unless Mr. Speaker decides otherwise in any particular case"<sup>6</sup>. It is thus observed that the adjournment motion is not a very useful expedient to raise an issue in Parliament. The time limit is unrealistic and thus few matters are raised in this matter.

Then there is question time. "Questions may be put to Ministers relating to:

- (a) affairs within their official functions, or
- (b) a Bill, motion or other public matter connected with the business of the House for which such Minister is responsible"<sup>7</sup>.

S.O. 21 (3) then emphasizes that the proper object of a question is to obtain information on a matter of fact within the special cognisance of the Minister to whom it is addressed. For these questions too, notice in writing not later than fourteen days before the day on which the answer is requested must be given "unless Mr. Speaker is of the opinion that it is of an urgent character and relates either to a matter of public importance or to the arrangement of public business"<sup>8</sup>.

By far the most restrictive order appears to be 23 (1) on the 'Contents of questions'. S.O. 23 (2) reads as follows:-

---

5 S.O.18  
6 S.O.17 (3)  
7 S.O.21 (1)  
8 S.O.22 (1) and 22 (2)

"If Mr. Speaker is of the opinion that any question of which a member has given notice to the Clerk or which a member has sought leave to ask without notice is an abuse of the right of questioning, or calculated to obstruct or affect prejudicially the procedure of the House, or to promote feelings of ill-will or hostility between different communities in the Federation or infringes any of the provisions of the Constitution or the Sedition Act, 1948, or any Act made under Article 10 (1) of the Constitution or of this Order, he may direct:

- (a) that it be printed or re-phrased with such alteration as he may direct, or
- (b) that the member concerned be informed that the question is disallowed".

It is also to be noted that it is within the prerogative of the Minister not to answer any such question. "Notwithstanding anything hereinbefore a Minister to whom a question is addressed may, with the approval of the Speaker refuse to answer such question on the ground of public interest, and such refusal cannot be debated or questioned<sup>9</sup>. It is submitted that these 'rules' can severely and detrimentally affect the scope and efficacy of debate in the House.

In S.O.21 (4) of the Dewan Negara, a new provision brought into force on 24th February 1973 restricts the number of questions which a Senator may ask in any one meeting of the Senate that is, not more than twenty questions for oral replies and not more than

questions for written reply. It is indeed artificial to impose such restrictions. Instead of tailoring or cutting down questions to suit the time factor in Parliament it would be more than worth the while to increase the total number of sittings to accommodate as many questions as possible. This final restriction does not appear to be present in the S.O. of the Dewan Rakyat. Hence, presumably M.Ps questions to Ministers are not limited in number. A further obstacle that Parliamentarians have to counter is the fact that they are not exempt from the provisions of the Sedition Act, 1948 even in respect of what they say on the floor of the House. During the period immediately following the May 13th incidents, when the National Operations Council was in full swing, these provisions were extended to cover M.Ps and Senators as well. This was by virtue of the Emergency Ordinance No.45 of 1970 and later by an amendment of the Constitution.

Coming now to the questions that are actually asked and the replies given, I wish to refer to one sitting of the Senate that I attended. There were nine questions for oral answers during that sitting. The first was directed to the Prime Minister. The question required the Prime Minister to "state reasons why vacancies in Government Departments, Statutory Bodies and Public Corporations cannot be filled without permission from the Cabinet"<sup>10</sup>. To this a Deputy Minister in the Prime Minister's Department replied that this ruling reflected the seriousness of the Government's attitude towards the 'austerity drive' and it was to ensure that Government

---

10 Dewan Negara Order Paper No.27, 12.1.76.

policies are strictly enforced.

Another interesting question came from Y.B. T.S. Gabriel who asked the Minister of Trade and Industry whether his Ministry was aware that motor car dealers have changed the guarantee period on new cars from one year or 10,000 miles to six months or 6,000 miles, and if so why. The Minister merely stated that this was a matter to be resolved by the parties concerned, i.e. the dealer and the purchaser. Although he was aware of the changes he said his Ministry is not directly involved. Occasionally, Senators ask for statistics; these are duly given. From this 'sample' of questions and answers, what springs to mind is the 'generality' of their nature. Even looking at the type of questions from M.P.'s in the Dewan Rakyat, it is clear that only major issues of public interest, or problems affecting a substantial majority of the public are raised. For instance, on 16.4.1976<sup>11</sup> the Dewan Rakyat Session heard questions relating:

- (i) to the number of petrol dealers and the percentage of Bumiputras involved in that business;
- (ii) delays in payments to pensioners of their E.P.F. contributions;
- (iii) payment of compensation under Social Security Regulations and so on.

In my own view, these questions are relevant ones. The replies could however be more specific and less vague or non-committal.

So far, the long-drawn and in-depth discussions in Parliament have been restricted to a handful of Regulations.

---

11 ¶ Penyata Rasmi Parlimen, D.R., Keempat Jilid 11

policies are strictly enforced.

