



Star LAW report

Freedom of religion

Indefinite restriction can not be imposed

High Court Division

The Supreme Court of Bangladesh
Writ Petition No. 388 of 2002
Dewanbagh Darbar Sharif and another

V
The Government of the People's Republic of Bangladesh and others

Before Mr Justice Md Hamidul Haque and Ms Justice Nazmun Ara Sultana

Judgement: July 7, 2002

Result: Rule disposed of with observations

Judgment

Md Hamidul Haque, J: This Rule Nisi was issued calling upon the respondents to show cause as to why they should not be directed to take necessary steps for peaceful entry of the petitioner and his devotees to his Dewanbagh Darbar Sharif to hold and arrange religious functions there, and to ensure their protection.

Counsels on behalf of the petitioner have submitted that the petitioner had been preaching Sufism by establishing a Darbar Sharif at mouza Monohrkharbagh and Khashpara under P S Bandar, district Narayanganj after purchasing 24.97 acres of land. Different religious functions and assemblies are held in that Darbar Sharif on different occasions. Lastly Ashekey Rasul Shammelon was scheduled to be held on 3.12.99 but due to terrorists activities of some of the local miscreants, the Shammelon could not be held and subsequently a police camp was established in the campus and all the devotees of the petitioner no 2 were driven out from the campus of the Dewanbagh Darbar Sharif. Since that time, the petitioner made several prayers to the District authority and police authority for allowing him to enter into the campus but neither the petitioner nor his devotees were allowed to enter into the campus to perform their religious duties. This action of the authority is violative of fundamental right as guaranteed under Article 41 of the Constitution.

The police after establishing the temporary camp in the campus, instead of helping the petitioner and his devotees to perform their day to day religious functions, are giving encouragement to the miscreants and respondents are responsible for depriving the petitioner and his devotees to perform their religious function. The Government or the authority concerned has no right to prohibit or restrain the petitioner and his devotees from performing its normal religious functions, at best the authority can regulate such activities in order to maintain public order and tranquility. The authority totally prohibited the petitioner and his devotees from performing their religious functions. The fundamental right of the petitioner to practice and propagate any religion has been violated and in this way the respondents acted in violation of the Articles 41 and 43 of the Constitution.

DAG appeared on behalf of respondent no 3 has submitted that a large number of people were against the preaching of petitioner no 2. Those people formed some committees and a tense situation arose in December, 1999 when the petitioner was going to hold Ashekey Rasul Shammelon on 3.12.99. There was a serious clash between the two groups and huge property, both of Government and private, were damaged and some innocent civilian lost their lives. Under such circumstances the local administration had to take action and in order to restore the law and order situation, police entered into the campus and drove away the rival groups who were engaged in clash. Still there is a commotion in the area and if the petitioner along with his devotees enter into the campus again there will be a serious clash with the rival parties. Police have done their duties only to maintain the law and order situation and to protect the lives of the innocent people.

Deliberation

The petitioners have come for a relief for issuing a direction upon the respondents to take necessary steps for peaceful entry of the petitioner and his devotees to Dewanbagh Darbar Sharif to hold and arrange their religious functions and to ensure their protection. The petitioner wants to get this relief in view of the fundamental right as guaranteed under Article 41 of the Constitution. Article 41 is reproduced below to appreciate the legal position as to what the freedom signifies:

"41. (1) Subject to law, public order and morality-
(a) every citizen has the right to profess, practise or propagate any religion;

(b) every religious community or denomination has the right to establish, maintain and manage its religious institutions.

(2) No person attending any educational institution shall be required to receive religious instruction, or to take part in or to attend any religious



ceremony or worship, if that instruction, ceremony or worship relates to a religion other than his own.

The enjoyment of fundamental right as mentioned in Clause (a) and (b) of Sub-Article (1) of Article 41 is subject to any law, public order and morality. So the rights are not absolute. Restriction may be imposed by law for the sake of public order or morality. But such restrictions also must be reasonable and what is reasonable may depend on the facts and circumstances under which such restrictions may be imposed. Moreover, such restrictions may be imposed to regulate the activities of a religious group and only in extreme cases prohibition may be imposed.

