IN THE INDUSTRIAL COURT OF MALAYSIA
[CASE NO: 30(32)(7)/4-717/16]

BETWEEN

GANESH BELOOR SHETTY

AND

RANBAXY (MALAYSIA) SDN BHD

AWARD NO. 3210 OF 2019

BEFORE	**:**	**Y.A. TUAN PARAMALINGAM AIL J. DORAISAMY** - Chairman (Sitting Alone)
VENUE	**:**	Industrial Court of Malaysia, Kuala Lumpur
DATE OF REFERENCE	**:**	31.05.2016
DATES OF MENTION	**:**	19.07.2016; 10.08.2016; 20.09.2016; 08.11.2016; 16.01.2017; 24.07.2017; 25.01.2018; 05.08.2019; 14.08.2019; 02.10.2019
DATES OF HEARING	**:**	26.02.2018; 27.02.2018
REPRESENTATION	**:**	*For the claimant - Savinderjeet Singh; M/s Sekhar Savin & Partners* *For the company - Jack Yow Pit Pin & Tan Mei Fang; M/s Rahmat Lim & Partners*

REFERENCE:

This is a reference made under Section 20 (3) of the Industrial Relations Act 1967 (Act 177), arising out of the dismissal of **Ganesh Beloor Shetty** (hereinafter referred to as *"the Claimant")* by **Ranbaxy (Malaysia) Sdn. Bhd.** (hereinafter referred to as *"the Company')* on 2nd September 2015.

AWARD

[1] The Ministerial reference in this case required the Court to hear and determine the Claimant's complaint of dismissal by the Company on 2nd September 2015.

I. Procedural History

[2] The Court received the letter pertaining to the Ministerial reference under Section 20(3) of the Industrial Relations Act 1967 on 20th June 2016.

[3] The matter was fixed for mention on 19th July 2016, 10th August 2016, 20th September 2016, 8th November 2016, 16th January 2017, 24th July 2017 and 25th January 2018.

[4] The trial proceeded before the learned Chairman of Court No. 7, Puan Jamhirah Binti Ali, on 26th February 2018 and concluded on 27th February 2018.

[5] Further mention dates were fixed on 5th August 2019, 14th August 2019 and 2nd October 2019.

[6] Due to the learned Chairman Puan Jamhirah Binti Ali's transfer to the Legal Profession Qualifying Board on 16th August 2018, the learned President of the Industrial Court on **3rd** October 2019 instructed the matter to be transferred from Court No. 7 to the learned Chairman of Court No. 32 for the purposes of handing down an Award for this case.

[7] On 16th December 2019, the learned President of the Industrial Court instructed the matter to be transferred from Court No. 32 to this Court, ie, Court No. 30, for the purposes of handing down the Award for this case.

[8] This Court, after perusing the pleadings, the documents, the witness statements, the notes of proceedings as well as the written submissions (together with the bundles of authorities) filed by the parties to this matter, herein hands down the Award as per the instructions of the learned President of the Industrial Court.

II. Factual Background

[9] The Claimant commenced his employment with Ranbaxy Laboratories Limited (a company incorporated in India) on 7th November2005 as a Senior Manager-Medical Services.

[10] *Vide* a Letter of Appointment dated 6th December 2012, the Claimant was appointed as the Head-Medical Affairs, APAC, ME & CIS in the Company. It is the Claimant's contention that this was a transfer of his services from the parent company, ie, Ranbaxy Laboratories Limited, and that his term was until he retires at the age of 58.

[11] *Vide* a Termination Letter dated **2nd** September 2015, the Claimant's services with the Company were terminated with immediate effect on grounds of redundancy due to the restructuring exercise that had taken place in the Company. The Claimant however contends that his position was not redundant at the material point in time and that it had continued to exist.

[12] The Company however contends that the Claimant in fact had resigned from his previous employer, ie, Ranbaxy Laboratories Limited, *via* his email dated 1st April 2013 to his reporting manager, ie, one Mr. Amitabha Gangopahyay. The Claimant's role in the Company was supervisory in nature in that he supervised pharmacovigilance function for Malaysia and the Asia Pacific region.

