

**Apex court: Anwar's sacking lawful**  
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Anwar Ibrahim's dismissal as deputy premier and finance minister on Sept 2, 1998 was lawful, as the prime minister has absolute power to appoint or revoke the appointment of its minister, the Federal Court unanimously ruled this morning.

President of the Court of Appeal Alauddin Mohd Sheriff said the court has no doubt that the prime minister (then, Dr Mahathir Mohamad) had advised the Agong to revoke Anwar's appointment to the two posts.

Alauddin said as the constitutional monarch has limited role concerning the appointment of Cabinet ministers as the power to choose to appoint resides with the PM.

"His majesty does not have any discretion to reject or question the discretion of the PM. Revocation of the appointment equally lies with the PM... that it (PM) is the only authority to appoint (also) has the right to revoke the appointment.

"If the Prime Minister has decided that a particular minister should cease from holding the office, the Yang diPertuan Agong would not be able to say otherwise as a constitutional monarch," said Alauddin (*left*), adding that under the Federal Constitutional, the King's function was purely ceremonial.

"Furthermore, there is an affidavit by the special officer of the (Agong) which was not disputed that the Agong had assented to the decision.

"The Court of Appeal had also ruled the failure of his opponent (Anwar) to dispute is usually treated as an admission by him of the fact asserted."

**Clear demarcation of powers**

In view of what Alauddin described as clear demarcation of power between the Prime Minister and the King, the judge said it was imperative to realise the cabinet's role of collective responsibility.

He further pointed out that the Agong, as constitutional monarch, shall act on the advice of the prime minister and the cabinet to revoke any appointment.

"We find that Anwar's contention that it was the PM who had effected the revocation and not the Agong is fallacious and untenable."

Noting that the dismissal was legally revoked, the judge said Anwar's legal suit "is unsustainable and dismissed with costs".

Justice Mohd Ghazali Mohd Yusoff and Justice Abdull Hamid Embong sat with Justice Alauddin.

In an immediate reaction, Anwar claimed that the Agong had not been advised and had not assented to Mahathir's decision to revoke the appointments.

He said Tuanku Jaafar (then the Agong) had met him in Munich in 2004 "where he told me this".

"The Agong said he had not assented and was saddened by my dismissal as it was not done according to the constitution," Anwar claimed.

"This was witnessed by Tuanku Najihah and (Anwar's wife Dr) Wan Azizah (Wan Ismail).

Clearly, this was a wrongful act as the Agong had not approved the decision but was forced to."

Anwar contrasted today's ruling with that of the Perak case, which determined that the Sultan has sole authority to dismiss the menteri besar "but in my case the prime minister had sole authority".

Lead counsel Karpal Singh said the background of today's decision showed the Mahathir was a dictator when he was premier.

### **Issues before the court**

The decision came 12 years after the application was filed in 1998. It was struck out by the High Court on Dec 24, 1998 without the matter going through a full trial.

The Court of Appeal then dismissed his appeal on April 25, 2007, ruling that Anwar's dismissal was lawful.

Central to the issue of the appeal was the letter sent to Anwar by Mahathir, dated Sept 2, 1998. It states:

'With regret I am forced to dismiss you from the post of the deputy prime minister and finance minister and other related posts. The Agong has been informed over the dismissal.'

Two questions of law were posed for due consideration by the apex court:

- Whether Article 43(5) of the federal constitution specifically requires the Agong to be the authority which revokes the appointment of the deputy prime minister and finance minister, or whether the cabinet has the right to revoke any appointment it makes; and
- whether the deletion of Anwar's name as deputy premier and the substitution of Mahathir's name as finance minister by virtue the Federal Government (Amendment) Order 1998, could in anyway cure the complete absence of the former premier complying the explicit provision of Article 43(5).

The Federal Court ruled that the answer to the the first question was in the negative.

Furthermore, said Alauddin, the appellate court was correct in its decision as the Agong cannot review the decision.

Anwar's lead counsel Karpal Singh had, at the end of his submission on Dec 3 last year, that he wants the judges presiding over the case to be "honest to themselves and the country".

Karpal said it was preposterous that the prime minister can dismiss a minister and then inform the Agong, and he urged the judges to give an honest judgment.

"Your lordships need to ensure it is so. The court has this right opportunity to correct what is wrong and do so with this case.

"There is a glaring mistake by the appellate court and this apex court ought to (intervene) on what was constitutionally wrong (done by Mahathir)."

### **Don: Conflicting judgments**

Senior federal counsel Kamaluddin Md Said, in defending the government's stand. had said the Hansard (verbatim record of parliamentary proceedings) shows that Mahathir had informed Parliament that the Agong had not objected to the dismissal.

This in itself, Kamaluddin said, is a clear compliance with Article 43(5) that the Agong had assented to the dismissal. As such, the constitutional requirement had been met.

In an immediate response, constitutional law expert Abdul Aziz Bari said the ruling today contradicted the ruling for the suit brought by ousted Perak Menteri Besar Mohd Nizar Jamaluddin.

"The court is now stuck, because in the Perak case, their ruling suggest that the PM can be dismissed at will by the Agong.

He adds that the public are likely to view the courts of being inconsistent on matters affecting Parliament, the speaker of the house and the ruler's powers.

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