

# The Sunamganj-3 by-election: A failed test case

DR. BADIUL ALAM MAJUMDAR

**T**HE by-election in Sunamganj-3 constituency was held on July 20, 2005. It was a test case in that for the first time in our history candidates in an election had to, in response to a High Court judgment, disclose some critical information about their personal and financial background to help the voters make informed decisions. Unfortunately it was a failed test case. The reason for the failure is that the relevant stakeholders failed to effectively play their respective roles.

On May 24, 2005, the High Court Division of the Bangladesh Supreme Court (*Abdul Matin Chowdhury and others vs Bangladesh, Writ Petition No. 2561 of 2005*) directed the Election Commission (EC) to collect from each candidate in parliamentary elections, in the form of an affidavit, along with his/her nomination paper, the following information: "a. Academic qualification with certificate from the Board or University. b. Whether he is accused in any criminal case at present. c. Whether there is any past record of criminal case and the result. d. Profession/occupation. e. Source or sources of income. f. Whether he was parliament member earlier and the role he played individually and collectively in fulfilling the commitment to the people. g. Description of assets and liabilities of the candidate and dependents of the candidate. h. Particulars and amount of loan taken from Bank and Financial Institutions dealing with public money personally, jointly or by dependent or loan taken by the Company from Bank where the candidate is Chairman/Managing Director/Director." The EC was also directed to disseminate the information submitted by candidates among voters through mass media. The Court recognised that "people have a right to know and such right is included in the right to franchise."

## EC's failure

The Election Commission took the initiative to implement the High Court judgment in Sunamganj-3 by-election. Unfortunately the Commission's efforts lacked assertiveness and seriousness, and in fact, they were feeble at best. For example, it issued a one paragraph special circular on June 18 asking the DC of Sunamganj, who is the Returning Officer (RO) of the Sunamganj-3 by-election, to implement the directives. It simply sent a copy of the judgment along with a pro-forma affidavit. The Commission provided no guidance to the RO nor did it specify any punishment for non-compliance. In fact, the CEC in a recent television interview contended that since the judgment did not specify any consequence, it should be construed as *directory* rather than *mandatory*. What this contention seems to mean is that even if the candidates fail to file affidavits or provide wrong, incomplete or misleading information, their nomination papers would be accepted. This would in essence amount to making the submission of affidavits simply optional for candidates, flouting the High Court judgment. In fact, if the directives do not have to be complied to, they are not worth the paper on which they are written.

In this context we may cite the famous Secretary, Ministry of Finance vs Masdar Hossain case (20 BLD (AD)(2000), where the Bangladesh Supreme Court directed the government to separate the judiciary from the executive. The seminal judgment contained no provision for consequence for non-compliance, yet no one ever claimed that the Court's judgment was directory rather than mandatory. In fact, the Appellate Division has been repeatedly taking the government to task for its failure to promptly implement this historic judgment. Ironically, our present Chief Election Commissioner, as the judge of the Appellate Division, was part of these proceedings.

Clearly, the EC's contention is erroneous because our Constitution has empowered the High Court to issue orders and directives (Article 102) and they have the force of law (Article 111). Thus, it would be unlawful not to submit the affidavit with the nomination paper. Furthermore, without the affidavit the nomination paper would be incomplete and hence be liable to be

This order to cancel nominations was rigorously enforced. For example, during the last Rajya Sabha election, the nominations papers of two Congress candidates were cancelled for non-submission of affidavits. Furthermore, the Indian EC allowed the submission of counter-affidavits by opponents. In addition, it posted the original affidavits filed by candidates in its website. It may be noted that based on the information submitted in the affidavits, about 20 per cent or 115 Indian legislators with criminal records have been identified as "tainted MPs" and a movement is now afoot there to take away their parliamentary membership.