In the present writ petition, the petitioner claims that some local miscre-

ants put obstructions on the Dhaka-Chittagong High way on the eve of yearly Ashekey Rasul Shammelon which was scheduled to be held on 3.12.99. Respondent no 3 in his affidavit-in-opposition, however, claims that some people formed some committees to protest against the unislamic preachings of the petitioner and that members of those committees, Imams of different mosques raised objection as a result of which there was a clash between the two groups. So it is admitted that there was a clash between the two groups of people and it is also clearly mentioned in the affidavit-in-opposition that several lives were lost in that clash. The loss of lives shows that situation was very grave and the law enforcing agencies had no alternative but to take stern action to stop the clashes between the two groups and for that purpose a police camp was established temporarily within the campus of Dewanbagh Darbar Sharif. The petitioner also approached the authority concerned to set up a permanent police camp in the campus. So, we find that the entry of the police within the campus was not illegal rather the entry was to secure and maintain law and order and tranquility in the locality. This action, according to us, is permitted under the provisions of Article 41 of the Constitution.

What the petitioners are challenging is that in spite of formal demand for allowing the petitioner and his devotees to enter into the campus the police did not allow them and in the process petitioner and his devotees are denied of enjoying their right to performing their normal religious functions. The occurrence took place about two years eight months back. The petitioners have not been allowed thereafter to enter into the campus to perform their normal day to day religious functions. There is no formal reply from the side of the respondents as to why the prayer of the petitioner was not considered. Only after this Rule was issued and interim order was passed, the District Magistrate, Narayanganj wrote a letter to the Secretary, Ministry of Home Affairs. In this letter, the District Magistrate mentioned that after the devotees declared in the locality that they would enter into the campus in accordance with the order of the Court, the other religious groups and different committees including Islami Shahantra Andolan of Peer of Charmonai are also taking steps to resist the devotees of the petitioner from entering into the campus.

The petitioner and his devotees used to perform religious functions at the Darbar Sharif before the occurrence of 3.12.99. As the petitioner was in possession of the Darbar Sharif and devotees used the mosque within the campus for saying prayers, the respondents cannot prohibit them from entering into the mosque and the Darbar Sharif to perform their day to day religious function. There is no doubt that the law enforcing agencies may take any step which is lawful to ensure law and order situation in a particular area or any particular place due to any activity of any religious group but to our knowledge there is no law which allows the law enforcing agencies to prohibit a particular religious group from discharging their function for an indefinite period.

Decision

The law enforcing agencies will be at liberty to take necessary action if the situation demands but prohibiting the petitioner and his devotees from entering into the campus cannot be justified. So, the respondents are directed not to prohibit the entry of the petitioner or his devotees to Dewanbagh Darbar Sharif and the mosque to perform normal day to day religious functions. However, this direction will not preclude the law enforcing agency or the local administration from taking any action to ensure law and order situation or to give any direction in accordance with law in case of holding of any big congregation.

With the observations made above the Rule is disposed of.

Mr Fazul Karim with Mr Rafiqul Islam, Ms Rabia Bhuiyan and Mr AKM Mujibur Rahman, advocates for the petitioners. Mr Tariqul Hakim, D A G with Mr Zaman Akhtar, A A G Ms Kamrunnessa, A A G for the respondents.

LAW week



Gram police neglected

Members of the gram police have been run-down for years though they are playing an important role in development activities in the rural areas. They are entrusted with maintaining law and order in the rural areas. At first the British Government introduced the "Town Chowkidar" in 1813 and later in 1856 the Bengal Chowkidar Act was passed to assist the law enforcement agencies. In Bangladesh they were designated as Gram Police through an Ordinance. Now the gram police discharge various duties such as birth-death registration, arbitration of union council, cooperation in judicial trials, cooperation in family planning programme and tree plantation programme in the union parishad. Nine gram policemen work in a union parishad. The leader of the gram police is called "Dafader" and the rest of them are known as "Mohalladars". A dafader gets taka one thousand as salary per month. It is born by the government and union council pays their salaries. But the payment is often regular. The government plans to reintroduce the gram sarker in the villages but no initiatives have been taken for the betterment of the gram police, the root level law watchdog. -News Today, 08 October.

Separation of judiciary still remains a dream!

