

SC lambasts judges

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made effective from August 15, 1975 when the father of the nation Bangabandhu Sheikh Mujibur Rahman, along with most of his family members, was assassinated.

A case known as "Halima Khatun vs Bangladesh" was one of the first lawsuits to reach the SC requiring interpretation of martial law and martial law regulations, after Halima filed a writ petition with the High Court.

The verdict in the case was delivered on January 4, 1978 when the country was under martial law.

The then SC judges held that martial law proclamation or a martial law regulation or a martial law order subordinated the country's constitution.

Referring to the judgment in Halima's case that said martial law proclamation, regulation and order subordinated the constitution, the SC verdict on the seventh amendment case says, "With great respect for the learned Judges of the Supreme Court of the day, it must be held that their Lordships were absolutely wrong."

The then Chief Justice Syed AB Mahmud Hossain, Justice Kenaluddin Hossain and Justice Fazle Munim gave the judgment in Halima's case.

The Supremacy of the Constitution as declared in Article 7 [of the constitution] was no longer unqualified," said an observation of the then judges in Halima's case.

But the latest SC judgement says, "These observations are preposterous. Let it be unquestionably declared that the supremacy of the constitution was unqualified, it is unqualified and it shall remain unqualified for all time to come."

The SC judges in Halima's case made further observations that "no constitutional provision can claim to be sacrosanct and immutable" and "the present constitutional provision may, however, claim superiority to any law other than a Regulation or Order made under the Proclamation".

The latest SC verdict says that these observations were "seditious".

"Let it be unhesitatingly declared that the Constitution being the solemn expression of the will of the sovereign people of Bangladesh is sacrosanct and immutable and all organs of the Republic owe its existence to the Constitution. It is supreme in all respect. The Martial Law Proclamations, Regulations and Orders are non est before it," reads the SC judgment in the seventh amendment case.

The verdict on the seventh amendment case was delivered by the Appellate Division bench of Justice ABM Khairul Haque, Justice Md Muzammel Hossain, Justice SK Sinha, Justice Nazmara Ara Sultana, Justice Syed Mahmud Hossain and Justice Muhammad Imman Ali.

Khairul Haque, the author judge of the verdict, was the chief justice when the verdict was delivered, and has been succeeded by Justice Md Muzammel Hossain.

The judgment that declared the seventh amendment to the constitution illegal was delivered on May 15 last year.

Several legal experts told The Daily Star yesterday that it is common in many other countries that the apex court overrules its earlier judgment if it finds the past verdict in essence wrong.

However, this is rare in the history of Bangladesh judiciary, especially when it involves constitutional matters, they said.

The seventh amendment ratified the proclamation of martial law and other regulations, orders and instructions by Lt Gen HM Ershad and his taking over the state power as the chief martial law administrator in March 1980.

On the SC's jurisdiction, the apex court judges in Halima's case said the SC had no power to call in question or declare illegal or void the proclamation or any order.

Referring to it, the judgment in seventh amendment case says, "The whole approach was reprehensibly

wrong. No authority in Bangladesh can oust the jurisdiction, powers and functions of the Supreme Court granted under the Constitution.

"The law as declared by the Supreme Court in Halima Khatun case is not only alien to the Constitution, but gave legitimacy to Martial Law Proclamations etc., as such, with great respect for the learned Judges, we are constrained to overrule it and hold that the statements of law contained in the said decision are wrong."

The SC judges elaborately discussed and criticised the observations in the past cases known as "State vs Haji Joynal Abedin and others," "KH EHTESHAMUDDIN AHMED vs Bangladesh," "NASIRUDDIN vs Government" and the eighth amendment case.

STATE VS HAJI JOYNAL ABEDIN AND OTHERS

In this case, Joynal Abedin and other appellants were convicted by a special martial law court and were given capital punishment. Following a writ petition, the HC cancelled the martial law court's sentence saying it was illegal and directed fresh trial by a competent court.

The government appealed with the SC against the HC verdict.

The SC delivered its judgment on December 20, 1978 when the country was under martial law. The then judges of the Appellate Division gave a split verdict.

The SC bench of the then Chief Justice Kenaluddin Hossain, Justice Fazle Munim, Justice Ruhul Islam and Justice KM Subhan delivered the verdict.

