

LEX/BDHC/0566/2011

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Writ Petition No. 3540 of 2010

Decided On: 27.10.2011

Appellants: **Public Interest Litigation (PIL), Human Rights and Peace for Bangladesh (HRPB)**

Vs.

Respondent: **Government of Bangladesh and Ors.**

Hon'ble Judges:

Naima Haider and Farid Ahmed, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Manzil Murshid, Adv.

JUDGMENT

Naima Haider, J.

1. On an application under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued calling upon the respondents to show cause as to why the steps taken by the respondent No. 4, by abusing power of the District administration and violating the instruction of the government regarding the misuse of electricity, should not be declared illegal and without lawful authority and why a direction should not be given upon the respondents to take action as per section 46 of Electricity Act, 1910, against the respondent No. 4 and why a direction should not be given upon the respondent No. 1, to take proper disciplinary action against the respondent No. 4 for his conduct.

2. At the time of the issuance of the Rule the Respondent No. 4 was directed to reframe the measuring electricity for playing tennis. In the manner reported in 21st of April 2010 issue of the "daily Jugantor" for a period of 3 (three) months from date which was not extended later.

3. The facts leading to the issuance of the Rule, in brief, are:

This writ petition is in the nature of a public interest litigation.

4. On 21.04.2010 a report was published in the daily Jugantor with a news item under the headline "রংপুর শহর যখন অন্ধকার, তখন জেলা প্রশাসক খেলেন ফ্লাইডলাইটে" that the Deputy Commissioner, Rangpur, has violated the instructions of the Government in respect of misuse of electricity. It is stated in the application that the Prime Minister directed the administration not to misuse the electricity in peak time due to shortage of electricity. The cause was to ensure supply of electricity for the farmers for cultivation of rice on which the citizens depend. The Prime Minister also urged the people to consider the matter for production of rice. Despite the instruction given by the Prime Minister, the respondent No. 4 along with other district administration misused the electricity during peak time by way of playing Long Tennis. It was reported in same news paper that though there was no electricity in the Rangpur city but by abusing the power of the respondent No. 4, the District Administration misused the electricity by playing Long Tennis in Floodlight. This is clear violation of the instruction of the government.

5. The total production of electricity is less than the demand of the country and it has

created many major problems in the normal life of the citizen. It also hampers the industrial and agricultural production of the country. The report published in the news paper further stated that the nation is facing acute shortage of electricity due to not taking steps by the earlier governments for sufficient production of electricity. It is also reported in the news paper the present government took initiative to increase the full production of electricity but it will take years to complete the project. It is an admitted position that the people of this country have to face shortage of electricity till the project is completed by the government. At this stage, there is no alternative but to stop misuse of the electricity which is reflected in the instructions of the Hon'ble Prime Minister. It is stated further here that in many places, electricity connection was being used by illegal means with the help of the corrupt people of the Electricity Department and the government is being deprived huge money in this way. If such kind of illegal means are not stopped, the suffering of the general people will increase. Many shop owners are using excess bulbs in their commercial place, which is totally unnecessary and are creating obstruction to other users of electricity. Even they use 20-40 bulbs in a small space and are unnecessarily consuming electricity by depriving other people.

6. The respondents are the experienced public servant and very much aware of the rules and instructions of the government. Moreover, the issue of electricity, conditions of the user and way of different misuse is being reported in media and is within the knowledge of the respondents, Under these circumstances, in such public interest issues, notice to the respondents is not necessary in order to bring to their notice again by way of legal notice for taking steps.

7. Being aggrieved by and dissatisfied with the failure of the respondents to take appropriate steps against the respondent No. 4 and having no other equally, efficacious remedy the petitioner moved this writ petition and obtained Rule Nisi.

8. The respondent no. 3 did not file any affidavit in opposition. Mr. Shahinoor Alam, learned Advocate appeared for respondent no. 3 and made oral submissions in this Rule.

9. Respondent No. 4 has-entered appearance by filing an affidavit in opposition. The case of the respondent No. 4 is that the alleged facts about the delinquency against respondent No. 4 regarding the violation of the instruction of the Government in respect of misusing electricity in peak time by way of playing Long Tennis in floodlights is not true. The respondent No. 4, Deputy Commissioner, Rangpur strongly denied the facts of the allegations. The unscrupulous and hostile news reporter published the alleged vexatious news report with ulterior motive to cause hindrance to the respondent No. 4's reputation. The respondent No. 4 is fully aware of the Government instructions and directions about misusing electricity. He is also aware of the directions given by the Hon'ble Prime Minister and other good offices about the misuse of electricity and every legal measures and steps were taken in order to ensure smooth electric supply for the farmers during the period of irrigation in paddy field.

