

Suspension of The Edge daily, weekly lifted
The Malaysian Insider
Sept 21, 2015
By V. Anbalagan

The High Court today revoked the home minister's decision to suspend The Edge Weekly and The Edge Financial Daily for three months.

Judge Datuk Asmabi Mohamad in allowing the judicial review application said the respondent (minister) had breached Section 7 (1) of the Printing Presses and Publications Act 1984.

"The respondent did not comply with procedural fairness as he did not give particulars of suspension to the applicant," she said.

The judge said the minister had taken irrelevant consideration to impose a blanket ban of three months.

"The conclusion, on totality of evidence before the court and relevant law, I am satisfied that the decision of the respondent in this case is tainted with illegality," she said in allowing the judicial review.

The Home Ministry had suspended the publishing permit of The Edge Weekly and The Edge Financial Daily for three months effective from July 27.

Asmabi said the respondent should have been more careful to issue the order as it had affected the livelihood of those employed by the applicant.

She said the court would assess damages to be awarded later and also gave RM15,000 in costs.

Before delivering her verdict, Asmabi said her ruling was made based on facts presented before her and not affected by any surrounding circumstances around 1MDB.

She then went on to outline the background of the case, highlighting that the respondent had issued a show-cause letter on June 29 to the publisher.

She the respondent made a "blanket allegation" without specifying the articles that were alleged to be undesirable publications.

She said that the publisher was put in a "difficult position" as it had published 300 articles since 2009 on 1MDB and could not give a specific response to the general claim in the show-cause letter.

Asmabi said that the respondent also failed to respond to the publisher's request to specify the questionable articles.

"Bearing in mind that what is being affected here is quite a large thing such as revenue, livelihood of personnel under the applicant, the respondent should have been more careful in preparing a show-cause letter in a better manner to notify the applicant which are the relevant articles said to be undesirable or had infringed provisions or guidelines," the judge said.

In an immediate response, lawyer Darryl Goon said the publisher, The Edge Communications Sdn Bhd, could begin publication of the two papers immediately as there were no stay application by the government.

Senior federal counsel Alice Loke Yee Ching told reporters that she had to take instructions from her superiors before a decision was made to appeal.

"We have a month to do so."

A cursory glance at Asmabi's ruling revealed that the court accepted in totality the submission put forward by Goon.

A letter from the ministry stated that the papers' coverage of the 1Malaysia Development Berhad (1MDB) scandal was "prejudicial or likely to be prejudicial to public order, security or likely to alarm public opinion or is likely to be prejudicial to public and national interests".

This is the first time a publisher is seeking legal recourse and won, following the suspension of its coverage of debt-ridden 1MDB.

Ministry secretary-general Datuk Alwi Ibrahim, had in a statement on July 24, said the suspension of the publications was made after the ministry had scrutinised their reports on 1MDB and the reply to the show-cause letter issued earlier.

The ministry gave three reasons for suspending the publications, which it said, violated Section 7(1) of the PPPA.

It said the headings and reporting by the two publications had raised questions and created negative public perceptions towards 1MDB, a Finance Ministry-owned firm, and implicating the government and national leaders.

Second, it also found the reports to be based on doubtful and unverified information, which it said might alarm public opinion and might be prejudicial to public order and national interests.

Third, the ministry said the 1MDB issue was being investigated by a special task force and it was, therefore, inappropriate for reportage on the issue to create negative perceptions.

Goon, in his submission on September 7, said the suspension order on grounds they carried undesirable reports was illegal as the order was not published in a gazette.

He said under Section 7(1) of the PPPA, an undesirable publication could only be prohibited by order of the minister published in a gazette.

"This was not done so in this case, therefore, the suspension is illegal because there was no breach of Section 7(1)."

Goon said the publisher took the position that the decision to suspend was illegal and ultra vires, and was also unconstitutional. He said under the constitution, the only permissible restriction to the right to freedom of speech and expression are if it was in the interest of:

- the security of the federation, friendly relations with other countries and public order and morality; and,
- to protect the privileges of Parliament.

"None of the grounds given by the minister come within the ambit of these permissible restrictions," he said in the judicial application to challenge the suspension.

Goon said the suspension was a breach against natural justice and the publisher was not given a reasonable opportunity to be heard.

Judge Asmabi today said the home minister had breached Section 7 (1) of the Printing Presses and Publications Act 1984 and the rules of natural justice was breached as The Edge was not given an opportunity to be heard.

Asmabi said that the relevant guidelines and Section 7(1) was not mentioned in the show-cause letter but the ministry had used this provision to issue the suspension order against The Edge on grounds of reporting undesirable publications.

She said that Section 7(1) only gave powers to the Minister to gazette orders against publications and was not an offence provision that allows action to be taken against The Edge when no such gazette was made in this case.

Asmabi said that Home Minister Datuk Seri Ahmad Zahid Hamidi was "in doubt" on whether The Edge had published its articles by relying on allegedly unverified information on online news portals, especially The Sarawak Report.

The judge said the July 23 notice of the suspension order was also issued just a day after the ministry gave a three-hour notice for a meeting lasting 30 minutes with The Edge's representative, where the ministry's officials asked the publisher for the source of its articles. – September 21, 2015.

<http://www.themalaysianinsider.com/malaysia/article/suspension-of-the-edge-daily-weekly-lifted>