

Govt fights back in Nipah Virus case

T.M.M 16/7/03 M/S 9

By **BOB TEOH and TAN LEE CHIN**

and Datuk Hashim Yusoff, directed the case to be heard by the High Court — which the Federal Court heard yesterday.

In handing down his written judgment, Justice Sri Ram then said, “This is an important case. This is the first occasion upon which we are deciding whether, as a matter of policy, the Government of the Federation and its respective States enjoy blanket immunity for original liability in the tort (wrongful act) of negligence.”

Yesterday’s appeal was heard by Justices Datuk Ariffin Zakaria, Datuk Nik Hashim Nik Ab Rahman and Datuk Zulkefli Ahmad Makinudin. The plaintiffs were represented by Ser Choon Ing, Malik Imtiaz Sarwar and Neo Hoe Kee, with Senior Federal Counsel Datuk Mary Lim and Ameerjit Singh appearing for the government.

In arguing against the Court of Appeal, Lim wanted the Federal Court to determine five points of law:

- Whether the alleged government officials involved in the epidemic must be named in the suit;
- Whether the government can personally commit tort (wrongdoings) or other breaches as alleged;
- Whether the government is covered by immunity in its action;
- Whether the government can be sued as the primary tortfeasors (wrongdoers); and

THE government stuck to its guns yesterday, asking the country’s highest court to throw out a suit by 184 pig farmers affected by the Nipah disaster a decade ago. The suit is frivolous and vexatious, it said.

However, the farmers’ counsel argued before the Federal Court in Putrajaya that the suit cannot be dismissed as there were issues in law and facts to be heard.

Some 30 pig farmers from Bukit Pelanduk in Negri Sembilan were present. The case was filed by 184 victims of the Nipah Virus outbreak in 1999 for losses they alleged resulted from negligence on the part of the government during the epidemic.

The Federal Government and three State governments — Perak, Selangor and Negri Sembilan — are named as defendants in the suit.

They are asking for RM136 million for loss of pigs, funeral and medical expenses, farm damage and unspecified damages, among other things.

The suit was first filed in 2002 and the government succeeded in staving off the farmers’ bid on technical grounds until the Court of Appeal on May 13, 2005, where the farmers fought back and won.

Justice Datuk Gopal Sri Ram, sitting with Justices Tan Sri Richard Malanjum



Lay Kee Tee and 183 others sued Govt @ KL High Court 2002

2002	May 7	Pig Farmers’ summons served.
	June 12	Govt asked court to strike out the suit.
2003	Sept 5	Govt won. Farmers appealed.
2004	Feb 5	High Court rejected appeal. Farmers’ suit struck off.
	Feb 19	Farmers’ appealed to Court of Appeal.
2005	May 13	Farmers won. Case ordered back to High Court for hearing.
2007	June 25	Govt asked Federal Court for leave to appeal. Application granted.
	July 15	Federal Court begins hearing.

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• Whether the government must plead its argument that the case is out of time at this stage.

She said the farmers, despite having received financial help from the government, still wanted to claim damages of RM136 million and other exemplary damages.

In law, the actual wrongdoers must be named as parties in the suit, the government cannot by itself personally commit the wrongdoings and as such the government cannot be directly sued.

Malik Imtiaz argued that

it was clear the suit against the government was filed on the basis that it was equally liable for the wrongdoings of its officers or agents in this instance.

Furthermore, there was no need to name the actual wrongdoer, as it would be impossible to pinpoint each and every wrongdoer.

He argued against “absolute protection” as statutory powers must be exercised without negligence and without committing avoidable nuisance.

Judgment was reserved —
SIN CHEW JIT POH