

1988 crisis: Salleh shot himself in the foot?
Malaysiakini.com
Apr 23, 2008
P Suppiah

The personalities involved in the entire episode are as follows:

- * The then Yang Di Pertuan Agong (the King), now the Sultan of Johor
- * Tun Salleh Abas, who was then the Lord President
- * The prime minister (Tun Dr Mahathir Mohamad, who was then Datuk Seri Dr),
- * The then attorney-general, Tan Sri Abu Talib Othman, now Suhakam chief.

The whole episode started with Salleh writing a letter to the King dated March 26, 1988, copies of which were sent to the Malay rulers. On May 27, 1988 the prime minister in the presence of high-ranking government officials informed Salleh that the King wished him to step down (to retire as Lord President) because of the said letter.

Salleh on May 28, 1988 sent a letter of resignation: the next day he withdrew it and subsequently held a press conference. On June 9, 1988 the prime minister made a second representation to the King alleging further misconduct on the part of Salleh based on his undignified use of the press to vent his grievances – such as requesting for a public hearing of the tribunal and asking for persons of high judicial standing to sit on the tribunal.

On June 11, 1988, members of the tribunal were appointed pursuant to the Federal Constitution by the King. On June 14, 1988, Salleh was served with the list of charges against him. On June 17, 1988, Salleh was served with a set of rules to govern the tribunal procedure. On June 21, 1988, on the application of Salleh, a Queen's Counsel was admitted for the purpose of defending him without any objection from the attorney-general.

Salleh was informed of the tribunal's hearing on June 29, 1988 and was told he could be represented by his Queen's Counsel. On June 29, 1988, counsel for Salleh appeared and informed the tribunal that Salleh would not participate in the proceedings. Salleh was making a series of press statements including an interview with the BBC showing unhappiness over the tribunal's legality.

The tribunal held its proceedings in camera. Salleh was accorded the right to be defended by counsel. His counsel decided not to cross-examine any of the witnesses. The tribunal was made up of the following six persons:

- * Acting Lord President, Abdul Hamid Omar (tribunal chairman), who was appointed a High Court judge in September 1968. In 1980, he was appointed a Federal Court judge. On Feb 3, 1984, he was made the Chief Justice of Malaya taking over from Salleh.
- * TS Sinnathuray, a Singapore Supreme Court judge (tribunal member).
- * Abdul Aziz Mohamed Zain, a former Federal Court judge (tribunal member).
- * Mohamed Zahir Ismail, former High Court judge from 1975 to 1982 before assuming his post as a Dewan Rakyat speaker (tribunal member).

* Sri Lankan Chief Justice, KAP Ranasinghe (tribunal member).

* Chief Justice of Borneo, Lee Hun Hoe (tribunal member).

The allegations against Salleh were made known to him in writing (in respect of which the tribunal held its inquiry), and briefly they are:

First allegation: On the occasion of the conferment of the honorary degree of doctor of letters on him by Universiti Malaya on Aug 1, 1987 in his speech he made several statements criticising the government which displayed prejudice and bias against the government: and these statements were incompatible with his position as the Lord President of the Supreme Court.

Second allegation: At the launching of the book Malaysia Law and Law, Justice and the Judiciary: Transnational Trend on Jan 12, 1988 in his speech he made several statements discrediting the government and thereby sought to undermine public confidence in the government's administration of this country in accordance with the law.

In the same speech he made special reference to the interpretative role of judges and advocated the acceptance of the Islamic legal system not only in the interpretation of the civil law of Malaysia but in its general application.

In particular he advocated thus: "This system consists mostly of the Quran and Hadith (tradition of Prophet Mohammad S.A.W.). The interpretation of these two sources of law is done according to the established and accepted methodology. Volumes of literature have been written as commentaries and exegesis of the Quaranic law the Prophet Mohammad's Hadith or tradition. In this situation, not only is the judiciary bound by Islamic law as propounded by jurisconsult (muftis, who give legal rulings on particular matters), but as Parliament and the executive too are certainly bound by these rulings."

