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THE DHAKA LAW REPORTS

(A MONTHLY LAW JOURNAL)

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Penal Code and sentenced him to death by his judgment and order dated 19-3-2003.

9. Reference under section 374 of the Code of Criminal Procedure was made to the High Court Division for confirmation of the sentence of death, which was numbered as Death Reference No.27 of 2003.

10. Before the High Court Division the Criminal Appeal No. 786 of 2003 with Jail Appeal No. 191 of 2003 were preferred by the condemned-petitioner, which were heard along with the death reference. By the impugned judgment and order, the High Court Division accepted the reference and dismissed the criminal appeal with jail appeal and confirmed the judgment and order of conviction and sentence passed by the Bicharok of the Druto Bichar Tribunal No.4, Dhaka. Hence, the condemned-prisoner has filed the instant Jail Petition No.17 of 2010 before this Division.

11. Mr Helaluddin Mollah, the learned Advocate appearing on behalf of the petitioner submits that admittedly the victim was the petitioner's wife who met her death inside his house. But no one saw the accused inflicting the injuries upon the victim which resulted in her death. He further submits that according to the evidence of the witnesses the petitioner after returning from abroad had argument with his sister-in-law, the informant, regarding money which he had remitted from abroad and he was occasionally abnormal. He also pointed out that the condemned-petitioner has been in the condemned cell since 19-3-2003 for about $9^1/_2$ years suffering the pangs of death while his appeal and death reference was pending before the High Court Division. He finally submits that the petitioner has a child who was aged four years at the time. He prays that in view of the extenuating circumstances, this Division will have mercy and commute the sentence of death.

12. Mr Md Shahrowardi, the learned Deputy Attorney-General appearing on behalf of the State submits that the occurrence took place inside the bedroom of the petitioner where he brutally killed the victim who was his wife. He further submits that in the facts and circumstances of the case, the petitioner was rightly sentenced to death by the trial Court and the reference was accepted by the High Court Division and he does not deserve any leniency from this Division.

13. We have considered the submissions of the learned Advocates for the parties concerned and perused the impugned judgment and order of the High Court Division and other connected papers on record.

14. It is in evidence that the victim was killed by the accused inside her bedroom and, according to the evidence of the mother and brother of the accused, the door of the room was locked from inside. The door was also found locked from the outside to prevent his escape before arrival of the police. The police arrested the condemned-petitioner from the place near the victim's dead body. The police also seized the blood stained dao which the condemned-petitioner had used to kill his wife. According to the post-mortem report and the evidence of PW 9 the Doctor, there were as many as eight 'chop wounds' found on various parts of the body of the victim. In the opinion of the Doctor, the death was due to haemorrhage and shock following injuries to the neck and different parts of the body with the heavy sharp cutting weapon. The occurrence was corroborated by the evidence of the mother and brother of the condemned-petitioner as well as other independent witnesses. In view of such evidence the conviction under section 302 of the Penal Code as found by the trial Court and affirmed by the High Court Division, cannot be faulted.

15. With regard to the sentence of death awarded by the trial Court and confirmed by the High Court Division, the learned Advocate appearing on behalf of the petitioner begs mercy of this Court and prays for commutation of the sentence of death.

16. In reaching its decision, the High Court Division relied upon a number of decisions of this Division as well as the decision of the High Court Division in the case of *State vs Kalu Bepari*. In each of the cases referred the victim was the wife of the accused. The pertinent question in those cases was whether it was established by evidence that the accused person was in his house where his wife was murdered, failing which he could not be saddled with any onus to prove his innocence. If it could be established by evidence that the accused was in his house at the material time then the Court would consider his failure to adduce explanation or the falsity of his explanation along with other incriminating circumstances. The High Court Division relied upon the cases of *State vs Kalu Bepari* reported in *43 DLR 249; Abdul Motaleb Howlader vs State, 5 MLR (AD) 362 = 6 BLC (AD) 1; Ilias Hussain (Md) vs State, 54 DLR (AD 78* and *Shamsuddin vs State, 45 DLR 587* which in turn relied upon *State vs Kalu Bepari* (cited above) and held that the accused (petitioner before us) was responsible for causing the death of his wife.

17. The High Court Division then considered the circumstances in which the condemned-petitioner killed his wife taking into account the fact that "the accused inflicted multiple sharp chop injuries on various parts of the body of the deceased". Before chopping, the accused tied up the hands and legs of his wife with clothes. Thereafter, he inflicted boti blows and slaughtered his wife. All these circumstances proved that the accused had all the intention to kill his wife". This led the High Court Division to the conclusion that the act of the accused falls within the mischief of murder as provided under section 300 of the Penal Code.

18. At the appeal hearing before the High Court Division the learned Advocate for the accused-appellant pleaded that the accused had been languishing in the condemned cell for 4 years and 9 months which was not accepted by that Division as a ground for commuting the sentence of death. In this regard the High Court Division relied upon the decision in the case of *Abed Ali vs State* reported in *42 DLR (AD) 171* where their Lordships referred to the case of *Nowsher Ali vs State, 39 DLR 57,* wherein it was held that "the delay in execution of death sentence for want of confirmation cannot by itself constitute mitigating circumstance but abnormal and excessive delay of 6 years may be considered for commutation of death to life imprisonment". However, in the facts presented in *Abed Ali's case* their Lordships felt obliged to sustain the order of conviction and sentence.

19. It is noteworthy that the High Court Division also referred to the decision in the case of *Abdul Bashir alias Bashu vs State* reported in *56 DLR (AD) 207* and the case of *Giasuddin vs State* reported in *54 DLR (AD) 146* where the delay was not accepted as a ground for commutation of sentence.

20. In the latter case this Division observed that "these two condemned-prisoners committed a cold blooded murder in broad daylight and the materials on record clearly proved that they hatched a plan to commit murder and with that intention they were following the movements of the deceased……their act of commission of murder was premeditated, cold-blooded and so brutal that they deserve no mercy and justice demands adequate and proper punishment which has been awarded".

21. In the instant case the High Court Division observed that before the victim was done to death, the husband tied up her hands and legs with clothes and killed her by inflicting indiscriminate blows by boti dao. He closed the door of the room from inside so that others could not come to rescue her. Hence, the High Court Division found that the accused deserved no sympathy from the Court.

22. The facts of the instant case disclose a number of mitigating aspects which have come to light: (i) the first and foremost is the fact that there

is a child of the accused who was four years old at the time of occurrence in 2002; (ii) The age of the accused who was twenty seven years old at the time of occurrence; (iii) the fact that the mental state of the accused had been affected due to squandering of his hard earned money by family members, principally his sister-in-law who was the victim's step sister; and (iv) the length of time the accused has spent in the condemned cell since the date of judgment of the trial Court on 19 March 2003, amounting to $9^1/_2$ years.

23. With regard to the first mitigating circumstance mentioned above, reference may be made to the judgment delivered by BB Roy Chowdhury, J when his Lordship was presiding a High Court Division Bench, where the existence of wife and children swayed their Lordships to commute the sentence of death to one of imprisonment for life. In similar fashion in the case of *Ananta Kumar Karan vs State* reported in *AIR 1962 Calcutta 428,* their Lordships noted that large number of incised injuries were inflicted on the deceased by a sword and the accused absconded for a number of years; their Lordships observed that although the assault was brutal in nature, the fact remains that the prosecution did not prove the motive for the assault and killing. The sentence of death was commuted to imprisonment for life on account of the age of the appellant and the fact that he had a wife and a number of children living which in their Lordships' view constituted an extenuation of the offence which at first struck them as brutal beyond word.

24. I have already referred to the age of the accused being a ground for commutation of sentence while mentioning the case of *State vs Tasiruddin* reported in *13 DLR 203* which was referred by this Division in the case of Jail Petition No. 15 of 2010. From the cases referred in the *Tasiruddin case* it can be seen that age of the offender upto 27 years has been considered as a ground for commutation of the sentence of death.

25. The aspect of the mental state of the accused as disclosed by the evidence of PWs 2 and 3 coupled with the fact that no motive for the murder was disclosed by the prosecution, can be taken as an extenuating fact for reducing the sentence, as was done in the *Ananta Kumar Karan case* mentioned above.

26. Lastly, with regard to the period of time spent by the accused in the condemned cell, there are numerous decisions of this Division which shed light on this aspect. In general terms, it may be stated that the length of period spent by a convict in the condemned cell is not necessarily a ground for commutation of the sentence of death. However, where the period spent in the condemned cell is not due to any fault of the convict and where the period spent there is inordinately long, it may be considered as an extenuating ground sufficient for commutation of sentence of death. It is noted that the High Court Division in rejecting this plea referred to the case of *Abed Ali vs State,* cited above. In that case this Division held that delay in execution cannot by itself constitute a mitigating circumstance, but mention was made of the *Nowsher Ali case* (cited above) where it was observed that a delay of six years may be considered for commutation of death sentence to life imprisonment *(emphasis added).* In the instant case, when the matter was heard by the High Court Division the convict had been in the condemned cell for less than five years, and hence the plea was rejected. However, the convict has now been in the condemned cell for more than $9^1/_2$ years due to no fault of his own. Thus the length of period by now can be taken as a circumstance, when there are other extenuating circumstances, to commute the sentence of death to one of imprisonment for life"

Considering the above facts and circumstances, we are of the view that the judgment of the High Court Division be upheld so far as it relates to conviction of the accused under section 302 of the Penal Code. The Jail Petition is therefore dismissed. However, in the light of the dis-

cussion regarding sentence, we are of the view that, in the facts and circumstances of the case, justice will be sufficiently met if the sentence of death is commuted to one of imprisonment for life. Accordingly, the sentence of the convict Md Nazrul Islam is modified to imprisonment for life.

Ed.

APPELLATE DIVISION
(Criminal)

Md Muzammel Hossain CJ Surendra Kumar Sinha J Md Abdul Wahhab Miah J Hasan Foez Siddique J AHM Shamsuddin Chowdhury J	Ahmed Lal Mia…... ……Petitioner vs
Judgment October 3rd, 2013.	State and another ……..Respondents*

Negotiable Instruments Act (XXVI of 1881)
Section 138

The cheque was dishonoured with the endorsement "payment stopped by the drawer", a clear *prima-facie* case of the commission of the offence punishable under section 138 of the Act, has been made out against the accused.

……(8)

Code of Criminal Procedure (V of 1898)
Section 222

Merely because charge has been framed against the accused, the case is not proved against him and it is the prosecution which has to prove its case beyond reasonable doubt, and the accused shall have all the right to take his defence by cross-examining the prosecution witnesses and also by examining his own witnesses, if he so desires.

……(8)

Mvi Md Wahidullah, Advocate-on-Record—For the Petitioner.

Zainul Abedin, Advocate-on-Record—For Respondent Nos.2-4.

None represented—For Respondent No. 1.

Judgment

Md Abdul Wahhab Miah J: The accused has filed this petition for leave to appeal against the judgment and order dated the 21st day of May, 2012 passed by a Division Bench of the High Court Division in Criminal Revision No.348 of 2012 discharging the Rule.

2. Facts necessary for disposal of this petition are that the accused, petitioner herein, filed a revision application before the High Court Division under section 439 read with section 435 of the Code of Criminal Procedure (the Code) being Criminal Revision No.348 of 2012 for setting aside two orders No. 7 dated 26-2-2012 and No.4 dated 29-11-2011 (as arranged in the cause title of the revision application) passed by learned Metropolitan Sessions Judge, Chittagong in Sessions Case No.2054 of 2011. The said sessions case arose out of a petition of complaint filed by respondent No.2 as complainant before the Chief Metropolitan Magistrate, Chittagong, alleging the commission of an offence punishable under section 138 of the Negotiable Instruments Act, 1881 (the Act, 1881). In the petition of complaint, it was alleged, *inter alia,* that the accused issued a cheque on 16-1-2011 for an amount of Taka 50,00,000 in favour of the complainant drawn on City Bank Limited, O.R. Nizam Road Branch,

*Criminal Petition for Leave to Appeal No.563 of 2012

(From the judgment and order dated the 21st day of May, 2012 passed by the High Court Division Criminal Revision No.348 of 2012).

Chittagong bearing Cheque No.16161317. The cheque was presented for encashment in the bank on 17-1-2011, but the same was dishonoured with the endorsement "payment stopped by drawer." Then the complainant issued the statutory notice upon the accused on 2-2-2011 by registered post asking him to make the payment of the amount of the dishonoured cheque which was duly received by him on 6-2-2011, but he failed to make the payment of the amount of the dishonoured cheque within the statutory period and thereafter, the complainant filed the petition of complaint. The concerned Metropolitan Magistrate on examination of the complainant under section 200 of the Code found *prima facie* case against the accused and took cognizance of the offence against him under section 138 of the Act, 1881. The case being triable by a Court of Sessions, the case records were transmitted to the Court of Metropolitan Sessions Judge, Chittagong who took cognizance of the offence against the accused under section 138 of the Act, 1881 and the case was registered as Metropolitan Sessions Case No.2054 of 2011. The learned Metropolitan Sessions Judge by his order dated 29-11-2011 framed charge against the accused under section 138 of the Act, 1881 and fixed the next date for examination of witnesses. It further appears from the record that on behalf of the accused, an application was filed on 12-1-2012 for discharging him from the case and alternatively to stay the further proceedings of the sessions case till disposal of Money Suit No. 13 of 2011 pending in the Court of the Joint District Judge, Third Court, Chittagong filed by him. The learned Metropolitan Sessions Judge by his order dated 26-2-2012 rejected the prayer for discharging the accused from the case, but did not pass any order on the alternative prayer. And this order was also challenged before the High Court Division as stated hereinbefore.

3. From the impugned judgment and order, it appears that at the time of hearing the Rule, the learned Advocate who appeared for the accused before the High Court Division made a candid submission to the effect that he had instructions not to press the Rule so far as it relates to the order passed on 26-2-2012 and accordingly, the High Court Division decided only the propriety of the order dated 29-11-2011 passed by the learned Metropolitan Sessions Judge, Chittagong framing charge against the accused under section 138 of the Act, 1881. We consider it better to quote the relevant portion of the order passed by the High Court Division in that respect, 'During the course of submission Mr Mohammad Arshadur Rouf the learned advocate appearing on behalf of the accused-petitioner submits that he has instruction not to press the Rule so far it relates to the order passed on 26-2-2012 and accordingly such portion of the Rule can be discharged for non-prosecution leaving other portion alive so far it relates to the impugned order passed on 29-11-2011 of framing charge for committing the offence punishable under section 138(1) of the Negotiable Instruments Act, 1881."

4. Mvi. Md Wahidullah, learned Advocate-on-Record, appearing for the accused-petitioner before this Division again tried to assail the order dated 26-2-2012 by submitting that the accused already filed a money suit against the complainant being Money Suit No. 13 of 2012 claiming a sum of Taka 33,97,000 in connection with the dishonoured cheque and also for declaration that he (the complainant) was not entitled to encash the cheque given by him on 16-1-2011, so in all fairness, the further proceedings of the Sessions case in question ought to have been stayed till the disposal of the money suit which is till pending, but the learned Sessions Judge did not pass any order on the prayer. Mvi. Md Wahidullah has further submitted that the Metropolitan Sessions Judge, Chittagong acted illegally in framing charge against the accused under section 138 of the Act, 1881 as he did not give any hearing to the accused and thus no chance to place his case as provided in sections 265C and 265D of the Code and also

without applying his judicial mind to the materials on record and therefore, the impugned judgment and order needs to be interfered with by this Division by giving leave.

5. Mr Zainul Abedin, learned Advocate-on-Record, entering caveat on behalf of the complainant-respondent, however, supported the impugned judgment and order submitting that a clear case of the commission of offence within the meaning of section 138 of the Act, 1881 having been made out in the petition of complaint, the Metropolitan Sessions Judge rightly framed charge against the accused under the said section of the Act, 1881, the High Court Division rightly refused to interfere with the same and therefore, no interference is called for with the impugned judgment and order and the leave petition be dismissed.

