

Hearing on Writ against Disclosure

'Rule infringes fundamental rights'

Supreme Court Correspondent

The Rule issued in Writ petition challenging the impugned order of the Government closing the University of Dhaka together with all other educational institutions in Dhaka till 12.11.90 came up for further hearing on Wednesday (November 14) 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.

The Court heard the learned counsels of both the sides on the question whether the Rule issued had become infructuous on the expiry of the period for closure.

Dr. Kamal Hossain and Syed Ishaq Ahmed, learned counsels of the petitioners having been aggrieved against the impugned order brought the matter before the Constitutional Court without delay and the Court is thus in session with the matter. They said that in a pending matter if there is delay in disposing the matter due to 'procedural indulgence' and meanwhile the impugned order is expired, the substantive right to vindicating the grievance for the fundamental rights guaranteed under the Constitution cannot be denied to the petitioners unless the judicial power is abdicated. They elaborated their arguments by pointing out that during the period of closure of the University and educational institutions, bundle of fundamental rights of the petitioners and others guaranteed under the Constitution were infringed by the impugned order passed under the impugned Ordinance. The damage was complete. They pointed out that the Ordinance by nature is of a temporary nature and also the order passed thereunder. If any mischief is done for a shorter period and the remedy is not achieved within such period, the aggrieved citizens shall virtually have no constitutional guarantee. This is a device, they contended, which cannot be accepted. They said that bundle of constitutional rights of the petitioners had been infringed within the period (13 October—12 November). They further said that this is also a 'public interest litigation,' and it also appears that the students and teachers of Dhaka University resumed classes before the expiry of the impugned order, they are therefore under threat of the actions under the impugned Ordinance. They honestly believed that the impugned order and the Ordinance were passed without lawful authority and of no legal effect and if no authoritative decision is given in this case they will suffer stigma as violators of law. This is "a very heavy cloud, this is not at all simply an academic issue". In addition to this the autonomy of the university is also permanently effected. This is continuing. They cited many decisions from American, Indian and Pakistani jurisdiction in support of their contention.

Mr. Rafiqul Huq, Attorney General, said that while deciding whether

the Rule had become infructuous the court should take into consideration the prevalent situation in the country and the circumstances under which the Ordinance and the orders were promulgated. He further pointed out that after the expiry of the impugned order the issue involved may be decided if "it is absolutely necessary". He asserted that there is no threat under the Ordinance to anybody; the government has not taken any action against anybody; no chargesheet and no notice to show cause has been issued. There is nothing on record that the Government is contemplating to prosecute the persons responsible for violation of the provision of the Ordinance. There should not be any anxiety. There cannot be any question of stigma or any threat. In case of any such threat the aggrieved person would be entitled to seek relief, he contended.

The Attorney General further said that constitutionality of the Ordinance can be decided viz-viz the impugned order passed thereunder and if the impugned order has lost its effects, the vires of the impugned Ordinance cannot be looked into. It should be kept for future exercise in proper cases. It is the province of the writers and jurists to criticise the vires of the law in treatise, but the court cannot indulge in such exercises, he said.

The Court is expected to pass orders on this point today (Thursday). The Court will also dispose of other petitions filed by the petitioners.

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Mr. Rafiqul Huq, Attorney General, said that while deciding whether