

Salleh reveals 'five incidents

KUALALUMPUR: Former Lord President Tun Salleh Abas responded yesterday to the statement by Minister in the Prime Minister's Department Datuk Seri Mohd Nazri Abdul Aziz regarding a proposal to review the 1988 judicial crisis.

Salleh thanked Nazri for agreeing to a review of those dark days in judicial history if "new and important facts" emerge.

He said Nazri has also not agreed to the review because the decision of the two tribunals – the first tribunal which decided on Salleh and the second tribunal which decided on his five colleagues – were accepted by the Yang diPertuan Agong and the government in 1988.

Salleh said Nazri seems to place great reliance on the fact that acceptance of the recommendations by both tribunals were also accepted by the King.

He said according to Article 40(1) of the Federal Constitution, the King as a constitutional monarch must act "in accordance with the advice of the cabinet or a minister acting under the general authority of the cabinet, except as provided by this constitution".

"Thus, the Yang di-Pertuan Agong is not even allowed to refuse advice tendered by the cabinet or the prime minister," he said.

"This is further provided in Article 66(4)(a) where the Yang di-Pertuan Agong cannot refuse to assent to a bill passed by Parliament. He is given three months within which to assent to the bill, if he fails to do so, the government is free to gazette the bill into law.

"The history of this country has shown that the Yang diPertuan Agong has never acted against the wishes of the prime minister or the cabinet, including on the issue of depriving the Rulers of their own immunity.

"There is therefore no way for the Yang diPertuan Agong to refuse consent to accept the recommendations of the two tribunals when they were submitted to His Majesty.

"In my view, no emphasis need therefore be placed on the acceptance of the recommendations of the two tribunals by the Yang diPertuan Agong, since in the light of the constitutional provisions and practice. His Majesty's powers have become, with respects, almost procedural and reflect the wishes of His Majesty's government, even if the prime minister of the day is dictatorial."

Salleh said as for the call for "new and important facts" to trigger a review, these should be presented to a tribunal or commission charged to investigate the matter, should the government decide to do so.

He said since Nazri has placed this as a condition for agreeing to a review, he has decided to touch on five incidents only in general terms.

FIRST INCIDENT:

The first incident relates to my meeting with the then prime minister in his office on Friday, May 27, 1988 in the presence of the then deputy prime minister and the then chief secretary to the government.

I was asked by the then prime minister to step down because I was accused of being biased in the discharge of my judicial duties. My understanding of this accusation was that it must have been connected with the impending Umno 11 case when I decided to establish a nine-member panel of the Supreme Court to hear the appeal.

I strongly denied the accusation and told him that I was not prepared to resign. Then he "threatened to dismiss me by instituting a tribunal under the Constitution. I told him I was prepared to be dismissed rather than leave the judicial office under a cloud.

This was a very short meeting and after I had left the prime minister's office and returned to my chambers, I immediately wrote by way of an *aide memoir* a note of what had transpired during that meeting. That note coincidentally appears in the latest issue of *Aliran*.

SECOND INCIDENT:

The second incident relates to the visit to me on the same day of a messenger who was a very important officer of the government. He came with the idea of persuading me to resign or go on long leave and at the same time threatening me with dismissal should I choose not to.

Were I to resign, I would be appointed to a lucrative job in Jeddah as a director of Islamic Bank with a high salary I could never have dreamed of coupled with an unlimited amount of entertainment allowances and travelling expenses.

The officer said he had been authorised to pass this message to me by a very important minister. When I told him I could not accept the offer, I was then threatened with dismissal and the ignominy of having to face a tribunal. My answer to the messenger was the same as I had given to the prime minister earlier on in the day.

THIRD INCIDENT:

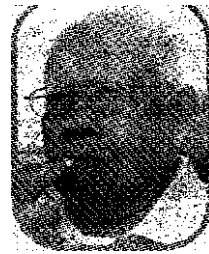
The third incident took place on June 24, 1988, almost a month after my suspension as lord president when two benevolent messengers arrived at my home to tell me that some Malay Rulers then gathered at Istana Kelantan at Jalan Kia Peng and wanted to see me.

Post haste, I made my appearance before Their Royal Highnesses. I was informed that the Yang diPertuan Agong (HRH the Sultan of Johor) had just left the meeting.

Taking the lead upon my appearance was HRH the then Raja of Perlis and also present were the other Malay Rulers or their representatives. (The Sultans of Kedah and Selangor were away abroad and the Sultan of Pahang was unable to attend on account of the serious illness of his then consort who in fact passed away the following day.)

I was informed by HRH the late Raja of Perlis that agreement was reached between the Yang diPertuan Agong and the Rulers then present that should I tender my apologies to and ask forgiveness from the Yang diPertuan Agong for writing my impugned letter to His Majesty at His Majesty's istana Bukit Serene in Johor Baru, my suspension would be lifted and the matter would end there. I was to travel to Istana Bukit Serene with my chief counsel, Raja Aziz Addruse.

These incidents undeniably go to show that come what may, I must be made to give up my judicial office."



Since we could not get seats on the plane, I decided to travel to Johor Baru by cat whilst Raja Aziz chartered a private aircraft for that purpose.

