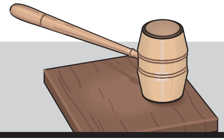

LAW watch

What will the Northern Alliance do in our name now?

ROBERT FISK

It wasn't meant to be like this. The nice, friendly Northern Alliance, our very own foot-soldiers in Afghanistan, is in Kabul. It promised didn't it? not to enter the Afghan capital. It was supposed to capture, at most, Mazar-i-Sharif and perhaps Herat, to demonstrate the weakness of the Taliban, to show the West that its war aims the destruction of the Taliban and Thus of Osama bin Laden's al-Qa'ida movement were inevitable. The corpse of the old man in the centre of Kabul, executed by our heroes in the Alliance, was not supposed to be on television. Was it not the US Secretary of State Colin Powell who assured General Musharraf of Pakistan the Alliance would be kept under control, that the United Nations' envoy, Lakhdar Ibrahimi, would be allowed to construct a truly representative government in Kabul to replace the Taliban? General Musharraf had promised his support to the United States at the risk of his nation and his life in return for American promises that Afghanistan would be governed by a truly representative coalition. Pakistan's air bases, its very support for the "war on terrorism", was contingent on Washington's word that the Northern Alliance would not take over Kabul and impose its own diktat on Afghanistan. The recent pictures from Kabul were almost identical to the videotapes of April 1992 when the pro-Russians and Communists were defeated. We saw the same jubilation by the non-Pushtu population. And within two days, Hekmatyar Gulbeddin began to bomb the city. The division of ethnic groups plunged the Afghan capital into civil war. Yesterday, the Alliance was supposed to wait on the outskirts of the city while the Americans attempted to construct a workable coalition. But for the present, Afghanistan without the Taliban is a country without a government. What on earth is going on? And what, for that matter, has happened to Mr bin Laden? Are we driving him into the mountains always supposing he is not already there or are we pushing him into the tribal areas of the North-West Frontier Province of Pakistan? For without a city, the Taliban themselves will melt back into their birthplace, the madrassa schools along the Pakistan border which created the puritan, obscurantist spirit which has inspired the rulers of Afghanistan these past five years. The Northern Alliance is advancing, meanwhile, with all its baggage of massacres and looting and rape intact. General Rashid Dostum, our hero now that he has recaptured Mazar-i-Sharif, is in the habit of punishing his soldiers by tying them to tank tracks and then driving the tanks around his barracks' square to turn them into mincemeat. You wouldn't have thought this, would you, when you heard the jubilant reports Of General Dostum's victory on Monday night? Nor would you have thought, listening to the reports from Afghanistan yesterday, that the Northern Alliance was responsible for more than 80 percent of the drug exports from the country in the aftermath of the Taliban's prohibition of drug cultivation. Why, I wonder, do we always have this ambiguous, dangerous relationship with our allies?

The Israelis relied upon their Phalangist militia thugs in Lebanon because the Christian Maronites hated the Palestinians. The Nazis approved of their Croatian Ustashi murderers in 1941 because the Ustashi hated the Serbs. Is this, I ask myself, why the Northern Alliance is our friend? Not because it is a loyal ally but because it hates the Taliban? Not because it opposes poverty and destitution and the destruction of Afghanistan under an Islamic regime but because it says it loathes Osama bin Laden? There are brave men in the Alliance, true. Its murdered leader, Ahmed Shah Massoud, was an honourable man. It's not difficult to turn our allies into heroes. But it remains a fact that from 1992 to 1996, the Northern Alliance was a symbol of massacre, systematic rape and pillage. Which is why we and I include the US State Department welcomed the Taliban when they arrived in Kabul. **The Northern Alliance left the city in 1996 with 50,000 dead behind it. Now its members are our foot soldiers. Better than Mr bin Laden, to be sure. But what in God's name are they going to do in our name?**

Robert Fisk is Foreign Correspondent of the Independent, UK.

