

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

**WRIT PETITION NO. 6930 of 2010**

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Human Rights and Peace for Bangladesh  
(HRPB) and others

.....Petitioners.

-VERSUS-

Bangladesh represented by the Secretary,  
Ministry of Commerce and others

..... Respondents

**Mr. Manzill Murshid, Advocate**

.....for the petitioner

**Mr. Md. A. B. M. Altaf Hossain, D.A.G with  
Mr. Shaikat Basu, A.A.G**

.....for the Respondents

Heard and Judgment on 21<sup>st</sup> of July, 2011.

**Present:**

**Mr. Justice A.H.M. Shamsuddin Choudhury**

**And**

**Mr. Justice Gobinda Chandra Tagore**

**Gobinda Chandra Tagore, J:-**

The *Rule Nisi* under adjudication, issued 26<sup>th</sup> of July 2010 in  
following terms:

“Let a *Rule Nisi* be issued calling upon the respondents to show cause as to why inaction of the respondents in taking necessary step to stop using of tannery waste in fish and poultry feed and failure of the respondents to take effective measures to protect the health of the citizens, should not be declared illegal and without lawful authority and why a direction should not be given upon the respondents to take effective measure to stop using of tannery waste in fish and poultry feed.”

Averments placed by the petitioners are summarized bellow:

There involves a public importance in the Writ Petition. Egg, fish and chicken play an important role in maintaining the health of the citizens. However, some corrupt businessmen are using tannery waste in producing fish and poultry feed for their own interest and undue financial benefit. Using tannery waste in the fish and poultry feed processing industry is dangerous for the health of the people. Health is related to the right to life of the citizen. Unless the use of tannery waste in producing fish and poultry feed is stopped there will be a health disaster, Hence, the petitioner filed and moved this Writ petition as a Public Interest Litigation (PIL) before this Court.

Reports published in the Daily Star on 24.07.2010 and in the Zugantar on 25.07.2010 revealed that use tannery waste in fish and poultry feed poses serious health risk for the consumers of the fish and poultry products as the hazardous waste has the possibility of directly entering into the food chain. As per the reports the experts say that the consumption of tannery waste through fish and poultry might cause liver and kidney diseases such as cancer and liver cirrhosis. The tannery waste contains chromium, acid, chromium salt and sodium chloride, which are harmful to the public health. Even, there will be a health disaster in near future if measures are not taken to stop using tannery waste in fish and poultry feed. Day by day the number of cancer patients is increasing rapidly as recorded by the National Institute of Cancer and Research and Hospital (NICRH). In the year 2005 the total number of cancer patients was 5411, in the year of 2006 6492, in the year of 2007 6926 and in the year of 2008 it was 7518. Higher rates than the tolerable levels of chromium were found in eggs and poultry meats.

Most of the people of the country depend on protein from egg, fish and chicken. However, chemicals less food is very important for the

life of the citizen. Due to the chemicals used food the people are becoming sick day by day and the health cost is increasing, which is unaffordable for the poor people. Nevertheless, for using the tannery waste in producing fish and chicken feeds the original taste and quality of the fish, chicken and egg has been degraded.

Therefore, it is necessary to stop using tannery waste to save the health of the citizen, otherwise the people will suffer. But the respondents are not taking steps to stop using tannery waste in fish and poultry feed. Thus, the people are being deprived of their emergency need of food.

However, the respondents being experienced public servants they are very much aware of the rules and instructions of the Government with regard to prevention of using tannery waste in fish and poultry feed. Moreover, the issues of using tannery waste in producing fish and poultry feed are often reported in the media, so it is not out of the knowledge of the respondents.

Without any precautions to save the health of the citizens the respondents have pushed the lives of the people in a dangerous situation, which is violative of Article 18(1) of the Constitution. Moreover, the right to life is a fundamental right guaranteed under Article 32 of the Constitution. But due to the presence of dangerous chemicals in egg and fish and poultry, the life is facing health threats.

However, as per Article 21 of the Constitution every public servant is duty bound to perform public duties and to observe the Constitution and the laws.

Therefore, a direction may be given upon the respondents to take appropriate steps to stop using tannery waste in fish and poultry feeds.

Being aggrieved by and dissatisfied with the inaction of the respondents to take necessary step to stop the use of tannery waste in producing fish and poultry feeds and the people having no other equally efficacious remedy, the petitioners filed this Writ Petition in the public interest and obtained the *Rule Nisi*.

