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Justice Mohammad Anwarul Haque laid down the Robes

Mr Justice Mohammad Anwarul Haque laid down his Robes on 8th April 2014 as a Judge of the Appellate Division of Supreme Court of Bangladesh. He was elevated as an Additional Judge of the High Court Division on 3-7-2001 and confirmed as a Judge of the same Division on 3-7-2003. He was appointed as a Judge of the Appellate Division on 30th March, 2013.

On the day of his retirement, the Attorney-General Mahbubey Alam and the President of the Supreme Court Bar Association Khondaker Mahbub Hossain in their farewell address appreciated Justice Anwarul Haque for his judicial acumen as a Judge of the Supreme Court and expressed good wishes for his well-being. In reply Justice said, *inter alia:*

এই মুহূর্তের অনুভূতিটুকু রবিঠাকুরের ভাষায় বলি—

ছোট-প্রাণ, ছোট ব্যাথা-
ছোট ছোট দুঃখ কথা
নিতান্তই সহজ সরল
নাহি বর্ননার ছটা-ঘটনার ঘনঘটা
নাহি তত্ত্ব, নাহি উপদেশ

He was born on 9-4-1947 in a respectable Muslim family of West Bengal. He obtained his MA, LLB from Dhaka University; completed the Certificate Course of Effective Case Management in National Judicial College under the University of Nevada, Reno, Florida, USA in 2001 and on ADR. Joined the Judicial Service as Munsif (Assistant Judge) on 15-4-1972 and was promoted as District and Sessions Judge on 14-11-1988.

Justice Anwarul Haque believed in strict construction of the law and he never deviated from this principle. In *Habibur Rahman Molla's case, 61 DLR 1* Justice Haque held that the power conferred under section 561A of the Code of Criminal Procedure cannot be lightly exercised in order to defeat and delay the normal procedure or to bid farewell to the alleged offender against whom specific allegation is available to commit a punitive offence only on *"hyper technical"*



Justice Md Anwarul Haque

ground. The judgment was affirmed by the Appellate Division vide *62 DLR (AD) 233.*

Justice Haque participated in the International Seminars; Workshops and Training Programmes held in San-Francisco, California, USA (2000), (Brisbane, Melbourne, Sydney, Canberra) Australia, Africa (Malawi), New Delhi (1989), Canada, United Kingdom, Philippines, New Zealand and Hong Kong, he visited UNO Head Quarters, New York in 1999, UAE, Saudi Arabia, Malaysia and Kenya.

Editor, DLR

গত ৮-৪-২০১৪ ইং তারিখে অনুষ্ঠিত বিদায় সম্বর্ধনায় আপীল বিভাগের মাননীয় বিচারপতি মোহাম্মদ আনোয়ার উল হকের প্রদত্ত লিখিত বক্তব্য।

শ্রদ্ধাস্পদ বাংলাদেশের প্রধান বিচারপতি জনাব মোঃ মোজাম্মেল হোসেন, সম্মানিত সহকর্মী বিচারপতিবৃন্দ, বাংলাদেশের বিজ্ঞ এ্যাটর্নী জেনারেল, বাংলাদেশের সুপ্রীম কোর্ট আইনজীবী সমিতির বিজ্ঞ সভাপতি ও সমিতির অন্যান্য বিজ্ঞ প্রবীন ও নবীন আইনজীবীগন–

আছ্ছালামো আলাইকুম,

সর্বাগ্রে পরমকরুনাময় আল্লাহতায়ালার কাছে অশেষ শোকর আদায় করি যিনি আমাকে নিম্ন আদালত সহ সর্বোচ্চ আদালত পর্যন্ত সুদীর্ঘ ৪২ বছর বিচারক জীবন কাটিয়ে আজকে তার পরিসমাপ্তি ঘটানোর সুযোগ করে দিয়েছেন।

সময় থামে না। সে কেবলই চলে আর চলে। সময়ের তীরে তীরে গড়ে উঠা সুদীর্ঘ প্রায় ৪২ বছরের কর্মজীবনের হাসি-কাঁন্না ও ভাঙা-গড়ার সংখ্যাতীত খেলাঘর সময়ের বুকেই বিলীন করে আজ সেই কর্মজীবনেরই পরিসমাপ্তি ঘটাতে চলেছি।

এমনি করেই কত মাস গিয়েছে, বছর গিয়েছে, শতাব্দীর পরিসমাপ্তি অবলোকন করার সুযোগ ও এসেছে। জীবনের এই চক্রতীর্থে কতনা অভিজ্ঞতার বর্ণ বৈভব। জীবন মানেই তো অজস্র ছোট-বড়, স্মরনীয়-বিস্মরনীয়, পুলকিত-ব্যথিত ঘটনার এক বিরামহীন প্রবাহ যা কালসিন্ধুর দিকে প্রতিমুহূর্তেই ধাবিত হচ্ছে। এ মুহূর্তে কত মনোমুগ্ধকর সুন্দর রমনীয় প্রভাত, কতনা বিষন্ন-বিনম্র সন্ধ্যা, কত স্মরনীয় আনন্দ উচ্ছাস, কত অবিস্মরনীয় বেদনার দীর্ঘশ্বাস স্মৃতি সমুদ্রে উদ্বেল হচ্ছে। ডুব দিচ্ছি চেতনার গভীরে। প্রকৃতপক্ষে সমগ্র বিচারিক জীবনের অনেক বিষন্ন মুহূর্তের অভিজ্ঞতা আমাকে দিয়েছে নূতন উৎসাহ আর প্রতিকুল অবস্থা জয়ের মহৎ প্রেরণা। সে সব কিছুকে নিয়েই মাইকেল মধুসুদনের "কাল-সিন্ধুর" পাণে জীবনের গতিকে নিয়ে চলেছি। মহাকালের রথের চাকা কখনও থামে না। এ গতি দূর্বার। ফেরানোর সাধ্য কারও নেই।

এভাবে কালের আবর্তে পুরানোরা চলে যায়, আসে নূতন। পুরাতনকে প্রথাসিদ্ধভাবে বিদায় দিয়ে নূতনকে আপনারা বরন করেন নানা সংশয় ও অনেক জিজ্ঞাসার মাঝে, যা অবশ্য নূতনরা পুরাতন হয়ে নিজ কর্মকান্ডের মাধ্যমে আনে বিচারপ্রার্থীদের মাঝে আস্থা, আর দূর করে অনাকাঙ্খিত উদ্বেগ আর সংশয়।

এমনিভাবেই আপনাদের সহচার্যে উচ্চ আদালতে ও সুদীর্ঘ প্রায় ১৩ বৎসর কাটিয়ে আজ বিদায় নিচ্ছি। এ মুহূর্তে নিজের কর্মকান্ডের নূতন ফিরিস্তি দেওয়া আমি আদৌ সমিচীন মনে করি না। এটি সম্পূর্ণ আপনাদের ও বিচার প্রার্থীদের এখতিয়ার। তবে এ প্রসঙ্গে আমার ব্যক্তিগত মানসিক অবস্থা সংক্ষিপ্তভাবে তুলে ধরা কর্তব্য বলে মনে করি।

আমি মানুষ হিসাবে ভুল-ভ্রান্তির উর্দ্ধে নই। আমার জীবনের এই গোধূলী বেলায় কর্মজীবনের সমাপ্তি দশার এই অনুষ্ঠানে নির্দ্বিধায় আমার বিচারাঙ্গনে অনিচ্ছাকৃত ভুল ভ্রান্তি ক্ষমাসুন্দর দৃষ্টিতে দেখার জন্য সম্মানিত সহকর্মী, বিজ্ঞ আইনজীবীসহ বিচারপ্রার্থীদের কাছে অনুরোধ জানাচ্ছি।

প্রকৃত পক্ষে আমার মাহাত্মে-মনুষ্যত্বে, কর্তব্যে ও সহনশীলতায়, অন্যায় ও অধর্মে কোনরুপ পদস্থলিত না হয়ে আমি এই সুদীর্ঘকাল বিচারিক জীবনের কর্মকান্ড পরিচালনা করেছি। আমি বিশ্বাস করি কর্মই মানুষের জীবনকে মহামান্বিত করে, জন্মের ঋণকে অর্থবহ করে তুলে। এই মুহূর্তে আমার বিচারিক পোষাকের সর্বশেষ ব্যবহার নিজেকে কিছুটা দায়মুক্ত করলেও শুধুমাত্র অতীতের কোন গ্রহণযোগ্য ব্যর্থতা ও সমিষ্টিক সার্থকতাই পারে আমাকে তৃপ্ত করতে। প্রতিকূল পরীক্ষায় ভাগ্য আমাকে কখনও কখনও বিব্রতকর অবস্থায় ফেললেও তা পরাভবের অগৌরবে কখনই সার্বিকভাবে লজ্জিত করেনি। এই মুহূর্তের অনুভূতিটুকু কবিগুরুর ভাষায় বলি–

ছোট প্রান, ছোট ব্যাথা ছোট ছোট দুঃখ কথা
নিতান্তই সহজ সরল
নাহি বর্ণনার ছটা ঘটনার ঘনঘটা
নাহি তত্ত্ব, নাহি উপদেশ।

পরিশেষে কর্ম জীবনের সমাপ্তি টানতে গিয়ে কত কথাই না মনে আসছে যা ব্যক্ত করার ভাষাও খুঁজে পাইনা। আজ আমার মনে হচ্ছে আপনারা আমাকে জাহাজে তুলে দিতে ঘাঁটে এসেছেন। আপনাদের মঙ্গল-ধ্বনি সঙ্গে নিয়ে আমার বিচারিক জীবনের খেয়াতরী দিবালোকের পরপারেই পাড়ী দিবে। এই মুহূর্তে আমি আপনাদের কাছে আমার অবশিষ্ট জীবন পরিবার পরিজন নিয়ে শান্তিতে কাটিয়ে পরপারে যেতে পারি তার জন্য দোয়া প্রার্থী।

এলোমেলো চিন্তার আর বহিঃপ্রকাশ না ঘটিয়ে অত্যন্ত সংক্ষিপ্তভাবে কবিগুরুর ভাষায় আবার ও বলি–

"পথের প্রান্তে আমার তীর্থ নয়,
পথের দু'ধারে আছে মোর দেবালয়।"

যাক, আপনাদের মঙ্গল-ধ্বনি হৃদয়ে ধারণ করে মহাসাগরের দিকেই পাড়ী জমাবার এই শুভ বার্তার মাঝেই বিচারক জীবনের অবসান ঘটুক এই কামনা করে বিদায় নিচ্ছি।

খোদা হাফেজ।

*Farewell address by Mr Justice Mohammad Anwarul Hoque in Court Room No. 1, of the Appellate Division. Supreme Court, held on 8th day of April, 2014.

Former Chief Justice Muhammad Habibur Rahman

—MI Farooqui*

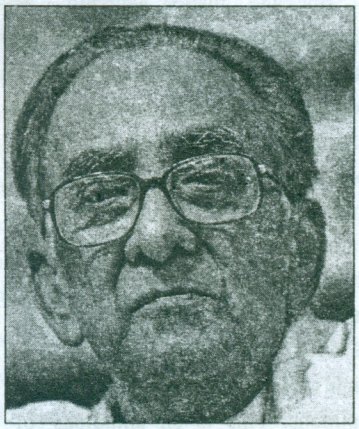
We have lost a legal luminary, social thinker, litterateur, a philologist, and a wise and upright judge, the former Chief Justice Muhammad Habibur Rahman (MH Rahman) who died on 11th January 2014 in Dhaka. He was 89, born in Murshidabad of West Bengal, India. He also served the nation, though reluctantly, as chief adviser to the caretaker government (31 March 1996-23 June 1996). He was persuaded to accept the office by the former Chief Justice Shahabuddin Ahmed. This office is abolished by the Fifteenth Amendment to the Constitution of the Republic.

As an independent thinker, he did not hesitate to criticize the Governments in power. He was an influential contributor to the societal development and believed in liberal democracy. He used to attend social functions of different segments of the society without any pride or prejudice. Once I found him in a cultural function at Alliance Frances of the inmates of the Geneva Camp. In another function, he called upon them for an organized movement, which could put forward their rightful demands. To quote him:

> "We have seen the ersatz activities of the language movement. The way we now see [the] so-called secularism, no demand, will be fulfilled without movement." (The New Age , Dhaka of 25 July 2011 under the caption "Call for end to discrimination against Urdu-speaking people.")

A question was raised by Larma in the Parliament in 1974 for the introduction of ten tribal languages in Primary schools of Chittagong Hill Tracts. Professor Yousuf Ali, the Minister for Education replied in the negative as the Hill Tracts is a part of Bangladesh, Bangla [alone] is, therefore, necessary to be maintained as a communication throughout the country. On this, MH Rahman has commented that the language has two [fundamental] rights: (i) Right of Protection and (ii) Right of Expression. There should not be discrimination for one's language. He has expressed this view in his book Bangladesher Nana Vasha. This is his last book published on the occasion of 21st February of 2014.

He has authored to his credit seventy-five books in Bangla and English on law, language, literature, poetry, and religions. He mainly concentrated, on law and languages. He has helped develop the legal jurisprudence and thoughts in Bangla. His book Ain-sabdakos is a basic book in Bangla for vocabulary of law. Another book Ainbishayek prabanda bali covers development of legal jurisprudence. He was interested in native languages of the other nationalities along with the national language of the country. He started translating into Bangla the poetry of



Justice Md Habibur Rahman

minorities' languages. In his title Bangladesher Nana Vasha, I find some such collections pleading for harmonious co-existence as components of one and single nation. In his book 21st February speaks for all Languages, he pleads strongly for mother tongues of all people. He speaks his mind in the introduction as follows:

> On 20 February I wrote a poem 'Twenty-First February' wherein I have said that Twenty-First February speaks for mother tongues of all peoples. That was our stand when we started the movement six decades ago for the recognition of Bengali as one of the state languages of Pakistan. I have been carrying that conviction all my life.

In one of the social functions, he addressed in Japanese language. At the end of his speech, the foreign guests applauded him. He was an

* The writer is Senior Advocate of Supreme Court of Bangladesh.

acknowledged authority on Tagore. He is comparable to the late Chief Justice Murshed of East Pakistan High Court who was a great judge. At the ripe age, Justice Murshid was learning Chinese. Justice Habibur Rahman was also learning Chinese. Command over the language and jurisprudence made their judgments lucid, appealable, and thought provoking. These judgments are legal literatures to be preserved and taught. To my satisfaction Justice Rahman has compiled his decisions (from 1976 to 1995) under the title, On Rights and Remedies: A collection of Opinions. This is an anthology of legal literature even though the views of the other judges are not mentioned. Lord Denning in The Discipline of Law has discussed his judgments with those of his peers.

In *Anwar Hossain's (Eighth Amendment) case*, the question was raised what is 'the pole star' of our Constitution. Article 7 was described by BH Chowdhury J, as the 'Pole Star'-the intention of its makers and adopters. MH Rahman J, on the other hand, termed the Preamble as the 'Pole Star'. He says:

> ...This preamble is not only a part of the Constitution; it now stands as an entrenched provision that cannot be amended by the Parliament alone. It has not been spun out of gossamer matters nor is it a little star twinkling in the sky above. If any provision can be called the pole star of the Constitution then it is the Preamble. The impugned amendment is to be examined in the light of the Preamble.

The Preamble's dramatic words, 'We, the People' trumpeted the Constitution's underlining theory of 'popular sovereignty' that vest in the people, who adopt[ed], enact[ed] and [gave] to 'themselves' this Constitution. The summary of the Preamble is reiterated in Article 7 as 'this Constitution' being 'solemn expression of the will of the people with 'all powers' belonging to the people affected under, and by the authority of this Constitution.'

I find this thought in Plato's discourse. Importance of Preamble in law, music, and speech was considered by him at the end of The Laws (book IV). He urged 'every single should have a suitable preamble at the beginning; for that which is to follow is most important, and it makes all the difference whether we clearly remember the preambles or not....' Plato says that Preamble is not a chance topic of discourse.

I was a Supreme Court Correspondent of the Bangladesh Observer, and was assigned to cover *Professor Golam Azam's Case* on nationality. In this case, chapter and verse was quoted to assert that he had been involved in anti-Bangladesh role since before and after the war of liberation.

In reply to a submission that in the USA even for voting in a political election in a foreign country, right of citizenship might be forfeited, MH Rahman, J., pointed out with reference to *Perez vs. Brownell* (cited by the Bar) that in his dissent, joined by Black and Douglas, JJ, Chief Justice Warren, held (in the minority judgment): "Citizenship is man's basic right, for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen. He has no lawful claim to protection from any nation, and no nation may assert rights on his behalf. His very existence is at the sufferance of the state within whose borders he happens to be". He then said that the majority decision (5-4) *in Perez* was over-ruled in *Afroyim vs Rusk*. His prompt wisdom was superb. In his judgment, he compared the citizenship as the very basis of fundamental rights of the citizens.

I hope I may be pardoned if I conclude this remembrance with my personal note. The day was fateful for Justice Rahman. His name was announced as chief justice for Bangladesh. Mr. Abdul Matin (as he then was) and I together went to his chamber in the morning to congratulate him. He asked both of us: "Why don't you want to be elevated? I politely said, "Sir, I cannot accept the high office as a notice from Bureau of Anti-Corruptions has asked me to submit a list of the cases I appeared in between 1 March 1993 and 20 March 1994. This has maligned me for the high office. Notice is under challenge." He appreciated me in silence. A Division Bench of High Court Division ultimately found the action of the Government (1991-1996) to be malafide, and illegal. See *51 DLR (1999) 121; 19 BLD (1999) 382*. Mr Abdul Matin was elevated and retired as a judge of the Appellate Division.

In his death, a chapter is closed.

'আমার চেনা এক দ্যুতিময় বিচারপতি'

বিরল কিছু মানুষ স্বকীয়তার কারনে মহীয়ান হয়ে ওঠেন যাদের আমরা সম্পূর্ন আলাদা করে দেখি। গায়ক সম্রাট মরহুম আব্বাস উদ্দিন সাহেবের সুযোগ্য জেষ্ঠ্য পুত্র বিচারপতি মোস্তাফা কামাল ঠিক সে রকম একজন।

বাবা-মার কাছে শুনেছি বিচারপতি মোস্তাফা কামালের পরিবারের সাথে তাঁদের ঘনিষ্টতা বহুদিনের। আমার বয়স যখন নয় বা দশ ঠিক মনে নেই মা কবি জাহানারা আরজু ও বাবা বিচারপতি নূরুল ইসলাম সাহেবের সাথে প্রথম আমি আব্বাস উদ্দিন সাহেবের পল্টনের বাড়ি হিরামন মঞ্জিলে যাই। সেখানেই প্রথম দেখি ব্যারিষ্টার মোস্তাফা কামালকে। যতদুর মনে পড়ে সংগীত নিয়েই আলোচনা হচ্ছিল। সেখানে তাঁর হাস্য-রস এবং কৌতুক আমার শিশু মনে দাগ কেটেছিল। পরবর্তিতে আমাদের র‍্যাংকিন স্ট্রীটের বাড়ি কবিতাংগনে সাহিত্য-সংগীতের আসরে সকলের অগোচরে তাঁকে বিশেষ ভাবে লক্ষ্য করতাম।

এর অনেক পরে আমি যখন ঢাকা বিশ্ববিদ্যালয় হতে আইন শাস্ত্রে অনার্স ও মাষ্টার্স (এল,এল,এম,) করে হাইকোর্টে কাজ শুরু করেছি তখন ঢাকা ল রিপোর্টে রাষ্ট্র বনাম আব্দুল করিম ৩৭ ডি,এল,আর, (১৯৮৫) ২৬ একটি মামলার রায় আমার দৃষ্টি আকর্ষণ করে যেটি ছিল আদালত অবমাননা সংক্রান্ত। উপজেলা পদ্ধতি তখন সবেমাত্র শুরু হয়েছে। উপজেলা নির্বাহি অফিসার এবং মুন্সেফ (বর্তমান Assistant Judge) এর মধ্যে বিরোধকে কেন্দ্র করে ঐ আদালত অবমাননার মামলাটি হয়েছিল। বিচারপতি মোস্তাফা কামাল তাঁর রায়ে লিখলেন আমাদের কখনই ভুললে চলবেনা এই উপজেলা পদ্ধতি একটি সদ্যজাত কনসেপ্ট আর মুন্সেফের বিচারিক কার্য্যক্রম শত বৎসর উর্দ্ধের এক ব্যবস্থা। কী করে একজন উপজেলা নির্বাহি অফিসারের এত ঔদ্ধত্ব হয় একজন মুন্সেফের সাথে এহেন আচরণ করার। এটা অবশ্যই ধৃষ্টতা এবং স্পষ্টতই আদালতের অবমাননা। উনি রায়ে উল্লেখ করলেন "Upazilla administration is still a new and evolving concept, but the place that a Munsif occupies in the judicial hierarchy is not a concept. It is generally known to our people, used as they are in the functioning of an independent judiciary for upwards of a century, that the Munsif is the lowest level representative of an independent organ of the State. Our people have not seen and are not used to seeing a pliable or a committed judiciary. The sight of an executive head lecturing a member of the judiciary in the open Court and creating hindrances in smooth functioning is too much to be allowed with impunity .....We cannot stand as a silent spectator to this unwarranted assault on the dignity of a Court of Law and to a blatant interference with the administration of justice at the lowest level. The arms of law are long enough to reach a contemner who acts in contumacious disregard of the dignity of a Court of Law." ঐ মূহুর্তেই নতুন করে আবিষ্কার করলাম এই দ্যুতিময় মানুষটিকে।

এর পরের অধ্যায় শুধু নিরবচ্ছিন্ন ক্ষুরধার আইনী ব্যাখ্যার ধারাবাহিকতা। একের পর এক কী চমৎকার বস্তুনিষ্ঠ সব রায় দিয়ে যাচ্ছেন তিনি। এক্ষেত্রে কয়েকটি রায়ের উল্লেখ না করলেই নয়।

আমাদের সংবিধান অনুচ্ছেদ ১০৪ এর মাধ্যমে শুধুমাত্র আপিল বিভাগকে সম্পূর্ণ ন্যায় বিচার (complete justice) নিশ্চিত করার ক্ষমতা দিয়েছে। আমার জানামতে ন্যাশনাল বোর্ড অব রেভিনিউ বনাম নাসরিন বানু ৪৮ ডি,এল,আর, (এডি) (১৯৯৬) ১৭১ মামলায় বিচারপতি কামাল সর্বপ্রথম complete justice এর ব্যাখ্যা দিয়েছেন এই ভাবে-"We have done this exercise "for doing complete justice" under Article 104 of the Constitution. But what is "complete justice?" The words do not yield to a precise definition. Cases vary, situations vary and the scale and parameter of complete justice also vary. Sometimes it may be justice according to law, sometimes it may be justice according to fairness, equity and good conscience, sometimes it may be in the nature of arbitration, sometimes it may be justice tempered with mercy, sometimes it may be pure commonsense, sometimes it may be the inference of an ordinary reasonable man and so on. This Court has done this exercise in varying circumstance applying varying principle in various cases."

ডঃ মহীউদ্দীন ফারুক বনাম বাংলাদেশ ৪৯ ডি,এল,আর, (এডি) (১৯৯৭) ১, অসাধারণ এক রায়ে তিনি আমাদের সংবিধানের ১০২ অনুচ্ছেদের *"Locus Standi"* এর পরিধি কি হবে সেটার বিশদ এবং বহুমাত্রিক ব্যাখ্যা দিলেন। তিনি বললেন-"In Bangladesh an unnoticed but quiet revolution took place on the question of *locus standi* after the introduction of the Constitution of the People's Republic of Bangladesh

*বিচারপতি মোঃ আশফাকুল ইসলাম, বাংলাদেশে সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ, ঢাকা।

in 1972 in the case of *Kazi Mukhlesur Rahman vs Bangladesh, 26 DLR (SC) 44,* decided on September 3, 1974.....With the power of the people looming large behind the constitutional horizon it is difficult to conceive of Article 102 as a vehicle or mechanism for realizing exclusively individual rights upon individual complaints. The Supreme Court being a vehicle, a medium or mechanism devised by the Constitution for the exercise of the judicial power of the people on behalf of the people, **the people will always remain in the focal point of concern of the Supreme Court** while disposing of justice or propounding any judicial theory or interpreting any provision of the Constitution. Viewed in this context interpreting the words "any person aggrieved" meaning only and exclusively individuals and excluding the consideration of the people as a collective and consolidated personality will be a stand taken against the Constitution. There is no question of enlarging locus standi or legislation by Court ..... From the language used in Article 102(1) of our Constitution, 'any person aggrieved' may move the High Court Division for enforcement of fundamental right conferred by Part III of the Constitution. Under Article 102(2)(a), the High Court Division may make an order on the application of any 'person aggrieved ' in the nature of mandamus, prohibition and certiorari except for and application for habeas corpus or quo-warranto."

পবিত্র কোরআন শরীফের ব্যাখ্যা দেয়ার যোগ্যতা কার হতে পারে, সে সম্পর্কে তিনি হেফজুর রহমান বনাম শামছুর রহমান ৫১ ডি,এল,আর, (এডি) (১৯৯৯) ১৭২ মামলায় দিক নির্দেশনা দিতে গিয়ে উল্লেখ করেছেন–"Then comes the question of competence or incompetence of persons to interpret the Holy Quran ..... A person who ventures to interpret the Holy Qur-an (1) shall be a Muttaqi (2) must have a wide knowledge of hadith in connection with the Prophet's (S) interpretation of the Holy Qur-an and with the statements of his sahabis (connections) and their successive companious (3) have a knowledge about those parts of the Holy Qur-an which have been repealed or substituted (4) have a knowledge about the significance of each Ayat (5) have a knowledge about Ilmul Kirat (6) have a profound knowledge of the Arabic language, grammar diction, etc. as the Holy Qur-an was revealed in the Arabic language (7) must have a thorough knowledge of all the major commentaries and works of different schools of thought, (8) must be a faqih and other qualifications as well, not necessarily limited to and special preserves of Ulemas. All these qualifications follow either from the Holy Qur-an or from Hadith and dedicated and knowledgeable Muslim interpreters of the Holy Qur-an. We do not question the competence of the learned Judges of the High Court Division or of the learned Advocates who addressed us to interpret the Holy Qur-an, but we ourselves are not sure about, our own competence in the matter and are approaching the subject by force of circumstances with a great deal of trepidation in our hearts, lest we commit mistakes unknowingly, for which we beg Almighty Allah's forgiveness in advance."

উনি আমাকে বলতেন সব সময় বস্তুনিষ্ঠ এবং সংক্ষিপ্ত বক্তব্য কোর্টে পেশ করবে। পাঁচটি বাক্যে যে ভাব প্রকাশ করা যায় সেটা যদি একটি বাক্যে প্রকাশ করতে পার সেখানেই তোমার কৃতিত্ব। তিনি আমায় আরও বলেছিলেন একজন আইনজ্ঞকে জীবনে অনেক মামলা করতে হয় কিন্তু একটি বা দু'টি মামলা যেমন তাকে স্মরনীয় করে একইভাবে একজন বিচারকের দেয়া অসংখ্য রায়ের মাঝে একটি কি দু'টি রায় তাঁকে চির স্মরনীয় করে রাখে। আমি অবলীলায় বলতে পারি বিচার বিভাগকে শাসন বিভাগ থেকে পৃথক করার ক্ষেত্রে বিচারপতি মোস্তাফা কামালের দেয়া মাজদার হোসেন মামলার ২০ বি এল ডি (এডি) (২০০০) ১০৪ রায়টি তাঁকে চীর স্মরনীয় করে রাখবে। ওটি একটি মাইল ফলক। ব্যক্তিগত আলাপচারিতায় কোন একদিন তাঁর কাছে জানতে চেয়েছিলাম কী ভাবে আপনার প্রতিটি রায় এত ছন্দময় এবং সংক্ষিপ্ত হয়? উনি বলেছিলেন– কাজটি সত্যিই দুরুহ। রবি ঠাকুর এজন্যই বলেছিলেন–

'সহজ কথা বলতে আমায় কহ যে সহজ কথা যায়না বলা সহজে।'

তাঁর অপূর্ব বাগমিতা আমার কাছে আর এক বিস্ময়। সহজ, সাবলিল এবং হাস্য রস উদ্দীপক উপস্থাপনায় বাঙ্গময় করে তোলেন যে কোন আসর। ভীষন positive ব্যক্তিত্বের মানুষ তিনি। প্রধান বিচারপতি হওয়ার পর সুপ্রীম কোর্ট বার এ্যাসোসিয়েশনের সম্বর্ধনা অনুষ্ঠানে প্রধান অতিথির ভাষনে দৃঢ়তার সাথে তিনি বললেন আমি কিছু কাজ করব, আপনাদের সেগুলো ধরে রাখতে হবে। মাত্র

৬ মাসের কিছু বেশী সময় বাংলাদেশের প্রধান বিচারপতি হিসেবে দায়িত্ব পালন করেছেন। ঐ অল্প সময়ের ভিতরে কি অসাধারণ কিছু কাজ তিনি করেছেন যা বিস্মৃত হবার নয়। সুপ্রীম কোর্ট প্রাঙ্গনের আমূল পরিবর্তন করলেন তিনি। কোর্টের আভ্যন্তরীন শাসন অব্যবস্থাকে কঠোর নিয়মের মধ্যে আনলেন। ঐ সময় থেকেই তাঁর নির্দেশে বেঞ্চ অফিসাররা কোট-টাই পরতে শুরু করেন যা এখনো অব্যাহত রয়েছে। প্রধান বিচারপতির কোর্টকে (১নং কোর্ট) সম্পূর্ণ শীতাতপ নিয়ন্ত্রিত করলেন। কোর্ট ও মাজার প্রাঙ্গন ঘেঁষে গড়ে ওঠা অবৈধ স্থাপনা সমূহ রাতারাতি উঠিয়ে দেন। কোর্টের বিভিন্ন সেকশনের কার্যক্রম সরাসরি পর্যবেক্ষনের ব্যবস্থা করেন।

তিনি বলতেন জীবনের প্রতিটি মূহুর্ত আবিষ্কারের, পেছনে ফিরে তাকানোর সময় কোথায়। একটি বইয়ের নাম দিয়েছেন "সময় কথা বলে।" যতদিন আইনের সুশাসন অব্যাহত থাকবে, যতদিন আইনের পঠন-পাঠন, চর্চা চলবে তাঁর বিচক্ষন আইনের ব্যাখ্যা সময়ের প্রয়োজনে সত্যিই কথা বলে যাবে। এই সব কিছু নিয়েই আমার ভীষণ প্রিয় মানুষটি বিচারপতি মোস্তাফা কামাল।

Feminine Jurisprudence :A new concept

*—A K Roy**

Feminist legal theory: Feminist legal theory is based on the belief that the law has been fundamental in women's historical subordination. The project of feminist legal theory is twofold. First, feminist jurisprudence seeks to explain ways in which the law played a role in women's former subordinate status. Second feminist legal theory is dedicated to changing women's status through a reworking of the law and its approach to gender.

History: Martha Fineman founded the Feminism and Legal Theory Project at the University of Wisconsin Law School in 1984, to explore the relationships between feminist theory, practice, and law, which has been instrumental in the development of feminist legal theory.

Contemporary legal theories, such as feminist legal theory, are interested in the relationship between law and power, including modes of domination. It would be fair to say, however, that even these newer approaches draw heavily on traditional debates over natural law versus positivism (e.g. both feminist and critical race theory tackle the problem of essentialism in law-the tendency to universalize the specific and culturally contingent nature of human behaviour). As with all theory, jurisprudence reflects the social concerns of the society that brings them into being. Both traditional and contemporary natural law theory and traditional and neopositivism reflect the values and concerns of the theorist.

Main approaches to feminist legal theory

The four primary approaches to feminist jurisprudence are:

* the liberal equality model;
* the sexual difference model;
* the dominance model;
* and the postmodern or anti-essentialist model.

Each model provides a distinct view of the legal mechanisms that contribute to women's subordination, and each offers a distinct method for changing legal approaches to gender.

The liberal equality model: The liberal equality model operates from within the liberal legal paradigm and generally embraces liberal values and the rights-based approach to law, though it takes issue with how the liberal framework has operated in practice. This model focuses on ensuring that women are afforded genuine equality-as opposed to the nominal equality often given them in the traditional liberal framework-and seeks to achieve this either by way of a more thorough application of liberal values to women's experiences or the revision of liberal categories to take gender into account. Susan Okin (1946-2004), for example, has critiqued liberal approaches to justice.

The sexual difference model: The difference model emphasizes the significance of gender differences and holds that these differences

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should not be obscured by the law, but should be taken into account by it. Only by taking into account differences can the law provide adequate remedies for women's situation, which is in fact distinct from men's. The difference model is in direct opposition to the sameness account which holds that women's sameness with men should be emphasized. To the sameness feminist employing women's differences in an attempt to garner greater rights is ineffectual to that end and places emphasis on the very characteristics of women that have historically precluded them from achieving equality with men.

The process of law reform is fraught with difficulties for all those who take part. The benefits for those who are the subject of law reform are also often dubious. Many sex-workers do not consider the legislation to be in their interests and, like Marcia Neave, think the legislation supports only those with power and money to establish licensed brothels for profit, Sex workers who want to work periodically or independently think the legislation undermines their efforts to earn a livelihood.

Research on the impact of the legislation on sex workers suggests that prostitutes regard the legislation as reinforcing the image of the profession as 'dangerous' and morally and biologically unsanitary.

The dominance model: The dominance model rejects liberal feminism and views the legal system as a mechanism for the perpetuation of male dominance. It thus joins certain strands of critical legal theory, which also consider the potential for law to act as an instrument for domination.

In the account of dominance proposed by Catherine MacKinnon, sexuality is central to the dominance. MacKinnon argues that women's sexuality is socially constructed by male dominance and the sexual domination of women by men is a primary source of the general social subordination of women.

The anti-essentialist model: Feminists from the postmodern camp have deconstructed the notions of objectivity and neutrality, claiming that every perspective is socially situated. Anti-essentialist and intersectionalist critiques of feminists have objected to the idea that there can be any universal women's voice and have criticized feminists, as did Black feminism, for implicitly basing their work on the experiences of white, middle class, heterosexual women. The anti-essentialist and intersectionalist project has been to explore the ways in which race, class, sexual orientation, and other axes of subordination interplay with gender and to uncover the implicit, detrimental assumptions that have often been employed in feminist theory.

In the 19th century, sexologists, criminologists and other 'experts' decided that prostitutes were biologically different from 'normal' women. Sex work, in this framework, shifted from being 'sinful' to 'sickness'. This location of 'difference' enabled surveillance and isolation of sex workers. They came to be treated as both a moral and a biological hygiene problem.

In the early 1960s, people began to question the right of the state to intrude into matters of private morality. To understand this social shift in attitude, we need to look at the work of an influential English law reform committee that inquired into the regulation of prostitution and homo sexuality. In 1957, the Report of the Committee on Homosexual Offences and Prostitution (the 'Wolfenden Report') was presented to the United Kingdom Parliament and led to legislative reform. The report reflected the more liberal views of the 1960s towards sexuality and private life.

The parliament did not consider the report saying that it is not their primary duty to decide what are the essential elements of criminal offence. They further observed that it is not their function to intervene in the private lives of the citizens or to sack to enforce any particular pattern of behaviour. They do not believe it to be a function of the law to attempt to cover all the fields of sexual behaviour. Nor indeed is prostitution as such.

.....

cross examining these witnesses, the defence could not make them unworthy of believing them.

55. From the testimonies of PWs 18 and 19, we find that they recovered the body of Trisha from the pond and sent the body to Gaibandha Sadar Hospital where the Doctor on duty declared her dead. From the evidence of PW 21, Dr Amal Chandra, it is clear that Trisha died due to asphyxia as a result of drowning.

56. PWs 15 and 16 who were the headmaster and the class teacher of Trisha respectively of Gaibandha Madhyapara Government Primary School deposed that Trisha was a student of that school and on the date of occurrence, i.e. on 17-7-2002, she had gone to school and after school hours, she started for home and then they heard that Trisha died because of drowning. The defence by cross-examining these witnesses, could not, in any way, shake the credibility of their testimonies that Trisha was a student of Madhyapara Government Primary School and on the date of occurrence, she had gone to school and after school hours started for her home.

57. All the appellants made confessional statements before PW 22. This PW categorically stated that he recorded the statements of the three appellants under section 164 of the Code observing all formalities as mandated by law. He categorically stated that none of the appellants made any complaint of torture and duress and thus made them compel to make the confessional statements. He further stated that he gave three hours time to each of the appellants for their reflections before making their confessional statements. We have gone through the confessional statements of the 3(three) appellants. It appears to us that the confessional statements of the three appellants were voluntary and true. In their confessional statements, the appellants stated the fact of love of Modern for Trisha and chasing her into the lane of Khapara and the confessional statements are clearly in line with the testimonies of PWs 2 and 3. However, we consider it relevant to quote the confessional statements of the three appellants which are as follows:

Statement of Md Mehedi Hassan Modern

"আমি তৃষাকে ভালবাসতাম। কিন্তু তৃষা এবং তার আত্মীয়-স্বজন ইহা পছন্দ করত না তাই আমি তাকে অপহরণ করে ঢাকায় নিয়ে বিবাহ করার মনস্থির করি। গত ১৭-৭-২০০২ ইং তারিখ বিকাল ৩-৩০ টার দিকে আমি আমার বন্ধু শাহীন ও আশা গিয়া মাতৃসদনের নিকট অপেক্ষা করতে থাকি। তৃষা সে পথে স্কুল থেকে বাড়ী ফিরছিল। আমাদিগকে দেখে সে প্রথম খাঁ পাড়ার গলির ভিতর প্রবেশ করে। কিছুক্ষণ পর সে পুনরায় রাস্তায় বের হলে আমরা তার দিকে এগিয়ে যাই। সে তখন দৌড় দেয়। এক পর্যায়ে তৃষা পুকুরে ঝাপ দেয়। আমি তখন বাচানোর চেষ্টা করলে আমার বন্ধুরা বলে যে লোক জানা জানি হবে। মামলা হবে তখন আমরা পালানের চেষ্টা করলে তখন দেখে ফেলে পরে লোকজন ধরে ফেলে।"

Statement of Md Shahin

"গত ১৭-৭-২০০২ তারিখ বিকালে মেহেদী মর্ডান আমাকে ডেকে নিয়ে যায়। সে তৃষা নামে একটি মেয়েকে ভালবাসত। তাকে ঢাকায় নিয়ে গিয়ে বিয়ে করবে বলে জানায়। ঘটনার দিন আমি মর্ডানের সংগে সিভিল সার্জন সাহেবের বাড়ীর সামনে যাই। তখন তৃষা সে পথে আসে। আমি, মর্ডান এবং আশা তাকে ধরতে যাই। তখন তৃষা দৌড় দেয়। এক সময় সে পুকুরে ঝাপ দেয়। আমরা কিছুক্ষণ অপেক্ষা করেই চলে আসি।"

Statement of Ariful Islam Asha

"গত ১৭-৭-২০০২ বিকাল ৩-৩০ টার সময় শাহীন ও মর্ডান আমাকে ডেকে নিয়ে যায়। মর্ডান তৃষা নামে একটি মেয়েকে ভালবাসত। সে ঐ দিন তাকে হাইজ্যাক করে ঢাকায় নিয়ে গিয়ে বিবাহ করতে চায়। বেলা ৩-৩০ টাকার দিকে তৃষা স্কুল থেকে বাড়ী যাচ্ছিল। মর্ডান তখন বলে চল তৃষাকে ধরি। আমরা তার দিকে যেতে থাকলে সে দৌড় দেয়। এক পর্যায়ে তৃষা পুকুরে ঝাপ দেয়। আমরা কিছুক্ষন অপেক্ষা করে চলে আসি।"

58. From the evidence of the PWs as well as the confessional statements of the appellants, it is clear that the appellants chased Trisha upto the pond of Idris Ali at Khapara while returning home after school hours but then she jumped into the pond of herself (নিজে নিজেই) apparently to save herself out of the clutches of the appellants being

encircled by them. From the confessional statements, it is also clear that appellant, Modern loved Trisha and he wanted to abduct her to marry and the other two appellants, namely: Shahin and Asha just accompanied him to fulfill his desire.

59. In view of the above, now a very pertinent question to be decided is whether the appellants committed the offence of culpable homicide within the meaning of section 300 of the Penal Code and thus, made themselves liable for punishment under sections 302/34 thereof.

60. Section 302 of the Penal Code has simply provided punishment for murder, and to see whether the appellants have committed murder, we are to fall back upon sections 299 and 300 of the Penal Code which read as follows:

> **"299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. (Illustrations are not quoted as being not relevant in the context)
>
> *Explanation 1.*—A Person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.
>
> *Explanation 2.*—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.
>
> *Explanation 3.*—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.
>
> **300.** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-
>
> *Secondly.*—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-
>
> *Thirdly.*—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-
>
> *Fourthly.*—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

(There are illustrations, exceptions and explanation to the section. Those are not quoted being not relevant in the context)

61. From a reading of section-299, it appears that a person shall be guilty of the commission of offence of culpable homicide if he does an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with knowledge that he is likely by such act to cause death. Three explanations have been added to the section. The explanations have stipulated of the bodily injuries to be inflicted on another person causing death to that person and the other act causing death of a child in the mother's womb respectively to attract the offence of culpable homicide. From a reading of section 300 it is clear that all culpable homicides are not murder. In the section, there are four clauses. As per this section except in the cases excepted therein culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or- If it is done with the intention of causing such bodily injury as the

offender knows to be likely to cause the death of the person to whom the harm is caused, or- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. However, we are not required to consider the exceptions mentioned in the section, because these exceptions will come into play only when it is proved or established beyond reasonable doubt that the accused, here the appellants commit the offence of culpable homicide.

62. From a combined reading of the two sections (sections 299 and 300) of the Penal Code, it is apparent that in order to convict a person under section 302, the prosecution must prove that he had the intention to cause death of the victim by an act as contemplated therein or the knowledge that an act done by him would cause death of the victim. So, we are to see whether the acts of the appellants in chasing Trisha upto the pond of Idris Ali at Khapara and thus, preventing her from going home in her normal route and then encircling her prompting her to jump into the pond which eventually caused her death at all attract any of the clauses of section 300 of the Penal Code.

63. From the prosecution case, vis-a-vis, the evidence on record, particularly, those of the eye witness (PW3), the confessional statements of the appellants and the medical evidence, it is crystal clear that the appellants did not have any intention of causing death of Trisha. Admittedly, the appellants did not cause any bodily injury on the person of Trisha and no such injury was also found on the body of Trisha, so the question of attracting the first 3 (three) clauses of the section does not arise at all. The learned Deputy Attorney General has tried to bank upon the Fourth clause of section 300 by submitting that the appellants knew that if the victim jumped into the pond, she could be drowned and that she could die because of such drowning. Similar view has been taken by the High Court Division in coming to the finding that the appellants committed the offence under sections 302/34 of the Penal Code. The High Court Division observed that "Hounding of victim of crime Trisha by convict-appellants up to the bank of episode pond and jumping on the pond in despair and non-action on the part of convict-appellants to rescue and save victim Trisha in spite of her offering imploration to save had been well established by clinching and credible evidence of PW-3, judicial confessional statements of convict-appellants, other evidences and facts and circumstances of the case." So, now we are to examine whether the High Court Division was justified in taking the said view, in other words, whether the prosecution could bring home the charges levelled against the appellants under sections 302/34 of the Penal Code.

64. It is not the prosecution case that being chased by the appellants, Trisha straightaway jumped into the pond to save herself out of their clutches or the appellants pushed back Trisha into the pond or that they actually caught hold of Trisha and while she was fighting to free herself out of their clutches fell into the pond. The prosecution case was that the appellants after chasing Trisha upto the bank of the pond of Idris Ali at Khapara encircled her from all sides and finding no way to escape, she jumped into the pond. In this regard, the testimony of PW3, the only eye witness, is very pertinent. He said to the effect

> "..... তারপর খাঁপাড়া পুকুরের পাড়ে আসামীরা তৃষাকে ঘিরে ফেলে। তৃষা তখন তাহার স্কুল ব্যাগটি পুকুর পাড়ে রাখিয়া পুকুরের পানিতে লাফ দেয়। তৃষার শরীর ও মাথা পানিতে ডুবিয়া যায়।"

From this, it is obvious that before jumping into the pond, Trisha got chance and time as well to keep her school bag on the bank of the pond. The circumstances further suggest that Trisha

jumped into the pond on the spur of the moment. Therefore, the question of knowledge of the appellants that Trisha would jump into the pond being encircled by them, on the bank of the episode pond, does not arise at all.

65. A plain reading of the Fourth clause of section 300 of the Penal Code shows that in order to attract the clause, the act(s) must be such that the person (here the appellants) committing the act must have the knowledge that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and the commission of the act must be such that such act without any excuse for incurring the risk of causing death or such injury as aforesaid. In the instant case, as already stated, Trisha suddenly jumped into the pond and then drowned. And therefore, by no logic, it can be said that the appellants knew that because of their chasing and subsequent encirclement, Trisha would jump into the pond and would be drowned and eventually, would die. From the confessional statements of the appellants along with the evidence of the prosecution witnesses, it is clear that the intention of the three appellants in chasing Trisha was to abduct her so that appellant-Modern, could marry her.

66. In conclusion, we say that in the facts and circumstances of the case and the evidence on record, Fourth clause of section 300 is not at all attracted. The High Court Division totally misconceived Fourth clause of section 300 vis-a-vis the prosecution case in observing that:

> "acts carried out by convict-appellants were eminently *(sic)* dangerous acts and convict-appellants had requisite knowledge that acts would in all probability cause death, though, there was no intention to cause death to victim Trisha. In other words, it can be well said that convict-appellants knew that their acts were also eminently *(sic)* dangerous that those must in all probability would cause death. Convict-appellants must have known that they were running the risk of causing the death of victim Trisha and they had no excuse for incurring that risk and the offence must be taken to fall within Fourth clause of section 300 of The Penal Code and offence of convict-appellants was culpable homicide amounting to murder, even if, they did not intend causing death of victim Trisha. Prosecution, thus, could bring home the charge of section 302 of the Penal Code beyond all shadow of doubt" and thus fell into an error in finding the appellants guilty under section 302 of the Penal Code while confirming the sentence of death awarded against them by the learned Sessions Judge.

67. Another pertinent question to be decided is as to whether the omission of the appellants to rescue Trisha while drowning after she jumped into the pond amounts to "illegal omissions" and thus to construe as "acts" within the meaning of section 32 of the Penal Code and to fix them up with the commission of the offence of culpable homicide within the meaning of section 299 thereof or any of the explanations thereto and find them guilty of the charges brought against them under sections 302/34. The learned Deputy Attorney General has submitted that the failure of the appellants in rescuing Trisha, while drowning, was an act of illegal omission on their part within the meaning of section 32 of the Penal Code, so they were guilty of the commission of the offence of culpable homicide within the meaning of section 299 thereof, the High Court Division rightly confirmed the order of conviction and sentence passed by the learned Sessions Judge against them finding them guilty under sections 300/34 and, as such, no interference is called for with the impugned judgment and order. In section 32 of the Penal Code, the words, which refer to "acts done", have been also extended to "illegal omissions." But "illegal omissions" within the meaning of the Penal Code have to be understood and judged by the term illegal as used in section 43 thereof which reads as follows:

"43. The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit."

