

Bersih **NOT** unlawful

> Home minister's decision 'tainted with irrationality', says High Court

BY S. TAMARAI CHELVI
newsdesk@thesundaily.com

KUALA LUMPUR: The High Court here yesterday quashed the home minister's order which had declared the Coalition for Clean and Fair Elections (Bersih) as an unlawful movement on July 1, 2011. High Court (Appellate and Special Powers) judge Datuk Rohana Yusuf said the minister's decision was "tainted with irrationality."

She noted that the minister's order was issued on July 1, 2011, but on July 9 last year, the rally planned by Bersih took place without censure.

"If it was found to be a threat to the security of the nation, the conduct of the respondents in treating Bersih certainly showed the opposite," said the judge.

"There can only be two things that happened: either Bersih was unlawful for being a threat to security and a week later, it was no longer a threat, or the decision to declare Bersih unlawful was made without taking into account some relevant facts or by taking into account some irrelevant facts," said Rohana.

"It is for this reason, in my view, the decision is tainted with irrationality," she said in her 30-page judgment.

The judge, however, did not make any order as to costs in the



SEA OF CONTENTION ...

This handout photo, taken on July 17 and released yesterday by the Philippine military western command (Westcom) shows a newly-constructed radar dome on Chinese-controlled Subi Reef, around 15 nautical miles northwest of the Philippine-controlled Pagasa Islands on the disputed Spratly islands. The Philippines yesterday summoned the Chinese ambassador to protest against China's plans to establish a military garrison on the disputed Pratacel Islands in the South China Sea.

application for judicial review by Bersih 2.0's steering committee chairman Datuk S. Ambiga Sreenivasan and 13 members.

The committee had in filing the application for judicial review on July 8 last year, named the inspector-general of police, the government and the home minister as respondents.

Citing irrationality as a ground to quash the administrative decision, Rohana allowed Bersih's application for an order of certiorari to remove the minister's order made under section 5 of the Societies Act 1966.

Under this section, the home minister is empowered to declare unlawful any society or branch or class or description of any societies, which in his opinion is or being used for purposes

prejudicial to or incompatible with the interest of the security of Malaysia.

Earlier, the judge noted that after a call by the King, Tuanku Mizan Zainal Abidin, for all parties to resolve the situation:

- ▶ there were negotiations between Ambiga and the respondents as to the locations of the Bersih rally of July 9;
- ▶ there was an audience granted by the King to Ambiga as the Bersih steering committee chairman on July 5, 2011; and
- ▶ the Bersih 2.0 rally took place without censure, as scheduled on July 9.

"No action was taken under the provisions of the Societies Act.

Conversely, Bersih, the unlawful society under section 5 of the Societies Act, was in fact allowed to

carry out its activities like normal and eventually held the scheduled event planned, right after it was unlawful," Rohana said.

"It would be unreasonable for a society to be found unlawful for serious reasons like being used for purpose prejudicial to public order and security on July 1 and then no longer so, on July 5 or July 9, 2011.

"Even, if it can be said that Bersih was such a society that had been used for purposes prejudicial to security of Malaysia before the order was made, it cannot be the case that one week after that such reason is no longer valid or applicable."

Rohana said Bersih cannot be considered detrimental to security on July 1, then no longer so a week after that. Even if that was so, then the declaration should have been

lifted accordingly.

She added there was no doubt that the applicants are directly and adversely affected by the decision.

After Rohana handed down her decision, Bersih lawyer K. Shanmuga said: "Bersih is now legal. Bersih is no longer unlawful society."

Senior Federal Counsel Azizan Md Arshad said although the court had ordered the minister's decision be quashed, Bersih is still an unregistered society under the Societies Act.

Azizan said however that he would get further instructions from the attorney-general.

The Bersih steering committee, in a statement, welcomed the High Court decision and urged the government not to pursue an appeal.