His attempt to restate the law generally along Islamic legal principles ignores the character of Malaysian society as one which is multi-religious and multi-racial with deep cultural differences. No responsible government can allow the postulation of such views by the head of the judiciary without causing fear and consternation among its non-Muslim population. Furthermore, his statement violates established principles of judicial interpretation widely accepted in the courts in Malaysia and in the Commonwealth.

Third allegation: He adjourned sine die the case of Teoh Eng Huat v Kadhi Pasir Mas, Kelantan and Another (Civil Appeal No 220 of 1986) which involved the issue of a minor's choice of religion. It was adjourned six times in the Supreme Court – Aug 18, 1986, Aug 25, 1986, Dec 1, 1986, July 30, 1987, July 31, 1987 and Aug 3, 1987. It related to the conversion from Buddhism to the Islamic faith.

Fourth allegation: In his said letter dated March 26, 1988 to the King and the Malay rulers, he stated that it was written on behalf of the judges of this country. This is false as there was no prior consultation with nor approval of all the judges of the country on the content of the letter before he sent it.

Fifth allegation: He, after his suspension as Lord President, made various statements to the media for publication and broadcasting which contained untruths and which were calculated to politicise the issue between the government and himself and to further discredit the government.

The tribunal commenced its hearing on June 29, 1988. Salleh was absent. But his counsel, namely Raja Aziz Addruse, CV Das and Royan were present. The attorney-general presented his arguments to assist the tribunal and set out the facts. In his submission, the AG stated that there was more than ample evidence and justification to recommend Salleh's removal from office.

In all four witnesses were called and much written material connected with the allegations was made available to the tribunal for its members to rely on. The four witnesses were Sallehudin Mohamed, Sharon Abdul Majid (director-general of Fisheries), Saedon Daud (deputy director of Budget) and Haidar Mohd Noor (chief registrar) who gave evidence with regard to the adjournments of the conversion case mentioned in the third allegation.

The tribunal completed its report on July 7, 1988. In it, it stated that the tribunal was appointed by the King under Article 125(3) and (4) of the Federal Constitution to investigate and submit a report to the King in regard to the representation made by the prime minister that Salleh be removed from office on the grounds of his misbehaviour which show that he is no longer able to discharge his duties and function as Lord President properly and justly.

The tribunal in its report set out the background facts and its findings and recommendations. The tribunal under proof and findings inter alia stated that it endeavoured to follow the well-known principle and applied and followed in such matters and also in regard to the burden of proof and the standard of proof by similar tribunals in other jurisdictions. It dealt with each of the allegations and stated briefly in respect thereof as follows:

Allegations 1 and 2: The tribunal was satisfied on a consideration of the documents containing the speech that had been made by Salleh on the occasion he was conferred the honorary degree of doctor of letters by Universiti Malaya on Aug 1, 1987 and also the speech made by him on Jan 12, 1988 on the occasion of the official launching ceremony of the book *Malaysian Law and Law Justice and the Judiciary: Transnational Trends* at the Shangri La Hotel Kuala Lumpur that the particulars set out in the said allegations have been established.

Allegation 2 (iv) and 3: In regard to allegation 3 the tribunal was satisfied in the absence of any explanation by Salleh that the adjournment was made upon improper and extraneous consideration when the case related to the conversion of a minor from the religion she professed (Buddhism) to the Islamic faith.

Allegation 2 (iv): The tribunal held:

i) that it was manifestly clear in the absence of an explanation from Salleh who made the speech that he was seeking to advocate in the guise of interpretation, the acceptance of the principles of Islamic law as propounded by the 'muftis' and to assert that such rulings bound not only the judiciary but also both the Parliament and the executive of the country

ii) that it must be borne in mind that Islam is the religion of the Federation, the Constitution of Malaysia by Articles 3 and 11 assures and guarantees to all persons complete freedom of religion by vesting in every person "the right to profess and practise his religion" in accordance with the law.

iii) that it must also be borne in mind that Malaysia is a multi-racial and multi-religious country. That being so, the assertion of principles as spelt out in the said speech by Salleh

is likely to cause not only uneasiness but also fear and doubt in the minds of those who profess a religion other than Islam and do not subscribe to the tenets and principles advocated by Salleh in his speech.

iv) that it must also be borne in mind that the Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with the Constitution shall be void to the extent of such inconsistency. Therefore, it was ill-advised for Salleh as head of the judiciary to make an authoritative statement that "Islamic laws bind not only the judiciary but Parliament and the executive also".

