

**Election Commission failed in duty to conduct free and fair polls, lead counsel tells
Bersih tribunal
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BY V. ANBALAGAN**

The Election Commission (EC) failed in its constitutional duty to conduct free and fair polls during the 13th general election, the Bersih People's Tribunal heard today.

Lead counsel Gurdial Singh Nijar (pic) said Barisan Nasional resorted to all kinds of manipulation to win the election while the EC "folded its arms and did nothing".

"Under the Federal Constitution the EC is responsible for conducting clean and fair elections but it chose to stand idle and watch the transgressions during campaigning," he said in his submission to a five-man tribunal at a hotel in Subang Jaya.

Gurdial questioned whether the EC was listening to the people, in an apparent reference to the commission's refusal to provide written feedback after saying it had taken note of everything that happened during the five days when witnesses testified at the tribunal.

He said the last election was keenly contested and the results pointed to the nation heading towards a two-party system.

He said the EC must be independent to inspire confidence among the people.

"It must not be influenced by the executive. There must elements of professionalism," he said to a packed audience made up mostly of politicians and representatives of non-governmental organisations.

He also said the practice of appointing retired civil servants as EC members needs to be reviewed.

Gurdial said the current EC leadership was partisan as they had jumped into the fray to accuse opposition leaders and Bersih co-chair Datuk Ambiga Sreenevasan of destroying democracy.

He took a swipe at Attorney-General Tan Sri Abdul Gani Patail for describing the People's Tribunal as a publicity stunt.

"It is a sad reflection of his ignorance about a people-initiated tribunal," he said.

Gurdial , who took almost four hours to make his submissions, said the election was skewered due to manipulation of the law and voters.

He said it was tilted in favour of the BN due to gerrymandering of electoral boundaries.

"The electoral roll was also suspect as close to 30% of the 13.2 million voters were dubious," he said.

Gurdial said things were made worse when the court refused to review applications to get the EC to clean up the roll.

He said the BN spent excessively before and during the election to buy votes and abused state resources which were offences under the Election Offences Act.

"The state-owned media and other mainstream print and electronic media were used to get excessive coverage for BN," he added.

The panel was led by Yash Pal Ghai, an expert in constitutional law and head of the Constitution Advisory Support Unit of the UN Development Programme in Nepal, and Ramlan Surbakti (former deputy chairman of the Indonesian Election Commission).

The Malaysians on the panel were lawyer and former administrative and diplomatic officer with the Ministry of Foreign Affairs Datuk Azzat Kamaludin, Dr Mavis Puthuchery (former associate professor Faculty of Economics and Administration, Universiti Malaya) and Rev Dr Hermen Shastri (general secretary of the Council of Churches of Malaysia).

Yash, in his closing remarks, congratulated Gurdial on a successful inquiry.

"It was a wonderful citizens' effort and a people's platform on their views on GE13," he said.

Yash said the bench would likely take more than three months to prepare its report.

"We hope to provide comprehensive findings and suggestions so that the report will form the basis of a national discussion," he added. – September 27, 2013.

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