

New convention prevails over constitutional provision

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PRESIDENT Zillur Rahman has finally "accepted" Syed Abul Hossain's resignation as ICT minister. The Cabinet Division announced it in a circular issued on Thursday (August 23). The president however took a month to do so. Abul had tendered his resignation to Prime Minister Sheikh Hasina on July 23, paving the way for her government to revive financial arrangements with the World Bank for the Padma Bridge project as the world money lender cancelled the loan agreement because of his alleged corruption in the project. The Cabinet Division also said the office of minister Abul, who was dubbed as "patriot" by PM Hasina for his resignation, fell vacant on July 23, the day he tendered his resignation.

The president did the opposite in the resignations of Suranjit Sengupta and Tanjim Ahmad Sohel Taj. Suranjit tendered his resignation to PM Hasina in the wake of criticism after his aide was caught with sacks full of money at midnight in the city in April this year. While bashing the media on April 19 over reports on Suranjit's resignation, Hasina claimed that a minister remained in the post until the prime minister accepted his or her resignation and the president signed the resignation letter. She said: "We made Suranjit Sengupta minister without portfolio as we did not accept the resignation of the railway minister."

The issue of resignation had become even more controversial with what happened in the case of Sohel Taj, who was state minister for home. He had resigned in June 2009 and left the country. Yet his salary as a state minister was being deposited to his bank account every month. When the matter was brought to light Taj, in a statement in April this year, demanded that the government take back the money.

Then Cabinet Secretary M. Musharraf Hossain Bhuiyan told the press that since Taj's resignation was not accepted, he remained a minister without portfolio.

Sohel Taj finally got relief by resigning from parliament in July this year as his resignation disqualified him from holding the office of state minister. Only after his resignation from Parliament did the Cabinet Division come up with a circular saying Sohel Taj's appointment as state minister had become void following his resignation.

The way the president and the premier handled the resignation of Suranjit, Abul and Sohel Taj proved that a convention of acceptance of resignation of a minister has been forcibly developed in the country. And all credit goes to Hasina as it is she who alone invented the new convention of "acceptance" and "non-acceptance" of resignation. There is no such provision in the constitution and her invention does not comply with Article 58 (1) (a) of the Constitution that says: "The office of a minister other than the prime minister shall become vacant (a) if he resigns from office by placing his resignation in the hands of the prime minister for submis-

sion to the president."

The explanation she gave after resignation of Suranjit, however, drew criticism from eminent jurists who argued that, as provided for in our constitution and as practised in parliamentary democracy, acceptance of resignation is unnecessary for ministers. Their resignation takes effect the moment they tender it to the prime minister for submission to the president.

By "accepting" Abul's resignation, the president himself proved wrong the premier's constitutional interpretation she gave after resignation of Suranjit. (She claimed that a minister remains in the post until the prime minister accepts his or her resignation.)

So what? She is the supreme leader both in the cabinet and the ruling Awami League and there is none to question her decision and her interpretation of the constitution. To her party and cabinet colleagues, her words seem more worthy than the

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constitutional provision. Eminent jurists may have not adequate expertise to interpret the spirit of the constitutional provision the way the premier has been explaining!

The Cabinet Division's circular also raised another crucial question about whether the president has any jurisdiction to "accept" resignation of a minister. Article 58 (1) (a) in no way provides the president with the jurisdiction to "accept" or "reject" resignation of a minister. Then, did the president cross the line of his jurisdiction by accepting or rejecting the resignation of Abul, Suranjit and Sohel Taj? Did the president do it on his own or on advice of the prime minister? Did the premier submit the resignation letters of Suranjit and Sohel Taj to the president?

The president, in exercise of his constitutional authority, appoints some high constitutional functionaries including the premier, ministers and judges of the Supreme Court. Can he claim any discretionary power to determine the fate of their resignation? The Indian Supreme Court came up with the answer to the crucial question in Union of

India versus Shri Gopal Chandra and others case in 1978. The Indian Supreme Court delivered the verdict disposing a petition filed with it centering the resignation of a High Court judge.

Citing Article 217 of the Indian Constitution, dealing with the appointment and conditions of the office of a judge of a High Court, the Supreme Court in the verdict observed: "It is manifestly plain that there is no relationship of master and servant, employer and employee between the President and the Judge of the High Court, because a Judge is not a Government servant so as to be governed by Article 310 of the Constitution. A Judge of the High Court appointed under Article 217 has a special status and is a constitutional functionary appointed under the provisions of the Constitution by the President. The mere fact that the President appoints him does not make him an employer of the Judge, in appointing a Judge, the President exercises certain constitutional functions as contained in Article 217 (1)."

