

**IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR
(APPELLATE AND SPECIAL POWERS)**

APPLICATION FOR JUDICIAL REVIEW NO: 2015

In the Matter of Part II, Article 5, Federal
Constitution

And

In the Matter of Section 25(2) and/or
paragraph 1, Schedule, Courts of Judicature
Act, 1964

And

In the Matter of Order 53, Rules of Court
2012

And

In the Matter of the decision by the 1st and
2nd Respondent in respect of a guideline for
a medical fee order on foreigners and the
refusal to discuss the same

Between

1. MICHAEL JEYAKUMAR DEVARAJ ...APPLICANT

And

1. MINISTER OF HEALTH MALAYSIA
2. MINISTRY OF HEALTH MALAYSIA
3. GOVERNMENT OF MALAYSIA ...RESPONDENTS

AFFIDAVIT IN SUPPORT

I, **MICHAEL JEYAKUMAR DEVARAJ** [NRIC No.: 550328-01-5553] of full age and a citizen of Malaysia with a residential address at 2A Jln Sitiawan, Lim Gardens, 30100 Ipoh, Perak DR do hereby take oath and state as follows:

1. I am the Applicant. I am a member of Parliament for the constituency of Sungai Siput since 2008. Prior to that, I was working for the 2nd Respondent and held the position of Chest Physician in Hospital Raja Permaisuri Bainun Ipoh and I was the Director of the Tuberculosis Control Program for the State of Perak from 1994 to 1999. I am also the Secretary for the Coalition against Health Care Privatization (“**CAHP**”), a coalition of non-governmental organisations established in 2005 to monitor and provide feedback to the Second Respondent on the development of the healthcare system in Malaysia
2. The facts deposed to herein are within my personal knowledge and/or informed to me as indicated and/or otherwise derived from records to which I have access unless stated to the contrary.
3. This affidavit is affirmed and filed in support of the application for leave to commence judicial review filed herein (the “**Application**”). I am advised by the solicitors for the Applicants and verily believe that the Application is filed with the intention of procuring the leave of this Court to commence judicial review proceedings against the Respondents.
4. I have read the Statement filed herein pursuant to Order 53 Rule 3(2), Rules of Court 2012. I verify the truth of the contents of the said statement and adopt the same herein.

I The material facts

5. The material facts are as follows:

A. The Guideline

6. The 2nd Respondent had vide its letter dated 29.12.2014, imposed a new Medical Fee Order for foreigners which was to be enforced from 01.01.2015. Details and terms of the new medical fee order were made available through a circular entitled Guidelines on the Implementation of the Fee Order (Medical) (Service Cost) 2014 (the “**Guideline**”), which was attached to the letter.

Now produced and shown to me and marked as Exhibit “MJD-1” is a true copy of the 2nd Respondent’s letter dated 29.12.2014, with the Guideline attached to it.

7. In essence, the Guideline regulates the handling of foreigners in government clinics and hospitals. It includes the implementation of the fee structure to be imposed on foreigners and the methods to deal with foreigners without valid travel documents. In this regard:

7.1. I hereby state and verily believe that the most migrant workers in this country earn an income of about RM900.00, which is the minimum wage. This can be reasonably inferred from the fact that many () employers who employ migrant workers were unhappy when the minimum wage policy was implemented on migrant workers;

Now produced and shown to me and marked as Exhibit “MJD-2” is a true copy of an article entitled “Levy it on the workers” dated 07.01.2014 which was published the STAR newspaper ().

7.2. The cost for foreigners to get checked for tuberculosis (“**TB**”), which includes the registration fee and fees for the basic tests, would be RM 92.00. The fee that was charged prior to the implementation of the Guideline was lower. The cost for the same for a Malaysian citizen would be only RM 1.00. The breakdown of the fees in accordance with the Guideline for the year 2015 would be as follows:

No.	Procedure	Cost (RM)	Guideline
1.	Outpatient Registration Fee	23	Table 1, Item 1
2.	Full Blood Count	23	Table 5, Item 153
3.	Erythrocyte Sedimentation Rate (ESR)	12	Table 5, Item 142
4.	Chest X-ray	33	Table 4, Item 1
<u>Total</u>		<u>92</u>	

7.3. Point 10 of the Guideline deters undocumented foreigners from seeking medical treatment as it requires all governmental health institutions to report foreigners without documents to the Royal Malaysian Police (“PDRM”) and the Immigration Department of Malaysia. I am advised by my solicitors and verily believe that section 6(3) of the Immigration Act provides for a mandatory whipping sentence of not more than six strokes on foreigners upon conviction for not possessing valid documents

B. Press statement by CAHCP

8. The CAHCP had discussed the contents of the Guideline and had on 12.02.2015 issued a press statement in response to the Guideline. In this regard:

8.1. In essence, the press statement stressed that the Guideline would have negative impacts on the countries health environment as it deters migrant workers from seeking medical attention;

8.2. This would lead to the transmission of infectious diseases such as TB, which would ultimately be detrimental to the health of ordinary Malaysians;

8.3. A suggestion was made that an immediate moratorium should be imposed on the Guideline and that the issue should be discussed with public health experts, infectious diseases specialists and other competent parties;

8.4. The press statement was endorsed by a total of twelve (12) Non-Governmental Organizations.

Now produced and shown to me and marked as Exhibit “MJD-3” is a true copy of CAHCP’s press statement made on 12.02.2015.