The Indian Election Commission rather unilaterally implemented the judgment as it did not have the rulemaking authority and the Indian Ministry of Law and Company Affairs refused to make the necessary rules when approached by the EC. In contrast, section 94 of **The Representation of the People Order, 1972** of Bangladesh vests rulemaking authority in the Election Commission. Hence, unlike their Indian counterpart, our Election

Commission could frame the necessary rules and specify the consequences for non-compliance, if it intended to do so. It could thus fully and completely implement the High Court judgment even without any reference to the government. It is clear that in contrast to the Indian EC our Election Commission has failed to exercise the power already vested in it under the existing statutes and perform its constitutional responsibility for holding fair elections.

compare the information included in the table are too vague to be of any use to voters. A careful perusal of the table also raises serious questions about the credibility of the information. For example, none of the candidates has any liabilities. Only one candidate has a bank loan. More seriously, none of the candidates seem to have any bank account or cash assets. If so, how are they, one may ask, going to defray their election expenses? In addition, contrary to the Court directives, the assets held by spouses and dependents are mostly absent in the table. We also fail to fathom how educational qualifications can be reported as "not applicable."

The EC and RO could easily verify the information contained in the affidavits. Under section 44AA of RPO, candidates in parliamentary elections are required to file, within seven days, the acceptance of their nomination papers, statements showing the sources of their election expenses, their assets and liabilities and also a copy of their most recent tax return. The authorities could easily, if they were interested,

distorted they may be, compiled by the RO. Even the media, other than two exceptions, took no steps to investigate and verify the information disclosed about candidates, and they have failed to uphold people's right to know.

The relative inaction of our citizen groups may be contrasted with the activism of Indian civil society following its Supreme Court judgment of 2002. Distinguished citizens and voluntary organisations came forward to form *Citizen Watch* in each Indian state to ensure that Court verdict is fully and completely implemented. For example, Justice Venkatchalia -- who was the former Chief Justice of the Indian Supreme Court and former head of the Indian Human Rights Commission and the former head of the Constitutional Review Committee -- became the head of Election Watch of Karnataka state. Unlike India, most of our distinguished citizens are unwilling to get involved -- and we found it through the hard way.

## Conclusion

The High Court recently gave a historic judgment requiring critical disclosures by candidates in national elections to empower voters with information. This is a historic judgment in that it opens a window of opportunity to de-criminalise our present system of politics by making it difficult for criminal elements and possessors of black money to run for election. It also creates openings for honest, competent and dedicated individuals -- individuals dedicated to the service of the people -- to come to state power. Only such changes can pave the way for establishing a truly democratic system, a *people's rule* in our country and usher in a better future for us all.

The recently-held by-election in Sunamganj-3 provided a test case for the implementation of the judgment. Unfortunately all interested parties failed in their respective roles. The EC shied away from its constitutional responsibility to seriously enforce the judgment to ensure fair elections. Fair elections require maximum disclosures by candidates so that voters can make their choice fairly based on information. Organised citizens groups largely failed to demand full compliance and accountability on the part of the EC and also show much activism to implement the court directives. The media also mostly failed to do any investigative reporting and uphold people's right to know. Despite the failures in Sunamganj, we hope we will learn from our experiences and do better next time -- in Faridpur-1 by-election to be held on August 30. Our doing better in the future is important because the future -- the future of our future generation depends -- on it.

Dr. Badiul Alam Majumdar is Member-Secretary, SHUJAN, and Global Vice President and Country Director, The Hunger Project-Bangladesh.

