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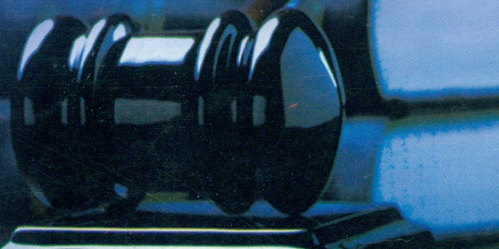
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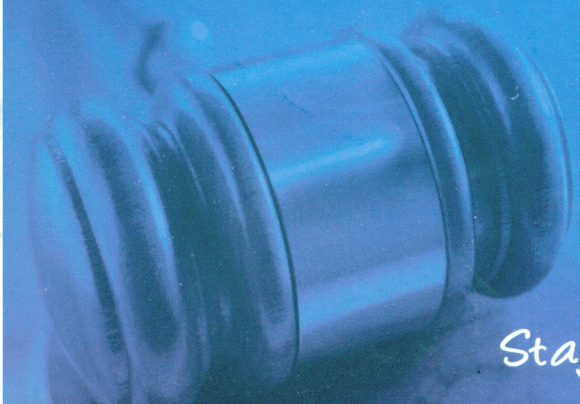
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Civil

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Order XXIII Rule 1- The plaintiff Dhaka Nawab Court of Wards Estate was the owner in possession of the suit land the onus is heavily upon the defendants to prove that they are now in possession of the suit land- In this Civil Appeal, by leave, at the instance of Dhaka Nawab Court of Wards Estate represented by Chairman, Court of Wards and Chairman, Land Reforms Board and Dhaka Nawab Court of Wards Estate represented by Manager, Land Reforms Board has arisen out of the judgment and order passed by the High Court Division in First Appeal rejecting the prayer for withdrawal of the suit and also dismissing the appeal. Considering all these facts and circumstances Appellate Division find that the High Court Division did not do justice in rejecting the plaintiff-appellants' application for withdrawal of the suit on the ground of formal defects for the reason only that it was a belated application. The impugned judgment and order of the High Court Division, therefore, need to be set aside.

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High Court Division
(Civil)

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This Rule was issued calling in question an order by the Respondent No.1, whereby the petitioner, a Union Parishad Chairman, was placed under temporary suspension following a no-confidence motion passed against him on the charge specially of corruption. High Court Division held that, although the office of the indicted chairman/member stands vacated with approval given by the government to the no confidence motion the vacancy should be given formal shape by an order of removal published in official gazette. This will, however, not entitle the chairman/member removed under section 39 to the right of appeal provided under sub-section (7) of section 34 of Local Government (Union Parishad) Act, 2009.

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Section 8- Phensidyl is not a Narcotics, but is a banned medicine, as prohibited by the Drugs (Control) Ordinance. The Narcotics Control Act has got no manner of application in case of a medicine like phensidyl-

This rule was issued calling upon the opposite party to show cause as to why the accused petitioner should not be enlarged on bail in Sessions Trial Case under Table 9 ((Kha) of Section 19(1) of the Narcotics Control Act, 1990. High Court Division find that the petitioner had been arrested along with 600 pieces of yaba Tablet on 13.9.2011 and was being detained in custody since then. By this time, he had been languishing in the jail custody for more than 8 months. Since 600 pieces of Yaba Tablet contain less than 5 grams of narcotics, for which the Legislature prescribes a minimum sentence of 6 months imprisonment, therefore High Court Division inclined to enlarge him on bail.

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Foreign Judgment

The Supreme Court of the United States of America

A naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated, but cDNA is patent eligible because it is not naturally occurring-

Each human gene is encoded as deoxyribonucleic acid (DNA), which takes the shape of a "double helix." Each "cross-bar" in that helix consists of two chemically joined nucleotides. Sequences of DNA nucleotides contain the information necessary to create strings of amino acids used to build proteins in the body. The nucleotides that

code for amino acids are "exons," and those that do not are "introns." Scientists can extract DNA from cells to isolate specific segments for study. They can also synthetically create exons-only strands of nucleotides known as composite DNA (cDNA). cDNA contains only the exons that occur in DNA, omitting the intervening introns. Respondent Myriad Genetics, Inc. (Myriad), obtained several patents after discovering the precise location and sequence of the BRCA1 and BRCA2 genes, mutations of which can dramatically increase the risk of breast and ovarian cancer. This knowledge allowed Myriad to determine the genes' typical nucleotide sequence, which, in turn, enabled it to develop medical tests useful for detecting mutations in these genes in a particular patient to assess the patient's cancer risk. If valid, Myriad's patents would give it the exclusive right to isolate an individual's BRCA1 and BRCA2 genes, and would give Myriad the exclusive right to synthetically create BRCA cDNA. Petitioners filed suit, seeking a declaration that Myriad's patents are invalid under 35 U. S. C. §101. As relevant here, the District Court granted summary judgment to petitioners, concluding that Myriad's claims were invalid because they covered products of nature. The Federal Circuit initially reversed, but on remand in light of Mayo Collaborative Services v. Prometheus Laboratories, Inc., 566 U. S. ___, the Circuit found both isolated DNA and cDNA patent eligible.

Association for molecular pathology, et al Vs. Myriadgenetics, inc., et al. . 57-66

The Federal Court of Australia

In no way debt collection agency is in a position to threaten litigation to intimidate debtors and recover debts-

This important recent ruling by the Federal Court considers the way that debt collection agencies use the threat of litigation to intimidate debtors and recover debts. Perram J found that collection officers threatening litigation against debtors constituted misleading and deceptive conduct. Even though ACM did have a legal department, it was not a common part of its business to refer debtors to. Furthermore, when matters were referred to the legal department, this was done on the recommendation of the section manager and not by individual collection officers. In no way were collection officers in a position to threaten litigation. Therefore, the manual was suggesting to collection officers that they should make statements which were misleading or deceptive. According to the evidence, the percentage of debtor accounts which were sent to the legal department was less than 0.5% and the number of accounts which incurred legal fees was less than 0.1%. It is hoped and expected that this case will encourage better adherence to key consumer protection laws by debt collectors - including provisions which protect consumers from misleading and deceptive conduct and from harassment and coercion. The case also clarifies that ASIC has the power to regulate and enforce consumer protection provisions, at least as they relate to credit debts.

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CANADIAN JUDGE SAYS, GOOGLE MUST REMOVE LINKS WORLDWIDE

[It appears that the judge, seeing the size and power of Google, may have decided that "judges need powers that are equally large if they're going to deal with it]

Internet Giant Google will appeal a decision by a court in British Columbia that requires the company to remove specific search results worldwide. While the case stems from an intellectual property dispute between two small industrial equipment companies, some legal experts say that if the decision is upheld it could have far-reaching consequences for the Internet.

The temporary order, granted on 20.06.2014 by the Supreme Court of British Columbia, emerged from protracted litigation between two companies which were once both closely connected. Equustek Solutions makes a device that allows industrial machines made by different manufacturers and that use different software to communicate with each other. Those products were marketed by another company, Datalink, which sold them under its name.

While the two companies almost merged at one point, relations soured in the middle of the last decade and they split. One result of that was the court finding that Datalink's stole Equustek's designs and engineering to create its own device, which it largely sells through the Internet.

Trying to block the sales of Datalink's product, however, has not been easy despite a court order banning online sales in December 2012. Datalink's owners appear to have left Canada and the location of its Web-based operation is unclear.

In an earlier court ruling, the court ruled in favor of Equustek Solutions and its principals. After that ruling, Google Canada began to voluntarily remove the Web address related to Datalink from searches made through Google.ca. But in the decision, Justice Lauri Ann Fenlon found that Datalink swiftly set up new websites with slightly different addresses every time it was blocked from search results in Canada by Google.

"Websites can be generated automatically, resulting in an endless game of 'whac-a-mole' with the plaintiffs identifying new URLs and Google deleting them," she wrote.

Her solution, unprecedented for Canada, was the interim injunction requiring Google to kill all Datalink search results worldwide.

If upheld and then emulated by courts in other countries, said Michael

Geist, a law professor at the University of Ottawa, the Internet could go from being perceived as a lawless place to "one where all courts apply" setting up conflicts between nations on several issues, particularly freedom of expression.

"The judge recognizes that there is this global impact but doesn't really want to deal with it," said Professor Geist, who holds the Canada Research Chair in Internet law. "Where this decision goes off the rails is when the court decides its order making power is limitless."

Google Canada declined to comment beyond a short statement: "We're disappointed in this ruling and will appeal this decision to the British Columbia Court of Appeals, B.C.'s highest court."

Professor Geist said he was puzzled that the order involves Google and no other web search provider, like Bing, making the information still easily available.

And while he agreed that the court could, and probably should have, ordered these search results struck in Canada, he said that it overreached with its global order. It would have been more appropriate, Professor Geist said, if Equustek sought similar orders in each of the countries where Datalink does business. They are not likely very numerous. Court filings indicate that at its peak in 2005, Equustek only sold 672,000 of its devices.

For Professor Geist, the decision is troubling in two different respects. If the order stands, it would most likely put Google in the position of deciding itself which court orders it obeys and where it honors them.

At the same time, he asked how Canadians would feel if "the European Court of Justice looked to extend the right to be forgotten not just to Europe but to the rest of the world?" That ruling, released on May,2014, requires all search providers' European operations to remove links that people believe violate their online privacy.

In its court submissions, Google argued that following a global order by a Canadian court could put in into conflict with laws of other countries. It cited a case where a French anti-racism group said that Yahoo had broken French law by allowing users to sell Nazi artifacts through its websites. A French court ordered Yahoo to block all access from France to Nazi artifact postings stored on its servers in the United States and fined the company about $15 million.

Yahoo voluntarily removed the material and then turned around and sued the anti-racism group in California, arguing that its First Amendment Rights to free expression had been violated. A federal judge sided with Yahoo in 2002. But that was set aside by an appeals court in 2006, which did not address the question of whether

American Internet companies must honor rulings by foreign courts related to postings that are unlawful overseas but not in the United States.

Professor Geist said that Google would most likely ask the appeals court to put the injunction on hold until it reaches its decision, a process that could be lengthy. It is also possible that Google will be supported in its appeal by other Internet search companies.

Based on earlier Canadian cross border Internet cases, Professor Geist said he expected that the global order would be struck down.

"This judge has decided that she's going to decide for the rest of the world," he said, adding that it appears that the judge, seeing the size and power of Google, may have decided that "judges need powers that are equally large if they're going to deal with it."

U.S. SUPREME COURT TO DECIDE IF HUMAN GENES ARE PATENTABLE

[Are Human Genes Patentable? US Supreme Court Will Decide]

The U.S. Supreme Court agreed to decide whether human genes can be patented, a hotly contested issue with broad consequences for the future of gene-based medicine.

The nation's highest court agreed to review a case over whether Myriad Genetics Inc may patent two genes linked to hereditary breast and ovarian cancer.

In a 2-1 ruling, a panel of the U.S. Federal Circuit Court of Appeals in Washington, D.C. upheld the biotechnology company's right to patent "isolated" genes that account for most inherited forms of the two cancers.

The case is the first challenging whether human genes can be patented.

BRCA1 and BRCA2 are two of the 23,000 genes in the human genome, 20 percent of which have been patented. We all have these genes, but women with certain genetic mutations are estimated to have up to an 85 percent lifetime risk for breast cancer and 50 percent risk for ovarian cancer. Myriad Genetics obtained patents on the "isolated" forms of the two genes, which simply means it patented the human gene once removed from the cell. This includes the BRCA genes from every person in the United States. Myriad has enforced its patents on the genes so that it has a monopoly on BRCA genetic testing.

What would be the impact of a Supreme Court ruling against human gene patents?

- Gene patent-holders could not threaten or shut down other laboratories from offering genetic testing. E.g., Myriad sued the University of Pennsylvania laboratory run by plaintiffs Arupa Ganguly and Haig Kazazian, forcing them to stop testing the BRCA genes, even though their test was different from Myriad's and cost less.

- Gene patent-holders could not prevent others from providing genetic testing that draws on new developments in genetic research. E.g., Myriad denied plaintiff Ellen Matloff's request to allow Yale to screen patients for BRCA genetic mutations that were excluded from Myriad's standard test, but shown by the scientific community to be associated with cancer risk, leading to false negative test results.

- Patients would not be barred from getting a second opinion or testing at a lower cost because a patent-holder has a monopoly on a gene. E.g., Our plaintiff Lisbeth Ceriani, a young breast cancer survivor who needed to determine her ovarian cancer risk, could not afford to pay $4,000 out of pocket for Myriad's testing and Myriad refused to contract with her insurance company, which was willing to provide coverage.

- Genetic testing could be offered that screens multiple genes for certain conditions, giving patients and doctors a better understanding of how genetic factors might affect diagnosis and treatment. E.g., Genetic tests currently exist to screen the multiple genes now associated with breast and ovarian cancer, but these clinical tests cannot include the BRCA genes because geneticists would be legally liable.

- No single laboratory could use its patents to control most of the data about a gene. E.g., Myriad now controls a huge amount of information about people's BRCA genes and stopped contributing its data to the Breast Cancer Information Core, an international scientific effort to better understand these genes and their connections to cancer.

- Universities, laboratories, and biotechnology companies could develop (and patent, if they choose) new tests, drugs, and other inventions based on genetic information and sequencing without fear of being accused of patent infringement.

To sum up, patents on human genes would no longer stand in the way of deepening our knowledge of the human genome and using these discoveries to improve how we diagnose and treat diseases. By invalidating these patents, the US Supreme Court would ensure that the patent system fulfils its constitutional mandate "to promote the progress of science."

Editorial Desk

APPELLATE DIVISION
(Civil)

Nazmun Ara Sultana—J.
Syed Mahmud Hossain—J.
Muhammad Imman Ali—J.
Mohammad Anwarul Haque—J.

CIVIL APPEAL NO. 32 of 2006

(From the judgment and order dated 05.04.2003 passed by the High Court Division in First Appeal No. 229 of 2001.)

Dhaka Nawab Court of Wards Estate and another ..... Appellants.

Vs.

Md. Yousuf Jamal Sumon and others ..... Respondents.

For the Appellants : Mr. A. F. Hasan Ariff, Senior Advocate instructed by Mr. Taufique Hossain, Advocate-on-Record.

For Respondent Nos.1-6, 8-10 : Mr. Mahmudul Islam, Senior Advocate and Mr. A. J. Mohammad Ali, Senior Advocate instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.

For Respondent No.5 : Mr. Md. Nawab Ali, Advocate-on-Record.

For Respondent No.7 : Mr. Zainul Abedin, Advocate-on-Record.

For Respondent No.12 : Dr. Rafiqur Rahman, Senior Advocate instructed by Mr. Md. Nawab Ali, Advocate-on-Record.

Respondent Nos. 11, 13-18 : Not represented.

Judgment: January 22, 2014

Code of Civil Procedure, 1908–

Order XXIII Rule 1- The plaintiff Dhaka Nawab Court of Wards Estate was the owner in possession of the suit land the onus is heavily upon the defendants to prove that they are now in possession of the suit land-

Where the defendants admitted that the suit land was recorded in the name of the Dhaka Nawab Court of Wards Estate in both S.A. and R.S. Khatians by giving specific suggestion, to the D.W.1 to the effect that both those khatians were collusive—the alleged field 'parchas' of the suit land should have been taken into consideration cautiously ..... (Para 13)

In this suit it is an admitted fact that the suit land belonged to the plaintiff Dhaka Nawab Court of Wards Estate and the plaintiff was

also in possession of the suit land. In these circumstances, in this suit, the onus is heavily upon the contesting defendants to prove their alleged case that they took settlement of the suit land from the Chief Manager of the plaintiff Dhaka Nawab Court of Wards Estate and they got possession of the same and are also in possession of the same. But it appears that except the D.W.1 one of the contesting defendants himself-no other witness has been examined before the court either to prove the alleged settlement of the suit land in favour of the defendants or to prove the defendants' possession in the suit land. In these circumstances how the courts below could say that the plaintiffs had no title and possession in the suit land and also that the defendants are in possession of the suit land. It appears that the High Court Division did not at all examine the evidence on record, rather made some statements in the impugned judgment to the effect that the trial court considered the evidence adduced by the contesting defendants and found title in favour of the defendants. The High Court Division itself, in spite of being the appellate court, did not examine the evidence adduced by the parties and did not consider at all whether the findings and decisions of the trial court was justified and correct. Without examining the evidence on record and without forming any opinion of its own as to the truth, genuineness, acceptability etc. of the evidence adduced by the parties the High Court Division dismissed the appeal simply making comment to the effect that since the plaintiff could not prove their possession in the suit land and since the defendants had been found in possession-the suit has been rightly dismissed ..... (Para 14)

JUDGMENT

NAZMUN ARA SULTANA–J: This Civil Appeal, by leave, at the instance of Dhaka Nawab Court of Wards Estate represented by Chairman, Court of Wards and Chairman, Land Reforms Board and Dhaka Nawab Court of Wards Estate represented by Manager, Land Reforms Board has arisen out of the judgment and order dated 05.04.2003 passed by the High Court Division in First Appeal No.229 of 2001 rejecting the prayer for withdrawal of the suit and also dismissing the appeal.

2. These appellants, as plaintiffs, instituted Title Suit No. 15 of 1999 in the Court of Subordinate Judge, 2nd Court, Dhaka for declaration of title in the suit property stating, *inter-alia,* that the suit property originally belonged to Nawab Sir Salimullah

which devolved upon the Court of Wards under the Court of Wards Act, 1879 and the land was recorded in the C.S. Khatian and also S.A. Khatian in the name of Court of Wards on behalf of Nawab Sir Salimullah. That the property cannot be given in settlement by anybody other than Board of Revenue of the Court of Wards, but the defendants claimed title over the suit property on the basis of alleged settlements allegedly granted in their favour by the Chief Manager of Court of Wards, that the alleged settlements of the suit land in favour of the defendants are fraudulent, collusive and illegal and that these alleged settlements created cloud in the title of the plaintiffs and hence the plaintiffs felt constrained to institute the suit.

3. The defendant Nos. 9 to 18 contested the suit by filing written statement contending, *inter-alia,* that the suit was not maintainable; that the Chief Manager of the Court of Wards settled the suit property in favour of the defendant Nos. 1 to 8 before the State Acquisition and Tenancy Act came into force and after getting settlement the defendant Nos. 1 to 8 were enjoying the suit properties on payment of revenue and taxes and the suit properties also were recorded in their names. That these defendants along with 29 others purchased the suit land from the settlement holders by 32 different registered kabalas and the khatians also were prepared in their names and they paid rents and have been possessing the suit property. That in an earlier suit being Title Suit No. 386 of 1989 this present plaintiff No. 1 filed written statement admitting that the manager of the Court of Wards though did not possess the power to settle the lands situated in Dhaka City, but he had the power to do so for the lands situated outside Dhaka City. That the settlements of the suit property by the manager of the Court of Wards in favour of the vendors of the contesting defendants were valid in law.

4. Both the parties examined one witness only each in order to prove their respective cases and produced some papers which were marked exhibits. The trial court, on consideration of these oral as well as documentary evidence, dismissed the suit by the judgment and decree dated 27.11.2000.

5. Being aggrieved by this judgment and decree of the trial court the plaintiffs preferred First Appeal No.229 of 2001 before the High Court Division. In the midst of hearing of the appeal the plaintiff-appellants filed an application under order 23 rule 1 of the Code of Civil Procedure praying for withdrawal of the suit with permission to sue afresh stating, *inter-alia,*

that at the time of filing of the suit there were some formal defects for which the suit might fail.

6. The High Court Division, after hearing the learned Counsel of both the parties, rejected the said application for withdrawal of the suit for the reason only that it was filed at a belated stage and also dismissed that first appeal on merit by the impugned judgment and order.

7. Leave to appeal against this judgment and order of the High Court Division was granted by this Division to consider the submission of the learned Counsel for the plaintiff-leave-petitioners that the High Court Division committed error in rejecting the application for withdrawal of the suit on the ground only that the application was a belated one.

8. We have heard the learned Counsel of both the sides.

9. Mr. A. F. Hasan Ariff, the learned Counsel for the plaintiff-appellants has made submissions to the effect that order XXIII rule 1 of the Code of Civil Procedure has authorized the court to grant permission to the plaintiff to withdraw the suit with the liberty to sue afresh at any time after its institution on the ground of formal defect and also on other sufficient grounds and that by virtue of section 107 of the same Code of Civil Procedure the appellate court also possesses this power of granting permission to the plaintiff-appellants to withdraw from the suit; that in the present case the plaintiff-appellants filed an application before the appellate court for withdrawal of the suit stating clearly that there were some formal defects for which the suit might fail, but the appellate court, without considering at all the grounds stated in that application for withdrawal of the suit, rejected the same on the ground only that the said application was filed at a belated stage. Mr. Hasan Ariff has argued that where the law permits withdrawal of the suit at any time after its institution and where it is now settled by so many decisions of the apex courts that a suit can be withdrawn at the appellate stage also, the High Court Division was not justified at all in rejecting the application for withdrawal of the suit on the ground only that it was filed at a belated stage. The learned Counsel has argued that the High Court Division ought to have considered the ground for withdrawal of the suit mentioned in that application. The learned Counsel has contended that had the High Court Division considered the grounds for withdrawal of the suit it would not have rejected the application on the plea only that it was filed at a belated stage. The learned Counsel has stated also about the formal defects of the suit. He has stated that

some other persons also require to be added as defendants in this suit and prayer for some consequential reliefs, such as confirmation of possession and permanent injunction against the defendants also need to be added in this suit. The learned Counsel has submitted that the High Court Division has committed error in rejecting the prayer for withdrawal of the suit without considering at all these formal defects in framing the suit and as such the impugned judgment and order is liable to be set aside. In support of his submission the learned Counsel for the plaintiff-appellants has cited the cases of Mohammad Abdul Quddus Vs. Mohammad Mustafa Hussain, reported in 12 BLD(AD) 131, Madan Mohon Vs. Abdus Samad, reported in 32 DLR at page 176 and Dil Mohammad Vs. Jamir Hossain, reported in 58 DLR at page 88. In all these cases permission for withdrawal of the suit was granted at the appellate stage on the ground of formal defect and also on other sufficient grounds.

10. Mr. Mahmudul Islam, the learned Counsel for the defendant-respondents though has made some submissions supporting the impugned judgment and order of the High Court Division, but ultimately he did not strongly oppose the prayer of the plaintiff-appellants for withdrawal of the suit. The learned Counsel, however, has pointed out that for institution of a fresh suit the plaintiff-appellants shall be bound by the law of limitation in the same manner as if this present suit had not been instituted. Drawing our attention to rule 2 of order XXIII of the Code of Civil Procedure the learned Counsel has submitted that since in this suit it was rather an admitted fact the plaintiff-appellants were out of possession at the time of filing of the suit, the fresh suit, if filed, will be barred by limitation.

11. In reply to this submission of the learned Counsel for the defendant-respondents Mr. A. F. Hasan Ariff, the learned Counsel for the plaintiff-appellants has strongly argued to the effect that nowhere either in the plaint or in deposition of the witness the plaintiff ever admitted that they were not in possession of the suit land, that the contesting defendants also, by adducing evidence, could not prove at all that the plaintiffs were out of possession or the defendants were in possession of the suit land. Mr. Hasan Ariff has also drawn our notice to the application for withdrawal of the suit and stated that in this application also it was not stated that the plaintiffs were out of possession. The learned Counsel has stated also that in the leave granting order only this court erroneously mentioned that in the application for withdrawal of the suit it was stated that the plaintiffs being

out of possession there was defect in the suit. The learned Counsel has contended that it was an error made by the court and that for this erroneous statement made by the court it cannot be said at all that the plaintiff-appellants were out possession of the suit land. Mr. Hasan Ariff has argued also that on examination of all the materials on record it will be very much evident that nowhere in the plaint, nor in the evidence, nor in the application for withdrawal of the suit there is any admission at all to the effect that the plaintiffs are out of possession of the suit land and that the contesting defendants also did not try even to prove by adducing necessary evidence that the plaintiffs are out of possession or they (defendants) are in possession of the suit land.

12. We have considered the submissions of the learned Counsel of both the sides and gone through the impugned judgment, that of the trial court, the evidence adduced by both the parties and other materials on record.

13. It appears that in this suit both the contesting parties examined only one witness each in order to prove their respective cases. From the side of the plaintiff Dhaka Nawab Court of Wards Estate, one Assistant Manager of Court of Wards, Land Reforms Board was examined as P.W.1. This witness has deposed to the effect that Court of Wards did not settle the suit land in .favour of anybody and that in S.A. Khatain No. 3 the suit land has been recorded in the name of Court of Wards. This witness has produced also a photocopy of a certified copy of S.A. Khatian No. 3-(which the court marked as exhibit-3) showing that the suit land has been recorded in the name of Dhaka Nawab, Court of Wards Estate. The P.W.1 has specifically denied also the defence case that the Chief Manager of the Court of Wards settled the suit land in favour of the defendants and that the defendants were possessing the suit land. During cross-examination this witness of the plaintiffs has further specifically denied the defence suggestion that the plaintiffs were not possessing the suit land. It also appears that to this P.W.1 a suggestion was put from the side of the defendants to the effect that the S.A. and R.S. Khatians of the suit land were collusive and that after getting summons of this suit the defendants could know about these S.A. and R.S. Khatians of the suit lands. This defence suggestion, rather, supports the plaintiffs' case that the suit land has been recorded in the S.A. and R.S. Khatians in the name of the plaintiff D.W.1, the only witness from the side of the contesting defendants, though deposed to the effect that the suit land was settled in their favour, but it appears that none of these alleged settlements of the suit land in favour of

the defendants have been proved at all. This D.W.1 though produced some alleged certified copies of some alleged filed 'parchas' of the suit land but it appears that none of these alleged field 'parchas' has been proved to be genuine. *Where the defendants admitted that the suit land was recorded in the name of the Dhaka Nawab Court of Wards Estate in both S.A. and R.S. Khatians by giving specific suggestion, to the D.W.1 to the effect that both those khatians were collusive—the alleged field 'parchas' of the suit land should have been taken into consideration cautiously.* But it appears that no attempt was made either from the side of the defendants or from the side of the court to be sure that those alleged field 'parchas' produced by the D.W.1 were genuine though from the side of the plaintiffs it was specifically alleged by giving suggestion to the D.W.1 that those field 'parchas' were collusive. However, it appears that this D.W.1, during cross-examination, has stated that he was defendant No.16, and was deposing on his behalf only and that the other defendants did not give him any power to depose on their behalf also. To this D.W.1 specific suggestion was given from the side of the plaintiffs that the defendants did not possess the suit land.

14. *In this suit it is an admitted fact that the suit land belonged to the plaintiff Dhaka Nawab Court of Wards Estate and the plaintiff was also in possession of the suit land. In these circumstances, in this suit, the onus is heavily upon the contesting defendants to prove their alleged case that they took settlement of the suit land from the Chief Manager of the plaintiff Dhaka Nawab Court of Wards Estate and they got possession of the same and are also in possession of the same. But it appears that except the D.W.1 one of the contesting defendants himself-no other witness has been examined before the court either to prove the alleged settlement of the suit land in favour of the defendants or to prove the defendants' possession in the suit land. In these circumstances how the courts below could say that the plaintiffs had no title and possession in the suit land and also that the defendants are in possession of the suit land. It appears that the High Court Division did not at all examine the evidence on record, rather made some statements in the impugned judgment to the effect that the trial court considered the evidence adduced by the contesting defendants and found title in favour of the defendants. The High Court Division itself, in spite of being the appellate court, did not examine the evidence adduced by the parties and did not consider at all whether the findings and decisions of the trial court was justified and correct. Without examining the evidence on record and without forming any opinion of its own as to the truth, genuine-*

ness, acceptability etc. of the evidence adduced by the parties the High Court Division dismissed the appeal simply making comment to the effect that since the plaintiff could not prove their possession in the suit land and since the defendants had been found in possession-the suit has been rightly dismissed. We don't understand how the High Court Division could say that the defendants have been found in possession of the suit land where the trial court also did not find possession of the defendants in the suit land. It appears that the High Court Division in its impugned judgment stated also that the only witness of the plaintiffs did not assert that the plaintiffs are in possession of the suit land. But on scrutiny of the evidence of P.W.1 we find that this P.W.1 has categorically denied the defence suggestion that the plaintiffs are not in possession of the suit land. We have already pointed out before that where, admittedly, the plaintiff Dhaka Nawab Court of Wards Estate was the owner in possession of the suit land the onus is heavily upon the defendants to prove that they are now in possession of the suit land. But the defendants have failed to discharge that onus.

15. Mr. Hasan Ariff, the learned Counsel for the plaintiff-appellants has stated also that this plaintiff No.1 did not file any written statement in Title Suit No. 386 of 1989 stating that the Chief Manager of the Court of Wards had authority to settle the land situated outside Dhaka City. This statement of Mr. Hasan Ariff has not been controverted by the learned Counsel of the defendant-respondents. Rather this statement of the learned Counsel for the plaintiff-appellants gets support from exhibit-'Cha'.

16. However, considering all these facts and circumstances we find that the High Court Division did not do justice in rejecting the plaintiff-appellants' application for withdrawal of the suit on the ground of formal defects for the reason only that it was a belated application. The impugned judgment and order of the High Court Division, therefore, need to be set aside.

17. In the result this appeal succeeds. Hence it is Ordered that the appeal be allowed on contest without any order as it cost. The impugned judgment of the High Court Division and that of the trial court are set aside. The plaintiff-appellants are permitted to withdraw from the suit with liberty to sue afresh.

Cases cited:

* ***Mohammad Abdul Quddus Vs. Mohammad Mustafa Hussain, 12 BLD (AD) 131.***

* ***Madan Mohon Vs. Abdus Samad, 32 DLR, 176.***

* ***Dil Mohammad Vs. Jamir Hossain, 58 DLR, 88.***

HIGH COURT DIVISION
(Special Original Jurisdiction)

M. Moazzam Husain-J.
And
Md. Badruzzaman-J.

WRIT PETITION NO. 12257 of 2012
(An application under Article 102 of the Constitution of the People's Republic of Bangladesh)

Mohammad Shahjahan ..... Petitioner.

Vs.

Bangladesh represented by the Secretary, Ministry of Local Government, Rural Development and Co-operatives, Government of the People's Republic of Bangladesh, Bangladesh Secretariat, Ramna, Dhaka and others ..... Respondents.

For the petitioner : Mr. Md. Idrisur Rahman, Advocate.

For the Respondent No.6 : Mr. Tufailur Rahman with Mr.Abdullah Al Baki, Advocate.

For the Respondent No.1 : Mr. Motahar Hossain, D.A.G.

Judgment: November 20, 2013

Local Government (Union Parishad) Act, 2009–

Section 34– Since Union Parishad is a democratic institution ordinarily no-confidence proceedings should get preference over ordinary disciplinary proceedings so that democratic values can take roots at all levels of the society–

Section 39– The chairman/member against whom no-confidence proceedings is initiated, cannot be deprived of his/her right to vote on 'no-confidence motion'–

A plain reading of the provisions of law laid down in the above two sections suggests that between the two, section 34 is more comprehensive and provides a self-contained scheme of disciplinary actions against chairman/member(s) of Union Parishad including initiation of proceedings on grounds specified therein, temporary suspension during proceedings, forwarding proposal for removal, approval or no-approval of the proposal by the government, and finally privilege of appeal against order of removal, if any, published in the official gazette ..... (Para 11)

Likewise procedure laid down under section 39 also leads to removal of the chairman/member(s) from office, but by democratic process. Under this section provisions are laid providing removal through no-confidence motion passed by a certain number of Members in Parishad. Section 39

provides how to bring no-confidence motion on specific allegations; procedure of inquiry; motion put to vote in Parishad and finally forwarding the same to the government for approval, if passed by requisite number of votes. Law, however, empowers Government to accord or not to accord approval to the no-confidence motion sent to it. Although section 39 does not say anything of the government's power beyond approval or no-approval it is fairly deducible from the scheme of law contained in sections 34 and 39 that once approval is given to the no-confidence motion by the government the office of the outvoted chairman/ member stands vacated. What is left thereafter for the government is to formally remove the concerned chairman/member from office by an order published in the official gazette ..... (Para 12)

In the scheme of sections 34 and 39 there is no scope for a chairman or member removed from office pursuant to proceedings under section 39 to seek relief in appeal. The appellate forum created under sub-section (7) of section 34, is exclusively meant for chairman/ member against whom proceedings under section 34 is taken and is removed by order published in the official gazette as required under sub-section (5) of section 34. .... (Para 13)

Section 34(1) provides for power to place an indicted chairman/ member under 'temporary suspension' during pendency of the proceedings, not after conclusion of proceedings. Suspension literally means- 'the act of debarring for a time from a function or privilege'. It means temporary deprivation of one's office or position. The suspended officer does not cease to be public servant; he is only prevented from discharging the duties of his office for the time being. A concluded proceeding logically and indeed is followed by a final order, i.e, either order of discharge or any order awarding suitable punishment ..... (Para 14)

This was a case for the government either to approve or not to approve the no-confidence motion sent by the inquiry officer through the Deputy Commissioner and, if approved, to remove the chairman by an order published in official gazette. Nothing of the kind was done. The government instead, placed the chairman under temporary suspension which is plainly incompatible with the stage of the proceedings and is grossly perverse ..... (Para 15)

The allegations are grave. But the gravity of offence cannot justify an order not only defiant of law but also deterrent to progress of democratic practices sought to be established by the legislature. The

order of temporary suspensions passed where it is plainly unwarranted by law whereas not explicable upon any proposition of innocence smacks of malice. The order, in the sense, is vitiated by malice in law. It seems to us to be an eminently fit case where interference is called for ..... (Para 18)

Although the office of the indicted chairman/member stands vacated with approval given by the government to the no confidence motion the vacancy should be given formal shape by an order of removal published in official gazette. This will, however, not entitle the chairman/member removed under section 39 to the right of appeal provided under sub-section (7) of section 34 .... (Para 19.3)

JUDGMENT

M. MOAZZAM HUSAIN-J: This Rule was issued calling in question an order vide Memo No. স্থাসবি/ইউপি-34/70/07 (Awn-2)/510 dated 30.08.2012 issued by the Respondent No.1 under the signature of Respondent No.2 whereby this petitioner, a Union Parishad Chairman, was placed under temporary suspension following a no-confidence motion passed against him on the charge specially of corruption.

2. Facts, in brief, are that the petitioner is the Chairman, Borikandi Union Parishad, Nabinagar, Brahmonbaria, elected for a term from 2011 to 2015. He took over office as chairman following publication of the list of elected chairmen/members of Union Parishads in the official gazette on 19.06.2011. While he was functioning as such all the twelve members of the Union Parishad brought a no-confidence motion against him on allegations of gross misconduct including misappropriation of public fund by abuse of office. The no-confidence motion was addressed to the local Upazila Nirbahi Officer, (hereinafter referred to as the "UNO") as per law. The UNO having received the same by his Memo No. 182 dated 04.03.2012 appointed a one-member inquiry committee comprising of Upazilla Livestock Officer to inquire into the matter and submit report. The inquiry officer accordingly issued a notice (Annex-C) on 11.03.2012 along with a copy of the said no confidence motion asking the petitioner to show cause within 22.03.2012.