6. Since the point has again been raised on behalf of the accused before this Division that a money suit being No.13 of 2012 has already been filed by him against the complainant claiming a sum of Taka 33,97,000 and also for a declaration that he (the complainant) is not entitled to encash the dishonoured cheque, in all fairness, the proceedings of the sessions case in question should have been stayed by the Metropolitan Sessions Judge till disposal of the said money suit, we are inclined to dwell upon the point and answer the same though the point was abandoned at the time of hearing of the Rule before the High Court Division.

7. From the facts as disclosed in the petition of complaint, it appears that a cheque was issued by the accused on 16-11-2011 in favour of the complainant for an amount of Taka 50,00,000 and the same having been presented was dishonoured on 17-1-2011. The statutory notice as required by clause (b) of the proviso to section 138 of the Act, 1881 asking the accused to make the payment of the amount of the dishonoured cheque was given on 2-2-2011 which was received by him on 6-2-2011, the accused failed to make the payment of the dishonoured cheque and then the petition of complaint was filed on 20th of March, 2011. The money suit in question was filed on 24-3-2011, i.e. after 3(three) days from the date of filing the petition of complaint and much after the cheque was dishonoured. The moment, the cheque was dishonoured with the endorsement "payment stopped by drawer", the offence under section 138 of the Act, 1881 was complete, but the cause of action to file the petition of complaint arose after the accused had failed to make the payment of the amount of the dishonoured cheque after the issuance of the notice under clause (c) of the proviso to section 138 thereof and that has nothing to do with the money suit filed by the accused and a case under section 138 of the Act, 1881 cannot be stayed on the ground of pendency of a money suit filed by the accused and if such a course is allowed to be practised then the whole purpose of the law shall be frustrated. Therefore, we find no substance in the first submission of Mvi Md Wahidullah.

8. From the order dated 29-11-2011, it appears that the charge was framed against the accused in presence of his learned Advocate and also the Public Prosecutor. It is true that on that day, the prosecution as well as the accused prayed for time, but the Court refused the prayer and then framed charge. But that does not show or indicate that the learned Advocate for the accused was not heard or in other words, he was not given any opportunity to make his submission and place the materials before framing the charge. It is also necessary to keep on record that the learned Metropolitan Sessions Judge clearly noted in the order dated 29-11-2011 that no application was filed on behalf of the accused for discharging him from the case. In framing charge in a case under section 138 of the Act, 1881, the only material to be looked into and considered by the Court concerned is the petition of complaint. A mere reading of the petition of complaint in the instant case

(the petition of complaint has been incorporated in the paper book) shows that all the necessary facts for constituting an offence under section 138 of the Act, 1881, such as: presentation of the cheque within 6(six) months from 16-1-2011 (the cheque was drawn on this date), the dishonourment of the cheque on 17-1-2011, notice given to the drawer (the accused) within the statutory period asking him to make the payment of the amount of the dishonoured cheque, failure of the accused to make the payment within thirty days from the date of receipt of the notice as mandated in clauses (a) (b) and (c) to the section, have been stated. And lastly the petition of complaint was filed within thirty days from the date of failure of the accused to make the payment of the amount of the dishonoured cheque to the complainant, the payee. As already stated hereinbefore, the cheque was dishonoured with the endorsement "payment stopped by the drawer", so a clear *prima facie* case of the commission of the offence punishable under section 138 of the Act, 1881 has been made out against the accused in the petition of complaint. The learned Metropolitan Sessions Judge rightly framed charge against the accused under section 138 of the Act, 1881. However, we like to observe that merely because charge has been framed against the accused, the case is not proved against him and it is the prosecution which has to prove its case beyond reasonable doubt, and the accused shall have all the right to take his defence by cross-examining the prosecution witnesses and also by examining his own witnesses, if he so desires.

9. In view of the above, no interference is called for with the impugned judgment and order.

The leave petition is dismissed.

Ed.

APPELLATE DIVISION
(Civil)

Md Muzammel Hossain CJ Md Abdul Wahhab Miah J Hasan Foez Siddique J AHM Shamsuddin Chowdhury J	Moklesur Rahman (Md) and another..... .....Petitioners vs Government of Bangladesh and others.....Respondents*
Judgment February 24th, 2014.	

Constitution of Bangladesh, 1972
Article 104

It a fit case to invoke the power conferred upon this Court by the Constitution for doing complete justice .....(18)

Because of the direction given by this Court in CMP No.745 of 2010, the judgment-debtor-petitioners have paid the decretal amount and the decree-holder-Bank accepted the payment made by the judgment-debtor-petitioners and that pursuant to the order of this Division, the Bank asked the judgment-debtor-petitioners to pay a sum of Taka 19,80,787 (nineteen lac, eighty thousand and seven hundred eighty seven) only within the fixed time (নির্ধারিত সময়ের মধ্যে) though the said CMP was filed against a *nonest* order allegedly passed in writ petition. The judgment-debtor-petitioners made the payment of the decretal amount for more than 3 (three) years and 4 (four) months before and the leave petition could not be heard earlier though it was fixed for hearing. The decree giving rise to this leave petition was passed as far back as on 6-5-2004 and the execution case in question was levied on 28-10-2004, i.e. by now almost 10 (ten) years elapsed from the date of passing of the decree. .....(17)

Abdul Wadud Bhuiyan, Senior Advocate instructed by Nurul Islam Bhuiyan, Advocate-on-Record—For the

*Civil Petition for Leave to Appeal No.2125 of 2010.

(From the order dated the 18th day of July, 2010 and the 18th day of August, 2010 passed by the High Court Division in Writ Petition No.878 of 2010).

Petitioners.

Harun-or-Rashid, Advocate instructed by Syed Mahbubur Rahman, Advocate-on-Record—For Respondent Nos.6-9.

Hosne Ara Begum, Advocate, instructed by Chowdhury Md Zahangir, Advocate-on-Record—For Respondent No.4.

None represented—For Respondent Nos.1-3 & 5.

Judgment

Md Abdul Wahhab Miah J: This petition for leave to appeal is directed against the two orders one dated the 18th day of July, 2010 rejecting the application filed by the petitioners for modification of the order dated 17-2-2010 and the other dated the 18th day of August, 2010 passed by a Division Bench of the High Court Division in Writ Petition No.878 of 2010 making the writ petition out of list.

2. Facts giving rise to this leave petition are that the present petitioners (hereinafter referred to as the writ-petitioners) filed the writ petition before the High Court Division impugning the order dated 14-1-2010 passed by Artha Rin Adalat No.l, Dhaka in Artha Rin Execution Case No.560 of 2004 rejecting the application filed by them under section 57 of the Artha Rin Adalat Ain, 2003 (the Ain, 2003) for setting-aside the auction sale of the mortgaged property held on 6-10-2009 and confirming the auction sale. In the writ petition, it was stated, *inter alia,* that respondent No.4, Janata Bank Limited, Armanitotalla Branch, Dhaka as the plaintiff (hereinafter referred to as the decree-holder-Bank) filed Artha Rin Suit No.304 of 2003 in the Court of Artha Rin Adalat No.l, Dhaka (the Artha Rin Adalat) impleading the writ-petitioners as defendants on the averments that on the prayer of writ-petitioner No.l, the decree-holder-Bank sanctioned Taka 5,00,000 as CC Hipo Loan in favour of M/s. Shabuz Medical Hall of which writ-petitioner No.l is the proprietor. Writ-petitioner No.l executed all necessary documents in favour of the decree-holder-Bank and enjoyed the benefit of the loan. The property of one Shahidul Islam was mortgaged with the decree-holder-Bank as security of the loan. Writ-petitioner No.l, the loanee became defaulter and in spite of several reminders did not repay the loan amount and by lapse of time the dues stood at Taka 28,59,333 as on 27-4-2003 including the interest and for realizing the same, the suit was instituted. In the four corner of the plaint, nothing was stated in respect of writ-petitioner No.2 and no statement was made as to why she was impleaded as defendant in the suit. Writ-petitioner No.2 has no connection with the business of writ-petitioner No.1, the proprietor of Shabuj Medical Hall, in whose favour loan was sanctioned. The suit was decreed ex-parte on 6-5-2004 and the decree was drawn and signed on 23-5-2004. The decree-holder-Bank levied Artha Rin Execution Case No.560 of 2004 for realization of Taka 35,61,331 as decretal amount including cost and interest, which was registered on 28-10-2004. Earlier the writ-petitioners filed Writ Petition No.8139 of 2009 against the order dated 19-9-2005 passed by the Artha Rin Adalat issuing warrant of arrest to detain them in Civil Jail in which Rule was issued and operation of the order dated 19-9-2005 was stayed, subsequently, the Rule was discharged for default. The writ-petitioners filed application to the Manager of the decree-holder-Bank for exemption of interest by depositing 10% interest of the decretal amount. The Board of Directors of the Bank considering the application in its 91st General meeting exempted "94.30% Ararpitoka" interest and the said fact was intimated to them by the Manager of the decree-holder-Bank by letter dated 31-6-2009. It was further intimated that the writ-petitioners should make payment of Taka 26,10,546 (Taka twenty six lakh, ten thousand and five hundred forty six) only within 31-11-2009 by 6(six) installments. Pursuant to the letter dated 31-6-2009, the writ-

petitioners paid Taka 2,00,000 and 20,000 on 30-7-2009 and 1-10-2009 respectively by pay slip. On 6-10-2009, the date was fixed for auction of the mortgaged property. On this date, the writ-petitioners submitted an application praying for time stating that they have already paid some amount of money and they needed some more time to pay the rest amount. The Bank also filed application for time to inform the Court in that respect. The Artha Rin Adalat after hearing the application by its order of the same date (6-10-2009) rejected the application; challenging this order, the writ-petitioners filed Writ Petition No. 6770 of 2009. A Division Bench of the High Court Division by order dated 19-10-2009 stayed operation of the order 30-11-2009 and also directed the decree-holder-Bank to receive the decretal amount. In pursuance of the order dated 19-11-2009, in Writ Petition No.6770 of 2009, the writ-petitioners submitted application to the decree-holder-Bank on 3-12-2006 and 6-12-2006 respectively for accepting the amount fixed by it, but writ-respondent No. .3 (Janata Bank, represented by its Managing Director) did not respond to the same till the filing of the instant writ petition. Thereafter, on 14-1-2010, the execution case was fixed for hearing. In the meantime, the writ-petitioners filed an application under section 57 of the Ain, 2003 for setting-aside the auction sale held on 6-10-2009 and for permitting them to make payment as per the claim of the decree-holder-Bank. The Artha Rin Adalat after hearing the application by its order dated 14-1-2010 rejected the same and hence the writ-petitioners filed the instant writ petition.

3. A Division Bench of the High Court Division on hearing the writ petition issued Rule on 17-2-2010 in the following terms:

> "Let a Rule Nisi be issued calling upon the respondent(sic) to show cause as to why the impugned Order dated 14-1-2010 passed by the Artha Rin Adalat No.l Dhaka in Artha Execution case No.560 of 2004 rejecting the application under section 57 of the Artha Rin Adalat Ain 2003 and confirming the auction of the mortgaged property (annexure-J) shall not be directed (sic) to have been issued without lawful authority and is of legal effect and/or pass such other or further order or orders as to this court may seem fit and proper."

4. The High Court Division while issuing the Rule also passed an interim order as under:

> "Pending hearing in the Rule, the operation of the impugned order dated 14-1-2010 passed by the respondent No.3 in Artha Rin Execution Case No.560 of 2004 is stayed for a period of 6(six) months from date.
>
> The petitioner is directed to pay entire claim amount within 6(six) months failing which the Rule shall stand discharged. The petitioner is directed to file an affidavit-of-compliance from time to time."

5. It further appears that respondent Nos.6-9 herein filed an application in the writ petition for adding them as respondents claiming that they purchased the mortgaged property in auction sale held on 6-10-2009 and deposited the entire auction money with poundage fee in the executing Court in favour of the decree-holder-Bank in the execution case. Their application was allowed and they were added as respondent Nos.6-9 in the writ petition by order dated 27-4-2010. It further appears that an application was filed by the writ-petitioners to modify the order dated 17-2-2010 and the High Court Division by order dated 18-7-2010 rejected the application. Then on 18-8-2010, the writ petition appeared in the list, but the same was made out of list. In the leave petition, both these orders have been impugned as stated at the beginning.

6. Similar facts as stated in the writ petition have been stated in the leave petition.

7. From the facts as noted hereinbefore, it is

clear that the writ-petitioners failed to make payment of the dues of the decree-holder-Bank pursuant to the interim order passed by the High Court Division at the time of issuance of the Rule in Writ Petition No.878 of 2010 and their application for modification was also rejected and in the meantime, the Rule stood discharged on 17-8-2010 because of the default order passed on 17-2-2010. In the above backdrop, the writ-petitioners filed Civil Miscellaneous Petition (CMP) for Leave to Appeal No.745 of 2010 before this Division on 22-8-2010 impugning the order dated 19-8-2010 passed by the High Court Division in the writ petition, though, in fact, no order was passed on 19-8-2010 therein. The cause title of the CMP is as follows:

> "Judgment and order dated 19-8-2010 passed by a Division Bench of the Hon'ble Court Division in Writ Petition No.878 of 2010 who discharged the Rule and vacated the order of stay as granted at the time of issuance of the Rule."

8. In the CMP, the petitioners filed an application praying for staying operation of the judgment and order dated 19-8-2010 passed by the High Court Division in Writ Petition No.878 of 2010 (though no order was passed in the writ petition on that date) and the learned vacation Judge on 30-8-2010 passed the following order:

> "Heard the learned Counsel and perused the application for stay.
>
> The respondent No.3 Janata Bank is directed to accept the pay order No.0338020 for Taka 11,10,546 and pay order No. 033-7070 for Taka 15,00,000 forthwith and intimate the petitioners-judgment-debtor the rest of decreetal dues immediately. The operation of the impugned judgment and order dated 19th August, 2010 passed by the High Court Division in Writ Petition No.878 of 2010 be stayed till 3rd October, 2010 subject to payment of the rest of the decreetal dues, failing which, the order of stay shall stand vacated,"

9. It further appears that the order of stay passed by the learned vacation Judge was extended by the learned Judge-in-Chamber on 13-10-2010 till 27-1-2011 and the leave petition was fixed for hearing on that date. Then again the order of stay was extended till hearing of the leave petition by order dated 24-1-2011.

10. Mr Abdul Wadud Bhuiyan, learned Counsel, appearing for the petitioners, has submitted that pursuant to the order passed by the learned vacation Judge on 30-8-2010, the decree-holder-Bank accepted the two pay orders as mentioned in the said order, i.e. for Taka 11,10,546 and Taka 15,00,000, i.e. in total Taka 26,10,546. Mr Bhuiyan has produced the photostat copies of these two pay orders which show that those were issued on 23-8-2010 and 3-8-2010 respectively. Mr Bhuiyan to show that these two pay orders have been accepted by the decree-holder-Bank, has drawn out attention at pages 174 and 175 of the paper book. From page 174, it appears that an officer or the decree-holder-Bank, accepted the two pay orders (amount already mentioned earlier) by making an endorsement on 29-9-2010 on the last page of the application filed by Mr AKM Shahidul Huq, Advocate-on-Record (as then he was) on behalf of the petitioners. The said application was addressed to the Manager, Janata Bank, Armanitotalla Branch, i.e. the decree-holder-Bank requesting him to pay "due respect to the order" of the learned vacation Judge and intimate his client about his conduct in that respect within 7(seven) days from the date of receipt of the application. In this application, the full context of the order passed by the learned vacation Judge in the CMP as quoted hereinbefore was mentioned. From the endorsement made by the officer of the Bank, it further appears that the request was made to the petitioners to pay Taka 19,80,787 within the time fixed pursuant to the order of this Division. The said endorsement reads as follows:

"বর্ণিত দুইটি-পে-অর্ডার গ্রহণ করা হইল। মহামান্য সুপ্রিম কোর্টের আপীলেট ডিভিশনের সংশ্লিষ্ট আদেশ মোতাবেক Decreetal dues-19,80,787/(উনিশ লক্ষ আশি হাজার সাতশত সাতাশি) টাকা নির্ধারিত সময়ের মধ্যে পরিশোধ করার অনুরোধ করা যাইতেছে।

স্বক্ষর/অস্পষ্ট
২৯-০৯-২০১০ইং
সময়ঃ১২-৩৫[PM]"

11. From page 175 of the paper book, it also appears that the decree-holder-Bank credited the amount paid by the said two pay orders in the account of M/s Shabuj Medical Hall on 07-10-2010 vide deposit slip No. 352 and CDD 274263. It further appears that earlier the writ-petitioners paid to the decree-holder-Bank Taka 2,00,000 (two lakh) and 20,000 (twenty thousand) on 30-7-2009 and 1-10-2009 respectively and thus the writ-petitioners have paid in total Taka 28,30,546.

