

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

Writ petition No. 9329 of 2008.

IN THE MATTER OF

An application under Article 102(2) (a) (i) of the
Constitution of the People's Republic of Bangladesh.

AND

IN THE MATTER OF

Human Rights and Peace for Bangladesh (HRPB),
represented by the Secretary of the Executive
Committee, Advocate Asaduzzaman Siddique and
Others

----- the petitioners.

Versus

Government of Bangladesh and Others

----- the respondents.

Mr. Manzill Murshid

----- for the petitioners.

Mr. Razik Al-Jalil, DAG

----- for the respondents.

Present :

Mr. Justice Syed Mahmud Hossain

And

Mr. Justice Quamrul Islam Siddiqui

Heard on 22.4.2009, 7.5.2009 and 23.06.2009

Judgment on 29.07.2009.

Syed Mahmud Hossain J

In this 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 inaction of the respondents to arrange sufficient rescue equipments in case of disaster caused by earthquake should not be declared to be illegal and without lawful authority and why a direction should not be given upon the respondents to arrange sufficient rescue equipments necessary in order to save the life of the citizens in case of disaster caused by earthquake.

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

Petitioner No. 1, Human Rights and Peace for Bangladesh, (HRPB) is a non-profitable registered organization and its objectives are (i) to uphold the human rights of the citizens, (ii) to work for the poor people, (iii) to give legal support to the

helpless people, (iv) to work for protection of the life of the citizens and (v) to build up a awareness amongst the people about their right. Petitioners Nos. 2-7 are the members of the organization and engaged in promoting and defending human rights and supporting the victims of violations. In the immediate past some news items were published in the daily newspapers that the major portion of Bangladesh is situated in high risk newspaper that the major portion of Bangladesh is situated in high risk earthquake zone. This is a serious threat to life of the people of this country. Therefore, appropriate steps to save life of the people are of great public importance and consequently, this petition should be treated as public interest litigation.

On 26.7.2008 an earthquake of moderate magnitude occurred in different parts of Bangladesh and as a result, 15 students of different halls of Dhaka University came out of their halls because of panic. During the earthquake, 15 students of Jasimuddin Hall and Jaganath Hall sustained injuries. A news item was also published in The Daily Ittefaq on 28.07.2008 stating that the intensity of the earthquake occurred on 26.07.2008. was measured on the Richter scale as 5.6. Different news items were published in the daily newspapers stating that a large portion of Bangladesh was within the vulnerable earthquake zone.

It is reported that in future there is possibility of occurrence of severe earthquake in Bangladesh. Till date, proper rescue arrangement is not available in our country. If and earthquake of higher magnitude occurs in our country, hundreds of thousands of people are likely to lose their life and equal number of people is likely to be maimed in the absence of adequate rescue equipments at the disposal of fire Service and Civil Defense. The first duty of the state is to save the life of its citizens. Even after publication of distressing news items about the danger of impending severe earthquake, the concerned authority of the Government has not yet been properly equipped to face the danger.

The petitioner served a notice upon the respondents demanding justice for taking adequate preparation and arranging rescue equipments but to no avail.

Therefore, the petitioners were constrained to file the instant Writ Petition and obtained the Rule Nisi.

Respondents No.4 filed affidavit-in-opposition controverting all the material allegations made in the Writ Petition. The case of this respondent, in sort, is that Government is fully aware of the problem and has been taking steps to save the life of the citizens in the event of a severe earthquake. The Government has taken different programs to create awareness among the people about earthquake. In addition to the above measures, the Government has been trying to make available the proper rescue arrangement with its limited resource so that it can take proper steps, if any higher scale of earthquake his country.

This respondent also furnished a list of rescue equipments at the disposal of Fire Service as evidenced by Annexures-1 and 2 to the affidavit-in-opposition.

Mr. Manzill Murshid, learned Advocate for the petitioners, submits that because of impending danger of earthquake, the Government should have taken adequate preparation but that adequate preparation but that adequate preparation is yet to be taken. He further submits that the Fire Service and Civil Defense do not have adequate rescue equipments at their disposal and as such, necessary direction should be given to the Government in this regard. He lastly submits that the Rule should be

treated as continuing mandamus so that this Court can give direction from time to time.