3. Having received the show-cause notice the petitioner submitted in writing a reply (Annex-D) on 22.03.2012 denying all the allegations made therein. The inquiry officer, however, was not satisfied with the reply submitted by this petitioner. He addressed the Chairman another notice on 22.3.2012 (Annex-E) saying that the reply given by him was not satisfactory and asked him to be pres-

ent at the venue of local-inquiry (mentioned therein) to be held on dates fixed with preparations to meet charges against him. The local inquiry was accordingly held on the dates fixed. On inquiry a number of allegations were found proved. Thereafter, a meeting of the Parishad was held on 16.5.2012 in which the no-confidence motion was put to vote. And all the twelve members of the Parishad voted in favour of the motion thus the motion was finally carried through against the petitioner by 12/1 votes.

4. The inquiry officer by his office Memo dated 23.5.2012 submitted the report to the Respondent No.4 (UNO) who in his turn forwarded the report to the Respondent No.3 (DC, Brahmonbaria). The Deputy Commissioner, by his office Memo dated 05.7.2012 forwarded the report to the Respondent No.1 with his opinion that allegations of corruption and misconduct under section 34(kha) and (gha) were found proved against the chairman and he was removable from his office. The Government having received the papers connected with no-confidence motion issued the order placing the chairman under temporary suspension under the signature of a Deputy Secretary (LGRD) which is under challenge before us.

5. Mr. Idrisur Rahman, learned Advocate, appearing for the petitioner submits that the Government has no authority to suspend the petitioner under section 34(4) of the Local Government (Union Parishad) Act, 2009. He did not, however, explain how the Government is so powerless and how the petitioner would have been benefited by other orders that might be passed against him. He next submits that in issuing the impugned order of suspension the authority violated the principle of natural justice inasmuch as he was not allowed right to defense enough for the gravity of the allegations. His final contention is that the impugned order is tainted with mala fide issued at the behest of quarters inimically disposed to the petitioner. We have closely examined the records. We find nothing therein which might be construed to mean that the petitioner has been deprived of his right to be heard. Rather the records show otherwise. Two show cause notices were issued to the petitioner on two phases of inquiry and the petitioner, amongst other things, responded the queries by submitting written-reply. More so, he did never raise objections to the inquiry process.

6. So far as mala fide is concerned, it is not a case merely to be made but must of necessity be made out which is sadly lacking.

7. Here is a case in which a Chairman of a Union Parishad has been placed under temporary suspension by the Government following a no confidence motion passed against him and he is still moving under the

shadow of his office with his designation as 'chairman under temporary suspension'.

8. Reverting back to law, it appears that section 34 and 39 of the Local Government (Union Parishad) Act, 2009, provide for procedures to be followed for removal of chairman/members of Union Parishad through disciplinary proceedings and possible actions to be taken during and at the conclusion of the proceedings.

9. Section 34 of the Local Government (Union Parishad) Act, 2009 reads as follows:

"(১) যে ক্ষেত্রে কোন পরিষদের চেয়ারম্যান বা সদস্যের বিরুদ্ধে উপ-ধারা (৪) এ বর্ণিত অপরাধে অপসারণের জন্য কার্যক্রম আরম্ভ করা হইয়াছে অথবা তাহার বিরুদ্ধে ফৌজদারী মামলায় অভিযোগপত্র আদালত কর্তৃক গৃহীত হইয়াছে অথবা অপরাধ আদালত কর্তৃক আমলে নেওয়া হইয়াছে, সেইক্ষেত্রে নির্ধারিত কর্তৃপক্ষের মতে চেয়ারম্যান অথবা সদস্য কর্তৃক ক্ষমতা প্রয়োগ পরিষদের স্বার্থের পরিপন্থী অথবা প্রশাসনিক দৃষ্টিকোণে সমীচীন না হইলে, সরকার লিখিত আদেশের মাধ্যমে চেয়ারম্যান অথবা সদস্যকে সাময়িকভাবে বরখাস্ত করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীনে সাময়িকভাবে বরখাস্তের আদেশ প্রদান করা হইলে আদেশ প্রাপ্তির ৩ (তিন) দিনের মধ্যে সংশ্লিষ্ট চেয়ারম্যান ধারা ৩৩ এর বিধানমতে নির্বাচিত প্যানেল চেয়ারম্যানের নিকট দায়িত্ব হস্তান্তর করিবেন এবং উক্ত প্যানেল চেয়ারম্যান সাময়িক বরখাস্তকৃত চেয়ারম্যানের বিরুদ্ধে আনীত কার্যক্রম শেষ না হওয়া পর্যন্ত অথবা চেয়ারম্যান অপসারিত হইলে তাহার স্থলে নতুন চেয়ারম্যান নির্বাচিত না হওয়া পর্যন্ত দায়িত্ব পালন করিবেন।

(৩) উপ-ধারা (১) এর অধীনে পরিষদের কোন সদস্যকে সাময়িকভাবে বরখাস্তের আদেশ প্রদান করা হইলে উক্ত সদস্যের বিরুদ্ধে আনীত কার্যক্রম শেষ না হওয়া পর্যন্ত অথবা উক্ত সদস্য অপসারিত হইলে তাহার স্থলে নতুন সদস্য নির্বাচিত না হওয়া পর্যন্ত পরিষদের সিদ্ধান্তক্রমে অপর একজন সদস্য উক্ত দায়িত্ব পালন করিবেন।

(৪) চেয়ারম্যান বা সদস্য তাহার স্বীয় পদ হইতে অপসারণযোগ্য হইবেন, যদি, তিনি–

(ক) যুক্তিসঙ্গত কারণ ব্যতিরেকে পরিষদের পর পর তিনটি সভায়অনুপস্থিত থাকেন;

(খ) পরিষদ বা রাষ্ট্রের স্বার্থের হানিকর কোন কার্যকলাপে জড়িত থাকেন, অথবা দুর্নীতি বা অসদাচরণ বা নৈতিক স্খলনজনিত কোন অপরাধে দোষী সাব্যস্ত হইয়া দন্ডপ্রাপ্ত হইয়া থাকেন;

(গ) তাহার দায়িত্ব পালন করিতে অস্বীকার করেন অথবা শারীরিক বা মানসিক অসামর্থ্যের কারণে দায়িত্ব পালনে অক্ষম হন;

(ঘ) অসদাচরণ বা ক্ষমতার অপব্যবহারের দোষে দোষী হন অথবা পরিষদের কোন অর্থ বা সম্পত্তির কোন ক্ষতি সাধন বা উহার আত্মসাতের বা অপপ্রয়োগের জন্য দায়ী হন;

(ঙ) এই আইনের ধারা ২৬ (২) অনুযায়ী নির্বাচনের অযোগ্য ছিলেন বলিয়া নির্বাচনের পর যদি প্রমাণিত হয়;

(চ) বার্ষিক ১২ (বার) টি মাসিক সভার স্থলে নূন্যতম ৯ (নয়) টি সভা গ্রহণযোগ্য কারণ ব্যতীত অনুষ্ঠান করিতে ব্যর্থ হন;

(ছ) নির্বাচনী ব্যয়ের হিসাব দাখিল না করেন কিংবা দাখিলকৃত হিসাবে অসত্য তথ্য প্রদান করেন; অথবা

(জ) বিনা অনুমতিতে দেশ ত্যাগ করেন অথবা অনুমতিক্রমে দেশ ত্যাগের পর সেখানে অননুমোদিতভাবে অবস্থান করেন।

ব্যাখ্যাঃ এই উপ-ধারায় 'অসদাচরণ' বলিতে ক্ষমতার অপব্যবহার, কর্তব্যে অবহেলা, দুর্নীতি, স্বজনপ্রীতি ও ইচ্ছাকৃত কুশাসনও বুঝাইবে।

(৫) সরকার বা সরকার কর্তৃক নির্ধারিত কর্তৃপক্ষ, সরকারি গেজেটে আদেশ দ্বারা, উপ-ধারা (৪) এ উল্লিখিত এক বা একাধিক কারণে চেয়ারম্যান বা সদস্যকে অপসারণ করিতে পারিবেঃ

তবে শর্ত থাকে যে, অপসারণের সিদ্ধান্ত চূড়ান্ত করিবার পূর্বে বিধি মোতাবেক তদন্ত করিতে হইবে ও অভিযুক্তকে আত্মপক্ষ সমর্থনের সুযোগ দিতে হইবে।

(৬) কোন চেয়ারম্যান বা সদস্য এর অপসারণের প্রস্তাব, সরকার বা সরকার কর্তৃক নির্ধারিত কর্তৃপক্ষ কর্তৃক অনুমোদন লাভের পর তিনি তাৎক্ষণিকভাবে অপসারিত হইবেন।

(৭) পরিষদের কোন চেয়ারম্যান বা সদস্যকে উপ-ধারা (৫) অনুযায়ী তাহার পদ হইতে অপসারণ করা হইলে তিনি সরকার কর্তৃক নির্ধারিত কর্তৃপক্ষের নিকট উক্ত আদেশের তারিখ হইতে ৩০ (ত্রিশ) দিনের মধ্যে আপিল করিতে পারিবেন এবং আপিল কর্তৃপক্ষ উক্ত আপিলটি নিষ্পত্তি না হওয়া পর্যন্ত অপসারণ আদেশটি স্থগিত রাখিতে পারিবেন এবং আপিলকারীকে বক্তব্য প্রদানের সুযোগ দানের পর উক্ত আদেশটি পরিবর্তন, বাতিল বা বহাল রাখিতে পারিবেন।

(৮) আপিল কর্তৃপক্ষ কর্তৃক উপ-ধারা (৭) এর অধীন প্রদত্ত আদেশচূড়ান্ত বলিয়া গণ্য হইবে।

(৯) এই আইনের অন্যান্য বিধানে যাহা কিছুই থাকুক না কেন, এই ধারা অনুযায়ী অপসারিত কোন ব্যক্তি কোন পদে সংশ্লিষ্ট পরিষদের কার্যকালের অবশিষ্ট মেয়াদের জন্য নির্বাচিত হইবার যোগ্য হইবেন না।"

10. Section 39 of the Act reads as follows:

"(১) এই ধারার বিধান সাপেক্ষে পরিষদের চেয়ারম্যান, সদস্য বা পরিষদের উপর সুনির্দিষ্ট অভিযোগে অনাস্থা প্রস্তাব আনয়ন করা যাইবে।

(২) উপ-ধারা (১) অনুযায়ী অনাস্থা প্রস্তাব পরিষদের সংখ্যাগরিষ্ঠ সদস্যের স্বাক্ষরে লিখিতভাবে উপজেলা নির্বাহী অফিসারের নিকট পরিষদের যে কোন একজন সদস্য ব্যক্তিগতভাবে দাখিল করিবেন।

(৩) অনাস্থা প্রস্তাব প্রাপ্তির পর উপজেলা নির্বাহী অফিসার ১০ (দশ) কার্যদিবসের মধ্যে একজন কর্মকর্তা নিয়োগ করিবেন এবং উক্ত কর্মকর্তা অভিযোগসমূহের বিষয়ে বক্তব্য প্রদানের জন্য ১০ (দশ) কার্যদিবসের সময় প্রদান করিয়া অভিযুক্ত চেয়ারম্যান বা সদস্যকে কারণ দর্শানোর নোটিশ দিবেন।

(৪) জবাব সন্তোষজনক বিবেচিত না হইলে উপ-ধারা (৩) অনুযায়ী নিযুক্ত কর্মকর্তা জবাব প্রাপ্তির অনধিক ৩০ (ত্রিশ) কার্যদিবসের মধ্যে অনাস্থা প্রস্তাবে যে সকল অভিযোগের বর্ণনা করা হয়েছে, সে সকল অভিযোগ তদন্ত করিবেন।

(৫) তদন্তে অভিযোগের সত্যতা প্রমাণিত হইলে উপ-ধারা (৩) অনুযায়ী নিযুক্ত কর্মকর্তা অনধিক ১৫ (পনের) কার্যদিবসের মধ্যে অভিযুক্ত চেয়ারম্যান বা সদস্যসহ সংশ্লিষ্ট সকল নির্বাচিত সদস্যের নিকট সভার নোটিশ প্রেরণ নিশ্চিতকরণপূর্বক পরিষদের বিশেষ সভা আহবান করিবেন।

(৬) চেয়ারম্যানের বিরুদ্ধে অনাস্থা প্রস্তাবের ক্ষেত্রে প্যানেল চেয়ারম্যান (ক্রমানুসারে) এবং কোন সদস্যের বিরুদ্ধে অনাস্থা প্রস্তাবের ক্ষেত্রে পরিষদের চেয়ারম্যান সভায় সভাপতিত্ব করিবেনঃ তবে শর্ত থাকে যে, চেয়ারম্যান বা প্যানেল চেয়ারম্যানের অনুপস্থিতিতে উপস্থিত সদস্যগণের মধ্যে একজন সদস্যকে ঐক্যমতের ভিত্তিতে সভাপতি নির্বাচিত করা যাইবে।

(৭) উপ-ধারা (৩) অনুযায়ী নিযুক্ত কর্মকর্তা সভায় একজন পর্যবেক্ষক হিসাবে উপস্থিত থাকিবেন।

(৮) উপ-ধারা (১) এর উদ্দেশ্যে আহুত সভাটি নিয়ন্ত্রণ বহির্ভূত কোন কারণ ছাড়া স্থগিত করা যাইবে না এবং মোট নির্বাচিত সদস্য সংখ্যার দুই-তৃতীয়াংশ সদস্য সমন্বয়ে সভার কোরাম গঠিত হইবে।

(৯) সভা শুরু হইবার তিন ঘন্টার মধ্যে উন্মুক্ত আলোচনার মাধ্যমে সিদ্ধান্ত গ্রহণ সম্ভব না হইলে অনাস্থা প্রস্তাবটির উপর গোপন ব্যালটের মাধ্যমে ভোট গ্রহণ করিতে হইবে।

(১০) সভার সভাপতি অনাস্থা প্রস্তাবের পক্ষে বা বিপক্ষে কোন প্রকাশ্য মতামত প্রকাশ করিবেন না তবে তিনি ব্যালটের মাধ্যমে উপধারা (৯) অনুযায়ী ভোট প্রদান করিতে পারিবেন কিন্তু তিনি নির্ণায়ক বা দ্বিতীয় ভোট দিতে পারিবেন না।

(১১) অনাস্থা প্রস্তাবটি কমপক্ষে ৯ (নয়) জন সদস্য কর্তৃক ভোটে গৃহীত হইতে হইবে।

(১২) উপ-ধারা (৩) অনুযায়ী নিযুক্ত কর্মকর্তা সভা শেষ হইবার পর অনাস্থা প্রস্তাবের কপি, ব্যালট পেপার, ভোটের ফলাফলসহ সভার কার্যবিবরণী প্রস্তুত করিয়া আনুষঙ্গিক কাগজপত্রসহ সরকারের নিকট প্রেরণ করিবেন।

(১৩) সরকার, উপযুক্ত বিবেচনা করিলে, অনাস্থা প্রস্তাব অনুমোদন অথবা অননুমোদন করিবে।

(১৪) অনাস্থা প্রস্তাবটি প্রয়োজনীয় সংখ্যক ভোটে গৃহীত না হইলে অথবা কোরামের অভাবে সভা অনুষ্ঠিত না হইলে উক্ত তারিখের পর ৬ (ছয়) মাস অতিক্রান্ত না হইলে সংশ্লিষ্ট চেয়ারম্যান বা সদস্যের বিরুদ্ধে অনুরুপ কোন অনাস্থা প্রস্তাব আনয়ন করা যাইবে না।

(১৫) পরিষদের চেয়ারম্যান বা কোন সদস্যের দায়িত্বভার গ্রহণের ৬ (ছয়) মাসের মধ্যে তাহার ৬ (ছয়) মাসের মধ্যে তাহার বিরুদ্ধে অনাস্থা প্রস্তাব আনয়ন করা যাইবে না।"

11. *A plain reading of the provisions of law laid down in the above two sections suggests that between the two, section 34 is more comprehensive and provides a self-contained scheme of disciplinary actions against chairman/member(s) of Union Parishad including initiation of proceedings on grounds specified therein, temporary suspension during proceedings, forwarding proposal for removal, approval or no-approval of the proposal by the government, and finally privilege of appeal against order of removal, if any, published in the official gazette.*

12. *Likewise procedure laid down under section 39 also leads to removal of the chairman/member(s) from office, but by democratic process. Under this section provisions are laid providing removal through no-confidence motion passed by a certain number of Members in Parishad. Section 39 provides how to bring no-confidence motion on specific allegations; procedure of inquiry; motion put to vote in Parishad and finally forwarding the same to the government for approval, if passed by requisite number of votes. Law, however, empowers Government to accord or not to accord approval to the no-confidence motion sent to it. Although section 39 does not say anything of the government's power beyond approval or no-approval it is fairly deducible from the scheme of law contained in sections 34 and 39 that once approval is given to the no-confidence motion by*

the government the office of the outvoted chairman/member stands vacated. What is left thereafter for the government is to formally remove the concerned chairman/member from office by an order published in the official gazette.

13. *In the scheme of sections 34 and 39 there is no scope for a chairman or member removed from office pursuant to proceedings under section 39 to seek relief in appeal. The appellate forum created under sub-section (7) of section 34, is exclusively meant for chairman/member against whom proceedings under section 34 is taken and is removed by order published in the official gazette as required under sub-section (5) of section 34.*

14. *Section 34(1) provides for power to place an indicted chairman/member under 'temporary suspension' during pendency of the proceedings, not after conclusion of proceedings. Suspension literally means- 'the act of debarring for a time from a function or privilege'. It means temporary deprivation of one's office or position. The suspended officer does not cease to be public servant; he is only prevented from discharging the duties of his office for the time being. A concluded proceeding logically and indeed is followed by a final order, i.e, either order of discharge or any order awarding suitable punishment.*

15. *This was a case for the government either to approve or not to approve the no-confidence motion sent by the inquiry officer through the Deputy Commissioner and, if approved, to remove the chairman by an order published in official gazette. Nothing of the kind was done. The government instead, placed the chairman under temporary suspension which is plainly incompatible with the stage of the proceedings and is grossly perverse.*

16. The impugned order of temporary suspension has left an otherwise decided matter totally undecided. The issue might have been settled once for all by way of approval or no-approval to the no-confidence motion. But things were set to linger years together by an apparently wrong order passed for reasons yet not known.

17. Mr. Motahar Hossain, learned DAG, submits that the petitioner was removed from his office by vote of no-confidence on specific charges of corruption and the motion was passed by 12/1 votes that means by all the members of his Parishad. Such a chairman, he insisted, should not be reinstated in office on mere technical defect in the order. Mr. Tufailur Rahman, learned Advocate, appearing for added Respondent No.6, found it difficult to defend the order of temporary suspension in the peculiar facts but adopted the argument of the DAG that it is in the public interest that the petitioner should not be restored to office.

18. *The allegations are grave. But the gravity of offence cannot justify an order not only defiant of law but also deterrent to progress of democratic practices sought to be established by the legislature. The order of temporary suspensions passed where it is plainly unwarranted by law whereas not explicable upon any proposition of innocence smacks of malice. The order, in the sense, is vitiated by malice in law. It seems to us to be an eminently fit case where interference is called for.*

19. To sum up:

1. Sections 34 and 39 of the Local Government (Union Parishad) Act, 2009, provide for two separate but parallel procedures for removal of chairman or member(s) of the Union Parishad. Either of the proceedings may be resorted to for the purpose.

2. Since Parishad is a democratic institution ordinarily no-confidence proceedings should get preference over ordinary disciplinary proceedings so that democratic values can take roots at all levels of the society.

3. *Although the office of the indicted chairman/member stands vacated with approval given by the government to the no confidence motion the vacancy should be given formal shape by an order of removal published in official gazette. This will, however, not entitle the chairman/member removed under section 39 to the right of appeal provided under sub-section (7) of section 34.*

4. The chairman/member against whom no-confidence proceedings is initiated as per section 39 cannot be deprived of his/her right to vote on 'no-confidence motion'.

20. For what we have stated hereinabove, we find merit in this rule. At the same time, we do not think that relief can be given absolutely in terms of the rule without frustrating the result of otherwise valid proceedings. Fitness of things, therefore, requires that the impugned order of temporary suspension be declared void and the case be sent back to Respondent No.1 with necessary directions to cure the defects.

21. In the result, the impugned Memo of temporary suspension is declared void and ineffective and the Respondent No.1 is directed to pass appropriate orders as required by section 39(13) of the Local Government (Union Parishad) Act, 2009, on the no-confidence motion received by it and dispose of the matter in accordance with law within thirty days from date of receipt of this judgment.

22. This rule is thus disposed of with the aforesaid direction. No order as to cost. Order of stay granted earlier is hereby vacated. Communicate copies of this judgment at once.

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HIGH COURT DIVISION
(Civil)

Nozrul Islam Chowdhury-J.
and
Mohammad Ullah-J.

CIVIL REVISION NO. 1702 OF 2012

(An application under section 115(1) of the Code of Civil Procedure, Rule was issued calling upon the plaintiff-opposite party No. 1 to show cause as to why the impugned order passed by the learned Joint District Judge, Chandpur allowing an application filed by the plaintiff under section 151 of the Code of Civil Procedure to deposit the balance consideration money of contract should not be set aside)

Md. Mojibur Rahman Gazi .....
..... Defendant-Petitioner.

Vs.

Abdul Latif Sardar and another
..... Plaintiff-Opposite Parties.

For the petitioner : Mr. Khijir Ahmed, Advocate with Mr. Dider Alom, Advocate.

For the Plaintiff-Opposite Parties : None appears.

Judgment: February 14, 2013

Specific Relief Act, 1877–

Section 21A– The provision for depositing the balance consideration money is a condition precedent failing which it would not be possible to enforce the contract by filing a suit–

In view of the language used in section 21A of the Specific Relief Act, 1877 (as amended) with a non-obstinate clause the ouster of jurisdiction is manifestly clear in entraining suit for specific performance of contract filed after 01.07.2005 without depositing the balance consideration money in the court at the time of filing of the suit ..... (Para 13)

The very specific provisions of section 21A(b) provides that the balance consideration money is required to be deposited at the time of filing of the suit. In view of the above there is no scope for a purchaser to make deposit of the consideration money beyond the statutory period of limitation. Consequently the application submitted for allowing the plaintiff appellant to make deposit of the balance consideration money is rejected as being time barred .....
..... (Para 15)

After the amendment of the Specific Relief Act, 1877 by Act No. XXVII of 2004 incorporating a new section, namely, section 21A which came into effect from 1st July, 2005 and the same being a mandatory provision of law the plaintiff has

no other alternative but to deposit the balance amount of the consideration money of the contract in the court below at the time of filing of the suit, and the same having not been deposited in the court at the time of filing of the suit, the court below most illegally allowed the plaintiff to deposit the balance consideration of the contract and thereby the court below committed an error of law resulting in an error in the decision occasioning failure of justice ..... (Para 17)

Now the question is whether the plaint of the suit is liable to be rejected as submitted by the learned Advocate for the petitioner. Although allowing the plaintiff to deposit the balance consideration money of the contract is tantamount to rejection of the application filed by the defendant for rejection of plaint, the settled principle of law is that the question of maintainability of the suit should be decided at first. We have already decided that the plaintiff is not competent to deposit the balance consideration of the registered contract long after filing of the suit, so we have to consider the question of maintainability of the suit as well .... (Para 19)

It is well settled that the rejection of plaint is not confined to the provision of Order 7 Rule 11 of the Code of Civil Procedure. In an appropriate case while the proceeding itself is barred or an abuse of the process of the court, the court having recourse of section 151 will be competent to reject the plaint ..... (Para 20)

When the ultimate result of the suit is as clear as day light such suit should be buried at its inception. So that no further time is consumed in fruitless litigation. Thus we feel it proper to reject the plaint of the suit as it is barred under section 21A of the Specific Relief of Act, 1877 ..... (Para 21)

JUDGMENT

MOHAMMAD ULLAH-J: On an application under section 115(1) of the Code of Civil Procedure this Rule, at the instance of the defendant-petitioner, was issued calling upon the plaintiff-opposite party No. 1 to show cause as to why the impugned order dated 10.5.2012 passed by the learned Joint District Judge, Chandpur in Civil Suit No. 06 of 2011 allowing an application dated 10.5.2012 filed by the plaintiff under section 151 of the Code of Civil Procedure to deposit the balance consideration money of contract should not be set aside and/or such other or further order or orders passed as to this court may seem fit and proper.

2. By the Rule issuing order dated 03.6.2012 operation of the impugned order dated 10.5.2012 and further proceedings of the above suit were stayed for a period of 3 (three) months and it was extended on 14.8.2012 for a further period of 6 (six) months.

3. The relevant facts for disposal of the rule are briefly stated below:

The opposite party No.1 as plaintiff on 10.01.2011 instituted Civil Suit No. 6 of 2011 in the 1st Court of Joint District Judge, Chandpur impleading the petitioner and opposite party No. 2 as defendants seeking a decree for specific performance of contract. The plaintiff's case, in brief, is that the schedule land belonged to the defendant No.1, who proposed to sell the same to the plaintiff and plaintiff agreed to purchase the same at a consideration of Tk. 81,00,000/-and the defendant No.1 received Tk. 10,00,000/- as earnest money and a registered bainapatro dated 08.10.2009 was executed between them. It was stipulated that balance consideration of Tk. 71,00,000/- would be paid within 07.04.2010 and after receipt of the balance consideration, the defendant would execute and register sale deed in favour of the plaintiff. But the defendant took time on various pretexts and the plaintiff on 30.03.2010 approached the defendant to execute and register the sale deed but the defendant No. 1 delayed the matter for going to perform Hajj and thereafter, the plaintiff on December, 2010 again approached the defendant to execute and register the sale deed as per terms of the bainapatro. But the defendant denied to execute the same, which constrained the plaintiff to file the suit for specific performance of contract. After filing the suit the plaintiff filed an application for injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure.

4. The petitioner entered appearance and on 15.04.2012 filed an application under Order 7 Rule 11 (d) of the Code of Civil Procedure praying for rejection of plaint stating *inter alia* that the plaintiff failed to deposit the balance consideration money amounting to Tk. 71,00,000/- at the time of filing of the suit and as such the plaint is liable to be rejected.

5. The plaintiff prayed for adjournment for filing written objection against the prayer for rejection of the plaint and also prayed for 1 months time to deposit the balance consideration of bainapatro. Accordingly, on 26.04.2012 the date was fixed for filing written objection against the application for rejection of plaint filed by the defendant. But the plaintiff again sought for adjournment and next date was fixed on 10.05.2012 and on that date the plaintiff filed an application under section 151 of the Code of Civil Procedure to allow him to deposit the balance consideration of the bainapatro and the learned Joint District Judge, by his impugned order dated

10.05.2012 allowed the plaintiff to deposit the balance consideration and the next date was fixed on 06.06.2012 for filing written objection and hearing the application for rejection of plaint. Against the said order dated 10.05.2012 passed by the learned Joint District Judge, the defendant approached this Court and the Rule was issued and order of stay was passed as stated above.

6. Mr. Khijir Ahmed, learned Advocate appearing with Mr. Dider Alom on behalf of the defendant- petitioner submits that the very specific provision of proviso (b) of section 21A of the Specific Relief Act, provides that the balance consideration is required to be deposited at the time of filing of the suit for specific performance of contract and as such there is no scope for a purchaser to make deposit of the balance consideration money beyond the statutory period of limitation. Consequently, allowing the plaintiff to make deposit of balance consideration money is liable to be set-aside as being barred under section 21A of the Specific Relief Act.

7. The learned Advocate for the petitioner submits further that the defendant filed an application for rejection of plaint invoking Order 7 Rule 11(d) of the Code of Civil Procedure and the learned Joint District Judge, by his order dated 15.04.2012 fixed for hearing the said application for rejection of plaint and kept the application in the record filed by the plaintiff praying time for depositing balance consideration. But subsequently on 10.05.2012 the learned Joint District Judge, most illegally allowed the plaintiff to deposit the balance consideration of the bainapatro which is tantamount to rejection of the application for rejection of plaint filed by the defendant-petitioner.

8. The learned Advocate for the defendant-petitioner lastly submits that the plaint is liable to be rejected under Order VII Rule II(d) of the Code of Civil Procedure as the plaintiff failed to make statutory deposit at the time of filing of the suit.

9. In support of his submission the learned Advocate for the petitioner placed reliance on the case of Imran (Md) Vs.- Shamim Kamal and others reported in 60 DLR (2008) 597.

10. None appears for the plaintiff-opposite party No. 1 although notice has been served upon him.

11. We have heard the learned Advocate for the petitioner, perused the impugned order and other materials on record and have gone through the decision referred to, wherefrom it transpires that the suit was filed on 19.01.2011 without depositing the balance consideration of the registered bainapatro dated 08.10.2009 and the plaintiff for the 1st time on 15.04.2012 prayed 1 months time for depositing the balance consideration. In the meantime the defendant filed an application for rejection of plaint and the

learned Joint District Judge, ought to have taken a decision about maintainability of the suit at first. But it appears that the learned Joint District Judge, without hearing the application for rejection of plaint allowed the plaintiff to deposit the balance consideration of the bainapatro upon allowing an application filed by the plaintiff under section 151 of the Code of Civil Procedure by his impugned order dated 10.05.2012 and fixed 6.6.2012 for depositing the balance consideration of contract. But the specific provision of section 21A of the Specific Relief Act provides that the balance consideration money is required to be deposited at the time of filing of the suit.

12. The Specific Relief Act, 1877 has been amended by adding section 21A by Act 27 of 2004 which runs as follows:

"21A. Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, no contract for sale of any immovable property can be specifically enforced unless–

(a) the contract is in writing and registered under the Registration Act, 1908, whether or not the transferee has taken possession of the property or any part thereof; and

(b) the balance amount of consideration of the contract is deposited in the court at the time of filing the suit for specific performance of contract."

The above amended provision of section 21A of the Specific Relief Act, came into effect from 1.7.2005.

13. *In view of the language used in section 21A of the Specific Relief Act, 1877 (as amended) with a non-obstinate clause the ouster of jurisdiction is manifestly clear in entraining suit for specific performance of contract filed after 01.07.2005 without depositing the balance consideration money in the court at the time of filing of the suit.*

14. In the instant case admittedly the contract for sale was registered on 8.1.2009 and the suit was filed on 19.1.2011 without depositing the balance consideration of the contract. Now the question is whether non depositing of the balance consideration of the contract at the time of filing of the suit, the plaint is liable to be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure or in other words whether the plaintiff is entitled to make deposit the balance consideration of the contract long after filing of the suit. On a careful reading of section 21A of the Specific Relief Act it appears that the provision for depositing the balance consideration money is a condition precedent failing which it would not be possible to enforce the contract by filing a suit.

15. We find support of the above contention in the case of *Imran (Md) Vs-Shamim Kamal and others reported in 60 DLR 597*. In the said reported decision it has been held that:

"The very specific provisions of section 21A(b) provides that the balance consideration money is required to be deposited at the time of filing of the suit. In view of the above there is no scope for a purchaser to make deposit of the consideration money beyond the statutory period of limitation. Consequently the application submitted for allowing the plaintiff appellant to make deposit o the balance consideration money is rejected as being time barred."

16. Similar views were also expressed in the case of ***Faquir Ashraf Vs.- Mrs. Bilkis Banu reported in 2 ALR (2012) 21***.

17. In the above facts and circumstances of the case, the provisions of law, and the decisions referred to above, we hold that *after the amendment of the Specific Relief Act, 1877 by Act No. XXVII of 2004 incorporating a new section, namely, section 21A which came into effect from 1st July, 2005 and the same being a mandatory provision of law the plaintiff has no other alternative but to deposit the balance amount of the consideration money of the contract in the court below at the time of filing of the suit, and the same having not been deposited in the court at the time of filing of the suit, the court below most illegally allowed the plaintiff to deposit the balance consideration of the contract and thereby the court below committed an error of law resulting in an error in the decision occasioning failure of justice.*

18. In the above facts and circumstances of the case and the provision of law, we find merit in the Rule. Accordingly, the Rule is made absolute however without any order as to costs. The impugned order dated 10.05.2012 passed by the learned Joint District Judge, Chandpur in Civil Suit No. 6 of 2011 is hereby set-aside.

19. *Now the question is whether the plaint of the suit is liable to be rejected as submitted by the learned Advocate for the petitioner. Although allowing the plaintiff to deposit the balance consideration money of the contract is tantamount to rejection of the application filed by the defendant for rejection of plaint, the settled principle of law is that the question of maintainability of the suit should be decided at first. We have already decided that the plaintiff is not competent to deposit the balance consideration of the registered contract long after filing of the suit, so we have to consider the question of maintainability of the suit as well.*

20. *It is well settled that the rejection of plaint is not confined to the provision of Order 7 Rule 11 of the Code of Civil Procedure. In an appropriate case while the proceeding itself is barred or an abuse of the process of the court, the court having recourse of section 151 will be competent to reject the plaint.*

21. Moreover, *when the ultimate result of the suit is as clear as day light such suit should be buried at its inception. So that no further time is con-*

sumed in fruitless litigation. Thus we feel it proper to reject the plaint of the suit as it is barred under section 21A of the Specific Relief of Act, 1877.

22. Accordingly, the plaint of Civil Suit No. 6 of 2011 pending in the court of learned Joint District Judge, Chandpur is rejected under section 151 of the Code read with under Order VII Rule II(d) of the Code of Civil Procedure.

23. Send copy of this judgment to the learned Joint District Judge, Chandpur.

Case Cited

* ***Imran (Md) Vs- Shamim Kamal and others 60 DLR 597.***

* ***Faquir Ashraf Vs.- Mrs. Bilkis Banu 2 ALR (2012) 21.***

HIGH COURT DIVISION (Criminal)

A.K.M. Asaduzzaman-J.
And
Md.Moinul Islam Chowdhury-J.

CRIMINAL MISC. CASE NO. 37461 OF 2011

(Rule was issued calling upon the opposite party to show cause as to why the accused petitioner should not be enlarged on bail in Sessions Trial Case under Table 9 ((Kha) of Section 19(1) of the Narcotics Control Act, 1990, pending in the Court of the Sessions Judge, Cox's Bazar.)

Md. Jafar Alam ..... Petitioner.

Vs.

The State ..... Opposite party.

For the petitioner : Mr. Probir Halder, Advocate.

For the Opposite party : Mr. Forhad Ahmed, D.A.G.

