

DALAM TRIBUNAL TUNTUTAN PENGGUNA MALAYSIA

DI PUTRAJAYA

TUNTUTAN NO: TTPM-WPPJ-(P)-542-2021

ANTARA

AYAS RAZA KHAN -

... PIHAK YANG MENUNTUT

DAN

TENBY ECOHILL SDN BHD -

... PENENTANG

ALASAN PENGHAKIMAN

1. The claim as stated in Borang 1 is unclear but it can be deduced that the Pihak Yang Menuntut (PYM) is seeking a discount on the school fees for term 3 Academic Year (AY) 2019/2020 and terms 2 and 3 for AY 2020/2021. Specifically, PYM is seeking RM6605.70 from the Pihak Penentang (PP).
2. In defence, the PP had stated they had indeed given PYM several discounts and subsidies.

Particulars of Agreed Facts

3. In January 2020, PYM approached the PP's representative with the intention to move his son, Riyan Raza Khan, to the school, in term 3, AY 2019-2020. The PP runs the abovementioned school.

4. Pursuant the above, a letter of offer from the school dated 3.2.2020 was emailed to the PYM which stated, inter *alia* that for year 7 students, the refundable deposit is RM8730.00 and the term fees is RM8730.00, totalling RM17,460.00. It also stated that there was a waiver of registration fee of RM3000.00.
5. The PYM then by return email on 2.3.2020 accepted the offer. On 26.3.2020, the school informed the claimant via email that term 3 classes would commence on 15.4.2020 instead of 13.4.2020. This is due to the Movement Control Order (MCO) announced by the Government for the period 18.3.2020-14.4.2020. If the MCO continues, classes would commence via on-line learning.
6. The PYM then sought information on how on-line teaching is conducted. He was then offered to be explained by a Mr Martin on how on-line teaching will be conducted but the offer was not taken up by the PYM.
7. The PYM instead decided that his son should be enrolled immediately due to the continuing MCO and paid the fees as follows:
 - 30.4.2020 – RM6111.00
 - 11.5.2020 – RM8730.00
8. The PYM's son began on-line learning in May 2020.
9. For Year 8, term 1 of AY 2020/2021 the PYM was given a 15% subsidy. For Year 8, term 2 of AY 2020/2021, the PYM was not offered any subsidy. For Year 8, term 3 AY 2020/2021, the PYM

was again not offered any subsidy. However, on both occasions, part of the fees was taken from the PYM's deposit.

Claimant's Statement

10. The PYM's statement during the proceeding, is summarised as follows:

- On-line classes were ineffective due to disturbances and noises in the students' background made by the students' siblings and interruptions due to other students attending classes late.
- The school was not following the full timetable although the school was receiving the full school fees.
- As such, he was entitled to the return of RM6605.70 being discount that he was entitled to for fees paid for terms 1, AY 2019/2020 and terms 2 and 3, AY 2020/2021 as classes were conducted on-line instead of physical setting.

Respondent's Statement

11. The PP as represented by Chong Hui Yu, in their defence, stated that physical lesson setting can never be the same and replicated in an on-line setting. As such the Ministry of Education accords schools the power and discretion how best on-line classes are to be conducted.

13. The PP further stated that they took steps to offer parents subsidies of 15%, which at the point of offering was the highest in the market. They also offered other special assistance on a case-by-case basis.
14. The PP explained that there was constant communication with parents including the circulation of on-line lessons timetables and information on distance learning.
15. The PP further explained that timetable changes did not affect the number of subjects taught in school. Priority subjects were identified and only swimming and IT classes were excluded.
16. Efforts were taken for children to adept to on-line learning as follows:
 - Consultation time with teachers where students could use on-line app to consult teachers.
 - Teachers to take calls from students.
 - Offer hybrid learning at the option of parents.These were conducted outside of school hours, where necessary.
17. Recognising that distance learning for children were novel, teachers were provided with guidance on how to make distance learning a 'good struggle' for students and their parents.
18. Distance learning guidelines for parents and pupils were also circulated.
19. The school were subjected to several audits/assessments conducted by the Ministry of Education and they passed those audits/assessments.

20. According to the PP, the PYM's son had actively used the MS Teams, joined classes and done his homework consistently.
21. The PP did not rebut any of the statement of the PP nor object to submission of any documents as the PYM's only contention is that there is limitation to distance learning when compared to physical lesson setting.

Issues/Conclusion

22. Various Movement Control Orders (MCO) were announced by the Government, the first of which came into effect on 18.3.2020 and extended till 14.4.2020. The Ministry of Education then mandated the implementation of distance learning.
23. This affected the ability of service providers, including schools, to fulfill their contractual obligations agreed to prior to the MCO. However, in this case the 'contract' is deemed duly concluded on 11.5.2020 (upon the full payment of the fees by the PYM), which is a date after the beginning of the MCO.
24. Therefore, this Tribunal is of the view that the PYM concluded the 'contract' fully aware that teaching would be conducted via distance learning. This is based on the email communication in PYM6.
25. Based on the above, the issue to be considered is whether or not the PP has fulfilled its responsibilities and obligations under the 'contract' within the context of distance learning as set out by the Ministry of Education.

26. This Tribunal has heard both parties and examined their supporting documents. The Tribunal finds that the PYM had failed to proof that the PP had failed to fulfil its obligation in a manner or within the standard as set out by the Ministry of Education. On the contrary, the PP had provided evidence which the Tribunal accepts that it had taken numerous steps to fulfil its responsibilities/obligation in the provision of distance learning. The school had provided a regular schedule each day, a timetable each week, a structure to their lessons as mandated by the Ministry of Education following the imposition of the Movement Control Orders (MCO). The school had in fact passed several audits/assessments conducted by the Ministry of Education. More importantly, this was not rebutted by the PYM.
27. Additionally, the PP had given certain subsidies to students which this Tribunal views as a measure of goodwill.
28. Based on the above, this Tribunal dismisses the PYM's claims in Borang 1.

Dated 28 July 2022

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HALIZA AINI BINTI OTHMAN

PRESIDEN

TRIBUNAL TUNTUTAN PENGGUNA
MALAYSIA