Mr. Rajik Al-Jalil, the learned Deputy Attorney General appearing on behalf of respondent No. 4, on the other hand, submits that the Government is completely aware of impending danger of earthquake and that necessary arrangement has been made in this regard. He also submits that the Fire Service and Civil Defense have necessary rescue equipments in their possession and as such no direction is required to be given.

We have perused the Writ Petition and its annexure, the affidavit-in-opposition and its Annexure.

One of the most frightening and destructive phenomena of nature is a severe earthquake and its terrible aftereffects. An earthquake is a sudden movement of the Earth, caused by the abrupt release of strains that has accumulated over a long time. For hundreds of millions of years, the forces of plate tectonics have shaped the Earth as the huge plates that form the Earth's surface slowly move over, under, and past each other. Sometimes the movement is gradual. At other times, the plates are locked together, unable to release the accumulating energy. When the accumulated energy grows strong enough, the plates break free. If the earthquake occurs in a populated area, it may cause many deaths and injuries and extensive property damage.

The Earth is formed of several layers that have very different physical and chemical properties. The outer layer, which averages about 70 kilometers in thickness, consists of about a dozen large, irregularly shaped plates that slide over, under and past each other on top of the partly molten inner layer. Most earthquakes occur at the boundaries where the plates meet. In fact, the locations of earthquakes and the kinds of ruptures they produce help scientists define the plate boundaries.

Earthquakes can also occur within plates, although plate-boundary earthquakes are much more common. Less than 10 percent of all earthquakes occur within plate interiors.

An earthquake is the vibration, sometimes violent, of the Earth's surface that follows a release of energy in the Earth's crust. This energy can be generated by a sudden dislocation of segments of the crust, by a volcanic eruption, or even by manmade explosions. Most destructive quakes, however, are caused by dislocations of the crust. The crust may first bend and then, when the stress exceeds the strength of the rocks, break and "snap" to a new position. In the process of breaking, vibrations called "seismic waves" are generated. These waves travel outward from the source of the earthquake along the surface and through the Earth at varying speeds depending on the material through which they move. Some of the vibrations are of high frequency to be audible, while others are of very low frequency. These vibrations cause the entire planet to quiver or ring like a bell or tuning fork.

Earthquakes beneath the ocean floor sometimes generate immense sea waves or tsunamis (Japan's dread "huge wave"). These waves travel across the ocean at speeds as great as 960 kilometers per hour (597 miles per hour) and may be 15 meters (49 feet) high or higher by the time they reach the shore.

Scientists today are working on ways to predict earthquakes. An earthquake triggered the slides of a mountain in Guatemala in February, 1976 when part of the earth's crust shifted. The quake caused 23,000 deaths. The quake damaged more than 300 villages.

The frequency of mild earthquake had been increasing in Bangladesh 40 times in 11 months of 2002 in Chittagong alone. Tremors have recently jolted Chittagong Hill Tracts. On July 27, 2003 the quake measured 5.09 Richter scale, killed two persons, injured 25, and flattened about 500 houses. It also triggered fissures on the ground at one place in the Hill Tracts. According to local people, at least 50 aftershocks had shaken area in the two districts, forcing some people to shift to safety. The epicenter of the July 27 quake was located at Kolabunia on the Indo-Bangladesh border. Four-storey buildings in Chittagong port developed multiple cracks after the tremor with 5.31 on the Richter scale hit the region on August 12, 2003 the higher ever in the world being 8.8. Besides, the roof of the Power Development Board sub-station in the city collapsed. On 26.12.2004, a magnitude 7.3 earthquake occurred in the Indian region of Nicobar Island near Bangladesh. The Bangladesh Metrological Department issued a statement that the quack had struck Chittagong.