RIGHTS corner

INVESTIGATION

Following up on Durban: OHCHR Must Step Carefully

HUMAN RIGHTS FEATURES

THE success of the World Conference Against Racism's (WCAR) final Declaration and Programme of Action depends on the commitment to follow-up programmes and concomitant financial resources. A welcome step is the recent establishment, within the Office of the High Commissioner for Human Rights (OHCHR), of an Anti-Discrimination Unit as the lead implementing agency of the Durban Declaration and Programme of Action. Throughout the WCAR process, it was recognised that eliminating racism, racial discrimination, xenophobia and related intolerance will require strong civil society participation in addition to sustained governmental efforts. The creation of the post of a new NGO Liaison in the Anti-Discrimination Unit is, therefore, also an important step in the right direction.

While the establishment of the Anti-Discrimination Unit is laudable, the OHCHR nevertheless should take all necessary measures to ensure that the mistakes of the Durban NGO process are not repeated so that NGOs can effectively and meaningfully participate in the follow-up programmes.

The present NGO Liaison of the WCAR Secretariat and the International Steering Committee (ISC) of the NGOs clearly failed to ensure effective NGO participation and input at the Durban World Conference. This failure was ultimately reflected by the fact that the High Commissioner for Human Rights Ms. Mary Robinson effectively had no choice but to forego recommending the Durban NGO Forum Declaration and Programme of Action to the governments for close attention. At the conference, the High Commissioner spoke candidly in saying, "It's sad for me that for the first time I can't recommend to delegates that they pay close attention to the NGO Declaration.… I cannot recommend it, because I cannot accept some of the language in it, particularly the reference to genocide." Ms. Robinson later repeated her remarks, adding "and I also understand from international NGOs that process was not followed".

Deplorably, the NGO Forum Declaration and Programme of Action was not formally adopted by the NGOs in a plenary and it was made public three days after the closing ceremony of the NGO Forum. The Final Declaration and Programme of Action was marred by amendments made without the approval of the NGO plenary, disowning of the same by some Steering Committee members, and disassociation from the document by international NGOs -- such as Amnesty International, Human Rights Watch, the International Service for Human Rights and Lawyers Committee for Human Rights -- and a coalition of regional NGOs from Central and Eastern Europe, as well as others from Asia and Latin America.

The Secretariat of the WCAR and the present NGO Liaison must take responsibility for the failure of the NGO process. The NGO Steering Committee must also share the blame. However, the NGO Forum failed primarily due to persistent interference by the NGO Liaison on issues ranging from the formation of NGO Steering Committees, the choice of the venues for NGO meetings during the preparatory processes, the splitting of regional NGO networking meetings, and the organising of NGO Forums. During the preparatory process, many NGOs from all over the world had complained to the High Commissioner about interference by the NGO Liaison. According to informed sources, one diplomatic representative also drew the High Commissioner's attention to the controversial role of the NGO Liaison in the African Regional Preparatory Conference in Dakar. Yet, such protests did not lead to corrective measures. The end result was the adoption of a document that could not, "for the first time," be recommended by the High Commissioner to the governmental delegates.

Not surprisingly, NGOs across the world are upset by recent attempts by the International Steering Committee (ISC) of the NGOs to perpetuate its role during the Durban follow-up process. The mandate of the ISC ended with the Durban Conference. If indeed the existing ISC were to be brought back to life by the OHCHR, its continued legitimisation would call into question the commitment of the Office of the High Commissioner to ensure the effective participation of civil society in the struggle against racism, racial discrimination, xenophobia and related intolerance.

Many perceive the unusually swift establishment of the Anti-Discrimination Unit as an attempt to correct the mistakes of the WCAR Secretariat in the Durban process. The challenge, however, lies in the ability of the OHCHR and its Anti-Discrimination Unit to learn from past experience.

An earlier process that the OHCHR can draw lessons from is the Vienna World Conference on Human Rights, which it organised (in its former incarnation as the Centre for Human Rights) in 1993.

