

Around the Courts

DU closure affected students' fundamental rights: lawyers

Supreme Court Correspondent

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

Syed Ishtiaq Ahmed, senior counsel developed his argument on the constitutionality of the promulgation of Educational Institutions (Law and Order) Ordinance (Ordinance 13 of 1980).

The impugned order has kept closed 1047 educational institutions affecting 4 lakh 85 thousand students.

The counsel submitted that the Ordinance has conferred sweeping powers for closing educational institutions in an arbitrary and discriminatory manner inasmuch as the students, teachers and persons concerned with educational institutions have been discriminated in violation of Article 27 (equality before law) of the Constitutions of the Republic. He contended, there is no reasonable classification.

He was also critical of the Ordinance on the ground of it being violative of the fundamental rights guaranteed to the citizens under Art 37 (freedom of assembly) and Art 39 (freedom of thought and conscience of speech).

Syed Ishtiaq Ahmed further said that the Ordinance is unprecedented in the Sub-continent; there exists no such law in the sub-continent. He referred the recital portion of the Ordinance and pointed out that in case of any law and order situation, the government should take necessary measure under the existing law to bring normalcy in society. But closure of the educational institutions affecting the fundamental rights of the students by legislation of the Ordinance is tantamount to putting the horse before the cart, he said.

Earlier Dr. Kamal Hossain explained the meaning of the word 'promulgation' to explain what Art. 93 of the Constitution meant with regard to promulgation of the Ordinance.

Detailed submissions were on what constitutes "promulgation". It was submitted that "promulgation" is a word used to express the act of state by which the existence of new laws is brought to the knowledge of the nation. In most countries laws are promulgated by publication in the official gazette of the state. The Oxford Dictionary, several law Lexicons, Balentines law dictionary, and several decisions were quoted. Dr. Kamal Hossain dwelt at length on the implication of Sections 5 and 30 of the General Clauses Act and the English practice relating to Acts of Parliament and Royal promulgations. Article 93 of the Constitution of Bangladesh and its implication on the impugned Ordinance was discussed at length. It was further submitted that it would be against the principles of natural justice to permit the subject of a state to be punished or penalised by laws of which they had no knowledge and of which they could not ever with the exercise of reasonable diligence, have acquired any knowledge. Natural justice required that before a law can become operative it must be promulgated or published.

He said that it must be broadcast in some recognisable way so that all men may know what it is or at the very least there must be some special rule

or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. He cited several decisions including the Opium case reported is A.I.R. 1951 (SC) 467.

Dr. Kamal Hossain at the fag end of the argument put an application to come up in the list on Sunday for hearing. He has prayed for direction upon the Secretary Ministry of Law and the Secretary Ministry of Education and/or the Ministers concerned and/or the President, if he so pleased in the interest of justice to file a clear affidavit stating when the impugned ordinance and the order were in fact signed.

Dr. Kamal Hossain and Syed Ishtiaque Ahmed were assisted by Mr. Mahmudul Islam, Mr. Amirul Islam, Mr. Shahabuddin Ahmed, Mr. Shamim Hasnein and others while Mr. Rafiqul Huq Attorney General with Mr. Abdul Wadud Bhuiyan, Additional Attorney General, and Mr. A.F. Hassan Arif, Deputy Attorney General appeared for the respondents.

The matter will come up for further hearing on Sunday.

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