



LAWvision



LAW watch



Development: The right approach

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DEVELOPMENT can be defined as the process by which resources, expertise and technologies are brought together to expedite economic growth.

are more essential because they help an individual to live and flourish his full natural potentials as human being.

The fundamental value that is added in right-based approach to development is combination of both the concepts of 'empowerment' and 'entitlement'.

If State violates any of the civil and political rights of its citizens, the aggrieved people can go to court of law for remedy.

Freedom of decent work without exploitation. Enjoyment of above freedoms can ensure both entitlement and empowerment rights of people.

Freedom of thought, speech, association and to participate in decision-making. This approach shifts its focus or priority from the most privileged to the most deprived, excluded and discriminated in the society.

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most deprived, excluded and discriminated in the society. Article 8(1) of the DRD states that States.... shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income.

The right based approach to development has been an issue of research and analysis to the development thinkers and planners for quite sometime. The existing development strategies and approaches (basic needs approach, growth based approach, sustainable development approach) are being compared with this approach to make it more practical and result oriented.

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National initiatives for human rights education

OHCHR

Editorial note: Following is an overview of national initiatives under the framework of the UN Decade for Human Rights Education in the Asia/Pacific region.

Australia In December 1998, the Attorney General announced the establishment of a National Committee for Human Rights Education, which brings together the expertise of business, community organizations and the Government in an endeavour to enhance human rights education in Australia.

The Government provided seed funding for the Committee, whose work-plan includes: conducting a comprehensive audit of human rights education needs of the Australian Community; identifying and assessing current initiatives in human rights education; developing a national action plan for human rights education in Australia, focussing on priority needs; providing assistance in the development of comprehensive and effective human rights education programmes in priority areas, in consultation with education delivery agencies; developing effective communication strategies for human rights education; communicating with international agencies and counterparts in other countries to make available best techniques and resources; supporting human rights education initiatives addressing Asia-Pacific needs; developing effective partnerships between Government, business and community sectors; reviewing implementation and reporting progress. No national Plan of Action has been developed as of yet.

Fiji The Government reported that the new Constitution (July 1998) provides for the establishment of a human rights commission, whose tasks include the promotion of human rights education.

India The Government of India has constituted a Coordination Committee, under the chairmanship of the Home Secretary, comprising of secretaries of other ministries and departments. The Committee requested the National Human Rights Commission to draft a national plan of action for human rights education. Priority areas have been identified and include: the introduction of human rights education at the undergraduate and postgraduate levels; the inclusion of a qualification in human rights for recruitment in various professional categories; the preparation of training materials and organization of training courses for professional and other groups, such as members of the security forces, doctors, lawyers, judicial officers, government officials, politicians, nongovernmental organizations personnel, trade unionists, members of religious organizations and villagelevel functionaries, and the organization of debates and seminars on human rights for the general public.

Islamic Republic of Iran In collaboration with UNDP and OHCHR, the Faculty of Law and Political Science of the University of Tehran is implementing a project for strengthening national capacities for human rights research and training, which will bring together faculty members, students and university graduates. It is expected that as a result of the project, a volume of literature on different crucial human rights subjects will be published.

In addition, the Government highlighted educational programmes carried out by NGOs (in particular, the Network of Women NGOs), the judiciary branch (which organized courses for lawyers and judges) and the Islamic Human Rights Commission (which organizes courses for various groups involved in law enforcement).

Japan The Headquarters for the Promotion of Human Rights Education was established in December 1995. In July 1997, a broad national plan of action for human rights education was released, which included the promotion of human rights education and training at all levels (school, general public, corporations and civil society movements, professionals), specific programmes for special groups (women, children, the aged, people with disabilities, people with HIV infection), and the promotion of international cooperation and other public information activities, such as symposia and conferences.

The Headquarters, which is Japan's national committee, is composed of a chairperson (the Prime Minister), a vice-chairperson (the Chief Cabinet Secretary), the Minister of Justice, the Minister for Foreign Affairs, the Minister of Education, Science, Sports and Culture, the Director General of the Management and Coordination Agency Members, the Deputy Chief Cabinet Secretary, and administrative vice-ministers of all the ministries and agencies. The total number of members is 28. There are no NGO representatives on the committee as the objective of establishing committees under the Cabinet, is to encourage each of the administrative agencies to exercise their administrative functions and to promote certain measures in a coordinated manner.

