

Lawyers, AGC and WP respond to apex court's by-election decision



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Madam Vellama Marie Muthu, a Hougang resident arriving in the High Court with her representative lawyer, Mr M Ravi on 16 July 2012 for the open court hearing of her application. Madam Vellama, a part time cleaner, wanted the court to declare that Prime Minister Lee Hsien Loong did not have unfettered discretion in deciding whether and when to call a by-election after a seat becomes vacant.

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SINGAPORE - The lawyers for a Hougang resident who initiated a court case on the calling of by-elections, and the Government, have responded to the Court of Appeal's ruling that the Prime Minister must call an election to fill a seat vacated by an elected MP.

The ruling on Friday overturned a previous High Court judgment to dismiss a bid for the court to declare that the PM does not have unfettered discretion to decide whether and when to call by-elections.

Madam Vellama Marie Muthu's lawyer M. Ravi welcomed the decision, saying it was a "great day for democracy in Singapore". He added: "A year ago, who would have imagined that one Hougang citizen could take on such a challenge, in the interest of all citizens, and that it would result in the highest court affirming that Singaporeans do have a right to representation in Parliament."

Last year, Justice Philip Pillai had ruled that "there is no requirement in the Constitution to call elections to fill elected Member vacancies" and so "there arises no prescribed time within which such elections must be called".

But on Friday, the apex court also dismissed Madam Vellama's appeal against Justice Pillai's judgment as it said she had no standing to pursue her declaration after the Hougang by-election was held in May last year. This was a point previously raised by the Attorney-General's Chambers (AGC).

However, the 57-page judgment ruled, among other things, that the PM must call an election to fill a vacancy "within a reasonable time", though he is "entitled to take into account all relevant circumstances". There can be judicial intervention only in clear cases, added the appeals court.

In a statement on Friday night, AGC noted this point, adding that the PM's discretion "would only be disturbed in exceptional cases".

It also noted that the Court of Appeal had agreed with it that Madam Vellama's bid in March last year had been "premature", as it came barely two weeks after former Hougang MP Yaw Shin Leong formally vacated his seat and before PM Lee Hsien Loong had made his stand on the issue.

In its judgment, the court said there was no basis to make any complaint as Madam Vellama's bid had "pre-empted any executive decision on the matter". AGC said this had been its position from the outset of the case.

The Court of Appeal also ruled that Madam Vellama should not have been given leave for her bid to proceed after PM Lee said last March that a by-election would be held in Hougang, said AGC. It added that it is studying the judgment carefully and will advise the PM on it in due course.

An AGC spokesman responded to further queries by Singapolitics on the implications of the Court of Appeal ruling on three instances in the 1980s when single seats were vacated but no by-elections were called to fill them.

Asked if these instances were unconstitutional, AGC referred to the apex court ruling that the PM has broad discretion in deciding when to call by-elections and is entitled to take into account policy matters such as the well-being of the country. "The previous PMs exercised this broad discretion, which was neither challenged nor held to be unconstitutional," said AGC.

The Court of Appeal also states that its ruling applies only to single-member constituencies as there is a provision requiring all MPs of a group representation constituency to vacate their seats before an election can be held.

The AGC spokesman also responded to a comment by Mr Ravi that the ruling "may be the first time the Singapore Courts have acted to interpret the Constitution in a way that has circumscribed the Prime Minister's executive authority".

She said: "In our system of constitutional government, all executive authority has to be derived from either the Constitution or some legislation. The Executive branch does not have any authority independent of the Constitution or legislation."

Meanwhile, the Workers' Party (WP) and legal experts welcomed the ruling for the clarity it gave on the scope of the PM's discretion.

"This is an important matter concerning the discretionary power of the Prime Minister in our democratic system. We believe it is reasonable that a by-election be called as soon as

practicable when a seat in an SMC is vacated to ensure that constituents are adequately represented in Parliament," the WP said in a statement.

Professor Thio Li-ann from the National University of Singapore and Associate Professor Eugene Tan from the Singapore Management University both lauded the judgment for upholding the principle that there are no unlimited powers or unfettered discretion under the rule of law.

Prof Tan said the decision affirms that "discretion conferred by law must be exercised responsibly and in accordance with the law". This provides "important constitutional protection against the arbitrary exercise of discretionary power", he added.

However, the judgment also recognises the government's political authority and the PM's discretion in deciding on the timing of by-elections, as it does not prescribe what a "reasonable time" is for by-elections to be called, said both academics.

Prof Thio said the decision embodies "principled pragmatism" - an attempt to strike a balance between principle and political pragmatism. While upholding the principle of people's right to parliamentary representation, the Court of Appeal has indicated that what constitutes a "reasonable time" may be subject to judicial review while also recognising the PM's broad discretion, she said.

The former Nominated MP, who moved a motion on by-elections in Parliament in 2008, added: "Possibly, what is 'reasonable time' may become a matter of constitutional convention (political good practice) subject to judicial scrutiny."