

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Md. Muzammel Hossain
Chief Justice

Mr. Justice S.K. Sinha

Mr. Justice Md. Abdul Wahab Miah

Mr. Justice Hasan Foez Siddique

CIVIL PETITION FOR LEAVE TO APPEAL
NO. 2616 OF 2012.

(From the judgment and order dated
19.02.2012 passed by the High Court
Division in Writ Petition No. 9587 of 2010)

Government of Bangladesh and others
.....Petitioners.

=Versus=

Human Rights and Peace for Bangladesh
(HRPB) and others.
..... Respondents.

For the Petitioners: **Mr. Rajuk-Al-Jalil, Deputy Attorney**
General
Instructed by Mr. B. Hossain Advocate-in-
Record

For the Respondent **Mr. Manzill Murshid, Advocate**
Instructed by Mr. Nurul Islam Chowdhury,
Advocate-on-Record.

Date of Hearing: The 6th March, 2014

Hasan Foez Siddique, J:

This Petition for Leave to Appeal by the writ respondents is from the Judgment and order dated 19.02.2012 passed by the High Court Division in Writ Petition No. 9587 of 2010 making the Rule absolute.

The respondent No. 1 institutes the aforesaid writ petition by way of public interest litigation for a direction upon the writ respondents to ensure better medical treatment to the patients in government hospitals and not to enhance the user fees. It has been stated that the poor of the country would be unable to take proper treatment in government hospitals if user fees is enhanced. The right of the citizen to get treatment would be obstructed due to enhancement of user fees. The writ petitioner also sought for a direction upon the writ-respondents to stop distribution of the user fees to the doctors, nurses and employees in the government hospitals.

The added respondent No. 5 contested the writ petition by filing affidavit-in-opposition contending, inter alia that though the medical treatment may qualify as a fundamental right but entitlement to free medical treatment is not a right guaranteed by the constitution. Realization of user fees from patients is not violation of fundamental right. People who are not in a position to pay user fee can obtain free medical treatment in government hospitals and take benefit of all hospital facilities, such as X-ray, ECG, Pathology etc, free of cost. The hospitals of the sub-continent have been collecting user fees since 1937. The amount to be realized had been reviewed from time to time depending upon the rate inflation. The Government permitted to collect the same and distribute the same to the doctors, nurses and other employees of the government hospital. Charging of user fees does not have any effect upon anybody's accessibility to get medical treatment. It is usually collected in those departments where the members of the respondent No. 5 namely Bangladesh Society of Radiology and Imaging and other similar high risk departments have been working and they got the same as a risk allowance for the doctors and technicians working in those departments. Since such doctors, nurses and technicians are exposed to high radiation due to the nature of their work such allowance is a legitimately payable. Considerable amount of realized user fees have been utilized for maintenance of very sophisticated machines in government hospitals. If the same is not provided, such services would be seriously affected and the patients would suffer gravely.

The High Court Division by the impugned judgment and order dated 19.02.2012 by the impugned order directed the writ-respondents to stop collection of user fees forthwith observing that is no legislative authority to back up the realization of user fees.

Mr. Rajik-Al-Jalil, learned Deputy Attorney General appears on behalf of the petitioners and Mr. Manzill Murshid, Learned Counsel appears for the respondent No. 1.

Mr. Rajik-Al-Jalil submits that section 3 of the Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance 1982 provides the provision of realization charges and fees for medical treatment and schedule A to this Ordinance specifics charges for medical consultation, surgical operation, electrocardiogram and radiological examinations and laboratory investigations. He submits that similar section 27(1) of the Safe Blood Transfusion Act (Act XII of 2002) and Rules 20 and 21 of the Safe Blood Transfusion Rules 2008 as framed under section 34 of the Act provides the provision collection of fees by the Government hospitals for different medical services and examination. So, the findings of the High Court Division that there is no law permitting to support the realization of user fees is not correct.

Mr. Manzill Murshid, the learned Counsel for the responded No.1 submits that the connecting laws have not been amended before realization of user fees at enhancement rate.

The writ petitioner produced a copy of circular issued in 02.03.2010 by the Ministry of Health and Family Planning providing the provisions of realization of user fees at enhanced rate. It appears from annexure-B to the Writ Petition that the writ respondents decided to realize the user fees in different heads, some of which disappeared in the schedule A to the Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance 1982 and Section 27 (1) of the Safe Blood Transfusion Act (Act XII of 2002). It is true that some of the employees and doctors used to work in very difficult, hazardous and high risk situations. They used to take many unforeseen and unwarranted risk. There are some high risk departments in the hospitals and doctors, nurses, technicians and some other employees used to take risk in performing their duties, for example departments relating to radiation etc. They are entitled to get incentive. The High Court Division held that specific legislative support is required to be made before realization of the user fees at enhanced rate. The

Law, upon which the learned Deputy Attorney General relied on, has not been amended and the authority, without amending the law, started realization of the user fees at enhanced rate which is not permissible. It is the duty of the Government to ensure treatment of its citizen but simultaneously the doctors, technicians and other employees who have been functioning in various high risk departments of the hospitals are also entitled to get incentive for their high risk job but before realization of the user fees at enhanced rate, legislative support is necessary.”

With the observation made above the petition is disposed of.

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