

Nexus between power-hungry politicians and opportunist bureaucracy

FAIR election is not democracy per se but one of its most important components. Unfortunately, finer aspects of democracy have seldom been pondered over. The provision of holding general elections under a non-party caretaker government, many thought, would do away with controversy over fairness of the polls. With that taken care of, they expected increased investment of time and thought on finer points of democracy. Unfortunately, there remained a thorn in the flesh -- the by-elections.

The Tangail-8 by-election experience has proved that disciplining only politicians would not do. Straightening the arrogant and opportunist bureaucracy is also a major pre-requisite to free and fair election. Besides, there is the dire need of strengthening, both on qualitative and quantitative counts, the Election Commission and electoral law reforms.

The controversial by-poll, EC steps and the Administration cadre's reaction

A day after the Tangail-8 by-election was held on November 15, the EC had ordered temporary suspension of eight election officials -- including four magistrates -- for negligence of duties. The administrative cadre of the state sharply reacted.

According to a UNB news item carried by some major dailies on November 19, "... some five hundred administrative officers vented their anger over suspension of four magistrates. Terming the suspension orders illegal, the officials threatened that they would refrain from performing any election duty in future if no action is taken against the suspension orders."

The leaders of the cadre service reportedly assured them of certain actions, instead of reminding the administrative officers that their demand itself was illegal.

The agitation of the administrative officials hit the headlines of a few national dailies again on November 22. The day before, they demonstrated before the cabinet secretary and the establishment secretary.

According to the Daily Sangbad, they demanded quick action against the EC measures and reiterated their position that they would not do any election duties in future unless suspension order against the four magistrates were not withdrawn. Agitating bureaucrats also cast aspersions on the EC, reportedly commenting that a highly-placed EC official cancelled polling at a centre with a view to pleasing candidate in the Tangail by-election.

The secretaries concerned once again assured them of making attempts to get the suspension orders withdrawn.

However, members of the administrative cadre have so far not disobeyed the EC directive, as regards election duties. They took up assignments from the EC during the last three parliamentary by-polls held on December 8 in Kishoreganj, Sirajganj and Rajshahi districts. But they are reportedly still busy lobbying with politically influential quarters to get the suspension order withdrawn before investigation.

The EC has not yet shown any sign of yielding to bureaucratic pressure. But clear indication is there that the incident has dampened, to some extent, the EC spirit to see election-day developments through its 'central eyes' -- the commission did not deploy its 'own observer groups' in the last three by-elections. Certain newspapers described the phenomena as a consequence of the EC's bitter experience in the Tangail by-elections.

So, the reaction of the administrative cadre needs to be analysed seriously, as it might have certain adverse impact on the 'independent' functioning of the Election Commission, making the electoral process more vulnerable to illegal bureaucratic pressures.

Actions and reactions of the bureaucrats naturally raise a volley of questions: what makes the civil servants think that the EC cannot take legal actions against them? Are they ignorant about the legal and constitutional status of the Election Commission and unaware of its jurisdictions? If not, do they consider themselves above the law? If yes, what has caused them to be arrogant? And finally, how to make civil servants realise that they are supposed to serve people in accordance with law?

Before we start searching for the answers; first, we need to examine whether the EC steps were correct or not, given its responsibilities to ensure fair elections.

The EC Rationale

Not only did the EC suspend the eight officials, it also withheld the process of gazetting election results and ordered investigation into alleged irregularities taken place in at least 19 of the 82 polling centres of the constituency. For investigation, the Commission announced formation of a four-member panel that included three judges.

The EC measures came following media reports of large-scale irregularities, interim reports of professional poll observer groups claiming electoral malpractice, official complaints lodged by a major candidate that the ruling party enthusiasts had engineered massive rigging. Besides, a special team of observers deployed by EC itself filed reports describing certain irregularities.

On top of that, the EC team headed by a Commissioner that visited the constituency on the election day was disappointed with certain 'untoward incidents' in and around certain polling stations. Commissioner Mostaque Ahmed Chowdhury himself cancelled polling in three of the seven centres he had visited, due to overt irregularities and subsequent deterioration of law and order in the areas under Shakhipur thana.

