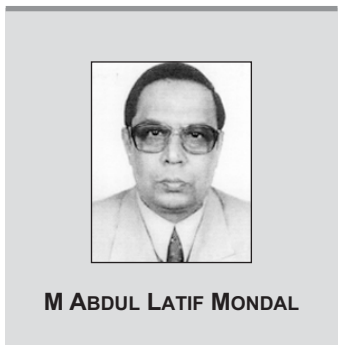


President's decision: How correct is it?



M ABDUL LATIF MONDAL

[This piece was written prior to the assumption of the office of chief adviser by the president.]

THE hope that flickered with retired chief justice KM Hasan's refusal to take office of the chief adviser to the caretaker government (CTG) dimmed again as President Iajuddin Ahmed in a meeting with the AL general secretary Abdul Jallil and the BNP secretary general Abdul Mannan Bhuiyan in the afternoon of October 28 offered himself as the CTG head without exploring constitutional options available for appointment of the chief adviser to the CTG.

It is mentionable that the president shall hold the office of chief adviser to the CTG in addition to his own duties only when all other options are exhausted. Some sources say that the BNP secretary general Abdul Mannan Bhuiyan at one stage of the meeting urged the president to head the CTG in addition to his own duties and the president expressed his willingness to accept the BNP secretary general's proposal. Anyway, the AL has intimidated the president its opposition to president's assumption of the office of chief adviser to the CTG. Now the question arises as to why the president should not head the CTG in addition to his own duties.

First, Article 58C of our constitution has made it absolutely clear that the president is the last option to head the CTG only when all other options are exhausted. Justice KM Hasan who retired last as the chief justice (CJ) was the first choice to head the CTG. With his refusal to head the CTG, the next choice is retired CJ Mahmudul Amin Chowdhury.

This is because of the fact that retired CJ Mainur Reza Chowdhury, who retired before Justice KM Hasan, has died, and this has made Justice Mahmudul Amin Chowdhury, who retired before Justice Mainur Reza Chowdhury, the next choice. If Justice Mahmudul Amin Chowdhury is not willing to hold the office of the CTG, then other retired living CJs, if any, not exceeding the age of 72, shall be the choices for office of the CTG, taking into consideration their date of retirement as CJ.

If no retired CJ is available or willing to hold the office of the CTG, the president shall appoint as chief adviser the person who among the retired judges of the Appellate Division retired last. The

BARE FACTS

The point to be noted here is that the question of consultation with the major political parties arises only when no retired CJ or judge of the Appellate Division is available or willing to take the office of the chief adviser. If the president assumes the office of the chief adviser in addition to his own functions without exploring all the options stated above, that will contradict the provision(s) of the constitution on the appointment of the chief adviser of the CTG.

sequence, as stated in the case of the retired CJs, has to be followed in the case of retired judges of the Appellate Division.

If no retired judge of the Appellate Division is available or willing to hold the office of the CTG, the president shall, after consultation, as far as practicable, with the major political parties, appoint the chief adviser from amongst citizens of Bangladesh who are qualified to be advisers to the CTG.

Without exhausting all the aforesaid options, it is too early for the president to assume the office of the chief adviser to the CTG in addition to his own duties.

Second, the media reports reveal that the president has started discussion with the political parties having representation in the 8th parliament that now stands dissolved, to resolve the crisis.

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Third, the CTG shall be collectively responsible to the president. If the president himself heads the CTG, then there will be no checks and balances, and questions will arise about the transparency of the activities of the CTG.

Fourth, although the CTG is scheduled to carry out the routine affairs of the government and assist the Election Commission (EC) for holding the general election freely, fairly and impartially, the ground realities will make it absolutely necessary for the CTG to adopt and execute important policy measures for maintaining law and order and depoliticizing the administration for helping the EC in the holding of general election smoothly and neutrally as well as for effective functioning of the government.

The CTG of 2001 even went for amendments of the Representation of the People Order, 1972. Some advisers to the past CTG have already expressed concerns that the 4th CTG (2006) will have to face more difficulties in maintaining law and order and creating conditions conducive to the holding



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Justice Mahmudul Amin Chowdhury has reportedly told the media that he would not feel embarrassed if he is approached officially to take office of the chief adviser to the CTG. The BNP has reportedly objected to his becoming the chief adviser without stating the reasons. As per constitution, Justice Mahmudul Amin Chowdhury is the next option after Justice KM Hasan's refusal and he cannot be bypassed only because of the BNP's objection.