**The High Court recently gave a historic judgment requiring critical disclosures by candidates in national elections to empower voters with information. This is a historic judgment in that it opens a window of opportunity to de-criminalise our present system of politics by making it difficult for criminal elements and possessors of black money to run for election. The recently-held by-election in Sunamganj-3 provided a test case for the implementation of the judgment. Unfortunately all interested parties failed in their respective roles.**

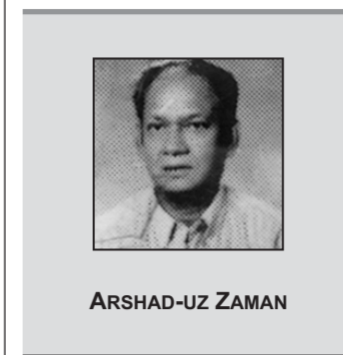
cancelled for being defective. Furthermore, Article 118 of our Constitution recognises the EC as an independent constitutional entity and Article 119 gives it a reservoir of power to ensure fair elections. As the Appellate Division of the Bangladesh Supreme Court, in *Altaf Hussain vs Abul Kasem* (45DLR(AD)(1993)), observed: "Election Commission's inherent power under the provision of 'superintendence, control and direction' should be construed to mean the power to supplement the statutory rules with the sole purpose of ensuring free and fair elections." Thus, although the High Court did not spell out the penalty, the Commission, given its residual power under the Constitution, could work out the norms and modalities, including the specification of penalty, to implement the judgment.

**Indian example**  
Indian Election Commission did exactly that in a similar situation. On May 2002, the Indian Supreme Court gave a similar landmark judgment directing the EC to collect from each candidate seeking election to Parliament and State legislatures information about his/her criminal antecedents, assets owned by the candidate and his/her dependents, his/her liabilities, and his/her educational qualifications. The Indian judgment also did not specify punishment, yet the EC issued a 5-page order clearly directing the RO to cancel the nomination papers of candidates for non-submission of affidavits or for providing wrong or incomplete information or for suppressing material information.

**Misleading disclosures by candidates**  
Nine candidates contested the Sunamganj-3 by-election. We verbally sought copies of the original affidavits from the CEC, but failed to receive them despite repeated assurances. We also made written requests to the RO for them. Again, our requests were denied, although getting copies of the original affidavits is a question of citizens' rights endorsed by the High Court rather than a gesture of generosity by the authorities.

Instead of disseminating the original affidavits, a table is compiled and distributed by the RO apparently based on the affidavits submitted by the candidates. The most fundamental question about the data in the table is that one cannot be certain about their veracity. Human beings are not angels and there may have been errors, wilful or inadvertent, in the compilation. Such errors would make a mockery of the High Court directives. The court directives are intended to empower the voters with facts, rather than mislead them with erroneous information. Besides

# Turkey in Europe: The Cyprus question



ARSHAD-UZ ZAMAN

**S**ULEYMAN Demirel, the former President of Turkey, who for more than forty years has played a very powerful role in the political life of Turkey, stated in a TV programme today that for Europe Turkey was an orphan. He described his relation, with newly accepted members within the European Union (EU) as between the rich and the poor. Demirel joined a programme on the thorny question between EU and Turkey.

Turkey very recently signed a document whereby it acknowledges the membership of Cyprus as member of the Customs Union, which means in effect that Turkey accepts Cyprus as a member of the EU. Along with that document Turkey has added a rider that this action does not mean recognition of the state of Cyprus. This explanation does not sound convincing because Turkey had pledged that she would sign the document. Furthermore, in front of Turkey the very important date is 3 October, when she is due to start her long awaited negotiations with the 25-member EU for her own full membership. Nobody has any doubt that the negotiations are going to be rocky and will last anywhere near a dozen years.

Fortunately for Turkey the current President of EU is Great Britain, who is more than helpful. Until now Britain is the odd man out within the EU, where France and Germany are in the driver's seat. Britain needs an ally and Turkey, with her nearly 72 million population will be the second most populous member after Germany. Turkey has worked hard to persuade leaders of the EU to swing in her favour. Both President Jacques Chirac of France and Gerhard Schroeder of Germany are sympathetic towards Turkish Prime Minister Tayyip Erdogan, but their

## THE HORIZON THIS WEEK

**Within the EU diplomatic activity surrounding membership of Turkey is bound to increase. The tussle is going to be between Turkey, a candidate for membership of EU and many members of the EU, and principally Greece and Cyprus, who technically have the power to block the membership aspirations of Turkey.**

own political future is in doubt as elections are due in Germany this autumn and he is seriously challenged by a German lady politician Angela Merkel. Nicholas Sarkozy, the Home Minister of France has mounted a shrill campaign against Chirac. Both oppose full membership of Turkey and suggest instead associate membership. Turkey, after half a century of effort for membership, has naturally stated that it is either full membership or nothing.