9. The Respondents and their representatives did not make any comments on the press statement issued.

C. Parliamentary debates

10. On 19.03.2015, I was given an opportunity to take part in the address of the Yang di-Pertuan Agong in Parliament. I had raised to the 1st Respondent, amongst others, the following issues:

10.1. The statistics in the Malaysian Medical Association’s publication states that the rate of new cases for TB in Malaysia has increased from 61 cases amongst every 100,000 citizens in 1990 to 81 cases amongst every 100,000 citizens in 2014. This is an increment of 30% over () a period of 25 years. The number of new TB cases has increased from 10,000 cases in 1990 to 24,711 in 2014;

10.2. I then referred to the Guideline and stated that the requirement to report undocumented foreigners to the PDRM and the Immigration Department is against the principles of public health;

10.3. I averred that such a policy would deter undocumented foreigners with TB or potential TB from obtaining proper treatment and medication. This would then expose Malaysian citizens to TB as the undocumented foreigners () share the same working environment and public spaces;

10.4. I concluded by stating that the health care system should be excluded from the steps taken to control undocumented migrant workers. The main role of a health care system is to control the transmission of infectious diseases. Early identification and effective treatment are among the best methods to restrict the transmission of infectious diseases.

Now produced and shown to me and marked as Exhibit “MJD-4” is a true copy of the House of Representatives Meeting Minute dated 19.03.2015

11. On 25.03.2015, during the sitting of Parliament, the 1st Respondent was given the opportunity to address all the health issues raised by () MP’s over the past few days. However, the 1st Respondent did not address the issues I raised as stated in paragraph 10 above.

Now produced and shown to me and marked as Exhibit “MJD-5” is a true copy of the House of Representatives Meeting Minute dated 25.03.2015

D. The decision

12. I, as the Secretary of CAHCP, prepared a letter dated 10.03.2015 to request a date to meet the 1st Respondent or his deputy to discuss the issues arising out of the Guideline because CAHCP opined that the Guideline was detrimental to the health of Malaysians. This letter was signed by Dr. Subramaniam Pillai and was sent by hand to the 1st Respondent’s office in Putrajaya.

Now produced and shown to me and marked as Exhibit “MJD-6” is a true copy of the letter dated 10.03.2015.

13. An official in () the 2nd Respondent’s Financial Division had replied vide his letter dated 21.04.2015. The letter stated that the Guideline issued by the 2nd Respondent was to explain the new medical fee order for foreigners which would be implemented in stages

from 2015. There was no response at all () to GMPPK's request for a meeting to discuss the issue (). This letter was taken as a refusal to discuss the dire issues arising from the implementation of the Guideline (the "**Decision**").

Now produced and shown to me and marked as Exhibit "MJD-7" is a true copy of the letter dated 21.04.2015.

II Grounds for judicial review

14. In view of the foregoing, I am advised by my solicitors and verily believe that there is basis for judicial review in respect of the Decision as the same and the Guideline affect and are detrimental to my rights and/or interests. In this regard:

14.1. TB is a contagious and airborne disease. It ranks as the second leading cause of death from a single agent after the Human Immunodeficiency Virus ("**HIV**"). In Malaysia, there were about 24,711 new cases of TB, with about 1,600 deaths excluding TB/HIV co-infection deaths;

14.2. The mortality rate for TB is 5.3 deaths in every 100,000 Malaysian residents (), which represents the highest amongst all infectious diseases in Malaysia. The rate of new cases for TB has gone up since year 1990, from 61 new cases amongst every 100,000 citizens to 81 new cases amongst every 100,000 citizens, with an increase in new cases from 10,000 cases in 1990 to 24,711 cases in 2014;

Now produced and shown to me and marked as Exhibit "MJD-8" is a true copy of an article entitled "World TB Day 2015" published in the Malaysian 45th Volume of the Medical Association's Journal in March 2015

14.3. Migrant workers are required to undergo a medical screening before entering Malaysia and on a yearly basis while in Malaysia. In 2014, forty-seven (47) percent of the migrant workers that failed their medical screening were found to have been diagnosed with TB. This means that 17,891 migrant workers were

found to have TB and were sent back to their home country in 2014. In regards to the approximately 2,000,000 undocumented foreign workers in Malaysia, who () did not go through any medical screening upon entry and do not go for yearly medical screenings. These undocumented foreign workers represent a major cause for the rise in TB cases;

Now produced and shown to me and marked as Exhibit “MJD-9” is a true copies of two articles in a news portal dated 12.03.2015 which reported statistics on TB and statements made by the Malaysian Medical Association president, Dr. H. Krishna Kumar

Now produced and shown to me and marked as Exhibit “MJD-10” is a true copy of an article in a news portal dated 06.06.2012 which reported statements made by Datuk Dr Abdul Razak Muttalif, director of the Institute of Respiratory Medicine Malaysia at that juncture.