Upon my arrival in Johor Baru, I was admitted into the Istana but Raja Aziz, despite all the trouble he took to charter the plane, could get only as far as the gates of the istana as he was prevented from entering the palace.

At the istana, contrary to my expectation, my mission was a failure because the Yang diPertuan Agong had earlier been briefed by two very senior government officers from Kuala Lumpur not to forgive me for the wrong I had committed.

FOURTH INCIDENT:

The fourth incident related to the suspension of my colleagues with the eventual dismissal of two of them. The suspension was engineered for the purpose of thwarting them from hearing my judicial review application challenging the legality and constitutionality of my suspension and the composition of the tribunal to deal with my dismissal.

A particular High Court judge who was reluctant to hear my application feigned illness on the day fixed for hearing. His replacement did his utmost to delay hearing my application and when he finally did so, my application was dismissed. I appealed to the Supreme Court and succeeded.

An order of the court must always be sealed before it is served on the respon-

dent. The chief registrar of the Supreme Court was the keeper of its seal but when I succeeded in my appeal, the seal could not be found as it was purposely hidden. However, after a search by the late Tan Sri Wan Suleiman, the seal was discovered. The sealed copy of the order had then to be served on the respondent tribunal which was located at Parliament House.

But when my counsel Raja Aziz Addruse attempted to effect service of the order on the respondent, he found that the authorities had ordered the Parliament gates closed.

However, at the request by the late Tan Sri Wan Suleiman for assistance from the office of the IGP, the gates were opened and the order was served. "

Despite receipt of the order, the tribunal proceeded with its deliberation.

The end result of this incident was that upon my refusal to recognise the composition of the tribunal, especially with regards to the appointment of a chairman on grounds of a serious breach of natural justice, I was, in my absence, adjudged guilty and subsequently dismissed. The five Supreme Court judges which allowed my application were themselves suspended.

Another tribunal was established to try them and two of these valiant judges, namely the late Tan Sri Wan Suleiman and Datuk George Seah, were dismissed. The other three, namely the late Tan Sri Eusoffe Abdoolcader, Tan Sri Azmi Kamaruddin and Tan Sri Wan Hamzah, were reinstated. If the Supreme Court order were obeyed, my reinstatement would have automatically followed and this would have been unacceptable not only to the government of the day but also to those who would benefit from my dismissal.

Thus, my five colleagues were innocently suspended with all the consequences that have adversely affected them and their families until this day.

FIFTH INCIDENT:

The fifth incident relates to the government's action to deprive the Rulers of their immunities. The late Tun Suffian and I acted as advisers to the Rulers. By then, the Sultan of Johor was no longer the Yang diPertuan Agong and His Royal Highness was very concerned about the government's intention.

This was my first audience with His Royal Highness after my dismissal. HRH said to me in no uncertain terms that he very much regretted what had happened to me as he said he then realised that he had been "made use of".

I told HRH that there was no need to feel sorry for me personally but he should express his regrets and apology to the people of this country for losing a judicia-

ry that was independent and could look after their rights,

I was later summoned again by HRH to Istana Bukit Serene for advice after HRH learned that a bill had already been introduced in Parliament to disband the Johor Military Force (JMF).

My advice to HRH was that the JMF, which was established long before the Malay Regiment was and is part of the privileges of the Sultan of Johor and, without the consent of His Royal Highness, such privileges could not legally be withdrawn.

My opinion was confirmed by Mr Neil Lawson, QC, the legal adviser to the Malay Rulers during the negotiation for Merdeka. There was no doubt that HRH was very pleased with my effort over HRH's then predicament and, in appreciation thereof, offered to make a public apology in Johor Baru over HRH's role in ray dismissal. The Johor Palace then began to put in place arrangements for the occasion but, once again, mightier hands from Kuala Lumpur managed to persuade HRH from keeping to his pledge.

The above are some of the new facts which I hope could persuade Nazri to change his mind. These incidents undeniably go to show that come what may, I must be made to give up my judicial office. There would, of course, be other incidents and other details which would emerge if the review is held but for the time being, I shall keep the identity of those unnamed persons in this statement concealed.

As regards responses from the other two judges who were also dismissed. Tan Sri Wan Suleiman is no longer with us. His widow, has nevertheless, supported the call for a review. But the speech made by the late Tun Suffian (Hashim) during a special reference organised by the Malaysian Bar in Tan Sri Wan Suleiman's memory and honour should give an indication on the role played by my late colleague during the crisis which, in the learned Tun Suffian's opinion, certainly did not deserve his dismissal.

Datuk George Seah is currently unwilling to make any contribution to Nazri's call for "new facts" but the series of articles on the crisis written by him not so long ago continue to appear in the websites of both the Malaysian Bar and *Aliran*. Knowing the character of the late Tan Sri Eusoffe Abdoolcader, I am sure that he, too, would support a review. Tan Sri Azmi Kamaruddin has already come out publicly for a review I believe Tan Sri Wan Hamzah is also of this view.

For these reasons, I hope Nazri will present the proposal to the cabinet for a review of the 1988 judicial crisis so that the truth of this important episode in our nation's history is uncovered.