

Ruler's request for more names to fill MB post creates impasse, says law expert
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The Sultan of Selangor's request for each component party of Pakatan Rakyat to submit more than two names for his consideration for the post of menteri besar appears to have created an impasse, says a law professor.

Professor Gurdial Singh Nijar from the Law Faculty, University of Malaya said this was because two of the three PR parties had insisted on nominating a single candidate who had majority support of the 56-member assembly.

But he said the sultan's request could be deemed a decree which must be obeyed – with unknown – even intriguing consequences for non-compliance.

"The parties seem to be perfectly within their rights to rely upon past practice (if proved) and more significantly, crystal clear judicial pronouncement by the highest court of the land justifying the nomination of a candidate who has majority support of the legislative assembly."

Citing the identical provisions in the Perak Constitution, the chief justice of the Federal Court in the Perak MB crisis case (Nizar v Zambry), ruled as follows:

"Once an MB loses the confidence of the majority he and his executive committee are dissolved without even the need for the sultan to remove them.

"Then the sultan, in the exercise of royal prerogative under the Perak Constitution, is at liberty to appoint another MB to replace the existing MB.

"But His Royal Highness must appoint someone who has the command and the confidence of the majority of the members of the legislative assembly.

"If there is no doubt that the person nominated has the support of the majority, then he is appointed."

Gurdial said if the sultan exercised his discretion and picked a candidate who was without the confidence of the majority of assemblymen, it would fly against what appeared to be a definitive judicial pronouncement by the nation's highest court.

The problem now, he said, was whether the political parties could extricate themselves from the dilemma the sultan's royal decree had created by relying upon the Federal Court's interpretation of the constitutional provisions on the exercise of discretion.

Gurdial said if the MB chosen did not command the confidence of the majority, they could at its next sitting pass a vote of no-confidence, thus needlessly embroiling the ruler in a constitutional complication.

"In this context, providing additional names knowing full well that the additional nominees cannot ultimately command majority support may also place the sultan in a difficult position."

The ruler's private secretary Datuk Mohamad Munir Bani said yesterday, the palace had given the three PR component parties a week to submit at least two names.

He said letters were sent to PKR president Datuk Seri Dr Wan Azizah Wan Ismail, PAS president Datuk Seri Abdul Hadi Awang and DAP secretary-general Lim Guan Eng and they would have to reply by September 3.

PKR and DAP had earlier nominated Kajang assemblyman Wan Azizah, for the post.

On August 14, 29 assemblymen, including two from PAS, signed statutory declarations in support of Dr Wan Azizah.

PAS at its August 17 central committee meeting nominated Dr Wan Azizah as the first choice and PKR deputy president and Bukit Antarabangsa representative Azmin Ali as second choice.

However, at the PR presidential council meeting on the same day, Azmin declined the nomination.

The PAS central committee on Tuesday, however, left the decision with the sultan.

Constitutional lawyers said it was not a legal requirement to send more than one name to the sultan as the state constitution stated that ruler shall appoint an MB, who in his judgment was likely to command the confidence of the majority assemblymen.

The tussle over the Selangor menteri besar position has been brewing for more than a month after Tan Sri Abdul Khalid Ibrahim refused to resign to make way for Dr Wan Azizah. – August 28, 2014.

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