Several non-governmental organizations, such as the International Movement Against All Forms of Discrimination and Racism/Japan Committee, the Buraku Liberation League, the National Dowo Educators Association, the Japan Teachers Union and the International Human Rights NGO network, have been actively involved in these initiatives. This includes the elaboration of the Plan, the organization of training programmes and symposia, and the production of publications.

The Ministerial Liaison Council for Training related to Human Rights Education was established in July 1998, to promote the exchange of information on training programmes and materials in related ministries and agencies.

In addition, major efforts are being undertaken at the prefectural level; 35 prefectures have established local task forces to pursue the Decade's objectives, and 26 have developed a local plan for human rights education. Municipal governments are also taking similar action.

Pakistan Although a national committee has not been set up, plans are underway to do so.

The Human Rights wing of the Ministry of Law, Justice and Human Rights has been entrusted with the responsibility of Human Rights Education at the national level. The Human Rights wing has only recently been assigned this task, but has launched a human rights awareness campaign and held a Human Rights Convention in April 2000.

The Human Rights wing is currently preparing the national plan for human rights education and it will be finalized in a few months, upon the establishment of the national committee. The national Plan of Action will introduce the subject of human rights through curriculum development at school, college and university levels, and through extra curricular activities such as debates, essays, paintings, puppet shows, songs, stage plays, community service and linkages with underprivileged school children.

In relation to technical assistance, UNESCO is providing printed material to approximately 300 schools involved in the project on human rights education.

Republic of Korea A variety of measures have been undertaken to promote human rights awareness, including the dissemination of human rights treaties through their publication and translation into Korean, the intensified provision of human rights education to public officials, the organization of a national programme of public lectures and symposia on human rights, and the provision of legal aid services, through which fundamental human rights are publicized in medium and small-sized cities coupled with farming and fishing communities.

In addition, South Korea hosted a sub-regional Training Workshop on Human Rights Education in Northeast Asia (Seoul, Republic of Korea), from 1 to 4 December 1999. The Workshop, organized by OHCHR in cooperation with the Government, aimed at providing a forum within which selected participants from Northeast Asia occupying a position of influence in their respective educational systems could explore and discuss strategies and components for the development of human rights education in schools. It was organized both as a follow-up to the Asia-Pacific Framework for Regional Technical Cooperation agreed upon in Teheran in 1998 and as a contribution to the Decade.

No national committee for human rights education has been established, however a bill has been passed in the National Assembly providing that a national commission for human rights shall be established to promote human rights education. There is no other institution which holds responsibility at the national level for this area. No national Plan of Action has been developed as attention has been directed at the passing of a national human rights law in the National Assembly. With the passage of the law, the Republic of Korea will take a series of measures to promote human rights education over the next five years of the Decade. A national committee will be set up to strengthen human rights programmes both in formal education settings and in non-formal education. This committee will also take the responsibility for elaborating a national human rights education plan which is to be implemented by relevant government authorities.

Star LAW report

Administrative Tribunal to decide grievances regarding promotion

High Court Division (Special Original Jurisdiction) Supreme Court of Bangladesh Md. Nurul Islam and others v Government of Bangladesh & others Before Mr Justice M M Ruhul Amin and Mr Justice Md Musurul Hoque Chowdhury. Writ Petition No. 3221 of 1996 Judgment : October 16, 2001 Result: Rule discharged

Judgment M M Ruhul Amin J: This Rule Nisi was issued calling upon the respondent Nos. 1-5 and 14 to show cause as to why the impugned order of promotion in Memo No. Pabi-1/Padonnati (3)/96/451 dated 11.8.1996 purported to have been signed and issued by the respondent No. 14 promoting the respondent nos. 6-13 as Deputy Directors in Grade No VI of National Pay scale, 1991 of Bangladesh Civil Service (Statistics) Cadre vide Annexure-H should not be declared to have been made without any lawful authority and is of no legal effect and/or such other or further order or orders passed as to this Court may seem fit and proper.

