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

WRIT PETITION NO. 2618 OF 2017

IN THE MATTER OF :

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

A N D
IN THE MATTER OF :

Human Rights and Peace for Bangladesh (HRPB) , represented by it's secretary Asaduzzaman Diddique Hall No. 2, Supreme Court Bar Assosiciation Bhaban, Dhaka Bangladesh and others.

…..... Petitioners.

= Versus =

Bangladesh represented by the Secretary Ministry of Health and Family Welfare, Bangladesh Secretariat, P.S. Shahbag Dhaka Bangladesh and others

……Respondents.

Mr. Manzill Murshid , Advocate

.. for the petitioners

Mr. Amit Talukder, D.A.G.with

Mr. Md. Jahangir Alam, A.A.G. and

Mr. Shafiquel Islam Siddique, A.A.G.

..for the Respondent Nos. 1-8

A.M.Aminuddin with

Mr. A.K.Fazlul Huq, Advocates

… for the Respondent Nos. 9 and 14

Mr. Ehsan A. Siddiq with

Mf. Syed Muhammad Raihan Uddin, Advocates

.. for the Respondent No.10.

Mr. Fida M. Kamal with

Mr. Md. Ramzan Ali Sikder, Advocate

..for the Respondent No.11

Mr. Yousuf Hossain Humayun with

Mr. J.K.Paul and

Mr. Liton Acharjeea, Advocates

. for the Resondents No. 12 and 13.

Mr. M. Qumrul Haque Siddique with

Mr. Parth Sarathi Mondal, Advocates

… for the Respondent No.15

Mr. Raghib Rauf Chowdhury, Advocate

.. for the Added Respondent No. 16

Mr. Mustaque Ahmed Chowdhury, Advocate

..for the Added Respondent No.17

Heard on 3.4.2017 and

Judgment on 3.4.2017

Present :

Mr. Justice Syed Muhammad Dastagir Husain

and

Mr. Justice Md. Ataur Rahman Khan

Syed Muhammad Dastagir Husain, J:

Rule Nisi was issued calling upon the respondents to show cause as to why the inaction and failure of the respondents to implement the recommendation of the expert committee to stop production and sale any kinds of Antibiotic (Penicillin, Cephalosporin), Storied/Hormone and Anti cancer drug/ medicine produced by the 28 Pharmaceuticals Industries (a per the name mentioned in para 9-11 of the writ petition) without following GMP guidelines/principles and quality control, should not be declared illegal and without lawful authority and why a direction should not be given upon the respondents to stop production and sale any kinds of Antibiotic (Penicillin, Cephalosporin), steriod/Hormone and Anti- cancer drug/medicine produced by the 28 Pharmaceuticals Industries (as per the name mentioned in para 9-11 of the writ petition) which caused threat to right to life of the citizen of Bangladesh. The respondent Nos. 1-5 are directed to take immediate steps within 72 hours to stop production and sale of Antibiotic (Penicillin, Cephalosporin)) storied/Hormone and Anti cancer drug/medicine by ther 28 Pharmaceuticals Industries (as per the name mentioned in para 9-11 of the writ petition) and file a compliance report within two weeks before this court.

The Respondent No. 5 has already filed affidavit of compliance before this court.

The petitioner is an organization Human Rights and Peace for Bangladesh (HRPB) is a non profitable registered organization and the objects the organization is to uphold the human rights of the citizen and to work for the poor people, to give legal support to the common people and to build up awareness amongst the people about their rights etc. The organization is also working to protect