About resignation of a judge of the High Court Article 217 (1) (a) says a judge may, by writing under his hand addressed to the president, resign his office.

Interpreting the provision on resignation, the Indian Supreme Court observed: "In the case of a Government servant, normally, the tender of resignation becomes effective and his service terminated when it is accepted by appropriate authority. In the case of a High Court Judge who is a constitutional functionary having under Article 217 (1), Proviso (a), a unilateral right or privilege to resign, his resignation becomes effective on the date from which he, of his volition, chooses to quit office."

It further observed that the concept of acceptance of resignation submitted by a High Court judge is completely absent from Article 217(1) (a), and the effectiveness of the resignation does not depend upon the acceptance of the resignation by the president.

"In view of the provisions of Article 217 (1) (a) and similar provision in respect to [other] high constitutional functionaries, the resignation once submitted and communicated to the appropriate authority, becomes complete and irrevocable and acts *ex proprio vigore*," the Indian Supreme Court said.

Relying on this verdict, eminent jurist and former attorney general Mahmudul Islam in his book *Constitutional Law of Bangladesh* said lawmakers and holders of other constitutional posts and offices have the unilateral right to resign, the effectiveness of which is not dependent on the acceptance of the resignation by any authority.

But nothing can prevent the new convention of acceptance of resignation of a minister from forcibly developing in Bangladesh during the regime of Awami League-led government. Will the new convention to be continued to get priority over the constitutional provision in the coming days? What will be the fate of the convention if the BNP-led alliance forms the government in future?

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SHIFTING IMAGES

Big Ben chimes for the Olympics!



MILIA ALI

NOW that the curtain has fallen on the 2012 London Olympiad, it's time to relive those moments of excitement, disappointment, tears and cheers that we shared with the athletes. A time when we straddled across national rivalries as Russian gymnasts gracefully hugged their US counterparts, Chinese and

British divers exchanged pleasantries and a Cuban Olympic hero made a cameo appearance on US TV! I am somewhat saddened because it's back to the grind of the "real world." The civil war in Syria, the plight of refugees from Northeast India and Myanmar, the racist shootings in the Oak Creek Sikh Gurdwara ... these have once again become part of the daily diet served by the media!

The British need to be congratulated on a well-organised Olympic Games. Now is not the time to debate whether the costs equaled the benefits -- let's just agree with Games Chief Lord Coe: "When our time came - Britain, we did it right." Yes, you did!

The opening ceremony, directed by Danny Boyle (of *Slumdog Millionaire* fame), was well conceptualised and choreographed. The best part was its cheeky British humour, climaxing with a stunt of the Queen parachuting at the celebrations with James Bond (Daniel Craig). Although the Queen herself appeared to be somewhat under the weather, the act created a great effect! The show kicked off with a verse from Shakespeare -- the immortal bard who has provided the English language its body and soul and the world much fodder for thought. What followed was a presentation of British history (with no mention of the colonial past, though) moving seamlessly from pastoral Britain to the industrial revolution, the modern era of social media and an impressive finale by Sir Paul McCartney crooning "Let it be."

If there is one area where Boyle can be criticised it's that the opening was in essence a British affair with British innuendos, showcasing British achievements. It lacked universal appeal although the Olympics are an international event. For once I was thankful for my "English medium" schooling; otherwise I would not have known the difference between Mary Poppins and the Queen of Hearts! And, had I not been familiar with Mr. Bean, I would have guessed that his interludes were the result of a technical hitch in the live orchestra performance of "Chariots of Fire"!

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The British press posted high ratings for the show with *The Guardian* declaring: "Boyle's opening ceremony was the equal of Beijing and more." Honestly, I am a little tired of a segment of the media trying to prove that the Chinese have been outperformed. Why can't we admit that the Chinese Olympic opening ceremony was a spectacular event, combining artistic excellence with technological mastery, which has so far been unmatched? And let's also stop the high-handed rhetoric on how the Chinese could pull it off because they are more regimented compared to the rest of us who have a higher level of democratic freedom! I think it's a mark of poor sportsmanship -- and the Olympics are all about being a good sport, right?

Those of us who happened to watch the events from the United States were somewhat shortchanged. The exclusive NBC coverage was preponderantly focused on American athletes and events dominated by them. Many important gymnastic and track and field competitions were not shown. Instead, we were subjected to hours of Beach Volleyball with bikini-clad women shoving the ball to and fro in a contrived sand court and no beach in sight! Disappointingly, we also missed Akram Khan's dance segment honouring the 7/7 terror victims of London because an interview with Michael Phelps was aired at that time. Obviously patriotism triumphed over artistic expression!

