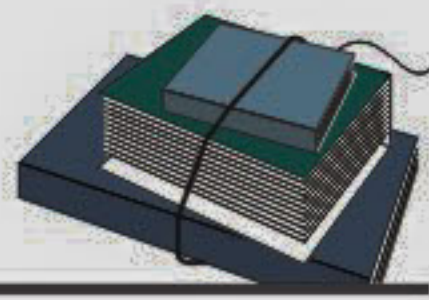


LAW BOOK REVIEW



Nuances of petroleum law

DR. RIDWANUL HOQUE

OPEN market economy or the so-called globalisation process has become an important driver to shape contours of 'the law' and its concerns. Legal systems that have guaranteed an expected level of legal certainty, protection against arbitrary acquisition of property, and have ensured an efficient and delivering adjudication system have attracted more foreign investments than others. Alongside these public law incentives, the private law of contract has become the oft-utilized bargaining chip to negotiate about the rights and limits of powers between investing companies and the host states. Accordingly, contracts in the petroleum industry tend to keep provisions that would strike a balance between the right of exploring corporations and the rights of the host states. This balancing phenomenon is described by what is known as 'stability and risk management in petroleum contracts', a discourse that has given birth to a bunch of issues including, famously, 'the tension between the sovereign right to regulate the petroleum industry and the necessity to protect the legitimate interests of foreign investors'.

The present book under review written by Dr. Abdullah Al Faruque, Associate Professor of Law, Chittagong University, is an insightful examination of the nuances of this tension between state regulation and the investors' leverage and autonomy in the petroleum sector from the perspective of developing countries. This is indeed a study in the law and development in that the author has virtually argued that the more stable and less-risky an investment contract is the more chance for the retention or attraction for investment, leading to development. By examining some select developing countries' petroleum contracts, the author reports that 'over the last two decades, the fierce competition among the developing countries for attracting foreign investment in natural resources exploration [...] have persuaded them to provide favourable conditions [...] for the petroleum companies'. There is indeed a significant rise in the insertion into these contracts of 'stability guarantees' and other fiscal and administrative leverages.

The book is divided into three parts, analysing theories of risks in petroleum contracts, effectiveness of contractual and fiscal devices of stability, and strategies for managing environmental, political and human rights risks.

PART one, with 3 chapters, is the analytical part. Chapter one gives a general but fascinating introduction to the subject, giving, e.g., an account of several types of petroleum contracts - concession contract, production sharing contract, service contract, and so on. Chapter two gives a dynamic definition of 'stability' and highlights its importance in petroleum contracts. It predicates stability upon, among others, the parties' willingness to co-operate with each other,

and the overall fairness in the contractual arrangement. Chapter three focuses on definition and categories of political risks, and examines domestic and international contract law principles vis-à-vis the risks of taking-over of investments of international

ments, focusing also on dispute avoidance tools.

PART three (chapters 8 to 10) analyses the unconventional issues of contention concerning petroleum contracts, taking up environmental and human rights concerns and the cause of transparency and good governance in petroleum industry. Chapter eight shows how legal and regulatory change in the environmental regime of the host country affects contract stability, arguing that states' environmental interventions as well as indigenous people's resistance are an anti-stability factor. Chapter nine discusses the non-conventional political risks in the petroleum sector: analysing the impact of social and human rights concerns on petroleum contracts. The chapter finds that the long-term survival of a petroleum project depends on its social acceptability, which is significantly predicated upon the operation of a social responsible business. Chapter ten deals with the vital issue of transparency in the management of extractive revenues. Finally, Chapter 11 concludes the study with a bundle of general conclusions. One important insight is that, traditional stability guarantees in law or contracts are unable to properly address the social, environmental and human rights risks, and that both the companies and the host states should take socially relevant 'preventive strategies' to better manage or mitigate these unconventional risks.

I have two critical observations: (i) although references to the Bangladeshi practices under petroleum contracts are made almost in every chapter, there ought to be a separate chapter fully dedicated to petroleum contracts in Bangladesh, incorporating the issues of the author's analytical framework. In Bangladesh, for example, there are problems of transparency

not only in the collection and distribution of revenues under petroleum contracts but also in the pre-contract period. Petroleum contracts in Bangladesh are extremely secret documents, and, on this ground, we have seen recent agitations in the streets. Undauntedly there is a need to bring a change into the culture of secrecy and non-participation while negotiating and signing petroleum contracts.

