

Gov't wins stay order on water concession ruling
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UPDATED 2.05PM The Energy, Water and Green Technology Ministry and the federal government have succeeded in their application for a stay of execution of a High Court order to make public by next Monday a water concession agreement and its audit report.

Judicial Commissioner Hadhariah Syed Ismail of the High Court in Kuala Lumpur granted the stay, noting that by not granting it and if the appeal is successful at the Court of Appeal, the federal government's application would be rendered nugatory.

"I am in a dilemma in granting the order as I truly feel there should be transparency in the deal as water is a basic right," she said.

However, Hadhariah has accepted the Malaysian Trades Union Congress' (MTUC) demand that the Attorney-General's Chambers file an application seeking an early date for the appeal to be heard.

NONEMTUC president Syed Shahir Syed Mohamud (centre in photo) expressed sadness with the decision as it seems the government is going back on its words of wanting accountability, transparency, and openness.

"There is more to the audit report than the non-revenue water, as it also discloses where Syarikat Bekalan Air Selangor (Syabas) obtain their pipe supplies. We want to know whether the raising of the water tariff was justifiable or someone benefits from it. As Hadhariah had ruled on Monday, there is nothing in the documents which states it endangers national security."

"It is not like these documents states what weapons Malaysia has. Just what is the government doing in filing the appeal and going against the spirit of the rakyat?" he asked.

Klang MP Charles Santiago (left in photo), who is also one of the 13 other applicants, said that the federal government is going back on its policy of ensuring transparency and openness in its dealings as pledged in the New Economic Model and 1Malaysia policy.

"It would be seen as a flip-flop in the government's policy and would not send the right signals to investors," he said.

The ministry and federal government, in appealing the decision, cited that the disclosure would upset the administration of government as its ground for the stay.

The Selangor government which was originally a party did not file an appeal over Monday's decision as it supported the move for such documents to be made public.

MTUC, Syed Shahir and 13 others had filed their application for judicial review on Jan 25, 2007, to compel the ministry, the federal government and the Selangor government to make the water concession agreement and audit report public.

Consumers in Selangor, Putrajaya and Kuala Lumpur objected to the 15 per cent rise in water tariff resulting in this application.

Landmark judgment

On Monday, judicial commissioner Hadhariah ordered the disclosure of the contents of the audit report and water concession agreement entered between the federal government, the Selangor government and Syarikat Bekalan Air Selangor (Syabas).

The documents, mainly the audit report, which were classified under the Official Secrets Act (OSA) by the federal government, were ordered to be made public by next Monday.

Hadhariah ruled that the government's refusal to release the documents to the public did not take into consideration the expectations of the people who were adversely affected by the decision.

"The respondents' decision to allow the privatisation of water service and arbitrary increase in tariff, and at the same time invoking the OSA, is disproportionate to the aims of the Act.

"It is also counter to the principles of good governance, accountability, transparency, and (that) the interests of the rakyat should come first," she said in her 19-page judgment.

Senior federal counsel Suzana Atan submitted that although it is the court's discretion to grant a stay, the court needs to ensure that the appeal, if successful, would not render it nugatory or academic.

"This rule is based on logic and common sense," she submitted, adding the government's application was based on the fact that if it is allowed it would disrupt government administration.

No special circumstances

Meanwhile, MTUC's counsel Malik Imtiaz Sarwar told the court the ministry and federal government have shown no special circumstances in the granting of a stay as the documents, as stated by the court's findings, were not a threat to national security for them to be deemed under OSA.

dap islamic state roundtable 100807 malik imtiaz "They had failed to show public importance in not releasing the documents," Malik, who was assisted by co-counsel Ang Hean Leng, said.

Malik (left) added his clients had waited for three years for such a landmark decision and the move today is retrogressive as it would be seen to associate the water concession agreement, which is in the public domain, to be classified under OSA as well.

"Furthermore, we do not know when the Court of Appeal would fix to hear their appeal, and if the stay application is allowed his clients would be prejudiced by the order."

The lawyer said should the court wish to grant the order, it should compel the ministry and federal government to write in an early date for hearing.

Malik said his clients do not want to see the federal government sitting on the stay application and this court should make an order to compel them to ensure an early hearing date at the appellate court.

Outside court, Malik told reporters that the federal government has eight weeks to file the appeal records after filing the notice of appeal.

"However, it should not take long as the grounds of judgment have been obtained and they could file it next week," the lawyer said.

Meanwhile, Selangor Menteri Besar Khalid Ibrahim said he is concerned over the court's decision in granting a stay against the schedule disclosure.

"It would certainly be in the public interest for everyone to know about the agreement and the audit report," he said.

"I will refer the matter to the Selangor exco, for the state to approve the appointment of a lawyer to represent the state at the appeal level."

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