

## **Is the EC admitting Dr M abused electoral system?**

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MP SPEAKS The Election Commission (EC) should have a proper sense of priorities instead of being led by the nose according to the dictates and wishes of the powers-that-be.

The latest example of the EC failing to have a proper sense of its constitutional proprieties is the statement by its chairperson Abdul Aziz Mohd Yusof that the EC is mulling over introducing harsher penalties against elected representatives who abuse the electoral process through unjustified resignations.

He said: "We need to curb the abuse of the electoral process... they (elected reps) should not resign at their whims and fancies.

"One must be aware of the hefty costs involved in holding a by-election."

In 1997, former prime minister Dr Mahathir Mohamad created not one, but two by-elections, when he handpicked the then Domestic Trade and Consumer Affairs Minister Abu Hassan Omar to be the Selangor menteri besar after the MB at the time, Muhammad Muhammad Taib, was forced to resign following two charges in the Australian courts over his failure to declare cash equivalent of RM2.4 million while leaving the Brisbane International Airport in December 1996.

Abu Hassan, who was also deputy Selangor Umno liaison chief, resigned from his cabinet position and as the Kuala Selangor MP to contest the Permatang state seat in a direct swap with incumbent Jamaluddin Adnan. Permatang is in the Kuala Selangor parliamentary constituency.

The creation of these two-by elections by Mahathir took place 17 years ago, and Mahathir has stepped down as prime minister for 11 years, having been replaced by two prime ministers since then.

But even in this distance of time of 17 years ago, would Abdul Aziz dare to say that Mahathir had "abused the electoral process" in creating two by-elections at his "whims and fancies"?

If Abdul Aziz dare not condemn Mahathir for abusing the electoral process 17 years ago in creating two by-elections in the Permatang state and Kuala Selangor parliamentary seats, what moral right has he to criticise the holding of the Kajang by-election on March 23?

Similarly, would Abdul Aziz criticise the impending holding of the Balingian by-election in Sarawak caused by the expected resignation of Abdul Taib Mahmud, giving up his 33-year state chief ministership for the state governorship?

### **Provisions in state, federal constitutions**

If the EC chairperson is mindful of his constitutional proprieties to promote democracy by conducting free, fair and clean elections, he would have given more urgent consideration to provisions which mar democratic principles.

One is the provision in the federal and state constitutions, which provides that no by-election needs to be held if a resignation from the Parliament or the state assembly occurs within two years of the expiry of the legislature.

The other is the provision that a member of Parliament or state assembly member who resigns from the legislature would be barred from standing for re-election to the same legislature for a period of five years.

Both these amendments were the draconian and desperate measures by Mahathir to consolidate his political power in Umno and BN when he was the prime minister to avoid accountability to the electorate, and is clearly undemocratic and should be removed from the statute books.

One can agree that within 12 months of the dissolution of Parliament or state assembly, any vacancy that arises - including because of resignation - need not be filled, but the political party which had won the constituency should be entitled to nominate an interim MP or assemblyperson who should enjoy all the allowances, perks and facilities of a fully-elected MP or assemblyperson.

There can be no reason for barring an MP or assemblyperson from standing for re-election for five years except to prevent another Shahrir Samad incident which had been most embarrassing for Mahathir when he was prime minister.

Shahrir (right) was sacked from Umno in 1987 in the events leading up to the 1988 Malaysian Constitutional crisis and had been Tengku Razaleigh Hamzah's challenge to Mahathir as prime minister and Umno president.

In 1988, Shahrir resigned from the parliamentary seat of Johor Baru and ran as an independent candidate in the ensuing by-election, inflicting an ignominious defeat to Mahathir whose Umno-BN candidate was crushed with a 12,613-vote majority by Shahrir.

Barring a person from standing for re-election flies in the face of the principle that it is the electorate, and not the EC, or the government-of-the-day, which should decide who should be their elected representative.

Article 114 (2) of the constitution imposes one qualification for appointment of the EC chairperson and members of the EC by the Yang di-Pertuan Agong - "the importance of securing an EC which enjoys public confidence".

### **'No EC like the present one'**

There can be no doubt that in the past 56 years, there has been no EC like the present one under the leadership of Abdul Aziz, which has forfeited public confidence in the manner it conducted the GE13.

If there is a public referendum on whether Malaysian voters have confidence in the EC headed by Abdul Aziz, there will be a substantial percentage of Malaysians who would vote against the present chairperson and members of the EC.

Its chairperson and members should convene a special meeting of the EC to consider whether they should collectively resign their commission as they have lost the most ingredient of their appointment - that is "to enjoy public confidence".

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