

Najib's house arrest bid rejected

Court rules royal addendum order for ex-PM as constitutionally invalid

KUALA LUMPUR: Datuk Seri Najib Razak failed to swap prison for house arrest as the court ruled the royal addendum order he relied on as constitutionally invalid, because it was never deliberated or decided by the Pardons Board.

High Court judge Justice Alice Loke ruled that the deliberation by the Board was vital under Article 42 of the Federal Constitution.

The judge found that the addendum order was not deliberated nor decided at the 61st Pardons Board meeting held on Jan 29, 2024.

The addendum order was the pillar of Najib's judicial review application to allow him to serve the remainder of his prison sentence in the SRC International case under, house arrest.

Based on a meeting minute, Justice Loke said the Board had only tendered its advice on two matters; a proposed full pardon and the reduction of the imprisonment term.

"Crucially, there is no mention whatsoever of house arrest. The addendum order was therefore not made in accordance with the procedure prescribed by Article 42 of the Federal Court," she said.

Justice Loke said while Najib's lawyer had argued that the addendum order need not be

"While the power of clemency is a royal prerogative, it must be exercised within the constitutional framework."

Justice Alice Loke

deliberated at the meeting, she was of the view that the exercise of the prerogative of mercy by the Yang Di-Pertua Agong (YDPA) under Article 42 must strictly adhere to the procedures and constitutionally mandated decision-making process.

"These requirements do not envisage a decision of the YDPA made independently of the Board.

"While the power of clemency is a royal prerogative, it must be exercised within the constitutional framework," she added.

Justice Loke further said that the existence of the order alone did not render the order valid as its validity depends on strict compliance with consti-

tutional requirements.

"The applicant also contended that the addendum order constituted a 'respite' within the meaning of Article 42 and therefore, may be exercised without convening a Pardons Board meeting.

"I am unable to accept this argument. The terms of the addendum order did not suggest urgency of the kind associated with reprieve or respite.

"Moreover, it was a supplementary order to an Early Release Order, which was deliberated upon by the Pardons Board. There was no reason why the house arrest could not have been similarly deliberated," Justice Loke said.

The judge further said that the King, as a constitutional monarch, exercises powers in accordance with the Federal Constitution.

"The prerogative of mercy is no exception. The addendum order was neither deliberated nor decided at the 61st Pardons Board meeting and was made in non-compliance with Article 42.

"It is therefore invalid. The respondents have no duty to enforce it, and conversely, the applicant has no right to the relief of mandamus.

"The judicial review is therefore dismissed," Justice Loke said.

The court did not make any

order as to cost.

Shafee then told the court that he has been instructed to appeal the decision and sought for the written judgment to be expedited, to which the judge said she would oblige.

As soon as court was adjourned, Shafee was seen briefing his client on the outcome of the proceedings.

The atmosphere inside the court room was solemn and quiet as Najib was surrounded by his family before he was escorted out of the courtroom by the prison officers.

Najib, a former prime minister, is currently serving the sentence imposed by the High Court that found him guilty of abuse of power, criminal breach of trust and money laundering in relation to RM42mil siphoned from SRC International, a former 1MDB subsidiary.

In the high-profile SRC case, Najib failed to overturn his conviction and sentence as he exhausted his appeals, prompting him to apply for a pardon.

On Feb 2, last year, the Board announced that it had reduced Najib's initial 12-year jail sentence and RM210mil fine to six years and a RM50mil fine.

According to the Board's statement, Najib will be released on Aug 23, 2028 and the fine has

been reduced to RM50mil from RM210mil.

"However, if the fine is not paid, a year will be added to the jail term, and the release date will then be on Aug 23, 2029," it said.

Two months later, on April 1, 2024, Najib filed an application for leave for judicial review, claiming that there was a royal addendum order that would have allowed him to serve his prison term under house arrest.

He named the Home Minister, the Commissioner General of Prisons, the Attorney General, the Federal Territories Pardons Board, the Minister at the Prime Minister's Department (Law and Institutional Reform), director-general of legal affairs at the Prime Minister's Department and the government as the respondents.

In the application, Najib sought an order demanding the respondents to execute the royal order and move him from the Kajang Prison to his residence in Kuala Lumpur, to serve his remaining sentence under house arrest.