

Bersih not 'unlawful organisation', rules court

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The Kuala Lumpur High Court has quashed the home minister's declaration on July 1 last year that the Coalition for Clean and Fair Elections (Bersih) is an "unlawful" organisation.

However, the court did not grant the two prayers sought by Bersih for the coalition to be registered.

Justice Rohana Yusof in her decision this morning said Bersih has successfully proven its case in challenging the declaration.

She also ruled that Home Minister Hishammuddin Hussein's declaration was "tainted with irrationality".

"Hence, we are allowing the applicant's application (for judicial review of the government's declaration), with no order as to costs," she said.

In her 30-page judgment, the judge narrated the history of the application that challenged Hishammuddin's decision to declare the coalition of NGOs to be an unlawful organisation.

Despite the declaration, she noted, the authorities had continued to meet with Bersih officials.

"There was negotiation between the applicant and the respondent (government) as to the location of the July 9 rally," she said.

"There was an audience with (the Agong for) the first applicant (Bersih co-chairperson) Ambiga Sreenevasan,) and there was no censure of Bersih (in conducting) its activities (the July 9, 2011 rally) as scheduled."

The court had further taken judicial notice that Hishammuddin had made a public statement to allow the Bersih 3.0 rally to proceed on April 28 this year.

"Even if it can be said that Bersih was endangering security before the order was made, it cannot be the case that - after one week - such reason was no longer valid or applicable.

"In short, Bersih cannot be a society used for purposes detrimental to security on July 1, 2011 - and then, no longer so a week later. Even if that is so, then the declaration should have been lifted accordingly."

Senior federal counsel Azizan Md Arshad, representing the respondents, said the attorney-general would be briefed and further instructions sought.

Azizan, along with senior federal counsel Shamsulbol Hassan, claimed that the ruling translates to status quo as far as Bersih was concerned.

However, Bersih lawyer K Shanmuga - who appeared with Tommy Thomas and Honey Tan - said the decision means in effect that the coalition is legal.

"...The home minister's decision was irrational because, after declaring it as a threat to national security, he and the authorities had met with Bersih officials," Shanmuga said.

'Time and funds wasted'

Ambiga was not present in court as she is abroad.

Bersih co-chairperson and national laureate A Samad Said (left) said the outlawing of the coalition was unnecessary.

"The legal process has wasted time, energy and government funds. This process also caused unnecessary fear to the people," he said outside the court.

"The government branded Bersih as dirty (kotor). Statements from the prime minister and the authorities last week said Bersih has affected the quota for haj set by the Saudi (Arabian) government.

"All parties should remember that Justice Rohana saw the contradiction in the actions of the authorities when - during the hearing on June 26 - (she established that) the government had entertained Bersih's request (to hold its third rally although it had been declared unlawful)."

The 14-member Bersih steering committee had named the home minister, inspector-general of police and the government as respondents.

Apart from Ambiga, the plaintiffs were Dr Ahmad Farouk Musa, S Arul Prakash, K Arumugam, Haris Fathillah Mohamed Ibrahim, Andrew Khoo Chin Hock, Liau Kok Fah, Maria Chin Abdullah, SP Subramaniam, Toh Kin Woon, Wong Chin Huat, Yeo Yang Poh, Yeoh Yong Woi and Zaid Kamaruddin.

Hishammuddin and the Registrar of Societies (ROS) had declared the coalition to be unlawful, prior to the Bersih 2.0 rally on July 9.

The minister had said the declaration was made under Section 5 of the Societies Act 1966 as investigations had shown that Bersih was not a registered organisation and that it was creating unease among the people.

Two days later, Bersih stated that coalitions need not be registered with the ROS.

It filed a judicial review application on July 8 to challenge the declaration, making these points among others:

Bersih had held numerous meetings with the government and the Election Commission prior to the declaration; and

Bersih is not a society within the meaning of the Societies Act and that the government has no power to declare a group of organisations as "unlawful".

Hishammuddin had on April 10 given the nod to Bersih to organise its third rally seeking electoral reforms, ruling out the possibility that it posed a security threat.

Based on this, Justice Rohana had sought clarification from the senior federal counsel.

However, on May 15, the court threw out Bersih's application to cross-examine Hishammuddin and police chief Ismail Omar.

At the time, it ruled that Bersih was still unlawful according to the home minister.

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