Second, I would also expect an independent chapter on how instability in petroleum contracts and lack of transparency may lead to frustration of investments and hence to 'un-development' of whatever degree. To conclude, this is an excellent study in the complex field of law and development, giving the reader a rather easy idea about the nexus between economic/developmental value of petroleum contracts and the stability mechanisms inserted into them.

The book offers a refreshing reading into legal and human rights aspects of operations of international oil companies in the so-called developing countries including Bangladesh. It also provides a wealth of references for other potential researchers.

The reviewer is Associate Professor, Department of Law, University of Dhaka.

PETROLEUM CONTRACTS: STABILITY AND RISK MANAGEMENT IN DEVELOPING COUNTRIES

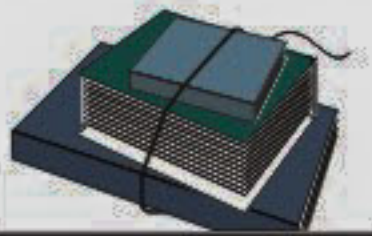
Abdullah Al Faruque

Dr. Abdullah Al Faruque
Petroleum Contracts: Stability and Risk Management in Developing Countries.
Dhaka: BILIA, 2011.
Price: Tk. 500.

oil companies.

PART two, spanning through chapters 4-7, is on contractual, legislative and fiscal incentives that generate and sustain 'stability' under petroleum contracts. Here the author examines trends on stability mechanisms by surveying the model and actual petroleum contracts of some developing countries. Chapter four usefully catalogues and analyses classic and modern types of stabilisation clauses and their legal implications. Chapter five focuses on the extent to which renegotiation and adaptation of petroleum contracts can reduce manage the risks that may arise from change of circumstances. Chapter six is devoted to an analysis of fiscal stability, which the author considers inevitable for the greater stability in petroleum contracts. Chapter seven is about settlement of disputes arising from petroleum agree-

LAW LEXICON



Motion in Limine - A motion made by counsel requesting that information which might be prejudicial not be allowed to be heard in a case.

Murder - The unlawful killing of a human being with deliberate intent to kill: (1) murder in the first degree is characterized by premeditation; (2) murder in the second degree is characterized by a sudden and instantaneous intent to kill or to cause injury without caring whether the injury kills or not.

Mutual assent - A meeting of the minds; agreement.

Naturalization - Process by which a person acquires nationality after birth and becomes entitled to privileges of citizenship.

Negligence - Failure to use care which a reasonable and prudent person would use under similar circumstances.

Negotiation - The process of submission and consideration of offers until an acceptable offer is made and accepted.

Source: Jurist International.

LEGAL MAXIM



Lex spectat naturae ordinem - The law regards the order of nature.

Lex succurrit ignoranti - The law succurs the ignorant.

Lex tutissima cassis, sub clypeo legis nemo decipitur - Law is the safest helmet; under the shield of the law no one is deceived.

Lex uno ore omnes alloquitur - The law speaks to all through one mouth.

Longa possessio est pacis jus - Long possession is the law of peace.

Longa possessio parit jus possidendi et tollit actionem vero domino - Long possession produces the right of possession and takes away from the true owner his action.

