



State obligation to ensure enjoyment of a healthy life free from man made hazards

Forced Labour: A social evil

BLAST Vs. Bangladesh and others

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In Bangladesh, certain classes like consumers do not have any right per se and certain issues like general public health never comes in the attention of the policy makers, though they are guarded under the provisions of the Constitution and the laws. Manufacturers and producers of edible foods have always found the ways to escape with marketing of inedible foods and thus affecting the right to life of people by distressing the human health directly and as we in every problem, children are the worst sufferers. However, there has been hue and cry to enact specific laws for consumers and specific rules for protecting general public health but without any result. Rights of consumers and general public health are interrelated to peaceful and healthy continuation of life and most of the times general public health is affected by different items like, non-iodised salt, adulterated food, contaminated water and fruits etc. that people at large consume everyday.

Iodine is a very important ingredient for human body and in the absence of natural food containing iodine; we are supposed to intake it through salt which we consume everyday. It is essential for growth and development of human body and brain. Every human being requires 3 to 4 grams of iodine which ensures the normal physical and mental development of a child during the month before and soon after its birth. It is also responsible for the development of the brain and the nervous system. Lack of this ingredient may cause: a) Goitre, and b) Cretinism - due to lack of thyroid hormone leading to physical and mental retardation. There may be other natural sources of iodine but main menu for getting iodine in the human body is iodised salt. Since 1989 by enacting Iodine Deficiency Diseases Prevention Act the Government has made marketing of iodised salt mandatory upon the manufacturers and distributors of salt. The Government has also constituted a statutory committee under section 3 of the aforesaid act. Furthermore, the Iodine Deficiency Diseases Prevention Rules, 1994 was also enacted for the better observance of the marketing of iodised salt ensuring the general public health.

Despite such strong law and preventive mechanisms, leading salt manufacturers and distributors managed to market iodine free or less iodine contained salt resulting 47.1% and 69% Goitre and Cretinism cases, respectively, among the people of Bangladesh in the year of 1993. It also reveals the inefficiency and callousness of the Government Officials and the Statutory Committee.

In the above-mentioned situation, Bangladesh Legal Aid and Services Trust (BLAST) (petitioner No. 1) collected samples of iodised salt produced by 12 different manufacturers of Bangladesh on random selection basis and those were tested in the Institute of Food, Science and Technology, an organ of BCSIR, Dhaka, which found that the iodine content in the salt samples were not up to the requirement and that the packaging were not as per requirement of the Act and the Rules.

Prior to this, the Consumers Association of Bangladesh (CAB) also collected samples of iodised salt produced by 15 manufacturers from the market and got those tested by the Institute of Nutrition of Food and Science, University of Dhaka and result reveals that none of the iodised salt samples of the said 15 manufacturers contained the required percentage of iodine in the salt. BLAST along with CAB came up with a Writ Petition under Article 102 of the Constitution of People's Republic of Bangladesh before the Hon'ble Supreme Court of Bangladesh.

The Respondent No. 1 of the petition was the Ministry of Health and Family Welfare being responsible for overall public health including control of food, water and other health related commodities. Respondent No.



2 is responsible for development of salt industries and for that matter quality control of edible salt and has control over the administration of the Bangladesh Small and Cottage Industries Corporation, which is responsible for setting up of a large number of salt industries. The respondent No. 4, the Bangladesh Standards and Testing Institution, is responsible for testing and quality control of, amongst others, edible salt. Respondent No. 3 is a statutory committee constituted under section 3 of the Iodine Deficiency Diseases Prevention Act, 1989, with the object, amongst others, to issue licence for the salt manufacturers as per provisions of said Act, 1989 and the committee is headed by the Secretary of the Ministry of Health and Family Welfare, a senior Civil Servant of the country.

Respondent Nos. 6-12 are some of the manufacturers of Iodised salt, whose product have been tested and found to be not as per as required by the law.

