

Was justice served?

What are we to make of the CJ's stay order and the vandalism later

WE think the most telling comment on the Chief Justice's (CJ) stay order on the writ petitions challenging the legality of the President taking over as the Chief Adviser, just minutes before the order was to be passed, was made by the former Chief Justice Mustafa Kamal. He said in his 40-year legal career he has never seen any chief justice exercising his power in this manner. This we think sums up the basis of the question in the public mind. Why did the CJ prevent his two colleagues from carrying out their judicial duties, and why did he intervene minutes before the order was to be issued? Has he intervened to serve justice or was it to prevent justice from being served? To raise questions like the above against a sitting Chief Justice is itself making a statement. But not to make it after what happened at the High Court premises yesterday would be letting down the public's right to know.

Given the sensitive nature of the case it is possible that the Chief Justice may have had some reservations about it and could have wanted it to be heard by the full bench. That is perfectly within the norms of his function. But the time to take such a decision was at the very outset when the case started or after the ruling is issued. Under no circumstances should it come while the case is being heard, and even less when the ruling is minutes away from being delivered.

It is the timing that has raised the maximum suspicion of political influence in issuing the stay order. There is also the question of the way the order was served to the court, and the CJ's absence from his chamber when he could have explained his concern to the senior members of the Bar and concluded the affair with the dignity that it deserved. We deeply regret that justice has been very badly served by its highest symbol.

We have a far deeper regret for vandalism and act of arson that took place in the premises of the High Court following the Chief Justice's stay order. Nothing can justify breaking into the CJ's chamber and destroying his office. A similar attempt was made on the office of the Attorney General. We know justifications would be made that the outrage was spontaneous and the vandalism was the result of the spur of the moment outburst. We would have accepted this argument had we seen condemnation of it in the press briefings of the lawyers of aggrieved parties. We could have far more vigorously condemned the CJ's intervention but for the fact that lawyers and some outsiders inflicted a great insult upon the highest judicial body.

Thus today we stand a few notches lower as a land of rule of law due to the actions both of the chief justice and of a section of the lawyers.

Under the world's watchful eye

Let's live up to the expectation

UN Secretary General's special envoy, Craig Jennes, currently on a three-day visit to the country has urged the political parties to resolve their differences through dialogue. On behalf of the Secretary General he has also assured of providing any assistance needed towards a free and fair election. While expressing heightened concern over the prevailing scenario in our political arena he said that like in previous years UN is ready to send election observers during the forthcoming election.

Jennes has already held discussions with the President and AL chief Sheikh Hasina. He is scheduled to hold talks with other political leaders including Khaleda Zia, the four party alliance leader. He hoped like many others in the country and abroad that the people would be able to vote freely and without fear or intimidation.

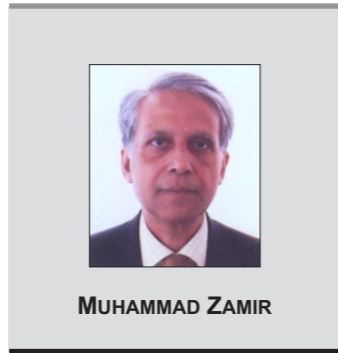
In the meantime the US ambassador in Bangladesh also met Khaleda Zia on a similar mission. After an hour long meeting the ambassador told the reporters that the BNP leadership had assured her of party's peaceful political stand.

We do sincerely hope that Craig has had a fruitful visit. It has hopefully contributed in defusing some of the hostilities between the various political parties. Surely our political parties are aware of their obligations to the people and the nation.

It appears that there exists an acute problem amongst our politicians dominated by anger, intolerance and an attitude that is retaliatory in nature. Whatever the causes might be, we simply must realise that adopting path of militancy and retaliation will help none, instead it might ultimately result in hurting the interests and the welfare of the entire nation.

Let us thus inculcate a spirit and commitment amongst ourselves that would help us resolve our differences and conflicts. We made considerable progress in the field of our economy and the society at large, what remains now is upholding and developing of a political culture that will help us retain democracy and the democratic process.

Electoral process continues to be controversial



MUHAMMAD ZAMIR

HERE is an old adage that you can drag a donkey to the pond but you cannot make it drink. This is proving true in contemporary Bangladesh. The electoral process supervised by the Election Commission continues to draw flak from representatives from a vast majority of the country's political parties. One is almost reminded in this context of a passage from the Holy Book which states that God has given some people eyes and ears but they will neither see nor hear.

