

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

WRIT PETITION NO. 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:

Public Interest Litigation (PIL).

AND

IN THE MATTER OF:

1. Human Rights and Peace for Bangladesh

(HRPB), represented by its Secretary,

Advocate Asaduzzaman Siddique, Hall No.

2, Supreme Court Bar Association Bhaban,

Dhaka, Bangladesh.

.....Petitioner.

-V E R S U S-

1. The Secretary, Ministry of Power,

Energy and Mineral Resources, Bangladesh

Secretariat, P.S.: Shahbag, District: Dhaka.

2. The Managing Director, Dhaka Electric

Supply Company Ltd. (DESCO), Block-K,

Road-24, House-3, Banani, Dhaka

3. The Managing Director, Dhaka Power

Distribution Company Ltd. 1, Abdul Goni

Road, Ramna, Dhaka

4. The President, Dhaka Club, Shahbag,

Police Station- Shahbag, District- Dhaka.

5. The President, Officers Club, Eskaton

Road, Police Station- Ramna, District-

Dhaka.

6. The President, Uttara Club, Sector-1,

Police Station- Uttara, District- Dhaka.

7. The President Gulshan Club, Gulshan,

Police Station- Gulshan Club, District-

Dhaka.

.....Respondents.

AND

IN THE MATTER OF:

For a direction upon the respondents to take

appropriate steps to stop misuse/waste

electricity and to take steps as per section

46 of the Electricity Act. 1910.

To

Mr. Justice Mohammad Fazlul Karim, The Hon'ble Chief Justice

Bangladesh and his companion Judges of the said Hon'ble Court.

The humble Petition of the Petitioner above named most
respectfully;-

S H E W E T H:

1. That the organization Human Rights And Peace For Bangladesh (HRPB) is a non profitable registered organization and the objects of the organization is to uphold the human rights of the citizen and to work for the poor people, to give legal support to the helpless people, and to build up awareness amongst the people about their rights etc.

That the organization is engaged in promoting and defending human rights, supporting the victims of human rights violations. It also works to protect environment and to protect health of the citizen and to establish rule of law.

2. That the petitioner is a practicing lawyer of this Hon'ble Court, human rights activist and conscious citizen of the country. He is challenging the misuse/waste of electricity, violating the instructions of the Government. The petitioner also seek to bring this application by invoking Article 102 of the Constitution as a public interest litigation in order to take necessary steps against the respondents, who has failed to perform their duties as vested upon them as a government servant.

3. That the Respondent No. 1 is the Secretary, Ministry of Power and Energy, Bangladesh Secretariat, P.S.: Shahbag, District: Dhaka.

Respondent no. 2 is the Managing Director, Dhaka Electric Supply Company Ltd, P.S.: Banani, District: Dhaka. Respondent no. 3 is the Managing Director, Dhaka Power Distribution Company. Respondent No. 4 is the President, Dhaka Club, Respondent no. 5 is President of Officers Club. Respondent no. 6 is the President of Uttara Club and Respondent no. 7 is the President of Gulshan Club. That the addresses of the petitioner and the respondents given above are correct for the purpose of service of notices.

4. That it is stated here that the matter is involved a public importance. Though the government gave instruction to stop of misuse/waste of electricity but the respondent no. 4-7 without considering the present shortage supply of electricity, is playing games by using flood light in pick time, so the people are suffering, the effected people unable to come to enforce their rights, hence the petitioner move this Public Interest Litigation (PIL) before this

Hon'ble Court. As it involves great public importance so this petition may be treated as public interest litigation.

5. That it is stated here that while a report was published in the Daily Zugantar on 21.04.2010, that the Deputy Commissioner, Rangpur, violating the instruction of the Hon'ble Prime Minister not to misuse the electricity in pick time due to shortage of electricity, is playing lawn tennis by using flood light in pick time. After publishing the news a Public Interest Litigation was filled by the petitioner and after hearing the parties this Hon'ble Court were pleased to issued Rule Nisi and directed the Deputy Commissioner, Rangpur, not to misuse/waste electricity in pick time by using flood light. The cause behind the instruction of the Government was to ensure supply of electricity for the farmer for cultivation of rice on which all the citizens are depending on. It is stated here that though there is shortage of electricity in Dhaka City but respondent no. 4-7 and many

others club of Dhaka City are playing games in Floodlight by misuse/waste the electricity but no steps has been taken by the respondents 2 and 3.