[13] The Company further contends that in April 2014, Ranbaxy Laboratories Limited and Sun Pharmaceutical Industries Limited were amalgamated, as a result of which the Company had undergone a restructuring exercise. The regional role undertaken by the Claimant as Head-Medical Affairs APAC, ME & CIS was abolished together with the closure of the Regional office of the Company. The Company decided to transfer the pharmacovigilance role to a centralised system in India, where the parent company is based. As such, the Claimant had become surplus to the Company as the supervisory role in Malaysia is no longer required to be performed and the Regional office (within the Company) had also been closed down. The situation of redundancy was discussed with the Claimant in July 2015 and August 2015 before the letter of termination was issued on **2nd** September 2015. He was compensated with a sum of RM77,689.00 which included 3 months' payment *in lieu* of termination notice and *ex-gratia* retrenchment benefits.

[14] The Claimant also contends that the position of Head-Medical Affairs APAC, ME & CIS no longer exists in the Company and there is no supervisory role similar to that undertaken by the Claimant in Malaysia. The regional office also had been closed down and the employees within the regional office were also made redundant, including the Claimant's boss Mr. Alok Kapoor.

[15] The Claimant contends that his dismissal by the Company was done without just cause and excuse and thus prays for an order that he be reinstated to his former position without loss of all wages and benefits, whether monetary or otherwise. It is not disputed that the Claimant's last drawn salary was RM23,195.00 per month although the Claimant claims that he was also entitled to housing allowance of RM5,600.00.

III. The Function Of The Industrial Court & The Burden Of Proof

[16] The role of the Industrial Court pertaining to a reference under section 20 (3) of the Industrial Relations Act 1967 is to ask itself a question whether there was a dismissal; and, if so, whether it was with or without just cause or excuse *(WONG CHEE HONG v. CATHAY ORGANISATION (M) SDN. BHD***.** [1988] 1 MLJ 92; [1987] 1 MLRA 346)**.**

[17] In a case involving retrenchment, the issues before the court essentially are whether there existed circumstances which justified the retrenchment exercise undertaken by the Company and whether the Company had acted *bona fide* in retrenching the Claimant *(ARKITEK AKIPRIMA SDN BHD v. LIANG STEW FATT & ANOR* [2002] 1 ILR 150; [2002] 1 MELR 46).

[18] The burden of proof is on the employer to prove actual redundancy on which the dismissal of the employee is grounded *(BAYER (M) SDN. BHD. v. NG HONG PAU [1999] 4 CLJ 155;* [1999] 1 MLRA 453).

IV. Issues To Be Decided

[19] The issues to be determined in this case are:-

(i) Whether a case of retrenchment has been made out;

(ii) Whether the retrenchment of the Claimant by the Company was made *bona fide*.

V. The Court's Findings And Reasons

(i) Whether a case of retrenchment had been made out

[20] The termination of the Claimant's employment *vide* letter dated 2nd September 2015 *(at p. 20 of CLB)* was grounded on redundancy. This was also confirmed by COW-1 (Azman Bin Bakar; Head of Human Resources in the Company) in his witness statement *(Q & A No. 10 of COWS-1).*

[21] In order for the Claimant to be retrenched from his employment, the burden is on the Company to prove that there was a redundancy. The term redundancy is defined by Dunston Ayadurai in his book **Industrial Relations In Malaysia (2nd Ed.)** at p. 159:-

> *"Redundancy refers to a surplus of labour and is normally the result of a reorganisation of the business of the employer; and its usual consequence is retrenchment, ie, the termination by the employer of those employees found to be surplus to his requirements after the organisation. Thus**, there***

must first be redundancy or surplus of labour before there can be retrenchment or termination of the surplus".

(Emphasis added)

[22] It is also trite law that the employer has the prerogative to organise or restructure their business in a manner which they deem fit and most economical, provided always that the said reorganisation or restructuring is done *bona fide*. This has been laid down in the oft-quoted case of *WILLIAM JACKS & CO. (M) SDN. BHD. v. S. BALASINGAM* [1997] 3 CLJ 235; [1996] 2 MLRA 678 where the Court of Appeal *(vide* the judgment of Gopal Sri Ram JCA):-

