TAMILESWAARAN RAVI KUMAR

v.

SURUHANJAYA PILIHAN RAYA MALAYSIA & ANOR

Court of Appeal, Putrajaya
Supang Lian, Wong Kian Kheong, Ismail Brahim JJCA
[Civil Appeal No: W-01(A)-19-01-2023]
6 August 2025

Administrative Law: *Judicial review — Certiorari — Application for order of certiorari to quash Election Commission's decision denying appellant of his right to vote in elections on ground that appellant was in quarantine period — Whether Election Commission could lawfully deny appellant's right to vote under art 119(1) Federal Constitution — Whether appellant entitled to monetary compensation or damages from respondents in case of unlawful denial of Malaysian citizen's right to vote*

Constitutional Law: *Fundamental liberties — Right to vote — Judicial review — Application for order of certiorari to quash Election Commission's decision denying appellant of his right to vote in elections on ground that appellant was in quarantine period — Whether Election Commission could lawfully deny appellant's right to vote under art 119(1) Federal Constitution — Whether appellant entitled to monetary compensation or damages from respondents in case of unlawful denial of Malaysian citizen's right to vote*

This appeal ('This Appeal') discussed the following two novel questions: (1) whether the Election Commission, the 1st respondent in This Appeal, could lawfully deny the right of the appellant ('Appellant') under art 119(1) of the Federal Constitution ('FC') to vote in the Johor State Elections ('Elections') in respect of the Skudai constituency on the ground that the Appellant had contracted COVID-19 disease and was consequently barred from voting in the Elections by a Standard Operating Procedure ('SOP') issued pursuant to reg 17(1) of the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase to Endemic) Regulations 2022 ('PCID Regulations'); and (2) if the Appellant's right to vote in the Elections had been unlawfully deprived by the 1st Respondent, in addition to the remedies of a *certiorari* order and declarations granted by the Court, whether the Appellant was entitled to monetary compensation or damages from the Respondents in This Appeal when the FC was silent on monetary relief in a case of an unlawful denial of a Malaysian citizen's right to vote. In this regard, was the right to vote a constitutional right pursuant to art 119(1) FC, or a statutory right under the Elections Act 1958 ('EA') and subsidiary legislation made under the EA? The facts of the case were as follows. The Appellant was a Malaysian citizen who had fulfilled all the requirements of art 119(1)(a) to (c) FC to vote in the Elections. On 7 March 2022, the Appellant tested positive for COVID-19 disease. Under the

SOP for Phase 4 of the National Recovery Plan, the Appellant was required to undergo home quarantine. On 12 March 2022, when the Appellant was in his sixth day of home quarantine, he self-tested for COVID-19 disease and the result of this self-test was negative ('Self-Test Result'). The Appellant was supposed to cast his vote at the polling centre at Sekolah Kebangsaan Taman Tun Aminah 2, Skudai ('Polling Centre'). When the Appellant's parents voted at the Polling Centre, they verbally enquired from an officer of the 1st Respondent on whether the Appellant could vote, in view of the Self-Test Result. The 1st Respondent's officer verbally informed the Appellant's parents that the Appellant could physically come to the Polling Centre and check on the Appellant's "MySejahtera" status ('Parents' Conversation') and based on the Parents' Conversation, the Appellant went to the Polling Centre. However, the 1st Respondent's officers did not allow the Appellant to enter the Polling Centre on the grounds that his MySejahtera record displayed a "high risk" status and he did not obtain permission to vote from the District Health Officer ('1st Respondent's Decision/Action'). The Appellant subsequently applied to the High Court for leave to file a Judicial Review application ('JRA') for, *inter alia*, the following reliefs: (i) an order of *certiorari* to quash the 1st Respondent's Decision/Action; and (ii) a declaration that the 1st Respondent's Decision/Action was unlawful in preventing the Appellant from voting and/or by denying the Appellant of his right to vote in the Elections on 12 March 2022 on the ground that the Appellant was in a quarantine period.

Held (allowing the appeal):

(1) The 1st Respondent's Decision/Action was amenable to Judicial Review under O 53 r 2(4) of the Rules of Court 2012 ('ROC'). The 1st Respondent, constituted under art 114 FC, was therefore a "public authority" within the meaning of O 53 r 2(4) ROC. The 1st Respondent's Decision/Action had "adversely affected" the Appellant's right to vote in the Elections pursuant to art 119(1) FC. In other words, the Appellant had a "real and genuine interest" in the 1st Respondent's Decision/Action. The Respondents did not file any notice of cross-appeal under r 8(1) of the Rules of the Court of Appeal 1994 ('RCA') for the Court of Appeal to vary the High Court's Decision on the ground that the 1st Respondent's Decision/Action was not amenable to Judicial Review under O 53 r 2(4) ROC. As such, the Respondents could not then contend in This Appeal that the High Court's Decision should be varied on the ground that the 1st Respondent's Decision/Action was not amenable to Judicial Review under O 53 r 2(4) ROC. (para 11)

(2) Public policy considerations, in themselves, might not be sufficient to defeat a JRA, especially where an Elector's Right to vote had been denied. Courts should be wary of accepting policy considerations as a bar to JRAs. In any event, the Respondents were barred from relying on policy considerations to oppose This Appeal. (paras 13-14)

(3) It was clear from the definitions of "Act of Parliament" and "federal law" in art 160(2) FC that "subsidiary legislation" was not included in the

meaning of "federal law''. The PCID Regulations were made by the Minister of Health pursuant to ss 11(2) and 31 of the Prevention and Control of Infectious Diseases Act 1988 ('PCIDA'). The SOP was made by the "Director General" (defined in s 2(1) PCIDA as the "Director General of Health") under reg 17(1) of the PCID Regulations. It was clear that both the SOP and PCID Regulations were "subsidiary legislation" within the meaning of s 3 of the Interpretation Acts 1948 and 1967, and they did not fall within the definitions of "federal law'' and "Act of Parliament" in art 160(2) FC. The High Court Judge had erred in three respects: (i) in not finding that the SOP and PCID Regulations could not constitute "federal law" or "Act of Parliament" under art 160(2) FC; (ii) in holding that the 1st Respondent's duty to conduct elections under art 113(1) FC was subject to the SOP and PCID Regulations; and (iii) in failing to hold that, as these instruments could not restrain the 1st Respondent's duty, the Appellant retained his Elector's Right to Vote under art 119(1) FC (paras 21-23)