Judgment: May 8, 2012

Drugs (Control) Ordinance 1982–

Section 8– Phensidyl is not a Narcotics, but is a banned medicine, as prohibited by the Drugs (Control) Ordinance. The Narcotics Control Act has got no manner of application in case of a medicine like phensidyl-

The Drugs (Control) Ordinance 1982 (Ordinance No VIII of 1982) prohibits the manufacture, import, distribution or sale of the said phensidyl under section 8 of the said Ordinance along with other medicine, as shown in schedule III thereof. Phensidyl is not a Narcotics, but is a banned medicine, as prohibited by the Drugs (Control) Ordinance. Thus, the Narcotics Control Act has got no manner of application in case of a medicine like phensidyl, which is guided under the Drugs (Control) Ordinance ..... (Para (9)

Perusing the above provisions of law together with the Third Schedule under the Drugs (Control) Ordinance, it appears that manufacture, import, distri-

bution and sale of drugs mentioned in the schedule thereunder is prohibited by section 8 of the said Ordinance. Section 16 of the said Ordinance prescribes the penalty for infringement of the said restriction. Sub section (b) of section 22 of the said Ordinance puts a restriction upon the other court other than the Drug Court to try an offence punishable under this Ordinance. Sub section (c) of section 22 of the said Ordinance narrates the procedure of initiation of a case under this law. Section 23 of the said Ordinance provides the constitution and function of the Drug Courts. In the premises, where it is the legislative mandate to try an offence under the Drugs (Control) Ordinance by a Drug Court with certain procedure, a trial and punishment by any other court under any other law other than Drug(Control) Ordinance is illegal and without jurisdiction. Moreover any offence under the Drugs (Control) Ordinance since are not schedule offence under the Special Powers Act, the Special Tribunal constituted under section 26 of the Special Powers Act has got no jurisdiction to try such offence .... (Para 12)

Similarly, about Yaba, the Director General of the Drug Administration submitted a report stating that;

"YABA is a combination of Methamphetamine (a powerful CNS addictive Stimulant) and Caffeine. Usually 30% Methamphetamine. Users get an intense burst of energy followed by increased activity, decreased appetite and general sense of well-being. Once the effects wear off, the user crases and experiences prolonged periods of sleep and depression. Long term uses of YABA produce dependency. The Methamphetamine is also used by the doctor to treat ADHD (attention deficit hyperactivity disorder) and short term obesity treatment. But since the YABA contain Methamphetamine, a schedule II substance under the controlled substance act, schedule II drugs as well as not registered drug in Bangladesh by DGDA, so it is illegal in Bangladesh and also is hazardous and injurious for human health." ..... (Para 13)

Yaba by name itself is not a Narcotics under the Narcotics Control Act. The Methamphetamine, an ingredients of Yaba, is narcotics as per schedule which has been defined under section 2(b) of the Narcotics Control Act. The weight of the tablet Yaba has no manner of application with regard the conviction as well to award of sentence to an accused. The weight of methamphetamine is required to

determine the punishment of an accused ..... (Para 15)

In order to determine the sentence of the accused, determination of quantum of narcotics is very much essential. For the different quantum of the Narcotics, the law prescribes different punishment. To sustain a charge under the table as prescribed by section 19(1) of the Narcotics Control Act, the correct ascertainment of the quantum of the Narcotics is an essential factor. Under Table 9, if the quantum of the narcotics in question (here methamphetamine) is found to be up to 5 grams the sentence will range from 6 months to 3 years but in case of even a smaller fraction above 5 grams, the sentence will range from 5 years to 15 years. Since a slight variation or mistake in the measurement may lead to greater punishment, it is necessary that the actual and real quantity of the Narcotics in question be ascertained accurately and the law interpreted carefully and strictly. Any reasonable doubt on this score must go to the benefit of the accused ..... (Para 16)

According to the chemical analysis report, as quoted above, since a single tablet contains only 5.1 mg methamphetamine, near about 1000 pieces of Yaba Tablet will contain 5 grams of methamphetamine and will therefore come under Table 9(Ka) of section 19(1) of the Narcotics Control Act. More than 1000 pieces of Yaba Tablet containing above 5 grams of methamphetamine will constitute an offence under Table 9(Kha) of section 19(1) of the said Act. In any sense, before awarding conviction and sentence of any accused for possessing Yaba it is very essential to get an actual measurement of the quantum of methamphetamine that was seized or recovered from the office of the Department of Narcotics Control Laboratory ..... (Para 17)

It appears that the petitioner was alleged to have been arrested along with 600 pieces of yaba Tablet on 13.9.2011 and is being detained in custody since then. By this time, he has been languishing in the jail custody for more than 8 months. Since 600 pieces of Yaba Tablet contain less than 5 grams of narcotics, for which the Legislature prescribes a minimum sentence of 6 months imprisonment, we are inclined to enlarge him on bail ..... (Para 18)

JUDGMENT

A.K.M. ASADUZZAMAN-J: This rule was issued calling upon the opposite party to show cause as to why the accused petitioner should not be enlarged on bail in Sessions Trial Case No.223 of 2012 arising out of

G.R.Case No.380 of 2011 (Teknaf) corresponding to Teknaf P.S. Case No.23 dated 13.09.2011 under Table 9 ((Kha) of Section 19(1) of the Narcotics Control Act, 1990, pending in the Court of the Sessions Judge, Cox's Bazar.

2. The prosecution case in short is that one S.I. Nilu Kanti Barua on producing the arrested accused and the seized tablets before the Teknaf Police Station, lodged an F.I.R implicating the petitioner and another as accused alleging, *inter alia,* that on 13.09.2011 during investigation of a criminal case on receiving a secret information at about 12.30 hours, he along with his force laid an ambush in front of the Mulapara Jame Mosque under the Teknaf Police Station. Noticing their presence, the accused person tried to flee away, but they were able to catch the petitioner and on search, they recovered 3 blue coloured plastic containing 600 pcs YABA tablets weighing about 63 gm. On query, the petitioner admitted his guilt to the informant saying that the co-accused Gafur gave him those tablets. He then tried to arrest Gafur but failed.

3. After arrest since the petitioner failed to get bail, he obtained the instant rule for bail.

4. The learned Advocate appearing for the petitioner submits that the alleged articles are not contraband items as well as measurement of the Narcotics as shown in the FIR and the seizure list are not in accordance with law and the petitioner will get the benefit and no YABA tablet was recovered from the control and possession of the petitioner and he is a victim of circumstances and he has got a fair chance of acquittal in this case; there is no certainty as to when the trial will commence, as such he prays for bail of the petitioner.

5. The learned Deputy Attorney General appearing for the opposite party opposes the prayer for bail.

6. Heard the learned Advocates of both the sides and perused the FIR, other documents annexed to the supplementary affidavit and the impugned order.

7. At the midst of the hearing of this rule, this court asked for a report from the Director General (D.G.) of the Department of Narcotics Control as well as Director General (D.G.) of the Drug Administration about Yaba and Phensidyl. In the report submitted by the Director General of the Drug Administration, it has been stated as follows:

> "Phensidyl is a cough linctus, a liquid preparation like syrup (which contains glucose in high concentration that used for better taste. Its active ingredients include Codeine phosphate. It also contained pseudoephedrine and chlorpheniramine maleate. The syrup is illegal in Bangladesh but not in India."

Composition:

Each 5 ml. contains the following

Promethazine Hydrochloride	3.6 mg
Codeine Phosphate	9.0 mg
Ephedrine Hydrochloride	7.2 mg

8. Thus in view of the above report, phensidyl is a kind of medicine and is used as cough linctus syrup.

9. *The Drugs (Control) Ordinance 1982 (Ordinance No VIII of 1982) prohibits the manufacture, import, distribution or sale of the said phensidyl under section 8 of the said Ordinance along with other medicine, as shown in schedule III thereof. Phensidyl is not a Narcotics, but is a banned medicine, as prohibited by the Drugs (Control) Ordinance. Thus, the Narcotics Control Act has got no manner of application in case of a medicine like phensidyl, which is guided under the Drugs (Control) Ordinance.*

10. Let us now refer to some of the relevant provisions of the Drug (Control) Ordinance. In the preamble of the said Ordinance it has been mentioned that

> "An Ordinance to Control manufacture, Import, distribution and sale of drugs."

Section 8 of the said Ordinance runs as follows:

> Prohibition of Manufacture, etc., of certain medicines
>
> 8.(1) On the commencement of this Ordinance, the registration of licence in respect of all medicines mentioned in the Schedules shall stand cancelled, and no such medicine shall, subject to the provisions of sub-section (2), be manufactured, imported, distributed, stocked, exhibited or sold] after such commencement.
>
> (2) Notwithstanding anything contained in sub-section (1),-
>
> the medicines specified in Schedule I shall be destroyed within three months from the date of commencement of this Ordinance;
>
> the medicines specified in Schedule II may be manufactured or sold for a period of [twelve months] from the date of commencement of this Ordinance and thereafter their manufacture [stock, exhibition and sale] shall be permitted only if they are registered after change in their formulation in accordance with the direction of the licensing authority;
>
> the medicines specified in Schedule III may be manufactured, imported, distributed and sold for a period of [eighteen months] after the commencement of this Ordinance, and thereafter there shall not be any manufac-

ture, import, distribution [, stock, exhibition or sale] of such medicines];

(d) the medicines specified in Schedule IV may be manufactured, distributed and sold for a period of eighteen months after the commencement of this Ordinance, and thereafter their manufacture, distribution [, stock, exhibition and sale] shall be permitted only if they are registered again with the licensing authority:

11. Provided that no fresh import of raw materials for the manufacture of the medicines specified in Schedule III and Schedule IV shall be permitted.]

Penalty for manufacture, etc., of certain drugs distributes [, stocks, exhibits or sells]-

16. Whoever manufactures, imports,

(a) any medicine which is not registered under this Ordinance, or

(b) any medicine in contravention of the provisions of section 8, or

(c) any drug which is adulterated [, misbranded, spurious or imitated],

shall be punishable with rigorous imprisonment for a term which may extend to ten years, or with fine which may extend to two lakh Taka, or with both, and any implements used in the manufacture or sale of such medicine or drug may, by order of the Drug Court, be forfeited to the Government.

Cognizance of offence

22. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898),-

(a) an offence punishable under this Ordinance shall be non- cognizable;

(b) no Court other than a Drug Court shall try an offence punishable under this Ordinance;

(c) no Drug Court shall take cognizance of an offence punishable under this Ordinance except on a report in writing made by the licensing authority or an officer authorized by him in this behalf.

Drug Courts

23.(1) The Government may, by notification in the Official Gazette establish as many Drug Courts as it considers necessary and where it established more than one Drug court, shall specify in the notifications the territorial limits within which each one of them shall exercise jurisdiction under this Ordinance.

(2) A Drug Court consist of a person who is or has been a Sessions Judge and he shall be appointed by the Government.

(3) A Drug Court shall sit at such place as the Government may direct.

(4) A Drug court may pass any sentence authorized by this Ordinance and shall have all the powers conferred by the Code of Criminal procedure, 1898 (V of 1898), on a Court of Session exercising original jurisdiction.

(5) A Drug Court shall not, merely by reason of a change in its composition, be bound to recall and rehear any witness who has given evidence, and may act on the evidence already recorded by or produced before it.

(6) A Drug Court shall, in all matters with respect to which no procedure has been prescribed by this Ordinance, follow the procedure prescribed by the Code of Criminal Procedure, 1898 (V of 1898), for the trial of summons cases by Magistrates.

(7) A Drug Court may, on application in this behalf being made by the prosecution, try an offence under this Ordinance summarily in accordance with the provisions contained in sections 262 to 265 of the Code of Criminal Procedure, 1898 (V of 1898).

(8) An appeal from the judgment of a Drug Court shall lie to the High Court Division.

SCHEDULE III

[Sec Section 8(2) (c)]

LOCALLY MANUFACTURED DRUGS

Sl. No	Drug Admn. code No. (DAC No)	Product
1	001-04-75	Dequadin Lozenges
—	—	—
—	—	—
—	—	—
52	004-62-40	Phensedyl.

12. *Perusing the above provisions of law together with the Third Schedule under the Drugs (Control) Ordinance, it appears that manufacture, import, distribution and sale of drugs mentioned in the schedule there under is prohibited by section 8 of the said Ordinance. Section 16 of the said Ordinance prescribes the penalty for infringement of the said restriction. Sub section (b) of section 22 of the said Ordinance puts a restriction upon the other court other than the Drug Court to try an offence punishable under this Ordinance. Sub section (c) of section 22 of the said Ordinance narrates the procedure of initiation of a case under this law. Section 23 of the said Ordinance provides the constitution and function of the Drug Courts. In the premises, where it is the legislative mandate to try an offence under the Drugs (Control) Ordinance by a Drug Court with certain procedure, a trial and punishment by any other court under any other law other than Drug*

(Control) Ordinance is illegal and without jurisdiction. Moreover any offence under the Drugs (Control) Ordinance since are not schedule offence under the Special Powers Act, the Special Tribunal constituted under section 26 of the Special Powers Act has got no jurisdiction to try such offence.

13. *Similarly, about Yaba, the Director General of the Drug Administration submitted a report stating that;*

"YABA is a combination of Methamphetamine (a powerful CNS addictive Stimulant) and Caffeine. Usually 30% Methamphetamine. Users get an intense burst of energy followed by increased activity, decreased appetite and general sense of wellbeing. Once the effects wear off, the user crases and experiences prolonged periods of sleep and depression. Long term uses of YABA produce dependency. The Methamphetamine is also used by the doctor to treat ADHD (attention deficit hyperactivity disorder) and short term obesity treatment. But since the YABA contain Methamphetamine, a schedule II substance under the controlled substance act, schedule II drugs as well as not registered drug in Bangladesh by DGDA, so it is illegal in Bangladesh and also is hazardous and injurious for human health."

14. By way of supplementary affidavit filed by the opposite party, a certificate of analysis issued by the Chief Chemical Examiner, Department of Narcotics Control, Central Chemical Laboratory Gandaria, Dhaka has been annexed, wherein a detailed description of the Drag YABA has referred to this court. The certificate reads as under:

Government of the People's Republic of Bangladesh
Ministry of Home Affaires
Department of Narcotics Control
Central Chemical Laboratory
Gandaria, Dhaka-1204

Ref No. CCL/02 dated: 16/04/2012

Certificate of Analysis

For testing of Sample of Drug given by Chemical Examiner as per Drug Act 1990, Section 50(3).

1. Detailed description of the Drug claimed in the Sample:

a. Trade Name: YABA

b. Generic Name: Methamphetamine

2. Detailed description of Test/ Analysis:

1. Description	A red colored round shaped tablet marked as WY weighing 91.25 mg.
2. Identification test	Methamphetamine and caffeine identified.
3. Content of Methamphetamine caffeine	5.1 mg / tablet. 1.75 mg / tablet.

other ingredients are–
Starch
Coating agent
Vanilla flavour
Red colouring agent identified.

(Dulal Krishna Saha)
Chief Chemical Examiner
Department of Narcotics Control
Central Chemical Laboratory
Gandaria, Dhaka 1204

(Md. Abu Hasan)
Chief Chemical Examiner
Department of Narcotics Control
Central Chemical Laboratory
Gandaria, Dhaka 1204

15. *Yaba by name itself is not a Narcotics under the Narcotics Control Act. The Methamphetamine, an ingredients of Yaba, is narcotics as per schedule which has been defined under section 2(b) of the Narcotics Control Act. The weight of the tablet Yaba has no manner of application with regard the conviction as well to award of sentence to an accused. The weight of methamphetamine is required to determine the punishment of an accused.*

16. *In order to determine the sentence of the accused, determination of quantum of narcotics is very much essential. For the different quantum of the Narcotics, the law prescribes different punishment. To sustain a charge under the table as prescribed by section 19(1) of the Narcotics Control Act, the correct ascertainment of the quantum of the Narcotics is an essential factor. Under Table 9, if the quantum of the narcotics in question (here methamphetamine) is found to be upto 5 grams the sentence will range from 6 months to 3 years but in case of even a smaller fraction above 5 grams, the sentence will range from 5 years to 15 years. Since a slight variation or mistake in the measurement may lead to greater punishment, it is necessary that the actual and real quantity of the Narcotics in question be ascertained accurately and the law interpreted carefully and strictly. Any reasonable doubt on this score must go to the benefit of the accused.*

17. *According to the chemical analysis report, as quoted above, since a single tablet contains only 5.1 mg methamphetamine, near about 1000 pieces of Yaba Tablet will contain 5 grams of methamphetamine and will therefore come under Table 9(Ka) of section 19(1) of the Narcotics Control Act. More than 1000 pieces of Yaba Tablet containing above 5 grams of methamphetamine will constitute an offence under Table 9(Kha) of section 19(1) of the said Act. In any sense, before awarding conviction and sentence of any accused for possessing Yaba it is very essential to get an actual measurement of the quantum of methamphetamine that was seized or recovered from the office of the Department of Narcotics Control Laboratory.*

18. In the instant case, *it appears that the petitioner was alleged to have been arrested along with 600 pieces of yaba Tablet on 13.9.2011 and is being detained in custody since then. By this time, he has been languishing in the jail custody for more than 8 months. Since*

600 pieces of Yaba Tablet contain less than 5 grams of narcotics, for which the Legislature prescribes a minimum sentence of 6 months imprisonment, we are inclined to enlarge him on bail. Thus, we find merits in this rule.

19. In the result, the rule is made absolute.

20. The petitioner Md. Jafar Alam, son of late Ejahar Miah may find bail on furnishing bail bond subject to the satisfaction of the learned Sessions Judge, Cox's Bazar in S.T. (Sessions Trial) Case No. 223 of 2012 arising out of G.R, Case No. 380 of 2011 (Teknaf) corresponding to Teknaf P.S. Case No. 23 dated 13.09.2011.

21. The trial court however, is at liberty to cancel the bail, if the accused petitioner misuses the privilege of bail in any way.

HIGH COURT DIVISION (Criminal)

Md. Emdadul Huq-J.
And
Mohammad Ullah-J.

CRIMINAL MISCELLANEOUS CASE NO. 15405 OF 2007

(Upon an application under section 561A of the Code of Criminal Procedure,1898 a Rule was issued upon the opposite parties to show cause as to why the proceedings of Special Case No. 13 of 2007 pending in the court of Special Judge, 2nd Court, Dhaka should not be quashed)

Md. Abul Kalam Azad and another ..... Accused-Petitioners.

Vs.

The State ..... Opposite Parties.

For the Petitioner : Mr. Fazle Rabbi, Advocate.

For the Opposite Party No.1 State : Mr. Shafiul Bashar Bhandary.

For the Opposite Party No.2 : Anti-Corruption Commission: Mr. A. K. M. Fazlul Huq, Advocate.

Judgment: September 3, 2012

Anti-Corruption Commission Bidhimala, 2007-

Rule 16- Applicable only in a case when an officer of the Anti-Corruption Commission lays a trap for catching hold of a bribe taker red handed. But this provision does not oust the jurisdiction of other competent law enforcing agencies to detect physical act of taking bribe-

It appears from the FIR and the charge sheet that the informant and his companion force had gone to the office of the accused petitioners and the informant had seen the fact of delivery of the bribe money by a school teacher named Nitish Kumar to accused petitioner

No.1, and then the informant in presence of the witnesses recovered the said money. The informant also recovered Tk. 5012/-from beneath the table of the accused petitioner No.1. The accused petitioner No.1 is admittedly a public servant and there are specific allegations of taking bribe by him while he was on duty as a public servant and such allegations were found to be established in investigation. So the allegations against him constitute at least the offences under section 161 of the Penal Code read with section 5 of the Prevention of Corruption Act, 1947 ..... (Para 18)

Detection of the offences of the physical act of accepting or taking bribe may take place by various means and that laying a trap is just one of those means of detection. There is no provision in the Ain, 2004 or any other law that prohibits a competent law enforcing agency to detect the physical act of taking bribe by public servant ..... (Para 19)

The credibility of the evidence relating to detection of the physical act of taking bribe compared to laying a trap is altogether a different aspect and subject to scrutiny in a trial. With regard to the requirement of Rule 16 of the ACC Bidhimala, 2007, we hold that the said rule is applicable only in a case when an officer of the ACC lays a trap for catching hold of a bribe taker red handed. But this provision does not oust the jurisdiction of other competent law enforcing agencies to detect physical act of taking bribe ..... (Para 20)

The ACC to the effect that during the emergency period, the Emergency Rules, 2007 framed under the Emergency Ordinance, 2007 was in force and a member of the disciplined forces mentioned therein including RAB was authorized to arrest any person even before lodging the FIR if he found that a public servant was taking bribe. Because the offences under section 161 of the Penal Code and section 5 of the Act II of 1947 are cognizable offences as per section 28 (1) of the Ain, 2004. Again according to Rule 15 read with Rule 2(ka) of the জরুরী ক্ষমতা বিধিমালা, ২০০৭ a member of the RAB was legally authorized to detect the offences in question and to lodge FIR ..... (Para 24)

We do not find any substance in the submission of the learned advocate for the petitioner to the effect that the instant case was a trap case and that approval under Rule 16(1) of the ACC Rules, 2007 was required to recover the alleged bribe money at the given stage. But no doubt taking of such approval under Rule 16 (1) of the ACC Rules,

2007 is mandatory in respect of a trap case, if any, to be led by the ACC in the cases of investigation conducted by ACC. Because this is the clear intention of the law maker, to prevent any abuse of this power ..... (Para 26)

Section 20 of the Ain, 2004 clearly envisages that the ACC may empower/authorize any of its officers to investigate of the offences under the Ain and the offences mentioned in its schedule. Therefore we do not find any substance in the submission of the learned Advocate for the petitioner about unauthorized investigation of the offences by an Assistant Director of the ACC. We do not find any reason to interfere with the case under section 561A of the Code, so far the case relates to accused petitioner No.1 Abul Kalam Azad ..... (Para 28)

JUDGMENT

MOHAMMAD ULLAH-J: Upon an application under section 561A of the Code of Criminal Procedure (shortly the Code,1898) a Rule was issued upon the opposite parties to show cause as to why the proceedings of Special Case No. 13 of 2007 pending in the court of Special Judge, 2nd Court, Dhaka should not be quashed.

2. By the Rule issuing order dated 2.11.2007 further proceedings of the said case was also stayed.

3. The facts relevant for disposal of the Rule are briefly stated below:

4. On18.4.2007 the informant Md. Shafiul Alam, Sub Inspector of Police, attached to RAB-3, Tikatuly, Dhaka lodged First Information Report (shortly the FIR) with the Shahabag Police Station against the accused petitioners narrating the offences punishable under sections 161 and 165A of the Penal Code read with section 5 (2) of the Prevention of Corruption Act, 1947 (shortly the Act, II of 1947). He stated that he had received information that the officers and staff of the Education Directorate at শিক্ষাভবন (shortly Directorate Building) had been habitually taking bribe from the teachers of various educational institutions of the country. So the informant and his companion police force headed by Additional Superintendent of Police Saha Mizan Safiur Rahman went to the Directorate Building on 17.4.2007 at about 3 p.m. after obtaining permission of the superior authority of the RAB-3. The team members started watching people at the Building.

5. At one stage of such watching the team found that the accused petitioner No. 1 Md. Abul Kalam Azad, being the Head Assistant, Non-Government Secondary School Section of the Education Directorate, took a khaki colour envelope from a person and kept the same in the drawer of his table. On query, the informant learnt that the said person being Nitish Kumar Pramanik was a school teacher, that

under compelling circumstances he delivered that envelope containing Tk. 6,000/- to the accused petitioner No. 1 as bribe for obtaining salary as a M.P.O listed teacher. Upon interrogation, the accused Abul Kalam Azad handed over the said envelope with Tk. 6,000/- to the informant. The informant also recovered Tk. 5,012/- from underneath the table of accused petitioner No.1. Then the informant on suspicion searched into the file cabinet and the drawer of the accused petitioner No. 2 Md. Amirul Islam being an office assistant of the Directorate and recovered Tk. 18,000/- there from. The informant seized all the moneys by preparing seizure lists in presence of witnesses.

6. Thus the accused persons being government employees committed offences under sections 161 and 165(A) of the Penal Code read with section 5(2) of the Act, II of 1947. Shahabag Police Station Case No. 35 dated 18.4.2007 was recorded under those sections. The Anti-Corruption Commission (shortly the ACC) took up the matter, and an Assistant Director of the ACC was entrusted with the investigation of the case. After Investigation charge sheet dated 07.10.2007 was submitted against the accused petitioners under the said sections after obtaining necessary sanction for prosecution from the ACC.

7. The learned Metropolitan Senior Special Judge, Dhaka took cognizance of the offences against the accused petitioners under those sections. Eventually the case record was transferred to the learned Special Judge Court No.2, Dhaka for trial and he framed charge on 4.11.2007 against the accused petitioners under sections 161 and 165 of the Penal Code read with section 5(2) of the Act, II of 1947.

8. Thereafter the accused petitioners approached this Court and rule was issued and stay order was passed as stated above. Mr. Fazle Rabbi, the learned Advocate appearing for the accused petitioners, at the very outset submits that the mandatory provision of Rule 16 of the দুর্নীতি দমন কমিশন বিধিমালা, ২০০৭ (shortly the Bidhimala, 2007) for laying trap was not observed and therefore the allegations do not legally constitute any offence and continuation of the proceeding would be an abuse of the process of the court.

9. Mr. Rabbi, the learned Advocate, next submits that if the allegations made in the FIR are taken in its entirety as true, do not disclose any offences against the petitioners under sections 161 and 165 of the Penal Code and section 5(2) of the Act, II of 1947 as they had no role to sanction or release the M.P.O fund in favour of the teachers.

10. Mr. Rabbi, the learned advocate, lastly submits that no officer below the rank of Deputy Director of the ACC can investigate the alleged offences and the instant case was investigated by an unauthorized person being Assistant Director of the ACC and

therefore the proceeding would be an abuse of the process of the court.

11. In support of his submission, Mr. Rabbi the learned Advocate refers to an unreported judgment delivered by another Division Bench of this Court in the case of Md. Shafiqul Islam vs. State and another in Criminal Miscellaneous Case No. 11259 of 2009.

12. In reply Mr. A.K.M. Fazlul Huq, the learned Advocate appearing for the ACC, submits that the present case is not a trap case and therefore the requirement of rule 16 of the Bidhimala, 2007 is not applicable.

13. Mr. Huq, the learned Advocate next submits that no provision of the দুর্নীতি দমন কমিশন আইন, 2004 (shortly the Ain, 2004) and the Bidhimala, 2007 prohibit the detection of the offences of physical bribe taking and the instant arrest of the bribe taker by a competent law enforcing agency member.

14. Mr. Huq, next submits that a member of the law enforcing agency specified in the জরুরী ক্ষমতা বিধিমালা, ২০০৭ including RAB was authorized to arrest any person even before lodging the FIR if any cognizable offences is found to be committed in his presence as in the present case.

15. Mr. Huq, the learned Advocate, lastly submits that under section 20 of the Ain, 2004 the ACC may authorize any of its subordinate officers to investigate the offence under the Ain, 2004 and also the offences specified in the Schedule thereof and this authorization has been clearly stated in the charge sheet with reference to the sanction letter.

16. In support of his submission Mr. Huq refers to the cases of (1) Md. Shahabuddin Vs. the State reported in BCR 1990 (AD), 355 and (2) Bayojit (Md.) Vs. the State reported in 61 DLR, 772.

17. We have considered the submissions of the learned Advocates for both sides and the materials on record and also the grounds taken by the petitioners in their application under section 561A of the Code, 1898. We have also gone through the decisions referred to by the learned Advocates.

18. *It appears from the FIR and the charge sheet that the informant and his companion force had gone to the office of the accused petitioners and the informant had seen the fact of delivery of the bribe money by a school teacher named Nitish Kumar to accused petitioner No.1, and then the informant in presence of the witnesses recovered the said money. The informant also recovered Tk. 5012/-from beneath the table of the accused petitioner No.1. The accused petitioner No.1 is admittedly a public servant and there are specific allegations of taking bribe by him while he was on duty as a public servant and such allegations were found to be established in investigation. So the allegations against him constitute at least the offences under section 161 of the Penal Code read with section 5 of the Prevention of Corruption Act, 1947.*

19. It is noted that *detection of the offences of the physical act of accepting or taking bribe may take place by various means and that laying a trap is just one of those means of detection. There is no provision in the Ain, 2004 or any other law that prohibits a competent law enforcing agency to detect the physical act of taking bribe by public servant.*

20. However *the credibility of the evidence relating to detection of the physical act of taking bribe compared to laying a trap is altogether a different aspect and subject to scrutiny in a trial. With regard to the requirement of Rule 16 of the ACC Bidhimala, 2007, we hold that the said rule is applicable only in a case when an officer of the ACC lays a trap for catching hold of a bribe taker red handed. But this provision does not oust the jurisdiction of other competent law enforcing agencies to detect physical act of taking bribe.*

21. The alleged offences are cognizable and triable by the Special Judge in view of the provision of section 4 and 5 of the Criminal Law Amendment Act, 1958. But whether the accused petitioner No. 1 had committed any offences or not is, of course, subject to proof by evidence.

22. The defense plea to the effect that the accused petitioner is a petty clerk or had no role to put up the file for sanctioning or releasing the M.P.O. fund cannot be considered in a case under section 561A.

23. We have gone through the judgment dated 11-11-2010 passed by another Division Bench of this Court in the unreported case of Shaiful Islam vs. the State and another (Criminal Miscellaneous Case No.11259 of 2009). The facts of that case are different to those of the present case and the reasoning recorded therein are not applicable to the present case.

24. We agree with the submission of the learned Advocate for *the ACC to the effect that during the emergency period, the Emergency Rules, 2007 framed under the Emergency Ordinance, 2007 was in force and a member of the disciplined forces mentioned therein including RAB was authorized to arrest any person even before lodging the FIR if he found that a public servant was taking bribe. Because the offences under section 161 of the Penal Code and section 5 of the Act II of 1947 are cognizable offences as per section 28 (1) of the Ain, 2004. Again according to Rule 15 read with Rule 2(ka) of the* জরুরী ক্ষমতা বিধিমালা, ২০০৭ *a member of the RAB was legally authorized to detect the offences in question and to lodge FIR.*

25. Rule 2(ka) and 15 are quoted below.

২। সংজ্ঞা– বিষয় বা প্রসঙ্গের পরিপন্থী কিছু না থাকিলে, এই বিধিমালায়

(ক) আইন-শৃঙ্খলা রক্ষাকারী বাহিনী অর্থ পুলিশ বাহিনী, আর্মড পুলিশ ব্যাটলিয়ান, র‍্যাপিড এ্যাকশন ব্যাটলিয়ান, আনসার বাহিনী, ব্যাটলিয়ান আনসার, বাংলাদেশ রাইফেলস, কোস্টগার্ড বাহিনী, জাতীয়

নিরাপত্তা গোয়েন্দা ও প্রতিরক্ষা গোয়েন্দা সংস্থার সদস্যগন এবং বাংলাদেশ সশস্ত্র বাহিনী:

১৫। দুর্নীতি অপরাধ সম্পর্কিত বিধান।– জরুরী-অবস্থা ঘোষণার কার্যকরতাকালে রাষ্ট্র ও জনগনের অর্থনৈতিক জীবন, স্বার্থ ও নিরাপত্তা বিপন্নকারী দুর্নীতি (২০০৪ সনের ৫নং আইন) [মানিলন্ডারিং প্রতিরোধ আইন, ২০০২ (২০০২ সনের ৭নং আইন) এবং income tax Ordinance,1984 (Ord. No. XXXVI of 1984) এর অধীন আয়কর,] দুর্নীতি ও মানিল্ডারিং সম্পর্কিত অপরাধসমূহ কার্যকরভাবে দমন করিবার জন্য আইন-শৃংখলা রক্ষাকারী বাহিনীসমূহ [বা কমিশন কর্মকর্তা উক্ত অপরাধ উদঘাটন বা অনুসন্ধান] [অভিযোগ বা মামলা দায়ের] [এবং অপরাধের সহিত সংশ্লিষ্ট অপরাধীগণকে, প্রয়োজনে গ্রেপ্তার করিয়া, তদন্ত ও বিচারার্থে যথাযথ আইনানুগ কর্তৃপক্ষের নিকট সমর্পন করিবার লক্ষ্যে উপযুক্ত ব্যবস্থা গ্রহণ করিবে। underline added.

26. *We do not find any substance in the submission of the learned advocate for the petitioner to the effect that the instant case was a trap case and that approval under Rule 16(1) of the ACC Rules, 2007 was required to recover the alleged bribe money at the given stage. But no doubt taking of such approval under Rule 16 (1) of the ACC Rules, 2007 is mandatory in respect of a trap case, if any, to be led by the ACC in the cases of investigation conducted by ACC. Because this is the clear intention of the law maker, to prevent any abuse of this power.*

27. The learned Advocate for the petitioners also raised a question about investigation of the offences by an officer not below the rank of Deputy Director of the ACC. In this respect section 20 of the ACC Act, 2004 is required to be looked into which reads as follows:-

২০। তদন্তের ক্ষমতা।– (১) ফৌজদারী কার্যবিধিতে যাহা কিছুই থাকুক না কেন, এই আইনের অধীন ও উহার তফসিলে বর্ণিত অপরাধসমূহ কেবলমাত্র কমিশন কর্তৃক তদন্তযোগ্য হইবে।

(২) উপ-ধারা (১) এ উল্লিখিত অপরাধসমূহ তদন্তে র জন্য কমিশন, সরকারী গেজেটে প্রজ্ঞাপন দ্বারা, উহার অধঃস্তন কোন কর্মকর্তাকে ক্ষমতা প্রদান করিতে পারিবে।

(৩) উপ-ধারা (২) এর অধীন ক্ষমতাপ্রাপ্ত কর্মকর্তার, অপরাধ তদন্তের বিষয়ে, থানার ভারপ্রাপ্ত একজন কর্মকর্তার ক্ষমতা থাকিবে।

(৪) উপ-ধারা (২) ও (৩) এর বিধান সত্বেও, কমিশনারগনের ও এই আইনের অধীন অপরাধ তদন্তের ক্ষমতা থাকিবে।

28. So *Section 20 of the Ain, 2004 clearly envisages that the ACC may empower/authorize any of its officers to investigate of the offences under the Ain and the offences mentioned in its schedule. Therefore we do not find any substance in the submission of the learned Advocate for the petitioner about unauthorized investigation of the offences by an Assistant Director of the ACC. We do not find any reason to interfere with the case under section 561A of the Code, so far the case relates to accused petitioner No.1 Abul Kalam Azad.*

29. Next comes the question of the accused petitioner No.2. Allegation against him is that the informant recovered Tk. 15,000+3,000=18,000/- from his file cabinet and the drawer of table on the same day on 17.4.2007.

30. The Investigating Officer has stated that the accused petitioner No.2 had taken Tk. 15,000/- on 8.4.2007 for the purpose of granting M.P.O fund to one Jahidul Islam, a school teacher as bribe and kept the same in his office file cabinet till recovery on 17.4.2007.

31. There is nothing on record to show that the said Jahidul Islam was examined or cited as a witness of the instant case. The prosecution story so far it relates to the petitioner No. 2 appears to be a preposterous one.

32. Considering the facts and circumstances as discussed above we are of the view that there is no legal materials on record on the basis of which charge could be framed against the petitioner No.2, Md. Amirul Islam. We do not find any material that justifies a charge against the petitioner No. 2 Md. Amirul Islam.

33. In view of the above, the Rule is to be made absolute in part. In the result, the Rule is made absolute-in-part so far it relates to the accused petitioner No.2 Md. Amirul Islam, and the Rule is discharged in respect of accused petitioner No.1 Md. Abul Kalam Azad.

34. The charge framing order dated 04.11.2007 passed by the learned Special Judge, 2nd Court, Dhaka, in Special Case No. 13 of 2007 is partly set aside so far it relates to petitioner No.2 Md. Amirul Islam and as a result he is discharged from the liability of that case. The stay order stands vacated.

35. Bail granted to the petitioner No. 1 Md. Abul Kalam Azad by this Court will continue, if there is no misuse of the privilege of bail.

36. Send a copy of this judgment to the learned Special Judge court No.2, Dhaka who shall take steps to proceed with and to dispose of the case as against the accused petitioner No.1 Md. Abul Kalam Azad in accordance with law.

HIGH COURT DIVISION
(Criminal)

Afzal Hossain Ahmed-J.
And
Md. Emdadul Haque Azad-J.