Turkish action regarding recognition of Cyprus has been received by the Government of Cyprus with a negative position although they have been careful not to reject it altogether. The patron of Cyprus, Greece has taken an identical position. It may be recalled that the present apparent impasse is the outcome of the referendums held in North Cyprus, inhabited by Turkish Cypriots, and South Cyprus inhabited by Greek Cypriots according to a peace plan proposed last year by Kofi Annan, Secretary General of the UN. Whereas Turkish Cypriots voted in favour of the plan, which meant United Cyprus, the Greek Cypriots rejected the plan.

The situation became further confused when, on the basis of an earlier decision, the EU made Cyprus (effectively the southern part) a full member of the EU. Thus EU broke its own rule by accepting as member, which, to say the least, was a mine field of disputed territory. This opened the door to diplomatic manoeuvrings of all sorts. It is evident that between now and 3 October diplomatic temperature will continue to mount between the divided island of Cyprus and their patrons -- Turkey and Greece. Within the EU diplomatic activity surrounding membership of Turkey is bound

to increase. The tussle is going to be between Turkey, a candidate for membership of EU and many members of the EU, and principally Greece and Cyprus, who technically have the power to block the membership aspirations of Turkey.

The date of 3 October was set by the EU Summit and there can be no going back. The Helsinki Summit a few years ago had accepted Turkey's membership in principle. It is difficult to see how those decisions can be set aside. Thus the proposal for Associate membership appears somewhat fanciful. On the other hand technically any member can veto any decision of the EU. Although this is on paper in reality the heavy weight within the EU like France and Germany have a preponderant voice.

Turkey made some major effort to bolster her chances for membership. Thus Prime Minister Erdogan has established solid friendship with Italian Premier Sylviano Berlusconi. In a general way Turkey has garnered support among the Mediterranean countries of the EU. Britain's support comes at a crucial time when negotiations are due to begin on 3 October.

EU is in an expansionist frame of mind. Her latest was addition of 10 members, mostly from Eastern Europe and the number rose to 25 from 15. Turkish membership along with two near neighbours have been accepted in principle. Of all the new members, Turkey raises numerous emotions among Europeans, not all favourable. The most important objection is of course that so far the EU has remained a Christian Club and Turkey has a population which is wholly Muslim. The Ottoman Empire of Turkey has ruled over large parts of Europe. We saw traces of anti-Turkish hatred in the behaviour of the Serbs towards their own nationals in Bosnia and Kosovo in the late nineties.

The die for Turkish membership of the EU has been cast. It is an irreversible process. For more than half a century the entire Turkish nation has united totally for joining the EU. The EU has as good as accepted Turkey as the new entrant within the Christian Club.

It would be foolhardy to bet that the going from now on between Turkey and the EU is going to be smooth. If anything many more shrill voices will rise. Little Cyprus with a tiny population of 600,000 will try to get all that she can from large Turkey. The diplomatic pirouette will be tremendously exciting.

Arshad-Uz-Zaman is a former Ambassador.



The scenic Cyprus: Tussle with Turkey

# Pax Europa: An ideal ahead of its time?

SYED MAQSUD JAMIL

**T**HE setback at French and Dutch referendum on proposed European Union constitution shows that popular support for further European integration has not been studied well by European planners. It is one of the confounding setbacks of the present time. In plainest terms, the French and Dutch 'NO' has brought plans for European integration down to the earth, to the people's level. It has added a new aspect of social and human issue to European integration. There is a strong need for making EU more than a trade and commerce club run by monetarist rigidity. In fact Pax Europa is an ideal ahead of its time! The condition for it has not yet matured, murmur European observers.

