

PART TWO
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CHAPTER 6

Recommendations and Proposals

This final part seeks to trace the apparent relation between different aspects of the problems in 'administrative justice' with a view to improving the general administrative health of the State. The target sought is a mechanism that could act as a protector of the civil servant against frivolous and unwarranted attacks as well as a watchdog of the public cases where a grievance of injustice is substantiated.

What we have to bear in mind is that the administration of justice is a societal method of doing things for and to the people; but the things done for and to the people are also done by people. This observation is important because a discussion of the complex facets of justice tends to obscure the fundamental roles played by people directly or indirectly. Much depends, therefore, on the eradication of apathy and self-satisfaction and the inculcation of the sense of dedication and responsibility in every individual.

With this in mind, two senior civil servants were questioned about their attitudes towards the civil service. X answered that in his College days he was "over-awed by the influence of the officials but being inside it, he finds it less efficient, more politicised. (Exphasis added). Yang Berhormat Mohd. Soviee (Chairman, Lembaga Padi dan Beras Negara and M.P. for Pulau Pinang)

confessed he was very radical in his views and was even considered revolutionary. He claims he is now relatively mild because of the 'environment'.

This slackening of discipline is highly evident today in the administration. For example, when we go to a department, clerks prefer to file their nails or read the Malay Mail Sports Column rather than come up and see or offer to help us. The problem is, people know their duties, yet choose to take it easy. This is because they are afraid to accept the responsibility that invariably accompanies any duty. It is true that the civil service, unlike the private sector, is not profit-orientated and that the problem of co-ordinating large numbers of people with differing mental capacities, varying attitudes and contrasting back-grounds is a herculean one. Yet, given the constraints, we must make them work to our advantage; not the other way round.

So we come to a point where we say there is a need for re-education and re-thinking along the lines of being more efficient. This cannot be achieved without a greater understanding of the impact of the system on people. Hence the suggestion for improvements are at two levels. The first level is a 'conceptual' one involving planning on a long term basis. The second comprises the immediate/realistic measures.

The orientation for the first mentioned should rightly begin with the Public Services Division which is entrusted with the task of recruiting the staff into the Malaysian Civil Service. The emphasis here should not be to fill the vacancies as such but to

fill the vacancies ~~as such but to fill the vacancies~~ with the right people: conscientious, sincere people dedicated to national interest, violent/subversive and destructive elements must be ruled out the sooner. The specific departments could then go to a step further and train these already 'screened' recruits so that the latter understand their department, the job, the people they work with, and the people they would encounter. What is also important is the constant need for survey and adaptation of the machinery.

These measures involve a great deal of foresight and planning. But, an individual in the face of maladministration in all likelihood wants redress, and he wants it quickly. For this, the tightening up of discipline through punitive measures, if need be, are recommended. Malaysians have to be jerked out of the post-Merdeka sedation they seem to have lapsed into. The General Orders, particularly Chapter D, should not be allowed to become a dead letter.

In view of the approach adopted in preceding Chapters, it is proposed first to review the conclusions reached at those points prior to a submission of reforms that could be implemented in this area of administrative law.

STRENGTHENING JUDICIAL CONTROLS

As regards the judicial controls over the administration, it was found that the expense, delay and technicality of procedure often serve to discourage litigation. Even in the minor percentage of cases that reach the courts, the benefit accrued to the party aggrieved is negligible. However, it is my humble submission

that the remedies are to be found mainly through law and not administrative palliatives. My reasons for this are:

- (i) Courts are vital in dealing with a question of fundamental liberty;
- (ii) Courts can do so with great force and logic;
- (iii) Courts can produce a remedy, effective in a particular case and thereby safeguard the essential interest both of the individual and of the public service without fear of Ministerial veto;
- (iv) Ministers should properly be subjected to judicial controls. In the law, however, there is a need for coherence to focus attention on the problems of justice and administration. The writer has proposed in Chapter 1 that an Administrative Division be created in the High Courts. Judges could sit with Assessors where necessary.

By strengthening judicial controls in a manner not inconsistent with administrative efficiency, Parliament would, in fact, be helped to perform its task more meaningfully.

