

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

WRIT PETITION NO. _____ OF 2015.

IN THE MATTER OF:

An application under Article 102 of the constitution of the Peoples Republic of Bangladesh.

AND

IN THE MATTER OF:

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.

.....Petitioner

-V E R S U S-

1. The Registrar, the Supreme Court of Bangladesh, Post and P.S. Shahabag, Dhaka, Bangladesh.

2. The Superintendent, Writ Section, Supreme Court of Bangladesh, Shahabag, Dhaka, Bangladesh.

3. The Superintendent, Criminal Section, Supreme Court of Bangladesh, Shahabag, Dhaka, Bangladesh.

.....Respondents.

GROUND S:

- I. For that the petitioner earlier filed the applications/petitions normally without affidavit and without court fees for which there were no obstructions/interventions by the office of the Hon'ble High Court Division in case of filing applications/petitions.
- II. For that as per sub-rule 2 of rule 2 of Chapter-IVA of the "Supreme Court of Bangladesh (High Court) Rules, 1973 (as amended in 2012), an application not registered as a case shall ordinarily be presented before a Motion Bench for hearing for the purpose of issuance of a Rule or for its registration otherwise. For that as per this rule an application/petition not registered may be heard without affidavit and accordingly *Rule Nisi* may also be issued.
- III. For that as per rule 10 of Chapter XIA of the "Supreme Court of Bangladesh (High Court) Rules, 1973 (as amended in 2012), a letter signed by a person and sent/addressed to the Chief Justice or any other Judge or the Court, or the Registrar or any report published in a

newspaper or other media may be treated as an application within the meaning of article 102 of the Constitution and the Hon'ble High Court may issue Rule Nisi on the basis of that letter or newspaper.

- IV. For that as per sub-rule: 3 and the rest of rule 10 of Chapter XIA of the said Rules swearing in an affidavit, payment of Court fees and observing other rigid formalities shall not be applicable to such applications brought before the Hon'ble High Court through letter or news report. So there should not be any obstruction in case of filing application by the petitioner otherwise it could be treated as discrimination.
- V. For that the rigid rule of swearing in affidavit has been relaxed by the said Rules in the context of public interest by a written letter or news report as addressed to the Chief Justice or to the Court or the Registrar. For that the petitioner wants to get involved in similar way under the provisions of the said Rules with the sprit of public benefit and public interest.
- VI. For that the petitioner has always filed applications/petitions in a more formal and organized relying on the correct and genuine news report and information from the responsible and well known national and local newspapers on the basis of "an application of" not "an application by" and on the proposition of "any person aggrieved" not "the person aggrieved". Hence direction may be given upon the respondents to allow the petitioner to file application without court fees and affidavit.
- VII. For that the authority of the Supreme Court should not be shortened or curtailed in the event of an application/petition relying on a news report brought before it by a public spirited citizen for public interest as there has been similar authority of the Hon'ble High Court in respect of *Suo moto* on the basis of a letter or a news report. For that the petitioner being an advocate is a court officer and works for the interest of common people and hence issuing *Rule* by the Hon'ble Court in case of bringing an application/petition in a formal way without affidavit on the basis of news report should not be limited.
- VIII. For that in the case of *Bandhua Mukti Morcha v Union of India and Others* [AIR1984 SC 802, para: 12] it was held that a member of the public acting bonafide moves the Court for enforcement of a fundamental right on behalf of a person or class of persons of disability or socially or economically disadvantaged position, may move the Court even by just writing a letter, because it would not be right or fair to expect a person acting *pro bono publico* to incur expenses out of his own pocket for going to a lawyer and preparing a regular writ petition for being filed in Court for enforcement of the fundamental right of the poor and deprived sections of the community.
- IX. For that in the case of *Bandhua Mukti Morcha v Union of India and Others* [AIR1984 SC 802, para: 78] it was also held that for effectively safeguarding the fundamental rights guaranteed by the Constitution, the Court, if satisfied on the materials placed in the form of a letter or other communication addressed to this Court, may take notice of the same in appropriate cases. For that it was also held that fundamental rights

guaranteed under the Constitution are indeed too sacred to be ignored or trifled with merely on the ground of technicality or any rule of procedure.

- X. For that a mere procedural technicality in the matter of form or procedure which may not in any way affect the substance of any proceeding should not stand in the way of the exercise of the very wide jurisdiction and powers conferred on the Hon'ble High Court for enforcement of fundamental rights as guaranteed under the Constitution. For that the very wide power of Article of 102 is never subject to any rule or procedure or technicality.
- XI. For that the petitioner organization has always been working voluntarily at the cost of its lawyer-members for the sake of upholding others' fundamental rights as guaranteed under the Constitution and protection of the same in the context of public interest. For that the organization receives no fund from abroad or from any citizen of the country except the lawyer members. For that due to present huge 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. Hence the petitioner may be allowed to file application/petition under Article 102 of the Constitution without affidavit and court fees.
- XII. For that in the case of Advocate Md. Salauddin Dolon v Govt. of Bangladesh and others [63 DLR (2011) HCD 81] it was held that the petitioner being an Advocate, swearing in affidavit on the application for public interest has been dispensed with and directed to register the application as a Writ Petition.
- XIII. For that the petitioner is in need of urgent assistance and effective steps by the Hon'ble Court to implement the purposes and objectives of the organization for enforcement of the fundamental rights through court proceedings for the better interest of the citizen of Bangladesh

Wherefore it is therefore humbly prayed that Your Lordships would graciously be pleased to:-

- a) Issue a Rule Nisi calling upon the Respondents to show cause as to why direction should not be given upon the respondents to register the application/petition submitted by the organization who does not receive fund from abroad or country under Article 102 of the Constitution of Bangladesh as a Writ Petition/Case without court fees and without affidavit.
- b) Direct the office to serve notices upon the respondents at the cost of the office.
- c) After hearing the parties and the causes, shown, if any, be pleased to make the Rule absolute.
- e) Pass such other and further order and/or orders as your Lordships may deem fit and proper.

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.
