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Court strikes out Anwar's suit (HL)

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KUALA LUMPUR, Wed. - The High Court today struck out a suit by Datuk Seri Anwar Ibrahim against Prime Minister Datuk Seri Dr Mahathir Mohamad and the Government of Malaysia challenging his dismissal from the Cabinet on Sept 2.

The Attorney-General's Chambers application to strike out the suit under Order 18 Rule 19(1)(a)(b)(d) of the High Court Rules 1980 was allowed as "based on facts and the law, the former Deputy Prime Minister's case is unsustainable."

In his decision, Judge Datuk Mohd Saari Yusof said the letter of revocation sent by the Prime Minister to Anwar had "in substance, although not in format" satisfied Article 43(5) of the Federal Constitution.

He said as Anwar's case revolved around the Prime Minister's letter sent to him, there was no need for further hearing or arguments on the matter.

Mohd Saari said prudence dictated that the Prime Minister should first formulate the decision, then inform the Yang di-Pertuan Agong and then convey the decision to Anwar.

However, he said: "The question is who is responsible to inform the plaintiff (Anwar) as normally the King would not inform the Minister on the revocation.

"There is no prescribed format requiring any one person to sign the letter of revocation. I don't see why the Prime Minister himself could not sign the letter conveying his decision.

"Although it is true there is nothing to show the letter was written at the behest of the King, nevertheless I am of the view the King was advised and informed."

He said this was evidenced by the affidavit filed by the King's private secretary, Ja'apar Wahab, that the King had accepted the Prime Minister's decision and advice and that Anwar's dismissal received the Yang di-Pertuan Agong's consent.

Anwar had on Nov 13 filed a suit against Dr Mahathir and the Government challenging his dismissal from the Cabinet.

In the suit, Anwar is seeking a declaration that his removal was unconstitutional and that his dismissal as from 5.30pm on Sept 2 this year is null and void, inconsequential and of no effect.

Anwar, 51, is also seeking a declaration that he is still a Minister, and is claiming costs and any other relief deemed fit and proper by the court.

Lawyers Karpal Singh, Jagdeep Singh Deo and Gobind Singh Deo are representing Anwar while Senior Federal Counsels Datuk Zaitun Zawayah Puteh and Abu Bakar Jais are representing the A-G's Chambers.

Earlier, Karpal submitted that Article 5(a) of the Federal Constitution says: "No person shall be deprived of his life or personal liberty save in accordance with law."

He said it was important to consider that Anwar's livelihood depended on his stay in Cabinet and under Article 5(a), his dismissal as Deputy Prime Minister and Finance Minister had deprived him of his livelihood.

It was not the decision itself but the "decision making process" leading to his dismissal that should be satisfied under Article 43(5) to ensure it was in accordance with the law.

He said "In Article 43(5), in the decision making process the prerequisite is the Prime Minister seeking an audience with the King and

then advising him that a Minister ought to be dismissed.

"On that advice, the King would revoke the appointment which subsequently under the Ministerial Functions Act 1969 have his name deleted from the list of Ministers."

"The decision making process must be done in writing or the deletion of Anwar's name from the list would be of no consequence and he would still be Deputy Prime Minister and Finance Minister.

"The Prime Minister had appointed himself Finance Minister and moved the Budget in October. If Anwar is still the Finance Minister, it is our contention the Budget would be void."

Karpal urged the court not to dismiss the case without going into its merits as the matter was of public interest and had far-reaching implications and consequences.

A summary dismissal would mean his argument had no merit and was completely baseless and "would be a blow in the face of Article 43(5) of the Federal Constitution".

"The Judiciary must be brave enough to stand up and say the Constitution is not to be contravened in any way" as, Karpal said the public would look at whether "the Judiciary will stand up to the Prime Minister".

Zaitun submitted that according to the facts of the case, the decision to dismiss Anwar was made and then conveyed to the King and had already been accepted.

"The Yang di-Pertuan Agong does not have the discretion in the matter of the dismissal and it is mandatory for the King to accept the decision made. The decision-making process has been made in accordance with law."

There was a hush in proceedings when, after hearing arguments, Mohd Saari sat in silence and studied several documents prompting Karpal to urge the Court to take some time to decide the matter.

After about 20 minutes, Mohd Saari began narrating arguments presented earlier and on Monday, and this again prompted Karpal to urge the Court to take time to consider the issues to be tried.

Mohd Saari responded by saying "I am about to deliver judgment. This is my view and it is up to either party to appeal the decision" and proceeded to deliver judgment.

Speaking to reporters later, Karpal said he would be appealing the decision "as a matter of public interest" and would file the notice of appeal at the Civil High Court registry tomorrow.

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