DEATH REFERENCE NO. 152 OF 2005

(Death Reference has been made under Section 374 of the Code of Criminal Procedure by the learned Special Sessions Judge, Jamalpur for confirmation of the sentence of death imposed upon the Condemned prisoners. The condemned prisoners filed Jail Appeals and also filed separate Criminal Appeals. The Death Reference, Jail Appeals as well as the Criminal Appeals have been heard together and are disposed of by this Judgment.)

The State ..... Petitioner.

Vs.

Most. Aklima Hossain Lipi and Abu Sayeed @ Sayeed .....
..... Condemned prisoners.

For the State : Mr. Md. Jahangir Alam , Deputy Attorney-General with Mr. Md. Nurul Islam Matubbor, Assistant Attorney-General .

For Most. Aklima Hossain @ Lipi, Condemned prisoner-Appellant (By C.O. Dt. 23.01.2012) : Mr. A. M. Md. Azizul Haque.

For Abu Sayeed @ Sayeed, condemned prisoner-appellant : Mr. S. M. Shahjahan with Mr. Fazlul Haque Khan Farid Ms. Sumana Rahman, Mr.Md. Muhinur Rahman.

WITH

CRIMINAL APPEAL NO. 4223 OF 2005

Abu Sayeed @ Sayeed .....convict- appellant.

Vs.

The State ..... Respondent.

For the Convict-appellant : Mr. S.M.Shahjahan with Mr. Fazlul Haque Khan Farid Ms. Sumana Rahman, Mr.Md. Muhinur Rahman.

Above named Attorneys General are also for the respondent.

WITH

CRIMINAL APPEAL NO. 5094 OF 2005

Most. Aklima Hossain @ Lipi ..... convict- appellants.

Vs.

The State ..... Respondent.

For Most. Aklima Hossain Lipi. Condemned prisoner-Appellant (By C.O. Dt. 23.01.2012) : Mr. A.M.Md. Azizul Haque.

Above named Attorneys General are also for the respondent.

AND

JAIL APPEAL NO. 1178 OF 2005

Md. Abu Sayeed @ Sayeed ..... Condemned prisoner-appellant.

Vs.

The State ..... Respondent.

For the condemned prisoner-appellant : Mrs. Khalifa Shamsunnahar Bari.

Above named Attorneys General are also for the respondent.

AND

JAIL APPEAL NO. 1179 OF 2005

Most. Aklima Hossain @ Lipi ..... Condemned prisoner-appellant.

Vs.

The State ..... Respondent.

For the condemned prisoner-appellant : Mrs. Khalifa Shamsunnahar Bari.

Above named Attorneys General are also for the respondent

Judgment: January 31, 2012

Code of Criminal Procedure, 1898–

Section 154- First Information Report is not a piece of substantive evidence but may be used for corroborating and or contradicting the maker only-

Criminal Courts should not be fastidious with mere omissions in First Information Statement, since such Statements cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes the First Information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing there from. Some may miss even important details in a narration..... It is not always expected that there must be disclosure of each and every fact in the F.I.R. which are necessary to be proved by the prosecution to establish a criminal charge ..... (Para 40)

F.I.R. is nothing but an information relating to a cognizable offence given to the Police first in point of time on the basis of which investigation commences and it is only the instrument which sets the ball in motion for the purpose of taking legal action against the offender. Neither it is a substantive piece of evidence nor it can be considered as encyclopaedia of the prosecution case. F.I.R. can only be used for the purpose of contradicting and corroborating evidence of the informant under Section 145 and 155 (3) of the Evidence Act and not for the purpose of impeaching credibility of other witnesses .... (Para 41)

F.I.R can be used only to corroborate or contradict the maker thereof. There is neither any law nor any principle on the basis of which the testimony of another witness can be ignored or rejected because the informant had made an omission to mention about the fact which the witness stated in his deposition ..... (Para 42)

First Information Report is not a piece of substantive evidence but may be used for corroborating and or contradicting the maker only. Attention of the P.Ws. 2 and 3 having not been drawn under Section 145 of the Evidence Act (Act I of 1872) to their such omission regarding the condemned-prisoner Abu Sayeed in cross-examination, the defence could take advantage of the contradiction by omission. Even otherwise we think this omission in the F.I.R. as to the con-

demned-prisoner Sayeed does not materially affect the prosecution case having regard to the other evidence ..... (Para 43)

Let us now consider as to whether there are extenuating circumstances for commutation of the sentence of death of the condemned prisoners. It appears that both the condemned prisoners Aklima Hossain @ Lipi Begum and Abu Sayeed @ Sayeed have been languishing in the condemned cell of the Jail custody since the date of order of conviction and sentence passed on 4.10.2005 with much agony and anxiety . More over from the date of making the Death Reference by the trial Court below on 05.10.2005, about 6 ½ years have already elapsed, not due to any laches of the condemned prisoners in making the Death Reference and the appeals ready for disposal as a result of which also the condemned prisoners have undergone the mental agony and anxieties of gallows around their neck for a long period. Thus, on giving our careful consideration to the delay of disposal of the Death Reference and Appeals along with other factors as extenuating circumstances, we think that the ends of justice would be sufficiently met if we commute the sentence of death passed upon the condemned prisoners to imprisonment for life. Considering the circumstances mentioned, we are not inclined to set aside the conviction of the condemned prisoners Aklima Hossain @ Lipi Begum and Abu Sayeed @ Sayeed and at the same time we are also not inclined to accept the Reference of death sentence while confirming the conviction and hence we hereby commute the death sentence of both the aforesaid condemned prisoners to imprisonment for life ..... (Para 47)

The law requires that before examining a child of tender age as a witness the Court should satisfy itself that the child is intellectually developed enough to comprehend what he has seen and to give an intelligent account of it to the Court. If the Court finds otherwise, it should decline to examine him as a witness . On the other hand, if the child is sufficiently intelligent to understand the questions put to him and he is capable to giving rational answers to those questions, then his capacity to give evidence is on the same footing as that of any other adult witness .... (Para 52)

Recalling witness for re-examination in relation to omission and contradictions in the evidence of other P.Ws. is not permissible in law. The prosecution witnesses (P.Ws. 2 and 3), in the instant case,

who have already been examined and cross-examined having sufficient maturity of understanding to give an intelligent account of the facts what they have seen, though they being child, cannot be recalled for re-examination in relation to the omission and contradictions in the evidence of other P.Ws. as provided under Section 540 of the Code of Criminal Procedure ..... (Para 53)

JUDGMENT

AFZAL HOSSAIN AHMED-J: This Death Reference has been made under Section 374 of the Code of Criminal Procedure by the learned Special Sessions Judge, Jamalpur for confirmation of the sentence of death dated 04.10.2005 imposed upon the Condemned prisoners (1) Aklima Hossain @ Lipi Begum, wife of late Billal Hossain, Police Station – Melandaha , District- Jamalpur and (2) Abu Sayeed @ Sayeed, son of Jiaruddin, of village- Chakdaha, Police Station- Melandaha, District- Jamalpur in Sessions Case No. 57 of 2004 arising out of Melandaha Police Station Case No. 21/1983 dated 10.04.2003 corresponding to G.R. Case No. 521 (2) of 2003 .The condemned prisoners filed Jail Appeals being Nos. 1178 of 2005 by Abu Sayeed @ Sayeed and 1179 of 2005 by Aklima Hossain @ Lipi Begum . Besides, they have also filed separate Criminal Appeals being Nos. 5094 of 2005 by Most. Aklima Hossain @ Lipi Begum and 4223 of 2005 by Abu Sayeed @ Sayeed. The Death Reference, Jail Appeals as well as the Criminal Appeals have been heard together and are disposed of by this Judgment.

2. The prosecution case, in short, is as follows:–

One Golam Kibria Azad, son of late Abdus Sobhan of village- Chakdah under Melandah Police Station, of Jamalpur District lodged an F.I.R. on 10.04.2003 with Melandah Police Station stating, *inter alia,* that his full brother Md. Billal Hossain was working in Social Welfare Department and posted at Netrokona and used to reside there. He used to come home during vacation. His other brothers had been residing in a separate house with their mother. His deceased brother tried to convince his wife Aklima Hossain @ Lipi Begum to stay at his working place but she did not go there and because of this reason there were quarrels in between them. On her pressure his brother gave his house in her name. Lipi Begum used to lead a fast life and the deceased made complaint against her such life style to her guardian but to no effect. Lipi Begum, the sister in law of the informant, became very reckless and disobedient and used to threaten to kill her husband, the brother of the informant. On

10.04.2003, at about 3-30 hours in the night, his sister in law Lipi Begum, along with some of her accomplices, inflicted repeated blows by "Seni Dao" on his brother Billal who remained asleep and slaughtered him to death. On hearing the hoarse screams of his brother his nephew Limon aged about 13 years and niece Smitha aged about 10 years woke up and saw the door of the house open in the electric light of the adjacent cinema hall and saw their father and mother scuffling outside the room. On looking the same they cried out when Lipi Begum asked him to remain silent then Limon rushed to his house and informed him and others whereupon he himself (informant), mother Noorjahan, sister Shajeda, brother Mijan, Mahfuz uncle Sarwar, Anwar Hossain and Suruj and cousin Shafiqul Islam Dulal and many others rushed to the place of occurrence and saw the slaughtered dead body of his brother Billal lying on the south-west corner of his dwelling house. On seeing, he at once informed of the occurrence to the Police Station whereupon Police came to the place of occurrence and took away the dead body.

3. The informant also stated in the F.I.R that his sister-in-law, Lipi Begum had extra-marital relation with one Abu Sayeed, son of Md. Jiaruddin Munshi of village- Chakdah for a long time and he apprehended that the said Abu Sayeed and his 3/4 other associates might have been involved in this murder. On the basis of this First Information Report Melandah Police Station Case No. 21 dated 10.4.2003 under Section 302/34 was started.

4. Police took up investigation of the case and after investigation submitted charge sheet against the condemned prisoners -accused-appellants under section 302/34 of the Penal Code then the case came up for hearing before the learned Sessions Judge, Jamalpur for trial where it was registered as Sessions Case No. 57 of 2004. Charge under Section 302/34 of the Penal Code was framed against the condemned prisoners -accused-appellants and the same was read over and explained to them to which they pleaded their innocence and claimed to be tried. The learned Sessions Judge, Jamalpur then sent the case to the Special Sessions Judge, Jamalpur for disposal.

5. The prosecution, with a view to establish the charge levelled against the accused persons, examined as many as 14 witnesses in this case. Amongst the prosecution witnesses P.W.1 Md. Gholam Kibria Azad is the full brother of the deceased Billal Hossain and the informant of the instant case, P.W. 2 Md. Nizamuddin Limon, aged about 13 years is a son of the deceased Billal Hossain and a eye witness of the occurrence, P.W.3 Shuhana Hossain Smitha , aged about

10 years is the daughter of the deceased Billal Hossain and also eye witness of the occurrence, P.W. 4 Md. Mahfuz is a younger brother of the deceased Billal Hossain , P.W. 5 Md. Shafiqul Islam is an another brother of the deceased Billal Hossain, P.W. 6 Dulal Mia, a maternal cousin of the deceased Billal Hossain , P.W.7 Sha Md. Abu Sayeed is a seizure list witness, P.W. 8, Syed Ali is a neighbour , P.W. 9, Noorjahan is the mother of the deceased Billal Hossain, P.W. 10 Dr. Abdullah Al-Amin held autopsy on the dead body of the deceased Billal Hossain, P.W. 11 constable No,. 398 Md. Noab Ali carried the dead body of the deceased Billal Hossain to the morgue and identified the dead body there for post mortem examination to the Hospital, P.W. 12 Md. Saiful Islam is a Magistrate , First Class, Jamalpur who recorded the statement of the accused Lipi Begum under section 164 of the Code of Criminal Procedure on 12.4.2003 and also recorded the statements of the witnesses P.Ws. 2 and 3 under section 164 of the Code of Criminal Procedure, P.W. 13 A.K.M. Shahin Mondal, an Officer –in-charge of Melandah Police Station on 10.4.2003 started the instant case on the basis of typed F.I.R. lodged by the informant, P.W. 14 Gholam Sarwar , S.I. of Police held inquest of the dead body of the deceased Billal Hossain and held investigation of the case and ultimately submitted the charge sheet under section 302/34 of the Penal Code against the condemned prisoners- appellants.

6. After closure of the examination of the prosecution witnesses both the above named condemned prisoners were examined under section 342 of the Code of Criminal Procedure to which they claimed the same plea of innocence. Besides the aforesaid 14 witnesses being examined, the prosecution has also adduced evidence which are marked as Exhibits and material exhibits. Since the learned Advocate who filed the aforesaid regular appeal on behalf of the Aklima Hosasain @ Lipi Begum did not turn up to conduct the case while taken for hearing the state defence lawyer was provided for the condemned prisoner Aklima Hossain @ Lipi Begum .

7. The defence case, as it transpires from the trend of cross-examination of the prosecution witnesses, is that the accused appellants are quite innocent and that the informant also implicated in this case with intend to grab the property of the deceased Billal Hossain and that so called confessional statement has been obtained from the accused appellant Aklima Hossain @ Lipi Begum by exercising threat and coercion and the same is not true and voluntary and that the P.Ws. 2 and 3 , the minor children of the deceased. Have been tutored by their uncle, the informant to depose falsely against the appellants to sued the evil design to grab the properties of the deceased and to grab the money

of condemned prisoner Abu Sayeed payable him by the informant.

8. The learned Special Sessions Judge, Jamalpur having heard both the parties and considered the materials on record passed the impugned judgment and order of conviction and sentence dated 4.12.2005 convicting both the above named appellants under Section 302/34 of the Penal Code and sentencing them to death by hanging by neck .The instant Death Reference being No. 152 of 2005 arising out of the judgment and order of conviction and sentence and, thereafter, being aggrieved by the aforesaid judgment and order of conviction and sentence the appellants have preferred the Jail Appeals and regular Criminal Appeals as above.

9. Mr. Jahangir Alam, the learned Deputy Attorney General with Mr. Md. Nurul Islam Matubbor, the learned Assistant Attorney General appearing for the State submits that the condemned- prisoner Aklima Hossain @ Lipi Begum had extramarital relations with the condemned prisoner Abu Sayeed @ Sayeed and with a view to maintain their such relations undisturbed they planned to kill Billal and accordingly, on the alleged night of occurrence, both the condemned prisoners brutally committed the murder of the deceased Billal Hossain which was witnessed by the P.Ws. 2 and 3 the own son and daughter respectively of the deceased and condemned prisoner Aklima Hossain @ Lipi Begum . The condemned prisoner Aklima Hossain @ Lipi Begum also made confessional statement recorded under Section 164 of the Code of Criminal Procedure which shows that she was concerned in the alleged murder of her husband Billal. Besides P.Ws. 2 and 3 gave a vivid picture as to the role played by the condemned prisoners in committing murder of the deceased. That the condemned prisoner Aklima Hossain @ Lipi Begum nakedly maintains extramarital relations with the other condemned prisoner Abu Sayeed @ Sayeed which was noticed not only by her own kids , the P.Ws. 2 and 3 but also by other P.Ws. and it was open secret. The learned Deputy Attorney-General further submits that the learned Special sessions Judge, Jamalpur considering all the aspects of the matter as well as the evidence on record passed the impugned judgment and order of conviction and sentence of death and there is nothing to interfere with the same and that in the case of this sort of heinous offence both the condemned prisoners should be hanged.

10. Mr. A.M.Md. Azizul Haque, the learned State Defence Lawyer on behalf of the condemned prisoner Aklima Hossain @ Lipi Begum submits that she has been falsely implicated in this case and she was never concerned in committing murder of her husband Billal Hossain and that the alleged murder was committed at

the instance of the informant himself with intent to grab the properties of the deceased and that Aklima Hossain @ Lipi Begum has been implicated in this case by the informant defaming her character only sued his purpose and with that end in view the informant himself managed to get the P.Ws. 2 and 3 tutored and deposed against their own mother Aklima Hossain @ Lipi Begum and that the so called confessional statement recorded under Section 164 of the Code of Criminal Procedure was obtained from Aklima Hossain @ Lipi Begum by exercising threat and coercion and the same was never true and voluntary. Mr. Haque further submits that P.Ws. 2 and 3 being minors their testimony cannot be safely relied upon and that the learned trial Judge failed to appreciate all those aspects of the matter and thereby arrived at an erroneous decision convicting and sentencing as above and as such the same is not sustainable in law and the appeals preferred by Aklima Hossain @ Lipi Begum are liable to be allowed.

11. Mr. S.M.Shahjahan, the learned advocate with Mr. Fazlul Haque Khan Farid and Ms. Sumana Rahman, the learned Advocate appearing for the condemned prisoner Abu Sayeed @ Sayeed submits that the informant lodged the F.I.R. having heard of the occurrence from his nephew P.W. 2 and niece P.W.3 who claimed themselves to have witnessed the occurrence. But in spite of the fact the name of the condemned prisoner Abu Sayeed @ Sayeed does not find place in the First Information Report. It is simply mentioned in the F.I.R. that Abu Sayeed @ Sayeed maintained extra-marital relation with condemned prisoner Aklima Hossain @ Lipi Begum and as such it is apprehended that Abu Sayeed @ Sayeed along with his associates might have been involved in the alleged murder of his brother Billal. Mr. Shahjahan further submits that the omission to mention the name of Abu Sayeed @ Sayeed in the F.I.R. and mentioning the name of this accused Abu Sayeed @ Sayeed by the witnesses is nothing but a subsequent embellishment and that the apprehension about Abu Sayeed @ Sayeed as mentioned in the F.I.R. has been purposely done by the informant with intend to grab the money which he borrowed from Abu Sayeed @ Sayeed and that in the circumstances it is not safe to rely upon dubious evidence adduced by the prosecution and thus, the impugned judgment and order of conviction and sentence of death is not sustainable in law and the appeals preferred by the condemned prisoner Abu Sayeed @ Sayeed are liable to be allowed.

12. The real question that calls for determination in this case is, whether the impugned judgment and order of conviction imposing sentence of death upon the condemned-prisoners is sustainable in law.

13. Heard the learned Advocates on both the sides and perused the Death Reference, the judgment and order of conviction and sentence, memo of appeals, Jail appeals , evidence adduced by the prosecution and the materials on record.

14. Now let us see how far the prosecution has been able to prove the incident of death of the unfortunate deceased Billal Hossain and the complicity of the condemned-prisoners in the commission of the crime.

15. Before considering the circumstantial evidence and confession of the condemned-prisoner Aklima Hossain @ Lipi Begum, we like to discuss certain broad evidence as revealed from the evidence of the prosecution witnesses to evaluate the prosecution case.

16. The informant Md. Gholam Kibria Azad, a younger full brother of the deceased Billal Hossain appearing as P.W. 1 has corroborated all the material particulars regarding time, place and manner of the occurrence as made in the F.I.R. He has stated the overt act of the condemned-prisoner Aklima Hossain @ Lipi Begum as narrated to him by his nephew P.W.2 and niece P.W. 3 immediately after the occurrence. During cross-examination nothing could be elicited from him on material particulars for the benefit of the defence although he has stated that he got monetary transaction with accused Sayeed . However, he denied the defence suggestion that he has falsely implicated the condemned prisoners in this case with intent to grab the properties of the deceased Billal Hossain and the money which he borrowed from accused Sayeed.

17. P.W.2 Md. Nizamuddin Limon, aged about 13 years, is the son of the deceased Billal Hossain and the condemned- prisoner Aklima Hossain @ Lipi Begum. He has stated that his mother had extra-marital relation with the condemned-prisoner Abu Sayeed @ Sayeed and on many occasions he witnessed the incidents arising out of such relation and he reported the same to his father whereby their conjugal relation became strained. He has stated that at about 3-30 hours in the night following on 09.04.2003 having heard the hoarse screams of his father he woke up and came to see that his mother, the condemned-prisoner Aklima Hossain @ Lipi Begum entered into the room holding a blood-stained "Dao" and kept the same under the showcase and went out of the room. Then P.W.2 and his younger sister (P.W.3) followed their mother and saw the condemned-prisoner Sayeed catching hold of his father at the courtyard when three other persons were standing near the gate. When his mother Aklima Hossain @ Lipi Begum caught hold of his father, Sayeed and those 3 persons fled away towards the west. He saw his father

trying to go towards the gate but his mother resisted him. He saw the body of his father wet with blood and when he asked to his mother as to what happened to his father, she kept mum. On seeing this he rushed to the house of his "Dadi" (paternal grand-mother) and informed of the occurrence to his uncle, "Dadi", paternal aunt and others and when he returned home saw his mother coming out from the pond taking her bath and then saw his father lying dead with cut throat and other bleeding injuries and that his father's dead body was completely naked and he placed a " Gamcha" on the dead body. Further he has stated that his mother Aklima Hossain @ Lipi Begum and Sayeed killed his father because of their extra-marital relation. He further stated that he also made statement before the Magistrate. During cross-examination by defence he has explained his full understanding what is called পরকীয়া প্রেম (extra-marital relation) and that he has seen the occurrence of the illicit affairs of his mother with Sayeed in his own eyes. Further he has stated that as to why would he falsely depose against his mother. The electric light of the Cinema Hall was at a distance of 15/20 cubits from the place of occurrence and that he did not raise alarm for safety of life and that (informant) his uncle sold out a shop and kept its sale proceeds with accused Sayeed and there was monetary transaction between his uncle and accused Sayeed. He has stated that he deposed what he saw in his own eyes and that as to why would he falsely depose against his mother, if not true.

18. P.W.3 Shuhana Hossain Smitha aged about 10 years is the daughter of the deceased Billal Hossain and the condemned prisoner Aklima Hossain @ Lipi Begum. She has stated that at about 3-30 P.M. in the night following 9th April, 2003 on hearing the hoarse screams of her father and sound of blows on the tin she and her brother Limon (P.W.2) woke up and saw her mother entering into the room holding a blood stained "Dao" which she kept under the showcase. Her mother removed the cut out and she and her brother (P.W.2) followed her mother and saw accused Sayeed catching hold of his father when three other unknown persons were standing near the gate and on seeing her and his brother accused Sayeed and those three persons went away towards the west. Accused Sayeed caught hold of her father and then her mother fell her father down on the courtyard to the south of their house and her mother sat on the chest of her father till she confirmed the death of her father. Thereafter, her " Dadi", maternal aunt, uncles and others came with her brother Limon who then placed a "Gamcha" on the naked dead body of her father. Mean-while, her mother took her bath from the pond. Further she has stated that her mother and accused Sayeed killed her father.

During cross-examination by defence, she stated that she had witnessed the events of the extra-marital relation of her mother with accused Sayeed. She further stated she was reading in Class-IV. She has further stated that in reply to a defence suggestion that আমার বাবা আমি দেখিনি আপনি দেখেছেন? সাঈদ আমার পিতাকে মেরেছে দেখিছি। সত্য নয় ঘটনাস্থলে ঐ দিন ঐ সময় সাঈদ ছিল না। আপনি দেখেছেন?.

19. However, she has denied all the defence suggestions on the material particulars. P.Ws. 2 and 3 are the eye-witnesses of the occurrence and their statements regarding time, place and manner of the occurrence as well as the overt act and the role played by the condemned-prisoners in the commission of the alleged crime and the fact of having extra-marital relations between the condemned prisoners Aklima Hossain @ Lipi Begum and Abu Sayeed are corroborative to each other which is also consistent with those of the P.W-1. During cross-examination, the defence could not elicit anything from P.Ws- 2 and 3 on the material particulars for its benefit.

20. P.W. 4 Mahfuz, a younger brother of the deceased Billal Hossain, has stated that at about 3-30 hours (night on 10.4.2003) his nephew Limon came to his house and told that his mother and Sayeed killed his father whereupon he, his mother and brother rushed to his house of the deceased at Kazipara and saw the dead body of his elder brother deceased Billal Hossain in front of the of his house with cut throat bleeding injuries where his niece (P.W.3) and nephew (P.W.2) also told them that their mother and accused Sayeed killed their father Billal Hossain . During cross-examination by defence he has stated that because of Aklima Hossain @ Lipi Begum and Abu Sayeed his brother Billal Hossain made a separate house. However, he denied all the defence suggestions on material particulars. His above statements are also quite consistent with those of the foregoing witnesses on material particulars.

21. P.W. 5 Md. Shafiqul Islam was tendered by the prosecution and the defence declined to cross-examine him.

22. P.W.6 Md. Dulal Mia, a maternal cousin of the informant, has stated that at about 3-30 hours (night on 10.4.2003) informant's nephew came to his house and informed that Sayeed and Aklima Hossain @ Lipi Begum (condemned prisoners) were inflicting assaults on his father whereupon he came to the house of Billal and saw Billal lying dead in front of his house with cut throat injuries. He heard from Limon and Shuhana (P.Ws. 2 and 3 respectively) that they saw Aklima Hossain @ Lipi Begum sitting on the chest of the deceased and at that time accused Sayeed and 2/1 others unknown persons were there. He has further stated that Limon told that Aklima

Hossain @ Lipi Begum kept a knife under Almirah by which they killed the deceased and he brought out that knife from there. He has further stated that there was extra-marital relation between Aklima Hossain @ Lipi Begum and Sayeed (the condemned prisoners) although they were nephew and aunt by relation and they appeared to be like husband and wife and that one day, during the life time of deceased Billal, he informed this fact to Billal. During cross-examination by defence, he has stated that Shuhana (P.W.3) told him that Aklima Hossain @ Lipi Begum kept that knife under showcase. He made statement before the Daroga on the very date of the occurrence and that on coming to the place of occurrence Aklima Hossain @Lipi Begum was not found there and heard that he went to take bath in the pond besides that house. However, he denied the defence suggestions on all material particulars.

23. P.W. 7 Shah Mohammad Abu Sayeed is a witness to the seizure list marked as Ext. 4. He has stated that on 10.4.2003 at about one P.M. the Daroga of Melandah Police Station seized from the house of Aklima Hossain @ Lipi Begum some articles in his presence vide the seizure list marked as Ext.4 which he exhibited as under:-

(1) One pillow of violate color with blood stained marked as material Ext. I ,

(2) One green – while and pink cotton cloth with blood stained marked as material Ext.II.

(3) Some blood stained earth marked as material Ext. III.

(4) One blood stained Chek Lungi marked as material Ext.IV.

(5) A branch of a guava tree with blood stained marked as material Ext.V.

(6) One electric cut out with blood stains marked as material Ext.VI.

(7) One 19" long with 6" wooden handle Dao/Boti with blood stains marked as material Ext.VII.

(8) Another 7" long Kopa Dao with 6" wooden handle with blood stains marked as material Ext. VIII.

(9) One legal notice of Talak marked as material Ext.IX.

(10) One photo copy of a heba-bil-ewaz deed marked as material Ext. X.

(11) One personal diary of the deceased Billal Hossain marked as material Ext.XI.

24. He put his signature in the seizure list which he marked as Ext.4/1. During cross-examination he has stated that the said blood stained two Daos were recovered, one from south and another from the place of murder beside the pond and that the blood stained earth was seized from the southern side of the inner court-

yard where the dead body of the deceased was lying. P.W.8 Syed Ali has stated that the alleged occurrence took place at about 3-30 P.M.(night on 10.4.2003) and that he got a grocery shop at Mannan Keranir Market which is about 100 yards off from the place of occurrence and that while working in the shop he often used to see accused Abu Sayeed going to the house of accused Aklima Hossain @ Lipi Begum and that people used to say that they got immoral relations amongst themselves. Further he has stated that it takes about 15 minutes to go to the place of occurrence from his house and that Limon went to the house of his grandfather and told that Aklima Hossain @ Lipi Begum and Abu Sayed @ Sayeed were killing his father whereupon the grand-mother of Limon (P.W. 2) with Limon first came to the place of occurrence and then he (P.W.8) came and saw the cut throat dead body of deceased Billal Hossain lying on the ground. He has further stated that Shuhana (P.W. 3) and Limon (P.W.2) told that they saw Sayeed and Aklima Hossain @ Lipi Begum (the condemned-prisoners) chopping his father to death. During cross-examination by defence he denied the defence suggestion that Limon and Shuhana did not see accused Aklima Hossain @ Lipi Begum and Sayeed killing the deceased.

25. P.W.9 Noorjahan, the mother of the deceased Billal Hossain, has stated that accused Sayeed had extra-marital relation with accused Lipi and that at the time of occurrence at about 3-30 hours (night) Billal's son Limon called her and said that Sayeed caught hold of his father and his mother Lipi was chopping him. Upon hearing this she rushed to the house of Billal and saw Billal lying slaughtered on his courtyard in front of his house. Further she has stated that Shuhana and Limon (P.Ws. 3 and 2 respectively) woke up from sleep on hearing the sound of strikes on the tin and came to see that accused Lipi and Sayeed were slaughtering Billal and also saw Lipi keeping a blood stained Dao under the showcase and another Dao throwing in the pond.

26. During cross-examination by defence, this P.W.9 has stated that she made statement before Daroga on the Thursday i.e. on the very date of occurrence at about 7 in the morning and that on the same date Shuhana and Limon (P.W. 3 and 2 respectively) also made their statements before the Daroga. However, she has denied the defence suggestion that there was no extra-marital relation between Sayeed and Lipi and that witness Limon and Shuhana(P.Ws. 2 and 3) did not state to her as to the overt acts of accused Sayeed and Lipi as she has stated above.

27. P.W.10, Abdullah Al-Amin, Medical Officer of Jamalpur General Hospital held Post Mortem examination on the dead body of the deceased

Billal Hossain and found the following injuries on the dead body :-

(i) One cut-throat wound 5"x1"x up to bone was found at the upper part of throat.

(ii) One cut injury 2 ½ " x ½ " x ½" over left side of face with nose.

(iii) Two incised wounds involving left side of face.

(iv) One incised wound 2" x ¼ " x skin over back of left elbow.

(v) One incised wound 2" x ½ " x skin over right shoulder

(vi) One cut injury over left hand in between thumb and index finger.

On deep dissection trachea oesophagus, carotid vessels of both sides of neck and other soft tissues were found cut. Clotted blood was found around the injury".

28. He opined that death was due to shock & hemorrhage as a result of the above stated injuries which were ante mortem and homicidal in nature. He exhibited the Post Mortem report of deceased Billal Hossain as ext. 5 and his signature therein as ext. 5/1. During cross-examination by defence, he has stated that he did not mention the age of the injuries as there was no column there for.

29. P.W. 11 Constable No. 398 Md. Nobab Ali Khan, on 10.4.2003, vide C.C. No. 1/03, marked as Ext.6, carried the dead body of the deceased Billal Hossain to the morgue and identified the dead body there. He has exhibited his signature in the said C.C,. as Ext. 6/1. The defence declined to cross-examine him.

30. P.W. 12 Md. Saiful Islam, the Upazila Nirbahi Officer, Tarail, Kishoreganj while serving as a Magistrate, First Class, Jamalpur on 12.4.2003 recorded the confessional statement of accused Aklima Hossain @ Lipi Begum under Section 164 of the Code of Criminal Procedure which he has exhibited as ext. 7 and his five signatures therein as ext. 7/series. Further he has stated that after recording that confessional statement the same was read over to the accused Aklima Hossain @ Lipi Begum and she having understood the same voluntarily put her signatures therein which he has exhibited as Ext. 7/series. This P.W. 12 has further stated that in para 6 of the confessional statement it is written that the confessing accused Aklima Hossain @ Lipi Begum reported him that the Police put pressure on her and also rebuked her. This P.W. 12 has further stated that on 19.4.2003 he recorded the statements of witness Limon according to law which he exhibited as Ext.8 and his own signatures therein as Ext.8/1 and 8/2 and the signatures of Limon therein as Ext. 8/3 and 8/4. On 19.4.2003 he also recorded the statement of witness Shuhana Hossain Smitha which he exhibited as Ext.9 and his own signa-

tures therein exhibited as Ext,. 9/1 and 9/2 and the signatures of Shuhana exhibited as Ext. 9/3 and 9/4. During cross-examination by defence he has stated that there is no confession in the statement made by the accused Aklima Hossain @ Lipi Begum to the effect that she or Sayeed had killed Billal.

31. P.W. 13 A.K.M. Shahin Mondal, while serving as the Officer-in-Charge of Melandah Police Station on 10.4.2003, started the instant case on the basis of a typed written F.I.R. of the informant. He exhibited the F.I.R. Form as ext.10 and his signature therein as Ext. 10/1. The defence declined to cross-examine him.

32. P.W. 14 Golam Sarwar, Sub-Inspector of Police of Melandah Police Station, on 10.4.2003, held inquest on the dead body of the deceased Billal Hossain and prepared the inquest report which he exhibited as Ext.3 and his signature therein as Ext. 3/2. He investigated the case and during investigation visited the place of occurrence, prepared the sketch map of the place of occurrence with index, seized alamats which already stated above, arrested accused Aklima Hossain @ Lipi Begum on 10.4.2003 and produced her before the Court on the next date, examined witness Limon and Smitha son and daughter respectively of deceased Billal Hossain and accused Aklima Hossain @ Lipi Begum and also got their statements recorded under Section 164 of the Code of Criminal Procedure. He also recorded the statements under Section 161 of the Code of Criminal Procedure of other witnesses. He obtained the Post Mortem report and took two snaps of the dead body which he exhibited as Ext. X series. On completion of investigation, he submitted charge sheet under Section 302/34 of the Penal Code against the accused Aklima Hossain @ Lipi Begum and Sayeed. During cross-examination by defence, this P.W. 14 has stated that it is not mentioned in F.I.R. that accused Sayeed caught hold of the Limon's father i.e. the deceased Billal Hossain. He has stated that amongst the witnesses the son (P.W. 2) and daughter (P.W.3) of the deceased Billal Hossain are the only eyewitnesses in this case . He recorded the statements of Limon and Smitha (P.Ws. 2 and 3 respectively) wherein they stated that there was extra-marital relation between the Lipi and Sayeed. During investigation it revealed that accused Lipi frequently used to go to the house of accused Sayeed. He denied the defence suggestion that Limon and Smitha made statements before the Magistrate after being tutored by him. Further he has stated that he got the dead body of the deceased Billal Hossain about 2 cubits off from his dwelling house where he slept and that the commission of the murder started inside and ended outside that house where the dead body was found. He denied the defence suggestion that Lipi did not

kill her husband by Seni Dao, Sayeed was not present there at that time and there was no extra-marital relation between Sayeed and Lipi and that being biased he submitted the charge sheet against Lipi and Sayeed.