Now produced and shown to me and marked as Exhibit “MJD-11” is a true copy of a Meeting Report entitled “Consultation on Tuberculosis and Migration in the Western Pacific Region”, which is a report by the World Health Organization.

- 14.4. The incidence of new TB cases in the home countries of our migrant workers is significantly higher than in Malaysia, i.e. Bangladesh at 360 new cases per 100,000 residents per year (360/100,000) compared to 81/100,000 for Malaysia. The annual incidence of new TB cases for Indonesia is 430/100,000 and for India,() 2000/100,000.

Now produced and shown to me and marked as Exhibit “MJD-12” is a true copy of a report entitled “Global Tuberculosis Control 2010” published by the World Health Organisation

- 14.5. Paragraph 7 refers. I hereby state and verily believe that:

- a. the cost for migrant workers to get checked for TB is too expensive in lieu of their low salary;
- b. Further, undocumented migrant workers would not get themselves checked if it exposes them to prosecution which might result in severe punishment;
- c. Essentially, the Guideline deters migrant workers, both documented and undocumented, who are a major cause for the rise in TB, from getting checked and treated for the same;
- d. This would then put Malaysian citizens at risk to contracting TB as migrant workers occupy the same public space.

15. Further, I am advised by my solicitors and verily believe that the Guideline and Decision:

15.1. are illegal for:

- a. violating my right to life as guaranteed under Article 5 of the Federal Constitution;
- b. violating the rules of natural justice. The relevant bodies and myself had a right to be heard as the Guideline and Decision affects our rights; and
- c. violating the my legitimate expectation that the relevant bodies and myself would be consulted before the enforcement of the Guideline.

15.2. are irrational and disproportionate as it was made without any sound basis. Further, the 1st and 2nd Respondent had, amongst others, failed to consider:

- a. any of the factors stated in paragraph 8, 10 and 14 above;

- b. the objectives, visions and missions of the 2nd Respondent, which is ultimately to uphold the right to health by providing a high quality healthy system based on a preventive approach;

Now produced and shown to me and marked as Exhibit “MJD-13” is a true copy of a the 2nd Respondents profile in its official website and its 2011 Annual Report

- c. that one of most internationally recognized means to control TB is to ensure early diagnosis and treatment so that the sources of transmission of TB can be kept to a minimum. In fact, the then Minister of the 2nd Respondent, Dato’ Sri Liow Tiong Lai, on 24.03.2012, during his keynote address in Kuala Lumpur for the World TB Day, said that the 2nd Respondent would implement a 5-year national strategic plan so that TB patients are diagnosed and treated early. He also said that the 2nd Respondent would require considerable support from non-governmental organisations; and

Now produced and shown to me and marked as Exhibit “MJD-14” is a true copy of a report entitled “Global Tuberculosis Control 2009 – Epidemiology Strategy Financing” published by the World Health Organization

Now produced and shown to me and marked as Exhibit “MJD-15” is a true copy of an article entitled “Responding to the increasing threat of TB: Malaysia’s battle plan” which is an excerpt from the keynote address by Dato’ Sri Liow Tiong Lai

- d. that foreign workers contribute a large sum to the country’s gross domestic product. In 2005, the contribution amounted to RM 17 billion (.). A total of RM 1.9 billion was collected from levies on foreign workers in 2004.

Now produced and shown to me and marked as Exhibit “MJD-16” is a true copy of an article entitled “Foreign workers contribute RM 17bil to the economy”, which reported statements made by the then Deputy Resources Minister, Datuk Abdul Rahman Bakar on 28.10.2005

15.3. were made with procedural impropriety for reasons stated in paragraph 15.1 () above.

III Conclusion

16. I humbly pray for order in terms of the said Application filed herein.

Solemnly affirmed and subscribed by)
Michael Jeyakumar Devaraj)
(NRIC No. 550328-01-5553))
At Kuala Lumpur on)

Before me,

.....
Commissioner of Oath

This AFFIDAVIT IN SUPPORT is filed by Messrs. Malik Imtiaz Sarwar, solicitors for the Applicant, whose address of service is at E3, Taman Tunku Apts, Taman Tunku, Bukit Tunku, 50480 Kuala Lumpur.

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