To conclude, President Iajuddin Ahmed is facing the most important challenge of his life. Time has come to prove that he is the president of the country. By exercising his conscience and judgement in the right direction, he can save the nascent democracy of the country. He must go by the constitution in appointing the chief adviser to the CTG.

M Abdul Latif Mondal is a former Secretary to the Government.

Prof Yunus and politics



ANM NURUL HAQUE

N OBEL laureate Prof Muhammad Yunus, on the eve of his departure for Korea to receive the Seoul Peace Prize, said that he plans to be in politics and may float a new political party. He said this while replying to questions put to him, by the reporters at the airport, on the enduring political stalemate that has created wide-spread public despair in the country. He stated categorically that he would not agree to be the chief adviser of the caretaker government even if he is requested by both BNP and AL to do so.

There has been speculation in the public mind that Prof Yunus would be chief adviser of the next caretaker government, and would utilize his position to remove all hurdles to holding a free and fair election acceptable to all. Prof Yunus has, however, reiterated his commitment to the clean and competent candidates campaign for the national election 2007. He said there has been a suggestion that the campaign for clean candidates will not be successful if its protagonists are not part of the political process.

Prof Yunus's intention to float a political party evoked mixed reactions among political and civil society circles. But the common people were jubilant to know that Prof Yunus is planning to enter politics, and to form a new political party. Certainly, there is no denying that the country is trapped in a political maze, and that the people in general are held hostage by the mainstream political parties. The people are desperately looking for a way out.

At least 60 percent of the people in Bangladesh find politics a shambles. A study, styled "Unbundling governance towards an annual report on governance in Bangladesh," by the Power and Participation Research Centre (PPRC), a local development research institute, revealed this unpleasant truth for the nation in a seminar held in the city on July 29.

The survey found that about 36.4 percent of the people have "low trust" in the country's political parties while nearly 60 percent are pessimistic about improved politics and 39.6 percent are pessimistic about the future of the country. Only 5.5 percent of the people are highly optimistic about the future of the country while 31.3 percent expressed concern at the high insecurity in the political arena. On the other hand, more than 31

BY THE NUMBERS

Bangladesh now needs a man of indomitable will, and dedicated leadership, to clean up its political mess. An individual with charisma and courage, like Prof Yunus, is quite fit for the purpose and can lift the nation from the abyss of despair. Yet, we urge him not to get involved in direct politics. It would be better that he take the role of the nation's conscience keeper to guide the nation in its hour of need. Albert Einstein was requested to become the first president of the newly formed state of Israel, but he declined the offer.

percent showed their low trust in politicians, and 33 percent showed their negative attitude about women's participation in politics.

We have seen the immense damage done to the national economy by the endless spate of hartals that have been observed since the return of parliamentary government in 1991. The major political parties did not agree to find a substitute for hartals, even considering the huge damage caused by them, over the last fifteen years. The political parties, devoid of any ideology and tolerance, have pushed the country to the brink of disaster. The country is now facing a fatal combination of crises that are taking a heavy toll on the economy.

Politics in Bangladesh is characterized by enormous odds. Politics of gaining power to plunder has destroyed all its intrinsic qualities. It has now turned into a dirty game that cannot be played without money and muscle. The nexus between crime and politics has given a boost to criminality in all the tiers of society. This particular political culture has engulfed the whole nation, making our lives utterly miserable.

The manifest truth is that most of the people in Bangladesh have already lost trust in politics due to prolonged absence of charismatic leadership. There is hardly any politician who combines vision and statesmanship. As a result, the voters' verdicts are no more in accord with any particular party in the national elections. Voters are now very divided.

Populism, as so often demonstrated by the political parties at their public rallies and show-downs, is mostly nothing more than a herd of hired people. As such, organizing a public rally now costs something in the range of Tk one crore. Votes are now bought, not won. Obviously, the stakes are high in politics. People at large are losing trust in the politicians due to these predicaments in our sham democracy.