The much-talked separation of judiciary still remains a dream, as the government is poised to seek time from the Supreme Court. This is the sixth time that the government fails to complete the groundwork for the separation of judiciary from the executive. The concerned Cabinet Committee failed to finalise its report containing "Modality of the Separation of Judiciary from the Executive" on 02 October. Earlier the Supreme Court directed the government to submit its final report about the separation of the Judiciary within 26 October. But the government decided to seek time, which causes frustration among the lawyers as well as the common people. -The Independent, 03 October.

Cabinet Okays reduction of court fees

The Cabinet okayed the reduction of court fees in some cases under the Court Fees Act, 1890. The approval came on a meeting of the cabinet chaired by the Prime Minister on 30 September. Earlier the government had increased the court fees three to five times in the last budget giving effect from 1 July. The initiatives of the government evoked sharp criticism specially from the lawyers who enforced court boycott in different places. -The Financial Express, 02 October.

Capital City witnessed 30 killings

At least 30 people were murdered in Dhaka City in the month of September while the number were 33 in August. The figure shows the deteriorating law and order situation in the Capital City. Most of the slain persons were involved in various criminal activities like murder, extortion and mugging. They were either shot or stabbed by their rivals over establishing supremacy in particular areas for toll collection. -Bangladesh Today, 01 October.

Police are not friends!

About 90% people of Dhaka City think that police are not friends of common people. The survey was conducted by Bangladesh Ummayan Parisad as the law and order situation is deteriorating day by day in the Capital City. They also said that police did not respond without bribe or political pressure. On the other hand 54 % people of Dhaka City alleged that the government has totally failed to control the law and order situation. -Pratham Alo, 03 October.

Crores of children fall victim to

repression

About four crore children have fallen victim to the repression annually throughout the world. The statistics was revealed by a study of the World Health Organisation (WTO). Repression like physical and mental assaults as well as sexual harassment are committed on children irrespective of cast, religion in almost all countries of the world, the study said. The findings were revealed in the keynote paper in a seminar named "Influence of Repression and Violence on Children" organised by the National Mental Health Institute. -BSS, 03 October.

Proposal of Election Commission ignored

The government has not yet responded to the proposal of the Election Commission relating to the amendment of the electoral laws. The Election Commission had made some recommendations for amendment to the electoral laws in order to declare the terrorists or the person involved in criminal activities as unworthy of being contestant in elections. The 12-point recommendations of the commission also include the rule for submitting election expenditure of the candidates and barred one person elected from two posts at a time. It is noted that about 1000 candidates including 40 elected candidates are yet to submit their election expenditure report to the Election Commission after the 1 October general election in 2001. -Pratham Alo, 01, October.

Permanent Public Prosecution Service

soon

The government plans to introduce a Permanent Public Prosecutor Service for prosecuting government cases. The decision came on an inter-ministerial meeting on 05 October. The recruitment of the public prosecutors will be conducted by the Public Service Commission (PSC). Earlier the government decided to form a Permanent Public Prosecution Department for prosecution of government cases. But as the Supreme Court declared the Judicial (BCS) Cadre Service inconsistent with the constitution the government now thinks to set up a Legal Cadre Service under the executive for government prosecutions. The concerned officials of the Ministry of Law, Justice and Parliamentary Affairs have taken initiative to make a draft of the law in this regard which will be submitted to the cabinet soon for approval. -Manavazamin, 06 October.

Amendment to Bankruptcy Act suggested

The Banker Association of Bangladesh (BAB) have submitted some proposal to the Ministry of Finance for amendment to the existing Bankruptcy Act as it was not effective enough for realisation of defaulted loans. The Bankruptcy Act, 1997 was enacted to ensure speedy recovery of defaulted loans. The Artha Rin Adalat was also set up under this Act. The association has detected two major loopholes that are hindering the enforcement of the law; stay order from the higher courts and obstacle faced by the banks to implement the court's decision against the defaulters. They put forward six suggestions to the ministry including setting up of a separate bench to deal with the cases decreed by Artha Rin Adalat but stayed by the higher courts. The association also suggested cancellation of the bail prayers of the defaulters who have been punished for cheques bouncing for insufficient funds in their accounts, without paying 50% money of the suit value. -Bangladesh Today, 04 October.

