



Star LAW report

A case on freedom of profession or occupation

High Court Division (Special Original Jurisdiction)
The Supreme Court of Bangladesh
Writ Petition No. 1925 of 1999

Alhaj Habibur Rahman and others
V

The Secretary, Ministry of Environment and Forest and others
Before Justice Md. Abdul Matin and Justice Mohammad Marzi-ul-Huq
Date of judgment: February 18, 2002
Result: Rule discharged

Background

Mr. Abdul Matin, J: In this rule the petitioners have challenged the impugned Rules namely Rules 3,4,5,6,7,8(2) and 9 to the Saw Mills (Licence) Rules, 1998 and also prayed for a rule as to why the Notification dated 15.3.99 and 3.5.99 should not be declared to have been passed without lawful authority and are of no legal effect.

The case of the petitioner, in short, is that the petitioners are all engaged in the business of Saw Mills and making furniture, doors, windows and various kinds of wood products and although Dhaka city has no forest and before any timber arrive in Dhaka city they are checked in at least 8 to 10 places by the police and various officials including that of the Department of Forestry. Moreover, timber is now freely imported from abroad to meet the increasing demand of the country but the respondents issued the aforesaid notification from the office of the respondent No. 3 calling upon the Saw Mills to apply for licence within 30 days failing which the Saws Mills were to be closed. Against that notification various representation were made to the government including the Prime Minister without any result and thereafter they served a notice demanding justice upon the respondents and then filed the present application under Article 102 of the Constitution.

Respondents No. 1 to 3 entered appearance and filed an affidavit-in-opposition denying the material allegation made in the application and contending, inter alia, that the government in order to bring the Saw Mills to some discipline framed the Rules by the competent authority under section 41(h) and (3) of the Act and provided the owners of the Saw Mills to apply for license within 30 days from the date of notification and there was no lack of authority in framing the rule or issuing the notification. The further case of the

respondents No. 1 to 3 is that the rules are applicable to the Saw Mills owners of the Dhaka City like other parts of the country and the rules have been applicable in all cases except the petitioners case because of the pendency of this rule. The rules are valid, bona fide and reasonable and therefore it is not ultra vires the constitution not to speak of any right of the petitioners and the rule is liable to be discharged with cost.

Deliberation

Heard the learned Advocate appearing for the petitioner and the learned Assistant Attorney General appearing for the respondents No. 1 to 3 and perused the application and the affidavit-in-opposition filed by the respondents No. 1 to 3 with Annexures.

The admitted position is that the petitioners are the Saw Mill Owners of Dhaka City having trade licence to carry on business from Dhaka City and from the respective Union Parishad of the petitioners. It appears from Annexure-D series that notifications were issued by the Divisional Forest Officer, Dhaka directing the petitioners to apply for licence for the Saw Mills. Annexure-E is the impugned rules framed under section 41 of the Forest Act, 1927 published in the Bangladesh Gazette on 3rd December, 1998. Annexure-F series are the different news item relating to the representation of the petitioners praying for repeal of the law but it appears that the government did not grant their prayer. Annexure-G is the notice of the demanding justice.

The learned Advocate appearing for the petitioners submits that although under section 41 of the Forest Act 1927 the government is authorised to frame rules but the rules as exhibited by Annexure-E to the writ petition are beyond scope of section 41 of the Forest Act to bring in Dhaka City within the mischief of the law, which is un-reasonable and violative of the fundamental right of the petitioners as guaranteed under Article 40 of the Constitution. The learned advocate further submits that some petitioners have obtained trade licence from the City Corporation and others from the Union Parishad and therefore the rules sought to introduce licence and providing for licence free of 100% is to be construed as unfair and unreasonable and should be struck down.

Article 40 of the constitution provides that all citizen of the country shall enjoy a fundamental right to enter upon any lawful profession or occupation and to conduct any lawful trade or business. This right is always subject to any restrictions imposed by law.

It appears that by this rules the government is not restricting any business but is bringing wood industries under the control and management of the government to give effect to the purpose of section 41 of the Forest Act. By this rule petitioners have been given an option to apply for the licence and carry on business of the saw mills under certain condition and they prescribed reasonable time of 30 days for such application. It is not the case of

the petitioner that the saw mills have been closed without giving the petitioner any chance to apply for the licence. Forest Law has been enacted to regulate the forest produce and section 41 provides for absolute prohibition or allowing on conditions within specified local limits, the establishment of wood, based industries including saw-mills. Sub-rule 3 of section 41 authorized the government to direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.