The frequent jolts and the damages have frightened the people across the country. There is a widespread allegation that building code has not been followed at all, even by developers of high-rise buildings, public and private. The fear of hit has caught people residing in Dhaka city which is full of authorized and unauthorized high-rise buildings without any reference to the building code. Experts on earthquake generally feel that Bangladesh may have a big earthquake in the Chittagong area whose impact may be felt in Dhaka also in the form of collapse of a lot of multi-storied building or in some other forms.

Geologists believe, the Himalayas were formed when the plate carrying India bumped into the one carrying the rest of Asia. The mantle may also pull plates apart. That is what is causing North America to drift ever farther away from Europe. Scientists believe that East Africa is barking away form the rest of the African continent. In millions of years may be a new continent, separated form Africa by a new ocean.

Record shows that Madhupur gar and haor of Sylhet were the creation of earthquake in 1762. Tista River changed its course as a result of an earthquake of 1787. About 40,000 sq. miles of Khasia hill areas were destroyed by the earthquake of 1891 and the course of Brahmaputra was also changed.

An examination of the historical catalogue of Bangladesh and its surrounding region reveals that a number of earthquake of large magnitude with epicenters within this region occurred in the past. The 1897 Great Indian earthquake in the world; it had its epicenter only 230 km form Dhaka. While the earthquake affected almost whole of Bangladesh, damages were very severe particularly in Sylhet, Rangpur and Mymensing. In the city of Dhaka most of the brick masonry buildings either collapsed or were severely damaged.

Negligible number of severe earthquakes during this century has led to a situation where the policy makers do not perceive seismic risk to be important. The rapid urbanization, development of critical engineering works. Industrialization of cities with modern types of buildings and the concentration of population living or settling in hazardous areas are matters of growing concern as they contribute to heavier loss of life and increase considerably the costs of disaster damage. In recognition of the threat to the major investment at risk from strong earthquake, the Government should multiply its efforts to continue the study and analysis o the seismicity of the region with a view to reducing the earthquake risk. The first step in mitigating the risk of the community from earthquake hazard is an assessment of the hazard itself.

Macroseismic earthquake data of the large historical earthquake are important for seismic hazard analysis. The relationship between magnitude, epicenter distance and peak ground acceleration of these earthquakes constitute the basic parameter needed for assessing seismic hazard at a given site.

More than 80% of Bangladesh is underlain by quaternary sediments consisting of deltaic and alluvial deposits of the Ganges, Bramaputra and Meghna rivers and their numerous tributaries. According to the study of Morgan and McIntire (1959), there are two major areas of Pleistocene sediments, commonly known as Madhupur tract and Barind tract. The Madhupur block lies between the Jamuna and Old Bramaputra rivers and 6 to 30m above the mean sea level. Madhupur tract is bounded by faults: they appear to be uplifted and structurally complex.

A fault is a fracture in the Earth's crust along which two blocks of the crust have slipped with respect to each other. Faults are divided into three main groups, depending on how they move. Geologists have found that earthquakes tend to reoccur along faults, which reflect zones of weakness in the Earth's crust. Even if a fault zone has recently experienced an earthquake, however, there is no guarantee that all the stress has been relieved. Another earthquake could still occur.

The Daily Inquilab published a news item on 28.07.2008 under the headline: $\text{0c}\text{P}\text{U}$ $\text{f}\text{y}\text{g}\text{K}^{\text{u}}\text{ th t}\text{K}\text{v}\text{b mgq Av}\text{N}\text{v}\text{Z n}\text{v}\text{b}\text{Z c}\text{v}\text{i} | \text{0}$

The news item also incorporated a chart showing occurrence of earthquake at different times:

$\text{w}\text{e}\text{M}\text{Z t}^{\text{o}} \text{k}\text{Z}\text{v}\text{x}\text{t}\text{Z ms}\text{N}\text{i}\text{U}\text{Z e}\text{v}\text{s}\text{i}\text{v}\text{t}^{\text{k}} | \text{msj M}\text{w}\text{A}\text{t}\text{j i f}\text{q}\text{en f}\text{y}\text{g}\text{K}^{\text{u}} |$