12. From the plaint, it appears that the decree-holder-Bank filed the suit for realization of a sum of Taka 28,59,338 and the suit was decreed ex-part for the said amount directing the defendants to pay the same within sixty days along with interest from the date of institution of the suit in 2003. From the execution case filed before the Artha Rin Adalat, it appears that the same was filed on 28-10-2004 for realization of the amount of Taka 35,61,331. It further appears that the mortgaged property was sold in auction on 6-10-2009 at Taka 45,10,000 only and the auction purchasers, respondent Nos.6-9 herein, already deposited the entire bid money.

13. Mr Bhuiyan has submitted that since the judgment-debtor-petitioners have already paid the entire decretal amount pursuant to the order passed by this Court, the order of default passed by the High Court Division while issuing the Rule, may be set-aside; the Rule may be restored to its file and number and the writ petition may be sent back on remand to the High Court Division for hearing on merit or in the alternative, the writ petition may be disposed of finally by this Court invoking the power vested in it under article 104 of the Constitution for doing complete justice in a case.

14. Mr Harun-or-Rashid, learned Advocate, entering caveat on behalf of the auction-purchaser-respondents, on the other hand, has submitted that the auction purchasers purchased the mortgaged property in question *bonafide* as the highest bidder at Taka 45,10,000 and they have already paid the entire bid money. So they should not suffer for the default of the judgment-debtor-petitioners in paying the decretal dues leading to the auction sale of the mortgaged property. He has submitted that besides paying the bid money, the auction purchasers have also paid Taka 1,35,300 as stamp duty and Taka 45,120 as poundage fee. He has further submitted that the auction purchasers also incurred expenses on other counts such as:

1. Tk.35,000 for advocate and clerk fee in the trial Court
2. Tk.40,000 for miscellaneous expenditure in the trial court
3. Tk.50,000 for advocate fee in two writ petitions.
4. Tk.50,000 for advocate fee in the Appellate Division, i.e. in total Tk.1,75,000

15. He has further submitted that since the judgment-debtor-petitioners failed to pay the decretal amount along with the interest as was directed by the trial Court and in the meantime, the mortgaged property has already been sold in auction and the Rule issued in the writ petition stood discharged, the question of sending the writ petition back on remand to the High Court Division for hearing on merit and also setting aside the auction sale does not arise at all and for similar reason the power vested in this Court under article 104 of the Constitution for doing complete justice

should not be invoked.

16. Mrs Hosne Ara Begum, learned Advocate, appearing for the decree-holder-Bank, has echoed the submissions of Mr. Harun-or Rashid.

17. We have given our anxious thought in the matter and considered the overall facts and circumstances of the case and particularly the fact that because of the direction given by this Court in CMP No.745 of 2010, the judgment-debtor-petitioners have paid the decretal amount to the tune of Taka 28,30,546 and the decree-holder-Bank accepted the payment made by the judgment-debtor-petitioners and that pursuant to the order of this Division, the Bank asked the judgment-debtor-petitioners to pay a sum of Taka 19,80,787 (nineteen lakh, eighty thousand and seven hundred eighty seven) only within the fixed time (নির্ধারিত সময়ের মধ্যে) though the said CMP was filed against a nonest order allegedly passed in Writ Petition No.878 of 2010. It is also a fact that the judgment-debtor-petitioners made the payment of the decretal amount on 29-9-2010, i.e. for more than 3(three) years and 4(four) months before and the leave petition could not be heard earlier though it was fixed for hearing on 27th January, 2011. It further needs to be mentioned that the decree giving rise to this leave petition was passed as far back as on 6-5-2004 and the execution case in question was levied on 28-10-2004, i.e. by now almost 10(ten) years elapsed from the date of passing of the decree. In the context, we do not consider it proper to send the matter back on remand to the High Court Division for hearing the Rule on merit setting-aside the order of default.

18. In view of the circumstances stated hereinabove, we consider it a fit case to invoke the power conferred upon this Court by the Constitution vide article 104 of the Constitution for doing complete justice in a case and accordingly, this leave petition is disposed of in the following terms:

(a) The judgment-debtor-petitioners shall pay a sum of Taka 19,80,787 (nineteen lakh, eighty thousand and seven hundred eighty seven) to the decree-holder-Bank (Janata Bank, Armanitotalla Branch, Dhaka having its head office at Janata Bank Bhaban, 110, Motijheel Commercial Area, Dhaka) and the decree-holder-Bank is directed to accept the payment.

(b) The judgment-debtor-petitioners shall pay the interest to the auction purchasers at the rate of 10% on the auction money being Taka 45,10,000 from the date of deposit of the auction money till date (24-2-2014). The judgment-debtor-petitioners shall also pay a sum of Taka 1,35,000 and Taka 45,120 to the auction purchasers for the expenses, they incurred for stamp duty and for poundage fee respectively.

(c) The auction money of Taka 45,10,000 deposited by the auction purchasers shall be refunded back to them along with Taka1,35,300 + Taka 45,120 and the amount of interest which will be paid by the judgment-debtor-petitioners on the auction money as directed in clause (b) hereinbefore.

(d) The judgment-debtor-petitioners shall make the deposit of the amount as detailed in clauses (a) and (b) hereinbefore in the Artha Rin Execution Case being No.560 of 2004 of the Artha Rin Adalat No.l, Dhaka within two months from the date of receipt of this order failing this, the leave petition shall stand dismissed and the auction sale of the mortgaged property held on 6-10-2009 shall be treated as legal and valid.

e) With the deposit of the money by the judgment-debtor-petitioners as detailed in clauses (a) and (b) hereinbefore, the

decree passed in the Artha Rin Suit No.304 of 2003 of the Artha Rin Adalat No. 1, Dhaka shall be satisfied.

(f) The Artha Rin Adalat No.l, Dhaka is directed not to cause any delay in giving back the auction purchasers' money as detailed in clauses (b) and (c) hereinbefore. The Artha Rin execution case in question (No.560 of 2004) shall stand satisfied accordingly.

Ed.

APPELLATE DIVISION
(Civil)

Md Muzammel Hossain CJ
Md Abdul Wahhab Miah J
Hasan Foez Siddique J
AHM Shamsuddin Chowdhury J

Judgment
February 17th, 2014.

Gias Uddin Chowdhury (Md) and others..... Petitioners

vs

Bangladesh, represented by the Secretary, Ministry of Law and others....Respondents*

Artha Rin Adalat Ain (VIII of 2003)
Section 32(2)

The language of sub-section (2) is absolutely mandatory in nature as consequence of non-deposit of such security has been provided therein and since the petitioners did not deposit security equivalent to 25% of the decretal amount, their application was incompetent. .....(9)

*Civil Petition for Leave to Appeal No.385 of 2011

(From the judgment and order dated the 2nd day of December, 2010 passed by the High Court Division in Writ Petition No.2488 of 2010).

Artha Rin Adalat Ain (VIII of 2003)
Section 32(2)

A mere reading of sub-section (2) of section 32 shows that it is the precondition to deposit security equivalent to 25% of the decretal amount in order to lay claim to an immovable property involved in an execution case, but admittedly in this case. .....(9)

KM Saifuddin Ahmed, Advocate instructed by Haridas Paul, Advocate-on-Record—For the Petitioner.

Shamim Khaled Ahmed, Senior Advocate instructed by Md Abu Siddique, Advocate-on-Record—For Respondent No.3.

Habibul Islam Bhuiyan, Senior Advocate instructed by Nahid Sultana, Advocate-on-Record—For Respondent No.5 (as added respondent)

None represented—For Respondent Nos.1-2& 4.

Judgment

Md Abdul Wahhab Miah J: This petition for leave to appeal has been filed by the writ-petitioners (hereinafter referred to as the petitioners) against the judgment and order dated the 2nd day of December, 2010 passed by a Division Bench of the High Court Division in Writ Petition No.2488 of 2010 discharging the Rule.

2. The petitioners herein filed the writ petition before the High Court Division calling in question order No.14 dated 16-2-2010 passed by Artha Rin Adalat No.l, Chittagong in Artha Rin Execution Case No.118 of 2009 rejecting an application filed by them under Order XXI, rules 90 and 91 of the Code of Civil Procedure (the Code) read with section 32 of the Artha Rin Adalat Ain, 2003 (the Ain, 2003) for cancelling the auction sale held on 19-1-2010.

3. The execution case in which the said application was filed, was levied for execution of

the decree passed by the Artha Rin Adalat No.l, Chittagong in Artha Rin Suit No.70 of 2008 filed by respondent No.3, herein, Social Investment Bank Limited against respondent No.4, namely, Nurul Islam Chowdhury for realization of the outstanding loan. The mortgaged property was sold in auction for the purpose of realization of the decretal amount. At this stage, the petitioners herein on 11-2-2010 filed an application under Order XXI, rules 90 and 91 of the Code and section 32 of the Ain, 2003 claiming the mortgaged property as their own and also asserting their possession therein. As no security equivalent to 25% of the decretal amount was deposited along with application, the Artha Rin Adalat rejected the same by its order dated 16-2-2010. It further appears that by the same order the Artha Rin Adalat directed for taking steps for submission of draft bainama by 2-3-2010. Against this order, the petitioners filed the writ petition and obtained the Rule.

4. The Rule was contested by writ-respondent No.3, Social Investment Bank Limited, stating, *inter alia,* that the mortgaged property had already been sold in auction to one Imran and sale certificate was issued in his favour on 21-3-2010 "and also registered on 22-3-2010."

5. A Division Bench of the High Court Division on hearing the writ petition discharged the Rule; hence this petition for leave to appeal.

6. Heard Mr KM Saifuddin Ahmed, learned Advocate, for the petitioners, Mr Shamim Khaled Ahmed, learned Advocate, for the respondent-Bank and Mr Habibul Islam Bhuiyan, learned Advocate, for the added respondent.

7. From the impugned judgment, it appears that the learned Judges discharged the Rule on the findings, *inter alia,* that as the mortgaged property was sold in auction long before the filing of the application by the petitioners under section 32 of the Ain, 2003 and the sale certificate was issued long before the issuance of the Rule on 5-5-2002, the auction sale of the mortgaged property was thus made absolute before issuance of the Rule. So in the circumstances, there was no scope of giving any opportunity to the petitioners to raise any claim in respect of the mortgaged property in the execution case in question. The learned Judges also endorsed the view of the Artha Rin Adalat that the application under section 32 of the Ain, 2003 was not maintainable as the same was filed without depositing security equivalent to 25% of the decretal amount as per provision of law.

8. To dispose of this leave petition, we need to consider section 32 of the Ain, 2003 which reads as follows:

"৩২। জারীর বিরুদ্ধে আপত্তি।-(১) অর্থ ঋণ আদালতের ডিক্রী বা আদেশ হইতে উদ্ভূত জারী মামলায় কোন তৃতীয় পক্ষ দেওয়ানী কার্যবিধি আইনের বিধান মতে দাবী পেশ করিলে, আদালত প্রাথমিক বিবেচনায় উক্ত দাবী সরাসরি খারিজ না করিলে, ডিক্রীদার অনূর্ধ্ব ৩০(ত্রিশ) দিবসের মধ্যে উহার বিরুদ্ধে লিখিত আপত্তি দায়ের করিয়া শুনানী দাবী করিতে পারিবেন।

(২) উপরোক্ত মতে দাবী পেশ করিবার ক্ষেত্রে দরখাস্তকারী, ডিক্রীকৃত অর্থের ২৫% এর সমপরিমাণ জামানত দাখিল করিবে এবং অনুরূপ জামানত দাখিল না করিলে, দাবী অগ্রাহ্য হইবে।

(৩) অর্থ ঋণ আদালত, উপ-ধারা (১)-এর অধীনে কোন দাবী বিবেচনার্থ গ্রহণ করিলে, সংশ্লিষ্ট বিষয়ে দরখাস্তটি দাখিল হওয়ার ৩০ (ত্রিশ) দিবসের মধ্যে উহা নিষ্পন্ন করিবে এবং কোন কারণে ৩০ (ত্রিশ) দিবসের মধ্যে উহা নিষ্পন্ন করিতে ব্যর্থ হইলে, কারণ লিপিবদ্ধ করতঃ উক্ত সময়সীমা অনূর্ধ্ব আরো ৩০(ত্রিশ) দিবস বর্ধিত করিতে পারিবে।"

9. A mere reading of sub-section (2) of section 32 shows that it is the precondition to deposit security equivalent to 25% of the decretal amount in order to lay claim to an immovable property

involved in an execution case, but admittedly in this case, the petitioners did not deposit any security for the said amount. The language of sub-section (2) is absolutely mandatory in nature as consequence of non-deposit of such security has been provided therein and since the petitioners did not deposit security equivalent to 25% of the decretal amount, their application was incompetent. Therefore, we do not find any error with the impugned judgment passed by the High Court Division in affirming the order passed by the Artha Rin Adalat in that respect. It further appears that the mortgaged property was sold in auction on 19-1-2010, whereas the application under section 32 of the Ain, 2003 was filed by the petitioners on 11-2-2010. The High Court Division took notice of the fact that the sale certificate of the auction sale was issued on 21-3-2010 and was registered on 22-3-2010, whereas the Rule in the writ petition was issued on 5-5-2010 and the learned Advocate for the petitioners could not deny the said fact before it. The fact that the sale certificate in respect of the mortgaged property was issued on 21-3-2010 and was registered on 22-3-2010, has not been denied in the leave petition before this Division.

10. In view of the above, we find no merit in this leave petition. However, we endorse the view of the High Court Division that "if the writ petitioner (sic, it would be petitioners) actually is the owner of the mortgaged property in question he can protect his right and title in that property by filing proper suit in a proper forum."

The petition is dismissed.

Ed.

APPELLATE DIVISION
(Civil)

Surendra Kumar Sinha J
Md Abdul Wahhab Miah J
AHM Shamsuddin Choudhury J

Judgment
May 4th, 2014

Ayub Hossain Khan (Md).....Petitioner
[In both the cases]
vs
Bangladesh and ors
[In CP 1901 of 2011]
Human Rights and Peace for Bangladesh [In CP 1902 of 2011]
.....Respondent*

Constitution of Bangladesh, 1972
Articles 23, 24 and 102(2)
Legitimate Expectation

The expectation, if any, died a natural death when the authorities resolved to convert the subject property into an archive to preserve *Shuchitra Sen's* memory, i.e. when a permanent decision had been taken on this vested property.

Expectation, if any, (and indeed reliance on promissory estoppel) must have been a stale one even from the inception from the legal perspective as well, because

◊ it cannot be honoured without clogging the hands of the authorities from implementing what Article 23 and 24 of our Constitution ordains. Although provision of these Articles are not judicially enforceable, they do nevertheless, impose upon the State inalienable obligation, which cannot be compromised by any promise or practice. To do so would be tantamount to defeating constitutional sermon and expectations,

*Civil Petition for Leave to Appeal Nos. 1901-1901 of 2011.

From the judgment and order dated 21.8.2011 passed by the High Court Division in Writ Petition No. 4608 of 2009 and Writ Petition No. 6766 of 2011).

◊ it is beyond the expectation of the statutes, which stand in force to regulate vested properties, that the authorities should be allowed to clog their discretion by making any promise of infinite duration and thereby deprive themselves of chalking further schemes of benevolent nature in future.