According to media reports, Commissioner Chowdhury received allegations of irregularities from some centres of the Basal Thana, too; but he could not make time to visit those areas. If he could, he might have cancelled polling at some other centres of the thana.

Meantime, Chief Election Commissioner Mohammad Abu Hena and his another colleague Abidur Rahman, who were monitoring developments in the constituency from Dhaka, ordered suspension of voting at a centre in Basal Thana due to irregularities and deterioration of law and order.

The next day, the print media extensively reported on electoral irregularities and malpractice that included rigging of votes, stuffing of ballot papers, forcibly ousting election agents of opposition candidates, so on and so forth. Most of the national dailies printed pictures of clashes between rival political groups around certain polling stations. A daily paper printed a photograph of a young man casting his vote openly, in front of a smiling polling officer, which is a clear violation of electoral secrecy.

The incidents taking place in the constituency therefore clearly established a *prima facie* case for the EC to cancel votes at certain centres, order investigation into alleged irregularities, take punitive measures against certain officials on duty and withhold the election results. The EC just acted accordingly.

Natural justice demanded the actions. The EC cannot cancel the entire elections, as demanded by 'losing' candidate, because only some centres were exposed to troubles. On the other hand, it cannot gazette election results, as demanded by the 'winning' candidate before investigation into specific allegations of rigging and irregularities taken place as many as eleven centres. In the same manner, the EC has to take actions against officials who failed to ensure law and order in and around certain centres.

A total of 130 magistrates were assigned to take care of law and order. Circumstantial evidences clearly showed that the suspended magistrates miserably failed to discharge their duties at the centres they were stationed in. Consequently, the two-month suspension for each along with other measures was the immediate steps for the EC to take.

The 'temporary' nature of the punitive measure suggests that the EC has come up with the most charitable interpretation of the magistrates' failure, giving them the benefit of doubt that such negligence was not deliberate.

However, the Commission left it to the probe committee to find out whether the lapses were the results of any 'calculated move aimed at influencing the election result'.

If it is proved to be a deliberate act, section 86 of the Representation of People's Order, 1972 is there to deal with it. It says, 'A person in the service of Bangladesh is guilty of an offence punishable with imprisonment for a term which may extend to five years and shall not be less than one year, and also with fine, if he misuses his official position in a manner calculated to influence the result of the election.'

EC's Legal Authority and Civil Servants' Illegal Reaction

Agitating administrative officers have reportedly termed the EC measures against the magistrates' illegal and demanded withdrawal of the illegal suspension.

It is, therefore, important to have a look into certain electoral laws to examine whether the claims of the civil servants has any basis. In other words, whether the EC has the legal authority to take such punitive measures against the officials.

Article 126 of the Constitution empowers the EC to ask any authorities of the executive wing of the state to assist it in the discharge of its function, that obviously include conducting of polls. It says, 'It shall be the duty of all executive authorities to assist the Election Commission in the discharge of its functions.'

Accordingly, the EC asked the Minister of Establishment to

Mutually-profitable alliance between power-crazy politicians and unruly bureaucracy coupled with a weak and understaffed Election Commission and inadequate electoral laws are among the major impediments to free and fair elections. Until and unless these are removed, democracy stands little chance, writes Nurul Kabir

provide the Commission with 130 magistrates to ensure law and order during the by-elections. The ministry responded accordingly. The EC deployed 82 of them at 82 polling centres, while the rest of them were given mobile duties. Under the magistrates, there were huge contingents of law enforcers including members from the police, BDR, Ansars and Village Defence Forces. The magistrates were given the authority to call, and order as well, the law enforcing agencies with the slightest sign of deterioration of law and order in and around the centres.

But some magistrates, especially the four in question, evidently failed to go by these instructions. The failure clearly amounts to a 'breach of duty'. The EC interpreted the failure as a result of their 'negligence of duties' which could be committed merely 'by an act of omission'. A charitable interpretation indeed, given the history of deliberate manipulation of election results by the administration especially in the seventies and eighties.