Europe has seen considerable successes since the Rome Treaty of 1957 established European Economic Community. A democratic society throughout the continent, albeit in a weaker state in the former soviet republics, makes pluralist and tolerant polity its major gain. The values of personal freedom, security and justice, supportive jobs, and environmental protection etc. are worthy achievements. In spite of all these gains the French and the Dutch rejected the proposed European constitution. It is a matter for European leaders and planners to ponder over.

It is particularly surprising that the French who led the idea of European integration have rejected the constitution. The idea of European Union came into being when the then French Foreign Minister Robert Schuman proposed the integration of the coal and steel industry of Europe on 9 May, 1950. Accordingly France along with five other states, Belgium, West Germany, Luxembourg, The Netherlands, and Italy formed European Coal and Steel Community ECSC in 1951. The 9th of May is now observed as Europe Day. It acted as catalytic agent in the formation of European Atomic

Energy Commission EURATOM and onward to the formation of European Economic Community commonly known as the Common Market.

It is evident that governmental cooperation was the driving force behind the growth of the union and in raising hopes of a united Europe. Successive governments of the member states took part in broadening the union. It is the Maastricht Treaty of 7 February 1992 that made it a major representative body by bringing into its fold cooperation in the fields of defence, justice and home affairs. The growing number of member states visualised it as a supranational body not as a replacement of states, neither as an international organisation. Peace and prosperity were the broader common goals they had in mind. It illustrates the shared will of the member states.

As far as economic integration is concerned, EU was on the right track. It focused on forming common policies in different fields of economy, security, inter state travelling, people to people contact and environment. The common policy covered agriculture, the broader aspect of trade and commerce from consumer affairs to competition, the vital energy sector and the sector to be watched - environment, better people to people contact through cultural interaction and relaxed inter-border travelling. And the importance on coal and steel was there from the beginning.

The formation of European Monetary Union in 1992 was a major step in empowering European Union as a supranational body. It paved the way for the introduction of Euro, a common currency, replacing national currencies on January 1, 2002. For the first time a split came into the fore with Denmark, Sweden and United Kingdom opting out of it. Denmark had rejected the Maastricht Treaty in a referendum much earlier. Sweden rejected the Euro in a referendum in spite of government campaign in favour of accepting it. The Swedes found the EU programme much too

**Integrated Europe holds out a vision of countries at peace and enjoying prosperity through common policies. It has rightly chosen common economic and commercial policies for enlarging the concept. But economic policies and theories are mere servitors of big capital and accumulation of wealth unless they bring maximum good for maximum people. EU economic and commercial policies have proceeded in a manner that subjected their human and social commitment to serious scepticism.**



The European Union since 1945

monetarist to the peril of their welfare system. They had seen what it did to the German economy. It was a widely held belief that like the German economy the Swedish economy was much better organised than of the other states of Europe. England was always the odd man out in Europe. Besides, as an ally of USA it saw a 'euro-machismo' in the monetary and economic programmes of EU. Moreover they had reservations about the export of institutions into Britain. Furthermore their Central Bank and exchange commission have been largely independent even without the prescriptions of Maastricht Treaty.

The seeds of discord lay in the overbearing nature of the commercial and monetarist policies laid down in the Maastricht Treaty. It laid down three basic conditions, convergence on Maastricht Treaty, complete independence of the Central Bank and unhindered operation of the exchange commission. There is also a good ground for Europeans to believe that the treaty has been the product of predominance of economic planners who see the market before people. In article 2, it clearly states that 'The Community shall have as its task, by establishing a common market and an economic and monetary union and by implementing the common policies or objectives referred to in article 3 and 3a, to promote throughout the community a harmonious development of economic activities, sustainable and non-inflationary economic growth respecting the environment.....'