Whether to give exemption from the application of the rules in case of



Dhaka City or particular local area is a matter to be decided by the government. It appears that several representations were made before the government for the repeal of the Forest Act but it appears that the government thought it wise not to repeal the act and the rule thereunder.

We do not find that the law is unreasonable or mala fide or violative of any fundamental right of the petitioners. In such circumstances we do not find any substance in this rule which is discharged without any order as to costs.

Mr. A M Mahbubuddin Ahmed, Advocate for the petitioners. Mr. Md. Foruzur Rahman, A.A.G. for the respondent Nos. 1 to 3.

LAW campaign

3rd Human Rights Summer School focuses on human rights and development

ERSHADUL ALAM

It is well recognized that there is a close connection between human rights and development. Keeping this linkage in mind the 3rd Human Rights Summer School (HRSS) has adopted the issue of Human Rights and Development for its two weeks programme held from December 11 to 22 which was adorned by many national and international resource persons. Human rights derive its sustenance from common interest of humankind and its satisfaction. This inter woven connection of rights and development was anatomized by the deliberations of Professor Madhava Menon, Vice Chancellor of West Bengal National University of Juridical Sciences, in a critical way considering the development in science and technology in today's world. The opening ceremony was presided by Prof K A A Quamruddin, the president of ELCOP. In his speech the president putted emphasis on the duties and obligations of a student of law to protect and enrich the human rights. The chief guest of the opening ceremony was Justice Habibur Rahman, former Chief Adviser of the Caretaker Government and Chief Justice of Bangladesh. He was present there with his appreciation of this programme and discussed the necessity to arrange this programme so that the people become aware of their rights and their duties to protect their rights as an individual and a member of the society or both. His presence and indication influenced and encouraged all the participants to become a human rights lawyer whose duty is not to become a lawyer only but to become an engineer and a builder of a society where human dignity is realized and upheld. The guest of honour, as I mentioned earlier, was Prof N R Madhava Menon whose deliberations changed the mindset of the participants to be a humanist rather than to be a lawyer. Professor Menon's speech focused the ongoing development of science and technology and its relation to human rights. He rightly put examples how human rights are violated by science and technologically developed countries who claim themselves to be the torch-bearer of human rights in the world, though he remembered the contribution of some countries in patronizing the concept of human rights. Dr M Rafiqul Islam, Associate Professor of Law, Macquarie University, Sydney, Australia, joined in this programme with his resourceful discussion. He analyzed the interrelation between civil and political rights on the one hand, and economic, social and cultural rights on the other, which has repeatedly been affirmed by a body of growing human rights instruments of the United Nations. He also reviewed the inseparable link among different human rights instruments in relation to freedom and development. Dr M Rafiqul

Islam judiciously quoted in his article the proposition of Julius Nyerere, former President of Tanzania: "without freedom you get no development; and without development you will soon loose your freedom."

So from this proposition it is clear that freedom, human rights and development are prerequisite for the enrichment and enhancement of each other. Considering the economic disparity of the different corners of the world, the UN has adopted a declaration on the Right to Development in 1986 as a response to mounting and glaring emergence to eliminate poverty from the world. All the speakers and residential resource persons agreed to the necessity of learning the laws and human rights of all the countries of the



Participants of 3rd Human Rights Summer School

world where globalization is prevalent. Satisfaction of the minimum need of the people is a precondition for the protection of human rights.

Protection of human rights demands the realization of human sufferings. A lawyer in this globalized world will react to every injustice. A lawyer can make the judge a proactive one. For doing so the lawyer himself should be more and more sensitized to the human rights and its violations. A human rights lawyer is accountable to his own conscience and reasonable to his own sense of responsibility to the client as well as to the society. A human rights lawyer may loose the case but must argue the case with the mind of a

human rights lawyer.

Dr. Mizanur Rahman, the architect of the concept of HRSS has aptly brought out the differences among regnant, rebellious and developmental lawyering. A development lawyer is also a rebellious lawyer but his views are different from that of the latter. Whereas a rebellious lawyer works for the client (group or individual) and the solution he achieves is of no far-reaching repercussion for the society, the development lawyer works for the development of human rights besides ensuring group or individual justice to the people. A regnant or rebellious lawyer wants to be a leader of the society, but the development lawyers want to create leader in the society for the well being of the human being living in that society.

