

Full judgment on CTG

Elements of the judgement should form the basis of future discussions

AFTER sixteen months of the “short order” being passed by the Chief Justice in May 2011, we now have the full verdict on the 13th Amendment to the Constitution, declaring the caretaker system void. Given the nature of the case the delay should not have happened. And the fact that the short verdict had very substantively transformed the country’s political scenario, we feel constrained to say that to have taken that long to draw up the full verdict was an injudicious act on the part of the former Chief Justice, made even more so by the fact that the judgment was not a unanimous one, something that had not come to the pubic domain till recently, and that the verdict was signed more than a year after the former CJ had retired.

The case dates back to 1996 when an appeal against the 13th Amendment was disposed of summarily. The verdict was challenged in 1999 and disposed of too in 2004 only to be revived in 2005 but whose hearing started only in March 2011.

We feel constrained to say that the judgment has created more confusion and compounded a matter that had been resolved by the 13th Amendment. And that related to the issue of holding a credible and acceptable election by a neutral body. In the meanwhile the government, taking advantage of the short order and exploiting the verdict very selectively, has done away with caretaker system through the 15th Amendment. Would we wrong to surmise that the haste is indicative of faulty judgment?

The judgment we feel suffers from two fundamental contradictions. While the learned former CJ declared the 13th Amendment ultra vires of the constitution, he has ruled that the election of the Tenth and the Eleventh Parliament may be held under the provisions of the 13th Amendment basing on the age old principles that which otherwise is not lawful, necessity makes lawful, that safety of the people is the supreme law and that safety of the State is the Supreme law.

May we put it to the ex-CJ whether the objective conditions that necessitated the caretaker system, and one which compelled him to recommend elections under the impugned amendment, have changed at all? In fact, if anything, the schism between the two parties has widened and the prospect of a grave political flux made more real. The verdict, we are afraid, ignores this very important reality.

We feel that the factors which compelled the CJ to suggest that the next two general elections may be held under the old arrangement remain valid. And that suggestion should be a used to facilitate discussions to resolve the issue of future elections amicably.

Laws for our lawmakers

A change in our parliamentary culture is necessary

THE parliament is the central institution of democracy, and when it falters in its duties and, indeed the esteem in which it should be held by the people, it is surely a cause for concern. Sadly, this is the story of our growing democracy.

While the Jatiya Sangsad does not fail to initiate and formulate laws and budgets, the essence of a true parliamentary democracy -- discussion and debate -- are gravely lacking. No matter which government may be in power, parliamentary proceedings end up being a one-sided affair among them. So much so that the opposition -- again, regardless of whichever party may be in the opposition -- does not even deem it necessary to be present in parliament. According to a report recently released by Transparency International Bangladesh (TIB), the current rate of boycott of parliament is 80%.

In terms of accountability, a lawmaker who is absent from parliament for 90 consecutive sittings forfeits his/her seat. This, according to TIB, should be 30 days in a five-year term, with a maximum of seven days' continuous absence. The question is not of how many days should be stipulated but entirely discouraging the parliamentary boycott culture through an appropriate legislation. Hence, in principle we endorse TIB's proposed law which also calls for a code of conduct for members of parliament and a law to prevent conflict of interest.

We also strongly believe that a vital path towards accountability comes from transparency -- to the people, the electorates who have voted the parliamentarians into power. Not only should the income and wealth statements of lawmakers be made public, but their presence and participation should also be made obligatory and visible. The people have a right to know whether their chosen representatives are delivering on their promises and transparency and accountability are the only means

THIS DAY IN HISTORY

September 18

- 1739**
The Treaty of Belgrade is signed, ceding Belgrade to the Ottoman Empire.
- 1934**
The USSR is admitted to League of Nations.
- 1948**
Operation Polo is terminated after Indian Army accepts the surrender of Nizam's Army.
- 1961**
U.N. Secretary-General Dag Hammarskjöld dies in a plane crash while attempting to negotiate peace in the war-torn Katanga region of the Democratic Republic of the Congo.

