

NIKO case: Punishment for bribery, but what about the bribed?

MOZAMMEL H. KHAN

THE Canadian company Niko became news in Bangladeshi media once again when an international tribunal rejected its challenge over the Bangladesh government's claim regarding payment of \$106 million in compensation for two blowouts at Tengratila Gas Field in Chhatak.

Before the tribunal, Niko challenged the case and another issue related to payment for gas sales from the Feni gas field, which the Canadian company operates with Bapex.

Niko started drilling the Chhatak-2 well on December 31, 2004. It drilled the first well there without the required approval of a Joint Management Committee.



around and handed Niko a joint venture agreement with Bapex."

In the meantime, according to a 'sealed' affidavit filed in Alberta court by the Royal Canadian Mounted Police (RCMP) obtained by Canadian newspaper *The Globe and Mail* through a legal battle, Niko appointed Canada's financially tainted Senator Mac Harb. He came to Bangladesh at least four times between 2004 and 2006 to help Niko navigate the fallout from the explosion.

The RCMP report citing a confessional statement (corroborated partly by RCMP and monitoring of bank money flow) of 'someone' from the clique went on, "after Niko was handed drilling rights, more than \$500,000 (U.S.) appeared in 'someone's bank account. From there, he dispersed some of the money to the cast of characters around Prime Minister Khaleda Zia -- including al Mamun.

Since the blowout was due to the "faulty and negligent operation of Niko Resources," the government had the power to order payments. The decision about how much, however, would be heavily influenced by the say of one man, an important voice in an ongoing dispute between

without me, and without me being aware of the meeting."

In June, 2011, lawyers for Niko stood before an Alberta Court of Queen's Bench judge and, on behalf of the company, pleaded guilty to bribing the then Bangladesh state minister for energy and mineral resources, contrary to section 3(1)(b) of the Corruption of Foreign Public Officials Act (CFPOA).

In the autumn of 2003, recounting the event the RCMP report said: "On the other side of the world, the government of Khaleda Zia came

Niko and the government over a gas purchase and sale agreement.

On June 23, 2011, Justice Scott Brooker of Alberta Queen's Bench delivered the verdict saying: "It is an embarrassment to all Canadians." The court handed down a \$9.5 million negotiated penalty against Niko, the maiden enforcement under the CFPOA, enacted in 1998.

The evidence was sufficient for the RCMP to state in the same court filing that it had "uncovered information that [Niko] used bribes to influence [Bangladeshi] public officials in order to secure the Joint Venture Agreement." So why didn't the RCMP pursue the other charges?

Then there's the logistics of getting Bangladeshi witnesses before a Canadian court. "How are you going to get them into court for trial? Are you going to use a video link? All sorts of problems kick in," RCMP said. "We play to win. With what we had, we had them dead-to-rights. So, if the investigation went on forever, could we prove everything bad that was ever done? Yeah, we could. May be. May be. But eventually you've got to draw a line in the sand."

The above could be issues for the Canadian RCMP, but they are non-issues for the Bangladesh ACC. Why was the guilty plea of the bribery that was punished in the Canadian court not pursued in the Bangladeshi court to punish the bribed? During their trip to Dhaka, the RCMP discussed the anti-bribery law, and what good it might do in the world. "Everyone saw how important this is. This was good for Bangladesh," RCMP investigator said. "But there was at least one naysayer in the country's elite. During the interview at his home, the concerned minister offered a meandering diatribe against the 'lies' and 'conspiracy' that landed him in jail for two years."

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ABDUL MATIN

DAVID Frost, a legendary English journalist and TV host died of a suspected heart attack on August 31 aboard the Queen Elizabeth cruise ship where he was due to give a speech. He was 74. In a statement to the BBC, his family said it was devastated and asked "for privacy at this difficult time."



David Frost

David Frost hardly requires any introduction. Born in Tenderden, Kent in 1939, he started his journalism career while he was a student at Cambridge University. He was the editor of the student newspaper *Varsity* and the literary magazine *Granta*. Having appeared in television for the first time in *Town And Gown*, he said: "The first time I stepped into a television studio, it felt like home. It didn't scare me. Talking to the camera seemed the most natural thing in the world."