68. Thus "illegal" means anything prohibited by law; which constitutes an offence if law prohibits. The word illegal as expressed in the section is applicable to everything which is an offence or which is prohibited by law or which furnishes ground for a civil action; a person is said to be legally bound to do whatever it is illegal in him to omit. Yes assuming that the appellants could have rescued Trisha, while drowning, but they did not do so and thereby omitted to do some act, but that omission on their part cannot, in no way, be termed as "an illegal omissions" within the meaning of section 32 read with section 43 and therefore, such omission does not attract section 299 or any of the explanations thereto and thus to find them guilty of the charges brought against them under sections 302/34 of the Penal Code. To make it clearer, it can be said that to bring an omission within the periphery of section 32 of the Penal Code, it is incumbent that the omission must be illegal and the onus is surely upon the prosecution to show that omission (here failure to rescue Trisha while drowning) which is being treated as an act, is either an offence or is prohibited by law or which furnishes ground for a civil action as stipulated in section 43 thereof. But we could not lay our hand on any provisions of the Penal Code or any other law, which has termed the omission on the part of a person(s) (here the appellants) to rescue a drowning person (here Trisha) as illegal and therefore, the question is answered in the negative.

69. We have considered the other provisions of the Penal Code to see whether the evidence on record attracts any other penal provisions thereof so that the appellants can be found guilty of such offence and can be convicted accordingly. But we could not fix any provision of the Penal Code.

70. We have also given our anxious thought to see whether the acts of the appellants attract any penal provisions of the Ain, 2000 and we find that the evidence clearly attracts the provision of section 7 of the Ain, 2000. This will be clear if we see the definition of "অপহরণ" as given in section ২(খ) of the Ain, 2000 which reads as follows:

"(খ) "অপহরণ" অর্থ বলপ্রয়োগ বা প্রলুব্ধ করিয়া বা ফুসলাইয়া বা ভুল বুঝাইয়া বা ভীতি প্রদর্শন করিয়া কোন স্থান হইতে কোন ব্যক্তিকে অন্যত্র যাইতে বাধ্য করা;

"অপহরণ" has been made punishable under section 7 of the Ain, 2000. As per definition given in the Ain, 2000 "অপহরণ" shall be complete the moment a person (নারী/শিশু) is compelled to go from one place to another place either by force or by allurement or by enticement (ফুসলাইয়া) or through misunderstanding or by threat. Section 7 reads as follows:

"৭। নারী ও শিশু অপহরণের শাস্তি।–যদি কোন ব্যক্তি (৫) এ উল্লিখিত কোন অপরাধ সংঘটনের উদ্দেশ্য ব্যতীত অন্য কোন উদ্দেশ্যে কোন নারী বা শিশুকে অপহরণ করেন, তাহা হইলে উক্ত ব্যক্তি যাবজ্জীবন কারাদণ্ডে বা অন্যূন চৌদ্দ বৎসর সশ্রম কারাদণ্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অর্থদণ্ডেও দণ্ডনীয় হইবেন।"

71. In this case, it has been proved beyond reasonable doubt that after school hours, Trisha was going home (not at Khapara), but was prevented by the appellants from going there and she had to go to Khapara lane because of the chase led by the appellants and thus, she was compelled to go from one place to other within the meaning of section 2(Kha) of the Ain, 2000 and chasing definitely involved the element of threat within the meaning of definition of "অপহরণ". Therefore, the appellants clearly committed the offence under section 7 of the Ain, 2000. These factual and legal aspects of the case in spite of having been brought to the notice of the High Court Division, though in a round about way, did not find merit on the finding that Trisha had not been abducted by the appellants and that "Examination of judicial confessional statements signifies that convict appel-

lants had intention to abduct Trisha." The High Court Division concluded by saying that "attempt to abduct has not been shaped an offence in the Ain, 2000. " In taking the above view, the High Court Division totally missed the words"..... কোন স্থান হইতে কোন ব্যক্তিকে অন্যত্র যাইতে বাধ্য করা।" as used in the definition of "অপহরণ" in the Ain, 2000. It appears to us that the High Court Division suffered from the intuition that "কোন স্থান হইতে কোন ব্যক্তিকে অন্যত্র যাইতে বাধ্য করা" must be a far place. It further appears to us that the High Court Division was obsessed with the definition of abduction as given in section 362 of the Penal Code in coming to the finding that there had been no abduction, but there was an attempt to abduct.

72. The next point to be considered by us is whether papers were filed by the appellants in the trial Court at the very beginning of the trial to show their age under 16 and whether the High Court Division was justified in affirming the finding of the learned Sessions Judge that from the size, the facial appearance and the height, the appellants appeared to him major and were above 18 years of age. To decide the point, we are to see the definition of child as given in section 2(f) of the Act, 1974 and the other relevant provisions therein:

> "child" means a person under the age of sixteen years *(emphasis supplied)*, and when used with reference to a child sent to a certified institute or approved home or committed by a Court to the custody of a relative or other fit person means that child during the whole period of his detention notwithstanding that he may have attained the age of sixteen years during that period.

73. Sub-section (1) of section 6 of the Act, 1974 has imposed a bar to charge a child with, or tried for, any offence together with an adult notwithstanding the provisions of section 239 of the Code or any other law for the time being in force. Sub-section (2) of the section has further provided that if a child is accused of an offence for which under section 239 of the Code or any other law for the time being in force such child but for the provisions of sub-section (1) could have been tried together with an adult, the Court taking cognizance of the offence shall direct separate trials of the child and the adult. Section 3 has empowered the Government to establish one or more Juvenile Courts for any local area by notification in the official gazette notwithstanding anything contained in the Code. Section 4 has specified 5(five) classes of Courts who have been empowered to exercise the powers of Juvenile Courts. Sections 5 and 7 have dealt with the powers of Juvenile Courts and its sittings. From a combined reading of these sections, it is clear that in order to attract the jurisdiction of the Juvenile Court under the Act to try an offence, one must be a child within the meaning of section 2(f) of the Act, 1974 as quoted hereinbefore. In the context, section 66 of the Act is relevant which is as follows:

> "66.(1) Whenever a person, whether charged with an offence or not, is brought before any criminal court otherwise than for the purpose of giving evidence, and it appears to the Court that he is a child, *(emphasis supplied)*, the Court shall make an inquiry as to the age of that person and, for that purpose, shall take such evidence as may be forthcoming at the hearing of the case, and shall record a finding thereon, stating his age as nearly as may be
>
> *(emphasis supplied)*
>
> (2) An order or judgment of the Court shall not be invalidated by any subsequent proof that the age of such person has not been correctly stated by the Court, and the age presumed or declared by the Court to be the age of the person so brought before it shall, for the purposes of this Act be deemed to be the true age of that person and, where it appears to the Court that the person so brought before it is of the age of sixteen years or upwards, *(emphasis supplied)* the person shall, for the purpose of this Act, be deemed not be a child."

74. To answer the point, the meaning of the word "appear" used in sub-section (1) of section

66 of the Act, 1974 appears very important and relevant. Since the word "appear" has not been defined in the definition given in section 2 of the Act, 1974, we are to fall back upon the dictionary meaning of the same and that is permissible. Lord Coleridge held in *R v Peters (1886), 16 Q BD 636* "dictionaries are not to be taken as authoritative exponents of the meanings of word used in Act of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books."

75. As per the Chambers Dictionary, 10th edition "appear" means "to become visible *(emphasis supplied);* to present oneself formally before an authority, court, etc; to act as the legal representative or counsel for another; to come into view *(emphasis supplied),* to come before the public; to perform (on stage or on film, etc); to be published; to be manifest *(emphasis supplied);* to seem *(emphasis supplied)."* In New Oxford Advanced Learners Dictionary as many as 8 (eight) meanings have been shown against the word "appear" and of these 8 meanings, meaning No.1 is relevant in the context. Meaning 1. appear means "LOOK/SEEM *(emphasis supplied)* linking verb (not used in the progressive tenses) to give the impression of being *(emphasis supplied)* or doing sth, SEEM *(emphasis supplied):* [VADJ] She did not appear at all surprised at the news [V-N]. He appears a perfectly normal person [v to inf) She appeared to be in her late thirties *(emphasis supplied)*. They appeared not to know what was happening. There appears to have been a mistake [v (that) it appears that there has been a mistake. It appears unlikely that interest rates will fall further. It would appear that this was a major problem.]" It is also the golden rule of construction that all statutes are to be construed according to the plain, literal and grammatical meaning of the words and when words in a statute are clear and unambiguous they should be construed according to their tenor and meaning for that reflects the intent and purpose of a legislation; the court to construe a provision of a statute according to the ordinary and natural meaning of the language used by the legislature as the language so supplied best declares the intention of the legislature and recourse to any other principle of interpretation is unnecessary. The language used in sub-section (1) of section 66 is very plain, simple, clear and unambiguous. Keeping in view the dictionary meaning of the word "appear" and from a reading of the words "and it appears to the court that he is a child *(emphasis supplied)"* used in subsection (1) of section 66, it *prima facie* appears to us that the legislature has given a plenary jurisdiction or power to the Court to take a first hand decision by way of presumption/assumption/formation of opinion as to the age of a person, whether charged with an offence or not, whenever is brought before it otherwise than for the purpose of giving evidence whether he is a child and then to make an inquiry in that respect as mandated in the section itself. Reading the sub-section in its entirety, it also appears to us that to take recourse to the process of inquiry as to the age of the person so brought before a court and record a finding stating his age, it is a pre-condition that the Court must first presume/assume/form an opinion that the person so brought is a child.

76. The Act, 1974 is a special law and various benefits have been given in the Act to a child offender which are not available to an adult offender, so to give those benefits to a child offender, the Court before whom a person is brought, must presume/assume/form opinion first as to his/her age and if it appears to it that he/she is a child and then on inquiry as mandated in section 66(1) if it is determined that he is really under the age of 16, then and then only he/she would be given the benefits of the Act. There is a good logic behind such scheme by the legislature. The reason, as we could see, is that there may be divergent types of cases which may come before a Court. There may be cases when admittedly in the FIR or in the petition of complaint as the case may be or in the charge-sheet and may be in a confessional statement made by such person, the age has uniformally been written or mentioned under 16, i.e. may be 14 years, 15 years or just under 16

years and such mentioning of age is not disputed by the prosecution or the private party concerned, then no presumption /assumption/formation of a first hand idea as to whether the person is a child or not would be needed or called for. There may be cases when the age of the person so brought is mentioned in the above mentioned documents as 16 or any other approximate age (but not under 16) or even above, there may be cases where no age is mentioned and the person so brought claims to be a child by filing documents, but the prosecution or the state or the private party concerned opposes the claim of the person to be a child claiming that he/she is adult, i.e. above 16 or high. There may be cases where the age of a person is exaggeratively mentioned by the complaining party or the law enforcing agencies to show him adult, but in fact, he is under the age of 16, yet there may be a case where only in one document, such as, the confessional statement made by a person under section 164 of the Code, as happened in the instant case, in the confessional statements of appellant-Asha recorded by the Magistrate, First Class, his age was mentioned 16, but the Sessions Judge found him major and above 18 along with two other appellants and in all these cases, the Court first has to assume/presume/form a first hand idea that the person so brought is a child and, then and then, only it would be obligatory upon it to make an inquiry as to the age of that person in the manner as stated in section 66(1) of the Act, 1974 and record a finding stating his age as nearly as may be *(emphasis supplied).* If it is interpreted that whenever any person, whether charged with an offence or not, is brought before any criminal Court and he claims to be under the age of 16 on the date of occurrence or on a particular date may be on the date of framing of charge "then it must be accepted that on that date he could have been below 16 and not above 16" as opined in the separate opinion by learned brother, Muhammad Imman Ali, J, though actually, the person apparently appears to be above 16 and much more high age as in the instant case, then the Court before whom such person is brought shall have no option but to go for inquiry to determine his/her age as mandated in the section, in that case the Court shall be stripped of the plenary power/jurisdiction given to it by the legislature to presume/assume/form its first hand opinion whether that person is a child or not and in the process, the first part of the section shall become meaningless or redundant. But the provisions of a statute cannot be interpreted in such a way that renders any part thereof meaningless or redundant. Moreso, interpretation of a statute cannot be such that nugates the power given to a Court by the legislature and giving such interpretation, we shall be questioning the wisdom of the legislature. We must also keep in mind another cardinal principle of construction that the legislature never uses any word unnecessary or without any meaning or purpose and no word in a statute should be treated as surplus or redundant and a construction which would render any part of the language of a statute without any effect will normally be rejected.

77. Presumption/assumption/formation of opinion by the Court whether the person brought before it is a child or not, as envisaged in sub-section (1) of section 66, may be from his physical appearance (as was presumed in the instant case) or with reference to papers and documents produced by the parties concerned and may be in consideration of both. And to presume/assume/form such a first hand idea by a Court, it need not be a doctor or a medical expert and no radiological or bone ossification report is necessary. It is also significant to note that even after inquiry the Court shall record a finding as to the age of the person so brought "as nearly as may be." *(emphasis supplied)*

78. We conclude by saying that a criminal Court shall be under an obligation to make an inquiry as to the age of a person who is brought before it whether charged with an offence or not, otherwise than for the purpose of giving evidence as mandated in section 66(1) of the Act, 1974, if it appears to it (here the Sessions Judge) that the person so brought is a child. The section has further mandated to take such evidence as may be

forthcoming at the hearing of the case for the purpose of determining the age "as nearly as may be" *(emphasis supplied).* Same view has been taken by this Division in the cases of *Bimal Das vs the State, 14 BLD (AD) 218 and Abdul Munem Chowdhury @ Momen vs The State, 47DLR (AD) 96.* In the first case (it was a leave petition), a contention was made on behalf of the accused-petitioner that under section 66(1), it was the duty of the Special Tribunal to find out the age of the petitioner before proceeding with the case. This Division dismissed the leave petition. Mustafa Kamal, J (as then he was) who wrote the judgment for the Court observed that:

> "The said section is applicable when it appears to the Court that a person charged with an offence (or not) is a child. If it does not do so appear he has no duty to ascertain the age of that person. The Special Tribunal, therefore, did not act illegally in the matter."

79. In the second case (it was also a leave petition), the accused-petitioner was facing trial along with others in a Sessions case before the Sessions Judge, Moulavi Bazar. On the date of framing of charge, on 31-8-1994, an application was filed by the petitioner to discharge him from the case on the ground that he being a minor was liable to be tried only under the Act, 1974 and not under sections 302/34 of the Penal Code along with others. The application was rejected on 17-9-1997, against which the petitioner took a revision, which was summarily rejected by the High Court Division and then the leave petition was filed. In this case, a contention was made on behalf of the petitioner that his application was wrongly rejected ignoring his age as entered in the registration card produced by him. The petition was dismissed by this Division. ATM Afzal, J (as then he was) who wrote the judgment for the Court held as follows:

> "Under section 66 of the Children Act it is for the Court to consider whether a person charged with an offence and brought before it for trial appears to be a child or not and then to proceed accordingly. In the instant case the learned Additional Sessions Judge observed that the age of the petitioner could not be less than 16 years. He also noticed that there was sign of interpolation in the registration card and the certificate issued from the school. Therefore, he could not rely upon the documents produced by the petitioner."

80. Sub-section (2) of section 66 also postulates that an order or judgment of the Court shall not be invalidated by any subsequent proof that the age of such person has not been correctly stated by the Court, and the age presumed or declared by the Court to be the age of the person so brought before it shall, for the purposes of the Act, be deemed to be the true age of that person and, where it appears to the Court that the person so brought before it is of the age of sixteen years or upwards, the person shall for the purpose of this Act be deemed not to be a child. Interpretation of sub-section (1) is equally applicable in respect of the words "where it appears to the Court that the person so brought before it is of the age of sixteen years or upwards, the person shall, for the purpose of this Act, be deemed not to be a child" as used in sub-section (2).

81. Learned brother Muhammad Imman Ali, J in giving his separate opinion about appellant, Ariful Islam Asha (hereinafter referred to as Asha) that on the date of occurrence, he was a child as in his confessional statement recorded under section 164 of the Code on 20-7-2002, he claimed to be about 16 years of age (occurrence took place on 17-7-2002), but "neither the Court nor the prosecution took any steps to act in accordance with section 66 of the Children Act", though he observed "However, since the trial is over there is no practical gain to be had in inquiring into the procedures followed or not followed during trial of the instant case. " He has observed that the Judges are not experts in assessing age and has also discarded the idea of assessing the age on physical appearance and in support of his view, has relied upon the cases of *Mahomed Syedol*

Ariffin bin Mahomed Ariff vs Yeah Oai Gark, AIR 1916 Privy Council 242, his own article published in the journal section of *61 DLR 33, Hasina Begum vs State, 1 BLC 315* and *Prafullah Kamal Bhattacharya vs Ministry of Home Affairs, Governmernt of Bangladesh 28 DLR, 123.*

82. The first case arose from a judgment and order of the Court of Appeal of the Supreme Court of the Straits Settlement. The action was brought by the respondent, who was money-lender, against the appellant for certain sums of money, in all, amounting to 29,521 dollars. To this action, the appellant lodged a defence that at the time of the transaction sued upon, he was an infant. It appears that certificate was procured from a doctor to show that the defendant was 21 years of age when the property was mortgaged against the loan taken by him. On the other hand, in support of the case of the defendant entry, in book of birth and death in the family kept by the father of the minor, *ante litem motem* was produced. In the above context, their Lordships opined that "Doctor's certificate which is only an assessment of opinion and the minor's declaration before the Magistrate as to age are no proof" and discarding the doctor's certificate accepted the entry, in book of birth and death in the family kept by the father of the minor considering the provisions of section 32 of the Straits Settlement Evidence Ordinance, 1893. The second case arose out of an application filed under section 491 of the Code. The question involved was as to the release of a girl from judicial custody and a Division Bench of the High Court Division relying on the school certificate of the girl held that as soon as the girl attains the age of 18 years from 1-12-1978, she must be released from the judicial custody on her own bond even if the criminal case remains pending. The learned Judges considering section 45 of the Evidence Act observed that the opinion of the doctor that the age of the girl was between 16 and 18 years was absolutely vague and indefinite, so the report could not be relied upon. The last case also arose out of an application under section 491 of the Code. In that case, rule was issued asking the opposite parties, namely, the Ministry of Home Affairs, Government of Bangladesh and others as to why the detenue Shipra Rani Bhattacharya should not be released from jail custody and be made over to the custody of her father. The petitioner claimed that her daughter was minor and was born on 13-6-1963 and was a student of class VIII of Elenga Girls' High School. None of the opposite parties appeared to contest the Rule. The detenue appeared through a privately engaged lawyer to contest the Rule. The question for determination was the age of the detenue. A medical Board was formed at the direction of the High Court Division which after examining the detenue opined that she was about 19 years old. But the learned Judges discarded the opinion of the medical Board as to the age of the detenue relying on other documents produced before them such as school certificate, passport and declaration made before the Indian Immigration authorities while the detenue with his family entered into India on 13-8-1971, i.e. during the war of liberation. The girl was also produced before the learned Judges and seeing the detenue, they observed as under:

> "We have seen her, but her appearance she does not show her to be 19 years old. The age as given by the Medical Board does not fit in her appearance. She looks very tender-aged, and though it is not possible for us to determine her exact age from her appearance, we think that her age could not be 16 years. To us she appears to be aged below 16 years and, as such, she is minor." In none of the cases relied upon by the learned brother, the Court was authorized by any statute to presume/assume/form an opinion as to the age of a person as in the instant case. So whatever observations might have been made in those cases cannot be followed in interpreting the language of sub-section (1) of section 66 of the Act, 1974 as to whether the Court was justified in observing that all the appellants were major and above 18 years of age. From the other judgments relied upon by my learned brother (of which he was the author Judge

while in the High Court Division), it does not appear that the language used in section 66(1) to the effect "and it appears to the Court that he is a child *(emphasis supplied)*" was at all considered and interpreted. In the context, we like to observe further that a provision of law has to be interpreted and applied in the given facts of a case and it cannot be interpreted or applied in the vacuum.

83. For the discussions made above, we hold that this Division rightly interpreted the provisions of section 66(1) of the Act, 1974 in the cases of *Abdul Momen Chowdhury @ Momen vs State (supra) and Bimal Das vs State (supra)* in taking the view that under the section, it is for the Court to consider whether a person charged with an offence and brought before it for trial appears to be a child or not and then to proceed accordingly and if it does not so appear to a Court that the person so brought is a child, it has no duty to ascertain the age of that person. Therefore, question of revisiting those decisions as opined by the learned brother does not arise at all (the case of *Mona alias Zillur Rahman vs the State* will be considered later on in another context). It may be kept on record that neither at the hearing of the leave petition (as apparent from the leave granting order) nor at the final hearing of the appeal, submission was made by the learned counsel final hearing of the appeal, submission was made by the learned Counsel for the appellants that the decision of this Court in the said two cases were wrong and those need to be revisited or reconsidered.

84. Now, we shall see whether, in the instant case, there was any scope of appearance to the Sessions Judge that the appellants were under the age of 16 years when they appeared before him at the time of framing charge and thus to oblige him to make an inquiry as to their age within the meaning of sub-section (1) of section 66 of the Act, 1974.

85. In the FIR, the age of the appellants, namely: Md Mehedi Hasan, Asha and Md Shahin were mentioned as 19, 20 and 19 respectively, so in the charge sheet as well. In the confessional statements of the appellants, their ages were recorded as 19, 20 and 16 years respectively, i.e. the appellants were of the age of 16 and above. From the record, it does not appear that at any point of time, right from the stage of framing charge upto the examination of the Investigation Officer (PW 26) or even prior to that, i.e. before the framing of charge, fact that the appellants were under the age of 16 years, was raised. From the impugned judgment, it is also apparent that during examination of the appellants under section 342 of the Code, their ages were mentioned as 19, 20 and 19 respectively and admitting their said age, they duly put their signatures therein. The learned Sessions Judge who had the privilege of seeing the appellants physically in the dock clearly stated in his judgment that—

> "অত্র মোকদ্দমায় আসামীদের বিরুদ্ধে অভিযোগ গঠনকালে আদালত আসামীদের আকার, চেহারা ও উচ্চতা পর্যবেক্ষন করে দৃঢ়মত পোষন করেছে যে, আসামীরা সকলেই সাবালক এবং তাদের সবারই বয়স ১৮ বৎসরের উর্ধ্বে। কাজেই আসামীগণকে নাবালক দাবী করা এবং নাবালকের সুবিধা পাওয়ার কোন কারণ নেই।"

and as discussed above, the learned Sessions Judge was quite authorized under section 66(1) of the Act, 1974 to hold such presumption/assumption/ formation of his opinion as to the age of the appellants. So, there was no scope of appearance to the Sessions Judge that the appellants were under the age of 16 years and, as such, the question of making an enquiry as to their age within the meaning of section 66(1) did not arise at all. It is also to be noted that in reply to the charges brought against them, none of the appellants (including Asha), at all, claimed that they were children. For the same reason, the learned Sessions Judge did not accept the papers such as registration cards of Secondary School Certificate of appellants, Modern and Asha and the affidavits sworn by the parents of the appellants which were filed during their examinations under section 342

of the Code in a bid to show that they were under the age of 16 years. The High Court Division also on consideration of the age of the appellants as mentioned in the FIR, in their confessional statements and in their examinations under section 342 of the Code, gave specific finding that:

> "From evidence produced and materials placed before court below it is manifestly clear that convict appellants were neither had been child nor juvenile within the meaning of Children's Act during course of commission of felony and also framing of charge. They stand proved to be major or adult at the time of commission of offence and, also, framing of charge."

86. The High Court Division did not take into consideration the documents filed by the appellants during their examinations under section 342 of the Code as those were not proved by examining defence witness. Moreso, the appellants in reply to the question put to them whether they would examine any defence witness declined to examine any defence witness.

87. We see nothing wrong with the above views taken by the learned Sessions Judge and the High Court Division, because a document has to be proved as per the rules of evidence. When the appellants filed those documents apparently in support of their plea that they were under the age of 16, onus was squarely upon them to prove those by examining competent witnesses, particularly, when there were other documents on record (FIR and charge-sheet) showing their respective age above 16 and the learned Sessions Judge while framing charge had already opined that all were major and above the age of 18, but the appellants failed to discharge their onus. And then they putting signatures in the statements under section 342 of the Code knowing fully well that their ages mentioned therein were 19, 20 and 19 respectively made their case worse. In this regard, it is necessary to state that a document(s) filed during the examination of an accused under section 342 of the Code ipso facto cannot be taken as proved, particularly, when there are other materials on record to contradict the contents of such documents and further none of the documents filed by the appellants has got any presumptive value as well within the meaning of section 114 of the Evidence Act; none of the documents filed by the appellants including Asha during their examination under section 342 of the Code can be grouped in clause (e) of the illustrations to section 114 of the Act.

88. Learned brother, Muhammad Imman Ali, J in his separate opinion has raised a point as to "the occasion on which the age of the offender is relevant; whether it should be taken to be at the time of commission of the offence or at the time of framing of charge" and opined that "this aspect has been wrongly interpreted by this Division in a number of cases (although he mentioned one only) where it has been held that the relevant time to consider the age is as on the date of framing the charge, " In support of his opinion, he has referred to the cases of *State vs Md Roushan Mondal @ Hashem, 59 DLR 72, State vs Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka 16 MLR 254, State vs Secretary, Ministry of Home Affairs, Bangladesh Secretariat, Dhaka and others, 19 BLT 376* (in all these cases, the learned brother is the author Judge while he was in the High Court Division) and of these cases, he has heavily relied upon the case of Roushan Mondal. He also relied upon the cases of *Protap Singh vs State of Jharkhand and another, 2005(3) SCC 551* (the judgment was not unanimous) *Jitendra Singh @ Babloo Singh and another vs State of UP (2010) 13 SCC 523, Gopinath vs State of WB 1984 Supp SCC 228* and another decision from Australian jurisdiction. The point raised by my learned brother was never raised either before the learned Sessions Judge or before the High Court Division or in the leave petition, in the concise statement or during the hearing of the appeal *(emphasis supplied)*. At the risk of repetition, it needs to be further mentioned that since the learned Counsel for the appellants did not address us on the point as raised in the separate opinion, no

reply was called for from the State. It is true that the learned Sessions Judge proceeded in the premise that at the time of framing the charge against the appellants, no objection was taken as to their age and he observed in his judgment that :

> "অত্র মামলার অভিযোগ গঠন কালে আসামীগণ তাদের বয়সের বিষয়ে কোনরুপ আপত্তি উত্থাপন করেনি কিংবা ১-১৭ নং পর্যন্ত সাক্ষীগণের দৃষ্টি আর্কষণ করেনি কিংবা সাফাই সাক্ষীর মাধ্যমে আসামীগনের কম বয়স প্রমানের চেষ্টা করেনি।"

and then by referring to the order passed at the time of framing charge came to the finding as to the age of the appellants as stated earlier. From the judgment of the learned Sessions Judge, it does not appear that any specific point was taken as to what should be the occasion on which the age of the appellants was relevant i.e. the date of commission of the offence or the date of framing the charge. Naturally, the learned Sessions Judge did not say anything in that regard. The subordinate Courts (here the Sessions Judge) do not settle the law. Both the Divisions of the Supreme Court settle the law. From the impugned judgment, it does not appear that any specific point as to what should be the "occasion on which the age of the offender is relevant" was raised before it, so the High Court Division did not also dwell upon the same. However, as also quoted earlier, the High Court Division gave specific finding that "From evidence produced and materials placed before court below it is manifestly clear that convict appellants were neither had been child nor juvenile within the meaning of Children's Act during course of commission of felony and also framing of charge. They stand proved to be major or adult at the time of commission of offence and, also, framing of charge, " In the context, it is very relevant to refer to rule 5 of Order XX of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988 (the Rules, 1988) which reads as follows:

> "5. The appellant shall not, without the leave of the Court, rely at the hearing on any grounds not specified in his petition of appeal and the concise statement."

89. From the leave granting order, it is crystal clear that no leave was granted to decide the point raised by the learned brother. In the concise statement filed by the appellants reasons assigned to allow the appeal are exactly same on which leave was ground. To make the point clearer, the reasons need to be perused and the same are quoted below:

I. Because the learned Judges of the High Court Division in affirming the Death sentence failed to consider that the confessional statements made by condemned-petitioners which the trial court and High Court *(sic)* relied upon in convicting petitioners will categorically show that death of Trisha was accidental and neither there was intention nor knowledge of the condemned-petitioners that due to their alleged act Trisha would jump into a pond and die. So in the absence of any intention or knowledge to cause death that their act is likely to cause death, if even the prosecution case is admitted, the conviction and sentence of the petitioner under section 302/34 of the Penal Code is not sustainable in law and, as such, impugned judgment and order is liable to be set-aside.

II. Because the learned Judges of the High Court Division failed to consider that PW 3 the alleged eye witness made vital contradiction in between his statement before the learned Magistrate made under section 164 of the Code of Criminal Procedure and before the trial Court, furthermore he himself did not make any attempt to rescue Trisha and, as such, no reliance can be placed upon his evidence in convicting and sentencing the condemned-petitioners and, as such, the impugned judgment and order is liable to be set-aside.

III. Because the convict-petitioners submitted papers to show their age in the trial court at the very beginning of the trial and

also under section 342 of the Code of Criminal Procedure statements and it will be seen from the 342 Code of Criminal Procedure statements of the condemned-petitioners that the age stated by them and written in 342 Code of Criminal Procedure statements originally were tampered by putting fluid on the dates of their birth and inserted different age to show them adult which is evident from the lower court record and said Act is a clear Act of forgery which the learned Judges failed to consider to reject the contention of the defence lawyer, that the trial of the condemned-petitioners has been vitiated as because Sessions Judge has no jurisdiction to try under the Children Act, 1974 youthful offender under 16 years of age and, as such, impugned judgment and order is liable to be set aside.

IV. Because the learned Judges of the High Court Division misread the evidences of PW 10, PW 11, PW 13 and PW 14 in coming to finding that the condemned-petitioners were caught from the bank of the pond by them. But the evidence of those witnesses will show that when they reached the place of occurrence hundreds of people assembled there and were trying to rescue the victim from the pond and these witnesses gave hearsay evidence and, as such, the learned Judges came to wrong finding that those witnesses are eye witnesses to the occurrence and sentenced the condemned-petitioners to death and, as such, impugned judgment and order is liable to be set aside."

90. It further needs to be pointed out that as, at the time of hearing the appeal, no ground, not specified in the petition of appeal and in the concise statement, was relied upon by the appellants, the question of granting leave by this Court to argue the point raised by the learned brother did not arise at all. Moreso, a point of law has to be decided in the given facts of a case. In the facts and circumstances of the case, the evidence on record, finding given by the High Court Division and the leave granting order vis-a-vis rule 5 of Order XX of the Rules, 1988, we are not, at all, called upon to duel and decide the issue raised by the learned brother in his separate opinion. And we are not inclined "to revisit" the decision in the case of *Mona @ Zillur Rahman vs State 23 BLD (AD) 187 = 9 BLC (AD) 125* as opined by him. However, in an appropriate case, the question may be looked into with notice to the State.

91. Leave was also granted to consider the submission made on behalf of the appellants that "it will be seen from the statement made under section 342 of the Code of Criminal Procedure of the condemned-petitioners that the ages stated by them and written in the statement under section 342 of the Code of Criminal Procedure were tampered by putting fluid on the dates of their birth and inserted different age to show them adult which is evident from the lower Court record and the said act is a clear act of forgery which the Judges failed to consider *(emphasis supplied)* in rejecting the contention of the defence lawyer, that the trial of the condemned-petitioners has been vitiated as because Sessions Judge has no jurisdiction to try the case under the Children Act, 1974 the accused being youthful offender under 16 years of age. " Let us see whether the submission has any factual basis.

92. From the impugned judgment, it does not appear that the allegation of tampering the dates of birth of the appellants as mentioned in their statements while examined under section 342 of the Code by putting fluid and thus, inserting different age to show them adult, as taken before this Division was made before the High Court Division. Before the High Court Division, it was contended in a general way that at the time of occurrence and at the time of framing charge as well as at the time of examination of the appellants under section 342 of the Code, they were under the age of 16 years, so the learned Sessions Judge committed gross illegality in not treating them juveniles under the Act, 1974 and they being

children were required to be tried by Juvenile Court and therefore, the whole trial was vitiated and consequently, the judgment and order of conviction and sentence passed by the learned Sessions Judge could not be maintained. The appellants relied upon the registration cards of Secondary School Certificate Examination of Modern and Asha and the affidavits sworn by their parents which were filed during their examinations under section 342 of the Code. At the risk of repetition, it is stated that besides these papers, no other paper was filed before the trial Court on behalf of the appellants to show that they were under the age of 16. From the judgment of the learned Sessions Judge, it does not appear that the allegation of tampering the ages of the appellants as stated by them in their statements under section 342 of the Code by putting fluid on the dates of their birth and "inserting different age" thereon was, at all, made before him. We do not also find any earthly reason why there would be an attempt by the prosecution to tamper the dates of birth of the appellants by inserting different dates with the fluid to show them adult when the plea of being under the age 16 was not taken by them till examination of the Investigation Officer. Further, if there was tampering of the dates of birth of the appellants as mentioned in their statements, why they chose not to examine defence witness to prove the documents filed in support of such plea and why they did not take that point before the High Court Division. When the allegation of tampering the dates of birth of the appellants mentioned in their statements under section 342 by putting fluid and inserting different age to show them adult was not taken before the Courts below (the learned Sessions Judge and the High Court Division) which, in fact, are the Courts of facts, we see no factual basis of such allegation and entertain the same now. Therefore, we find no merit in the submission.

93. For the discussions made above, we are constrained to hold that the prosecution failed to bring home the charges levelled against the appellants under sections 302/34 of the Penal Code and the High Court Division fell into an apparent error in confirming the death sentence awarded against them by the learned Sessions Judge finding them guilty under the said sections. It further appears that both the Courts below approached the case from an emotional point of view rather than sifting the evidence on record in its proper perspective and in arriving at the finding of guilt keeping in mind the culpability of the appellants in view of the charges levelled against them. The Judges should not be swayed by emotion as that may impair even handed justice. In a criminal proceedings where accusation is made against an accused as to the commission of an offence under any law, be it the Penal Code or other law, the Court is to see whether the evidence adduced by the prosecution in the case proved the accusation and if so to hand down the punishment on the accused as per the dictate of the law, no matter how serious or heinous the offence might be.

94. Be that as it may, the evidence on record show that the prosecution proved beyond reasonable doubt that the appellants committed the offence under section 7 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 and they are liable to be punished for the commission of such offence. And, in order to do complete justice in the matter, we invoke our power under article 104 of the Constitution and dispose of the appeal finally without sending the case back on remand for trial afresh by the concerned Nari-o-Shishu Nirjatan Daman Tribunal, Gaibandha, under the Ain, 2000. Accordingly, we find the appellants guilty under section 7 of the said Ain and sentence each of them to suffer rigorous imprisonment for 14 years and also to pay a fine of Taka 2,000 each in default to suffer rigorous imprisonment for 3 (three) months more.

The appeal is allowed in part.

The judgment and order of conviction and sentence dated 30-9-2002 passed by the Sessions Judge, Gaibandha in Session Case No.53 of 2002 convicting the appellants under sections 302/34 of the Penal Code and

sentencing each of them to death as confirmed by the High Court Division in Death Reference No.44 of 2002 heard analogously with Criminal Appeal No.2967 of 2002 (criminal appeal was dismissed) is set-aside. The appellants are acquitted of the charges brought against them under sections 302/34 of the Penal Code. The appellants are found guilty under section 7 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 and sentenced to suffer rigorous imprisonment for 14(fourteen) years each and also to pay a fine of taka 2,000'00 each in default to suffer rigorous imprisonment for 3 (three) months more. The jail petition is disposed of accordingly.

Nazmun Ara Sultana J: I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J, Md Abdul Wahhab Miah, J and Muhammad Imman Ali, J I agree with the reasoning and findings given by Md Abdul Wahhab Miah, J.

Syed Mahmud Hossain J: I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J, Md Abdul Wahhab Miah, J and Muhammad Imman Ali, J. I agree with the reasoning and findings given by Md Abdul Wahhab Miah, J

Muhammad Imman Ali J : This criminal appeal by leave arises out of judgment and order dated 19-5-2004 passed by a Division Bench of the High Court Division upholding the conviction of the appellants under section 302 of the Penal Code and also confirming the sentence of death.

98. After hearing the matter at length, this Division decided to set-aside the conviction of all the condemned accused for murder under section 302 of the Penal Code while finding them guilty and convicting them for abduction under section 7 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 and sentencing them to rigorous imprisonment for 14 years and also to pay a fine of Taka 2,000 each, in default to suffer rigorous imprisonment for three months more.

99. While I agree with my learned brothers and sister that the conviction should be under section 7 of the Nari-o-Shishu Nirjatan Daman Ain, 2000, for reasons I shall explain in this opinion, I am of the view that accused Ariful Islam Asha was a child at the time of occurrence and he ought to have been dealt with in accordance with the provisions of the Children Act, 1974, hereafter referred to as "the Act", and the Children Rules 1976, hereafter referred to as "the Rules". Moreover, as I shall endeavour to show in the course of my opinion, many misconceptions have surfaced in the judgment of the trial Court and that of the High Court Division with regard to trial of youthful offenders. I feel that such misconceptions, if not pointed out and clarified by this Division, are likely to propagate further misconceptions in the future leading to miscarriage of justice.

100. The Children Act, 1974 is a special law enacted to give various benefits to children under the justice system, in particular to those children who come into conflict with the law and are described as youthful offenders. In fact the law contains favourable provisions in respect of children, which are otherwise discriminatory and not applicable to adult offenders. The law creates a separate and palpably distinct criminal trial and sentencing system, when compared with the system which is in place for adults. However, this positive discrimination, though contrary to article 27 of the Constitution, is a manifestation of article 28(4) which provides:

> "(4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

101. Thus the legislature is empowered by the Constitution to enact provisions in the laws which are specifically favourable to women, children and any backward section of citizens. Therefore, when any offender is a child the law requires that s/he must be dealt with in accordance

with the provisions of the Act, no matter how serious or heinous the offence might be. The same principle is applicable in cases of offences under special laws. Hence, as soon as a child offender is arrested for any crime, the police are obliged to inform the parents or guardian of the child [section 13(2)] as well the probation officer [section 50]. The Officer-in-Charge of the Police Station must also consider bail of the child even in cases of non-bailable offences [section 48]. Apart from persons whose presence is felt necessary by the Court, all other persons may be excluded from the hearing [sections 9, 10 and 12]. No matter how heinous the offence, a child offender cannot be sentenced to death or imprisonment for life [section 51]. Even upon conviction of offences carrying the death penalty or imprisonment for life, the sentence that may be awarded is detention in a certified institute for a period of between two and ten years [section 52]. S/he may only be sentenced to imprisonment in exceptional cases to a maximum period often years [first and second provisos to section 51]. Thus it is of fundamental importance that an offender, who claims to be a child and as such is entitled to benefits under the law, must be given the opportunity to establish his claim to such rights and those may not be denied due to the whims and caprices of those involved in the juvenile justice system.

102. At the outset, one must recall the cardinal principle of criminal justice that the benefit of any legal provision must be construed in favour of the accused. Where two different meanings are possible, the one which is more favourable to the accused will be given preference. Hence, when the accused claims to be about *(emphasis added)* 16 years of age on a particular date, then it must be accepted that on that date he could have been below 16 and not above 16. If he was below 16 he would be entitled to certain substantive and procedural benefits under the Act and the Rules, which should not be denied to him, particularly keeping in mind that if he is wrongfully denied the due benefits he cannot be adequately compensated. Moreover, if he was sixteen years of age on the date of the confession then he must have been below sixteen on the date of commission of the offence, which arguably is the relevant date for calculating age of the accused for the purpose of establishing jurisdiction of the Court under the Children Act, 1974. If the accused can establish that he was a child on the relevant date then the provisions of the Act will be applicable and he will be entitled to all the benefits under that law.

103. It should also be borne in mind that claim to legal rights may be made at any time during the course of the proceedings and should not be allowed to be frittered away by misconceived notions held by trial judges and wrong application of legal provisions. Moreover, substantive rights do not disappear by lapse of time or failure to bring the legal right to the notice of the Judge because the right accrues at the time of framing of the charge (or arguably at the time of commission of the offence, which aspect will be discussed later) and continues to exist. If the accused was a child at the relevant time, then under the Children Act and Children Rules he would have become entitled to all the benefits of a trial as a youthful offender and the effect of those provisions would continue throughout the trial and beyond. Hence, if at any time the accused can establish that he was a child at the relevant time, then he would not be liable to be held in prison during the trial and would automatically become eligible to be sentenced in accordance with sections 51 to 53 of the Act even though the offence may be one which carries a possible death sentence or life imprisonment; section 51 prohibits the imposition of a sentence of death or life imprisonment or imprisonment on a youthful offender. A sentence of imprisonment may be imposed only under two exceptional circumstances as provided in the first proviso to section 51, and that is limited by the second proviso to that section to a maximum period of ten years. These aspects of sentencing were elaborately discussed in the case of *Fahima Nasrin vs Government of Bangladesh,* reported in *61 DLR 232.*

104. Another very important issue is the occasion on which the age of the offender is relevant; whether it should be taken to be at the time of commission of the offence or at the time of framing of charge. With due respect, I am constrained to say that this aspect has been wrongly interpreted by this Division in a number of cases where it has been held that the relevant time to consider the age is as on the date of framing the charge. This issue was discussed at length with reference to international instruments and decisions from other jurisdictions in the case of *State vs Md Roushan Mondal @ Hashem,* reported in *59 DLR 72,* where it was observed:

> "In view of the international covenants, declarations and other instruments, we feel inclined to the view that the relevant date must be the date on which the offence is committed, otherwise the whole thrust of the law to protect those who are immature, impetuous, unwary, impressionable, young, fickle-minded and who do not know the consequences of their act, would be lost. It is the mental capacity of the offender at the time of committing the offence which is of crucial importance. It was observed in the case of *Protap Singh vs State of Jharkhand, 2005 (3) SCC 551* as follows:
>
> "Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing *mens rea* as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child."

105. Thus the Supreme Court of India settled the issue over-turning one of their earlier decisions in the case of *Armit Das vs State of Bihar, 2000 (5) SCC 488.* We may also add that the relevant laws of a vast majority of the countries looked at by us take the date of the offence to be the relevant date for applicability of the Act. In at least two decisions of our High Court Division, *Bablu (supra) and State vs Deputy Commissioner Satkhira (supra),* the relevant date has been taken to be the date of occurrence, which we believe, with respect, is the correct approach. On the other hand there are many decisions of our superior courts holding the view that the relevant date is the date of framing charge or commencement of trial. In our humble and respectful view, this misinterpretation arose initially due to the inaptly applied wording of section 6(1) of the Act, which provides as follows:

> "6. No joint trial of child and adult.—(1) Notwithstanding anything contained in section 239 of the Code or any other law for the time being in force, no child shall be charged with, or tried for any offence together with an adult."

106. Dr Malik submitted that this provision is concerned with the matter of separate trial for children and does not lay down the point in time at which the age will be relevant for the purpose of determining whether the accused is a child. We are inclined to agree with this submission, particularly in view of the stance taken by the Indian Supreme Court, bearing in mind the similar provision which exists in the (Indian) Juvenile Justice (Care and Protection of Children) Act, 2000:

> "18. No joint proceeding of juvenile and person not a juvenile,—(1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, no juvenile shall be charged with or for any offence together with a person who is not a juvenile."

107. We have noted earlier that the Indian Supreme Court has decided that the relevant date

is the date of commission of the offence and not the date of trial.

108. The view taken by the courts in Australia can be gauged from the decision in *Jason Joseph Braun V R Eric Ebatarintja V R* decided on *14 March 1997* by the Court of Criminal Appeal of The Northern Territory of Australia, (as reported in Australian-Northern Territory Report) where it was deliberated as follows:

> "Is the Court's jurisdiction affected if the accused has "attained the age of 17years" by the time he appears before it charged with offences he committed before he attained the age of 17? That question was squarely posed and answered by Muirhead J 11 years ago in Seears vs Oldfield (1985) 36 NTR 65; his Honour said at 70: "Having considered the matter and the authorities, I am satisfied that the age of the person charged when he or she committed the alleged offence is the critical test of the jurisdiction of the Juvenile Court".

The learned Judges went on to hold:

> "We accept for the purpose of these proceedings the approach to dealing with accused persons who have turned 17, first expressed by Muirhead J in relation to the Juvenile Court in Seears vs Oldfield (supra), and adopted as regards the Supreme Court in R vs Williams (supra) and the other authorities mentioned (p6) ."

109. We also bear in mind that the whole purpose of the Act may be defeated by the capricious dealings of the investigating agency, who may intentionally or whimsically delay the investigation and thereby deprive the accused the benefits of the Act. It is the act of the youthful offender done in a moment of indiscretion due to his lesser mental faculty that is being targeted by the Act. Therefore the relevant point in time at which to qualify for the benefits of the Act must be the time of the commission of the offence. We may refer to the reasoning found in a decision of the US Supreme Court,

> "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." Johnson Johnson vs Texas, 509 U S 350, 359-362 (1993).

110. In the light of our views above and bearing in mind the views already expressed by our Superior Courts, we would, with respect suggest that the 'relevant date' aspect for the purpose of jurisdiction of the Juvenile Court may be rethought and brought into line with the aims and purports of the children's legislation worldwide."

111. On perusal of the judgments of the instant case delivered by the trial Court and the High Court Division, it is clear that both Courts are confused on this issue. The High Court Division, as quoted in the judgment of the majority, observed, "the convict-appellants were neither has been *(sic)* child nor juvenile within the meaning of Children's Act *(sic)* during course of commission of felony and also framing of charge. They stand proved to be major or adult at the time of commission of offence and also, framing of charge."

112. The judgment of the majority in the instant case appears to be based on the premise that the date on which age of the offender is relevant is the date of framing of the charge. I respectfully disagree with such reasoning as the basic foundation of the premise relied upon is faulty. Apart from the discussion on this issue in the *Roushan Mondal* case quoted above, for the purpose of guidance reference may be made to section 83 of the Penal Code, which provides as follows:

> "Nothing is an offence which is done by a child above nine and below twelve years of age who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct *on that occasion.*" *(emphasis added)*

113. Thus the important factor is the sufficiency of maturity on the occasion of commission of the offence. I would therefore strongly urge this Division to revisit its earlier decisions on this issue which held the relevant occasion to be the date of framing of charge and, to that extent, to reverse those decisions. I believe the interpretation given earlier was erroneous and to follow the same in the instant case results in perversity which will inevitably be replicated by the subordinate judiciary.

114. In the light of the above discussion, I would base my remaining opinion on the premise that the occasion on which the age of the offender is relevant is the date of commission of the offence.