After considering the petition and arguments provided by the petitioner The Hon'ble Court was pleased to issue a Rule upon the Respondent No.1-5 to show cause as to why they should not be directed:

- to take necessary steps and action to ensure that all licensed manufacturers of salt to produce, pack and sell salt with iodine content conforming with the quality and standard as specified in the Iodine Diseases Prevention Act, 1989;
- to revoke licences and take action against respondent Nos. 6-12 and other manufacturers of iodised salt, those failed to comply with the provisions, as enumerated in the said Act, and
- to identify the unlicensed manufacturers of edible salt and to take action against these manufacturers as per provisions of the Act.

Here, it is pertinent to mention that none appeared on

behalf of the respondents. On request of the court, the learned D.A.G appeared before the Hon'ble Court. The lawyer appearing on behalf of the petitioners stated the law before the court whereby certain responsibilities are provided upon the Government officers responsible for observing and scrutinising the production and marketing of edible salt including the Respondent Nos. 1 to 5. The law (the Act of 1989) requires production and marketing of iodised salt as per specification of section 2(k) of the Act and the law has clearly barred manufacturing and sale of edible salt without iodine and any contravention of such act have been made punishable offence under sections 4 and 6. Section 9 of the act provided that whoever violates the law may suffer imprisonment not more than three years and fine not more than Tk. 5000/-.

The function and duty of the National Salt Committee (to be appointed under the Act) and the authority to file cases by the inspectors have been provided in the provisions of Act and the Rules. The petitioners also mentioned the diseases which may result from the inefficiency of iodine and they placed the relevant data whereby it was proved that public officials failed to perform their duty according to the law and hence, the hon'ble court felt necessary to issue the Rule to require the persons concern to rise to the occasion and for that matter to compel them to act as required by the provisions of the Act and the Rules. Also to compel them and to perform their statutory duties and obligations as well.

The learned D.A.G also sought 'proper directions' for respondent Nos. 1-5 so that they perform their statutory obligations properly and diligently in the greater interest of the future generation and accordingly the Government Officials and the Committee were directed to perform their respective duties as specified in the act of 1989 by the Hon'ble Court so that the iodised salt

produced and marketed for consumption of the people to comply with the provisions of sections 2, 4 and 6 of the said Act and the violators thereof be prosecuted under provisions of section 9 of the said Act. They are further directed to ensure that the unregistered edible salt manufacturers are not allowed to produce, market and sell for human consumption and such unregistered manufacturers of salt be brought to book and be prosecuted in accordance with the provision of law. The respondent Nos. 2 and 5 are also directed to prepare and submit the list of registered manufacturers / producers of the edible iodised salt in Bangladesh and the respondent Nos. 2, 3, and 4 are directed to collect the samples of edible salt put in the market for sale for general consumption and to submit analysis reports of such salt twice a year, i.e., for the period ending on 30th June and 31st December, respectively, to the Registrar, Supreme Court of Bangladesh, within 15 days thereafter without fail with a copy thereof endorsed to the respondent No. 3, who is directed to ensure taking of actions as per law against the defaulters on the basis of such reports.

The analysis reports are to be submitted initially for five (5) years effective from 2005 A.D.

In addition to this judgement, it can be said that the respondents Nos. 1-5 should not forget Article 18 (2) of the Constitution of People's Republic of Bangladesh, where it is said that: The State shall regard the raising of the level of nutrition and the improvement of public health. Furthermore, "right to life", which by way of judicial explanation helps to enforce the above-mentioned Article 18 (2) in the apex court of Bangladesh in case of any violation, is guaranteed under Article 32 of our Constitution. According to Munn vs. Illinois [(1877) 94 US 113], life means: Something more than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. It must include protection of the health and strength of workers, men and women, and the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner.