Proposal for Gram Sarker approved

The Cabinet has approved the proposal for reintroduction of the Gram Sarker in order to involve the grassroots people in the development activities. Late president Ziaur Rahman introduced the Gram Sarker, the lowest tier of the local government, which was abolished by HM Ershad. Later the Awami League Government had passed a law named "Gram Parishad" in 1997 but did not introduce it. The proposal to form Gram Sarker has been prepared through reviewing the abolished Swanirbar Gram Sarker Provision of 1980, the Gram Parishad Act of 1997 and recommendations of a Local Government Commission formed in 1992, according to the LGRD ministry. A bill regarding Gram Sarker would be placed in the next session of the parliament. The source also said that formation of Gram Sarker in 40,392 villages would start after completion of election of the Union Parishads in January- February next year. -Daily Star, 08 October.

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

READER'S queries



Your Advocate



Your advocate is **Mr. Probir Neogi** of the Supreme Court of Bangladesh. His professional interests include civil law, constitutional law and banking law. Send your legal and human rights queries to the Law Desk, The Daily Star. A panel of lawyers will address your problems.

Q: My name is A. R. In all my examinations I used this name. I did not use my family title 'Khan' before my name.

a) Now I want to add Khan before my name. Is it possible without making any affidavit if I use this family title only in informal places such as newspaper, poster etc. not in formal places such as application for job, passport etc.?

b) Do the persons who write Dr., Justice, Barrister, etc. before their names need to make affidavit to that effect?

c) When affidavit is necessary to change/amend names and what is the procedure? Please advise.

A. R.

Rajshahi

Your Advocate: a) Yes, it is possible without making any affidavit if you use this family title only in informal places.

b) No, the persons who write Dr., Justice, Barrister, etc. before their names need not make affidavit to that effect.

c) Affidavit is necessary to change/amend names in formal documents/official papers such as academic transcripts. An affidavit is a declaration on solemn affirmation by its maker. This declaration has to be made before and affirmed by notary public/magistrate, 1st class. Before the notary public/magistrate the deponent (maker of the affidavit) has to be identified by an advocate.



LAW quotations

"Law is nothing other than a certain ordinance of reason for the common good, promulgated by the person who has the care of the community."

Thomas Aquinas (1225-1274), Italian philosopher, theologian.

"The law will never make a man free; it is men who have got to make the law free."

Henry David Thoreau (1817-1862), U.S. philosopher, author, naturalist.

LAW letter



Controlling Crime and Disorder Its everybody's Business!

In Bangladesh, crime is going to be institutionalised! From street muggers to millionaire industrialists, patriot politicians to pious preachers, almost all who has a chance to exploit the state by corrupt practice, have ventured through it for making huge and unlimited wealth as quickly as possible.

World Bank, Transparency International and other international and national organizations have published reports on corruption and human rights violation in Bangladesh and there are suggestions to improve the situation too. But none of them are followed or implemented so far. Political parties are trying to gain their party interests. They have also divided the nation (ideologically). National unity is a dream that might never come true. 'Civil Society' merely write some articles in newspaper only. Abuse of power by almost each and every public servant and so-called representative of the people suffered the nation beyond all limits. The 'Civilians' are frightened, threatened and their constitutional and universally accepted human rights are seized.

A local Bengali Daily (28 March 2002) reported that, "Law and order situation in the country have been collapsed. From January to the third week of March of the year, 770 persons were killed in the country at an average of 10 persons per day, 152 women and children were tortured and raped and 17 were killed after being raped. About 106 persons were abducted and 19 of them were killed after abduction. This is only one of the many similar reports published everyday.

How individual can do business or even lead his or her everyday life when there are so many violent incidents in every minute almost everywhere? Long term political violence or day to day extortion made our people 'hostage' to the crime syndicate. No one can do business without paying 'chanda' (a certain amount of money to be paid to miscreant groups periodically as toll). Government heads have failed to do anything except delivering speeches. Are our leaders sincere to combat the crimes?

As an ordinary citizen of Bangladesh I believe we can do something for the betterment of the people of our country. But one can't do anything significant alone. There has to be a collaborative action and systematic implementation of such a programme that ensure crime control. It is necessary to have a neutral and powerful civil authority, preferably of NGOs, free from political pressure and government bureaucracy. Establishing an active and powerful anti-corruption and crime prevention organisation is the first and foremost priority. People from all walks of life together can make an effective movement against crime and disorder.

