

Court to rule on Aug 3 if Pua's suit against Najib should be struck out

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By V Anbalagan

Najib cannot rely on the Malaysian constitution to evade action as the tort of misfeasance in public office originates from the United Kingdom, says lawyer Gobind Singh Deo.

KUALA LUMPUR: The High Court will rule on Aug 3 whether to allow the application by Najib Razak and the government to strike out Petaling Jaya Utara MP Tony Pua's suit for misfeasance in public office over the 1Malaysia Development Bhd (1MDB) affair.

Pua's lawyer Gobind Singh Deo said judicial commissioner Faizah Jamaludin deferred decision as the parties had made lengthy submissions.

"We took the position that Prime Minister Najib Razak is a public officer and the merits of Pua's suit should be heard," he told reporters after proceedings in chambers.

However, he said Najib and the government wanted Pua's writ and statement of claim to be struck out.

"Najib's lawyer submitted that my client's statement of claim did not disclose a case of misfeasance in public office as a result of which it ought to be struck out."

Gobind said he submitted before Faizah that the tort of misfeasance in public office was a civil wrong that originated from the United Kingdom and provisions in the Malaysian constitution could not be used to evade liability.

In a recent pronouncement in another case, Justice Abu Bakar Jais, in striking out a similar suit brought by former prime minister Dr Mahathir Mohamad and two others, said Najib was not a public officer although holding public office.

Abu Bakar said a public officer under the constitution did not include any member of the administration in the federation or state.

Najib's grounds for the striking out of the application are based on the contention that he is not a public official, and that Pua had filed the suit for political purposes.

On Jan 16, Pua filed the suit against the prime minister for abuse of his public office over 1MDB funds.

Pua, who is also the DAP national publicity chief, wants a declaration that Najib had committed the tort of misfeasance in public office and had abused his office to personally profit from the funds.

In his statement of claim, Pua explained why 1MDB was set up, the numerous transactions that took place in relation to the issuance of two bonds and how part of the funds were allegedly transferred to Najib's private accounts.

He also narrated the three phases where the money was transferred into the prime minister's accounts between 2011 and 2013.

Pua said as finance minister and chairman of the 1MDB advisory board, Najib had a role in the decision-making process over the sovereign wealth fund.

Pua said his public statements against Najib on 1MDB had been construed as defamatory and that he (Pua) had been labelled as a detriment to parliamentary democracy.

Pua said the Malaysian government was also vicariously liable for Najib's action in his capacity as a public servant.

Najib has denied any wrongdoing and in January 2016, the attorney-general cleared him of any offence.

Before the start of today's proceeding, Najib's lawyer Cecil Abraham informed the judge that press members were in the court room when the case was a chamber matter.

However, Gobind said the press could follow the matter since it was of public interest.

Faizah said she did not want the press to misreport the proceedings.

"I think it is best they are not here. Please leave," she said.

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