Various aspects of human rights with their multifarious dimensions have been discussed in this programme. Deans and chairmen of different schools of law of Bangladesh attended this programme with their knowledge and experience. Many national and international resource persons attended at BARD (venue of HRSS) in Comilla, to name a few, Mr. Md. Shahidul Haque, Ms. Rina Sen Gupta, professor Kazi Ahmed Nabi, prof. Anu Mohammed, Dr Zahinul Islam, Barrister Amir-ul-Islam, David R. Harden, Justice MA Wahab Miah, Ms. Nasrin Begum, Mr. Mohiuddin Khaled, Legal luminaries and human rights activist like justice KM Sobhan, Ms Ila Chand, Sultana Kamal, Dr Faustina Pereira, Dr Rahmatullah and Hafizur Rahman Karzon with their lively debate and discussions made the citizenry of Adhikarbhumi enthusiastic to become a development lawyer who will share the sufferings of the people. The second phase of the HRSS started with community visit to know the real scenario of human rights in the community. The community was Bamoil, around ten kilometre away from the BARD. The participants gathered information and data and generalized these in accordance with their rights and its violations.

After the tight schedule started to be a little bit flexible, the tune of departure was in the air of Adhikarbhumi (a fictitious name of the place where no violation of human rights will take place). The closing ceremony was presided over by Prof. KAA Quamruddin where Dr Kamal Hossain was chief guest and Advocate Sigma Huda was special guest.

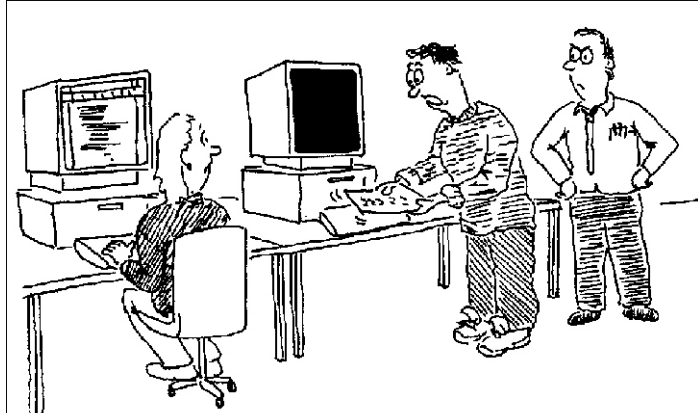
The certificates were awarded by Dr. Kamal Hossain to the participants, he later in his speech drew our attention to the fact that it is the people who have to ensure and protect their rights. No one can ensure the rights of others until he himself is aware of his rights.

ErsHADUL ALAM is a fourth year student of law, University of Dhaka.

LAW letter

Stop cyber pornography, obscene films & magazines

Present age can be termed as the era of information technology. Due to rapid progress in science & technology information flow becomes very easy. Electronic mail services branded our life at home. Internet services are now available in many district towns also. Internet browsing has become as a hobby to many of our adolescent guy. Newly established cyber cafes are



giving easy access to the World Wide Web and availing this opportunity our young children are watching porno pictures through internet. Now it becomes a medium of entertainment for the children. Our adolescents are tremendously affected by watching such pornography. They are loosing character and becoming perverted. Most of Bangladeshi films are semi-pornographic

in nature. With predictable or hardly credible story line, lurid, crude dialogues and vulgar scenes and erotic dancing, these films encourage the viewers to act out their sexual fantasies. In small towns and even in some theatres in city, X-rated films are shown frequently. Sometimes cable operators show porno films after mid night. These films are mostly catered to working class males who might confuse reality with fantasy.

Many feel that TV channel help to perpetuate crimes in our country. Some TV channels broadcast excessive violence and often perverted crimes in gory/bloody details. The police drama series, horror movies and the highly action thrillers may have an adverse influence on people who are young and inclined to violent tendencies. Some obscene magazines like Sex enjoy, Sex guide, Honeymoon sex etc are being published & sold in our bus terminals, launch terminals, Railway Stations & bookstalls openly. The porno and semi porno picture in the cover page of these magazines easily allure our school going children. These have got very bad effect to the society also. So, necessary steps should be taken to combat the aggression of Cyber Pornography, Obscene films & magazines. The government should legislate strict laws and take stern actions against all forms of pornography for protecting the morality of our young guys and social values. The earlier the government realizes this unsavoury truth the better would be for the society.

