



## Star LAW report

## LAW week



## Gram Sarkar bill placed in JS

The government introduced a bill in parliament relating to establishment of 'Gram Sarkar' in each ward of the unions in order to ensure the participation of the roots level people in development plan and activities. LGRD minister Abdul Mannan Bhuiyan has placed the Gram Sarkar bill in the parliament. Placing the bill he said that the aim of the bill is to include peoples from various segment of society in the country's overall development activities. The bill is designed to set up an organisation for development at the grass roots level through people's participation. The proposed organisation, to be set up in every ward, would not be an administrative unit as defined in Section 152(1) of the Constitution, rather it would be a supporting unit of the Union Parishad. The representatives of the organisation would be selected. The bill has its conceptual origin in the 'village government' introduced by late President Ziaur Rahman in 1980 and it proposed to repeal the Village Council Act 1997, which is yet to take effect. According to the bill a Gram Sarkar organisation will have 15 representatives including the head of the organisation and an advisor. The tenure of the organisation will be five years. The proposed Gram Sarkar would undertake development projects like construction of roads and culverts on a priority basis and review their progress and financial aspects from time to time. It would also report to the Union Parishad about law and order, literacy movement, school enrolment, family planning activities and collect preliminary information on birth, death, marriage and divorce. It would also take necessary measures to stop repression on women, theft, robbery and other criminal activities and help the civil administration to settle local disputes through negotiations. Chairman of the Upazila Parishad and Union Parishad would be empowered to oversee the activities of the Gram Sarkar, while the district administration will have the authority to dissolve it for a valid reason. -Daily Star, 17 February.

## 203 Bangladeshi killed in the border

At least 203 Bangladeshi citizen were killed, 298 were injured, 503 were arrested, 168 were abducted, and 35 were missing and 22 incidence of hijacking/robbery took place in the Bangladesh-India border. Indian Border Security Force (BSF) and the miscreants of India are allegedly committed these crimes. These statistics were revealed by a survey report of Odhikar, a human rights organisation, compiled from the various reports published in newspapers. According to the report, only in the month of January of the current year (2003) 4 Bangladeshi citizens were killed and 77 were arrested by the BSF and Indian miscreants on the Bangladesh-India border. Out of 77 arrestees, 32 were children and 27 were women. Besides, during this period 1 Bangladeshi woman was raped and 5 persons are missing which includes 1 child. Similarly, in the last year (2002) 105 Bangladeshi citizens were killed, 54 were injured, 366 were arrested, 118 were abducted, and 30 were missing which includes 8 children. -Law Desk

## Army re-deployed in six divisions

Army has been re-deployed on Sunday, 16 February in six divisions to join the law enforcing agencies in curbing crime. A Company of 150 soldiers has been deployed in each division to patrol crime prone areas and nab criminals. But the troops have not been given the power to take the arrestee into their custody for interrogation. They will hand the criminals to the police. A police team will always accompany the army during the anticrime drive. It may be mentioned that the army led joint force launched a crackdown on criminals on October 17 styled 'Operation Clean Heart'. The government withdrew troop on January 9 after indemnifying the joint forces for all their acts during the drive. During the 87-day operation crimes went down but about 44 people allegedly died in army custody during this period. -Daily Star, 18 February.

## Law on tobacco advertisement soon

The government is going to enforce law against tobacco business and its publicity. The government would soon enforce law regarding tobacco advertisement rigorously. Communications Minister Barrister Najmul Huda said this at a seminar titled "Loss of using drugs: World Scenario" jointly organised by Manas and East West University. The minister said that the government is aware of the sensitivity of tobacco business and its advertisement. Dr. Arup Ratan Chowdhury, who presented the keynote paper, said that the target of the tobacco traders is the youth of the developing countries. Presenting research findings he revealed that the majority of drug addicts of the country are smokers. -The Independent, 05 February.

## CPC amendment bill is on the table

Law Minister Maudud Ahmed tabled a bill seeking amendment to the Code of Civil Procedure to introduce a provision for arbitration in the legal system. The objective of the bill is the introduction of arbitration system so that cases could be quickly disposed of, the number of huge stockpile cases would be reduced, fraternity among the disputing parties would be developed and above all the social solidarity would be strengthened, he said while tabled the bill. -Financial Express, 07 February.