(4) In view of the interpretation of arts 113(1), 119(1) as well as the definitions of "Act of Parliament" and "federal law" in art 160(2) FC, the 1st Respondent had committed an "error of law" or an illegality in this case by denying the Appellant's right to vote in the Elections. Accordingly, there was no hesitation for the Court of Appeal to allow This Appeal and exercise its discretion to issue a *certiorari* order to quash the 1 st Respondent's Decision/Action, and to grant the declarations sought by the Appellant in the JRA. (para 24)

(5) An Elector's Right to Vote was a constitutional right and not a statutory right for the following reasons: (i) upon a person's ('X') fulfilment of art 119(1) (a) to (c) FC, it had expressly provided that X "is entitled to vote". Such wording of art 119(1) FC clearly conferred a constitutional right on X to vote; (ii) Article 4(1) FC provided for the supremacy of the FC. If there was any Act of Parliament and/or subsidiary legislation which was inconsistent with an Elector's Right to Vote under art 119(1) FC, the Act of Parliament and/or subsidiary legislation "shall" be void to the extent of the inconsistency with an Elector's Right to Vote; (iii) an "existing law" as defined in art 160(2) FC, namely, a pre-Merdeka law, must be "in accord" with the Elector's Right to Vote according to art 119(1) read with art 162(6) and (7) FC; (iv) an Elector's Right to Vote pursuant to art 119(1) FC could only be amended by Parliament if such an amendment was passed "by the votes of not less than two-thirds of the total number of members" of both Houses of Parliament. If an Elector's Right to Vote was a statutory right (not a constitutional right), this implied that the Elector's Right to Vote could be amended by a "simple majority of members voting" as provided in art 62(3) FC; and (v) Article 119(1) FC differed from art 326 of the Indian Constitution ('IC'), which merely entitled an Indian citizen aged 18 or above to be registered as a voter. Unlike art 119(1) FC, the IC did not confer a constitutional right to vote; instead, Indian statutes only created a statutory elector's right to vote, and Indian case law had accordingly held that such a right was statutory, not constitutional. (para 27)

(6) The FC was silent on monetary relief for a breach of an Elector's Right to Vote ('Breach of Right to Vote'). Notwithstanding such a fact, the Court had a discretionary power to award monetary compensation or damages for a Breach of Right to Vote ('Constitutional Compensation/Damages'). The following reasons supported the existence of the Court's discretionary power to award Constitutional Compensation/Damages: (i) an Elector's Right to Vote was the cornerstone of a democracy. In view of this fundamental importance of an Elector's Right to Vote, the Court's discretionary power to grant Constitutional Compensation/Damages would ensure that an Elector's Right to Vote was always safeguarded by the 1st Respondent and all other public authorities; (ii) by reason of art 4(1) FC, any Act of Parliament and/or subsidiary legislation that was inconsistent with an Elector's Right to Vote under art 119(1) FC, "shall" be void to the extent of the inconsistency with an Elector's Right to Vote. By virtue of art 162(6) and (7) FC, a pre-Merdeka law must be "in accord" with an Elector's Right to Vote under art 119(1) FC. If the Court had no discretionary power to grant Constitutional Compensation/Damages, this would defeat arts 4(1), 119(1), 162(6) and (7) FC; (iii) Order 53 r 2(3) ROC had expressly conferred power on the Court to grant monetary compensation in a JRA; and (iv) the Court should not allow an injustice, including a Breach of Right to Vote, to be without any monetary remedy. (para 29)

(7) In the exercise of the Court's discretionary power to award Constitutional Compensation/Damages, the following considerations were relevant: (i) the reason and cause for the Breach of Right to Vote, and in this regard, the 1st Respondent's *bona fides* or the lack of it, was pertinent; and (ii) whether the party who had been unlawfully deprived of his or her right to vote ('Y'), should be compensated with regard to the following losses – (a) Y's travelling expenses to and from the polling centre in question; (b) Y's cost of accommodation if Y had to travel outstation to vote; and (c) Y's loss of income because Y had to take time off from work to vote. As such, the Court's discretion in a particular case to grant Constitutional Compensation/Damages was fact-centric. Ultimately, in this case, the Court of Appeal did not exercise its discretion to award Constitutional Compensation/Damages to the Appellant because the 1st Respondent's Decision/Action was made purely based on the SOP, in the interest of public health and safety; and the 1st Respondent's officers had acted in good faith in this case. (paras 30-31)

Case(s) referred to:

Ah Thian v. Government Of Malaysia [1976] 1 MLRA 410 (refd)

Anukul Chandra Pradhan v. Union Of India AIR [1997] SC 2814 (refd)

Badan Peguam Malaysia v. Kerajaan Malaysia [2007] 2 MLRA 847 (refd)

Badan Peguam Malaysia v. Kerajaan Malaysia [2008] 3 MLRA 1 (refd)

Dato' Seri Anwar Ibrahim v. PP [2010] 2 MLRA 82 (refd)

Fender v. Mildmay (1938) AC 10 (refd)

Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor [2016] 3 MLRA 345 (refd)

Jagan Nath v. Jaswant Singh, 1954 SCR 892 (AIR 1954 SC 21O) (refd)

Jumuna Prasad Mukhariya v. Lachhi Ram [1955] 1 SCR 608; AIR [1952] SC 64 (refd)

Jyoti Basu v. Debi Ghosal [1982] 1 SCC 691; AIR [1982] SC 983 (refd)

Majlis Perbandaran Seremban v. Tenaga Nasional Berhad [2020] 6 MLRA 379 (refd)

Malaysian Trade Union Congress & Ors v. Menteri Tenaga Air & Komunikasi & Anor [2014] 2 MLRA 1 (refd)

Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor [2021] 3 MLRA 1 (refd)

N P Ponnuswami v. Returning Officer, Namakkal Constituency [1952] SCR 218; AIR [1952] SC 64 (refd)

Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar [2019] 6 MLRA 307 (refd)

Public Textiles Berhad v. Lembaga Letrik Negara [1976] 1 MLRA 70 (folld)

R (On The Application Of Dolan & Ors) v. Secretary Of State For Health And Social Care & Anor [2021] WLR 2326 (distd)

Surinder Singh Kanda v. The Government Of The Federation Of Malaya [1962] 1 MLRA 233 (refd)

Wallersteiner v. Moir (No 2) [1975] 1 All ER 849 (refd)

Yazid Sufaat & Ors v. Suruhanjaya Pilihanraya Malaysia [2009] 4 MLRA 22 (distd)