It has become customary for our politicians to promise a lot of things for the well-being of the people, and to forget all the pledges once they are sworn into public office. They will remember and repeat the old pledges again only when they lose power. It is a vicious cycle of hypocrisy that we are living through, and the good politicians are being driven out of the political arena by the bad ones, following Gresham's law,



that bad money drives away good money.

The people attained the independence of Bangladesh after colossal bloodshed in the fierce liberation war of nine months. They never expected such a failed leadership and ineffective national parliament. Both BNP and AL took to the recourse of boycotting parliament, often on any trivial grounds, while in opposition. Eventually, it is the nation which pays the price. The people are really tired of watching the same drama year after year.

Bangladesh now needs a man of indomitable will, and dedicated leadership, to clean up its political mess. An individual with charisma and courage, like Prof Yunus, is quite fit for the purpose and can lift the nation from the abyss of despair. Yet, we urge him not to get involved in direct politics. It would be better that he take the role of the nation's conscience keeper to guide the nation in its hour of need. Nobel laureate scientist Albert Einstein was requested to become the first president of the newly formed state of Israel, but he declined the offer. History now reveals that he did the right thing.

The winning of the Nobel Peace Prize has given Prof Yunus the stature of a pacifist. His words can be said to have acquired greater value and significance. He should now

pioneer the campaign for clean and competent candidates in the forthcoming election. Until now, election has brought in leadership that lacks competence, does not consider itself accountable, and utterly fails to meet people's demands and aspirations.

There are lots of examples around us where civil society played a vital role in restoring democracy. Prominent examples include the National Citizens' Movement for Free Election in Philippines that forced Marcos out of power. The civil society again succeeded in their campaign to oust Joseph Estrada for corruption. Very recently, the civil society in Nepal played an active role in the democratic upsurge against the feudal monarchy.

In the process of elections becoming a game of black money and hooliganism, the civil society, as we know it today, emerged with a vision for Bangladesh and took an initiative to create pressure on the major political parties to nominate clean and competent candidates. The entire nation now looks forward to a free and fair election with honest and competent candidates. It would be much more in the keeping with the expertise of Prof Yunus if he pioneers the campaign for clean and competent candidates.

ANM Nurul Haque is a columnist of The Daily Star.

Putting the cart before the horse?

Thus, it seems clear that there are a number of constitutionally mandated steps that the president was obligated to run through before appointing himself chief adviser, that were not followed. It would have been preferable had the honourable president tried all options provided in the constitution to appoint the chief adviser before selecting himself, and only if the provisions of clauses (3), (4) and (5) could not be given effect to, to have then applied clause (6). It is the duty of the president to protect and uphold the constitution and eschew any controversial decision or move.

HARUN-UR-RASHID

A T long last Justice KM Hasan stepped aside. In a press release distributed to the media, Justice Hasan expressed the hope that the political parties of the country would settle their differences and work in harmony in order to hold a free and fair election to uphold democracy. Justice Hasan expressed his solidarity with the people of the country, and said that he felt it was better to stand aside than to become a hurdle in the political process, and thus to help bring a peaceful political atmosphere for the nation. He further said that some would be happy and some would not be, but he asserted that he did keep all in mind when he took the decision.

He kept in mind the people of his beloved country. He had a very tough time taking the decision. We know, Justice Hasan, that you faced a very embarrassing situation, and had a hard time taking this decision. We thank you very much, and express our gratitude for your decision. Some people are saying that if Justice Hasan had conveyed his inability to take over the charge of the caretaker government earlier, the bloodshed and the loss of lives

could have been avoided. Some are saying that he was expecting a solution out of the dialogue of the two major political parties, and he waited for that, and so cannot be faulted on this count.

Since Justice Hasan is now in the past we shall not enter into fruitless arguments, counter-arguments, and debate about him and his role. We must move forward.

Indeed, now that we have President Iajuddin Ahmed as chief adviser, this is really the only issue worth discussing.

But, in this context, let us concentrate our attention for a moment on what the president, the outgoing prime minister, and the outgoing leader of the opposition said, and how they played with the situation, so to speak, with the formation of the caretaker government.

We have seen in yesterday's newspapers what the three said on Saturday:

The president himself offered to be the chief adviser to the caretaker government. Khaleda Zia, the outgoing prime minister, said that the BNP would accept whatever the president decides, and urged others to accept it also.

Sheikh Hasina, the outgoing leader of the opposition, said that

the president should follow the constitution.