33. Accused Aklima Hossain @ Lipi Begum made confessional statement in this case which the Magistrate P.W. 12 recorded under section 164 of the Code of Criminal Procedure and the same, marked as Ext.7, is as under:–

"আমার ১৫ বৎসর বয়সের সময় বিয়ে হয় স্বামীর সঙ্গে প্রেম করে। আমার শ্বাশুড়ী ও দেবর আমাকে মেনে নেয় নাই। আমার স্বামী ছাত্র পড়াইত। আমাকে নিয়ে প্রায়ই ঝগড়া হত তবে ভাই ও মায়ের সঙ্গে । বিয়ের প্রথমেই বাচ্চা আসে। বাচ্চা স্বামী নিয়ে কষ্টে ছিলাম। প্রায়ই আমার নামে বিচার দিত। একপর্যায়ে আমার স্বামী বাড়ী ছাড়ে। কিছুদিন পর চাকুরী হয়। আমার জমি বিক্রী করে দেবর কে দোকান দিয়ে দেই। গত বুধবার দিন রাত্রে ঘটনা । রাত্র ১০টার সময় একসঙ্গে ভাত খাই। রাত্র ১১টার সময় শুতে যাই। এখন আমার স্বামী বলে পেপে ও পেয়ারার চারা তুলছিলাম। তখন ৪জন লোক আসে। আমার স্বামী তাদের সঙ্গে গল্প করে। অল্প সময় কথা গাছ তুলছে। তখন রাত্র ১২-৩০ মিনিট। রাত্র ৩টার দিকে দুইজন মিলিত হই। আমার স্বামী, আমি স্মীতা, উপমা এক চৌকিতে থাকি । আমার ছেলে লেমন আলাদা খাটে থাকে। শব্দ হয়। শব্দের জন্য আমাকে দেখতে বলে। আমি দেখি দুইজন আছে। দরজা লাগানো । তখন ৩.৩০ মিনিট আমি দরজা খুলে বাইরে যাওয়ার জন্য বাইরে বের হই। মুখোশ পড়া দুইজন লোক আমাকে মুখ চেপে ধরে। মাথায় কিল দেয়। আমার মুখ চেপে রাখে । আমার ছেলে ও মেয়ে উঠে। লেমন বলে কারেন্ট নেই। আমার বাসার সংগে টিনের বেড়া। চিল্লা চিল্লি করতে থাকি । তখন কোন লোকজন আসে নাই। আমার স্বামীকে জড়াইয়া ধরি লেমন দেখেছে। ৩:৩০ মিনিট রাত্রিতে দরজা খুলে দেই। ঘটনা ১৫-২০ মিনিট স্থায়ী হয়। দেবরদের সংগে শত্রুতা আছে। কুড়াল দিয়ে মারতে যায়। সাইদের সঙ্গে কোন সম্পর্ক নেই। আমি দরজা খুলে দিয়েছি এই আমার দোষ। আমার স্বামী যেখানে ঘুমায় সেখানে বাম পার্শ্বে দা, কুড়াল, হাতুর এই গুলি ছিল কাঠের উপর।"

34. In the aforesaid statement accused Lipi did not confess her involvement in the alleged murder of her husband and her such statement outwardly appears to be exculpatory in nature.

35. In the instant case the prosecution examined as many as 14 witnesses of whom only P.Ws. 2 and 3 are the eye witnesses . P.W. 2 Md. Nizamuddin Limon aged about 13 years is the son of the deceased Billal Hossain and accused Lipi and P.W.3 Shuhana Hossain Smitha aged about 10 years is also their daughter and both have stated by corroborating each other that at the time of the alleged occurrence at about 3-30 hours in the night following 9.4.2003 their mother Lipi Begum, the deceased Billal Hossain, Shuhana (P.W.3) and another sister were sleeping in the same bed and Limon in another bed in the same room and on hearing the sound of hoarse screams of their father they woke up and found their mother Lipi entering into the room with a blood stained Dao and placing the same under the showcase and then again going out of the room and at that time they watched and came to see accused Sayeed in the courtyard catching hold of his father and 3 other persons standing near the gate and then their mother Lipi

Begum caught hold of their father Billal Hossain when his body was wet with blood.

36. P.W.2 has said that he asked his mother Lipi Begum as to what had happened to his father but his mother did not make any reply and remained silent. Then he opened the gate and informed the occurrence to his grand-mother, uncle, aunt and others and on coming back he saw his father's slaughtered dead body lying on the courtyard and at that time his mother was taking bath in the pond adjacent to the courtyard. Both the P.Ws. 2 and 3 by corroborating each other have stated that their mother Lipi Begum had extramarital relation with accused Sayeed and they themselves witnessed their many obscenities on different occasions. The aforesaid blood-stained Dao, which both the P.Ws. 2 and 3 saw their mother Lipi Begum placing under the showcase, has been recovered from there and seized vide seizure list marked as Mat. Ext. VII. P.W.3 has stated that she saw her mother, Lipi Begum removing the cut out of their room and the same with blood-stain has also been seized from that house vide marked as Mat. Ext. VI. P.W.3 has further stated that Lipi Begum, lastly, sat on the chest of the deceased Billal Hossain and caught hold of the mouth and checked by touching his legs whether Billal Hossain died and then she became confirmed that he died. P.Ws. 2 and 3 have also stated by corroborating each other that the dead body was lying naked and Limon, P.W.2 placed a cloth on the dead body of the deceased and when their uncles and others came, mean-while, Lipi Begum finished her bath from the pond.

37. It appears from the evidence of all the P.Ws. other than the official witnesses that there was extra-marital relations between the accused Lipi and Sayeed even the fact of having such relation between them was con-firmed by the own son and daughter of accused Lipi Begum, namely, P.Ws. 2 and 3 and, admittedly, Billal Hossain at that time was attacked with Jaundice for which he took leave for 15 days and came home which might be a hindrance to the free exercise of extra-marital relation of the accused Lipi and Sayeed. Although P.W.2 was aged about 13 years and P.W. 3, 10 years, from a plain reading of their statements it would appear that they got sufficient maturity of understand-ing at least to say the truth what actually they had seen and that there is nothing to disbelieve their testi-mony. During cross-examination defence could not shake their testi-mony and elicit anything from them on material particulars for the benefit of the defence. There is also nothing to show as to why the P.Ws. 2 and 3, being the own son and daughter of the accused Aklima Hossain @ Lipi Begum, would falsely assign the part of killing of their father to her. P.Ws.

2 and 3 have stated corroborating each other that accused Lipi Begum and her paramour Sayeed took part in killing their father Billal and ultimately their father Billal was slaughtered to death and at the alleged time of occurrence the dead body was found lying in the inner courtyard in front of the door of their dwelling house. P.Ws. 2 and 3 have stated corroborating each other that at that time they saw the part of the occurrence, as mentioned earlier, in the light of the adjacent Cinema Hall which is about 15/20 cubits off from their courtyard which remains unchallenged . All the P.Ws. other than the official witnesses who came to the place of occurrence immediately after the occurrence also saw the slaughtered dead body of deceased Billal Hossain lying on the courtyard of the deceased's house. Their evidence are also quite consistent with those of the P.Ws. 2 and 3 regarding the time, place and manner of the occurrence. P.W. 10 Dr. Abdulllah Al-Amin holding post mortem examination on the dead body of the deceased found the injuries, as stated above, on the dead body of the deceased including cut-throat injuries which being ante mortem and homicidal in nature resulted in his death. Medical evidence of this P.W.10 is also consistent with those of the other P.Ws. as to the manner of the occurrence. During cross-examination of the P.Ws. 1-14 the defence failed to elicit anything from them on the material particulars for the benefit of the defence and there is nothing to disbelieve their evidence.

38. It appears from the confessional statement of Lipi Begum recorded by the Magistrate, marked as ext.7, that in its column No.6 it is noted that while recording the statement Lipi Begum told the Magistrate that Police put pressure on her and also rebuked her. However, she did not confess her guilt and involvement in the alleged murder of her husband Billal Hossain and her said confessional statement appears to be exculpatory in nature. In column 6 of ext.6 she has, however, stated that she was making the statement for telling the truth and that in her said statement she stated that in the alleged night of occurrence at about 3-30 hours there was knock at the door whereupon she opened the door for coming out and that was her only fault. Knocking at the door at about 3-30 hours in the night is, undoubtedly, dreadful and at that time her husband was sleeping with her in the room and without calling her husband from sleep and also without calling her kids (including P.Ws. 2 and 3) sleeping in the said room and also without asking who was knocking at the door she, of her own accord, opened the door for going outside which is unusual. Such demeanour of condemned-prisoner Aklima Hossain @ Lilpi Begum looks askance at which inclines to us to believe that had she no the complicity in the alleged murder, surely, she would not have

opened the door of her own accord without calling her husband and the kids at such a dreadful time of night at 3-30 hours. Besides, P.W. 2 Limon and P.W.3 Shuhana being the own son and daughter respectively of the condemned prisoner Aklima Hossain @ Lilpi Begum have stated by corroborating each other that when they woke up they saw their mother entering into the room coming from outside with blood-stained dao in her hand and keeping the same under the showcase and then removing the 'cut out'. The said blood stained dao and 'cut out' were seized from those particular places of the place of occurrence vide seizure list marked as Ext.4. P.Ws. 2 and 3 have also stated corroborating each other that they saw their mother Aklima Hossain @ Lilpi Begum scuffling with their father in the courtyard and also saw other condemned prisoner Sayeed catching hold of his father Billal . This P.Ws. 2 and 3 have also stated that after confirming the death of their father deceased Billal Hossain their mother Aklima Hossain @ Lipi Begum took bath in the pond adjacent to that courtyard. These P.Ws. 2 and 3 have also stated corroborating each other that their mother Aklima Hossain @ Lipi Begum had extramarital relation with the condemned prisoner Sayeed and they themselves witnessed some events of such relations between them. There is also nothing to show as to why would the P.Ws. 2 and 3 being the own kids of the condemned prisoner Aklima Hossain @ Lipi Begum falsely assign the part of killing of their father Billal to their own mother Aklima Hossain @ Lipi Begum and there is also no reason to disbelieve their evidence. The evidence of the other P.Ws., as referred to above, are also consistent with those of the P.Ws. 2 and 3 on material particulars.

39. Mr. S.M. Shahjahan, the learned Advocate appearing for the condemned prisoner, Abu Sayeed @ Sayeed has submitted that the informant lodged the First Information Report of this case having heard of the occurrence from P.Ws. 2 and 3 who claimed to have witnessed the occurrence. Had the P.Ws. 2 and 3 seen the condemned-prisoner Sayeed in committing the murder of the deceased Billal, his name would find place in the F.I.R. but having not so done the statement of the P.Ws. 1, 2, 3 and 4 and other witnesses to the effect that P.Ws. 2 and 3 disclosed to them that at the alleged time of occurrence they also saw the condemned prisoner Sayeed catching hold of the deceased Billal cannot be relied upon. This sort of endeavour on the part of the witnesses including P.Ws. 1, 2 and 3 is nothing but a subsequent embellishment and relying upon such embellished evidence no conviction can be based on the condemned prisoner Abu Sayeed @ Sayeed .

40. In reply to the above submission of Mr. Shahjahan, the learned Deputy

Attorney General has made an endeavour to persuade us to concur with the learned Sessions Judge's view that the omission in the F.I.R. regarding the condemned prisoner Abu Sayeed and the role played by him in committing the murder of the deceased is not enough to conclude that the said part of the story is a later improvement. Omission of the said detail is there in the F.I.R, no doubt. But the *Criminal Courts should not be fastidious with mere omissions in First Information Statement, since such Statements cannot be expected to be a chronicle of every detail of what happened, nor to contain an exhaustive catalogue of the events which took place. The person who furnishes the First Information to authorities might be fresh with the facts but he need not necessarily have the skill or ability to reproduce details of the entire story without anything missing there from. Some may miss even important details in a narration.* The learned Deputy Attorney-General has further submitted that in this case there is overwhelming evidence to show that the condemned prisoner Abu Sayeed being the paramour of the condemned prisoner Lipi Begum both, in furtherance of their common intention of all, committed the murder of the deceased. Thus, the aforesaid omission in the F.I.R. as to the presence and overt act of the condemned-prisoner, Abu Sayeed in committing murder of the deceased does not affect the prosecution case so far as it relates to him. *It is not always expected that there must be disclosure of each and every fact in the F.I.R. which are necessary to be proved by the prosecution to establish a criminal charge.*

41. *F.I.R. is nothing but an information relating to a cognizable offence given to the Police first in point of time on the basis of which investigation commences and it is only the instrument which sets the ball in motion for the purpose of taking legal action against the offender. Neither it is a substantive piece of evidence nor it can be considered as encyclopaedia of the prosecution case. F.I.R. can only be used for the purpose of contradicting and corroborating evidence of the informant under Section 145 and 155 (3) of the Evidence Act and not for the purpose of impeaching credibility of other witnesses* like P.Ws. 2 and 3, of whom none was the informant in this case. So, the question of subsequent embellishment of the F.I.R. story regarding the condemned prisoner Sayeed and discarding the evidence of P.Ws. 2 and 3 coupled with those of P.Ws. 1,4,6 and 9 to that effect given before the Court for that reason, does not arise at all. This view of ours find support from the decision in the case of ***The State vs. Kamal Pasha @ Pasha reported in B.C.R. 2006 (HCD) 136.***

42. The above views of ours also find support from the decision in the case of ***The State Vs. Abdus Sattar and others reported in 43 D.L.R. (AD)***

44 wherein their Lordships have taken view in this respect in the following manner:–

"F.I.R can be used only to corroborate or contradict the maker thereof. There is neither any law nor any principle on the basis of which the testimony of another witness can be ignored or rejected because the informant had made an omission to mention about the fact which the witness stated in his deposition".

43. In the instant case P.Ws. 2 and 3 are the eye witnesses of the occurrence and they, corroborating each other, have given a vivid picture of the role played by both the condemned prisoners Aklima Hossain @ Lipi Begum and Abu Sayeed @ Sayeed in committing the murder of the deceased and they also made their statements before the Magistrate recorded under section 164 of the Code of Criminal Procedure. The statements of P.Ws. 2 and 3 given in Court and their statements recorded by the Magistrate under section 164 of the Code of Criminal Procedure are quite consistent with all the material particulars regarding time, place and manner of the occurrence as well as overt acts of both the condemned prisoners in committing murder of their father Billal. Further it appears that, admittedly, the P.Ws. 2 and 3 were examined by the Investigating Officer who recorded their statements under section 161 of the Code of Criminal Procedure on the very date of occurrence but in spite of the fact attention of the P.Ws. 2 and 3 was not drawn denying the veracity of their statements as to the presence of the condemned prisoner Sayeed at the place of occurrence at the alleged time and the role played by him in committing the murder of the deceased. Even P.Ws. 1,4,6 and 9 who came to the place of occurrence immediately after the occurrence have also corroborated the P.Ws. 2 and 3 that they heard of the overt acts of both the condemned prisoners Aklima Hossain @ Lipi Begum and Abu Sayeed @ Sayeed in committing the murder of the deceased and there was nothing to disbelieve their such evidence.

44. *First Information Report is not a piece of substantive evidence but may be used for corroborating and or contradicting the maker only. Attention of the P.Ws. 2 and 3 having not been drawn under Section 145 of the Evidence Act (Act I of 1872) to their such omission regarding the condemned-prisoner Abu Sayeed in cross-examination, the defence could take advantage of the contradiction by omission. Even otherwise we think this omission in the F.I.R. as to the condemned-prisoner Sayeed does not materially affect the prosecution case having regard to the other evidence* in the point, as we have already referred to above. This view of ours finds support in the decision in the case of ***Dipok Kumar Sarker Vs. the State reported in 1988 B.L.D. (AD) 109***.

49. In the midst of hearing of this Death Reference Mr. A.M. Md. Azizul Haque, the learned Advocate appearing as State Defence Lawyer for the condemned prisoner Aklima Hossain @ Lipi Begum filed an application under section 540 of the Code of Criminal Procedure for re-examination of P.W.2 Nizamauddin Limon and P.W. 3 Shuhana Hoassain Smitha, both being minor kids of deceased Billal Hossain and the condemned prisoner Aklima Hossain Lipi Begum, on the ground that they made their statement before the Court out of fear and being tutored by his uncle, the informant-P.W.1 and as such they are required to be re-examined.

50. The learned Deputy Attorney-General opposing the application has submitted that the P.Ws. 2 and 3, though minors, had sufficient maturity of understanding at least to narrate the facts what they had witnessed during the alleged occurrence and after they being examined and cross-examined they could not be recalled for re-examination in relation to the omission and contradiction in their evidence and as such the application filed under section 540 of the Code of Criminal Procedure is liable to be rejected.

51. Admittedly, P.W.2 Limon and P.W.3 Shuhana Hossain Smitha son and daughter respectively of the deceased Billal Hossain were aged about 13 and 10 years respectively at the time when they made their statements before the Court as eye witnesses of the alleged murder of the deceased. From the reading of the statements of P.W.2 Limon we find that at the time of occurrence he was a student of class VII and had got sufficient maturity of understanding and that he correctly explained the meaning what is called "Porokia prem" (Extra-marital love affair) and correctly explained the meaning thereof. During cross examination by defence he has said that he stated what he saw in his own eyes and also stated as to why would he falsely depose against his mother. P.W. 3 Shuhana Hossain Smitha was aged about 10 years at that time and at the time of the alleged occurrence she saw her mother, the condemned-prisoner Aklima Hossain @ Lipi Begum entering into the room with a blood- stained Dao and keeping the same under the showcase and also saw removing the 'cut out' of the room and, accordingly those were recovered from those places. During cross examination by defence, in reply to the defence suggestion, she stated that "

আমার ভাই দাদার বাড়ী থেকে এসে চাদর দিয়ে উলঙ্গ বাবাকে ঢেকে দেয়। আমার আব্বুকে যখন মারে তখন কেউ দেখেনি, সত্য নয়। আমি বাইরে আহত অবস্থায় বাবাকে দেখি। আমার বাবা আমি দেখিনি, আপনি দেখেছেন? সাঈদ আমার পিতাকে মেরেছে দেখিছি। সত্য নয় ঘটনাস্থলে ঐ দিন ঐ সময় সাঈদ ছিল না, আপনি দেখেছেন?

52. From the manner of giving statements by the P.Ws. 2 and 3, as above, we are inclined to hold that both the

P.Ws. 2 and 3 , though being child, were intellectually developed enough to comprehend what they had seen and to give an intelligent account of it to the Court. In this regard we like to refer the decision in the case of ***Fazlul Haq Sikder Vs. The State reported in 15 B.L.D. (1995) (HCD)365*** which reads thus,

> *"The law requires that before examining a child of tender age as a witness the Court should satisfy itself that the child is intellectually developed enough to comprehend what he has seen and to give an intelligent account of it to the Court. If the Court finds otherwise, it should decline to examine him as a witness . On the other hand, if the child is sufficiently intelligent to understand the questions put to him and he is capable to giving rational answers to those questions, then his capacity to give evidence is on the same footing as that of any other adult witness".*

53. Besides, *recalling witness for re-examination in relation to omission and contradictions in the evidence of other P.Ws. is not permissible in law. The prosecution witnesses (P.Ws. 2 and 3), in the instant case, who have already been examined and cross-examined having sufficient maturity of understanding to give an intelligent account of the facts what they have seen, though they being child, cannot be recalled for re-examination in relation to the omission and contradictions in the evidence of other P.Ws. as provided under Section 540 of the Code of Criminal Procedure.* This view of ours finds support from the decision in the case of ***Rana Das Vs The State reported in 12 M.L.R. (HCD)199 .***

54. In view of the above, the application filed under Section 540 of the Code of Criminal Procedure, being not maintainable at this stage, is rejected.

55. For the reasons stated above we reject the Death Reference No. 152 of 2005 and also dismiss the Criminal Appeal Nos. 4223 of 2005 and 5094 of 2005 and the Jail Appeal Nos. 1178 of 2005 and 1179 of 2005 of the condemned prisoners with modification of sentence of both the condemned-prisoners from death to imprisonment for life and in default to payment of fine as awarded by the trial Court below, both the aforesaid condemned prisoners are to suffer rigorous imprisonment for two years more each.

56. Send down the Lower Court Records with a copy of this judgment and order to the Court below at once for information and necessary action.

Case Cited

* ***The State vs. Kamal Pasha @ Pasha B.C.R. 2006 (HCD) 136.***
* ***The State Vs. Abdus Sattar and others 43 D.L.R. (AD) 44.***
* ***Dipok Kumar Sarker Vs. the State 1988 B.L.D. (AD) 109.***
* ***Fazlul Haq Sikder Vs. The State 15 B.L.D. (1995) (HCD) 365.***
* ***Rana Das Vs. The State 12 M.L.R. (HCD) 199.***

SUPREME COURT OF THE UNITED STATES

No. 12–398

ASSOCIATION FOR MOLECULAR PATHOLOGY, ET AL., PETITIONERS

v.

MYRIADGENETICS, INC., ET AL.

On writ of certiorari to the united states court of appeals for the federal circuit

[June 13, 2013]

A naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated, but cDNA is patent eligible because it is not naturally occurring.

JUSTICE THOMAS delivered the opinion of the Court.

Respondent Myriad Genetics, Inc. (Myriad), discovered the precise location and sequence of two human genes, mutations of which can substantially increase the risks of breast and ovarian cancer. Myriad obtained a number of patents based upon its discovery. This case involves claims from three of them and requires us to resolve whether a naturally occurring segment of deoxyribonucleic acid (DNA) is patent eligible under 35 U. S. C. §101 by virtue of its isolation from the rest of the human genome. We also address the patent eligibility of synthetically created DNA known as complementary DNA (cDNA), which contains the same protein-coding information found in a segment of natural DNA but omits portions within the DNA segment that do not code for proteins. For the reasons that follow, we hold that a naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated, but that cDNA is patent eligible because it is not naturally occurring. We, therefore, affirm in part and reverse in part the decision of the United States Court of Appeals for the Federal Circuit.

I

A

Genes form the basis for hereditary traits in living organisms. See generally Association for Molecular Pathology v. United States Patent and Trademark Office, 702 F. Supp. 2d 181, 192–211 (SDNY 2010). The human genome consists of approximately 22,000 genes packed into 23 pairs of chromosomes. Each gene is encoded as DNA, which takes the shape of the familiar "double helix" that Doctors James Watson and Francis Crick first described in 1953. Each "cross-bar" in the DNA helix consists of two chemically joined nucleotides. The possible nucleotides are adenine (A), thymine (T), cytosine (C), and guanine (G), each of which binds naturally with another nucleotide: A pairs with T; C pairs with G. The nucleotide cross-bars are chemically connected to a sugar-phosphate backbone that forms the outside framework of the DNA helix. Sequences of DNA nucleotides contain the information necessary to create strings of amino acids, which in turn are used in the body to build proteins. Only some DNA nucleotides, however, code for amino acids; these nucleotides are

known as "exons." Nucleotides that do not code for amino acids, in contrast, are known as "introns."

Creation of proteins from DNA involves two principal steps, known as transcription and translation. In transcription, the bonds between DNA nucleotides separate, and the DNA helix unwinds into two single strands. A single strand is used as a template to create a complementary ribonucleic acid (RNA) strand. The nucleotides on the DNA strand pair naturally with their counterparts, with the exception that RNA uses the nucleotide base uracil (U) instead of thymine (T). Transcription results in a single strand RNA molecule, known as pre-RNA, whose nucleotides form an inverse image of the DNA strand from which it was created. Pre-RNA still contains nucleotides corresponding to both the exons and introns in the DNA molecule. The pre-RNA is then naturally "spliced" by the physical removal of the introns. The resulting product is a strand of RNA that contains nucleotides corresponding only to the exons from the original DNA strand. The exons-only strand is known as messenger RNA (mRNA), which creates amino acids through translation. In translation, cellular structures known as ribosomes read each set of three nucleotides, known as codons, in the mRNA. Each codon either tells the ribosomes which of the 20 possible amino acids to synthesize or provides a stop signal that ends amino acid production.

DNA's informational sequences and the processes that create mRNA, amino acids, and proteins occur naturally within cells. Scientists can, however, extract DNA from cells using well known laboratory methods. These methods allow scientists to isolate specific segments of DNA—for instance, a particular gene or part of a gene—which can then be further studied, manipulated, or used. It is also possible to create DNA synthetically through processes similarly well known in the field of genetics. One such method begins with an mRNA molecule and uses the natural bonding properties of nucleotides to create a new, synthetic DNA molecule. The result is the inverse of the mRNA's inverse image of the original DNA, with one important distinction: Because the natural creation of mRNA involves splicing that removes introns, the synthetic DNA created from mRNA also contains only the exon sequences. This synthetic DNA created in the laboratory from mRNA is known as complementary DNA (cDNA).

Changes in the genetic sequence are called mutations. Mutations can be as small as the alteration of a single nucleotide—a change affecting only one letter in the genetic code. Such small-scale changes can produce an entirely different amino acid or can end protein production altogether. Large changes, involving the deletion, rearrangement, or duplication of hundreds or even millions of nucleotides, can result in the elimination, misplacement, or duplication of entire genes. Some mutations are harmless, but others can cause disease or increase the risk of disease. As a

result, the study of genetics can lead to valuable medical breakthroughs.

B

This case involves patents filed by Myriad after it made one such medical breakthrough. Myriad discovered the precise location and sequence of what are now known as the BRCA1 and BRCA2 genes. Mutations in these genes can dramatically increase an individual's risk of developing breast and ovarian cancer. The average American woman has a 12- to 13-percent risk of developing breast cancer, but for women with certain genetic mutations, the risk can range between 50 and 80 percent for breast cancer and between 20 and 50 percent for ovarian cancer. Before Myriad's discovery of the BRCA1 and BRCA2 genes, scientists knew that heredity played a role in establishing a woman's risk of developing breast and ovarian cancer, but they did not know which genes were associated with those cancers.

Myriad identified the exact location of the BRCA1 and BRCA2 genes on chromosomes 17 and 13. Chromosome 17 has approximately 80 million nucleotides, and chromosome 13 has approximately 114 million. Association for Molecular Pathology v. United States Patent and Trademark Office, 689 F. 3d 1303, 1328 (CA Fed. 2012). Within those chromosomes, the BRCA1 and BRCA2 genes are each about 80,000 nucleotides long. If just exons are counted, the BRCA1 gene is only about 5,500 nucleotides long; for the BRCA2 gene, that number is about 10,200. Ibid. Knowledge of the location of the BRCA1 and BRCA2 genes allowed Myriad to determine their typical nucleotide sequence. 1 That information, in turn, enabled Myriad to develop medical tests that are useful for detecting mutations in a patient's BRCA1 and BRCA2 genes and thereby assessing whether the patient has an increased risk of cancer.

Once it found the location and sequence of the BRCA1 and BRCA2 genes, Myriad sought and obtained a number of patents. Nine composition claims from three of those patents are at issue in this case. 2 See id., at 1309, and n. 1 (noting composition claims). Claims 1, 2, 5, and 6 from the '282 patent are representative. The first claim asserts a patent on "[a]n isolated DNA coding for a BRCA1 polypeptide," which has "the amino acid sequence set forth in SEQ ID NO:2." App. 822. SEQ ID NO:2 sets forth a list of 1,863 amino acids that the typical BRCA1 gene encodes. See id., at 785–790. Put differently, claim 1 asserts a patent claim on the DNA code that tells a cell to produce the string of BRCA1 amino acids listed in SEQ ID NO:2.

Claim 2 of the '282 patent operates similarly. It claims "[t]he isolated DNA of claim 1, wherein said DNA has the nucleotide sequence set forth in SEQ ID NO:1." Id., at 822. Like SEQ ID NO:2, SEQ ID NO:1 sets forth along list of data, in this instance the sequence of cDNA that codes for the BRCA1 amino acids listed in claim 1. Importantly, SEQ ID NO:1 lists only the cDNA exons in the BRCA1 gene, rather than a full DNA sequence containing both exons and introns. See id., at 779 (stating that

SEQ ID NO:1's "MOLECULE TYPE:" is "cDNA"). As a result, the Federal Circuit recognized that claim 2 asserts a patent on the cDNA nucleotide sequence listed in SEQ ID NO:1, which codes for the typical BRCA1 gene. 689 F. 3d, at 1326, n. 9; id., at 1337 (Moore, J., concurring in part); id., at 1356 (Bryson, J., concurring in part and dissenting in part).

Claim 5 of the '282 patent claims a subset of the data in claim 1. In particular, it claims "[a]n isolated DNA having at least 15 nucleotides of the DNA of claim 1." App. 822. The practical effect of claim 5 is to assert a patent on any series of 15 nucleotides that exist in the typical BRCA1 gene. Because the BRCA1 gene is thousands of nucleotides long, even BRCA1 genes with substantial mutations are likely to contain at least one segment of 15 nucleotides that correspond to the typical BRCA1 gene. Similarly, claim 6 of the '282 patent claims "[a]n isolated DNA having at least 15 nucleotides of the DNA of claim 2." Ibid. This claim operates similarly to claim 5, except that it references the cDNA-based claim 2. The remaining claims at issue are similar, though several list common mutations rather than typical BRCA1 and BRCA2 sequences. See ibid. (claim 7 of the '282 patent); id., at 930 (claim 1 of the '473 patent); id., at 1028 (claims 1, 6, and 7 of the '492 patent).

C

Myriad's patents would, if valid, give it the exclusive right to isolate an individual's BRCA1 and BRCA2 genes (or any strand of 15 or more nucleotides within the genes) by breaking the covalent bonds that connect the DNA to the rest of the individual's genome. The patents would also give Myriad the exclusive right to synthetically create BRCA cDNA. In Myriad's view, manipulating BRCA DNA in either of these fashions triggers its "right to exclude others from making" its patented composition of matter under the Patent Act. 35 U. S. C. §154(a)(1); see also §271(a) ("[W]hoever without authority makes . . . any patented invention . . . infringes the patent").

But isolation is necessary to conduct genetic testing, and Myriad was not the only entity to offer BRCA testing after it discovered the genes. The University of Pennsylvania's Genetic Diagnostic Laboratory (GDL) and others provided genetic testing services to women. Petitioner Dr. Harry Ostrer, then a researcher at New York University School of Medicine, routinely sent his patients' DNA samples to GDL for testing. After learning of GDL's testing and Ostrer's activities, Myriad sent letters to them asserting that the genetic testing infringed Myriad's patents. App. 94–95 (Ostrer letter). In response, GDL agreed to stop testing and informed Ostrer that it would no longer accept patient samples. Myriad also filed patent infringement suits against other entities that performed BRCA testing, resulting in settlements in which the defendants agreed to cease all allegedly infringing activity. 689 F. 3d, at 1315. Myriad, thus, solidified its position as the only entity providing BRCA testing.

Some years later, petitioner Ostrer, along with medical patients, advocacy groups, and other doctors, filed this

lawsuit seeking a declaration that Myriad's patents are invalid under 35 U. S. C. §101. 702 F. Supp. 2d, at 186. Citing this Court's decision in MedImmune, Inc. v. Genentech, Inc., 549 U. S. 118 (2007) , the District Court denied Myriad's motion to dismiss for lack of standing. Association for Molecular Pathology v. United States Patent and Trademark Office, 669 F. Supp. 2d 365, 385–392 (SDNY 2009). The District Court then granted summary judgment to petitioners on the composition claims at issue in this case based on its conclusion that Myriad's claims, including claims related to cDNA, were invalid because they covered products of nature. 702 F. Supp. 2d, at 220–237. The Federal Circuit reversed, Association for Molecular Pathology v. United States Patent and Trademark Office, 653 F. 3d 1329 (2011), and this Court granted the petition for certiorari, vacated the judgment, and remanded the case in light of Mayo Collaborative Services v. Prometheus Laboratories, Inc., 566 U. S. ___ (2012).See Association for Molecular Pathology v. Myriad Genetics, Inc., 566 U. S. ___ (2012).

On remand, the Federal Circuit affirmed the District Court in part and reversed in part, with each member of the panel writing separately. All three judges agreed that only petitioner Ostrer had standing. They reasoned that Myriad's actions against him and his stated ability and willingness to begin BRCA1 and BRCA2 testing if Myr-iad's patents were invalidated were sufficient for Article III standing. 689 F. 3d, at 1323; id., at 1337 (opinion of Moore, J.); id., at 1348 (opinion of Bryson, J.).

With respect to the merits, the court held that both isolated DNA and cDNA were patent eligible under §101. The central dispute among the panel members was whether the act of isolating DNA—separating a specific gene or sequence of nucleotides from the rest of the chromosome—is an inventive act that entitles the individual who first isolates it to a patent. Each of the judges on the panel had a different view on that question. Judges Lourie and Moore agreed that Myriad's claims were patent eligible under §101 but disagreed on the rationale. Judge Lourie relied on the fact that the entire DNA molecule is held together by chemical bonds and that the covalent bonds at both ends of the segment must be severed in order to isolate segments of DNA. This process technically creates new molecules with unique chemical compositions. See id., at 1328 ("Isolated DNA . . . is a free-standing portion of a larger, natural DNA molecule. Isolated DNA has been cleaved (i.e., had covalent bonds in its backbone chemically severed) or synthesized to consist of just a fraction of a naturally occurring DNA molecule"). Judge Lourie found this chemical alteration to be dispositive, because isolating a particular strand of DNA creates a non-naturally occurring molecule, even though the chemical alteration does not change the information-transmitting quality of the DNA. See id., at 1330 ("The claimed isolated DNA molecules are distinct from their natural existence as portions of larger entities,

and their informational content is irrelevant to that fact. We recognize that biologists may think of molecules in terms of their uses, but genes are in fact materials having a chemical nature"). Accordingly, he rejected petitioners' argument that isolated DNA was ineligible for patent protection as a product of nature.

Judge Moore concurred in part but did not rely exclusively on Judge Lourie's conclusion that chemically breaking covalent bonds was sufficient to render isolated DNA patent eligible. Id., at 1341 ("To the extent the majority rests its conclusion on the chemical differences between [naturally occurring] and isolated DNA (breaking the covalent bonds), I cannot agree that this is sufficient to hold that the claims to human genes are directed to patentable subject matter"). Instead, Judge Moore also relied on the United States Patent and Trademark Office's (PTO) practice of granting such patents and on the reliance interests of patent holders. Id., at 1343. However, she acknowledged that her vote might have come out differently if she "were deciding this case on a blank canvas." Ibid.

Finally, Judge Bryson concurred in part and dissented in part, concluding that isolated DNA is not patent eligible. As an initial matter, he emphasized that the breaking of chemical bonds was not dispositive: "[T]here is no magic to a chemical bond that requires us to recognize a new product when a chemical bond is created or broken." Id. ,at 1351. Instead, he relied on the fact that "[t]he nucleotide sequences of the claimed molecules are the same as the nucleotide sequences found in naturally occurring human genes." Id., at 1355. Judge Bryson then concluded that genetic "structural similarity dwarfs the significance of the structural differences between isolated DNA and naturally occurring DNA, especially where the structural differences are merely ancillary to the breaking of covalent bonds, a process that is itself not inventive." Ibid. More-over, Judge Bryson gave no weight to the PTO's position on patentability because of the Federal Circuit's position that "the PTO lacks substantive rulemaking authority as to issues such as patentability." Id.,at 1357.

Although the judges expressed different views concerning the patentability of isolated DNA, all three agreed that patent claims relating to cDNA met the patent eligibility requirements of §101. Id., at 1326, and n. 9 (recognizing that some patent claims are limited to cDNA and that such claims are patent eligible under §101); id., at 1337 (Moore, J., concurring in part); id., at 1356 (Bryson, J., concurring in part and dissenting in part) ("cDNA cannot be isolated from nature, but instead must be created in the laboratory . . . because the introns that are found in the native gene are removed from the cDNA segment"). 3 We granted certiorari. 568 U. S. ___ (2012).

II

A

Section 101 of the Patent Act provides:

"Whoever invents or discovers any new and useful . . . composition of mat-

ter, or any new and useful improvement thereof, may obtain a patent there for, subject to the conditions and requirements of this title." 35 U. S. C. §101.

We have "long held that this provision contains an important implicit exception[:] Laws of nature, natural phenomena, and abstract ideas are not patentable." Mayo, 566 U. S., at ___ (slip op., at 1) (internal quotation marks and brackets omitted). Rather, " 'they are the basic tools of scientific and technological work' " that lie beyond the domain of patent protection. Id., at ___ (slip op., at 2). As the Court has explained, without this exception, there would be considerable danger that the grant of patents would "tie up" the use of such tools and thereby "inhibit future innovation premised upon them." Id., at ___ (slip op., at 17). This would be at odds with the very point of patents, which exist to promote creation. Diamond v. Chakrabarty, 447 U. S. 303, 309 (1980) (Products of nature are not created, and " 'manifestations . . . of nature [are] free to all men and reserved exclusively to none' ").

