instance, arbitrary decision have

we would like to raise a question as

Why not these aspects be dele

which has already has acquired

experience and competence? Why

also the ministry must retain the

procurement of crude oil and petro-

Energy regulatory commission in a blind alley? After the drama



NURURDDIN MAHMUD KAMAL

ANGLADESH energy system is in trouble. alleged to be the victim of a concoction of public sector and free market ideology, compounded by years of poor political leadership. The Ministry of Power, Energy and Mineral Resources (MPEMR) today apparently has no real vision of the future of our energy system -- just a vague notion that everything will work out right if we simply let impersonal, uncaring market forces to do their job. But, we do not want to give up our right as a society to take the energy path that we democratically decided to be best for our future. We need better regulations in order to shape our system so that it best serves Bangladesh's needs, not the anomalous profits of private

happens to this country. Before we set about building our twenty-first century energy system, we should, however, be wise enough to try to understand how we got to where we are today. We seem to ignore the lessons of history at our peril and we impoverish our culture by forgetting or diminishing the achievements of those who came before us. We have now reached a miserable state, which may be further aggravated by faulty provisions of Bangladesh Energy Regulatory Commission (BERC) Act, 2003, as well as wrong application of the rules under the Act.

shareholders who may not even live

here and therefore won't care what

The story begins with the government. At the end of a long willy-nilly experiments, the government enacted the BERC Act in July 2003 Almost eighteen months later, a half baked amendment was published in February 2005. All along it was hoped that there would be an honest endeavour to constitute an independent and autonomous commission as exists in many civilized countries. But, in our case although the Act provided some semblance of independence, the issue as autonomy remained furthest from truth. The Act was defined (as per Bangladesh Gazette published on July 24, 2003) as, "An Act to make provisions for the establishment of an 'independent' and 'impartial' regulatory commission for the energy sector." The reason for deviation from norm has not been explained The authorities perhaps thought that there is no need to explain these matters to ordinary citizens who have no stake in energy mat-

Thus, even a cursory glance over the provisions of the Act as well as the Draft Licensing Regulations, 2005 would show some wilful nealigence and deliberate mistakes that may retard or complicate the implementation phase. It is in this background, a rumour floats in the energy sky that the Ministry is soft peddling now to circumvent the contentious issues incorporated in the Act. If there is any truth in the allegation, the commission has unwittingly entered into a blind alley.

So far, BERC's journey has gone smoothly. The radar now indicates rough time ahead. Some arbitrary perceptions with which it began about two years ago are now surfacing. For instance, in common parlance, 'energy' is a generic term used to cover sources of heat and power without specifying what sort and without regard to quality (Ref: Dictionary of Energy, General Editor, Malcolm Slesser). But the BERC Act (at chapter-1, 2 (b) -Definitions) states, 'Energy' means the electricity, gas and petroleum

management. Now, with the entry of the commission in the upstream, suspicion and uncertainty will grow more between the government and Petrobangla.

Another area of concern is the absence of rules and regulation under the Act, which come into existence under pressure from external agencies. The Act (Ref. Chapter-3, Article 20(3) states that the commission is a statutory public authority, and shall be under the jurisdiction of the comptroller and auditor general. It has been further

but with application of laws, rules now be identified under the Act. For and regulations that set out its mandate. In doing so, one must also been made to incorporate a part of recognise the division of upstream and a part of downstream between the government (repreactivities (in the commission) of the sented by the minister) and the power sector and also downstream regulator. The basic principle is that of gas and petroleum sectors neither the regulator nor the minister respectively. For argument's sake should step into the shoes of each other. Ideally, the minister translates to why the government should retain general government policy into the authority over exploration production and also the pricing? sector policies, mandates fuel stock for national security reasons etc., while the regulator with his licensing gated to a refurnished Petrobangla tools issues and enforces licences.