Zwi L	$\text{f}\text{y}\text{g}\text{K}^{\text{u}}$ bvg	gv I v (wi LUvi t ^ tj)	Drcw E t ^ tj i (Bwctm>Uvi) Ae ^ vb	XvKv t ^ tK Drcw E t ^ tj i y ^ Zj	
27 Rj vB, 2008	-----	5.6	wmtj U mrgv S I	263 wKtwgt	-----
10 Rvbqvi x, 1879	KvQvo (Avmvg) $\text{f}\text{y}\text{g}\text{K}^{\text{u}}$	7.5	%Rw S I qv, Avmvg, fvi Z	250 wKtwgt	Avmvtgi gubcj, KvPro I eZgyb evsj vt ^ tki wmtj U AA ^ tj Rvbgtj i e ^ vcK $\text{f}\text{y}\text{g}\text{K}^{\text{u}}$
14 Rj vB, 1885	5te ^ zj Av ^ tKvtqK	7.0	e ^ ov, evsj vt ^ k	170 wKtwgt	wmi vRM A , ^ ov, ep E i gqgbwmsn Gj vKvq e ^ vcK $\text{f}\text{y}\text{g}\text{K}^{\text{u}}$
12 Rj, 1897	M BwUqvb Av ^ tKvtqK	8.7	Avmvtgi wkuj s gvj fvg fvi Z	230 wKtwgt	mgM A Avmvg-evsj vq w e tkl K I wmtj U, gqgbwmsn D E i v A tj gvi vZK $\text{f}\text{y}\text{g}\text{K}^{\text{u}}$
8 Rj vB, 1918	kig ^ zj Av ^ tKvtqK	7.6	kig ^ zj evsj vt ^ k	150 wKtwgt	ep E i wmtj U, XvKvq c P U K ^ utb wecj $\text{f}\text{y}\text{g}\text{K}^{\text{u}}$, AvLvDov t ^ ÷k ^ tb I wKQyFeb aesm
2 Rj vB, 1930	ap w o Av ^ tKvtqK	7.1	ap w o, Avmvg, fvi Z	250 wKtwgt	i scj mn Av f kcvtk mgn $\text{f}\text{y}\text{g}\text{K}^{\text{u}}$
15 Rvbqvi x,	Wenvi - tbcvj Av ^	8.3	v ^ vi fv ^ zj, fvi Z	510 wKt vgt	wenvi, tbcvj I D E i c ^ tk Rvbgtj i Ac ^ bxq $\text{f}\text{y}\text{g}\text{K}^{\text{u}}$

1934	†Kv†qK				
15 AvMó, 1950	†MŪ Avmvg Av_© †Kv†qK	8.5	Avmvg fvi Z	780 wKwtgt	w†k† cPŪ f†gK=ú,tj vi k†l© Gi tiKW†

It appears that the concerned authority is not fully aware of the impending danger of severe earthquake. In view of the discussions made before, it is incumbent upon the Government to make available sufficient equipments necessary for rescue operation of the people soon after occurrence of a severe earthquake. Recent news items published in different national Dailies regarding chance of severe earthquake in Bangladesh have created great anxiety amongst the people. The Government is bound to protect the life and property of the people in discharge of its constitutional obligations. Even after publication of numerous news items in different national Dailies, the concerned authority of the Government has not been taking adequate preparation to face it. At present, Fire Service and Civil Defense do not have adequate equipments at their disposal to meet any risk/danger of earthquake. The petitioners have given a list of equipments necessary for rescue operation after earthquake in paragraph 13 of the Writ Petition.