I have failed to understand the streak of stubbornness that has manifested itself in the dynamics of decision making both with regard to the Chief of our Caretaker Government and also the Acting Chief Election Commissioner of the Election Commission. They appear to be deliberately disregarding public opinion and are undertaking a course of action which is bound to lead to further problems rather than solutions.

There is very little in terms of constructive engagement. Instead, the events of the past few days have made things that much more complex.

Like many other analysts, I have



The President as Chief of the Caretaker Administration has to understand that it will not be enough to just have an election. It has to be acceptable to all, both at home and abroad. That alone will lend credibility to the electoral process. What is required is a plain and level playing field. There must be equal opportunity for all concerned. He, as well as those in the Election Commission, have to realize that fate has given in their hands a chance to be remembered by posterity. They have to come down from their ivory tower and find realistic solutions to the existing problems.

in the past highlighted several demands that need to be addressed to hold a free and fair election.

In this context, attention has been drawn to the fact that we have a flawed voters list. Estimates made by independent foreign observers and also by local civil societies have indicated that corrections need to be made with regard to more than 13 million ghosts who presently inhabit this haunted voters list.

Let me move next to the question of reconstitution of the Election Commission. Innovative measures have been taken. Justice Aziz has apparently taken leave and decided that he will stay out of the Election Commission. Justice Mahfuzur Rahman, one of the Election Commissioners, with the help of the two other Election Commissioners, had himself appointed as the new Acting Chief Election Commissioner. There was no transparency in the manner in which this was accomplished. Instead it was presented to the nation as a fait accompli.

The whole paradigm of recon-

stitution has been further affected with the appointment of two new additional Election Commissioners. It appears to have been done without any consultation with political parties or through consensus among the different Advisers in the Caretaker Administration. Consequently, it will not resolve the issue of legitimacy or remove charges of election engineering.

The election schedule has also been announced and dates fixed for the necessary steps to be completed. The relevant authorities need not have been so hasty. By undertaking such action, they have only raised the political ante and proven once again that they are in favour of one particular group amongst the many political parties. Election Commission Secretariat officials have said that they have had to announce the schedule because they have very little time. I find that difficult to accept. Last time round in 2001, such announcement of the election schedule was done much later within the time frame.

Such actions have eroded the credibility of the Institution even further. This measure of cutting

corners and taking a short-cut was eerily similar to the method used by the President in assuming the role of Chief of the Caretaker Administration.

It is indeed sad and disappointing that at every opportunity, decisions are being taken without discussion or consensus. Such an attitude only smacks of autocratic arrogance and total disregard of public opinion.

It has been reported (in 'The Financial Express' of 27 November) that the President and Chief Adviser during his meeting with Awami League Secretary General Abdul Jalil on 26 November has made it clear that 'the Caretaker Government had already fulfilled all possible demands raised by the Awami League-led 14 -Party Alliance, particularly those for ensuring their participation in the upcoming elections.' The President was also quoted as having urged Jalil that his Alliance should 'keep your (their) words and take part in the elections'. The President is also understood to have stated that the Awami League and its partners should

withdraw their agitation programmes since their 'demands were (had been) met.'

There seems to be a fundamental flaw in the reasoning process within the Bangabhaban.

I am afraid that those responsible for assisting the Chief of the Caretaker Government are not doing their tasks as efficiently as they should. The demands on the street are not just of the 14-Party Alliance. These demands are an expression of general public opinion. I also do not understand how the President can claim that the public demands have been met.

We have also not seen any special effort with regard to another important aspect of the electoral process that is vital for holding a free and fair election. I am referring here to the more than 1,100 partisan electoral officials who were appointed in critical positions all over the country by the past Administration. Very little has been done in terms of re-arrangement of their respective responsibilities.

The sense of prevailing uncertainty has also been heightened through eleven leaders of the 14-Party Alliance jointly filing three writ petitions in the High Court against the President's assumption of the post of Chief Adviser, his manner of exercising executive power and the Election Commission move to declare the election schedule before finalising (correcting) the existing voters list. The petitioners have asked the Court to direct the Chief Adviser to hand over the office of the Chief Adviser to 'a person who is competent, qualified, eligible, available and entitled to claim the valid legal title to such public office.'