115. In order for any juvenile offender to benefit from the provisions of the Act, s/he must prove that s/he is a child within the definition as given in section 2(f) of the Act. S/he must be below the age of 16 years. It is the duty of the Court to assess the age of an offender on the very first occasion when s/he is brought before any Criminal Court, as provided by section 66(1) of the Act. Naturally, it is important that the age of the offender be assessed at the very initial stage as many consequences follow with regard to whether the offender may be granted bail, or where s/he should be kept in custody pending trial and which Court will have the jurisdiction to try her/him. It is absolutely illegal for a child to be held in jail custody pending trial, as was held in *State vs Secretary, Ministry of Home Affairs, 16 MLR 254* and in *State vs Secretary, Ministry of Home Affairs, 19 BLT 376*. Thus it is of crucial importance that age is assessed in accordance with the law so that a child is not sent to jail custody in violation of the law.

116. The way to assess the age is clearly spelt out in section 66, which provides as follows:

> "66. Presumption and determination of age.-(1) Whenever a person whether charged 'with an offence or not, is brought before any criminal Court otherwise than for the purpose of giving evidence, and it appears to the Court that he is a child, the Court shall make an inquiry as to the age of that person and, for that purpose, shall take such evidence as may be forthcoming at the hearing of the case, and shall record a finding thereon, stating his age as nearly as may be."

117. It is therefore a mandate upon the trial judge to hold an inquiry to assess the age and to consider all evidence that may be forthcoming, and to record a finding stating the age as nearly as may be. *(emphasis added)*. To say that an "accused is not a child" or "is above 16 years of age" or "is an adult" does not fulfil the requirement of the law. An approximate figure must be given, for example, "the accused is about 12 years old" or "is about 18 years old".

118. Judges are not experts in assessing age. Indeed doctors, some of whom during the course of their studies gain knowledge in age assessment have been denied the status of being experts in age assessment in a Privy Council decision (cited below). Reference may profitably be made to an article written by the author titled "Are Judges Experts in Determining Age" [61 DLR Journal 33] where this topic has been discussed. A number of decisions were cited on the topic of age assessment based on physical appearance. It was stated that estimating a person's age accurately simply from physical appearance can be so difficult, if not impossible. So many factors play a part in moulding a person's appearance that it would be foolhardy to guesstimate without having knowledge of all the deciding factors, such as hereditary traits, nutritional habits, exposure to maladies etc. Medical Jurisprudence accepts that age can be estimated only within a range. Hence, in the case of *Hasina Begum vs State, 1 BLC 315* where the doctor had opined that the girl was 16 to 18 years old, the High Court Division held that to be absolutely vague and indefinite and chose to rely upon the date of birth given in her school records.

119. It was further observed with reference to decided cases, that where doctors, who are perhaps better placed to estimate age due to their professional qualifications, learning and experience and due to their use of technology such as skiagrams of bone ossification, are not accepted by the Courts as accurate, learned Judges should not venture to assume special expertise in age determination. In the case of *Prafullah Kamal Bhattacharya vs Ministry of Home Affairs, Government of Bangladesh, 28 DLR 123,* referring to many decisions of the sub-continent on the issue of age determination, the High Court Division discarded medical assessment of age in preference to the date of birth as stated in the school admission register. Shahabuddin Ahmed J (as he was then) observed that it is not possible to determine exact age from appearance, but opined that the girl appeared to be below 16 years.

120. In the instant case, the trial Court depending entirely on physical assessment for the purpose of determining the age, discarded documentary accused to be adults and lumped appellant Asha in the same reasoning without giving any specific reason why his document was unacceptable. Moreover, he weighed all the accused on the one scale, whereas the rights accruing to each accused is individual to himself.

121. The High Court Division took the stance that if the accused does not physically appear to be a child then the obligation to hold an enquiry to assess the age is not relevant. This has found favour in the view of the majority of this Division relying upon the decision in *Abdul Munem Chowdhury @ Momen vs State, 47 DLR (AD) 96.* In that case while considering section 66(1) it was observed that "The said section is applicable when it appears to the Court that a person charged with an offence (or not) is a child. If it does not so appear he has no duty to ascertain the age of that person." With respect, it must be observed that such argument is tautological. This very question is often asked by many toa trial Judge, i.e. whether he is still bound to go through with the process of determining age if the person brought before him does not appear to him to be a child, or if the police state the age to be above 16 years. In other words, does the duty to determine the age arise only if the person brought before him prima facie appears to be a child? The fallacy of the contention is all too apparent. If he appears to be a child then there would be no need to determine the age. He would automatically become eligible to get the benefit of the provisions of the law. On the other hand, if a fifteen year old youth with a fully grown moustache is brought before the Court and the learned Judge forms the view that he is not a child, or if the police state in the First Information Report (FIR) or charge-sheet that he is 17 years old then that would absolve the Judge from the need to determine the age. This is also not acceptable. The fact that the informant may be swayed by ulterior motive to give a higher age for the accused cannot be ignored. It cannot be overlooked that the police may capriciously state a higher age in order to avoid the formalities of submitting a separate charge-sheet in respect of the child offender. Thus failing to determine the age of the child because in the opinion of the judge or magistrate he does not appear to be a child or because the informant or the police state an age above 16, would lead to grave injustice to children as it may mean that children are unlawfully kept in prison and treated and tried under the same regime as adults. Be it noted that the duty to assess and determine the age arise on the first day when the alleged offender is brought before a criminal court, which in all likelihood would be before a magistrate within 24 hours of his arrest.

122. In the instant case the High Court Division noted that "the learned Additional Sessions Judge observed that the age of the petitioner could not be less than 16 years." Sadly, the High Court Division failed to note that the law requires that the Court must record a finding stating the age as nearly as may be. It must be stated without any hesitation that the learned trial Judge in this case did not record any finding in accordance with section 66(1) of the Act. The learned Additional

Sessions Judge stated in his judgment that at the time of framing charge the Court upon observing their features, appearance and height formed the firm opinion that the accused were all adult and that all of them were above 18 years of age. Hence there was no scope for the accused to claim that they are minors or to claim benefits as such. Thus it would appear that the age of the accused was broached at the time of framing the charge and the assessment of the age by the trial Judge was purely on the basis of physical appearance. Furthermore, there does not appear to be any individual indicators mentioned in respect of accused Asha which led the Judge to believe that he was above 18.

123. In paragraph 55 the High Court division observed that the learned Sessions Judge being trial judge had the opportunity of noticing size, facial appearance and height of convict-appellants and positively held that they were all major and all of them had been above 18 years of age and, thus, discarded their claim as juvenile or child. Thus the claim of the appellants that they were children within the definition of the Children Act was rejected by the High Court Division.

124. I believe that it is altogether inappropriate for this Division to endorse such arbitrary and archaic method of determining age. To exclude supporting documentary evidence because the Judge came to the conclusion that the accused has a physical appearance of being over 18 years is abandoning logic altogether. This is totally unacceptable. The personal opinion of a Judge cannot override documentary evidence. It is one thing to say that the documentary evidence is not acceptable because it has not been proved in accordance with the Evidence Act or that it has been proved to be false by expert or other evidence, and yet another to say that the document must be false because the Judge was of the firm view that the age of the accused was not as claimed. If the documents had been legally proved to be false or forged then that could lend support to the judge's view that the claimed age is false, but not vice versa. This Division is now justifying the decision of the trial Judge for a different reason than that given by the trial Judge. We are not aware if the certificates relating to age were produced and exhibited without any objection, in which case there was no reason why they should be doubted, particularly since they are official documents issued by the appropriate authority and would have probative value under section 114 of the Evidence Act unless and until they are proved to be false or forged. In all fairness, if the Judge had doubts he himself could have taken steps for verifying the veracity of the documents in question.

125. Another issue addressed by the High Court Division was with regard to failure of the accused to agitate the aspect of age and hence jurisdiction of the Court at the earliest stage. In this regard, as we have already noted above, from the judgment of the trial Court it appears that opinion was noted about the age at the time of framing charge. Then palpably, it appears that age was an issue at the inception of the trial. Moreover, we must bear in mind that that litigants depend largely on the vagaries and acumen of their counsel. The failure of counsel to take steps in any case should not necessarily take away the rights of the accused which is enshrined in law. There are many examples where the High Court Division has remanded the case to determine the age of the accused. *[See Monir Hossain (Md) @ Monir Hossain vs The State, 53 DLR 411.]* The decision of the Indian Supreme Court in the case of Gopinath Ghosh (cited below) exemplifies how the failure to claim to be a minor at the earliest stage does not deprive the accused from exerting his right even before the Supreme Court for the first time. The essence of the decision is that if the right existed at that time then the right subsists no matter at what stage it is claimed.

126. In order to do justice, one must look at the law in its proper context and gauge the intention behind the legal provision. One may go one step further and suggest that the fate of children accused of having committed an offence should

not be left to the vagaries of the learned advocates of the Bar, who often fail in their duties, as they did in the above mentioned case of Monir Hossain. Conversely, it may be suggested that, for the sake of justice, the duty should be cast squarely on the Court to determine in every case whether the accused would stand to benefit from the provisions of the Children Act, and, if so, to enquire as to the age of the accused and to determine the age before proceeding further with the trial. This duty becomes all the more obligatory when an accused claims to be below 16 years of age. In such an event the Court must ascertain upon inquiry whether his claim is correct without arbitrarily brushing aside his claim purely on visual assessment. This claim should be raised at the earliest opportunity in order to get the benefits of the legal provisions from the very beginning. However, there is no bar to raising the claim at any time during the trial until and unless the age is assessed and the Court's finding recorded in accordance with section 66 of the Act. Once the age is finally determined on inquiry and recorded in accordance with section 66, then such order is appealable under section 76 of the Act. The final determination of age by the assessing court or, on appeal, the appellate court, will subsist throughout the trial as provided by section 66(2) of the Act.

127. These days with the improvement of nutrition many boys aged about 14-15 years sport a moustache and beard. Conversely there are some men who never show growth of any beard. To say that a person who has a moustache and beard is *ipso facto* adult would be an arbitrary exercise of non-existent power and unjust denial of legal rights enshrined in statutes.

128. The conclusion that one would reach is that it is dangerous to state the age of an accused based only on visual assessment.

129. The Privy Council in *Saydul Arefin vs YO Gark, AIR 1916 PC 242, observed that a Civil* Surgeon had issued a certificate showing the age of the person to be 20 years basing his opinion on physical appearance only. In the latter case Lord Shaw observed:

> "Doctor's certificate which is only an assertion of opinion and the minor's declaration before the Magistrate as to age are no proof as to age."

130. In the instant case, an indication of the age of the appellant came in his confessional statement. When an accused person makes a confession, it becomes part of the record and is sent to the Court along with other materials. During the trial the judge has direct control over all the materials in the case docket and is bound to consider all the evidence and materials placed before him. It appears that accused Asha made a statement to the Magistrate on 20-7-2002 giving details of his involvement in the occurrence. This was recorded by a Magistrate First Class under section 164 of the Code of Criminal Procedure. In the printed form of the statement, the age of the confessing accused is written as about 16 years. This figure was either guessed by the Magistrate or given by the accused. It is obvious that the accused was not advised about the benefits under the Children Act of being below 16, otherwise he would have stated that he was 15 years of age. So, it can be presumed that the age stated was recorded based upon the estimation of the learned Magistrate, or if given by the accused, then it was without any ulterior motive and is therefore to be accepted as being as accurate as could be.

131. It is a fact that accused-appellant Ariful Islam Asha was arrested on the date of occurrence on 17-7-2002 and had his statement recorded by a Magistrate 20-7-2002 after having been kept on remand in police custody for two days. At the time of the examination of the accused under section 342 of the Code of Criminal Procedure, all the accused claimed that they were below the age of 16 years and produced some papers in support. Arguments were placed before the court by the learned advocate for the appellants to the effect that they were below 16 years of age. The learned judge also observed that the appellants' lawyer

suggested in cross examination to the investigation officer (PW 26) that the accused were aged below 16 years, which he denied. However, these materials and suggestions were not relied upon by the learned trial judge. He noted that if at the time of framing of charge the accused were above 16 years of age then they would not get the benefits of the Children Act and that during the framing of charges in the instant case the court formed the opinion based on their height and other features that all the accused were above 18 years. Accordingly, there is no cause for the accused to claim that they were minors in order to get the benefits as such.

132. In the case of *Gopinath Ghosh vs State of W B, 1984 Supp SCC 228,* it was urged for the first time before the Supreme Court of India that on the date of the offence the appellant was aged below 18 years and was therefore a child within the meaning of the expression in the West Bengal Children Act, 1959. In view of such contention, the Supreme Court framed the following issue for determination:

> "What was the age of the accused Gopinath Ghosh (appellant) on the date of the offence for which he was tried and convicted?"

and remitted the issue to the learned Sessions Judge, Nadia to certify the finding after giving an opportunity to both sides to lead oral and documentary evidence.

133. In due course, the learned Additional Sessions Judge, First Court, Nadia received a report of the Chief Medical Officer of Health and also examined him in court. In addition he examined the Radiologist, the Orthopaedic Surgeon as well as the mother of the appellant. The case was adjourned as the appellant wanted to examine the headmaster of his school to prove entries from the admission register. The headmaster was duly examined and in due course the learned Additional Sessions Judge after hearing both sides certified his finding that the appellant Gopinath Ghosh was aged between 16 and 17 years on the date of the offence.

134. The Supreme Court of India observed that appellant Gopinath Ghosh never questioned the jurisdiction of the Sessions Court which tried him for the offence of murder. Even the appellant had given his age as 20 years when questioned by the learned Additional Sessions Judge. Neither the appellant nor his learned counsel appearing before the learned Additional Sessions Judge as well as at the hearing of his appeal in the High Court ever questioned the jurisdiction of the trial court to hold the trial of the appellant, nor was it ever contended that he was a juvenile delinquent within the meaning of the Act and therefore, the Court had no jurisdiction to try him, as well as the Court had no jurisdiction to sentence him to suffer imprisonment for life. The Supreme Court of India held that, in view of the underlying intendment and beneficial provisions of the Act read with clause (f) of Article 39 of the Constitution which provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment, they considered it proper not to allow a technical contention that this contention is being raised in that Court for the first time to thwart the benefit of the provisions being extended to the appellant, if he was otherwise entitled to it. The Supreme Court went on to hold that the entire trial of the appellant was without jurisdiction and was vitiated. The case was remitted to the learned Magistrate for proceeding further in accordance with law keeping in view the provisions of the Act.

135. In the case of *Jitendra Singh @ Babboo Singh and anr. vs State of UP, (2010) 13 SCC 523* the Supreme Court of India adjourned the hearing of the appeal pending before it in order to ascertain the age of the appellant, in spite of the fact that the juvenility of the appellant was not raised

during the trial or during hearing of the appeal by the High Court. It was observed that in the ordinary course any one claiming to be a minor on the date of the incident (which is the relevant date under Indian law) ought to make such a claim at the earliest available opportunity before the Trial Court or at least before the High Court, but the very fact that no such claim is for any reason made, may not by itself disentitle him to do so before the apex Court.

136. In the present case, with regard to the confessional statement made by the accused, the finding of the learned trial judge was that it was true and voluntary and as such it was believable and acceptable. The learned judge further observed that, from the evidence on record, it appeared that all the accused were adults and that they were all above 18 years of age. Upon scrutiny of the records, we do not find any evidence with regard to the age of the accused apart from those produced in their support by the accused themselves when they were examined under section 342 of the Code of Criminal Procedure. So far as accused Ariful Islam Asha is concerned, we find that his age was recorded in his confessional statement as "about 16 years" and there is no suggestion or indication that he was aware about the provisions of the Children Act or that he had been in contact with any lawyer or anyone else who might have advised him to give a lower age in order to get the benefits of the Children Act. He would therefore, have been below 16 years of age at the time of the occurrence.

137. The death reference and criminal appeal were heard by a Division Bench of the High Court Division. By the impugned judgment dated 19-5-2004 the reference was accepted upholding the conviction and sentence passed by the trial court.

138. With regard to the claim by the appellants that they were below 16 years of age at the relevant time of occurrence, and the claim of the appellants that they ought to have been tried in accordance with the provisions of the Children Act, the High Court Division observed that the defence claimed that registration cards of Secondary School Certificate Examination along with affidavits produced during the examination of the convict appellants under section 342 of the Code of Criminal Procedure are evidence that the appellant's had been minors at the time of occurrence and framing of charge. The court observed that in their judicial confessional statements the accused had given their ages as 19, 20 and 16 years but in their affidavits they had given dates of birth which make them all below the age of 16 years at the time of their examination under section 342 of the code of Criminal Procedure. However, the court observed that these were all afterthought matters and created documents by which their real date of birth and age could not be screened. The conclusion that the lower age claimed at the stage of the statement under section 342 of the Code was an afterthought may be acceptable in the case of accused Modern and Shahin, but the record shows that accused Asha had all along claimed his age to be around 16. So, this cannot be said to be an afterthought. It was further observed that any accused above 16 years of age at the time of framing charge cannot get the benefit of the provisions of the Children Act. In this regard the prosecution relied upon the cases of *Abdul Monem Chowdhury alias Momen vs State, 47 DLR (AD) 96, Bimal Das vs State, 14 BLD (AD) 218* and *Mona alias Zillur Rahman vs State, 23 BLD (AD) 187 = 9 BLC (AD) 125.*

139. The High Court Division then noted some relevant sections of the Children Act, but then proceeded to quote section 6(1) and wrongly added that "the law was subsequently amended by adding sub-section 1 with section 6 and it was enacted that if at the time of trial the offender is not below the age of 16 years at the time of framing charge the trial can be held together with adult and no separate trial is necessary." We do not find this to be a correct reflection of the existing law. Section 6 (1) provides as follows:

"6. No joint trial of child and adult.(1)

Notwithstanding anything contained in section 239 of the Code or any other law for the time being in force, no child shall be charged with, or tried for any offence together with an adult."

140. It was observed in the case of *Roushan Mondal* that section 6(1) relates to the mode of trial where a child offender is accused of commission of an offence along with an adult. It is correct that if all the offenders are above 16 years of age than they would be tried together as adults by the same court. However, the effect of sections 6(1), 6(2) and 8(1) is such that in a joint trial where any one of the offenders is below the age of 16 then his trial is to be held separately from that of the adult. It must be understood that these provisions relate to the mode of trial and have no bearing on the relevancy of age on the date of framing of charge. It was further observed that the relevant date to determine the age of the offender would be the date of the alleged commission of the offence since it is necessary to ascertain that the offender understood the consequences of his actions and had the necessary *mens rea* on that occasion. This is evident from the provisions of section 83 of the Penal Code, which clearly makes it a requirement for the Court to be satisfied that the accused had the mental capacity of understanding the consequence of his actions on that occasion (meaning on the date of commission of the offence). Moreover, it was held that the relevant date is the date of commission of the offence, otherwise the whole purpose of the provisions contained in the international instruments would be defeated.

141. It is stated in the judgment of the High Court Division that during examination under section 342 Of the Code of Criminal Procedure, the age of Asha was claimed to be below 16 and evidence was submitted in support of such claim. It was observed by the High Court Division that the "Convict-appellants could easily lead defence evidence, both documentary and ocular, in support of the last time claim to be aged below 16 years." The High Court Division further observed that "the plea of convict-appellants being Juveniles is not only an afterthought matter but a concoction of their imagination at a belated stage to thwart the course of justice by having resort to wrangles of procedures and technicalities of law. Convict-appellants tried to create a smoke screen with respect to their age. Such effort transpires to have been made only to hide the real age of convict-appellants and to engender doubt in the mind of Court. Judicial system cannot be allowed to be taken ransom by having resort to imaginative and concocted grounds. Efforts ventured by convict-appellants are not likely to advance the interest of justice but on the contrary to frustrate it." We note however that the High Court Division did not take into account the age stated for accused Asha in his confessional statement.

142. With regard to the age of the appellants, the High Court Division concluded that "From evidence produced and materials placed before Court below it is manifestly clear that convict-appellants were neither had been child nor Juvenile within the meaning of Children's Act during course of commission of felony and also framing of charge. They stand proved to be major or adult at the time of commission of offence and, also, framing of charge."

143. It is clear from the last foregoing paragraph that the date of commission of the offence had some relevance according to the views of the High Court Division, although their Lordships were somewhat equivocal by mentioning the date of framing of charge as also being relevant. Hence it is by no means settled as to which the relevant date is for the purpose of determination of age of the accused. The views of the High Court Division on this issue in various cases are divergent and that of the Appellant Division, though consistent, is arguably based on misinformation. The matter was discussed at length in the case of Rowshan Mondal, where it was concluded that the date relevant for establishing the age of the accused must be the date of commission of the offence, otherwise the whole purpose of the law

of protecting the immature and impulsive child would be defeated. The relevant consideration must be whether the accused was capable of understanding the cause and effect of his action and that must of necessity relate to the date of the commission of the offence. Hence I am constrained to conclude that the date of the alleged commission of the offence is the relevant date on which the age of the accused is to be established, i.e. whether or not he was below the age of 16 years on that date.

144. In the instant case, I am constrained to hold that the accused claimed to be about 16 years of age on the date of recording of his confessional statement and, therefore, he was below 16 years of age on the date on which he is alleged to have committed the offence. This assertion was part of the record and neither the Court nor the prosecution took any steps to act in accordance with section 66 of the Children Act, which in my humble opinion is a mandatory and most salutary provision of law for the purpose of the rights of youthful offenders.

145. Although it has been held in the case of *Bimal Das vs State, 14 BLD (AD) 218* that the Court has no duty to ascertain the age once it is satisfied that the accused is not a child, with all due respect, this tends to give a perverse interpretation of the law. In that case the provision was given such a literal interpretation as to lead to an absurdity that the Court will only inquire into the age of the accused if it is of the opinion that she or he is a child. That is an absurdity because if she or he is a child then there would be no need to ascertain the age for the purpose of establishing whether the case is to be tried in accordance with the provisions of the Children Act. It was observed in the case of Monir Hossain that whenever an accused claims to be below 16, then a duty is cast upon the Court to direct an enquiry to satisfy itself whether the accused is a child below 16 years of age, otherwise the Court may commit an error regarding jurisdiction. For jurisdictional purposes the duty to ascertain the age extends to the highest court as exemplified by the Indian Supreme Court in the *Gopinath Ghosh* case.

146. If the trial of the accused were to take place under the provisions of the Children Act, then certain consequences would follow. For example, pending the trial the accused would not be kept in prison and would by law be bound to be kept in a place of safety in accordance with section 2(j) of the Act. It has been held in *State vs The Secretary, Ministry of Home Affairs, 19 BLT 376* that children cannot be held in prison during trial. The law allows for children to be enlarged on bail even where they are alleged to have committed an offence which is non-bailable. The only alternative is that they must be held in a place of safety as defined in the Act *[See State vs The Secretary, Ministry of Home Affairs, 16 MLR 254].*

147. Another consequence of trial under the provisions of the Children Act is that the environment of the hearing and method of trial would be regulated by sections 7 to 13 of the Act and rules 3 and 4 of the Rules. The leniency of the trial procedure, laxity of the provisions of the law of Evidence and the system of protecting the child offender from over-exposure to the rigorous of the criminal justice system are apparent in those provisions.

148. However, since the trial is over there is no practical gain to be had in inquiring into the procedures followed or not followed during trial of the instant case. On the other hand, the sentence awarded is a matter of great concern. Section 52 of the Act read with section 51 provides that on conviction a child offender cannot be sentenced to death, imprisonment for life or imprisonment and may only be committed to a certified institute for detention for a period not less than two and not more than ten years. Imprisonment may be given in two exceptional circumstances, as detailed in the first proviso to section 51, where the child offender has committed an offence which is so serious in nature that the sentence possible under

section 52 is felt to be not sufficient or is inadequate; imprisonment can also be awarded if the offender is so depraved in character that it would not be suitable to keep him in detention in a certified institute.

149. The second proviso to section 51 restricts the length of imprisonment that can be awarded even in those exceptional circumstances mentioned above, to ten years. Issues of sentencing under the Children Act have been elaborately discussed in the case of *Fahima Nasrin vs Government of Bangladesh, 61 DLR 232.*

150. Turning to the facts of the instant case, there is no doubt that the accused have committed a heinous offence. However, where any special law gives specific benefit to an accused, then he deserves to be treated in accordance with such beneficial provisions. As stated above, under the second proviso to section 51, an accused found guilty of any offence, even on carrying the sentence of death or life imprisonment, may be sentenced in exceptional circumstances to imprisonment for a maximum period of ten years. Hence, even upon conviction under section 7 of the Nario-Shishu Ain, accused Asha may not be sentenced to 14 years in prison. The sentence that may be lawfully imposed is a maximum of ten years' imprisonment.

151. Finally, I note that in paragraph 104 the High Court Division stated as follows: "the villainy committed by convict-appellants is extremely shocking and revolting and it shocks Judicial conscience. In such a shocking nature of felony it is necessary to impose maximum punishment which is death under the law as means of social necessary. Mere young age of convict-appellant cannot be ground for desisting from imposing death penalty and cannot be termed as a mitigating circumstances in imposing punishment and no mercy can be shown to the culprits who pollute the society." This statement is clearly indicative of the emotions of the author judge which were stirred by the terrible turn of events. It is undeniable also that the Courts have a duty to uphold the rule of law and protect the interest of the State and its citizens. On the other hand, it is also the duty of the Courts to implement the legal provisions enacted by Parliament, which in a democracy is done by the will of the people. Rights and benefits accruing to a citizen, be he an accused or otherwise, have to be ensured and cannot be denied or disregarded due to emotional or sentimental considerations of the judge. An accused person has rights and privileges afforded by the law, in this case the Children Act and Children Rules, which must be zealously guarded by the Judge, particularly since the accused by the nature of the trial process stands in a vulnerable position.

152. This Division is the last port of call for any litigant attempting to establish his rights under the law. It is not uncommon to find that this Division has reconsidered its earlier decision and corrected errors earlier committed or given new interpretation where it is felt appropriate and just. This is a process of evolution of the justice system, which cannot be allowed to stagnate and stand still. I am of the firm view that the interpretation of law in the cases of *Abdul Monem Chowdhury alias Momen vs State, Bimal Das vs the State* and *Mona alias Zillur Rahman vs State* were not correct so far as it relates to the duty of the Court to determine the age of the accused and the occasion on which the age of the accused is relevant. Hence it is the duty of this Division to revisit those earlier decisions and, to the extent necessary, overrule them.

153. I would conclude by saying that in my humble opinion an accused will be entitled to the benefits of the provisions of the Children Act if he can establish that he was a child on the date of commission of the offence and that it is the duty of the Court to initiate an inquiry before the commencement of the trial to determine the age of the accused in order to establish jurisdiction of the Court and ensure the due rights of the accused in accordance with law. To that extent the decision referred above are not correct and it is the duty of

this Division to declare accordingly. Accused Asha established that he was a child at the time of commission of the offence and accordingly his trial ought to have been held under provisions of the children Act and Children Rules. His sentence as awarded by the trial Court and confirmed by the appellate Court and as proposed by this Division, with all due respect, are not in accordance with the law. The maximum period of imprisonment that can be imposed on accused-appellant Asha under the prevailing law is for a period of 10 years. Under the Children Act there is no question of imposing fine in addition to sentence of imprisonment. I, therefore, agree that appellant Ariful Islam Asha be convicted under section 7 of the Nari-o-Shishu Nirjatan Daman Ain, 2003. Keeping in mind the seriousness of the offence and the fact that he is a youthful offender, he is sentenced to imprisonment for 10 years.

Md Shamsul Huda J : I have gone through the judgments proposed to be delivered by my brothers, Surendra Kumar Sinha, J, Md. Abdul Wahhab Miah, J and Muhammad Imman Ali, J. I agree with the reasoning and findings given by Md. Abdul Wahhab Miah, J.

Court's Order

The appeal is allowed in part by majority decision.

The judgment and order of conviction and sentence dated 30-9-2002 passed by the Sessions Judge, Gaibandha in Session Case No.53 of 2002 convicting the appellants under sections 302/34 of the Penal Code and sentencing each of them to death as confirmed by the High Court Division in Death Reference No.44 of 2002 heard analogously with Criminal Appeal No.2967 of 2002 (criminal appeal was dismissed) is set aside. The appellants are acquitted of the charges brought against them under sections 302/34 of the Penal Code. The appellants are found guilty under section 7 of the Nari-o-Shishu Nirjatan Daman Ain, 2000 and sentenced to suffer rigorous imprisonment for 14(fourteen) years each and also to pay a fine of Taka 2,000 each in default to suffer rigorous imprisonment for 3(three) months more.

The Jail Petition is disposed of accordingly.

Ed.

APPELLATE DIVISION
(Civil)

Nazmun Ara Sultana J
Syed Mahmud Hossain J
Md Imman Ali J
Md Anwarul Haque J

Judgment
January 20th, 2014.

Abdul Hakim (Md)...
.....Petitioner
vs
Md Nazrul Islam and others.....
.....Respondents*

State Acquisition & Tenancy Act (XXVIII of 1951)
Section 96

It is well settled that the pre-emptor must have interest in the case holding until the case is finally disposed of. .....(14)

Co-sharer

A co-sharer means a person whose interest subsists throughout the course of the application to pre-empt and not a person who held such an interest in the beginning, but lost it before its disposal. .....(15)

Chandra Kumar Maladas vs Abdul Motaleb, 19 DLR (SC) 36 and Md Mofizuddin vs Abdul Hakim, 33 DLR (AD) 305 ref.

Chowdhury Md Zahangir, Advocate-on-Record—For the Petitioner.

Md Golam Mostafa, Advocate, instructed by Md Nawab Ali, Advocate-on-Record—For Respondent Nos.1-2.

None Represented—Respondent Nos. 3-23.

*Civil Petition for Leave to Appeal No. 1751 of 2011.

(From the judgment and order dated 14-6-2011 passed by the High Court Division in Civil Revision No.3451 of 2003).

Judgment

Syed Mahmud Hossain J: This civil petition for leave to appeal is directed against the judgment and order dated 14-6-2011 passed by the High Court Division in Civil Revision No.3451 of 2003 making the Rule absolute and setting aside by the judgment and order 20-7-2003 passed by the learned Joint District Judge, Third Court, Mymensingh in Miscellaneous Appeal No.66 of 2002 reversing the judgment and order dated 22-5-2002 passed by the learned Senior Assistant Judge, Nandail, Mymensingh in Pre-emption Case No-5 of 2000.

2. The facts, leading to the filing of this civil petition for leave to appeal, in a nutshell, are:

The leave petitioner as the pre-emptor filed Pre-emption Case No. 5 of 2000 in the Court of Senior Assistant Judge, Nandail, Mymensingh claiming pre-emption right over 24 decimals of land described in the schedule to the application for pre-emption under section 96 of the State Acquisition and Tenancy Act. His case, in short, is that the case land under RoR belonged to the tenants, namely, Abbas Ali, Ismail, Tamijuddin and Abdul Gaffar and the pre-emptor is the son of Ismail. The seller-respondents are the co-sharers in the case holding as well as cousins of the pre-emptor. Though the pre-emptor is a co-sharer tenant in the holding by inheritance, the seller-respondents sold the case land to strangers beyond his knowledge by a deed of sale dated 2-11-1999. The pre-emptor definitely came to know about the deed of sale on 20-2-2000 soon after obtaining certified copy thereof. The purchasers are strangers and the pre-emptor's claim over the case land is genuine and, as such, he has filed the instant pre-emption case.

3. Pre-emptee-respondent Nos.1-3 contested the case by filing written objection denying the material statements made in the pre-emption application. Their case, in short, is that one Saleh Sheikh was the sole owner of the case land under CS Khatian No.207 and the pre-emptor failed to give details of the heirs of the CS recorded owner and failed to implead all the heirs of CS and RoR khatians. The pre-emptee-respondents asked the pre-emptor to purchase the case land and the pre-emptor himself was present in the process of negotiation as well as the registration of the deed of sale. The pre-emptor suppressing the above fact filed the case on the basis of a forged copy of RoR khatian. The pre-emptee-respondents developed the land by spending Taka.1800 and the pre-emptor now became greedy to grab the case land with ill motive and, as such, the pre-emptee-respondents prayed for dismissal of the case.

4. After hearing the parties, the trial Court by its judgment and order dated 22-5-2002 dismissed the preemption case.

5. Against the judgment and order of dismissal of the trial Court, the pre-emptor-petitioner filed Miscellaneous Appeal No.66 of 2002 before the learned District Judge, Mymensingh. On transfer, the appeal was heard and disposed of by the learned Joint District Judge, Third Court, Mymensingh, who by his judgment and order dated 20-7-2003 allowed the appeal.

6. Being aggrieved by and dissatisfied with the judgment and order dated 20-7-2003 passed by the appellate Court, the pre-emptee-respondents filed a revisional application before the High Court Division and obtained Rule in Civil Revision No.3451 of 2003. The High Court Division by the judgment and order dated 14-6-2011 made the Rule absolute.

7. Feeling aggrieved by and dissatisfied with the judgment and order passed by the High Court Division, the pre-emptor leave petitioner has preferred this civil petition for leave to appeal before this Division.

8. Mr Chowdhury Md Zahangir, learned Advocate-on-Record, appearing on behalf of the leave petitioner, submits that the High Court

Division erroneously came to a finding that the pre-emptor lost his right, title and interest in the case holding by selling out his entire interest by a registered deed dated 29-6-2005 although the pre-emptor has subsisting interest in the case holding and, as such, the impugned judgment should be set-aside.

9. Mr Md Golam Mostafa, learned Advocate, appearing on behalf of pre-emptee-respondent Nos. 1 and 2, on the other hand, submits that the High Court Division correctly found that the pre-emptor has lost his right, title and interest in the case holding by selling out his interest therein by a registered deed of sale dated 29-6-2005 and, as such, no interference is called for.

10. We have considered the submissions of the learned Advocates, perused the impugned judgment and the materials on record.

11. The High Court Division came to a finding that in the present backdrop, it was not necessary to go in detail because the pre-emptor lost his right of pre-emption in the case holding through transfer of all his subsisting interest in the case holding on the basis of which, the pre-emptor claimed pre-emption.

12. The High Court Division found that the learned Advocate for the pre-emptees filed an affidavit annexing the deed of sale bearing No.6058 dated 29-6-2005 showing that the pre-emptor exhausted his entire interest in the case holding.

13. Having considered the RoR Khatian No.247, we find that Abbas Ali, Ismail, Tamijuddin and Abdul Gaffar were the owners of the land of that khatian in equal share. In the entire land of the RoR khatian measuring 1.39 acres, Ismail, father of the pre-emptor, is entitled to 0.3475 acre of land in his 4 annas share. Admittedly, the pre-emptor has another brother and, as such, he is entitled to 0.1737 acre of land in the case holding. By a registered deed bearing No.6058 dated 29-6-2005 the pre-emptor sold 0.18 acre of land to one Md. Saidur Rahman and thereby sold more than his share in the case holding.

14. In the counter affidavit filed by the pre-emptor, it has been asserted that the land of the case holding was not partitioned by the metes and bounds and, as such, the pre-emptor is still a co-sharer tenant in the case holding by inheritance. The pre-emptor, however, did not deny that by a registered deed of sale dated 29-6-2005 he did not transfer 0.18 acre of land. The contention that the land of the case holding has not been partitioned by metes and bounds does not hold good as on the face the RoR Khatian No. 247, it appears that the pre-emptor has exhausted his entire interest in the case holding. It is well settled that the pre-emptor must have interest in the case holding until the case is finally disposed of. Therefore, the pre-emptor is no longer a co-sharer in the case holding.

15. In this connection, reliance may be placed on the case of *Chandra Kumar Maladas vs Abdul Motaleb, 19 DLR (SC) 36,* wherein it is held that a pre-emptor must not only have a subsisting interest in the holding when he files an application for pre-emption but must continue to hold the self-same interest to the date when the case is finally disposed of. It is further held that a co-sharer means a person whose interest subsists throughout the course of the application to pre-empt and not a person who held such an interest in the beginning, but lost it before its disposal.

16. The above decision was noticed with approval in the case of *Md Mofizuddin vs Abdul Hakim, 33 DLR (AD) 305.*

The findings arrived at and the decision made by the High Court Division having been made on proper appreciation of law and fact do not call for interference. Accordingly, this civil petition for leave to appeal is dismissed.

Ed.

APPELLATE DIVISION
(Criminal)

Nazmun Ara Sultana J
Md Imman Ali J
Md Anwaru Haque J
Hasan Foez Siddique J

Judgment
April 1st, 2012.

Sohel Rana Shippon (Md) and others.....
.....Appellants

vs

State.....Respondent*

Constitution of Bangladesh, 1972
Article 35

Nari-o-Shishu Nirjatan Daman Ain (VIII of 2000)
Section 27(3)

Penal Code (XLV of 1860)
Sections 302/201/34

If the offences under the Ain, 2000 and those under the Penal Code were tried together then at the time of sentencing certain norms would have been followed. .....(13)

Section 7 of the Ain, 2000 concerns abduction of any woman or child for any of the purposes mentioned in section 5 of the Ain. Section 8 of the Ain, 2000 concerns the offence of confining any woman or child for the purpose of extracting ransom. Section 30 covers the instigation of such offences as mentioned above. Quite clearly the offences under sections 302/201/34 of the Penal Code alleged to have been committed by the appellants have not been considered by any Court or tribunal. It is true that section 27(3) of the Ain, 2000 empowers the Bicharak of the Tribunal to try any other related offences simultaneously if it is necessary to try them together for ends of justice. Therefore, there was apparent oversight on the part of the Bicharak of the Tribunal at the time of framing the charge. Nevertheless, we are of the view that there is no bar for the trial to proceed against the appellants for the offences under sections 302/201/34 of the Penal Code. The appellants have not been tried for these offences, and, therefore, there is no violation, of Article 35 of the Constitution. .....(12)

Md Nawab Ali, Advocate-on-Record—For the Appellants.

Sorwar Ahmed, Deputy Attorney General, instructed Md Shamsul Alam Advocate-on-Record—For the Respondent.

*Criminal Appeal No. 26 of 2006.

(From the judgment and order dated 11th April, 2004 passed by the High Court Division in Criminal Miscellaneous Case No. 9813 of 2003)

Judgment

Md Imman Ali J : This appeal, by leave, is directed against the judgment and order dated 11-4-2004 passed by a Division Bench of the High Court Division in Criminal Miscellaneous Case No. 9813 of 2003 discharging the Rule.

2. Criminal Miscellaneous Case No. 9813 of 2003 relates to an application filed by the accused-petitioners before the High Court Division for quashing the proceedings in Sessions Case No.35 of 2002 arising out of Jamalpur PS Case No.3 dated 1-6-2001 corresponding to GR No. 507(2)2001 under sections 302/201/34 of the Penal Code, pending in the Court of Sessions Judge, Jamalpur.

3. The facts of the case, in brief, are that one Md Ashraf Hossain, brother-in-law of the victim's father lodged ejahar with the Jamalpur Police Station stating, *inter alia,* that the family of the informant's brother-in-law has been living adjacent to his house since his brother-in-law, Md Lutfor Rahman, resides in the United States of America. On the date of occurrence, that is on 31-5-2001 at about 8-30 PM accused-petitioner No.2 Tofail Islam Hira called victim Mostasim Billa and took him out of his house for drinking 'Virgin' (soft drink). After one or two hours accused-petitioner No.2 Tofail Islam Hira came back to that house and wanted to know where Mostasim Billah was. At this moment mother of the victim cried out that he had taken her son and became senseless whereupon the informant along with others came and tried to find out the victim boy. The neighbours also came to the PO house and on search and inquiry found out that Tofail had bought a Virgin drink from Babla Store for Mostasim and after

Md Hossain, Advocate—For the Petitioner.

Shakowat Hossain Bahar, Advocate—For the Opposite Party.

Judgment

AFM Ali Asgar J: This Rule was issued calling upon the Opposite party to show cause to why the Judgment and decree dated 26-4-2000 passed in SCC Suit 8 of 1994 by the learned Senior Assistant Judge, Khulna should not be set-aside and or such other or further order or orders passed as to this might seem fit and proper.

2. Facts relevant for the purpose of disposal of this Rule, in short, are the plaintiff petitioner instituted SCC Suit No. 8 of 1994 in the Court of Senior Assistant Judge, at Khulna against the Opposite Party praying decree for ejecting him and realization of rent and mesne profit alleging *inter alia* that the defendant opposite party was a monthly tenanat the rate of Taka 200 per month under one ASM Anowar Kadir in the case premises. That the said ASM Anwar Kadir sold the demised premises including other properties to Md Golam Quddus Mallik on 11-9-1991; then the plaintiff petitioner as co-sharer filed a preemption case being No. 79 of 1993 in the Court of Subordinate Judge, 1st. Court, Khulna and the said Miscellaneous Case was allowed on 22-8-1993 and said Golam Quddus Mallik withdrew the said deposited money in the pre-emption case; in this way the premises came to the ownership of the plaintiff and the plaintiff petitioner is the sole owner of the suit premises and the defendant opposite party became a tenant under the plaintiff petitioner. Thereafter, the plaintiff sent a notice under registered post dated 29-9-1993 asking the defendant opposite party to pay the monthly rent to the plaintiff; that the defendant opposite party received the notice but did not pay the rent, there by the defendant did not pay monthly rent from September, 1993 to February, 1994. Thus the defendant opposite party became defaulter; and for that the plaintiff petitioner determined the tenancy by a notice under section 106 of the Transfer of Property Act through her advocate 8-3-94; that the defendant opposite party gave a reply to the said notice through his lawyer admitting the statements made in the notice; the defendant opposite party sent Taka 600 by money order; but the defendant opposite party did not surrender the vacant possession of the premises, hence the suit for ejectment, arrears of rent and mesne profit for occupation of the premises after the determination of the tenancy.

3. The defendant opposite party contested the suit by filing a written statement denying all the material allegations of the plaint and contending *inter alia* that the land measuring 8 acres appertaining to CS Khatian No.1272 of Mouza No. 3 Baniakhamar originally belonged to Mukta Boishnabi who was survived by two sons namely Santosh Kumar Howlader and Sudhir Kumar Howlader. On 10-6-1943 Santosh transferred $2^1/_2$ acres to Grindra Nath Dey and Nitai Chand Dey by way of Kabala. Sudhir transferred $1^1/_4$ acre to said Girindra and Nitai. Grindra and Nitai leased out the land together with a tin made house on it to Lotan Sohani and Jamini Sohani. Thereafter, the defendant opposite party, with prior permission of Grindra and Nitai, took possession of the land from Lotan and Jamini for a consideration of Taka 6,000. From that time he has been possessing the land. On 28-1-1967 Girindra and Nitai executed a Bainanama in favour of the defendant opposite party to sell the property to him at Taka 5,000 and accordingly took Taka 4,600 on several occasions. Subse-quently Girindra and Nitai left Bangladesh for India without executing any Kabala favouring the defendant opposite party. Since then he has been holding the property for more than 12 years in adverse possession and hence in the disputed land the plaintiff has no title at all.

Upon pleadings of the parties the trial Court framed as many as 3 issues:-viz;

1. Is the SCC suit maintainable in the present form?
2. Is there any landlord and tenant relationship between the parties?
3. Is the plaintiff entitled to the decree as prayed for?

4. The suit came up for final hearing before the learned Senior Assistant Judge and the plaintiffs son (having power of attorney from the plaintiff) deposed as PW-1 and three other witnesses were examined on behalf of the plaintiff petitioner and the defence examined two witnesses including the defendant himself as DW 1.

5. Upon hearing the counsels for both the sides and on perusal of the pleadings and the available evidence on record the learned trial Judge dismissed the suit finding, *inter alia,* that landlord and tenant relationship between the plaintiff and the defendant has not been proved; that the plaintiff petitioner should have issued notice under section 111 of the Transfer of Property Act.

6. Being aggrieved by the aforesaid judgment of the trial Court the plaintiff as petitioner filed this revisional application before this Court under section 25 of Small Cause Courts Act. Hence this rule.

7. Mr Mohammad Hossain learned Advocate appearing on behalf of the petitioner submits that the plaintiff petitioner has become owner of the disputed premises by virtue of an order of pre-emption passed by the 1st. Subordinate Judge, Khulna in pre-emption Miscellaneous Case No. 79 of 1993. As such she was entitled to get a decree of eviction of her tenant in the said premises as the defendant was a tenant under the pre-emptee and his transferor. His next submissions is that the defendant opposite party could not prove his case as taken in defence at all inasmuch as he did not exhibit any document in support of his case.

8. He further submits that the learned trial Judge acted illegally and with material irregularity in dismissing the suit and thus the judgment and decree passed is not maintainable in law.

9. He has also submitted that the trial Court has failed to appreciate the law as enunciated in the Transfer of Property Act and, as such, acted not according to law inasmuch as failed to appreciate that the plaintiff petitioner became owner of the disputed premises since she is the transferee of the premises by operation of law. His next submission is that the trial Court has acted in defiance of the law in finding that the plaintiff petitioner should have issued notice under section 111 of the Transfer of Property Act instead of section 106 of the said Act. Inasmuch as a tenant denying title of the landlord becomes liable to immediate eviction at the option of the landlord and he cannot claim to be entitled to any notice to quit.

10. He has further submitted that the trial Court has taken a gross erroneous decision by holding that the landlord and tenant relationship between the plaintiff petitioner and the defendant opposite party was not proved. He has also submitted that the learned trial Judge has passed the impugned decree in gross misreading of evidence inasmuch as he failed to rightly appreciate the exhibit produced by the plaintiff petitioner, specially the ADs signed by the defendant opposite party mainly (Exhibit 1- 1ka), the plaintiffs notice under section 106 of the Transfer of Property Act dated 8-3-1994 and its reply by the advocate of the defendant dated 31-3-1994 (Exhibit 3- 3Ka), the rent receipt given to the defendant by Golam Quddus previous owner (pre-emptee) landlord (Exhibit 4-4Ka).

11. Mr Hossain has lastly submitted that mere denial of non receipt of notices send by the plaintiff petitioner and further denial of giving reply to notice through lawyer and denial not to appoint such a lawyer is not enough to disown his signature on acknowledgment due, according to him

the plaintiff have been able to prove the receipt of notices sent by him. But the learned trial Judge on misconceived and erroneous notion could not and did not properly evaluate these exhibits thus came to an erroneous decision thereby passed the impugned judgment and decree. He also submits that sending of notice by registered post and production of receipt thereof is enough to prove that the plaintiff has given notice as required under the law. If the defendant denies to have received such notice the burden of prove entirely vests upon him to disprove the same by proper evidence that he did not receive it.

12. In this regard he has referred to section 13 of the Evidence Act and section 27 of the General Clauses Act.

13. In support of his arguments he has referred to decisions of our High Court Division on this point in the case of *Motiul Hoque vs DIT* reported *43 DLR 407* and the case of *Alauddin vs Md Idrish Miah* reported in *22 DLR 664* and the case of *Azahar Baperi vs Abdul Aziz* reported in *22 DLR (Dac) 36* he has also referred to a decision of our Appellate Division in the case of *Haji Kabir Uddin Ahamed vs Md Salam Kabir* reported in 1983 *BLD (AD) 53 = 34 DLR (AD) 271* the case of *Md Shahadat Hossain vs Kafiluddin* reported in *37 DLR 126* and an Indian decision in the case of *Chunal Bahadur and Co. vs Abdul Gani* reported in *AIR 1953 (Assam) 206.* The learned counsel prays that the rule be made absolute.

