

MB vs MB: 2 written judgments available
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More than one month after delivering the decision on who is the lawful Perak menteri besar, two of the three Court of Appeal's written judgments were released yesterday. However, the final one will only be available on Monday as a result of a computer glitch.

In his 49-page written judgment, Court of Appeal Judge Md Raus Sharif, who led the three-member court panel, said that ousted Perak MB Mohammad Nizar Jamaluddin had requested for the dissolution of the state legislative assembly using the wrong provision of the Perak constitution.

According to Md Raus, Nizar's application under Article 36 (2) was incorrectly made as the clause is relating to the "conclusion of the five years term of the Perak assembly when a general election is contemplated."

"It is a well-known fact that the general election had been held barely one year ago (March 8, 2008). Hence, the learned High Court judge's finding that Nizar's request for the dissolution of the assembly made under Article 36 (2) cannot be supported.

"On the facts, the request could only have been made in accordance to Article 16 (6) of the Perak constitution," he ruled.

According to Md Raus, Article 36 (2) is a general provision for which a request for dissolution can be made when the five-year term of the assembly is drawing to an end.

Article 16 (6), on the other hand, states that if the menteri besar ceases to command the confidence of the majority of the legislative assembly members then, unless at his request to the ruler to dissolve the legislative assembly, he shall tender the resignation of the executive council.

In making its oral judgment on May 22, the Court of Appeal quashed the May 11 High Court decision which ruled that Nizar was the rightful menteri besar.

The three judges had promised to provide the written grounds within a week after their oral judgment, but checks revealed that Md Raus' judgment was completed on June 2, while the other two were yet to be ready at that time.

Md Raus headed the three-member panel in the unanimous decision in ruling that Nizar's rival, Zambry Abd Kadir from Barisan Nasional, as the legitimate Perak menteri besar. The other judges were Zainun Ali and Ahmad Maarop.

Journalists were finally able to obtain Md Raus' judgment early yesterday while Ahmad's judgment was released later on the same day.

Zainun, who was also to provide his judgment yesterday, was unable to do so due to a computer glitch and it would now be made available on Monday.

The judgments were released a week after Nizar had filed his leave application to the Federal Court to challenge the decision.

Nizar made the application without the written grounds and his application will be heard on July 9 and 10 by the country's highest court.

Sultan can determine majority

In his written judgment, Md Raus also disagreed with the High Court judge Abdul Aziz Abd Rahim in ruling there must be a motion of no confidence in the assembly against Nizar before he ceases to command the confidence of the majority.

"The fact that a menteri besar ceases to command the confidence of the majority of the elected representatives can be established by other means. It cannot be solely confined to the vote taken in the legislative assembly," the judge said.

"Actual voting in the assembly is ideal, but in interpreting Article 16 (6) to require the loss of confidence to be established only by assembly would lead to absurdity as the menteri besar who may lost support will not be too eager to summon it," he said.

For the above reasons, Md Raus said he found the High Court judge had erred in concluding that the only manner in which the loss of confidence could only be ascertained by way of motion passed at the assembly.

He said such a finding was contrary to Article 16 (6) of the Perak constitution which make no reference to such a motion having to be tabled.

Citing Article 16 (2), Md Raus said the appointment of the menteri besar was at a discretion of the sultan and he would seek those who command the support of the majority.

"From the facts of this case, Zambry from BN had the command of the majority and the sultan appointed him in accordance with the constitution," said the judge.

Not need for sultan to sack MB

"If the menteri besar does not tender his resignation and resignation of his executive council, as happened in this case, the fact remains the executive council is dissolved (which include the menteri besar) on account that they loses the confidence of the majority."

Therefore, he said it is not necessary for the sultan to remove Nizar as the sultan was exercising his prerogative under Article 16 (2) to appoint another menteri besar to replace him (Nizar).

"In the present case, Zambry had the majority support of 31 members from 59 members. Thus, the appointment of Zambry as MB was made in accordance to the Perak constitution and established democratic practice and convention."

Meanwhile, justice Ahmad in his 77-page judgment ruled that Nizar's refusal to tender his resignation and that of his executive council was not merely "a breach of convention and undemocratic" but more importantly, it contravened Article 16 (6) and hence, unconstitutional.

"Since he had ceased to command the confidence of the majority of the legislature, it is implicit that on his refusal to tender the resignation of the exco, it is thereby dissolved and the office of menteri besar vacated."

"Furthermore, I am of the view the power of the sultan to dismiss the menteri besar is implicit in the event he does not resign... by withholding the ruler's consent to dissolve the assembly. Thus, the press statement by the sultan on Feb 5 amounted to Nizar's dismissal was still valid," Ahmad said.

He further commented that the sultan had in the critical situation rightly exercised his constitutional powers provided under the state constitution, solely for the best interest of the people of Perak.

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