◊ it is beyond qualm that late *Shuchitra Sen* is an Acclaimed Maestro who reigned over our film world for over three decades unrivelled. She is preciously adored by our people, whose vibrant desire for the protection and preservation of the earlier's memory and works in her natal home mounts to a level high enough to be ignored, and it is this inviolable aspiration that undoubtedly animates an overriding public interest of utmost importance, which cannot be flouted or crucified, which interest must prevail over the petitioner's claim.

◊ if the claim advanced by the petitioner is accepted, that would effectively mean emasculating the authorities to the extent that they would be debarred from performing their statutory obligations as per the mandates that emanates from the Antiquities Act 1968 section 2(e), read with section 2(c)(ii),when the cite shall attain the statues of a centenarian, an event which is quite foreseeable without any haze as it is not far away, because *Shuchitra* died aged 83, of which we take judicial notice.

◊ it would amount to fettering the authorities' discretion to adopt a different policy which is not unreasonable in the *Wednesbury sense,* or irrational in the GCHQ sense. .....(115 & 116)

Constitution of Bangladesh, 1972
Article 102(2)

Legitimate Expectation—Protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest surfaces with greater accentuation. A change in policy can defeat a substantive legitimate expectation provided it can be justified on *Wednesbury reasonableness.* ...(109 & 111)

Article 102(2)

Legitimate Expectation—A legitimate expectation can arise when the public authority concerned, by a promise or a representation, whether verbal or written, or by conduct or continuous practice, ignites an expectation in the mind of the promisee or the representee that the promise, representation or the practice would be followed. .....(90)

Constitution of Bangladesh, 1972
Article 102(2)
Evidence Act (I of 1872)
Section 115

Promissory Estoppel and Legitimate Expectation—The most important difference between a promissory estoppel and legitimate expectation is that while detriment suffered by the promisee is a *sine qua non* for a promissory estoppel, no such detriment is necessary to erect a claim on legitimate expectation.

Legitimate expectation is also different in that while promissory estoppel is a product of equity, legitimate expectation is an extension of the principle of fairness as propounded by the Common Law Judges in the realm of Administrative Law. As such, while relief under promissory estoppel is granted if the court concludes denial would be inequitable, a promise under the doctrine of legitimate expectation may be enforced if resiling from the promise by a public authority is deemed to be an unfair abuse of power. .....(87)

Promise

A promise, a representation, whether oral or written or a continuous conduct or practice

may ignite an expectation based right if relied on by the promisee, representee. The expectation can be procedural or substantive. .....(86)

Constitution of Bangladesh, 1972
Article 102(2)

Legitimate Expectation—Legitimate expectation is an extended form of fairness, designed to prevent abuse of power and the same is liable to fall through if, amongst other factors, interest of the society so warrants.

.....(90)

Dulichand Omraolal vs Bangladesh, 33 DLR (AD) 30; Mofazzal Hossain vs Bangladesh, 43 DLR (AD) 137; O' Reilly vs Mackman, 1983 2 AC 237; Fairmount Investments Ltd. vs SOS, 1976 1 WLR 1255; Shareghnessa vs US 345 US 206 1953; M. Nabb vs United States, 318 US 332 1943; R vs Home Secretary exparte Santillo 1981 QB 778; R vs Gaming Board, 1970 20B 417;George vs SOS for Environment 1979 77 LGR; Commission of Business Franchises vs Borenstein, 1984 VR 375; Ridge vs Baldwin, 1964 AC 40; Reg vs Home Secretary, Ex-P Mughal, 1974 QB 313; Mallikpur Fishermen Co-operative Society Ltd. vs The Secretary, Ministry of Land, 15 BLD (AD) 241; Ministry of Agriculture and Fisheries vs Mathews 1949 2 All ER 724; Sharping Matsajibi Samabay Samity vs Bangladesh, 39 DLR (AD) 85; India vs Godfrey Philips, AIR 1986 SC 806; Central London Properties Trust Ltd. vs High Trees House Ltd,1947 KB 130; Jordan vs Money, 1854 5 HL Cas 158; House of Lords in Hughes vs Metropolitan Railway, 1877 2 App. Case 439; Woodhouse AC Israel Cocoa Ltd. vs Nigerian Produce Marketing Co. Ltd. 1972 AC 741; Combe vs Combe 1951 2 KB 215; Robertson vs Minister of Pensions 1949 1 KB 227; Wells vs Minister of Housing and Local Government 1967 1 WLR 1000; Lever Finance vs Westminister LBC, 1971 1 QB 222; Lords in Howell vs Falmouth Boat Construction, 1951 AC 837; Western Fish Products vs Penrith DC, 981 2 All ER 204; R. Reprotech (Pebsham) Ltd. vs East Sussex CC 2003 1 WLR; Supreme Court in MP Sugar Mills Ltd. vs UP, AIR 1979 SC 621; Jit Ram vs Hariyana AIR 1980 SC 1285; Godfrey Philips, AIR 1986 SC 806; India in Kasinka Trading vs Union of India 1995 (1) SCC 274; Collector of Customs vs Abdul Hannan 42 DLR (AD) 167; Secretary, Industries vs Saleh Ahmed, 1981 BLD (AD) 91); Khandker Delwar Hussain vs Bangladesh Italian Marble Works, 62 DLR (AD) 298; Chairman RAJUK vs Abdur Rouf Chowdhury, 61 DLR (AD) 28; Chairman Bangladesh Textile Mills vs Nasir Ahmed Chowdhury 22 BLD (AD) 199 = 7 BLC (AD) 144; Sankaranarayan vs State of Kerala, AIR 1971 SC 1997; R vs Department of Education and Employment, Ex P Begbie, 2000 1 WLR 1115; R vs Newham LBC (No. 1) 2002 1 WLR 237; R vs Falmouth and Turno Port Health Authority Ex P South West Water Ltd. 2001 QB 445; R (Wagstaff) vs Secretary of State for Health 2001, 1 WLR 292; AG of Hong Kong vs Ng Yuen Shiu 1983 2 AC 629); R vs SOS for the Home Department Ex P Ruddock, 1989 1 WLR 1982; (R vs North and East Dewan Health. Authority ex-P Coughlan 2001 QB 213; R vs SOS Home Department ex-P Hargreaves, 1997 1 WLR 906; Schmidt vs Secretary of State for Home Affairs, 1969 All ER Vol. 1904; Laws LJ in R (Niazi) vs SOS for Home Department, 2008 EWCA CIV 755; R vs North and East Devon Health Authority, Ex-P Coughlan, 2001 QB 213; R vs SOS for Education, Ex P Begbie 2000 1 WLR 1115; Council of Civil Service Unions vs Minister for Civil Service, 1985 AC 374; R (X) vs Head Teacher and Governors of Y School 2008 1 All ER 249; R vs Ministry of Agriculture Fisheries and Food, Ex P Hamble Fisheries Ltd. 1995 2 All ER 714; R vs Liverpool Corporation, (1972 2QB 299); Lord Binkenhead's dictum in Birkendale District Electricity Supply Company Ltd. vs Southport Corporation, 1926 AC 355; MP Oil Extraction vs MP, AIR 1998 SC 145; Dr Chanchal Goyal vs Roysthan, AIR 2003

SC 1713; India vs Hindusthan Development Corporation, AIR 1994 SC 988 and India vs Kamdhenu Cattle Feed Industries, 1993 SC 160 ; R vs Home Secretary ex P Hargreaves, 1997 1WLR ref.

AJ Mohammad Ali, Senior Advocate, instructed by Syed Mahbubur Rahman, Advocate-on-Record.—For the Petitioner [In both the cases]

Murad Reza, Additional Attorney General with Ekramul Haque, DAG instructed by B. Hossain, Advocate-on-Record—For the Respondent [In CP No. 1901 of 2011]

None represented—For the Respondent [In CP No. 1902 of 2011].

Judgment

AHM Shamsuddin Choudhury, J: These two Civil Petitions for Leave to Appeal have been preferred by one Md. Ayub Hossain Khan, acting in a fiduciary capacity for a trust, named Imam Gazzali Trust, impugning a judgment and order a Division Bench of the High Court Division passed in two writ petitions, registered as Writ Petition Number 4608 of 2009 and 6677 of 2011 respectively.

2. Issues and subject matters in both the petitions being identical, the Division Bench concerned took up both the petitions together for adjudication and disposed both of them by a single judgment, dated 21st August, 2011.

3. The Rule engendered by the Writ Petition No. 4608 of 2009 has been discharged on merit while the Rule issued in respect to the Writ Petition No. 6766 of 2011 has been discharged as the same had become redundant. The petition that has been discharged on merit i.e. the Writ Petition No. 4608 of 2008 was filed by the instant leave to appeal petitioner, whereas the Writ Petition number 6766 of 2011, discharged on ground of infructuity, was filed as a PIL by a non-governmental organisation, named Human Rights and Peace for Bangladesh.

4. Incidentally both the "leave to appeal" petitions have been filed by the petitioner of Writ Petition No. 4608 of 2009. By Leave Petition No. 1901 of 2011, he impugned the judgment and the order dated 21-8-2011, whereby the eviction order issued by the authorities had been affirmed while by Leave Petition No. 1902 of 2011 he challenged another aspect of the same judgment and order whereby the High Court Division directed the government to implement their decision to establish "Suchitra Sen Sangrahashala" immediately.

5. Not surprisingly, the PIL petitioners (the petitioners in Writ Petition No. 6766 of 2011) found no reason to apply for leave to appeal, apparently because their aspiration has been squarely met at the order the High Court Division passed on the government to set up Shuchitra Sangrahashala.

6. The Writ Petition No. 4608 of 2009 was structured on the following assertions; By an order dated 23rd March 1987, the Additional Deputy Commissioner (Revenue), Pabna, demised the subject property in favour of the petitioner on an year to year lease, the commencing date being the 1st day of Poush, 1393 of the Bengali era. It was stipulated in the lease deed that an application, if any, is to be made for the renewal of the lease at the beginning of the year following the expiry of the lease, failing which the lease shall stand cancelled. Having procured registration from the education authority, the petitioner, as the Principal of an Institution named Imam Gazzali Institute, commenced imparting primary education to the Children of Pabna.

7. By a memo dated 6th August 1991, the Ministry of Land intimated the petitioner that as there existed no provision for permanent settlement of vested properties, the leasehold tenure on the schedule land, a vested property, would be renewed every year until such time the govern-

ment takes a final decision on the settlement of vested properties.

8. Since no decision has been taken on the settlement of vested properties, the petitioner is entitled to have the tenure renewed, as per the promise, yet, instead, the respondents have served the impugned notice dated 22nd June, 2009 asking the petitioner to surrender possession of the subject property and had, thereby, acted without lawful authority.

9. The respondent No. 4 in the aforementioned Writ Petition, in his endeavour to rebut the petitioner's assertion and claim, had it to state that the property in question with a single story building on it originally belonged to Korunamoiya Das Gupta, who sailed to India for good before 1960 and hence the government requisitioned his property in 1960 and subsequently designated the same as a vested property after the vested property scheme came into being. On 23rd March 1987, the Additional Deputy Commissioner (Revenue) Pabna, demised the property on a temporary yearly lease to the petitioner conditionally for the year 1383 of the Bengali Calendar. Thereafter, the petitioner's aforenamed institute obtained some 1.29 acres of land in a nearby location from the Public Works Department (PWD) on permanent settlement with a nominal consideration, and erected thereon a four storied building.

10. The opposing respondent went on expressing that the Legendary Diva of the Bengali film industry, who occupies a cozy, irreversible place in the minds of the Bengali speaking people, was indeed the only daughter of Korunamoiya Das Gupta, the original owner of the dwelling and that the government in consonance with the popular demand and with a view to attract tourist who would visit the coveted venue to pay respect to the memory of their Sublime Idol, want to establish Shuchitra Sen Memorial Complex at her natal home.

11. The petitioner failed to pay rent from 1398 BS to 1401 BS.

12. Averments figured in Writ Petition No. 6766 of 2011, which has been filed as a public interest litigation, are, in succinct form, as follows;

13. A report published in a national daily, named "Sokaler Khobor" on 13th July 2011, on the paternal abode of Shuchitra Sen came to their notice. The report divulges that the said threshold was being grabbed by some local people with the support of the law enforcers and the government has taken no initiative to recover the Mega Star's toddling house. The report, quoting the local inhabitants, reveals that Shuchitra Sen along with her family left for Kolkata. Their house has been listed as a vested property. In 1987 this house and its adjacent land was taken on lease by a political party, which set up an education centre by flexing muscle. Jamate Islam is maintaining an education centre in the house although the district administration asked them to vacate the premises. Journalists and artists have asked the authorities to recover it and establish a cultural centre therein to immortalise Shuchitra Sen's memory. Although a huge chunk of land has been bought by the aforesaid education centre from the government for Taka 3 (Taka three) only and a three storied building has already been erected thereon for Imam Gazzali Institute, they have not yet parted with the possession of Suchitra Sen's house.

14. The respondent No. 7 in the Writ Petition No. 6766 of 2011, who is indeed the leave to appeal petitioner before us, and was the petitioner in Writ Petition No. 4608 of 2009, filed an affidavit to oppose the averments scripted in Writ Petition No. 6766 of 2011, stating, inter alia that after demising the property on a year to year lease in his favour, the district administration, Pabna, has consistently renewed the tenure on the lessee's application who has been paying rents in advance. The swearing respondent invested sub-

stantial sums of money for repairing and refurbishing the roof of the building pursuant to approval granted by the Ministry of Land to permit such repair work, of which the authorities were aware. The swearing respondent applied for renewal of the lease for 1416-1417 BS and sought to deposit advance rent therefor, but the Additional Deputy Commissioner (Revenue) Pabna, refused to accept the rent and then asked him to quit stating that a museum is to be floated on the land. He claimed to have a legitimate expectation to have the tenure renewed, because of unambiguous practice of the authorities for the last 22 years. He also invoked the doctrine audi alteram partem asserting that no notice was served upon him before the notice to quit was issued. The property was never listed as a national heritage by the Ministry of Culture and there is no record with the said Ministry or the Ministry of Land to prove that the property is that of Shuchitra Sen's patriarch and that inquiry with the office of the Assistant Commissioner (Land) Pabna, revealed otherwise. It cannot be a public interest litigation as no public interest is involved.

15. As we took up the leave to appeal application for consideration, Mr AJ Mohammad Ali, the learned Senior Advocate for the petitioner, proffered before us that the High Court Division misdirected themselves by failing to recognise that (1) failure to adhere to the principles of natural justice steered the authorities' move to a nullity (2) the doctrine of estoppel stood as an invincible a hurdle against the authorities' decision to evict the petitioner (3) the petitioner is also fortified with legitimate expectation.

16. In his attempt to ward off Mr Mohammad Ali's contention, Mr Mahbubey Alam, the learned Attorney General articulated that the High Court Division had come up with an exquisite judgment which cannot be disloged. In his view none of the principles advanced by Mr Ali can be engaged in the backdrop of factual as well as legal elements that orbit round the case in hand. He expressed that nothing could, in the instant case, impair the government's decision against renewing the lease concerned, particularly when they have resolved to proceed with a noble scheme of preserving the legacy of the Prima Donna of the Bengali filmdom, Shuchitra Sen, which is destined to survive in history till eternity.

17. Salient features of the High Court Division Judgment, as much as they are pertinent for the disposal of this petition, are figured below:

18. Since both the parties admit that the subject property is a vested and non-resident one, submission as to the compliance with the provisions as outlined in the Government and Local Authority Land and Buildings (Recovery and Possession) Ordinance 1970 is otiose.

19. The petitioner of the Writ Petition No. 4608 of 2009 expressed nothing regarding the ownership of the subject property when he filed that petition and a lessee is not, in any event, legally entitled to raise any dispute on the title of the leasehold property.

20. Since the authority concerned did not renew the lease, the petitioner of the Writ Petition No. 4608 of 2009 is not entitled to hold the premises and must vacate the same. The petitioner, a habitual defaulter, acquired no vested right in the property.