14. Mr Shakowat Hossain Bahar, the learned Advocate appearing on behalf of the Opposite party submitted that the judgment passed by the trial Court do not suffer from any error or irregularity as because the court has very rightly and correctly came to the finding that no relationship as landlord and tenant was established between the plaintiff petitioner and the defendant opposite party. As such the suit was dismissed very rightly by the trial Court. He has further submitted that even if for the sake of argument it is accepted that a notice was served as claimed by the plaintiff even then the notice for 30 days was not a proper notice as required under the statute because it is admitted position that the defendant had his gold ornament manufacturing industry in the premises. As such according to him six months notice as per provision of section 106 of the Transfer of Property Act was necessary and since that had not been done the plaintiff petitioner cannot get any relief against the defendant opposite party for evicting him from the premises.

15. Mr Shakowat Hossain has further submitted that notice under section 106 of the Transfer of Property Act as claimed by the plaintiff to have been served upon the defendant opposite party, has been very categorically and empathically denied by the defendant not to have received any notice of such kind and since the defendant has denied to be a tenant under the plaintiff or her predecessor and on coming to know of the said purchase by the plaintiff, the defendant at once filed a Title Suit being Title Suit No. 124 of 1995 in the same Court seeking for declaration of his title. As such the plaintiff cannot get a decree for ejectment. In support of his arguments *Mr Shakowat Hossain Bahar* has referred to a decision reported in *10 DLR (WP) 40* which has been referred in the DLR's Transfer of Property Act at page 335 in C/W S.106-case law. He has also referred to a decision of our appellate division in the case of *Sudhangshu Kumar Chowdhory vs Md Ali Hossain,* reported in *46 DLR (AD) 151* on the point of jurisdiction of Small Cause Courts Act. He prays that the Rule be discharged.

16. I have given my anxious consideration to the submissions made at the Bar and I have gone through the rule petition, impugned Judgment and deposition of the witnesses, all the exhibits proved by the parties and after going through the impugned judgment I find that the learned Assistant Judge heard, both the parties at length

and came to his decision mainly on one point that the suit is not maintainable as the plaintiff could not establish his relationship with the defendant as landlord and tenant although he discussed other points as well.

17. Thus the learned Judge opined in the judgment that for getting a decree for ejectment there must be an admitted tenancy between the parties inasmuch as a notice under section 106 of the Transfer of Property Act is also applicable in respect of admitted tenant and according to the trial Judge, the plaintiff could not bring any such evidence before the Court that the relationship of landlord and tenant was existing between the parties as such the trial Judge dismissed the suit and passed the decree accordingly disbelieving the evidences produced by the plaintiff. The plaintiff also could not prove landlord and tenant relationship between her predecessor and the defendant. On the other hand, the learned trial Judge believed the deposition of DW's according to him since the defendant has denied to have received any notice from the plaintiff, or to have given any reply to that through his lawyer as claimed by the plaintiff, the plaintiff failed to prove his relationship as landlord and tenant with the defendant. Specially the trial Court did not believe the claim of the plaintiff that the defendant was a tenant under her predecessor ASM Anwar Kader or Md Golam Quddus Mallik as she did not produce any lease agreement to that effect except claiming that the defendant paid rent to Golam Quddus Mallik and his predecessor and in lieu of that produced photostat copy of one rent receipt which Md Golam Quddus Mallik as PW 3 though admitted but he deposed that the defendant did not pay any money in lieu thereof as rent, saying that he will pay later on. As such there was good reasoning for disbelieving such a claim of the plaintiff by the trial Court. And the trial Court disbelieved the case of the plaintiff giving cogent reason.

18. Moreover, the trial Court found that no tenancy agreement between the parties were produced before the Court in evidence save and accept aforesaid one disputed rent receipt said to have been issued by Md Golam Quddus Mallik and the disputed notice said to have been sent by the plaintiff and photostat copy of receipt of money order for Taka 600 said to have been sent by the defendant which the defendant categorically denied in his written statement inasmuch as in his deposition before the Court, the said money order receipt do not contain the name of the sender. The learned trial Judge believed the deposition of the defendant and reasoning of his believing the defence version is cogent and reasonable. As such he dismissed the suit of the plaintiff.

19. Mr Mohammad Hossain the learned counsel has very strenuously argued and concentrated his submission and citations in respect of service of notice under section 106 of the Transfer of Property Act as referred to above keeping aside other points of his arguments, as such those need not be discussed at length but after perusal of the impugned judgment, pleadings and deposition of witnesses, I am of the opinion that even if the contention of Mr Mohammad Hossain is accepted that a notice under section 106 of the Transfer of Property Act had been served upon the defendant and he gave reply to that, even then the fact remains that the defendant in his pleading as well as in his deposition have very categorically taken his defence apart from other points including filing of title suit No. 124 of 1995 seeking declaration of his title in the case property pending in the same court and that he has got his ornaments manufacturing industry in the premises which has been admitted by the PW 1 in his cross-examination. Moreover from exhibit 'ka' gold licence for dealership in gold also speaks in support of this contention of the defendant. So it is very clear that the defendant was legally entitled to a notice giving him 6 (six) months time for his eviction, even if it is accepted that he is a tenant under the plaintiff even then the notice as claimed to have beer

served is insufficient. In this connection the citation referred to by Mr Shakowat Hossain Bahar is also in agreement with his contention, inasmuch as section 106 of the Transfer of Property Act is also very clear on this point. As such I am inclined to hold that apart from all other things if the plaintiffs case is accepted though it has been denied by the defendant even then the defendant was entitled to a notice for 6 (six) months under section 106 of the Transfer of Property Act, which has not been done by the plaintiff petitioner.

20. Moreover after going through the evidence of PW 1 it was found that the plaintiff could not bring any document in evidence to show existence of any tenancy agreement between the plaintiff or any of her predecessor as claimed by her with the defendant or any rent receipt except one exhibit-4, proved by PW 3 but the same PW 3 stated that he did not receive any money from the defendant towards the rent which rendered the same to be disbelieved. So I find that the findings of the trial Court is cogent and legal basing on legal evidence. So I do not find any reason to interfere with the judgment passed by the trial Court as there is no legal infirmity.

21. I further find that the plaintiff examined the local postman as PW 2 to prove service of notice upon the defendant but the said postman though admitted that he knew Lal Mohammad (the defendant) but did not prove the services of those two exhibits 1-1 Ka upon the defendant. He has also stated that he had been working as postman of Helatola area for last 8 years, that is, since 1992 and the exhibits 1 and 1ka is said to have been served in 1993 and 1994. I further find that the signatures of defendant on the aforesaid exhibit 1-1 Ka differs from each other, in as much as the plaintiff did not endeavour to prove exhibit-3ka by legal evidence which as she claims to be the reply to her notice under section 106 of the Transfer of Property Act given by the defendant through his lawyer which the defendant very categorically denied to have engaged any such lawyer to give such a reply.

22. In that view of the matter I find that the learned Court below did not commit any error in passing the impugned judgment and it does not suffer from any infirmity. Although this point of 6 months' notice was not very categorically discussed by the Court below, except giving stress upon the point that the plaintiff ought to have given a notice under section 111 of the Transfer property Act to the defendant and that the plaintiff failed to produce any lease agreement or creation of landlord and tenant relationship between the defendant and the plaintiff or any of his predecessors Golam Quddus or Anwar Kadir, which is an essential ingredient for getting a decree for ejectment under the provision of Small Cause Courts Act.

23. In view of the discussion made above, I am inclined to hold that the impugned judgment passed by the trial Court bears merit to be upheld and the Rule is not sustainable.

24. On the other hand, defence did not produce any witness or evidence to support the plea of alibi raised by them in the trial to prove that the appellant was in a bazar at the time of occurrence. It is established principle of law that if any incident or circumstance is particularly within the special knowledge of any party to the case, in accordance with section 106 of the Evidence Act the burden to prove that particular incident or circumstance lies on the party who raises it. In the instant case, since the defence raise the plea of alibi, the onus was on them to prove it either by leading evidence or from other evidence on record. But they clearly failed to discharge the said onus.

25. In the result, the Rule is discharged without any order as to costs. And the judgment and decree dated 26-4-2000 passed by the learned Senior Assistant Judge, Khulna, in SCC suit No. 8

of 1994 is upheld and maintained.

Send down the lower Court records together with a copy of this judgment to the trial Court immediately.

Ed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction)

Mamnoon Rahman J Md Abu Zafor Siddique J	Shamsul Islam (Md).... .....Petitioner vs
Judgment February 19th, 2012.	Sonali Bank and others... .....Opposite Parties*

Artha Rin Adalat Ain (VIII of 2003)
Section 2

After enactment of the Act of 2003 all the execution cases arising out of the decree relates to a financial institution are liable to be transferred to the Artha Rin Adalat. The entire proceeding is illegal and without lawful authority.

...(3)

Abul Kalam Mainuddin, Advocate—For the Petitioner.

Md Ali, Advocate—For the Opposite Party No. 1

Iqbal Hossain, Advocate—For the Opposite Party No.2.

Judgment

Abu Zafor Siddique J : In an application under section 115 of the Code of Civil Procedure, Rule was issued calling upon the opposite party Nos. 1 & 2 to show cause as to why the impugned judgment and order dated 6-2-2008 of the learned Additional District Judge, 2nd Court, Khulna in Miscellaneous Appeal No.63 of 2006 affirming that dated 27-11-2005 of the learned Joint District Judge, 1st Court, Khulna in Miscellaneous Case No.136 of 2005 should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

*Civil Revision No.620 of 2008

2. We have heard the learned Advocates for the petitioner as well as for the opposite party No.l & 2. It appears that Sonali Bank, a financial institution instituted the suit namely Title Suit No.475 of 1978 in the Court of Subordinate Judge, Khulna for realization of loan amount to the tune of Taka 1,12,502.16. It also appears from the decree as annexed as Annexure-B that the borrower defendants created legal mortgage in favour of the Bank. It also appears that the bank instituted Execution case being No.4 of 1985 and the same is continuing in the Court of Joint District Judge, First Court, Khulna. Thereafter, the Court below fixed date for auction on 12-6-2005 and on that date the petitioner submitted his bid. However, the Court below refused to accept the same on the plea that the Decree-Holder Bank filed an application for amendment of its claim. Subsequently the Bank withdrawal its claim and thereafter the Court proceeded with the auction and ultimately on 14-9-2005 accept the auction bid of the opposite party No.2. Against which the present petitioner filed an application under Order XXI, rule 19 of the Code of Civil Procedure for setting aside the aforesaid sale. The Court below namely Joint District Judge, first Court, Khulna vide order dated 27-11-2005 rejected the miscellaneous case for setting aside the auction sale and the same order is affirmed by the appellate Court vide the impugned judgment and order.

3. It appears that the petitioner who claimed to be in possession of the property filed an application for setting aside auction sale as per the provision of Order XXI, rule 19 of the Code. Admittedly the Court below is in the sisin of the matter and initially the Court below refused to accept the bid of the petitioner but subsequently the Court below accepted the second bid of the opposite party No.2. Before going into the merit it is apparent that the decree holder is Sonali bank as per section 2 of the Act of 2003 read with the relevant provision of the Act 4 of 1990 being a financial Institution. All case in respect of loan is to be

tried by an Arthra Rin Adalat established under the Act of 1990 and subsequently 2003. In section 60 of the Act 8 of 2003 there is a provision when an appeal is pending in the High Court Division the same will be disposed of as if the Act of 1990 has not been repealed. Apart from that all are to be followed as per the provision of the Act 8 of 2003. Section 26 to section 38 of the Act 8 of 2003 deals with the provision relates to the execution and as per the said provision of law of execution case is to be transferred and disposed of by the concerned Artha Rin Adalat established under the provision as laid down sections 3 and 4 of the Act 8 of 2003. In such view of the matter we are of the view that the entire proceeding pending before the Joint District Judge, First Court, Khulna so far it relates to the execution case No.4 of 1985 is illegal and without jurisdiction. After enactment of the Act 8 of 2003 all the execution cases arising out of the decree relates to a financial institution as per section 2 of the Act 8 of 2003 are liable to be transferred to the concerned Artha Rin Adalat. Hence, we are of the view that the entire proceeding is illegal and without lawful authority and liability to be struck down. Accordingly the proceeding initiated as well as the orders passed by the Joint District Judge, First Court, Khulna is set-aside and the District Judge, Khulna is directed to transfer the execution case to the competent Artha Rin Adalat for taking necessary steps and disposed of in accordance with law.

4. On perusal of the annexures-D series special order No. 143 dated 10-9-2005 as follows;

মাননীয় জজ আদালতের নাজির নিলাম অনুষ্ঠানের পর বীট শীট দাখিল করিয়াছেন। তিনি বীট শীটে প্রতিবেদনে উল্লেখ করিয়াছেন যে, নিলাম ডাকে অংশ গ্রহণ কারীদের মধ্যে জনৈক সাহীদ হোসেন সবোর্চ্চ ১,৫১,০০০ (এক লক্ষ একান্ন হাজার) টাকায় ক্রয় করিবার নিমিত্তে ডাক প্রদান করেন।

ডিক্রীদারপক্ষ এক দরখাস্ত দাখিল করিয়া উক্ত দরখাস্তের বর্ণিত কারনে অদ্যকার নিলাম স্থগিত করিয়া আপোষের মাধ্যমে টাকা আদায়ের সুযোগের আদেশের প্রার্থনা করিয়াছে।

মাননীয় জেলা জজ আদালতের নাজির তাহার প্রতিবেদনে অত্র মোকর্দ্দমাটির ডিক্রীদার সোনালী ব্যাংক। সোনালী ব্যাংক একটি আর্থিক প্রতিষ্ঠান হওয়ায় সকল আর্থিক প্রতিষ্ঠানের অর্থ সংক্রান্ত মামলা সমুহ স্থানীয় অর্থ ঋণ আদালত কর্তৃক নিস্পত্তি যোগ্য মর্মে প্রতিবেদন দিয়েছেন।

ডিক্রীদারপক্ষ এক দরখাস্তে বর্ণিত কারনে সময়ের প্রার্থনা করেন। মোকদ্দমার এই পর্যায় সময়ের দরখাস্তে মোটেও গ্রহণ যোগ্য নহে বিধায় সময়ের প্রার্থনা নামঞ্জুর পূর্বক নীলাম ডাকের জন্য গ্রহণ করা হইল।

অদ্যকার প্রকাশ্য নিলাম ডাকে তিন জন বীডার অংশ গ্রহণ করিয়াছেন। উক্ত বীডারগনের নাম ও টাকার পরিমান নিম্ন প্রদত্ত হইলঃ

১। সাহীদ হোসেন, পিতা- মোঃ আইনুল হক, তাহার নীলাম ডাকের পরিমান ১,৫১,০০০ টাকা।

২। কাজী আমিরুল হক, পিতা- কাজী জিয়াউল হক, তাহার নিলাম ডাকের পরিমান ১,৪৭,০০০ টাকা।

৩। ইফতেখার হোসেন, পিতা- মোঃ সামসুল হক, তাহার নিলাম ডাকের পরিমান ১,৪৯,০০০ টাকা।

অত্র মোকদ্দমার নথি ও নজিরের প্রতিবেদন পর্যালোচনা করলাম নিলাম ডাককারীদের নিলাম ডাকের টাকার পরিমান বিবেচনা করিলাম। অদ্যকার এই নিলাম ডাকের সর্বোচ্চ নিলাম ডাককারীর নাম সাহীদ হোসেন হইতেছে এবং ডাকের পরিমান ১,৫১,০০০ (এক লক্ষ একান্ন হাজার) টাকা। যেহেতু অদ্যকার সর্বোচ্চ নিলাম ডাক ১,৫১,০০০ টাকা হইতেছে এবং অত্র মোকদ্দমার বাদী হইতে বেশী হইতেছে। সেইহেতু অদ্যকার অনুষ্ঠিত সর্বোচ্চ নিলাম ডাককারীর ১,৫১,০০০ (এক লক্ষ একান্ন হাজার) টাকা গ্রহন করা হইল।

এমতাবস্থায় এখনি নিলাম ডাকের কমপক্ষে ২৫% টাকা এবং নিলাম ডাকের মোট টাকার উপর বিধি মোতাবেক সেল ফি জমা দেওয়ার জন্য নির্দেশ দেওয়া গেল। জানানো হউক।

5. It is apparent that the District Judge opined that Sonali bank being a financial institution all cases relates to such institution is to be transferred to the concerned Artha Rin Adalat but despite recording such order the Presiding Judge proceeded with the auction in a reckless manner which clearly shows serious illegality and malafide intention. In such circumstances the said Joint District Judge, first Court, Khulna namely

Md Shafiqul Rahman (where ever he is posted now) is directed to show cause as to why proceeding should not be drawn against him for such negligence within 4 weeks from the date of receipt of this order. The said judge is directed to communicate his reply to this Court through the Registrar of this Court. The Court below is directed to refund the entire money deposited by the opposite party No. 2 forthwith.

6. With these observation and direction the Rule is disposed of. Communicate this order at once.

Ed.

HIGH COURT DIVISION
(Civil Appellate Jurisdiction)

Nozrul Islam Chowdhury J Jahangir Hossain J	Sadharan Bima Corporation and others.....Appellants
	vs
Judgment May 18th, 2010.	Golden Twisting Factory & other.....Respondents*

Limitation Act (IX of 1908)
Article 86(b)

The law of limitation runs from the cause of action of a suit and that should be in all cases for 3 (three) years not from the date of occurrence. .....(16)

Tufailur Rahman with Afreen Mohiuddin, Advocates —For the Appellants.

Fazlul Haque with Akbar Hossain, Advocates—For the Respondent No.l.

Judgment

Nozrul Islam Chowdhury J: This appeal is directed against the judgment and decree dated 31-10-2005 passed in Money Suit No.3 of 2000 by the Joint District Judge 1st Court, Munshiganj.

*First Appeal No.60 of 2006.

2. The defendants who are appellants preferred this appeal against the impugned judgment and decree passed by the learned joint District Judge decreeing the suit for a claim of Taka 80,00,000 (lakh) together with interest @ 10% since 22-2-1997 as claimed by the plaintiff.

3. Facts in a nutshell, giving rise to this appeal are that, the respondent as plaintiff instituted Money Suit No. 3 of 2000 before the Joint District Judge,1st Court, Munshiganj impleading the appellants as defendants seeking a decree for Taka 80,00,000 (lakh) with interest accrued thereon. The plaintiff stated *inter alia* in his plaint that it deals rope, net and with all kinds of twin yearn manufacturing and marketing within Bangladesh territory and in order to avoid the risk of sudden loss or damage to the property ensured those with Sadharan Bima Corporation i.e. defendant Nos.l-3 mentioning those in the schedule of the policy, obtained a Fire Policy No. SBC/NGJ/ MRK/F/P-32/12/96 on payment of premium of Taka 49,467.25 (lakh) covering the risk for the period from 3-12-1996 to 3-12-97. It was also stated in the plaint that on 21-2-97 at about 12-30 hours at night through an electric short-circuit a devastating fire broke out at the godown premises of M/s Golden Twisting Factory at Ghosair Bagh, Panchashar, Munshiganj causing total loss of the godown with stocks therein. The Munshiganj Fire Station were informed about the lire incident on 21-2-97 as also the plaintiff tried his best to control the fire but by this time when the fire was brought under control the entire stocks in the godown were completely gutted immediately after the occurrence. The plaintiff lodged a GD Entry with Munshiganj Police Station on 22-2-97 bearing No.741 about the incident; the mortgagee bank of the insured property namely Agrani Bank, Mukterpur Branch, Munshiganj notified the incident of the defendant Nos.l-3; the Insurance authority and the Bank jointly appointed surveyors M/s Asian Surveyors Ltd and M/s Udayan

Survey inspections for the purpose of survey about the loss , meanwhile the plaintiff lodged a formal claim with the defendants Sadharan Bima Corporation for the loss on 3-3-97, thereafter the said two surveyors jointly surveyed the place of incident upon investigation of the relevant papers maintained and kept in the bank; thereafter the defendant Nos.1-3 kept silent for long time giving no reply to the letters given to them by the bank and the claim made by the plaintiff. It was also stated in the plaint that on 28-5-97 the defendant No.3 Manager (Claim) asked for some papers from Agrani Bank Mukterpur Branch and those were furnished by the bank on 25-6-97 and on 30-3-97 the Manager, Agrani Bank and defendant No.4 supplied some papers and documents to the Manager, Sadharan Bima Corporation, the surveyor appointed for the purpose of assessment of the loss in the incident also required some papers and statements from Agrani Bank which duly furnished those papers as per the requirement of the surveyors who also acknowledged receipt of those papers on 15-6-97 and 27-7-97; meanwhile the Assistant Director of Fire Service and Civil Defence Department issued their report on 27-11-99 assessing total loss Taka 80,00,000 (lakh) only; the same incident was also investigated by the police officer of Munshiganj whereupon Superintendent of Police, Munshiganj furnished his report to the plaintiff on 12-3-97; report was also obtained from the godown Chowkidar about the incident on 21-2-97 ; the news of devastating fire came out in the daily news papers like Ittefaq and the Daily Janakantha. Despite survey report recommending payment of claim upon acknowledgement of the incident on the grounds stated in their report, the defendant Nos.1-3 knowing full well about the surveyors report, most illegally denied the claim of the plaintiff on 9-3-2003 on some flimsy grounds which is against the Insurance Policy and the terms and condition, available under the said policy. The plaintiff also asserted his claim before the defendant Nos.1-3 with reference to his Insurance Policy No.SBC/NGJ-MRK.-05/99 asserting further that the said policy covered the devastating fire broke out at plot No. SA 372, RS 1181 and 1182 as such the defendant Nos.1-3 are liable to pay the legal-claim of the-plaintiff. Hence, the suit was brought by the Respondents as plaintiff.

4. The defendant Nos. 1-3 entered appearance upon filing written statement denying the material allegations made in the plaint contending *inter alia* that the Insurance Policy issued by the answering defendants does not cover the Mill premises and the goods stored in the godown are not also covered by the Insurance Policy and the claim made by the plaintiff is not entertainable under the terms and conditions of the Insurance Policy, therefore, the denial of the claim at the plaintiff was done legally and correctly. It was also stated in the written statement that in their reply to the legal notice dated 30-7-2000, the defendants gave reasons elaborately for not entertaining the claim of the plaintiff and that the claim made by the plaintiff in the suit is not based on acceptable ground, therefore, the suit was liable to be dismissed.

5. Eventually, the suit was taken up for hearing by the learned Joint District Judge who framed as many as 5 issues including one as to whether the plaintiff is entitled to make the claim on the basis of their Insurance Policy, from the defendant Nos.1-3 and in course of trial the plaintiff examined 3 witnesses while the defendants examined 2 on their behalf and upon conclusion of the trial the learned Joint District Judge decreed the suit allowing the claim of the plaintiff to the tune of Taka 80,00,000 (lakh) with interest @ 10% accrued out of the said amount, by his judgment and decree dated 31-10-05 thereafter the defendants as appellants preferred this appeal.

6. Mr Tufailur Rahman the learned Advocate appearing with Ms Afreen Mohiuddin on behalf

of the appellants submits that the impugned judgment and decree is not sustainable in law in that the suit itself was barred under Article 86 of the Limitation Act. The learned Advocate appearing for the appellants submits that the claim of the plaintiff is not sustainable both in law as well as in facts in as much as the fire alleged to have taken place in the premises of the godown which was not covered by the Insurance Policy granted by the defendant Nos.1-3.

7. It was also urged by the learned Advocate for the appellants that the documents produced by the plaintiff in support of its claim are, based on inadmissible evidence in that the documents which have been marked as Exhibits are all photostat copies, of the original, therefore, the learned Joint District Judge acted illegally in decreeing the suit on the basis of inadmissible evidence.

8. Mr Fazlul Haque the learned Advocate appearing with Mr Akbar Hossain, on the other hand, submits that the incident of fire took place in the suit premises on 21-2-97 at 12-30 hours out of electric short-circuit and the fire broke out at the godown premise of M/s Golden Twisting Factory namely the plaintiff and immediately thereafter Munshiganj Fire Station was informed about the incident on the same day which having arrived at the scene tried their best to extinguish the fire and before the said fire came under control the entire stocks in the godown were completely gutted; a GD entry with Munshiganj Police Station was, also lodged in connection with the same incident on 22-2-97 bearing No.741 and that the mortgagee bank of the insured property namely Agrani Bank Mukterpur Branch notified the defendant Nos.1-3 about the incident by their letter No.95-97 dated 22-2-97 and the plaintiff lodged a formal claim with the Sadharan Bima Corporation for loss on 3-3-97 whereupon the defendant Nos.1-3 appointed surveyors Ms. Asian Survey and M/s Udoyan Survey for inspection. The said surveyors having conducted survey about the loss as claimed by the plaintiff submitted their report recommending the claim of the plaintiff to the defendant Nos1-3, moreover there were other reports from different other agencies supporting the claim of the plaintiff, despite such a position the defendants kept silence and ultimately on 9-3-2000 refused the claim of the-plaintiff, therefore, the cause of action of the suit arose on 9-3-2000 and thereafter the instant suit was instituted on 7-8-2000, therefore, the learned Advocate for the respondents submits that the question of limitation as contemplated under clause (b) of Article 86 of the Limitation Act does not arise at all.

9. Mr Fazlul Haque the learned Advocate for the respondents having drawn our attention to exhibits 16 and l6Ka produced by the plaintiffs, submits that the Insurance Policy was subsequently amended on the request of Agrani Bank, the banker of the insured property and this aspect of the case has not been denied by the defendants at any stage and by the said amendment both the godown and its premises were also included in the policy itself with specific description of the plot numbers whereupon the structure of the godown and its mills are situated, therefore, the learned Advocate submits that the claim of the defendants that the insurance policy does not cover the godown and its premises where the fire broke out causing loss of Taka 80,00,000 (lakh) to the plaintiff is not at all sustainable.

10. Referring to page 7 of the Paper Book which contains order No.12 elated 4-9-2001 of Money Suit No.3 of 2000 the learned Advocate has drawn our attention that it is on the prayer of the plaintiff an order was passed by the learned Joint District Judge directing the defendants to produce all the relevant papers which were lying with them, before the court in connection with the incident despite such an order the defendants did not comply with the said order rather they remained silent about the same consequently the

plaintiff had no other alternative to produce the photo-copies of the documents in support of his claim before the court and those were duly marked as exhibits through the witnesses but the defendants did not raise any objection presumably for the reason that they had not complied with the order of the court to produce the original before it, therefore, at this stage they have no reason whatsoever to raise any objection about the admissibility of the Photostat copies of the documents which ultimately were produced as secondary evidence as contemplated under sub-section (3) of Section 63 of the Evidence Act.

11. Heard the learned Advocates for both the parties, perused the materials relevant for the purpose of disposal of this appeal including the documents produced from both sides wherefrom we find that the submission made by the learned Advocate for the respondents to the effect that the exhibits produced by the plaintiff are very much admissible in evidence particularly in view of the fact that on a perusal of the order No. 12 dated 4-9-2001 passed by the learned Joint District Judge, we find that a direction was given by the court to the defendants to produce the relevant documents which were in fact in their custody but they did not comply with such direction, accordingly, the plaintiff had no other alternative but to produce the photostat copies of the documents and it appears that for this reason the defendants did not raise any objection while admitting those documents by the trial court despite their presence before the court. Therefore, we find that the objection raised by the learned Advocate for the appellants with respect to the admissibility of the documents in question is not sustainable.

12. Having gone through the materials on record we find that the objection raised by the learned Advocate for the appellants to the effect that the Insurance Policy does not cover the incident in as much as the Fire broke out at the godown and its premises but on perusal of exhibits 16 and 16Ka us produced by the plaintiff we find that as a matter of fact, on the request of the banker of the ensured goods namely, Agrani Bank the policy was duly amended by the defendant Nos.1-3 covering both the godown and its premises situate in particular plot of settlement survey, therefore, the objection to that effect raised by the learned Advocate for the appellants is also not sustainable.

13. The pertinent question raised about the applicability of clause (b) of Article 86 of the Limitation Act which prescribes a period of 3(three) years from the date of the occurrence causing the loss. Before entering into further discussion of the same we feel it proper to quote the relevant law which reads as under :—

Description of suit	Period of Limitation	Time from which period begins to run
"(b) On a policy of insurance when the sum insured is payable alter proof of the loss has been given to or received by the insurers."	Three years	(b) The date of the occurrence causing the loss.

14. Referring to the position as aforesaid Mr Tufailur Rahman has already submitted that the suit for a claim as in the instant case ought to have been instituted within 3(three) years from the date of occurrence.

15. In appreciating such submission made by the learned Advocate we find that the entire gamut can be unfolded if the law as quoted above, is read together with first part of clause (b) of Article 86 of the Limitation Act which shows that the question of proof of the quantum of loss is very much pertinent and in determining the quantum of loss the question of assessment and evaluation and

verification about the claim ought to have been made as it has been done in the instant case by two surveyors as also by the police officer during investigation including the Fire Service men and upon accumulating all those report the quantum of loss can be assessed which necessarily take sufficient time for the purpose, therefore, before assessment of a claim for specific amount cannot be made by the plaintiff and that too has to be either accepted or refused by the insurer himself, in the event of acceptance of the claim no question of filing of a suit arises rather it is only in the event of refusal of claim, institution of suit necessitates.

16. In the instant case we find that the cause of action of the suit necessarily arose on the date of refusal of the claim of the plaintiff by defendant Nos.1-3 on 9-3-2000 and the suit was instituted on 7-8-2000 and that before refusal of the claim of the plaintiff by the defendant a cause of action does not arise and a suit cannot be instituted, therefore, in our opinion, the law of limitation as quoted above, runs from the cause of action of a suit and that should be in all cases for 3 (three) years not from the date of occurrence as submitted by the learned Advocate for the appellants, therefore, we find that the instant suit has been filed well within the prescribed period of limitation as such in no way hit by clause (b) of Article 86 the limitation Act. Since all the questions raised by the learned Advocate for the appellants have already been answered therefore, in our opinion, the appeal itself is without substance.

17. Accordingly, the same is dismissed and the impugned judgment and decree is hereby upheld.

Send down the lower court records with a copy of this judgment, forthwith.

Ed.

HIGH COURT DIVISION
(Criminal Appellate Jurisdiction)

ANM Bashir Ullah J	Mohammad Ali Fatik..... .....Convict-Appellant
Judgment	vs
January 30th 2014.	State and another..... .....Respondents*

Negotiable Instruments Act (XXVI of 1881)
Section 138

The cheque was drawn some time in 2004 and it was presented in the Bank in the month of September, 2007 i.e. beyond the period of six months from the date on which it was drawn. A cheque receiving in the year 2004, filling up the various columns later on, at the sweet will of the complainant, if presented in the Bank after a long gap of 3/4 years, undoubtedly the same is a fraud upon the drawer of the cheque and if Court allow to continue such practice, that would be sheer indulgence to the creditors to be more oppressive to the debtors. .....(21)

Taher N. Khambat vs Vinayak Enterprises (AP), Company Cases, Vol 86, 1996, Page 471 to 477 ref.

Majedul Islam Patwary, Advocate—For the Convict-Appellant.

Md Ashaque Momin with Salma Rahman, AAG—For the Respondent No. 1.

AKM Faiz with Md Sultan Uddin, Advocate—For the Respondent No.2

Judgment

This criminal appeal at the instance of the convict appellant under section 410 of the Code of Criminal Procedure (in short, the Code) is directed against the judgment and order dated 2-2-2011 passed by the Sessions Judge, Bogra in Sessions Case No. 50 of 2009 arising out of CR Case No. 59/C of 2007 dated 12-11-2007 under section 138

*Criminal Appeal No. 4079 of 2011.

of the Negotiable Instruments Act, 1881 (in short, the NI Act) convicting the appellant under the said section of law sentencing him to suffer imprisonment for l(one) year and to pay fine of Taka 14,30,000 (fourteen lakhs thirty thousand).

2. The facts relevant for disposal of the appeal, in short, is that Md Sohel-bin-Anwar as complainant (respondent No.2 in this appeal) filed a petition of complaint in the Court of Magistrate, Bogra under section 138 of the NI Act alleging, *inter-alia*, that he is a businessman of machineries parts at Bogra town. Accused Mohammad Ali Fatik is a man of dubious character who is also a businessman of same type of goods at Natore town having a shop in the name and style as "Messers Shova Machineries".

3. The accused used to purchase machinery parts from the complainant in cash and the same build a fiduciary relation between them for the ongoing business transaction. Thereafter, the accused requested him to sell the parts to him on credit and at one stage there was a due of Taka 7,16,300 to the accused till 17-4-2007. On the repeated pressure of the complainant the accused drew a cheque for Taka 7,15,000 in favour of the complainant being cheque No. IBC 2320562 of his account No.0006686, Islami Bank Bangladesh Limited, Natore Branch, Natore in order to make payment of the said amount. The complainant presented the said cheque in his account at Islami Bank Bangladesh Limited, Bogra, but for insufficiency of fund the cheque was bounced on 19-9-2007 by the Islami Bank Bangadesh Limited, Natore and ultimately a certificate to that effect was issued in favour of the complainant by the Islami Bank Bangladesh Limited, Bogra on 23-9-2007. The complainant through his lawyer issued legal notice on 3-10-2007 requesting the accused for making payment of the cheque value and though he received the notice on 4-10-2007 but all in vain and under this compelling circumstances the complainant filed the petition of complaint on 12-11-2007.

4. On the basis of the aforementioned petition of complaint CR Case No. 59C of 2007 was started and the case was ultimately tried by the Sessions Judge, Bogra who framed charge under section 138 of the NI Act on 27-7-2009 against the accused. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

5. The prosecution examined 2 witnesses and submitted some papers which have been marked as exhibits 1 to 3 series. After conclusion of recording of evidence, the accused was examined under section 342 of the Code when he repeated his innocence and submitted written statements disclosing his defence case.

6. The defence case as it appears from the cross-examination of the PWs 1 and 2 and also from the statements under section 342 of the Code is the case of innocence, false implication and non-issue of any cheque for payment of the amount.

7. The further defence case is that he started business transaction with the complainant in 2004. The complainant proposed him to purchase goods from his shop either in cash or on credit subject to deposit a signed blank cheque as security of the arrear transaction and the accused being convinced of the said proposal in good faith drew a signed blank cheque on 26-9-2004 being cheque No. 2320562 of Islami Bank Bangladesh Limited, Natore. All the entries of the cheque was blank save and except of his signature on the cheque and he was running his business with the complainant smoothly but at one stage when the complainant was charging the higher rate of the goods than that of the market rate, he started to purchase the goods from other shops. He unsuccessfully requested the complainant to return back the blank cheque to him but the complainant being annoyed of it filling up the blank entries of the cheque showing an amount of Taka 7,15,000 filed this case. The accused did not draw any cheque

for the payment of Taka 7,15,000 on 2-9-2007 in favour of the complainant.

8. The trial Court on consideration of the evidence and other materials on record convicted the appellant sentencing him as aforesaid and the convict appellant being aggrieved by and dissatisfied with the impugned judgment and the order of conviction and sentence preferred this appeal.

9. Mr Majedul Islam Patwary, the learned Advocate appearing for the convict appellant submits that since the convict appellant did not draw any cheque for payment of any amount to the complainant, the occurrence of this case did not at all attract the provisions of section 138 of the NI Act. He referring the sub-section (I) of section 138 of the NI Act categorically submits that when a cheque is drawn for the payment of any amount of money to another person and when such cheque is dishonoured for insufficiency of fund, that is an offence under section 138 of the NI Act, but in this particular case it would be revealed from the materials on record that in the year of 2004 when the complainant started business transaction with the complainant handed over a signed blank cheque to the complainant as security for the transaction but since the appellant found it difficult to purchase the goods from the shop of the complainant, he (complainant) being annoyed of the said fact filling up the various entries of the cheque showing an imaginary amount presented the cheque to the bank on 2-9-2007.

10. He further submits that the various entries of the cheque have been made by his Manager and the same has been evident from the evidence of PW 1 in a very good manner. He also submits that this Court called for a report from the Islami Bank Bangladesh Limited, Bogra as to when the cheque in question was issued to the appellant and the Bank in its report dated 5-7-2012 stated that the cheque in question was given to the accused on 27-5-2004. The report also lends a strong and logical support to the defence case.

11. He further submits that the trial Court being seriously misconceived of the facts as well as law connected with the occurrence of this case fails to appreciate the defence case and thereby wrongly applied the provisions of section 138 of the NI Act in the instant case. The trial Court should have found that when a blank cheque is drawn by a person to another person, the intention of making payment of money is found much absent there. So, bouncing of such a cheque did not attract the provisions of section 138 of the NI Act. The learned Advocate in support of his such contention referred the case of *Taher N Khambat vs Vinayak Enterprises (AP)* reported in *Company Cases, Vol-86, 1996, Page 471 to 477.*

12. On the other hand, Mr AKM Faiz, the learned Advocate with Mr Md Sultan Mahmud appearing for the respondent No.2 (complainant of the original case) and Mr Md Ashaque Momin with Mrs Salma Rahman, the learned Assistant Attorney Generals appearing for the respondent No. 1 almost in a chorus voice controverting the submissions made by the learned Advocate for the appellant and supporting the judgment of the trial Court submits that the cheque in question was drawn by the accused in the due course of normal business transaction in order to make a payment of Taka 7,15,000 on 2-9-2007 and the cheque was presented within the stipulated period of time in the Bank for its encashment but due to insufficiency of fund the same was bounced on 23-9-2007 and in response to a legal notice, the accused did not turn up to make the payment as a result the complainant under the compelling circumstances filed the case. The trial Court on the right assessment of the evidence and other materials on record very legally held that the convict-appellant committed an offence punishable under section 138 of the NI Act for not making the arrangement to honour the cheque in question. So, the judgment of the trial Court did not call for interference from this Court.

13. I have considered the above submissions and the arguments of the learned Advocates of both the parties with profound attention and have gone through the materials on record.

14. The gist of the prosecution case is that the accused as a debtor in order to make payment of Taka 7,15,000 drew a cheque on 2-9-2007 in favour of the complainant and the complainant as payee of the cheque presented the same for encashment in the Bank but the same was dishonoured on 23-9-2007.

15. On the other hand, the defence case is that the accused did not draw any cheque on 2-9-2007 to its so-called payee in order to make payment of any amount. Rather, he deposited a signed blank cheque to the complainant in the year of 2004 when he started business transaction with him but whenever he was purchasing goods from other shops of Bogra, the complainant being annoyed of it filling up the entries of the cheque by his own man presented the same in the Bank in order to invoke the penal provisions of section 138 of the NI Act.

16. On a careful scrutiny of the evidence on record it appears that PW 1 Mohammad Sohel-bin-Anwar (the complainant of the case) in his cross-examination in a very clear language admitted that the name of the firm and the amount of money and the date on cheque has been written by his Manager. The said evidence is running in the following ways:

"আসামী ২০০৪ সালেরও আগে থেকে আমার সাথে ব্যবসায়িক লেন দেন করে। সত্য যে, চেকে ফার্মের নাম ও টাকার অংক আমার ম্যানেজারের লেখা। সত্য যে চেকের তারিখও ম্যানেজারের লেখা.....।

17. The above evidence of PW 1 is perhaps more than enough to come to a very sound and invulnerable conclusion that when the cheque was issued by the accused it was a blank cheque having his signature on it only and it was issued by him without filling up the other required columns or entries of the cheque. Thus, the defence case stands on a very good and steady proof that he had handed over a blank cheque to the complainant.

18. There appears a report dated 5-7-2012 furnished by the Islami Bank Bangladesh Limited, Natore Branch, Natore in compliance with the direction of this Court's order dated 11-6-2012 wherein the Bank authority also stated that the cheque in question was issued to the accused in the year of 2004. This report lends a strong support to the defence case that the cheque was given to the complainant much earlier than that of 2007.

19. Now, if this is the situation that a blank cheque having signature of the accused was given to the complainant by the accused what may be the consequence or fate of the same. In this connection sub-section (l) of section 138 of the NI Act is very much important to examine the fate of such a cheque. Sub-section (1) of section 138 runs as follows:

"138. Dishonour of cheque for insufficiency, etc of funds in the account—

(l)Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficiency to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to thrice the amount of the cheque, or with both"

20. The underlined portion *(the underline is mine)* of the above quoted section is going to show that when a cheque is drawn by the drawer

of the cheque for payment of any amount of money to another person and when the cheque is bounced for insufficiency fund, then it is an offence punishable under section 138 of the NI Act, but whenever a cheque is drawn or given by an accused to another person without writing the amount and dates, such a cheque cannot be considered as a cheque drawn or issued for making payment of any amount. Had there been any legal and fair intention for making of payment of any amount of the drawer of the cheque that must be notified on the cheque. In this particular case, I find that the amount, dates and other entries has been written on the cheque by an agent of the complainant. So, it is very much clear from the materials on record that the accused did not draw the cheque for making payment of any amount through the cheque in question. So, the occurrence of this case did not attract the provisions of section 138 of the NI Act.

21. Moreso, from the materials on record it has been found that the cheque was drawn some time in 2004 and it was presented in the Bank in the month of September, 2007 i.e. beyond the period of six months from the date on which it was drawn. A cheque receiving in the year 2004, filling up the various columns later on, at the sweet will of the complainant, if presented in the Bank after a long gap of 3/4 years, undoubtedly the same is a fraud upon the drawer of the cheque and if this Court allows to continue such practice, that would be sheer indulgence to the creditors to be more oppressive to the debtors.

22. The similar view has been taken by the High Court, Andra Pradesh in the case of *Taher N. Khambat vs Vinayak Enterprises (AP)* reported in *Company Cases, Vol. 86, year 1996, Pages 471 to 477.* In the reported case, the accused issued a signed blank cheque in favour of the complainant of that case as security for payment of interest with the understanding that the complainant will present the cheque in the Bank if the accused fails to pay interest as stipulated. The High Court of Andhra Pradesh considered it seriously that if this sort of practice of taking blank signed cheque is allowed, every creditor would abuse the provisions of section 138 of the NI Act obtaining blank cheques and putting the debtors in fear of prosecution insist on discharge of the debts at any time and it was also considered in the reported case that the same was not the intention of the legislature while incorporating section 138 in the NI Act, 1881.

23. In fact, a blank signed cheque is generally taken by a creditor from the debtors in order to create more and more pressure so that the debtors make the payment of the creditors but whenever a cheque is drawn for making of payment as provided in section 138 of the NI Act and when the same is bounced, the section 138 of the NI Act will come to play its role. The findings and decision of the Indian reported case is very much relevant in coming such a decision that since the cheque was not issued for making payment of any amount to the payee, so the occurrence of this case did not come under the purview of section 138 of the NI Act. The relevant portion of the reported case *(Company Cases Vol. 86, year 1996, page 471-477)* runs as follows:

> "Section 138 of the Act is introduced with a view to avoid the malignant trade practice of indiscriminately issuing cheques without sufficient funds. The amendment is introduced with a view to curb instances of issuing such cheques indiscriminately. So, having regard to the purpose with which this provision is introduced, it is doubtful whether a case of this nature can be construed as attracting the provisions of section 138 of the Act. In the instant case, the appellant advanced some money to the respondents and obtained a pronote. It was stipulated that the respondents should pay interest every month. At the same time appellant-creditor took a blank signed cheque from the respondents with the

understanding that the complainant could fill the other columns in the cheque and present it if the respondents committed default in payment of interest. The respondents paid interest for about eight months and, thereafter, stopped payment of interest. Then the appellant put the date on January 15, 1991, wrote his own name in the space intended for the payee and also mentioned the amount as Rs. 1,18,337 and presented the cheque. Even at the time when he presented the cheque, he would not have expected that the cheque would be honoured. He was presenting the cheque only with a view to get an endorsement which would enable him to proceed under section 138 of the Act. If this sort of practice is allowed, every creditor would abuse the provisions of section 138 of the Act by obtaining blank cheques and putting the debtors in fear of prosecution insist on discharge of the debts at any time I do not think that would have been the intention of the Legislature while incorporating section 138 in the Negotiable Instruments Act, 1881. Though the appellant did not state the circumstances under which he obtained the pronote and the cheque in his complaint yet it is clear from the evidence the circumstances under which the complainant obtained a signed blank cheque from the respondent. So, the appellant has obtained this blank signed cheque with a view to make use of it, as a threat to the respondents for realisation of the amount. So, it cannot be construed that the respondents had issued the cheque voluntarily for discharge of any debt or legal liability as envisaged under section 138.1, therefore, find that the facts and circumstances of the case are not attracted by the provisions of section 138 of the Act and that the learned Magistrate was justified in acquitting the accused. Hence, the criminal appeal is dismissed."

24. From the findings and decision of the reported case, noted above, it appears that the High Court of Andra Pradesh came to a such conclusion on the basis of a case which has almost similarly with the case in my hands.

25. Now, having regards to the discussion made hereinbefore I find it difficult to hold that the trial Court had applied his judicial mind in disposing of the case. The learned Advocate appearing for the respondents though tried to convince me that since the cheque was issued by the accused in favour of the complainant and since the cheque was bounced for insufficiency of fund the same occurrence is covered by section 138 of the NI Act. But the learned Advocate is almost silent as to the evidence of PW 1 as I have reproduced in this judgment that the amount, dates and name of the payee of the cheque has been written by the Manager of the complainant. The respondent will not be in any position to challenge their own evidence as given by the PW 1 at trial and the said evidence has established it beyond all reasonable doubt that at the time of drawing of that cheque that was a signed blank cheque and later on the blank columns has been written to give a proper shape of the cheque and to present the same in the Bank. Now, since the cheque in question was not drawn in order to make payment of any amount rather the same was a signed blank cheque at the time of its drawn and whenever such a cheque is bounced that will not come under the purview of section 138 of the NI Act but the trial Court without considering all these material facts of the case wrongly found the accused guilty under section 138 of the NI Act, 1881. So, the judgment and the order of conviction and sentence is liable to be set-aside.

26. In the result, the appeal is allowed. The judgment and order dated 2-2-2011 passed by the Sessions Judge, Bogra in Sessions Case No. 59/C of 2009 is hereby set-aside. The convict appellant is allowed to withdraw the amount deposited by

him at the eve of presenting the appeal against the judgment of the trial Court.

27. Let a copy of this judgment and order be sent to the concerned Court for information and necessary action.

Send down the lower Court's record at once.

Ed.

HIGH COURT DIVISION
(Statutory Original Jurisdiction)

Md Rezaul Hasan J

Judgment
February 25th, 2014.