All along, Khaleda Zia was saying that the caretaker government would be formed according to the constitution, but this is the first time she said that she would accept the president's decision, whatever it might be. This came only after the decision of Justice Hasan to not accept the post of chief advisor of the caretaker government.

So, in my opinion, it wouldn't be entirely unjustified to say that after Justice Hasan, President Iajuddin is the next reliable and dependable person who BNP believe could help it to sail through the election smoothly. So we have every reason to believe that it is the BNP who has advised the president to offer his candidature to become the chief adviser to the caretaker government.

We have no reason to believe that Prof Iajuddin, being a university teacher, is ignorant about the constitutional provisions for the caretaker government. Since he is the guardian of the constitution we would have urged him to follow, protect, and uphold the constitution.

The constitution of the country has not empowered anyone to break it, or to violate any of its provisions. Not for the honourable

president, but for the common readers, I am extracting below the relevant provisions of the constitution regarding the caretaker government:

Article 58C (3): "The President shall appoint as Chief Adviser the person who among the retired chief justices of Bangladesh retired last and who is qualified to be appointed as an Adviser under this article.

Provided that if such retired Chief Justice is not available, or is not willing to hold the office of the Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Chief Justices of Bangladesh retired next before the last retired Chief Justice."

We know that before Justice KM Hasan, Justice Moirur Reza Chowdhury retired as chief justice, and that before Justice Moirur Reza Chowdhury, Justice Mahmudul Amin Chowdhury retired as chief justice.

Justice Moirur Reza Chowdhury has passed away. He is no longer in this world. Thus, the above article cannot apply to him, and since Justice Hasan has graciously declined the post, the appointment should move to "the person who among the retired Chief Justices of Bangladesh retired next before the last retired Chief Justice."

In other words, Justice Mahmudul Amin Chowdhury. Obviously, the clause does not contemplate any of the deceased previous chief justices, only the ones who are alive. We should look for the next available chief justice, as per the constitution. I believe that the provisions of the constitution about the caretaker government are written in a very simple language,

and we do not need any lawyer or legal expert for its interpretation or clarification. Educated people can easily understand it.

Let us look at clause (4): "If no retired Chief Justice is available or willing to hold the office of the Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired last, and who is qualified to be appointed as an Adviser under this article.

Provided that if such retired Judge is not available or is not willing to hold the office of the Chief Adviser, the President shall appoint as Chief Adviser the person who among the retired Judges of the Appellate Division retired next before the last such retired Judge."

Thus, constitutionally, it seems clear that if, and only if, all the retired chief justices decline to be chief adviser, as Justice Hasan has done so, can the president constitutionally look to the clause (4) for appointing a chief adviser.

Let us now look at clause (5): "If no retired Judge of the Appellate Division is available or willing to hold the office of Chief Adviser, the President shall, after consultation, as far as practicable, with the major political parties, appoint the Chief Adviser from among citizens of Bangladesh who are qualified to be appointed as Advisers under this article."

Again, constitutionally, it seems clear that if, and only if, all the retired judges of the Appellate Division decline to be chief adviser, can the president then constitutionally look to the clause (5) for appointing a chief adviser. Now, let us look at the clause (6): "Notwithstanding anything contained in this Chapter, if the provisions of clauses (3), (4) and



(5) cannot be given effect to, the President shall assume the functions of the Chief Adviser of the Non-Party Care-taker Government in addition to his own functions under this Constitution."

Once again, it seems clear that the president was obligated to fully explore this option with all the major political parties before resorting to clause (6). It is not apparent that this was done. No information has been released as to which names had been proposed by the political parties, and whether any consensus name might have emerged through discussion.

Indeed, the political parties were all summoned to speak with the president separately, rather than together, which would seem to make reaching consensus rather difficult. It does not seem as though this option was fully exhausted.

Thus, it seems clear that there are a number of constitutionally mandated steps that the president was obligated to run through before appointing himself chief adviser, that were not followed. It would have been preferable

had the honourable president tried all options provided in the constitution to appoint the chief adviser before selecting himself, and only if the provisions of clauses (3), (4) and (5) could not be given effect to, to have then applied clause (6). It is the duty of the president to protect and uphold the constitution and eschew any controversial decision or move.

Harun-ur-Rashid is a retired government officer.