Having placed the Writ Petition Mr. Manzill Murshid, learned Advocate for the petitioners submits that tannery waste containing around 30 types of chemicals like acid, chromium salt, sodium

chloride *et cetera* is being illegally used in producing fish and poultry feeds and consumption thereof through fish, chicken and egg might cause liver and kidney diseases, even cancer and as such it is a matter of great public importance to stop immediately using tannery waste in producing fish and poultry feeds.

The learned Advocate for the petitioners then submits that the respondents have failed to perform their legal duty in preventing the use of tannery waste in producing fish and poultry feeds in order to maintain public health safe and free from any sort of hazard and as such they may be directed accordingly.

The learned Advocate for the petitioner further submits that as per Article 18(1) read with Article 21 and 32 of the Constitution the respondents are duty bound to raise the level of nutrition and to take effective measures to improve the public health as among their primary duties in order to safeguard the people's fundamental right to life and hence, they should be directed as has been prayed for.

The respondents have not materially opposed the *Rule Nisi* by filing any Affidavit-in-Opposition.

However, Mr. A.B.M. Altaf Hossain, learned Deputy Attorney General along with Mr. Shaikat Basu, learned Assistant Attorney General orally submits that the Writ Petition is not maintainable as the মৎস্যখাদ্য ও পশুখাদ্য আইন, ২০১০ provides for alternative remedies against the grievance raised therein.

But the learned Deputy Attorney General fails to materially controvert that tannery waste is being used in producing fish and poultry feed and that tannery waste contains hazardous chemicals which the people are being fed through fish, poultry and egg and such chemicals obviously cause serious kidney and liver diseases like cancer and liver cirrhosis.

We have perused the Writ Petition along with the annexures thereto and heard the learned Advocate for the petitioners and the learned D.A.G and A.A.G

Having annexed two investigative reports thereto-one under the caption "**Toxic poultry feed poses health risk**/ Tannery waste used in producing feed for fish fowls, published in The Daily Star on July 24, 2010 and the other under the caption "আলোচনা সভায়

ব্রিডার্স                      অ্যাসোসিয়েশন                      নেতারা                      /                      ট্যানারি  
বর্জ্য                      মি শিয়ে                      পোলট্রি                      ফিড                      প্রস্তুতকারী

কারখানা                      এখনই বন্ধ                      করতে হবে ” published in the daily  
'যুগান্তর                      ' on July 25, 2010, the petitioners filed the Writ  
Petition as a public interest litigation and obtained the *Rule Nisi*.

The said two reports reveal that meat-bone, a protein-rich substance is an essential ingredient of fish and poultry feeds. Earlier the traders used to import meat-bone. But a practice of using tannery waste in producing fish and poultry feeds started around 10 years ago as the price of imported protein for feed has gone up over the years. An inquiry by The Daily Star found around 100 small traders in and around Hazaribagh at Dhaka use raw tannery waste that comes from tanning of skin-cuts as the ingredient of meat-bone and supply it to some 20 factories across the country. However, as per the Poultry Feed Industries Association, there are around 70 big and medium, and 300 small feed factories in the country. A study in 2007 conducted by Dhaka University and Bangladesh Council for Scientific and Industrial Research (BCSIR) found higher rates of chromium in eggs and poultry meats than the tolerable level. Meat-bone made from tannery waste contains 2.5 percent chromium, which is only 0.4 percent in imported protein. Nevertheless, around 30 types of chemicals like acid, chromium salt, sodium chloride at *et cetera* are used in tanning of skin-cuts. The studies suggest that the chemicals including chromium, if used in fish and poultry feeds, enter the food chain of the consumers of such fish, poultry meats and eggs and the consumers may be subjected to cancer or liver and kidney-related diseases. With reference to the National Institute of cancer Research and Hospital (NICRH) the report says that the number of cancer patients is raising and the use of tannery waste in poultry and fish feed might cause cancer. In 2005, the recorded number of cancer patients treated in the NICRH was 5,411, which rose to 6,492 in 2006, 6,926 in 2007 and 7,518 in 2008. Having quoted some experts the reports continue that heavy metals like chromium and lead may cause dangerous diseases such as cancer and liver cirrhosis, and damage the kidneys.

Nevertheless, the production process of meat-bone from tannery waste by boiling skin-cut waste is severely polluting the environment in Hazaribagh area. Plastic items like sandals used for

fired and burning of tannery waste make huge black smoke putting public health in danger.