CHRONICLE

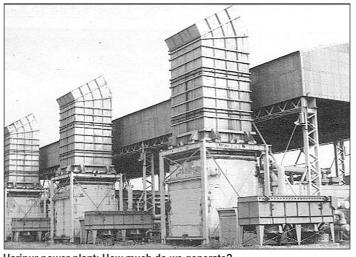
Today, affordable, reliable energy supply continues to be a cornerstone of Bangladesh's economic health. No one doubts this. There is, however, a debate -- whether public or private sector can better perform to fulfil this need for the common people of Bangladesh. Nevertheless, the regulatory commission must be 'independent' and 'autonomous'. Otherwise the very creation of the commission will continue to be questioned.

products, which appears to be an incomplete definition. The role of has not been recognised although it is a fast growing energy source in Bangladesh. At the same time, the scope for renewable sources such as solar and wind did not get a space in the definition of energy.

Ironically, the upstream activities both the gas and petroleum sectors have remained outside the purview of the commission's work. But the reason for such a deliberate decision has not been explained even in the amendment published in Bangladesh Gazette (Ref. February 17, 2005). Whether Petrobangla or the government would regulate such activities is not clear. The most distressing news is that as per BERC Act, the commission is not an autonomous organisation. The gas sector in Bangladesh is

characterised by a peculiar situation. Both the Ministry as well as Petrobangla engage themselves in jealously guarded mechanisms to regulate, formulate policies and execute plans. Petrobangla operates through 9 (nine) operating companies (OCs). But neither Petrobangla nor the OCs have adequate autonomy in operation, not even in the formation of company boards. The OCs have been formed under the Companies Act, but the mother organisation i.e.. Petrobangla has not been corporatised. In the past thirty-one years, the idea of transforming Petrobangla (created in 1974 under Petroleum Act, 1974) into a 'holding company' did not materialise. Government seems to be reluctant in making a holding company and subsidiary company relationship between Petrobangla and the OCs. So the issue of autonomy has remained captive in the files of the government. Most material decisions for finance, personnel, and procurement are taken by the MPEMR, sometimes tinged with malice and hostility.

Petrobangla is that the efficiency with which the organisation should operate is missing. Reportedly, uninspired and unreliable senior management has weakened Petrobangla's operation over the past one decade. The introduction of IOCs since mid 1990s has complicated the situation. And there appears no serious effort to overcome the difficulties by the top



arbitrates disputes between opera-

Before we move into other vital

areas of interest a sentence or two

should mention about an open

secret. The secret is about USAID

and Bruce Mc Mullen. In the recent

past. Bruce Mc Mullen took a vow to

educate Bangladeshis about the

advantages' of bringing the energy

sector of Bangladesh under a

regulatory frame as if the sector was

operated in a vacuum in the past

three decades. Motivated by a deep

desire to assist Bangladesh govern-

ment, he managed to provide some

nandpicked expert (PA consulting

team) to formulate some debilitating

documents relating to the BERC

Act, 2003 and also licencing regula-

tions. The best part of his contribu-

tion seemed to be furnishing the

commission's head office in Dhaka.

Hardly anyone ever inquired what is

the price paid or to be paid in future

Nevertheless, to be effective, a

regulator must have a degree of

independence and autonomy that

can be best assured by: (a) provid-

ing the regulator with a distinct legal

mandate, free of ministerial control:

(b) prescribing professional criteria

for appointment (under recruitment

rules); (c) involving technocrats

from relevant disciplines, and also

from the executive and legislative

branches for fixed terms and pro-

tecting them from arbitrary removal

(however, not through indemnifica-

Many other anomalies can ever

for such a gesture!

tors and consumers etc.

noted (Ref: Chapter-13, Article 61) that the chairman, members, offieither has suffered loss or likely to suffer loss (Ref: Chapter 13, Article 62)"? Now, we can perhaps start to

the areas such as the 'objectives' and 'benefits' of the Regulatory the first time in Bangladesh. Usually, others, is to protect: (a) the industry energy industry -- with a minimum of case, it is perhaps a foreign consuldiscussion or debate before enact-