The coverage notwithstanding, there were some beautiful moments: Michael Phelps making history with his 22nd medal, 16-year old Gabby Douglass hugging her coach after winning the gold for all-round women's gymnastics, Usain Bolt's record breaking sprint and antics, Oscar Pistorius running the 4x400m relay with his steel legs.

My Olympic moment, however, was David Rudisha breaking the world record for the men's 800m run. The Kenyan Massai, trained by an Irish missionary with no Olympic experience, literally emerged from a "dirt track." For me, Rudisha's victory encapsulated the indomitable spirit of the Games! It also shattered the myth that developing countries cannot make it to the medal podium because they are resource-strapped. May be it's time to be introspective and ask: is it a question of resources alone or do these countries suffer from an overall lack of organisation, discipline and determination -- ingredients necessary for success in sports? But then, this is a discussion that warrants a separate column!

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Global food crisis of 2013

HABIBUL HAQUE KHONDKER

COLUMN writers and academics are often criticised for discussing or pointing out problems but not offering solutions. To preempt such a criticism, I start by proposing a solution: buy rice from Russia and beef up the cereal stock for 2013.

Why am I suggesting importing rice? Here, I present the case. In the festivities of Ramadan and Eid holidays and the hogging of newspapers by political stories, two important news items might not have been given the attention they deserve. It is also likely that the top politicians of the ruling party as well as those of the major opposition did not pick up the warnings or glossed over them, since their priority at the moment is the modality of the interim, i.e., non-party (or multi-party) government that would conduct a clean and neutral election in 2014.

The news coming out of the UN Food and Agricultural Organization (FAO), and other media points to an impending shortage of cereal in 2013. "The severe deterioration of maize crop prospects in the United States, following drought conditions and excessive heat during critical stages of the crop development, pushed up maize prices by almost 23% in July [2012]. International wheat quotations also surged (by 19%), amid a worsening of production prospects in the Russian Federation and expectations of a firm demand for wheat from the livestock sector for the second consecutive season because of tight maize supplies. By contrast, international rice prices remained mostly unchanged in July, with the FAO overall Rice Price index stable at 238, barely one point more than in June."

First, drought in the US which has cut down the maize production, which in turn will put added demand on corn. As petroleum prices remain unchanged, the incentive for ethanol production will remain high. The US and Brazil are the world

leaders in ethanol production and an increasing number of automobiles in the US are switching from imported gasoline to home-grown ethanol. Drought also affected India and parts of Russia, impacting on cereal production. Add to that continued economic instability in Europe which shows little sign of respite or for that matter slowing down of the world economy with two of its new engines, China and India, showing slowing trends.

Although droughts and conflicts threaten famine in Somalia, some of the fastest growing economies are now in the African continent, which prompted *The Monthly Atlntic* to name Africa as "the next

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Asia." Countries that were once poster boys of hunger -- Ethiopia, Mozambique, and Rwanda -- have made a turnaround by a mixture of good governance, foreign assistance and favourable weather situation. Bangladesh too has been able to change its image from a hungry nation to a nation where senior officials often talk about food export. The Bangladesh government has done well in overseeing the food situation and Dr. Abdur Razzaque, the minister of food is fully aware of the situation (*The Daily Star*, August 10). The Ministry of Agriculture in the hands of Mrs. Matia Chowdhury has also received high marks. But the hard-working and entrepre-

neurial Bangladeshi peasants deserve the most credit for this turnaround. Yet, there is no justification for complacency.

Meanwhile, after twenty years of lobbying, Russia has now been able to join WTO as its 156th member, which will lower the tariffs thus creating possibility for buying its products at a lower rate than in the past. Another good news is that Russia has had a bumper production of rice. Compared to other grains, rice production worldwide is doing well. Hence, it may be wise to begin negotiation, before others jump in, to buy Russian rice for the rainy days ahead.

During the economic crisis of 2008, food prices shot up, which triggered food riots in Egypt. Mubarak used the military to bake bread to feed the needy. Even that did not stop the resentment that led to his removal in a couple of years. In January 2011, Mohamed Bouaziz resorted to self-immolation because he was prevented from running the sidewalk shop which was his source of livelihood.

Following the food crisis of 2008, often exemplified in "food riots" in Egypt and elsewhere, in *The World Food Insecurity Report* of 2009, FAO stated that the crisis was not new, rather it was "the sudden worsening of a structural crisis" that, over the past decades, denied hundreds of millions of people around the world access to adequate food for an active and healthy life. "The rapid increase in the number of hungry over the past two years, because of first the food and fuel crisis and now the economic crisis, reveals the fragility of present food systems" (p.39).

Despite decent rate of economic growth and significant signs of progress in social indicators in recent years, the structural situation has not changed a lot in Bangladesh. Hence, a plan of action must be in place to preempt the crisis before it unfolds.

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