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Court-Bakun

BAKUN: HIGH COURT DECLARATION DISMISSED

KUALA LUMPUR, Feb 17 (Bernama) -- The Court of Appeal here today dismissed the High Court decision which had declared the Environmental Quality (Prescribed Activities) (Environment Impact Assessment) Amendment Order 1995, applied to the RM13.6 billion Bakun hydro-electric dam in Sarawak, invalid.

The decision was made by a three-member bench comprising Datuk G. Sri Ram, Datuk Ahmad Fairuz Sheikh Abdul Halim and Datuk Haji Mokhtar Sidin after allowing the defendants' appeals against the High Court declaration on the dam on June 19, last year.

The defendants are Ekran Berhad, the Director-General of the Department of Environment, Government of Malaysia, Natural Resources and Environment Board and the Sarawak Government.

The court also dismissed the High Court order that Ekran Bhd comply with the Environmental Quality Act 1974 (EQA) before it could proceed with the construction of the project.

In his judgment, Sri Ram said the construction of the dam fell within the ambit of the state law and the Sarawak Government had jurisdiction and constitutional rights to the land.

Therefore, the EQA was not applicable to this case because the law was part of the federal constitution, he said.

Sri Ram said the plaintiffs -- Belaga longhouse residents Tahu Lujah, 70, Saran Imu, 48 and Kajing Tubek, 39 -- had claimed for injured rights under Article 5 of the Federal Constitution because it affected their lives, and right to livelihood.

However, he said, the injury was well-addressed by way of compensation which could be argued among the parties and therefore was no more a constitutional issue.

"Although the plaintiffs have threshold locus standi they certainly lack substantive locus standi," he added.

Sri Ram said: "It is open to Ekran to say now that the EQA does not apply to them. If this happens, there is no standing by the plaintiffs to enforce the EQA (especially Section 34A) as the remedy is criminal prosecution which only the Attorney-General can institute proceedings. No body else has standing."

He ruled that both declarations by Justice James Foong were erroneously made and quashed them.

He also ordered the costs to be borne by each party since the plaintiffs were in a way misled by the confusion of the two laws.

Speaking to reporters later, counsel for the plaintiffs, G.S. Nijar said they would appeal to the Federal Court as the matter was a critical issue with serious implications.

He said it would be very useful to have highest court in the land decide.

Counsel Muhammad Shafee Abdullah appeared for Ekran while Datuk J.C. Foong represented SNREB and the Sarawak Government.

Meanwhile, Tan Sri Ting Pek Khiing, executive chairman of Bakun Hydro-Electric Corporation Bhd (BHC), the Ekran Bhd subsidiary operating the dam projec, said the decision of the Appeals Court would put aside all doubts on the project which could now proceed smoothly.

"With the decision today, I hope there is no more doubt on Bakun...it is now a free project that can go ahead as scheduled," he told reporters in

response to the court decision.

Ting said he had informed both Prime Minister Datuk Seri Dr Mahathir Mohamad, who is in Sabah for a state visit, and Sarawak Chief Minister Datuk Patinggi Haji Taib Mahmud of the court ruling.

"Both of them expressed their happiness over the ruling as the project can now go ahead without facing anymore legal repercussion, " he said, adding that the physical work of the dam construction, which started on Jan 1 this year, was expected to be completed by January, 2002, a year ahead of schedule.

"This is a long outstanding matter...the project strictly complies with the requirements of the Sarawak Natural Resources and Environment Board which approves the EIA," he said, adding that by 2002 BHC might supply power to west Malaysia thorough submarine cable.

On the protection of wildlife in the affected area, the enviromental impact assessment (EIA) report had already taken very firm measures to protect animals and plants and efforts were underway to move the wildlife elsewhere, he said.

Ting expressed confidence that the BHC, which had received approval for listing, would bring profit to its shareholders.

"I assure investors it is a profitable buy. They can gain profit from day one the project is being implemented as the power to be generated has ready buyers for the next 30 years," he said.

BHC will issue 1.5 billion new shares at RM2 per unit. The dam, dubbed the largest infrastructure project in Southeast Asia, has a capacity to generate 2,400 megawatts of electricity. -- BERNAMA

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