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Su Tiang Joo v Tribunal for Consumer Claims & Anor

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-01 (A)-139–03 OF 2019
UMI KALTHUM, MARY LIM AND SURAYA OTHMAN JJCA
20 JULY 2020

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Administrative Law — Judicial review — Application for — Decision of Tribunal for Consumer Claims ('Tribunal') — High Court dismissed application — Appeal against decision — Whether appellant had locus standi to initiate claim before Tribunal — Whether there was error of law, irrationality or unreasonableness in decision of Tribunal

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This appeal involved a monetary claim of a sum of RM3,250. It arose out of a bill totalling RM5,623.70 to replace a defective blower fan and batteries in the appellant's Mercedes-Benz E300 which he bought from the second respondent under hire purchase arrangements on 22 November 2010. After the batteries and fan blower were replaced by the second respondent's authorised dealer, Hap Seng Star Sdn Bhd, the second respondent refused to reimburse the appellant for the costs of these replacements citing that it was not obliged to pay since the relevant three-year warranty period had expired. The three-year warranty comprised a two-year warranty from the manufacturer and an extended one-year warranty by the second respondent. On 26 September 2011, the second respondent decided to revised the warranty period to four-years. This warranty was however, only offered to Mercedes-Benz vehicles purchased and/or registered from 1 October 2011 onwards. The appellant was obviously displeased when he learnt that the revised warranty period did not apply to his Mercedes-Benz purchased just over ten months earlier. The appellant took his complaint to the first respondent, the Tribunal for Consumer Claims ('the Tribunal'). He filed two claims: one against the second respondent, the other against Hap Seng Star Sdn Bhd. The claim against Hap Seng Star Sdn Bhd was allowed and Hap Seng Star Sdn Bhd was ordered to reimburse the appellant the sum of RM2,055.40 for the battery. The claim against the second respondent for the sum of RM5,623.70 was struck out and it was taken to the High Court for judicial review. The High Court allowed the application on terms and further directed the Tribunal to rehear part of the appellant's claim. The order of the High Court was duly complied by the Tribunal. Upon rehearing, the claim was dismissed by a differently composed panel of the Tribunal. The appellant then filed a second judicial review application seeking to quash the Tribunal's decision. He also asked for consequential relief in the form of an order for monetary compensation of RM3,250 with interest to be paid by the second respondent. The application was dismissed and hence this appeal.

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Held, dismissing the appeal with no order as to cost:

(1) The appellant had the requisite locus standi to initiate the claim before the Tribunal. The appellant was obviously a consumer as defined in s 2 of the Consumer Protection Act 1999 ('the CPA 1999'); having bought 'goods' in the form of a vehicle or more specifically, a Mercedes-Benz from the second respondent. Since the appellant was a consumer of goods covered under the CPA 1999, the appellant had the necessary locus standi to bring his claim before the Tribunal. It was far too late for the respondent to challenge his right to sue having kept silent in the substantial proceedings before the Tribunal. The second respondent had acceded to the appellant's right to bring his claim as a consumer claim before the Tribunal; had fully participated in those proceedings to their conclusion on both occasions; and could not now reprobate from that stand. The second respondent was thus estopped from pleading lack of locus standi. The locus standi that the second respondent complained the appellant lacked did not pertain to the jurisdiction of the Tribunal in the sense that sans this locus standi, the Tribunal would be bereft of jurisdiction. Therefore, the learned judge was thus in error in accepting the second respondent's submission that the appellant lacked locus standi (see paras 34, 36–38 & 40–41).

(2) There was no error of law, irrationality or unreasonableness in the decision of the Tribunal. There was no merit in the appellant's complaints and the appellant had not established a case for the orders sought. The appellant's case which was a simple claim for refund for repairs no longer of RM5,623.70 as claimed in his statement of claim filed before the Tribunal, but a sum of RM3,250 for the fan blower, to have been taken far beyond the reaches of the intent of CPA 1999. The claim ought to have been confined to the pleaded complaint(s) and defence(s). There was no error in the deliberations of the Tribunal that may be said to fall within the meaning of *Wednesbury* unreasonableness; irrationality or even unlawfulness. The award was well-reasoned and there was no error of law committed by the Tribunal warranting any exercise of the court's supervisory powers. There was also no failure to adhere to 'acceptable standards of administrative law and justice; or administrative governance'; and, as pronounced by the learned judge, based on the evidence available, including the clear terms of the warranty period with regard to the vehicle, the second respondent had indeed discharged its burden of proof required under s 24E of the CPA 1999. The evidence led by the second respondent was more than adequate to meet the burden of proof. The evidence of the parties themselves was corroborated by the terms of the warranties. Further, the explanations from the second respondent themselves as to why there was a change or revision of warranty policy; that it was based on business efficacy and to keep themselves competitive were rightly accepted by the Tribunal. There was

nothing irrational about such a decision and there was no need for any other evidence save what was already available before the Tribunal. Such an explanation did not require the calling of the manufacturers in Germany since the warranty in question was in any case, one offered by the second respondent, and not the manufacturer. The reasons and explanation were valid and acceptable; and the construction and interpretation of the warranties and the relevant provisions of CPA 1999 was correct in law (see paras 42, 45–46, 50 & 86–89).

(3) The first respondent Tribunal created under the CPA 1999 had acted well within its powers and jurisdiction. In this respect, the second respondent had discharged its burden of proof under s 24E of the CPA 1999; that there was no case made under Part IIIA of CPA 1999; and that the standard form three-year warranty that the appellant had with the second respondent was valid and binding. The second respondent was therefore entitled to refuse and/or reject the appellant's claim for refund or reimbursement of the repaid of the fan blower. Consequently, as provided under s 116(1) of the CPA 1999, the decision of the Tribunal 'shall be final and binding on all parties to the proceedings' (see paras 90–91).

[Bahasa Malaysia summary

Rayuan ini melibatkan tuntutan wang berjumlah RM3,250. Ia timbul daripada bil berjumlah RM5,623.70 untuk menggantikan kipas dan bateri yang rosak pada Mercedes-Benz E300 perayu yang dibelinya daripada responden kedua di bawah perjanjian sewa beli pada 22 November 2010. Setelah bateri dan kipas diganti oleh peniaga sah responden kedua, Hap Seng Star Sdn Bhd, responden kedua enggan membayar balik perayu untuk kos penggantian dengan alasan bahawa ia tidak terikat untuk membayar kerana tempoh jaminan tiga tahun yang relevan telah tamat. Jaminan tiga tahun merangkumi jaminan dua tahun daripada pengilang dan jaminan satu tahun lanjutan oleh responden kedua. Pada 26 September 2011, responden kedua memutuskan untuk mengubah tempoh jaminan kepada empat tahun. Jaminan ini bagaimanapun, hanya ditawarkan kepada kenderaan Mercedes-Benz yang dibeli dan/atau didaftarkan dari 1 Oktober 2011 dan seterusnya. Perayu jelas tidak senang ketika dia mengetahui bahawa tempoh jaminan yang diubah tidak terpakai untuk Mercedes-Benz yang dibeli sepuluh bulan sebelumnya. Perayu menyampaikan aduannya kepada responden pertama, Tribunal untuk Tuntutan Pengguna ('Tribunal'). Perayu memfailkan dua tuntutan: satu terhadap responden kedua, satu lagi terhadap Hap Seng Star Sdn Bhd. Tuntutan terhadap Hap Seng Star Sdn Bhd dibenarkan dan Hap Seng Star Sdn Bhd diperintahkan untuk membayar balik perayu sebanyak RM2,055.40 untuk bateri. Tuntutan terhadap responden kedua dengan jumlah RM5,623.70 dibatalkan dan ia dibawa ke Mahkamah Tinggi untuk semakan kehakiman. Mahkamah Tinggi membenarkan permohonan itu