The respondents in this instant case was not functioning enough to provide safety to public health at large and specially to the future generation. It was again decided in Vincent vs. Union of India [AIR 1987 (SC) 990]: In a welfare state, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health. So failure of the Respondent Nos. 1 to 5 means failure of the state to function for the welfare of its people. Again, the "right to life" through the protection of public health has been reiterated in a leading case of Bangladesh, which is Mohiuddin Farooque vs. Bangladesh [49 DLR 438] and it is stated there that: A man has natural right to the enjoyment of a healthy life and a longevity up to normal expectation of life of an ordinary human being. Enjoyment of a healthy life and normal expectation of longevity is threatened by disease, natural calamities, and human actions. Natural rights of a man to live free from all man-made hazards has been guaranteed under Article 31 and 32 subject to law of the land.

Thus, by this judgement the Apex Court of Bangladesh once again upheld the supremacy of the law and the constitution, and stated that Government officials should function according to the law and not according to their own discretion.

The Judgement was declared on the 14th December, 2004 by Justice Shah Abu nayeem mominur rahman and Mr Justice Moeenul islam chowdhury. Petitioners were represented by senior advocate Mr. M. I. Farooqui with advocate Mr. Md. Ruhul quddus.

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LAWweek



Justice Aziz becomes CEC

The government appointed Justice MA Aziz, a sitting judge of the Appellate Division of the Supreme Court, Chief Election Commissioner (CEC), ignoring the longstanding demand of the opposition and the civil society for a consensus appointment.

President Iajuddin Ahmed yesterday morning made the appointment on the advice of Prime Minister Khaleda Zia, causing widespread resentment among the opposition parties whose demand for a CEC acceptable to all was turned down. The government maintains that there is no constitutional obligation to hold talks with the opposition on the issue.

Aziz, whose appointment came a day after MA Syed's tenure as CEC expired on May 22, took his oath of office. Chief Justice Syed JR Mudassar Husain administered the oath.

On entering his new office, MA Aziz told journalists that his first priority is holding elections in a free and fair manner. Asked about the criticism from the opposition parties of his appointment, he said he is not involved in politics. "I am nobody's man. I rather am a friend of everybody. I will try my best to serve the nation," he added. The mainstream opposition parties, which have long been demanding appointment of the CEC through political consensus, strongly criticised the 'unilateral appointment'. The main opposition Awami League (AL) rejected outright the appointment. - *The Daily Star, May 24.*

HC bans agitation at court, boycott

The High Court in an unprecedented ruling banned agitation on the Supreme Court or any other court premises and boycott of the courts. The suo moto rule came a week into the speaker's ruling in parliament that suggested that the High Court take legal measures against the lawyers' agitation for removal of a controversial judge.

The court prohibited gathering, congregation, picketing and laying siege to the entrance to any court. It also slapped a ban on boycotting or abstaining from attending any court on the basis of any decision of any Bar associations or Bangladesh Bar Council. The court also imposed a moratorium on activities interfering with judicial work or operations of any court or hindering access of any person to the courts. No rally can be held or human chain formed or sit-in demonstrations staged on the Supreme Court premises or any court premises in the name of any forum or the Bar associations. Besides, no lawyer can circulate leaflets, put up banners or give statements to or publish them in any way through the press or any other media. - *Prothom Alo, May 24.*

Savar Factory Collapse

HC asks why not probe by judge

The High Court issued a rule asking the government why it should not be directed to form a commission headed by a sitting or a retired Supreme Court judge to inquire into the factory collapse in Savar, find the culprits and suggest measures to prevent such disasters in future.

The court also restrained the chairman, managing director and directors of the Spectrum Sweater Industries Ltd from disposing of their assets and properties. It asked them to show cause why they would not be directed to pay adequate compensations for rehabilitating the victims. The court orders came following a writ petition filed by four injured workers and nine rights based organisations. The court also issued the show cause notice on about 20 people asking them to reply in two weeks.

The respondents include the secretaries of the ministries of home, labor and employment, industries, food and disaster management, land, and environment. The deputy commissioner of Dhaka, chief inspector of factories of Rajuk, chief executive officer of Savar Cantonment Board, director general of Fire Service, president of BGMEA and three owners of the sweater factory are the other respondents. - *The Daily Star, May 25.*

HC asks EC to collect info on MP aspirants

The High Court ordered the Election Commission (EC) to collect information on parliamentary election candidates' academic qualification, profession, source of income, criminal records, if any, and other issues. The order came against a writ petition filed one month ago by three lawyers who argued that the EC should compile such information on candidates and make them public to help voters choose their representatives properly.

