

Report to be made public

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PORT DICKSON, Fri. —
Datuk Seri Dr Mahathir Mohamad said today the report of the tribunal which heard charges against suspended Lord President Tun Mohamed Salleh Abas will be made public.

"The whole report will be publicised. There is nothing secret about it," he said in reply to newsmen after opening the Pesta Port Dickson 1988 here.

The Prime Minister said he did not know the contents of the report "but whatever it is, it should be publicised".

Unanimous decision

On the decision by the Supreme Court this afternoon, Dr Mahathir said he had not been officially informed.

The Supreme Court set aside a restraining order preventing the tribunal from submitting its report to the Yang di-Pertuan Agong.

A quorum of five judges — Tan Sri Hashim Yeop Sani, Datuk Harun Hashim, Datuk Mohamed Yusof Mohamed, Datuk Gunn Chit Tuan and Datuk Anuar Zainal Abidin — unanimously allowed an application by the Attorney-General to set aside the Supreme Court order of July 2 which restrained the tribunal from submitting any recommendations, report or advice to the King.

The court later dismissed an application by Tun Salleh for an order to restrain the tribunal from submitting its report to the King, pending his appeal against the High Court's dismissal of his application for leave to stop members of the tribunal from exercising their functions.

The High Court decision was given by Mr Justice Ajaib Singh on July 8.

In allowing the application by the Attorney-General, the Supreme Court held that any order to restrain the tribunal from submitting its report in effect restrains the King from receiving the report.

It said the restraining order was

★ **TURN TO P2, COL 1**

King entitled to report: Judge

NST 23 JUL 1988

★ FROM PAGE ONE

"bad in law, invalid and unenforceable against the Yang di-Pertuan Agong and the tribunal".

The six-member tribunal completed its work on July 7.

On July 2, a special sitting of the Supreme Court presided by Tan Sri Wan Sulaiman Pawan Teh, Datuk George Seah, Tan Sri Mohamed Azmi Kamaruddin, Tan Sri Eusoffe Abdoolcader and Tan Sri Wan Hamzah Salleh ordered the tribunal be restrained from submitting its report to the King "until further order".

The order was given following an ex-parte application by counsel for Tun Salleh when the High Court adjourned hearing of a petition by Tun Salleh and refused to give a decision on a request for an interim stay of the tribunal's proceedings.

Thirty minutes after the High Court adjourned, Tun Salleh's lawyers took the matter to the Supreme Court which made the order to restrain the tribunal.

Subsequently, on July 5, the

five Supreme Court judges concerned were suspended from office for having convened the sitting on July 2 without the consent of acting Lord President Tan Sri Abdul Hamid Omar. A tribunal will be set up to hear charges against them.

The Supreme Court today set aside the restraining order given on July 2, after the judges deliberated in chambers for about 50 minutes.

In their judgment, read out by Tan Sri Hashim, the judges said the Supreme Court is principally an appellate court with appellate jurisdiction.

They said despite an amendment to the Federal Constitution effective Jan 1, 1985, no substantive law has been passed by Parliament to confer powers on the Supreme Court other than those already laid out in the Courts of Judicature Act, 1964.

"The really vital issue here, however, is whether an interim order in the nature we have before us should have been made at all," said Tan Sri Hashim.

He said to resolve this, there was the need to go back to basic principles.

The functions of the tribunal appointed under Article 125(3) of the Constitution is to inquire and investigate on representation made to it and report to the Yang di-Pertuan Agong, any recommendation it may make.

"The tribunal is a body which investigates and does not decide. It is performing a Constitutional function. The tribunal should not therefore be restrained from performing its Constitutional function," Tan Sri Hashim said.

The members of the tribunal are appointed by the King under Article 125(3) of the Federal Constitution which reads:

"If the Prime Minister, or the Lord President after consulting the Prime Minister, represents to the Yang di-Pertuan Agong that a judge of the Federal Court ought to be removed on the ground of misbehaviour or of inability, from infirmity of body or mind or any other cause, properly to discharge the functions of his office, the Yang di-Pertuan Agong shall appoint a tribunal in accordance with Clause (4) and refer the representation to it; and may on the

recommendation of the tribunal remove the judge from office."

"From the language of Article 125(3) it is clear the Yang di-Pertuan Agong is entitled to the report of the tribunal," Tan Sri Hashim said.

"To restrain the tribunal from submitting their report is in effect to restrain His Majesty from receiving the report.

"On the above grounds the restraining order is therefore bad in law, invalid and unenforceable against the Yang di-Pertuan Agong."

Tun Salleh's petition for a restraining order against the tribunal was dismissed on the same grounds under which the Attorney-General's motion was allowed.

Yesterday, the Supreme Court dismissed two applications relating to the tribunal:

● Tun Salleh's petition to strike out the Attorney-General's application to set aside the July 2 Supreme Court order; and,

● An application by the five suspended Supreme Court judges for leave to intervene in the proceedings.