As things are EU has been badly handicapped by the French and Dutch 'NO'. Those who were sceptical about the speed and direction of EU right from the beginning are now speaking of reforming it. A look at the French rejection shows that it was not the agenda of a major political party. Only the ultra-leftists and ultra-rightists were openly against it. As for the rest of the parties, Chirac's Rally for the Republic RPR (*Rassemblement pour la République*), the Socialists and UMP all campaigned for 'Yes'. But there were dissidents inside all the parties. They worked against the ratification. The rejection was much more decisive at the Dutch referendum, 65 percent of the Dutch said 'No' as against 55 percent French.

The European planners have failed to read the minds of the disenchanting voters. The proposed constitution was elaborate on making Europe a finely crafted market and it obviously did not unfold a vision of a Europe winning the hearts and minds of the voters. A feeling has grown among the voters, in almost all the member states that EU at Brussels is being run by economic mandarins. There are perceptions among many voters that the 'Eurocrats' are unfeeling, aloof and carry them about in such a manner that is costing Europe lot of money -- that the human and social side of Europe do not carry much consideration for EU planners. Perhaps one of the important things working in the minds of the French and Dutch voters was the fear of being swamped by Turkish

immigrants. There are about 4 million Arab and Turkish expatriate community in France. The slaying of a Dutch worker also might have alienated the Dutch against Muslim immigrants.

Under the present format the EU has five institutions to perform specific tasks. These are 1) European Parliament (elected by the member states), 2) Council of the European Union (representing the governments of the member states), 3) European Commission (driving force or executive body), 4) Council of Justice (ensuring compliance with law), 5) Court of Auditors (controlling sound and lawful management of the EU budget).

The main features of the constitution endeavour to make EU a well-coordinated, clearly defined and broader supranational body subsidiary to the member states. It undertakes to bring together all the treaties and agreements relating to EU and in clearly defining the functions of its institutions. Besides it addresses the vital aspect of EU in defining where it can act and where the member states retain the rights of veto. The constitution defines the powers of EU as subsidiary to member states and can act only in areas where "the objectives of the intended action cannot be sufficiently achieved by the member states but can rather be better achieved at Union level."

Thorny issue in the proposed constitution is that it will extend the powers of EU to legislate over justice policy. EU already has powers to legislate over external trade and customs policy, the internal market, and the monetary policy of member states within eurozone. On decision-making the constitution speaks of qualified majority. By qualified majority it means "at least 55 percent of members of the Council, comprising at least 15 of them and representing member states comprising 65 percent of the population." The President of EU will be elected by qualified majority by the European Council represented

by their respective heads of state or government for a term of two and half years, renewable once. The European Parliament will then approve the chosen candidate, and the President will chair the Council. EU will also have a foreign minister elected by qualified majority and who will conduct common foreign and security policy. On paper it looks befitting for a supranational body but its interpretation will lay bare many contentious issues, unless of course the member states have no lurking fear in their minds.

Integrated Europe holds out a vision of countries at peace and enjoying prosperity through common policies. This is an enlightened concept and its success may set a workable example of building peace and progress throughout the world. It has rightly chosen common economic and commercial policies for enlarging the concept. But economic policies and theories are mere servitors of big capital and accumulation of wealth unless they bring maximum good for maximum people. EU economic and commercial policies have proceeded in a manner that subjected their human and social commitment to serious scepticism. It has failed to win the hearts and minds of the French and Dutch common people.

For the time being Pax Europa has to recover from the reverses. It may not happen soon. This is the time for a candid dialogue among the EU states, a time for overcoming the lingering doubts and fears of a United Europe. Every crisis is a challenge. It is for the European leaders to prove that they can rise to the occasion and are capable of converting a crisis into a lasting gain.

Syed Maqsood Jamil is a freelance writer.