> **Throughout the WCAR process, it was recognised that eliminating racism, racial discrimination, xenophobia and related intolerance will require strong civil society participation in addition to sustained governmental efforts. The creation of the post of a new NGO Liaison in the Anti-Discrimination Unit is, therefore, also an important step in the right direction.**

In the Vienna preparatory process, NGOs from the Asia-Pacific region successfully countered the attempt by some authoritarian governments from the Asian region to backslide on the "universality of human rights".

After the Vienna Conference, a few NGOs and NGO networks from the Asia Pacific region contributed to the process of the "Regional Arrangement for the Protection and Promotion of Human Rights" and the monitoring of the establishment and functioning of National Human Rights Institutions two key recommendations of the Vienna Declaration and Programme of Action (VDPA).

Among the thematic groups, despite the setback on the use of the term "peoples" in the VDPA, indigenous peoples made some remarkable contributions to the process leading to the establishment of the Permanent Forum on Indigenous Issues another key recommendation of the VDPA.

The Vienna follow-up process demonstrated the efficacy of contributions by thematic groups, NGOs and regional NGO networks toward the implementation of the VDPA.

At the international level, as a follow up to the Vienna Conference, the Vienna Plus 5 Conference was organised by Human Rights Internet (HRI) in Ottawa in 1998. However, the Declaration and Programme of Action of the Vienna Plus 5 Conference is yet to see the light of day now a number of years after the Conference. If the Secretariat of the WCAR had taken serious note of this failure, the problems that arose in the Durban NGO preparatory process due to the interference of the present NGO Liaison might have been avoided. That the Declaration and Programme of Action of the Third WCAR is yet to emerge on the OHCHR website is not a happy augury of things to come.

The OHCHR might consider some of the following recommendations for ensuring effective NGO participation in the Durban follow-up programmes:

1. No conflict of interest

One of the most troubling activities of the present NGO Liaison of the WCAR concerned the misuse of UN facilities. Information on the NGO participation was not put on the OHCHR website but on the website of the NGO headed by the WCAR Liaison, unfairly promoting that organisation, and at the same time undermining the dissemination of information which is important for NGO participation. Care must be taken to see, therefore, that appointees abide by UN protocol.

2. Facilitation, not interference

Throughout the preparatory process of the WCAR, interference by the NGO Liaison of the WCAR was the norm with regard to the formation of NGO Steering Committees, number and venues of NGO networking meetings, organising of the NGO Forums, treatment of NGO Declaration and contribution of NGOs in the Governmental meetings. The role of the NGO Liaison of the Anti-Discrimination Unit should be one of 'facilitation' rather than 'interference.'

3. Choosing well

If the Vienna follow up is any indication, success lies in identifying effective individual and/or thematic and regional NGO networks based on their ability, expertise, a solid track record of working with grassroots organisations, and the experience to ensure implementation of the Durban Declaration and Programme of Action. The Committee on the Elimination of Racial Discrimination can be useful in identifying the NGOs that have been contributing to the effective examination of periodic reports by the Committee.

4. Reaching down to the grassroots

Communication pertaining to the NGO Forum was conducted on the Internet through an NGO listserv prepared by the WCAR NGO Liaison. Hundreds of NGOs across Asia, Africa, Latin America and the Caribbean and Eastern Europe do not have access to the Internet. The NGOs at the grassroots level must be brought within the information loop.

5. No hidden agendas

In order to ensure that otherwise unheard voices are taken into account and follow-up programmes are not hijacked by a few issues, identifying NGOs who focus on the issues at hand and who do not resort to political brinkmanship as happened in the NGO Forum in Durban will remain a challenging task.

6. No language barriers

Throughout the WCAR preparatory process, Spanish and French speaking NGOs were at a disadvantage. No translation facilities were available. The Anti-Discrimination Unit must make an attempt to provide information in all UN official languages.

Human Rights Features is an independent, objective and analytical attempt to look comprehensively at issues behind the headlines from a human rights perspective.

