

## **What transpired as national interests became a national embarrassment, says Court of Appeal**

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PUTRAJAYA (Dec 8): The Court of Appeal in ruling that Datuk Seri Najib Razak's abuse of power conviction was safe said the SRC International Sdn Bhd project that started off as a national interest venture in the end had become a national embarrassment.

Appellate court judge Justice Datuk Abdul Karim Abdul Jalil in leading the bench said while Najib's defence team argued through its (defence) witnesses former attorney general (AG) Tan Sri Mohamed Apandi Ali, former Malaysian Anti-Corruption Commission chief commissioner Tan Sri Dzulkifli Ahmad and former Treasury secretary-general Tan Sri Mohd Irwan Serigar, the project was for national interest, the court did not buy the argument.

"The general law is that the opinion of any person, even if that person is the former AG, is not relevant in any court proceeding. The court forms its decision on cogent admissible evidence, not on the opinion of others, except such opinion is an exception of that of an expert."

To this end, Abdul Karim said the High Court judge was entirely correct to state that the opinion of Dzulkifli and Irwan could not replace the evidence before it to arrive at a fair and just decision.

**No ability to repay the loan**

"It would be rather absurd for the government to guarantee a loan to a government-linked corporate body knowing well that the corporate body does not have the ability to repay the loan or service. That is simply bad financial management of public funds," the top judge said.

"The appellant (Najib) was actively involved in ensuring that the Retirement Fund Inc (KWAP) loans were disbursed to SRC. However, after the funds had been disbursed, the appellant became indifferent to the whereabouts of the funds, and did not inquire from SRC as to what had happened to the funds, not how they were utilised.

"He even instructed the second finance minister (Tan Sri Ahmad Husni Hanadzlah) then to keep off SRC. This conduct of the appellant can be indicative of one thing, that is once the funds had been secured by SRC, over which he had overarching control, he was free to utilise them for his personal benefits."

"This was manifested by the flow of RM42 million from SRC into his personal accounts. This is not something that can be said to have been done in national interest. There is no national interest here, just a national embarrassment," the judge admonished.

Testimonies at the High Court revealed that as soon as the RM2 billion loan each came from KWAP in August 2011 and February 2012, the bulk of the funds were transferred to Swiss accounts immediately and were not seen again.

SRC or Strategic Resources Company was set up with the purpose to secure alternative energy for the country as stipulated in its memorandum of articles.

## **Two Cabinet decisions led to KWAP loans**

The Court of Appeal also agreed that there should be only one abuse of power charge with regard to the KWAP loans that were given between 2011 and 2012.

Abdul Karim cited Kod Etika Bagi Anggota-Anggota Pentadbiran (Code of Ethics of members of the Administration) that requires members of the administration to ensure no conflict of interest arises from the position one holds in public office.

If such a conflict arises, he said a person must not only declare his interest but also leave the meeting and his non-attendance during the meeting recorded.

"In the present case, the evidence shows that Najib was not only present but chaired the two Cabinet meetings held on Aug 17, 2011 and Feb 8, 2012 and was thus involved in the decisions of the Cabinet to approve the said government guarantees in favour of KWAP as verified by the then deputy head secretary (Cabinet) in the Prime Minister's Department, Tan Sri Mazidah Abdul Majid.

"She testified that in the first Cabinet decision (in August) the relevant papers and memorandum presented to the Cabinet were stated to be from the prime minister and tabled by Tan Sri Nor Mohamed Yakcop, then the minister in the Prime Minister's Department, whilst the second decision (February 2012) came from the finance minister and it was signed by Najib himself," he added.

He said such conduct would militate against Najib and towards establishing the charge under Section 23(1) of the Malaysian Anti-Corruption Commission Act 2009 for abuse of power.

Abdul Karim said the bench agreed with the High Court judge that, Najib's role and involvement in SRC's inception, set-up grant, KWAP loans, government guarantee arrangement as well as the ownership and governance structure of SRC establish the fact he had interest in the company.

"In light of the foregoing, we find that all factual requirements of the presumption under Section 23(2) of the MACC Act have been established and Najib is presumed by law to have committed the offence of using his office for gratification under Section 23(1) of the same Act.

"We find the learned trial judge was entirely correct to find the prosecution had proved the charge of abuse of power beyond reasonable doubt. Overall we find the conviction [for abuse of power] is safe," the Court of Appeal judge said.

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