> *"The issue before that Court was whether there was a genuine retrenchment exercise vis-à-vis the respondent. Retrenchment means: "the discharge of surplus labour or staff by the employer for any reason whatsoever otherwise than as a punishment inflicted by way of disciplinary action" (per SK Das J in* Hariprasad v. Divelkar 1957 SC 121 *at p 132).*
>
> *Whether the retrenchment exercise in a particular case is* bona fide *or otherwise, is a question of fact and of degree depending for its resolution upon the peculiar facts and circumstances of each case.* ***It is well-settled that an employer is entitled to organise his business in the manner he considers best. So long as that managerial power is exercised* bona fide, *the decision is immune from examination even by the Industrial Court. However, the Industrial Court is empowered, and indeed duty-bound, to investigate the facts and circumstances of a particular case to determine whether that exercise of power was in fact* bona fide".**
>
> **(**Emphasis added**)**

[23] From a perusal of the Claimant's Statement of Case (in particular paragraphs 8 and 9), the Claimant does not dispute that there had been a restructuring exercise due to the amalgamation between Sun Pharmaceutical Industries Ltd. with Ranbaxy Laboratories Limited, ie, the Company's parent company. The Claimant's case in fact centres around his one and only contention that his position as the Head of Medical Affairs in the Company was not

redundant as it is compulsory for the Company to have such a position in order to comply with the prevailing law (paragraph 12 of the Claimant's Statement of Case).

[24] As such, the Claimant is bound by the four corners of his pleading and, after admitting that there had been a restructuring exercise, cannot now wander into the issue of whether the restructuring exercise had indeed taken place. The Claimant is thus confined to the issue of whether his position as Head-Medical Affairs still existed in the Company. In *RANJIT KAUR A/P S GOPAL SINGH v. HOTEL EXCELSIOR (M) SDN BHD* [2010] 6 MLJ 1; [2010] 5 MLRA 696 it was held by the Federal Court *(vide* the judgment of Raus Sharif FCJ):-

> *"Learned counsel for the respondent responded by stating that s 30(5) of the [Industrial Relations Act 1967] could not be used to override or circumvent the basic rules of pleading. He submitted that the Industrial Court must confine itself to the four corners of the pleadings place before it. The Federal Court case in (R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147; [1996] 1 MLRA 725] *was cited in support.*
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> *There is no doubt that the underlying objectives and purposes of the Act is to ensure social justice to both employers and employees and to advance the progress of industry by bringing harmony and cordial relationship between the parties and to eradicate unfair labour practices, to protect workmen against victimisation by employers and to ensure termination of industrial disputes in a peaceful manner (see* Tanjung Jara Beach Hotel Sdn Bhd v. National Union of *Hotel & Bar Restaurant Workers Peninsular Malaysia* [2004] 2 MLRA 237; [2004] 4 CLJ 657). ***However, as rightly pointed out by learned counsel for the respondents 30(5) of the Act cannot be used to override or circumvent the basic rules of pleading. The Industrial Court, like the civil courts must confine itself to the four corners of the pleading. This had been held to be so by this court in*** **Rama Chandran** ***which are as follows:***
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> > ***It is trite law that a party is bound by its pleadings The Industrial Court must scrutinise the pleadings and identify the issues, take***

evidence, hear the parties' arguments and finally pronounce its judgment having strict regards to the issues.

There is no reason to depart from the above view. Pleadings in the Industrial Court are as important as in the civil courts The appellant must plead its case and the Industrial Court must decide on the appellant's pleaded case. This is important in order to prevent element of surprise and provide room for the other party to adduce evidence once the fact or an issue is pleaded. Thus, the Industrial Court's duty, to act according to equity, good conscience and substantial merits of the case without regard to technicalities and legal form under s 30(5), does not give the Industrial Court the right to ignore the Industrial Court Rules 1967 made under the principle Act. *[Rule] 9 provides as follows:*

Statement of Case

(1) Upon a case being brought before the court, the registrar shall immediately serve notice in Form H on one or other of the parties as the President shall direct to submit to the court a Statement of Case.

Rule 9 (3) specifically prescribes the contents of a Statement Of Case. It reads:

(3) Such Statement of Case shall be confined to the issues which are included in the case referred to the court by the minister or in the matte required to be determined by the court under the provisions of the Act and shall contain:

(a) a statement of all relevant facts and arguments;

(b) particulars of decisions prayed for;

(c) an endorsement of the name of the first party and of the first party and of his address for service; and

(d) as appendix or attachment, a bundle of all relevant documents relating to the case.