The Breeders' Association also demanded stop using tannery waste in producing fish and poultry feeds as the same might cause health hazards to the consumers of fish and poultry meats.

But the respondents have failed to take effective measures in stopping use of tannery waste in producing fish and poultry feeds.

However, in 2010 a new law the মৎস্যখাদ্য ও পশুখাদ্য আইন, ২০১০ hereinafter referred to as the Act of 2010, was enacted. Section 4 of the Act of 2010 imposes restrictions on production, processing, import, export marketing, sale and distribution and other activities related to fish-feeds and animal-feeds without the license to be granted under section 6 of the Act.

As per section 5 of the Act the respective Director General of the Directorate of Fisheries or the Directorate of Livestock or any Class-I officer authorized by the concerned Director General for this purpose is the concerned licensing authority.

Section 12 of the Act prohibits any person from producing, importing, exporting, selling, transporting and marketing any harmful and adulterated fish-feed and animal-feed and any violation of such prohibition shall constitute an offence under the Act.

Section 14 of the Act imposes restrictions on using antibiotic, growth-hormone, pesticide *et cetera* in fish-feed and animal-feed and the violation of any such restrictions shall also constitute an offence under the Act.

But section 18(1) of the Act provides that no Court shall take cognizance of any offence under this Act except upon a written complaint filed by the concerned Director General or the authorized officer. Section 18 of the Act provides as follows:

“১৮। অপরাধ গ্রহণ ও বিচারঃ

- 1) মহাপরিচালক বা ক্ষমতাপ্রাপ্ত কর্মকর্তার লিখিত অভিযোগ ব্যতিত কোন আদালত এই আইনের অধীনে কোন মামলা বিচার গ্রহণ করিবে না।
- 2) ফৌজদারী Kvh"©বিধি তে যাহা কিছুই থাকুক থাকুক না কেন , এই আইনের অধীন অপরাধ সমূহ প্রথম শ্রেণীর ম্যাজিস্ট্রেট বা মেট্রোপলিটন ম্যাজিস্ট্রেট কর্তৃক বিচার হ"© হইবে।
- 3) এই আইনে ভিন্নতর কিছু না থাকিলে , এই আইনের অধী ন সংঘটিত অপরাধের বিচার সংক্ষিপ্ত পদ্ধতিতে অনুষ্ঠিত হইবে এবং এতদুদ্দেশ্যে ফৌজদারী Kvh"©বিধির Chapter XXII তে বর্ণিত পদ্ধতি , যতদূর সম্ভব , প্রযোজ্য হইবে। ”

Therefore, as per section 18(1) of the Act, except the concerned Director General or the authorized officer no other body or authority has any legal authority to file any case on the allegation of any offence under the Act.

However, in the Writ Petition neither of the said Director Generals nor any authorized officers have been made a party. But they are subordinate to the Secretary, Ministry of Fisheries and Livestock, respondent No. 5. Nevertheless, none of the respondents asserted by filing any affidavit or otherwise that any body or authority of the Government including the said Director generals and authorized officers have taken any step to stop using tannery waste in producing fish-feed and poultry feed.

While, the concerned authorities remain indifferent to their public duties, the petitioners have rightly come forward with this Writ Petition in the form of public interest litigation.

Therefore, the writ petition is maintainable in its entirety.

Nonetheless, as per Article 18(1) read with Articles 21 and 32 of the Constitution respondents being public servant they are bestowed with the duty to raise the level of nutrition and the improvement of public health as among their primary duties in order to safeguard the people's fundamental right to life.

In such view of the matter, we find merit in the Rule. Hence, the Rule is made absolute.

Respondent Nos.1-6 are directed to stop functioning of all Fish and Poultry Feed Industries, which are using tannery waste in producing fish and poultry feeds and to take appropriate legal actions against such industries in accordance with the provisions of the মৎস্যখাদ্য ও পশুখাদ্য আইন, ২০১০ within 2(two) month, to prepare a monitoring guideline in order to stop using tannery waste in all fish and poultry feeds factories within 4(four) months from the date of receipt of this judgment and to submit affidavits-in-compliance with the directions within 15 days from the date of expiry of the respective period of compliance.

Send a copy of this judgment of respondent Nos. 1-6 and to each of the Director General of Directorate of Fisheries and the Director General of the Directorate of Livestock for necessary action and compliance with the same.

Let the Writ Petition be treated as a writ of continuing mandamus.

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