Hafiz Ahmed Mazumder and others.....
.....For Petitioners

vs

Pubali Bank Limited and others.....Respondents*

Bank Companies Act (XIV of 1991)
Section 15(9)

Independent director—In interpreting an 'independent director' and thereby purporting to bring a share holder director, within the confine of 'independent director', is not permissible in law. BSEC cannot publish any notification by resorting to any fiction, nor can it modify, nullify or override the specific provision of law by attributing a perverse, absurd or conflicting meaning of the expression 'independent director'. It therefore has no force of law. .....(23)

Securities Exchange Commission (Insider Trading Restriction) Rules, 1995
Rule 4(2)

With reference to and in continuation of the notification has required holding of minimum 2% shares or to acquire the said quantity of shares within the next 6 months and in order to facilitate such acquisition it has exempted the directors, who are holding shares less than minimum required numbers, from application of sub-rule 2 of Rule. .....(21)

Interim Order

There having an order of the High Court Division staying operation of notice the neutral chairman appointed by the court to preside over 30th AGM of the Bank, had no scope sit in appeal over the interim order passed by this court. .....(25)

Sheikh Fazle Noor Taposh with Md Mehedi Hasan Chowdhury and AKM Rabiul Hassan with Md Selim Jahangir, Advocates—For the Petitioners.

Aktar Imam, Senior Advocate with Rashna Imam, and Reshad Imam, Advocates—For the Respondent No.1.

Probir Neogi with Shuvra Chakravorty and Manzur-al-Matin, Advocates—For the Respondent No.4

AM Mahbubuddin with Saqeb Mahbub, Advocates—For the Respondent No.5.

Judgment

Md Rezaul Hasan J: This is a petition filed under section 85(3) of the Companies Act, 1994 (herein after referred as the Act) by Mr Hafiz Ahmed Mazumder and 7 others.

2. It has been stated, amongst other, in the petition, that the petitioners are share-holders in respondent No.1 Company; that the Respondent No. 1 is a public company limited by shares incorporated under the Companies Act, 1913; it carries on business as a commercial bank through its branches located all over Bangladesh it's shares are listed and publicly traded in the Dhaka and Chittagong Stock Exchanges; that the Respondent

*Company Matter No. 181 of 2013.

No. 2 is the Office of the Chief Election Commissioner, for conducting election to the office of the Board of Directors in the 30th AGM of Pubali Bank Limited. The Respondent No.3 is the Registrar of Joint Stock Companies and Firms. Respondent No.4 is Bangladesh Securities and Exchange Commission (BSEC); that the Respondent No.1, the Bank, was initially established in the erstwhile East Pakistan as Eastern Mercantile Bank Limited in the year 1959 under the Companies Act, 1913; after independence of Bangladesh in 1972 the Respondent the Bank was nationalized and renamed as Pubali Bank; that pursuant to an application filed by one Mr Shafi Ahmed Chowdhury under section 85(3) of the Companies Act, 1994, being Company Matter No.90 of 2013, impugning, *inter alia,* the non inclusion of an agenda for election of directors in the 30th AGM of the respondent No. 1 bank, the Company Bench of the High Court Division, by a judgment and order dated 6-5-2013 the application with, *inter alia,* the following directions:

i. The Bank should hold its 30th AGM within 45 days from receiving the certified copy of the judgment and order or from sending the file of Company Matter No. 90 of 2013 to the company section of the High Court Division, whichever is earlier, after issuance of notice including the agenda relating to retirement and election of directors.

ii. Mr Fida M Kamal, Senior Advocate and former Attorney-General for Bangladesh, was appointed as the chairman to preside over the 30th AGM.

iii. All directors including chairman of the Bank was directed to submit resignation letters within 15 day to Mr Fida M Kamal. The resignation letters would take effect from the date and time the new board of directors, elected in the 30th AGM, would call their first meeting immediately after the 30th AGM.

iv. All directors who shall resign pursuant to the judgment and order shall be eligible for re-election, on condition that they are not otherwise disqualified as per provisions of the Articles of Association or any statute or any directive or circular of the regulatory authorities, if any, as the case may be; it is further stated that as contained in directive 8 of the operative portion of the judgment dated 6-5-2013, the Respondent Bank, immediately appointed a neutral Election Commission comprising of Professor Fariduddin Ahmed as the Chief Election Commissioner, Dr MA Eusuf and Dr Kazi Maruful Islam as the Election Commissioners for conducting the 30th AGM of Respondent No.1 Company; that in compliance with the judgment and order dated 6-5-2013 of the Hon'ble High Court Division, all directors, including chairman of the Bank, submitted their resignation letters to Mr Fida M Kamal; that owing to the inability to secure a venue within the prescribed time frame provided by the High Court Division the Respondent No. 1 was constrained to file an application to the Hon'ble High Court Division to extend the time for holding the AGM and on the application of the Respondent No.1 Bank, the High Court Division, by its order dated 9-7-2013, extend the time to hold the AGM on 21-8-2013; that meanwhile, although the Bank had made all preparations for convening the AGM on 21-8-2013, upon misconceived application of the petitioner of Company Matter No. 90 of 2013, Mr Shafi A Chowdhury, addressed to Mr Fida M Kamal demanding cancellation of nomination paper of the petitioners from contesting the directors' election in the 30th

AGM of the respondent Bank, the scrutiny committee of the Respondent No. 2, Office of the Chief Election Commissioner, illegally and unlawfully issued a notice dated 14-8-2013 holding that the petitioners were not qualified to contest in the election for office of the directors as they did not have 2% shareholding in their individual name, in the paid up capital of the bank, on the record date; that the Respondent No.2's deliberation as contained in the impugned notice in respect of the disqualification of the petitioners in contesting the election for directorship in the upcoming 30th AGM is based on a misconceived interpretation of the Notification No. SEC/CMRRCD/2009-193/119/Admin/34 dated 22-11-2011 issued by the Respondent No.4, Securities and Exchange Commission, for the following reasons, namely- the Respondent No. 4, subsequent to issuance of the Notification No. SEC/CMRRCD/2009-193/119/Admin/34 dated 22-11-2011, had further issued two clarifications, being Notification No SEC/CMRRCD/2009-193/120/Admin, dated 7-12-2011 and letter No. SEC/SRMIC/95-299/384, dated 12-2-2012; that in the Notification dated 7-12-2011, the Respondent No.4 has clearly stated that the 2% share holding requirement was not applicable to independent/nominated directors of any listed company; that subsequently, in the letter dated 12-2-2012, the SEC had clearly stated that the 2% share qualification was applicable for sponsor directors; it had also clarified that the following categories of directors would be considered as independent directors and accordingly the condition to hold 2% minimum shares in the paid up capital of the bank was not applicable on them, i.e. (i) to directors elected from amongst the ordinary shareholders, (ii) to directors nominated from amongst the bank's depositors and (iii) to ex-officio directors; that due to the historical background in respect of establishment of Pubali Bank Limited, as set out in paragraph 4 above, the Respondent Bank does not have any sponsor director. Accordingly, the petitioners are ordinary shareholders and have submitted their nomination for election as directors from the category of ordinary shareholders, that it is submitted that due to the reasons stated above, the Respondent No.2 had illegally and unlawfully disqualified the petitioners for nomination as Directors of Respondent Bank in the upcoming 30th AGM; that in the premises the petitioner have prayed, upon hearing the parties, to declare illegal and having no legal effect the impugned notice dated 14-8-2013 (Annexure-D) of the Respondent No. 2, i.e. the Office of the Chief Election Commissioners, whereby the nomination of the petitioners, contesting for the post of directors, was declared invalid, as they do not have requisite 2% shareholding in their individual names as on record date (4-4-2013) and also prayed that pending disposal of the petition, stay operation of the relevant portion of the notice dated 14-8-2013 in relation to the declaration of ineligibility of the petitioners to contest in the post of directors as they do not have requisite 2% shareholding in their individual names as on record date (4-4-2013) in the paid up capital of the company (bank) and to direct Respondent No. 2 to allow the petitioners to contest in the election of the directors in the 30th AGM of the Respondent No. 1 bank.

3. It further appears from the record that the petition was moved before and admitted by a Vacation Bench of this Division, hearing company matter, by an order dated 20-8-2013. It also

appears from the said order dated 20-8-2013 that operation of impugned notice dated 18-3-2013 (Annexure-D), issued by the respondent No.2, in so far as it relates to disqualifying the petitioners from being candidate for election to the office of directors of the bank, for not holding minimum 2% shares in the paid up capital of the bank, was stayed for a period of 3(three) months from date and the respondents were directed to allow the petitioner to contest for the post of the directors in the AGM to be held on the following day (i.e. on 21-8-2013). As such the present Board of the Bank is consisting of 13 directors in total, out of whom 5 directors are holding minimum 2% shares in the paid up capital and 8 directors (the petitioners in this case) are holding less then 2% shares in the paid up capital of the bank.

4. The respondent Bank (PBL) has filed an affidavit-in-opposition mainly denying the allegations made in the petition and asserting that the statements made in several paragraphs of the petition are in substance misconceived, erroneous and/or false. It has further been submitted in the affidavit-in-opposition that the notification dated 22-11-2011 read with notification dated 7-12-2011 and letter dated 12-2-2012 of the Respondent No.4 (BSEC) states the legal position unequivocally inasmuch as only the Sponsor Directors/ Promoters are required under the law to hold minimum 2% shareholding in the paid up capital of a bank in order to contest in the election in the said bank for the post of directors and that Independent Directors i.e. (1) Directors elected from amongst ordinary shareholders, (ii) the directors nominated from amongst the bank's depositors and (iii) the ex-officio directors are exempted from this legal requirement. It has also been submitted on behalf of the Bank that the interpretation of the Notification dated 22-11-2011 read with Notification dated 7-12-2011 by BSEC cannot differ from one bank to another, since the said notifications are applicable to all listed companies and, as such, any interpretation given by BSEC to any listed company shall be applicable to all listed companies. The Bank (Respondent No.1) does not have any sponsor director as is evident from the historical background of the Bank as well as from the Memorandum of Association of the Bank. The petitioners are all ordinary shareholders and are elected by ordinary shareholders. As such, there is no requirement for them to hold 2% shareholding in the paid up capital of the Bank. Finally, it has been submitted that the matter was infructuous in that the issues raised in the petitioner are past and closed transaction.

5. The respondent No.4, Bangladesh Securities and Exchanges Commission (BSEC), has also filed an affidavit-in-opposition mainly disowning the interpretation given by the petitioners to the Notification of the Securities Exchange Commission (BSEC). It has been stated in their affidavit-in-opposition that, by notification dated 20-11-2011 the BSEC has imposed certain conditions as narrated in paragraph No.4 of the affidavit-in-opposition and the notification has been issued in exercise of the power vested in the BSEC under section-2CC of the Security Exchange Ordinance, 1969 (the Ordinance). It has also referred to another notification dated 7-12-2011, in paragraph No.4 of the affidavit-in-opposition, and further asserts that, in order to enable the petitioners or directors of a banking and other listed companies to hold and acquire 2% shares in the paid up capital, in the banking and other listed companies, the application of sub-Rule (2) of Rule 4 of the Security & Exchange Commission (Insider Trade Restriction) Rules, 1995 i.e. সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যাবসা নিষিদ্ধকরন) বিধিমালা ১৯৯৫ has been exempted, so that the defaulter directors can acquire the minimum 2% required shares as per conditions laid down in the aforesaid two notifications. Then, having denied the statements made in paragraphs No.8 and 9 of the petition, BSEC has also asserted in paragraph No.6 of the affidavit-in-opposition that the state-

ment made in paragraph No.10 of the petition is not correct. In this respect it has stated that clause (d) of the notification dated 21-11-2011 clearly stipulates that each director, other than independent directors, of any listed company shall hold minimum 2% share in the paid-up capital, of a listed company, otherwise there shall be a casual vacancy in the office of the concerned director. It has also been mentioned that the notification dated 22-11-2011, issued by the Commission being empowered by section 2CC of the Securities & Exchange Ordinance, 1969 and Parliament has delegated the power to the Commission for framing securities law and accordingly these notifications have legal force. But, the subsequent clarification dated 12-2-2012 of the notification dated 22-11-2011 was not given or issued in exercise of the authority vested in BSEC under section 2CC of the Securities and Exchange Ordinance, 1969. Besides, the clarification dated 12-2-2012 was not published in the official gazette, unlike two other notifications, and it can not override the force of the conditions laid down in the said two notifications dated 22-11-2011 and 7-12-2011 that were published in the official gazette, requiring holding of minimum 2% shares by all directors of a listed company, other than independent directors. The petitioners cannot get exemption from holding 2% share in the paid up capital of Pubali Bank Ltd., as they are not 'independent directors'. At the initial stage of notification dated 7-12-2011, six months time was allowed to fulfill the condition of holding minimum 2% shares, but the petitioners neither took this opportunity, nor had purchased the required shares within the stipulated time. Under the above circumstances, it can be resolved that respondent No.2 has rightly rejected the nomination papers of the petitioners. At paragraph No.7 of the affidavit-in-opposition, it has stated that it is not correct to say that 2% minimum share holding requirement is not applicable to the petitioners. The petitioners, it is also stated, ought to have fulfilled the conditions laid down in notification dated 22-11-2011, wherein it has been categorically mentioned that minimum 2% share is to be held by each director of a listed company.

6. The respondent No.5, having denied the allegations made in the petition as regards the interpretation of the aforementioned notifications dated 22-11-2011 and 7-12-2011 and letter dated 12-2-2012, further states that on a proper construction of the aforesaid Notifications dated 7-12-2011 and 7-12-2011, any director (except independent director) not holding the minimum of 2% shares in the respondent Bank shall be ineligible to contest in any election of directors, unless the requirement is fulfilled. As the petitioners do not hold the minimum requirement of 2% shares in the respondent Bank, as stipulated in the BSEC Notifications dated 22-11-2011 and 7-12-2011,the respondent No. 2 has disqualified the petitioners from contesting in the election for directorship. The shareholding of the petitioners in the respondent bank is as follows:

Name of Candidate	No. of shares held	Shares as % of Total Paid-up Capital
Mr Hafiz Ahmed Mazumder MP	2,907,256	0.350
Mr Mohammad Yaqub	544,960	0.060
Mr. Ahmed Shafi Choudhury	68,090	0.010
Mr. Muhammad Faizur Rahman	357,563	0.040
Mr Fahim Ahmed Faruk Chowdhury	12,705,828	1.510
Mrs. Rumana Sharif	45,680	0.010
Mr. Azizur Rahman	25,025	0.003
Mrs. Suraiya Rahman	9,212,645	1.100

the respondent No. 5 further states that the letter dated 12-2-2012 was neither issued by the SEC in exercise of its power under section 2CC of the Securities and Exchange Ordinance, 1969, nor it was issued as a clarification of the aforesaid Notifications dated 22-11-2011 or 7-12-2011. The letter was issued by a Director of BSEC, namely one Mr Abu Rayhan Mohammad Masum Billah, which was addressed to the Managing Director of Dutch Bangla Bank Limited. It is categorically stated that the said letter bears no indication that it is a "Notification". It did not mention that it was passed in exercise of Section 2CC of the Securities and Exchange Ordinance, 1969 or any other law. Furthermore, the said letter does not specifically claim it is applicable to any other listed company other than the addressee of the letter, i.e. Dutch Bangla Bank Limited; that even though the said letter claims to be regarding the Notification dated 7-12-2011, it directly attempts to override the said Notification by stating that other Directors can be deemed to be Independent/ Nominated directors under the meaning of the said Notification, whereas the provision of clause (b) of the Notification clearly states that it is applicable to "Each Director other than Independent/ Nominated director(s)"; that the Respondent No. 5 himself sought clarification from the Securities and Exchange Commission regarding the interpretation of the Notifications dated 22-11-2011 and 7-12-2011 specifically for application to the case of the Respondent No. 1 (Bank). On this subject, the Respondent no. 5 wrote a letter dated 24-4-2013 addressed to the Chairman of the Commission stating as follows:

> "With reference to my earlier letter dated April 15, 2013 in connection with minimum 2 per cent share requirement for becoming a Director in the Board of a bank, I was confirmed by your concerned department and also by your good-self over telephone that irrespective of any sponsor/promoters and general shareholders, must have minimum 2 percent share to become a Director, but the Pubali Bank management repeatedly confirmed that as per latest decision/notification of SEC that above 2 per cent minimum share requirement is not applicable in case of Pubali Bank Directors since none of them are sponsor directors. All the present Directors of the Board are general shareholders.

7. In view of the same, I respectfully request you to reconfirm the same that minimum 2 percent shares are not only applicable for sponsor/ promoter directors, but also for general shareholders to become a Director in the Board"; that in response to the letter of the Respondent No. 5 to the Commission, the Commission replied, vide a letter bearing Memo No. SEC/SRMIC/94-169/ 624 dated 25-7-2013, stating categorically as follows:

> "In this connection, the issues raised by you in the referred letter are clearly stated in Commission's Notification No. SEC/CMR-RCD/2009-193/119/Admin/34 dated November 22, 2011. So you are advised to follow the conditions of said notification."; that in the above reply of BSEC no mention was made to the letter written to Dutch Bangla Bank Ltd. on 12-2-2012. Rather the Respondent No. 5, who raised the specific issue as to whether the minimum 2 per cent shareholding requirement was applicable to the petitioners, was advised to only refer to the Notification dated 22-11-2011; that the Chief Election Commissioner, Professor Fariduddin Ahmed and the two other Commissioners, having received the objection of the Respondent No. 5, vide his letters dated 13-8-2013, personally visited the Securities and Exchange Commission to seek clarification from the Chairman of the BSEC as to the applicability of the Notification dated 22-11-2011. Based on the said clarification from the BSEC, the Election Commission was pleased to pass the

order declaring the candidacy of the petitioners invalid; that the requirement in the BSEC Notification dated 22-11-2011 of 2% shareholding applies to all directors except independent directors. This has plainly been clarified by the SEC vide the Notification dated 7-12-2011. Both the notifications state the law very clearly, i.e. the 2% share requirement is applicable for all directors only excluding independent/nominated directors. There is no ambiguity or uncertainty about the requirement as stipulated by the SEC; that the SEC in a Notification, being No. SEC/CMRRCD/2006-158/134/Admin/44 dated 7-8-2012, defined independent directors as follows:

1.2 Independent Directors

(ii) For the purpose of this clause "independent director" means a director—

a) who either does not hold any share in the company or holds less than one percent (1%) shares of the total paid-up shares of the company;

b) who is not a sponsor of the company and is not connected with the company's any sponsor or director or shareholder who holds one percent (1%) or more shares of the total paid-up shares of the company on the basis of family relationship. His/her family members also should not hold above mentioned shares in the company:

Provided that spouse, son, daughter, father, mother, brother, sister, son-in-law and daughter-in-law shall be considered as family members;

c) who does not have any other relationship, whether pecuniary or otherwise, with the company or its subsidiary/associated companies;

(iii) the independent director(s) shall be appointed by the board of directors and approved by the shareholders in the Annual General Meeting (AGM).

1.3 Qualification of Independent Director (ID)

(i) Independent Director shall be a knowledgeable individual with integrity who is able to ensure compliance with financial, regulatory and corporate laws and can make meaningful contribution to business.

(ii) The person should be a Business Leader/Corporate Leader/Bureaucrat/University Teacher with Economics or Business Studies or Law background/Professionals like Chartered Accountants, Cost & Management Accountants, Chartered Secretaries. The independent director must have at least 12 (twelve) years of corporate management/professional experiences; that, evidently, an independent/nominated directors comprise those directors who are appointed by the board of directors themselves, generally on a part-time basis, and are approved by the shareholders in the AGM. They are included in the board of a company because of their special skills or qualification in a particular field which acts as a 'creative contribution' to the board. The instant petitioners do not fulfill the aforesaid criteria of the SEC Notification dated 7-8-2012 for independent directors. Hence, the petitioners cannot be called independent/nominated directors in complete contravention of the said Notification; that in the Judgment and Order dated 6-5-2013 delivered by the Hon'ble High Court in the Company Matter No. 90 of 2013, the Hon'ble Court Division, heavily criticized the Directors holding their positions in the Respondent No. 1 Company without the requisite minimum shares. The relevant part of the Judgment and Order dated 6-5-2013 reads as follows:

"9. I have also taken notice of the fact that the present Chairman, namely Mr Hafiz

Ahmed Majumder is holding only 0.35% shares in the Bank (respondent No. 1), he was last elected in the 18th AGM held on 10-11-2001, that since then he is holding the office and that the respondent Bank or the board of directors are allowing the same board members to remain in office, since 2003, without transacting the agenda relating to retirement and election of directors and thereby the existing directors have evaded their liability to retire by rotation and have infringed the provisions of Article 90 of the Articles of Association as well as the provisions of the Bank Companies Act, 1991. This conduct, on the part of the respondent Bank and its directors, is quite contrary to the law declared by the apex court, vide the case reported in *32 BLD (AD) (2012) 115: Md Mazakat Harun & Ors vs Export Import Bank of Bangladesh Ltd.";* that since the petitioners are not independent/nominated directors of the Respondent No. 1 Bank, the 2% shareholding requirement is applicable to them. As the petitioners did not possess the requisite percent of shares, as on the record date, they are not entitled to hold the office of director or contest in the directorship election; that the petitioners have cunningly provided a misconceived interpretation of 'independent directors' to take an unfair advantage from this Hon'ble Court. The requirement of 2% shareholding is applicable for any directors (whether sponsor director or not) other than independent directors. The assertion by the plaintiffs that the requirement of 2% shareholding was applicable only for sponsor directors is also an erroneous interpretation of law. Accordingly he has prayed that the petition is liable to be dismissed.

8. The learned Advocate Mr Mohammed Mehedi Hasan Chowdhury, appearing along with the learned Advocates, Mr AKM Rabiul Hassan and Mr Mohammed Selim Jahangir, having placed the petition alongwith the documents annexed therewith, submits at the out set that, pursuant to the judgment and order dated 6-5-2013 of the High Court Division, the respondent-bank immediately appointed a neutral election commission comprising of Professor Fariduddin Ahmed as a Chief Election Commissioner, Dr MA Eusuf and Dr Kazi Masuful Islam as the election commissioners for conducting election to the office of the directing in the 30th AGM of respondent company. Thereafter, the Bank has completed all preparation for convening the Annual General Meeting on 21-8-2013, that is within period extended by the court, but the respondent No.5 (Mr Shafi A Chowdhury) addressed a letter dated 13-8-2013 to Mr Fida M Kamal (the neutral chairman appointed by the court) for cancellation of nomination paper of the petitioners from contesting for the office of the directors in the 30th AGM of the respondent bank and that the scrutiny committee illegally and unlawfully issued a notice dated 14-8-2013 (Annexure-D) holding that the petitioners were not qualified to contest in election (in the 30th AGM) as directors as they did not have minimum 2% shareholding in their individual name as on the record date. That this notice dated 14-8-2013 has been challenged in the instant petition since, he further submits, according to the conditions laid down in BSEC Notification No.SEC/CMRRCD/2009-193/119/Admin/34 dated 22-11-2011 (Annexure-E2) read with Notification No.SEC/CMRRCD/2009-193/120/Adm dated 7-12-2011 (Annexure-E), and Letter No.SEC/SRMIC/95-299/384 dated 12-2-2012 (Annexure-E1), the petitioners are not required to hold 2% shares, because they fall with the category of 'independent directors' as per clarification given in the aforesaid letter dated 12-2-2012 (Annexure-E1) of the BSEC. He continues that in the aforesaid letter dated 12-2-2012, issued to clarify the aforesaid two notifications as regards holding of 2% shares in the paid up capi-

tal by the directors of a listed company, it has been stated that the 2% shares requirement was not applicable to the (i) directors elected from amongst ordinary share holders, (ii) directors nominated from amongst the bank's depositors and (iii) ex-officio directors. He emphatically argues that since, in the clarification letter dated 12-2-2012, the respondent No.4 (BSEC) has clearly stated that the directors elected by ordinary shareholders are deemed to be 'independent directors' and, therefore the petitioners are not subject to the condition requiring to hold 2% shares, hence the aforesaid two notifications dated 22-11-2011 and 7-12-2011, issued by the BSEC under section 2CC of the Ordinance is no more applicable in respect of these petitioners and they were valid candidates for the election to the office of directors and their offices are not liable to be vacated. He also submits that the aforesaid two notifications (Annexure-E and E-2) apply only to sponsors directors. As the respondent No.1 (Bank) was a nationalized bank and the sponsor directors were representatives of the government, each holding one share in the Bank (as nominee share holders), as would be evident from the Memorandum of Association, so there is no sponsor directors at present in the respondent Bank and that the petitioners not being sponsor directors they does not come within the mischief the aforesaid notifications. Hence, the scrutiny committee of the election commission has illegally issued the notice dated 14-8-2013 (Annexure-D) disqualifying the petitioners, from contesting in the election, for not holding 2% shares in the Bank, and thereby the scrutiny has misinterpreted and misapplied those two notifications in respect of the petitioners. As such, he concludes, this petition has clear merit and the same may be allowed.

9. The learned Advocate Aktar Imam, appearing alongwith the learned Advocates Rashna Imam and Reshad Imam, having placed the affidavit-in-opposition filed on behalf of the Bank, first of all submits that whether interference at this stage, when the next AGM is impending is at all called for. He next submits that the neutral chairman appointed by the court has not felt it necessary to address the objection raised by the respondent No.5 who (the neutral chairman) was supposed to decide the issues as per direction Nos.8 and 9 of this court, as given in the judgment dated 6-5-2013, that the dispute, if any, arises at the time of election will be settled by the neutral chairman. He also submits that in the case of finding any ambiguity in relation to the legal position regarding holding of 2% shares, this court may direct the BSEC to issue a fresh notification to clarify the position further. In the alternative, he continues, that if this court finds a case to interfere with the current board of the directors in the Bank, then it may cause serious disturbance in running the affairs of the respondent No.1-(Bank) owing to creating casual vacancies so close to the next AGM, hence instead, the court may direct all directors to retire in the next AGM (i.e in the 31st AGM) and the respondent No.1 (Bank) to ensure that the requirement of holding minimum 2% shares may be complied with in relation to eligibility of all candidates for the office of directors in the next AGM. Thereafter, referring to the statements made in paragraph No.6 of the affidavit-in-opposition of BSEC, the learned advocate submits that the statements made by the of BSEC, as given in paragraph No.6 of it's affidavit-in-opposition, is not correct. Because, he emphasizes, that the clarification letter dated 12-2-2012 was issued by BSEC, in exercised of the power vested in BSEC under section 20A of the Ordinance, and this clarification has the force of law and is binding on all concerned in as much as it says that director elected from amongst the ordinary share-holders shall be deemed to be an 'independent director.'

10. The learned Advocate Mr Probir Neogi, appearing alongwith the learned Advocates Mr Shuvra Chakravorty and Mr Manzur-al-Matin,

appearing for the BSEC (respondent No.4), on the other hand, referring to the aforesaid two notifications dated 22-11-2011 (Annexure-E-2 to the petition) and 7-12-2011(Annexure-E to the petition) submits that these two notifications were issued by the BSEC in exercised of the power vested in it under section 2CC of the Ordinance and in no ambiguous terms it has been made clear in these two notifications that the directors of a public company listed with the Stock Exchanges is required to hold minimum 2% shares in the paid up capital of the company and that the directors who were not holding minimum 2% shares, as required by these notifications, shall acquire 2% shares within 6(six) months period otherwise the office of the defaulter director shall stand vacated. He further submits that, in order to facilitate acquisition of the required shares to meet up the minimum 2% share holding requirement, the BSEC has exempted the defaulter directors from the operation of sub-rule (2) of Rule-4 of the Securities of the Exchange Commission (Insider Trade Restriction) Rules, 1995, but the petitioners, neither holding nor having acquired 2% minimum shares in the paid up capital of the company, pursuant to these two notifications, as on the record date, the scrutiny committee the election commission has rightly declared their nomination invalid. He also submits that the question as to whether 2% shares are required to be hold by the directors of a company listed with the Stock Exchanges shall be determined solely with reference to the conditions laid down in the aforesaid two notifications dated 22-11-2011 and 7-12-2011 (Annexure-E2 and E to the petition) respectively, issued by the BSEC in exercise of the power vested in it under section 2CC of the Ordinance, not with reference to the letter dated 12-2-2012 (Annexure-E-2 to the petition) which does not have any force of law. Accordingly, he has clarified the position of the BSEC as regards interpretation of these two notifications vis-à-vis the letter dated 12-2-2012 and emphatically submits that the condition of holding minimum 2% shares by the director of a public company listed with the Stock Exchanges is mandatory. The learned Advocate for the BSEC also submits that in the Gazette Notifications dated 14-12-2011 and Gazette Notification dated 29-12-2011,both these notifications, dated 22-11-2012 and 7-12-2011, were published by the BSEC for information of all concerned and the said notifications were issued under the classification 'notification issued by private individual and corporation etc.' But, letter dated 12-2-2012 was never published in any Gazette Notification. He then submits that the court can take judicial notice of these two notifications published in Bangladesh Gazette and brought the same to the notice of the court by filing the same.

11. The learned Advocate Mr AM Mahbub-uddin, appearing alongwith the learned Advocate Mr Saqeb Mahbub, for respondent No.5, having placed the affidavit-in-opposition and drawing my attention to the documents annexed therewith submits that the notification dated 22-11-2011 and 7-12-2011, also annexed to the affidavit-in-opposition, were published in the Gazette Notification by BSEC. These two notifications were admittedly issued in exercise of the power vested in BSEC under section 2CC of the Ordinance. These two notifications stand in force on the date of 30th Annual General Meeting of the respondent-Bank. According to the condition No. (d), laid down in notification dated 22-11-2011, each director, other than independent directors, of a listed company shall hold minimum 2% shares in the paid up capital, otherwise there shall be a casual vacancy of director. Next, referring to notification dated 7-12-2011, the learned advocate further submits that it has been reiterated in this notification that each director, other than an independent director, of a listed company holding less then 2% shares of the paid up capital shall acquire the minimum required 2% shares within 6 months of issuance of

Notification No.SEC/CMRRCD/2009-193/119/Admin/34 dated 22-11-2011. But the petitioners have neither held this minimum 2% shares in the paid up capital of the company, as on the record date, before holding the 30th AGM, nor they have acquired 2% shares within the aforesaid stipulated time of 6 months. As such their candidacy was rightly held illegal by the scrutiny committee , vide its notice dated 14-8-2013 (Annexure D) and this does not call for interference by this court inasmuch as it is clearly founded upon legal footing furnished by the aforesaid two notifications, having the force of law. Then, referring to the letter dated 12-2-2012 (also annexed as annexure-3 in affidavit-in-opposition), the learned Advocate submits that this letter was not issued with reference to any specific provision of Security Exchange Commission Ordinance, 1969 (the Ordinance). It was rather issued with reference to a request apparently made by Dutch Bangla Bank Limited. Since this clarification letter does not have the force of law, therefore this clarification letter dated 12-2-2012 was not published in the Gazette. It is, at best an internal correspondence between Dutch Bangla Bank Limited and the Securities Exchange Commission. Moreover, this clarification letter dated 12-2-2012 says that the directors elected from amongst the ordinary share holders shall be deemed an 'independent directors'. Law does not permit, he continues, such a clarification allowing resorting to fiction in defining or giving meaning to the words "independent directors". On the contrary, he submits, that Notification No.SEC/CMRRCD/2006-158/134/Admin/44 dated 7-8-2012 (Annexure-6 to the Affidavit-in-opposition), at clause 1.2, has defined "independent director." According to this notification an "independent director" means a person " who either does not hold any share in the company or holds less than 1% shares of the total paid-up shares of the company." The purpose of this interpretation is that an independent director shall not have any stake or capacity to control or otherwise to influence the decision making process by the Board of Directors or in the general meetings or in the management of the Bank. He then submits that the respondent No.1 being a Bank, the Bank Companies Act, 1991, as Amended by Bank Company amendment Act, 2013, vide gazette notification dated 22-7-2013, has defined 'independent director' in explanation to sub-section (9) of section 15 of the Amended Act. According to the explanation given in sub-section (9) of section 15 of the Bank Companies Act, as amended in 2013, "an independent directors means a person who is independent from the shareholding and management of the Bank and who does not have any apparent or actual interest in any matter of the concerned Bank". But, in the instant case, although these petitioners are holding less than minimum 2% shares, they are, however, holding shares in the respondent Bank, had submitted nomination papers for election to the office of the directors and tried to influence the election, business of the board, the management and the affairs of the bank. As such they are clearly excluded from the statutory interpretation of "independent director" given in sub-sections (9) of section 15 of the Bank Companies Act, as amended in 2013, by Act No.27 of 2013 published in official gazette on 22-7-2013, nor they can be called independent with reference to their acts and deeds. As such, the clarification given in letter dated 12-2-2012 of BSEC, purporting to give an interpretation of 'independent director' is totally contrary to the statutory definition of 'independent director' given in sub-section (9) of section 15 of the Bank Companies Act as well as it contradicts meaning of the independent director given in clause 1.2 of notification dated 7-8-2012 of the BSEC. (Annexure-6). Hence, this clarification, given in letter dated 12-2-2012, can not be accepted and it cannot override the specific provisions of law defining independent director or the notification dated 7-8-2012, issued under section 2CC of the Ordinance. He further submits that there is

no ambiguity in the aforesaid two notifications dated 22-112011 and 7-12-2011 that each director of a public company listed with the Stock Exchanges shall hold minimum 2% shares in the paid up capital of the company or shall make up the deficiency, if their share holding falls below 2%, within 6 months, as has been emphasized in the notification dated 7-12-2011. Besides, he continues, BSEC, by filing an affidavit-in-opposition has given interpretation of these two notifications vis-à-vis the letter dated 22-11-2011 and has also made it clear that each director, except an independent director, of a company listed with the Stock Exchanges should have minimum 2% shares in the listed company, otherwise their office shall be liable to be vacated. Since this requirement of holding minimum 2% shares is visited with consequence of vacation of offices of the defaulter directors, needless to say it that this provision is mandatory. Accordingly, the candidature of these petitioners were rightly held invalid by the scrutiny committee of the election commission, vide a notice dated 14-8-2013 (Annexure D), impugned in the instant matter and they are continuing as directors in violation of the clear provisions of law and notifications having the force of law. Therefore their offices, assumed illegally since the very inception, is void *ab initio* and the same are liable to be vacated. Accordingly, he submits, that this petition has no merit and the same is liable to be dismissed and the office of these petitioners are liable to be declared vacant for non-compliance of the conditions laid down in the notifications dated 22-11-2011 read with notification dated 7-12-2011.

12. I have heard the learned Advocates appearing for the petitioner, for the respondent Nos.1, 4 and 5. Perused the petition the petitioner's supplementary affidavit, the affidavit-in-reply alongwith the affidavits-in-opposition filed by respondent Nos. 1, 4 and 5.

13. It is to be noted here that the Company Matter No.90 of 2013, although has come up in the list alongwith Company Matter No.181 of 2013, had already been disposed of. The Matter No.90 of 2013 has been kept in the list for examination of the records of the case only, not for the purpose of hearing simultaneously.

14. It also appears from the impugned letter dated 14-8-2013 (Annexure-D) that, the Election Commission, appointed by the Bank, had received 2o nomination papers, in total, from the candidates for election to the post of Directors. Out of 20 candidates, the Scrutiny Committee of the Election Commissioner found 5 candidates qualified for election to the office of the directors in the 30th AGM of the Bank. But 13 candidates, out of total 20 candidates, were found disqualified to participate in the election, as they did not have minimum 2% shares in the paid up capital of the bank, as per conditions laid down in BSEC Notifications dated 22-11-2011 and 7-12-2011, published in Bangladesh Gazettees, Extra Issues, dated 14-12-2011 and 29-12-2011, respectively. Out of this disqualified 13 candidates, 8 candidates. (the petitioners) participated in the petition pursuant to interim order dated 20-8-2013, passed in this case.

15. As regards the merit of the case, I have taken the notifications dated 22-11-2011 and 7-12-2011 alongwith the clarification letter dated 7-12-2011, annexed by the petitioner as well as by the respondent No.5, for consideration. It is pertinent to quote clauses (a), (d) and (e) of the BSEC notification dated 22-11-2011, that reads as follows:

(a) All sponsors/promoters and directors of a company listed with any stock exchange shall all time jointly hold minimum 30% (thirty percent) shares of the paid-up capital of the company. The sponsors/promoters and directors holding less than 30% (thirty percent) shares shall acquire the rest amount within 6(six) months of

issuance of this Notification.

(b) .....

(c) .....

(d) Each director other than independent director (s) of any listed company shall hold minimum 2% (two percent) shares of the paid up capital, otherwise there shall be a casual vacancy of director.

(e) In case of aforesaid casual vacancy of director, any individual holding 5% (five percent) or more shares of the paid up capital shall be entitled to be a director in the next Annual General Meeting (AGM)."

16. Along side, (emphasis added) I have considered the BSEC notification dated 7-12-2011 and it is also pertinent to quote clause (a) A and (b) of this notification, that reads as follows:

(a) The sponsors/promoters and directors of any listed company jointly holding less than 30% (thirty percent) shares of the paid-up capital of the company have been exempted from the উপবিধি (২) of বিধি (৪) of the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যাবসা নিষিদ্ধকরন) বিধিমালা ১৯৯৫ to acquire the minimum required 30% (thirty percent) shares.

(b) Each director, other than independent/ Nominated Director (s), of any listed company holding less than 2% (two percent) shares of the paid-up capital shall acquire the minimum required 2% (two percent) shares within 6(six) months of issuance of the Notification No.SEC/ CMRRCD/2009-193/ 119/Admin/34 dated November 22, 2011. In this regard the respective directors has been exempted from the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যাবসা নিষিদ্ধকরন) বিধিমালা ১৯৯৫.

(emphasis added)

17. These two notifications, quoted above and to be frequently referred to hereinafter, have been issued by the BSEC in exercise of the powers vested in it under section 2CC of the Ordinance and both these notifications have been published by the BSEC in Bangladesh Gazette, extra issues, on 14-12-2011 at page 15317, and on 29-12-2011 at page 1556. There is no dispute that these two notifications have the force of law.

18. In the notification dated 22-11-2011, vide clause (a), all sponsors/promoters and directors of the company listed with any Stock Exchange are required to jointly hold minimum 30% shares in the paid up capital. This condition, apparently, applies to all directors i.e. to sponsor or promoter directors as well as to other directors who are not sponsors or promoters. There is no ambiguity that this Notifications dated 22-11-2011, at clause (a), lays down condition that the directors, both promoters/sponsors and other directors of any listed company shall jointly hold minimum 30% shares of the paid up capital, or if they jointly hold less than 30% then they shall fulfill the requirement within 6(six) of months issuance of this Notification. Clause(a) of this notification, markedly, omitted to mention 'independent director'. But, this omission in clause (a) will lead to no confusion, because an 'independent' director is not legally obliged to hold any share, vide the meaning given to this expression, as noted herein before. On the contrary, a mere perusal of the condition laid down in clause (d) of this same Notification dated 22-11-2011 requires, in no uncertain term, that each director, other than 'independent director', shall hold minimum 2% shares in the paid up capital, otherwise their office is liable to be vacated in consequence thereof. Accordingly, I find that condition (d), laid down in this Notification dated 22-11-2011, provides for vacation of office of a defaulter director. There-fore, I hold that condition (d) of Notification dated 22-11-2011, is mandatory. However, it is also to be

noted here that no provision for vacation of office, in the event of default, has been kept under condition (a) of this notification dated 22-11-2011, though it has required that 30% shares are to be jointly held or acquired by the directors (other than independent director, of course) within 6(six) months *(empasis supplied)*

19. Next, I have taken for consideration the notification dated 7-12-2011, issued by BSEC, in exercise of power vested in it under section 2CC of the Ordinance. This notification, as well, has been published in Bangladesh Gazette, extra issue, as mentioned herein above. This Notification is, indeed, continuation of the previous Notification dated 22-11-2011, which is referred to in this notification dated 7-12-2014, at clause (b), and both these Notifications are to be read and considered together in order to arrive at the findings on the issues that have emerged in this matter.

20. This Notification dated 7-12-2011, vide clause (a), has exempted the directors from the mischief of application of sub-rule (2) of Rule 4 of the Securities & Exchange Commission (Insider Trade Prohibition) Rules, 1995 i.e. সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যাবসা নিষিদ্ধকরন) বিধিমালা, ১৯৯৫, to enable the defaulter directors in jointly acquiring 30% shares in a listed company. Sub-rule (2) of Rule 4 of সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যবসা নিষিদ্ধকরন) বিধিমালা, ১৯৯৫ read as follows:

'৪। সুবিধাভোগী ব্যবসা ইত্যাদি নিষিদ্ধ করন।–

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(২) ষ্টক এক্সচেঞ্জ তালিকাভূক্ত কোম্পানীর কোন স্পন্সর (Sponsor), পরিচালক, কর্মকর্তা বা কর্মচারী নিরীক্ষক বা নিরীক্ষাকার্যে সম্পৃক্ত ব্যক্তি, পরামর্শক বা আইন উপদেষ্টা, কিংবা Securities and Exchange Ordinance, 1969 (XVII of 1969) এর section 12 এ উল্লিখিত beneficial owner, উক্ত কোম্পানীর বার্ষিক হিসাব সমাপ্তির তারিখ হইতে উক্ত হিসাব কোম্পানীর পরিচালনা পর্ষদ (Board of Directors) কর্তৃক চুড়ান্ত ভাবে বিবেচিত, গৃহীত বা অনুমোদিত হওয়ার তারিখ পর্যন্ত সময়কালে আলোচ্য কোম্পানীর শেয়ারর ক্রয় বিক্রয় কিংবা অন্য কোন প্রকারে হস্তান্তর বা গ্রহন করিতে পারিবেন না।" The intention in providing this exemption, to ensure acquisition of 30% shares jointly by the directors of a listed company, in my considered view, signifies that this condition is mandatory too.

21. Thereafter, having considered clause (b) of Notification dated 7-12-2011, I find that clause (b) has laid down condition, in an unequivocal language, that each director, other than independent/Nominated Directors(s), of any listed company holding less than 2% (two present) shares of the paid up capital shall acquire the minimum 2% (two percent) shares within 6(six) months of issuance of the Notification No. SEC/CMRRCD/2009-193/119/34 dated 22-11-2012. In this case too, the respective director has been exempted from the উপবিধি (২) of বিধি ৪ of the সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সুবিধাভোগী ব্যবসা নিষিদ্ধকরন) বিধিমালা, ১৯৯৫. Therefore, evidently and clearly, this Notification, with reference to and in continuation of the Notification dated 22-11-2011 has required holding of minimum 2% shares or to acquire the said quantity of shares within the next 6 months and in order to facilitate such acquisition it has exempted the directors, who are holding shares less than minimum required numbers, from application of sub-rule-2 of Rule-4 of Securities Exchange Commission (Insider Trading Restriction) Rules 1995. *(emphasis added).*

22. These two notifications, having considered together, leave no room for any doubt that the directors, whether sponsors/promoters or not, of all public company listed with the Stock Exchanges, must hold minimum 2% shares in the paid up capital of the concerned company, unless he is an 'independent director'.

23. Who is or are 'independent directors' has been defined in the explanation to sub-section (9) of section 15 of the Bank Companies Act, 1996,

(as amended in 2013) and in the Notification No.SEC/CMRRCD/2006-158/134/Admin/44 dated 7-8-2012 of BSEC. Hence, the clarification given in letter dated 12-2-2012 of the BSEC stating that a director elected from the ordinary share holding shall be deemed to be 'independent director' is, in my view, in clear conflit with definition and meaning of 'independent director' given in the statute as well as in the Notification mentioned above. Besides, I find that this clarification given in the letter dated 12-2-2011, was not issued under any provisions of the Securities Exchange Ordinance, 1969. Apparently it was issued and in response to some correspondence with Dutch-Bangla Bank Limited. It can, at best, be considered as an internal correspondence between the BSEC and Dutch Bangla Bank Limited, hence it was not published in Bangladesh gazette. Moreover, the fiction resorted to by BSEC, in interpreting an 'independent director' and thereby purporting to bring a share holder director, within the confine of 'independent director', is not permissible in law. BSEC cannot publish any notification by resorting to any fiction, nor can it modify, nullify or override the specific provision of law by attributing a perverse, absurd or conflicting meaning of the expression 'independent director'. It therefore has no force of law, in my considered opinion. This position has also been admitted by BSEC, in paragraph No. 6 of its affidavit-in-opposition *(emphasis added).*

24. Hence, the persons, who have designedly resorted to fiction and introduced such a clarification to frustrate the intent and purport of law and to frustrate the initiative to bring discipline in the capital market by ignoring unambiguous language of law, should be identified and be brought to the book for abusing their official position to secure unlawful gain to themselves or to others and for doing acts prejudicial to the national economic interest.

25. Next, turning my attention to the submission of Mr Aktar Imam, appearing for the Bank, that the dispute should have been referred to and be settled by the neutral chairman appointed by the court, vide judgment dated 6-5-2013, passed in Company Matter No.90 of 2013, I find that, the respondent No.5 had raised objections before the neutral chairman appointed by the court, vide his letters all dated 13-8-2013 and, on the other hand, the Security Committee of the Election Commission of the Bank has found the petitioners not qualified for holding election for not having 2% minimum paid up shares in the Bank, as informed vide their letter dated 14-8-2013 (Annexure-D).But the petitioners have filed the instant petition and obtained an order of stay and an interim order on 20-8-2013 and participated in the election. In this circumstances, there having an order of the High Court Division staying operation of notice dated 14-8-2013, the neutral chairman appointed by the court to preside over 30th AGM of the Bank, had no scope sit in appeal over the interim order passed by this court. Hence, I do not find any substance in the submission.

26. As regards the merit of this petition, I should refer further to direction No.8 passed in the judgment and order dated 6-5-2013, passed in Company Matter No.90 of 2013. Direction No.8 reads as follows:

> "8 All the directors, who shall resign pursuant to this judgment and order, shall be eligible for re-election, on condition that they are not otherwise disqualified as per provisions of the Articles of Association or of any statute or any directive or circular of the regulatory authorities, if any, as the case may be. Since all the directors shall resign, pursuant to the direction of this court, so the question of retirement by rotation shall not arise or be raised as disqualification. All disputes, what so ever, that may arise in the course of the meeting shall be resolved in such manner as the chairman of the meeting may direct."

Therefore, it was duty of the scrutiny committee of the Election Commission to ensure that the candidates are not disqualified as per directives of BSEC, contained in the two aforesaid notifications, and they have done their duty, as per this direction of the court, in issuing the impugned notice dated 14-8-2013, holding nomination papers of the petitioners invalid *(empasis added).*

27. I have also considered that, 5 directors remains in the board of directors of the Bank and 5 directors forms quorum and there will be no stalemate in running the affairs of the Bank.

28. Accordingly, I am of the considered view that the election commission of respondent No.2 has rightly held this petitioners nomination invalid, vide its notice dated 14-8-2013 (Annexure-D), and that the offices of the 8(eight) petitioners are liable to be vacated for not complying with the conditions to hold 2% minimum shares in the share capital of the bank, as prescribed in the BSEC Notifications dated 22-1-2011 and 7-12-2011.

29. In view of the deliberation recorded above, this petition is dismissed and the petitioners are hereby held disqualified to hold office of the directors in the respondent Bank and their office shall stand vacated with immediate effect. The respondent-Bank is accordingly directed to file the particulars of directors that have taken place in Form-XII with the Registrar of Joint Stock Companies and Firms, reflecting the change in the board of directors pursuant to this judgment and order.