On television, he was indeed a natural speaker. He never had to look for words or mince words. His wits and sense of humour were unparalleled. I first watched David Frost in England in 1962 when he hosted the popular satirical programme *That Was the Week That Was* (TW3) broadcast by BBC.

After the success of TW3, Frost produced numerous programmes, which include *Not So Much a Programme*, *More a Way of Life*, *The Frost Report*, *Breakfast with Frost*, *Through the Keyhole*, and *Frost Over the World* -- all of which were very popular.

David Frost was a great interviewer. He interviewed many world leaders and other dignitaries in sports, music and films. He is reported to have interviewed all the six British prime ministers between 1964 and 2007 and the seven US presidents between 1969 and 2008.

Frost earned international fame by interviewing President Richard Nixon in 1977. It may be recalled that Nixon resigned in disgrace in 1974 as the president of the United States, being involved in what was known as the Watergate scandal. In the interview, Nixon admitted his fault and said: "I let the American people down and I have to carry that burden with me for the rest of my life." It was the most widely watched interview of the time.

On his death, BBC's Barney Jones who worked with David Frost said: "David loved broadcasting, did it brilliantly for more than 50 years and was eagerly looking forward to a host of projects -- including interviewing the prime minister next week -- before his sudden and tragic death. We will all miss him enormously."

It is not only Barney Jones but millions of his fans all over the world, including the writer, who will miss David Frost.

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Making of a destructive political storm!

SHAKHAWAT LITON

PRIME Minister Sheikh Hasina on Monday announced that the next general election will be held without dissolving the current parliament. She backtracked from her earlier declaration in parliament on September 19 last year that the polls would be held after dissolution of the House.

The dramatic change in her strategy has exposed the pervasive confrontational culture in the country's politics. It also portrayed the greatest weakness of the country's political culture, which is the lack of something positive which may attract people and give them relief in the suffocating political atmosphere.

It is clear that Hasina changed her stance on the polls due to the rigid position of her archrival BNP chief Khaleda Zia-led 18 party opposition combine that has been threatening the government with dire consequences for its failure to restore an election time non-partisan government.

So, Hasina took the rigid stance on the election. She is determined to uphold the constitutional provision to this effect. The provision provides for holding the next general election within 90 days before the expiry of the tenure of the current parliament. This means the polls will be held on any day between October 27 and January 24. Most probably it will be held at the beginning of January, if everything goes smoothly.

But the coming days may not be smooth for her government and Awami League. She may not be able to go ahead with the current strategy if Khaleda Zia opts for another extreme negative step: resignation from parliament some days before October 27.

What will happen if the 40 MPs of the BNP-Jamaat led alliance do so? As per the constitution, the Election Commission must hold the by-elections to those vacant seats within 90 days from the date of their resignation.

Simultaneously, the EC will have to go ahead with the process of holding the general election to constitute the 10th Parliament. If such a situation arises, there will be an interesting and unprecedented complicated situation.

The people who win the by-elections will be elected as MPs to the 9th Parliament, though only for a very brief period. On the other hand, the EC at the same time will be moving towards holding the 10th parliamentary polls. But the general election will not be completed until the EC holds polls to those vacated seats. According to the constitutional provision, polls to those seats must be held on or before January 24. [The BNP has five MPs elected to reserved women seats. And elections to the reserved seats always take place following the general election to 300 constituencies.] Then how will it be possible for the EC to meet the constitutional obligation to hold the polls to those 35 seats by January 24? The EC needs at least a month to hold an election, even if it wants to complete the entire process hurriedly.

When his attention was drawn to this possible situation, eminent jurist Shahdeen Malik said it will obviously lead to a very complicated situation. This will make the EC's task very difficult and complicated. In his view it will be a chaotic situation with legal and practical complexities.

The constitutional weapon Hasina is trying to apply had been present in the constitution until 1996 since 1972 without any break. It was not applied as none of the previous parliaments since 1973 could complete their tenure. The seventh Jatiya Sangsad [1996-2001] was the first one to complete its five year tenure.