Source; inrebus.com



YOUR ADVOCATE

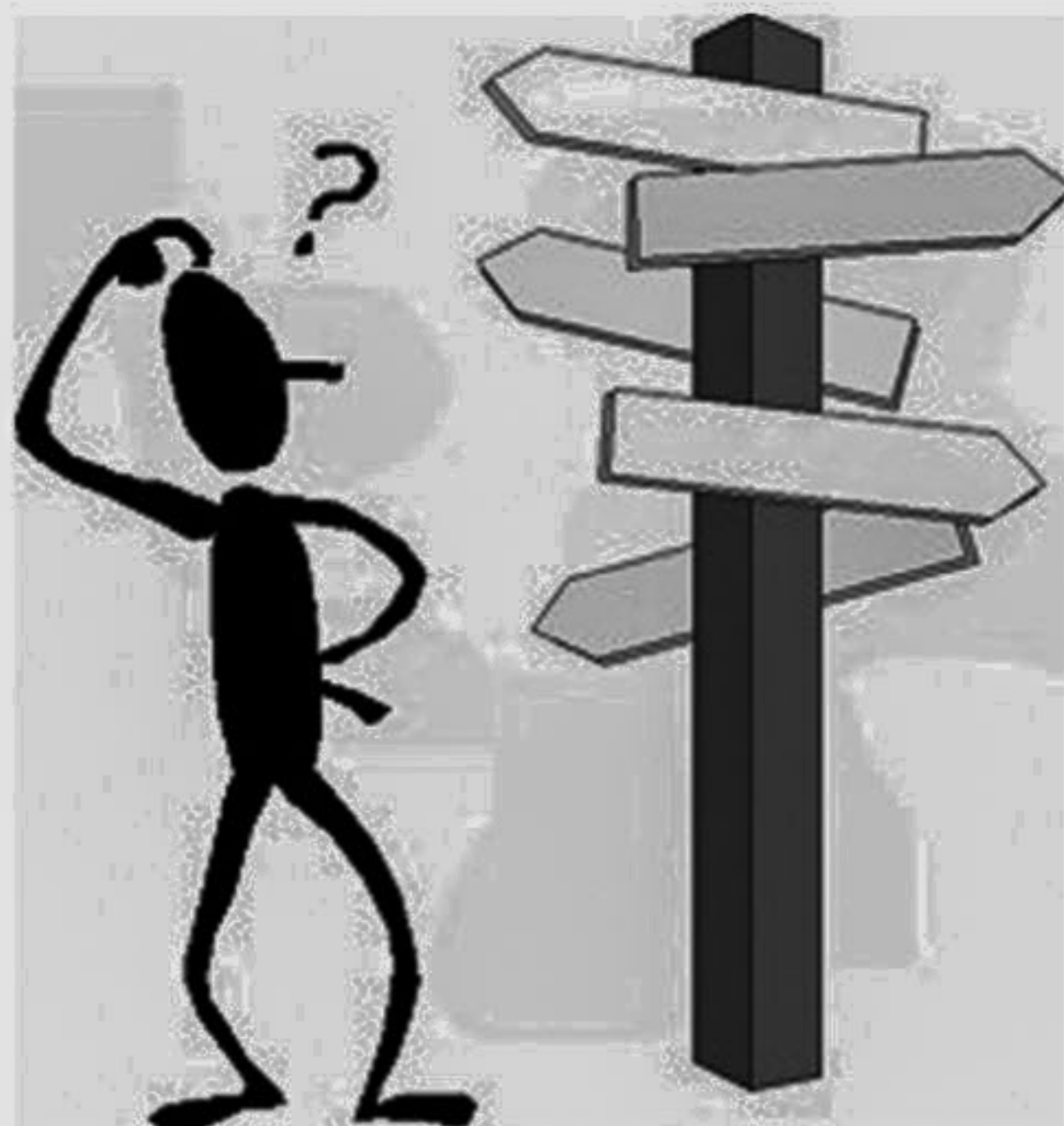
This week Your Advocate is Barrister Tanjib-ul Alam Advocate, Supreme Court of Bangladesh. He is the head of the chamber of a renowned law firm, namely, 'Tanjib-ul Alam and Associates', which has expertise mainly in commercial law, corporate law, admiralty, employment and labor law, land law, banking law, constitutional law, telecom law, energy law, Alternative Dispute Resolution, Intellectual Property Rights and in conducting litigations before courts of different hierarchies.

Query

I am a LLB graduate. Now I want to pursue my Masters degree from London. As a law student I really need help with choosing a career path and I felt that you are the right person to consult with. I am interested in the subject which called 'Conflict and Dispute Resolution' which is mostly comprise of commercial arbitration and its relevant factors. Do you think studying in this area will help me to establish myself further? May I know what you think about it in the light of job prospects? Confused.

Response

Pursuing a course on commercial arbitration is a very good idea. Although current situation with regard to commercial arbitration in Bangladesh is



not that encouraging as people still tend to resort to traditional litigation, but as the economy grows further I am sure there will be changes in litigation scenario. If you acquire specialised knowledge on commercial arbitration, in terms of professional development, there is a good prospect to establish yourself as a corporate lawyer. If you are planning to build your career as a in house lawyer, it seems pursuing higher education in banking and financing law with a blend of company law is better than doing

LL.M in commercial arbitration. Corporate houses do not usually employ lawyer to conduct commercial arbitration on their behalf as the professional lawyers are more suitable due to the nature of the proceedings.