Star LAW report

Government functionaries have constitutional obligations of equal treatment to all citizens

High Court Division (Civil Appellate Jurisdiction)
The Supreme Court of Bangladesh
First Appeal No. 455 of 1999 with Civil Rule No. 621(F) of 1999; and
First Appeal No. 43 of 2000
M/s. ST International ... ... Appellants
Vs
Executive Engineer, Roads and High Ways, Road Division & others ... ... Respondents
With Government of Bangladesh ... ... Appellants
Vs
Md. Nazmul ... ... Respondent
Before Mr. Justice Gour Gopal Saha and Mr. Justice S K Sinha
Judgment: April 8, 2001
Result: F A No 435/1999 is dismissed and F A No 43/2000 is allowed

JUDGEMENT

Facts of the case

The case of plaintiff M/s S T International, in short, is that it has been a lessee under the Government of Bangladesh for collection of tolls from vehicles plying over the Meghna-Gomati Bridge on the Dhaka-Chitagong High Way. In pursuance of the agreement between the parties dated 20.4.98 the plaintiff took lease of the previously mentioned bridges for a period of one year from 20.4.98 to 19.4.99 at Tk 13,11,12,18.88 as the lease money. The plaintiff has alleged that due to hartal flood and transport strikes it could not enjoy the benefit of the lease, because of which the plaintiff suffered heavy losses. Thereafter the plaintiff prayed for remission of payment of lease money to the Government on the previously mentioned grounds. It has been further alleged that the authority of the Government, in consideration of the sufferings of the plaintiff allowed it to enjoy the benefit of toll collection of the disputed bridges for a period of 50 days up to 9.6.99 after the expiry of the plaintiff's lease on 19.4.99 without making any payment to the Government. Thereafter the plaintiff prayed for a further remissions of revenue and its prayer was under the active consideration of the Hon'ble Minister for Communications but defendant No. 1, in violation of the recommendations of the Ministry of Communications, cancelled the plaintiff's lease by his order dated 20.6.99 and illegally terminated the lease and directed the plaintiff to pay forthwith Tk 1,09,26,014.00 as dues from it and hence the suit.

The trial

The Government of Bangladesh contested the suit by filing written statement denying the material allegations of the plaint and contended inter alia that the plaintiff has no cause of action. It has been further contended that the lease of the plaintiff having duly expired on 19.4.99, the plaintiff has no locus standi to challenge the unlimited authority of the Government to deal with the collection of tolls for the bridges in question in any way it likes. It was further contended that of sheer piety plaintiff allowed to enjoy the privilege of free collection of tolls for 50 days without paying anything to the Government and the said grace period having expired long back, the plaintiff has no right whatsoever for collection of tolls and as such the suit its liable to be dismissed.

At the trial, the plaintiff examined only one witness and the defendants examined one witness in support of their respective cases. The parties also exhibited a series of documents in support of their claims. The learned Subordinate Judge by his impugned judgment dated 23.8.99 decreed the suit in part, allowing 37 days to the plaintiff to enjoy the benefit of free-collection of tolls after the expiry of the lease period on 39.04.99. Being aggrieved by the previously mentioned judgment dated 23.8.99 passed by the learned Subordinate Judge, Munshigonj that the contending parties preferred the two appeals before this Court.

The arguments

Mr H N Nandi, the learned Advocate appearing for the plaintiff appellant in first Appeal No. 455 of 1999 submits that the learned Subordinate Judge was manifestly wrong in not decreeing the suit in full inasmuch as the claim of the plaintiff's virtually admitted by the contesting defendants. The Advocate further submits that regard being had to the admitted fact that the representation of the plaintiff for free enjoyment of the disputed bridges for a further period of 45 days for the purpose of collection of tolls being under the active consideration of the authority concerned, the learned Subordinate Judge was wholly wrong in not decreeing the suit in full.