dengan syarat dan selanjutnya mengarahkan Tribunal untuk mendengar kembali sebahagian tuntutan perayu. Perintah Mahkamah Tinggi dipatuhi oleh Tribunal. Setelah pendengaran semula, tuntutan tersebut ditolak oleh panel Tribunal yang berbeza. Perayu kemudian mengemukakan permohonan semakan kehakiman kedua yang memohon pembatalan keputusan Tribunal. Perayu juga meminta relif berbangkit dalam bentuk perintah untuk pampasan wang sebanyak RM3,250 dengan faedah yang harus dibayar oleh responden kedua. Permohonan itu ditolak dan oleh itu rayuan ini.

Diputuskan, menolak rayuan tanpa perintah kos:

(1) Perayu mempunyai locus standi yang diperlukan untuk mengemukakan tuntutan itu di hadapan Tribunal. Perayu jelas merupakan pengguna seperti yang didefinisikan dalam s 2 Akta Perlindungan Pengguna 1999 ('Akta tersebut'); setelah membeli 'barang' dalam bentuk kenderaan atau lebih khusus lagi, sebuah Mercedes-Benz daripada responden kedua. Oleh kerana perayu adalah pengguna barang yang dilindungi di bawah Akta tersebut, perayu mempunyai locus standi yang diperlukan untuk mengemukakan tuntutannya ke Tribunal. Adalah terlambat bagi responden untuk mencabar haknya untuk menuntut dengan terus membisu dalam sebahagian besar prosiding di hadapan Tribunal. Responden kedua telah mengakui hak perayu untuk mengemukakan tuntutannya sebagai tuntutan pengguna ke Tribunal; telah mengambil bahagian sepenuhnya dalam prosiding tersebut sehingga kesimpulan mereka pada kedua-dua peristiwa; dan sekarang tidak dapat menolak dari pendirian itu. Oleh itu, responden kedua diestopkan daripada memplid ketiadaan locus standi. Locus standi yang responden kedua adukan perayu kekurangan tidak berkaitan dengan bidang kuasa Tribunal dalam erti bahawa tanpa locus standi ini, Tribunal akan kehilangan bidang kuasa. Oleh itu, hakim yang bijaksana terkhilaf dalam menerima hujahan responden kedua bahawa perayu tidak mempunyai locus standi (lihat perenggan 34, 36–38 & 40–41).

(2) Tidak ada kesalahan undang-undang, tidak rasional atau tidak munasabah dalam keputusan Tribunal. Tidak ada merit dalam aduan perayu dan perayu tidak membuktikan kes untuk perintah yang dipohon. Kes perayu yang merupakan tuntutan mudah untuk pengembalian wang untuk pembaikan tidak lagi berjumlah RM5,623.70 seperti yang dituntut dalam pernyataan tuntutannya yang difailkan di Tribunal, tetapi sejumlah RM3,250 untuk kipas, telah jauh dari jangkauan niat Akta tersebut. Tuntutan itu seharusnya terbatas pada aduan dan pembelaan yang diplidkan. Tidak ada kesalahan dalam perbincangan Tribunal yang dapat dikatakan masuk dalam maksud *Wednesbury* tidak munasabah; tidak rasional atau bahkan menyalahi undang-undang. Award tersebut beralasan kukuh dan tidak ada kesalahan undang-undang yang dilakukan oleh Tribunal yang

mewajarkan pelaksanaan kuasa pengawasan mahkamah. Tidak ada juga kegagalan untuk mematuhi 'standard undang-undang dan keadilan pentadbiran yang dapat diterima; atau tadbir urus pentadbiran'; dan, seperti yang diucapkan oleh hakim yang bijaksana, berdasarkan keterangan yang ada, termasuk syarat-syarat yang jelas mengenai tempoh jaminan berkenaan dengan kenderaan, responden kedua memang telah melepaskan beban bukti yang diperlukan berdasarkan s 24E Akta tersebut. Keterangan yang dikemukakan oleh responden kedua lebih daripada cukup untuk memenuhi beban pembuktian. Keterangan pihak-pihak itu sendiri disahkan oleh syarat-syarat jaminan. Selanjutnya, penjelasan daripada responden kedua sendiri mengenai mengapa terdapat perubahan atau semakan polisi jaminan; bahawa ia berdasarkan keberkesanan perniagaan dan untuk menjaga persaingan mereka diterima dengan tepat oleh Tribunal. Tidak ada yang tidak rasional mengenai keputusan tersebut dan tidak perlu ada keterangan lain kecuali apa yang sudah ada di hadapan Tribunal. Penjelasan sebegitu tidak memerlukan pemanggilan pengeluar di Jerman kerana jaminan yang dimaksud adalah, yang ditawarkan oleh responden kedua, dan bukan pengeluarnya. Sebab dan penjelasannya adalah sah dan boleh diterima; dan pembinaan dan tafsiran jaminan dan peruntukan Akta tersebut yang berkaitan adalah betul dari segi undang-undang (lihat perenggan 42, 45–46, 50 & 86–89).

(3) Responden pertama Tribunal yang dibentuk di bawah Akta tersebut telah bertindak dengan baik dalam kuasa dan bidang kuasanya. Dalam hal ini, responden kedua telah melepaskan bebanan pembuktiannya berdasarkan s 24E Akta tersebut; bahawa tidak ada kes dibuat di bawah Bahagian IIIA Akta tersebut; dan bahawa jaminan standard tiga tahun yang dimiliki perayu dengan responden kedua adalah sah dan mengikat. Oleh itu, responden kedua berhak untuk menyangkal dan/atau menolak tuntutan perayu untuk pengembalian wang atau penggantian pembayaran balik kipas. Akibatnya, seperti yang diperuntukkan di bawah s 116(1) Akta tersebut, keputusan Tribunal 'adalah muktamad dan mengikat semua pihak dalam prosiding' (lihat perenggan 90–91).]

Cases referred to

Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd [1995] 3 MLJ 331, FC (refd)

Hazlinda bte Hamzah v Kumon Method of Learning Centre [2006] 3 MLJ 124; [2006] 2 CLJ 933, CA (folld)

Hello Holidays Sdn Bhd v Phang Lai Sim and other applications [2014] 8 MLJ 478, HC (refd)

Madin Al-Syarif Travel Sdn Bhd & Anor v Tribunal Tuntuan Pengguna Malaysia [2020] MLJU 396; [2020] 1 LNS 312, HC (refd)

Malaysia Land Properties Sdn Bhd v Waldorf & Windsor Joint Management Body [2014] 3 MLJ 467, CA (distd)
Ong Siew Hwa v UMW Toyata Motor Sdn Bhd [2018] 5 MLJ 281; [2018] 8 CLJ 145, FC (refd)
Prangin Mall Sdn Bhd v Tang Joo Ming & Anor [2013] 6 MLJ 753; [2012] 1 LNS 1285, CA (refd)
Tenby World Sdn Bhd v Soh Chong Wan & Anor [2013] MLJU 1623; [2013] 10 CLJ 822, HC (refd)

Legislation referred to

Consumer Protection Act 1999 ss 2, 24B, 24C, 24E, 24G, 32, 32(1), (2), 97, 98 98(3), 99 104(1), (2), 110, 116(1), Part IIIA, Part XII
Contracts Act 1950
Courts of Judicature Act 1964
Sale of Goods Act 1957

Appeal from: Judicial Review Application No WA-25–132–05 of 2018 (High Court, Kuala Lumpur)

Su Tiang Joo (Liew Yik Kai with him) (Cheah Teh & Su) for the appellant.
K Kirubakaran (Vanessa Yap Yoong Wei with him) (Shui Tai) for the respondent.