List of the rescue equipments (Spellings of the equipments given by the petitioner may not be correct) provided by the petitioner is as follows :

- i. " Turn Table Ladder (T.T.L), (total-6), Height 170 Feet, Moving.
- ii. Shorkel, (total-6), Moving Ladder, Height 88 feet.
- iii. Break Down Van, (total-20) High hydraulic power.
- iv. Emergency Tender (E.T. and Lighting Unit), (total- 8).
- v. Chemical Tender, (total-6), For put out fire.
- vi. Track Droger, Bulldozer (total-6).
- vii. Crush Tender, for broken, (total-6).
- viii. From Tender, (total-2) for put out fire from oil.
- ix. Water Tender, 11000 liter, (total-6).
- x. Crane (total-6).
- xi. Rotary Rescue saw, for cutting (total-10).
- xii. Chapping Hammer, for making hole (total-8).
- xiii. Vibrator (total- 4).
- xiv. Electric Drill (total-6).
- xv. Generator, (total- 6).
- xvi. Hydraulic Spreader with Power unit rescue from inside, (total- 6)
- xvii. Air blower, for giving oxygen inside. (Total -6).
- xviii. Oxy-Acetylene Cutter, For cutting iron. (Total-6).
- xix. Pipe Squeezer, Stop gas line. (Total-6).
- xx. Search Camera. (Total-6)
- xxi. Image Camera, Looking inside. (Total-6)
- xxii. Gas Detector, Density Lessen. (Total-6)"

The petitioner state that if the present condition of rescue capacity of the authority is not increased, the life of the citizens will be at stake.

Respondent No. 4 furnished two lists to show the equipments at the disposal of Fire service and Civil Defense Directorate as evidenced by Annexure1 and 2 to the affidavit-in-opposition. Annexure 1 and 2 are quoted below:

SL	Name of equipments	Held	Under	Total	Remarks
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No.			Process		
1	Water Tender	227	53	280	
2	Special Water Tender	6	6	12	
3	Foam Tender	6	6	12	
4	Chemical Tender	0	5	5	
5	Crush Tender	0	0	0	Used Civil Aviation
6	Snorkel	4	0	4	
7	Turn Table Ladder	2	4	6	
8	Towing Vehicle	232	23	255	
9	Emergency Tender	5	5	10	#
10	Break Down Van	2	2	4	
11	Lighting Unit	2	11	13	
12	Crane	0	1	1	#
13	Fork Lift (8 ton)	0	2	2	#
14	Wheel Dozer	0	1	1	#
15	Excavator (Heavy)	0	1	1	#
16	Excavator (Light)	0	1	1	#
17	Fire Float	0	4	4	
18	Rescue Speed Boat	0	2	7	
19	Speed Boat Ambulance	6	0	6	
20	Portable Pump	398	49	447	
21	Portable Pump(Pocket)	153	19	172	
22	Ambulance	61	8	69	
23	Power Unit Assembly	14	0	14	
24	Portable Foam Generator	1	0	1	
25	Spreader	14	45	59	
26	Ram Jack	10	34	44	
27	Smoke Ejector	102	59	161	
28	Face/gas Mask	13	280	293	
29	Slab Cutter	33	59	92	
30	Power chain `Saw'	10	11	21	
31	Power Round `Saw'	1	8	9	
32	Power cutter	5	13	18	
33	Breathing Apparatus	225	221	446	
34	Diving Apparatus	33	26	59	
35	Compressor Machine For Breathing Apparatus (Portable)	12	14	26	
36	Heat Portable Suit	94	152	244	
37	Gas Detector	3	13	16	
38	Generator	92	6	98	
39	Auto Escape	24	30	54	
40	Full Body Rescue Harness	2	20	22	
41	Hurst Jaw	1	0	1	

42	Hurst Hydraulic Cutter	6	0	6	
43	Door Opener (Breaker Set)	3	0	3	
44	Jumping Air bag	4	4	8	
45	Thermal Image Camera	1	14	15	
46	Electric/Power Vibrator	7	0	7	
47	Fireman Suit	801	1580	2381	
48	Safety Helmet with Light	797	863	1660	
49	Gum Boot	1273	400	1673	
50	Portable Ground Monitor	39	0	39	
51	Chain pully	9	0	9	
52	Mechanical Jack	242	0	242	
53	Proto Type Jack	119	0	119	
54	Extension Ladder	122	0	122	
55	Air Lifting Bag	17	48	65	
56	Water Mist System	0	1	1	
57	Cold Cute System	0	3	3	

M Abdus Salam

Deputy Director (Admin & Finance)
Fire Service & Civil Defence Directorate
Kazi Alauddin Road, Dhaka.