Mr M A Quayum, the learned Deputy Attorney General appearing for the Government respondent in First Appeal No 455 of 1999 and appellant in First Appeal No 43 of 2000, on the other hand, submits that in view of the admitted fact that the lease of the plaintiff duly expired on 19.4.99 and a grace period of 50 days following thereafter also duly expired on 9.6.99 and no further extension of time was granted to the plaintiff by any authority of the Government, the plaintiff is evidently left with no right and interest whatsoever in the matter of free collection of tolls from the disputed bridges and as such the suit is liable to be dismissed as a whole. The Deputy Attorney General further submits that the plaintiff having no semblance of right, evidently has no locus standi to challenge the authority of the Government for the collection of tolls from the bridges in question in any way it likes and, consequently, the suit must fail for want of any cause of action. The DAG also submits that 50 days grace was given to the plaintiff out of shear humanitarian considerations and that gave the plaintiff no right in any form whatsoever in claiming further concessions for free enjoyment of the concerned bridges for a period of 45 days or for any other period and, consequently, the learned Subordinate Judge was manifestly wrong in decreeing the suit in part on a totally wrong view of law and fact. The DAG further submits that in the face of clear stipulations made in clause, 25 of the lease-agreement dated 20.4.98 Ext. 1, the plaintiff is not entitled to any concession or compensation resulting from disruption of normal traffic due to hartals or political blockades or any other unnatural events and the plaintiff having no legal right to claim concessions after the grace period ending on 9.6.99. The learned Subordinate Judge was manifestly wrong in granting an unwanted bonus of 37 days to the plaintiff against the overwhelming weight of the evidence and as such the suit is liable to be dismissed as a whole.

The determining point

The only point for determination in the two appeals is whether the learned Subordinate Judge was justified in decreeing the suit in part.

Findings

Prosecution Witness (PW) 1 Md Nazmul deposing as the only witness of the plaintiff stated in his evidence that the plaintiff suffered for 62 days due to hartals. He stated that on his representation, the Government allowed the plaintiff 50 days for free collection of tolls ending on 9.6.11. Thereafter the plaintiff prayed for further concessions and the Minister concerned recommended for 28 days and directed the authority concerned not to cancel the plaintiff's lease till its representation was disposed of. He went on to state that defendant No. 1 illegally issued letter dated 20.6.99 terminating the lease and demanding money from the plaintiff, not due to it. In cross-examination, PW 1 clearly stated that the life of the lease expired duly. He admitted that the extended period of lease also expired on 9.6.99. He stated that the plaintiff on 23.6.99 applied to the Government for extension of the lease but it was not recommended by the Minister concerned. This claim of verbal order of the Hon'ble Minister has not been corroborated by any other evidence, either oral or documentary. He stated that the plaintiff is ready to pay the outstanding dues of the government promptly.

Defence Witness (DW) 1 Md Rafiqul Islam deposing for the defendants stated in his evidence that the lease of the plaintiff expired on 19.4.99. Thereafter on humanitarian considerations the plaintiff was allowed to collect tolls for a further period of 50 (fifty) days without any payment to the Government. He stated that the plaintiff is not at all entitled to claim any concession from the Government in terms of clause 25 of the lease agreement. He added that the Government had the right to cancel the lease for failure of the plaintiff to perform its part of the contract by paying the installments by the stipulated dates. He asserted that the plaintiff furnished no statement regarding the traffic movements. In cross-examination he stated that the plaintiff was given revenue holiday for 50 days on purely humanitarian considerations.

In this case, there is no dispute to the fact that the lease of the plaintiff for collection of tolls from the Meghna-Gomati Bridges was from 20.4.98 to 19.4.99 and it duly expired on 19.4.99. It is also an undisputed fact that the lease of the plaintiff has not been renewed for any further period. It is also an admitted fact that on the representations of the plaintiff the Government allowed the plaintiff to enjoy free collection of tolls for a period of 50 days, purely on humanitarian considerations, albeit against the express condition in Clause 25 of the lease agreement dated 20.4.93. This gratuitous relief given to the plaintiff cost the defendant Government about two crores of Taka. On the expiry of the grace period of 50 days on 9.6.99 the plaintiff applied on 23.6.99 to the defendant Government for giving it a revenue holiday for a further period of 45 days without making any payment whatsoever. According to the plaintiff, while its prayer was under the active consideration of the authority of the Government, defendant No. 1 issued the disputed notice dated 20.6.99 demanding deposit by the plaintiff of Tk. 1,09,26,014.00 as Government dues along with the special security deposit within 3 days for collection of tolls from the bridges in question after the expiry of the lease period on 19.4.99 and the grace period on 9.6.99. The plaintiff has challenged the legality of this notice dated 20.6.99.The plaintiff claims total exemption of revenue payment for 45 days on the ground of loss of tolls due to nonpaying of vehicles for hartals and natural calamities during the tenure of the lease ending on 19.4.99.

