

POWER OVER JUSTICE
By
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When Dato' Seri Anwar Ibrahim (Anwar) was given the full pardon, I said that the only basis for it was "might is right." His party came to power, he was going to be the Prime Minister (PM) and therefore, he should be given the full pardon and a VIP treatment even though he was still a convicted prisoner. Hence, the Yang di-Pertuan Agong (YDPA) promised the current PM that Anwar would be pardoned even before the Pardon's Board had its meeting and Anwar was given an audience with YDPA prior the meeting of the Pardon's Board and he was told by the YDPA himself that he would be given the full pardon.

Would all prisoners who petition for pardon be given the same treatment?

One would have thought that, given a second chance to become PM, Anwar would be grateful to Allah swt, would not raise the sodomy issue anymore as its originator, Tun Dr. Mahathir is now his political ally, and concentrate on preparing himself to become PM. But, recent events do not seem to be so.

First, Anwar himself, as reported by the Star Online August 26, 2018, now wants the "heads of the judiciary to take necessary immediate actions to correct the inherent wrongs", adding that "he was not interested to take action against judges for their decisions in his previous sodomy trials."

More shocking is his revelation of the reason for his pardon given by the YDPA. He said, "When I met the King, he told me that he was giving me a full pardon – not because he had the power and authority to do so but because it was his duty to correct injustices."

On August 26, 2018, Free Malaysia Today reported that Anwar's lawyer, SN Nair wanted an inquiry into Anwar's "unjust" convictions to be held "because the Yang di-Pertuan Agong had granted a full pardon on Anwar on the basis that the convictions were founded explicitly on the ground of miscarriage of justice."

The report continues, "SN Nair said it must then naturally follow that all judges who convicted Anwar on the three charges were guilty of not dispensing justice according to the law and had failed to uphold their judicial oath."

The lawyer further said that the inquiry must also extend to the Attorney-General's Chambers from the time of the late Mohtar Abdullah.

Let us now look closely at these statements. Referring first to Anwar's statement, assuming that he had used the word "heads" in the plural form, he must be referring to the Chief Justice, President of the Court of Appeal, Chief Judge (Malaya) and Chief Judge (Sabah and Sarawak).

What does he want them to do? There can only be two possibilities. First, they should take disciplinary action against the judges who convicted him. Secondly, they should call up the case and reverse the judgment of the court.

Regarding the first, Anwar himself said that he was not interested to take action against the judges for their decisions in his previous sodomy trials. However, the fact that he made that statement is a cause for concern.

What it means is that when your party wins the General Election and forms the government, you may take action against judges who had convicted you! If you don't do it, it is only because of your magnanimity.

It would also mean that the current Chief Justice, Tan Sri Richard Malanjum would have to take disciplinary action against himself because he was one of the judges who convicted Anwar at the Court of Appeal in his first sodomy case.

If what he meant was that he wanted the heads of the judiciary to call up the cases and reverse the judgments, that too is a very worrying proposition. Again, it is back to "might is right". Just because your party (in coalition with other parties) comes to power, you may direct the heads of the judiciary to reverse your convictions!

We now come to the reason purportedly given by YDPA for giving him the full pardon. With greatest of respects, this is the most serious mistake made by YDPA, compared to the other three in this matter, i.e. first, promising the current PM that Anwar would be pardoned before the Pardon's Board had its meeting; secondly, giving Anwar, still a prisoner, an audience; thirdly, telling him that he would be pardoned.

By saying that he (YDPA) pardoned Anwar because it was his duty to correct injustice, the inference is that the 5-member bench that convicted Anwar was unjust or committed a miscarriage of justice that warrants the pardon to be given.

Assuming the YDPA had said that (which he should not), we would like to know a bit more detail. Does he mean that the conviction is legally untenable due to lack of admissible evidence? As far as we know, he is not even a lawyer. Neither did he read the whole appeal record, indeed, most probably, not even the judgment. So, on what basis did he form his opinion?