The Court of Appeal has reproduced the applicant's statement of case in full in its judgment and found that the issue of victimisation was never

pleaded. From the statement of case reproduced there is no doubt that the issue of victimisation was never pleaded. It was not a ground advanced by the appellant. As such the Industrial Court cannot act on a ground which was not advanced in a pleaded case. s 30(5) of the Act cannot rescue the appellant's case". **(Emphasis added)**

[25] It is submitted by Counsel for the Company that after the amalgamation of Sun Pharmaceutical Industries Ltd. and Ranbaxy Laboratories Limited with the consequent business restructuring, there had been a genuine redundancy of the Claimant's position as the Head of Medical Affairs in the Company. The Claimant's role had become surplus to requirement as his job responsibilities ceased to exist after the said amalgamation and the ensuing restructuring exercise. The Claimant's job functions were primarily supervisory in nature in that he was to supervise pharmacovigilance functions such as scientific activities and clinical trials. The Company had decided to transfer the Claimant's roles to a centralised system in India, where the parent company is based. This centralised system in India will provide support and all **promotional materials to Ranbaxy or Sun Pharmaceutical related organisations, including the Company in Malaysia.**

[26] From the Company's Organisational Chart *(at page 5 of COB-2)* it is evident that the position of "Head-Medical Affairs APAC, ME & CIS" no longer exists as at 15th January 2018. Even the Regional Office, where the Claimant was situated, was closed. The Claimant's superior, one Mr. Alok Kapoor, had also been retrenched even before the Claimant's turn came for retrenchment. This was admitted to by the Claimant during cross-examination. In fact, this admission by the Claimant is crucial to the matter as it shows he had at the very least some knowledge that a restructuring exercise was being carried out and that the staff of the Regional Office were being gradually retrenched, culminating in the closure of the said office. The steps taken to close the Regional Office is documented by the series of emails at pages 1-2 of COB-3. The Claimant failed to rebut this and in fact his only answer was that he was no longer in the Company to confirm whether the Regional Office had indeed been closed.

[27] Employers have the discretion and prerogative to employ fewer employees to run their business. And the Industrial Court should be slow to interfere with

how an employer chooses to organise or reorganise its business, provided always that any retrenchment that arises out of it was done *bona fide.* In the High Court case of *STEPHEN BONG v. FCB (M) SDN BHD & ANOR* [1999] 3 MLJ 411; [1999] 5 MLRH 107 it was held by Nik Hashim J that redundancy does not mean the job or work no longer exists but that redundancy situations arise where the business requires fewer employees of whatever kind.

[28] In the High Court case of *BOEY SOW FOONG v. ANTAH DRILLING SDN BHD* [1998] 7 MLRH 178; [1998] 1 LNS 448 it was stated by Nik Hashim J:-

> *"Likewise, in the present case, since there was a lower level of activity in the Respondent company at the material time following the completion of the contract and the position of the account manager had been eliminated and the Applicant's duties were absorbed by the remaining staff and not taken over by someone from outside, I think the Industrial Court is right in holding that the Applicant was lawfully retrenched. The mere fact that the remaining staff were paid for covering the applicant's duties does not mean that the retrenchment was not bona fide. The Industrial Court was satisfied that at the material time following the completion of the contract, the Applicant's service had diminished. Furthermore, there was no evidence of mala fide and victimization on the part of the Respondent to retrench the Applicant".*

[29] **In** *PENGKALEN HOLDINGS BHD v. JAMES LIM HEE MENG [2000] 2 ILR 252;* [2000] 1 MELR 696 it was held by the Industrial Court *(vide* the decision of the learned Chairman, Lim Heng Seng):-

> *"The existence of surplus or supernumerary staff or a redundancy situation can arise due to a number of situations. A business entity facing a severe cutback in business volume or which is attempting to rationalise its business may have to reorganise and/or downsize.* ***Where a whole production line or business unit is discontinued, the need for employees to work on that line or unit no longer exists. Both the job functions and the jobs of the employees in the said line or unit have ceased to exist. The business entity with such a problem of surplus workers would have to consider the painful option of retrenchment of its surplus staff who***

were previously holding posts which have since become redundant and are abolished accordingly.