On the day of filing the petition, the court had issued a rule on the EC asking it to explain why it should not be directed to take measures to collect information as mentioned in the writ petition.

The EC did not oppose the rule. The High Court made the rule absolute and ordered that when a person files nomination paper for parliamentary election, the EC should ask the candidate to provide a set of information through affidavit. The required information are about the candidate's academic qualification (to be proved by certificate), and about whether they are accused in any criminal cases at present or whether there were any criminal records in the past. The candidates should also inform the EC about their profession and sources of income. The assets and liabilities of the candidate

and their dependants should also be reported. - *The Daily Star, May 25.*

US blasts Dhaka for extra-judicial killing, HR violations

The United States blasted Bangladesh for extra-judicial killings, human rights abuse, repeated bomb blasts, dilly-dally in investigating and finding out the perpetrators in the August 21 grenade attack and former minister SAMS Kibria killing.

The criticism came at a briefing on Bangladesh at the US Congress in the Washington DC where the US Congressional leaders recommended Bangladesh's inclusion in the Millennium Challenge Account (MCA) and allocated about \$100 million in assistance for Bangladesh to be disbursed through the USAID this year.

If included in the programme, the quantum of US development assistance to Bangladesh is expected to be doubled within a year. At the meeting, overall political, social and human rights issues came up for discussion that witnessed both appreciation and criticism. In a report placed before the briefing, country's political and social issues received mild criticism while empowerment of women and social sector development was highly appreciated. The congressional hearing expressed doubt over the election system of the country and proposed for UN election observation. Congressman Joseph Crowley, presiding over the session organised by the Congressional Human Rights Caucus, urged the US administration to help Bangladesh sustain its democratic and economic strides through increased development assistance.

A panel of administration officials were present to brief the Congress on recent developments in Bangladesh that included Deputy Assistant Secretary of State for South Asia John Gastright and USAID Mission Director for Bangladesh Gene George. The second session constituted by independent experts including NDI Resident Director in Bangladesh Owen Lippert, South Asia expert at the US Institute of Peace Christine Fair and US Chapter of the Amnesty International T Kumar.

Awami League's senior leader Suranjit Sengupta and top US leaders of ruling BNP and AL were present at the briefing. After the hearing, Foreign Minister M Morshed Khan and Suranjit Sengupta met Crowley. Khan was not present at the hearing. - *BD News, May 26.*



weak labour inspection.

The appearance of new forms of coercion in today's globalise economy also raises some difficult policy questions. The report examines the strong pressures to deregulate labour markets as part of the overall drive to reduce labour costs and thereby increase competitiveness.

"Forced labour is the very antithesis of decent work, the goal of the ILO", says Mr. Somavia. "There is critical need for devising effective strategies against forced labour today. This requires a blend of law enforcement and ways of tackling the structural roots of forced labour, whether outmoded agrarian systems or poorly functioning labour markets".

The report makes the case that forced labour can be abolished, but only if governments and national institutions pursue active policies, vigorous enforcement and show strong commitment to eradicating such treatment of human beings. It also presents the positive experience in selected countries that, with ILO assistance, are now tackling forced labour by adopting strong legislation and enforcement mechanisms, implementing policies and programmes to tackle the underlying causes, and helping victims rebuild their lives.

"Although the numbers are large, they are not so large as to make abolishing forced labour impossible", Mr. Somavia says. "Thus, the ILO calls for a global alliance against forced labour involving governments, employers' and workers' organisations, development agencies and international financial institutions concerned with poverty reduction, and civil society including research and academic institutions. With political will and global commitment over the next decade, we believe forced labour can be relegated to history."

Source: International Labour Organisation.

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