The stay order granted at the time of admission of this petition is hereby vacated.

The parties will bear their respective cost.

Ed.

HIGH COURT DIVISION
(Criminal Miscellaneous Jurisdiction)

Borhanuddin J
KM Kamrul Kader J

Judgment
July, 25th 2013.

Younus-uz-zaman (Badal)
.....Petitioner

vs

State and another.....
.....Opposite Parties*

Negotiable Instruments Act (XXVI of 1881)
Sections 138 & 140

Petitioner was Managing Director of the Company at the time of offence committed and all acts are committed or done within his knowledge. He is responsible for the conduct of the business of the company and in such situation when the Managing Director of the Company is made party, there is no necessity for making the Company a party. .....(15)

Jagarlamubi Surya Prasad vs State of AP (1992) 1 BC 120, UP Pollution Control Board vs Modi Distillery (1987) 3 SCC 684, Krishan Bi vs ARP1 Press (1994) 80 Company Cases, 750 Mad, Wahidul Islam Chairmanvs State, 2008 BLD 354 and Nizamuddin Mahmood vs Abdul Hamid Bhuiyan, 60 DLR (AD) 195 ref.

Lutfor Rahman, Advocate – For the Petitioner.

AFM Mesbahuddin, Senior Advocate with Tamizuddin Advocate – For the Opposite Party No. 2

Judgment

KM Kamrul Kader J: This Rule was issued upon an application filed by the accused-petitioner under section 561A of the Code of Criminal Procedure calling upon the opposite parties to show cause, as to why the proceeding of Sessions Case No. 227 of 2009 arising out of CR Case No, 766 of 2008 under section 138 of the Negotiable Instrument Act, 1881, now pending in the Court of 4th Assistant Sessions Judge, Narayangonj, should not be quashed.

*Criminal Miscellaneous Case No. 22031 of 2010.

2. Facts, relevant for disposal of the Rule, in brief, are that one Akhil Chardra Basak as complainant filed a petition of complaint in the Court of learned Chief Judicial Magistrate, Narayangonj on 20-10-2008 stating *inter alia* that the complainant entered into an agreement on 24-5-2004 with M/S Zaman Dyeing & Fabrics Ltd. represented by its Managing Director, the accused petitioner, for marketing and selling 10/1, 16/1 & 20/1 count cotton yarn produced by the said company. According to the terms and conditions of the agreement the complainant paid an amount of Taka 20,00,000 (twenty lakh) only to the accused petitioner on the date of signing of the said agreement as security money, if the company of the accused-petitioner fails to supply yarn to the complainant as per terms of the agreement the company of the accused would be bound to refund the entire security money to the complainant. Accordingly, the accused petitioner on behalf of the company issued a cheque being Cheque No. 6403508 dated 8-7-2008, in favour of the complainant for an amount of Taka 20,00,000 (twenty lakh) only, from his C/D Account No. STD 16 maintained with Uttara Bank Ltd. Siddeswari Branch, Dhaka against the said security money. Since the accused petitioner failed to comply with the terms and conditions of the agreement, the complainant presented the said cheque on 12-8-2008 and 19-8-2008 for encashment to the Dutch Bangla bank Ltd. Narayangonj branch and on both occasion the cheque was dishonoured for insufficient fund. Finding no other alternative, the complainant issued a legal notice according to the provisions of the Negotiable Instruments Act through his learned Advocate on 30-8-2008 by registered post with A/D and the same was received by the accused petitioner on 2-9-2008. Unfortunately, the accused did not take any step to pay the said amount within the statutory period of 30 days from the receipt of this legal notice. After expiry of the statutory period of 30 days, cause of action arose and the complainant-opposite party filed the instant petition on 20-10-2008. Accordingly, the Magistrate has examined the complainant and having found prima facie case against the accused, took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881. The accused petitioner voluntary surrendered in the Court of learned Chief Judicial Magistrate, Narayangonj and obtained bail on 20-10-2008.

3. Next the case record was transmitted to the court of learned Sessions Judge, Narayangonj and the same was numbered as Sessions Case No. 227 of 2009. Thereafter, the case was further transmitted to the court of 4th Assistant Sessions Judge, Narayangonj for trial. The accused petitioner filed an application under section 265(C) of the Code of Criminal procedure for discharging the accused petitioner from the charge levelled against him on the ground that in the petition of complaint the Company has not been implicated as an accused and the cheque itself is not a valid one, as it has been presented after four years of its maturity, which is unlawful as such the accused petitioner should be discharged. After hearing the parties the learned Assistant Sessions Judge rejected the application for discharge and framed charge against the accused, under section 138 of the Negotiable Instruments act, 1881 on 3-5-2010.

4. Having been aggrieved by and dissatisfied with the impugned proceeding, the accused-petitioner preferred this instant application under section 561A of the Code of Criminal Procedure for quashing the proceeding and obtained the present Rule and an order of stay.

5. Mr Lutfor Rahman, learned advocate appearing for the petitioner at the outset submits that the instant proceeding clearly violated the provisions of sections 138 and 140 of the Negotiable Instruments Act, admittedly, the alleged business was taken place between the Complainant and Zaman Dyeing & Fabrics Ltd. but the Company has not been implicated as accused, the complainant instituted this proceeding without implicating the principal accused, the cheque in question being issued on behalf of the company, namely Zaman Dyeing & Fabrics Ltd. a private company and the accused as Managing Director simply signed the cheque on behalf of the company, as there is no allegation made in the peti-

tion of complaint against the drawer company, this impugned proceeding is not maintainable in law as per provision of Section 140 of the Act, as such, the proceeding against this petitioner is liable to be quashed.

6. Finally, he submits that the cheque itself is not a valid one, as it has been presented after four years of its maturity, which is unlawful as such the accused petitioner should be discharged from the charge levelled against him. The learned Advocate argued that admittedly the cheque was supposed to be presented for encashment on 24-5-2005, just after expiring the agreement, for which the cheque was issued and as it was an undated cheque should be matured just after the incidence for which the maturity of the cheque was relying on and without following the maturity period the complainant presented the cheque four (4) years later than its maturity, without any explanation of the said delay, as such the same is not a valid cheque in the eye of law as it was submitted for encashment after 4 years of its maturity and the liability if any become a time barred civil liability and clear violation of law and process as such, it is liable to be quashed. The complainant failed to comply with the provision of sections 138 and 140 of the Negotiable Instruments Act, as such, the proceeding is an abuse of the process of the court and is liable to be quashed. In support of his submission the learned advocate for the appellant placed reliance on the decisions in the cases of *Jagarlamubi Surya Prasad vs State of AP (1992) 1 BC 120, UP Pollution Control Board vs Modi Distillery (1987) 3 SCC 684, Krishan Bi vs ARP1 Press (1994) 80 Company Cases, 750 Mad, Wahidul Islam Chairman vs State, 2008 BLD 354.*

7. Learned Sr advocate Mr AFM Mesbahuddin, with Mr Md Tamizuddin appears on behalf of the opposite party No. 2, submits that the complaint Petition and other materials on record disclosed that all legal formalities as laid down in Section 138 of the Act have been duly complied and the materials put forward by the prosecution contain ingredients of criminal offences as contemplated by the Section 138 of the Act against the petitioner. He next submits that since the complaint petition and other materials on record disclosed *prima-facie* case against the petitioner, the learned Magistrate has examined the complainant and having found prima facie case against the accused, rightly took cognizance of the offence against the petitioner. The learned Assistant Sessions Judge after hearing the parties rejected the application for discharge and framed charge against the accused, under section 138 of the Negotiable Instruments act, 1881, on 3-5-2010. The accused petitioner being Managing Director cannot avoid his liability to pay the amount due under this dishonor cheque as per provision of Section 140 of the Act. He further submits that whether the cheque itself is a valid one or not and whether or not it has been presented after four years of its maturity are factual matters, which required to be proved on taking evidence, this Court exercising its extra-ordinary jurisdiction under section 561A of the Code of Criminal Procedure cannot decide the factual aspect of the case. He further submits that there is no illegality and irregularity in the proceeding. The complainant has filed this petition of complaint after complying all procedure of the section 138 and 140 of the Negotiable Instruments Act, 1881 and, as such, the instant application for quashing the proceeding should be dismissed.

8. We have perused the application under section 561A of the Code of Criminal Procedure and the annexure thereto. In order to appreciate the submission made by the learned Advocates of both the parties, let us now see whether the complainant-opposite party No. 2 has filed the case after complying the provision of law as enunciated in sections 138 and 141 of the Negotiable Instruments Act and whether or not the instant proceedings is liable to be quashed. The provisions of section 138 of the Negotiable Instruments Act, 1881, which reads as follows:

> "138. (I), Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account is returned by the bank unpaid, either because of

the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Ac, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to (thrice.) the amount of the cheque, or with both;

Provided that nothing contained in this section shall apply unless-(a) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier: (b)The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within (thirty days) of the receipt of the said notice.

(1A) The notice required to be severed under clause (b)of subsection (I) shall be severed in the following manner—

(a) by delivering it to the person on whom it is to be served; or

(b) by sending it by registered post with acknowledgement due to that person at his usual or last known place of abode or business in Bangladesh; or

(c) by publication in a daily Bangla national newspaper having wide circulation.

(2).....

(3).....

9. Now let us see the provision of Section 141 of the Negotiable Instruments Act which runs as follows:

"141. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898)

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque:

(b) Such complaint is made within one month of the date on which the cause of action arises under clause

(c) of the proviso to section 138;

(d) no court inferior to that of a court of sessions shall try any offence punishable under section 138."

10. On a careful analysis of Section 138 and 141 of the Negotiable Instruments Act, 1881, we find in the instant case that the accused petitioner issued a Cheque being 6403508 dated 8-7-2008, in favour of the complainant Akhil Chandra Basak, for an amount of Taka. 20,00,000 only from his Account and the same was presented on 12-08-2008 and 19-8-2008 for encashment to the Dutch Bangla bank Ltd. Narayangonj branch and on both occasion the cheque was dishonoured for insufficient fund and returned. We find and hold that the cheque has been presented to the bank within the statutory period of six months from the date on which it is drawn and within the period of its validity. Thereafter, the complainant sent a legal notice through his learned Advocate on 30-8-2008 according to the provision of Section 138, Clause (1A), Sub-clause (b) of the Negotiable Instruments Act. The accused petitioner received it on 2-9-2008 but he did not take any step to pay the said amount, within the statutory period of 30 days from the receipt of this legal notice. After expiry of the statutory period of 30 days, cause of action arose and the complainant-opposite party filed the instant petition on 20-10-2008. Accor-dingly, the Magistrate has examined the complainant and

having found prima facie case, he took cognizance of the offence under section 138 of the Negotiable Instruments Act, 1881 against the accused petitioner.

11. We have perused the application and other materials on record and find that in the instant case, all legal formalities as laid down in Sections 138 and 141 of the Act have duly been complied. There is no illegality or irregularity in this proceeding.

12. The learned Advocate for the petitioner raised a question to the effect that the drawer of the cheque is Zaman Dying and Fabrics Ltd. a Private company was not made party in this case. The Company has not been implicated as an accused, the complainant instituted this proceeding without implicating the principal accused, the cheque in question being issued on behalf of the company, namely Zaman Dyeing & Fabrics Ltd. a private company and the accused as Managing Director simply signed the cheque on behalf of the company, as there is no allegation made in the petition of complaint against the drawer company, this impugned proceeding is not maintainable in law as per provision of Section 140 of the Act. We have also considered the provision of Section 140 of the Negotiable Instruments Act which runs as follows:

> 140 (1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this subsection shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence.
>
> (2) Notwithstanding anything contained in sub-section (I), where any offence under this Act has been committed by a company and it is proved that the offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation- For the purposes of this section-
>
> (a) "company" means anybody corporate and includes a firm or other association of individuals; and
>
> (b) "director" in relation to a firm, means a partner in the firm.

13. This Section contained that if a company committed an offence under section 138 of the said Act, the person who was in charge or responsible for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, the word "as well as" means and or in addition, it does not negate or exclude the liability of a person who was in charge or responsible for the conduct of the business of the company.

14. Further, our legislature clearly expressed their intention in Sub-clause 2 of the Section 140 of the said Act, the words "Notwithstanding anything contained in subsection (I)" means sub-section (II) shall prevail over the sub-section (I), which makes it an independent sub-section of Section 140 of the said Act. It provides that if a company committed an offence under section 138 of the said Act, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director of the company, such director shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. This sub-section imposed personal liability upon the Managing Director of a Company for his action and/or his negligence.

15. Admittedly, the accused petitioner as Managing Director of the Company signed the cheque on behalf the Company, as a natural person

and the drawer of the cheque is a juristic person, the petitioner does everything on behalf of the company. All liability practically falls on him. A company being a juristic person, all its deeds and functions are the result of the acts of Managing Director. Therefore, a Managing director of the company is responsible for the acts done in the name of the company. The accused petitioner was Managing Director of the Company at the time of offence committed and all acts are committed or done within his knowledge. He is responsible for the conduct of the business of the company and in such situation when the Managing Director of the Company is made party, there is no necessity for making the Company a party as the Director represents the company.

16. The learned Advocate for the petitioner raised another question to the effect that the cheque itself is not a valid one, as it has been presented after four years of its maturity. The question is whether the cheque itself is a valid one or not and whether or not it has been presented after four years of its maturity are factual matters, which required to be proved on taking evidence, this Court exercising its extra ordinary jurisdiction under Section 561A of the Code of Criminal Procedure cannot decide the factual aspect of the case. We cannot decide the factual aspect of the case, the question of facts will be decided in the trial court. We find support of the above view in the case of *Nizamuddin Mahmood vs Abdul Hamid Bhuiyan reported in 60 DLR (AD) 195.*

17. Having been considered the materials on record, after hearing the learned Advocates appearing for the both sides and under the facts and circumstances of the case, we do not find merit in this Rule.

18. Accordingly, the Rule is discharged.

19. The order of stay granted at the time of issuance of the Rule is hereby vacated.

Communicate a copy of this judgment to the court concern immediately.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Farah Mahbub J
AKM Zahirul Hoque J

Judgment
April 4th, 2013.

Mohammad Saheed and another.....Petitioner
vs
Government of Bangladesh and others.....Respondents*

Artha Rin Adalat Ain (VIII of 2003)
Section 34(1)

It was the responsibility of the Adalat to take initiatives for auction sale of those moveable properties first before invoking power under section 34(1) of the Ain. In the absence of the process issuance of the order of warrant of arrest is palpably illegal for being passed in violation of section 34(9) of the Ain. .....(11)

Younus Haider, Advocate with Md Shahed Razmul Bari, Advocate—For the Petitioner.

Anwarul Karim, Advocate— For the Respondet No.2.

Judgment

Farah Mahbub J : In this Rule, issued under Article 102 of the Constitution of the People's Republic of Bangladesh, the respondents have been called upon to show cause as to why the impugned order No. 9 dated 3-1-2011 issuing warrant of arrest against the petitioner under section 34(1) of the Artha Rin Adalat Ain, 2003 (Annexure-D) passed be the respondent No. 1 in Artha Execution Case No. 65 of 2010 arising out of Artha Rin Suit No. 111 of 2007 should not be declared to have been passed without any lawful authority and hence, of no legal effect.

2. In view of the statements so made in the instant writ petition Mr Younus Haider with Mr Md Shahed Razmul Bari, the learned Advocates appearing on behalf of the petitioners submits drawing attention to the judgment and decree of the Artha Rin Suit No.111 of 2007 dated 28-10-

*Write Petition No. 1931 of 2011

2009 (Annexure-A and A-1 respectively) respectively that the Artha Rin Adalat while drawing up the decree has categorically included some immoveable properties as described in schedule Nos. 1 and 2. In this regard he further goes to contend drawing attention to the application filed under Order XXI, rule 11 of the Code of Civil Procedure (Annexure-B) that in column 11 the decree holder Bank has categorically made a prayer for realization of the decretal amount upon selling the moveable and immoveable property through auction and ultimately, has given a description of some moveable properties though strangely the Bank concern did not give any description whatsoever of the immoveable properties in view of the decree of the said Artha Rin Ain.

3. Further, he submits that it is evident from the order sheet (Annexure-D) to the writ petition that before allowing the prayer of the respondent Bank for issuing warrant of arrest under section 34(1) of the Artha Rin Adalat Ain, 2003 (in short, the Ain) no process had been initiated in due compliance of section 34(9). Considering of the said factual position he submits that the impugned order of issuing warrant of arrest against the petitioners being violative of the said provision is not tenable in the eye of law and, as such, is liable to be knocked down upon making the Rule absolute.

4. Conversely, Mr AM Abdur Razzaque, the learned Advocate appearing for the respondent Bank without filing any affidavit-in-opposition submits that it is fact that the respondent Bank while instituting the said Artha Rin Suit in its plaint did not include any immoveable property of the petitioner; however, the Adalat while decreeing the suit on contest inadvertently has included the immoveable properties belonging to the petitioners and ultimately to that effect has drawn up the decree (Annexure-A-1).

5. In view of the stated position, he submits that the petitioners having defaulted to pay of the decretal amount within time as prescribed in the judgment the respondent Bank was constrained to initiate Artha Execution Case No. 65 of 2010 excluding the immoveable properties of the petitioners as described in the Schedule of the decree and, as such, has given description of some moveable properties belonging to the petitioner; and considering the same the respondent Bank having no other alternative made a prayer under section 34(1) of the Ain, 2003 to issue warrant of arrest against the petitioners with a view to realize the decretal amount speedily. Hence, he submits that no interference is called for.

6. From record it is apparent that in connection with Artha Rin Suit No. 111 of 2007 the Artha Rin Adalat No. 3, Dhaka passed the judgment and decree on contest dated 28-10-2009 and ultimately has drawn up the decree on drawn up the decree on 28-10-2009 as contending (Annexure-A-1).

7. However, it is interesting to note that while drawing up the decree the Adalat has included some immoveable properties of the petitioners as described in schedule Nos. 1 and 2. Later, the petitioners having failed to pay up the decretal amount within the prescribed period of time the respondent Bank filed Artha Execution Case No. 65 of 2010 with a prayer for realization the decretal amount "দায়িগনের নিকট হইতে ডিক্রিদায়ের সমূদয় পাওনা আদায়ের নিমিত্তে বর্ণিত অস্থাবর সম্পত্তি ও অপরাপর স্থাবর ও অস্থাবর সম্পত্তি ক্রোক করতঃ সম্পত্তি ক্রয় করিয়া আদায় দেওয়ার জন্য ডিক্রিদার ব্যাংকের প্রার্থনা।"

8. In the schedule of property, however, the respondent Bank has given description of some moveable properties belonging to the petitioners though it did not include the immoveable properties as were included in the decree of the said that Artha Rin Suit. Ultimately, the executing Adalat allowing the prayer of the respondent Bank dated 20-9-2010 under section 34(1) of the Ain, 2003 issued warrant of arrest against the petitioners vide the impugned order 9 dated on 3-1-2011.

9. On perusal of the entire order sheets, as

are made available before us, it is evident that prior to the issuance of the said order the executing Adalat did not take any initiatives whatsoever as required under section 34(9) in view of the fact that in the decree there is a mention of some immoveable properties belonging to the petitioners.

10. In this regard, the learned Advocate for the respondent Bank submits that the properties as mentioned in the decree has been made inadvertently since those properties were not included in the plaint, so filed by the respondent Bank at the time of institution of the said Artha Rin Suit.

11. Furthermore, considering the submission of the respondent Bank it is apparent from the application of the execution proceeding that it has given description of certain moveable properties therein; in that view of the matter it was the responsibility of `the Adalat to take initiatives for auction sale of those moveable properties first before invoking power under section 34(1) of the Ain, 2003. In the absence of the process we are of the view that issuance of the impugned Order of warrant of arrest against the petitioners is palpably illegal for being passed in violation of section 34(9) of the Ain, 2003.

12. In the result, the Rule is made absolute.

13. The impugned order No. 9 dated 3-1-2011 passed by the Artha Rin Adalat No. 3, Dhaka in connection with Artha Execution Case No. 65 of 2010 arising out of Artha Rin Suit No.111 of 2007 is herery declared to have been passed without any lawful authority and is of illegal effect.

14. However, the respondent Bank is at liberty to bring that anomaly as is apparent in the record to the notice of the Adalat concern and make necessary prayer to that effect in accordance with law.

15. There will be no order as to costs.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md Bazlur Rahman J
Sheikh Hassan Arif J

Judgment
January 13th, 2013.

Mehreen Asaf and another
.....Petitioner
vs
Chairman, First Labour Court, Dhaka and another
.....Respondents*

Bangladesh Labour Law Act (XLII of 2006)
Section 307

Under the provisions of section 307, the Labour Court straightaway issues warrant against the employers without even providing them with any opportunity to defend and that may lead to misusing of this provisions, as such, it should be used strictly in accordance with law as provided in the Code.

The opposite-parties, those who were aggrieved and have brought the cases against their employers have invoked section 307, which clearly stipulates that the jurisdiction of the section is limited only when there is no punishment procedure is available. These workers did not at all specify, as to which provision of the Code, their employers have violated and thereby they ought to have stated that there is no provision of punishment under that provision, i.e. section of the Code, only then they could invoke section 307. (*Per Quazi Reza-ul-Hoque J, majority)* .....(45)

Bangladesh Labour Law Act (XLII of 2006)
Sections 307 and 310

If it is found that *bonafide* dispute raised by the employer is true that can also be taken care of in a criminal proceeding. And he may also be directed to comply and settle the dispute but if it is found that his action tantamounts to violation of or non-compliance with the provision of the Act then appropriate

*Writ Petition Nos. 8958, 8960, 8308 and 8309 of 2010.

action can be taken against him. *(Per Nizamul Hua J, minority)* .....(36)

Bangladesh Supreme Court (High Court Division) Rules, 1973

Chapter V, rule 1

It very difficult to agree with the basic ratio as intended to be settled or expressed in the *Sayeed Ahmed's* case *(63 DLR 212)* and *Kazi Rokanuddin's* case *(63 DLR 382).* Therefore, the writ petitions should be referred to the Hon'ble Chief Justice for decision by a Full Bench as per the provisions of Chapter-VI, Rule 1 of the High Court Division Rules. *(Per Md Bazlur Rahman J and Sheikh Hassan Arif J)* ...(14)

Abdul Khaleque, Advocate—For the Petitioner in Writ Petition Nos. 8958 and 8960 of 2010.

Syed Moyeenul Huq, Advocate—For the Petitioners in Writ petition No 4308 and 4309 of 2010.

ASM Shafiqul Islam Biplob, Advocate—For the Respondent No.2 in Writ Petition No. 4308 and 4309 of 2010.

Rajik-al-Jalil, DAG with SM Quamrul Hassan, AAG with Yesmin Sultana (Shamsad) AAG—For Bangladesh (with the leave of the Court).

Judgment

Since the questions of law and facts involved in the aforesaid writ petitions under Article 102 of the Constitution are almost same, they were taken up together for hearing.

2. Rules in the aforesaid writ petitions were issued calling upon the respondents to show cause as to why the criminal proceedings pending before the respective Labour Courts under sections 307 read with section 310 of the Bangladesh Labour Act, 2006 should not be declared to have been initiated without lawful authority and is of no legal effect.

3. In Writ Petition No. 8958 and 8960 of 2010, both the respondent Nos. 2 filed the Bangladesh Labour Law (Criminal) Case No. 432 and 423 of 2010 before the First Labour Court, Dhaka under sections 307 and 310 of the Labour Act, 2006 (hereinafter called "the said Act") alleging, *inter alia*, that they joined the petitioners' establishment B 2 B Excellence Ltd. on (2-9-2006 and 1-3-2008 respectively without any appointment letters. While serving as Line QC under the Sewing Quality section, they were orally terminated on 22-4-2010 along with some other workers without any prior notice. Upon such termination, although their employers were obliged under law to pay Taka 44,004 and Taka 39,004 respectively on account of their arrear wages and termination benefits etc, they were paid nothing. They then initiated the impugned criminal proceedings, after serving a legal notice, on the allegations that the employer-petitioner, by such non-payment, violated the provisions under sections 3 and 123 of the said Act and, as such, liable to be punished under section 307 of the same.

4. In Writ Petition Nos. 4308 and 4309 of 2010. both the respondent Nos. 2 also filed Bangladesh Labour Law (Criminal) Case No. 121 of 2009 and 533 of 2008 before the First Labour Court, Dhaka under sections 307 and 310 of the said Act, alleging, *inter alia*, that they joined the establishment of the petitioners namely "দৈনিক যায়যায় দিন", on 1-4-2006 and 1-6-2006 as Assistant Editor and Translation Editor respectively. However, they were terminated from their services on 23-9-2008 and 29-6-2008 without any prior notice. Upon such terminations, they were entitled to receive Taka 3,88,622 and Taka 5,42,747 respectively as per the 7th Wage Board Decisions on account of termination and other benefits. However, they were paid only Taka 1,94,117 and Taka 2,28,391 respectively. Thus, they initiated the impugned proceedings, after serving Legal Notices, against the petitioners on the allegation that the petitioners had violated the provisions of the said Act.

5. The petitioners in Writ Petition No. 8958 and 8460 of 2010 obtained the aforesaid Rules after obtaining bail from the concerned Labour Court. The petitioners in Writ Petition Nos. 4308 and 4309 of 2010 also obtained bail from the concerned Labour Court and challenged the impugned proceedings through the said writ petitions after the concerned Labour Court had rejected their applications for discharge.

6. The legal question involved in all the aforesaid Rules is same which is that whether or not the petitioner-employers are liable to be prosecuted for punishment under sections 307 read with section 310 of Labour Act, 2006 or under any other provisions for their alleged violation or non-compliance of the provisions of the said Act or Rules or Regulations or Scheme made there under without or before exhaustion of legal avenues as provided by section 33 and/or section 132 of the said Act.

7. At the very outset, the learned advocates for the petitioners have referred to two decisions of this Court, namely the cases of *Sayeed Ahmed Chowdhury vs SM Zahidul Islam (Zahid), 63 DLR 212* (decided under criminal jurisdiction) and *Kazi Rokanuddin Ahmed vs Labour Court, 63 DLR 382* (decided under writ jurisdiction) (hereinafter called *"Sayeed Ahmed's case"* and *"Kazi Rokanuddin's case"* respectively).

8. The cumulative submissions of both the learned Advocates (Mr Abdul Khaleque and Mr Syed Moyeenul Huq), appearing for the above mentioned two sets of petitioners respectively, are that since the dispute involves determination of facts, namely whether the concerned workers were at all terminated or not and as well as determination of actual monetary liability of the employers, the remedies available to the workers are either grievance proceedings under section 33 or proceedings under section 132, and under both the provisions, the Labour Court may resolve the disputes like a Civil Court. Thus, according to them, since the Labour Court, in exercise of criminal jurisdiction under section 307 or other relevant provisions of the said Act cannot be in a position to resolve those bonafide disputes involving civil liabilities of the employers, the impugned criminal proceedings should not be allowed to continue.

9. On the other hand, Mr Rajik-al-Jalil learned Deputy Attorney-General, appearing with the leave of the Court, submits that the decisions in *Sayeed Ahmed's* case and *Kazi Rokanuddin's* case have not decided the questions of law involved in the matters in clear terms. According to him, section 307 criminal proceeding is an independent proceeding which is not in any way dependent on the exhaustion or initiation of the proceedings either under section 33 or section 132. He further submits that whether a worker will take recourse to section 33 or section 132 of the said Act is dependent on the desire of the concerned worker as both the provisions made it optional for the said worker, and if a particular worker does not intend to take recourse to those two provisions, he will not be rendered bereft of any remedy in so far as the penalty for violation of the provisions of law by the employers is concerned.

10. Heard the submissions and considered the materials on record. In view of section 30, once the employment of a worker has terminated due to his retirement, discharge, retrenchment, dismissal or termination etc, the appointing authority is obliged to pay his entire dues (প্রাপ্য সকল পাওনা) within thirty working days from such end of service. On the other hand, section 123 oblige the employers to pay the entire wages (প্রদেয় সকল মজুরী) of the concerned worker within seven working days from the end of his employment on account of retrenchment, discharge, removal, dismissed etc. Besides, in case of Wage Board Decision for the news paper employees, section 148 made it mandatory for the employers to comply with the decisions of the Wage Board. It also

recognized the rights of the newspaper employees/workers to receive minimum wages declared by the said Wage Board Decision. Section 149 even made it prohibitory for the employers to pay any wages below the rate determined by the Wage Board.

11. Now, the question is whether the legal obligations to pay as mentioned in sections 30, 123 and 148 and the prohibition under section 149, are mere literature in the statute book or they have any meaningful purpose. If we accept the submissions of the learned advocates for the petitioners, the said obligations as mentioned under sections 30, 123 and 148 and the prohibition under section 149 will be rendered to be mere letters in the statute book without any teeth to bite. Section 33 and 132 provides for civil remedies in accordance with certain procedures and limitation period through which the Labour Court has power to settle the dispute in exercise of its civil jurisdiction and may, in an appropriate case, direct the employer to even pay the entire dues or entire wages, as the case may be. Penalties for non-compliance of any such direction of the Labour Court have also been mentioned in the relevant provisions. These provisions are optional for the workers concerned. The issue is what if any person, in this case the employers, violates, or does not comply with, any specific provisions of the said Act, Rules, Regulations or Scheme there under. This aspect is dealt with by some specific penalty provisions enumerated from sections 283 to 306 under Chapter 19 of the said Act, and section 307 is there as a residue penalty provision. Section 307 runs as follows :

> "৩০৭। অন্যান্য অপরাধের দন্ড।-কোন ব্যক্তি এই আইন বা কোন বিধি, প্রবিধান বা স্কীমের কোন বিধান লংঘন করিলে বা মানিতে ব্যর্থ হইলে এবং ইহার জন্য উহাতে অন্য কোন দন্ডের বিধান না থাকিলে, তিনি তিন মাস পর্যন্ত কারাদন্ডে, অথবা এক হাজার টাকা পর্যন্ত অর্থদন্ডে, অথবা উভয় দন্ডে দন্ডনীয় হইবেন"।
>
> *(Underlines are given to give emphasis)*

12. Upon reading the relevant Petition of Complaints as annexed to the aforesaid writ petitions, it appeals that the basic allegation of the concerned workers is that the employers concerned either violated the provisions of the said Act or did not comply with the specific provisions of law. Although in Writ Petition No. 4308 and 4309 of 2010 the Petition of Complaints alleged violation of sections 148 and 149 and specific penalty for such violation is provided under section 289, this non-mentioning of section 289 or wrong mentioning of section 307 should not in any way vitiate the entire proceedings initiated against the employer if it is found that the allegations made in the Petition of Complaints do disclose the culpability punishable under the said Act. Therefore, our *prima-facie* view is that the criminal proceedings concerned in the aforesaid writ petitions should not be nipped in the bud and they should be allowed to proceed. The Labour Court in those proceedings will of course not endeavour to determine exact liability and will not pass direction to pay like in the proceedings under sections 33 and 132. Nevertheless, it will go into the merit of liability just to determine the culpability as to whether there was any violation of, or non-compliance with, any provisions on the part of the employers. Any *bonafide* dispute, if raised by the employers, can also be taken care of in a criminal proceeding either at the time of framing of charge or subsequently. We find indirect support of our this view in an unreported judgment of our High Court Division dated 17-4-2002 in Writ Petition Nos. 2100-2111 of 1999.

13. Although the legal issues involved in the instant writ petitions were not elaborately discussed and/or answered in *Sayeed Ahmed's* case and *Kazi Rokanuddin's* case as referred to above, it is palpable that the basic ratio intended to be expressed by their Lordships in those cases is that no criminal proceedings can be initiated or proceeded against the employers under section 307 or any other provisions for the following reasons:

a) no order of Labour Court was violated or non-complied with *(Sayeed Ahmed's case);*

b) the concerned worker claimed some dues which involve calculation and, as such, a civil dispute *(Sayeed Ahmed case);*

c) initiation of criminal proceedings under sections 307 and 310 is "a misconception of Law" as the concerned work failed to take prior recourse to grievance proceedings under section 33 *(Kazi Rokanuddin's case);*

14. Thus, it is very much understandable that, with all due respect to the Hon'ble Judges, we find it is very difficult to agree with the basic ratio as intended to be settled or expressed in the *Sayeed Ahmed's* case and *Kazi Rokanuddin's* case. Therefore, the instant writ petitions should be referred to the Hon'ble Chief justice for decision by a Full Bench as per the provisions of Chapter-VI, Rule-1 of the High Court Division Rules. Accordingly, let the aforesaid Writ Petitions be placed before the Hon'ble Chief Justice for a decision by a Full Bench in view of Chapter-VII, Rule-1 of the High Court Division Rules.

Editor's Note

Four writ petitions were placed before the Hon'ble Chief Justice for reference to a Full Bench and the Hon'ble Chief Justice has formed the Full Bench to hear the four writ petitions. Full Bench delivered the following judgment.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md Nizamul Huq J Quazi Reza-ul-Haque J ABM Altaf Hossain J	Mehreen Asaf and another.....Petitioner vs Chairman, First Labour Court, Dhaka and another.....Respondent*
Judgment June 18th, 2013.	

Aminul Huq with Abdul Khaleq, Advocates—For the Petitioners.

Rajik-al-Jalil, DAG Sakila Rowshan, DAG with Sarmina Haque,Sarwardi Amatul Karim, AAGs—For the State.

Khurshid Alam Khan, with AKM Nasim, Advocates—For Intervener, Bangladesh Legal Aid and Services Trust.

Judgment

Md Nizamul Huq J: Since the questions of facts and law involved in the 4(four) aforesaid writ petitions under Article 102 of the Constitution of the People's Republic of Bangladesh (The Constitution) are almost same and all these matters were heard together by a Division Bench of this Court presided over by Mr Justice Bazlur Rahman and Mr Justice Sheikh Hasan Arif and that Bench by order dated 13-1-2013, found it difficult to agree with the basic ratio as intended to be settled or expressed in the *Sayeed Ahmed's* case and *Kazi Rokanuddin's* case (reported in *63 DLR 212* decided under criminal jurisdiction and *63 DLR 382* decided under writ jurisdiction respectively), therefore the instant 4 writ petitions were referred to the Honourable Chief Justice for a decision by a full Bench as per provisions of Chapter VII, Rule 1 of the High Court Rules. Accordingly, these 4(four) writ petitions were placed before the Honourable Chief Justice for reference to a full Bench and the Honourable

*Writ Petition Nos. 8958, 8960, 4308 and 4309 of 2010.

Chief Justice has formed this full Bench to hear those 4(four) writ petitions.

16. Rules in the aforesaid writ petitions were issued calling upon the respondents to show cause as to why the criminal proceedings pending before the respective Labour Courts under sections 307 read with section 310 of the Bangladesh Labour Act, 2006 should not be declared to have been initiated without lawful authority and is of no legal effect.

17. In writ petition No. 8958 of 2010 and 8960 of 2010, both the respondent No.2, were the complainants in Criminal Case No. 432 and Criminal Case No. 423 of 2010 filed before the 1st Labour Court, Dhaka under section 307 and 310 of the Labour Act, 2006 (hereinafter referred to as the said act) alleging *inter-alia* that the complainant joined the petitioners establishment on 2-9-2006 and 1-3-2008 respectively without any appointment letters; while serving in the sewing quality section they were orally terminated on 22-4-2010 along with some other workers without any prior notice. Upon such termination although their employers were obliged under the law to pay Taka 44,004 and Taka 39,004 respectively on account of their arrear wages and termination benefits etc, they were paid nothing. They then initialed the impugned criminal proceedings after serving legal notice on the allegations that the employer-petitioner by such an act of non-payment violated the provisions under section 30 and 123(1) of the said act and, as such, liable to be punished under section 307 of the same.

18. In writ petition No. 4308 of 2010 and writ petition No. 4309 of 2010, both the complainant respondent Nos. 2 also filed Labour Court Criminal Case Nos. 121 of 2009 and 533 of 2008 before the 1st Labour Court, Dhaka under section 307 and 310 of the said act alleging *inter-alia* that they joined the establishment of the petitioners namely 'Dainik Jai Jai Din' (a daily news paper) on 1-4-2006 and 1-6-2006 respectively as Assistant Editor and Translation Editor respectively. However, they were terminated from their services on 23-9-2008 and 29-06-2008 respectively without any prior notice. Upon such termination they were entitled to receive Taka 3,88,622 and Taka 5,42,747 respectively as per the 7th Wage Board Decisions on account of termination and other benefits. However, they were paid only Taka 1,94,117 and 2,28,391 respectively, thus they initiated the impugned proceedings after serving legal notices against the petitioners on the allegation that the petitioners had violated the provisions of the said act.

19. All the petitioners in writ petition No. 8958 of 2010, writ petition No. 8960 of 2010, writ petition No. 4308 of 2010, and writ petition No. 4309 of 2010 obtain the aforesaid Rules, after obtaining bail from the concerned Labour Court, challenging the impugned proceeding of the concerned Labour Court rejecting their application for discharge.

20. The legal question involved in all the aforesaid Rules are the same, as to whether the petitioner employers are liable to be prosecuted for punishment under sections 307 read with section 310 of Labour Act 2006 or under any other provisions for their alleged violation or non compliance of the provisions of said Act, rules, or scheme made there under without or before exhaustion of legal avenues as provided by section 33 and or section 132 of the said Act.

21. It may be mentioned here that in Criminal Case No. 432 of 2010 there are two accused persons 1) Mehreen Asaf, Managing Director and 2) Col. (Retd) Mostafa Ali, Executive Director and in the writ petition only Mehreen Asaf is the petitioner and the accused Col. (Retd) Mostafa Ali is not a party. Similarly in Writ Petition No. 8960 of 2010, the said Mehreen Asaf is the petitioner and the another accused Col. (Retd) Mostafa Ali is not a petitioner. In writ petition No. 4308 of 2010, which relates to Criminal Case No. 121 of 2009,

5(five) accused persons are there and all of them are petitioners in the Writ Petition No. 4308 of 2010. In writ petition No. 4309 of 2010, challenging the legality of Criminal Case No. 533 of 2008, wherein 5(five) accused persons are there and all the 5(five) accused persons are petitioners.

22. Mr Aminul Haque with Mr Abdul Khaleque, the learned advocates appeared for the petitioners in the writ petitions, while Mr Rajik-al-Jalil, the learned Deputy Attorney-General with Ms Shakila Rowsan, the learned Deputy Attorney-General, Ms. Sarmina Haque, Md Sarwardi and Ms AmatuI Karim AAGs appeared for the government. But none appeared for the accused respondent No.2 in all the cases. While the matter was being argued, Mr Khurshid Alam Khan the learned advocate appeared with a prayer on behalf of Bangladesh Legal Aid and Services Trust to appear as intervener. The prayer was allowed and Mr Khurshid Alam Khan with Mr AKM Nasim, the learned advocates appeared for the intervener. All the petitioners in their writ petitions stated *inter-alia* that the claim of the respondent complainants are monetary claim, which is required to be determined and, as such, it does not constitute any criminal offence under section 307 of the said Act. The allegations of violation of section 30 and 123(1) of the Act is that if due salary, termination benefits etc. has not been paid to the complainant within the time stipulated in these sections that does not constitute any criminal offence because of the fact that there are specific provisions of settling the disputes under sections 33 and 123 of the said law. It was further contended that the dispute arose out of termination of services, so that is to be adjudicated under section 33 of the Bangladesh Labour Law, 2006 which contains *inter-alia* that:

> [33(8) reads ["এই ধারার অধীন কোন অভিযোগ এই আইনের কোন ফৌজদারী অভিযোগ বলিয়া গন্য হইবে না" ।]

23. It was further contended that non-compliance of section 123 of the said law is to be adjudicated under section 132. And as per section 132(5), the Court has power to give 25% compensation of the salary as fine, which is a punishment according to the section 53 of the Penal Code, and, as such, this proceeding under section 307 is illegal and is liable to be declared without lawful authority and is of no legal effect.

24. It was further stated in the writ petition that the petitioners earlier filed an application under section 561A of the Code of Criminal Procedure but those were not moved.

25. It is further submitted that since the dispute involves determination of facts that is determination of actual monetary liability of the employers, the remedies available to the workers are either convene proceedings under section 33 of the Act, or to initiate proceedings under section 132 of the Act, and under both the provisions the Labour Court may resolve the disputes like a civil court. Thus since the Labour Court in exercise of criminal jurisdiction under section 307 or other relevant provisions of the said act cannot be in a position to resolve those disputes involving criminal liabilities of the employers, as such the criminal proceedings should not be allowed to continue.

26. It was also submitted that the intention of the legislature cannot be such that as soon as an employee is dismissed, retrenched, terminated or any dispute arose between the parties without trying to settle the dispute, any one of the party will go to the Court by invoking its criminal jurisdiction, which will cause harassment to the other side. The criminal jurisdiction may be allowed only when the dispute is settled by the Court and either of the parties denies to obey that decision of the Court, only the other side may prefer invoking criminal jurisdiction of the Court for redress and compliance of the Court's judgment and order. In the 4(four) cases referred herein upon which the writ petitions have been filed, according to them there was no settlement of the disputes and the complainant's side straight away went to the Labour Court invoking its criminal jurisdiction

and arranged summons against the management, which cannot be the spirit and intention of the legislature. Moreover there are documents to show that the claim of the complaints after being correctly concluded has been given to the complainants and the complainants have received the said amount by giving written receipt as a full and final settlement of the claim by them and in a case like this, it cannot be the intention of the legislature to allow the complainant to go to the Court in its criminal jurisdiction to harass the other side. If he got any further claim, he can take the help of the civil jurisdiction of the Labour Court for settlement of the dispute and not the harassment procedure as has been done in two of the instant cases against 'Jai Jai Din'.

27. Mr Rajik-al-Jalil, the learned Deputy Attorney-General submits that the two reported decisions reported in *63 DLR 212* and *63 DLR 382,* which have been referred by the learned advocate for the petitioners and considered by the Bench, were heard earlier and had different views with those findings, however, not decided the questions of law involved in the matters in clear terms. He submitted that section 307 is an independent criminal proceeding, which is not in any way dependent on the exhaustion or initiation of the proceedings, either under section 33, or section 132 of the Act.

28. He submits that it is the choice of the worker whether he will take the recourse of section 33 or section 132 of the said Act or he will avail the process under section 307 of the Act and both the provisions are optional for the said worker. If a particular worker does not intend to take recourse to those provisions he will not render benefit of any remedy, in so far as, the penalty for violation of the provisions of the law by the employers is concerned.