However, the important question here is, whether the EC has any legal authority to take steps against such breach of duty, deliberate or not? The answer is a big yes.

Section 85 of the RPO says: 'A Returning Officer, Assistant Returning Officer, Presiding Officer, Assistant Presiding Officer or any other person employed by any such officer in connection with his official duties imposed by or under this Order, is guilty of an offence punishable with imprisonment for a term which may extend to one year, or with a fine which may extend to Taka five thousand, or with both, if he wilfully and without reasonable cause, commits breach of any such official duty by act, or omission.'

Besides, the EC has the Election Officials (Special Provisions) Act, 1991 to deal with the unprofessional behaviour of the government officials during polls. Under Section 5(1) of the law, there is no scope for an election official to 'wilfully fail or refuse to implement any order or directive (regarding elections) of the Election Commission'. If any such official 'wilfully violates any provision of any electoral law, or commits any crime under any electoral law, it will be considered misconduct on the part of the official concerned.'

If any election official commits such misconduct, the Election Commission enjoys the right -- under Section 5(3) -- to ask his appointing authority to draw disciplinary proceedings against him. The section 5(3) of the legislation also authorises the EC to 'order a temporary suspension of his service for a maximum period of two months'. The order of such suspension with 'deem to have been made by his appointing authority and will be executed accordingly.'

If asked by the EC, the appointing authority is legally bound to draw disciplinary proceedings against the official committing misconduct during elections. Section 5(4) says: 'If the Commission, or in cases the Returning Officer, request any appointing authorities to draw disciplinary proceedings against any election official, the authorities concerned will draw such proceedings and inform the Commission about it in a month from the receipt of such request.'

However, it is perhaps now clear that the EC has just asserted its legal authority -- under Section 5(3) of the Act -- to deal with certain election officials who apparently failed to meet their legal obligations during the Tangail by-election.

But in a show of sheer arrogance, members of the administrative cadre service termed the EC actions illegal and threatened the EC with a boycott of election duties in future. Their leaders entertained the arrogance by assuring them of steps to get the suspension orders withdrawn and keeping mum on the threat of boycotting election duties.

Had the senior bureaucrats cared for the law of the land, they would have reminded their subordinates of the relevant section of the Election Officials (Special Provision) Act, 1991. Section 6(2) of the law says, 'Any person failing to observe or implement any order issued under section 5(3)... is guilty of an offence punishable with imprisonment for a term of maximum six months, or a fine not less than Taka two thousand or both.'

Pronounced bureaucratic arrogance

If asked by the EC, does a government official have any legal scope to say no to election duties? The answer is, no.

Primarily because, as mentioned earlier, it is the constitutional duty of all executive authorities of the state 'to assist the Election Commission in the discharge of its functions'.

Then comes the Election Officials (Special Provisions) Act, 1991 that specifically obliges government officials to help the EC conduct polls. Section 4(1) of the law says that if the EC appoints a government officer as election official, 'he cannot refuse to accept, or perform, the responsibilities concerned without grounds acceptable to the Election Commission, or in cases the Returning Officer.'

Moreover, once appointed an election official by the EC, even the original appointing authority of the government official concerned cannot obstruct him to perform the election duties. Section 4(2) of the legislation says, 'If a government official is appointed an election official, his (original) appointing authority cannot obstruct the official to, or refrain from, performing the election duties concerned.'

Sections 4(3) and 4(4) say that once appointed an election official, the government official concerned will be 'deemed to have been working' in the Election Commission 'on deputation' between the dates of appointment and the release from election duties, while he will be bound to abide by all the lawful orders or directives of the Commission and the Returning Officer concerned.'

Section 6(1) of the law has clear provision for punishment of those denying election duties assigned by the EC. The provision says, a government official refusing to accept or perform the election duties on a ground unacceptable to the EC, or his original appointing authority obstructing him to refrain from performing the duties, will be 'guilty of an offence punishable with imprisonment for a term of one year, or a fine of not less than Taka five thousand, or both'.

