

IN THE SUPREME COURT OF BANGLADESH
 HIGH COURT DIVISION
 (SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. OF 2011.

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF:

Public Interest Litigation (PIL)

AND

IN THE MATTER OF:

1. Human Rights and Peace for Bangladesh (HRPB) Represented by it's Secretary Advocate Asaduzzaman Siddique, Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

2. Advocate Sarwar Ahad Chowdhury, Organizing Secretary, Human Rights and Peace for Bangladesh (HRPB) of 3/14 Bashbari Bosila Road, Mohammadpur, P.S.: Mohammadpur, Dhaka.

3. Advocate Md. Aklas Uddin Bhuiyan Publicity Secretary of Hall No. 2, Supreme Court Bar Association Bhaban, Dhaka and 33 Abdul Hadi Lane, Police Station Kotwali, District- Dhaka, Bangladesh.

.....Petitioners.

-V E R S U S-

1. Bangladesh represented by the Cabinet Secretary, Cabinet Division, Bangladesh Secretariat, P.S.: Ramna, District: Dhaka.

2. The Secretary, President Secretariat, Bangabhaban, P.S.: Ramna, District: Dhaka.

3. The Secretary, Secretariat of the Prime Minister's Office, Tejgaon, P.S.: Tejgaon, District: Dhaka.

4. The Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat P.S.: Ramna, District: Dhaka.

5. The Secretary, Bangladesh Jatiya Sangsad Secretariat, Bangladesh Secretariat, P.S.: Ramna, District: Dhaka.

6. The Secretary, Ministry of Home Affairs, Bangladesh Secretariate, P.S. Shahbag, District: Dhaka.

....Respondents.

G R O U N D S

I. For that by amending the provisions of the impugned sections, the offenders are being subject to a punishment which is not proportionate to the seriousness of the offence. The government has no reasonable ground to reduce the penalty of the offence where death is related so it is unreasonable. By way of this

amendment the right to life of the citizen guaranteed by the constitution has been seriously affected thus it is ultra vires and illegal.

II. For that despite the fact that respondents amended the column 7 of schedule II in relation of section 304B of the Code of criminal Procedure, 1898 (Act V of 1898) by the Code of Criminal Procedure (Second Amendment), 1985 (Ordinance No. XLIX of 1985) and the amendment of section 304B of the Penal Code, 1860 (Act XLV of 1860) by the Penal Code (Second Amendment) Ordinance, 1985 (Ordinance no. XLVIII of 1985). The petitioners with no option but to challenge the vires and legality of the impugned amendment by which inserting the words “three years” substituting the words “seven years”.

III. For that Article 32 of the Constitution of People Republic of Bangladesh provides the citizens of Bangladesh a fundamental right, “protection of right to life and personal liberty”. Even though according to the judgment of Field J, in Munn v. People of Illinois 94 US 113 the meaning of life in “right life” is more than mere animal existence. But for the purpose of our issue in hand, the literal meaning of the fundamental right protected by the constitution is violated by the impugned amendment, thus it is ultra vires and illegal.

IV. For that the government has no reasonable ground to reduce the penalty of this sever offence thus the amendment of the column 7 of schedule II in relation of section 304B of the Code of criminal Procedure, 1898 (Act V of 1898) by the Code of Criminal Procedure (Second Amendment), 1985 (Ordinance No. XLIX of 1985) and the amendment of section 304B of the Penal Code, 1860 (Act XLV of 1860) by the Penal Code (Second Amendment) Ordinance, 1985 (Ordinance no. XLVIII of 1985), was an unreasonable act by the government. As in the Wednesbury case any act or decision of the public body which no other reasonable public body would take is amounted to be an unreasonable act or decision.

V. For that the penalty provided in impugned amendment is not proportionate to any offence related to homicide. Thus the amendment is disproportionate, hence liable to be declared illegal and void.

VI. For that the reason for increasing the death by negligent and rash driving is minimum punishment for the offence. Though the right to live of the citizen is guaranteed by the Constitution of Bangladesh but due to minimum punishment under section 304B of the Penal Code fundamental rights of the citizen has been violated. So the amendment made under the ordinance no. XLVIII and XLIX are inconsistent with the constitution and violative of the provisions of the constitution of Bangladesh. So it is liable to be declared illegal and void.

Wherefore, it is most humble prayed that your Lordships would graciously be pleased to:-

- a) Issue a Rule Nisi calling upon the Respondents to show cause as to why Amendment of Column 7 of Schedule II, Act V of 1898, by The Code of Criminal Procedure (2nd Amendment) Ordinance, 1985 (Ordinance No. XLIX of 1985) and amendment of section 304B, Act XLV of 1860 by the Penal Code (Second Amendment) Ordinance, 1985 (Ordinance no. XLVIII of 1985), inserting the words “3 years” substituting the words “7 years”, published in the official gazette on 10.10.1985, should not be declared to be void and ultra vires to

the constitution as being violative of the fundamental rights of the citizen.

Present Status

The case was filed and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon'ble Court issued Rule Nisi upon the respondents. The matter is pending before the Hon'ble High Court Division.