Nonetheless, it is important to understand that the regulators are entrusted not with policy formulation

monitors compliance, and also

cers and employees of the commission shall be deemed to be public servants within the meaning of the term public servant as used in Section 21 of the penal code, 1860 (Act XLV of 1860). How come then, No case, either civil or criminal, or any other legal proceedings, shall against chairman, member, officer, employee or a person authorised by the commission in respect of any deed done in good faith as a result of which any person

think why BERC Act did not dwell on Commission being introduced for the role of a commission, among interest, (b) the consumer interest. The long-term goal has often been to meet at least the cost to the economy through a competitive government intervention. But, there adopts its own approach. In our tant driven model -- with a number of inconsistencies here and there. But there has never been a public ing the Regulatory Commission Act,

leum products? The Ministry does not have any expertise or experience developed on these subjects. Yes, the business of procurement (including purchase) and sale is often a puzzle that attracts the government in many ways. Yet, it's a pity that through the process of accounting and audit (ex: chapter Article 20), the Ministry intends to subordinate the Regulatory Commission. When Article-20 is read in conjunction with Article-21 (Reporting) the issue would become evident. If the commission is independent, why should it carry out its reporting through the Ministry? Instead, it is recommended that the commission should submit such report or reports either directly to the Parliament or through the Parliamentary Standing Committee to the Parliament to maintain independence and autonomy. Otherwise our earlier contention of no autonomy to the commission holds good, and

> It is a pity that the donors and even so-called experts from abroad expect that we Bangladeshis must always follow their prescription and remain sick or unhealthy (not die!). Time has come for us to realise that we are able to exercise our common sense and live more comfortably Our national objectives should relate to stable and affordable price (low) for domestic consumers. Gas price, in particular, should be fixed as per international market price for both domestic and foreign private entrepreneurs, at least to cover the purchase price from the IOCs, plus transportation transmission cost to obtain a win-win situation. The idea is to ensure reliability, economic growth, regional development (both east and west zone), technological excellence, environmental protec

raise questions.

tion and, public accountability. For all things. It is sad that some overenthusiastic persons have made the creation of the commission more a place for debate than a place for balancing existing irrationalities in the energy sector. Today, affordable, reliable energy supply continues to be a cornerstone of Bangladesh's economic health. No one doubts this. There is, however, a debate -- whether public or private sector can better perform to fulfil this need for the common people of Bangladesh. The energy related challenges we now face, however, go beyond the electricity prices and availability. The power industry in Bangladesh is a large part of the problem and must be an equally large part of any solution. Nevertheless, the regulatory commission must be 'independent' and 'autonomous'. Otherwise the very creation of the commission will continue to be questioned.

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This farce has to end. While this has played across the newspapers, millions in the capital have been going without water and electricity. The government has made no statement about the two crises and not shown us what they are doing about it. While the leaders and sycophants are playing electoral politics, the people are being denied basic services. Food prices are going through the roof and will prove to be a major issue at the polls.

FARID BAKHT

OLITICS took a turn towards the bizarre and, true, to the media age, it was all captured on camera. While we remain fascinated by the drama of it all, there may be far more important fallout for the political scene. The Jatiyo Party of Mr. H.M. Ershad, military ruler during the eighties, had been looking like the kingmaker of any future regime. It does not garner many votes but its power comes from the concentration of those votes in particular northern constituencies. The local people are eternally grateful for the economic largesse bestowed on them from the coffers of central government JP has been looking like they could make an impact in the next election. with the critical mass for the smaller parties and individuals to coalesce around.

The governing regime's main fear is the possible formation of an Awami League-Jativo Party alliance. The arithmetic of votes and seats look pretty frightening on

Realignment? Of course, this could now go the other way. JP could be persuaded to join up with the BNP. The union of two military-born parties makes electoral sense. They can unite on a nationalist platform, or perhaps a thinly disguised anti-India platform. They can either ditch or keep the Islamic component of the alliance The only reason to ditch the Jamaat would be to seek "the blessing" of some embassies. Sacrificing Jamaat would not be too difficult, as the Islamic forces have no other place to go to, electorally speaking. Whether in or out of any alliance, the small Islamic vote bank would have to support a BNP-Jatiyo combine.

Missing the real issues All this speculation is fine for living

room gossip and we can amuse ourselves with endless combinations and permutations. No doubt there will be more drama ahead of us, though perhaps with a bit more

has played across the newspapers, millions in the capital have been going without water and electricity. The government has made no statement about the two crises and not shown us what they are doing

While the leaders and sycophants are playing electoral politics, the people are being denied basic services. Food prices are going through the roof and will prove to be a major issue at the polls.

One has to question whether the eadership of the Big Two parties in Bangladesh have the finger on the pulse. I am not convinced. They are not doing anything that points to the contrary. The opposition apparently has no clue on how they are going to turn the economy around while the government is diverted by electoral machinations.

