



**Judicial Review, Order 53 Rules of Court 2012 -
Request of Information, Section 39(b)(ii) Personal
Data Protection Act 2010 – Section 81 Income Tax
Act 1967**

DIRECTOR GENERAL OF INLAND REVENUE

v.

GENTING MALAYSIA BERHAD

[W-01(A)-449-08/2021]

 **COURT OF APPEAL**

 **YA DATUK HAJJAH AZIZAH BINTI HAJI NAWAWI
YA DATO' MOHD NAZLAN BIN MOHD GHAZALI
YA DATO' DR CHOO KAH SING**

 **29th APRIL 2024**

The Court of Appeal unanimously allowed the appeal by the Director General of Inland Revenue (DGIR) against the decision of the High Court.

The dispute which led to the application for Judicial Review (JR) arose way back in 2018 when the DGIR requested the Applicant to provide the personal data of members of Genting Rewards Loyalty Programme. The request was refused by the Applicant on the basis that such disclosure would be in breach of the Personal Data Protection Act 2010 (PDPA 2010) whereas the DGIR was of the view that such request was made under Section 81 of the Income Tax Act 1967 (ITA 1967) which was within the purview of Section 39(b)(ii) of PDPA 2010.

To resolve the dispute, the DGIR had written to the Department of Personal Data Protection (DPDP) for confirmation for such request. On 8.11.2019, the Deputy Commissioner of Personal Data Protection confirmed vide a letter which was sent through an e-mail dated 12.11.2019 that the disclosure of the information was allowable under Section 39(b)(ii) of PDPA 2010 as Section 81 of ITA 1967 authorized the DGIR to request for such information. The application for JR was filed against the DGIR against what was purported to be the DGIR's decision in the said e-mail dated 12.11.2019.

In opposing the application, the DGIR argued that the e-mail dated 12.11.2019 merely conveyed DPDP's letter to the Applicant and did not amount to a 'decision' by the DGIR under Order 53 Rules of Court 2012. The decision, if any, was contained in the earlier letters dated 23.11.2018, 29.4.2019 or 17.5.2019 where the information was requested and the DGIR made a stand that such request was lawfully made under Section 81 ITA 1967 and not prohibited by PDPA 2010. Since the application for leave for JR was filed on 7.2.2020, the JR was clearly out of time. In any event, the request was made pursuant to the powers under Section 81 of ITA 1967, of which the provision fell within the purview of Section 39(b)(ii) of PDPA 2010 that allowed for disclosure if it was required or authorized by any law.

The Court of Appeal held that the e-mail dated 12.11.2019 was not a 'decision' and thus the learned High Court Judge had erred in allowing the application for JR against the DGIR. The 'decision' was contained in the earlier letters dated 23.11.2018, 29.4.2019 and 17.5.2019. Since the application was filed out of time, the High Court had no power to grant the leave for JR. The High Court had further erred in deciding that the High Court was *functus officio* when the DGIR raised the argument of jurisdiction at the substantive stage, as argument on the issue of jurisdiction may be raised at any stage. Hence, the appeal was allowed with costs of RM10,000.00.

Editorial Note:

The Applicant had indicated on filing the application for leave to appeal to the Federal Court against the decision of the Court of Appeal.