The case of the petitioner in brief is that he joined in the service of Bangladesh Bureau of Statistics in the year 1981 and presently he has been serving as a statistical officer since 2.6.1981. The petitioner no 1 has passed the Senior Scale Promotion Examination in the year 1992 and 1995. The petitioner no 2 joined in the service as a Statistical Investigator, Population Census Commission through public service commission in the year 1974 and thereafter he was appointed as Research officer on 12.9.78. (The post was subsequently re-designated as Statistical Officer).

The respondent no 1 vide Memo No Pabi-1 (0265) 93-278 dated 22.1.96 invited particulars of all the officers of BCS (Statistics) Cadre for preparation of seniority list i.e. gradation list and thereafter again the respondent no 1 by his memo dated 9.7.96 invited particulars from the officers for preparation of seniority list and accordingly the officers have furnished particulars but the list has not yet been prepared finally and the same is still in process. Although the seniority list has not yet been prepared and finalised, the respondent No 1 has promoted six Deputy Directors of the Bangladesh Bureau of Statistics, namely, Mr A Maksud Ahmed, Mr Syed Asaduzzaman, Mr Md Churchill Kamal, Mr Md Abdul Jalil Bhuiyan, Mr Abdur Rashid Shikdar and Mr Hamidul Hoque Bhuiyan and appointed them as the Joint Directors of the said Bureau. After promotion of above named six officers, the respondent No 1 by memo dated 12.1.94 and thereafter again by memo dated 13.4.94 invited the particulars of the said Officers and others. The respondent No 2 vide memo dated 18.5.94 intimated the respondent No 1 that the appointment on promotion as Deputy Director of the said three officers was made irregularly and as such could not be regularized and advised the respondent No 1 to revert back them to their respective original places and posts. After the promotion of those six Deputy Directors as joint Directors vacancies have taken place in their places and the respondent No 1 has taken a step to fill up those vacancies by giving promotion to the respondent Nos 6-13 behind the back of the petitioners and without preparing and finalising the seniority list of the officers of BCS (Statistics) Cadre. The petitioner no 2 through the Director of his department vide memo dated 13.5.96 made a prayer to the Respondent No 1 to consider his case for promotion as Deputy Director as he was senior to the respondent Nos 6-13.

The departmental promotion committee considered the promotion of respondent Nos 6-13 as Deputy Director and the said committee recommended the proposal of promotion of the respondent Nos 6-13. As the respondents did not consider the prayer of the petitioner, the Association of BSC (Statistics) also made a representation on 11.7.96 you the Hon'ble Prime Minister to take effective steps in the matter.

It is submitted that the respondent no 6 is a statistical officer of the Statistics Division, as such he is not eligible for promotion as Deputy Director in the Bureau of Statistics in view of notification No PB/P. M/3 (208)/80-4065 dated 27.9.1980. It is further stated that the respondent No 11 was appointed as a programmer and the said post of programmer being not included in BCS (Statistics) Cadre, he was not entitled to get promotion. It is further submitted that no promotion can be given unless the seniority list is prepared and finalised. It is also stated that the petitioner no 2 is senior to the respondent Nos 6-13 but he was not promoted.

Being aggrieved by the impugned order of promotion of respondent nos 6-13 dated 11.8.96 purported to have been signed and issued by the respondent No 14, the petitioners moved this Court and obtained the present Rule.

It appears that the rule was not issued upon the respondent No 11. So, the affidavit-in-opposition fled by him and affidavit-in-reply to the same filed by the petitioner are left out of consideration. It further appears that the petitioner in prayer portion of the writ petition has prayed for issuance of Rule upon respondent nos 1-5 and 14 only. Rule was accordingly issued. As no Rule was issued upon Respondent Nos 6-13, in our opinion no order affecting their interest can be passed without giving them an opportunity of being

heard. We have heard Mr SS Halder, the learned Advocate for the petitioner, and Mrs Reba Kaniz, the learned AAG for respondent Nos 1-5 and 14 Mr Halder has taken us through the writ petition and the annexures. At the very outset the learned A.A.G. pointed out that the writ petition itself is not maintainable as the matter relates to the terms and conditions of service of the petitioners who claim to be members of BCS. (Statistics) Cadre, and as such they are person in the service of the Republic. Thereafter, without approaching the Administrative Tribunal constituted for this purpose, the present writ petition by them is not maintainable.