However, it is hard to believe that the agitating administrative officials and their leaders are unaware of these provisions; the reality is that they have reacted to the EC's steps against a few of their fellow members. And, needless to say, their reaction is illegal.

The important question here is, therefore, what makes them show such arrogance with a sense of impunity? And, how to make this bureaucracy realise that their job is to assist gov-

ernments implement their social, political and economic programmes having people's mandate.

Main source of bureaucratic arrogance

State power is meant for political parties. Competition in this regard, therefore, is an inevitable consequence. But what shapes should the competition take in a sound political system? It should ideally be at the level of the social, political and economic programmes the parties have on offer for the people, primarily because that ensures people a fair chance to choose a better government on the basis of the quality of their programmes on the one hand, and their success and sincerity in implementation, on the other.

But the country's political parties are seemingly reluctant to give people such a sound scope, presumably because that would require them to undergo the painstaking process of regularly updating voters on their programmes when in opposition and implement them accordingly when in power. This is the way the accountability of the political parties could be ensured to the people, whom, according to Article 7 of the Constitution, 'all powers in the Republic belong to...'. But what about the party's political culture based on certain universally recognised democratic norms and values that guarantees fair elections. And, adequate electoral laws prevent aberration in electoral process. There is a lot of democracies in the world where electoral laws seem weaker than those of Bangladesh, and the polls conducting authorities enjoy less power than their Bangladeshi counterparts; however, in practice, most of the elections they conduct are fairer, while in many cases quality of the polls is almost impeccable, mainly because politicians there uphold democratic values that include self respect and respect for opponents.

the 'kings' of district administrations. During elections, it's the DCs -- not the EC officials -- who act as Returning Officers.

The EC does not have adequate number of thana-level election officers. The TNOs, again the bureaucrats, works as Assistant Returning Officers during national polls and Returning Officers at the time of local government elections.

On top of that, the EC does not have any legal mechanism to monitor the candidates' election expenditures or examine their financial statements that include sources of money used in the polls. Without the mechanism, there is no scope for the EC to stop free flow of money, or black money for that matter, into the electoral process which effectively corrupts the very essence of an election. Under the circumstances, the EC is nothing but a hostage to the bureaucracy.

What is, therefore, important at the moment even for a relatively credible election system -- let alone a leak proof one -- is to rid the polling process from the grip of the administrative cadre, the most powerful section of the bureaucracy controlling the executive wing of the state.

For this, the post of the district election officers has to be upgraded immediately, and they have to be provided with all logistics necessary to control and conduct national polls from the district headquarters. Besides, the EC has to have its own thana-level officials with adequate legal authority and logistic support so that they can effectively control the field-level electoral process. Instead of the DCs and TNOs, the district- and thana-level election officers have to be made Returning and Assistant Returning Officers for national polls.

Inadequacies of Electoral Laws

Basically, and ideally too, it's a sound political culture based on certain universally recognised democratic norms and values that guarantees fair elections. And, adequate electoral laws prevent aberration in electoral process. There is a lot of democracies in the world where electoral laws seem weaker than those of Bangladesh, and the polls conducting authorities enjoy less power than their Bangladeshi counterparts; however, in practice, most of the elections they conduct are fairer, while in many cases quality of the polls is almost impeccable, mainly because politicians there uphold democratic values that include self respect and respect for opponents.

But stringent electoral law is an essential pre-condition of fair polls for nations deprived of self-respecting politicians. It is needless to say that we need stricter electoral laws and effective enforcement for fair elections. Maybe, with the politicians and others concerned gradually achieving an optimum level of moral and cultural accomplishments, there would be no need for stringent laws some day. But right at the moment, unfortunately, there is.

Again, certain incidents taking place before and after the Tangail by-elections could be mentioned for a better understanding of the issue.

Three days after the EC had announced a probe body to investigate allegations of irregularities in the polls and suspended the process of gazetting election results on November 17, President Shahabuddin Ahmed summoned the acting law secretary to make certain legal queries over the measures.