M.H. Bari
Khulna

Who will protect the rights?

As per a recently revealed report of Transparency International, the police department is the most corrupt of all the departments of the country. The lower court is in the second position in the corruption list. It is painful that the two most essential departments of the country who are entrusted to protect the rights of the people are indulged in corruption. Corruption of the police department is not a new phenomenon. But the corruption of the lower courts makes common people doubtful whether they will get justice. If the two departments are indulged in corruption then where the common people will

go for enforcement of their rights? Therefore, the government should immediately form a committee to investigate the report and punish the officials who are indulged in corruption.

Shampa
Dhaka University

Corruption in lower courts

The report of the Transparency International revealed that our lower court is the second most corrupt public department of the country. Judiciary is the last hope of common people where they go to enforce their rights. If the lower courts are corrupt where they will go for protection of their rights or to get justice. Corruption of the officials of the lower court have dented in its dignity to a great extent among the common people. The Supreme Court directed the government to fulfill the 12-point directions for the separation of judiciary. The civil society also called for the separation of the judiciary from the executive authority. Separation is needed for independent trial of cases. But how the common people will be benefited from the separation if the courts are indulged in corruption?

Masud Rana
Dhaka Medical College

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

LAW week



Executive does not comply with the judiciary

The executive department of the government does not comply with the direction of the higher court to establish the rule of law. At present it is observed that the executive department comply with only those decisions of the higher court which are in favour of the government. Not only the executive department but the lower courts also ignore the direction of the higher court. Lower courts' non-compliance with the direction of higher court in relation to arrest and detention is hindering people's right to justice. Priscilla Raj an NGO activist was granted ad-interim bail by the High Court Division but she was released after five days of her order of bail. Journalist Saleem Samad was granted ad-interim bail from the High Court Division but the lower court instead of releasing him detained him under the Special Powers Act. It is noticed that in the case of "Kalandiar Kabir Vs Bangladesh and others" High Court Division declared the detention as illegal when the detenu is under the trial of a regular case. Government tries to ignore the decision of the higher judiciary by two ways: firstly, by showing complete reluctance and secondly, by seeking time. In the case of the separation of judiciary the government sought time for 14 times. According to Article 112 of the Constitution the government is under an obligation to implement the direction of the higher court. The decision of the higher court is also binding upon the lower courts in accordance with Article 111 of the Constitution. But continuous delay or denial in implementing the decision of higher court by the government and the lower courts hinders the establishment of rule of law as well as violates the rights of the people guaranteed by the constitution. - Prothom Alo, 25 December.

EC announces UP polls schedule

The Election Commission has announced the schedule of the election of union parishad, the lower tier of local government. General elections to 4267 union parishads of the country will take place between January 25 and March 16 next year. The first day of January is the last day for submission of the nomination papers, 2 January is fixed for the scrutiny of nomination papers and 9 January is the day for withdrawal of the nomination papers, according to the announcement of the election commission. Any candidate or his/her supporters can submit nomination papers to the Returning Officers during the period mentioned above. - Bangladesh Today, 23 December.

Six were punished for death in army custody

Six army personnel were reportedly punished for death in army custody. 38 persons were reportedly died in the army custody during the on going "Operation Clean Heart" commenced from 17 October this year. They were punished for negligence and abusing power in performing their duty. The press briefing during the operation claimed that the deceased persons were victims of heart attack. But the relatives of the deceased alleged that they died from torture. In this backdrop 15 committees were formed to investigate the death incidents. The committee scrutinizing the autopsy report found that the doctors found torture marks in the body of the deceased persons. The committee confirmed that some persons were died in the army custody from torture. - Ittefaq, 24 December.

HC declares 138 detentions illegal

Two vacation benches of the High Court Division of the Supreme Court have declared 138 detentions illegal. The courts have also ordered the authority concerned to release them immediately if there are no cases against them. A High Court bench comprising Justice MA Aziz and Justice Nazrul Islam Chowdhury has declared 88 detentions illegal while another bench comprising Justice Hamidul Huq and Justice Salma Masud Chowdhury declared 50 detentions illegal. All of the detained persons were detained under the Special Powers Act 1974 after arrest under section 54 of CrPC during the on going Operation Clean Heart. - Janakantha, 24 December.