Legislation referred to:

Constitution of India [Ind], art 326

Federal Constitution, arts 4(1), 62(3), 113(1), (5), 114, 118, 119(1)(a), (b), (c), 159(1), (3), 160(2), 162(6), (7)

Interpretation Acts 1948 and 1967, s 3

Prevention and Control of Infectious Diseases Act 1988, ss 2(1), 11(2), 31

Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase to Endemic) Regulations 2022, reg 17(1)

Rules of Court 2012, O 53 r 2(3), (4)

Rules of the Court of Appeal 1994, r 8(1)

Counsel:

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For the respondents: Mohammad Al-Saifi Hashim (Nur Syazwani Abdul Aziz & Fauziah Daud with him); AG's Chambers

[For the High Court judgment, please refer to *Tamileswaaran Ravi Kumar v. Election Commission Of Malaysia & Anor* [2023] 4 MLRH 679]

JUDGMENT

Wong Kian Kheong JCA:

A. Introduction

[1] This appeal (This Appeal) discusses the following two novel questions:

(1) whether the Election Commission, the 1st respondent in This Appeal (1st Respondent), could lawfully deny the right of the appellant (Appellant) under art 119(1) of the Federal Constitution (FC) to vote on 12 March 2022 in the Johore State Elections (Elections) in respect of Skudai constituency on the ground that the Appellant had contracted COVID-19 disease and was consequently barred from voting in the Elections by a Standard Operating Procedure (SOP) issued pursuant to reg 17(1) of the Prevention and Control of Infectious Diseases (Measures Within Infected Local Areas) (National Recovery Plan) (Transition Phase to Endemic) Regulations 2022 (PCID Regulations); and

(2) if the Appellant's right to vote in the Elections had been unlawfully deprived by the 1st Respondent, in addition to the remedies of a *certiorari* order and declarations granted by the court, whether the Appellant is entitled to monetary compensation or damages from the respondents in This Appeal (Respondents) when the FC is silent on monetary relief in a case of an unlawful denial of a Malaysian citizen's right to vote. In this regard, is the right to vote:-

(a) a constitutional right pursuant to art 119(1) FC; or

(b) a statutory right under the Elections Act 1958 (EA) and subsidiary legislation made under the EA?

B. Background

[2] The Appellant is a Malaysian citizen who has fulfilled all the requirements of art 119(1)(a) to (c) to vote in the Elections.

[3] On 7 March 2022, the Appellant tested positive for COVID-19 disease. Under the SOP for Phase 4 of the National Recovery Plan, the Appellant was required to undergo home quarantine.

[4] On 12 March 2022:-

(1) when the Appellant was in his sixth day of home quarantine, he self-tested for COVID-19 disease and the result of this self-test was negative (Self-Test Result);

(2) the Appellant was supposed to cast his vote at the polling centre at Sekolah Kebangsaan Taman Tun Aminah 2, Skudai (Polling Centre);

(3) when the Appellant's parents voted at the Polling Centre, they orally enquired from an officer of the 1st Respondent on whether the Appellant could vote (in view of the Self-Test Result). The 1st Respondent's officer verbally informed the Appellant's parents that the Appellant could physically come to the Polling Centre and check on the Appellant's "MySejahtera" status [Conversation (Appellant's Parents-1st Respondent's Officer)]; and

(4) based on the Conversation (Appellant's Parents-1st Respondent's Officer), the Appellant went to the Polling Centre. However, the 1st Respondent's officers did not allow the Appellant to enter the Polling Centre on the grounds that his MySejahtera record displayed a "high risk" status and he did not obtain a permission to vote from the District Health Officer (1st Respondent's Decision/Action).

The 1st Respondent's Decision/Action was based on the SOP which provided as follows, among others -

> "**Kehadiran di setiap premis yang digunakan bagi tujuan pelaksanaan pilihan raya tertakluk kepada Arahan Tetap yang berkuatkuasa yang mana tidak menjejaskan pelaksanaan proses pilihan raya.**
>
> Kod QR MySejahtera/Buku Pendaftaran Kehadiran (nama, nombor telefon dan masa) WAJIB disediakan di setiap premis yang digunakan bagi tujuan pilihan raya. **Setiap individu yang hadir ke premis-premis ini hendaklah mengimbas Kod QR MySejahtera atau mencatat kehadiran di dalam buku yang disediakan (nama, nombor telefon dan masa).**
>
> **Menempatkan petugas untuk menyemak status risiko dan gejala bagi setiap individu yang hadir ke premis tersebut. Hanya individu berstatus "Low risk" atau "Casual contact" sahaja dibenarkan masuk.**
>
> **Individu positif COVID-19 TIDAK DIBENARKAN hadir ke mana-mana premis yang digunakan untuk aktiviti pilihan raya.**"
>
> [Emphasis Added].

According to the 1st Respondent, the "protocol" which applied to the Elections was as follows, among others -

> **"Bagi pengundi yang berstatus COVID-19 positif, mereka adalah TIDAK DIBENARKAN keluar dari tempat mereka sedang menerima rawatan (hospital/pusat rawatan/pusat kuarantin/rumah dll.) untuk mengundi kerana masih dalam rawatan dan sememangnya masih berjangkit dan boleh menyebabkan penularan jangkitan kepada orang lain selagi mana masih dalam rawatan. Pengundi berstatus patient under investigation (PUI) dan person under surveillance (PUS) yang ingin mengundi HENDAKLAH MEMOHON KEBENARAN dari Pegawai Kesihatan Daerah (PKD), Pejabat Kesihatan Daerah yang mengawasi Arahan Perintah Pengawasan dan Pemerhatian berkenaan, untuk keluar sementara ke Pusat Mengundi.**

...

Individu positif COVID-19 TIDAK DIBENARKAN hadir ke mana-mana premis yang digunakan untuk aktiviti berkaitan pilihan raya.

...

Pengundi yang berstatus PUI dan PUS hendaklah diasing dan DITEMPATKAN DI KHEMAH/BILIK/RUANG KHAS yang disediakan.

...

Khemah/bilik/ruang khas hendaklah dilakukan disinfeksi berdasarkan garis panduan KKM sebaik sahaja selepas setiap pengundi bergejala, pengundi positif COVID-19, PUI dan PUS selesai mengundi."

[Emphasis Added].