Where organisation arising from the reduction of work leads to a merger of work units or departments with consequential redistribution of work, there might be an abolishment of posts albeit the job functions assigned to other staff. Similarly, where due to a reduction in the work of a department, there may be a need to reduce the staff strength therein with the workload of the abolished posts being re-assigned to the remaining staff, jobs might have to be abolished'.

(Emphasis added)

[30] This Court had also held in the case of *CHEN XIAOLING v. WORLEY PARSONS BUSINESS SERVICES SDN. BHD.* [2018] 3 MELR 540**:-**

"The claimant claimed that her position was still needed and still existed at the material time as it had been taken over by other employees of the company. However, based on the evidence adduced, it was shown that the claimant's role had indeed become redundant. Her specific role had simply become obsolete with certain functions of it drafted in to other departments after the retrenchment exercise. The fact that some other employees had taken over some of the claimant's role did not mean that the claimant's specific role was still in existence. Further, based on the evidence adduced by the company, the court was satisfied that the company's decision to restructure and/or reorganise its business due to economic downturn was reasonable and valid. The claimant had failed to produce any evidence to show that the company had acted male fide".

[31] The Claimant contends that his position as the Head-Medical Affairs APAC, ME & CIS is a compulsory position under the Malaysian Organisation of Pharmaceutical Industries (MOPI) guidelines. However, there is nothing in the MOPI guidelines that suggests any mandatory requirement for a medical advisor to be employed in the Company to approve promotional communications. In fact, Clauses 9.3 and 17 of the MOPI provides that a senior official of the Company (preferably a doctor or a pharmacist) having sufficient knowledge or with

scientific and healthcare qualification may certify the promotional materials. Furthermore, the MOPI guidelines are not even mandatory legal requirements as it merely sets out the best practices and standards for the Pharmaceutical Marketing Practices on Prescription (Ethical) Products to healthcare professionals to ensure that member companies' interactions with healthcare professionals are appropriate.

[32] The Claimant also contends that his job functions had been taken over by one Dr. Puvan. It is pertinent to note at the outset that Dr. Puvan is a Malaysian citizen and was under the Marketing Department for the Malaysia office, and not the Regional office. Both COW-1 and COW-2 (Mohamad Fozi Mohd Noor @ Rich Fozi) confirmed during cross-examination that Dr. Puvan did not take over the Claimant's position. The Claimant failed to adduce any evidence to suggest that that was the case. However, Dr. Puvan was one of the senior officials who possessed sufficient knowledge or scientific and healthcare knowledge to comply with the MOPI requirements. But that also ought not to distract from the fact that the Claimant's job functions had been shifted to the centralized system in India. Even Dr. Puvan is no longer with the Company.

[33] Counsel for the Claimant submits that the Company failed to give the Claimant advance notice of the impending retrenchment. It is the Company's contention that prior to the dismissal on 2nd September 2015, the Claimant was consulted and given notice of his impending retrenchment in early July 2015 and August 2015. COW-2 states in his witness statement (COWS-2):-

> ***"Q9 Is there any discussion or communication made to the Claimant before he was dismissed from his employment?***
>
> *A. Yes. Around July 2015, Mr. Vikram (the VPHR for Emerging Markets based in Mumbai HQ) and I had a discussion with the Claimant in my office located at Ranbaxy Regional Office, Level 5, Wisma Selangor Dredging. We told the Claimant that his position was redundant because his role as the Head-Medical Affairs is no longer required to be performed in Malaysia and the region. We told him that the Company decided to transfer the role to a*

centralised system in India. Hence, a termination of employment would be forthcoming.

Q10. Other than the communication made in July 2015, is there any subsequent discussion with the Claimant?

A. Yes. Sometime around August 2015, I had discussed with the Claimant in relation to the redundancy of his position. During the discussion, Dr. Ganesh was not happy and arguing that his position should not be made redundant as he claimed his position was compulsory by law. I have explain to him that restructuring will cause some position redundant especially the regional functions as what happen to the position of Regional Director hold by Mr. Alok Kapoor and there will be centralisation base in India. Dr. Ganesh argued about the inconvenience he has to face because he just brought in his daughter to study in Malaysia from India.