29. Mr AKM Nasirm, the learned advocate appearing for the intervener Bangladesh Legal Aid and Services Trust submitted that they are very much concerned about the outcome of this case because of the fact that the provisions have been brought in the act only to ensure early disposal of the disputes. It is not the intention of the legislature to harass the employers, however, they want that the disputes should be settled as early as possible and the result should be complied with and for that reason the provisions of section 307 of the Act cannot be termed as illegal and without lawful authority. He referred to sections 30, 33, 123, 132, 215, 216, 283, 289, 307 and 310 of the Code and submitted that these sections are required for disposal of this matter. Those sections read as follows:

Section 33: "অবসর, ডিসচার্জ, ছাঁটাই, বরখাস্ত এবং চাকুরীর অবসান ইত্যাদি যে কোন কারনে শ্রমিকের চাকুরী ছেদ ঘটার পরবর্তী সর্ব্বোচ্চ ৩০ কর্ম দিবসের মধ্যে নিয়োগকারী কর্তৃপক্ষ কর্তৃক উক্ত শ্রমিকের প্রাপ্য সকল পাওনা পরিশোধ করিতে হইবে"।

Section 33: ১) লে-অফ, ছাঁটাই, বরখাস্ত, অপসারণ অথবা অন্য যে কোন কারণে চাকুরীর অবসান হইয়াছে এরূপ শ্রমিকসহ যে কোন শ্রমিকের, এই অধ্যায়ের অধীন কোন বিষয় সম্পর্কে যদি কোন অভিযোগ থাকে এবং যদি তিনি তৎসম্পর্কে এই ধারার অধীন প্রতিকার পাইতে ইচ্ছুক হন তাহা হইলে তিনি অভিযোগের কারণ অবহিত হওয়ার তারিখ হইতে ত্রিশ দিনের মধ্যে অভিযোগটি লিখিত আকারে রেজিস্ট্রি ডাকযোগে মালিকের নিকট পেশ করিবেন।

তবে শর্ত থাকে যে, যদি নিয়োগদানকারী কর্তৃপক্ষ অভিযোগটি সরাসরি গ্রহণ করিয়া লিখিতভাবে প্রাপ্তি স্বীকার করেন, সেই ক্ষেত্রে উক্ত অভিযোগটি রেজিস্ট্রি ডাকযোগে না পাঠাইলে ও চলিবে।

২) মালিক অভিযোগ প্রাপ্তির পনের দিনের মধ্যে অভিযোগ সম্পর্কে তদন্ত করিবেন এবং সংশ্লিস্ট শ্রমিককে শুনানির সুযোগ দিয়া তৎসম্পর্কে তাহার সিদ্ধান্ত লিখিতভাবে শ্রমিককে জানাইবেন।

৩) যদি মালিক উপ-ধারা(২) এর অধীন কোন সিদ্ধান্ত দিতে ব্যর্থ হন, অথবা সংশ্লিস্ট শ্রমিক যদি উক্তরূপ সিদ্ধান্তে অসন্তুস্ট হন, তাহা হইলে তিনি উপ-ধারা(২) এ উল্লিখিত সময় অতিক্রান্ত হওয়ার তারিখ ত্রিশ দিনের মধ্যে অথবা, ক্ষেত্রমত, মালিকের সিদ্ধান্তের তারিখ হইতে ত্রিশ দিনের মধ্যে শ্রম আদালতে লিখিতভাবে অভিযোগ পেশ করিতে পারিবেন।

৪) শ্রম আদালত অভিযোগ প্রাপ্তির পর উভয় পক্ষকে নোটিশ প্রদান করিয়া অভিযোগটি সম্পর্কে তাহাদের বক্তব্য শ্রবণ করিবে এবং উহার বিবেচনায় মামলার অবস্থাধীনে যেরূপ আদেশ দেওয়া ন্যায়সঙ্গত সেরূপ আদেশ প্রদান করিবে।

৫) উপ-ধারা(৪) এর অধীন প্রদত্ত কোন আদেশ দ্বারা আদালত, অন্যান্য প্রতিকারের মধ্যে, অবিযোগকারীরকে বকেয়া মজুরীসহ বা ছাড়া, তাহার চাকুরীতে পুর্নবহাল করার নির্দেশ দিতে পারিবে এবং কোন বরখাস্ত, অপসারণ বা ডিসচার্জের আদেশকে ধারা ২৩(২) এ উল্লিখিত কোন লঘুদন্ডে পরিবর্তিত করিতে পারিবে।

৬) শ্রম আদালতের কোন আদেশ দ্বারা সংক্ষুব্ধ কোন ব্যক্তি আদেশের ত্রিশ দিনের মধ্যে ট্রাইব্যুনালের নিকট আপীল দায়ের করিতে পারিবেন এবং এ আপীলের উপর উহার সিদ্ধান্ত চূড়ান্ত হইবে।

৭) এই ধারার অধীন কোন অভিযোগ বা আপীল দায়েরের জন্য কোন কোর্ট-ফিস প্রদেয় হইবে না।

৮) এই ধারার অধীন কোন ফৌজদারী অভিযোগ বলিয়া গণ্য হইবে না।

৯) এই ধারায় যাহা কিছুই থাকুক না কেন, ধারা ২৬ এর অধীন প্রদত্ত চাকুরীর অবসানের আদেশের বিরুদ্ধে কোন অভিযোগ করা যাইবে না, যদি না অবসানের আদেশটি সংশ্লিস্ট শ্রমিকের ট্রেড ইউনিয়ন কর্মকান্ডের কারণে অথবা উদ্দেশ্য প্রণোদিতভাবে প্রদত্ত হইয়াছে বলিয়া অভিযোগ করা হয়, অথবা যদি না তিনি উক্ত ধারার অধীন প্রাপ্য সুবিধা হইতে বঞ্চিত হন।

১২৩(১) কোন শ্রমিকের যে মজুরকাল সম্পর্কে তাহার মজুরী প্রদেয় হয় সেই কাল শেষ হওয়ার পরবর্তী সাত কর্মদিবসের মধ্যে তাহার মজুরী পরিশোধ করিতে হইবে।

(২) যে ক্ষেত্রে কোন শ্রমিকের চাকুরী তাহার অবসর গ্রহণের কারণে অবসান হয়, অথবা মালিক কর্তৃক তাহার ছাঁটাই, ডিসচার্জ, অপসারণ, বরখাস্ত অথবা অন্য কোন কারণে উহার অবসান করা হয় সে ক্ষেত্রে উক্ত শ্রমিককে প্রদেয় সকল মজুরী তাহার চাকুরী অবসানের তারিখ হইতে পরবর্তী সাত কর্মদিবসের মধ্যে পরিশোধ করিতে হইবে।

১৩২(১) যে ক্ষেত্রে এই আইনের বিধানের খেলাপ কোন শ্রমিকের মজুরী হইতে কোন কর্তন করা হয় অথবা কোন শ্রমিকের মজুরী পরিশোধ করা না হয় অথবা তাহার মজুরী কিংবা কোন বিধির আওতায় প্রদেয় গ্রাচুইটি বা ভবিষ্যৎ তহবিলের প্রাপ্য পরিশোধে বিলম্বে ঘটে সে ক্ষেত্রে তিনি, অথবা তাহার মৃত্যু হইলে তাহার কোন উত্তরাধিকারী অথবা কোন আইনসঙ্গত প্রতিনিধি কর্তৃক মজুরী ফেরত পাওয়ার জন্য অথবা বকেয়া বা বিলম্বিত মজুরী ও অন্যান্য পাওনা আদায়ের জন্য শ্রম আদালতের দরখাস্ত করিতে পারিবেন।

২১৫(১) এই আইনের বিধান সাপেক্ষে, শ্রম আদালত অপরাধ বিচারকালে, যতদূর সম্ভব, ফৌজদারী কার্যবিধিতে বর্ণিত সংক্ষিপ্ত বিচার পদ্ধতি অনুসরণ করিবে।

(২) এই আইনের অধীনে অপরাধ বিচারের উদ্দেশ্যে ফৌজদারী কার্যবিধির অধীন প্রথম শ্রেনীর ম্যাজিস্ট্রেটের উপর ন্যস্ত সকল ক্ষমতা শ্রম আদালতের ও থাকিবে।

(৩) উপ-ধারা(২) এ যাহা কিছুই থাকুক না কেন, শাস্তি প্রদানের উদ্দেশ্যে উক্ত কার্যবিধির অধীন সেশন আদালতের উপর ন্যস্ত সকল ক্ষমতা শ্রম আদালতের ও থাকিবে।

(৪) শ্রম আদালত কোন অপরাধের বিচারকালে আদালতের সদস্যগণ ছাড়া বিচারকার্য পরিচালনা করিবে।

২১৬ (১) অপরাধ ব্যতীত এই আইনের অধীন অন্য কোন বিষয়, প্রশ্ন বা বিরোধের বিচার ও নিস্পত্তির উদ্দেশ্যে, শ্রম আদালত একটি দেওয়ানী আদালত বলিয়া গণ্য হইবে এবং দেওয়ানী কার্যবিধির অধীন দেওয়ানী আদালতের উপর ন্যস্ত সকল ক্ষমতা নিম্নবর্নিত ক্ষমতাসহ, শ্রম আদালতের ও থাকিবে, যথাঃ

(ক) কোন ব্যক্তির উপস্থিতি এবং তাহাকে শপথাধীন জবানবন্দী এবং সাক্ষ্য প্রদানে বাধ্য করা;

(খ) কোন দলিল বা বস্তু হাজির করিতে বাধ্য করা;

(গ) সাক্ষ্য গ্রহনের জন্য অথবা দলিল পরীক্ষার জন্য কমিশন প্রেরণ করা;

(ঘ) কোন পক্ষের আদালতে অনুপস্থিতির ক্ষেত্রে মামলায় একতরফা সিদ্ধান্ত প্রদান করা;

(ঙ) একতরফা সিদ্ধান্ত বাতিল করা;

(চ) কোন পক্ষের অনুপস্থিতির কারণে প্রদত্ত মামলা খারিজের আদেশ বাতিল করা;এবং

(ছ) মামলার উদ্দেশ্যে ব্যাহত রোধ করার লক্ষ্যে শ্রম আদালত যে কোন পক্ষের উপর অর্ন্তবর্তীকালীন আদেশ জারী করিতে পারিবে।

(২) এই আইন সাপেক্ষে, কোন শ্রম আদালতে কোন দরখাস্ত বা দলিল পেশ করা প্রদর্শন করা অথবা লিপিবদ্ধ করার জন্য অথবা উহা হইতে কোন দলিল নেওয়ার জন্য কোন কোর্ট-

৩। **Act No. XIX of 1973 এর section 20 এর সংশোধন।**—উক্ত Act এর section 20 এর sub-section (2) এর পর নিম্নরূপ sub-section (2A) এবং (2B) সন্নিবেশিত হইবে, যথাঃ—

"(2A) A copy of judgement under the seal and signature of the Registrar of a Tribunal shall be provided, free of cost, to the prosecution and the accused person on the date of delivery of the judgment.

(2B) Notwithstanding anything contained in any other law, rule or legal instrument for the time being in force, when a coy of Judgement is provided under sub-section (2A), it shall be used as certified copy of the judgement of the Tribunal for the purpose of preferring an appeal under section 21."।

৪। **Act No. XIX of 1973 এর seciton 21 এর সংশোধন।**—উক্ত Act এর section 21 এর sub-section (3) এর "Sixty days" এর পরিবর্তে "thirty days" শব্দগুলি প্রতিস্থাপিত হইবে।

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Bangladesh Legal Practitioners and Bar Council Order, 1972 এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পুরণকল্পে Bangladesh Legal Practitioners and Bar Council Order, 1972 (President's Order No. 46 of 1972) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু, এতদ্বারা নিম্নরূপ আইন করা হইল ঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।**—(১) এই আইন Bangladesh Legal Practitioners and Bar Council (Amendment) Act, 2012 নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **President's Order No. 46 of 1972 এ নূতন Article 6A এর সন্নিবেশ।**—Bangladesh Legal Practitioners and Bar Council Order, 1972 (President's Order No. 46 of 1972),অতঃপর উক্ত Order বলিয়া উল্লিখিত, এর Article 6 এর পর নিম্নরূপ নূতন Article 6A সন্নিবেশিত হইবে, যথা ঃ—

"6A. There shall be a Secretary of the Bar Council appointed by the Government from amongst the District Judges or Additional District Judges on such terms and conditions as may be determined by it."।

৩। **President's Order No. 46 of 1972 এর Article 7 এর বিলোপ।**—উক্ত Order এর Article 7 বিলুপ্ত হইবে।

৪। **President's Order No. 46 of 1972 এর Aticle 11 এর সংশোধন।**—উক্ত Order এর Article 11 এর clause (1) এর sub-clause (b) বিলুপ্ত হইবে।

৫। **President's Order No. 46 of 1972 এ নূতন Article 11B এর সন্নিবেশ।**—উক্ত Order এর বিলুপ্ত Article 11A এর পর নিম্নরূপ নূতন Article 11B সন্নিবেশিত হইবে, যথা ঃ—

"11B. (1) Notwithstanding anything contained in any other law for the time being in force or in this Order or rules made thereunder, there shall be an enrolment committee consisting of following members for the enrolment of Advocates desiring to practice in the High Court Division of the Supreme Court or any other Court Subordinate to it, namely :—

(a) a Chairman to be nominated by the Chief Justice from amongst the Judges of the Appellate Division;

(b) two members to be nominated by the Chief Justice from amongst the Judges of the High Court Division;

(c) Attorney-General for Bangladesh;

(d) one member elected by the Bar Council from amongst its members.

(2) The procedure of the enrolment of Advocates and the business of the enrolment committee shall be regulated in such manner as may be determined by it."।

৬। **President's Order No. 46 of 1972 এর Article 40 এর সংশোধন।**—উক্ত Order এর Article 40 এর clause (1) এর পরিবর্তে নিম্নরূপ clause (1) প্রতিস্থাপিত হইবে, যথা ঃ—

"(1) The Bar Council may, with the prior approval of the Government, by notification in the official Gazette, make rules to carry out the purposes of this Order."।

৭। **রহিতকরণ ও হেফাজত।**—(1) Bangladesh Legal Practitioners and Bar Council (Amendment) Ordinance, 2012 (২০১২ সনের ৯ নং অধ্যাদেশ) এতদ্বারা রহিত করা হইল।

(২) উক্তরূপ রহিতকরণ সত্ত্বেও রহিত অধ্যাদেশের অধীন কৃত বা গৃহীত কার্যক্রম চলমান থাকিলে উহা এমনভাবে চলমান ও অব্যাহত থাকিবে যেন উহা এই আইনের অধীন কৃত বা গৃহীত হইয়াছে।

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সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন আইন, ১৯৯৩ এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে, সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন আইন, ১৯৯৩ (১৯৯৩ সনের ১৫ নং আইন) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইলঃ—

১। **সংক্ষিপ্ত শিরোনামা ও প্রবর্তন।**—(১) এই আইন সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সংশোধন) আইন, ২০১২ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **১৯৯৩ সনের ১৫ নং আইনের পূর্ণাঙ্গ শিরোনামা সংশোধন।**—সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন আইন, ১৯৯৩ (১৯৯৩ সনের ১৫ নং আইন), অতঃপর উক্ত আইন বলিয়া উল্লিখিত, এর পূর্ণাঙ্গ শিরোনামায় উল্লিখিত "সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন" শব্দগুলির পরিবর্তে "বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন" শব্দগুলি প্রতিস্থাপিত হইবে।

৩। **১৯৯৩ সনের ১৫ নং আইনের প্রস্তাবনা সংশোধন।**—উক্ত আইনের প্রস্তাবনায় উল্লিখিত "সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন" শব্দগুলির পরিবর্তে "বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন" শব্দগুলি প্রতিস্থাপিত হইবে।

৪। **১৯৯৩ সনের ১৫ নং আইন সংশোধন।**—উক্ত আইনের সর্বত্র, যথাক্রমে, "সদস্য" শব্দের পরিবর্তে "কমিশনার", "সদস্যগণ" শব্দের পরিবর্তে "কমিশনারগণ", "সদস্যকে" শব্দের পরিবর্তে "কমিশনারকে", "সদস্যবৃন্দ" শব্দের পরিবর্তে "কমিশনারবৃন্দ", এবং "সদস্যপদে" শব্দের পরিবর্তে "কমিশনারপদে", শব্দ প্রতিস্থাপিত হইবে।

৫। **১৯৯৩ সনের ১৫ নং আইনের ধারা ১ এর সংশোধন।**—উক্ত আইনের ধারা ১ এর উপ-ধারা (১) এ উল্লিখিত "সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন" শব্দগুলির পরিবর্তে "বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন" শব্দগুলি প্রতিস্থাপিত হইবে।

৬। **১৯৯৩ সনের ১৫ নং আইনের ধারা ২ এর সংশোধন।**—উক্ত আইনের ধারা ২ এর উপ-ধারা (১) এর—

(ক) দফা (ক) এ উল্লিখিত "সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন" শব্দগুলির পরিবর্তে "বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) দফা (ক) এর পর নিম্নরূপ দফা (কক) সন্নিবেশিত হইবে, যথা ঃ—

"(কক) "কমিশনার" অর্থ কমিশনের কমিশনার;";

(গ) দফা (গ) এ উল্লিখিত "সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন" শব্দগুলির পরিবর্তে "কমিশনের" শব্দ প্রতিস্থাপিত হইবে;

(ঘ) দফা (চ) বিলুপ্ত হইবে।

৭। **১৯৯৩ সনের ১৫ নং আইনের ধারা ৩ এর সংশোধন।**—উক্ত আইনের ধারা ৩ এর উপ-ধারা (১) এ উল্লিখিত "সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন" শব্দগুলির পরিবর্তে "বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন" শব্দগুলি প্রতিস্থাপিত হইবে।

৮। ১৯৯৩ সনের ১৫ নং আইনের ধারা ৫ এর সংশোধন।—উক্ত আইনের ধারা ৫ এর উপ-ধারা (৬) এ উল্লিখিত "তিন বৎসর" শব্দগুলির পরিবর্তে "চার বৎসর" শব্দগুলি প্রতিস্থাপিত হইবে।

৯। ১৯৯৩ সনের ১৫ নং আইনের ধারা ৮ এর সংশোধন।—উক্ত আইনের ধারা ৮ এর উপ-ধারা (২) এর—

(ক) দফা (ঝ) এর পর নিম্নরূপ দুইটি নূতন দফা (ঝঝ) ও (ঝঝঝ) সংযোজিত হইবে, যথা ঃ—

"(ঝঝ) আপাততঃ বলবৎ অন্য কোন আইনে যাহা কিছু থাকুক না কেন, বাংলাদেশ ব্যাংককে অবহিতক্রমে, কোন ব্যাংক, বীমা ও আর্থিক প্রতিষ্ঠান, সংবিধিবদ্ধ সংস্থা বা অন্যান্য কর্তৃপক্ষ হইতে সিকিউরিটিজ লেনদেন সম্পর্কিত তদন্তাধীন ব্যাংক হিসাব সংক্রান্ত তথ্য ও রেকর্ড তলব;

(ঝঝঝ) সরকারের পূর্বানুমোদনক্রমে, দেশী ও বিদেশী কর্তৃপক্ষ বা সংস্থার সহিত সিকিউরিটিজ সম্পর্কিত সহযোগিতা ও তথ্য বিনিময় চুক্তি সম্পাদন;";

(খ) দফা (ঠ) এর পর নিম্নরূপ দফা (ঠঠ) সংযোজিত হইবে, যথা ঃ—

"(ঠঠ) ডেরিভেটিভসহ সিকিউরিটিজ লেনদেন সংক্রান্ত সেটেলমেন্টের জন্য স্থাপিত ক্লিয়ারিং কর্পোরেশনের কার্য নিয়ন্ত্রণ;"।

১০। ১৯৯৩ সনের ১৫ নং আইনের ধারা ৯ এর সংশোধন।—উক্ত আইনের ধারা ৯ এর—

(ক) উপ-ধারা (১) এ উল্লিখিত "সময় সময় প্রদত্ত নির্দেশাবলী সাপেক্ষে" শব্দগুলির পরিবর্তে "অনুমোদিত সাংগঠনিক কাঠামোর ভিত্তিতে" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (২) এর পর নিম্নরূপ নূতন উপ-ধারা (৩) সংযোজিত হইবে, যথা ঃ—

"(৩) বাংলাদেশ ব্যাংকের কর্মকর্তা ও কর্মচারীগণকে প্রদেয় বেতন, ভাতা ও অন্যান্য সুবিধাদির সহিত সামঞ্জস্যপূর্ণ করিয়া উপ-ধারা (২) এর অধীন কমিশনের কর্মকর্তা ও কর্মচারীদের বেতন, ভাতা ও অন্যান্য সুবিধাদি সম্পর্কিত চাকুরীর শর্তাবলী নির্ধারণ করা যাইবে।"।

১১। ১৯৯৩ সনের ১৫ নং আইনে নূতন ধারা ৯ক এর সন্নিবেশ।—উক্ত আইনের ধারা ৯ এর পর নিম্নরূপ নূতন ধারা ৯ক সন্নিবেশিত হইবে, যথা ঃ—

"৯ক। পরামর্শক বা উপদেষ্টা নিয়োগ।—কমিশন, সরকারের পূর্বানুমোদনক্রমে, তদ্‌কর্তৃক নির্ধারিত শর্ত ও মেয়াদে, প্রয়োজনীয় সংখ্যক পরামর্শক বা উপদেষ্টা নিয়োগ করিতে পারিবে।"।

১২। ১৯৯৩ সনের ১৫ নং আইনের ধারা ১২ এর সংশোধন।—উক্ত আইনের ধারা ১২ এর—

(ক) উপ-ধারা (১) এ উল্লিখিত "সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন" শব্দগুলির পরিবর্তে "বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (৩) এর পর নিম্নরূপ উপ-ধারা (৪) সংযোজিত হইবে, যথা ঃ—

"(৪) উপ-ধারা (৩) এ যাহা কিছুই থাকুক না কেন, উপ-ধারা (১) এর অধীন সরকারি, স্থানীয় কর্তৃপক্ষ বা অন্য কোন প্রতিষ্ঠান হইতে প্রাপ্ত অনুদান ব্যতীত কমিশন কর্তৃক প্রাপ্ত অর্থ কমিশন স্বীয় প্রয়োজনে ব্যয় করিতে পারিবে।"।

১৩। ১৯৯৩ সনের ১৫ নং আইনের ধারা ১৬ এর সংশোধন।—উক্ত আইনের ধারা ১৬ এ উল্লিখিত "বিশেষ নির্দেশ" শব্দগুলির পরিবর্তে "নীতিগত বিষয়ে বিশেষ সময় সময় নির্দেশ" শব্দগুলি প্রতিস্থাপিত হইবে।

১৪। ১৯৯৩ সনের ১৫ নং আইনের ধারা ১৮ এর সংশোধন।—উক্ত আইনের ধারা ১৮ এর উপ-ধারা (২) এর পর নিম্নরূপ দুইটি নূতন উপ-ধারা (২ক) ও (২খ) সন্নিবেশিত হইবে, যথাঃ—

"(২ক) অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, এই আইন বা তদধীন প্রণীত বিধির অধীন কমিশন কর্তৃক আরোপিত অর্থদণ্ডের ১৫ (পনের) শতাংশ অর্থ কমিশন কর্তৃক নির্ধারিত ব্যাংক হিসাবে জমা প্রদান না করিয়া উক্তরূপ দণ্ডাদেশের বিরুদ্ধে ধারা ২১ এর উপ-ধারা (১) এর অধীন আপীল বা উপ-ধারা (৫) এর অধীন পুনর্বিবেচনা বা কোন আদালতে কোন মামলা বা আইনগত কার্যধারা দায়ের করা যাইবে না।

(২খ) এই আইনের অধীন কমিশন কর্তৃক আরোপিত অর্থদণ্ড অনাদায়ী হইলে উহা বকেয়া ভূমি রাজস্ব হিসাবে আদায়যোগ্য হইবে।"।

১৫। ১৯৯৩ সনের ১৫ নং আইনে নূতন ধারা ২৬ক এর

সন্নিবেশ।—উক্ত আইনের ধারা ২৬ এর পর নিম্নরূপ নূতন ধারা ২৬ক সন্নিবেশিত হইবে, যথা ঃ—

"**২৬ক। ইংরেজিতে অনূদিত পাঠ প্রকাশ, ইত্যাদি।**—(১) সিকিউরিটিজ ও এক্সচেঞ্জ কমিশন (সংশোধন) আইন, ২০১২ কার্যকর হইবার পর সরকার, প্রয়োজনে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিতে পারিবে।

(২) এই আইনের বাংলা ও ইংরেজি পাঠের মধ্যে বিরোধের ক্ষেত্রে বাংলা পাঠ প্রাধান্য পাইবে।"।

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Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969) এর অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969) এর অধিকতর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু, এতদ্বারা নিম্নরূপ আইন করা হইল ঃ—

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।—(১) এই আইন Securities and Exchange (Amendment) Act, 2012 নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। Ordinance No. XVII of 1969 এর প্রস্তাবনার সংশোধন।—Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969), অতঃপর উক্ত Ordinance বলিয়া উল্লিখিত, এর প্রস্তাবনা অংশের দ্বিতীয় অনুচ্ছেদ বিলুপ্ত হইবে।

৩। Ordinance No. XVII of 1969 এর section 2 এর সংশোধন।—উক্ত Ordinance এর section 2 এর—

(১) clause (b) এর পরিবর্তে নিম্নরূপ clause (b) প্রতিস্থাপিত হইবে, যথা ঃ—

"(b) "bank" means a banking company as defined in the Banking Companies Act, 1991 (Act No. XIV of 1991);";

(২) clause (cc) এর পরিবর্তে নিম্নরূপ clause (cc) প্রতিস্থাপিত হইবে, যথা ঃ—

"(cc) "Commission" means the Securities and Exchange Commission constituted under the Securities and Exchange Commission Act, 1993 (Act No. 15 of 1993)";

(৩) clause (cc) এর পর নিম্নরূপ clause (ccc) ও (cccc) সন্নিবেশিত হইবে, যথা ঃ—

"(ccc) "Commodity Futures Contract" means an agreement to purchase or sell a particular commodity for delivery or settlement in the future at a price to be determined by a contract that obligates each party to fulfill the contract at the specified price and that may be settled by delivery, cash or offset at the Commodity Exchange duly registered with the Commission and in relation to Commodity Future the expression "commodity" includes,—

(i) agricultural, livestock, fishery, forestry, mining or energy goods, and any product that is manufactured or processed from any such goods; and

(ii) any other matter as may be notified by the Commission in the official gazette;

(cccc) "derivative" includes—

(i) a security derived from a debt instrument, share, loan, whether secured or unsecured, risk instrument or contract for differences or any other form of security;

(ii) a contract which derives its value from the prices, or index of prices, of underlying securities;";

(৪) clause (e) এর sub-clause (iii) এ দুইবার উল্লিখিত "Jobber" শব্দটির পরিবর্তে "Jobber or dealer" শব্দগুলি প্রতিস্থাপিত হইবে;

(৫) clause (h) এ উল্লিখিত "Jobber" শব্দটির পর "or dealer" শব্দগুলি সন্নিবেশিত হইবে;

(৬) clause (1) এর sub-clause (iii) এ উল্লিখিত "investment contract" শব্দগুলির পর একটি কমা বসিবে এবং অতঃপর "derivative, commodity futures contract, options contract, exchange-traded fund" শব্দগুলি, কমাগুলি ও হাইফেন সন্নিবেশিত হইবে।

৪। **Ordinance No. XVII of 1969 এর section 2A এর সংশোধন।**—উক্ত Ordinance এর section 2A এর—

(ক) sub-section (1) এ উল্লিখিত "No company" শব্দগুলির পরিবর্ত "No issuer, or no company" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে; এবং

(খ) sub-section (2) এ উল্লিখিত "No company" শব্দগুলির পরিবর্তে "No issuer, or no company" শব্দগুলি ও কমা প্রতিস্থাপিত হইবে।

৫। **Ordinance No. XVII of 1969 এর section 8 এর সংশোধন।**— উক্ত Ordinance এর section 8 এর—

(ক) sub-section (2) এর প্রান্তঃস্থিত ফুলস্টপের পরিবর্তে কোলন প্রতিস্থাপিত হইবে এবং অতঃপর নিম্নরূপ শর্তাংশ সন্নিবেশিত হইবে, যথাঃ—

"Provided that business of security which is de-listed or not listed may be transacted in such manner as the Commission may direct.";

(খ) sub-section (3) এ উল্লিখিত "dealer" শব্দটির পরিবর্তে "Jobber or dealer" শব্দগুলি প্রতিস্থাপিত হইবে; এবং

(গ) sub-section (4) এ উল্লিখিত "jobber" শব্দটির পরিবর্তে "Jobber or dealer" শব্দগুলি প্রতিস্থাপিত হইবে।

৬। **Ordinance No. XVII of 1969 এর section 9 এর সংশোধন।**—উক্ত Ordinance এর section 9 এর sub-section এর দ্বিতীয় লাইনে উল্লিখিত "fourteen" শব্দটির পরিবর্তে "thirty" শব্দ এবং শেষ লাইনে উল্লিখিত "fourteen" শব্দটির পরিবর্তে "fifteen" শব্দ প্রতিস্থাপিত হইবে।

৭। **Ordinane No. XVII of 1969 এ নতুন section 19A ও 19B এর সংযোজন।**—উক্ত Ordinance এর section 19 এর পর নিম্নরূপ দুইটি নতুন sections যথাক্রমে 19A ও 19B সংযোজিত হইবে, যথা ঃ—

"19A. Maintenance of secrecy by the Commission, etc.—The existing and former Chairman, Member and employee of the Commission shall not disclose or communicate to any person not legally entitled thereto any information which has been entrusted to him or which he has obtained or to which he had access in the course of the performance of any functions under this Ordinance.".

"19B. Penalty for disclosure of information.—(1) The disclosure of any information in contravention of section 19 or 19A for the purpose of making profit through insider trading shall be an offence.

(2) Whoever contravence sub-section (1) shall be punishable with imprisonment for a term which may extend to five years, or with fine not less than taka five lakh, or with both.".

৮। **Ordinance No. XVII of 1969 এর section 20A এর সংশোধন।**—উক্ত Ordinance এর section 20A এ উল্লিখিত "Where" শব্দটির পরিবর্তে Notwithstanding anything contained in any other law for the time being in force, where" শব্দগুলি ও কমাটি প্রতিস্থাপিত হইবে।

৯। **Ordinance No. XVII of 1969 এর section 21 এর সংশোধন।**—উক্ত Ordinance এর section 21 এর—

(ক) sub-section (1) এর clause (b) এ উল্লিখিত

"Who is directly or indirectly the beneficial owner of not less than ten per cent of a listed security" শব্দগুলি বিলুপ্ত হইবে;

(খ) sub-section (2) এর পরিবর্তে নিম্নরূপ sub-section (2) ও (2a) প্রতিস্থাপিত হইবে, যথা ঃ—

"(2) where an enquiry under sub-section (1) has been undertaken, every member, director, manager or other officers of the Stock Exchange or the issuer to which or to whoes member, director, auditor or officer of the enquiry relates, an insurance company as defined in the Insurance Act, 2010, a bank, a financial institution as defined in the Financial Institutions Act, 1993, and every other person considered by the person conducting the enquiry to be capable of providing information which is, or may be relevant to that enquiry, hall furnish such information as the person conducting the enquiry may require.

(2a) Notwithstanding anything contained in any other law for the time being in force in conducting enquiry under sub-section (1), the Commission, Keeping the Bangladesh Bank informed, may seek information regarding bank account from any bank, or any financial institution or organization, as the case may be, so far as it relates to the transaction of security." ।

১০। **Ordinance No. XVII of 1969 এ নতুন section 22A এর সংযোজন।**—উক্ত Ordinance এর section 22 এর পর নিম্নরূপ নতুন section 22A সংযোজিত হইবে, যথাঃ—

"22A. Restriction in respect of filing of suit.—Notwithstanding anything contained in any other law for the time being in force, no legal proceeding before any Court can be brought challenging an order of penalty imposed by the Commission unless an amount of 15% (fifteen percent) of such penalty is deposited in the Commission." ।

১১। **Ordinance No. XVII of 1969 এ নতুন section 25B এর সংযোজন।**—উক্ত Ordinance এর section 25A এর পর নিম্নরূপ নতুন section 25B সংযোজিত হইবে, যথা ঃ—

"25B. Power to establish Special Tribunal —(1) For the purpose of this Ordinance, the Government may, by notification in the official gazette, establish one or more Special Tribunal.

(2) A Special Tribunal shall consist of a Sessions Judge or Additional Sessions Judge, who shall be appointed by the Government and shall have all the powers conferred by the Code of Criminal Procedure, 1898 (Act No. V of 1898), on a Court of Sessions exercising original jurisdiction.

(3) The Court of Sessions may, off its own, or upon an application made by the Commission, transfer at any stage of the trial, any case from his Court to another Special Tribunal.

(4) The Special Tribunal shall try the case from such stage wherefrom the case was so transferred." ।

১২। **Ordinance No. XVII of 1969 এ নতুন section 32A এর সংযোজন।**—উক্ত Ordinance এর section 32 এর পর নিম্নরূপ নতুন section 32A সংযোজিত হইবে, যথা ঃ—

"32A. Regulation of business of Commodity Futures Contract, etc.—The business of Commodity Future Contract or Options Contract, in the Commodity Exchange, shall be regulated in such manner and on payment of such fees and charges as may be prescribed.

Explanation : For the purpose of this section, "Commodity Exchange" means a company that

provides or, proposes to provide, the physical facilities necessary for trading in Commodity Futures Contract or Options Contract." ।

১৩। **Ordinance No. XVII of 1969 এর section 34 এর সংশোধন।**—উক্ত Ordinance এর section 34 এর sub-section (2) এর CLAUSE (xviii) এ উল্লিখিত "jobber" শব্দটির পরিবর্তে "jobber or dealer" শব্দগুলি প্রতিস্থাপিত হইবে।

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মূল্য সংযোজন কর, সম্পূরক শুল্ক এবং টার্নওভার কর আরোপের ক্ষেত্র বিস্তৃতকরণ এবং কর আদায় প্রক্রিয়া সহজীকরণ সংক্রান্ত বিধি-বিধান সুসংহতকরণ এবং আনুষঙ্গিক অন্যান্য বিষয়ে বিধান প্রণয়নকল্পে প্রণীত আইন

Value Added Tax and Supplementary Tax Act, 2012

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জ্বালানি নিরাপত্তা নিশ্চিত করিবার উদ্দেশ্যে টেকসই ও নবায়নযোগ্য জ্বালানি উন্নয়ন কর্তৃপক্ষ প্রতিষ্ঠার লক্ষ্যে প্রণীত আইন

যেহেতু বৈশ্বিক উষ্ণতা নিয়ন্ত্রণ, প্রাকৃতিক বিপর্যয় সংক্রান্ত ঝুঁকি হ্রাস এবং জ্বালানি নিরাপত্তার প্রয়োজনে জীবাশ্ম-জ্বালানির উপর নির্ভরশীলতা ক্রমান্বয়ে হ্রাস করিয়া নবায়নযোগ্য জ্বালানির প্রসার হওয়া আবশ্যক; এবং

যেহেতু জ্বালানি সংরক্ষণ ও ইহার দক্ষ ব্যবহারের মাধ্যমে জ্বালানির অপচয় রোধ এবং বৈশ্বিক উষ্ণতা হ্রাসে ভূমিকা রাখা সম্ভব; এবং

যেহেতু জ্বালানি নিরাপত্তা নিশ্চিত করিবার উদ্দেশ্যে টেকসই ও নবায়নযোগ্য জ্বালানি উন্নয়ন কর্তৃপক্ষ প্রতিষ্ঠা এবং আনুষঙ্গিক বিষয়াদি সম্পর্কে বিধান করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইল ঃ—

প্রথম অধ্যায়

প্রারম্ভিক

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।**—(১) এই আইন কেটসই ও নবায়নযোগ্য জ্বালানি উন্নয়ন কর্তৃপক্ষ আইন, ২০১২ নামে অভিহিত হইবে।

(২) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যে তারিখ নির্ধারণ করিবে সেই তারিখে ইহা কার্যকর হইবে।

২। **সংজ্ঞা।**—বিষয় বা প্রসঙ্গের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে—

(১) **"অ-নবায়নযোগ্য জ্বালানি"** অর্থ প্রাকৃতিক গ্যাস, কয়লা পিট কয়লা, খনিজ তেল, অন্যান্য জীবাশ্ম-জ্বালানি, বিদ্যুৎ ও আনবিক শক্তি হইতে প্রাপ্ত শক্তি এবং সরকার কর্তৃক সময় সময় সরকারি গেজেটে প্রজ্ঞাপন দ্বারা অ-নবায়নযোগ্য জ্বালানি হিসাবে ঘোষিত অন্য কোন উৎস হইতে প্রাপ্ত জ্বালানি ও শক্তি;

(২) **"কর্তৃপক্ষ"** অর্থ ধারা ৪ এর অধীন প্রতিষ্ঠিত টেকসই ও নবায়নযোগ্য জ্বালানি উন্নয়ন কর্তৃপক্ষ;

(৩) **"ক্লিন ডেভেলপমেন্ট মেকনিজম (সিডিএম)"** অর্থ এই আইনের অধীন প্রণীত বিধিতে বর্ণিত ক্লিন ডেভেলপমেন্ট মেকানিজম;

(৪) **"চেয়ারম্যান"** অর্থ পরিচালনা পর্ষদের চেয়ারম্যান;

(৫) **"জ্বালানি"** অর্থ নবায়নযোগ্য ও অ-নবায়নযোগ্য জ্বালানি এবং এইরূপ জ্বালানি ব্যবহারের মাধ্যমে সৃষ্টি শক্তি;

(৬) **"জ্বালানি নিরীক্ষা (Energy Audit)"** অর্থ ডেজিগনেটেড কঞ্জুমার এর জ্বালানি ব্যবহারকারী যন্ত্র ও সরঞ্জাম, জ্বালানি ব্যবহারের প্রক্রিয়া যাচাই, পরিবীক্ষণ ও বিশ্লেষণ এর মাধ্যমে জ্বালানির দক্ষতা নিরূপণ, তুলনামূলক জ্বালানি ব্যয় সংক্রান্ত লাভ

ক্ষতির হিসাব এবং নবায়নযোগ্য জ্বালানি প্রতিস্থাপনের ক্ষেত্র সনাক্তকারণপূর্বক জ্বালানি ব্যবহার হ্রাসের কর্মপরিকল্পনা সম্বলিত কারিগরি প্রতিবেদনও ইহার অন্তর্ভুক্ত হইবে;

(৭) **"জ্বালানি নিরীক্ষক (Energy Auditor)"** অর্থ কর্তৃপক্ষ কর্তৃক নির্ধারিত যোগ্যতাসম্পন্ন ব্যক্তি বা প্রতিষ্ঠান, যিনি বা যাহারা বিভিন্ন শিল্প ও ব্যবসায়িক প্রতিষ্ঠান, বৃহৎ ইমারত এবং জ্বালানি ব্যবহারকারী অন্যান্য স্থাপনায়, প্রবিধান দ্বারা নির্ধারিত পদ্ধতিতে, জ্বালানি নিরীক্ষা কার্যক্রম পরিচালনা করিতে সক্ষম;

(৮) **"জ্বালানি ব্যবস্থাপক (Energy Manager)"** অর্থ জ্বালানি ম্যানেজার হিসেবে দায়িত্ব পালনের জন্য কর্তৃপক্ষ কর্তৃক নির্ধারিত যোগ্যতাসম্পন্ন ব্যক্তি, যিনি সার্বক্ষণিকভাবে কর্তৃপক্ষ কর্তৃক নির্ধারিত প্রতিষ্ঠানে জ্বালানি ব্যবহার কার্যক্রম পরিবীক্ষণ, জ্বালানির অদক্ষ এবং অপচয়মূলক ব্যবহার হ্রাস, প্রতিবেদন প্রণয়ন, সংরক্ষণ এবং উহা উপযুক্ত কর্তৃপক্ষকে সরবরাহ করেন;

(৯) **"জ্বালানি সম্পদ"** অর্থ দেশে উৎপাদিত অথবা বিদেশ হইতে আমদানিকৃত সকল ধরনের প্রাথমিক ও বাণিজ্যিক জ্বালানি অথবা রূপান্তরিত জ্বালানি, প্রাকৃতিক গ্যাস, খনিজ তেল, কয়লা, পিট কয়লা, বিদ্যুৎ, অন্যান্য জীবাশ্ম-জ্বালানি, বায়োগ্যাস, বায়ো-মাস, বায়ো-ফুয়েল, হাইড্রোজেন সেল, জিওথারমাল, জোয়ার-ভাটা ও ঢেউ হইতে প্রাপ্ত শক্তি, সৌরশক্তি, বায়ুশক্তি, হাইড্রোপাওয়ার, আনবিক শক্তি, ইত্যাদি;

(১০) **"জ্বালানি সংরক্ষণ (Energy Conservation)"** অর্থ জ্বালানির দহন দক্ষতা উন্নতকরণ, জ্বালানির অপচয় রোধ, নির্গত তাপ পুনরুদ্ধার ও ব্যবহার, ব্যবহৃত জ্বালানির পরিবর্তে অধিকতর দক্ষতা সম্পন্ন পরিবেশ বান্ধব বিকল্প জ্বালানি ব্যবহার, জ্বালানির দক্ষ ব্যবহার, ইত্যাদি পদক্ষেপের মাধ্যমে জ্বালানি সংরক্ষণ;

(১১) **"টেকসই জ্বালানি"** অর্থ নবায়নযোগ্য জ্বালানির উন্নয়ন এবং জ্বালানি সংরক্ষণ ও উহার দক্ষ ব্যবহার সংশ্লিষ্ট কার্যক্রম;

(১২) **"ডেজিগনেটেড কঞ্জুমার"** অর্থ বিধি দ্বারা নির্ধারিত পদ্ধতিতে ডেজিগনেটেড কঞ্জুমার হিসাবে ঘোষিত গ্রাহক;

(১৩) **"তহবিল"** অর্থ ধারা ১৯ এ উল্লিখিত টেকসই ও নবায়নযোগ্য জ্বালানি উন্নয়ন কর্তৃপক্ষ তহবিল;

(১৪) **"নবায়নযোগ্য জ্বালানি"** অর্থ বায়োমাস (জ্বালানি কাঠ, ধানের তুষ, আখের ছোবড়া, বর্জ্য ইত্যাদি), বায়ো-ফুয়েল, বায়োগ্যাস, হইড্রো পাওয়ার, সৌর শক্তি, বায়ু শক্তি, হাইড্রোজেন সেল, জিওথারমাল, জোয়ার-ভাটা ও ঢেউ হইতে প্রাপ্ত জ্বালানি ও শক্তি এবং সরকার কর্তৃক সময় সময়, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা নবায়নযোগ্য জ্বালানি হিসাবে ঘোষিত অন্য কোন উৎস হইতে প্রাপ্ত জ্বালনি ও শক্তি;

(১৫) **"নির্ধারিত"** অর্থ বিধি বা প্রবিধান দ্বারা নির্ধারিত;

(১৬) **"পরিচালনা পর্ষদ"** অর্থ ধারা ৯ এর অধীন গঠিত পরিচালনা পর্ষদ;

(১৭) **"প্রবিধান"** অর্থ এই আইনের অধীন প্রণীত প্রবিধান;

(১৮) **"ফুয়েল"** অর্থ জ্বালানি দ্রব্য;

(১৯) **"বিধি"** অর্থ এই আইনের অধীন প্রণীত বিধি;

(২০) **"সদস্য"** অর্থ পরিচালনা পর্ষদের কোন সদস্য।

৩। **আইনের প্রাধান্য**।—আপতত বলবৎ অন্য কোন আইনে যাহা কিছুই থাকুক না কেন, এই আইনের উদ্দেশ্য পূরণকল্পে অত্র আইনের উল্লিখিত বিধিনাবলী প্রাধ্যন্য পাইবে।

দ্বিতীয় অধ্যায়

কর্তৃপক্ষ প্রতিষ্ঠা এবং উহার কার্যাবলী, ইত্যাদি

৪। **কর্তৃপক্ষ প্রতিষ্ঠা**।—(১) এই আইন কার্যকর হইবার পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, টেকসই ও নবায়নযোগ্য জ্বালানি উন্নয়ন কর্তৃপক্ষ নামে একটি কর্তৃপক্ষ প্রতিষ্ঠা করিবে।

(২) কর্তৃপক্ষ একটি সংবিধিবদ্ধ সংস্থা হইবে, যাহার স্থায়ী ধারাবাহিকতা ও একটি সাধারণ সীল মোহর থাকিবে এবং সরকারের পূর্বানুমোদনক্রমে, ইহার স্থাবর ও অস্থাবর উভয় প্রকার সম্পত্তি অর্জন করিবার, অধিকারে রাখিবার এবং হস্তান্তর করিবার ক্ষমতা থাকিবে এবং উক্ত নামে ইহা মামলা দায়ের করিতে পারিবে এবং ইহার বিরুদ্ধেও মামলা দায়ের করা যাইবে।

৫। **কর্তৃপক্ষের কার্যালয়**।—(১) কর্তৃপক্ষের প্রধান কার্যালয় ঢাকায় থাকিবে।

(২) কর্তৃপক্ষ, সরকারের পূর্বানুমোদনক্রমে, বাংলাদেশের যে কোন স্থানে উহার শাখা কার্যালয় স্থাপন করিতে পারিবে।

৬। **কর্তৃপক্ষের দায়িত্ব ও কার্যাবলী**।—কর্তৃপক্ষের দায়িত্ব ও কার্যাবলী হইবে নিম্নরূপ, যথা ঃ—

(১) বিদ্যুৎ ও জ্বালানির সংরক্ষণ এবং ইহার দক্ষ ব্যবহার সম্পর্কে জনসচেতনতা সৃষ্টি ও উদ্বুদ্ধকরণের লক্ষ্যে প্রয়োজনীয় পদক্ষেপ গ্রহণ;

(২) বিদ্যুৎ ও জ্বালানি দক্ষ যন্ত্রপাতি ব্যবহারে উৎসাহ এবং জ্বালানি ও বিদ্যুৎ ব্যবহারকারী যন্ত্রপাতি প্রমিতকরণ-সহ উক্ত যন্ত্রপাতি লেবেলিং এবং ব্যবস্থাকরণ;

(৩) জ্বালানি ব্যবহারকারী যন্ত্রপাতির মান নিরূপণ ও প্রত্যয়ন প্রদানের লক্ষ্যে পরীক্ষণাগার স্থাপন বা স্থাপনে সহায়তা প্রদান;

(৪) জ্বালানি সংরক্ষণ ও দক্ষ ব্যবহার সংক্রান্ত গবেষণা ও উন্নয়ন কাজ উৎসাহ প্রদান, এতদ্‌সংশ্লিষ্ট কাজ বা প্রকল্প বাস্তবায়নে উদ্ভাবনীমূলক অর্থায়নের ব্যবস্থা গ্রহণ এবং এতদ্‌বিষয়ে প্রয়োজনীয় প্রশিক্ষণের ব্যবস্থা গ্রহণ;

(৫) জ্বালানি সাশ্রয়ী ইমারত নির্মাণ বিধি প্রণয়ন ও উহা বাস্তবায়নে সরকারকে সহায়তা প্রদান;

(৬) জ্বালানি ব্যবস্থাপক ও জ্বালানি নিরীক্ষক নিয়োগ ও স্বীকৃত জ্বালানি নিরীক্ষণ প্রতিষ্ঠান নির্বাচনের লক্ষ্যে মান ও যোগ্যতা যাচাই সংক্রান্ত প্রবিধান প্রণয়ন;

(৭) সরকারি, আধা-সরকারি ও স্বায়ত্তশাসিত প্রতিষ্ঠান-সমূহে জ্বালানি সংরক্ষণ ও উহার দক্ষ ব্যবহার কার্যক্রম বাস্তবায়ন সংশ্লিষ্ট কাজের সমন্বয় সাধন এবং প্রদর্শনীর মাধ্যমে বেসরকারি পর্যায়ে টেকসই জ্বালানির বাণিজ্যিক বাজার ব্যবস্থা গড়িয়া তোলা;

(৮) টেকসই জ্বালানি উন্নয়নের লক্ষ্যে প্রয়োজনীয় আইন, বিধি-বিধান প্রণয়নে সরকারকে সহায়তা প্রদান;

(৯) জ্বালানি অদক্ষ যন্ত্রপাতি চিহ্নিতকরণ এবং উহার উৎপাদন, আমদানি ও বিক্রয় করিবার লক্ষ্যে প্রয়োজনীয় পদক্ষেপ গ্রহণ;

(১০) জ্বালানি ব্যবহারকারী বিভিন্ন গ্রাহক বা গ্রাহকশ্রেনীকে ডেজিগনেটেড কঞ্জুমার হিসাবে ঘোষণার লক্ষ্যে প্রয়োজনীয় ব্যবস্থা গ্রহণ;

(১১) নবায়নযোগ্য জ্বালানি সম্পদ ও এতদ্‌সংশ্লিষ্ট বিভিন্ন প্রযুক্তির খতিয়ান (inventory) প্রস্তুতকরণসহ উহার হালনাগাদকরণ এবং উহাদের ভৌগোলিক অবস্থান চিহ্নিতকরণ ও বাণিজ্যিকভাবে ব্যবহারের উপযুক্ততা যাচাইপূর্বক আহরণের সম্ভাব্যতা নিরূপণ;

(১২) সিডিএম অথবা অনুরূপ অন্য কোন কার্যক্রম সংশ্লিষ্ট প্রকল্প প্রণয়নে প্রয়োজনীয় কারিগরি সহায়তা প্রদান;

(১৩) নবায়নযোগ্য জ্বালানির ব্যবহার সম্প্রসারণের লক্ষ্যে স্বল্প, মধ্য ও দীর্ঘ মেয়াদি লক্ষ্যমাত্রা নির্ধারণপূর্বক উন্নয়ন পরিকল্পনা প্রণয়ন ও উহা বাস্তবায়নে প্রয়োজনীয় পদক্ষেপ গ্রহণ;

(১৪) নবায়নযোগ্য জ্বালানি বিষয়ক গবেষণা, উন্নয়ন, ডেমনস্ট্রেশন ও প্রশিক্ষণ কাজে কারিগরি ও আর্থিক সহায়তা প্রদান;

(১৫) সরকারি ও বেসরকারি পর্যায়ে নবায়নযোগ্য জ্বালানি ব্যবহারে উৎসাহ প্রদানের লক্ষ্যে জনসচেতনতা সৃষ্টি ও উদ্বুদ্ধকরণের প্রয়োজনীয় পদক্ষেপ গ্রহণ;

(১৬) নবায়নযোগ্য জ্বালানি খাতে বেসরকারি উদ্যোক্তাদের আকৃষ্ট করার লক্ষ্যে প্রয়োজনীয় অর্থের উৎস চিহ্নিতকরণে সহায়তা প্রদান এবং এইখাতে বিনিয়োগ উৎসাহ প্রদানের লক্ষ্যে প্রণোদনামূলক আর্থিক সুবিধা প্রদানের ব্যবস্থা করা;

(১৭) নবায়নযোগ্য জ্বালানির ট্যারিফ নির্ধারণ সংক্রান্ত বিষয়ে সরকারের সাথে আলোচনাপূর্বক বাংলাদেশ এনার্জি রেগুলেটরী কমিশন আইন, ২০০৩ (২০০৩ সনের ১৩ নং আইন) এর ধারা ৪ এর অধীন প্রতিষ্ঠিত বাংলাদেশ এনার্জি রেগুলেটরী কমিশনে প্রস্তাব প্রেরণ;

