

**Zaid's petition: Judicial rot deepens**  
**Malaysiakini.com**  
**August 06, 2010**

Justice Azahar's Mohamed's decision to strike out Zaid Ibrahim's application to annul Malaysia's dirtiest by-election - for the Hulu Selangor constituency - was completely within my expectation.

NONE In fact, the moment I learned that Chief Justice Zaki Azmi - a former Umno stalwart - had appointed Azahar to handle the case, I knew that Zaid's (right) prospects were doomed.

For, wasn't Azahar the judge who handed out the atrociously "double-standard" judgment in the Perak Speaker vs Speaker case on Sept 8, 2009?

In that judgment over the chaotic state assembly sitting of May 7, 2009, he rejected Pakatan speaker Sivakumar's complaints against BN speaker Ganesan on grounds that he had no jurisdiction to intervene into affairs of the assembly.

But he failed to realise that by declaring Ganesan's election as speaker during the same assembly sitting as a lawful act, he was in fact committing the same intervention he said he wanted to avoid in the first place. (Azahar's self-contradiction was so blatant that it earned the title of "Speaker vs Speaker: Judge Azahar slapping his own face?" for an article in my book, 'The March to Putrajaya').

Judge Azahar's reputation dubious

NONE And, wasn't Azahar also the prosecutor accused of fabricating false evidence against Anwar Ibrahim (left) during the infamous Anwar corruption trial a decade ago, which was resoundingly condemned around the world as a heinous travesty of justice and outright political persecution? (This is an accusation that Azahar was not known to have denied, see Note 1 below).

What sort of outcome can you expect when a former Umno stalwart appoints a judge of such reputation to hear a case with such high political stakes?

Now let us get to the nitty-gritty of Azahar's judgment.

Azahar allowed BN's Kamalanathan's application to strike out Zaid's petition on the following grounds:

- \* Zaid failed to identify the recipients of the alleged corrupt act;
- \* Zaid failed to show how the alleged corrupt acts have altered the outcome of the election; and
- \* Zaid failed to provide a full text of the speech or transcript of the alleged bribery.

Zaid's allegation of corrupt acts in this petition was focused only on Prime Minister Najib Razak's offer of RM3 million to a Chinese school and offers of cash to Felda settlers, though there were innumerable other material inducements by the BN amounting to many millions of ringgit during the election campaign.

Evidence of bribery monumental

When Najib made the offer of RM3 million on the eve of polling day, he told the electorate in Rasa that they could come to his office to secure the payment the next day of election if Kamalanathan won. But he added: "If we lose, don't have to come".

This sensational bribery offer was instantly splashed all over the Internet which was read around the world, in addition to appearing in some local newspapers the next day.

NONE Much to the amazement of many, Najib (left) not only failed to feel guilty, he seemed mighty proud of this act when he cited this incident as proof of his 'trustworthiness' during the subsequent Sibu by-election campaign when he made a similar offer to the Sibu electorate on the eve of polling day. This

time, his full speech was captured in video and uploaded in You Tube which attracted a world-wide audience.

Najib's cash offer to the Sungai Buaya Felda scheme was: RM160,000 to former settlers for every acre of land developed, and RM50,000 for the next-of-kin of settlers upon their death. These offers were publicly announced and reported in the media.

Do these acts constitute election corruption and bribery under the Election Offences Act 1954"?

Let us take a look at Sections 32(a) and 32(c) of the same Act, upon which Zaid based his petition.

Section 32, titled "Avoidance of election on election petition," reads:

"The election of a candidate at any election shall be declared to be void on an election petition on any of the following only which may be proved to the satisfaction of the Election Judge:

a. That general bribery, general treating or general intimidation have so extensively prevailed that they may be reasonably supposed to have affected the result of the election; and,

c. That a corrupt practice or illegal practice was committed in connection with the election by the candidate or with his knowledge or consent, or by any agent of the candidate.  
(There are 5 sub-sections under Section 32).

Grounds of judgment ridiculous

Would any common man, after reading this, have the slightest doubt that bribery to induce votes had indeed taken place? Wasn't it crystal clear that the offer of RM3 million was a trade-off for the electorate's votes for Kamalanathan? Wasn't the cash offers to Felda settlers an outright inducement for their votes for BN? Don't our judges have the same kind of common sense that the common folk have?

Judge Azahar says that the recipients of bribery must be identified and evidence produced that the alleged bribery has in fact altered the election results before he would even begin to hear the case proper.

But isn't an attempt to bribe sufficient to constitute an offence? Why must the judge insist on such exhaustive details at such a preliminary stage when the respondent is asking the case to be thrown out without actually hearing it? Isn't there sufficient evidence at this stage to at least arouse the judge's curiosity to hear further so that justice may not be aborted.

What is Judge Azahar here for - to serve justice or to serve something else? Does Azahar realize that he is doing our judicial system, nay our entire democratic system, a grievous injury when his judgment on such a watershed case is even perceived to have transgressed justice, not to mention that it has actually done so.

I'll come back to Azahar's various grounds upon which he decided not to hear Zaid's petition.

He said the recipients of the alleged bribery had not been identified. Aren't the electorate of Rasa and Sungei Buaya the recipients? If the entire country, and even the world, already had access to this news, why should Azahar be so doubtful of this fact that he refused to hear further?

Azahar said Zaid had not produced evidence that such alleged bribery had affected the election results. What kind of evidence does he have in mind? Does he expect voter A to swear that he wanted to vote for Zaid, but due to Najib's offer, he changed his mind and voted for Kalamathan? If voter A really does that, would Azahar accept voter A's word as gospel truth?

If not, what other evidence does Azahar have in mind before he would agree that pervasive offer of

inducement had in fact swayed the decision of voters? Come on judge, let us not carry such nonsense to the bizarre.

Azahar also said he had to throw out the case because Zaid did not provide a full text of Najib's speech or a transcript; but if the whole world has known his speech and Najib even bragged about it himself, isn't Azahar making a fool of himself by rejecting the case on such flimsy grounds?

We have seen enough nonsense and treachery in our courts. What Zaid Ibrahim must do now is to appeal all the way to the highest court. Let the whole world see how bad our judiciary is. And let all Malaysians realise that the only way to get justice in this country is to change the government.

Note 1: Azahar, then a prosecutor, was accused of fabricating false evidence against Anwar Ibrahim together with Gani Patail during the corruption trial in 1999 in the Zainur Zakaria vs Public Prosecutor case.

The Federal Court subsequently stated that there was a prima facie case justifying the application to disqualify these two prosecutors, noting that both had not denied the accusation at the material time. This statement has not been contradicted or challenged to date. You may refer to the following Malaysian Bar website for further details.

Copyright © 1999-2007 Mkini Dotcom Sdn. Bhd.  
Source : <http://www.malaysiakini.com/news/139389>