

Statement by Mr Speaker of Selangor Legislative Assembly
19 January 2011

My attention is drawn to the fact that YB Tuan Badrul Hisham bin Abdullah, member of the Selangor Legislative Assembly for Pelabuhan Klang (YB Badrul), has been absent from the Legislative Assembly in the sitting beginning from 8 November 2010 to 15 November 2010 (the November Sitting).

Article LXIX of the Laws of Constitution of Selangor, 1959 (the State Constitution) provides that:-

"If a member of the Legislative Assembly is without the leave of the Speaker absent from every sitting thereof for a period of six months his seat shall be declared vacant by the Speaker."

I, therefore, have to decide if YB Badrul's absence in the November Sitting falls within the definition of Article LXIX of the State Constitution and thereby renders his seat vacant by virtue of the State Constitution.

There were 3 sittings in the 3rd session of the Selangor Legislative Assembly in 2010, namely the opening sitting held from 12 to 14 April 2010 where YB Badrul was present for all the 3 days meetings. For the 2nd sitting held from 12 to 15 July, YB Badrul was absent for 2 days on 13 and 14 July with my leave for which he had produced medical certificate as proof of his indisposition. As for the November Sitting, namely the 3rd sitting of the 3rd session from 8 to 15 November, 2010, he did not attend any of the 6 days meetings.

It is admitted by YB Badrul himself that he was absent from the whole November sitting via his letter stated November 2010 which reached my office on 10 December 2010. In the said letter he sought for my leave for his absence stating that he was seeking traditional treatment in Pahang during the period when the Legislative Assembly was in sitting.

I replied in a letter dated 21 December 2010 informing him that the reason for his absence was not acceptable based on 2 grounds. Firstly, he did not apply for leave before or during the sitting of the House. Secondly, he did not give concrete reason for his late application to be acceptable. Hence, I concluded that his absence in the November Sitting was without leave. To my decision, YB Badrul only replied in his letter dated 5 January, 2011 seeking for forgiveness but no other reason was given.

The issue I have to decide is whether by the provision of Article LXIX, YB Badrul has been absent from every sitting of the Legislative Assembly for a period of 6 months. In short, when did the 6 month begin to run, from 16 July or 8 November 2010?

My research shows that there is no reported precedence on this issue either in Parliament or any of the Legislative Assemblies in Malaysia. Reference to the Erskine May Parliamentary Practice does not help as the matter before us is one of interpretation of the constitutional provision and not Parliamentary practice.

A similar issue was raised in the Malaka Legislative Assembly on 29 September 1981 but unfortunately no decision was made by the Assembly. In that case, YB Mr Lim Kit Siang faced the similar predicament as YB Badrul where he was absent from the Malaka Legislative Assembly for a 1 day sitting on 23 September 1980 ("the September Sitting"). He was present at the sittings prior to and after the September Sitting.

Unlike in Selangor where leave is to be obtained from the Speaker and that the declaration of vacancy of seat shall be declared by the Speaker, the Malacca constitution provides that "[I]f a member of the Legislative Assembly is without the leave of the *Assembly* absent from every sitting thereof for a period of six months the *Assembly* may declare his seat vacant" (*emphasis added*). However, the issue of computation of 6 months remains the same.

YB Mr Lim Kit Siang's case was deliberated by the Committee of Privileges as the Constitution of the State of Malacca does not give the power to the Speaker to decide on the issue. When the report of the committee was tabled in the Assembly, YB Mr Lim Kit Siang participated in the debate.

I have studied the arguments put forward by YB Mr Lim Kit Siang for his defence in the Malaka Legislative Assembly in my effort to interpret Article LXIX of the State Constitution.

To look at Article LXIX in isolation will not help to give it a proper interpretation. It has to be read in harmony or in consistent with other related provisions in the State Constitution.

I find that Article LXX(1) of the State Constitution is of great help. Article LXX provides that:-

“His Highness shall from time to time by Proclamation published in the Gazette summon the Legislative Assembly and shall not allow six months to elapse between the last sitting in one session and the date appointed for its first sitting in the next session.”

It is obvious that the Legislative Assembly when passing Article LXX of the State Constitution intends that the Legislative Assembly shall have at least one sitting within 6 months after the last sitting or otherwise His Highness shall summon a new sessions.

That is to say, if the Legislative Assembly does not sit in six months after the last sitting, His Highness will have to summon the first meeting of the new session. For instance, if the first sitting of the first session is held in 1 March and the State Assembly does not sit in six months, His Highness by virtue of Article LXX shall then summon the first meeting of the 2nd session latest on 1 September which means there will be 2 sessions in a year. That will go against the convention of Selangor Legislative Assembly where there is only one session in a year.

Order 10(1) of the Selangor Legislative Assembly Standing Order also provides that:-

"The sessions of the Assembly shall be held at such places, and every meeting of the Assembly shall open on such day and at such hour, as His Royal Highness may appoint. The first meeting of every session shall be held as the Opening Ceremony of the Session. The Ceremony shall be officiated by His Royal Highness."

That means if the Legislative Assembly does not sit in six months after the last sitting, there will be 2 Opening Ceremonies in a year and His Royal Highness will have to officiate the Legislative Assembly twice in a year. That has never been the convention of Selangor or any Parliaments or Legislative Assemblies in the Commonwealth. And that could not be the intention of the Legislative Assembly.

As such, the intention of Legislative Assembly when enacting Articles LXIX and LXX was clear that the Legislative Assembly shall sit at least once in six months and the computation of six months begins from the day after the last sitting.

I have considered effect if the phrase "every sitting" is to be replaced by "any sitting" in determining the intention of the Legislative Assembly. I am of the view that the Legislative Assembly intended that member of the Legislative Assembly shall attend at least one sitting if there were more than one sittings in six months after the last sitting. To use the phrase "any sitting" would be too harsh and that cannot be the intention of the Legislative.

With the reasons thereof, I am constraint to declare that the seat of Pelabuhan Klang is vacant from 16 January 2011 as YB Badrul is without

the leave of the Speaker absent from every sitting from the last sitting ended on 15 July 2010 for a period of six months.