Majority of them said the constitution was reduced to a position subordinate to the martial law proclamation. So the martial law courts had the authority to try any offence and its proceedings had been made immune from being challenged before a court, including the SC.

Justice KM Subhan had given a dissenting opinion.

The SC verdict in the seventh amendment case says this observation was "not only gravely wrong but also seditious".

The judgment says it is apparent that the decision of the Appellate Division in Abedin's case was made in violation of the constitution.

"With great respect for the learned Judges we are constrained to overrule it," reads the recent judgment.

KH EHTESHAMUDDIN AHMED VS BANGLADESH

This case was also about conviction and capital punishment by a special martial law court.

The appeal against the conviction was decided in the SC in March 1980. The country was not under the martial law at that time.

But a day before withdrawing martial law, the second parliament on April 6, 1979 gave legitimacy to the country's first martial law by the fifth amendment to the constitution [it was also declared illegal by the SC in 2010].

The then chief justice Kenaluddin Hossain, Justice Fazle Munim, Justice Ruhul Islam and Justice Badrul Haider Choudhury delivered verdict in this case.

On some observations of that verdict, the recent SC judgment says, "Since the legal position of the Supreme Court, as postulated by the Appellate Division in the case of Ehteshamuddin was subservient of the Constitution, with great respect for the learned Judges, we are constrained to overrule it."

NASIRUDDIN VS GOVERNMENT

This case involved abandoned property and was decided by the SC on April 14, 1980.

Discussing a part of the judgment of this case, the SC judges in the verdict in the seventh amendment case said the constitution is the supreme law of the country and the apex court is empowered by the constitution to look into any illegality or irregularity of any authority or regulation or order.

The latest judgment says, "The views of the Appellate Division [in April 1980] in this case, upholding the vain supremacy of the Martial

Law Proclamations, etc and the Martial Law Courts were erroneous and inconsistent with the Constitution, as such, with greatest respect for the learned Judges, we are constrained to overrule it."

The then chief justice Kenaluddin Hossain, Justice Ruhul Islam, Justice Badrul Haider Choudhury and Justice Shahabuddin Ahmed delivered the verdict in this case.

EIGHTH AMENDMENT CASE

Nearly a decade later in 1989, the SC upheld the absolute supremacy of the constitution and its basic structures in ANWAR HOSSAIN CHOWDHURY VS BANGLADESH case, popularly known as the eighth amendment case.

In his observations in the judgment, Justice Shahabuddin Ahmed, then judge of the SC, said, "In spite of these vital changes from 1975 by destroying some of the basic structures of the Constitution, nobody challenged them in court after revival of the Constitution; consequently, they were accepted by the people, and by their acquiescence have become part of the Constitution."

On Justice Shahabuddin's observation, the latest SC judgment says, "The observation that the past amendments which were not challenged have become part of the Constitution by general acquiescence", with respect, was misconceived."

"The Constitution is the Supreme law and its any violation is void and illegal and remains so for all time to come."

"The plea of waiver or acquiescence is not available in respect of violation of any law. If it is violated, the Court is bound to say so, no matter when it is raised. There is no period of limitation, no waiver, no acquiescence..." says the latest SC judgment.

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Govt appoints

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appointed directors.

Balaram Poddar, a former leader of pro-Awami League student body Bangladesh Chhatra League, had served as a Janata Bank director before the board's tenure expired last September. The government yesterday made him a director of Agrani Bank.

Zaid Bakht, research director of Bangladeshi Institute of Development Studies, was chosen as a Sonali Bank director.

Other new directors of the bank are Md Nazibor Rahman, a former director of Janata Bank, Shekhor Dutta, secretary of Moni-Singh-Farhad Memorial Trust, Selima Ahmad, vice-chairman of Nitol-Niloy Group of Industries, Md Mahbub Hossain, Kazi Tariqul Islam, Saheb Ali Mirza, all former joint secretaries, and Md Enamul Haque Chowdhury, a former managing director of Sonali Bank.

Nagibul Islam Dipu, a former director of Federation of Bangladesh Chambers of Commerce and Industry, ex-banker Ramoni Mohan Devnath, Syed Bazzul Karim, Prof Mohammad Moinuddin, an educationist, and Md Abu Naser hold the posts of Janata Bank directors.