Her archrival Khaleda Zia, in her first term as the prime minister between 1991-1995, could not apply this provision due to political turmoil following the AL-led opposition parties' vigorous and violent street agitation for introduction of the caretaker government system.

The prevailing political situation at that time was complicated. As many as 147 MPs belonging to AL, Jatiya Party

and Jamaat-e-Islami resigned from the then fifth parliament on December 28, 1994 as a means to mount pressure on Khaleda's government to introduce the non-partisan election time caretaker government by amending the constitution.

As per the constitutional provision, by-elections to those seats were supposed to be held within 90 days from the date of their resignation. But the then BNP-led government had opted for a strategy to avoid holding the large scale by-elections considering the then deteriorating political situation.

In line with the government strategy, the then speaker did not accept the opposition MPs' resignation. But their continued boycott at one stage crossed the 90-day constitutional limit for which their membership in parliament was supposed to be declared vacant. A legal complication arose as a result.

Finally, the then president sought the opinion of the Appellate Division of the Supreme Court on July 4, 1995 whether the continued boycott by the opposition MPs would be treated as absence of the House and how the 90 consecutive days would be counted. The apex court unanimously declared that walkout and boycott would be construed as absence and the speaker would compute consecutive absence from the parliament for 90 sitting days. On getting the apex court's opinion, the parliament secretariat, on July 30, 1995, declared the opposition MPs' seats in the House vacant.

Then, on advice of then Prime Minister Khaleda Zia, the president dissolved the fifth parliament on November 24, 1995 to avoid holding the by-elections to the large number of vacant seats.

The 5th Parliament began its journey on April 5, 1991, and it was supposed to be dissolved on April 5, 1996 after completing its five year tenure. And, as per the then constitutional provision, the general election was supposed to

be held within 90 days prior to its dissolution. But the prevailing political situation could not allow the Khaleda's government to apply the provision to hold a parliamentary election without dissolving the House.

With the introduction of the caretaker government system in 1996, this provision was replaced by another one, which had provided for holding the general election after dissolution of a parliament.

But in 2011 Hasina's government restored the previous provision, which says that the general election will be held within 90 days before expiry of tenure of the current parliament. This means MPs seeking reelection in the next polls will remain in their offices and will get extra benefits over their non-MP contestants. That will diminish the prospect of a level playing field, in addition to increasing the government's possible influence on the administration in its favour.

On Monday, Hasina announced that the current cabinet will not be dissolved during the general election. Instead, the size of the cabinet will be reduced and it will not take any policymaking decision.

She did not clarify how many members there will be in the cabinet. Currently, there are 50 members in her council of ministers and seven advisors with status of ministers. She also did not say whether the government's rules of business will be amended to limit the election time cabinet's functions. It is difficult to trust her verbal announcement as she contradicted her announcement on September 19 that the general election would be held after dissolving the current parliament.

Looking at the way the situation is fluctuating political analysts apprehend that the clouds gathering in the sky of politics may turn into an unpredictable storm, which may have a shattering impact on the country's political and economic activities.

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CRYPTOQUIP: I E N G L N P O B L S A T B P L A S B T P C B R L G L R F U U Z G I J W B S F S T O I Z P J B D B F J P L S A N D L S A P W F U B C J F R N L R B P E L N P Yesterday's Cryptoquip: SINCE MY HUGE PET DOG USES UP SO MUCH OF MY ENERGY, I LIKE TO TELL FOLKS IT'S A GREAT DRAIN. Today's Cryptoquip Clue: F equals A

BEETLE BAILY by Mort Walker: QUICK, GIZMO! SEND THE GENERAL'S LETTER TO THE PENTAGON NOW! IT LOOKS LIKE HE MIGHT BE RE-WORDING IT AGAIN! GREG + MORT WALKER

HENRY by Don Tranchte: A cartoon strip showing a boy looking thoughtful at a girl.

QUOTABLE Quotes: "You cannot help men permanently by doing for them what they could do for themselves." Abraham Lincoln