human health and takes legal steps against the activities subversive of public health as well as in case of violation of law. The respondent No.1 is Bangladesh represented by the Secretary, Ministry of Health and Family Welfare, Respondent No. 2 Secretary, Ministry of Industries. Respondent No. 3 is the Director General (DG), Health Directorate, Mohakhali, Dhaka, Respondent No.4 is the Director General, the Department of National Consumer Rights Protection, Respondent No.5 is the Director, Directorate of Drug Administration, Respondent No. 6 The Secretary, Bangladesh Aushad Shilpa Samity/ Bangladesh Association of Pharmaceutical Industries (BAPI), Respondent No. 7 is the Inspector General of Police (IGP), Police Head Quarter, Ramna, Dhaka, Respondent No.8 is the Director General D.G. of RAB Forces, RAB Head Quarter, Kurmitola, Dhaka and their address are given in the cause title are correct. The matter involved in the instant petition has a public importance from different aspects. It is known to all that drugs and medicine are a vital need in day to day life of human beings. Drugs play a pivotal role in keeping the human race safe and sound. However, some unscrupulous and inconsiderate businessman/manufacturers of drugs are producing drugs which are not up to the mark, so unusually affecting the life of the people. This being a matter of public issue and affecting the basic need of common people and relating to public health, it has severe negative impact on all concern, especially on the mass at large. It is stated that the affected people being unable to come to enforce their fundamental rights hence the petitioners move this Public Litigation (PIL) before this court . Since the matter involves great public importance so this petition may be treated as Public Interest Litigation. Due to producing of less qualitative drug and medicine by some pharmaceuticals industries the issue was discussed in the parliamentary standing committee and with the approval of the Hon'ble Speaker of the Bangladesh Parliament an expert committee was formed in September 2014 headed by Professor ABM Faruk along with four others professors of different universities. The committee was directed to visit the industries in order to ascertain the capacity of quality medicine production by the Pharmaceuticals Industries in Bangladesh. It was also directed

to the committee to submit a report. After that the expert committee visited 84 pharmaceuticals industries and submitted a detail report on 1.2.2016. Before submission of the report the members of the committee visited three times in the industries. The committee has taken a constant assistance from the Department of Drug Administration from its some competent officers and analysts as referred in the report. Hence the report has given a vivid picture of the 84 inspected pharmaceuticals industries including the instant added respondent industry from all aspects including the reality.

It is necessary to stop illegal production of antibiotic/drugs/medicine to save the health of the citizen otherwise the people will suffer a lot, which would have a severe bad impact on the life of the citizen and it also violated the fundamental rights guaranteed by the Constitution of Bangladesh . The committee also expressed its concern that if drugs/medicines are not produced in line with GMP guidelines, the produced drugs/medicines do not have any standard; diseases will not be cured; severe injury may occur in human body that may also claim human life and those drugs/medicines are to be abandoned in the context of all considerations of public health" Accordingly as per the terms of reference, the Expert Committee prepared its report along with various observations and specific recommendations for each pharmaceuticals industry for addressing a public purpose as per Good Manufacturing Practice (GMP) principles which comprises some basic principles of drugs productions, i.e. its quality system, risk management, sanitation and hygiene, self- inspection, personnel, premises, equipments materials goods practice and above quality control of drugs. The expert committee report recommended to cancel the license of 20 pharmaceuticals industries and to cancel the permission of production of Antibiotic (Non Penicillin, Penicillin ad cephalosporin group) of 14 pharmaceuticals industries. A writ petition being No. W.P. 6969 of 2016 was filed before this court challenging the inaction of the respondents. In the petition it was also prayed to stop production of those pharmaceuticals industries and rule nisi has been issued. Thereafter the rule was heard by this Division Bench and Rule was made absolute in part. Here in this case the expert committee recommends to stop production of any kinds of drug/medicine of

Antibiotic (Penicillin, Cephalosporin), Storied/Hormone, by 21 Pharmaceuticals Industries namely; Amico Pharmaceuticals Ltd., Aztec Pharmaceuticals Ltd., Bengal Techno Pharma Ltd., Benham Pharmaceuticals Ltd., Central Pharmaceuticals Ltd. Decent Pharma Ltd., Dr. Tim's Laboratories Ltd. Globex Pharmaceuticals Ltd., Greenland Pharmaceuticals Ltd.,, Inova Pharmaceuticals Ltd. Maks Drugs Ltd., Medimet Laboratories Ltd., Modern Pharmaceuticals Ltd., Mystuc Pharmaceuticals Ltd., National Laboratories Ltd., Organic Healthcare Ltd., Oyster Pharma Ltd., Premier Pharmaceuticals Ltd., Prime Pharmaceuticals Ltd., Seema Pharmaceuticals Ltd. White Horse Pharmaceuticals Ltd. The expert committee also recommend stopping production of any kinds of oral medicine by Mumtaz Pharmaceuticals Ltd. Unique Pharmaceuticals Ltd. The committee also recommend to stop production any kinds of drug/ medicine of Antibiotic (Penicillin, Cephalosporin), Storied /Hormone by United Chemicals & Pharmaceuticals Ltd. In the report it was also recommends to stop all kinds of medicine production by FNF Pharmaceuticals Ltd. The expert committee also recommended for stopping production of any kinds of drug/medicine of Antibiotic (Penicillin, Cephalosporin), Storied/Hormone and Anti cancer medicine y Techno Drugs Ltd. Unit-I, Techno Drugs Ltd. Unit-2, Techno Drugs Ltd. Nuit-3 which are Annexures A B and C series. Despite of recommendation made by the expert committee long before but the respondents did not take any steps to stop less quality medicine production by those 28 pharmaceuticals industries. The petitioners finding no other alternative efficacious remedy came before this court and obtained the present Rule.

