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Hearing on Writ against DU closure

'Ordn violative of academic freedom'

Supreme Court Correspondent

The writ petition challenging the order of closing the University of Dhaka together with all other educational institutions in Dhaka till 12.11.90 came up for further hearing before a Division Bench comprising Mr. Justice Md. Abdul Jalil and Mr. Justice Shafi Uddin of the High Court Division of the Supreme Court of Bangladesh.

Syed Ishtiaq Ahmed, senior counsel for the petitioners questioned the constitutionality of the Educational Institution (Law and Order) Ordinance, 1990 being violative of Art 31 (right to protection of law) Art 39 (freedom of thought and conscience, and of speech). By referring the Articles, he asserted that "academic freedom" is equally guaranteed. In Indian jurisdiction, the counsel pointed out that Art 19 covers "academic freedom" as a fundamental right. He also referred to the first and fourteenth amendments of the American Constitution in support of his contention that fundamental rights include "academic freedom." He also cited decisions from American jurisdiction. But the impugned Ordinance, the learned counsel pointed out, has infringed bundle of rights guaranteed under the Constitution namely, (1) right to receiving and imparting learning and education, right of assimilation of ideas and thought and right of assembly and right of corporate life of students and teachers. This has been done without proper classification, he contended.

Syed Ishtiaq Ahmed said that evidently it appears the classification in the impugned Ordinance is good but "we are to test the classification on the touch stone of the "public order legislation". He said that there cannot be intelligible and reasonable classification to describe the students as a whole as a class in order to legislate to maintain the law and order situation. In other words, it will tantamount to put the students into a class

of 'dacoits and bad elements' to bring the legislation within the definition of the "public order legislation". This sort of legislation must identify bandits, goondas, previous convicts as a class to curtail their fundamental rights to maintain public order.

But the students can not be branded as such. He further pointed out that in the impugned Ordinance there is no procedural safeguard; there is no procedural review within the legislation to correct the order purported to have been passed under the legislation. There is a power of revocation of the order in the legislation but it is not the procedural remedy, the counsel pointed out. He further said that the procedural remedies are provided even in Goonda Acts.

The counsel further pointed out that in a legislation when there is curtailment of fundamental rights the law must be precise, but in the impugned Ordinance a wide power has been given to the executive. He cited decisions from American and Indian jurisdictions to show precision of legislation.

Earlier, Mr. Rafiqul Haq, Attorney General, filed a supplementary affidavit sworn by Mr. Siddique Rahman, Deputy Controller of Bangladesh Government Press (respondent-4). He has stated in his affidavit that he had checked the records and had found that in case of Ordinance, order, SRO etc., the date on which it was promulgated and/or made is usually put on the Gazette irrespective of dates of sending of the same. He has given a list of 18 such Ordinances regulations and proclamations published in the official Gazette with the dates when they were promulgated or made as the case might be although received by the Government press at later date.

The matter will come up for hearing today (Tuesday).