## Decision on separation of judiciary

The government has taken decision to separate the Judiciary from the Executive. Law and Parliamentary Affairs Minister Mr. Maudud Ahmed said this in the Jatiya Sangsad. Earlier the Appellate Division of the Supreme Court in a landmark verdict issued 12 point directives upon the government to separate the judiciary from the executive organ of the government. The government on several times sought before the Appellate Division extension of the period to implement the 12 point directions. In compliance with the courts order government submitted some draft bills before the court. On 27 January 2003 the Appellate Division sent back the draft bills and asked the government to submit the bills within three months after the modifications as directed by the Appellate Division of Supreme Court. -Law Desk

## Protecting interest of the migrants

Speakers at a discussion on Bangladesh's inclusion in INS: Meeting the Challenges said that civil society groups will have to take initiative to protect the interest of the Bangladeshi migrants who are now scrutiny based on their immigration status according to the NSEER of the US government. The seminar was organised by Refugee and Migratory Movement Research Unit (RMMRU). Speakers said that US was climbing sharply as one of the main source of remittance and those who send money home were being most affected. They also said that there were much criticism of the move and the objective was security threat driven and Bangladesh had been lumped together with countries that had a long record in militant Islamic activities. Participants pointed out that it is necessary to prepare an accurate situation analysis as to how much the INS move affected Bangladesh and its trade sector. The meeting underscored the need for gathering more information how the US decision affected different categories of Bangladeshi migrants and demanded that reciprocity be established in issuance of business visa between the countries. Law Desk

## Travel Tax bill introduced in the parliament

The government has introduced the Travel Tax Bill 2003 in the parliament aimed to bring foreign visitors under travel tax-net. The bill proposes levy upto Tk 10,000 on any passenger travelling to any country from Bangladesh by land, air or water routes. The government will determine the rate to be based on rule in line with the proposed law. The bill kept a provision for exemption to any person or section people subject to government notification. It also excluded children, cancer patients, blind and disabled people, airline crew, foreign diplomats and their family, pilgrims heading towards Saudi Arabia, transit passengers staying not more than 72 hours and Bangladeshi national serving an airline, who visits abroad without fare or in reduced fare. -Daily Star, 18 February.

## Corresponding Law Desk

Please send your mails, queries, and opinions to: post - Law Desk, The Daily Star, 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, 8124966; fax 8125155, 8126154; email dslawdesk@yahoo.co.uk; interactive email lawdesk20@hotmail.com

# No legal proceedings shall be maintain at the time of winding up of a company

High Court Division (Civil Original Jurisdiction)  
The Supreme Court of Bangladesh  
Matter No. 59 of 2001  
Mr Amir Hossain  
V  
Homeland Footwear Ltd. and others  
Before Justice ABM Khairul Haque.  
Date of Judgement: July 21, 2002.  
Result: Petition allowed.

ment to the petitioner although partial payment was made on various dates showing a total payment of Tk. 60,000/. It is further stated on behalf of the respondent-company that apart from the petition under the provisions of the Companies Act praying for winding up, the petitioner also filed a case under section 138 of the Negotiable Instrument Act, before the Chief Metropolitan Magistrate, Dhaka. It is also stated that since the petitioner had already taken legal action for recovery of the alleged debt in another forum, this petition under the Companies Act, praying for winding up is not maintainable.

### Deliberation:

I have heard the learned Advocates of both the sides and also on behalf of the creditors. It is admitted and found on records that the petitioner allowed a loan of more than Tk 45,00,000.00 in favour of the respondent company. Although by way of separate investment, the company as it appears, failed to keep up with the assurance given in the MOU dated 14.3.1999 and voluntarily executed a further MOU on 2.6.2000. As such, the earlier MOU dated 14.3.1999 was superseded by the terms and conditions of the said MOU dated 2.6.2000. In the said MOU dated 2.6.2000, it was categorically admit-

ted by and between the petitioner and the respondent-company. The cheques dated 15.4.2001, 15.5.2001 and 30.5.2001 were also issued on behalf of the respondent-company but the CR Case was not brought against the company as required under Section 140 of the Negotiable Instrument Act, but only against two individuals under Section 138 of the Negotiable Instrument Act, presumably because they are the directors of the respondent-company. Since no allegation was brought against the respondent-company nor any order was passed against it by the learned Magistrate, the question of double jeopardy does not arise here. As such, there is no legal impediment for the petitioner in filing the instant petition praying for winding up of the respondent-company. Besides, the proceedings of winding up under the Companies Act in a different forum, is altogether different from the proceedings under Chapter XVII of the Negotiable Instrument Act. The procedure, the rights and obligations of the concerned parties and the remedies available are entirely different in a proceeding under the Negotiable Instrument Act than the Companies Act.