C. Proceedings In The High Court

[5] The Appellant applied to the High Court for leave to file a Judicial Review application (JRA) for the following relief:

(1) an order of *certiorari* to quash the 1st Respondent's Decision/Action;

(2) a declaration that the 1st Respondent's Decision/Action was unlawful in preventing the Appellant from voting and/or by denying the Appellant of his right to vote in the Elections on 12 March 2022 on the ground that the Appellant was in a quarantine period;

(3) a declaration that the 1st Respondent's Decision/Action was unlawful in preventing the Appellant from voting and/or by denying the Appellant of his right to vote on the ground that the Appellant had contracted an infectious disease;

(4) a declaration that the 1st Respondent had violated the Applicant's right under art 119 FC; and

(5) damages for the violation of the Appellant's constitutional right.

[6] The High Court granted leave for the JRA on 22 June 2022.

[7] On 7 December 2022, the High Court dismissed the JRA without an order as to costs (High Court's Decision).

[8] The grounds for the High Court's Decision are as follows, among others:

(1) by virtue of art 113(1) FC, the 1st Respondent had to conduct the Elections "subject to the provisions of federal law". In this case, when the Elections were conducted by the 1st Respondent,

the "federal law" applicable was the Prevention and Control of Infectious Diseases Act 1988 (PCIDA);

(2) reading the SOP as a whole, the SOP prevented electors who were COVID-19 positive, including the Appellant, from entering the Polling Centre. Accordingly, there was no "illegality or irrationality" in the 1st Respondent's Decision/Action; and

(3) the Appellant could not claim for monetary compensation due to the following reasons -

(a) the learned High Court Judge was not bound by the dissenting judgment of Tengku Maimun CJ in the Federal Court case of *Maria Chin Abdullah v. Ketua Pengarah Imigresen & Anor* [2021] 3 MLRA 1, because *Maria Chin Abdullah*:-

(i) concerned the fundamental liberty of a person under art 5(1) read with art 8(1) FC; and

(ii) did not involve the unlawful deprivation of the right to vote pursuant to art 119(1) FC;

(b) according to the judgment of Mohd Ghazali Yusoff FCJ in the Federal Court in *Yazid Sufaat & Ors v. Suruhanjaya Pilihanraya Malaysia* [2009] 4 MLRA 22 the right to vote is a statutory right which is not a fundamental liberty under Part II FC; and

(c) the right to vote does not exist in a vacuum but is part of the right to stand for elections and to question the result of the elections. Hence, there is only one remedy for an unlawful deprivation of the right to vote, namely, by way of an election petition.

Our Decision

D. Was The 1st Respondent's Decision/Action Amenable To Judicial Review?

[9] On behalf of the Respondents, the learned Senior Federal Counsel (SFC) had contended that This Appeal should be dismissed on the sole ground that the 1st Respondent's Decision/Action was not amenable to Judicial Review under O 53 r 2(4) of the Rules of Court 2012 (RC).

[10] Order 53 r 2(4) RC states as follows:

> **"Any person who is adversely affected by the decision of any public authority shall be entitled to make the application."**
>
> [Emphasis Added].

[11] We have no hesitation to decide that the 1st Respondent's Decision/Action was amenable to Judicial Review under O 53 r 2(4) RC.

Firstly, the 1st Respondent is constituted under art 114 FC and is, therefore, a "public authority" within the meaning of O 53 r 2(4) RC.

Secondly, the 1st Respondent's Decision/Action had "adversely affected" the Appellant's right to vote in the Elections pursuant to art 119(1) FC. In other words, the Appellant had a "real and genuine interest" in the 1st Respondent's Decision/Action — please refer to the judgment of the Federal Court delivered by Hasan Lah FCJ in *Malaysian Trade Union Congress & Ors v. Menteri Tenaga Air & Komunikasi & Anor* [2014] 2 MLRA 1, at [58].

Lastly, the Respondents did not file a notice of cross-appeal under r 8(1) of the Rules of the Court of Appeal 1994 (RCA) for the Court of Appeal to vary the High Court's Decision on the ground that the 1st Respondent's Decision/Action was not amenable to Judicial Review under O 53 r 2(4) RC. As such, the Respondents cannot now contend in This Appeal that the High Court's Decision should be varied on the ground that the 1st Respondent's Decision/Action was not amenable to Judicial Review under O 53 r 2(4) RC. Rule 8(1) RCA provides as follows:-

> "rule 8.**Notice of cross-appeal.**
>
> (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."
>
> [Emphasis Added].

E. Should This Appeal Be Barred By Policy Considerations?

[12] The learned SFC submitted that policy considerations regarding public health and safety (due to the COVID-19 pandemic) should bar the JRA in this case. Reliance had been placed on the judgment of the Court of Appeal of the United Kingdom (UK) in *R (On The Application Of Dolan & Ors) v. Secretary Of State For Health And Social Care & Anor* [2021] WLR 2326 (*Dolan*'s Case).

[13] We are not able to accept the contention that public policy considerations, in themselves, may defeat a JRA, especially when an Elector's Right to vote has been denied. Courts should be wary of accepting policy considerations as a bar to JRAs. In this regard, we rely on the following judgment of the Federal Court delivered by Raja Azlan Shah FJ (as His Majesty then was) in *Public Textiles Berhad v. Lembaga Letrik Negara* [1976] 1 MLRA 70, at p 79:

> **"The term public policy is vague and unsatisfactory. From time to time judges of the highest reputation have uttered warning notes as to the danger of permitting judicial tribunals to roam unchecked in this field. The "unruly horse" of Hobart C.J. is commonplace: see *Fender v. Mildmay* (1938) AC 10. In my opinion, the public policy yardstick is too wide and elusive."**
>
> [Emphasis Added].

[14] In any event, the Respondents are barred from relying on policy considerations to oppose This Appeal as the Respondents did not file any cross-appeal under r 8(1) RCA for the Court of Appeal to vary the High Court's Decision on the ground that policy considerations, in themselves, would bar the JRA in this case.

[15] We have not overlooked *Dolan*'s Case. *Dolan*'s Case did not concern the deprivation of an elector's right to vote.

