

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

WRIT PETITION NO. 4496 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)

IN THE MATTER OF:

Human Rights and Peace for Bangladesh
(HRPB) and others

..... For the Petitioners.

-VERSUS-

The Government of Bangladesh represented
by the Secretary, Ministry of Commerce and
others

..... Respondents

Mr. Manzill Murshid, Advocate

.....for the petitioner

Mr. Md. A. B. M. Altaf Hossain, D.A.G

.....for the Respondents

Heard and Judgment dated 29.02.2012

Present:

**Mr. Justice A. H. M. Shamsuddin
Choudhury**

And

Mr. Justice Jahangir Hossain

Jahangir Hossain, J:

The rule was issued on 10.05.2010 in the following terms:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why the respondents’ persistent failure to take fruitful steps to stop application of chemical substance to ripen fruits and their uninterrupted failure to take effective measures to protect the mental and physical health of the citizens, by wiping out process of chemical contamination, should not be declared to have been illegal, without lawful authority and is barren of legal effect and why they should not be directed to resort to prolific measures to stop using chemical to ripen fruits or to make them fabulous looking”

Averments figured in the petition are summarized below:

The organization Human Rights and Peace for Bangladesh (HRPB) is a non profitable registered organization and the object of the organization is to uphold the human rights of the citizen, 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. The organization is engaged in promoting and defending human rights, supporting the victims of human rights violations. It also works to protect environment, health of the citizen and to establish rule of law. The petitioner also seeks to bring this application by invoking Article 102 of the Constitution as public interest litigation (PIL) in order to take necessary steps by the Government servants against those people who are using chemical in making the fruits ripe. Though the different kinds of fruits such as apple, mango, grapes, banana, papaya etc. are playing an important role in protection of health of the citizens but some corrupted businessmen are using chemical such as carbide and formalin in making the fruits ripe.

It is further stated that some businessmen for their own interest and financial benefit use chemical in fruits which is injurious to health. The affected people are unable to come to enforce their fundamental rights, hence the petitioners move this public Interest Litigation (PIL) before this Hon’ble Court. A report was published in the Daily Shomokal on 08.05.2010 and in “Prothom Alo” dated 06.05.2010 which shows that some businessmen are selling mango and other fruits in the market after chemical was used. It was also reported that there will be health disaster in near future if measures are not taken to stop using chemical in making the fruits ripe. It was also reported that priority should be given to stop using chemical in

fruits; otherwise there will be serious consequence to the health of the people. The chemical which are using in fruits, may invite many diseases. Moreover, by way of such marketing the people being deprived of natural quality and the health of the people is facing serious threat. The millions of people residing in the Capital are depending upon various fruits supplied by the businessman but due to illegal acts of the law violators and failure of the respondents to take effective steps the people are serious suffering from danger and it lost its original taste and quality.

It is stated that in every moment the lives of the city dwellers are depending on fruits available in the market. Facts remain that the total supply of fruits is controlled by the businessmen and it is their duty to bring fresh fruits but they have failed to do so. It may be mentioned here that chemical less fruits are very important for the life of the citizens. Due to chemical used in fruits the people are becoming sick day by day and health cost is increasing and also unaffordable for the poor people. But the respondents are not taking step to stop using such chemical in making the fruits ripe. In this way the people are depriving of their emergency need of pure fruits. It necessities stopping using chemical in making the fruits ripe in order to save lives of the people otherwise, the people will suffer. The respondents are experienced public servants and very much aware of the rules and instructions of the government. Moreover, the use of chemical in fruits is always reporting in media, so it is not out of the knowledge of respondents. All the time the respondents any duty bound to serve the people and to perform their duties in the interest of people. But they have failed to take necessary measures against the using of chemical in fruits.

Being aggrieved by and dissatisfied with the inaction of the respondents to take necessary steps to stop using chemical in fruits which is causing health threat to the people and having no other equally efficacious remedy, the petitioners moved this Court invoking Article 102 of the Constitution of the People's Republic of Bangladesh and obtained the instant rule.

As the Rule has become matured, it has taken up for hearing Mr. Manzill Murshid, learned Advocate appearing on behalf of the petitioners, contends that the respondents being the responsible persons in the service of the republic, have a duty to prevent the corrupted-businessmen involved in using chemical in making the fruits ripe. He further submit that Article 21 of the Constitution

provides that “it is the duty of every citizen to observe the constitution and the laws, to maintain discipline, to perform public duty and to protect public property.” Under the present situation the provision of Article 21 of the Constitution has been violated by the respondents as they did not take necessary measure against the corrupted-businessmen who used to ripen fruits by using chemical. Mr. Murshid further submits that for not talking action by the respondents the life of the people has been fallen in a dangerous position which has also violated Article 18(1) of the Constitution. He finally submits that the right to life is a fundamental right as guaranteed under Article 32 of the Constitution. Therefore, essentially a direction should be given to the respondents to stop using chemical in making fruits ripe.

No body has appeared on behalf of the respondents to oppose the rule at the time hearing and no affidavit-in-opposition filed by the respondents to refute the averments figured in the petition by the petitioners.

However, Mr. A.B.M Altaf Hossain Learned Deputy Attorney General for the respondents finds no way to oppose the rule.

We have heard the learned Advocates of both the parties, perused the application along with connecting annexure, wherefrom it transpires that the petitioners brought the allegation against the respondents that they have failed to take necessary measures against some corrupt-businessmen who used to ripen fruits by using chemical which are absolutely injurious to health. In protecting such unhealthy practice in the name of business, a direction is being required upon the respondents. Article 18(1) of our Constitution contemplates that the State shall take or adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcohol and other intoxicating drinks and of drug which are injuries to health. Here, the respondents are representatives of the state. They are duty bound to take effective measures for preventing any misuse of chemical in the name of business. Article 21 of the Constitution has purely prescribed them to observe the constitution and the laws but in this unhealthy practice, they have failed to take necessary steps to prevent the corrupted-businessmen for not using chemical in making the fruits ripe. Therefore, it necessitates passing a direction upon the respondents by this Court.

In other words, as the respondents have failed to file an affidavit-in-opposition to refute the averments fireguard in the petition, we are not in a position to know the case of the respondents. Respondents' failure to do so is obviously unfortunate to say the least. And as such we don't have any option but to make the rule absolute.

In the light of discussion as narrated above, we find merits in the contentions of the learned Advocate for the petitioners.

Accordingly, the rule issued by this Court, is made absolute without any order as to costs.

However, the following directions are categorically given upon

- a. the respondent nos. 1-3 and 5 to prepare a guideline to stop chemical use to ripen fruits within 6 months from the date of receipt of the judgment and the circulate the same to the field level administration;
- b. the respondent no. 10 to set up Chemical Test Unite [CTU] in all land and sea port area of Bangladesh within 6 months and release the imported fruits after conducting a chemical test of all kind of fruits imported from abroad and ensure that no chemical fruits can be entered the land;
- c. the respondent nos. 8-9 to deploy law enforcing agencies in Mango Orchard (Commercial) area in Rajshahi and major harvesting area of Bangladesh in season to stop chemical use in ripe Mango;
- d. the respondent nos. 4-7 to monitor the fruits market and warehouse through surveillance committee in every month all over the country so that no one can engage himself to sale chemical used fruits in the market and in mango season monitor the fruits market and warehouse through surveillance committee in every calendar and
- e. the respondent nos. 4 and 6 to issue a Circular to all its forces for legal steps in case of adulteration and chemical use of fruits and ensure that the perpetrators are indicted under the provisions of law of the land,

The matter shall remain continues mandamus and examine from time to time.