The rule against patents on naturally occurring things is not without limits, however, for "all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas," and "too broad an interpretation of this exclusionary principle could eviscerate patent law." 566 U. S., at ___ (slip op., at 2). As we have recognized before, patent protection strikes a delicate balance between creating "incentives that lead to creation, invention, and discovery" and "imped[ing] the flow of information that might permit, indeed spur, invention." Id., at ___ (slip op., at 23). We must apply this well-established standard to determine whether Myriad's patents claim any "new and useful . . . composition of matter," §101, or instead claim naturally occurring phenomena.

B

It is undisputed that Myriad did not create or alter any of the genetic information encoded in the BRCA1 and BRCA2 genes. The location and order of the nucleotides existed in nature before Myriad found them. Nor did Myriad create or alter the genetic structure of DNA. In-stead, Myriad's principal contribution was uncovering the precise location and genetic sequence of the BRCA1and BRCA2 genes within chromosomes 17 and 13. The question is whether this renders the genes patentable.

Myriad recognizes that our decision in Chakrabarty is central to this inquiry. Brief for Respondents 14, 23–27. In Chakrabarty, scientists added four plasmids to a bacterium, which enabled it to break down various components of crude oil. 447 U. S., at 305, and n. 1. The Court held that the modified bacterium was patentable. It explained that the patent claim was "not to a hitherto unknown natural phenomenon, but to a non naturally occurring manufacture or composition of matter—a product of human ingenuity 'having a distinctive name, character [and] use.' " Id., at 309–310 (quoting Hartranft v. Wiegmann,121 U. S. 609, 615 (1887) ; alteration in original). The

Chakrabarty bacterium was new "with markedly different characteristics from any found in nature," 447 U. S., at 310, due to the additional plasmids and resultant "capac-ity for degrading oil." Id., at 305, n. 1. In this case, by contrast, Myriad did not create anything. To be sure, it found an important and useful gene, but separating that gene from its surrounding genetic material is not an act of invention.

Groundbreaking, innovative, or even brilliant discovery does not by itself satisfy the §101 inquiry. In Funk Brothers Seed Co. v. Kalo Inoculant Co., 333 U. S. 127 (1948) , this Court considered a composition patent that claimed a mixture of naturally occurring strains of bacteria that helped leguminous plants take nitrogen from the air and fix it in the soil. Id.,at 128–129. The ability of the bacteria to fix nitrogen was well known, and farmers commonly "inoculated" their crops with them to improve soil nitrogen levels. But farmers could not use the same inoculant for all crops, both because plants use different bacteria and because certain bacteria inhibit each other. Id., at 129–130. Upon learning that several nitrogen-fixing bacteria did not inhibit each other, however, the patent applicant combined them into a single inoculant and obtained a patent. Id., at 130. The Court held that the composition was not patent eligible because the patent holder did not alter the bacteria in any way. Id., at 132 ("There is no way in which we could call [the bacteria mixture a product of invention] unless we borrowed invention from the discovery of the natural principle itself"). His patent claim thus fell squarely within the law of nature exception. So do Myriad's. Myriad found the location of the BRCA1 and BRCA2 genes, but that discovery, by itself, does not render the BRCA genes "new . . . composition[s] of matter," §101, that are patent eligible.

Indeed, Myriad's patent descriptions highlight the problem with its claims. For example, a section of the '282 patent's Detailed Description of the Invention indicates that Myriad found the location of a gene associated with increased risk of breast cancer and identified mutations of that gene that increase the risk. See App. 748–749. 4 In subsequent language Myriad explains that the location of the gene was unknown until Myriad found it among the approximately eight million nucleotide pairs contained in a subpart of chromosome 17. See Ibid. 5 The '473 and '492 patents contain similar language as well. See id., at 854, 947. Many of Myriad's patent descriptions simply detail the "iterative process" of discovery by which Myriad narrowed the possible locations for the gene sequences that it sought. 6 See, e.g., id., at 750. Myriad seeks to import these extensive research efforts into the §101 patent-eligibility inquiry. Brief for Respondents 8–10, 34. But extensive effort alone is insufficient to satisfy the demands of §101.

Nor are Myriad's claims saved by the fact that isolating DNA from the human genome severs chemical bonds and thereby creates a non naturally occurring molecule. Myriad's claims are simply not expressed in terms of

chemical composition, nor do they rely in any way on the chemical changes that result from the isolation of a particular section of DNA. Instead, the claims understandably focus on the genetic information encoded in the BRCA1 and BRCA2 genes. If the patents depended upon the creation of a unique molecule, then a would-be infringer could arguably avoid at least Myriad's patent claims on entire genes (such as claims 1 and 2 of the '282 patent) by isolating a DNA sequence that included both the BRCA1 or BRCA2 gene and one additional nucleotide pair. Such a molecule would not be chemically identical to the molecule "invented" by Myriad. But Myriad obviously would resist that outcome because its claim is concerned primarily with the information contained in the genetic sequence, not with the specific chemical composition of a particular molecule.

Finally, Myriad argues that the PTO's past practice of awarding gene patents is entitled to deference, citing J. E. M. Ag Supply, Inc. v. Pioneer Hi-Bred Int'l, Inc., 534 U. S. 124 (2001) . See Brief for Respondents 35–39, 49–50. We disagree. J. E. M. held that new plant breeds were eligible for utility patents under §101 notwithstanding separate statutes providing special protections for plants, see 7 U. S. C. §2321 et seq. (Plant Variety Protection Act); 35 U. S. C. §§161–164 (Plant Patent Act of 1930). After analyzing the text and structure of the relevant statutes, the Court mentioned that the Board of Patent Appeals and Interferences had determined that new plant breeds were patent eligible under §101 and that Congress had recognized and endorsed that position in a subsequent Patent Act amendment. 534 U. S., at 144–145 (citing In re Hibberd, 227 USPQ 443 (1985) and 35 U. S. C. §119(f)). In this case, however, Congress has not endorsed the views of the PTO in subsequent legislation. While Myriad relies on Judge Moore's view that Congress endorsed the PTO's position in a single sentence in the Consolidated Appropriations Act of 2004, see Brief for Respondents 31, n. 8; 689 F. 3d, at 1346, that Act does not even mention genes, much less isolated DNA. §634, 118Stat. 101 ("None of the funds appropriated or otherwise made available under this Act may be used to issue patents on claims directed to or encompassing a human organism").

Further undercutting the PTO's practice, the United States argued in the Federal Circuit and in this Court that isolated DNA was not patent eligible under §101, Brief for United States as Amicus Curiae 20–33, and that the PTO's practice was not "a sufficient reason to hold that isolated DNA is patent-eligible." Id., at 26. See also id., at 28–29. These concessions weigh against deferring to the PTO's determination. 7

C

cDNA does not present the same obstacles to patentability as naturally occurring, isolated DNA segments. As already explained, creation of a cDNA sequence from mRNA results in an exons-only molecule that is not naturally occurring. 8 Petitioners concede that cDNA differs from natural DNA

in that "the non-coding regions have been removed." Brief for Petitioners 49. They nevertheless argue that cDNA is not patent eligible because "[t]he nucleotide sequence of cDNA is dictated by nature, not by the lab technician." Id., at 51. That may be so, but the lab technician unquestionably creates something new when cDNA is made. cDNA retains the naturally occurring exons of DNA, but it is distinct from the DNA from which it was derived. As a result, cDNA is not a "product of nature" and is patent eligible under §101, except insofar as very short series of DNA may have no intervening introns to remove when creating cDNA. In that situation, a short strand of cDNA may be indistinguishable from natural DNA. 9

III

It is important to note what is not implicated by this decision. First, there are no method claims before this Court. Had Myriad created an innovative method of manipulating genes while searching for the BRCA1 and BRCA2 genes, it could possibly have sought a method pat-ent. But the processes used by Myriad to isolate DNA were well understood by geneticists at the time of Myriad's patents "were well understood, widely used, and fairly uniform insofar as any scientist engaged in the search for a gene would likely have utilized a similar approach," 702 F. Supp. 2d, at 202–203, and are not at issue in this case.

Similarly, this case does not involve patents on new applications of knowledge about the BRCA1 and BRCA2 genes. Judge Bryson aptly noted that, "[a]s the first party with knowledge of the [BRCA1 and BRCA2] sequences, Myriad was in an excellent position to claim applications of that knowledge. Many of its unchallenged claims are limited to such applications." 689 F. 3d, at 1349.

Nor do we consider the patentability of DNA in which the order of the naturally occurring nucleotides has been altered. Scientific alteration of the genetic code presents a different inquiry, and we express no opinion about the application of §101 to such endeavors. We merely hold that genes and the information they encode are not patent eligible under §101 simply because they have been isolated from the surrounding genetic material.

* * *

For the foregoing reasons, the judgment of the Federal Circuit is affirmed in part and reversed in part.

It is so ordered.

Disclaimer: This information is provided for general legal information only and may not be totally accurate in a particular case in any other country. Questions involving interpretation of specific foreign laws should be addressed to foreign lawyers. It is not an opinion on any aspect of foreign, or international law. Mainstream Law Reports (MLR) does not intend to take a position on any aspect of any litigation.

IN THE FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES DISTRICT REGISTRY

GENERAL DIVISION

NSD 684 of 2011

Australian Securities & Investments Commission ..... Plaintiff

And:

Accounts Control Management Services Pty Ltd Acn 050 268 141 .... First Defendant

Acm Group Ltd Acn 127 181 097..... ..... Second Defendant

JUDGE : PERRAM J

DATE OF ORDER : 23 NOVEMBER 2012

WHERE MADE : SYDNEY

In no way debt collection agency is in a position to threaten litigation to intimidate debtors and recover debts-

This important recent ruling by the Federal Court considers the way that debt collection agencies use the threat of litigation to intimidate debtors and recover debts. Perram J found that collection officers threatening litigation against debtors constituted misleading and deceptive conduct. Even though ACM did have a legal department, it was not a common part of its business to refer debtors to. Furthermore, when matters were referred to the legal department, this was done on the recommendation of the section manager and not by individual collection officers. In no way were collection officers in a position to threaten litigation. Therefore, the manual was suggesting to collection officers that they should make statements which were misleading or deceptive. According to the evidence, the percentage of debtor accounts which were sent to the legal department was less than 0.5% and the number of accounts which incurred legal fees was less than 0.1%. It is hoped and expected that this case will encourage better adherence to key consumer protection laws by debt collectors - including provisions which protect consumers from misleading and deceptive conduct and from harassment and coercion. The case also clarifies that ASIC has the power to regulate and enforce consumer protection provisions, at least as they relate to credit debts.

THE COURT DECLARES THAT:

1. Between 24 November 2008 and 21 June 2010, the Defendants engaged in misleading and deceptive conduct in contravention of section 12DA(1) of the Australian Securities and Investments Commission Act 2001 (Cth), by representing to eight debtors who it pursued for payment of credit card and personal loan debts it had acquired from third party creditors that:.

(a) the Defendants were a firm which specialised in commencing legal proceedings against debtors for the recovery of debt;

(b) the Defendants frequently commenced legal proceedings against debtors for the recovery of debts;

(c) the debtor's matter had been referred to the Defendant's lawyer for the purpose of commencing legal proceedings;

(d) the Defendants had decided to commence legal proceedings against the debtor;

(e) the Defendants would commence legal proceedings immediately against the debtor;

(f) the Defendants would cause Sheriff's officers to serve documents upon the debtor;

(g) a collections officer was a "Senior Legal Officer";

(h) the Defendants were proceeding to bankrupt a debtor.

when none of this was true.

And by:

(i) contacting a debtor's employer and seeking information on the false premise that they needed the information to verify a credit application.

2. Between 24 November 2008 and 21 June 2010, the Defendants engaged in unduly harassing and coercive conduct in relation to eight debtors, in contravention of section 12DJ(1) of the Australian Securities and Investments Commission Act 2001 (Cth), by:

(a) Threatening to issue a warrant for a debtor's arrest;

(b) Threatening to inform a debtor's husband about her indebtedness;

(c) Threatening to call a debtor's friends and employer until she repaid the debt;

(d) Threatening to cause Sheriff's officers to attend a debtor's house to effect service when the Defendants did not intend to do so;

(e) Threatening to serve documents on a debtor at her place of employment when the Defendant's did not intend to do so;

(f) Threatening to take action against a debtor that would result in his taxi licence being revoked;

(g) Threatening to take action against a debtor that would result in him being unable to travel overseas;

(h) Calling a debtor's neighbour and friend with the expectation

that they would tell the debtor that the Defendants had contacted them;

(i) Calling a debtor's employer and eliciting confidential information about a debtor under the false pretence that the debtor had applied for credit;

(j) Calling a debtor's employer and eliciting confidential information about the debtor under the false pretence that the debtor would be served with legal papers; and

(k) Involving third parties, such as partners, friends and neighbours in the collection of debts with a view to putting pressure on the debtor to pay.

THE COURT ORDERS THAT:

3. The Second Defendant, by itself, its servants and its agents be restrained from engaging in the misleading and deceptive conduct declared in paragraphs 1 (a)-(i) above.

4. The Second Defendant, by itself, its servants and its agents be restrained from using undue harassment and coercion as declared in paragraphs 2(a)-(k) above.

5. The Defendants pay the costs of the Plaintiff.

Note: Entry of orders is dealt with in Rule 39.32 of the Federal Court Rules 2011.

IN THE FEDERAL COURT OF AUSTRALIA

NEW SOUTH WALES DISTRICT REGISTRY

GENERAL DIVISION

NSD 684 of 2011

Australian Securities & Investments Commission ..... Plaintiff

And:

Accounts Control Management Services Pty Ltd Acn 050 268 141 .... First Defendant

Acm Group Ltd Acn 127 181 097 .... Second Defendant

JUDGE : PERRAM J

DATE : 23 NOVEMBER 2012

PLACE : SYDNEY

REASONS FOR JUDGMENT

1. I delivered my primary judgment in this matter on 26 October 2012: Australian Securities and Investments Commission v Accounts Control Management Services Pty Ltd [2012] FCA 1164. The question which arises today is the form of the orders which should be made. In the primary judgment at [321], I said as follows:

321 I would not, however, be willing to make declarations in the form proposed by ASIC. These ran to 66 pages, and dealt, in detail, with the position of each of the debtors. Although I am prepared to entertain further debate, at present it seems to

me that an appropriate declaration would be that:

The Defendants engaged in misleading and deceptive conduct by informing debtors who they pursued on unpaid accounts they had acquired from third party creditors that:

(a) they were about to sue them; or

(b) the file was in the hands of their lawyers; or

(c) a decision had been made to sue them; or

(d) they would shortly be served with Court process by the Sheriff when none of this was true.

2. Consequent upon that indication, the parties have prepared competing short minutes of order. The present debate is twofold. The first concerns whether Prayers Three and Four sought by ASIC should be made. In their final articulated form, these were as follows:

THE COURT:

...

3. ORDERS THAT the Second Defendant take, and continue to take, all necessary steps including, without limitation,

a. The preparation of training manuals;

b. The holding of regular training sessions; and

c. The monitoring of communications

so as to ensure, as best it can, that its employees, servants and agents, in their attempts to recover from debtors, debts which have been purchased from third party creditors, do not engage in unduly harassing and coercive conduct, in contravention of section 12DJ(1) of the Australian Securities and Investments Commission Act 2001 (Cth) in the manner declared in paragraphs 2 (a) to (k) above.

4. ORDERS THAT the Second Defendant take, and continue to take, all necessary steps including, without limitation,

a. The preparation of training manuals;

b. The holding of regular training sessions; and

c. The monitoring of communications

so as to ensure, as best it can, that its employees, servants and agents, in their attempts to recover from debtors, debts which have been purchased from third party creditors, do not engage in misleading and deceptive conduct, in contravention of section 12DA(1) of the Australian Securities and Investments Commission Act 2001 (Cth) by making false representations to debtors in the manner declared in paragraphs 1 (a) to (i) above.

3. As opposed to that, ACM submitted that the following orders 3 and 4 should be made:

THE COURT:

...

3. ORDERS THAT the Second Defendant, by itself, its servants and its agents be restrained from engaging in the misleading and deceptive conduct declared in paragraphs 1 (a) - (i) above.

4. ORDERS THAT the Second Defendant, by itself, its servants and its agents be restrained from using undue harassment and coercion as declared in paragraphs 2(a)-(k) above.

4. The second debate between the parties concerned the question of whether ASIC's proposed Orders Five and Six should or should not contain the word 'permanently'. Paragraphs Five and Six of ASIC's proposed order is as follows.

THE COURT:

...

5. ORDERS THAT the Second Defendant, by itself, its servants and its agents be permanently restrained from engaging in the misleading and deceptive conduct declared in paragraphs 1 (a) to (i) above.

6. ORDERS THAT the Second Defendant, by itself, its servants and its agents be permanently restrained from engaging in undue harassment and coercion as declared in paragraphs 2 (a) to (k) above.

5. Dealing with the second question first, this debate is largely pointless. Both parties proceeded on the basis that the injunctions proposed by ASIC would be permanent in effect. This formed the basis for ASIC's submission that the addition of the word 'permanently' to the injunction did no harm, and the foundation of Ms Petrolo's argument for ACM that since it did nothing, it should be omitted.

6. Mr Stack, who appeared for ASIC, referred me to the proposition that this was a standard form in which injunctive relief had been granted for twenty years. I was not taken to any authority to make good that proposition, and I am not certain it is correct; but be that as it may, I do not see that there is any point in including in orders words which do no work. If there is ever a debate about what these orders mean, and I cannot see how there could be, the transcript of the argument before me together with these reasons for judgment will well show that the injunction was intended to be a permanent one. In those circumstances, I conclude that the orders suggested by ACM without the word 'permanently' are the appropriate ones.

7. I turn then to the substantive debate between the parties. Here, the

question was whether the orders of the Court should, in effect, be informed by [327] of the reasons for judgment. In those reasons, I indicated that I did not think that a bare injunction simply to forebear from engaging in undue harassment and coercion would be sufficient to bring about organisational change. ASIC's orders seek to deal with that problem to an extent by prescribing a régime of training manual preparation, training sessions and call monitoring. I accept that Prayers Three and Four proposed by ASIC do attempt to give effect to what I said at [327].

8. However, Ms Petrolo submitted that I ought not to take the course of making an order of that kind because (a) its terms were too vague, and (b) a mandatory injunction had not formed part of the relief which had been claimed by ASIC in its amended originating process. Mr Stack submitted that the relief claimed was informed by practical matters, and he emphasised both the words 'as best it can' and the specific reference to the declarations in Orders One and Two as indicating that the orders would have the practical consequence of requiring ACM to act on these matters.

9. On balance, I do not think that the order which has been articulated by ASIC overcomes the difficulties of the uncertainty of its operation, and I think there is force in the submission made by ACM that it would be difficult for me to embrace, in any event, what ASIC suggests without there being an amendment to its originating process. True it is that the idea of a mandatory injunction was one which finds its origins in [327] of the reasons for judgment, but that does not mean that ASIC is entitled without amendment if the point be taken against it to claim relief which is not otherwise sought.

10. I should say, however, that that is not the principal reason I decline the relief. The principal reason is because I do not think that the orders which have been proposed are sufficiently clear to make enforcement of them a meaningful enterprise. In those circumstances, I propose to make orders in accordance with the short minutes of order which have been articulated by ACM, and I make Declarations One and Two, and Orders Three, Four and Five in the document prepared by the solicitors for ACM.

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[পূর্বের সংখ্যার পর হইতে]

২৬। ১৯৯১ সনের ১৪নং আইনে চারটি নূতন ধারা যথাক্রমে ২৬ক, ২৬খ, ২৬গ ও ২৬ঘ এর সন্নিবেশ।– উক্ত আইনের ধারা ২৬ এর পর নিম্নরূপ চারটি নূতন ধারা যথাক্রমে ২৬ক, ২৬খ, ২৬গ ও ২৬ঘ সন্নিবেশিত হইবে, যথা:–

"২৬ক। ব্যাংক-কোম্পানী কর্তৃক অন্য কোন কোম্পানীর শেয়ার ধারণ।– (১) ধারা ২৬ এর বিধান সাপেক্ষে, কোন ব্যাংক-কোম্পানী অন্য কোন কোম্পানীর শেয়ার ধারণের ক্ষেত্রে নিম্নবর্ণিত পরিমাণের অধিক শেয়ার ধারণ করিবে না, যথা:–

(ক) ধারণকৃত শেয়ার বাজারমূল্যে উক্ত ব্যাংক-কোম্পানীর আদায়কৃত মূলধন, শেয়ার প্রিমিয়াম, সংবিধিবদ্ধ সঞ্চিতি ও রিটেইন্ড আর্নিংস এর মোট পরিমাণের পাঁচ শতাংশ,

(খ) উক্ত কোম্পানীর আদায়কৃত মূলধনের দশ শতাংশ:

তবে শর্ত থাকে যে, উপরোক্ত দফা (ক) ও দফা (খ) এ শেয়ার ধারণের পরিমাণ আদায়কৃত মূলধনের দশ শতাংশের বেশী হইতে পারিবে না:

আরো শর্ত থাকে যে, এই আইন কার্যকর হইবার তিন বৎসরের মধ্যে প্রত্যেক ব্যাংক-কোম্পানী এমনভাবে উহার পুঁজিবাজার বিনিয়োগ কোষ পুনর্গঠন করিবে যাহাতে ধারণকৃত সকল প্রকার শেয়ার, কর্পোরেট বন্ড, ডিবেঞ্চার, মিউচুয়াল ফান্ড ও অন্যান্য পুঁজিবাজার নিদর্শনপত্রের মোট বাজারমূল্য এবং পুঁজিবাজার কার্যক্রমে প্রত্যক্ষ বা পরোক্ষভাবে নিয়োজিত নিজস্ব সাবসিডিয়ারী কোম্পানী বা কোম্পানীসমূহ বা অন্য কোন কোম্পানী বা কোম্পানীসমূহে প্রদত্ত ঋণসুবিধা এবং পুঁজিবাজারে বিনিয়োগের উদ্দেশ্যে গঠিত কোন প্রকার তহবিলে প্রদত্ত চাঁদার পরিমাণ সমষ্টিগতভাবে উহার আদায়কৃত মূলধন, শেয়ার প্রিমিয়াম, সংবিধিবদ্ধ সঞ্চিতি ও রিটেইন্ড আর্নিংস এর মোট পরিমাণের ২৫ (পঁচিশ) শতাংশের অধিক না হয়।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, যদি কোন ব্যাংক-কোম্পানীর ব্যবস্থাপনা পরিচালক বা ম্যানেজার কোন কোম্পানীর পরিচালনায় সংশ্লিষ্ট থাকেন বা উহাতে তাহার কোন স্বার্থ থাকে, তাহা হইলে, এই আইন প্রবর্তনের তারিখ হইতে ১ (এক) বৎসর মেয়াদ অতিক্রান্ত হইবার পর, সংশ্লিষ্ট ব্যবস্থাপনা পরিচালক বা ম্যানেজার উক্ত কোম্পানীতে কোন শেয়ার ধারণ করিতে পারিবে না।

(৩) কোন ব্যাংক-কোম্পানী উপ-ধারা (১) এর বিধান লংঘন করিলে উক্ত ব্যাংক-কোম্পানী বাংলাদেশ ব্যাংক কর্তৃক অনূর্ধ বিশ লক্ষ টাকা পর্যন্ত জরিমানা আরোপিত হইবে এবং যদি উক্ত লংঘন অব্যাহত থাকে, তাহা হইলে উক্ত লংঘনের প্রথম দিনের পর প্রত্যেক দিনের জন্য অতিরিক্ত অনধিক পঞ্চাশ হাজার টাকা জরিমানা আরোপিত হইবে।

২৬খ। ঋণ-সীমার সাধারণ সীমাবদ্ধতা।– এই আইনে ভিন্নতর যাহা কিছুই থাকুন না কেন,

(১) কোন ব্যক্তি, প্রতিষ্ঠান বা গ্রুপকে প্রদত্ত বা প্রদেয় সকল ঋণ সুবিধার আসল অংকের মোট পরিমাণ উক্ত ব্যাংক-কোম্পানী কর্তৃক ধারা ১৩ এর উপ-ধারা (১) এর বিধান মোতাবেক রক্ষিত মূলধনের বাংলাদেশ ব্যাংক কর্তৃক, সময় সময়, এতদুদ্দেশ্যে নির্ধারিত হারের অধিক হইবে না:

তবে শর্ত থাকে যে, নির্ধারিত সীমা কোন অবস্থাতেই শতকরা ২৫ ভাগের অধিক হইবে না।

(২) কোন ব্যাংক-কোম্পানী কর্তৃক প্রদত্ত বা প্রদেয় এবং বাংলাদেশ ব্যাংক কর্তৃক জারীকৃত সংজ্ঞা অনুযায়ী নির্ণীত বৃহদাংক ঋণের সর্বমোট পরিমাণ উক্ত ব্যাংক-কোম্পানীর মোট ঋণ ও অগ্রিমের সেই শতাংশ অপেক্ষা অধিক হইবে না যাহা এতদুদ্দেশ্যে বাংলাদেশ ব্যাংক কর্তৃক সময় সময় নির্ধারিত হইবে।

(৩) সরকারকে অথবা সরকার কর্তৃক প্রদত্ত নিশ্চয়তার বিপরীতে প্রদত্ত বা প্রদেয় ঋণ কিংবা ১ (এক) বৎসরের চাইতে কম মেয়াদের আন্তঃব্যাংক লেনদেনের ক্ষেত্রে বাংলাদেশ ব্যাংক উপ-ধারা (১) এবং (২) এ বর্ণিত বিধানের প্রয়োগ হইতে অব্যাহতি প্রদান করিতে পারিবে।

(৪) কোন ব্যাংকিং গ্রুপের ক্ষেত্রে এই ধারায় বর্ণিত সীমাসমূহ কোন পদ্ধতিতে প্রয়োগ হইবে তাহা বাংলাদেশ ব্যাংক কর্তৃক এই ধারার অধীনে নির্দেশিত হইবে।

ব্যাখ্যা।– এই ধারার উদ্দেশ্য পূরণকল্পে "গ্রুপ" বলিতে কোন ঋণগ্রহীতা এবং তাহার সহিত প্রত্যক্ষ বা পরোক্ষভাবে জড়িত অন্য যে কোন ব্যক্তি, প্রতিষ্ঠান বা কোম্পানী যাহাদের একজনের আর্থিক স্বচ্ছলতা অন্যজনের আর্থিক স্বচ্ছলতাকে প্রভাবিত করে, অথবা তাহাদের মধ্যে বিদ্যমান সম্পর্কের কারণে একজনের দায় বা সুবিধা অন্যজনের উপর বর্তায়, এইরূপ সকলকে বুঝাইবে।

২৬গ। ব্যাংক-সংশ্লিষ্ট ব্যক্তির সহিত লেনদেন।– (১) কোন ব্যাংক কোম্পানী উক্ত ব্যাংকসংশ্লিষ্ট কোন ব্যক্তির সহিত বা তাহার স্বার্থের অনুকূলে এইরূপ কোন লেনদেন করিবে না যাহার শর্তাবলী ব্যাংক-সংশ্লিষ্ট নহে এমন

কোন গ্রাহকের সহিত সম্পাদিত লেনদেনের শর্তাবলী অপেক্ষা সহজতর।

(২) উপরি-উক্ত বিধান সত্ত্বেও, কোন ব্যাংক কোম্পানী কর্তৃক ব্যাংক-সংশ্লিষ্ট ব্যক্তিবর্গ বা তাহাদের স্বার্থের অনুকূলে প্রদত্ত ঋণ-সুবিধার মোট পরিমাণ উক্ত ব্যাংক-কোম্পানীর টিয়ার-১ মূলধনের শতকরা ১০ ভাগ এর অধিক হইবে না।

ব্যাখ্যা।– এই উপ-ধারার উদ্দেশ্য পূরণকল্পে "টিয়ার-১ মূলধন" অর্থ ধারা ১৩ এর উপ-ধারা (১) এর বিধান মোতাবেক বাংলাদেশ ব্যাংক কর্তৃক জারীকৃত মূলধন সংরক্ষণ সংক্রান্ত নীতিমালায় সংজ্ঞায়িত টিয়ার-১ মূলধন।

(৩) বাংলাদেশ ব্যাংক হইতে এতদুদ্দেশ্যে অব্যাহতিপ্রাপ্ত ন্যূনতম অংকের ঋণের ক্ষেত্র ব্যতীত অন্য সকল ক্ষেত্রে ব্যাংক-সংশ্লিষ্ট কোন ব্যক্তিকে ঋণ প্রদানের পূর্বে পরিচালনা পর্ষদের অনুমতি গ্রহণ করিতে হইবে এবং ব্যাংক-সংশ্লিষ্ট কোন ব্যক্তি বা তাহার স্বার্থের অনুকূলে প্রদত্ত প্রতিটি ঋণের বিষয়ে যথাশীঘ্র পর্ষদকে অবহিত করিতে হইবে।

(৪) এই ধারার বিধান লংঘন করিয়া ব্যাংক-সংশ্লিষ্ট কোন ব্যক্তি বা তাহার স্বার্থের অনুকূলে ঋণ প্রদান করা হইলে উহা তাৎক্ষণিকভাবে আদায় করিতে হইবে এবং এইরূপ লংঘন পরিচালনা পর্ষদ সদস্যদের জ্ঞাতসারে ঘটিয়া থাকিলে তাহারা এককভাবে ও যৌথভাবে উক্ত ঋণের আসল, সুদ ও অন্যান্য সমুদয় চার্জ পরিশোধের জন্য দায়ী থাকিবেন।

(৫) ব্যাংক-সংশ্লিষ্ট কোন ব্যক্তির সহিত বা তাহার স্বার্থের অনুকূলে ঋণ প্রদানের বিষয়ে এতদুদ্দেশ্যে বাংলাদেশ ব্যাংক কর্তৃক জারীকৃত নির্দেশনায় উল্লিখিত সংজ্ঞা কিংবা অতিরিক্ত শর্তাদি পরিপালনীয় হইবে।

(৬) বাংলাদেশে এক বা একাধিক শাখা পরিচালনাকারী বাংলাদেশের বাহিরে নিবন্ধিত ব্যাংক-কোম্পানীর ক্ষেত্রে উপ-ধারা (২) ও (৩) এর বিধানসমূহ প্রযোজ্য হইবে না।

ব্যাখ্যা।– এই ধারায় "ব্যাংক-সংশ্লিষ্ট কোন ব্যক্তি" অর্থে বুঝাইবে–

(ক) কোন ব্যাংক-কোম্পানীর পরিচালক, ব্যবস্থাপনা পরিচালক বা প্রধান নির্বাহী কিংবা উল্লেখযোগ্য শেয়ারধারক;

(খ) কোন ব্যাংক-কোম্পানীর পরিচালক, ব্যবস্থাপনা পরিচালক বা প্রধান নির্বাহী কিংবা উল্লেখযোগ্য শেয়ারধারকের স্বামী বা স্ত্রী;

(গ) এমন কোন কোম্পানী যেখানে ব্যাংক-কোম্পানীর কোন পরিচালক বা উল্লেখযোগ্য শেয়ারধারক একজন পরিচালক বা উল্লেখযোগ্য শেয়ারধারক;

(ঘ) কোন কোম্পানীতে কোন ব্যাংক-কোম্পানী উল্লেখযোগ্য পরিমাণ শেয়ারধারণ করিলে উক্ত কোম্পানীর কোন উল্লেখযোগ্য শেয়ারধারক;

(ঙ) বাংলাদেশ ব্যাংক কর্তৃক জারীকৃত বিধান অনুযায়ী এমন কোন ব্যক্তি, প্রতিষ্ঠান বা কোম্পানী যিনি বা যাহারা দফা (ক)-(ঘ) এ বর্ণিত সম্পর্কের ন্যায় কোন ব্যাংক-কোম্পানীর সহিত সম্পর্কিত।

২৬ঘ। ব্যাংক-কর্মচারীর ঋণ-সীমা।– কোন ব্যাংক-কোম্পানী উহার কর্মকর্তা-কর্মচারীদেরকে বা উহার সাবসিডিয়ারী কোম্পানীসমূহের কর্মকর্তা-কর্মচারীদেরকে এতদুদ্দেশ্যে বাংলাদেশ ব্যাংক কর্তৃক, সময় সময়, নির্ধারিত শর্ত ও সীমার ব্যত্যয় করিয়া কোন ঋণ-সুবিধা প্রদান করিবে না।"।

২৭। ১৯৯১ সনের ১৪ নং আইনের ধারা ২৭ এর সংশোধন।– উক্ত আইনের ধারা ২৭ এর–

(ক) উপ-ধারা (১) এর পরিবর্তে নিম্নরূপ উপ-ধারা (১) প্রতিস্থাপিত হইবে, যথা:–

"(১) কোন ব্যাংক-কোম্পানী,–

(ক) উহার নিজস্ব শেয়ারকে জামানত হিসাবে রাখিয়া কোন ঋণ, অগ্রিম, গ্যারান্টি বা অন্য কোন আর্থিক সুবিধা প্রদান করিবে না;"

(খ) ইহার কোন পরিচালককে "জামানতী ঋণ বা অগ্রিম" ব্যতীত অন্য কোনরূপ ঋণ বা অগ্রিম মঞ্জুর করিবে না বা ইহার কোন পরিচালক কর্তৃক দায় গ্রহণের ভিত্তিতে "জামানতী ঋণ বা অগ্রিম" ব্যতীত ঋণ, অগ্রিম, গ্যারান্টি বা অন্য কোন আর্থিক সুবিধা প্রদান করিবে না;

(গ) বিনা জামানতে নিম্নবর্ণিত ব্যক্তি বা প্রতিষ্ঠানকে কোন ঋণ বা অগ্রিম মঞ্জুর করিবে না, অথবা এই সকল ব্যক্তি বা প্রতিষ্ঠান কর্তৃক দায় গ্রহণের ভিত্তিতে কোন ঋণ ও অগ্রিম প্রদান করিবে না,–

(অ) ইহার কোন পরিচালকের পরিবারের কোন সদস্য;

(আ) এমন কোন স্বার্থ সংশ্লিষ্ট প্রতিষ্ঠান বা প্রাইভেট কোম্পানী যাহাতে উক্ত ব্যাংক-কোম্পানী বা উহার কোন পরিচালক বা উহার কোন পরিচালকের পরিবারের কোন সদস্য পরিচালক, মালিক বা অংশীদার রহিয়াছেন;

(ই) এমন কোন পাবলিক লিমিটেড কোম্পানী, যাহা উক্ত ব্যাংক-কোম্পানী বা উহার কোন পরিচালক বা উহার কোন

পরিচালকের পরিবারের কোন সদস্য কর্তৃক কোনভাবে নিয়ন্ত্রিত হয়, অথবা যাহাতে উক্ত ব্যক্তিদের এমন পরিমাণ শেয়ার থাকে যাহা দ্বারা তাহারা অন্যূন বিশ শতাংশ ভোটদান ক্ষমতার অধিকারী হন।";