Mary Lim JCA (delivering judgment of the court):

[1] The appellant's application for judicial review of the first respondent's decision dismissing his claim before the Tribunal for Consumer Claims was dismissed. It was the second of such applications.

[2] After due consideration of the submissions of all parties concerned and the reasoning of the learned judge, we dismissed the appeal with no order as to costs.

THE CONSUMER CLAIM

[3] This appeal involved a monetary claim of a sum of RM3,250. It arose out of a bill totaling RM5,623.70 to replace a defective blower fan and batteries in the appellant's Mercedes-Benz E300 which he bought from the second respondent under hire purchase arrangements on 22 November 2010. After the batteries and fan blower were replaced by the second respondent's authorised dealer, Hap Seng Star Sdn Bhd, the second respondent refused to reimburse the appellant for the costs of these replacements citing that it was not obliged to pay since the relevant three-year warranty period had expired.

[4] At the time of the appellant's purchase of his Mercedes-Benz in November of 2010, the second respondent gave a three-year warranty for any

defects of parts for vehicles that it sold. The three-year warranty comprised a two-year warranty from the manufacturer and an extended one-year warranty by the second respondent. The warranty was applicable to all parts of the vehicle.

[5] On 26 September 2011, the second respondent decided to revise the warranty period to four-years. This warranty was however, only offered to Mercedes-Benz vehicles purchased and/or registered from 1 October 2011 onwards. The four-year warranty was actually an extension of the country warranty from one to two-years and it was only applicable in Malaysia.

[6] The appellant was obviously displeased when he learnt that the revised warranty period did not apply to his Mercedes-Benz purchased just over ten months earlier, on 22 November 2010. He felt that the revision should have been extended to his purchase.

[7] The appellant took his complaint to the first respondent, the Tribunal for Consumer Claims ('the Tribunal'). He filed two claims: one against the second respondent (Claim No TTPM-WP-(P)-1543–2015), the other against Hap Seng Star Sdn Bhd (Claim No TTPM-WP-(P)-1542–2015). The claim against Hap Seng Star Sdn Bhd was allowed on 7 January 2016 and Hap Seng Star Sdn Bhd was ordered to reimburse the appellant the sum of RM2,055.40 for the battery. The award of the Tribunal in Form 10 can be seen at p 287.

[8] On the same date, 7 January 2016, the claim against the second respondent (Claim No TTPM-WP-(P)-1543–2015) for the sum of RM5,623.70 was struck out (*dibatalkan*) (see ss 98(3) and 104(1) and (2) of the Consumer Protection Act 1999 ('the CPA 1999') on the use of different terminologies of 'withdrawn', 'abandoned' and 'struck out'). The decision was not in Form 10 but communicated vide letter dated 7 January 2016 — see p 185.

[9] The reasons for the award against Hap Seng Star Sdn Bhd in Claim No TTPM-WP-(P)-1542–2015 and for the striking out of Claim No TTPM-WP-(P)-1543–2015 against the second respondent are not obvious as the related papers are not in the records of appeal. Neither is the statement of claim in Form 1 against Hap Seng Star.

FIRST JUDICIAL REVIEW

[10] It was the decision of the Tribunal striking out the appellant's claim against the second respondent in Claim No TTPM-WP-(P)-1543–2015 that was taken to the High Court under Judicial Review Application No WA-25–67–04 of 2016.

[11] In this judicial review application, the appellant applied for an order of certiorari to quash the whole decision and for a mandamus directing the Tribunal to rehear not his whole claim but only the part of his claim relating to the fan blower (first judicial review). As part of his reliefs, the appellant also asked that 'in the course of which to call upon the supplier and/or the manufacturer of the fan blower, viz the second respondent, to discharge the burden of proof pursuant to s 24E of the Consumer Protection Act 1999'.

[12] On 21 October 2016, the High Court allowed the application on terms. The order of certiorari was only granted in respect of a part of the decision of the Tribunal 'yang menolak secara sebahagian tuntutan Pemohon No TTPM-WP-(P)-1543–2015 berkaitan dengan penghembus kipas yang dibekalkan bersama kenderaan nombor pendaftaran WUN 833'. The record shows that the whole claim was 'dibatalkan' suggesting thus that the claim on the batteries remained struck out. The High Court further directed the Tribunal to rehear part of the appellant's claim, that is, the claim on the fan blower 'dan di dalam proses tersebut memanggil pembekal dan/atau pengilang penghembus kipas (fan blower), iaitu responden kedua bagi melepaskan beban pembuktiannya menurut s 24E Akta Perlindungan Pengguna 1999' — see p 268 of the record of appeal.

[13] The order of the High Court was duly complied by the Tribunal. Upon rehearing, the claim was dismissed on 26 February 2018 by a differently composed panel of the Tribunal.

THE SECOND JUDICIAL REVIEW

[14] The appellant then filed the second judicial review application seeking to quash the Tribunal's decision made on 26 February 2018. He also asked for consequential relief in the form of an order for monetary compensation of RM3,250 with interest to be paid by the second respondent because of the delay caused by the intervening events as explained above.

[15] The appellant claimed that:

(a) in dismissing his claim, the Tribunal had taken into account matters which it should not and had failed to take into account matters which it should;

(b) although the Tribunal had directed the second respondent to prove that the warranty given for the fan blower for only three years instead of four years was not without adequate justification, the second respondent neglected and failed to adduce any evidence;

(c) the Tribunal had erred in law in relying on a standard form provided by the second respondent;

(d) the Tribunal had wholly relied on the second respondent's assertions made without any evidence and without subjecting the evidence to be tendered on oath and cross-examination resulting in the Tribunal making a decision without any evidence to support the decision;

(e) the second respondent had failed to discharge its burden of proof under s 24E of the CPA 1999 as directed by the High Court in the first judicial review; and

(f) the Tribunal's decision was unlawful, capricious, arbitrary, a mere camouflage and which suffers from *Wednesbury* unreasonableness.

[16] At the High Court, the second respondent:

(a) challenged the appellant's locus standi to initiate the claim before the Tribunal;

(b) argued that the appellant was bound by the warranty period upon which the appellant had purchased his vehicle;

(c) contended that the revision or change of warranty period was a business decision which was legally and commercially valid; and

(d) claimed that s 24E of the CPA 1999 had no application to the appellant's case.

