

High Court dismisses Hougang by-election case

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Vellama Marie Muthu and her lawyer M Ravi asked the court to declare if the Prime Minister has the option to decide on the by-election and when it is held. (Yahoo! photo/Andrew Loh)

A High Court judge has ruled against the application of Hougang resident Vellama Marie Muthu for a declaration that the Prime Minister does not have “unfettered discretion” in determining when to hold by-elections.

In a more than 50-page written judgement issued on Wednesday, Justice Philip Pillai concluded that “there is no requirement” in Singapore’s constitution to call elections to fill elected Member of Parliament (MP) vacancies, and therefore no prescribed time such elections must be called.

“Should the Prime Minister decide to call an election to fill an elected Member vacancy, he has a discretion as to when to call it,” Pillai said.

Vellama, represented by human rights lawyer M Ravi, brought the by-election issue up in court in the wake of the dismissal of former Hougang MP Yaw Shin Leong from the Workers’ Party in mid-February, when Prime Minister Lee Hsien Loong said he would

consider "whether or not" to hold a by-election to fill the vacated single parliamentary seat.

PM Lee did eventually call for a by-election and it was held in late May. The opposition party's replacement candidate Png Eng Huat was elected over that of the ruling People's Action Party, and he was later sworn in as MP for the single-seat constituency.

Ruling explained

Elaborating on his ruling, Pillai explained that the term "election" in Article 49 (1) in Part VI of Singapore's constitution carries two possible interpretations.

In the first, it could refer to an event, making the holding of a by-election mandatory. In the second, it could refer to the *process* of election, indicating only that the *way* in which the process of filling a vacated seat in parliament is by election.

The latter interpretation does not suggest that the Prime Minister must call for a by-election, wrote Pillai, who concluded from further reading of the rest of Part VI that it is this second meaning that should be taken.

Given this, Pillai ruled that the Parliamentary Elections Act "merely provides the mechanism to hold such an election (the by-election) should the Prime Minister decide to call one", instead of determining whether or not one should be held, much less *when*.

The ruling is in contrast to some experts' earlier views. Constitutional law professors whom *Yahoo! Singapore* previously spoke with on the issue agreed that interpretation of the phrase "shall be filled by election" necessarily indicates the mandatory nature of a by-election, in the event that a seat is vacated.

Reactions to ruling

Assistant professor Jack Lee, who teaches constitutional law at Singapore Management University, noted that one good thing that emerged from the by-election hearing is that the meaning of a phrase in the constitution has been looked at in detail and reasoned thoroughly.

"We now have a reasoned opinion on the meaning of Article 49 (1) in the Constitution. The fact that this is the first time the provision has been judicially considered is significant in itself," he told *Yahoo! Singapore*.

Lee, however, put forward the possibility that Justice Pillai may not have needed to distinguish the two possible meanings of the phrase "shall be filled by election".

"In my view, it is not necessarily an either/or situation," he said. "It might be argued that (the phrase 'shall be filled by election') could indicate *simultaneously* the means of filling the vacancy *and* the fact that it is mandatory for the vacancy to be filled."

Lee added that the Court of Appeal could offer definitive ruling on the issue if Pillai's decision on the matter is appealed, hence escalating it to the three-judge panel.

Constitutional law professor Thio Li-ann, who lectures at the National University of Singapore's law faculty, noted the importance of the phrase "shall be filled by election" in a historical context, as well as the necessity of it being read against other provisions in the constitution.

"The Constitution read against its structure and history, as well as against the associated statutes (Parliamentary Elections Act, Interpretation Act), provides for HOW to fill seats and is silent on WHEN the How is implemented," she told *Yahoo! Singapore* on Wednesday evening.

Noting the separation of powers that exists between the state and its courts, Thio observed that in this case, the provisions of the Parliamentary Elections Act -- which includes Article 49 (1) -- are "subject to the primary checks of political methods".

She also noted the possibility that presented itself for Justice Pillai to make a recommendation that could have added pressure on political leaders to live up to the expectations of voters.

However, she added, "if the government follows a certain practice (for example in calling a by-election within three months of a seat's vacancy), a constitutional convention may develop," a rule she says is enforced more at the ballot box instead of in the courtroom.

Adding to this, NUS adjunct law professor Kevin Tan said Justice Pillai could have issued a ruling tackling the question of "when" a by-election should be held, if it is decided that one needed to be held.

"The onus then ought to be placed on the Cabinet to explain to the public when an election will be called and if there is any undue delay, to offer reasons why the delay is reasonable," he said.

Thio also stressed that should this portion of the Constitution be governed more by political checks than legal ones, the government in question must be both responsible and responsive.

"A preference for political forms of accountability, for political constitutionalism, requires that politics must work, (and) the government must be both responsible and responsive," she said.