He was also argued about his termination compensation and his balance stock option which I have explained in similar content of my email to him on 28.9.2015'

[34] The Claimant merely gave a bare denial pertaining to these communications in July 2015 and August 2015. However, the Claimant admitted that he knew Mr. Alok Kapoor had already been retrenched before his turn came up. Thus, he clearly knew of the on-going restructuring exercise at that point in time and the impending retrenchment in the Regional office where he was situated at. The Claimant testified during cross-examination:-

"Q: I think I have crossed a little bit on it earlier, about Alok Kapoor, the Director of Regional office, having been retrenched before you, isn't it?

A : Yes, I agree.

Q : Yeah. So you do know that the Company is restructuring in the sense of restructuring people from the Regional **office.** *Would that not be the case?*

A : It's only I know physically because there is somebody has gone, but there is no information it's all happening. There is nothing. No information is given to anybody.

Q : In fact, I'm actually going to that same point, page 4 of the email, COB page 4. The email, page 4, it is your email and the first paragraph...I'm not going into the entire paragraph but just to summarise it. Basically, you are contending that notwithstanding the restructuring, the Company still have the position of Medical Head because the Company needs to comply with Article 9.3 and 17, isn't that the case?

Ct : Sorry, counsel, can you repeat that?

Q Yes. The first paragraph of the email, your contention is despite the restructuring, the Company still needs the Head of Medical to comply with Article 9.3 and 17 of the Guideline. Agree?

A : Yes, I agree, My Lady'.

[Notes of Proceedings, 27.02.2018; 14:43:22 -14:45:44]

[35] Be that as it may, it is trite law that failure to notify the employees of the impending retrenchment exercise does not render the said exercise unlawful, *mala fide* or that it was done without just cause or excuse. In the case of *EQUANT INTEGRATION SERVICES SDN BHD (in liquidation) v. WONG WAI HUNG* [2012] 1 LNS 1296; [2012] MLRAU 591 it was held by the Court of Appeal *(vide* the judgment of Rohana Yusuf J (as Her Ladyship then was):-

"Reverting to the two reasons cited by the Industrial Court in allowing a claim of unjust dismissal, the first reason was the failure of the respondent to consult and give early notice as required under cls 21 and 22(a)(i) of the Code. The second reason was that the Chairman, applying cl 22(a)(ii) of the Code, found the compensation granted by the appellant to the respondent to be inadequate. As we have earlier stated, the failure to comply with the Code per se *cannot be fatal in a proper retrenchment exercise. This is because the Code does not have the force of law. The*

Code is to be given due consideration by the Industrial Court towards exercising its discretionary power under s 30(5A) of the Industrial Relations Act 1967, that is, to make a decision in accordance with equity and good conscience. The Code cannot be applied technically and mechanically. Instead it should be taken as mere guidance in a properly retrenched exercise as in the instant case. Failure to adhere to the requirement under the Code per se *cannot vitiate a genuine retrenchment. The proper question for the Chairman to ask, is therefore: how would the breach of the Code affect a redundant position in the company?'*

[36] In the case of *MALAYSIA SHIPYARD & ENGINEERING SDN. BHD. v. MUKHTIAR SINGH & 16 ORS [1991] 1 ILR 626;* [1991] 1 MELR 267 it was held by the Industrial Court (vide the decision of the then Chairman, Steve L.K. Shim (as His Lordship then was)):-

"There is no legal obligation on the part of the company to consult or warn its employees before retrenchment and in this case, there was also no contractual obligation for the company to do so. Furthermore, there was sufficient evidence to indicate that the claimants knew or must be deemed to know, from the circumstances of the company and the actions taken by it, including the union meetings, that the possibility of their retrenchments was real and imminent and therefore quite foreseeable".

[37] *In NIRMALA DEVI N. LETCHUMANAN v. INFORMATICS TRAINING TECHNOLOGY SDN BHD* [2011] 1 ILR 121; [2010] 2 MELR 616 it was held by the Industrial Court *(vide* the decision of the learned Chairman, Gulam Muhiaddeen Abdul Aziz):-

"The failure to consult the claimant or to warn her of the impending retrenchment does not render the retrenchment of the claimant mala fide. *There is no obligation on the employer to consult or warn its employees before embarking upon retrenchment. To expect the company to do so would be derogating from the recognised prerogative of an employer to close down, reorganise and restructure its business in the way its likes be it for the purpose of the economy or convenience provided its acts is* bona fide.