DECISION OF THE HIGH COURT

[17] The learned judge agreed with the second respondent on the issue of locus standi. The learned judge found that in view of the hire purchase arrangements, the contractual arrangements between the appellant and the second respondent had been superseded by the hire purchase agreement leaving the appellant without any legal capacity to file the judicial review application. The High Court therefore was said to be without jurisdiction to hear the matter and on that ground alone was prepared to dismiss the judicial review application.

[18] The High Court nevertheless went on to consider the merits finding the appellant to be bound by the terms of the standard form warranty since he had accepted the terms at the material time of purchase of the vehicle. The High Court also agreed with the Tribunal's acceptance of the second respondent's explanation that the change or revision of the period or duration of warranty was a proper and legal business decision which the second respondent was entitled to make in order to attract customers.

[19] On the issue of s 24E of the CPA 1999, the High Court found that it had no application since the appellant had no locus standi to bring the

proceedings. The High Court found the burden in any event to be discharged in view of the clear terms of the warranty.

OUR ANALYSIS AND DECISION

[20] The consumer claim at the heart of the appellant's complaint is to be found in his statement of claim filed on 7 December 2015. It is in the prescribed Form 1 and the claim was registered as No TTPM-WP-(P)-1543–2015.

[21] According to the statement of claim, the appellant claimed the sum of RM5,623.70, particularised as follows:

> Car engine fan blower and batteries under warranties had to be replaced during the warranty period and charges were not waived.

[22] A copy of the cash sales for the repairs was attached to the claim filed — see pp 172–177 of the record of appeal. There were no other complaints.

[23] The second respondent's statement of defence seen at p 180, inter alia, pleaded:

> 4. The Vehicle was registered on 22 November 2010 and was provided with a three (3) years warranty period comprising of two (2) years motor vehicle manufacturer plus one (1) year in country warranty ('3 Years Warranty'), which commenced on 22 November 2010 and has expired on 21 November 2013. The 3 Years Warranty is stated in the Introduction Booklet which was given to the Claimant when the Claimant purchased the Vehicle back in 2010. A copy of an extract of the Introduction Booklet is enclosed herewith as Appendix A. At the hearing and if requested by this Honourable Tribunal, the Respondent's representatives will produce a complete copy of the Introduction Booklet.
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> 5. The Respondent submits that at the time of the repair, the 3 Years Warranty has expired and the replacements provided were no longer under warranty. As such, the Claimant shall bear the Cost of Repair.
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> 6. In the premises the respondent denies that the Claimant is entitled to any of the relief sought in this action and accordingly, prays the claim be dismissed with costs.

[24] On 7 January 2016, the claim was dismissed by the Tribunal.

[25] The Consumer Claims Tribunal is a specific forum statutorily set up under Part XII of the CPA 1999 to hear and determine consumer claims. How such claims and decisions of the Tribunal are to be viewed and treated by the court has been examined in several decisions.

[26] In one of the earliest pronouncements on this area of law, the Court of

Appeal in *Hazlinda bte Hamzah v Kumon Method of Learning Centre* [2006] 3 MLJ 124; [2006] 2 CLJ 933, after commenting on how at that material time, disposal of claims filed in court 'would take ages', opined:

> [3] It was to remedy this injustice that Parliament enacted the Consumer Protection Act 1999 ('the Act') which came into force on 15 November 1999. Its long title sets out its general objective. It says this:
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> > An Act to provide for the protection of consumers, the establishment of the National Consumer Advisory Council and the Tribunal for Consumer Claims, and for matters connected therewith.
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> [4] It has several important provisions, some of which are more beneficial than those found in the Sale of Goods Act 1956. They apply to both goods and services. The purpose of those provisions is to protect consumers from the provision of defective goods and services and to give claimants speedy relief. Parliament knew that if matters were left to the ordinary courts, the protection it had set about giving to consumers would be rendered illusory. So it established the Tribunal. A few words must be said about the way it functions and its powers.
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> [5] The jurisdiction of the Tribunal is limited to hearing claims not exceeding RM25,000 (s 98) and proceedings before it are commenced by lodging a claim with it in the prescribed form (s 97) within three years of the claim accruing (s 99(2)). Parties are entitled to attend and be heard (s 108(1)) but are not entitled to legal representation (s 108(2)). The Act in s 109 requires the hearings of the Tribunal to be open to the public and by s 110 empowers the Tribunal to take evidence and 'to generally direct and do all such things as may be necessary or expedient for the expeditious determination of the claim'. The words to which emphasis has been supplied reflect the central theme of the Act, namely, the speedy disposal of consumer claims. You will find it repeated in s 112(1) of the Act which requires the Tribunal to make its award 'without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences'.
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> [6] The Tribunal has very wide powers. These are to be found in s 112(2) which, among other things, enables the Tribunal to direct the payment of money or to direct the refund of the consideration paid for goods or services or to direct payment of compensation or to vary or set aside a contract wholly or in part. Its powers are exercisable even in the event that the party complained against fails to appear at the hearing. (See s 111 of the Act.)
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> ...
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> [12] There remains one final matter which requires mention. As already observed, the Tribunal is a specially constituted body to speedily deal with consumer's complaints. Although its awards are final (which means that they are final on the facts but not on the law: *R v Medical Appeal Tribunal, ex p Gilmore* [1957] 1 QB 574) they are amenable to judicial review. It is the submission of learned counsel for the respondent that the Tribunal committed an error of law because it ordered a partial refund of the consideration paid by the appellant to the respondent when there was absent here a total failure of consideration. With respect, it is to overcome this sort of technical common law rule that the Act conferred wide powers on the Tribunal. As already demonstrated, the Tribunal has the power to direct a refund. It did so in this case. So there is no error of law at all here.

[13] *Being a specialist body, the Tribunal has been conferred with extraordinary powers to do speedy justice for consumers. As such, its awards should not be struck down save in the rarest of cases, where it has misinterpreted some provision of the Act in such a way to produce an injustice. For courts should be ever remindful that certiorari is not a remedy that is available as of right. It is a discretionary remedy. It is not every error of law committed by an inferior Tribunal that entitles the High Court to issue certiorari. It must be demonstrated that the error has occasioned an injustice in a broad and general sense*. This principle was laid down by the Federal Court in *Hoh Kiang Ngan v Mahkamah Perusahaan Malaysia & Anor* [1995] 3 MLJ 369; [1996] 4 CLJ 687 and in *R Rama Chandran v Industrial Court of Malaysia & Anor* [1997] 1 MLJ 145; [1997] 1 CLJ 147 where the following passage in the judgment of Bose J in *Sangram Singh v Election Tribunal* AIR [1955] SC 425 was applied with approval:

> That, however, is not to say that the jurisdiction (to issue certiorari) will be exercised whenever there is an error of law. The High Courts do not, and should not, act as Courts of Appeal under Art 226. Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the legislature to have disputes about these special rights decided as speedily as may be. Therefore, writ petitions should not be lightly entertained in this class of case. (Emphasis added.)

[14] Two points need to be made. First, that art 226 of the Indian Constitution is in essence identical to para 1 of the Schedule to the Courts of Judicature Act 1964. Second, the words in the judgment of Bose J to which emphasis has been lent above are entirely apposite to the Tribunal established by the Act. (Emphasis added.)