Such a move on their part has made the entire scene that much more complex. Some of the petitioners had been openly talking of such a view of the last few days. They have since claimed that they had refrained from filing such writs before because they wanted to see if the current Chief of the Caretaker Administration would be able to prove his neutrality. They now feel that the President a person appointed to that post for his loyalty towards the BNP-led Four Party Alliance, had failed to rise to the occasion.

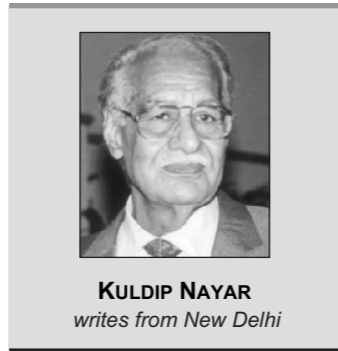
The High Court in its wisdom will adjudicate on these writ petitions. Ordinary citizens will wait to see which way the coin falls.

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At this point of time they are suffering from the ostrich syndrome. Such an approach will not do. The future stability of the country is at stake and they have to rise to the occasion.

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Whose country is it anyway?



KULDEEP NAYAR

writes from New Delhi

I was in Kerala when its chief minister V.S. Achudananandam clashed with his Tamil Nadu counterpart M Karunanidhi over the Mullaperiyar dam. Both were at their worst behaviour. I have watched my state, Punjab, fighting with neighbouring Haryana over the share of water from the Sutlej impounded at Bakhra. I have also followed the ever-running feud between UP and Delhi on a host of things, including bus routes.

But nowhere have people come to the streets as they did in Tamil Nadu. They burnt Kerala state buses. The ruling DMK cadre blocked roads between Tamil Nadu and Kerala. Travel and transport were allowed only after New Delhi's intervention. In their accusations, both chief ministers behaved like they were from different countries. Achunandan said that Tamil Nadu was acting as if it had forgotten that the dam was in Kerala. Karunanidhi retorted that the Kerala chief minister's remark was "irresponsible and provocative" and could harm the spirit of "national integration."

Strong words do not break bones, but they break the sense of unity. I believe that things came to



The Congress has not yielded to the BJP's demand for a stricter law to fight the fissiparous tendencies in the country. Manmohan Singh has ruled out tougher laws. He has rightly said that the problem is not with the laws, but with their inefficient enforcement. What is needed is perspective and balance. How can this be possible when there are deliberate efforts to whip up passions by an appeal to parochial and communal sentiments? A great deal of heat and controversy that states like Tamil Nadu and Maharashtra generate may be a passing phase. Nevertheless, it would be unwise not to take note of disruptive trends.

such a pass that Prime Minister Manmohan Singh deployed, at Tamil Nadu's request, the Central Reserve Police Force (CRPF) to protect the dam which irrigated the state's four districts.

Two weeks earlier, I saw a similar drama being enacted in Karnataka. This was on a territorial issue. Maharashtra renewed its claim over Belgaum, a Marathi-speaking district which the state's Reorganisation Commission had given to the Kannada-speaking Karnataka in 1955. Maharashtra has filed a petition in the Supreme Court to prove its case. Karnataka has gone to the extent of convening the assembly session in the dusty town of Belgaum which has no facilities worth the name. This is meant to convey the message that Belgaum is an integral part of the state. New Delhi is on the side of Karnataka, primarily because it does not want to reopen the case of altering state boundaries.

Maharashtra has contended that Govind Ballabh Pant, home minis-

ter at that time, had assured the transfer of Belgaum to Maharashtra. This is not true. I know it because I was his press officer. He stated categorically, more than once, that Belgaum was part of Karnataka in view of the States' Reorganisation Commission verdict. The Mehar Chand Commission which Pant appointed to consider Maharashtra's claim held that Belgaum was justifiably integrated with Karnataka. Still, the quarrel between the two states continues to rage as furiously as before.

Whether it is a dispute about water or territory, it becomes a point of anxiety when it boils over to a situation which Kerala and Tamil Nadu have faced. The arrogance of chief ministers makes it all the more disturbing. That such acute differences should surface within 60 years of independence shows that India is yet to settle down as a nation-state. The old provinces, which were the result of an accident, and the circumstances

attending the growth of British power have burrowed deep into the people's minds. Even the pluralistic ethos of India has not yet erased the old loyalties.