By The Negotiable Instruments (Amendment) Act 1994, (Act No. XIX of 1994), Section 138 and 139 in Chapter XVII of the Negotiable Instrument Act, 1881 (XXVI of 1881) were replaced with new provisions contained in Section 138, 139, 140 and 141 of the Act. Section 138 of the said Act was further amended by the Negotiable Instruments (Amendment) Act 2000 (Act No. XVII of 2000). The purpose of these provisions, as amended, is to impose penalties by way of imprisonment and also find on the drawer of the cheque, in case of its dishonour for insufficiency of fund in his account, without impairing the right of the holder of the cheque and to establish his claim through civil court.

But the object of a petition for winding up of a company is to pay its debts out of its realisable assets, provided it answers to any of the circumstances mentioned in Section 241 of the Companies Act. An order of winding up of a company is the discretion of the Court but under Section 250 of the Act, when a winding up order has been made, no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the Court.

As such the submissions made on behalf of the respondents that since the petitioner had earlier filed a case under Section 138 of the Negotiable Instrument Act, he is debarred from proceeding with the winding up petition, has got no substance. If the proceeding under Section 241 of the Companies Act satisfies the requirements of law, it shall certainly find its mark in accordance with law and shall not be disallowed or deviated because of other equally efficacious remedies available to the petitioner in another forum.

In respect of the submissions made by Mr Khaled H Chowdhury, Advocate, that the unsecured creditors have got no grievance against the company and they oppose the petition for winding up, it may be pointed out that although they filed the balance-sheets for the year 1999 but in spite of giving repeated opportunities and sufficient time since the beginning of the hearing of the petition to produce its balance-sheets for the years 2000 and 2001 or any other evidence showing financial viability of the company in the face of the allegations of the petitioner based on admitted liabilities, the company could not show before this Court their financial and/or liquidity position till December, 2001. Rather from the papers as submitted before this Court it appears that the company is heavily indebted to the petitioner but the company could not highlight how it would eventually be able to pay off its debt to its different creditors including the petitioner.

### Decision:

Under such circumstances, it is apparent that the company not only neglected to pay its debt but at the moment it is unable to pay its admitted debt of Tk 60.00 lakh to the petitioner. Since the papers on record do not show any effort on behalf of the respondent company to pay off its debt to the petitioner, it should be wound up so that the interest of the other creditors may not be prejudiced any further.

In the result, this petition is allowed.

Dr. M. Zahir, Senior Advocate, with Mr. Shah Muhammad Ejaz Rahman, Advocates for the Petitioner. Mr. Imtiaz Mahmud with Ms. Sk. Jeneifa K. Jabbar and Mr. Mustafizur Rahman Khan, Advocates for Respondent no. 1 and Mr. Khaled H. Chowdhury, Advocate for Respondent nos. 5-7



ted by both the parties that because of business reasons the petitioner allowed the respondent-company a loan of Tk 45,07,386.00 during the period from 16.3.1999 to 31.12.1999. It was also stipulated in the said MOU that the petitioner is entitled to 15% profit for the period from 16th March 1999 to 15th July 2000. It was further stipulated in clause IV of the said MOU that the company would pay the entire amount of Tk 54,78,938.00 in favour of the petitioner, within 15th July 2000. Today the original of the said MOU dated 2.6.2000 is filed in Court by Dr M Zahir for perusal.

Mr Imtiaz Mahmud, the learned Advocate on behalf of the respondent-company could not deny the authenticity of the said MOU dated 2.6.2000. It appears that this MOU dated 2.6.2000, stipulates a definite debt of the company. Besides, in acknowledgement of the said debt and in its anxiety to repay 3 (three) cheques were admittedly issued on behalf of the company on different dates. Cheque dated 15th April 2001 for an amount of Tk 30,00,000.00, cheque dated 15.5.2001 for an amount of Tk 15,00,000.00 and cheque dated 30.5.2001 of an amount of Tk 15,00,000.00, in total for Tk 60,00,000.00. All these cheques were returned unpaid for insufficiency of funds in the bank account of the respondent-company. These facts also highlight the inability of the company to pay its debt. Besides, even in response to the statutory notice dated 4th June, 2001, issued to the company demanding payment of Tk 65,35,709.70, the company did not take any effective step to redeem its debt owed to the petitioner. It is true that the petitioner filed a separate case under Section 138 of the Negotiable Instrument Act. But on examination of the Order-sheet of CR Case No. 882 of 2001 in the Court of Metropolitan Magistrate, Dhaka, it appears that the said case was filed against M A Malek and Ali Akbar, presumably, the directors of the respondent-company and by an order dated 1.7.2001, the Metropolitan Magistrate took cognisance of the case against them. In due course, by its judgement and order dated 17.7.2001, found the allegations brought under Section 138 of the Negotiable Instrument Act proved against those two persons only but no order was passed against the respondent-company.

