

Najib not public officer: 2 cases in spotlight after ruling

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Today, ex-AG will fight to throw out a suit for alleged abuse while in office while another involves Najib against Tony Pua over 1MDB.

KUALA LUMPUR: At least two cases will now be closely watched following last week's High Court ruling that Prime Minister Najib Razak is not a public officer although he holds public office.

Today, a Kuala Lumpur High Court will hear former attorney-general Abdul Gani Patail's application to strike out the tort of misfeasance in public office suit by PKR Youth chief Nik Nazmi Nik Ahmad.

The prosecution in 2015 charged Nik Nazmi again for organising a public rally in 2013 after the Court of Appeal acquitted him of the charge.

Nik Nazmi then filed the suit, alleging that he had been the victim of malicious prosecution.

Gani said his act was purely an exercise of discretion vested in him by law and not done in bad faith.

The second is yet another application by Najib to strike out a suit filed by Petaling Jaya Utara MP Tony Pua for a similar tort over the 1Malaysia Development Bhd (1MDB) funds.

Najib's grounds for the application was that he is not a public official.

It is unclear if a date has been fixed to hear the prime minister's application.

Pua, who filed the suit on Jan 16, wants a declaration that Najib had abused his office to personally profit from the funds.

On Friday, High Court Judge Abu Bakar Jais struck out a suit brought by former Umno leaders Dr Mahathir Mohamad, Khairuddin Abu Hassan and Anina Saadudin as they could not prove that Najib was a public officer in public office.

The judge said public officers under the Federal Constitution did not include any member of the administration in the federation or state.

Abu Bakar said Article 160 (2) clarified such member of the administration in Putrajaya is meant to be a person holding the office of minister (which includes prime minister), deputy minister or parliamentary secretary and political secretary.

The three filed the suit against Najib for interference and to ensure all the relevant authorities discontinued from carrying out investigations into his alleged misconduct over the RM2.6 billion donation and RM42 million said to be from SRC International.

Immediately after the ruling by Abu Bakar, Najib's lawyer Mohamed Hafarizam Harun said that decision would have an impact in Pua's case.

However, lawyer S N Nair said the High Courts hearing the other two cases were not bound by Abu Bakar's ruling.

"The doctrine of binding precedent is not applicable as all High Court judges are of equal standing," he said.

Nair said the High Court was only bound by a judgment coming from the Court of Appeal or Federal Court.

The lawyer said Abu Bakar's ruling would also appear to indicate that Gani would fail in his attempt to strike out the suit because he was a public officer in his capacity as AG from the legal and judicial service.

Retired Federal Court judge Gopal Sri Ram said provisions in the constitution and the Interpretation Acts have no relevance to determine who is a public officer for the purposes of the tort.

He said the action brought by Mahathir and two others were based on the well-established common law tort.

"It is not brought under an Act of Parliament. It is also not an action brought for violation by the executive of a constitutionally guaranteed right," he told FMT last week.

Sri Ram said in the case of *Henly v Mayor of Lyme* (1828), Chief Justice Best had declared that a public officer was one who is appointed to discharge a public duty and "receives a compensation in whatever shape, whether from the crown or otherwise..."

Best said an action could be brought against the public officer who abused his office, either by an act of omission or commission and resulted in an injury to an individual.

Sri Ram said Abu Bakar was wrong to state the prime minister was not a public trustee.

"Every minister in a parliamentary democracy is a fiduciary with the power to run the government by the people," he added.

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