BERC and unfair electricity tariff



SYED MANSUR HASHIM

THE Bangladesh Energy Regulatory Commission (BERC) came into being nearly a decade ago. Its vision statement reads “for providing energy at just and reasonable cost, and protection of consumers' interest and satisfaction through fair practice.” Unfortunately, if one looks BERC's track record over the past year, it has taken steps to the contrary. What has become obvious is that the regulatory body is sorely lacking in technical capacity for analysing the tariff rate under different slabs. The regulator also seems oblivious to higher tariff rate for electricity and its financial and economic implications on consumers both at retail and bulk level. This lack of capacity is perhaps the reason for BERC's continued dependence on outside agencies to come up with formula for tariff regulation, tariff rates and slab fixation.

The latest major revision of the tariff rates that came about in March, 2012, whereby, tariff rates were placed in three slabs that resulted in massive disparity for consumers. Although the revision was advocated by BERC to bring in the big customers under higher payment slab, this did not happen. On the contrary, in real terms, the small and limited user base ended up paying much more. According to the revised rates, a consumer now pays Tk. 3.05 for 0-100 units; Tk.4.29 for 101-400 units and Tk.7.89 for 401 or above units. It is the average consumer who has seen his/ her electricity bill go grow significantly thanks to these combination and permutation games in calculating tariff slabs.

From what has been reported in the press, BERC is looking now looking at a nine-tier slab to ease the sufferings of consumers that should

come into effect from September, 2012. The question is whether this new system will alleviate consumers' suffering or merely add further salt to injury. According to a report published in Prothom Alo on July 27, consumers across the board will be paying higher tariff than the outgoing 3-tier slab. For instance, the consumer utilising 325 units is looking at a 9.76% increase in tariff, while the consumer using 400 units

when it comes to upholding its objective of providing electricity at “reasonable cost.” Consumers are being fleeced at will and they have no recourse on the matter. While some may argue that BERC's original plan was to encourage people from consuming less or discourage the wastage of electricity, the reality is that the more a consumer uses, the less s/he pays.

Additionally, readers may recall



AFP

BERC is mechanically following the advice of PDB and shifting the raised cost of power generation onto consumers without taking into account the spin-off social, political and economic impacts of this action.

will see his bill inflated by 7.79%. The real brunt will be faced by consumers who fall in the 425 unit range, for their tariff is set to increase by an astonishing 87.41%. Ironically, it is the heavy duty users who consume 1,000 units and above who will experience a much more tolerable increase in tariff at 24.72%. If we are to take the above calculation at face value, it is clear as day that BERC is fumbling in the dark

that the electricity generation system is now heavily dependent on costly import-based oil fired power plants. Mainly the rental and quick rental plants and the cost of per unit generation from these plants is significantly higher than gas-based power plants' output.

This is causing two-fold subsidies for the government. One: the government is supplying imported oil to the power plants at a fixed rate

KALEIDOSCOPE

Political process bypassed



SYED FATAHUL ALAM

RATHER than who joined the expanded cabinet after its latest reshuffle, what made news is who did not. By not accepting ministerial portfolios, veteran Awami League (AL) leader Tofail Ahmed and AL-led grand alliance partner and Workers Party president Rashed Khan Menon have surprised political observers. Hence all the speculation as to why these two politicians behaved the way they did.

When morality, ideology and principle have become things of the past in politics, landing a coveted ministerial job, by fair means or foul, has become the be-all and end-all among many of our leaders. In such a context, non-acceptance of cabinet portfolio by Tofail and Menon is something out of the ordinary. No doubt, it marks a clear departure from the past.

This senior leader of AL has been sidelined in the party since the government took office in January 2009. Even so, an experienced and astute politician as he is, Tofail's stance cannot be dismissed purely as something done out of hurt feelings. As a seasoned politician, he cannot be unaware that with 2013's national elections round the corner, there was little he could do within such a short to turn the tide in favour of the government. Clearly, it was one reason why he declined the offer. And he has also the commonsense to realise that the government was

too eager to draw him into the cabinet, so that he may not raise his critical voice against the various lapses and failures of the government.