In this writ petition Annexure-H-1 dated 11.8.96 issued under the signature of a Senior Assistant Secretary, Ministry of Planning, Planning Division, Bangladesh Secretariat, Dhaka, has been called in question. By this Annexure 8 persons i.e. respondent Nos. 6-13 were promoted to the post of Deputy Directors. The learned A.A.G. submits that promotion of persons in the service of the Republic is definitely part of terms and conditions of the service and as such the petitioners ought to have moved the Administrative Tribunal for proper remedy and hence the writ petition is not maintainable. In support of her contention the learned A.A.G. has cited the cases of Mujibur Rahman Vs Bangladesh, reported in 44DLR (AD) 111, Bangladesh Vs. Shafuddin Ahmed and others, reported in 3BLC(AD) 6, Sazedur Rahman Vs. Secretary, Ministry of Establishment, reported in 3BLC(AD) 188 and Delwar Hossain Mia (Md.) Vs. Bangladesh, reported in 52 DLR(AD) 120.

In reply, Mr. Halder submits that in the case of Mujibur Rahman Vs. Bangladesh, 44 DLR(AD)111 it was held that a person in the service of the Republic who intends to invoke fundamental right for challenging the vires of a law will seek his remedy under Article 102(1), but in all other cases he will be required to seek remedy under Article 117(2) of the Constitution. He submits that the impugned order Annexure H-1 by which the respondent nos. 6-13 were promoted was issued in the form of a notification and as such the same is law and he has challenged the law. So the writ petition is maintainable. In support of his contention he has drawn our attention to the definition of the term 'law' in Article 152 of the Constitution. He then submits that 'law' means any Act, ordinance, order, rule, regulation, bye-law, notification or other legal instrument an any custom or usage, having the force of law in Bangladesh. According to him this Annexure H-1 giving promotion to respondent nos. 6-13 having been issued in the form of a notification has been challenged in this writ petition. So, the writ petition is maintainable. We are unable to accept this submission of the learned Advocate. In this case, vires of any law has not been challenged.

In the case of Mujibur Rahman Vs. Government of Bangladesh, reported in 44DLR(AD)111 it was held that the Tribunal in its jurisdiction can strike down an order for violation of principle of natural justice as well as for infringement of fundamental rights, guaranteed by the Constitution. In that case it was further held that a person in the service of the Republic who intends to invoke fundamental right for challenging the vires of a law will seek his remedy under Article 102(10) but in all other cases he will be required to seek remedy under Article 117(2).

The learned Advocate for the petitioner tried to argue that the promotion of respondent Nos. 6-13 by the impugned order Annexure-H-1 superseding the petitioners is violation of fundamental right and as such he has challenged the same and seeks relief under Article 102 of the Constitution.

In the case of Delwar Hossain Mia Vs. Bangladesh, reported in 52DLR(AD) 120 the principle of law is enunciated in the cause reported 44 DLR(AD) 111 has been reiterated and it was further held as under:

"The Gravamen of the writ petitioners grievance is that by the impugned order of promotion their seniority has been affected. Seniority and promotion of civil servants being terms and conditions of service the Administrative Tribunal is possessed of the exclusive jurisdiction to hear the dispute in such matter."

In the instant case also the petitioner's case is that they are senior to the respondent Nos. 6-13 and by the impugned order of promotion their seniority has been affected.

In the case of Abul Bashir Vs. Bangladesh, reported in 1 BCR(AD) 77 it was held that an officer of the Corporation, if terminated from service, can approach the High Court Division in the writ jurisdiction directly only for the purpose of striking down any statute or rules framed thereunder for enforcement of his fundamental rights, but if he can obtain full relief from the Administrative Tribunal without striking down the statute or the rules then his writ petition before the High Court Division is not competent.

In view of our above discussion we are of the view that the promotion of the persons in the service of Republic being part of the terms and condition of the service a grievance in respect of the same definitely falls within the exclusive jurisdiction of the Administrative Tribunal and as such the writ petition is not maintainable as the petitioner did not approach the Administrative Tribunal.

Since we are of the view that the writ petition is not maintainable we refrain ourselves from giving any findings on the merit of the case.

The Rule is accordingly discharged without any order as to costs.

