

**Court throws out Zaid's election petition**  
**Malaysiakini.com**  
**August 05, 2010**

Former minister in the Prime Minister's Department Zaid Ibrahim has failed in his bid to challenge the Hulu Selangor by-election results.

NONEThis follows the High Court's decision to allow a striking-out application by the victorious candidate, P Kamalanathan (right).

Election judge justice Azahar Mohamed has ruled that the election petition was defective as it had not stated clearly the alleged bribery acts.

Azahar then declared Kamalanathan was duly elected as Hulu Selangor MP.

Justice Azahar in his judgment, had set out the foundation on how an election petition should be filed as the petitioner must furnish details of who had received the alleged bribe.

He also indicated that the full text of the speech or transcript of the alleged bribe offer (namely the one made by Prime Minister Najib Abdul Razak) should have been included in the petition.

The judge in his 27-page judgment, adopted the principles set in the case of Mohd Nazri Din vs Raja Ahmad Zainuddin Raja Omar which was decided by the Federal Court, that the material facts must follow Rules 4 of the Election Petition Rules, and must relate the offer of bribery in question.

"I have searched through this election petition, for any specific name or identity of the person to rule the alleged corrupt act of whom the first respondent or his agent was allegedly involved in.

NONE"However, on this, it is singularly silent of any specific names of the person who received the alleged bribe. What stands out, is that not one of the recipients to have received such alleged bribery was named in the petition," he said.

Petition vague

The judge also said Zaid (right) had also failed to show how the alleged bribery acts had resulted to alter the outcome of the by-election adding that the petition was quite vague and devoid of material facts, rendering it defective.

"The first respondent (Kamalanathan) needs to be informed of the precise identity of the person accepting the bribe for him to prepare his defence," he said, adding the fundamental flaw in the petition is a matter of substance and not merely form.

"This is not a mere technical non-compliance. The petition in the present form does not contain the most vital material facts which should have been furnished."

This, Justice Azahar ruled, made the petition defective and invalid.

The judge also stated how a charge of any wrongdoing in an election petition had to be framed.

He said the charge of the bribery in question, must be a document setting out the specific accusation made against a person, who is entitled to know the alleged facts at a very early stage.

"It should not be like casting the net wide in the hope it might strike one of them (the accusations made). The rule does not allow this," he said.

Attempts to induce voters

Zaid had filed the petition on May 24 to invalidate the April 25 poll results on grounds that there were attempts to induce voters by BN chief Najib Abdul Razak.

NONEHe alleged that Kamalanathan knew of the inducements made by Najib. The focal point of the case was Najib's (right) promise of RM3 million to SRJK (C) Rasa School and the presentation of cheques to the Felda settlers.

Kamalanathan applied to strike out the petition on the grounds that it was trivial and an abuse of the court process.

He claimed that Zaid had failed to identify the people said to have been offered bribes by - or to have received from - Najib during the election campaign, as alleged in the petition.

Kamalanathan further argued that Zaid had failed to abide by the election petition rules in filing the petition.

According to him, the pleading in the petition does not come under Section 32(c) of the Election Offences Act 1954 (EOA) as it does not fall within the meaning of corrupt practices as stipulated under Section 10(a) of the Act.

Justice Azahar had earlier dismissed Zaid's preliminary objection to Kamalanathan's strike-out application.

Ninety percent of election petition cases end with a striking-out application.

'I am P Kamalanathan'

Kamalanathan, in welcoming the perak state govt crisis 030309 hafarizam harunecision, thanked God that the court has affirmed him as the rightful MP.

"I am P Kamalanathan, and I am the MP for Hulu Selangor," he said, adding he would now continue to work hard in serving his constituents.

One of his lawyers, Mohd Hafarizam Harun (right), said the decision showed what had been offered, such as for the Chinese school and the RM160,000 to the Felda settlers, were not bribes but was meant for the development of the constituency.

Another lawyer who appeared for Kamalanathan, Firoz Hussein Ahmad Jamaluddin said it is a matter of substance that the charge has to be framed properly for his client to prepare his defence.

Lawyer Azhar Azizan Harun representing Zaid said he was disappointed with the decision as they had the names of those who received the bribes, and would have brought the matter up in a full trial.

"It's a Catch-22 situation as those receiving and giving the bribe would be seen as committing an offence. These people may not come out, unless the law is amended," he said.

Nevertheless, he said justice Azahar had laid down the foundation on how and what the facts are to be included in the petition.

The judgment, he said does not mean the court recognised that bribery did not take place. "But we have to prove the substance."

Azhar said they have yet to make a decision on whether to appeal the decision.

Lawyer Ang Hean Leng also appeared for Zaid.

Copyright © 1999-2007 Mkini Dotcom Sdn. Bhd.  
Source : <http://www.malysiakini.com/news/139219>