

Should PM recuse himself from appointing Judicial Appointment Commission members?

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By V Anbalagan

Ex-judge and a lawyer concur that Najib Razak should delegate his authority to a minister while another counsel feels the PM can do the appointments even though he is involved in several cases before the courts.

PETALING JAYA: Prime Minister Najib Razak must delegate his power to appoint five Judicial Appointments Commission (JAC) members to a minister as he is in a position of conflict, a retired judge and a lawyer said.

They said Najib was an active litigant as plaintiff, having filed five defamation suits revolving around the 1Malaysia Development Fund (1MDB) and the allegation that RM2.6 billion had been channelled into his personal bank accounts.

Further, they said, Najib had also been dragged to court as a substantive defendant to face six cases of public interest litigation.

However, another lawyer said Najib could still go ahead and appoint JAC members.

They were commenting on the on-going consultation by the Prime Minister's Office with the Malaysian Bar, Sabah Law Association, Advocates Association of Sarawak and the Attorney-General's Office to fill vacancies in the JAC.

JAC members have been appointed since 2009 to suggest candidates for the PM to choose from, and advise the King on appointments and elevation of judges to the superior courts.

The JAC consists of nine members, with the chief justice doubling up as chairman, and includes the Court of Appeal president and the chief judges of Malaya and Sabah and Sarawak by virtue of their administrative posts.

At the moment there are five vacancies in the JAC. One of the five must be a senior Federal Court judge and the rest must be "eminent persons".

The two-year tenure of the four "eminent persons" came to an end on Feb 9 while the slot for a senior Federal Court judge became vacant following the appointment of Ahmad Maarop as Chief Judge of Malaya on April 1.

Filling the vacancy as soon as possible is vital as the JAC Act states that commission members must meet at least once a month with a quorum of seven people.

More so, the JAC has to work out a succession plan since Chief Justice Raus Sharif and Court of Appeal president Zulkefli Ahmad Makinudin will retire in August and September respectively.

Former Federal Court judge Gopal Sri Ram said any appointment of JAC members by Najib might be struck down as invalid.

“Being a plaintiff and defendant, he has a sufficient interest that disqualifies him from making an appointment,” he said.

Sri Ram said the JAC was the body that put up persons for appointment as judges, some of whom might be called upon to hear cases in which the prime minister was involved.

“There need not be actual bias but apparent bias will suffice,” he added.

As such, Sri Ram said, the power to make these appointments could be given to any other member of the Cabinet for the time being.

“The Delegation of Powers Act could be invoked to entrust another minister to perform the PM’s function under the JAC Act,” he said.

Lawyer Mohamed Haniff Khatri Abdulla, who echoed the views of Sri Ram, said powers were given by the constitution or statutes to a public officer to do something lawful.

“In other words, if the person holding office is conflicted out, he must disqualify himself from carrying out that power,” he said.

Haniff said the deputy prime minister, who was also appointed by the Agong, should carry out that function in this situation.

However, lawyer S N Nair said, on the face of it, Najib’s appointees to judicial positions might be beholden to him, given that he was a litigant in several suits.

“But there is also a duty conferred on him by law to make various appointments which he must carry out,” he said.

As such, Nair said, it was difficult to cast aspersion of bias against the prime minister.

Nair said it should be in the conscience of the appointees to act impartially and without fear or favour.

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