6. That it is stated here that the total production of electricity is less than the demand of the country and it has created many major problem in the normal life of the citizen. It also hampers the industrial and agricultural production of the country. As the report published in the news paper this short of serious problem is facing the nation due to not taking steps by the earlier governments for sufficient production of electricity. It is also reported in the news paper that the present government took initiative to increase the need full production of electricity but it will take more years to complete the project. It is admitted position that the people of this country have to face shortage of electricity since the incoming project is completed by the government. So at this stage there is no alternative to stop

misuse/waste of electricity which is reflected by the instructions of the Hon'ble Prime Minister.

7. That it is stated here that millions of people are living in Dhaka City and every moment of their life is depending on electricity. Facts remain that the total supply of electricity is less than the demand. It may be mentioned here that continuous supply is needed in hospital, clinic and in all emergencies services. Moreover it is very important to supply continuous electricity for the students for their study. Due to shortage of electricity the respondent no. 2 and 3 are causing load shedding in every hour. Under these circumstances when the emergency need of electricity of the people of the Dhaka City can not be fulfilled but in many clubs situated in Dhaka City are using flood light for playing games. In this way they deprive some people from their emergency need of electricity. It may be mentioned here that the respondent no. 4-7 and many others club of Dhaka City are using electricity by way of floodlight in pick time for playing games only

for their recreation and sports. Though such kinds of using of electricity in pick time is depriving others from their emergency need and which could be used for the students and for others emergency service. Under this circumstances the use of electricity by the respondent no. 4-7 and others club of Dhaka City in pick time is to be treated as waste of electricity. Considering the whole situation the respondent no. 4-7 and other clubs of Dhaka City may use generator in pick time for their games. In that case emergency demand of electricity for students and emergencies service can be improved. It is necessary to stop misuse/waste of electricity in pick time in order to fulfill the emergency need otherwise the people will suffer. It may be mentioned here that when the nation is facing electricity shortage and depriving from electricity for their normal life in that situation no one be allowed to use electricity for their recreation and sports. If so it can be treated as waste of electricity and liable to be punished under section 46 of Electricity Act. 1910.

8. That it is stated here that the respondent no. 1-3 are the experienced public servant and very much aware of the rules and instructions of the government. More over the issues of shortage of electricity, conditions of the user and way of different misuse is always reporting in media, so it is not out of the knowledge of respondents. Under this circumstances in such a public interest issues which is always in the notice of the respondents, is not necessary to bring his notice again by way of sending any legal notice.

9. That it is submitted here that the respondents are duty bound at all time to serve the people and to perform the public duties. But they have failed to do their duty because they have failed to take steps against the misuse/waste of electricity by the respondent no. 4-7.

10. That it is submitted here that the duty and responsibility vested upon the administration to serve the people and they are duty bound to obey the provisions of law. It is the duty of an officer to act legally but

no law has been allowed him to do anything in an unlawful manner.

But the respondent has failed to perform the duties and responsibility.

11. That it is submitted here that as per Article 21 of the Constitution of Bangladesh the duty of every public servant is to perform public duties and to observe the constitution and the laws. According to the prevailing situation the provision of Article 21 of the Constitution of Bangladesh has been violated. More over in the Electricity Act. 1910, a provision was made in section 46 that any one who negligently cause to be wasted electricity....is liable to be punished. But the respondent no. 2 and 3 has not taken any steps in this regard.

12. That it is stated here that Human Rights And Peace For Bangladesh (HRPB) is an organization working on different issues and many public interest litigations have been filed by them. In many

cases the Hon'ble High Court Division has passed judgment such as i) VAT collection from the patient declared illegal, ii) directed to constitute civil vacation court during civil vacation in every December in subordinate court, iii) directed not to set up any cattle hat on the street in Dhaka City during Eid-Ul-Azha and removing all slaughtering materials within 24 hours with a hygienic manner, iv) directed to form an inquiry commission about murder/rape /persecution/torture committed immediate after parliament election of 2001 upon the then opposition supporter and minorities, v) directed to set up food court in every city in order to prevent food adulteration, vi) directed to form an "Earthquake Preparedness And Awareness Committee" and collected the necessary earthquake rescue equipments as per their recommendation, vii) directed to protect river Buriganga, Balu, Turag and Shitalakha and to stop encroachment in the rivers as well as directed to remove all the structure from inside the rivers and etc. Many others cases are pending before the Hon'ble