The economic growth should have made states transcend their boundaries. Natural resources at one place are the grist of industrial units at another. There is interdependence. Entrepreneurs move all over the country, strengthening common ties through trade and business. Experts of one state are employed in another. This criss-crossing has apparently not demolished preferences and prejudices. Emotional integration is not keeping pace with the contact between people in the last few decades. In fact, the reorganised states on the basis of language have become islands of linguistic chauvinism and intolerance. Tamil Nadu is an ugly example of that trend. It has decided to introduce Tamil as the state High Court's official language. This will harm the all-India character of the bar and the judi-

ciary. A lawyer of one state appears in another, and the centre has the policy of appointing the High Court Chief Justice from outside. All this will be affected if states begin to have their mother tongues as the language in High Courts.

What is frightening is when a dispute becomes a prestige issue and the nationals of one state jump into the arena to threaten another. Developments in some states are ominous. The States' Reorganisation Commission was itself worried when the members found conflicting claims made before them taking the shape of frenzy. Therefore, they emphasised in their report two basic facts: one, the states, whether organised or not, would continue to be integral parts of the Union, and, two, the constitution of India recognised only one citizenship -- a common citizenship for the entire Indian people, with equal rights and opportunities throughout the country.

The behaviour of Kerala and Tamil Nadu on the one hand, and Maharashtra and Karnataka on the other, has shown that the Commission's points were only a pious hope. The states remain primarily parochial in their attitudes. Probably, the redrawing of boundaries on the basis of language was a mistake. It has only increased the chances of confrontation.

It is apparent that political parties have tried to play with the people's sentiments in the name of mother tongue. Their purpose is selfish: electoral gains. Take the attitude of the BJP. When the nation was worried over the petulance of Kerala and Tamil Nadu, the BJP

organised rallies in Delhi. It had no concern about the challenge to the nation's coherence.

The party's purpose was to communalise the atmosphere -- something in which it was adept.

Whether Mohammed Afzal, given death sentence for having attacked the Indian parliament, is hanged or not, and when, depends on how the president views his mercy petition. The country is governed by the law, not by the dictates of the BJP. I do not know whether, by raising Afzal's case, the party would garner more votes in its favour in the UP elections in February. But the party is determined to play the religious card. I wish Atal Behari Vajpayee could assert himself, and stop the BJP's programme of dividing the country.

For a change, the Congress has not yielded to the BJP's demand for a stricter law to fight the fissiparous tendencies in the country. Manmohan Singh has ruled out tougher laws. He has rightly said that the problem is not with the laws, but with their inefficient enforcement. What is needed is perspective and balance. How can this be possible when there are deliberate efforts to whip up passions by an appeal to parochial and communal sentiments? A great deal of heat and controversy that states like Tamil Nadu and Maharashtra generate may be a passing phase.

Nevertheless, it would be unwise not to take note of disruptive trends.

Kuldeep Nayar is an eminent Indian columnist.

Should we still have a revised voters' list?

M A S MOLLA

IT is about 18 months since Justice M A Aziz was appointed the Chief Election Commissioner (CEC) on May 23, 2005. He and his previous two colleagues were preparing for the electoral roll since the very beginning. Having the new colleagues and old ones together, the Election Commission (EC) has been making anew or revising the electoral roll ahead of the general elections to our coveted ninth Parliament for about a full year. The money spent is also said to be a large amount. Then why the question of revising the voter list again should arise at all?

The cause lies in the fact that the voter list prepared by so much trial and error method contains about 14 million more voters than any logical estimate. Not only that a good number of real voters have not been enrolled. Besides, some stranded Pakistanis were listed as voters who are still showing allegiance to Pakistan, not to independent Bangladesh. A number of Rohingya refugees (citizens of Myanmar) were said to be

enrolled in the list. So the list is simply a mess! The answer is an obvious 'yes'.

And obviously question arises how the constitutional body made such a faulty so called electoral roll that independent Bangladesh had never seen before? Then should we still have a revised voters' list? Is our EC actually incompetent? The EC has always been consisted of three or more very competent persons, mostly the judges of the High Court or of the Appellate Division of honourable Supreme Court. All of these respected judges had a reliable record of legal proceedings. Then what made them so inefficient that they failed in producing an acceptable voter list this time?