In this episode, the YDPA would have been wiser had he merely chaired the meeting of the Pardon's Board and let the secretary of the board convey the decision to the prisoner. Indeed, the Constitution does not require YDPA or the Pardon's Board to give reasons for pardoning a prisoner. But, once it is said, though innocently and privately, it could be quoted to further one's agenda. That is what appears to have happened here.

In any event, I am not aware of any procedure that allows the case to be reopened and the decision to be reversed. It is an abuse of power for the Chief Justice or one panel of the Federal Court to "review" the correctness of the decision of another panel and reverse it or even affirm. It simply has no power to do so.

We now come to the statement by Anwar's lawyer. He asked for an inquiry. He too relied on the ground given by the YDPA was to why he pardoned YDPA.

What does he want the inquiry for? For the first sodomy case, the Federal Court had acquitted Anwar. (Indeed I was the judge who wrote the judgment, which was agreed to by Dato' Tengku Baharuddin Shah Tengku Mahmud, JCA.) Does he want the dissenting judge, Dato' Rahmah Hussain, the Court of Appeal Judges (one of them was the Tan Sri Richard Malanjum, the present CJ) and the High Court Judge (who had passed away) to be "disciplined" for convicting Anwar?

Regarding the other two cases, does he also want all the judges who had convicted Anwar to be "disciplined" or for the commission of inquiry to declare that Anwar was innocent? How are the members of the commission going to form their opinions when they do not even have the notes of evidence before them? In any event are they judges?

SN Nair also wants the inquiry to extend to the Attorney-General's Chambers from the time of the late Mohtar Abdullah. What does he want the commission to do? "Discipline" the Public Prosecutor who charged Anwar? Mohtar Abdullah had passed away. Tan Sri Gani Patail is still around but, remember, he was sacked by Dato' Seri Najib and appointed by PH Government to be one of the members of the committee to investigate Dato Sri Najib's alleged misdemeanour in 1MDB.

Are the members of the commission going to comb through all the investigation papers, if they are still available and declare that Anwar should not have been charged?

In calling for the inquiry and extending its scope, SN Nair missed the most important player in the episode: Tun Dr. Mahathir. There would not have been the first sodomy case had Tun Dr. Mahathir not caused investigation to be carried out to provide ground for his dismissal of Anwar. The abuse of power case is related to it.

The reason is not difficult to understand: Tun Dr. Mahathir is now a political ally of Anwar. Everything is forgiven as between them. So, go after the police, the Public Prosecutor and the judges, blame them and punish them, instead!

It must be emphasised that the second sodomy case is not related to the first. It is a separate and a clear cut sodomy case, except that the offender is the same person. He was simply stupid to have committed the offence again after Tengku Baharuddin and I had acquitted him in the first case, not because we did not believe he did it, but purely because there was insufficient admissible evidence in law **to convict** him.

After his acquittal in the first case, he should have been grateful to Allah swt and not to repeat it. May be due to over confidence, he did it again. Even then, he is given a full pardon and a second chance to be the Prime Minister. It would be better for him to focus on what he is going to do for the good of the country as a Prime Minister rather than trying to clear his name in the eyes of the public. Indeed, he should not be concerned about what the public think of him anymore. Irrespective of what they think of him, they have given him their votes. That is all, as a politician, he had wanted from them all these years.

He should focus on his relationship with Allah swt who had been so kind to him to give him a second chance to become the Prime Minister, by making Tun Dr. Mahathir *melutut* to him, by giving a victory to PH and by making YDPA grant a full pardon to him.

Indeed, I had suffered at the hands of the BN government for acquitting Anwar. I was black-listed and initially denied the post of Chief Justice even though I was the most senior judge then. However, when Allah swt intervened through VK Lingam and the Rulers, even the then Prime Minister and UMNO succumbed. I became Chief Justice at last, even though, I know Tun Dr. Mahathir, who had retired by then, was unhappy. But, I did not take revenge on UMNO after I retired.

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