

**DALAM MAHKAMAH RAYUAN MALAYSIA  
(Bidangkuasa Rayuan)  
RAYUAN SIVIL NO. W-01-29 TAHUN 2006**

ANTARA

1. YAZID BIN SUFAAT
2. NIK ADLI BIN NIK ABDUL AZIZ
3. AHMAD YANI BIN ISMAIL
4. ZAINON BIN ISMAIL
5. ABD SAMAD SHUKRI BIN MOHAMAD
6. ABU BAKAR BIN CHE DOI
7. MAT SAH BIN MOHD SATRAY
8. MD LOTFI BIN ARIFFIN
9. IDRIS BIN SALIM
10. MUHAMAD ZULKEPLI BIN MD ISA
11. MOHD SHA BIN SARIJAN
12. SOLEHAN BIN ABDUL GHAFUR
13. ABDUL MURAD BIN SUDIN
14. MOHD RAFI BIN UDIN
15. NORDIN BIN AHMAD
16. ASFAWANI BIN ABDULLAH @ AB WAHAB
17. ROSHELMY BIN MD SHARIF
18. ALIAS BIN NGAH
19. SUHAIMI BIN MOKHTAR
20. MUHAMAD ZULKIFLI BIN MOHAMAD ZAKARIA
21. MAT SALLEH BIN SAID ... PERAYU-
22. KHAIRUDDIN BIN SAAD ... PERAYU

DAN

SURUHANJAYA PILIHANRAYA MALAYSIA ... RESPONDEN

(Dalam perkara Permohonan Semakan Kehakiman No. R1-25-61-2004 dalam Mahkamah Tinggi Malaya di Kuala Lumpur (Bahagian Rayuan dan Kuasa-Kuasa Khas) yang diputuskan pada 23 Februari, 2006.

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21. MAT SALLEH BIN SAID ... Pemohon
22. KHAIRUDDIN BIN SAAD ... Pemohon

Dan

SURUHANJAYA PILIHANRAYA MALAYSIA ... Responden

Coram: Zulkefli bin Ahmad Makinudin, JCA  
 Low Hop Bing, JCA  
 Zainun binti Ali, JCA

**JUDGMENT OF ZULKEFLI AHMAD MAKINUDIN, JCA**

I have read the Judgment in draft of my learned sister Zainun Ali, JCA and the judgment of my learned brother Low Hop Bing, JCA in respect of this appeal by the appellants. With utmost respect to the judgment of Zainun Ali, JCA, I am more inclined to agree with the views expressed by Low Hop Bing, JCA in his judgment that there is no merit in the appeal. I would like to add in and state my views on some of the issues raised in the appeal as follows:

On the appellants' contention that Part VIII, Articles 113 and 114 of the Federal Constitution ["FC"] read with the relevant provisions of the Election Act 1958 ["EA"] imposes a duty on the respondent to ensure that all Malaysian Citizens, including the detainees under the preventive detention law, who are registered voters to cast their votes, through rules and regulations as guaranteed under Article 119 FC, I am of the view that there is nothing in both the FC and the Federal Laws which cast a duty upon the respondent to ensure that every registered voter in Malaysia must cast his vote on polling day. It is to be stated also on this point that there cannot be a breach of duty by the respondent as in the present case where none exists in law. **[See the case of Nordin bin Haji Zakaria & Anor. v. Mohd Noor bin Abdullah (2004) 2 CLJ 777].** I am also of the view that it is not the duty of the respondent to ensure that detainees at the detention centres can vote on polling day as

Article 119 FC clearly provides that a registered voter has a constitutional right to vote only in that constituency where he had registered, that is, in the constituency in which he resides on the qualifying date.

It is my view that the appellants' entitlement to vote under Article 119 FC does not allow a registered voter to vote at any polling station he chooses. A registered voter can only vote for the particular constituency and at the particular polling station where his name has been registered as an elector. As regards the fact that the appellants are detained as detainees under the Internal Security Act, 1960 ["ISA 1960"] at Kamunting Detention Centre ["KDC"] and therefore not allowed to leave the said detention centre, it is my judgment that this is not a relevant consideration as Article 119 FC clearly provides the constitutional right of a voter can only be exercised in the respective constituency where he had registered as a voter. The issue of allowing the appellants to get out of KDC and go to their respective constituencies to vote is beyond the power and jurisdiction of the respondent.

On the appellants' reliance of the provision of Article 113(5) FC that the respondent has a very wide and unlimited discretion to make rules and regulations to enable the appellants to cast their votes, I am of the view that the rules to be enacted are only for the purposes of the respondent's functions under the said Article 113 FC which is to conduct the elections and the same are still subject to Federal Laws. Whatever laws the respondent may enact cannot contravene the

provisions of the ISA 1960. Further, the rules enacted must give effect to Article 119 FC, namely that the constitutional right of a voter can only be exercised in the respective constituency where he had registered as a voter.

On the issue of postal voters which the appellants contended that the respondent could have included them as postal voters, it is to be noted that the appellants have never made any formal application to be registered as postal voters under regulation 3(1)(f) of the Elections (Postal Voting) Regulations 2003. I wholly agree with the view expressed by the learned trial Judge that even, if the letters from the appellants can be said to be an implied application to the respondent to treat them as postal voters, it is too late for the respondent to take the necessary actions. The respondent only received the first letter from the appellants on 18 March 2004. Under regulation 14A of the Elections (Conduct of Elections) Regulations 1981, the authoritative text of the electoral rolls must be submitted to the candidates on the day of the nomination. The nomination day in the previous general election was 13 March 2004. Thus, the authoritative text should contain the names of the appellants as regular voters in the constituencies where they have registered. I am therefore of the view since the appellants are not postal voters, there was no violation of their rights when the respondent did not provide them with the postal ballot papers.

For the reasons above stated I would dismiss the appellants' appeal with costs. Deposits to the respondent on account of taxed costs.

(DATO' ZULKEFLI BIN AHMAD MAKINUDIN)  
Judge  
Court of Appeal

Dated: 16<sup>th</sup> January 2009.

**Counsel for the Appellants:**

Mr. Edmund Bon Tai Soon, Ms. Sunil Lopez and Encik Nik Ikhwan.

**Solicitors for the Appellant:**

Messrs. Chooi & Co.

Senior Federal Counsel Puan Azizah Haji Nawawi for the Respondent.