[27] This decision was cited in the Federal Court decision of *Ong Siew Hwa v UMW Toyata Motor Sdn Bhd* [2018] 5 MLJ 281; [2018] 8 CLJ 145; and referred to and applied recently by Wong Kian Kheong J in *Madin Al-Syarif Travel Sdn Bhd & Anor v Tribunal Tuntuan Pengguna Malaysia* [2020] MLJU 396; [2020] 1 LNS 312.

[28] Similar views were expressed in *Hello Holidays Sdn Bhd v Phang Lai Sim and other applications* [2014] 8 MLJ 478 at p 491 by Vernon Ong J (as His Lordship then was) when invited to use the court's supervisory powers to quash a decision of the Tribunal. His Lordship refined his views earlier expressed in *Tenby World Sdn Bhd v Soh Chong Wan & Anor* [2013] MLJU 1623; [2013] 10 CLJ 822 on both the CPA 1999 and the Tribunal:

> [25] At the juncture, it is pertinent to note that the Tribunal is a statutory body created under the Consumer Protection Act 1999 (CPA 1999). An award of the tribunal 'shall be final and binding on all parties to the proceedings' (s 116 of the

CPA). This aspect of finality is reinforced by two provisions: (a) that an award shall be deemed to be an order of a magistrate's court and enforceable accordingly; and (b) criminal penalty of fine or imprisonment for non-compliance with an award (ss 116(2) and 117 of the CPA).

[26] Against this backdrop, it [sic] is becomes apparent that the intention of the Legislature in enacting the CPA is for the protection of the consumers. The tribunal was created to give fair and speedy justice for the aggrieved consumer. The CPA provides a relatively fair and simple and expeditious procedure for the hearing of a claimant's claim. It is also pertinent to note that the award of the tribunal is final and binding.

[27] In the light of the legislative intent, it would not be appropriate for the court to go into the merits or substance of the tribunal's decision during the judicial review application. To do so would defeat the very object and purpose of the statutory framework of the CPA. Accordingly, the court will only exercise corrective jurisdiction where there is clear evidence that the tribunal has failed to adhere to the acceptable standards of administrative law and justice; or administrative governance; as where it is shown that there has been a clear error of law committed by the tribunal (see *Sheila a/p Sangar v Proton Edar Sdn Bhd & Anor* [2009] 4 MLJ 285; [2009] 2 ILR 489).

[29] Several key elements emerge from all these observations:

(a) the CPA 1999 is intended to protect consumers;

(b) the Tribunal created under the CPA 1999 has extraordinary powers designed to give fair and speedy justice for the aggrieved consumer;

(c) the procedure before the Tribunal is relatively fair and simple;

(d) the award of the Tribunal is final and binding; but not on the law; and

(e) awards of the Tribunal should not be struck down 'save in the rarest of cases where it has misinterpreted some provision of the Act in such a way to produce an injustice'.

[30] The powers of the court to grant orders of certiorari, declarations, mandamus are conferred under the Courts of Judicature Act 1964. These powers are 'purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily; and one of the limitations imposed by the courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue'. These powers are exercised using the court's supervisory and not appellate jurisdiction. Hence, the frequent reminders that the courts must 'not allow themselves to be turned into courts of appeal or revision to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no legislature can impose limitations on these constitutional powers it is a sound exercise of discretion to bear in mind the policy of the

legislature to have disputes about these special rights decided as speedily as may be'. A

[31] These sound principles of law continue to resonate today. Though the courts must ever be vigilant as vanguards to check any abuse or arbitrary use of power, it is the scales of justice that the lady of justice balances with her sword of justice. The courts also recognise that it is not alone in the task of dispute resolution and that for any number of reasons, generally rooted in policy, tribunals such as the Tribunal, are set up to deal with specific claims. The role of the Tribunal has already been discussed in *Hazlinda bte Hamzah* and the other cases cited above; and we adopt them. B C

[32] In this appeal, the appellant argued that it was not open to the second respondent to raise the matter of his locus standi to initiate the claim before the Tribunal for the first time three years after the first hearing before the Tribunal. That issue was furthermore never raised in the first judicial review proceedings or even at the second hearing before the Tribunal. A whole host of authorities on the law concerning pleadings and how parties are bound to their pleadings and how such issue cannot be subsequently raised were cited to us. D E

[33] The second respondent on the other hand, contended that it was right for the learned judge to hold that the appellant's claim against the second respondent was defective and unmaintainable due to want of locus standi. Relying on the Federal Court decision of *Ong Siew Hwa v UMW Toyata Motor Sdn Bhd* [2018] 5 MLJ 281; [2018] 8 CLJ 145, the second respondent submitted that this was a question of jurisdiction which it was entitled to raise at any time. When the appellant entered into the hire purchase agreement with EON Bank Bhd, that agreement superseded and extinguished the sales contract that the appellant had with the second respondent in which case, the appellant had no locus standi to make any claim against the second respondent. F G

[34] On the issue of locus standi, we agree with the appellant that he has the requisite locus standi to initiate the claim before the Tribunal.

[35] The jurisdiction of the Tribunal is limited in two respects: subject matter and financial limits so long as the claim is brought by a consumer — see ss 2, 97, 98 and 99. The first respondent, the Tribunal, is also only authorised to hear consumer claims where the total amount sought to be awarded does not exceed RM50,000: H I

> 2 Application
>
> (1) Subject to subsection (2), this Act shall apply in respect of all goods and services that are offered or supplied to one or more consumers in trade including any trade transaction conducted through electronic means.

(2) This Act shall not apply —

(a) to securities as defined in the Securities Industry Act 1983 [Act 280];

(b) to futures contracts as defined in the Futures Industry Act 1993 [Act 499];

(c) to contracts made before the date on which this Act comes into operation;

(d) in relation to land or interests in law except as may be expressly provided in this Act;

(e) to services provided by professionals who are regulated by any written law; and

(f) to healthcare services provided or to be provided by healthcare professionals or healthcare facilities;

(g) (deleted)

(3) (deleted)

(4) The application of this Act shall be supplemental in nature and without prejudice to any other law regulating contractual relations.

97 Commencement of proceedings

A consumer may lodge with the Tribunal a claim in the prescribed form together with the prescribed fee claiming for any loss suffered on any matter concerning his interests as a consumer under this Act.

98 Jurisdiction of Tribunal

(1) Subject to ss 99 and 100, the Tribunal shall have jurisdiction to hear consumer claims within the ambit of this Act including claims in respect of all goods and services for which no redress mechanism is provided for under any other law and where the total amount in respect of which an award of the Tribunal is sought does not exceed fifty thousand ringgit.

99 Limitation of Jurisdiction

(1) Except as expressly provided under this Act, the Tribunal shall have no jurisdiction in respect of any claim —

(a) for the recovery of land, or any estate or interest in land;

(b) in which the title to any and, or any estate or interest in land, or any franchise, is in question;

(c) in which there is a dispute concerning —

(i) the entitlement of any person under a will or settlement, or on any intestacy (including a partial intestacy);

(ii) good will;

(iii) any chose in action;

(iv) any trade secret or other intellectual property;

(ca) which may be lodged by a consumer relating to aviation service as defined in the Malaysian Aviation Commission Act 2015 [Act 177];

(d) where any tribunal has been established by any other written law to hear and determine claims on the matter which is the subject matter of such claim. A

(2) The jurisdiction of the Tribunal shall be limited to a claim that is based on a cause of action which accrues within three years of the claim.