If one real issue is the day-to-day struggle of its people, the other big issue is the position of Bangladesh on the global scene. As Singapore Telecom shows, there are quite a few multinationals having a peek at the potential of this 150 million strong economy (even if many are only interested in 15 million with the necessary spending power). Foreign companies and their donor colleagues are more than little exasperated by the small-minded politics on display. They can spot an opportunity and cannot believe that the Big Two cannot get their act together. Their constant refrain is for

the politicians to join parliament, and make a show of a functioning democracy. Plus provide the stability through ombudsmen, a separate judiciary, and enhanced property rights. Politicians would still be able to make money but without killing the golden goose.

This neat analysis has been played a thousand times through their sponsored seminars. The propaganda has worked since a few people seem to think this is all that is needed to reach 7 percent economic growth and be branded an economic tiger -- and, um, provide 2 million new jobs a year, every year, and cope with 80 million people jamming the cities in ten years' time! fit were only that simple

Out with the old and in with the new?

Are we witnessing the last few years of Old Politics? If there is another election, will it be decisive? Or will it lead to weak coalitions, falling apart at the onset of the first crisis? Whatever the combination or alliance. they will not get the true mandate of the people and will not get the basics right, once in office. After all the politics of money dictates that the criminals need a payback after the election.

Too many people are getting carried away with the election cycle and are likely to be mightily disappointed with any new administration. Surely we are not expecting the



Political campaign: Khaleda Zia



no "Big Idea" is being offered and the proponents are all from the old school. We do need unity and we do need direction. But where will it come from? Something has to give.

Farid Bakht is the founder of Futurebangle

same ageing political leaders to

suddenly change and provide

mature leadership? Their track

record suggest otherwise, even if

they have memorised the words to

All the current talk of a national

consensus seems hollow given that

the song "Good Governance."

Political campaign: Sheikh Hasina

EU in crisis



CHAKLADER MAHBOOB-UL ALAM writes from Madrid

N May 29, the EU's worst fears were realised. On that day, in a nation-wide referendum, the French voters overwhelmingly rejected the European constitution, which was signed by the heads of state of member countries on October 29, 2004. Two days later the Dutch did the same with an even greater margin. Apparently the national identity-conscious Dutch had become afraid of losing their much-cherished sovereignty to bureaucrats in Brussels

In both cases, the turnout was unusually high. The consequences of this rejection are still unpredictable. Some think by doing so, the French and the Dutch have effectively killed the constitution, which is such a long and cumbersome document that one needs to have an advanced law degree to understand it. Others, who are slightly more optimistic, think that it will merely slow down the pace of European integration.

Almost everybody agrees that it will open a period of uncertainty and turbulence. Now the question is: If the Union has got twenty five members, why rejection by only two

should create such a crisis? There are two reasons for that. This treaty or the constitution or the constitu tional treaty, however one wants to describe it, can only come into effect if it is ratified by all the member states. Both France and Holland happen to be founding members of the Union. It is inconceivable to have an integrated European Union without the presence of France and Germany, Why?

The search for an integrated European Union owes its origin to the age-old rivalry between Germany and France, which caused two world wars in the twentieth century with devastating consequences. In order to build a bridge between France and Germany and to lessen the risk of another Franco-German war, in May 1950, a French civil servant called Jean Monnet and the then French Foreign Minister, Robert Schuman put forward the idea of a new framework for western

An independent supranational authority to administer a common market for coal and steel -- two items then considered as absolutely essential for all war efforts -- was to be set up in 1951 by France, West Germany, Italy and the three Benelux countries. The members of the European Coal and Steel Community (ECSC) agreed to abolish all customs barriers and discriminatory practices affecting these commodities. Although the immediate objectives of these economic measures were to prevent another Franco-German war, some influential French and German politicians nourished the idea of an eventual political integration of the member states. This is why many in France

LETTER FROM EUROPE

Now what? There are several options. Some politicians (e.g. EU President Juncker and President of the Commission Durao Barroso) think that the EU should stay the course and continue with the ratification process until 2006 and give a second chance to the countries which rejected the constitution. Others think that after such an ignominious defeat, the ratification process should be suspended and the constitution in its current form should be scrapped.