In *N. Vijayan K. Nagarajan v. Siebel Systems (M) Sdn Bhd* [2006] 1 MELR 317; [2006] 1 ILR 385 (Award No 173 of 2006), *it was held as follows:*

> *The employer's failure to consult the claimant or warn him of the impending retrenchment and its failure to offer the claimant an alternative job does not render the retrenchment of the claimant mala fide..."*

[38] Thus, the Claimant's contention of there being a lack of notification of the impending retrenchment certainly does not hold water.

[39] The Court finds that the Company had succeeded in proving, on a balance of probabilities, that a situation of redundancy had indeed occurred thereby justifying their actions in retrenching the Claimant.

(ii) Whether the retrenchment of the Claimant by the Company was made *bona fide*

[40] It is evident that there had been a restructuring exercise pursuant to the amalgamation between Sun Pharmaceutical Industries Ltd. and Ranbaxy Laboratories Limited. Part of the restructuring exercise involved the closure of the Regional office in the Company. The staff of the Regional office, including the Claimant and his superior Mr. Alok Kapoor, were retrenched as their positions had become redundant.

[41] The Claimant did not dispute the restructuring exercise that was carried out, as can be seen from his own pleadings. His only contention was that his position of Head of Medical Affairs still existed when in actual fact it had been shifted to a centralised system in India. The Company's organisational chart as at 15th January 2018 is also devoid of any such position as that held by the Claimant during his employment with the Company. The Claimant failed to produce any concrete documentary evidence that could have convinced this Court otherwise.

[42] There is no evidence before this Court that the retrenchment exercise was carried out in a *mala fide* manner by the Company. The Claimant in fact had also

been compensated with a sum of RM77,689.00 which included 3 months' payment in lieu of termination notice and *ex-gratia* retrenchment benefits.

[43] Under such circumstances, this Court finds that the Claimant's retrenchment by the Company was done *bona fide* and with just cause and excuse.

VI. Conclusion

[44] The Court therefore finds that the Company has discharged their burden of proof to show that the retrenchment of the Claimant by the Company was made *bona fide*.

[45] The Claimant's case is hereby dismissed.

HANDED DOWN AND DATED THIS 18TH DAY OF DECEMBER 2019

(PARAMALINGAM J. DORAISAMY)
CHAIRMAN
INDUSTRIAL COURT, MALAYSIA
KUALA LUMPUR

Case(s) referred to:

(Wong Chee Hong v. Cathay Organisation (M) Sdn. Bhd. [1988] 1 MLJ 92; [1987] 1 MLRA 346

(Arkitek Akiprima Sdn Bhd v. Liang Stew Fatt & Anor [2002] 1 ILR 150; [2002] 1 MELR 46

(Bayer (M) Sdn. Bhd. v. Ng Hong Pau [1999] 4 CLJ 155; [1999] 1 MLRA 453

William Jacks & Co. (M) Sdn. Bhd. v. S. Balasingam [1997] 3 CLJ 235; [1996] 2 MLRA 678

Ranjit Kaur A/P S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 6 MLJ 1; [2010] 5 MLRA 696

Stephen Bong v. Fcb (M) Sdn Bhd & Anor [1999] 3 MLJ 411; [1999] 5 MLRH 107

Boey Sow Foong v. Antah Drilling SDN BHD [1998] 7 Mlrh 178; [1998] 1 LNS 448

Pengkalen Holdings Bhd v. James Lim Hee Meng [2000] 2 ILR 252; [2000] 1 MELR 696

Chen Xiaoling v. Worley Parsons Business Services Sdn. Bhd. [2018] 3 MELR 540

Equant Integration Services Sdn Bhd (in liquidation) v. Wong Wai Hung [2012] 1 LNS 1296; [2012] MLRAU 591

Malaysia Shipyard & Engineering Sdn. Bhd. v. Mukhtiar Singh & 16 ORS [1991] 1 ILR 626; [1991] 1 MELR 267

In Nirmala Devi N. Letchumanan v. Informatics Training Technology Sdn Bhd [2011] 1 ILR 121; [2010] 2 MELR 616

Legislation referred to:

Industrial Relations Act 1967, s. 20 (3)