It appears on perusal of the records that the MOU dated 2nd June 2000

### Background:

**ABM Khairul Haque, J:** This is an application under Section 241 (v) of the Companies Act, 1994, filed by one Amir Hossain praying for winding up of Homeland Footwear Ltd. ('the company'). The case of the petitioner in short, is that the respondent-company took Tk 45,07,386.00 from the petitioner during the period from 11<sup>th</sup> March 1999 to 31<sup>st</sup> December 1999. In acknowledgement of the receipt of the said amount, the company issued a statement of accounts (Annexure-A) on 8<sup>th</sup> May, 2000, in favour of the petitioner, which shows that the respondent-company owes Tk. 54,78,938.00 to the petitioner. The company also executed a memorandum of understanding (M.O.U) on 2<sup>nd</sup> June 2000 (Annexure-B), with the petitioner acknowledging receipt of Tk. 45,07,386/- and assuring him to repay an accumulated sum of Tk 54,78,938.00 on or before 15<sup>th</sup> July 2000. But the company failed to repay the said amount within the stipulated time, however, on 8<sup>th</sup> May 2001, the company repaid Tk. 5,50,000.00. Thereafter, the respondent-company issued three cheques, dated 15.4.2001 for Tk. 30.00 lakh, cheque dated 15.5.2001 for Tk 15.00 lakh and cheque dated 30.5.2001 for Tk. 15.00 lakh, in favour of the petitioner in its account maintained in the National Bank Ltd., Foreign Exchange Branch, Dhaka, for a total amount of Tk. 60,00,000.00. But when the petitioner deposited the three cheques on the stipulated dates, all three cheques were returned unpaid to the petitioner for insufficiency of funds in the account of the respondent-company. The petitioner asked the respondent-company on several occasions to repay his money but it did not respond. The petitioner firstly, served a notice on 2<sup>nd</sup> June 2001, under Section 138 of the Negotiable Instrument Act, 1881, demanding repayment within 15 (fifteen) days. Secondly on 4<sup>th</sup> June 2001, he served a notice through his lawyer under Section 242 of the Companies Act, asking it to repay its debt of Tk. 65,35,709.70 within three weeks. But the company although replied to his said notice through the proforma-respondent no. 2 on 14.6.2001 and 24.3.2001 failed to repay the debt. As a result the petitioner filed the instant application under Section 241 (v) of the Companies Act praying for winding up of the company.

The respondent-company made its appearance through its learned Advocate on 21<sup>st</sup> August 2001 and in the course filed an affidavit-in-opposition on 17<sup>th</sup> October 2001. In the affidavit-in-opposition, it denied all the material allegations made in the petition. It also stated that the petitioner went to the office of the respondent-company in mid May 2001 and forcibly took away the relevant file regarding the transactions between the petitioner and the respondent-company and a GD entry was made to that effect on 21<sup>st</sup> July, 2001 with the Motijheel Police Station. The respondent-company, however, admitted that it had entered into a commercial transaction with the petitioner under the terms of the Memorandum of Understanding (MOU) dated 14.3.1999. Under the said MOU the petitioner and the respondent-company mutually agreed to collaborate enabling the petitioner to import and set up a plant and machinery at the premises owned by the respondent-company. So that the petitioner can manufacture PVC thongs for sandals (hawai chappal) and supply it to the respondent-company for its use as components for the footwear manufactured by the respondent-company. In this respect it was also agreed that the petitioner would make some advance payment to the respondent-company in order to enable it to construct a factory premises and for taking other necessary steps in this regard. Accordingly, the plant and the machinery were acquired at the responsibility of the petitioner under the terms of a lease agreement dated 12.5.1999 but entered into between the United Leasing Company Ltd. and the respondent-company instead of the petitioner because those machinery were set-up in its premises. However, the operational control of the plant and the machinery as well as the beneficial ownership of the leasehold interest remained with the petitioner. It was stated that the MOU dated 2.6.2000 was executed due to the failure of the business arrangements contained in the MOU dated 14.3.1999, to bear the desired results and in consideration of the payments as stated in Clause-IV of the MOU dated 2.6.2000, the possession and control of the beneficial

Ownership of the leasehold interest in the plant and machinery acquired in pursuant to the MOU dated 14.3.1999, were to be handed over to the respondent-company. But on receipt of the said plant and machinery, the respondent-company discovered that these were not operated properly by the petitioner and were therefore damaged and in a state of disrepair. In such premises, the respondent-company refrained from making full pay-

## LAW letter

## Existing tires of local govt. should be strengthened



Since independence, successive governments in Bangladesh experimented with one kind of local government but little success has been achieved in delegating authority to local institutions to formulate and administer even limited sphere of public policies. With independence in 1971 we inherited local government system comprised union, thana and district councils. Soon after Awami League government dissolved these councils and reconstituted the local government bodies as Union Panchayets, thana committees and Zila Parishads. In 1976 a Local Government Act was promulgated which provided for elected local council at all levels, except at the Thana level. It also dissolved the Union Panchayat elected in 1973. In 1982 the army general, Ershad, took control of Bangladesh through military coup and formed a committee to suggest measures for decentralisation of local government. In 1991, Bangladesh Nationalist Party (BNP) won the election and set up a 17-member local government commission. It also dissolved the Upazila Parishad. After the 7th general election held under caretaker government in 1996 Awami League came into power and they also formed a local government commission. The commission suggested a four-tier local government system. The then government also passed Upazila Parishad Act in 2000. But election of Upazila Parishad is yet to hold and it is unlikely to be in near future. Because some influential member of the present government is strongly opposing it contending that there will be conflict of interest between Member of Parliament (MP) and Upazila Chairman in exercise of power. In this realities the present government plans to introduce a new concept in the local government system namely 'Gram Sarkar'. According to

the newspaper reports the government has introduced a bill in the parliament in this connection. The proposed bill suggests that a Gram Sarkar organisation will have 15 representatives including the head of the organisation and an advisor and the tenure of the organisation will be five years. Members except the chairman of this organisation will be selected and activity of this proposed organisation is nearly similar to some of the union council's activity. The obvious question that one can raise is will this 'Gram Sarkar' be supportive to the UP or create more complexity in terms of exercise of power and function? Is the step is aimed to strengthen the local government system or reestablish the system introduced by late President Ziaur Rahman? The local government is considered one of the key institutions for ensuring participatory democracy and good governance. Unfortunately, in our country it is one of the weakest structures of governance. Every government tries to experiment with their own idea without any effort to make it sustainable and effective. As a result, the local government system is becoming handicapped in relation to exercise of power and financial capability. Jurisdiction of powers and fund mobilisation has become so limited that it sometimes cannot even provide the monthly salary of the Village Defense Force. Although we have women representatives in local government system by direct election but their duty is yet to be specified as there is no clear plan of action. Therefore, our local government system has become almost impotent. It is evident that each successive government, coming to power set up a commission dissolving previous elected bodies of local government. But most of the changes brought about were regarding structures of local government. Powers, functions, resource and personnel of different bodies did not receive any major attention. Establishing another tier in the local government system will not serve any purpose if the internal function and activities as well as relationship between the different tier of local government are specified.

**Khokon,**  
127 Kobi Jashimuddin hall, Dhaka university.

## Another Indemnity Ordinance?

The government has employed army throughout the country to combat terrorism and bring the law and order situation under control. Government claimed that army deployment was in line with the existing laws and they will assist the civil administration i.e. Police. Earlier army started their drive on 17 October 2002 and was assisted by members of BDR, NAVY and Police and it left at least 44 person died allegedly in custody. The famous drive Operation Clean Heart ended with the promulgation of Indemnity Ordinance aimed to protect members of the joint force from any form of legal action. The parliament is in the way to endorse the Ordinance. It is surprised to see that army has again been deployed in the divisional headquarters of the country without the power to take arrestees to their custody for interrogation, rather hand them to police. To me this decision is very significant, because it implies that in the previous occasion army tortured the arrestees during

interrogation, which caused the deaths or the so-called heart attacks. So if incidents of death and torture take place during this time in custody of the joint force, can we expect another indemnity ordinance for the army members?

**Nafis,**  
Mirpur, Dhaka

## Why not indemnity for Police!

Government issued the Joint Forces Indemnity Ordinance on 9 January 2003. This is the second ordinance of this kind in our country. Previous one was issued in 1975 to indemnify killers of the then president and his family, who were soldier and officer of army. Present one will indemnify members of joint force led by army members. It is alleged that 44 people died in army custody within a very short time. It is also alleged that the deaths were caused by torture of army. But no body can accuse the army members with the charge of killing as they are indemnified by law. On the contrast, we often see allegation of death, rape, and torture against police personnel. We also see criminal proceeding against them. Whether they are convicted or not is a



different question. We know Police is the main law-enforcing agency of our country. My point is if we can offer indemnity to army for their 87 days law enforcement (?) activities, why don't we provide the same protection to our police forces who are serving (!) us all the time?

**Rana,**  
Dhaka Medical College.