21. As steps for setting up "Shuchitra Sen Smrity Sangahashala" has already been taken by the authority there is no need to interfere with Writ Petition No. 6766 of 2011.

22. The High Court Division projected with vivid details the evolution of the vested property legislations which commenced its maiden voyage with the passage of East Pakistan Enemy Property (Land and Buildings) Administration and Disposal Order 1966 and then reproduced some parts of the decision in the case of *Dulichand*

Omraolal vs Bangladesh, reported in *33 DLR (AD) 30,* in which their Lordships of the Appellate Division depicted the transformation of the Enemy Property Legislations after the Liberation of Bangladesh through the Enemy Property (Continuance of Emergency Provisions) (Repeal) Ordinance 1974 (the Ordinance IV of 1974) which repealed Ordinance 1 of 1969, the Vested and Non-Resident Property (Administration) Ordinance 1974, (Ordinance V of 1974), Enemy Property (Continuance of Emergency Provision) (Repeal) Act, 1974, (Act XLV of 1974), the Vested and Non-Resident Property (Administration) Act 1974, (Act XLVI of 1974), the Vested and Non-Resident Property (Administration) (Repeal) Ordinance 1976, (Ordinance XLII of 1976), which repealed Act XLVI of 1974, followed by the Enemy Property (Continuance of Emergency Provision) (Repeal) (Administration) Ordinance 1976, (Ordinance XLIII of 1976) which amended section 3 of Act XLV of 1974 by providing that properties which had vested in the government the right of administration, control, management and disposal of by transfer or otherwise be conferred on the government or such officer or authority as the government may direct, to depict a comprehensive and consolidated picture on the custody, administration, control and demising of properties that vested in the government. The High Court Division also cited Appellate Division's Decision in *Mofazzal Hossain vs Bangladesh, 43 DLR (AD) 137,* which referred to a circular dated 23rd May, 1977, that emanated from the Ministry of Land Administration, containing instruction for the administration management and disposal of vested properties, and reproduced the text in clauses 4(1), 5, 6 and 7 of the circular.

23. By embarking on a hair-split analyses on the said legislations, decisions and the circular, the High Court Division held that as both the parties admit that the subject property is a vested one, its status gives rise to no dilemma and then cited two aforementioned decisions to re-instate that (I) the right of administration, control, management and disposal by transfer or otherwise, which stand vested in the government, pursuant to Ordinance XLIII of 1976 remains conferred on the government or such office or authority as the government may direct (II) as per the circular dated 23rd May 1977, issued by the Ministry of Land Administration, which though is not a piece of legislation, yet binding, the Additional Deputy Commissioner may, with the previous approval of the government, transfer or otherwise dispose of any vested property, in whose jurisdiction it is situate, provided that no such approval shall be necessary for granting lease or letting any such property for a period not exceeding one year at a time (III) no lessee or tenant of a vested property shall acquire any right of occupancy and shall not be entitled to hold on after the expiry of the lease period (IV) the lessee or the tenant, as the case may be, shall be liable to be evicted on the expiry of the lease period (V) Clause 7 of the circular, which speaks of 7 days notice before eviction move, read together with clauses 5 and 6 thereof, reveals that it is applicable for those in unlawful possession, not for lessees who turned unauthorised occupant after the expiry of the tenure of the lease (VI) the word "shall" has been inserted in both clauses 5 and 6 meaningfully to indicate that it is the duty of the lessee to vacate the property at the end of the stipulated tenure, it is his obligation and, even if it is accepted that the phrase "unlawful possession" as used in clause 7 of the circular, is referable to former tenants, such a former lessee is not entitled to hold on the property (VII) as per section 14 of the অর্পিত সম্পত্তি প্রত্যার্পন আইন ২০০১, until returned, vested properties shall remain under control of the Deputy Commissioners who shall demise the same on lease in accordance with the prevailing laws of the land, (VIII) in the backdrop of the circumstances taken up for scanning, it is to be held that the petitioner's possession in the subject property cannot be protected in any manner and he is not entitled to continue with the possession

of the property, (IX) the petitioner was allowed 15 days time to quit: so it is not a case of compelling the petitioner to vacate the premises without notice, notice meaning making something known to a person who was, or might have been, unaware of that scenario.

24. The High Court Division then directed the government to implement the decision to establish "Shuchitra Sen Smrity Sangrahashala" immediately.

25. We must accentuate that the level of ingenuity the High Court Division exhibited in dissecting, scanning and analysing the applicable legislations and decisions, are simply impeccable and beyond reproach. We trace no misdirection or error whatsoever either in the mode they applied to arrive at their conclusion or in the conclusion itself.

26. In discarding the submission audi alteram partem, the High Court Division has commendably taken the pain of exploring several Indian and English decisions to lend support to the enunciation that rules of natural justice are not always rules of thumb; they are flexible and their applications depend on the setting and the back ground of the postulated statutory provisions, nature of the right and the consequences which may entail its application, and reminisced Lord Denning's observation that if a man sees as a privilege to which he has no particular claim, he can be turned away without a word.

27. Right to be heard is, beyond qualm, an indispensable safety valve to protect rights of the postulants: it is an integral part of the principle of fairness.

28. By developing the principles of natural justice the courts have devised a kind of code of fair administrative procedure.

29. Natural Justice plays much the same part in British Law as does "due process of law" in the U.S. Constitution. However wide the powers of the state and however extensive the discretion they confer, it is always possible to require them to be exercised procedurally fairly.

30. Sir William Wade and Sir Christopher Forsyth expressed in their book "Administrative Law, (9th edition page 439);"As governmental powers continually grew more drastic, it is only by procedural fairness that they are rendered tolerable".

31. Eternity and Divinity of the principle was projected by the Court of Kings Bench in the classic Bentleys case, *(R vs University of Cambridge 1723 1*^{str} *557)* by stating that the petitioner should have received a notice "as required by the laws of God and man".

32. Byles J, whose observation is frequently quoted, expressed in Cooper vs Wardsworth Board of Works (1863 14 CB NS 180), "Long course of decisions beginning with Dr. Bentleys case, and ending with some recent cases, establish that, although there are no positive words in statute, requiring that the party shall be heard, yet the justice of Common Law will supply the omission of the legislature".

33. Lord Russel emphatically stated, "It is to be implied, unless the contrary appears, that Parliament does not authorise by the Act the exercise of power in breach of the principles of natural justice ..... *(Fairmount Investments Ltd. vs SOS for the Environment (1976 1 WLR 1255).*

34. Seetley, J. stated that Procedural justice has by now secured an invincible bridgehead in the territory of administration.

35. In *O' Reilly vs Mackman (1983 2 AC 237),* Lord Diplock said that the right of a man to be given a fair opportunity of hearing what is alleged against him is so fundamental to any civilised legal system that it is to be presumed that Parliament intended that a failure to observe it

should render null and void any decision reached in breach of this requirement.

36. Jackson J of the United States Supreme Court stated, "Procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied." *(Shareghnessa vs US 345 US 206 1953).*

37. According to Frankfurter J, " The history of Liberty has largely been the history of the observance of procedural safeguards" *(M. Nabb vs United States, 318 US 332 1943).*

38. All these said however, bridles that obscurate the application of this precious tenet, when fairness permits departure, must not be over looked.

39. In reply to the self generated question, "How far is it right for the courts of law to try to impart their own standards of justice to the administration?"

40. Prof. Sir Wade and Sir Forsyth (Supra) observed, "Since the decisions to which the rules apply are very various, they have to be flexible and their precise content depends on the circumstances". (Page 442)

41. Lord Denning expressed, "The rules of natural justice or fairness are not cut and dried. They vary infinitely *(R vs Home Secretary exparte Santillo 1981 QB 778).* He also said, " it is not possible to lay down rigid rules as to when the principle of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject matter" *(R vs Gaming Board for Great Britain ex P Benaim and Khaida 1970 20B 417).* It has been emphasised in *George vs SOS for Environment (1979 77 LGR)* that there must have been some real prejudice to the complainant: there is no such thing as a merely technical infringement of natural justice.

42. It has been held in *Commission of Business Franchises vs Borenstein (1984 VR 375)* that it is always possible for hearing to be excluded by the scheme of the legislation.

43. It is Lord Bridge's following observation on flexibility of the application of the doctrine that has attracted widest attention:

> "My Lords the rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the under lying concept, what the requirement of fairness demand when any body, domestic, administrative, or judicial, has to make a decision which will affect the rights of individuals, depends on the character of the decision making body, the kind of decision it has to make and the statutory or other framework in which it operates." *(Lloyd vs Me Maheri 1987 AC 625).*

44. Lord Denning MR, who, according to Lord Devlin, nurtured the conception that justice is above the Law (Lord Devlin's Foreword for the book "Lord Denning: The Judge and the Law Edited by JL Jowell & JPWB Mc Anslan) figured the most robust expression against the abusive and illusory application of the doctrine, in following terms in *Reg vs Home Secretary, Ex-P Mughal (1974 QB 313):*

> "The rules of natural justice must not be stretched too far. Only too often the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequences".

45. Lord Denning's above quoted observation is squarely applicable in the instant case as the petitioner invoked audi alteram partem after he indulged upon wrong doing by failing to vacate the premises after he was asked to do so following the admitted cessation of the year to year lease period, to avoid the consequences.

46. Even in the epochal English decision in the case of *Ridge vs Baldwin (1964 AC 40)*

which has literally resuscitated the doctrine from dormancy, the House of Lords made flexibility principle quite explicit by stating, "It is common sense that normally the principle audi alteram partem should apply, but in each case the obligation depends on the words of the particular statute".

47. To draw the line between the kind of cases where right to be heard are imperative and the cases where such rights are not available, Lord Reid in the aforementioned case expressed;

> "Sometimes the functions of a Minister or department may also be of that character, and then the rules of natural justice can apply in much the same way. But more often their functions are of a very different character. If a Minister is considering whether to make a scheme for, say, an important new road, his primary concern will not be with the damage which its construction will do to the rights of individual owners of land. He will have to consider all manner of questions of public interest and, it may be, a number of alternative schemes. He cannot be prevented from attaching more importance to the fulfilment of his policy than to the fate of individual objectors, and it would be quite wrong for the courts to say that the Minister should or could act in the same kind of way as a board of works deciding whether a house should be pulled down."

48. Lord Evershed in the same case stated, " It has been said many times that the exact requirements in any case of the so-called principles of natural justice cannot be precisely defined; that they depend in each case upon the circumstances of that case. According to Sir Frederick Pollock, the meaning of the phrase "natural justice" is the ultimate principle of fitness with regard to the nature of man as a rational and social being; and he went on to point out that the origin of the principle could be traced to Aristotle and Roman Jurists. (Jurisprudence and Legal Essays 1961, Page 124). Your Lordships were, therefore, not unnaturally referred to a great many cases, but, as I believe that your Lordships agree, it is by no means easy to treat these decisions as entirely uniform and still less easy to be able to extract from them the means of propounding a precise statement of the circumstances or of the cases in which the principles can be invoked before the courts".

49. Lord Devlin on the question of applicability of natural justice, stated in the same case; " whether or not they are to be applied to any statutory procedure depends upon an implication to be drawn from the statute, itself .....".

50. The House of Lord's Judgment in this *Star Ship case* (i.e. *Ridge vs Baldwin, Supra),* transmit undistorted message to the effect that, audi alteram partem shall apply when a decision taker relies on a given ground, which is *prima facie* contentious in the sense that it is open to the affected person to put forward his version on the alleged fact in question. In other word, right to be heard cannot be claimed where visibly and on the face of it no contentious ground exists. As Lord Evershed stated in Ridge vs Baldwin, *Supra;*

> "My Lords, if the only question which was here involved was whether the appellant should have ceased in March, 1958, to be chief Constable and whether, therefore, the watch committee was entitled without more to decide, I would for my part, say that there was, in the circumstances, no call for the watch committee to observe the so called rule, *audi alteram partem".*

51. What are amply clear from the amalgam of all the decisions scanned above are that the plea of mere technical infringement of natural Justice must be disbudded, that to be permitted to hoist a plea, there has to be a *prima facie* contentious issue capable of fortifying the person aggrieved with some apparently recognisable argument in

his fovour, that there cannot be any inflexible rule as to its application; as the same would vary from case to case, that it cannot be allowed to be used as a vexatious device to waste Courts' time in visibly open and shut, barren cases.

52. In the case in hand, admittedly the subject premises was demised on a year to year lease and the tenure had come to an end and, admittedly again, the circular concerned, upon which even the learned Senior Advocate for the petitioner in Writ Petition No. 4608 of 2009 relied, unambiguously required the lessees to give up possession on the extinction of the lease period without further ado. It is, hence, a thoroughly fallacious and spurious exercise to claim audi alteram partem in this case.

53. When it is not disputed, and unbroken chain of authorities proclaim that a year to year lessee acquires no vested right, *(Mallikpur Fishermen Co-operative Society Ltd. vs The Secretary, Ministry of Land (15 BLD AD 241),* purported claim to audi alteram partem is like arguing that before a civil servant proceeds to retire having attained super annuation, he is entitled to be given an opportunity to be heard. The government demises on lease on different terms many Jal Mahals, Hats, Bazars etc. Can it be argued that these lessees cannot be evicted without a hearing when their tenure end? Such a contention would not only be bizarre, but shall also put things topsy turvy.

54. It is true that this Division in the decisive case of *Sharping Matsajibi Samabay Samity vs Bangladesh, (39 DLR AD 85)* illustrated the necessity of show cause notice. But that was under a diametrically divergent factual scenario. Unlike the instant one, that was a case of cancellation of lease in the midway, involving no question of fresh renewal at the expiry of the original term, and most importantly, the ground that was assigned, as under the term of the lease in that case such a ground was indispensable to cancel a lease, was fiercely contentious ones even to the extent that two different relevant government functionaries supplied two mutually destructive report on the prime question as to whether the writ petitioner had undertaken required development work in the Jalmahal. Obviously this conspicuously disputed question, on which the authorities' power to cancel the lease entirely depended, could not be resolved without hearing the party that claims it undertook development work.

55. Verbatim observation of BH Chowdhury J, reproduced below, will make the difference quite discerable.

> "The learned Attorney-General could not specifically inform the court whether there had been an inquiry previous to the filing of the bad conduct certificate issued by the ADC on 7-4-1985. It is clear there is nothing on the record to substantiate that there had been any inquiry before filing such adverse report nor any show cause notice was ever issued as contended by Mr Ishtiaq Ahmed. In this position there is no hesitation in saying that it is another case of non-application of mind which operated adversely in so far as the appellant is concerned".

56. Shahabuddin J's observation, which runs as follows, is also pertinent;

> "As to the execution of the development work the lease deed shows that the lessee was to execute development work once in every 3 years according to the direction of officers of the Fishery Directorate. The lessee appellant contended that he did execute the development work as per approved plan and produced a certificate to this effect from the District Fishery Officer. But the Additional Deputy commissioner obtained a report from the Thana Revenue Officer showing that no development work was done. The Government, while cancelling the lease on the Additional Deputy Commissioners report,

did not refer to the certificate of the Fishery Officer. .....

.....

It clearly shows malafide intention on the part of the Additional Deputy Commissioner and non-application of mind and arbitrary action on the part of the government in cancelling the lease without giving the appellant any opportunity whatsoever to show cause against the proposed action."

57. It goes without saying that when a decision is based on an allegation, more so when that allegation is a fervently contentious one, the principle of natural justice warrants that the claimant cannot be condemned unheard.

58. So, in no way can the instant case be equated with that of *SMS Samity vs Bangladesh,* Supra. Here there is no question of cancellation of a lease on reliance upon a stipulated ground before expiry of the term, and the authorities have assigned no reason, as they are not required to, in exercising their unfettered discretion against renewal of the lease after its tenure came to an end. It also does not invite the question as to whether the authorities acted in breach of the lease covenant.

59. Mr AJ Mohammad Ali also attempted to engage the doctrine of promissory estoppel and relied on a memo dated 6th August, 1991 his client received from a Senior Assistant Secretary at the Ministry of Land, text of which is reproduced below for ease of exploration.

