

Appeal to reinstate RM100 million suit against PM fails
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Lawyers M.Manoharan and P.Uthayakumar cannot sue the government to challenge the grounds of their detention under the Internal Security Act (ISA) and seek damages, ruled the Court of Appeal.

Justice Zainun Ali, leading a three-man panel, said this was so by virtue of the "ouster clause" of Section 8B of the ISA which forbids any challenge on the merits of the King or minister's discretionary decision to detain a person under the ISA except on the aspect of procedural compliance requirement.

Abdullah Ahmad Badawi meets the king to resign as PMThe panel, which also comprises Justices Ramly Ali and Zaharah Ibrahim, made the decision after dismissing the duo's appeal to reinstate their RM100 million civil suit against Prime Minister Najib Abdul Razak and five others.

In the unanimous decision, Zainun said the civil suit which also named former prime minister Abdullah Ahmad Badawi (right), Home Minister Hishammuddin Hussein, former inspector-general of police Musa Hassan, the Taiping detention centre superintendent and the government as defendants, was a plain and obvious case to be struck out.

She, however, accepted Manoharan's submission that res judicata (a matter that has been decided) did not apply to their civil suit.

Last March 24, the Kuala Lumpur High Court allowed the defendants' application to strike out the suit on grounds of abuse of court process.

Not a threat

In the suit filed on Dec 9, last year, the duo claimed that their arrests, detention and restriction orders were unlawful, stating that they had not, at any time, done anything which was deemed to be a security threat to the country.

They alleged that they were arrested by the police on Dec 13, 2007, and were each served a two-year detention order at Kamunting. They were released on May 9, 2009, after serving 514 days in detention.

Earlier, Manoharan who represented himself and Uthayakumar (right), urged the court to reinstate their civil suit and that they be given a day in the court to ventilate on the merits of their detention.

"We were detained 514 days for reason best known to them but we want to know the reasons," he submitted.

He said they could file a civil suit to challenge the grounds of their detention because they could not do so in their writ of habeas corpus application to seek their release from detention, which was with regard to procedural non-compliance.

Senior Federal Counsel Najib Zakaria argued that Manoharan's contention that they were entitled to initiate civil action to challenge the merit of their detention, was misconceived.

He said the matter was res judicata because both the High Court and Federal Court had ruled that their detention was lawful.

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