

Hulu S'gor by-election ruling all too predictable
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COMMENT Often, it doesn't really take much these days to be a lawyer as demonstrated by the Hulu Selangor election petition case where PKR's Zaid Ibrahim failed in his bid to challenge the Hulu Selangor by-election results.

NONE The High Court today allowed a striking-out application by the victorious candidate, MIC's P Kamalanathan (left).

All one has to do is to sidetrack from the case proper and point out some insignificant 'technicality'.

Any 'coffee shop lawyer' can do this and save the winning party a small fortune in legal fees, if not costs. The entire case gets thrown out. No need to get into the substantive issues.

These so-called lawyers who manage this exit the courts, into the glare of camera flashes and the hordes of waiting reporters, flashing artificially whitened grins from ear-to-ear, both hands up in the V for victory sign, as if they had managed to put on an extraordinarily brilliant legal performance. And laughing all the way to the bank.

In one forgotten corner, the more important losers slink away, eyes downcast, cursing their fate.

They wonder - certainly more for the entertainment of the media, and the amusement of the winning party - whether to take it to the appeal stage. It will be another foregone conclusion - no reason to interfere with the election court ruling.

Generally, no written judgment is given by the Court of Appeal - talk of avoiding work like the plague - unless the plaintiff succeeds in getting their appeal heard at the Federal Court.

The Federal Court has even less work these days than the Court of Appeal. They routinely deny any application for leave to appeal, again noting that "there's no reason to interfere with the Court of Appeal ruling".

In the case of the Election Court for the Hulu Selangor by-election, it was a foregone conclusion. Zaid Ibrahim must have known he was barking up the wrong tree.

But why file this futile case when he knows that he will surely win Hulu Selangor at the next general election? Just look at the way the votes went. MIC is history.

Lost cause

Zaid knows why he lost the case in court even before it was heard. He didn't have, as the court expected, a list of people who had been bribed by the BN into voting for their candidate P Kamalanathan.

Then the election judge could have easily calculated whether these votes would have made any difference to the results.

NONE It would have been better still if Zaid (left) had all the bribed voters overflowing in court to back his election petition. That's what the judge expected before getting into the substantive issues.

Was Zaid expecting judicial activism? That will be the day. Or perhaps he was hoping that he would be among the ten percent of election petition cases which make it to the hearing stage? Tough luck! He lost a great opportunity to embarrass Umno before having his case thrown out.

Spirit of the law

True, legislation is as much a process of the courts as the lawmaking bodies. While Parliament enacts the law, it's the courts that define the law and they can do this by interpreting its letter and spirit in a creative manner. In the process, they could create new legislation in the courts.

There's nothing to prevent the courts from doing this as one of the three arms in the doctrine of separation of powers. It's not the done thing to focus solely on the intent of Parliament when enacting legislation, unless the judiciary wants to reduce itself to just another government department peopled by glorified clerks, slavishly subservient to the executive.

NONEMahathir (left), despite being ignorant of the law as many critics in the fraternity charge him, was against the interpretative power of the courts. He saw the mandate the ruling party obtained at every election as carte blanche to ride roughshod over even any semblance of democracy and justice.

Hence, his oft-cited proclamation: "We must find a way to legislate in such a way that it will leave no room for interpretation by the courts".

The courts too, and not only because they have since degenerated into another government department peopled by glorified clerks who seem obsessed with perennially figuring out what the legislators meant or intended when they passed a law.

They would do much better to summon the legislators to court and ask them directly what their intent was when passing any piece of legislation. It saves one from all the stress and head-cracking.

Alternatively, the rule of thumb in court in cases involving the ruling party or government, could be a simple one: "Heads I win, tails you lose".

Justice not being served

Hulu Selangor is not the only case which was not allowed by the courts to proceed to the substantive issues. More recently, we had the Mazu - Goddess of the Sea - case from Kudat. Except for the High Court, both the Court of Appeal and Federal Court refused to allow the substantive issues to be heard.

So what function do these courts serve in the interest of justice and the truth? Where's the remedy?

Joseph KurupThe other case, again from Sabah, is Pensiangan which was won unopposed by Parti Bersatu Rakyat Sabah (PBRS) president Joseph Kurup (right). But not of course without a punch to his face from an irate voter. To the credit of the election court, Kurup lost. The judge refused to get into meaningless technicalities.

It was a different situation at the appeal stage where Kurup got to keep his seat. No prizes for guessing why.

Then, there's of course Perak where a lawfully-established government was overthrown by dubious means and control of the state assembly wrested with the aid of hooligans. The courts, keeping a straight face, saw these acts of hooliganism as part of the normal process of the state assembly and saw no reason to interfere.

There's the rare victory against the government, just to keep up appearances, as in a major land case recently in Sarawak. However, there's a dilemma here.

The Taib government refuses to recognise the court verdict although it went all the way to the Federal Court and lost. So, individual land owners have to go to court all over again, case-by-case.

There's sure to be some technicality accepted by the court to prevent the substantive issues from being heard. Heads I win, tails you lose.

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