F. Whether The 1st Respondent Could Lawfully Deprive The Appellant Of His Right To Vote In The Elections Under The SOP

[16] We reproduce below art 113(1), (5), 119 as well as the definitions of "Act of Parliament", "elector", "existing law", "federal law" and "Merdeka Day" in art 160(2) FC:

> "Article 113 **Conduct of elections**
>
> (1) **There shall be an Election Commission**, to be constituted in accordance with art 114, **which, subject to the provisions of federal law, shall conduct elections to the House of Representatives and the Legislative Assemblies of the States** and prepare and revise electoral rolls for such elections.
>
> ...
>
> (5) **So far as may be necessary for the purposes of its functions under this Article the Election Commission may make rules, but any such rules shall have effect subject to the provisions of federal law.**
>
> **Qualifications of electors**
>
> Article 119(1) **Every citizen who -**
>
> **(a) has attained the age of eighteen years on the qualifying date;**
>
> **(b) is resident in a constituency on such qualifying date or, if not so resident, is an absent voter; and**
>
> **(c) is, under the provisions of any law relating to elections, registered in the electoral roll as an elector in the constituency in which he resides on the qualifying date,**

is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified under Clause (3) or under any law relating to offences committed in connection with elections; but no person shall in the same election vote in more than one constituency.

(2) If a person is in a constituency by reason only of being a patient in an establishment maintained wholly or mainly for the reception and treatment of persons suffering from mental illness or mental defectiveness or of being detained in custody he shall for the purposes of Clause (1) be deemed not to be resident in that constituency.

(3) A person is disqualified for being an elector in any election to the House of Representatives or the Legislative Assembly if -

(a) on the qualifying date he is detained as a person of unsound mind or is serving a sentence of imprisonment; or

(b) having before the qualifying date been convicted in any part of the Commonwealth of an offence and sentenced to death or imprisonment for a term exceeding twelve months, he remains liable on the qualifying date to suffer any punishment for that offence.

(4) In this Article -

(a) "absent voter" means, in relation to any constituency, any citizen who is registered as an absent voter in respect of that constituency;

(b) "qualifying date" means the date on which a person applies for registration as an elector in a constituency, or the date on which he applies for the change of his registration as an elector in a different constituency,

in accordance with the provisions of any law relating to elections.

Article 160. **Interpretation**

...

(2) **In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say -**

...

"Act of Parliament" means a law made by Parliament;

...

"elector" means a person who is entitled to vote in an election to the House of Representatives or the Legislative Assembly of a State;

...

"existing law" means any law in operation in the Federation or any part thereof immediately before Merdeka Day;

"federal law" means

(a) **any existing law relating to a matter with respect to which Parliament has power to make laws, being a law continued in operation under Part XIII; and**

(b) **any Act of Parliament;**

...

"Merdeka Day" means the thirty-first day of August, nineteen hundred and fifty-seven;"

[Emphasis Added].

[17] Firstly, it is not in dispute that the Appellant in this case had fulfilled Clauses (1)(a) to (c) of art 119(1) FC. Hence, the Appellant was an "elector" within the meaning of art 160(2) FC. An elector "is entitled to vote" pursuant to art 119(1) FC read together with the definition of an "elector" in art 160(2) FC (Elector's Right to Vote).

[18] Secondly, the learned High Court Judge did not err in deciding that, according to art 113(1) FC, the 1st Respondent has a duty to conduct the Elections "subject to the provisions of federal law" [1st Respondent's Duty (Conduct of Elections)]. By reason of art 113(5) FC, so far as may be necessary for the purposes of carrying out the 1st Respondent's Duty (Conduct of Elections), the 1st Respondent "may make rules, but any such rules shall have effect subject to the provisions of federal law".

[19] Thirdly, reading together arts 113(1) and 119(1) FC in a harmonious manner -

(1) the Elector's Right to Vote is subject to the 1st Respondent's Duty (Conduct of Elections); and

(2) the 1st Respondent's Duty (Conduct of Elections) shall be performed "subject to the provisions of federal law".

The court may invoke the rule of harmonious construction. This is clear from the following two judgments of the Federal Court -

(a) the decision of Mohd Zawawi Salleh FCJ in *Pihak Berkuasa Tatatertib Majlis Perbandaran Seberang Perai & Anor v. Muziadi Mukhtar* [2019] 6 MLRA 307, at [78]; and

(b) the judgment of Zaleha Yusof FCJ in *Majlis Perbandaran Seremban v. Tenaga Nasional Berhad* [2020] 6 MLRA 379, at [32].

[20] According to art 160(2) FC, the term "federal law" has two meanings, namely:

(1) "existing law" relating to a matter with respect to which Parliament has power to make laws and the existing law continues to be in operation under Part XIII FC (Temporary and Transitional Provisions). Article 160(2) has defined "existing law" to mean any law in operation in the Federation or any part thereof immediately before "Merdeka Day" [interpreted in art 160(2) FC to mean 31 August 1957]; and

(2) any "Act of Parliament'. Article 160(2) FC has defined an "Act of Parliament" to mean "a law made by Parliament".

[21] In contradistinction to the meaning of "federal law" in art 160(2) FC, the term "subsidiary legislation" is defined in s 3 of the Interpretation Acts 1948 and 1967 (IA) as follows -

> **"subsidiary legislation" means any proclamation, rule, regulation, order, notification, by-law or other instrument made under any Act,** Enactment, Ordinance **or other lawful authority and having legislative effect;"**
>
> [Emphasis Added].

It is clear from the definitions of "Act of Parliament" and "federal law" in art 160(2) FC that "subsidiary legislation" is not included in the meaning of "federal law". This construction is supported by a trilogy of Federal Court judgments as follows (in chronology) -

(1) in *Badan Peguam Malaysia v. Kerajaan Malaysia* [2007] 2 MLRA 847, at [64], a joint judgment of Gopal Sri Ram JCA (as he then was), Mohd Ghazali Yusoff JCA (as he then was) and Tengku Baharudin Shah JCA [Joint Judgment (*Badan Peguam Malaysia*)], decided as follows -

> "[64] **Taking a moment aside, we note that the expression used by art 128(3) is "federal law" in relation to this court's appellate jurisdiction. This is defined by art 160(2) as follows:**
>
> ...
>
> **Put shortly, federal law means any pre-Merdeka law and any Act of Parliament. You will notice that the definition is not open-ended. It is fixed. It says "federal law means". It follows that it is not open for a court to include any other written law within the definition. So, rules of court made under the Courts of Judicature Act are, by constitutional definition not federal law.…** "
>
> [Emphasis Added];

(2) Mohd Ghazali Yusof FCJ decided as follows in *Dato' Seri Anwar Ibrahim v. PP* [2010] 2 MLRA 82, at [68] -