Statement of Rescue Equipments of Fire Service and Civil Defense Against the Writ Petition.

SL	Name of Equipments	Writ Petition Quantity	Fscd Available Quantity	State Procurement in Process	Total	Remark
1	Turn Table Ladder (T.T.L)	06	02	04	06	
2	Snorkel	06	04		04	
3	Break Down Van	20	02	02	04	
4	Emergency Tender (E.T)	04	01	05	06	
5	Lighting Unit	04	02	09	11	
6	Chemical Tender	06		05	05	
7	Truck Dozer/Bulldozer	06		01	01	Not Authorized
8	Crush Tender	06				Required by Aviation
9	Foam Tender	02	06	04	10	
10	Water Tender, 1,100 Liter	06	05	05	10	
11	Crane	06		01	01	#
12	Rotary Rescue Saw (For Cutting)	10	24	60	84	

13	Chipping Hammer (For Making Hole)	08				Task can be Performed by SL- 14
14	Vibrator	04	58	10	68	
15	Electric Drill	06				Task can be Performed by SL-14
16	Generator	06	59		59	
17	Hydraulic Spreader with Power unit (Rescue form Inside)	06	14	35	49	
18	Air Blower (For Giving Oxygen Inside)	06	22		22	
19	Oxy-Acetylene Cutter (For Cutting Iron)	06	08		08	
20	Pipe Squeezer (Stop Gas line)	06	15		15	
21	Search Camera	06	06	17	23	
22	Image Camera, Looking inside	06	01		01	Task can be Performed by SL-21
23	Gas Detector	06	03	13	16	

Note: In case of emergency resources of other departments (AFD, RDH, City Corp etc) will be utilized".

Considering the impending danger of earthquake, we direct the Government to form a high powered committee comprising Ministries experts, NGOs, Red Crescent etc at the earliest time.

The committee to be constituted by the Government may be called "Earthquake Preparedness and Awareness Committee."

The Ministry of Disaster Management will immediately obtain the advice of the Prime Minister to the formation of the Committee.

The proposed committee may be as follows:

- (1) Ministry of Disaster Management
- (2) Home Ministry
- (3) Ministry of Finance
- (4) Ministry of Communication
- (5) Ministry of Information
- (6) University professor's experts on earthquake.
- (7) Major NGOs having the capability of undertaking essential relief operation after earthquake.

- (8) Bangladesh Red Crescent Society.
- (9) Ministry of Health and Family Welfare.
- (10) Representative of Fire Service and Civil Defense.
- (11) Ministry of Defense.
- (12) Women Organization.
- (13) Ministry of Foreign Affairs.

The Committee so constituted shall have the option to co-opt members according to its need.

The Committee shall be formed at the earliest.

The Committee shall convene its first meeting soon after its formation with the permission of the Prime Minister.

The Committee, amongst others, shall enquire into the existing preparedness of the Government to meet the challenge of any severe earthquake.

The Committee shall check the lists of equipments supplied by respondent No. 4 and also the list supplied by the petitioners as detailed in the body of the judgment. The Committee then shall prepare a list of equipments of its own, recommending purchase of those equipments on an urgent basis. The Committee shall have the authority to include new equipments not mentioned in the lists of equipments supplied by respondent No. 4 and the petitioners.

As soon as the recommendation of the Committee will be available, it will be the responsibility of the Ministry of Finance to allocate funds to the purchase of the equipments.

The Committee shall meet frequently and make recommendation to the Government from time to time.

If further direction of this Court is needed in this regard, the parties will be at liberty to file applications in the instant Rule as the present Rule Nisi is treated as continuing mandamus.

In the light of the finding made before, we find substance in this Rule.

Accordingly, the Rule is made absolute and the respondents are directed to act as per the direction made in the body of the judgment.

There is no order as to costs

Let a copy of this judgment be communicated to the office of the Prime Minister and the Ministry of disaster Management by a Special messenger of this Court as soon as possible.
