

অর্থ ... 07 NOV 1990

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Huq, Mr. Julmat Ali Khan, Mr. Rafi-
qual Islam Miah, Mr. Saifuddin
Ahmed, Mr. Shamiam Hasnain and
Mr. Khalilur Rahman assisted the
counsel.

By referring the contents of the
affidavit filed by Mr. Md. Siddiqur
Rahman and Khandoker Mahfuzal
Karim (respondents-4 and 5), the
counsel pointed out that they had
alleged that the Ordinance and im-
pugned 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 con-
tended 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 eter-
nal, and effectiveness of the ordinance
or S R O does not depend on its
publication 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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Supreme Court Correspondent

The Rule Nisi, issued upon the
Secretaries of the Ministries of Educa-
tion, Law & Justice, Mr. Abdullah
Haroon Pasha, Joint Secretary of
Ministry of Education, Mr. Md. Sid-
diquar 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 Shafiuuddin 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 Dha-
ka 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 Ordin-
ance was not made and promul-
gated" 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
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Islam, Mr. Amirul Islam, Mr. Aminul

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He emphasised that publication in
the official gazette was made on
15.10.90 (vide affidavit of the respon-
dents 4-5) giving the back dates. He
also pointed out that the announce-
ment 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 docu-
ment being void in case of change in
the material portion.

Argument was also advanced as to
when 'Act of Parliament' and 'Ordin-
ance' 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 re-
quire, 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 "promulga-
tion".

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.