

Pakatan fails to nullify GE13

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Nov 7, 2014

The Court of Appeal today dismissed the application by Pakatan Rakyat to nullify the 13th general election over the indelible ink fiasco.

In a majority two-one decision, the three-member bench ruled that such a trial should be heard through an election petition in the Election Court.

As such, the court ruled that a civil court has no jurisdiction to hear an election case and the application seeking removal of election commissioners.

Justice Alizatul Khair Osman, who delivered the decision, said the High Court has no right to nullify the election.

While her colleague Justice Prasad Abraham ruled partially in favour of the plaintiffs, he agreed that the plaintiffs have the right to question the Election Commission's (EC) constitutional duty in the conduct of its obligations during an election poll.

The other member of the panel was Justice Rohana Yusuf.

No costs ordered.

The plaintiffs were three former candidates of Pakatan parties, namely PAS's Dzulkefly Ahmad (Kuala Selangor), DAP's M Manogaran (Cameron Highlands), PKR's Saifuddin Nasution (Kulim Bandar Baru), and two voters, Arifin Abd Rahman and Abbo Rajoo.

They filed their suit against seven Election Commissioners including its chief Abdul Aziz Mohd Yusof (left) for fraud in the implementation of indelible ink, which was allegedly easily removable, on July 15, 2013.

Besides seeking a fresh election, the plaintiffs urged the removal of the commissioners for their fraudulent behaviour.

However, on Feb 7, 2014, the High Court in Kuala Lumpur dismissed the suit, citing that a civil court has no jurisdiction to hear an election trial nor remove the election commissioners.

The respondents were represented by senior federal counsel Armajeet Singh, while Ambiga Sreenevasan and Americk Singh Sidhu represented the appellants.

Manogaran, who was present in court, said that they will appeal as Justice Prasad was

agreeable to their right to take action against the EC.

“I am saddened by the ruling,” he said.

“It seems that we have not reached a stage where we can differentiate between the grievance of offences and dissatisfaction under the constitution as a citizen,” Manogaran said.

“As a citizen, I can question the use of indelible ink when my right protected by the Federal Constitution has been infringed.

“It’s not an election offence in that sense, but rather a legal offence,” he added.

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