Charge to be framed on the basis of facts and records

High Court Division (Criminal Miscellaneous Jurisdiction) Supreme Court of Bangladesh MdAbul Kalam Azad v. The State Before Mr. Justice Md Hamidul Haque and Mr. Justice ABM Khairul Haque, Criminal Misc. Case No. 309 of 1998 Judgment : April 20, 2000 Result: Rule absolute

Judgment Md Hamidul Haque, J: By this rule opposite parties were called upon to show cause as to why the judgment and order dated 10.7.97 passed by Additional Sessions Judge, Court No. 3 Dinajpur in Criminal Revision No. 92/96 affirming the order dated 12.8.96 passed by the Magistrate 1st Class, Dinajpur in Case No. 162C of 1994 should not be quashed.

It appears that the complainant filed a petition of complainant with an allegation that the accused petitioners though not owner of the land of plot No. 348 of CS Khatian No. 3 of Mouza Narayanpur sold 15 decimals out of that plot to him, but subsequently when he came to know that the accused petitioner No. 2 and 3 are actually not the owners, he demanded for refund of the consideration money. An enquiry was held by Thana Revenue Officer, in view of the order passed under section 202 of the Criminal Procedure Code. The Enquiry Officer in his report stated the facts in details and also clearly stated that the complainant on the basis of his purchase already got possession in the land. The learned Magistrate, however, framed charge against the accused persons under section 406, 420 and 109 of the Penal Code. Being aggrieved by that order, the accused persons moved the learned Sessions Judge by filing the above Criminal Revision which was heard by the learned Additional Sessions Judge. The Revision was rejected and then the accused petitioners moved this court by filing this application under Section 561A of the Code of Criminal Procedure.

Mr Enayetur Rahim appeared on behalf of the accused petitioners. His main contention is that when the Enquiry Officer clearly stated that the complainant got the possession of his purchased land, the learned Magistrate had no reasons to frame charge against the accused persons. Mr Rahim has also pointed out that the learned Sessions Judge also was not correct in holding that the court had wide powers to frame charge and as such the order of framing charge should not be interfered. The learned AAG opposed the rule.

We have perused the petition of complaint, the order framing charge and the order passed by the learned Additional Sessions Judge in the above Criminal Revision. When cognizance is not taken by a Magistrate on receipt of a petition of complaint and issuance of processes is postponed, the Magistrate may give direction for holding enquiry under section 202 of the Code of Criminal Procedure. Under Section 203, a Magistrate is empowered to dismiss a complainant if he finds after considering the statement on oath of the complainant and result of the investigation or enquiry held under section 202 if there is no sufficient ground for proceeding. Under Section 241A of the Code, before framing charge, a Magistrate is also required to hear the parties and consider the documents submitted along with the record of the case by the prosecution. In the impugned order though it is mentioned that the parties were heard and all the documents were perused, we find that there is no specific reference to the enquiry report in this order. When in the enquiry report it is clearly stated that the complainant got the possession of the properties after his purchase, the learned Magistrate ought to have recorded some reasons as to why this report should not be relied upon or believed. It appears to us that the learned Magistrate actually did not consider the record at all. Enquiry report is part of the judicial record and one of the piece of the document of the prosecution. A decision regarding framing charge cannot be made in view of the provisions of section 203 and 241 A of the Code of Criminal Procedure without considering the enquiry report. It is unfortunate that the learned Additional Sessions Judge also did not consider the enquiry report. The view taken by him is also not correct. A court has no wide power to frame charge, charge is to be framed on consideration of the document and the record of the case. If the record of the case and documents show that there is no sufficient ground to proceed with, no charge can be framed.

In view of our discussion above, we are of the view that the learned Magistrate did not apply his judicial mind at the time of framing charge which is apparent from the fact that he did not consider the enquiry report. So, the matter is sent back to the learned Magistrate for hearing afresh in the light of observations made in this judgment.

In the result, the Rule is made absolute. The order dated 10.7.97 passed by the learned Sessions Judge in Criminal Revision No. 92/96 and the order dated 12.8.96 passed by the learned Magistrate in Case No. 162C/94 of the Court of Thana Magistrate Chirirbandar are set aside. Communicate the order to the magistrate concerned for hearing the matter at early date.