The learned Advocate Mr. Manzill Murshid, appearing on behalf of the petitioners submits that it is the fundamental rights of the common people, the citizens that thy are entitled to have quality medicine/ drug/antibiotic. In the absence of quality medicines, the right to life of the citizens are violated. Moreover as per Constitution of the People's Republic of Bangladesh the fundamental human rights of the citizens in the republic must be guaranteed, Medicinal treatment is one of the fundamental human rights of citizens. So no authority can show any negligence in any way to this right. Rather it is the duty of the government to give

full support for arranging effective and quality medicine for the safety of the citizen. But without keeping in mind about the Constitutional obligations the respondents failed to take any steps to stop production of less quality or adulterated medicine and ultimately the peoples are deprived from proper medicine. Therefore it requires interference by this court. Further he submits that due to less quality or adulterated medicine, the lives of the people fall in a dangerous situation, which is violation of Article 18(1) of the Constitution of Bangladesh. The respondents are always duty bound to serve the people and to perform their duties. But they have failed to perform their duties because of their inactions. They did not take any steps against the manufactures of drugs/medicine, they are producing less quality medicine. Inaction of the respondents to stop production of less quality drugs/medicine has caused serious sufferings to public health. Hence a direction may be given upon the respondents to stop production and sale any kinds of drug/ medicine of Antibiotic (Penicillin, Cephalosporin), Storied/Hormone and Anti- cancer medicine by the 28 Pharmaceuticals Industries. The respondents being the responsible persons and the responsible bodies, they are duty bound to abide by laws and regulations, and as such it is necessary to stop illegal production otherwise would have a severe bad impact on the life of the citizen and as such interference of this court is very much essential.

On the other hand the Respondent Nos. 9,10,11,12, 13,14,15,16,17 have appeared and have submitted affidavit in opposition.

Mr. Fida M. Kamal appearing on behalf of the Added-Respondent No. 11 has submitted that already there is recommendation by the expert committee with some conditions and as such they may be permitted to go on production and the same submission was adopted by Mr. A.M. Aminuddin in respect of Added Respondent Nos. 9 and 14 and also the same submission was adopted by Mr. Yousuf Hossain Humayun in respect of Added-Respondent No. 12 and 13. Mr. Qumrual Islam Siddique in respect of Added-Respondent No. 15 submits that at least they may be allowed to go on production, as well as Mr. Ragib Rouf Chowdhury appearing on behalf of the Added- Respondent No. 16 adopted the same

argument made by Added- Respondent No.9 and in reply to the said submission Mr. Morshid submits that though they were recommended but there are some conditions which are to be followed before such production. The Respondents have also submitted that in case of antibiotic and Hormone steroid anti cancer drugs they were manufacturing not by themselves but on toll basis, which is permitted by law.

Heard the learned advocates as it appears there are some opinion followed by conditions made by the expert committee. The expert committee visited the pharmaceuticals Industries three times and most of the pharmaceuticals industries were trying to manufacture medicines by following ETP and GMP. Though the expert committee has recommended for production of non penicillin antibiotic but stated that unless and until the GMP is upgraded they cannot go into production. Further some of the pharmaceuticals industries neither have GMP nor even ETP. If they can install ETP and follow GMP only then they can go into production. In disposing of Writ Petition No. 6969 of 2016 we have recommended for establishment of a committee consisting of five members; one expert from Expert Committee, One expert from WHO, representative from Drug Administration, one Expert from Respondent No.1 and one professor from Department of Pharmacy of Dhaka University. The Industries can only go into production subject to the recommendation of the committee as stated above. Since the learned advocates have stated that there should be time limit for formation of such committee, under such situation within 15 days from date of receipt of this order, the committee shall be formed to observe the production.

We therefore, with this direction made the Rule absolute in part.