High Court Division. The organization is always bearing all the cost of the cases by it's own fund which is raised by the donation of the members. The organization received no fund from abroad or from any citizen of the country except the lawyer members. Due to present high volume of cases it is not possible to bear the cost of the cases filed before the Hon'ble High Court Division as public interest litigation. Under these circumstances it is necessary to exempt the cost of the cases filed by the organization as public interest litigation. Hence a direction may be given to the office to register the application as a writ petition and also notices may be served at the cost of office.

13. That being aggrieved by and dissatisfied with the failure of the respondents to take appropriate steps to stop misuse/waste of electricity and having no other equally efficacious remedy the petitioner beg to move Your Lordships on the following amongst others:-

GROUND S

- I. For that the duty and responsibility vested upon the administration to follow the instruction 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 constitution. Hence a direction may be given to take appropriate steps as per section 46 of the electricity Act. 1910.
- II. For that as per Article 21 of the Constitution of Bangladesh the duty of every public servant is to perform public duties and to observe the constitution and the laws. Under the present situation the provision of Article 21 of the Constitution of Bangladesh has been violated. Moreover the section 46 of the Electricity Act.1910 has not been applied.
- III. For 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 are depending on.

The Prime Minister also urged the people to consider the matter due to shortage of electricity and for much production of rice.

Despite of that the respondent no. 4-7 along with other club of Dhaka City are misusing the electricity in peak time by way of playing games in flood light. Hence it is clear violation of section 46 of Electricity Act.1910.

IV. For that the total production of electricity is less than the demand of the country and also hampers the industrial and agricultural production of the country as well as normal life of the citizens. So at this stage there is no alternative to stop misuse/waste of electricity which is reflected by the instructions of the Hon'ble Prime Minister.

V. For that the respondent no. 4-7 has violated the provision of section 46 of Electricity Act. 1910, so they are liable to be punished. Hence a direction should be given upon the respondents to take steps under section 46 of the Electricity Act. 1910.

Wherefore, it is most humbly prayed that

Your Lordships would graciously be pleased

to;-

a) Direct the office to register this application as a writ petition.

b) Issue a Rule Nisi calling upon the Respondents to show cause as to why inaction of the respondent no. 1-3 to take steps as per the provision of Electricity Act.

1910, should not be declared illegal and without lawful authority and why a direction should not be given upon the respondent 1-3 to take steps as per section 46 of the Electricity Act. 1910, against the Respondent No. 4-7 for wasting of electricity.

c) Pending hearing of the Rule an order may be passed directing the Respondent no. 2 and 3 for taking necessary steps to refrain the respondent no. 4-7 from consuming the electricity in pick time from DESCO and DPDC for playing games in flood light.

d) Direct the office to serve notices upon the respondents at the cost of office.

e) Upon hearing the cause if any shown
makes the rule absolute.

f) Pass such other or further order or
orders as Your Lordships may deem fit and
proper.

And for this act of kindness Your Petitioner as in duty bound shall
ever pray.

Name of the Petitioner-

Advocate Asaduzzaman Siddiki -----

Submitted By-

Manzill Murshid
গব্বরজ তগব্বিতম`
Advocate
Supreme Court of Bangladesh.

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

WRIT PETITION NO. _____ OF 2010.

IN THE MATTER OF

Advocate Asaduzzaman Siddiki.

.....Petitioner.

-V E R S U S-

Bangladesh and others.

.....Respondents.

Manzill Murshid
মনজিল মোরসেদ
Advocate
for the Petitioner.

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

WRIT PETITION NO. _____ of 2010.

IN THE MATTER OF

Advocate Asaduzzaman Siddiki.

.....Petitioner.

-V E R S U S-

Bangladesh and others.

.....Respondents.

To
The Learned Attorney General
The Peoples Republic of Bangladesh.

Dear Sir,

Please take notice that an application under Article 102 of the Constitution, will be filed and moved before this Court, a copy of which is enclosed herewith for your kind information.

Regards-

Manzill Murshid
মনজিল মোরসেদ
Advocate
Supreme Court of Bangladesh