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Petitioner gets 12 months for contempt

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SHAH ALAM, Fri. - A petitioner in an election petition against three respondents - Datuk Seri Dr Mahathir Mohamad, Datin Paduka Zaleha Ismail and Datuk Wan Ahmad Omar - was today sentenced by a High Court to 12 months' jail for contempt of court.

Judge Datuk Low Hop Bing said Hardial Singh Sekhon had filed the petition on Jan 20 without obtaining leave or approval from a judge as required to in an order made on Oct 12, 1990, by High Court Judge Datuk Mahadev Shanker.

"You have contravened the order of the Judge and I rule that there is prima facie a contempt of court. I have brought a charge against you that you have filed an election petition without leave of a judge."

On Oct 12, 1990, Mahadev prohibited Hardial from instituting any legal proceeding in any court except with leave of a judge.

He made this ruling when an appeal by Hardial came up for hearing before him in a case where a Rawang magistrate dismissed an application by Hardial against 60 respondents, which included Finance Minister Datuk Daim Zainuddin and Attorney-General Tan Sri Mohtar Abdullah.

Mahadev had said: "The sad result of all this is a history of vexatious litigation. Bearing in mind the commentary in the Supreme Court Practice (1979) Vol 2 para 3390, I consider it desirable that he (the appellant) be restrained from instituting any further legal proceedings except under judicial supervision. I accordingly order that Hardial Singh Sekhon be restrained from instituting any legal proceedings in any court save by leave of a judge. A copy of this order shall be published in the Gazette."

Low asked Hardial: Are you aware that you have commenced an election petition without leave of a judge?

Hardial: Yes, I am aware but I applied for leave both in this court and to another High Court judge but the judge dismissed my application without giving reason in writing. I am applying to this court to file a complaint against Judge Datuk Chin Fook Yen and Chief Judge Tan Sri Wan Adnan Ismail.

Low: Are you going to withdraw the allegation against Datuk Chin and Tan Sri Wan Adnan?

Hardial: No, I will not.

Low then asked him for a copy of the leave of a judge to commence this election petition to which Hardial said he had applied on March 27 but no decision had been made.

Low: The decision of the court is that you are charged with contempt of court as you have contravened the order made by a Shah Alam High Court on Oct 12, 1990. You are prohibited from commencing any legal proceedings except after obtaining leave of a judge. You are now given an opportunity to show cause as to why you cannot be committed for contempt.

Hardial then urged the court to fix a date for him to submit a written submission and file an affidavit to show cause that there was no contempt. At this juncture Senior Federal Counsel Bazain Idris pointed out that there was glaring evidence in the affidavit and several applications filed before the court to show that Hardial had committed contempt of court.

When Low dismissed the application Hardial argued that there was no need for leave from a judge as the election petition was brought before an election tribunal and not the court. However, Bazain submitted that election petitions must be filed in High Courts and the hearing was by a

High Court judge.

Hardial then said he was conducting the case on his own as an arbitrator-advocate to seek justice before an election tribunal and if attempts were exhausted then he would take it up with the International Human Rights Commission.

At this juncture Bazain said: "This petitioner is an incorrigible person who never learns his lesson despite various cautions given by High Court Judges. He may have escaped committal proceedings on previous occasions. I am asking for a deterrent sentence because of the nature of allegation made in the election petition."

Low agreed with Bazain that Hardial was "a vexatious litigant" who would stop at nothing to continue proceedings in court and sentenced him to 12 months' jail.

When Hardial applied for stay of execution pending appeal to the Court of Appeal, Low granted him the stay on three conditions - that he filed the notice of appeal today, surrendered his international passport and posted RM15,000 bail in two sureties.

Low also dismissed the election petition as null and void.

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