(3) Nothing in this section shall be deemed to authorize the Tribunal to deal with a claim arising from personal injury or death. B

(4) For the purposes of subsection (1), 'land' does not include fixtures.

[36] In our view, the appellant is obviously a consumer as defined in s 2 of CPA 1999; having bought 'goods' in the form of a vehicle or more specifically, a Mercedes-Benz from the second respondent: C

'consumer' means a person who —

(a) acquires or uses goods or services of a kind ordinarily acquired for personal, domestic or household purpose, use or consumption; D

(b) does not acquire or use the goods or services, or hold himself out as acquiring or using the goods or services primarily for the purpose of —

(i) resupplying them in trade;

(ii) consuming them in the course of a manufacturing process; or E

(iii) in the case of goods, repairing or treating, in trade, other goods or fixtures on land.

[37] Since the appellant is a consumer of goods covered under the CPA 1999, the appellant has the necessary locus standi to bring his claim before the Tribunal. F

[38] We agree with the appellant that in any case, it is far too late for the respondent to challenge his right to sue having kept silent in the substantial proceedings before the Tribunal, whether in the defence filed in response to the appellant's claim or even in the course of any of the two hearings before the Tribunal. The second respondent has acceded to the appellant's right to bring his claim as a consumer claim before the Tribunal; had fully participated in those proceedings to their conclusion on both occasions; and cannot now reprobate from that stand. The second respondent is thus estopped from pleading lack of locus standi — see *Prangin Mall Sdn Bhd v Tang Joo Ming & Anor* [2013] 6 MLJ 753; [2012] 1 LNS 1285 *Boustead Trading (1985) Sdn Bhd v Arab-Malaysian Merchant Bank Bhd* [1995] 3 MLJ 331. G H

[39] As was the case in *Malaysia Land Properties Sdn Bhd v Waldorf & Windsor Joint Management Body* [2014] 3 MLJ 467, the second respondent is precluded from raising the issue of locus standi for the first time in the second judicial review proceedings. While it may be an important point of law, it was I

A one which the second respondent ought to have pleaded and raise at the first opportunity, and that would be in the defence filed.

[40] We further opine that the locus standi that the second respondent complains the appellant lacks does not pertain to the jurisdiction of the
B Tribunal in the sense that sans this locus standi, the Tribunal will be bereft of jurisdiction. As we have seen from the several provisions of the CPA 1999, the Tribunal takes its jurisdiction not from the locus standi of the parties but from whether the claim before the Tribunal concerns goods and services supplied to a consumer within the meaning of the CPA 1999. So long as the appellant is a
C consumer of the kind of goods and services covered by the CPA 1999, he has the necessary locus standi to approach the Tribunal to hear and determine his claim. Undoubtedly and affirmatively the appellant has that locus standi.

[41] The learned judge was thus in error in accepting the second
D respondent's submission that the appellant lacked locus standi.

[42] The learned judge however, did not dismiss the appellant's application on that reason alone. The learned judge dismissed the application after finding
E there was no error of law, irrationality or unreasonableness in the decision of the Tribunal.

[43] And, it is in this respect that we agree with the High Court.

F **[44]** The appellant complained that the learned judge erred in finding that the second respondent had discharged its burden of proof under s 24E of the CPA 1999 primarily because the second respondent did not lead any evidence at all to discharge this burden as was directed by the High Court in the first judicial review. To recapitulate, the relevant order in the first judicial review was
G that the Tribunal was to rehear the appellant's claim and in the course of which to call upon the supplier and/or the manufacturer of the fan blower, viz the second respondent to discharge its burden of proof pursuant to s 24E of the CPA 1999 — see pp 127–133 of the record of appeal.

H **[45]** The reasonings for the Tribunal's decision are at pp 358–396 of the record of appeal. Those reasons actually encapsulate the proceedings that transpired before the Tribunal in fairly vivid detail. Having considered those reasons, we could find no merit in the appellant's complaints and have no reason to disagree with the learned judge that the appellant had not established
I a case for the orders sought.

[46] We found that the appellant's case which was a simple claim for refund for repairs no longer of RM5,623.70 as claimed in his statement of claim filed before the Tribunal, but a sum of RM3,250 for the fan blower, to have been

taken far beyond the reaches of the intent of CPA 1999. When he made his claim of RM5,623.70, the appellant had particularised it as 'car engine fan blower and batteries under warranties had to be replaced during the warranty period and charges were not waived'. A copy of the cash sales for the repairs was attached.

[47] As we had noted earlier, there were no other complaints, not even a claim or suggestion that there was unfairness, unjust advantage or unjust disadvantage, or that the standard form warranty restricted rights, duties and liabilities without adequate justification. Or at least, that is not evident as the reasoned award for the striking out ('dibatalkan') of the appellant's claim is not before us.

[48] The appellant's claim was simply one of non-waiver of charges incurred in replacing the car engine fan blower and batteries. The defence was that the warranty had expired.

[49] Yet, the proceedings metamorphosed into what we can only describe as fairly convoluted arguments on what was actually an un-pleaded complaint but which then nevertheless formed the subject of review in the first judicial review.

[50] In our view, consistent with the intent of CPA 1999 and how it is to operate, that uppermost is the expeditious disposal of consumer claims of a value not exceeding RM50,000, the claim ought to have been confined to the pleaded complaint(s) and defence(s). We have made these observations, though not raised or objected to by the parties as it is highly relevant and impacts on the conduct of such proceedings before the Tribunal.

[51] It is fairly obvious from the reasoned award of the Tribunal that the Tribunal appreciated this disparity. The Tribunal pointed out that from the notes of the previous proceedings and statement of claim in Form 1 and the attached documents:

> ... it is apparent that the Claimant neither pleaded in his Form 1 nor adduced any document which would have warranted this Tribunal to consider the application of Part IIIA of Act 599 in the proceeding dated 7.12.2015. In particular, the Claimant did not plead nor submit any statement that would suggest that he had been either generally procedurally or substantively unfairly treated by the Respondent in the light of ss 24C or 24D or both of Act 599 that would warrant for this Tribunal to call upon the Respondent pursuant to s 24G of Act 599 to discharge its burden of proof pursuant to s 24E of the same Act.

[52] However, being fully aware of what was expected of him as directed by the High Court in the first judicial review, the Tribunal proceeded to rehear the appellant's consumer claim — see paras 5–8 at pp 360–361 of the record of appeal.

[53] It was only at the further hearing on 26 October 2017 that the appellant 'for the first time, tendered to the Tribunal 'the detailed claim' he sought against the respondent together with relevant documents in support thereof'. It was only at this point that the appellant explained at paras 3(a)–11 of his 'detailed claim' his complaint of unfairness under Part IIIA of the Act 599. This may be gleaned from para 10 of the Tribunal's reasons for its award.

[54] The records show that the parties exchanged numerous submissions on the claim, responses, replies; that the issues before the Tribunal evolved somewhat from a simple claim for refusal to refund due to expiry of the three-year warranty to a claim premised on amongst others, whether it was unfair and/or without adequate justification that the revised warranty period of four years was not extended to the appellant.

[55] Thereafter, the second respondent filed a response and defence dated 13 November 2017 to that detailed claim. According to the Tribunal, it was a 'reply and in discharging their burden of proof under s 24E of the Act 599 pursuant to the order of the learned judicial commissioner dated 21 October 2016' — see para 11 at p 363.