Abdullah Rakeeb

Dhaka

Killing of children

Crimes against children are increasing menacingly. Shishu Adhikar Forum reveals that 578 children were killed while 486 were kidnapped and 771 were lost during the period of September 2001 to August 2002. The above mentioned survey record shows how vulnerable our children are. Such gradual rise of crimes against children has really become a matter of great concern for the guardians as well as the society.

Another report published in different national English Dailies said that as many as 1029 children, aged below 18 years, are languishing in 65 jails across the country. Children are becoming the targets of the hoodlums. The children are being victimised for taking revenge against the guardians. The miscreants know it very well that off springs are dearest to all parents and they are taking this chance. Prime Minister Begum Khaleda Zia already expressed her deep anguish over the recent brutal murders of some children and warned stern action against the accused. Will it be materialized?

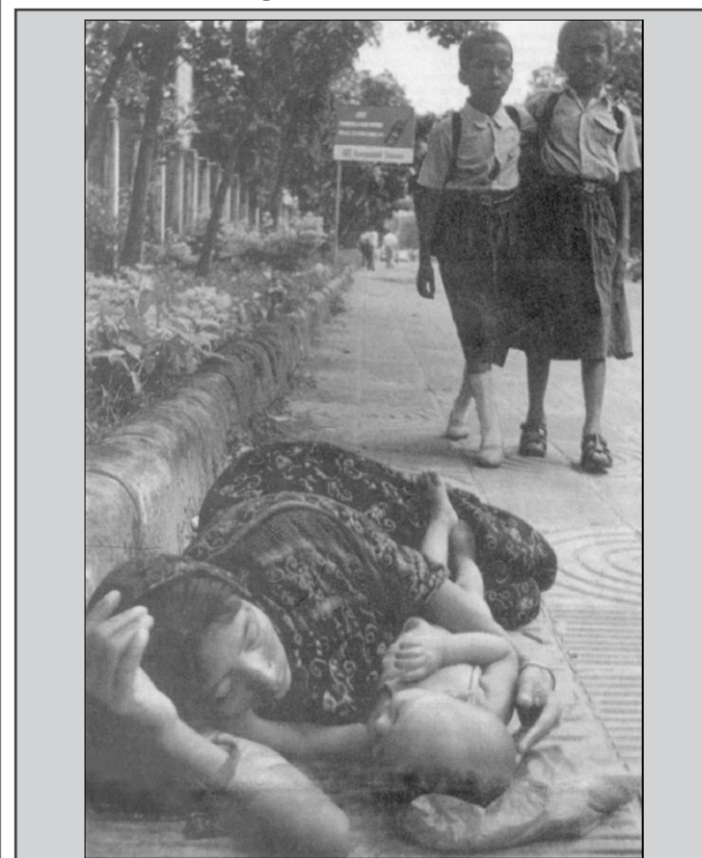
M. H. Bari

Khulna

LAW excerpts



Children deprived of basic needs



Picture

A child is sleeping on the footpath beside his mother. This picture was published on The News Today on 3 October 2002. The child is one of the 4,45,226 street children of the country who have no house to live in.

Excerpt

Article 15 of the Constitution of the People's Republic of Bangladesh: "It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens-

(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care; ...

(c) the right to reasonable rest, recreation and leisure; ..."

Paragraph 5 of the preamble to the United Nations Convention on the Rights of the Child, 1989: "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding."

Law Desk

It does not transpire from the picture that the State has ensured 'the provision of basic necessities of life, including food, clothing, shelter, education and medical care' to the child of the picture above. 'Reasonable rest, recreation and leisure' for him, no doubt, a far cry. To grow up in 'a family environment, in an atmosphere of happiness, love and understanding' is almost impossible for a child like him who has to sleep on footpaths. The right to the provision of basic necessities of life, including food, clothing, shelter, education and medical care has been embodied in our Constitution in Part II as Fundamental Principles of State Policy. Though provisions of this Part are not enforceable by the Court, by including these provisions in this Part the State pledges to strive for them. Bangladesh has signed and ratified the Convention on the Rights of the Child and as such the country has an obligation to ensure all its children the right to grow up in a family environment, in an atmosphere of happiness, love and understanding.

The child in the picture does not know these. But those who know have done so little for children like him that still they have to sleep in footpaths.