> "[68] In the light of art 121(2) [FC] and ss 86 and 87 of the CJA, I am of the view that this court has no power to review its own judgment. It is clear that the [FC] and the CJA have not conferred this court a power to review its own judgment. **I am also of the view that the Rules is not federal law within the meaning of the words 'federal law' in the [FC]**. The Rules, pursuant to s 17(5) of the CJA, shall be laid before the Dewan Rakyat at the first meeting after their publication and may be disapproved in whole or in part by a resolution of the Dewan Rakyat. **Thus the Rules need to be laid before the Dewan Rakyat for approval but that does not make it an Act of Parliament within the contemplation of art 160(2) [FC] which provides that an 'Act of Parliament' means a law made by Parliament…**. "
>
> [Emphasis Added]; and

(3) in *Hap Seng Plantations (River Estates) Sdn Bhd v. Excess Interpoint Sdn Bhd & Anor* [2016] 3 MLRA 345, at [23], Zulkefli Makinudin CJ (Malaya) (as he then was) followed the Joint Judgment (*Badan Peguam Malaysia*) and gave the following judgment -

> "[19] **It is important to note that the [FC] allows the High Courts to have jurisdiction only as conferred by federal law. The ROC 2012 [Rules of Court 2012] is not a federal law as it does not fall within the definition of a federal law pursuant to art 160(2) [FC]. The ROC 2012 is not an Act of Parliament and therefore it is our view that O 57 r 1 [ROC 2012] cannot grant power to transfer proceedings between the two High Courts in the State of Malaya and the State of Sabah and Sarawak. On the definition of 'federal law' in the case of *Badan Peguam Malaysia v. Kerajaan Malaysia* [2008] 3 MLRA 1 Gopal Sri Ram JCA (as he then was) stated:…**"
>
> [Emphasis Added].

[22] PCID Regulations were made by the Minister of Health pursuant to ss 11(2) and 31 PCIDA. The SOP was made by the "Director General" [defined in s 2(1) PCIDA as the "Director General of Health"] under reg 17(1) PCID Regulations. Reproduced below is reg 17(1) PCID Regulations:

> **"The Director General may, during any designated phase, issue any directions and conditions in any manner, whether generally or specifically, to any person or group of persons to take such measures for the purpose of preventing and controlling any infectious diseases within any infected local area."**
>
> [Emphasis Added].

It is clear that the SOP and PCID Regulations -

(1) are "subsidiary legislation" within the meaning of s 3 IA; and

(2) do not fall within the definitions of "federal law" and "Act of Parliament" in art 160(2) FC.

[23] With respect, the learned High Court Judge committed the following three errors of law in this case:

(1) as explained in the above paras 20 to 22, the High Court should have decided that the SOP and PCID Regulations cannot constitute "federal law" and "Act of Parliament" as understood in art 160(2) FC;

(2) the 1st Respondent's Duty (Conduct of Elections) in art 113(1) FC cannot be subject to the SOP and PCID Regulations — please refer to the above paras 18 and 19. Consequently, the learned High Court Judge erred in deciding that the 1st Respondent's Duty (Conduct of Elections) was subject to the SOP and PCID Regulations; and

(3) as the SOP and PCID Regulations cannot restrain the 1st Respondent's Duty (Conduct of Elections), the High Court should have decided that the Appellant had the Elector's Right to Vote in the Elections pursuant to art 119(1) FC.

[24] In view of our interpretation of arts 113(1), 119(1) as well as the definitions of "Act of Parliament" and "federal law" in art 160(2) FC (please refer to the above paras 18 to 22), the 1st Respondent had committed an "error of law" or an illegality in this case by denying the Appellant's right to vote in the Elections. Accordingly, we have no hesitation in allowing This Appeal and exercise our discretion to -

(1) issue a *certiorari* order to quash the 1st Respondent's Decision/ Action; and

(2) grant the declarations sought by the Appellant in the JRA.

G. Is An Elector's Right To Vote A Constitutional Or Statutory Right?

[25] The Federal Court had decided as follows in *Yazid Sufaat*, at [2], [4], [26] and [32]:

> "[2] **The applicants are Malaysian citizens and are registered voters in various constituencies. They are all detainees under the Internal Security Act 1960 ("ISA") at Pusat Tahanan Kamunting, Perak ("the said detention centre").**
>
> ...

[4] **Learned counsel for the applicants intimated that there are six proposed questions of law which require a determination by this court and that these questions, if answered, will finally determine the matter and reverse the decision of the Court of Appeal; the questions formulated were as follows:**

(a) **Whether under Part VIII (in particular art 119) [FC] and reg 5 of the Elections (Registration of Electors) Regulations 2002, detainees who have not been convicted and are held under preventive detention laws such as the Internal Security Act 1960 but are not otherwise disqualified to vote (hereinafter referred to as "the detainees"), entitled to exercise their constitutional right to vote while in detention.**

(b) **Whether under Part VIII (in particular arts 113, 114 and 115) [FC] read with the Election Act 1958 (in particular ss 5, 15 and 16) and Elections (Registration of Electors) Regulations 2002 (in particular reg 5), the Election Commission is under a duty, obligation or responsibility to enact the necessary and appropriate rules, regulations and procedures for registration to facilitate and allow for the exercise of the detainees' constitutional right to vote while in detention.**

(c) **Whether under Part VIII [FC] read with the Election Act 1958 (in particular ss 5, 15 and 16) and Elections (Registration of Electors) Regulations 2002 (in particular reg 5), the Election Commission is under a duty, obligation or responsibility to include those who are detained under preventive detention laws such as the Internal Security Act 1960 (e.g., the detainees), as persons who are not residents in the constituency in which they are detained (i.e., Kamunting, Taiping), as a category of persons who may be registered as "absent voters" pursuant to reg 2 of the Elections (Registration of Electors) Regulations 2002 to facilitate and allow for the exercise of the detainees' constitutional right to vote while in detention.**

(d) **Whether the detainees may be designated as "postal voters" by the Election Commission under reg 3(1)(f), Elections (Postal Voting) Regulations 2003 read with reg 3(2) and Form 1 in the Schedule (with the accompanying Certificate).**

(e) **Whether the failure, neglect or refusal of the Election Commission to enact the necessary and appropriate rules, regulations or procedures for registration to facilitate and allow for the exercise of the detainees' constitutional right to vote while in detention amounted to a breach of its said duty, obligation or responsibility.**

(f) **Whether the absence of the necessary and appropriate rules, regulations or procedures for registration to facilitate and allow for the exercise of the detainees' constitutional right to vote while in detention amounted to a breach of the detainees' constitutional rights under arts 8 and/or 10(1)(a) and/or 119 [FC].**

...