For detailed query contact: info@tanjibalam.com



LAW WEEK

Nizami denied bail in arms haul case

A Chittagong court on September 7 denied the bail prayers of Jamaat-e-Islami Ameer Motiur Rahman Nizami and two others in the ten-truck arms haul case. The two others are former general manager (admin) of Chittagong Urea Fertiliser Limited Enamul Hoque and contractor Deen Mohammad. Judge SM Mujibur Rahman of the Chittagong Metropolitan Special Tribunal-1 also ordered the authorities concerned to publish an advertisement in two national dailies, asking two fugitives Paresh Barua and Nurul Amin to appear before the court within October 3. The court fixed October 3 for the next hearing and ordered to submit the copies of advertisement on that day, said Additional Public Prosecutor Nazrul Islam Sentu. - *The Daily star* September 8 2011.

Ex-SCC chief engr, wife charge-sheeted

Anti Corruption Commission (ACC) on September 7 charge-sheeted former chief engineer of Sylhet City Corporation (SCC) and his wife on charge of concealing around Tk 5.89 crore in their wealth statement. ACC Sylhet office Deputy Director Enamul Basir submitted the charge sheet to the chief judicial magistrate's court against the couple Saiful Islam and his wife Rozina Sultana Rimi. The office Director Abdur Rakib Nakib said a case was filed against the couple in this regard with Sylhet Kotwali Police Station on February 10, 2008. In their recent wealth statement to the ACC, the couple showed Tk 11,80,67,839. But ACC investigations found the amount to be Tk 17,70,56,601.43 accumulating from 10 plots on Bashundhara Residential area, two flats in the capital, a filling station in Sirajganj, cars, bank deposits and savings accounts. - *The Daily star* September 8 2011.

Bangladesh HR body made Asia Pacific Forum member

The National Human Rights Commission (NHRC), Bangladesh has been made member of the Asia Pacific Forum of National Human Rights Institutions (APF). The membership was given in the 16th annual general meeting of APF in Bangkok on September 6, said a press release of National Human Rights Commission Capacity Development Project UNDP, Bangladesh on September 7. NHRC Chairman Prof Dr Mizanur Rahman reiterated Bangladesh government's commitment to protecting, upholding and promoting human rights in the country. - *The Daily star* September 8 2011.

Charge framed against 5 Huji men

A Sylhet court on September 7 framed charges against five members of banned Islamist militant outfit Harkatul Jihad al Islami (Huji) in an assassination attempt case on the city Mayor Badar Uddin Ahmed Kamran. The accused Mufti Abdul Hannan, his brother Muhibullah alias Muhibur Rahman alias Mofizur Rahman, Mufti Abu Zandal, Sharif Shahedul Alam Bipul and Delwar Hossain Ripon were present during the charge framing. The judge rejected a prayer by the accused for further investigation. Chief Judicial Magistrate Abu Syed Dilzar Hossain set the date for starting the trial on November 23. - *The Daily star* September 8 2011.

HC questions ACC act provisions

The High Court on September 5 questioned the legality of the Anti-Corruption Commission (ACC) rules that empower it to charge people with amassing wealth beyond known sources of income and concealing the information about it. An HC bench issued rules on the government and the ACC asking to explain within four weeks why sections 26(2) and 27(1) of the ACC act should not be declared illegal and unconstitutional. The ruling came in response to separate petitions by Abdul Mannan, an Awami League lawmaker from Bogra, and his wife Sahadara Mannan. The ACC on July 4 filed two cases against the couple under the two sections. In response to their petitions, the HC bench of Justice Bazlur Rahman and Justice M Enayetur Rahim asked the government and the commission to explain why the proceedings of the cases against them should not be declared illegal. - *The Daily star* September 6 2011.

Babar's Tax Evasion, hearing adjourned 15 times

A Dhaka court on September 5 deferred the hearing till October 27 on charge framing against detained former state minister for home Lutfozzaman Babar in a case filed for dodging income tax of Tk 2.65 crore from 1999-2000 to 2008-09 fiscal years. With this, the court had adjourned the hearing for 15 times on different excuses submitted from the defence. Judge Mohammad Rezaul Islam of the Special Judge's Court-5 passed the order following a petition submitted by defence lawyer seeking an adjournment of the hearing. Babar's lawyer told the court that he had earlier filed a writ petition with the High Court (HC) challenging the legality of the case. But the hearing on the writ petition is still pending. The prosecution opposed it and prayed for framing charge against the accused as there was no stay order on the proceeding of the case. Deputy Tax Commissioner Syed Zakir Hossain of the National Board of Revenue (NBR) filed the case on February 14 last year against Babar, now in police custody on various criminal charges. - *The Daily star*

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those. Please send your mails, queries, and opinions to: Law Desk, The Daily Star 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: