

HC rejects 1988 writ petition

HC rejects 1988 writ petition challenging state religion

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THE High Court on Monday rejected a writ petition filed 28 year ago challenging the legality of Article 2A of the constitution that declared Islam as the state religion.

The bench of Justice Naima Haider, Justice Quazi Reza-Ul-Haque and Justice Md Ashraful Kamal rejected the petition on the ground that the petitioner, Swairachar O Sampradaiyikata Pratirodh Committee, had no legal right to file the petition.

Fifteen eminent citizens - former chief justice Kemal

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Uddin Hossain, former Supreme Court judges Justice Devesh Chandra Bhattacharjee and Justice KM Sobhan, lawyer Syed Istiaq Ahmed, academics Khan Sarwar Murshid, Kabir Chowdhury, Mosharaf Hossain, Serajul Islam Chowdhury and Anisuzzaman, Liberation War sector commander Chitta Ranjan Dutta, poet Begum Sufia Kamal, writers Kalim Sharafi, Badruddin Umar, Borhan Uddin Khan Jahangir and journalist Faiz Ahmed - filed the petition on behalf of Swairachar O Sampradaiyikata Pratirodh Committee, a platform formed to resist autocracy and communalism, in 1988 after the passage of the eighth amendment to the constitution.

Only five of the petitioners - Serajul Islam Chowdhury, Anisuzzaman, Chitta Ranjan Dutta, Badruddin Umar and Borhan Uddin Khan Jahangir - are now alive.

'Our finding is that the petitioner [platform] does not have the locus standi and that is why the petition is summarily rejected,' said Justice Quazi Reza-Ul-Haque, one member of the three-judge bench that pronounced the verdict.

The court heard the petition for two minutes before the presiding judge, Naima Haider, pronounced the three-word verdict: 'Rule is discharged.'

During the hearing, Justice Quazi Reza-Ul-Hoque told

petitioner's counsel Subrata Chowdhury that now there was no existence of the petitioner, Swairachar O Sampradaiyikata Pratirodh Committee.

Subrata replied that 15 individuals filed the petition.

Justice Quazi Reza-Ul-Hoque said that the 15 individuals filed the petition representing the committee, not individually.

The committee has no locus standi to file the petition, said the judge.

The court did not allow Subrata to make argument on locus standi.

'I am very disappointed as the court rejected the petition without hearing me,' Subrata said emerging from the courtroom.

He said he would think about filing an appeal to the Appellate Division after receiving the detailed verdict.

Before the hearing, additional attorney general Murad Reza sought time for making argument for the government.

Senior lawyers TH Khan and ABM Nurul Islam, who appeared on behalf of different professionals groups who had applied for being a party to the case, also sought time to oppose the writ petition.

The court asked them to wait until it heard Subrata.

Some activists of Hefazat-e-Islam Bangladesh, who were waiting outside the courtroom, rejoiced at the verdict.

Hefazat was demonstrating across the country while the Jamaat-e-Islami had called a day-long general strike for Monday pretesting at, what they called, a conspiracy to repeal constitutional declaration of Islam as the state-religion.

Earlier, a representative of the Dhaka city Hefazat submitted a memorandum to the chief justice through the Supreme Court registrar general.

Following instructions from the chief justice, the larger High Court bench took up the writ petition for hearing on February 29, 2016.

The court deferred the hearing and asked petitioner's lawyer to explain on March 28 whether Sampradaiyikata Pratirodh Committee had the legal right to file the petition.

The original ruling was issued on June 8, 2011 asking the government to explain the legality of the insertion of Article 2A into the constitution by the eighth amendment in 1988.

The rule was issued 23 years after the writ petition was filed by the 15 eminent citizens.

In a supplementary ruling issued on December 1, 2011, another bench asked the government to explain the legality of the retention of Article 2A in the constitution under the 15th amendment to the constitution made on July 8, 2011.

The supplementary ruling came following a supplement-

tary petition that stated that the parliament passed the 15th amendment to the constitution reinstating Islam as the state religion on June 30, 2011 while the question of legality of state religion was pending with the High Court.

The petition argued that the Article 2A contradicted the basic structure and essential feature of the constitution embodied in its preamble, by declaring a particular religion as the state religion.

It said that the article clashed with the fundamental state principle of secularism and freedom of religion guaranteed by the constitution.

The article was incorporated in the constitution in gross violation of its basic spirit by the regime of deposed military despot HM Ershad through the eighth amendment on June 9, 1988, contends the petition.

It said that the retention of Islam as state religion created serious repercussion and unrest amongst the people at large and progressive and pro-liberation forces in particular, and religious minorities.

The retention of Islam as state religion was also repugnant to the Supreme Court judgements declaring unconstitutional the 5th, 7th, 8th and 13th amendment to the constitution.

Except the 13th amendment, the three other amendments were made during the martial law regimes, said the petition.