

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

WRIT PETITION NO. \_\_\_\_\_ OF 2018.

IN THE MATTER OF:

An application under Article 102 of the Constitution of 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-in-Charge, Advocate Md. Sarwar Ahad Chowdhury, Hall Room No. 2, Supreme Court Bar Association Bhaban, Dhaka, Bangladesh.

.....Petitioner.

-V E R S U S-

1. Bangladesh represented by the Secretary, Health Services Division, Ministry of Health and Family welfare, Bangladesh Secretariat, P.S. Shahbag, Dhaka, Bangladesh.

2. The Director General (DG), Directorate General of Health Services, Mohakhali, Dhaka.

3. The Director General (DG), Directorate of Drug Administration, Aushad Bhaban, Mohakhali IPH Canteen Road, Mohakhali, Dhaka-1012, Bangladesh.

4. The Director, Directorate of Drug Administration, Aushad Bhaban, Mohakhali IPH Canteen Road, Mohakhali, Dhaka-1012, Bangladesh.

5. The Assistant Secretary, Public Health-1 Branch, Ministry of Health and Family welfare, Bangladesh Secretariat, P.S. Shahbag, Dhaka.

6. The President/the Secretary General, Bangladesh Aushad Shilpa Samity/ Bangladesh Association of Pharmaceutical Industries (BAPI), 214/D Bir Uttam Mir Shawkat Avenue, Tejgaon Gulshan Link Road, Dhaka-1208, Bangladesh

.....Respondents.

AND

IN THE MATTER OF:

Circular published vide Order No. Public Health-1/Drug-18/93/63 dated 26.02.1994 issued by the Assistant Secretary, Public Health-1 Branch, Ministry of Health and Family Welfare as of "ANNEXURE -B" (herein after referred to as impugned circular).

AND

IN THE MATTER OF:

Violation of the provisions of law as enshrined in section 11 of the Drugs (Control) Ordinance, 1982 and section 3 of the Essential Commodities Act, 1957.

GROUNDS:

I. For that section 11 of the Drugs (Control) Ordinance 1982 talks about fixation of price of drugs, which imposes responsibilities upon the Government to fix the maximum price of drugs at which any medicine may be sold. However, the said circular dated 26.02.1994 empowers the manufacturers of medicines to fix up price of drugs at their sweet will, which eventually is a clear deviation from legal provision as set out section 11 of the Ordinance 1982 and it also overrides the statutory provisions and obligations and responsibilities of the respondents as defined in the said Ordinance 1982. Hence, impugned circular may be declared illegal and without lawful authority.

II. For that after the enactment of the Ordinance 1982, the Government earlier used to control the fixation of the price of drugs of all kinds of medicines in line with section 11 of the Ordinance 1982

until the said circular came into force. But now it fixes up the price of only 117 listed items of drugs, actually it has shifted its responsibilities upon the business conglomerates; as a result the manufacturers manipulates the market of essential and vital medicines, which ultimately affects the right to life of the common citizens of Bangladesh as is enshrined in article 32 of constitution of Bangladesh. Hence, impugned circular may be declared illegal and without lawful authority.

III. For that as per section 11 of the Ordinance 1982, the responsibility of fixation of price of drugs vests in the Government and since 1986, the price of all medicines and Drugs were controlled by the Ministry of Health and Family Welfare but at present only 117 medicines are listed as essential drugs the price of which are controlled by the Drug Administration. The sale of essential drugs other than 117 drugs at higher price could be controlled once the respondents would have discharged their statutory obligations as per the Ordinance 1982 as framed in section 11 as well as 19 of the Drugs (Control) Ordinance 1982. More so, drugs are essential commodities. The respondents has power to control the price of such commodities and the sale of essential drugs at higher rate is contrary to law and rules as framed in section 6 read with section 3 of the Essential Commodities Act, 1957. Hence Your Lordships may pass a direction declaring the said impugned circular illegal and without lawful authority.

IV. For that by the said circular dated 26.02.1994 the Government has shifted its duty under section 11 of the Ordinance 1982 upon the drugs manufacturers resulting in making monopoly in drugs business instead of serving the common people. Eventually the common people having limited income becomes unable to purchase life-saving drugs while in emergency and in need and thereby it ultimately affects right to life and emergency health care. Hence, it may be declared illegal and without lawful authority.

V. For that the instant circular dated 26.02.94 came at hand to the petitioners at a belated stage, however, unless it is addressed separately and independently in this application, it would create further obstructions to enjoyment of fundamental rights by the common people and thereby infringe the fundamental rights of them. So, Your Lordships may declare it illegal and without lawful authority.

Wherefore, it is most 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 the Circular published vide Order No. Public Health-1/Drug-18/93/63 dated 26.02.1994

issued by the Assistant Secretary, Public Health-1 Branch, Ministry of Health and Family Welfare (as of ANNEXURE-B”), should not be declared illegal and without lawful authority as it is violative of section 11 of the Drugs (Control) Ordinance 1982 as well as section 3 of the Essential Commodities Act, 1957.

**Present Status**

The case was filled and moved by Advocate Manzill Murshid, President, HRPB. After hearing the parties the Hon’ble Court issued Rule Nisi upon the respondents and granted ad-interim order. The matter is pending before the Hon’ble High Court Division.

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