ANNEXURE-E.

গণপ্রজাতন্ত্র বাংলাদেশ সরকার
ভূমি মন্ত্রনালয়
শাখা-৬।

স্মারক নং ভূঃমঃ/শা-৬/স্থায়ী বন্দোবস্ত/১০৪/৯১-২৩৩
তারিখ ৬-৮-৯১ইং
২২-৪-৯৮ বাং

প্রেরকঃ চেয়ারম্যান,
ইমাম গাজ্জালী ইনষ্টিটিউট,
পাবনা।

বিষয়ঃ ভি,পি কেস নং-৩ (পাব)/৮৬-৮৭ ভূক্ত অর্পিত ও অনাগরিক সম্পত্তি পাবনা ইমাম গাজ্জালী ইনষ্টিটিউটের জন্য স্থায়ী ইজারা বন্দোবস্ত প্রসংগে।

সূত্রঃ তাহার স্মারক নং ১৭১৩-ভি,পি তাং ১৬-৭-৯১ইং/ ৩১-৩-৯৮ বাং।

উপরোক্ত বিষয় ও পত্র সূত্রে নির্দেশক্রমে জানানো যাইতেছে যে, বর্তমানে অর্পিত সম্পত্তি স্থায়ী বন্দোবস্ত বিধান নাই ফলে যতদিন পর্যন্ত অর্পিত সম্পত্তি সম্পর্কে চূড়ান্ত সিদ্ধান্ত গৃহিত না হয় ততদিন পর্যন্ত উল্লেখিত অর্পিত সম্পত্তি প্রতিষ্ঠানটির অনুকুলে একসানা বন্দোবস্ত থাকিবে।

স্বঃ
(সৈয়দ আখতার হোসেন)
সিনিয়ন সহকরী সচিব

স্মারক নং ভূঃমঃ/শা-৬/স্থায়ী বন্দোবস্ত/১০৪/৯১-২৩৩
তারিখ ৬-৮-৯১ইং
২২-৪-৯৮ বাং

অনুলিপি অবগতির জন্যঃ
১। জেলা প্রশাসক, পাবনা।

স্বঃ অপাঠ্য
(সৈয়দ আখতার হোসেন)
সিনিয়ন সহকরী সচিব

60. Before construing the legal position on this dogma, it is necessary first to scrutinise the factuality of the claimed promise, the petitioner is bent upon, to see if it can be compartmentalised as an estoppel generating promise at all in concord with the High Trees principle and the subsequent development that followed. By the message transmitted through the docket dated 6-8-1991 the

Assistant Secretary concerned stated that as there existed no provision for permanent settlement of vested properties, the yearly lease would be extended untill such time a final decision is arrived at on vested properties. So, since a final decision has in fact been taken in respect to the subject vested property, it is factually not open to the petitioner to say that the promisors have resiled from their promise. The so-called promise was not ad-infinitum, but was an event bound one, which event, i.e. a permanent decision had in fact been taken on the vested property concerned.

61. Most importantly, the given facts cannot in any event constitute promissory estoppel because under the High Trees principle, which is the progenitor of this doctrine, which had survived the passage of time, to constitute a claim for promissory estoppel, factum of detriment by the promisee must be established, detriment being unamputable spark to ignite promissory estoppel. In the instant case, the petitioner was quite conspicuously and, without any equivocation, intimated vide a letter dated 25-5-92 that it was for him to decide whether to spend any money in the premises, but that such spending will not create any right or claim in his favour. So, when the petitioner was explicitly warned that no expenditure would arm him with any right or claim, it is not open to him to claim that he suffered detriment by reciprocating the promise.

62. The petitioner's submission on the invocation of the doctrine of promissory estoppel begets a bit of comprehensive legal analyses.

63. Promissory estoppel, also known as equitable estoppel as it was innovated to grant relief outside the inflexible rules of Common Law, though it is neither in the realm of contract nor in the realm of equity, *(India vs Godfrey Philips AIR 1986 SC 806),* was first brought into being by none other than that great English innovating Judge, Denning J. (as he was at the relevant time i.e. in 1947). In the pivotal case concerned (i.e. *Central London Properties Trust Ltd. vs High Trees House Ltd. 1947 KB 130:* the adventurous decision that hiked Denning-J on the platform of prominence- (Lord Devlin felt that by this bold decision Denning J, a very recent puisne, preferred to cut a channel from the mainstream. Lord Devlin's foreward, supra) the plaintiff, who sued the defendants for full rents for the last quarter of the year 1945 and for future, leased a block of flats to the defendants. In view of the War time lull in the rental market, the plaintiff in January 1940, agreed in black and white to reduce the rent, without specifying the time span for such concessionary rate. The defendants paid at the reduced rent during 1940-45 period but as the tenants' scarcity waned with the cessation of hostility in 1945, the plaintiff demanded rent at the originally fixed sum, retrospectively as well as for the future and then initiated the said civil action for originally fixed rent for the last two quarters of 1945, as the defendant declined to give in to that demand.

64. As the agreement for reduced rent fell short of a contract because of the absence of consideration, the defendant could not foster the plea of breach of contract, but instead, he raised a surrogated defence with the claim that the plaintiff could not resile from its promise on the basis of which the defendant spent some money to repair the flat to its detriment.

65. Denning J expressed that the agreement of January, 1940 was intended as a temporary expedient only and has ceased to operate early in 1945 and hence rent originally fixed by the contract was payable as from 1945 and the plaintiffs were entitled to judgment for the period from 1945 onward, stating however that, had the plaintiffs sued for arrears for 1940-45 period, the agreement made in 1940 would have operated to defeat their claim.

66. Denning J. agreed that there was no consideration for the plaintiff's promise to reduce the

rent. If, therefore, the defendants had themselves sued upon that promise, they must have failed. They could not claim on contract as one of the essential elements, i.e. consideration, was missing. But, Denning J. raised a question as to why, when such a promise is used merely as a defence, presence or absence of consideration be relevant? He expressed that the defendants were not seeking to enforce a contract and need not prove one. In quest of a rule under the English Law, whereby the plaintiffs could be prevented from ignoring their promise, he felt at the first sight that the doctrine of general estoppel would supply the answer. But Denning J's supposition on the applicability of the doctrine of (Legal) estoppel faced a stumbling block from the 1854 House of Lord's decision in *Jordan vs Money (1854 5 HL Case 158)* in which the House of Lords held that estoppel would operate only on a representation of existing fact and hence it could be applicable in High Trees type situation where the defendant sought to rely on a promise of future intention. To overcome this quandary, Denning J sought to tap a slender stream of authority which had flowed in equity rather than in Common Law. He extended the equitable doctrine of forebearance, as propounded by the *House of Lords in Hughes vs Metropolitan Railway (1877 2 App. Case 439)*, stating that the plaintiffs would have been precluded by the equitable doctrine of Hughes vs Metropolitan Railway, supra, from suing for the full rent for the period which was covered by the 1940 agreement adding; " The logical consequence no doubt is that a promise to accept a smaller sum, if acted upon, is binding notwithstanding the absence of consideration" and thus the fullest effect of "equitable" or "promissory" estoppel surfaced as a quasi equitable remedy, about which Lord Pearson stated, " Promissory estoppel was far removed from familiar estoppel by representation of fact and seems to be more like waiver of contractual rights" *(Woodhouse AC Israel Cocoa Ltd. vs Nigerian Produce Marketing Co. Ltd. 1972 AC 741).*

67. Gist of promissory estoppel is that (1) there is to be an unequivocal, clear promise meant to be relied on by the promisee (2) acted upon the promise by the promisee to his detriment, (3) it could only be used as a "shield" not as a sword *(Combe vs Combe 1951 2 KB 215).* (The Indian Supreme Court deprecated the 3rd element).

68. Although the doctrine was born as a private Law concept through a civil suit between two private parties, its effect soon pervaded to public law domain in the UK and India and then to our jurisdiction. In the past it was accepted that an estoppel could sometimes be raised against a public body in order to prevent it from resiling from an officials undertaking *(Robertson vs Minister of Pensions 1949 1 KB 227, Wells vs Minister of Housing and Local Government 1967 1 WLR 1000, Lever Finance vs Westminister LBC 1971 1 QB 222),* though doubt was expressed by the House of *Lords in Howell vs Falmouth Boat Construction (1951 AC 837)* on its application in public law domain.

69. The Court of *Appeal in Western Fish Products vs Penrith DC (1981 2 All ER 204),* stated that estoppel can only be raised against a public body in some narrow circumstances, such as where the representor had ostensible authority and the decision was intra vires and the power could have been delegated to the representor.

70. However, following the House of Lords' decision in *R. [Reprotech (Pebsham) Ltd. vs East Sussex CC (2003 1 WLR]* estoppel by representation no longer applies in the UK in public law cases, as Lord Hoffman expressed obitar, that it was unhelpful to introduce private law concept of estoppel into planning law because estoppel is not suited to the public law context, because estoppel binds individuals on the ground that it would be unconscionable for them to deny what they have represented or agreed, but the doctrine of estoppel is a blunt tool in the Public Law context because public authorities also have to take into account

the interest of the general public which the authority exists to promote.

71. In Lord Hoffman's view the solution lay in jettisoning estoppel from public law entirely in favour of the principle of legitimate expectation. He expressed, obitar.

> " It is true that in early cases such as the Wells case and *Lever Finance Ltd. vs Westminister (City) London Borough Council (1971) 1 QB 222, (1970) 3 All ER 496* Lord Denning used the language of estoppel in relation to planning law. At that time the public law concepts of abuse of power and legitimate expectation were very undeveloped and no doubt the analogy of estoppel seemed useful. In the Western Fish the Court of Appeal tried to reconcile these invocations of estoppel with the general principle that a public authority cannot be estopped from exercising a statutory discretion or performing a public duty. But the results did not give universal satisfaction: see the comments of Dyson J. in the Powergen Case (2000) JPL 629, 638. It seems to me this area, public law has already absorbed whatever is useful from the moral values which underlie the private law concept of estoppel and the time has come for it to stand upon its own two feet."

72. The Indian *Supreme Court in MP Sugar Mills Ltd. vs UP (AIR 1979 SC 621)* held that the government was barred by the promise if it had been made by an agent having authority to make such promise and if such promise was not contrary to law even though it might relate to its sovereign function. In the later case of *Jit Ram vs Hariyana (AIR 1980 SC 1285)* however, the same court deviated from the MP Sugar Mills decision, only to revert back to the same through the 1986 case of *India vs Godfrey Philips (AIR 1986 SC 806)*. This is to be mentioned that the Indian Supreme Court examined scores of English authorities beginning with the decision in the ice breaking High Tries case to arrive at the MP Sugar principle. Latest English Development that came into vogue through the House of Lords decision in *R (Reprotech) (Pebsham) Ltd. vs East Sussex CC,* supra, was yet to be known. It is to be seen whether the Indian Apex Court in future follows this decision to say that promisory estoppel has no application in public law, as the doctrine of legitimate expectation has, of late, achieved sufficient progression and sophistication to render promisory estoppel redundant in public law domain.

73. Even if promissory estoppel is to be applicable in public law cases, restrictive factors fencing its bounds, must not be obliterated. The Indian Supreme Court in MP Sugar Mills, supa, also, observed that promissory estoppel is an equitable doctrine and it must yield when equity so demands, stating;

> "If it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it the court would not raise an equity in favour of the promise against the Government..... ".

74. The Apex Court in *India in Kasinka Trading vs Union of India (1995 (1) SCC 274)* held that the government being satisfied about public interest in withdrawing something granted earlier, is bound by no unequivocal promise as representation extending by merely specifying the period of operation of the grant in the notification, so as to attract the doctrine of promissory estoppel, in the absence of manifest injustice, malafide or fraud, expressing further that when something is granted in exercise of a statutory power, it is implicit that the same can also be rescinded or modified at any time in exercise of the same power. The Court also observed, "The doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the result sought to be achieved

and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must forever be present in the mind of the court while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown, having regards to the facts and circumstances of the case, that it would be inequitable to hold the government or the public authority to its promise, assurance or representation."

75. So far as our own jurisdiction is concerned although the Appellate Division in a couple of cases gave relief on the basis of promissory estoppel *(Collector of Customs vs Abdul Hannan 42 DLR (AD) 167, Secretary, Industries vs Saleh Ahmed, 1981 BLD (AD) 91),* on the basis of the facts peculiar thereto, nevertheless remained unequivocal to express in *Khandker Delwar Hussain vs Bangladesh Italian Marble Works (62 DLR (AD) 298)* that estoppel cannot be pleaded against or in respect of statute, much less against the Constitution.

76. In *Chairman RAJUK vs Abdur Rouf Chowdhury, 61 DLR (AD) 28,* this Division enunciated the prevailing view that promissory estoppel cannot be invoked to enforce a promise contrary to law.

77. This Division in *Chairman Bangladesh Textile Mills vs Nasir Ahmed Chowdhury (22 BLD (AD) 199 = 7 BLC (AD) 144)* stated in the context of both promissory estoppel and legitimate expectation, that "In this conflict of doctrine the demands of fairness are proving the stronger. But these demands cannot be pressed to the point where they obstruct change of policy which a government should be at liberty to make within its discretionary power or legitimate practice".

78. The legal position after analysing the above authorities can be summed up by succinctly stating that while the government may be prevented from backing out of a promise its functionaries made and the promisee acted upon it to his detriment, estoppel cannot have any threshold to prevent a state functionary from performing a duty the law or the Constitution thrust upon him. He can obviously not turn intra vires an ultravires action *(Ministry of Agriculture and Fisheries vs Hulkin,* unreported, has been quoted in *Ministry of Agriculture and Fisheries vs Mathews 1949 2 All ER 724,*) nor can it be taken in aid when equity deserves the converse and that the doctrine being based on equity, resiling would be permissible if equity so warrants.

79. In the case in hand the property concerned bears great historic and cultural significance being the tenement where the most illustrious star in the galaxy of Bengali film, Suchitra Sen was born in. She is our Pride (but not Prejudice) and shall live as our invaluable heritage till the twilight of civilisation. It is no exaggeration to say that the Government is saddled with a constitutional duty to adopt measures required for its protection under Articles 23 and 24 of the Constitution. Furthermore, it would be inequitable to try to hold the authorities to their purported promise not only because of their constitutional obligation to protect and preserve it but also because plunging the government to the claimed promise would mean depriving the nation of a prodigious relic.

80. Authorities of spectacular preponderance ordain that the doctrine of promissory estoppel cannot be animated against the Government if that impedes the Government's constitutional responsibility.

81. The Indian Supreme Court in *Sankaranarayan vs State of Kerala (AIR 1971 SC 1997)* held that the powers conferred by an Article of the Constitution cannot be curtailed by any agreement.

82. The said Court emphasised in *MP Sugar*

Mills case, supra, that it would be deemed inequitable if the Government can demonstrate that overriding and overwhelming public interest required the Government to be absolved of its past promise.

83. Shuchitra Sen, generally venerated as a Sage, was the most revered Regina of Bengali Silver screens, which we take judicial notice of, and hence, in addition to what have been stated by the writ respondents, it goes without saying that duty to preserve her memory by setting up an archive, far transcends any other interest and hence public interest to protect and preserve it, is beyond any qualm, overriding and over whelming.

84. We do also note that the petitioner cannot claim equity based relief as he has not come with clean hands, firstly because, as the High Court Division concluded, he had been a defaulter and, also because after obtaining a big chunk of land for a throw away price from the government in the same town, (a fact that is not refuted) it was neither ethical nor scrupulously on his part to hold on to another government property and it would also be in-equitable on the part of the authorities to allow the same Imam Gazzali Institute to retain two sets of government lands simultaneously.

85. The petitioners' learned Senior Counsel also included the doctrine of legitimate expectation in his index of submissions.

86. This concept, the latest entrant into the domain of public law, again evolved by none else than Lord Denning, is distinct from equitable estoppel notwithstanding its visible resemblance with the latter. A promise, a representation, whether oral or written or a continuous conduct or practice may ignite an expectation based right if relied on by the promisee, representee. The expectation can be procedural or substantive.