Clause 25 of the lease agreement dated 20.4.98 expressly provides that the plaintiff shall not get any concession or damages whatsoever for non-plying of vehicles due to hartals or natural calamities. Even in the face of such clear stipulations in the lease agreements, the authority of the Government gave the plaintiff an unwanted grace of 50 days for free enjoyment of the toll collection facilities, only at the expense of the State. In the process, the plaintiff obtained a net gain of about 2 crores of Taka. It is difficult to appreciate how the authority of the Government could dole out charity to the plaintiff crores of taka for the alleged loss of its business due to hartals and natural calamities. In Bangladesh, hundreds of thousands of people have been losing crores of taka every day due to hartals and other unnatural events but the Government cannot make good their losses. The plaintiff is one of the lucky few who has been favoured with revenue holiday for 50 days and thereby giving it a net benefit of about two crore of taka at the cost of the state. This grace of 50 days after the expiry of the lease period on 10.4.99 was certainly not as a matter of right for the plaintiff but it was out and out a gratuitous relief for no worthy cause. This grace period admittedly expired on 9.6.99. Thereafter the plaintiff on 23.6.99 applied to the Government praying for a further grace of 45 days, but the plaintiff's prayer was eventually turned down. In such state of things, it must be found that the plaintiff had no right and interest whatsoever in the bridges in question for claiming free collection of tolls on the expiry of the grace period on 9.6.99. The filing of the suit on 7.7.99 based on an non-existing right is ill-conceived aimed at prolonging enjoyment of the disputed bridges under the cover of litigation for making illegal gains.

> **In a democratic society, the government functionaries are under constitutional and moral obligations to mete out equal treatment to all citizens irrespective of social standing and political affiliations. Granting of revenue holiday to the plaintiff involving crore of taka without any justifiable reason is a classic example of wanton discrimination and mis-use of discretion in managing the affairs of the State. The public functionaries must be cautious in doling out charities by way of granting revenue holiday to individuals or establishments against public interest.**

From the evidence on record, we find that the plaintiff defaulted in payment of the scheduled installments. The learned Subordinate Judge himself found in the impugned judgment that payment of at least two installments is yet due from the plaintiff, along with other dues of a huge amount of money. This is a clear violation of clauses 27 and 36 of the lease agreement. We also find from the admission of PW 1 that the terms of the lease duly expired on 19.4.99 and thereafter the plaintiff was allowed free enjoyment of the bridges for collection of tolls for 50 days. The grace period duly expired on 9.6.99. It was only on 23.6.99 that the plaintiff chose to make another prayer to the Government for free enjoyment of the bridges for a further period of 45 days but this prayer of the plaintiff has not been approved, as a result of which it stands refused. It is thus manifestly evident that after 9.6.99 the plaintiff has no right or legal claim whatsoever for collection of tolls from the 2 bridges in question. Since the plaintiff continued to enjoy the privilege of collection of tolls even after 9.6.99, defendant No. 1 committed no illegality in claiming Government dues from the plaintiff by the impugned notice dated 20.6.99. There is, therefore, no earthly reason to declare the impugned letter dated 20.6.99 illegal or arbitrary. Defendant No. 5 Md. Rafiqul Islam deposing for the defendant fully supported the defence case. There is nothing in his evidence that ensures to the benefit of the plaintiff to cover up its inherent deficiency of merit in its claims.