[26] **We would think that the main complaint of the applicants is that being detainees under the ISA they are not allowed to leave the said detention centre to enable them to cast their votes in their respective constituencies where they are registered as voters and based upon this premises, they concluded that the respondent had not performed its duty or exercised its power to register them as postal voters so as to enable them to vote.**

...

[32] **We noticed that the questions formulated by the applicants in this application under s 96(a) of the CJA seem to lean heavily on alleged deprivation of constitutional rights when these rights were not really in issue under the circumstances. Under the said Regulations, the respondent would not be able to supply the applicants with postal ballot papers as they have not been designated as such pursuant to reg 3(1) of the said Regulations, discussed earlier. These are limitations imposed by statute and regulations. The circumstances surrounding the application for Judicial Review, namely, the right to be registered as a postal voter and the right to vote as a postal voter cannot be made with reference to fundamental rights under the Federal Constitution. In *Anukul Chandra Pradhan v. Union Of India, supra*, a challenge was made to the constitutional validity of s 62(5) of The Representation of the People Act 1951.** Section 62(5) of The Representation of the People Act 1951 reads:

> No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police:
>
> > Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force.

In delivering the judgment of the Supreme Court, Verma, CJI said (at p 2817):

> **It may also be mentioned that the nature of right to vote has been held to be a statutory right and not a common law right because of which it depends on the nature of right conferred by the statute. In *N P Ponnuswami v. Returning Officer, Namakkal Constituency,* [1952] SCR 218 at 236: (AIR [1952] SC 64 at p 71), the Constitution Bench held:**
>
> > **The right to vote** or stand as a candidate for election is not a civil right but **is a creature of statute or special law and must be subject to the limitations imposed by it.**
>
> In *Jumuna Prasad Mukhariya v. Lachhi Ram* [1955] 1 SCR 608 at 610: (AIR [1954] SC 686 at p 688), the Constitution Bench reiterated:
>
> > ... The right to stand as a candidate and contest an election is not a common law right. It is a special right created by statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute ... .

In *Jyoti Basu v. Debi Ghosal* [1982] 1 SCC 691 at 696: (AIR [1982] SC 983 at p 986), the law on the point was restated, thus:

> **The nature of the right to elect,** the right to be elected and the right to dispute an election **and the scheme of the constitutional and statutory provisions in relation to these rights have been explained by the Court in *N P Ponnuswami v. Returning Officer, Namakkal Constituency,* 1952 SCR 218: (AIR 1952 SC 64) and *Jagan Nath v. Jaswant Singh*,** 1954 SCR 892: (AIR 1954 SC 210). We proceed to state what we have gleaned from what has been said, so much as necessary for this case.
>
> **A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right.** So is the right to dispute an election. **Outside of statute, there is no right to elect, creations they are, and therefore, subject to statutory limitation.**
>
> **In view of the settled law on the point, it must be held that the right to vote is subject to the limitations imposed by the statute which can be exercised only in the manner provided by the statute; and that the challenge to any provision in the statute prescribing the nature of right to elect cannot be made with reference to a fundamental right in the [Indian Constitution]. The very basis of challenge to the validity of sub-section (5) of s 62 of the Act is, therefore, not available and this petition must fail.**
>
> **We are of the same view. In the Malaysian context, the right to vote is also subject to the limitations imposed by statute and the regulations made thereunder and that such right can only be exercised in the manner provided by statute and the regulations made thereunder.**"

[Emphasis Added]

[26] Firstly, we are of the following view regarding the Federal Court's judgment in *Yazid Sufaat*:

(1) the material facts in *Yazid Sufaat* were as follows -

   (a) the applicants in *Yazid Sufaat* were detained under the then applicable Internal Security Act 1960 (Detainees); and

   (b) the Detainees were not allowed to leave the detention centre and cast votes in their respective constituencies where they were registered as voters;

(2) the Detainees applied for leave of the Federal Court to refer six questions of law regarding the Election Commission's obligations, if any, under certain provisions in the FC, EA, Elections (Registration of Electors) Regulations 2002 and Elections (Postal Voting) Regulations 2003 to register the Detainees as "postal voters"· and

(3) *Yazid Sufaat* does not concern the issue of whether an Elector's Right to Vote is a constitutional or statutory right. Consequently, the Federal Court's acceptance of the judgment of the Supreme Court of India in *Anukul Chandra Pradhan v. Union Of India* AIR [1997] SC 2814 (an Elector's Right to Vote is not a constitutional right but a mere statutory right), is merely *obiter*.

[27] Secondly, we opine that an Elector's Right to Vote is a constitutional right and not a statutory right. Our reasons are as follows:

(1) upon a person's (X) fulfilment of art 119(1)(a) to (c) FC, art 119(1) FC has expressly provided that X "is entitled to vote". Such wording of art 119(1) FC clearly confers a constitutional right on X to vote;

(2) Article 4(1) FC states as follows -

> **"Supreme law of the Federation**
>
> 4(1) **This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void."**
>
> [Emphasis Added].
>
> Article 4(1) FC provides for the supremacy of FC — please refer to the judgment of Suffian LP (sitting alone) in the Federal Court case of *Ah Thian v. Government Of Malaysia* [1976] 1 MLRA 410, at p 411.
>
> If there is any Act of Parliament and/or subsidiary legislation which is inconsistent with an Elector's Right to Vote under art 119(1) FC, the Act of Parliament and/or subsidiary legislation "shall' be void to the extent of the inconsistency with an Elector's Right to Vote;

(3) an "existing law" as defined in art 160(2) FC, namely, a pre-Merdeka law, must be "in accord" with the Elector's Right to Vote according to art 119(1) read with art 162(6) and (7) FC — please refer to the judgment of Lord Denning in the Privy Council in *Surinder Singh Kanda v. The Government Of The Federation Of Malaya* [1962] 1 MLRA 233, at p 235 (an appeal from Federation of Malaya):

> Article 162(6) and (7) FC provide as follows:
>
> "Article 162(6)**Any court or tribunal applying the provision of any existing law which has not been modified on or after Merdeka Day under this Article or otherwise may apply it with such modifications as may be necessary to bring it into accord with the provisions of this Constitution.**
>
> (7) **In this Article "modification" includes amendment, adaptation and repeal.**"
>
> [Emphasis Added];

(4) an Elector's Right to Vote pursuant to art 119(1) FC can only be amended by Parliament if such an amendment is passed "by the votes of not less than two-thirds of the total number of members" of both Houses of Parliament. Article 159(1) and (3) FC states as follows -

> "Article 159**Amendment of the Constitution**
>
> (1) **Subject to the following provisions of this Article and to art 161E, the provisions of this Constitution may be amended by federal law.**
>
> [Clause (2) had been deleted]
>
> (3) **A Bill for making any amendment to the Constitution (other than an amendment excepted from the provisions of this Clause) and a Bill for making any amendment to a law passed under Clause (4) of art 10 shall not be passed in either House of Parliament unless it has been supported on Second and Third Readings by the votes of not less than two-thirds of the total number of members of that House.**"

[Emphasis Added].