87. The most important difference between a promissory estoppel and legitimate expectation is that while detriment suffered by the promisee is a *sine qua non* for a promissory estoppel, no such detriment is necessary to erect a claim on legitimate expectation *(R vs Department of Education and Employment, Ex P Begbie (2000 1 WLR 1115, R (on the application of Bibi) vs Newham LBC (No. 1) 2002 1 WLR 237, R vs Falmouth and Turno Port Health Authority Ex P South West Water Ltd. 2001 QB 445, R (Wagstaff) vs Secretary of State for Health 2001, 1 WLR 292, AG of Hong Kong vs Ng Yuen Shiu 1983 2 AC 629).* The strongest authority to say that the promisee need not incur any expenditure or otherwise to act to his detriment, is, *R vs SOS for the Home Department Ex P Ruddock (1989 1 WLR 1982).* Legitimate expectation is also different in that while promissory estoppel is a product of equity, legitimate expectation is an extension of the principle of fairness as propounded by the Common Law Judges in the realm of Administrative Law. As such, while relief under promissory estoppel is granted if the court concludes denial would be inequitable, a promise under the doctrine of legitimate expectation may be enforced if resiling from the promise by a public authority is deemed to be an unfair abuse of power. *(R vs North and East Dewan Health. Authority ex-P Coughlan 2001 QB 213). In R vs SOS Home Department ex-P Hargreaves (1997 1 WLR 906),* on substantive expectation, as opposed to procedural ones, it was held that provided that the public body acted rationally in the Wednesbury sense, it is free to determine where the balance lay between the policy factors pointing towards frustration of the expectation and the unfairness which would thereby be occasioned to the representee. *Lord Brown Wilkinson in R vs SOS for Home Department Ex-P Variables,* expressed, "When Parliament confers a discretionary power exercisable from time to time, such power must be exercised on each occasion in the light of the circumstances at that time. In consequence, the person on whom the power is conferred cannot fetter the future exercise of his dis-

cretion by committing himself now as to the way in which he will exercise his power in the future. He cannot exercise the power nunc pro tunc." (1998 AC 407).

88. High profile authorities affirm that Courts are far slower to enforce substantive expectation, as opposed to procedural expectation .

89. Prof. Richard Moules of Cambridge in his book, "Actions Against Public Officials: Legitimate Expectation, Misstatements and Misconduct, by analysing various decisions, states. "While it is uncontroversial that a procedural legitimate expectation should normally be protected by ordering the expected procedure to be followed, the position in respect to substantive legitimate expectation is more complex. This is because substantive legitimate expectation impinges on the public body's discretion to a much greater extent: it constrains the decision which the body is entitled to make, rather than merely the procedure which must be followed". (Page 93).

90. It is thus, within the comprehensible range of vision that whereas promissory estoppel is conditioned and circumscribed by all the equitable maxims, a legitimate expectation is an extended form of fairness, designed to prevent abuse of power and the same is liable to fall through if, amongst other factors, interest of the society so warrants.

91. In quest of an answer to the question whether the doctrine of legitimate expectation is available to the instant petitioner, it is incumbent upon us to examine the circumstances in which this principle was gestated and what stumbles its application.

92. This latest permeated doctrine in the realm of public law made its maiden appearance with the deliberation of the judgment in the case *Schmidt vs Secretary of State for Home Affairs (1969 All ER Vol. 1904).*

93. Lord Denning MR, arguably one of the greatest English catalyst in juristic excellence, who evolved this doctrine from nihility by expanding the notion of fairness, while dismissing an American citizen's claim to have his stay visa in the UK extended after the same expired, to enable him to follow the course of study for which he was allowed to enter the UK., stated obitar, " If his permit is revoked before the time limit expires, he ought, I think, to be given an opportunity of making representations; for he would have a legitimate expectation of being allowed to stay for the permitted time. Except in such a case, a foreign alien has no right and I would add, no legitimate expectation of being allowed to stay. Once his time has expired he has to go."

94. With this observation, this hitherto unveiled concept came to the vogue. During the intervening period, this concept passed through manifold developments, not only in its natal home in the UK but also beyond.

95. Precisely, a legitimate expectation can arise when the public authority concerned, by a promise or a representation, whether verbal or written, or by conduct or continuous practice, ignites an expectation in the mind of the promisee or the representee that the promise, representation or the practice would be followed.

96. Unlike in promissory estoppel, the promisee is not required to show any detriment on his part, for the principle is an extension of the doctrine on fairness, not of equity. It is reckoned that fair play requires a public authority to honour its promise.

97. As the wings of the doctrine spread all around, so did the wing clipping factors.

98. It is, by now, a deeply trenched rule that neither form of legitimate expectation is absolute and an individual's entitlement may be denied in

furtherance of an overriding public interest, particularly in substantive expectation cases. According to *Laws LJ in R (Niazi) vs SOS for Home Department (2008 EWCA CIV 755)* there are two situations in which it would be lawful for a public authority to resile from a legitimate expectation, namely (1) where there are countervailing considerations which justify not giving effect to the legitimate expectation in the public interest and (2) where it would be unlawful for the public authority to give effect to the legitimate expectation.

99. In the *Hallmark case of R vs North and East Devon Health Authority, Ex-P Coughlan (2001 QB 213),* it has been articulated that (1) in the first place the court is restricted to rationality or Wednesbury review, (2) concerning procedural expectations the court will decide whether the decision is procedurally fair, (3) the court must itself decide whether frustration of an individual's expectation was so unfair as to amount to an abuse of power.

100. The Court of Appeal thus emphasised that once the legitimacy of the expectation is established, the court will have the task of weighing the competing requirements of fairness against any overriding interest relied upon for the departure from the promise.

101. It has been stated by the Court of Appeal in *R vs SOS for Education, Ex P Begbie (Per Laws LJ) (2000 1 WLR 1115),*

> "In some cases a change of track by a public authority, though unfair from the applicant's stance, may involve question of general policy affecting the public at a large or a significant section of it."

102. In *R (Niazi) vs SOS Home Department,* supra, the court of Appeal (Per Laws LJ), held that the public authorities could resile from legitimate expectation where countervailing public interest so justifies.

103. The most glaring example of a public authority being permitted to resile from a legitimate expectation originating utterance or practice has been provided by the decision in the celebrated case of *Council of Civil Service Unions vs Minister for Civil Service,* (the *GCHQ case*) *1985 AC 374),* in which case the House of Lords held that considerations of national security were sufficient to justify departure.

104. It has also been emphasised by the English authorities that a public body will be absolved from giving effect to a legitimate expectation if it is required to act contrary to the expectation of the statute. *(R (X) vs Head Teacher and Governors of Y School 2008 1 All ER 249.*

105. It has been held in *R vs Ministry of Agriculture Fisheries and Food, Ex P Hamble Fisheries Ltd. (1995 2 All ER 714),* that to bind public bodies to an unlawful representation would have the duel effect of extending statutory power and destroying ultra vires doctrine by permitting public bodies to arbitrarily extend their power.

106. Lord Denning MR in *R vs Liverpool Corporation, Ex-P Liverpool Taxi Fleet Operators Association (1972 2QB 299)* relied on *Lord Binkenhead's dictum in Birkendale District Electricity Supply Company Ltd. vs Southport Corporation (1926 AC 355)* to the effect that a public body cannot contract out of its statutory duties. Lord Denning expressed that a public body could not act incompatibly with the exercise of its powers or the discharge of its duties.

107. This British originated doctrine did not take much time to reach our sub-continent and quite naturally we followed the English decisions and the English guidelines as much as the interdictory devices the English Courts devolved, the English Courts being the innovating fora.

108. So far as the Indian Jurisdiction is concurred, the ratio in *MP Oil Extraction vs MP (AIR 1998 SC 145)* provides with a significant and comprehensive analyses, in which the Indian Supreme Court by placing under the scaner the

English authorities, held that this doctrine has been judicially recognised in India.

109. Indian Apex Court followed the same exclusionary provisions as the English courts had and held in *Dr Chanchal Goyal vs Roysthan (AIR 2003 SC 1713)* that clear words in the statute or policy statement defeat legitimate expectation. It held in *India vs Hindusthan Development Corporation (AIR 1994 SC 988)* that the protection of legitimate expectation does not require the fulfillment of the expectation where an overriding public interest surfaces with greater accentuation.

110. In Food Corp of *India vs Kamdhenu Cattle Feed Industries (1993 SC 160)* the same court, though recognised the existence of legitimate expectation, refused to grant relief because overriding public interest outweighed the individual's expectation.

111. By anatomising the English decision in *R vs Home Secretary ex P Hargreaves (1997 1WLR)*, the Indian Supreme Court came up with the irrefutable conclusion that a change in Policy can defeat a substantive legitimate expectation provided it can be justified on Wednesbury reasonableness.

112. Courts in our own jurisdiction had displayed no outwardly approach either. On the constraining application of the doctrine, the Appellate Division in *Chairman BTMC vs Nasiruddin Chowdhury, supra,* while holding that the given facts are incapable of igniting such an expectation, nevertheless, expressed obitar, that though a substantive legitimate expectation cannot normally be defeated, overriding public interest clearly requires negation.

113. The above stated authorities can be summed up as follows:

(1) While a representation, promise, verbal or scripted, a continuous practice that has been followed, if relied on, can procreate a legitimate expectation in the mind of the recipient as to their followance, his claim to the expectation may be liable to be defeated for numerous reasons, such as, if honouring the expectation;

(a) would founder overriding public interest,

(b) would be repugnant to any constitutional, or statutory mandate or even constitutional or statutory expectation: if honouring the expectation would be ultra vires any constitutional or statutory provision.

(c) would be inconsistent with a changed policy provided the change is not unreasonable in the Wednesbury sense.

114. The primordial question before us is where does the petitioner stand in the backdrop of the factors dissected above so far as his claimed legitimate expectation is concerned?

115. We reckon it irresistible in the first place to explore the question as to whether the text in the documed annexed as Annexure-E to the Writ Petition No. 4608 of 2009 can be treated as a promise capable of generating a legitimate expectation, and if it does, to what extent? It is plenteously clear from the text that the authorities concerned stated that the yearly lease would be extended every year until a permanent decision is taken on the vested properties. So, the expectation, if any, died a natural death when the authorities resolved to convert the subject property into an archive to preserve Shuchitra Sen's memory, i.e. when a permanent decision had been taken on this vested property.

116. Expectation, if any, (and indeed reliance on promissory estoppel) must have been a stale one even from the inception from the legal perspective as well, because;

(i) it cannot be honoured without clogging the hands of the authorities from implementing what Article 23 and 24 of our Constitution ordains. Although provi-

sion of these Articles are not judicially enforceable, they do nevertheless, impose upon the State inalienable obligation, which cannot be compromised by any promise or practice. To do so would be tantamount to defeating constitutional sermon and expectations,

(ii) it is beyond the expectation of the statutes, which stand in force to regulate vested properties, that the authorities should be allowed to clog their discretion by making any promise of infinite duration and thereby deprive themselves of chalking further schemes of benevolent nature in future.

(iii) it is beyond qualm that late Shuchitra Sen is an Acclaimed Maestro who reigned over our film world for over three decades unrivelled. She is preciously adored by our people, whose vibrant desire for the protection and preservation of the earlier's memory and works in her natal home mounts to a level high enough to be ignored, and it is this inviolable aspiration that undoubtedly animates an overriding public interest of utmost importance, which cannot be flouted or crucified, which interest must prevail over the petitioner's claim.

(iv) if the claim advanced by the petitioner is accepted, that would effectively mean emasculating the authorities to the extent that they would be debarred from performing their statutory obligations as per the mandates that emanates from the Antiquities Act 1968 section 2(e), read with section 2(c)(ii),when the cite shall attain the statues of a centenarian, an event which is quite foreseeable without any haze as it is not far away, because Shuchitra died aged 83, of which we take judicial notice.

(v) it would amount to fettering the authorities' discretion to adopt a different policy which is not unreasonable in the Wednesbury sense, or irrational in the GCHQ sense.

117. For the reasons assigned above, our irrestible conclusion is that the High Court Division's judgment and order are irreprehensible, above board and rigidly infallible. We cannot detect even a microscopic particle of error or misdirection in the merit oriented judgment in Writ Petition No. 4608 of 2009. Arguments purportedly structured on natural justice, promisory estoppel and legitimate expectation are obfuscating and destined to end in futitity and fiasco.

118. So far as the fate of Writ Petition No. 6766 of 2011 is concerned, the High Court Division quite cogently noted that as the authorities have resolved to do what the petitioner of that petition aspired, this petition has become infructuous.

119. We find both the leave to appeal application totally devoid of merit, founded upon total delusive introspection and hence both of them, namely, Civil Petition for Leave to Appeal No. 1901 of 2011 and 1902 of 2011 are bound to falter, wherefor they are hereby dismissed.

120. The High Court Division's direction upon the Government to implement the decision to establish "Shuchitra Sen Smrity Sanghrohashala" without delay to protect and preserve her birth place for her indubitable contribution to our cultural arena, is hereby reiterated, requiring the authorities to begin the process forthwith without any delay whatsoever by evicting the petitioner and his institute, if that has not already been done by now.

121. Before parting we must also note with disquiet that Mr Imran Siddique, the learned Advocate for the petitioner in Writ Petition No. 4608 of 2009 as early as in August, 2011, prayed for an stay of the operation of the High Court Division's order for two months so that the school could be shifted and the said prayer was granted.

Yet, instead of shifting the school, for which stay was successfully applied for, the petitioner filed these Civil Petitions for Leave to Appeal, and thereby kept the property under their possession for three more years, by doing which, in our view, the learned Advocate and his client resorted to clear fraud upon the court for which they deserve to be reprimanded.

Ed.

APPELLATE DIVISION
(Criminal)

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

State.....Petitioner
(In Crl P.No.117 of 2011)
Anti-Corruption Commission.....Petitioner
(In Crl P.No.210 of 2011
vs
Faisal Morshed Khan and another.....
.....Respondents*
(In both the cases)

Judgment
May 5th, 2014.

Anti-Corruption Commission Act (V of 2004)
Section 27

Evidence Act (I of 1872)
Section 45

The findings made in the impugned judgment and also in the case of Mohiuddin Khan Alamgir *[15 BLC 107, Para 97]* shall be deemed to have been modified in respect of the assessment made by the PWD officials in that the assessment of valuation of any property made by PWD officials shall have evidentiary value when no such assessment is made and accepted as correct by another independent department of the Government authorized in that behalf.

.....(21)

*Criminal Petition for Leave to Appeal Nos. 117 & 210 of 2011

(From the judgments and orders dated 3-8-2010 passed by the High Court Division in Criminal Appeal No.5250 of 2009).

Anti-Corruption Commission Act (V of 2004)
Section 27

Evidence Act (I of 1872)
Section 45

There may be a situation when there is no assessment of valuation by any competent authority of the Government exercising power in that behalf and in such a case, the Anti-Corruption Commission has no other option but to take the assistance of the PWD officials in making assessment of the valuation of any property. Therefore, it cannot be said that the assessment of valuation made by the PWD officials does not have any evidentiary value in all situations.

The assessment of valuation made by the Income Tax Department has legal validity which should not be questioned by another independent government department unless the Income Tax Department reviews its own assessment. There cannot be a conflicting exercise of power between the two independent departments of the Government. If the assessment of valuation made by the Income Tax Department is allowed to be questioned then the very sanctity of such assessment will be at stake and this may cause overlapping exercise of jurisdiction between the two independent departments of the Government. .....(19 & 20)

Mohiuddin Khan Alamgir vs Anti-Corruption Commission, 15 BLC 107 ref.

Biswajit Deb Nath, Deputy Attorney-General, instructed by Sufia Khatun, Advocate-on-Record—For the Petitioner. (In Criminal Petition No.117 of 2011)

Khurshid Alam Khan, Advocate, instructed by Mahmuda Begum, Advocate-on-Record—For the Petitioner. (In Criminal Petition No.210 of 2011)

Shafique Ahmed, Senior Advocate, Ajmalul Hossain, QC Senior Advocate and Ahasanul Karim, Advocate with them, instructed by Mvi. Md Wahidullah, Advocate-on-Record—For the Respondent (In both the cases)

Judgment

Syed Mahmud Hossain J : Delay of 266 days in filing Criminal Petition for Leave to Appeal No.210 of 2011 is hereby condoned.