10. Mr. Manzill Murshid, the learned Advocate appearing for the petitioner at the outset submits that the duty and responsibility vested upon the administration is to follow the instructions of the government. The respondents are also duty bound to obey the provision of law. It is the duty of an officer to perform the duties in accordance with law, but they have failed to perform the duties and responsibility as per the instructions. He next submits that the respondent No. 4 violated the provision of section 46 of the Electricity Act, 1990 (sic 1910). So, he is liable to be punished. He lastly submits that the Prime Minister directed the administration not to misuse

the electricity in peak time due to shortage of electricity. The cause was to ensure supply of electricity for the farmer for cultivation of rice on which all the citizens depend upon. Mr. Murshid emphatically argued that despite the instructions of the government, the respondent No. 4 along with other District Administration misused the electricity in peak time by way of playing Long Tennis in floodlights which is a clear violation of the instruction of the government.

11. Mr. Shahinoor Alam, the learned Advocate appearing on behalf of the respondent no. 3 and made oral submissions in this Rule.

12. Mr. Molkeshur Rahman, the learned Deputy Attorney General appearing on behalf of the respondent No. 4 on the other hand submits that the alleged facts about the delinquency against respondent No. 4 regarding the violation of the instruction of the Government in respect of misusing electricity in peak time by way of playing Long Tennis in floodlights violating the directions of the Hon'ble Prime Minister as per news report published in the daily Zugantar dated 21.04.2010 is not correct. He next submits that the reporter published the alleged vexatious news report with ulterior motive to cause hindrance to the respondent No. 4's reputation and adds that the respondent No. 4 is fully aware of the Government instructions and directions about misuse of electricity. The learned Deputy Attorney General reiterates that he is also aware of the directions given by the Hon'ble Prime Minister and other good offices about the misuse of electricity and every legal measures and steps were taken accordingly in order to ensure smooth electric supply for the farmers during the period of irrigation in paddy field. He lastly submits that in order to ensure smooth electric supply and to save energy, respondent No. 4 played a vital role and took all necessary steps conjointly with related offices and not a single complaint was received from the cultivators about the irregularities of electric supply.

13. We have perused the writ petitions, annexures and affidavits in opposition filed on behalf of the respondent No. 4.

14. Public Interest Litigations are filed for the cause of the public and no doubt, they should give meaning to the purpose for which they are knocking the doors of justice. Here, the petitioners elaborated the sufferings of the general public, which, in our opinion, merits consideration.

15. A news under the caption "রংপুর শহর যখন অন্ধকার তখন জেলা প্রশাসক খেলেন ফ্লাইডলাইটে" that the Deputy Commissioner, Rangpur has violated the instructions of the Government in respect of misuse of electricity has triggered the petitioner to file this PEL. It is stated in the application that the Prime Minister directed the administration not to misuse the electricity in peak time due to shortage of electricity. The cause was to ensure supply of electricity for the farmers for cultivation of rice on which the citizens depend. The Prime Minister also urged the people to consider the matter. Despite the instruction given by the Prime Minister, the respondent No. 4 along with other district administration misused the electricity during peak time by way of playing Long Tennis.

16. Power Crisis has been a long clamor in Bangladesh and this seems to persist for the coming decade or so. The term electricity is synonymous with' modern life in the industrially developed world. Communication, transportation, food supply and preservation, housing, offices and establishments, mills and factories all depend on adequate supply and availability of electricity. Electricity must therefore be supplied dependably and the supply must be compatible with the demand of the citizens of the country. We cannot be oblivious of the fact that the gap between the demand and supply had increased, due to which the general public of the country would put to lot

of irreparable sufferings. Now-a-days, the electricity is one of the basic needs of the human beings to survive and without having electricity we cannot imagine a day to go beyond. Needless to say, the Government has taken the responsibility ensure all public amenities made available to the general public to keep surviving peacefully. At the same time, we are also of the view that the Government, has to take immediate and necessary action in this matter, involving large scale of public interest and see that the power crisis would get resolved.

17. While dealing the instant application, this Court observes the following:

1. It is the duty of every citizen to be cautious about the use of electricity and be on guard so that it is not misused.

2. Some decree of austerity is to be maintained in the use of power/electricity and under no circumstances should there be any wastage.

3. The clubs concern should have their power generating system. However, there is no bar in playing tennis but one must be on guard so that consumption of electricity in any manner is not misused or wasted.

4. Electricity theft has to be reduced by applying technical solutions such as tamper-proof meters.

5. Managerial methods such as inspection and monitoring in the clubs on a regular basis is necessary so as to prevent misuse of electricity and reduce the consumption.

6. Energy saving bulbs should be used in the clubs and public places.

18. Keeping in mind the aforementioned, we need to bear in mind that the problem has to be-resolved by creating awareness amongst the users so that there is no misuse of power.

19. Faced with the above, we are inclined to make the Rule absolute-in-part.

20. In the result, the Rule is made absolute-in-part with the observations made in the body of the judgment.

21. There is however no order as to costs.

22. Communicate the order.

Farid Ahmed, J.

I agree.

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