From the discussion of the evidence, we are satisfied that the plaintiff has totally failed to prove its case. It is unfortunate that the learned Subordinate Judge left the field of fact and evidence and strayed into conjectures and surmised in decreeing the suit in part by doling out 37 days for free collection of tolls from the 2 bridges without any legal basis whatsoever. The grace period of 50 days granted to the plaintiff after the expiry of the lease on 19.4.99 was out and out an act of unwanted charity doled out by the authority of the Government but that did not and could not give the plaintiff any vested right to claim further concessions for free enjoyment of toll collection from the 2 bridges. What was out and out a charity has been taken for a right by the plaintiff and this prompted the plaintiff to file the present suit on frivolous allegations. On the expiry of the lease on 19.4.99 and the grace period ending on 9.6.99, there is evidently no existence of the lease and, therefore, the question of cancellation of lease by the impugned letter dated 20.6.99 is totally redundant. In the fact and circumstances of the case and the evidence on record, we find that the plaintiff initiated the vexatious suit on frivolous allegations for making illegal gains, being emboldened by the undue favour already shown to it by the governmental functionaries only at the cost of the State.

While parting with the case records, we feel inclined to record our strong sense of disapproval to the way in which revenue remission to the tune of about 2 crore of taka has been doled out to the plaintiff on totally unacceptable grounds and that in flagrant violation of clause 25 of the lease agreement dated 20.4.98. It is all the more distressing to note that further moves on the part of a Governmental agency were made to dole out an additional premium to the plaintiff for another period of 45 days after the expiry of the grace period on 9.9.99 but unfortunately for the plaintiff, its latest move did not find favour with the Ministry of Finance and this saved the State from further loss of revenue amounting to crore of taka. Can the Government condescend to grant such gratuitous relief to individuals and establishments in millions who have been suffering incalculable losses and injury involving trillions of take for years together due to disruption of normal economic activities of the country, resulting from hartals and other unnatural events.

It may not be out of place to mention here in this connection that in a democratic society the Government functionaries are under constitutional and moral obligations to make out equal treatment to all citizens irrespective of social standing and political affiliations. It is evident that the plaintiff is one of the lucky few who has been showered with unwarranted bounties worth crores of taka for no justifiable reason, clearly depriving the public exchequer of this huge amount of money as its legal dues. This is also found to be a classic example of wanton discrimination and misuse of discretion in managing the affairs of the State, adversely affecting the public revenues and public interests. It is legitimately expected that the Government authorities should be more careful in doling out charities by way of granting revenue holidays to individuals and establishments against public interest, except in cases where it is found imperative in the interest of justice and that without transgressing the concept of equality in the estimation of the public. The question of transparency and that public accountability cannot be given a go-bye at the pleasure of an individual or group of individuals. The cardinal state policies must be zealously guarded against erosions in the best interest of the society.

Decision

For the reasons stated above, we hold that the learned Subordinate Judge was manifestly wrong in decreeing the suit in part on illegal and irrelevant considerations. The learned Subordinate Judge failed to properly apply his judicial mind into the facts and circumstances of the case and the evidence on record and passed the impugned judgment essentially on surmises and conjectures. The approach of the learned Subordinate Judge, 1st Court, Munshiganj is strongly deprecated. In the result, FA No. 455 of 1999 is dismissed and F A No. 43 of 2000 is allowed with costs and the impugned judgement and decree dated 23.8.99 passed by the learned 1st Court of Subordinate Judge, Munshiganj in Title Suit No. 44 of 1999 decreeing the suit in part are set aside. Title Suit No. 44 of 1999 of the 1st Court of Subordinate Judge, Munshiganj is hereby dismissed.

The connected Civil Rule No. 621 (F) of 1999 is discharged and the order of status quo earlier granted by this Court stands vacated. The Deputy Commissioner, Munshiganj is directed to take prompt legal steps against the plaintiff for realisation of appropriate damages from it under the provisions of the PDR. Act for the period beginning from 9.6.99 till the plaintiff vacates and makes over possession of the Meghna-Gomati Bridges to the Govt. for collection of tolls from the said two bridges and to report compliance to this Court within 3 months from the date of receipt of this order.