The President reportedly wanted to know whether the EC had the authority to order an investigation into allegations of irregularities instead of referring the matter to the election tribunal. He also sought to know whether the EC can suspend the process of gazetting election results, pending the investigation.

President Ahmed, himself a former Chief Justice, had reasons to make the queries, as the ruling party candidate had been demanding immediate gazette notification of election results. Quoting certain provision of the Representation of Peoples Order, 1972, ruling party quarters were arguing that the EC was legally bound to refer electoral disputes to the Election Tribunal, instead of ordering an investigation and suspending the result. Even the law secretary reportedly put forward the same interpretation while briefing the President.

The EC, however, refused to budge.

Chief Election Commissioner Mohammad Abu Hena told the press on November 22 that certain incidents 'have created a general impression to the people that something had gone wrong in some polling stations' of the Tangail-8 constituency.

Basing his argument on the rationale that 'it is the constitutional obligation of the EC to ensure free and fair elections', he said that the EC believed that it was its responsibility to give certain 'consequential orders' to ensure fair election.

In this regard, the CEC quoted section 91 (C) of the Peoples Representation Order, 1972 that says that 'The Commission may issue such instruction and exercise such powers, and make such consequential orders as may, in its opinion, be necessary for ensuring that election of any polling station is conducted impartially, justly and fairly, and in accordance with the provisions of this Order and the rules'.

Under this provision, the EC withdrew before the polls a TNO, cancelled votes of certain centres on the election day and ordered a probe into alleged irregularities following complaints after the polls, he said.

The EC also put forward a High Court observation, made in 1992 by Justice Anwarul Haque Chowdhury, while giving judgement in a case (Afzal Hossain vs Chief Election Commissioner and others).

Interpreting Article 119 of the Constitution, Justice Chowdhury said: 'The Election Commission has overall control in election matters and it shall be competent to correct an apparent illegality or to remove mass apprehension for the sake of fair elections.'

Arguing that the EC has no scope for going beyond the framework of the laws, Justice Chowdhury further said, '... but when the law is silent, not expressly providing a thing to be done or not to be done, the Election Commission has plenary power to act under Article 119 of the Constitution which is the reservoir of power for the Election Commission to act for the onward purpose of ensuring free, fair and impartial election with expediency.'

It is true that natural justice demands investigation into allegations of irregularities, prior to cancellation of an election or gazetting its results. But it is also true that the EC had to take shelter in a High Court judgement to ensure the natural justice, instead of deriving the jurisdiction directly from an electoral law. This clearly speaks of a major inadequacy of the electoral law.

Earlier, the electoral enquiry committee for the Tangail-by-election had served notices on some ruling party top notches including the home minister, and two major candidates for alleged violation of the electoral code of conduct. But the home minister ignored the measure reportedly on the plea that he did not receive any such notice. Those who had replied were eventually found guilty of committing the crime, and received letters of warning that they would be fined with Taka 5,000 each in case they further violate the code. On the other hand, the home minister escaped the 'punishment', if one could term it so, as the enquiry committee fell for the ministerial trick.

However, punishments for violation of the code of conduct, prepared on the basis of certain electoral laws and consensus reached by major political parties, need to be effectively deterrent. The provision for 'warning' should be replaced with a fine of Taka five thousand, while the present provision of fining a candidate for committing similar crime for the second time should be replaced with a severe one like cancellation of candidature. Besides, the code of conduct should cover some other areas so that a minister cannot slip through the noose just claiming that s/he did not receive notices. On the top of all, the code of conduct should be made legally enforceable.

A lot of discussions have so far been held at different levels on the corrupting role of black money in the country's electoral process and none has publicly argued against the necessity of provisions to stop free flow of money in the polls. It is an open secret that the candidates in parliamentary elections sometimes spend 30 to 40 times of the legally entitled amount of three lakh taka in electioneering. But the Election Commission seems helpless in this area as it has no legal mechanism equipped with adequate professionals and logistics to monitor election expenditures of the candidates and audit the returns they submit to the EC secretariat.

So without laws providing the