EC bars use of children in electioneering

Election Commission has imposed restriction on the use of children in electioneering activities including meetings and processions during the upcoming union parishad polls. The decision came on a meeting of the commission held on 22 December chaired by Chief Election Commissioner Abu Sayed. Against the backdrop of the increasing violation of child rights EC decided so to protect children from abuse of different forms that occur during election times in Bangladesh. - Daily Star, 23 December.

Draft policy to eliminate child labour

A draft policy was prepared by the Labour and Employment ministry to eliminate the worst form of child labour within the shortest possible time. The draft policy identified poverty, illiteracy, low wages of child labour, lack of education, gender discrimination, family migration and non-implementation of labour laws as the reasons behind child labour. The policy advocated for formation of a National Council for Child Labour headed by the Prime Minister. It also suggested for effective programmes like poverty reduction, motivation, and family welfare programmes to get rid of child labour. - Financial Express, 23 December.

AI reiterated independent probe

The Secretary General of the Amnesty International Dr. Irene Khan has said that the government must run an independent investigation into the reported custodial deaths during the ongoing anti-crime drive. She said while giving her lecture on "Human Rights in the Context of Bangladesh and south Asia" that findings of the investigation report must be made public and the responsible person for the custodial deaths must be punished. This should be done for the credibility of the army as well as the government. She also said in her lecture arranged by Bangladesh Institute of International and Strategic Studies (BIISS) that departmental inquiry as stated by the government is not enough. An independent investigation is needed to find out the truth. The army should have been more concerned about its trustworthiness as it has been blamed for deaths, she advocated. She urged the government not to manipulate the legal procedures after criticising some recent actions of the latter. - Daily Star, 25 December.

BNWLA's draft bill on birth and death registration

Bangladesh National Women Lawyers' Association (BNWLA) has prepared a draft bill on birth and death registration for implementation of birth and death registration in the country. BNWLA arranged a discussion meeting on the draft bill on 22 December at BIAM auditorium to receive opinions from minister, learned lawyers, policy makers and experts on this issue. Minister of Law, Justice and Parliamentary Affairs Barrister Moudud Ahmed attended the meeting as chief guest. Md. Abdullah, Project Director of 'Birth and Death Registration Project' under the ministry of Local Government, Co-operatives and Rural Development was the special guest. Additional Attorney General Abdur Rezzak Khan and teacher of Dhaka University Dr. Nusrat Ameen attended the meeting as discussants. President of BNWLA Advocate Sigma Huda presided over the meeting. In the opening speech of the meeting, Advocate Salma Ali emphasized on the importance of birth and death registration and explained why BNWLA has prepared a new bill in this respect. BNWLA, since its inception in 1979, has been working for the protection of rights of women and children. It gives legal aid to women and children who fell victim to trafficking, rape or other violence. While giving legal aid to these victims BNWLA faces difficulties as their exact age cannot be determined due to lack of birth registration which is considered as the yardstick to determine age. As age cannot be determined children cannot claim the rights which they are entitled to. The British rulers legislated an Act in 1873 for birth, death and marriage registration. But after more than a century the Act has lost its efficacy. It has been revealed in a research that birth of more than 88% children are not registered and 74% people of this country do not have any idea about birth registration. Being aware of the necessity of a new law on birth and death registration BNWLA prepared the bill after conducting recommendation collection campaign and research. The draft bill of BNWLA on birth and death registration contains 24 sections providing rules for how and when to register birth and death; who can register; the duties of the registrar; certificate for registration; inspection power of the registrar; credibility of birth or death registration as evidence; fee for registration; and penalty for non-compliance with the provisions of the law. In his discussion the law minister admitted the necessity of the law on birth and death registration and pledged that his government would pass the draft bill in the Parliament as soon as it was ready for legislation. He said mere legislation was not enough; the media, especially the radio, could play a vital role to make the law effective. Provisions for monitoring of registration in this draft bill was not strong enough, he maintained. He suggested the monitoring provisions should be stronger. He also advised the maker of the draft bill to include provisions for bastard and stillborn children in the bill. Additional Attorney General Abdur Rezzak Khan scrutinized the pros and cons of the bill and suggested some amendments to the bill. Advocate Salma Ali in the closing speech said BNWLA would consider the amendments and submit the bill to the law ministry which was supposed to finalise the bill and submit it to the Parliament for legislation. Law Desk.