Allegation 4: The tribunal held that for Salleh to say that the letter to the King (copied to all the Malay rulers) was from "all of us" was an untruth and in the absence of any explanation the tribunal held that Salleh had done so in order to ensure that the said letter could carry greater authority and greater conviction than it would have had it been made only by a section of the judges.

Allegation 5: The tribunal was satisfied that in the absence of any explanation from Salleh that he used the media with the view to politicising the issue of his suspension and to gain public sympathy for himself.

The tribunal touched on the meaning of "misbehaviour": to mean unlawful conduct or immoral conduct such as bribery, corruption, acts done with improper motives relating to the office of a judge and which would affect the due administration of justice or which would shake the confidence of the public in a judge.

The tribunal concluded: "Having regard to the views we have already formed upon the material before us, we are of the opinion, in the absence of an explanation being made by or on behalf of Salleh that he has been guilty of not only "misbehaviour", but also of misconduct which falls within the ambit of "other cause", which renders him unfit to discharge properly the functions of his office, as Lord President, as set out in Article 125(3) of the Constitution."

Under recommendation, the tribunal said: "Salleh has been proved to have behaved himself in such a way as would destroy the public confidence in his impartiality, his honesty his integrity and in his ability to make decisions as a judge and unanimously recommended that he be removed from office, both as a judge and as the Lord President of the Supreme Court, which recommendation was accepted by the King."

It further stated: "We very much regret that the respondent chose not to appear before us, even though every reasonable opportunity was afforded to him by us. We have, as has been made clear in this report, come to the findings which we have arrived at only upon the unchallenged and uncontradicted material placed before us. Needless to say that had we had the benefit of a plausible explanation from the respondent in regard to the several issues which were presented to us for our consideration, our decision may well have been different."

Much later in a reply letter dated March 20, 1989 to the International Commission of Jurist, Hamid stated that though Salleh was the Lord President his judicial experience on the Superior Court bench was comparatively short having been appointed (when he was a solicitor-general) direct to the Federal Court (the predecessor of the present Supreme Court) as recently as 1979. Salleh was never a Judge of the High Court and had no experience whatever of trial court work at that level. On the other hand, he (Hamid) was appointed High Court judge in 1968 (11 years earlier).

What prompted me to write this letter is because the topic of Salleh Abas has cropped up in the papers recently with the de facto law minister holding the view that the government should apologise to Salleh for his being sacked as Lord President.

The present prime minister has also advocated in his speech at the Bar dinner last week (nearly 20 years later) that the government would make "goodwill ex-gratia payment to Tun Salleh". I wonder whether it will be proper to use government's money for such purpose.

It must be remembered that to this day no one knows what the defence would have been if Salleh had appeared before the tribunal and be subjected to cross-examination. Salleh did not do this as he said he 'did not recognise' the tribunal in his interviews. Even if one does not recognise a tribunal, one should appear before it and make the necessary submission and if the submission fails, one should still give evidence (under protest so to speak) setting out the defence.

His version, even if disbelieved by the tribunal, will always be there on the record for everyone to see. In fact the tribunal had stated categorically that if it had the benefit of a plausible explanation from Salleh in regard to the several issues which were presented to it for its consideration its decision may well have been different.

By his refusing to appear and give his version (especially in regard to his advocating the acceptance of the Islamic legal system in the interpretation of the laws as propounded by the 'muftis') he in fact had shot himself in the foot. It is no use crying foul when he did not exercise his right to be heard. What would he have done in a similar or other cases presided by him?

To my mind, it is still open to Salleh, for instance among other avenues, to ask for an appointment of another tribunal to review his case (whether there will be any objection to this from any quarters, I do not know) subject however to his agreeing to give evidence as to his defence. The record of the proceedings are still there. Even if this happened he will be running into difficulties because the four witnesses who gave evidence at the tribunal were never cross-examined by his counsel.

Copyright © 1999-2007 Mkini Dotcom Sdn. Bhd.
Source : <http://www.malysiakini.com/news//81831>