But all attempts of Tofail at coming up with a decent explanation of his particular stance as something personal could hardly convince his party colleagues. His arguments in self-defence fell on deaf ears.

Taking serious exception to Tofail's non-acceptance of ministerial job offer, AL's general secretary as well as others at the party's Central Working Committee meeting on Saturday even smelt the possibility of a “conspiracy” in it. So, in the eyes of many of his party colleagues, he remains a renegade, despite all his statements to the contrary.

Next comes the denial of another renowned left leader and one of the coalition partners of the government, Menon.

Political commentators have interpreted his instance as a sign of widespread disenchantment in the AL-led grand alliance. And that is particularly so when the embattled government is in utter desperation in the wake of a series of reverses like cancellation of World Bank's

loan for Padma Bridge, share market debacle, international criticism over its handling of Grameen Bank, Hall-Mark-Sonali Bank scam, appalling human rights records, etc.

To Menon, the head of a party in the grand alliance, the manner of inviting him to join the cabinet seemed lacking in political etiquette. This is despite the justifications the prime minister has tried to make at the AL's Working Committee meeting citing examples

from the practice in the previous governments' time as well as other governments in South Asia and elsewhere.

But more important than the issue of punctiliousness is what he said while explaining the reason for such behaviour on the government's part. He saw in it the absence of any political process in the decision-making bodies, either of the government or of the alliance.

Menon has made a political point out of his decision to refuse the cabinet position. And as he explained in so many words, there is no political process in the running of the AL-led alliance government.

It is not only to Menon that this explanation of the government's behaviour seems to be a very plausible

one, it is so even to observers outside politics.

Two: the government is purchasing power at a higher price and selling to the consumers at a lower price. As a result, Power Development Board (PDB) and government utility providers are under tremendous pressure and they are trying to use BERC umbrella to shift the cost of power to the consumers. And BERC is mechanically following the advice of PDB and shifting the raised cost of power generation onto consumers without taking into account the spin-off social, political and economic impacts of this action.

Secondly, PDB's power generation cost includes not only the fuel price, but also the operating and maintenance cost and the system losses. So, PDB and utility providers are less interested to operate their plants efficiently. It has thus become a case of passing over the overall their combined inefficiency costs on to the shoulders of the hapless consumers. Here also we see BERC, by legal authority entrusted to protect the rights of consumer -- failing miserably to do so.

Given such ground realities, BERC should encourage efficient and sustainable power generation in the country if it truly wishes to live up to its mandate in protecting consumers' rights. With overt dependence on oil-based and costly rental and quick rental power plants, such objectives simply cannot be attained. Till date, BERC has kept mum on the subject of reminding PDB that it has failed to bring in sustainable base-load power plants online. Additionally, the regulator's lack of movement on ensuring the wise use of local fuel sources remains a mystery. It is high time that BERC began to play the role it was designed to, i.e. “to create an enabling environment, efficient, well-managed and sustainable energy sector in Bangladesh.”

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In absence of a decision making process, things must remain at the mercy of personal whims of one or a handful of persons. This is undoubtedly a bad signal for the alliance government, particularly with the general election near at hand. However much Menon may have spoken in defence of the alliance and his pledge to maintain its integrity, the sign of cracks in it (grand alliance) is gradually becoming clearer.

Taking its cue from Menon, even the Jatiyo Party, the biggest partner of the ruling combine, has now divulged how it spurned the government's offer to take ministerial jobs in the cabinet.

Oddly though, despite the mess the AL-government has created in its various fronts, including the administration as well as in the alliance, it has not so far taken any lesson from its failures. It is still in a denial mode and has been stubbornly defending its every move so far. Small wonder, without giving a second try to persuade these two seniors leaders to join the government at this hour of need, it went ahead to look for alternatives.

With its composition, the expanded cabinet will remain more of the same and so will the government's performance while it braces for a rough ride during the remaining days before the election.

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