Another interesting question came from Y.B. T.S. Gabriel who asked the Minister of Trade and Industry whether his Ministry was aware that motor car dealers have changed the guarantee period on new cars from one year or 10,000 miles to six months or 6,000 miles, and if so why. The Minister merely stated that this was a matter to be resolved by the parties concerned, i.e. the dealer and the purchaser. Although he was aware of the changes he said his Ministry is not directly involved. Occasionally, Senators ask for statistics; these are duly given. From this 'sample' of questions and answers, what springs to mind is the 'generality' of their nature. Even looking at the type of questions from M.P.'s in the Dewan Rakyat, it is clear that only major issues of public interest, or problems affecting a substantial majority of the public are raised. For instance, on 16.4.1976<sup>11</sup> the Dewan Rakyat Session heard questions relating:

- (i) to the number of petrol dealers and the percentage of Bumiputras involved in that business;
- (ii) delays in payments to pensioners of their E.P.F. contributions;
- (iii) payment of compensation under Social Security Regulations and so on.

In my own view, these questions are relevant ones. The replies could however be more specific and less vague or non-committal.

So far, the long-drawn and in-depth discussions in Parliament have been restricted to a handful of Regulations.

---

11 ¶ Penyata Rasmi Parlimen, D.R., Keempat Jilid 11  
Bil 13  
16.4.76

Following amendments to the Emergency (Essential Powers) Ordinance, 1969, there was a motion on 19.12.75 in the Dewan Rakyat to repeal the Essential (Security Cases) (Amendment) Regulations 1976. The motion was however defeated. On 31.10.75 on the motion to refer the matter of Mr. Fan Yew Teng (an Opposition Member belonging to the Democratic Action Party) to the Committee of Privileges, the Opposition led by Y.B. Lim Kit Siang staged a walkout. The recent Fire Arms (Increased Penalties) Act 1971 and the University and University Colleges Act (Amendment) 1975<sup>12</sup> have also been the subjects of very heated debate. This apart, there is little time for the citizen with a problem.

By far, the issue is not perhaps the complacency of M.P's and Senators as such as the so-called stern party discipline that is expected in Parliament. This factor works vigorously to the extent that 90% of the Bills are passed by unanimous vote of "Setuju" without much discussion.

The following is the report of an interview with Y.B. Dr. Tan Chee Khoo, Pekemas President, and a well-known Opposition Member of Parliament:

Q. How much time do you spend with your constituents?

A. Together with my representatives, we spend nearly four days in a week.

Q. What do you do about individual grievances?

A. I refer them to the authorities concerned and, so far, I have obtained satisfactory replies.



Q. In Parliament, what (if any) are the main inhibiting factors for you to voice, either your opinions or the problems of your people?

A. Time, time is the problem. Say, the King's Speech ..... We're given 20 minutes. What can you say in 20 minutes? And to question the various Ministries we're given only 10 minutes.

Q. How did you respond to the set-up of the Public Complaints Bureau?

A. I was against it from the beginning. Even now, I don't think much of it. You see, the very nature of our administrative structure calls for something else. I don't believe the Bureau is doing well now, is it?

Q. Would you welcome the introduction of the Ombudsmen to look into individual problems as they relate to administrative inefficiency, delay etc?

A. I was very much in favour of implementing Sir Guy Powles' Report in the late sixties. But I think the Government is afraid:

- (i) to entrust such wide powers to an individual;
- (ii) that the individual alone may find it difficult to handle racial sensitivities and so on.

Dr. Tan also expressed the view that courts could do much more to help redress individuals, if only lawyers charge less.

"I send out hundreds of letters for free and these lawyers insist on seeing \$25/- before they get their letter-heads".

On speaking to Dato Azizul Rahman, the Secretary to Parliament, it came to light that any move to increase the duration of Parliamentary Sessions had to come from the Government alone. Dato was of the view that the M.Ps are THE people who could help the individuals, because they (the M.Ps) had direct access to

Ministers. However, I for one believe, that the system of referring complaints to the Minister should not be encouraged.. The Minister and Heads of Departments have access to all files, but the individual is generally kept in the dark about any such matters.

The Minister for Communications, Tan Sri V.Manickavasagam, who is also the National Front Whip in Parliament, when called upon to comment on pre-Council Meetings, had this to say:

"We discuss Order Papers that are to be placed before Parliament ..... the object? you can say is that we expect Party Members to tow-the-line ....."

In conclusion, it is believed that political controls are more effective than either judicial or parliamentary controls, because political representations can cause Ministries or Departments to change their 'state of mind' and introduce new subordinate legislation.

Hence, it is interesting to speculate the effect of the Prime Minister's statement in the New Straits Times dated 27.4.76, emphasising the need for a more dynamic political leadership in order to ensure efficiency and smooth running of the administrative machinery at all levels.