If an Elector's Right to Vote is a statutory right (not a constitutional right), this implies that the Elector's Right to Vote may be amended by a "simple majority of members voting" as provided in art 62(3) FC; and

(5) the wording of art 119(1) FC can be contrasted with art 326 of the Indian Constitution (IC). Reproduced below is art 326 IC -

> "Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.
>
> The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, **every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.**"

[Emphasis Added].

Article 326 IC only provides that an Indian citizen who is not less than 18 years of age, "shall be entitled to be registered as a voter". Unlike art 119(1) FC, the IC does not confer a constitutional right to vote. Indian statutes have provided for a statutory elector's right

to vote. Hence, Indian cases have decided that an elector's right to vote is a statutory right (not a constitutional right).

H. Is There Monetary Compensation Or Damages For A Breach Of An Elector's Right To Vote?

[28] The learned High Court Judge decided that if there is a denial of an Elector's Right to Vote, an election petition should have been filed. We are not able to agree because, according to art 118 FC, an election petition is filed with the purpose of challenging the validity of an election to the House of Representatives or the State Legislative Assembly. Reproduced below is art 118 FC:

> "Article 118 **Method of challenging election**
>
> **No election to the House of Representatives or to the Legislative Assembly of a State shall be called in question except by an election petition presented to the High Court having jurisdiction where the election was held.**"
>
> [Emphasis Added].

[29] The FC is silent on monetary relief for a breach of an Elector's Right to Vote [Breach (Right to Vote)]. Notwithstanding such a fact, we are of the considered view that the court has a discretionary power to award monetary compensation or damages for a Breach (Right to Vote) {Constitutional Compensation/Damages [Breach (Right to Vote)]}. The following reasons support the existence of the court's discretionary power to award Constitutional Compensation/Damages [Breach (Right to Vote)]:

(1) an Elector's Right to Vote is the cornerstone of a democracy. In view of this fundamental importance of an Elector's Right to Vote, the court's discretionary power to grant Constitutional Compensation/Damages [Breach (Right to Vote)] will ensure that an Elector's Right to Vote is always safeguarded by the 1st Respondent and all other public authorities;

(2) by reason of art 4(1) FC, any Act of Parliament and/or subsidiary legislation which is inconsistent with an Elector's Right to Vote under art 119(1) FC, "shall" be void to the extent of the inconsistency with an Elector's Right to Vote — please refer to the above sub-paragraph 27(2). As explained in the above sub-paragraph 27(3), by virtue of art 162(6) and (7) FC, a pre-Merdeka law must be "in accord" with an Elector's Right to Vote under art 119(1) FC. If the court has no discretionary power to grant Constitutional Compensation/Damages [Breach (Right to Vote)], this will defeat arts 4(1), 119(1), 162(6) and (7) FC:

(3) Order 53 r 2(3) RC has expressly conferred power on the court to grant monetary compensation in a JRA; and

(4) the court should not allow an injustice, including a Breach (Right to Vote), to be without any monetary remedy. In the Court of Appeal of UK in *Wallersteiner v. Moir (No 2)* [1975] 1 All ER 849, at p 857 (concerning a derivative suit by a company's minority shareholder), Lord Denning MR stated that the law would have failed in its purpose if an injustice can be committed without any monetary redress.

[30] In the exercise of the court's discretionary power to award Constitutional Compensation/Damages [Breach (Right to Vote)], the following considerations are relevant:

(1) what is the reason and cause for the Breach (Right to Vote)? In this regard, the 1st Respondent's *bona fides* or the lack of it, is pertinent; and

(2) whether the party who has been unlawfully deprived of his or her right to vote (Y), should be compensated with regard to the following losses -

(a) Y's travelling expenses to and from the polling centre in question;

(b) Y's cost of accommodation (if Y has to travel outstation to vote); and

(c) Y's loss of income because Y has to take time off from work (to vote).

Needless to say, whether the court exercises its discretion in a particular case to grant Constitutional Compensation/Damages [Breach (Right to Vote)] or otherwise, is fact-centric.

[31] In this case, we do not exercise our discretion to award Constitutional Compensation/Damages [Breach (Right to Vote)] to the Appellant because -

(1) the 1st Respondent's Decision/Action was made purely based on the SOP in the interest of public health and safety; and

(2) the 1st Respondent's officers had acted in good faith in this case.

I. Costs

[32] After we have delivered our oral decision, we asked learned counsel regarding the costs of This Appeal and JRA in the High Court (Costs).

[33] Mr New Sin Yew, the Appellant's learned counsel, in the finest traditions of the Bar, informed the court that his client would not seek Costs as this case concerned public interest and had raised novel constitutional issues. In view of this concession, we make no order as to Costs.

J. Conclusion

[34] Premised on the above reasons -

(1) This Appeal is allowed;

(2) the High Court's Decision is set aside;

(3) an order of *certiorari* is granted to quash the 1st Respondent's Decision/Action;

(4) a declaration that the 1st Respondent's Decision/Action was unlawful in preventing the Appellant from voting and/or by denying the Appellant of his right to vote in the Elections on 12 March 2022 on the ground that the Appellant was in a quarantine period;

(5) a declaration that the 1st Respondent's Decision/Action was unlawful in preventing the Appellant from voting and/or by denying the Appellant of his right to vote on the ground that the Appellant had contracted an infectious disease;

(6) a declaration that the 1st Respondent had violated the Applicant's constitutional right under art 119 FC; and

(7) there would be no order as to Costs.

[35] The Appellant, his solicitors and counsel, should be commended for their public-spiritedness in the filing of this case. The Appellant was also magnanimous in not seeking Costs. This Appeal has enabled an elucidation of an Elector's Right to Vote under art 119(1) FC and the 1st Respondent's Duty (Conduct of Elections) pursuant to art 113(1) FC.