This would go a long way to preserve dynamism in the administration. It enforces standards of law and administrative morality which could eradicate the causes of modern malaise about maladministration.

LIMITATIONS OF PARLIAMENT

Parliamentary controls are very limited. Parliament is not a court nor our Ministers judges of law. Individual M.Ps themselves must choose to divide the question time to make room in Parliament for airing individual grievances. This has not so far been done. In its absence, political control may prove

productive in that "whip" policy could be relaxed, more dynamic Senators chosen and the Press given more freedom.

REASONED DECISIONS

On the administrative side, the exercise of wide powers and discretions by the executive involve the making of various decisions which touch on every aspect of the daily life of a citizen. Ministers and Heads of Departments are vested with adjudicating power. Only in some cases have provisions been made for review of such decisions by Tribunals or Courts. In the majority of cases, review can be claimed only via the prerogative writs. This has proved to be quite ineffective. (See Chapter 1).

The Administrative Division of the High Court as proposed should, therefore, also have power of original jurisdiction in relevant cases in addition to appellate jurisdiction. The administration itself should be further subjected to stricter supervision and be forced to:

- (a) observe fixed time limits for making decisions, and
- (b) be required to state reasons supporting its decision.

To codify such principle, I would propose that an Administrative Procedure Act be enacted for Malaysia. As in the Administrative Procedure Act, 1946 of the U.S.A., the main features of this Act could be that:

- (i) it lays down the principal norms of natural justice which the adjudicating bodies should follow;
- (ii) it provides for internal separation of function so that one person does not perform, adjudicate and prosecute;
- (iii) it ensures judicial review in all questions of law.

The administration division in the High Court can review and report on the working of the Act.

A HIGH-POWERED COMPLAINTS BUREAU

As regards the Public Complaints Bureau, it is left to the task force to subscribe to whatever view it thinks fit. It is hoped that all relevant considerations are borne in mind. My main objection to the Bureau is that it is offering no feedback to the individual but that it is perpetuating many of the bureaucratic evils that could be done away with in a body of this nature. The weakness of the Bureau stem from a number of root causes. For example, the inadequacy of expert staff: staff that are not permanent staff does not command the respect or authority that is required in the performance of such function. We should also not hesitate to incorporate the merits of the Ombudsmen Systems to suit local conditions whenever attempts are made to review existing systems.

In fact, the work done by the Bureau can be likened to that of a Post Office. For better and more effective examination of grouses, more thorough follow-up procedures have to be adopted. The high-powered staff must be given wide jurisdiction. Thought must also be given to making the Bureau an independent body. If it is feared that too much power would become vested in the hands of one individual, a Commission with various representatives could be considered.

ROLE OF THE MASS MEDIA

To change the subject, but not the object, there's but one last point I would like to draw attention to, that is, the

role of the mass media. These can perform a very significant function in bringing to light problems of individuals through such columns as the "Letters to the Editor" in the New Straits Times on Wednesday and Saturday, People and Problems, New Sunday Times, Mailbag - Malay Mail. This sphere, I feel, has not been fully exploited. The Board of Directors or Editors themselves can undertake to follow-up the matters raised by readers, with the authorities concerned. For fear of adverse public opinion at least, the Departments would react. Although laws in general do not inhibit the pursuit of liberties, more and more administrative actions are being looked upon with fear or suspicion or as severe hindrances.

To quote one instance when the mass media could have played a very influential role; I refer to the Parliamentary debates on the amendment to the University & University Colleges Act, 1975. The entire debate was a highly heated affair lasting from 5.45 p.m. to 10.45 p.m. on 8th April, 1975¹. In the end, the amendment was passed. In the course of it, Opposition Members and also Government back-benchers expressed heartfelt and hard-hitting statements. Reports of these were either underplayed or conveniently overlooked both by the Press and Radio Television, Malaysia. 'Suppression' of such news items has, in my opinion, left the majority of the public and more important the people who would be affected by such legislation (viz. academic staff in general and undergraduates in particular) in the dark about the matter. This would well lead to agitation, lack of

1 Penyata Rasmi Parlimen, Dewan Rakyat, Penggal Pertama Jilid 1. Bil. 40 8.4.75.

understanding, misconception and loss of faith in the administration as a whole: for it appears that individual rights are not being considered and the fears of students unallayed.