(খ) উপ-ধারা (২) এর–

(অ) "ঋণ বা অগ্রিম" শব্দগুলির পরিবর্তে "ঋণ, অগ্রিম, গ্যারান্টি বা অন্য কোন আর্থিক সুবিধা" শব্দগুলি ও কমাগুলি প্রতিস্থাপিত হইবে;

(আ) ব্যাখ্যা অংশে উল্লিখিত "উপ-ধারায়" শব্দটি ও হাইফেনের পরিবর্তে "ধারায়" শব্দটি প্রতিস্থাপিত হইবে।

২৮। ১৯৯১ সনের ১৪নং আইনের ধারা ২৭ক এর সংশোধন।– উক্ত আইনের ধারা ২৭ক এর "পরিচালক পর্ষদের সম্মতি" শব্দগুলির পরিবর্তে "ঋণ বা বিনিয়োগ অনুমোদনকারী কর্তৃপক্ষের একস্তর উর্দ্ধতন কর্তৃপক্ষের অনুমোদন" শব্দগুলি প্রতিস্থাপিত হইবে।

২৯। ১৯৯১ সনের ১৪ নং আইনের ধারা ২৮ এর সংশোধন।– উক্ত আইনের ধারা ২৮ এর–

(ক) উপ-ধারা (১) এ উল্লিখিত "ঋণ" শব্দটির পরিবর্তে "ঋণ বা উহার অংশ বা উহার উপর অর্জিত সুদ" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (২) এর পরিবর্তে নিম্নরূপ উপ-ধারা (২) প্রতিস্থাপিত হইবে, যথা:–

"(২) উপ-ধারা (১) এর বিধান লঙ্ঘনক্রমে কোনরূপ মওকুফ করা হইলে উহা অবৈধ হইবে, এবং অনুরূপ মওকুফের জন্য উহার যে সকল পরিচালক বা কর্মকর্তা দায়িত্বপ্রাপ্ত ছিলেন তাহাদের প্রত্যেকে উক্ত লঙ্ঘনের জন্য দোষী বলিয়া গণ্য হইবেন এবং অনূর্ধ্ব তিন বৎসর কারাদণ্ডে বা অনূর্ধ্ব তিন লক্ষ টাকা অর্থ দণ্ডে বা উভয় দণ্ডে দণ্ডনীয় হইবেন।";

(গ) উপ-ধারা (২) এর পর নিম্নরূপ একটি ব্যাখ্যা সংযোজিত হইবে, যথা:–

"**ব্যাখ্যা।**– এই ধারায় "পরিচালক" বলিতে ক্ষেত্রমত, পরিচালকের স্ত্রী, স্বামী, পিতা, মাতা, পুত্র, কন্যা, ভাই, বোন এবং ঐ পরিচালকের উপর নির্ভরশীল সকলকে বুঝাইবে।"।

৩০। ১৯৯১ সনের ১৪ নং আইনের ধারা ২৯ এর সংশোধন।– উক্ত আইনের ধারা ২৯ এর উপ-ধারা (৩)এ উল্লিখিত "(ক) ও (খ)" অক্ষরগুলি ও বন্ধনীগুলির পরিবর্তে "(ক) হইতে (চ)" অক্ষরগুলি, শব্দ ও বন্ধনীগুলি প্রতিস্থাপিত হইবে।

৩১। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩০ এর সংশোধন।– উক্ত আইনের ধারা ৩০ এ উল্লিখিত "শরিয়ত" শব্দটির পরিবর্তে "শরীয়াহ" শব্দটি প্রতিস্থাপিত হইবে।

৩২। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩১ এর সংশোধন।– উক্ত আইনের ধারা ৩১ এর–

(ক) উপ-ধারা (১) এ উল্লিখিত "কোম্পানী" শব্দটির পরিবর্তে "ব্যক্তি, প্রতিষ্ঠান বা কোম্পানী" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (৩) এর শর্তাংশে উল্লিখিত "১৩(১)" সংখ্যাগুলি ও বন্ধনীর পরিবর্তে "১৩" সংখ্যা প্রতিস্থাপিত হইবে;

(গ) উপ-ধারা (৪) এর দফা (গ) এর পরিবর্তে নিম্নরূপ দফা (গ) প্রতিস্থাপিত হইবে, যথা:–

"(গ) বাংলাদেশের বাহিরে নিবন্ধিত কোন ব্যাংক-কোম্পানীর ক্ষেত্রে, কোম্পানীটি যে দেশে নিবন্ধনকৃত সেই দেশের সরকার বা আইন বাংলাদেশে নিবন্ধনকৃত কোন ব্যাংক-কোম্পানীকে সেই সকল সুবিধা প্রদান করে যে সব সুবিধা বাংলাদেশের বাহিরে নিবন্ধনকৃত কোম্পানীটিকে বাংলাদেশ সরকার বা বাংলাদেশী আইন প্রদান করে, এবং কোম্পানীটি বাংলাদেশের বাহিরে নিবন্ধনকৃত কোম্পানীর ব্যাপারে এই আইনের যে সকল বিধান প্রযোজ্য সে সকল বিধান মানিয়া চলে।";

(ঘ) উপ-ধারা (৬) এ উল্লিখিত "সরকারের নিকট আপীল দায়ের" শব্দটির পরিবর্তে "বাংলাদেশ ব্যাংকের পরিচালনা-পর্ষদের নিকট তাহা পুনর্বিবেচনার আবেদন" শব্দগুলি প্রতিস্থাপিত হইবে;

(ঙ) উপ-ধারা (৭) বিলুপ্ত হইবে।

৩৩। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩২ এর সংশোধন।– উক্ত আইনের ধারা ৩২ এর উপ-ধারা (৩) এ উল্লিখিত "জানাইয়া দিতে" শব্দগুলির পরিবর্তে "জানিয়া নিতে" শব্দগুলি প্রতিস্থাপিত হইবে।

৩৪। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩৩ এর সংশোধন।– উক্ত আইনের ধারা ৩৩ এর–

(ক) উপ-ধারা (২) এর পরিবর্তে নিম্নরূপ উপ-ধারা (২) প্রতিস্থাপিত হইবে, যথা:–

"(২) কোন ব্যাংক-কোম্পানী কর্তৃক Bangladesh Bank Order, 1972 (P.O No. 127 of 1972) এর section 36 কিংবা ধারা ২৫ এর উদ্দেশ্য পূরণকল্পে বাংলাদেশ ব্যাংকের নিকট চলতি হিসাবে রক্ষিত নগদ জমার অতিরিক্ত

অর্থ এবং নিজের নিকট বা বাংলাদেশ ব্যাংকের কোন প্রতিনিধি ব্যাংকের নিকটে চলতি হিসাবে জমা অর্থ এবং/বা বাংলাদেশ ব্যাংকে লাভক্ষতির ভাগাভাগি ভিত্তিক জমা হিসাবে রক্ষিত অর্থ বা বাংলাদেশ ব্যাংক কর্তৃক নির্দেশিত অন্য কোন হিসাবে রক্ষিত অর্থ উপ-ধারা (১) এ উল্লিখিত অর্থ গণনার ক্ষেত্রে নগদ অর্থ হিসাবে গণ্য হইবে।

ব্যাখ্যা।– এই উপ-ধারায় "প্রতিনিধি ব্যাংক" বলিতে কোন তফসিলি ব্যাংক-কোম্পানীর এমন শাখাকে বুঝাইবে যাহা বাংলাদেশ ব্যাংকের পক্ষে ক্লিয়ারিং হাউজ পরিচালনা করে।";

(খ) উপ-ধারা (৫) এ উল্লিখিত "সুদের সর্বোচ্চ" শব্দগুলি বিলুপ্ত হইবে।

৩৫। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩৪ এর সংশোধন।– উক্ত আইনের ধারা ৩৪ এর–

(ক) উপ-ধারা (১) এর শর্তাংশে উল্লিখিত "শর্তাংশ" শব্দটির পরিবর্তে "শতাংশ" শব্দটি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (৩) এর দফা (খ) এর পরিবর্তে নিম্নরূপ দফা (খ) প্রতিস্থাপিত হইবে, যথা:–

"(খ) "বাংলাদেশের অভ্যন্তরে দায়" অর্থে আদায়কৃত মূলধন ও সংরক্ষিত সঞ্চিতিসমূহ বা ব্যাংক-কোম্পানীর লাভ-ক্ষতির হিসাবে উল্লিখিত আকলন স্থিতি অন্তর্ভুক্ত হইবে না।"।

৩৬। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩৫ এর সংশোধন।– উক্ত আইনের ধারা ৩৫ এর–

(ক) উপ-ধারা (১) এর–

(অ) দফা (ক) এ উল্লিখিত "বাংলাদেশী মুদ্রায়" শব্দগুলি বিলুপ্ত হইবে;

(আ) দফা (গ) এ উল্লিখিত "বাংলাদেশী মুদ্রায়" শব্দগুলি বিলুপ্ত হইবে;

(ই) প্রান্তঃস্থিত দাঁড়ির পরিবর্তে সেমিকোলন বসিবে এবং অতঃপর নিম্নরূপ শব্দগুলি ও দাঁড়ি বসিবে, যথা:–

"ড্রাফট বা বিনিময় দলিলের পাওনাদারের ঠিকানা পাওয়া না গেলে আবেদনকারীর ঠিকানায় অনুরূপ নোটিস প্রেরণ করিবে।";

(খ) উপ-ধারা (২) এর দফা (গ) এর পর নিম্নরূপ দফা (ঘ) সন্নিবেশিত হইবে, যথা:–

"(ঘ) বাংলাদেশ ব্যাংকে জমা প্রদানের পর সংশ্লিষ্ট ব্যাংক-কোম্পানী তাহাদের ওয়েবসাইটে প্রেরিত অদাবীকৃত আমানত ও মূল্যবান সামগ্রীর তালিকা ১(এক) বৎসর যাবৎ প্রকাশ করিবে।";

(গ) উপ-ধারা (৯) এ উল্লিখিত "একবার করিয়া" শব্দগুলির পর "অথবা বাংলাদেশ ব্যাংকের ওয়েবসাইটে" শব্দগুলি সন্নিবেশিত হইবে;

(ঘ) উপ-ধারা (১৩) এ উল্লিখিত "এক বছরের" শব্দগুলির পরিবর্তে "দুই বৎসরের" শব্দগুলি প্রতিস্থাপিত হইবে;

(ঙ) উপ-ধারা (১৪) এ দুইবার উল্লিখিত "এক" শব্দটির পরিবর্তে উভয় স্থানে "দুই" শব্দটি প্রতিস্থাপিত হইবে;

(চ) উপ-ধারা (১৫) এর পরিবর্তে নিম্নরূপ উপ-ধারা (১৫) প্রতিস্থাপিত হইবে, যথা:–

"(১৫) কোন ব্যাংক-কোম্পানী কর্তৃক চেক, ড্রাফট বা বিনিময় বিলের কোন পাওনাদার বা সুবিধা প্রাপককে বা যে ব্যক্তির নামে কোন মূল্যবান সামগ্রী রহিয়াছে সেই ব্যক্তিকে নোটিস প্রদানের সম্পর্কে উপ-ধারা (১) এ বা বাংলাদেশ ব্যাংক কর্তৃক অদাবীকৃত অর্থ বা মূল্যবান সামগ্রীর তালিকা প্রকাশ সম্পর্কে উপ-ধারা (৯) এ যাহা কিছুই থাকুক না কেন, সংশ্লিষ্ট ব্যক্তি আপাততঃ বাংলাদেশে বসবাস না করার ক্ষেত্রে ও তাহা ব্যাংকের গোচরে থাকিলে, কোন আমানত, দলিল বা মূল্যবান সামগ্রীর বিলি-বন্দোবস্তের ব্যাপারে সরকার কর্তৃক নির্ধারিত পদ্ধতি ও নিয়মাবলী অনুসরণ করিতে হইবে।";

(ছ) উপ-ধারা (১৮) এর দফা (খ) এর পরিবর্তে নিম্নরূপ দফা (খ) প্রতিস্থাপিত হইবে, যথাঃ–

"(খ) "প্রামাণিক দলিল ও অন্যান্য গুরুত্বপূর্ণ প্রমাণাদি উপস্থাপনে বাধ্যকরণ;"।

৩৭। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩৬ এর সংশোধন।– উক্ত আইনের ধারা ৩৬ এর উপ-ধারা (১) এর পরিবর্তে নিম্নরূপ উপ-ধারা (১) প্রতিস্থাপিত হইবে, যথা:–

"(১) প্রত্যেক ব্যাংক-কোম্পানী উহার সম্পদ ও দায় সম্পর্কে প্রতি বৎসরে ত্রৈমাসিক ভিত্তিতে একটি বিবরণী নির্ধারিত ফরম ও পদ্ধতিতে বাংলাদেশ ব্যাংকের নিকট দাখিল করিবে।"।

৩৮। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩৭ এর সংশোধন।– উক্ত আইনের ধারা ৩৭ এর পরিবর্তে নিম্নরূপ ধারা ৩৭ প্রতিস্থাপিত হইবে, যথা:–

"**৩৭। তথ্যাদি প্রকাশের ক্ষমতা।**– বাংলাদেশ ব্যাংক, জনস্বার্থে প্রয়োজন মনে করিলে, ধারা ২৭কক এর উপ-ধারা (১) এর আওতায় প্রাপ্ত খেলাপী ঋণ গ্রহীতাদের তালিকা এবং এই আইনের অধীন সংগৃহীত ৩০ দিনের অধিক সময় অনাদায়ী ঋণ ও অগ্রিম

সম্পর্কিত কোন তথ্য কিংবা ব্যাংক ব্যবসা সম্পর্কিত যে কোন তথ্য একীভূত অবস্থায় বা অন্য কোনভাবে প্রকাশ করিতে পারিবে।"।

৩৯। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩৮ এর সংশোধন।– উক্ত আইনের ধারা ৩৮ এর–

(ক) উপ-ধারা (১) এ উল্লিখিত "অর্থ বৎসর" শব্দগুলির পরিবর্তে "ইংরেজী পঞ্জিকা বৎসর" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (৪) এ উল্লিখিত "ফরমসমূহ" শব্দটির পরিবর্তে "ফরম ও নির্দেশনাসমূহ" শব্দগুলি প্রতিস্থাপিত হইবে;

(গ) ব্যাখ্যা অংশ বিলুপ্ত হইবে।

৪০। ১৯৯১ সনের ১৪ নং আইনের ধারা ৩৯ এর সংশোধন।– উক্ত আইনের ধারা ৩৯ এর–

(ক) উপ-ধারা (৩) এর–

(অ) দফা (ঘঘ) এ উল্লিখিত "করা হইবে" শব্দগুলির পরিবর্তে "করা হয়" শব্দগুলি প্রতিস্থাপিত হইবে;

(আ) দফা (ঙ) এর পরিবর্তে নিম্নরূপ দফা (ঙ) প্রতিস্থাপিত হইবে, যথাঃ–

"(ঙ) আর্থিক প্রতিবেদন দেশে প্রচলিত বিধিবিধান ও হিসাবমান এবং বাংলাদেশ ব্যাংক কর্তৃক এতদুদ্দেশ্যে নির্দেশিত হিসাবমান অনুযায়ী নির্ধারিত মানসম্পন্ন হইয়াছে কিনা;";

(ই) দফা (ছ) এর পর নিম্নরূপ তিনটি নূতন দফা যথাক্রমে (ছছ), (ছছছ) ও (ছছছছ) সন্নিবেশিত হইবে, যথা:–

"(ছছ) অভ্যন্তরীণ নিরীক্ষা, অভ্যন্তরীণ নিয়ন্ত্রণ ও ঝুঁকি ব্যবস্থাপনা সম্পর্কিত কাজের জন্য অনুসৃত পদ্ধতির পর্যাপ্ততা এবং প্রযোজনীয় ক্ষেত্রে সংস্কারের সুপারিশ;

(ছছছ) ব্যাংক-কোম্পানী কিংবা উহার কোন সহযোগী প্রতিষ্ঠানের কোন কর্মকর্তা-কর্মচারী কর্তৃক সংঘটিত যে কোন জালিয়াতি, বা কোন অনিয়ম, বা প্রশাসনিক কোন ত্রুটি-বিচ্যুতি বা ব্যাংক-কোম্পানীর জন্য ক্ষতিকর কোন কিছু পরিলক্ষিত হইলে তাহা;

(ছছছছ) ব্যাংক-কোম্পানী সাবসিডিয়ারীর ক্ষেত্রে ঐ সকল সাবসিডিয়ারী কোম্পানী নিরীক্ষিত হইয়াছে কি না ও তাহার হিসাব সঠিকভাবে একত্রীভূত করতঃ ব্যাংক-কোম্পানীর আর্থিক প্রতিবেদনে অন্তর্ভুক্ত করা হইয়াছে কি না;";

(খ) উপ-ধারা (৪) এর দফা (গ) এ উল্লিখিত "মূলধন" শব্দটির পরিবর্তে "ধারা ১৩ এর উপ-ধারা (১) এর বিধান অনুযায়ী সংরক্ষিত মূলধন আবশ্যক মূলধনের" শব্দগুলি, সংখ্যাগুলি ও বন্ধনী প্রতিস্থাপিত হইবে;

(গ) উপ-ধারা (৪) এর পর নিম্নরূপ দুইটি নূতন উপ-ধারা (৫) ও (৬) সংযোজিত হইবে, যথা ঃ–

"(৫) কোম্পানী আইন বা অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, এই ধারা মোতাবেক ব্যাংক-কোম্পানীতে নিয়োজিত কোন নিরীক্ষক উপ-ধারা (১), (২) ও (৩) এ বর্ণিত বিষয়, বা বাংলাদেশ ব্যাংক কর্তৃক নির্দেশিত বিষয়, ব্যতীত উক্ত ব্যাংক-কোম্পানীতে অন্য কোন প্রকার কর্মকাণ্ড বা সেবা প্রদানে লিপ্ত হইতে পারিবে না:

তবে শর্ত থাকে যে, ব্যাংক-সংশ্লিষ্ট কোন ব্যক্তি বা ব্যাংকের কোন এজেন্ট বা কোন প্রতিনিধি এবং ব্যাংকের সহিত আমানত ব্যতীত অন্য কোনরূপ স্বার্থের সংশ্লেষ রহিয়াছে এমন ব্যক্তি ব্যাংক-কোম্পানীর নিরীক্ষক বা নিরীক্ষকদলের কোন সদস্য হইতে পারিবেন না।

(৬) বাংলাদেশ ব্যাংক এতদুদ্দেশ্যে বিধান জারী করিয়া একটি নির্দিষ্ট মেয়াদ অতিবাহিত হইবার পর নিরীক্ষকগণের পালাবদল বাধ্যতামূলক করিতে পারিবে।"।

৪১। ১৯৯১ সনের ১৪ নং আইনের ধারা ৪০ এর সংশোধন।– উক্ত আইনের ধারা ৪০ এ দুইবার উল্লিখিত "তিন" শব্দটির পরিবর্তে উভয় স্থানে "দুই" শব্দটি প্রতিস্থাপিত হইবে।

৪২। ১৯৯১ সনের ১৪ নং আইনের ধারা ৪২ এর সংশোধন।– উক্ত আইনের ধারা ৪২ এর পরিবর্তে নিম্নরূপ ধারা ৪২ প্রতিস্থাপিত হইবে, যথা:–

"৪২। বাংলাদেশে কার্যরত ব্যাংক-কোম্পানী কর্তৃক নিরীক্ষীত ব্যালেন্সশীট প্রদর্শন।– বাংলাদেশে কার্যরত কোন ব্যাংক-কোম্পানীকে ধারা ৩৮ এর অধীন প্রস্তুতকৃত ইহার সর্বশেষ ব্যালেন্সশিট এবং লাভক্ষতির হিসাব ব্যাংকের আমানতকারী, শেয়ারহোল্ডার ও নিয়ন্ত্রণকারী কর্তৃপক্ষসহ অন্যান্য ব্যবহারকারীগণ ব্যাংক সম্পর্কে যাহাতে সহজে তথ্য লাভ করিতে পারেন সেই জন্য বাংলাদেশ ব্যাংকে দাখিলের এক সপ্তাহের মধ্যে বহুল প্রচারিত একটি জাতীয় বাংলা দৈনিক ও একটি ইংরেজী দৈনিক পত্রিকায় প্রচার ও ব্যাংকের ওয়েবসাইটে উক্ত বিবরণী প্রকাশ করিতে হইবে এবং উক্তরূপ প্রকাশ উহার পরবর্তী ব্যালেন্সশীট ও হিসাব একইভাবে প্রকাশিত না হওয়া পর্যন্ত উহা অব্যাহত থাকিবে।"।

৪৩। ১৯৯১ সনের ১৪ নং আইনের ধারা ৪৪ এর সংশোধন।– উক্ত আইনের ধারা ৪৪ এর–

(ক) উপ-ধারা (১) এ উল্লিখিত "এবং সরকার কর্তৃক নির্দেশিত হইলে অনুরূপ পরিদর্শন করাইবে" শব্দগুলি বিলুপ্ত হইবে;

(খ) উপ-ধারা (২) এ উল্লিখিত "যদি উক্ত ব্যাংক-কোম্পানী অনুরোধ করে, বা এইরূপ পরীক্ষার ভিত্তিতে উহার বিরুদ্ধে কোন ব্যবস্থা গ্রহণের প্রস্তাব বিবেচনাধীন থাকে, তাহা হইলে বাংলাদেশ ব্যাংক উক্ত পরীক্ষার ভিত্তিতে প্রস্তুতকৃত প্রতিবেদনের একটি অনুলিপি উক্ত ব্যাংক-কোম্পানীকে সরবরাহ করিবে" শব্দগুলি, কমাগুলি ও হাইফেনগুলির পরিবর্তে "বাংলাদেশ ব্যাংক আবশ্যক মনে করিলে উক্ত পরীক্ষার ভিত্তিতে প্রস্তুতকৃত প্রতিবেদনের একটি অনুলিপি উক্ত ব্যাংক-কোম্পানীকে সরবরাহ করিতে পারিবে" শব্দগুলি ও হাইফেন প্রতিস্থাপিত হইবে;

(গ) উপ-ধারা (৫) এর পরিবর্তে নিম্নরূপ উপ-ধারা (৫) প্রতিস্থাপিত হইবে, যথা:–

"(৫) বাংলাদেশ ব্যাংক এই ধারার অধীন কোন পরিদর্শন বা পরীক্ষাকার্য সম্পন্ন করার পর উক্ত প্রতিবেদন বিবেচনান্তে যদি এইরূপ অভিমত পোষণ করে যে, উক্ত ব্যাংক-কোম্পানীর কার্যাবলী উহার আমানতকারীদের স্বার্থের পরিপন্থী পদ্ধতিতে পরিচালিত হইতেছে, তাহা হইলে বাংলাদেশ ব্যাংক, লিখিত আদেশ দ্বারা–

(ক) উক্ত ব্যাংক-কোম্পানী কর্তৃক নূতন আমানত গ্রহণ নিষিদ্ধ করিতে পারিবে;

(খ) ধারা ৬৪ এর উপ-ধারা (৪) এর অধীন উক্ত ব্যাংক-কোম্পানীর অবসায়নের উদ্দেশ্যে আবেদন দাখিল করিতে পারিবে;

(গ) আমানতকারীদের স্বার্থ রক্ষার্থে বাংলাদেশ ব্যাংক যেইরূপ সংগত মনে করে সেইরূপ আদেশ প্রদান কিংবা কার্যক্রম গ্রহণ করিতে পারিবে।";

(ঘ) উপ-ধারা (৬) এর পরিবর্তে নিম্নরূপ উপ-ধারা (৬) প্রতিস্থাপিত হইবে, যথা:–

"(৬) বাংলাদেশ ব্যাংক, সংশ্লিষ্ট ব্যাংক-কোম্পানীকে যুক্তিসংগত নোটিশ প্রদানের পর, তৎকর্তৃক প্রস্তুতকৃত প্রতিবেদন বা উহার অংশ বিশেষ প্রকাশ করিতে পারিবে।

ব্যাখ্যা।– এই ধারার উদ্দেশ্য পূরণকল্পে "ব্যাংক-কোম্পানী" বলিতে–

(ক) বাংলাদেশের বাহিরে নিবন্ধকৃত কোন ব্যাংক-কোম্পানীর ক্ষেত্রে, বাংলাদেশে অবস্থিত উহার সকল শাখাকে বুঝাইবে; এবং

(খ) বাংলাদেশে নিবন্ধনকৃত কোন ব্যাংক-কোম্পানীর ক্ষেত্রে, বাংলাদেশের ভিতরে বা বাহিরে অবস্থিত উহার সকল শাখা ও সাবসিডিয়ারী কোম্পানীকে বুঝাইবে।"।

৪৪। ১৯৯১ সনের ১৪ নং আইনের ধারা ৪৫ এর সংশোধন।– উক্ত আইনের ধারা ৪৫ এর উপ-ধারা (২) এর পর নিম্নরূপ একটি নূতন উপ-ধারা (৩) সংযোজিত হইবে, যথা:–

"(৩) উপ-ধারা (১) ও (২) এর বিধানাবলী সরকারি মালিকানাধীন বাণিজ্যিক ব্যাংক ও বিশেষায়িত ব্যাংকসহ সকল ব্যাংক-কোম্পানীর ক্ষেত্রে সমভাবে প্রযোজ্য হইবে।"।

৪৫। ১৯৯১ সনের ১৪ নং আইনের ধারা ৪৬ এর সংশোধন।– উক্ত আইনের ধারা ৪৬ এর–

(ক) উপ-ধারা (১) এ উল্লিখিত "প্রধান নির্বাহী" শব্দগুলির পরিবর্তে "প্রধান নির্বাহী কর্তৃক" শব্দগুলি এবং "আমানতকারীদের ক্ষতিকর" শব্দগুলির পরিবর্তে "আমানতকারীদের জন্য ক্ষতিকর" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (৬) এ উল্লিখিত "কোন চেয়ারম্যান, পরিচালক, প্রধান নির্বাহী" শব্দগুলি ও কমাগুলির পরিবর্তে "কোন চেয়ারম্যান বা পরিচালক" শব্দগুলি এবং উক্তরূপ চেয়ারম্যান, পরিচালক বা প্রধান নির্বাহীর" শব্দগুলি ও কমার পরিবর্তে "উক্তরূপ চেয়ারম্যান বা পরিচালকের" শব্দগুলি প্রতিস্থাপিত হইবে।

৪৬। ১৯৯১ সনের ১৪ নং আইনের ধারা ৪৭ এর সংশোধন।– উক্ত আইনের ধারা ৪৭ এর–

(ক) উপ-ধারা (১) এর দফা (ক) উল্লিখিত "এই" শব্দটির পরিবর্তে "এর" শব্দটি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (৪) এর পর নিম্নরূপ একটি নূতন উপ-ধারা (৫) সংযোজিত হইবে, যথা:–

"(৫) উপ-ধারার (৩) এর বিধানাবলী সত্ত্বেও উক্তরূপ নিয়োজিত কোন ব্যক্তির জন্য বাংলাদেশ ব্যাংক নিম্নবর্ণিত ক্ষেত্রে বিধানাবলী জারী করিতে পারিবে:

(ক) উক্ত ব্যক্তি কর্তৃক প্রয়োগযোগ্য ক্ষমতার সীমা;

(খ) উক্ত ব্যক্তির কাজের সহিত সম্পর্কিত ব্যয়ের বিষয়;

(গ) উক্ত ব্যক্তির নিয়োগ বাতিল;

(ঘ) বাংলাদেশ ব্যাংকের প্রতি উক্ত ব্যক্তির দায়বদ্ধতা; এবং

(ঙ) সরল বিশ্বাসে কৃত কাজকর্মের জন্য উক্ত ব্যক্তির দায়-মুক্তি।"।

৪৭। ১৯৯১ সনের ১৪ নং আইনের ধারা ৪৮ এর সংশোধন।– উক্ত আইনের ধারা ৪৮ এর উপ-ধারা (১) এর শর্তাংশে উল্লিখিত "এতদুদ্দেশ্যে" শব্দটির পর "বাংলাদেশ ব্যাংক কর্তৃক" শব্দগুলি সন্নিবেশিত হইবে।

৪৮। ১৯৯১ সনের ১৪ নং আইনের ধারা ৪৯ এর সংশোধন।– উক্ত আইনের ধারা ৪৯ এর উপ-ধারা (১) এর–

(ক) দফা (গ) এ উল্লিখিত "৭৬" সংখ্যাটির পরিবর্তে "৭৫" সংখ্যাটি প্রতিস্থাপিত হইবে;

(খ) দফা (ঘ) এর উপ-দফা (উ)এর প্রান্তঃস্থিত দাঁড়ির পরিবর্তে সেমিকোলন প্রতিস্থাপিত হইবে এবং অতঃপর নিম্নরূপ দুইটি নূতন দফা (ঙ) ও (চ) সংযোজিত হইবে, যথা:–

"(ঙ) আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নরূপ কিছু না থাকিলে, দেশের ক্লিয়ারিং ব্যবস্থা বা পেমেন্ট সিস্টেমস্ এর সুষ্ঠু পরিচালনার স্বার্থে এ সংক্রান্ত যে কোন কার্যক্রম গ্রহণের জন্য সাধারণভাবে সকল বা কোন বিশেষ ব্যাংক-কোম্পানীকে নির্দেশ দিতে পারিবে;

(চ) ঋণ শৃঙ্খলার স্বার্থে বাংলাদেশ ব্যাংক সাধারণভাবে সকল ব্যাংক-কোম্পানী বা কোন বিশেষ ব্যাংক-কোম্পানী বা বিশেষ শ্রেণীর ব্যাংক-কোম্পানীর জন্য ঋণ শ্রেণীকরণ ও সঞ্চিতি সংরক্ষণ, ঋণ মওকুফ, পুনঃতফসিলীকরণ কিংবা পুনর্গঠন সংক্রান্ত বিষয়সমূহে বাধ্যতামূলকভাবে অনুসরণীয় নির্দেশ প্রদান করিতে পারিবে।"।

৪৯। ১৯৯১ সনের ১৪ নং আইনের ধারা ৫১ এর সংশোধন।– উক্ত আইনের ধারা ৫১ এর–

(ক) প্রথম অনুচ্ছেদটির পরিবর্তে নিম্নরূপ প্রথম অনুচ্ছেদটি প্রতিস্থাপিত হইবে, যথা:–

"অন্য কোন আইনে বা এই আইনের অন্যত্র যাহা কিছুই থাকুক না কেন, বাংলাদেশ ব্যাংকের নিকট যদি এই মর্মে প্রতীয়মান হয় যে, কোন কোম্পানী বা প্রতিষ্ঠান বা অন্য কোন ব্যক্তি ধারা ৩১ এর উপ-ধারা (১) এর বিধান লঙ্ঘনক্রমে জনসাধারণের নিকট হইতে আমানত গ্রহণ করিতেছে বা ব্যাংক-ব্যবসা পরিচালনা করিতেছে, তাহা হইলে বাংলাদেশ ব্যাংক,-";

(খ) দফা (ক) এ উল্লিখিত "কোম্পানী বা ব্যক্তিকে" শব্দগুলির পরিবর্তে "কোম্পানী, প্রতিষ্ঠান বা ব্যক্তিকে" শব্দগুলি ও কমা এবং "কোম্পানীর বা ব্যক্তির" শব্দগুলির পরিবর্তে "কোম্পানী বা প্রতিষ্ঠান বা ব্যক্তির" শব্দগুলি প্রতিস্থাপিত হইবে;

(গ) দফা (খ) এ উল্লিখিত "কোম্পানী বা ব্যক্তির" শব্দগুলির পরিবর্তে "কোম্পানী, প্রতিষ্ঠান বা ব্যক্তির" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে;

(ঘ) দফা (ঘ) এ উল্লিখিত "কোম্পানী বা ব্যক্তি" শব্দগুলির পরিবর্তে "কোম্পানী, প্রতিষ্ঠান বা ব্যক্তি" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৫০। ১৯৯১ সনের ১৪ নং আইনের ধারা ৫২ এর সংশোধন।– উক্ত আইনের ধারা ৫২ এর:–

(ক) উপ-ধারা (১) এ উল্লিখিত "ব্যাংক-কোম্পানী" শব্দগুলি ও হাইফেনের পরিবর্তে "কোম্পানী" শব্দটি, "ব্যক্তি" শব্দটির পরিবর্তে "প্রতিষ্ঠান বা ব্যক্তি" শব্দগুলি এবং উক্ত উপ-ধারা (১) এর শর্তাংশে উল্লিখিত "কোম্পানী বা ব্যক্তিকে" শব্দগুলির পরিবর্তে "কোম্পানী, প্রতিষ্ঠান বা ব্যক্তিকে" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (২) এ উল্লিখিত "কোম্পানী" শব্দটির পরিবর্তে "কোম্পানী, প্রতিষ্ঠান" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৫১। ১৯৯১ সনের ১৪ নং আইনের ধারা ৫৩ এর সংশোধন।– উক্ত আইনের ধারা ৫৩ এ উল্লিখিত "ব্যাংক-কোম্পানী" শব্দগুলি ও হাইফেনের পরিবর্তে "কোম্পানী বা প্রতিষ্ঠান" শব্দগুলি এবং দুইবার উল্লিখিত "কোম্পানী বা ব্যক্তি" শব্দগুলির পরিবর্তে "কোম্পানী, প্রতিষ্ঠান বা ব্যক্তি" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৫২। ১৯৯১ সনের ১৪ নং আইনের ধারা ৫৪ এর সংশোধন।– উক্ত আইনের ধারা ৫৪ এর–

(ক) উপ-ধারা (১) এর পরিবর্তে নিম্নরূপ উপ-ধারা (১) প্রতিস্থাপিত হইবে, যথা:–

"(১) ধারা ৫৩ তে যাচাই বিধৃত থাকুক না কেন, কোন কোম্পানী, প্রতিষ্ঠান বা অন্য কোন ব্যক্তি সম্পর্কে ধারা ৫২(১) এর অধীন কোন ঘোষণা প্রকাশিত হইলে, উক্ত কোম্পানী, প্রতিষ্ঠান বা ব্যক্তির বা উহার বা তাঁহার পক্ষে কোন ব্যক্তির দখলে, তত্ত্বাবধানে, নিয়ন্ত্রণে বা জিম্মায় আছে এমন সব টাকা-পয়সা, স্থাবর সম্পত্তি, শেয়ার, সম্পত্তির স্বত্ব-দলিল বা অন্য কোন দলিল, যত শীঘ্র সম্ভব,

বাংলাদেশ ব্যাংক কর্তৃক নির্দেশিত কোন ব্যাংক-কোম্পানী, বা বাংলাদেশ ব্যাংক বা তৎকর্তৃক ক্ষমতা প্রদত্ত কোন ব্যক্তির নিকট জমা রাখিতে হইবে।";

(খ) উপ-ধারা (৩) এ দুইবার উল্লিখিত "কোম্পানী বা ব্যক্তির" শব্দগুলির পরিবর্তে উভয় স্থানে "কোম্পানী, প্রতিষ্ঠান বা ব্যক্তির" শব্দগুলি ও কমা এবং "কোম্পানীর প্রধান নির্বাহী" শব্দগুলির পরিবর্তে "কোম্পানী বা প্রতিষ্ঠানের প্রধান নির্বাহী" শব্দগুলি প্রতিস্থাপিত হইবে;