[56] In summary, the second respondent:

(a) maintained that the appellant's vehicle purchased on 22 November 2010 had a three-year warranty for any defects of parts up to 21 November 2013 according to the warranty terms and conditions;

(b) denied that it had to refund money paid for replacing the fan blower approximately three years ten months after the date of purchase/registration of the vehicle;

(c) revised the warranty period to four years based on a business decision made on 26 september 2011 and that such revised warranty was only offered to Mercedes-Benz vehicles purchased and/or registered from 1 October 2011 onwards;

(d) decided that the revised warranty period was only applicable in Malaysia; and

(e) submitted that parties are bound by the signed agreement and that any amendment or changes to the policy after the date of agreement had no retrospective effect to nullify earlier rights and obligations.

[57] Pursuant to clarifications sought by the Tribunal, the second respondent explained the distinction between the manufacturer and country warranty; that the earlier was in respect of 'faults arising from the manufacturer of the motor vehicle will be the responsibility of the manufacturer' while the country warranty was given by the second respondent for the same defect.

[58] The second respondent further explained that the extended warranty was based on a business decision offered only to vehicles purchased or registered from 1 October 2011 and that vehicles purchased or registered prior to that date will not enjoy the same. In the case of the appellant's vehicle, both the manufacturer and country warranty of a total of three years had already expired by the time the vehicle was brought in for repairs. The vehicle was purchased on 22 November 2010 and it was brought in for repairs on 27 September 2014. The warranty expired on 21 November 2013, 'approximately by ten months'.

[59] The appellant 'objected to the written and oral statements made by' the second respondent. Broadly, the appellant's position was that 'it was highly unreasonable that the fan blower which was sold and fixed to the vehicle should have a warranty of different life span, one of three years and another of four years when it is the same type'; that at the time when the second respondent decided to extend the warranty, his fan blower was still under warranty. In his words, 'at the time when they extended the warranty by another year, my warranty was still on foot. So the fan blower of my vehicle should enjoy the extended one year additional warranty'.

[60] The consumer claim then took another turn. The appellant responded that the 'merchantability, functionality and quality of the product should be the criteria for the warranty period'. The appellant cited ss 32(1) and (2) of the CPA 1999, explaining that:

> ... there was an implied guarantee that goods supplied are of acceptable guarantee. And goods shall be deemed to be of acceptable guarantee if they are free from minor defects and durable. By extending the warranty to 4 years as from 1-7-2011 or even 1-10-2011, MB is in fact telling the whole world including the Claimant that its Mercedes spare parts including the fan blower, shall be free of defects and durable for a minimum of 4 years, ie their lifespan is a minimum of 4 years.
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> ...
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> Its lifespan gave out within the implied guarantee lifespan of 4 years. Therefore, even if the contractual warranty is to be restricted to 3 years, which I humbly submit it should not, I should still be entitled to the costs for the replacement of the fan blower as the goods supplied was in breach of the implied guarantee of acceptable quality imposed by law accompanying the fan blower. The damages here would be the costs of making good on the defective fan blower and all incidental costs coming to a total of RM3,250.00.

[61] He also took issue with the fact that the second respondent's 'own document stated that the extended warranty period commences from 1 July 2011 ... since the fan blower of my vehicle is the same with the fan blower of any vehicle sold and registered after 1 July 2011, it should have a four year warranty of my purchase. The reason why I relied on s 24G was because the respondent relies on three authorities to say that the sanctity of freedom of contract should be maintained'.

[62] When the second respondent tendered the vehicle delivery certificate as evidence of acknowledgment by the appellant that the owner's manual and warranty policy had been explained and handed over to him, supporting its contention that the appellant 'was well aware of the warranty policy' at the material time; the appellant countered that the defects arose and came to light only in September 2014.

[63] At the rehearing, the second respondent also informed the Tribunal it did not intend to call the manufacturer or distributor of the fan blower as it was based in Germany, taking inter alia the view that it had discharged its burden of proof under s 24E of the CPA 1999.

[64] Following a specific direction of the Tribunal to submit on the issue of discriminating treatment was reasonably justified as dealt with by the appellant, the second respondent filed further submissions, the details of which are set out at para 20 of the Tribunal's reasons (see p 373 of the record of appeal).

[65] Amongst its submissions was this:

> The issue at hand is whether the decision by Mercedes Benz to provide a 3 year fan blower warranty for cars registered before July 2011 and a 4 year warranty for cars for the very same fan blower for the very same car model for cars registered after July 2011, falls foul of the provisions of the Consumer Protection Act 1999. It is our respectful submission that it does not.
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> ...
>
> It is our submission that the Company often changes policy for various reasons such as the need to respond to market conditions, to compete with steps taken by competitors and to generally remain competitive within the market. Also the Company endeavors to constantly provide better terms to its customers and this reason also, may make policy adjustments as and when required.
>
> This is true to all businesses. It is critical that businesses are allowed to make such adjustments. Any effort to protect consumer rights must always be held in balance to the need for businesses to react to market conditions as and when necessary in order to survive.

In this case, on or about 26th September 2011, the company took the policy decision to increase the warranty period in response to competitors offering extended warranty periods.

[66] The second respondent also dealt with the issue under s 24C of the CPA 1999, a provision governing complaints of general procedural unfairness. After examining that provision and giving its views as to its meaning and application, the second respondent invited the Tribunal to take into account the manner and circumstances under which the warranty was entered into; that 'by increasing the warranty period later, there was no unjust advantage by the company, other than making itself more competitive in the market. It is basic commercial sense that businesses must constantly remain competitive'.

[67] On the issue of whether there has been unjust disadvantage to the appellant, the second respondent submitted that was not the case, offering several reasons. Amongst them, that all cars registered before July 2011 were subjected to the same terms as the appellant; that the appellant was aware of the terms before the purchase of the vehicle and had agreed to the terms and was thus bound by the terms; that the appellant was never 'forced to accept the said term'.

[68] In short, the second respondent claimed that the appellant cannot demand that new terms apply retrospectively to him; that pursuant to s 24C, there was no procedural unfairness.

[69] To this, the appellant was also given a chance to respond. He replied that the issue as formulated by the second respondent was wholly erroneous and misconceived; that the correct issue before the Tribunal was as directed by the High Court, which is on discharging the burden of proof that the revised warranty was not without adequate justification. He claimed that 'after getting the issue wrong', the second respondent had not adduced 'single iota of evidence' to prove any of its factual allegations'; that there was no evidence at all to show what the market conditions were, what steps were taken by its competitors, why was it critical that MSSB had to make an adjustment in the warranty period for it to survive and which of its competitors offered extended warranty periods.

[70] In essence, the appellant's complaints finally were:

(a) there was unequal bargaining power at the material time of contracting;

(b) the warranties are all standard form and not the subject of any negotiation;

A (c) there was no opportunity to negotiate for any extension of warranties; and

(d) it was not reasonably practicable for the appellant to negotiate for the alteration of the warranty or to reject the same.

B

[71] As far as the appellant was concerned, 'for a similar fan-blower which is given four years warranty, I am only given a three year's warranty'. He claimed to have relied on the skill, care and advice of the supplier or persons connected with the supplier in entering into the contract for the purchase of the vehicle which came with the fan blower.

