

LEX/BDAD/0065/1992

Equivalent/Neutral Citation: 1992 12 BLD (AD) 149, 44 DLR (1992) 109

**IN THE SUPREME COURT OF BANGLADESH
(APPELLATE DIVISION)**

Civil Petition For Leave To Appeal No. 49 of 1991

Decided On: 02.03.1992

Dr. Ahmed Hossain **Vs.** Bangladesh and others

Hon'ble Judges/Coram:

M.H. Rahman, A.T.M. Afzal, Mustafa Kamal and Latifur Rahman, JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Dr. Ahmed Hossain, Senior Advocate, instructed by Md. Nowab Ali, Advocate-On-Record

For Respondents/Defendant: A.W. Bhuiyan, Additional Attorney-General, B. Hossain, Deputy Attorney-General and Sharifuddin Chaklader, Assistant Attorney General with him, instructed by Mvi. Md. Wahidullah, Advocate-on-Record

JUDGMENT

M.H. Rahman, J.

1. The petitioner, a Senior Advocate of this Court, unsuccessfully challenged the vires of the Constitution (Tenth Amendment) Act, 1990 (Act No. 38 of 1990) in Writ Petition No. 2306 of 1990, before the High Court Division. In the Constitution of the People's Republic of Bangladesh, in Article 65, for clause (3) the following was substituted by the impugned amendment:

"(3) Until the dissolution of Parliament occurring next after the expiration of the period of ten years beginning from the date of the first meeting of the Parliament next after the Parliament in existence at the time of commencement of the Constitution (Tenth Amendment) Act, 1990, there shall be reserved thirty seats exclusively for women members, who shall be ejected according to law by the members aforesaid.

Provided that nothing in this clause shall prevent a woman from being elected to any of the seats provided for in clause (2)."

In the original Constitution, passed by the Constituent Assembly,- there was a similar provision for reservation of 15 seats for women for ten years in addition to 300 seats for members of Parliament. By second Proclamation Order No. IV of 1978, the number of seats was increased to 30 seats and the period was extended to fifteen years from the date of the commencement of the Constitution. That period expired on 16 December, 1987. By the impugned Act, the period for reservation of thirty seats for women members was further extended. The petitioner contends that after the period for reservation of thirty seats expired on 16th December, 1987, no extension could be made. We do not find any substance in this contention. Clause (3) of Article 65 was never deleted. It remained in the Constitution. The substitution of the earlier clause (3) by the new one cannot be challenged as ultravires.

2. The petitioner next contends that the impugned Act is violative of the provisions of Articles 121 and 122(1) of the Constitution.

3. The Constitution on the date of its commencement provided for two different kinds of elections. Three hindered members of the Parliament are to be elected in accordance with law from single territorial constituency by direct election. Members for seats reserved exclusively for women are to be elected by the members of the Parliament, according to law. The Representation of the People (Seats for Women Members) Order 1973 (P.O.No. 17 of 1973) provides for that law.

4. We find no conflict between the impugned amendment and Articles 121 and 122(1) of the Constitution. The petitioner next contends that the impugned amendment, by providing for indirect election for the seats reserved exclusively for women, has destroyed the principle of democracy as expressed in the Preamble, in clause (1) of Article 7 and Articles 8 and 11 of the Constitution, A system of indirect election cannot be called undemocratic. It is provided in the Constitution itself. The amendment is not also violative of Article 28. Clause (4) in Article 28 provides that nothing in that article shall prevent the State, which expression includes Parliament, from making special provision in favour of women. We find no merit in this petition and, accordingly, it is dismissed.

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