It's a sad story that at first Justice Aziz the CEC who has been on leave (or actually stepped down?), could not 'understand' the meaning of a High Court (HC), order that voter list should be revised, not be made afresh. Even this veteran Justice interpreted the HC directives that it was not bound on EC, instead the EC could well keep the directives

If the election is held using this faulty voter list, it shall have the same fate as of the 1996 February election. Does the nation have enough resource to do the same thing twice in few months? The answer is an emphatic 'No'. So the election schedule should be withdrawn not only because the 14-party combine is against this, but also to save the nation from a huge waste. There is not much time for revising the voter list, but provided it is done sincerely, the EC can collect data in one week and organise those in another week appointing additional manpower, and also using the ICT resource; then it can declare the schedule again in two weeks.

aside and go on with the 'sacred task' of preparing a new list. So the voters were being enlisted anew since January 1, 2006.

But later the HC ordered to stop this and revise the existing one prepared in 2000 before the 2001 election. The unqualified ones, especially due to death should be deleted, while those reaching the age of 18 should be incorporated in the list. However, the HC was not very clear on some probable false (non-existent) voters listed in 2000.

This time the electoral roll had a setback for a while. In a few days our funny CEC supported by two new ECs came up with a sermon that there was not enough time to go house to house again to revise the voters' list. So election officials

(who understood well in advance the outcome of this futile effort) were made to sit in their offices calling the prospective voters to get enlisted coming to these offices. Very few people had enough time to physically come, leaving their livelihood occupations, and this failure was published in media largely. The HC came up with another order that EC must go house to house again to revise the list. So lastly, the EC drank some filthy water in revising the voter list again.

When the EC thought that all the prospective voters were enlisted, it came up with a controversial statement that voter list would not be published for the people. Demands were pouring in the media that it's the duty of the

EC to make the list public so that people can see if all qualified ones were listed and the non-existent ones deleted or not. Lastly the EC did that but the list spoke of over 93 million voters in a populace of 140 million. This is roughly two-thirds of the population and seemed impossible to all specialists in the population studies discipline.

Then the EC and some apparently biased think-tank came up with the explanation that increase of voters in 2000 from the earlier one over 30%, while this time the increase is less than 30%. CEC himself took a high hand on the media saying, "I am sorry to say, journalists here always print all the bad news under red banner headlines" (DS: CEC vents venom on

media, vested quarters, April 26, 2006).

All the four wrong steps (renewing in place of revising, not going house to house, declaring that list would not be published and inclusion of about 14 million ghost voters) taken by the EC (led by the then CEC Justice Aziz) serially, incited people to think that without a behind-the-scene design such mischief cannot be done by this otherwise competent EC.

The behind the scene high hand was assumed when the BNP secretary general Mr. Abdul Mannan Bhuiyan uttered that during the several round of talks with AL general secretary Mr. Abdul Jalil, no question on CEC Justice Aziz was raised, the question was then on the appointment

of Justice Hasan as the Chief Adviser (CA). But the whole nation knows the case of CA was the first one on the 14-party agenda (not the only one) and both the general secretaries had a consensus on saying 'goodbye' to Justice Aziz. Lastly the case was made clear by the ex-PM Begum Zia by asking the CG not to 'tinker with' the EC (as if the EC was a gunpowder pack and tinkering with it would spread the obvious risk on every direction!).

So the 'voter list' revised by the four-party alliance's 'yes men' in EC is a document of conspiracy not a true voter list. No election should be held using this without a sincere revision. But how can this be done? By this time the EC has declared election schedule with the election date on January 21.

Is there any scope to revise the declaration of election date? In normal condition, there's no scope. But this is not at all a normal and congenial atmosphere and the EC secretariat is seeking the President's initiative in changing the schedule, if needed. If the election is held using this faulty

voter list, it shall have the same fate as of the 1996 February election. Does the nation have enough resource to do the same thing twice in few months? The answer is an emphatic 'No'. So the election schedule should be withdrawn not only because the 14-party combine is against this, but also to save the nation from a huge waste. There is not much time for revising the voter list, but provided it is done sincerely, the EC can collect data in one week and organise those in another week appointing additional manpower, and also using the ICT resource; then it can declare the schedule again in two weeks.

Even if the EC fails to have a revised list in two weeks, it should not proceed towards election before having a truly revised list. Then the four-party conspiracy can be regarded as an 'act of God' under article 123 (4) that provides for deferring election for another 90 days. The Supreme Court can help the process, if such necessity arises.

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