(১৮) সরকারি আধা-সরকারি ও স্বায়ত্তশাসিত প্রতিষ্ঠান-সমূহে নবায়নযোগ্য জ্বালানির ব্যবহার বাস্তবায়ন সংশ্লিষ্ট কাজের সমন্বয় সাধনে সরকারকে সহযোগিতা প্রদান;

(১৯) প্রদর্শনী প্রকল্প গ্রহণের মাধ্যমে বেসরকারি পর্যায়ে নবায়নযোগ্য জ্বালানি ও জ্বালানি সাশ্রয়ী কার্যক্রম বাণিজ্যিকীকরণে উৎসাহ প্রদান;

(২০) নাবায়নযোগ্য জ্বালানি নীতিমালাসহ এই আইন সংশ্লিষ্ট অন্যান্য নীতিমালা প্রণয়ন, হালনাগাদকরণ ও বাস্তবায়নে সরকারকে প্রয়োজনীয় সহায়তা প্রদান;

(২১) টেকসই জ্বালানি বিষয়ে বিভিন্ন মন্ত্রণালয়, বিভাগ এবং সংস্থার সহিত প্রয়োজনীয় সমন্বয় সাধন;

(২২) টেকসই জ্বালনি বিষয়ে আঞ্চলিক ও আন্তর্জাতিক সংস্থার সহিত যোগাযোগ স্থাপন;

(২৩) বিধি দ্বারা বা সরকার কর্তৃক, সময় সময়, নির্ধারিত অন্যান্য দায়িত্ব পালন।

৭। কর্তৃপক্ষের ফি আরোপের ক্ষমতা।—এই আইনের অধীন সম্পাদিত কোন কাজের জন্য কর্তৃপক্ষ, সরকারের পূর্বানুমোদনক্রমে, উপযুক্ত ফি নির্ধারণ করিতে পারিবে।

তৃতীয় অধ্যায়

ব্যবস্থাপনা সংক্রান্ত বিষয়াবলী

৮। ব্যবস্থাপনা।—কর্তৃপক্ষের সাধারণ নির্দেশনা ও ব্যবস্থাপনা পর্ষদের উপর ন্যস্ত থাকিবে এবং কর্তৃপক্ষ যে সকল ক্ষমতা প্রয়োগ ও কার্য সম্পাদন করিতে পারিবে পরিচালনা পর্ষদ সেই সকল ক্ষমতা প্রয়োগ ও কার্য সম্পাদন করিতে পারিবে।

৯। পরিচালনা পর্ষদ গঠন।—(১) একজন চেয়ারম্যান এবং অনধিক ১৬ (ষোল) জন সদস্য সমন্বয়ে কর্তৃপক্ষের পরিচালনা পর্ষদ গঠিত হইবে।

(২) চেয়ারম্যান ও ৫ (পাঁচ) জন সদস্য পরিচালনা পর্ষদের সার্বক্ষণিক সদস্য হইবেন এবং অন্যান্য সদস্যগণ অবৈতনিক সদস্য হইবেন।

(৩) চেয়ারম্যান এবং পরিচালনা পর্ষদের সার্বক্ষণিক সদস্যগণ সরকার কর্তৃক নিযুক্ত হইবেন এবং তাহাদের চাকুরির শর্তাবলী সরকার কর্তৃক স্থিরকৃত হইবে।

(৪) চেয়ারম্যান কর্তৃপক্ষের প্রধান নির্বাহী হইবেন।

(৫) বিধিতে উল্লিখিত মন্ত্রণালয়/বিভাগের ৬ (ছয়) জন প্রতিনিধি, এবং শিক্ষাবিদ, পেশাজীবী, কারিগরি বিশেষজ্ঞ, ব্যবসায়ী প্রতিনিধি বা বেসরকারি উন্নয়ন সংস্থা হইতে সরকার কর্তৃক মনোনীত ৫(পাঁচ) জন সদস্য পরিচালনা পর্ষদের অবৈতনিক সদস্য হিসেবে অন্তভুক্ত হইবেন।

(৬) উপ-ধারা (৫) এর অধীন মনোনীত সদস্য তাহার মনোনয়নের তারিখ হইতে ২ (দুই) বৎসর মেয়াদে স্বীয় পদে অধিষ্ঠিত থাকিবেন;

তবে শর্ত থাকে যে, উক্তরূপ মনোনীত কোন সদস্য সরকার কর্তৃক অনুরুদ্ধ হইলে, তিনি সদস্য পদ হইতে পদত্যাগ করিবেন অথবা কোন সদস্য চেয়ারম্যানের উদ্দেশ্যে লিখিত স্বাক্ষরযুক্ত পত্রযোগে স্বীয় পদ ত্যাগ করিতে পারিবেন।

(৭) সরকার উপ-ধারা (৫) এর অধীন মনোনীত কোন সদস্যকে পুনঃমনোনয়ন প্রদান করিতে পারিবে।

১০। পরিচালনা পর্ষদের সভা।—(১) এই ধারার বিধানাবলী সাপেক্ষে, পরিচালনা পর্ষদ উহার সভার কার্যপদ্ধতি নির্ধারণ করিতে পারিবে।

(২) পরিচালনা পর্ষদের সভা চেয়ারম্যান কর্তৃক নির্ধারিত স্থান ও সময়ে অনুষ্ঠিত হইবে;

তবে শর্ত থাকে যে, প্রতি ৩ (তিন) মাসে পরিচালনা পর্ষদের অন্যূন একটি সভা অনুষ্ঠিত হইবে।

(৩) পরিচালনা পর্ষদের সকল সভা চেয়ারম্যান এর সভাপতিত্বে এবং তাহার অনুপস্থিতিতে চেয়ারম্যানের দায়িত্বপ্রাপ্ত ব্যক্তি বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন সদস্য সভায় সভাপতিত্ব করিবেন।

(৪) পরিচালনা পর্ষদের সভার কোরাম গঠনের জন্য উহার চেয়ারম্যানসহ মোট সদস্য সংখ্যার অর্ধেকের বেশি সদস্যের উপস্থিতির প্রয়োজন হইবে।

(৫) পরিচালনা পর্ষদের সভায় উপস্থাপিত সকল বিষয় উপস্থিত সদস্যগণের প্রদত্ত ভোটের সংখ্যাগরিষ্ঠতার ভিত্তিতে নিষ্পত্তি হইবে।

(৬) পরিচালনা পর্ষদের সভায় প্রত্যেক সদস্যের একটি করিয়া ভোট থাকিবে এবং ভোটের সমতার ক্ষেত্রে, সভায় সভাপতিত্বকারী ব্যক্তির দ্বিতীয় বা নির্ণায়ক ভোট থাকিবে।

(৭) পরিচালনা পর্ষদের কোন সদস্যপদে শূন্যতা বা পরিচালনা পর্ষদ গঠনে ত্রুটি থাকিবার কারণে পরিচালনা পর্ষদের কোন কার্য বা সিদ্ধান্ত অবৈধ হইবে না এবং তৎসম্পর্কে কোন প্রশ্ন উত্থাপন করা যাইবে না।

(৮) পরিচালনা পর্ষদের সভায় যোগদানের জন্য অবৈতনিক সদস্যগণ, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, কর্তৃপক্ষের তহবিল হইতে সম্মানী প্রাপ্য হইবেন।

১১। কমিটি গঠন।—পরিচালনা পর্ষদ উহার দায়িত্ব পালনে সহায়তার জন্য এক বা একাধিক কমিটি গঠন করিতে পারিবে এবং এইরূপ কমিটির দায়িত্ব ও কার্যাবলী পরিচালনা পর্ষদ কর্তৃক নির্ধারিত হইবে।

১২। পরামর্শক সেবা গ্রহণ।—কর্তৃপক্ষ ইহার বিশেষ কোন কার্য সম্পাদনের নিমিত্ত কোন ব্যক্তি বা প্রতিষ্ঠানের নিকট হইতে পরামর্শক সেবা গ্রহণ করিতে পারিবে।

চতুর্থ অধ্যায়

সংস্থাপন বিষয়ক

১৩। কর্মচারি নিয়োগ।—(১) কর্তৃপক্ষের একজন সচিব থাকিবেন, যিনি সরকারের উপ-সচিব পদমর্যাদার নিম্নে নহেন এইরূপ একজন কর্মকর্তা হইবেন এবং তিনি সরকার কর্তৃক নির্দিষ্ট শর্তে নিযুক্ত হইবেন।

(২) সরকার কর্তৃক অনুমোদিত সাংগঠনিক কাঠামো সাপেক্ষে, কর্তৃপক্ষ উহার কার্যাবলী সুষ্ঠুভাবে সম্পাদনের লক্ষ্যে প্রয়োজনীয় সংখ্যক কর্মকর্তা ও কর্মচারি নিয়োগ করিতে পারিবে এবং উক্ত কর্মকর্তা ও কর্মচারির চাকুরির শর্তাবলী প্রবিধান দ্বারা নির্ধারিত হইবে।

১৪। জন সেবক হিসাবে গণ্য।—চেয়ারম্যান, সার্বক্ষণিক সদস্য এবং কর্তৃপক্ষের কর্মকর্তা ও কর্মচারিগণ Penal Code, 1860 (Act No. XLV of 1860) এর section 21এর public servant (জন সেবক) অভিব্যক্তিটি যে অর্থে ব্যবহৃত হইয়াছে সে অর্থে জন সেবক হিসেবে গণ্য হইবেন।

১৫। ক্ষমতা অর্পণ।—কর্তৃপক্ষ, সাধারণ অথবা বিশেষ আদেশ দ্বারা, উহার যে কোন ক্ষমতা বা দায়িত্ব, নির্দিষ্ট শর্ত সাপেক্ষে, চেয়ারম্যান বা উহার কোন সার্বক্ষণিক সদস্য বা কর্মকর্তাকে অর্পণ করিতে পারিবে।

পঞ্চম অধ্যায়

চুক্তি, প্রতিবেদন, ঋণ গ্রহণ, ইত্যাদি

১৬। চুক্তি সম্পাদন।—(১) কর্তৃপক্ষ ইহার কার্যাবলী সম্পাদনের লক্ষ্যে যে কোন ব্যক্তি বা সংস্থার সহিত চুক্তি সম্পাদন করিতে পারিবে;

তবে শর্ত থাকে যে, কোন বিদেশী সরকার বা আন্তর্জাতিক সংস্থার সহিত চুক্তি সম্পাদনের ক্ষেত্রে সরকারের পূর্ব অনুমোদন গ্রহণ করিতে হইবে।

(২) এইরূপ চুক্তি কর্তৃপক্ষের পক্ষে চেয়ারম্যান অথবা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন সার্বক্ষণিক সদস্য বা কর্মকর্তা স্বাক্ষর করিতে পারিবেন।

১৭। প্রতিবেদন।—(১) প্রত্যেক অর্থ বৎসর সমাপ্তির পর কর্তৃপক্ষ তৎকর্তৃক পূর্ববর্তী বৎসরে গৃহীত ও সম্পাদিত কার্যাবলীর একটি প্রতিবেদন সরকারের নিকট পেশ করিবে।

(২) সরকার প্রয়োজনমত কর্তৃপক্ষের নিকট হইতে যে কোন সময় কর্তৃপক্ষের যে কোন বিষয়ের উপর প্রতিবেদন, বিবরণী, হিসাব, পরিসংখ্যান বা অন্যান্য তথ্য আহবান করিতে পারিবে এবং কর্তৃপক্ষ উহা সরকারের নিকট সরবরাহ করিতে বাধ্য থাকিবে।

১৮। ঋণ গ্রহণের ক্ষমতা।—এই আইনের উদ্দেশ্য পূরণকল্পে, কর্তৃপক্ষ, সরকারের পূর্বানুমোদনক্রমে, প্রয়োজনে কোন বাণিজ্যিক ব্যাংক, আর্থিক প্রতিষ্ঠান, অথবা দেশী বা বিদেশী অন্য কোন উৎস হইতে ঋণ গ্রহণ করিতে পারিবে।

ষষ্ঠ অধ্যায়

তহবিল, বাজেট এবং হিসাব রক্ষণ ও নিরীক্ষা

১৯। কর্তৃপক্ষের তহবিল।—(১) টেকসই ও নবায়নযোগ্য জ্বালানি উন্নয়ন কর্তৃপক্ষ তহবিল নামে কর্তৃপক্ষের একটি তহবিল থাকিবে।

(২) তহবিলে নিম্নবর্ণিত উৎস হইতে প্রাপ্ত অর্থ জমা হইবে, যথা ঃ—

(ক) সরকার কর্তৃক প্রদত্ত মঞ্জুরী;

(খ) সরকারের নিকট হইতে গৃহীত ঋণ;

(গ) স্থানীয় কর্তৃপক্ষ কর্তৃক প্রদত্ত মঞ্জুরী;

(ঘ) অন্য কোন উৎস হইতে গৃহীত ঋণ বা মঞ্জুরী;

(ঙ) সিডিএম বা অনুরূপ অন্য কোন কার্যক্রমের আওতায় বাস্তবায়িত প্রকল্প হইতে প্রাপ্ত অর্থ;

(চ) কোন পরামর্শ সেবা প্রদানের জন্য আহরিত অর্থ;

(ছ) এই আইনের অধীন সম্পাদিত কাজের জন্য আরোপিত ফি হইতে প্রাপ্ত অর্থ; এবং

(জ) অন্য কোন উৎস হইতে প্রাপ্ত অর্থ।

(৩) তহবিলের অর্থ কোন তফসিলি ব্যাংকে জমা রাখিতে হইবে;

তবে শর্ত থাকে যে, কোন তফসিলি ব্যাংক না থাকিলে বাংলাদেশ ব্যাংক কর্তৃক অনুমোদিত যে কোন বাণিজিক ব্যাংকে তহবিলের অর্থ জমা রাখা যাইবে।

(৪) তহবিল হইতে কর্তৃপক্ষের যাবতীয় ব্যয় নির্বাহ করা হইবে।

(৫) সংশ্লিষ্ট অর্থ বছরে কর্তৃপক্ষের ব্যয় নির্বাহের পর তহবিলে

উদ্বৃত্ত থাকিলে, উহার সম্পূর্ণ বা অংশ বিশেষ সরকারের কোষাগারে জমা করিতে হইবে।

২০। **বাজেট**।—কর্তৃপক্ষ, সরকার কর্তৃক নির্ধারিত সময়ের মধ্যে, প্রতি অর্থ বৎসরের সম্ভাব্য আয় ও ব্যয় এবং উক্ত অর্থ বৎসরে, সরকারের নিকট হইতে কি পরিমাণ অর্থের প্রয়োজন হইবে উহা উল্লেখ করিয়া একটি বাজেট সরকারের অনুমোদনের জন্য পেশ করিবে।

২১। **হিসাব রক্ষণ ও নিরীক্ষা**।—(১) সরকার কর্তৃক নির্ধারিত পদ্ধতিতে কর্তৃপক্ষ উহার হিসাব সংরক্ষণ করিবে।

(২) বাংলাদেশের মহা হিসাব-নিরীক্ষক ও নিয়ন্ত্রক প্রতি বৎসর কর্তৃপক্ষের হিসাব নিরীক্ষা করিবেন এবং নিরীক্ষা প্রতিবেদনের একটি করিয়া অনুলিপি সরকার ও কর্তৃপক্ষের নিকট পেশ করিবেন।

(৩) উপ-ধারা (২) এ উল্লিখিত নিরীক্ষা ছাড়াও Bangladesh Chartered Accountants Order, 1973 (PO No. 2 of 1973) এর Article 2(1)(b) তে সংজ্ঞায়িত চার্টার্ড একাউন্টেন্ট দ্বারা কর্তৃপক্ষের হিসাব নিরীক্ষা করা যাইবে এবং এতদুদ্দেশ্যে কর্তৃপক্ষ এক বা একাধিক চার্টার্ড একাউন্টেন্ট নিয়োগ করিতে পারিবে এবং এইরূপে নিয়োগকৃত চার্টার্ড একাউন্টেন্ট সরকার কর্তৃক নির্ধারিত পারিতোষিক প্রাপ্য হইবেন।

(৪) কর্তৃপক্ষের হিসাব নিরীক্ষার উদ্দেশ্যে মহা নিসাব-নিরীক্ষক বা তাহার নিকট হইতে ক্ষমতাপ্রাপ্ত কোন ব্যক্তি বা উপ-ধারা (৩) এর অধীন নিয়োগকৃত চার্টার্ড একাউন্টেন্ট কর্তৃপক্ষের সকল রেকর্ড, দলিল-দস্তাবেজ, বার্ষিক ব্যালেন্স সিট্, নগদ বা ব্যাংকে গচ্ছিত অর্থ, জামানত, ভান্ডার এবং অন্যবিধ সম্পত্তি পরীক্ষা করিয়া দেখিতে পারিবেন এবং কোন সদস্য বা কর্তৃপক্ষের যে কোন কর্মকর্তা বা কর্মচারিকে জিজ্ঞাসাবাদ করিতে পারিবেন।

সপ্তম অধ্যায়

বিবিধ

২২। **নির্দেশনা প্রদানে সরকারের সাধারণ ক্ষমতা**।—এই আইনের উদ্দেশ্য পূরণকল্পে সরকার, সময় সময়, কর্তৃপক্ষকে, তদবিবেচনায় যেরূপ উপযুক্ত মনে করিবে, সেইরূপ পদক্ষেপ গ্রহণের জন্য নির্দেশনা প্রদান করিতে পারিবে এবং কর্তৃপক্ষ উক্তরূপ সকল নির্দেশনা পালন করিবে।

২৩। **পরিদর্শনের ক্ষমতা**।—কর্তৃপক্ষ, এই আইনের উদ্দেশ্য পূরণকল্পে, ডেজিগনেটেড কঞ্জুমার এর কোন জায়গা পরিদর্শন করিতে পারিবে।

২৪। **সরল বিশ্বাসে কৃত কার্য রক্ষণ**।—এই আইনের অধীন সরল বিশ্বাসে কৃত কোন কাজের ফলে কোন ব্যক্তি ক্ষতিগ্রস্ত হইলে বা হইবার সম্ভাবনা থাকিলে তজ্জন্য কর্তৃপক্ষ, বা উহার চেয়ারম্যান, কোন সদস্য, কর্মকর্তা বা কর্মচারীর বিরুদ্ধে কোন দেওয়ানী বা ফৌজদারী মামলা রুজু করা যাইবে না বা অন্য কোন আইনগত কার্যধারা গ্রহণ করা যাইবে না।

২৫। **অসুবিধা দূরীকরণ**।—এই আইনের কোন বিধান কার্যকর করিবার ক্ষেত্রে কোন অসুবিধা দেখা দিলে সরকার উক্ত অসুবিধা দূরীকরণার্থে আদেশ দ্বারা প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে।

২৬। **বিধি প্রণয়নের ক্ষমতা**।—এই আইনের উদ্দেশ্য পূরণকল্পে সরকার, কর্তৃপক্ষের সহিত পরামর্শক্রমে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

২৭। **প্রবিধান প্রণয়নের ক্ষমতা**।—এই আইনের উদ্দেশ্য পূরণকল্পে কর্তৃপক্ষ, সরকারের পূর্বানুমোদনক্রমে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, প্রবিধান প্রণয়ন করিতে পারিবে।

২৮। **জ্বালানি নিরীক্ষণ সেল এর বিলোপ, ইত্যাদি**।—(১) কর্তৃপক্ষ প্রতিষ্ঠা হইবার সঙ্গে সঙ্গে জ্বালানি নিরীক্ষণ সেল, অতঃপর বিলুপ্ত সেল বলিয়া উল্লিখিত বিলুপ্ত হইবে।

(২) বিলুপ্ত সেল এর সকল সম্পদ, অধিকার, ক্ষমতা, কর্তৃত্ব, ঋণ, দায় ও দায়িত্ব, সুবিধা এবং স্থাবর-অস্থাবর সকল সম্পত্তি, নগদ ও ব্যাংক স্থিতি, সংরক্ষিত সঞ্চিত তহবিল, বিনিয়োগ এবং অন্য সকল অধিকার এবং এইরূপ সম্পত্তিতে অথবা উহা হইতে উদ্ভূত অন্যান্য সকল স্বার্থ ও অধিকার এবং সকল বহি, রেজিস্টার, রেকর্ডপত্র এবং অন্য সকল দলিল-দস্তাবেজ কর্তৃপক্ষের নিকট হস্তান্তরিত হইবে এবং ন্যস্ত থাকিবে।

(৩) বিলুপ্ত সেল কর্তৃক কৃত কোন কার্য, গৃহীত কোন ব্যবস্থা, প্রদত্ত কোন আদেশ, জারিকৃত বিজ্ঞপ্তি এই আইনের অধীন কর্তৃপক্ষ কর্তৃক কৃত, গৃহীত, প্রদত্ত বা জারিকৃত বলিয়া গণ্য হইবে।

২৯। **ইংরেজিতে অনুদিত পাঠ প্রকাশ**।—(১) এই আইন প্রবর্তনের পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের বাংলা পাঠের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ প্রকাশ করিবে।

(২) বাংলা ও ইংরেজি পাঠের মধ্যে বিরোধের ক্ষেত্রে বাংলা পাঠ প্রাধান্য পাইবে।

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বিদ্যুৎ ও জ্বালানীর দ্রুত সরবরাহ বৃদ্ধি (বিশেষ বিধান) আইন, ২০১০ এর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্য পূরণকল্পে বিদ্যুৎ ও জ্বালানীর দ্রুত সরবরাহ বৃদ্ধি (বিশেষ বিধান) আইন, ২০১০ (২০১০ সনের ৫৪ নং আইন) এর সংশোধন সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইলঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন বিদ্যুৎ ও জ্বালানীর দ্রুত সরবরাহ বৃদ্ধি (বিশেষ বিধান) (সংশোধন) আইন, ২০১২ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **২০১০ সনের ৫৪ নং আইনের ধারা ১ এর সংশোধন**। —বিদ্যুৎ ও জ্বালানীর দ্রুত সরবরাহ বৃদ্ধি (বিশেষ বিধান) আইন, ২০১০ (২০১০ সনের ৫৪ নং আইন) এর ধারা ১ এর উপ-ধারা (২) এ উল্লিখিত "২ (দুই বৎসর" সংখ্যা, বন্ধনী এবং শব্দগুলির পরিবর্তে "৪ (চার) বৎসর" সংখ্যা, বন্ধনী এবং শব্দগুলি প্রতিস্থাপিত হইবে।

৩। **রহিতকরণ ও হেফাজত**।—(১) বিদ্যুৎ ও জ্বালানীর দ্রুত সরবরাহ বৃদ্ধি (বিশেষ বিধান) (সংশোধন) অধ্যাদেশ, ২০১২ (২০১২ সনের ৮ নং অধ্যাদেশ) এতদ্বারা রহিত করা হইল।

(২) উক্তরূপ রহিতকরণ সত্ত্বেও রহিত অধ্যাদেশের অধীন কৃত বা গৃহীত কার্যক্রম চলমান থাকিলে উহা এমনভাবে চলমান ও অব্যাহত থাকিবে যেন উহা এই আইনের অধীন কৃত বা গৃহীত হইয়াছে।

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সমবায় সমিতি আইন, ২০০১ অধিকতর সংশোধনকল্পে প্রণীত আইন

যেহেতু নিম্নবর্ণিত উদ্দেশ্যসমূহ পূরণকল্পে সমবায় সমিতি আইন, ২০০১ (২০০১ সনের ৪৭ নং আইন) এর অধিকতর সংশোধন করা সমীচীন ও প্রয়োজনীয়;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইল ঃ—

১। **সংক্ষিপ্ত শিরোনাম ও প্রবর্তন**।—(১) এই আইন সমবায় সমিতি (সংশোধন) আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। **২০০১ সনের ৪৭ নং আইনের ধারা ২ এর সংশোধন**।— সমবায় সমিতি আইন, ২০০১ (২০০১ সনের ৪৭ নং আইন), অতঃপর উক্ত আইন বলিয়া উল্লিখিত, এর ধারা ২ এর—

(ক) দফা (৪) এর পর নিম্নরূপ দফা (৪ক) সন্নিবেশিত হইবে, যথা ঃ—

"(৪ক) "আমানত সুরক্ষা তহবিল" অর্থ ধারা ২৬খ এর অধীন গঠিত আমানত সুরক্ষা তহবিল;";

(খ) দফা (৫) এর পরিবর্তে নিম্নরূপ দফা (৫) প্রতিস্থাপিত হইবে, যথা ঃ—

"(৫) "উপ-আইন" অর্থ সমবায় সমিতি গঠনের উদ্দেশ্যে উহার সাংগঠনিক ও আর্থিক কার্যাবলী পরিচালনার জন্য প্রণীত গঠনতন্ত্র এবং উহার সংশোধনীও ইহার অন্তর্ভূক্ত হইবে;";

(গ) দফা (৬) এর পরিবর্তে নিম্নরূপ দফা (৬) প্রতিস্থাপিত হইবে, যথা ঃ—

"(৬) "কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংক" অর্থ ধারা ৮(১)(খ) এর শর্তাংশে উল্লিখিত কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংক;";

(ঘ) দফা (৮) এর পরিবর্তে নিম্নরূপ দফা (৮) প্রতিস্থাপিত হইবে, যথা ঃ—

"(৮) "সমবায় ভূমি উন্নয়ন ব্যাংক" অর্থ ধারা ৮(১)(ক) এর শর্তাংশে উল্লিখিত সমবায় ভূমি উন্নয়ন ব্যাংক;";

(ঙ) দফা (১০) এর পর নিম্নরূপ দফা (১০ক) সন্নিবেশিত হইবে, যথা ঃ—

"(১০ক) "দ্বি-স্তর বিশিষ্ট সমবায় সমিতি" অর্থ ধারা ৮(১)(চ) এ উল্লিখিত দ্বি-স্তর বিশিষ্ট সমবায় সমিতি;";

(চ) দফা (১১) এ উল্লিখিত "অধিদপ্তরের শীর্ষ কর্মকর্তা" শব্দগুলির পরিবর্তে "এই আইনের ধারা ৬এ উল্লিখিত নিবন্ধক ও মহাপরিচালক" শব্দগুলি প্রতিস্থাপিত হইবে;

(ছ) দফা (১৭) এর পর নিম্নরূপ দফা (১৭ক) ও (১৭খ) সন্নিবেশিত হইবে, যথা ঃ—

"(১৭ক) "বিধি" অর্থ এই আইনের অধীন প্রণীত বিধি;

(১৭খ) "বাংলাদেশ সমবায় ব্যাংক", এই আইনের অধীন নিবন্ধিত বাংলাদেশ সমবায় ব্যাংক, যাহার মূল উদ্দেশ্য হইবে সমবায় সমিতিসমূহ ও সমবায় সংশ্লিষ্ট ব্যক্তি বা প্রতিষ্ঠানসমূহকে ঋণ প্রদানের জন্য তহবিল গঠন;";

(জ) দফা (২০) এর পর নিম্নরূপ দফা (২০ক), (২০খ) ও (২০গ) সন্নিবেশিত হইবে, যথা ঃ—

"(২০ক) "সঞ্চয় আমানত" অর্থ সমবায় সমিতির প্রত্যেক সদস্য কর্তৃক নিবন্ধনকালীন বা পরবর্তীতে সমিতিতে জমাকৃত অর্থ;

(২০খ) "সদস্য" অর্থ কোন সমবায় সমিতির শেয়ার হোল্ডার সদস্য;

(২০গ) "সদস্যের অধিকার" অর্থে সমিতির কোন বৈধ সভায় অংশগ্রহণ, ভোট প্রদান, নির্বাচনে অংশগ্রহণ, ঋণ প্রাপ্তি অথবা এই আইন বা বিধির অধীন প্রদত্ত সুযোগকে বুঝাইবে;";

(ঝ) দফা (২১) এর পর নিম্নরূপ দফা (২২) সংযোজিত হইবে, যথা ঃ—

"(২২) "শেয়ারের বাজার মূল্য" অর্থ শেয়ারের নির্ধারিত মূল্য অথবা, ক্ষেত্রমত, শেয়ারের পুনঃনির্ধারিত মূল্য।"।

৩। **২০০১ সনের৪৭ নং আইনের ধারা ৩ এর প্রতিস্থাপন।**— উক্ত আইনের ধারা ৩ এর পরিবর্তে নিম্নরূপ ধারা ৩ প্রতিস্থাপিত হইবে, যথা ঃ—

"৩। **সমবায় সমিতির ক্ষেত্রে কতিপয় আইনের প্রয়োগ নিষিদ্ধ।**—সমবায় সমিতির ক্ষেত্রে কোম্পানী আইন, ১৯৯৪ (১৯৯৪ সনের ১৮ নং আইন) এবং মাইক্রো ক্রেডিট রেগুলেটরি অর্থরিটি আইন, ২০০৬ (২০০৬ সনের ৩২ নং আইন) প্রযোজ্য হইবে না।"।

৪। **২০০১ সনের ৪৭ নং আইনের ধারা ৬ এর সংশোধন।**— উক্ত আইনের ধারা ৬ এর উপান্তটীকার "নিবন্ধক" শব্দের পর "ও মহাপরিচালক" শব্দগুলি সন্নিবেশিত হইবে এবং উপ-ধারা (১) এর পরিবর্তে নিম্নরূপ উপ-ধারা (১) প্রতিস্থাপিত হইবে, যথা ঃ—

"(১) অধিদপ্তরের একজন নিবন্ধক থাকিবেন, যিনি মহা-পরিচালক নামেও অভিহিত হইবেন।"।

৫। **২০০১ সনের ৪৭ নং আইনের ধারা ৭ এর সংশোধন।**— উক্ত আইনের ধারা ৭ এর "কর্মচারীকে" শব্দের পর "বা সরকারি কোন কর্মকর্তাকে বা সুনির্দিষ্ট কাজের জন্য এই আইনের অধীন নিবন্ধিত কোন সমবায় সমিতিকে" শব্দগুলি সন্নিবেশিত হইবে।

৬। **২০০১ সনের ৪৭ নং আইনের ধারা ৮ এর সংশোধন।**— উক্ত আইনের ধারা ৮ এর উপ-ধারা (১) এর—

(ক) দফা (ক) এর শর্তাংশের "জমি বন্ধকী ব্যাংক" শব্দ-গুলির পরিবর্তে "সমবায় ভূমি উন্নয়ন ব্যাংক" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) দফা (খ) এর শর্তাংশের পরিবর্তে নিম্নরূপ শর্তাংশ প্রতিস্থাপিত হইবে, যথা ঃ—

"তবে শর্ত থাকে যে, সমবায় ভূমি উন্নয়ন ব্যাংক নামক প্রাথমিক সমবায় সমিতি সমন্বয়ে গঠিত কেন্দ্রীয় সমবায় সমিতি কেন্দ্রীয় সমবায় ভূমি উন্নয়ন ব্যাংক নামে অভিহিত হইবে;";

(গ) দফা (ঘ) এর পরিবর্তে নিম্নরূপ দফা (ঘ), (ঙ) ও (চ) প্রতিস্থাপিত হইবে, যথা ঃ—

"(ঘ) জাতীয় সমবায় ইউনিয়ন অর্থাৎ এমন একটি সমবায় সমিতি, যাহার সদস্য হইবে ইউনিয়ন, জেলা, বিভাগ ও দেশব্যাপী কর্ম এলাকা বিশিষ্ট প্রাথমিক সমবায় সমিতি, কেন্দ্রীয় সমবায় সমিতি ও জাতীয় সমবায় সমিতি;

(ঙ) দফা (ঘ) এর অধীন গঠিত জাতীয় সমবায় ইউনিয়ন উহার সদস্য সমিতির সহায়ক হিসাবে কাজ করিবে এবং উহার কার্যাবলি ও ব্যবস্থাপনা বিধি দ্বারা নির্ধারিত হইবে;

(চ) দ্বি-স্তর বিশিষ্ট সমবায় সমিতি অর্থাৎ গ্রাম পর্যায়ে নির্ধারিত গঠিত কমপক্ষে ১০ (দশ) টি প্রাথমিক সমবায় সমিতির সমন্বয়ে উপজেলা বা থানা পর্যায়ে গঠিত উপজেলা বা থানা কেন্দ্রীয় সমবায় সমিতি লিমিটেডকে বুঝাইবে।"।

৭। **২০০১ সনের ৪৭ নং আইনের ধারা ৯ এর প্রতিস্থাপন।**—উক্ত আইনের ধারা ৯ এর পরিবর্তে নিম্নরূপ ধারা ৯ প্রতিস্থাপিত হইবে, যথা ঃ—

"৯। **নিবন্ধন ব্যতীত সমবায় শব্দ ব্যবহার নিষিদ্ধ, ইত্যাদি।**—(১) এই আইনের অধীন সমবায় সমিতি হিসাবে নিবন্ধিত না হইলে কোন ব্যক্তি, ব্যক্তিসংঘ, সংগঠন বা সমিতি উহার নামের অংশ হিসাবে সমবায় বা Co-operative শব্দ ব্যবহার করিবে না।

(২) সমিতির নিবন্ধিত নাম ব্যতীত সমিতির সাইন বোর্ড, বিল বোর্ড বা প্রচারপত্রে অন্য কোন নাম বা শব্দ ব্যবহার

করা যাইবে না।

(৩) নিবন্ধিত বা নিবন্ধনের জন্য প্রস্তাবিত কোন সমবায় সমিতির নামের সাথে কমার্স, ব্যাংক, ইনভেস্টমেন্ট, কমার্শিয়াল ব্যাংক, লীজিং, ফাইনান্সিং বা সমার্থক শব্দ ব্যবহার করা যাইবে না এবং কোন সমবায় সমিতি এইরূপ শব্দযুক্ত নামে ইতোমধ্যে নিবন্ধিত হইয়া থাকিলে এই বিধান কার্যকর হইবার ৩ (তিন) মাসের মধ্যে উহার নাম সংশোধন করিয়া নিবন্ধককে অবহিত করিতে হইবে।

(৪) কোন ব্যক্তি এই ধারার কোন বিধান লঙ্ঘন করিলে অনধিক ৭ (সাত) বৎসর কারাদণ্ড বা অন্যূন ১০ (দশ) লক্ষ টাকা অর্থদণ্ড বা উভয়দণ্ডে দণ্ডনীয় হইবেন।"।

৮। ২০০১ সনের ৪৭ নং আইনের ধারা ১০ এর সংশোধন। —উক্ত আইনের ধারা ১০ এর উপ-ধারা (২) এর "অবিলম্বে আবেদনকারীকে লিখিতভাবে জানাইয়া দিবেন ঃ" শব্দগুলি ও কোলন এর পরিবর্তে "৩০ (ত্রিশ) দিনের মধ্যে আবেদনকারীকে লিখিতভাবে জানাইয়া দিবেন।" সংখ্যা, শব্দগুলি, বন্ধনী ও দাঁড়ি প্রতিস্থাপিত হইবে এবং শর্তাংশ বিলুপ্ত হইবে।

৯। ২০০১ সনের ৪৭ নং আইনের ধারা ১৩ এর সংশোধন। —উক্ত আইনের ধারা ১৩ এর উপ-ধারা (১) এর—

(ক) শর্তাংশের পরিবর্তে নিম্নরূপ শর্তাংশ প্রতিস্থাপিত হইবে, যথাঃ—

"তবে শর্ত থাকে যে, উক্ত সময় সীমার মধ্যে প্রস্তাবিত সংশোধন বা পুনঃপ্রণীত উপ-আইন অনুমোদন করা না হইলে উহার কারণ উল্লেখ করিয়া ৬০ (ষাট) কার্য দিবসের মধ্যে নিবন্ধক আবেদনকারী সমিতিকে লিখিতভাবে জানাইয়া দিবেন।";

(খ) পর নিম্নরূপ উপ-ধারা (১ক) ও ১(খ) সংযোজিত হইবে, যথা ঃ—

"(১ক) যদি কোন সমবায় সমিতির উপ-আইন বা উহার অংশ বিশেষ এই আইনের সহিত অসঙ্গতিপূর্ণ হয় বা অর্থ সরবরাহকারী সংস্থা উহার সদস্য সমিতিকে উহার উপ-আইন সংশোধনের জন্য নির্দেশনা প্রদান করে সংশ্লিষ্ট সমবায় সমিতি ১২০ (একশত বিশ) দিনের মধ্যে নির্ধারিত পদ্ধতিতে উপ-আইন সংশোধন করিতে বাধ্য থাকিবে এবং এই ক্ষেত্রে উপ-আইন সংশোধনের জন্য সাধারণ সভার অনুমোদনের প্রয়োজন হইবে না।

"(১খ) উপ ধারা (১ক) এ উল্লিখিত সময়ের মধ্যে সংশ্লিষ্ট সমবায় সমিতি উহার উপ-আইন সংশোধনে ব্যর্থ হইলে, নিবন্ধক উক্ত সময়সীমা অতিবাহিত হইবার পর উক্ত সমিতির উপ-আইন সংশোধন করিয়া সমিতিকে অবহিত করিবেন।"।

১০। ২০০১ সনের ৪৭ নং আইনের ধারা ১৫ এর সংশোধন। —উক্ত আইনের ধারা ১৫ এর উপ-ধারা (২) এর পরিবর্তে নিম্নরূপ উপ-ধারা (২) প্রতিস্থাপিত হইবে, যথা ঃ—

"(২) কোন সমবায় সমিতির নিবন্ধনকালে উহার প্রত্যেক সদস্যকে অন্ততঃ একটি শেয়ার অভিহিত মূল্যে (face value) ক্রয় করিতে হইবে এবং পরবর্তী সময়ে নতুন সদস্যপদ লাভের জন্য বা কোন সদস্য কর্তৃক অতিরিক্ত শেয়ার ক্রয়ের ক্ষেত্রে ব্যবস্থাপনা কমিটি কর্তৃক অথবা, ক্ষেত্রমত, নিবন্ধক কর্তৃক নির্ধারিত শেয়ারের বাজার মূল্য (market value) সমিতিকে প্রদান করিতে হইবে, যাহা সমিতির নিজস্ব মূলধন হিসেবে পরিগণিত হইবে ঃ

তবে শর্ত থাকে যে, সরকার ব্যতীত, কোন সদস্য বা, ক্ষেত্রমত, সমিতি কোন সমবায় সমিতির মোট শেয়ার মূলধনের এক পঞ্চমাংশের অধিক শেয়ার ক্রয় করিতে পারিবে না।"।

১১। ২০০১ সনের ৪৭ নং আইনের ধারা ১৭ এর সংশোধন। —উক্ত আইনের ধারা ১৭ এর—

(ক) উপ-ধারা (৩) এর পরিবর্তে নিম্নরূপ উপ-ধারা (৩) প্রতিস্থাপিত হইবে, যথা ঃ—

"(৩) প্রত্যেক সমবায় সমিতির বার্ষিক সাধারণ সভা উহার নিরীক্ষা কাজ সম্পন্ন হইবার ৬০ (ষাট) দিনের মধ্যে নির্ধারিত পদ্ধতিতে অনুষ্ঠিত হইবেঃ

তবে শর্ত থাকে যে, সমিতির আবেদনের প্রেক্ষিতে নিবন্ধক যদি এই মর্মে সন্তুষ্ট হন যে, উক্তরূপ সময়ের মধ্যে বার্ষিক সাধারণ সভা অনুষ্ঠিত না হইবার যুক্তিসঙ্গত কারণ রহিয়াছে, তাহা হইলে নিবন্ধক উক্ত সময়সীমা সর্বোচ্চ ৬০ (ষাট) দিন বৃদ্ধি করিতে পারিবেন।"।

(খ) উপ-ধারা (৬) এর "অযোগ্য বলিয়া নিবন্ধক আদেশ দিতে পারিবেন" শব্দগুলির পরিবর্তে "অযোগ্য হইবেন" শব্দগুলি প্রতিস্থাপিত হইবে।

১২। ২০০১ সনের ৪৭ নং আইনের ধারা ১৮ এর সংশোধন। —উক্ত আইনের ধারা ১৮ এর—

(ক) উপ-ধারা (২) এর শর্তাংশের দফা (খ) এর "ব্যবস্থাপনা কমিটির একতৃতীয়াংশের সদস্য মনোনয়ন করিবেন" শব্দগুলির পরিবর্তে "ব্যবস্থাপনা কমিটিতে এক তৃতীয়াংশ সদস্য ব্যবস্থাপনা কমিটির নির্বাচন অনুষ্ঠিত হইবার ৬০ (ষাট) দিনের মধ্যে মনোনয়ন প্রদান করিবেন।" শব্দগুলি প্রতিস্থাপিত হইবে;

(খ) উপ-ধারা (৩) এর পরিবর্তে নিম্নরূপ উপ-ধারা (৩) প্রতিস্থাপিত হইবে, যথা ঃ—

"(৩) কোন সমবায় সমিতি নিবন্ধনকালে নিবন্ধক কর্তৃক অনুমোদিত প্রথম ব্যবস্থাপনা কমিটির মেয়াদ হইবে ২ (দুই) বৎসর এবং এই মেয়াদের মধ্যে অনুমোদিত ব্যবস্থাপনা কমিটি নির্বাচন অনুষ্ঠান করিয়া নিয়মিত কমিটি গঠন করিবে।";

(গ) উপ-ধারা (৫) এর "৯০ (নব্বই) দিনের জন্য" সংখ্যা, বন্ধনী ও শব্দগুলির পরিবর্তে "১২০ (একশত বিশ) দিনের জন্য" সংখ্যা, বন্ধনী ও শব্দগুলি প্রতিস্থাপিত হইবে;

(ঘ) উপ-ধারা (৮) এর "দু'টি" শব্দ ও চিহ্নের পরিবর্তে "তিনটি" শব্দ প্রতিস্থাপিত হইবে।

১৩। ২০০১ সনের ৪৭ নং আইনের ধারা ১৯ এর সংশোধন। —উক্ত আইনের ধারা ১৯ এর উপ-ধারা (২) এর—

(ক) দফা (খ) এর পরিবর্তে নিম্নরূপ দফা (খ) প্রতিস্থাপিত হইবে, যথা ঃ—

"(খ) তিনি উক্ত নির্বাচন অনুষ্ঠানের পূর্ববর্তী ৩ (তিন) বৎসর যাবৎ অব্যাহতভাবে সংশ্লিষ্ট প্রাথমিক সমবায় সমিতির সদস্য না থাকেন এবং উক্ত ৩ (তিন) বৎসরে অনুষ্ঠিত সংশ্লিষ্ট প্রাথমিক সমিতির অন্যূন দু'টি বার্ষিক সাধারণ সভায় উপস্থিত না থাকেন;";

(খ) দফা (ঘ) এর প্রান্তস্থিত "দাঁড়ি" এর পরিবর্তে; "অথবা" সেমিকোলন ও শব্দ প্রতিস্থাপিত হইবে এবং অতঃপর নিম্নরূপ দফা (ঙ) সংযোজিত হইবে, যথা ঃ—

"(ঙ) ঋণ খেলাপী, সমবায় উন্নয়ন তহবিল (সিডিএফ), অডিট সেস বা অন্য কোন সরকারি পাওনা পরিশোধে ব্যর্থ হন।"।

১৪। ২০০১ সনের ৪৭ নং আইনের ধারা ২০ এর প্রতিস্থাপন। —উক্ত আইনের ধারা ২০ এর পরিবর্তে নিম্নরূপ ধারা ২০ প্রতিস্থাপিত হইবে, যথা ঃ—

"২০। **শূন্য পদ পূরণ।**—(১) ব্যবস্থাপনা কমিটির কোন সদস্য পদ শূন্য হইলে অবশিষ্ট মেয়াদের জন্য ধারা ১৯ এর বিধান অনুযায়ী যোগ্য কোন সদস্যকে উক্ত পদ শূন্য হইবার ৩০ (ত্রিশ) দিনের মধ্যে ব্যবস্থাপনা কমিটি কো-অপ্ট করিবে।

(২) কোন সমবায় সমিতির নির্বাচনে কোরাম সংখ্যক সদস্য নির্বাচিত না হইলে বিদ্যমান কমিটি সম্ভব হইলে উহার মেয়াদের মধ্যে বা, ক্ষেত্রমত, নিবন্ধক কর্তৃক গঠিত অন্তর্বর্তী ব্যবস্থাপনা কমিটি উক্ত নির্বাচনের ৩০ (ত্রিশ) দিনের মধ্যে নির্ধারিত পদ্ধতিতে ব্যবস্থাপনা কমিটির শূন্য পদসমূহে নির্বাচনের ব্যবস্থা করিবে ঃ

তবে শর্ত থাকে যে, ৩০ (ত্রিশ) দিনের মধ্যে শূন্য পদে নির্বাচন করা না হইলে বা নির্বাচনের মাধ্যমে কোরাম সংখ্যক সদস্য নির্বাচিত না হইলে সংশ্লিষ্ট নির্বাচন প্রক্রিয়া বাতিল হইবে এবং এইক্ষেত্রে সমিতির কার্যক্রম নির্বাহ ও নির্বাচন অনুষ্ঠানের জন্য ধারা ১৮ এর উপ-ধারা (৫) অনুযায়ী অন্তর্বর্তী ব্যবস্থাপনা কমিটি গঠিত হইবে।"।

১৫। ২০০১ সনের ৪৭ নং আইনের ধারা ২১ এর সংশোধন। —উক্ত আইনের ধারা ২১ এর পরিবর্তে নিম্নরূপ ধারা ২১ প্রতিস্থাপিত হইবে, যথা ঃ—

"২১। **সমবায় সমিতির কার্যাবলী পরিচালনার জন্য সরকারি কর্মকর্তা এবং কর্মচারী প্রেষণে নিয়োগ।**—(১) যে সকল সমিতিতে সরকারের শেয়ার, ঋণ বা উক্ত সমিতির গৃহীত ঋণের ব্যাপারে সরকারের গ্যারান্টি রহিয়াছে সে সকল সমিতিতে সরকার, নির্ধারিত শর্ত সাপেক্ষে, কোন প্রথম শ্রেণীর সরকারি কর্মকর্তাকে উহার নির্বাহের জন্য প্রেষণে নিয়োগ করিতে পারিবে।

(২) কোন সমবায় সমিতির আবেদনক্রমে নিবন্ধক, তদ্‌কর্তৃক নির্ধারিত শর্ত সাপেক্ষে, অধিদপ্তরের কোন কর্মকর্তা বা কর্মচারীকে সমিতির কার্যাবলী নির্বাহের জন্য প্রেষণে নিয়োগ করিতে পারিবেন।"।

১৬। ২০০১ সনের ৪৭ নং আইনের ধারা ২২ এর সংশোধন। —উক্ত আইনের ধারা ২২ এর—

(ক) উপ-ধারা (১) এর "বহিষ্কারের উদ্দেশ্যে" শব্দগুলির পর "আত্মপক্ষ সমর্থনের জন্য শুনানীর সুযোগ প্রদান করিবেন এবং শুনানী অন্তে সন্তুষ্ট না হইলে ৩০ (ত্রিশ) দিনের মধ্যে" শব্দগুলি, সংখ্যা ও বন্ধনী সন্নিবেশিত হইবে;