and Germany thought that this European Constitution was one more step in that direction. If that is so, why all of a sudden have so many French voters turned against

There are varied reasons for this resounding rejection. Memories of the two World Wars have faded in French minds. Now they take peace for granted. The disenchantment with the EU has come gradually. Anyone who bothered to follow French domestic politics in recent times could feel that it was growing. The fact is that there is a total disconnect between the elite, who govern the country and run the bureaucracy in Brussels on one side, and the ordinary people on the

First of all, it was not even necessary for President Chirac to submit the constitution to a referendum. Like his German colleague, Gerhard Schroder, he could have had it approved by the national parliament without any difficulty. Instead, he wanted to be too clever and play domestic politics. He thought that he was going to win anyway and that



ist party in such a manner -- which it did -- that his chances of winning the 2007 presidential elections would be enhanced by a victory. Needless to say, he failed to gauge the mood of the country.

Let me give you another simple example to illustrate the point that there is a great divide between the French ruling class and the ordinary people. While the US constitution starts with the words, "We, the people of the United States," the

drafted by a former French president called Giscard d' Estaing, who is an aristocrat, starts with the words. "His Maiesty, the King of the Belgians" and other European heads of state have "agreed on the following dispositions." No wonder, the French, who sent their king and the queen to the guillotine more than two hundred years ago, rejected this "royal document" so unceremo-

The current socio-economic problems have also played an important role in this rejection. Poor economic growth, high unemployment, more Anglo-Saxon-inspired deregulation which may threaten jobs and existing social benefits, low wages, high profits for big business. ever-rising compensation packages for senior executives, globalisation which is leading to outsourcing and transfer of production facilities to poorer countries of Europe and elsewhere, a certain incomprehension of many European directives coming from Brussels -- all this have created such anger, fear, and frustration among the French that they no longer trust their government.

On top of all this, the French are suspicious of the EU's "Lishon Agenda" -- an Anglo-Saxon style economic programme, which apparently would make Europe more competitive in the world market. There is a growing feeling among the French that their legislators and bureaucrats in Brussels have become so remote from reality that they no longer know how the ordinary French people live or what

is perceived as a club of distant heartless technocrats who want to lay down centralised economic policies for the whole of Europe and control every aspect of human life like the much-discredited economic planners of the now defunct Soviet Union. However, unlike the Soviet Union, where the state controlled everything, here in France and Holland, many ordinary people, in the best populist tradition, think that the European Union is pursuing an agenda which is driven by big business. The French want their government to fight for a more social Europe in Brussels.

The EU government in Brussels

As mentioned before, the Union has already got 25 members. Bulgaria, Romania, and Croatia are expected to join it soon. Serbia, Bosnia, Albania, and Macedonia are waiting in line to join the Union. In France and Holland already there are serious complaints against the immigrants from East and Central Europe, who are apparently taking away jobs or lowering wages. Because of its colonial past, France has already got the largest Muslim population in Europe. Now simply the idea of letting a Muslim country with a large population like Turkey become a member of the European Union frightens many French people. Many people in France and Holland think that the expansion of the Union "has gone too far and too fast." Even worse, they feel that it has been done behind their back without their participation. referendum on the constitution has been perceived as an after-theevent consultation. This referendum has been their only opportunity to take revenge, which they have not

Now what? There are several options. Some politicians (e.g. EU President Juncker and President of the Commission Durao Barroso) think that the EU should stay the course and continue with the ratification process until 2006 and give a second chance to the countries which rejected the constitution. Others think that after such an ignominious defeat, the ratification process should be suspended and the constitution in its current form should be scrapped.

Given the strong nationalistic feelings in many countries, one should forget these grandiloquent expressions like European citizenship or European constitution and concentrate on those parts of the draft which would "streamline the bureaucracy that the voters assail and strengthen the management of the FU."

Most probably, Tony Blair would use the forthcoming British presidency of the Union to push forward this line of thinking because on the issues of national identity and sovereignty, the British public feel exactly the same way as the Dutch. There are still others who think that the EU should fall back on the Treaty of Nice.

The future course of action will probably be decided at the next summit meeting scheduled to be held in Brussels on the 16th and 17th of this month. Meanwhile a lot of soul searching and reassessment of the situation will take place in the European capitals.