C

[72] All of the above were taken on board by the Tribunal with the Tribunal identifying the following 'pertinent issues' to be determined, namely:

(a) whether the three year warranty conferred on the claimant to enjoy pursuant to the sale and purchase contract and the registration of the vehicle into the claimant's name was valid and binding on the parties hereto;

D

(b) whether the respondent had duly discharge their obligations under the terms and conditions of the three years warranty;

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(c) whether the respondent had discharged its burden of proof pursuant to s 24E of the Consumer Protection Act 1999 (Act 599); and

(d) whether the respondent is in breach of s 32 of Act 599.

F

[73] The Tribunal dealt with each of those issues 'based on all the evidence put forth by both parties' — see paras 23–52 (pp 383–396 of the record of appeal).

G

[74] On the first issue, the Tribunal found the three year warranty to be valid and binding because the contract was entered into at arm's length. Absent of any evidence of misrepresentation, undue influence, coercion or fraud, the Tribunal would give the contract its full effect and force under the Contracts Act 1950.

H

[75] On the appellant's claim that it did not have any bargaining strength as it was a standard form contract not subject to any negotiation and that the standard form was unfair as it restricted liability for the fan blower without any adequate justification, that he was subjected to general procedural and substantive unfair practice; the Tribunal opined that it had to 'consider to what extent does the implication of the usage of the standard form print agreement

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had caused imbalance of negotiating power between the parties'.

[76] For this purpose, the Tribunal stated that it was obliged to consider the nature and manner the standard form agreement was drawn, the extent of its usage, the sufficiency of explanation given by the second respondent to the appellant, the level of literacy and capacity of the appellant who was asked to sign the standard form agreement. The Tribunal was of the view that the appellant had failed to adduce evidence to show how the standard form print sales and purchase of the vehicle contract had resulted in an unjust advantage to the respondent or unjust disadvantage to the appellant on account of the adoption of the standard form contract; how such form had resulted in him not having any bargaining power.

[77] The Tribunal found from the appellant's own testimony that he knew at the time of contract and registration of the vehicle he was receiving a 're-introduction of three-year owner protection plan' reintroduced with effect from 1 January 2010 until 30 June 2011. Apparently, the second respondent had a 'three year owner protection plan' for the period from 1 December 2000 to 31 December 2005 but there were no warranties offered from 1 January 2006 until 31 December 2009; the only warranty scheme offered by the second respondent at the material time was the reintroduced three year owner protection plan.

[78] The Tribunal also found the appellant's arguments that the new warranty scheme had to be extended to him to be without basis as there were no terms in the standard form contract requiring any 'improvement' to be automatically extended to holders of the 're-introduction of three-year owner protection plan' or that such holders may negotiate their terms. The Tribunal thus found the appellant bound by the terms to which he had agreed.

[79] As for the complaint that there was no opportunity for him to negotiate any of the terms of the 're-introduction of three-year owner protection plan', the Tribunal found it to be of no basis since the four year warranty scheme had yet to be introduced at the time of purchase or registration.

[80] Specifically, on the issue that the High Court in the first judicial review had charged the Tribunal with, the Tribunal found at paras 38–45 that it was satisfied with the second respondent's explanation cum evidence. The Tribunal took judicial notice of such 'business decision exercise' and found such exercises:

(a) to be 'completely legal and commercially valid argument in the normal course of trade',

A (b) happens in other sales;

(c) 'a norm in the business practices' in order to remain competitive within the market and to constantly provide better terms to customers; and

(d) 'perfectly legal and normal to be protected from competitors'.

B

[81] In particular, the Tribunal opined that Part IIIA of the CPA 1999 was not intended to nullify such business practices, and that it agreed with the second respondent that 'any effort to protect consumer rights must always be held in balance to the need for businesses to react to market conditions as and C when necessary in order to survive but for as long as the provisions of Part IIIA of the Act 599 are always observed and complied with'.

[82] The Tribunal further found the warranty scheme to be neither objectionable nor unreasonable; that the schemes were the result of business D decisions made at two different times and offered under two distinct contract schemes independent of each other.

[83] There is not a whiff of unlawfulness, capriciousness or even arbitrariness in the above deliberations of the Tribunal. It cannot even be suggested that the E well-reasoned award to be 'a mere camouflage' which 'suffers from *Wednesbury* unreasonableness'.

[84] The Tribunal is entitled to make findings of fact from evidence the F production of which is under its powers as provided under s 110 of the CPA 1999. From the record of appeal and from the reasons of the award as set out above, the findings reached are supported and both parties had had ample opportunities to deal with and submit on them.

G **[85]** The backdrop against which the appellant's consumer claim was to be reheard was properly and corrected appreciated by the newly composed Tribunal and there was no dereliction, in any manner whatsoever, of the task directed by the High Court in the first judicial review.

H **[86]** As for the law and the legal principles invoked and applied, we do not find any error in those deliberations that may be said to fall within the meaning of *Wednesbury* unreasonableness; irrationality or even unlawfulness. The legal provisions of the CPA 1999 are to be read in tandem with other legislation such as the Contracts Act 1950 and the Sale of Goods Act 1957 (see s 24B of the I CPA 1999); and the Tribunal has kept well within the law. In fact, the award is well-reasoned and there is no error of law committed by the Tribunal warranting any exercise of the court's supervisory powers.

[87] We also do not find any failure to adhere to 'acceptable standards of

administrative law and justice; or administrative governance'; and, as pronounced by the learned judge, based on the evidence available, including the clear terms of the warranty period with regard to the vehicle, the second respondent has indeed discharged its burden of proof required under s 24E of the CPA 1999.

[88] While we do not generally adjudge on the adequacy of evidence that was led to meet the burden of proof, we find that on the facts, the evidence led by the second respondent was more than adequate to meet that burden. The evidence of the parties themselves was corroborated by the terms of the warranties. Further, the explanations from the second respondent themselves as to why there was a change or revision of warranty policy; that it was based on business efficacy and to keep themselves competitive were, in our view, rightly accepted by the Tribunal. There is nothing irrational about such a decision and we do not see the need for any other evidence save what was already available before the Tribunal. Such an explanation does not require the calling of the manufacturers in Germany since the warranty in question was in any case, one offered by the second respondent, and not the manufacturer.

[89] In any event, we, too, find the reasons and explanation valid and acceptable; and the construction and interpretation of the warranties and the relevant provisions of CPA 1999, correct in law.

CONCLUSION

[90] In our unanimous view, the first respondent Tribunal created under CPA 1999 has acted well within its powers and jurisdiction. In this respect, we agree with the learned judge that the second respondent had discharged its burden of proof under s 24E of CPA 1999; that there was no case made under Part IIIA of the CPA 1999; and that the standard form three-year warranty that the appellant had with the second respondent was valid and binding. The second respondent was therefore entitled to refuse and/or reject the appellant's claim for refund or reimbursement of the repaid of the fan blower.

[91] Consequently, as provided under s 116(1) of the CPA 1999, the decision of the Tribunal 'shall be final and binding on all parties to the proceedings'.

[92] For all the reasons explained, we thus found no merits in the appeal. The appeal was unanimously and accordingly dismissed with no order as to costs.

Appeal dismissed with no order as to cost.

Reported by Ahmad Ismail Illman Mohd Razali