Engineer Abdus Sabur, Niaz Rahim, group director of Rahimafrooz, Baloram Poddar, MA Rouf Sarder, an associate professor of ENT at Bangladesh Medical College Hospital, Begum Hasina Newaz, vice-president of Bangladesh Women Chamber of Commerce and Industry, became Agrani Bank directors.

Details of Shamim Ahsan, Md Altaf Hossain Molla and ABM Quamrul Islam could not be known immediately. The Banking and Financial Institution Division gave only their names and addresses in Dhaka.

Dewan Nurul Islam, Kazi Morshed Helal Kamal, advocate Md Abdus Salam from

Shakib

AFP, London

An official report on Wednesday strongly criticised the BBC's handling of allegations of child sex abuse against late presenter Jimmy Savile, but cleared the world's biggest broadcaster of a cover-up.

The findings by an independent inquiry sparked the resignation of the BBC's deputy director of news, and led to the editor and deputy editor of the programme at the centre of the scandal being replaced.

The report exposed the "chaos and confusion" at the BBC although it dismissed claims that its flagship current affairs programme Newsnight dropped an investigation into Savile so as not to jeopardise Christmas tribute shows to him.

The BBC commissioned the inquiry by former Sky News executive Nick Pollard in October during a major crisis at the corporation that cost then-director-general George Entwistle his job.

Savile, who died last year at the age of 84, was one of the BBC's top TV and radio presenters.

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AKM Rezaur Rahman and AKM Quamrul Islam, whose details were not available, got appointment at BASIC Bank.

Madan Mohan Dey and Md Ebayedur Rahman Pramanik, both professors of Rajshahi University, were appointed as directors of Rajshahi Krishi Unnayan Bank.

Mashur Rahman Humayun from Dhaka was appointed as director of Bangladesh Krishi Bank.

33 dead in Sudan bus collision

AFP, Khartoum

Thirty-three people were killed and 24 injured when two inter-city buses collided in Sudan late Wednesday, in one of the country's worst road accidents in years, police said.

The crash between a full-sized passenger bus and a minibus occurred near the small community of El Kamlien, about halfway between Khartoum and Wad Medani.

"The minibus tried to overtake another vehicle and then collided with the bus," which was travelling in the opposite direction, a police statement said.

Formalin-free

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after Malibagh, Shantinagar, Mohakhali and Gulshan DCC-North markets in the capital.

The Federation of Bangladesh Chambers of Commerce and Industry (FBCCI) organised a programme at the market to make the declaration.

Commerce Minister GM Quader inaugurated the formalin-free market by handing over a formalin detector machine and a deep freeze to the market committee.

"Customers can now buy fish, vegetables and fruits from the market without any hesitation. In case of any doubt, buyers themselves can do a test at the market," Quader said while addressing the programme.

The apex trade body has trained two staff of the market to use the formalin detector, donated by Dhaka Bank Ltd. The deep freeze, donated by Walton, will be used to preserve fish that are to be sold.

"From now on, we will not allow selling of fish, vegetables and fruits without a formalin detection test," said Md Lutfur Rahman, president of Mohammadpur Town Hall City Corporation Kitchen Market Traders' Association.

The initiative comes at a time when the use of toxic chemicals in food is rampant and consumer concern about their adverse effects on health has peaked.

Some traders spray fish, fruits and vegetables with chemicals that are used for preservation in textile and leather industries and are poisonous to humans.

Speaking on the occasion, FBCCI President Kazi Akram Uddin Ahmed stressed the need for creating awareness to fight against food adulterators.

"There are 30 large kitchen markets in the capital now," said FBCCI Vice-President Md Helal Uddin. "We want to declare all of them formalin-free in a couple of months."

He said several private banks have agreed to pay for a total of 23 formalin detection kits for the kitchen markets in the capital.

Speaking on the occasion, State Minister for LGRD and Cooperatives Jahangir Kabir Nanak called for identifying food adulterators and punishing them.

The commerce minister said the government would soon launch special drives at the five kitchen markets to check the misuse of toxic chemicals.

Malibagh kitchen market was the first to be declared formalin- and carbide-free on September 19.

Meanwhile in Mount Pleasant, South Carolina, about 30 protesters chanting "From US to Bangladesh, no more Walmart factory deaths" halted traffic outside the Wando Terminal yesterday morning.