The following were some of the pertinent remarks by Members of the Lower Houses vis-a-vis the Amendments, which sought to impose greater control by the Ministry on the Institutions on the question of discipline:

Yang Berhormat Lim Kit Siang - Opposition Democratic Action Party Member of Parliament for Kota Melaka.

We argued that the Bill had far-reaching consequences affecting the future of the country, national unity and democracy, as it conferred arbitrary powers. He urged that time be given to the public to consider, study and deliberate the Bill. "This is a piece of panic legislation, rising from panic reaction".

Yang Berhormat Dr. Tan Chee Khoo - Opposition Member, President of Pekemas, Member for Kepong.

"The Amendments are diabolic and draconian in concept, tyrannical in execution and will produce graduates who are intellectual morons". (He was, however, asked to withdraw the word 'Diabolic' ").

The most effective speech that evening came from Yang Berhormat Mohd. Sopiee bin Tan Sri Sheik Abdullah, the Barisan National Member of Parliament for Pulau Pinang².

2 Mr. Sopiee is the Chairman of Lembaga Padi Negara. He was formerly the General Manager of Bernama. He says he has now become Adviser to the Editors of Straits Echo, the Penang-based newspaper.

In very subtle terms he expressed dissatisfaction over the hasty Bill. He said some of the Members of Parliament had not seen the original Act and the Minister had refused an audience of Members of Parliament to discuss the Bill earlier on. 'Saya rasa mengasingkan pelajar dan menanti hak hak asasi mereka yang kita beri dan menjamin kepada sehap umat dalam negeri ini ialah satu kaedah yang payah sangat kita menerima". (I feel, that this way of alienating the students and depriving them of the fundamental rights that we guarantee to all the other peoples in the country is one procedure that is difficult to accept).

"Kalau kita membelanjakan \$10 juta sekalipun atas 10 orang manusia, kita tidak mempunyai hak sebagai Tuhan mencabut hak asasi orang itu".

(Even if we spend \$10 million on ten people, we do not have the assent of God to take away their fundamental rights).

"(Ini akan) meminda keberasan, memecah semangat dan morale penentangan dan akan membangkit sebarang dissent".

(This will instil violence, break their spirit and morale to oppose and give rise to every form of dissent).

He said the right way was for us to identify with the students, not alienate them, understand, not suppress them, correct their ways and show them that politics is not all dirty.

"Sungguhpun saya bercakap begitu, bila masa undi nanti terpaksa saya undi menjokong, kerana saya taat kepada Barisan Nasional dan taat kepada pemerintahan. Undi saya sokong".

(Although I spoke thus, when the time comes to vote, I must support the motion, because I am loyal to the Barisan National and loyal to the Government. My vote is 'Aye').

The questions raised above have several implications:-

- (1) In totality, they show the extent to which 'party discipline' regulates or controls parliamentary democracy;
- (2) It is my own belief that if the mass media had released the true scenes behind the passing of the amendment, it would surely have aroused stronger public response and greater participation;
- (3) There is an Opposition in the Malaysian Parliament to speak for the minority and the suppressed. But it is one thing to have the potential and another to be able to establish credibility;
- (4) The impediment in this case was perhaps the system of annual licences for any publications. Also PERNAS owns 51% of the New Straits Times shares and Utusan Melayu is essentially an UMNO concern.

Finally, the issue whether the mass media should merely play an educative or an investigative role as well is left to the 'policy' of the government. Whatever it is, there are only peripheral matters and the essence of the argument remains that the machinery of "administrative justice" itself has to be strengthened and improved.

In the final analysis, therefore, there ought to be a general appellate tribunal, particularly in view of the fact that there is now dissatisfaction with the existing writs-system with its artificial and conceptualistic distinctions. Lastly, judicial review alone may be inadequate for controlling administrative action or inaction and helping individuals. Hence the need to review other complaint-handling mechanisms, that is, the Public Complaints Bureau and the corresponding need to strengthen it.