

21 DEC 1998

Court-Anwar (Suit)

ANWAR FAILS IN BID TO HAVE CIVIL SUIT HEARD BY ANOTHER JUDGE

KUALA LUMPUR, Dec 21 (Bernama) -- Datuk Seri Anwar Ibrahim today failed in his bid to have his civil suit against Datuk Seri Dr Mahathir Mohamad heard by another judge of the High Court.

Justice Datuk Mohamed Saari Yusoff, in dismissing the former deputy prime minister's application, said he was designated to hear the case by Chief Judge of Malaya Datuk Wan Adnan Ismail by virtue of Section 20 of the Courts of Judicature Act 1964.

"So if I allow this application to transfer the case to another court, it will go against the directive of the Chief Judge of Malaya," he said.

He said Wan Adnan gave the instruction verbally before confirming it in writing.

Anwar, who is suing the prime minister over his dismissal from the Cabinet on Sept 2, was represented by counsel Karpal Singh.

In his application, he said the case was first designated to Justice Datuk James Foong but later transferred to Mohamed Saari's court.

After the judge gave his decision, Karpal asked him if there was any particular reason why the case was transferred to his court.

The only reason, Mohamed Saari said, was that he was the judge designated to try the case.

Anwar, 51, filed the suit on Nov 13, challenging his dismissal which he claimed was unconstitutional. He named the Malaysian government as the second respondent.

He is seeking a declaration that his removal as deputy prime minister and finance minister was unconstitutional and that Dr Mahathir had contravened Article 43 (5) of the Federal Constitution when dismissing him.

He wants the court to declare that his dismissal was null and void, inconsequential and of no effect.

Anwar is also seeking a declaration that he is still a Cabinet minister.

On Dec 4, the Attorney-General's Chambers filed an application to set aside Anwar's suit on the grounds that it did not disclose any reasonable cause of action and was frivolous, vexatious and an abuse of the court process.

Anwar filed an affidavit in reply a day later saying that the A-G Chambers' application was misconceived.

Mohamed Saari today proceeded to hear the application by senior federal counsel Datuk Zaitun Zauyah Puteh that Anwar's suit be set aside.

Zaitun submitted that Section 43 (5) of the Federal Constitution should be read together with Section 40 (1A) which stated that it was mandatory for the Yang di-Pertuan Agong to follow, accept, and to act on, the advice of the prime minister.

She said a letter sent by the prime minister to inform Anwar about his removal did not contravene Section 43 (5) as alleged by Anwar because the decision was made and had been informed to the Agong who accepted it.

"There is no legal requirement that that the removal from the post must be gazetted.

"What is required under Section 43 (5) is that the dismissal of a minister must be made by the Agong on the advice of the prime minister; it need not be gazetted," she said.

Zaitun said the act of revocation of Anwar's appointment was completed since the decision by the prime minister was conveyed to the Agong who

later accepted it.

In his submission, Karpal said that according to Section 43 (5), the prime minister only advises and the revocation must be done by the Agong on the advise of the prime minister.

Karpal said what happened in this case was vice-versa.

"Here he (prime minister) said I'm dismissing you and the King (Agong) had been informed.

"Clearly, the wording of the letter runs contrary on the face of the clear wording of Section 43 (5). It (the revocation) must be done by the King, unless of course, he (prime minister) has become King," he said.

Karpal said the prime minister could not make the decision to remove or to dismiss a minister who had been appointed by the King and according to Section 43 (5), the king must be the one to dismiss Anwar.

"The affidavit by the King's secretary confirmed our fear that the decision (to remove Anwar) was made by the prime minister and not by the King.

"So I submit that the application to strike out the suit ought to be dismissed with costs," said Karpal.

-- BERNAMA

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