

Court throws out Mahathir's suit against Najib

Free Malaysia Today

April 28, 2017

By V Anbalagan

High Court allows prime minister to strike out the suit filed by Dr Mahathir Mohamad and two others on grounds that members of the administration are not public officers.

KUALA LUMPUR: The prime minister cannot be sued for abuse of power in office as he is not a public official, the High Court ruled today in allowing Najib Razak's application to strike out a suit by Dr Mahathir Mohamad and two others.

Najib's lawyer, Mohamed Hafarizam Harun, said justice Abu Bakar Jais held that the prime minister "is not a public officer although he is in public office" within the meaning of the Federal Constitution.

"The prime minister, ministers, deputy ministers and parliamentary secretaries are only members of the administration in public office," he told reporters on the ruling made in chambers.

Hafarizam said the judge acknowledged that his ruling might seem unacceptable to some quarters, but that he was merely interpreting the law.

"The judge said the court could not question that as this was for Parliament to decide," he said.

The court also ordered Mahathir, and former Umno leaders Khairuddin Abu Hassan and Anina Saadudin to pay Najib RM30,000 in costs.

This followed the trio's move on March 23 to sue Najib for abuse of power in office.

In their statement of claim filed in March last year, they said they were among the rightful parties to take action against Najib.

They traced the chronology of the 1MDB investigations dating back to March 2015, from the formation of a special task force, to then attorney-general Abdul Gani Patail's dismissal, and the sacking of former deputy prime minister Muhyiddin Yassin.

“We say that the chronology leads to the irresistible and undeniable conclusion on the manner in which Najib has continuously interfered with the due process of the law to ensure all the relevant authorities could not continue to carry out and conclude the necessary investigations pertaining to his alleged misconduct over the RM2.6 billion donation and RM42 million from SRC International,” the trio had said.

They are also compelling Najib to return to the government the money found in his private bank accounts.

However, Najib filed action to strike out the suit on grounds that it is unsustainable, frivolous and vexatious.

Today, Hafarizam and Rishwant Singh appeared with senior counsel Cecil Abraham to argue the case for Najib.

Hafarizam said the court had adopted their submission made on Feb 20, adding that Article 132 (3)(a) states that politicians are excluded as public officials.

He said officials in the public service comprised civil servants in the states and in Putrajaya, members of the armed forces, judicial and legal services, policemen and those in the education services.

He added that the interpretation provision in Article 160 (2) further states that a member of the administration in Putrajaya is meant to be a person holding the office of minister, deputy minister or parliamentary secretary.

“In accordance with the provision, Prime Minister Najib Razak is a member of the administration, but not a public official.”

Lawyer Mohamed Haniff Khatri Abdulla, in his reply, said his clients’ action was based on the common law principle of misfeasance in public office, which focuses on the act or conduct, not the person.

He said the court needed to ask whether the conduct was in relation to public or private affairs.

“The complaint of my clients is that of Najib’s conduct. The prime minister performs a public duty when he discharges his function under the constitution or any federal law.”

Haniff said an appeal would be filed in the Court of Appeal.

Anina said she was disappointed with the outcome but added that the quest for justice was not over yet.

Khairuddin meanwhile said there was hope for reversal as this matter could go up to the Federal Court.

“The ruling is a bit displaced, but that is alright. The people will still be the final judge come the general election,” he added.

Copyright (C) 2009-2016 MToday News Sdn. Bhd. All Rights Reserved.

Source: <http://www.freemalaysiatoday.com/category/nation/2017/04/28/court-throws-out-mahathirs-suit-against-najib/>