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## DU closure order not constitutional: lawyers

Supreme Court Correspondent

The Rule Nisi, issued upon the Secretaries of the Ministries of Education, Law & Justice, Mr. Abdullah Haroon Pasha, Joint Secretary of Ministry of Education, Mr. Md. Siddiqur Raham, Deputy Controller of Bangladesh Government Press and Khandoker Mahfuzal Karim Deputy Controller of Bangladesh Forms of Publications calling upon them to show cause why the closure of the University as well as the impugned order No. S R O No. 357/AIN/90 dated 13.10.1990 (Annex 'C') should not be declared to have made without lawful authority, came up for hearing on Tuesday (November 6) before a Division Bench consisting of Mr. Justice Md. Abdul Jalil and Mr. Justice Qazi Shafiuddin of the High Court Division of the Supreme Court.

The court room was full of the members of the public and lawyers.

The impugned order dated 13.10.90 is purported to be an order for closure of all educational institutions in Dhaka till 12.11.1990 pursuant to the Ordinance No. 13. of 1990 i.e. The Educational Institutions (Law and Order) Ordinance.

The order of closure of educational institutions has been questioned on various grounds, viz: (i) The Ordinance was not made and promulgated on 13.10.90 by the President by virtue of his authority under Art. 93 of the Constitution of the Republic nor (ii) was it published in the official gazette on 13.10.90; the Ordinance was "made and promulgated" on 15.10.90 giving "ante date" of making the Ordinance and giving "ante date" publication of the Ordinance in the official gazette.

Dr. Kamal Hossain and Syed Ishtiaq Ahmed learned counsels argued at length in support of the above contention. Mr. Mahmudul Islam, Mr. Amirul Islam, Mr. Aminul

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Huq. Mr. Julmat Ali Khan, Mr. Rafiqul Islam Miah, Mr. Saifuddin Ahmed, Mr. Shamiam Hasnain and Mr. Khalilur Rahman assisted the counsels.

By referring the contents of the affidavit filed by Mr. Md. Siddiqur Rahman and Khandoker Mahfuzal Karim (respondents-4 and 5), the counsels pointed out that they had alleged that the Ordinance and impugned order were promulgated and made on 13th October 1990, and that "the Ordinance was sent for printing by the Ministry of Law & Justice vide Memo No. 252 P. dated 13.10.90 in the Extraordinary Gazette dated 13.10.90 with No. 2062 pub. and it was received by the office of the respondent No. 4 on 15th October, 1990 and was printed on that day, and in the same way the impugned order was sent for publication.

In the affidavit it was further contended that in case of any ordinance, order, S R C O etc. the date on which it is promulgated and or made is usually put on the gazette irrespective of printing of the Memo and this procedure is followed for time eternal, and effectiveness of the ordinance or S R O does not depend on its publication in the official gazette.

Dr. Kamal Hossain, on the facts he placed argued that there existed no Ordinance and no order of closure under the Ordinance and the Ordinance and the impugned order were created in fact on 15.10.90 giving the back dates. On this premise the learned counsel contended that Ordinance was not a valid piece of legislation under Art. 93 (3) of the Constitution and there cannot be any valid order passed on 13.10.90 in absence of any Ordinance.

He emphasised that publication in the official gazette was made on 15.10.90 (vide affidavit of the respondents 4-5) giving the back dates). He also pointed out that the announcement for closure of the institutions on 13.10.90 at 11.30 p m on T V did not refer the Ordinance at all.

Syed Ishtiaq Ahmed in support of the contention added that because of the material change in the Ordinance with regard to its "publication" the Ordinance would be a void piece of legislation on the analogy of document being void in case of change in the material portion.

Argument was also advanced as to when 'Act of Parliament' and 'Ordinance' would come into operation. It was pointed out with reference to Section 5 (1) (b) of the General Act that in case of the Act of parliament it would come into operation, on the day on which the assent was first published in the official gazette, but what about the ordinance. Art 93 of the Constitution gives the President ordinance making power to make and promulgate such Ordinances as the circumstances appear to him to require, and any Ordinance so made shall, as from its promulgation have the like force, of law as an Act of Parliament. The question remains what is the meaning of "promulgation".

This correspondent could not gather whether Section 30 of the General Clauses Act was referred to in order to explain the intent and purpose of Section 5 of the General Clauses Act vis-a-vis the Ordinance for its coming into operation as a law.

The matter will be taken up on November 8 for further hearing.