(গ) উপ-ধারা (৪) এ উল্লিখিত "কোম্পানী বা ব্যক্তির" শব্দগুলির পরিবর্তে "কোম্পানী, প্রতিষ্ঠান বা ব্যক্তির" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৫৩। ১৯৯১ সনের ১৪ নং আইনের ধারা ৫৫ এর সংশোধন।– উক্ত আইনের ধারা ৫৫ এ উল্লিখিত "ব্যাংক-কোম্পানী" শব্দগুলি ও হাইফেনের পরিবর্তে "কোম্পানী, প্রতিষ্ঠান" শব্দগুলি ও কমা, তিনবার উল্লিখিত "কোম্পানীর" শব্দটির পরিবর্তে সকল স্থানে "কোম্পানীর বা প্রতিষ্ঠানের" শব্দগুলি এবং "কোম্পানী বা ব্যক্তি" শব্দগুলির পরিবর্তে "কোম্পানী, প্রতিষ্ঠান বা ব্যক্তির" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৫৪। ১৯৯১ সনের ১৪ নং আইনের ধারা ৫৭ এর সংশোধন।– উক্ত আইনের ধারা ৫৭ এর উপ-ধারা (২) এ উল্লিখিত "বিশ হাজার" শব্দগুলির পরিবর্তে "দুই লক্ষ" শব্দগুলি প্রতিস্থাপিত হইবে।

৫৫। ১৯৯১ সনের ১৪ নং আইনের পঞ্চম খণ্ডের শিরোনামের সংশোধন।– উক্ত আইনের পঞ্চম খণ্ডের শিরোনামে উল্লিখিত "প্রতিষ্ঠান" শব্দটি বিলুপ্ত হইবে।

৫৬। ১৯৯১ সনের ১৪ নং আইনের ধারা ৫৮ এর সংশোধন।– উক্ত আইনের ধারা ৫৮ এর–

(ক) উপান্ত-টীকায় উল্লিখিত "প্রতিষ্ঠান" শব্দটি বিলুপ্ত হইবে;

(খ) উপ-ধারা (১) এর পরিবর্তে নিম্নরূপ উপ-ধারা (১) প্রতিস্থাপিত হইবে, যথা:–

"(১) বাংলাদেশ ব্যাংক হইতে রিপোর্ট প্রাপ্তির পর যদি সরকার এই মর্মে সন্তুষ্ট হয় যে,–

(ক) ধারা ২৯ বা ধারা ৪৫ এর অধীন ব্যাংক-নীতি সম্পর্কিত লিখিত নির্দেশনা পালন করিতে কোন ব্যাংক-কোম্পানী একাধিকবার ব্যর্থ হইয়াছে, বা

(খ) আমানতকারীদের ক্ষতি হইতে পারে এমন পদ্ধতিতে কোন ব্যাংক-কোম্পানীর ব্যবস্থাপনা পরিচালিত হইতেছে, এবং

(অ) উক্ত ব্যাংক-কোম্পানীর আমানত-কারীদের স্বার্থে,

(আ) ব্যাংক-নীতির স্বার্থে, কিংবা

(ই) সাধারণভাবে বা কোন বিশেষ এলাকায় ঋণ প্রদানের জন্য উন্নততর ব্যবস্থার স্বার্থে;

উক্ত ব্যাংক-কোম্পানী অথবা উহার এক বা একাধিক শাখা অথবা উহার অধীনস্থ কোন প্রতিষ্ঠান অধিগ্রহণ করা প্রয়োজন;

তাহা হইলে সরকার, বাংলাদেশ ব্যাংকের সহিত আলোচনাক্রমে, সরকারী গেজেটে প্রজ্ঞাপিত আদেশ দ্বারা, উক্ত আদেশে নির্ধারিত তারিখ হইতে, উক্ত ব্যাংক-কোম্পানী অথবা উহার এক বা একাধিক শাখা অথবা উহার অধীনস্থ কোন প্রতিষ্ঠান, অতঃপর অধিগৃহীত ব্যাংক বলিয়া উল্লিখিত, অধিগ্রহণ করিতে পারিবে।

ব্যাখ্যা।– এই খন্ডে, বাংলাদেশের বাহিরে নিবন্ধনকৃত কোন ব্যাংক-কোম্পানীর ক্ষেত্রে, "অধিগৃহীত ব্যাংক" বলিতে বাংলাদেশের অভ্যন্তরে উক্ত ব্যাংক-কোম্পানীর অধিগৃহীত এক বা একাধিক শাখা অথবা উহার অধীনস্থ কোন প্রতিষ্ঠানকে বুঝাইবে।";

(খ) উপ-ধারা (২) এ উল্লিখিত "প্রতিষ্ঠান এবং উক্ত ব্যাংকের" শব্দগুলি বিলুপ্ত হইবে;

(গ) উপ-ধারা (৩) এ উল্লিখিত "প্রতিষ্ঠানের" শব্দটি বিলুপ্ত হইবে;

(ঘ) উপ-ধারা (৪) এ উল্লিখিত "প্রতিষ্ঠান ও উহার" শব্দগুলি এবং "প্রতিষ্ঠান," শব্দটি ও কমা বিলুপ্ত হইবে;

(ঙ) উপ-ধারা (৫) এ উল্লিখিত "প্রতিষ্ঠান ও উহার" শব্দগুলি বিলুপ্ত হইবে।

৫৭। ১৯৯১ সনের ১৪ নং আইনের ধারা ৫৯ এর সংশোধন।– উক্ত আইনের ধারা ৫৯ এর–

(ক) উপ-ধারা (১) এ উল্লিখিত "কোন অধিগৃহীত ব্যাংকের ব্যাপারে" শব্দগুলির পরিবর্তে "ধারা ৫৮ এর আওতায় অধিগৃহীত কোন ব্যাংকের ব্যাপারে" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (২) এর–

(অ) দফা (ক) এ উল্লিখিত "প্রতিষ্ঠান ও উহার" শব্দগুলি বিলুপ্ত হইবে;

(আ) দফা (চ) এ উল্লিখিত "প্রতিষ্ঠান বা উহার" শব্দগুলি বিলুপ্ত হইবে।

৫৮। ১৯৯১ সনের ১৪ নং আইনের ধারা ৬০ এর সংশোধন।– উক্ত আইনের ধারা ৬০ এর উপ-ধারা (১) এ উল্লিখিত "অধিগৃহীত ব্যাংক বাংলাদেশের বাহিরে

নিবন্ধনকৃত হইলে, অধিগৃহীত ব্যাংককে, অধিগৃহীত ব্যাংকের প্রতিষ্ঠান" শব্দগুলি, কমাগুলি ও হাইফেনের পরিবর্তে "কোন ব্যাংক কোম্পনীর শাখা কিংবা অধীনস্থ প্রতিষ্ঠান অধিগ্রহণের ক্ষেত্রে উক্ত ব্যাংক-কোম্পানীকে, অধিগৃহীত ব্যাংকের সম্পদ ও দায়" শব্দগুলি, হাইফেনগুলি ও কমা প্রতিস্থাপিত হইবে।

৫৯। ১৯৯১ সনের ১৪ নং আইনের ধারা ৬১ এর সংশোধন।– উক্ত আইনের ধারা ৬১ এর উপ-ধারা (২) এ উল্লিখিত "সুপ্রীম কোর্টের" শব্দগুলির পরিবর্তে "হাইকোর্ট বিভাগের" শব্দগুলি প্রতিস্থাপিত হইবে।

৬০। ১৯৯১ সনের ১৪ নং আইনের ধারা ৬৪ এর সংশোধন।– উক্ত আইনের ধারা ৬৪ এর উপ-ধারা (১) এ উল্লিখিত "ব্যবসা বা কার্যক্রম গ্রহণ ও চালু রাখা" শব্দগুলির পরিবর্তে "সকল আইনগত কার্যধারা" শব্দগুলি প্রতিস্থাপিত হইবে।

৬১। ১৯৯১ সনের ১৪ নং আইনের ধারা ৬৮ এর সংশোধন।– উক্ত আইনের ধারা ৬৮ এর উপ-ধারা (১) এ উল্লিখিত "৬৭ বা ৬৮" সংখ্যাগুলি ও শব্দের পরিবর্তে "৬৬ বা ৬৭" সংখ্যাগুলি ও শব্দ প্রতিস্থাপিত হইবে।

৬২। ১৯৯১ সনের ১৪ নং আইনের ধারা ৭০ এর সংশোধন।– উক্ত আইনের ধারা ৭০ এর দফা (ক) এর পরিবর্তে নিম্নরূপ দফা (ক) প্রতিস্থাপিত হইবে, যথা:–

"(ক) কোম্পানী আইনের উল্লিখিত ধারার প্রয়োজন মোতাবেক সেই সকল তথ্য যাহা তাহার নিকট রহিয়াছে;"।

৬৩। ১৯৯১ সনের ১৪ নং আইনের ধারা ৭৪ এর সংশোধন।– উক্ত আইনের ধারা ৭৪ এর পরিবর্তে নিম্নরূপ ধারা ৭৪ প্রতিস্থাপিত হইবে যথা:–

"(১) কোন ব্যাংক-কোম্পানীর অবসায়নের কার্যধারায় অবসায়নের আদেশ এই আইন প্রবর্তনের পূর্বে প্রদত্ত হইয়া থাকিলে, অনুরূপ প্রবর্তনের ৩ (তিন) মাসের মধ্যে বা, উক্ত আদেশ অনুরূপ প্রবর্তনের পর প্রদত্ত হইলে, আদেশ প্রদানের ৩ (তিন) মাসের মধ্যে, সরকারী অবসায়ক এতদুদ্দেশ্যে নির্ধারিত ছকে ব্যাংক আমানত বীমা আইন, ২০০০ (২০০০ সনের ১৮ নং আইন) এর অধীন বীমাকৃত অবসায়িত ব্যাংক-কোম্পানীর আমানতকারীগণের আমানতের তালিকা আমানত বীমা ট্রাষ্টি বোর্ডের নিকট দাখিল করিবেন:

তবে শর্ত থাকে যে, অবসায়ক উক্তরূপ আমানতের পরিমাণ নির্ধারণকালে আইনগতভাবে আমানতকারীর নিকট বীমাকৃত ব্যাংকের কোন পাওনা থাকিলে উহা বাদ দিয়া আমানতকারীর পাওনা নির্ধারণ করিবেন।

(২) উপ-ধারা (১) এর বিধান মোতাবেক অগ্রাধিকারভিত্তিক পাওনা সময়ে সময়ে ব্যাংক আমানত বীমা আইন, ২০০০ এর আওতায় অথবা উক্ত আইনের আওতায় জারীকৃত বিধান বা নির্দেশনা মোতাবেক নির্ধারিত অঙ্ক এবং শর্তে পরিশোধ করা হইবে।

(৩) উপ-ধারা (২) এর বিধান মোতাবেক আমানতকারীদের অগ্রাধিকারভিত্তিক পাওনা পরিশোধের পর সরকারি অবসায়ক কোম্পানী আইনের ধারা ৩২৫ তে উল্লিখিত সেই সকল অগ্রাধিকারভিত্তিক পাওনা প্রদান করিবেন বা প্রদানের পর্যাপ্ত ব্যবস্থা গ্রহণ করিবেন যে সকল পাওনা সম্পর্কে, ধারা ৭১ এর অধীন প্রদত্ত নোটিসের প্রেক্ষিতে, উহা জারীর তারিখ হইতে ১ (এক) মাসের মধ্যে, দাবী উত্থাপন করা হইয়াছে।

(৪) উপ-ধারা (২) ও (৩) অনুসারে আমানতকারীগণের এবং অগ্রাধিকারসম্পন্ন দাবীদারগণের পাওনা পরিশোধ করার পর, সরকারী অবসায়ক–

(ক) ধারা ৭১ এর উপ-ধারা (৩) এর অধীন নিশ্চয়তাপ্রাপ্ত পাওনাদারগণের পাওনা পরিশোধ করিবেন বা প্রদানের পর্যাপ্ত সংস্থাপন রাখিবেন;

(খ) অন্যান্য সকল সাধারণ পাওনাদারদের পাওনা সম্পদের সহিত অনুপাত বজায় রাখিয়া উপ-ধারা (৭) এ বর্ণিত ক্রমানুযায়ী পরিশোধ করিবেন:

তবে শর্ত থাকে যে, সরকারি অবসায়ক যখনই নগদ টাকার আকারে ব্যাংক-কোম্পানীর সম্পদ সংগ্রহ করিতে পারিবেন তখনই উপ-ধারা (৪) এর দফা (ক) ও (খ) তে উল্লিখিত পাওনাদারগণের পাওনা সংগৃহীত সম্পদের সহিত অনুপাত বজায় রাখিয়া প্রদান করিবেন।

(৫) সরকারী অবসায়ক যাহাতে কোম্পানীর সর্বাধিক সম্পদ নগদ টাকার আকারে নিজের রক্ষণাবেক্ষণে আনিতে পারেন সেই উদ্দেশ্যে তিনি নিশ্চয়তাপ্রাপ্ত পাওনাদারদিগকে প্রদত্ত অনুমোদিত জামানত নিম্নলিখিত ভাবে দায়মুক্ত করিতে পারিবেন, যথা:–

(ক) উক্ত পাওনাদারের পাওনার পরিমাণ, পাওনাদারের নিজের মূল্যায়ন, বা ক্ষেত্রমত, সরকারি অবসায়কের মূল্যায়ন অনুযায়ী উক্ত জামানতের মূল্য অপেক্ষা বেশী হইলে, সেই মূল্য পরিশোধ করিয়া; এবং

(খ) অনুরূপ মূল্যায়নে পাওনাদারের পাওনা উক্ত জামানতের মূল্যের সমান বা কম হইলে, পাওনা টাকা পরিশোধ করিয়া:

তবে শর্ত থাকে যে, সরকারী অবসায়ক যদি পাওনাদার কর্তৃক মূল্যায়নে সন্তুষ্ট না হন, তাহা হইলে তিনি মূল্যায়ন করার জন্য হাইকোর্ট বিভাগের নিকট আবেদন করিতে পারিবেন।

(৬) উপ-ধারা (২), (৩) ও (৪) ও (৫) এর বিধান মোতাবেক পাওনা পরিশোধের জন্য কোন দাবীদার, পাওনাদার বা আমানতকারীকে যদি পাওয়া না যায় বা তাহাকে যদি তৎক্ষণাৎ খুঁজিয়া পাওয়া না যায়, তাহা হইলে সরকারী অবসায়ক, উক্ত পাওনা পরিশোধের জন্য পর্যাপ্ত ব্যবস্থা গ্রহণ করিবেন।

(৭) এই ধারার উদ্দেশ্য পূরণকল্পে, নিম্নবর্ণিত পাওনাসমূহকে ভিন্ন ভিন্ন শ্রেণীর পাওনা হিসাবে গণ্য করা হইবে, এবং বর্ণিত ক্রমানুযায়ী পাওনাসমূহ পরিশোধিত হইবে, যথা:–

(ক) উপ-ধারা (২) এর অধীন পরিশোধিতব্য বীমাকৃত আমানতের পাওনা;

(খ) উপ-ধারা (৩) এ বর্ণিত কোম্পানী আইনের ধারা ৩২৫ এর অধীন অগ্রাধিকারভিত্তিক দাবীদারদের পাওনা;

(গ) উপ-ধারা (৪) এর দফা (ক) ও উপ-ধারা (৫) এর বর্ণনা অনুযায়ী নিশ্চয়তাপ্রাপ্ত পাওনাদারগণের পাওনা;

(ঘ) আমানতকারীগণের হিসাবে উপ-ধারা (২) এর অধীন পরিশোধিত অর্থের অতিরিক্ত স্থিতির বিপরীতে প্রদেয় পাওনা;

(ঙ) অন্যান্য সকল সাধারণ পাওনাদারদের পাওনা;

(চ) আমানত বীমা তহবিল হইতে বীমাকৃত আমানতকারীগণের অনুমোদিত পাওনা পরিশোধ বাবদ প্রদত্ত অর্থ সমন্বয়ের লক্ষ্যে প্রদেয় অর্থ।";

(৮) আপাততঃ বলবৎ অন্য কোন আইনে বা কোন চুক্তি বা অন্য কোন দলিলে যাহা কিছুই থাকুক না কেন, উপ-ধারা (৭) এর দফা (খ), (গ), (ঘ), (ঙ)ও (চ) এ উল্লিখিত প্রত্যেক শ্রেণীর পাওনাদারগণকে তাহাদের নিজেদের মধ্যে সমতার ভিত্তিতে মূল্যায়ন করা হইবে এবং যদি পাওনা পরিশোধের জন্য প্রাপ্ত সম্পদ পর্যাপ্ত হয়, তাহা হইলে তাহাদের পূর্ণ পাওনা প্রদান করা হইবে, এবং উক্ত সম্পদ অপর্যাপ্ত হইলে সমান অনুপাতে তাহাদের পাওনা হ্রাস করা হইবে।

৬৪। ১৯৯১ সনের ১৪নং আইনের ধারা ৭৭ এর সংশোধন।– উক্ত আইনের ধারা ৭৭ এর উপ-ধারা (১৫) এর পর নিম্নরূপ একটি নূতন উপ-ধারা (১৬) সংযোজিত হইবে, যথা:–

"(১৬) উপ-ধারা (৪) এ উল্লিখিত ক্ষেত্র ব্যতীত, কোন ব্যাংক-কোম্পানী স্বতঃপ্রণোদিত হইয়া অন্য কোন ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠানের সহিত একত্রীভূত হইতে চাহিলে অথবা কোন ব্যাংক-কোম্পানী নিজের ব্যবসার কিয়দংশ অন্য কোন ব্যাংক-কোম্পানী বা আর্থিক প্রতিষ্ঠানের নিকট হস্তান্তরের মাধ্যমে পুনর্গঠিত হইতে চাহিলে, বাংলাদেশ ব্যাংকের পূর্বানুমোদনক্রমে, এতদ্বিষয়ে তৎকর্তৃক জারীকৃত নীতিমালা অনুসরণ করিয়া কাংখিত একত্রীকরণ বা পুনর্গঠন করিতে পারিবে।"।

৬৫। ১৯৯১ সনের ১৪নং আইনের ধারা ৮১ এর সংশোধন।– উক্ত আইনের ধারা ৮১ এর–

(ক) উপ-ধারা (৪) এ উল্লিখত "দেনাদারের" শব্দটির পর "নিকট" শব্দটি সন্নিবেশিত হইবে;

(খ) উপ-ধারা (৫) এ উল্লিখিত "সে ব্যক্তি" শব্দগুলির পর "এবং" শব্দটি সন্নিবেশিত হইবে;

(গ) উপ-ধারা (১০) এর দফা (ক) এর পরিবর্তে নিম্নরূপ দফা (ক) প্রতিস্থাপিত হইবে, যথা:–

"(ক) এমন কোন ঋণের প্রতি প্রযোজ্য হইবে না যাহা কোন তৃতীয় পক্ষের স্বার্থযুক্ত স্থাবর সম্পত্তি বন্ধক রাখিয়া গৃহীত হইয়াছে; বা"।

৬৬। ১৯৯১ সনের ১৪ নং আইনের ধারা ৮৪ এর সংশোধন।– উক্ত আইনের ধারা ৮৪ এর উপ-ধারা (৮) এর দফা (ক) এ উল্লিখিত "ছিলেন না" শব্দগুলির পরিবর্তে "নহেন" শব্দটি প্রতিস্থাপিত হইবে।

৬৭। ১৯৯১ সনের ১৪ নং আইনের ধারা ৯৭ এর সংশোধন।– উক্ত আইনের ধারা ৯৭ এ উল্লিখিত "১২১" সংখ্যাটির পরিবর্তে "১২০" সংখ্যা প্রতিস্থাপিত হইবে।

৬৮। ১৯৯১ সনের ১৪ নং আইনের ধারা ১০৩ এর সংশোধন।– উক্ত আইনের ধারা ১০৩ এর–

(ক) উপ-ধারা (১) এ উল্লিখিত "একজন" শব্দটির পরিবর্তে "একজন বা একাধিক" শব্দগুলি, "যাহাকে" শব্দটির পরিবর্তে "যাহাকে বা যাহাদিগকে" শব্দগুলি এবং "অন্য কোন ব্যক্তিকে" শব্দগুলির পরিবর্তে "অন্য কোন ব্যক্তিকে বা ব্যক্তিবর্গকে" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (২) এ উল্লিখিত"মনোনীত ব্যক্তি" শব্দগুলির পরিবর্তে "মনোনীত কোন ব্যক্তি" শব্দগুলি প্রতিস্থাপিত হইবে।

৬৯। ১৯৯১ সনের ১৪ নং আইনের ধারা ১০৫ এর সংশোধন।– উক্ত আইনের ধারা ১০৫ এর উপ-ধারা (২) এ উল্লিখিত "সামগ্রীকে" শব্দটির পরিবর্তে "সামগ্রী কে" শব্দগুলি প্রতিস্থাপিত হইবে।

৭০। ১৯৯১ সনের ১৪নং আইনের ধারা ১০৯ এর সংশোধন।– উক্ত আইনের ধারা ১০৯ এর–

(ক) উপ-ধারা (১) এ উল্লিখিত "অনধিক ৭ বৎসর কারাদন্ডে দন্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদন্ডেও দন্ডনীয়" শব্দগুলির পরিবর্তে "অনধিক ৭ (সাত) বৎসর কারাদন্ডে এবং অন্যূন দুই লক্ষ টাকা এবং অনধিক বিশ লক্ষ টাকা অর্থদন্ডে দন্ডনীয়" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (২) এ উল্লিখিত "অনধিক তিন বৎসরের কারাদন্ডে দন্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদন্ডেও দন্ডনীয়" শব্দগুলির পরিবর্তে "অনধিক ৩(তিন) বৎসরের কারাদন্ডে এবং অনধিক এক লক্ষ টাকা অর্থদন্ডে দন্ডনীয়" শব্দগুলি প্রতিস্থাপিত হইবে;

(গ) উপ-ধারা (৩) এ উল্লিখিত "অগ্রিম" শব্দটির পরিবর্তে "ঋণ, অগ্রিম, গ্যারান্টি বা অন্য কোনরূপ আর্থিক সুবিধা" শব্দগুলি এবং "অনধিক তিন বৎসরের কারাদন্ডে দন্ডনীয় হইবেন এবং ইহার অতিরিক্ত অনধিক বিশ হাজার টাকা অর্থদন্ডে দন্ডনীয়"

শব্দগুলির পরিবর্তে "অনধিক ৩(তিন) বৎসরের কারাদন্ডে অথবা অন্যূন এক লক্ষ টাকা এবং অনধিক দশ লক্ষ টাকা অর্থ দন্ডে অথবা উভয় দন্ডে দন্ডনীয়" শব্দগুলি প্রতিস্থাপিত হইবে;

(ঘ) উপ-ধারা (৪) এ উল্লিখিত "অনধিক দুই হাজার টাকা অর্থ দন্ডে দন্ডনীয়" শব্দগুলির পরিবর্তে "অন্যূন দশ হাজার টাকা এবং অনধিক এক লক্ষ টাকা জরিমানা আরোপিত" শব্দগুলি এবং "অনধিক একশত টাকা অর্থ দন্ডে দন্ডনীয়" শব্দগুলির পরিবর্তে "অন্যূন পাঁচশত টাকা এবং অনধিক পাঁচ হাজার টাকা জরিমানা আরোপিত" শব্দগুলি প্রতিস্থাপিত হইবে;

(ঙ) উপ-ধারা (৫) এ উল্লিখিত "অর্থ দন্ডে দন্ডনীয়" শব্দগুলির পরিবর্তে "জরিমানা আরোপিত" শব্দগুলি প্রতিস্থাপিত হইবে;

(চ) উপ-ধারা (৬) এ উল্লিখিত "অনধিক দুই হাজার টাকা অর্থ দন্ডে দন্ডনীয়" শব্দগুলির পরিবর্তে "অন্যূন দশ হাজার টাকা এবং অনধিক এক লক্ষ টাকা জরিমানা আরোপিত" শব্দগুলি এবং "অনধিক একশত টাকা অর্থ দন্ডে দন্ডনীয়" শব্দগুলির পরিবর্তে "অন্যূন পাঁচশত টাকা এবং অনধিক পাঁচ হাজার টাকা জরিমানা আরোপিত" শব্দগুলি প্রতিস্থাপিত হইবে;

(ছ) উপ-ধারা (৭) এ উল্লিখিত "অনধিক দুই হাজার টাকা অর্থ দন্ডে দন্ডনীয়" শব্দগুলির পরিবর্তে "অন্যূন দশ হাজার টাকা এবং অনধিক এক লক্ষ টাকা জরিমানা আরোপিত" শব্দগুলি এবং "অনধিক একশত টাকা অর্থ দন্ডে দন্ডনীয়" শব্দগুলির পরিবর্তে "অন্যূন পাঁচশত টাকা এবং অনধিক পাঁচ হাজার টাকা জরিমানা আরোপিত" শব্দগুলি প্রতিস্থাপিত হইবে;

(জ) উপ-ধারা (৮) এ উল্লিখিত " কোম্পানী" শব্দটির পরিবর্তে "কোম্পানী বা প্রতিষ্ঠান" এবং দুইবার উল্লিখিত "কোম্পানীর" শব্দটির পরিবর্তে উভয় স্থানে "কোম্পানী বা প্রতিষ্ঠানের" শব্দগুলি প্রতিস্থাপিত হইবে;

(ঝ) উপ-ধারা (৯) এ উল্লিখিত "তাহাকে কেন অর্থদন্ডে দন্ডিত" শব্দগুলির পরিবর্তে "তাহাকে কেন আর্থিক জরিমানা" এবং "যে কোন অংকের অর্থদন্ডে দন্ডিত" শব্দগুলির পরিবর্তে " যে কোন অংকের আর্থিক জরিমানা" শব্দগুলি প্রতিস্থাপিত হইবে;

(ঞ) উপ-ধারা (১০) এ উল্লিখিত "অর্থদন্ড" শব্দটির পরিবর্তে "জরিমানা" এবং "দন্ডিত অর্থ" শব্দগুলির পরিবর্তে "জরিমানাকৃত অর্থ" শব্দগুলি প্রতিস্থাপিত হইবে;

(ট) উপ-ধারা (১০) এর পর নিম্নরূপ দুইটি নূতন উপ-ধারা যথাক্রমে উপ-ধারা (১১) ও (১২) সংযোজিত হইবে, যথা:–

"(১১) যদি কোন ব্যাংক-কোম্পানী এই আইনের ধারা ১৩ এর উপ-ধারা (৭), ধারা ২৫ এর উপধারা (৩), (৪) ও (৫), ধারা ২৬ এর উপ-ধারা (৪), ধারা ২৯ এর উপধারা (৩), এবং ধারা ৩৩ এর উপ-ধারা (৫) এ বর্ণিত ক্ষেত্র ব্যতীত অন্য কোন ধারার বিধান লংঘন করে বা তদধীন প্রদত্ত কোন আদেশ বা নির্দেশ বা আরোপিত কোন শর্ত বা প্রণীত কোন বিধি লংঘন করে, তাহা হইলে উক্ত লংঘনের জন্য উক্ত ব্যাংক-কোম্পানী অন্যূন পঞ্চাশ হাজার টাকা এবং অনধিক দশ লক্ষ টাকা জরিমানা আরোপিত হইবে, এবং যদি উক্ত লংঘন অব্যাহত থাকে, তাহা হইলে উক্ত লংঘনের প্রথম দিনের পর প্রত্যেক দিনের জন্য অতিরিক্ত অন্যূন পাঁচ হাজার টাকা এবং অনধিক পঞ্চাশ হাজার টাকা জরিমানা আরোপিত হইবে।

(১২) উপ-ধারা (৯) এর অধীন জরিমানাকৃত কোন ব্যক্তি বা উপধারা (১১) এর অধীন জরিমানাকৃত কোন ব্যাংক-কোম্পানী বাংলাদেশ ব্যাংক কর্তৃক অনুরূপ জরিমানা আরোপের ১৪ দিনের মধ্যে বাংলাদেশ ব্যাংকের পরিচালনা-পর্ষদের নিকট তাহা পুনর্বিবেচনার আবেদন পেশ করিতে পারিবে এবং এই ব্যাপারে উক্ত পর্ষদের সিদ্ধান্ত চূড়ান্ত হইবে।"।

৭১। ১৯৯১ সনের ১৪ নং আইনের ধারা ১১২ এর প্রতিস্থাপন।– উক্ত আইনের ধারা ১১২ এর পরিবর্তে নিম্নরূপ ধারা ১১২ প্রতিস্থাপিত হইবে, যথা:–

"**১১২। ব্যাংক-কেম্পানীর বিরুদ্ধে শাস্তিমূলক কার্যধারা গ্রহণের পদ্ধতি।**– (১) বাংলাদেশ ব্যাংক যদি এই আইনের কোন ধারা অথবা তদধীন কোন আদেশ বা নির্দেশ বা আরোপিত শর্ত বা প্রণীত কোন বিধি লংঘন করার জন্য কোন ব্যাংক-কোম্পানীর বিরুদ্ধে আদালতের বিচারার্থ অপরাধ ব্যতীত অন্য কোন ক্ষেত্রে শাস্তিমূলক ব্যবস্থা গ্রহণ করিতে চায়, তাহা হইলে বাংলাদেশ ব্যাংক উক্ত ব্যাংক-কোম্পানীর বিরুদ্ধে কেন শাস্তিমূলক ব্যবস্থা গ্রহণ করিবে না বা আর্থিক জরিমানা আরোপ করিবে না সে সম্পর্কে কারণ দর্শাইতে সুযোগ দিতে পারিবে এবং প্রদত্ত ব্যাখ্যায় সন্তুষ্ট না হইলে বা, উক্ত ব্যাংক-কোম্পানী নির্দিষ্ট সময়ের মধ্যে কোন ব্যাখ্যা প্রদান না করিলে, উক্ত ব্যাংক-কোম্পানীকে সংশ্লিষ্ট ধারা বা উপধারাসমূহে উল্লিখিত শাস্তিমূলক ব্যবস্থা গ্রহণ করিতে বা সংশ্লিষ্ট ধারা বা উপধারাসমূহে উল্লিখিত যে কোন অংকের আর্থিক জরিমানা আরোপ করিতে পারিবে।

(২) উপ-ধারা (১) এ যাহাই থাকুক না কেন, বাংলাদেশ ব্যাংক যে সকল ক্ষেত্রে যথাযথ মনে করে সে সকল ক্ষেত্রে কৃত অপরাধের বিষয়ে একটি তদন্ত অনুষ্ঠান করিতে পারিবে এবং উহাতে সংশ্লিষ্ট ব্যাংক-কোম্পানীকে শুনানীর যুক্তিসঙ্গত সুযোগ দিতে পারিবে।

(৩) উপ-ধারা (১) এর অধীন আরোপিত জরিমানা উক্ত ব্যাংক কোম্পানী এইরূপ আদেশ প্রদানের ১৪ দিনের মধ্যে পরিশোধ করিতে বাধ্য থাকিবে।

(৪) যদি কোন ব্যাংক-কোম্পানী উপ-ধারা (৩) এ নির্ধারিত সময়ের মধ্যে আরোপিত জরিমানা পরিশোধে ব্যর্থ হয় তাহা হইলে বাংলাদেশ ব্যাংক কোনরূপ নোটিশ প্রদান ব্যতিরেকে বাংলাদেশ ব্যাংকের সহিত রক্ষিত উক্ত ব্যাংক-কোম্পানীর হিসাব বিকলন করিয়া উক্ত জরিমানা আদায় করিয়া নিতে পারিবে।"।

৭২। ১৯৯১ সনের ১৪ নং আইনের ধারা ১১৫ এর প্রতিস্থাপন।– উক্ত আইনের ধারা ১১৫ এর পরিবর্তে নিম্নরূপ ধারা ১১৫ প্রতিস্থাপিত হইবে, যথা:–

"**১১৫। চেক দ্বারা প্রত্যাহারযোগ্য আমানত গ্রহণের উপর বাধা-নিষেধ।**– কোন ব্যাংক-কোম্পানী, বাংলাদেশ ব্যাংক বা সরকার কর্তৃক বাংলাদেশ ব্যাংকের সুপারিশক্রমে এতদুদ্দেশ্যে বিজ্ঞাপিত কোন ব্যাংকিং প্রতিষ্ঠান ব্যতীত, অন্য কোম্পানী, প্রতিষ্ঠান বা ব্যক্তি চেক দ্বারা প্রত্যাহারযোগ্য কোন আমানত গ্রহণ করিতে পারিবেন না:

তবে শর্ত থাকে যে, এই ধারার কোন কিছুই সরকার কর্তৃক পরিচালিত কোন সঞ্চয় ব্যাংক স্কীমের ক্ষেত্রে প্রযোজ্য হইবে না।"।

৭৩। ১৯৯১ সনের ১৪ নং আইনের ধারা ১১৬ এর সংশোধন।– উক্ত আইনের ধারা ১১৬ এ উল্লিখিত "সরকার কোন ব্যাংক-কোম্পানীর নাম পরিবর্তনের জন্য উহার অনুমোদন দিবে না" শব্দগুলির পরিবর্তে "কোন ব্যাংক-কোম্পানীর নাম পরিবর্তনের জন্য কোন আবেদন গ্রহণযোগ্য হইবে না" শব্দগুলি প্রতিস্থাপিত হইবে।

৭৪। ১৯৯১ সনের ১৪ নং আইনের ধারা ১১৮ এর সংশোধন।– উক্ত আইনের ধারা ১১৮ এ উল্লিখিত "১১, ১৫, ২৩, ৪৫, ৪৯, ৭৫ এবং ৭৭" সংখ্যাগুলি, কমাগুলি ও শব্দটির পরিবর্তে "১১, ১৫, ১৫কক, ২৩, ৪৫, ৪৬, ৪৭, ৪৯, ৭৪ এবং ৭৭" সংখ্যাগুলি, কমাগুলি, অক্ষরগুলি ও শব্দ প্রতিস্থাপিত হইবে।

৭৫। ১৯৯১ সনের ১৪ নং আইনের ধারা ১২০ এর সংশোধন।– উক্ত আইনের ধারা ১২০ এর উপ-ধারা (১) এর শর্তাংশে উল্লিখিত "নূতন ব্যাংক এবং বিশিষ্ট" শব্দগুলির পরিবর্তে "বিশেষায়িত" শব্দটি প্রতিস্থাপিত হইবে।

৭৬। ১৯৯১ সনের ১৪ নং আইনের ধারা ১২১ এর সংশোধন।– উক্ত আইনের ধারা ১২১ এ উল্লিখিত "সরকার, বাংলাদেশ ব্যাংকের সহিত পরামর্শক্রমে" শব্দগুলি ও কমার পরিবর্তে "বাংলাদেশ ব্যাংক, সরকারের সহিত পরামর্শক্রমে" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৭৭। ১৯৯১ সনের ১৪ নং আইনের ধারা ১২২ এর সংশোধন।– উক্ত আইনের ধারা ১২২ এ উল্লিখিত "উহাদের কোন কর্মকর্তা বা কর্মচারীর বিরুদ্ধে কোন মামলা" শব্দগুলির পরিবর্তে "উহাদের কোন কর্মকর্তা বা কর্মচারীর বিরুদ্ধে বা ধারা ৪৭ এর উপ-ধারা (৩) এর আওতায় বাংলাদেশ ব্যাংক কর্তৃক নিয়োগকৃত কোন ব্যক্তির বিরুদ্ধে কোন মামলা" শব্দগুলি, সংখ্যাগুলি ও বন্ধনী প্রতিস্থাপিত হইবে।

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সচিব।