2. Both the criminal petitions for leave to appeal are directed against the judgment and order dated 3-8-2010 passed by the High Court Division in Criminal Appeal No.5250 of 2009 allowing the appeal and setting aside the judgment and order of conviction dated 20-8-2008 passed by the learned Special Judge, Tenth Court, Dhaka under sections 26(2) and 27(1) of the Anti-Corruption Commis-sion Act, 2004 against the respondent and sentencing him under section 26(2) to suffer rigorous imprisonment for a period of 2 (two) years and also sentencing him under section 27(1) of the Act to suffer rigorous imprisonment for 8 (eight) years to be suffered consecutively and imposing a fine of Taka 1,00,000 (one lakh), in default, to suffer rigorous imprisonment for 1 (one) year more and confiscating of the respondent's property worth Taka 1,66,13,758.43 to the State.

3. These two criminal petitions for leave to appeal involving similar question of law and fact between the same parties have been heard together and are being disposed of by this common judgment.

4. The facts, leading to the filing of these criminal petitions for leave to appeal, in a nutshell, are:

On 20-6-2007, the Anti-Corruption Commission issued an order under section 26(1) of the Anti-Corruption Commission Act, 2004 (in short, the Act of 2004) directing the respondent to submit his statement of wealth along with the statements of wealth of his wife and other dependants within 7 (seven) days of the receipt of the said order. The said order dated 20-6-2007 contained legal action including confiscation of his assets in default of submitting the statements within the time stipulated therein and the order was communicated to the respondent on 21-6-2007. The respondent being away from the country at the relevant time submitted his statement of wealth along with the statements of wealth of his wife and other family members to the said Commission on 10-7-2007 through his representative.

5. After submission of his statement of assets, one Md. Talebur Rahman, Assistant Director of the said Commission, lodged an First Information Report (FIR) with the Gulshan Police Station on 10-12-2007 alleging that the respondent and his wife committed offence under sections 26(2) and 27(1) of the Act, 2004 and Rule 15(Gha) of the Emergency Power Rules read with section 109 of the Penal Code by giving false statement of wealth to the said Commission by acquiring and possessing the property disproportionate to his lawful source of income.

6. After lodging of the FIR, the said Commission on 3-12-2007 gave responsibility of investigation to the Assistant Director of the said Commission, who after investigation submitted charge sheet on 15-6-2008 with the Court of Chief Metropolitan Magistrate, Dhaka against the respondent and his wife under section 26(2) and 27(1) of the said Act, 2004 read with section 109 of the Penal Code within the purview of Rule 15 of the Emergency Power Rules, 2007. The said Assistant Director just reproduced the allegations made in the FIR and the Commission vide memo dated 9-6-2008 issued sanction for submitting charge sheet against the respondent and his wife. After that, the Court of Chief Metropolitan Magistrate, Dhaka transferred the said case to the learned Metropolitan Senior Special Judge, Dhaka wherein the said case was registered as Metropolitan Special Case No.84 of 2008. By his order dated 18-6-2008, the learned Senior Special Judge took cognizance against the respondent and his wife under sections 26(2) and 27(1) of the said Act, 2004 read with section 109 of the Penal Code. After that, the learned Metropolitan Senior Special Judge, Dhaka, sent the case for trial to the Special Judge, Court No.10, Dhaka wherein it was

renumbered as Special Case No.10 of 2008. The said Court, vide order dated 3-7-2008 framed charges against the respondent under sections 26(2) and 27(1) of the said Act of 2004 and also framed charges against his wife under section 27(1) of the Act, 2004 read with section 109 of the Penal Code.

7. The prosecution examined 18 witnesses and the defence examined none.

8. The trial Court by its judgment and order dated 20-8-2008 convicted and sentenced the respondent as stated before. The trial Court in the impugned judgment excluded the property of accused No.2, the wife of the respondent holding that in view of the judgment dated 9-7-2008 pronounced by the High Court Division in Writ Petition No.42 of 2008, no order could be passed against the respondent and his wife with respect to the specific allegation so far the same related to the alleged offence of the wife of the respondent.

9. Being aggrieved by and dissatisfied with judgment and order of conviction passed by the trial Court, the respondent preferred Criminal Appeal No.5250 of 2009 under section 10 of the Criminal Law Amendment Act,1958. The learned Judges of the High Court Division upon hearing the parties by their judgment and order dated 3-8-2010 allowed the appeal setting aside the judgment and order of conviction passed by the trial Court.

10. Feeling aggrieved by the judgment and order passed by the High Court Division, the leave-petitioners have filed these criminal petitions for leave to appeal before this Division.

11. Mr Khurshid Alam Khan, learned Advocate, appearing on behalf of the leave-petitioner in Criminal Petition for Leave to Appeal No.210 of 2011, submits that the High Court Division erroneously came to the finding that the valuation report of the PWD officers has no evidentiary weight more so when the report has been prepared on mere conjectures and as such, the impugned judgment calls for interference. He further submits that the High Court Division came to a finding that it is well-settled that the assessment of valuation of asset by PWD officers has no evidentiary value and the trial Court acted wrongly in considering the valuation report of disputed house and therefore the declaration of the value of the said house given by the respondent was correct and genuine value of the building. He also submits that the valuation of the house having been disclosed in the income tax report was a known and disclosed income of the respondent and that section 27(1) of the Act of 2004 does not come to the aid of the prosecution and the aforesaid finding of the High Court Division having been contrary to the materials on record is required to be interfered with. He lastly submits that the High Court Division without adverting to the findings arrived at by the trial Court acquitted the respondent of the charge levelled against him and as such, the impugned judgment should be set-aside.

12. Mr Biswajit Deb Nath, learned Deputy Attorney-General, appearing on behalf of the leave-petitioner in Criminal Petition for Leave to Appeal No.117 of 2011, adopts the submissions made by Mr Khurshid Alam Khan.

13. Mr Shafique Ahmed, learned Senior Advocate appearing on behalf of respondents in both the criminal petitions, on the other hand, supports the impugned judgment delivered by the High Court Division. He further submits that all the assets of the respondent, which were disputed in the instant case were before the Income Tax Department which had the legal authority to determine the valuation of the assets of the respondent and that had found that the valuation submitted by the respondent was correct and as such there is no scope to raise any dispute with respect to the valuation of the disputed property and as such, the impugned judgment should not be interfered with.

14. We have considered the submissions of Mr. Khurshid Alam Khan, learned advocate for the petitioner in Criminal Petition for Leave to Appeal No. 210 of 2011 and Mr Shafique Ahmed, learned Senior

Advocate, appearing on behalf of the respondent in both the criminal petitions, perused the impugned judgment and the materials on record.

15. Having scanned the evidence of PW 2, Executive Engineer, PWD, and PW 3, Anwarul Azim, Sub-Divisional Engineer of PWD, the High Court Division came to a definite finding that their assessment in respect of valuation of the disputed building could not be accepted because this valuation came up for consideration before the Income Tax Department, which found that the valuation put forward by the respondent was correct as contained in exhibit-III.

16. Relying upon the case of *Mohiuddin Khan Alamgir vs Anti-Corruption Commission (2010) 15 BLC 107,* the High Court Division noted that it was held in that case that the valuation of the PWD officials did not carry any evidentiary value.

17. Having considered the evidence on the P.Ws., the High Court Division also found that the valuation of the furniture, electronics and car given by the respondent was also disclosed to the Income Tax Department which accepted the valuation and that there was no concealment on the part of the respondent. The High Court Division also held that the finding of the trial Court that the respondent concealed investment in respect of the plot of land in Cox's Bazar and he acquired Taka 96,10,527.43 by illegal means and beyond known source of income was not sustainable in law as the same was also before the Income Tax Department for its consideration, which in fact, found that the said plot of land belonged to the company.

18. Mr. Khurshid Alam Khan, learned Advocate appearing for the leave-petitioner in Criminal Petitions for Leave to Appeal Nos.117 and 210 of 2011 has drawn our attention that relying upon the case of *Mohiuddin Khan Alamgir vs Anti-Corruption (2010) 15 BLC 107 at para 97,* the High Court Division came to a finding that the assessment of valuation by PWD Officers did not have any evidentiary value and that the petitioner would be seriously prejudiced if such finding is not interfered with.

19. Having considered the impugned judgment and also para-7 of Dr Mohiuddin Khan Alamgir (ibid), we are of the opinion that the assessment made by the PWD officials would be of no avail when the assessment of valuation came up for consideration before the Income Tax Department which indisputably passed an order on the assessment of valuation. The assessment of valuation made by the Income Tax Department has legal validity which should not be questioned by another independent government department unless the Income Tax Department reviews its own assessment. There cannot be a conflicting exercise of power between the two independent departments of the Government. If the assessment of valuation made by the Income Tax Department is allowed to be questioned then the very sanctity of such assessment will be at stake and this may cause overlapping exercise of jurisdiction between the two independent departments of the Government. The officials of the Income Tax Department exercise their power under a statute.

20. But there may be a situation when there is no assessment of valuation by any competent authority of the Government exercising power in that behalf and in such a case, the Anti-Corruption Commission has no other option but to take the assistance of the PWD officials in making assessment of the valuation of any property. Therefore, it cannot be said that the assessment of valuation made by the PWD Officials does not have any evidentiary value in all situations.

21. Therefore, the findings made in the impugned judgment and also in the case of Mohiuddin Khan Alamgir *(ibid)* shall be deemed to have been modified in respect of the assessment made by the PWD officials in that the assessment of valuation of any property made by PWD officials shall have evidentiary value when no such assessment is made and accepted as correct by another

independent department of the Government authorized in that behalf.

22. In the light of the findings, we do not find any substance in both the criminal petitions for leave to appeal.

Accordingly, both the criminal petitions for leave to appeal are dismissed with the observation made in the body of the judgment.

Ed.

APPELLATE DIVISION
(Civil)

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

Judgment
February 25th, 2014.

Ruksana Huq and others.....Petitioners

vs

AK Faizul Huq (Raju) and others..... .....Respondents*

Code of Civil Procedure (V of 1908)
Order I, rule 10(2)

Of course, generally the courts will not allow transposition of defendants as plaintiffs after striking the names of the original plaintiffs or after transposing them as defendants. But in appropriate case the court should not be reluctant to make such transposition of the parties for the ends of Justice or to prevent abuse of the process of the court. .....(8)

Code of Civil Procedure (V of 1908)
Section 141

Section 141 of the Code has provided that the procedure provided in the Code of Civil Procedure in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction. A succession case, in all consideration, is a proceeding in a court of civil jurisdiction. .....(9)

Fida M Kamal, Senior Advocate instructed by Sufia Khatun, Advocate-on-Record—For the Petitioners.

Probir Niogi, Advocate instructed by Nurul Islam Bhuiyan, Advocate-on-Record—For Respondent No.3.

Not represented—Respondent Nos. 1 and 2.

Judgment

Nazmun Ara Sultana J: This Civil Petition for Leave to Appeal is directed against the judgment and order dated 24-5-2009 passed by the High Court Division in Civil Revision No.3987 of 2008 discharging the Rule.

2. The necessary facts for disposal of this Civil Petition for Leave to Appeal, in short, are as follows:-

The present petitioners, as heirs and successors of late Mr AK Faizul Huq filed Succession Case being No.888 of 2007 in the Court of Joint District Judge, 3rd Court, Dhaka for a certificate of succession under the Succession Act, 1925. During pendency of that proceeding the present respondent Nos.1 to 3, claiming themselves as the second wife, son and daughter of late AK Faizul Huq, filed an application on 26-8-2007 praying for being added as parties in that succession case. The court allowed that application vide order dated 12-11-2007 and fixed 2-3-2008 for recording evidence of both the parties. Thereafter, the court recorded the evidence of the opposite party No.1, Mariam Begum since the petitioners side was absent. However, subsequently the court allowed the prayer of the petitioners to cross-examine the opposite party's witness No. 1, but without cross-examining the opposite party's witness No.1, the petitioners, on 19-6-2008, filed an application under order XXIII rule 1 of the Code of Civil Procedure praying for withdrawal of the case. At the same time the added opposite parties also filed an application for transposing them as petition-

*Civil Petition for Leave to Appeal No. 1827 of 2009

(From the judgment and order dated 24-5-2009 passed by the High Court Division in Civil Revision No. 3987 of 2008).

the inquest report in his presence. He put his signature in the inquest report. On 26-8-2006 at 9-00 AM, Officer-in-Charge Shahidar Rahman seized the uniform of police. He put his signature in the seizure list. He proved the seizure list as Exhibit 16 and his signature therein as Exhibit 16/1. As many as 26 items were seized and he put his signature therein. He proved 26 seized items which were marked as Material Exhibit V-XXX.

64. In cross-examination, he stated that he went to the place of occurrence at 7-00 PM alongwith ASI Tofazzal Hossain (PW 1). He first saw the dead body which was lying under the open sky. The dead body was taken in front of toll house and the inquest report was prepared there. He denied the suggestion that on 25-8-2006, he did not go to the place of occurrence.

65. The State Defence Lawyer adopted the above cross-examination.

PW 19 is Manik Hossain. He stated that on 25-8-2006, he was on duty in Naogaon Police Station. He went to Chowbariahat at 7-00 PM and saw that 4(four) police personnel were lying dead having throat cut. He brought the dead body to Naogaon Sadar Hospital for post-mortem examination. He brought back the dead body and handed over the dead body of Nojer Ali to his relatives. He brought back the dead body of police personnel and handed over the same to police line. He proved the chalan of dead body of constable Askan Ali as Exhibit 13 and his signature therein as Exhibit 13/2, constable Babul Miah as Exhibit 15 and his signature therein as Exhibit 15/2 and the chalan of dead body of Nojer Ali as Exhibit 14 and his signature therein as Exhibit 14/2.

66. In cross-examination, he stated that he does not know if police assaulted anybody. On 25-8-2006 at 7-00 PM, he went to Chowbariahat. He was not examined by the Investigating Officer. He denied the suggestion that he deposed falsely.

67. The State Defence Lawyer adopted the above cross-examination.

68. PW 20 is Md Mamnur Rashid. He stated that on 2-10-2006 at 6-30 PM, police seized one red colour motor cycle, Bajaj Metro Ga 11-0863. He put his signature in the seizure list. He proved the seizure list as Exhibit 17 and his signature therein as Exhibit 17/1.

69. In cross-examination, he stated that when he put his signature in the seizure list his age was 17 years. His house is situated adjacent to the house of accused Abdul Karim and accused Karim is his elder uncle.

The State Defence Lawyer adopted the above cross-examination.

70. PW 21 is Md Alauddin. He is SI of Naogaon Court. He stated that on 11-11-2006, he was serving as TSI in Naogaon Police Station. At the time of occurrence, he was on training at Sarda Police Academy. He brought a letter from Officer-in-Charge of Manda Police Station to the CARB Office and handed over the same to one Abdur Rahman. Abdur Rahman gave him few photographs and told him (PW 21) that he (Abdur Rahim) would send the rest photographs to the Thana at his (Abdur Rahman) own initiative. He proved the letter as Exhibit 18. Abdur Rahman gave him few photographs in closed cover and he handed over the same to the Officer-in-Charge.

71. In his cross-examination, he stated that Investigating Officer did not seize the letter which he brought from CARB office.

72. The State Defence Lawyer adopted the above cross-examination.

PW 22 is Md Meser Ali. He is a retired teacher of a private school. He stated that the occurrence took place on 25-8-2006 at 6-00/6-30 P.M. He has a medicine shop at Chowbariahat. At the time of occurrence he was in his shop. He saw that people were leaving the hat with cattle and on query he came to know that bombs were explod-

ed in the cattle market and people were injured and 4 (four) police personnel were killed. He also heard that Izaradar received injury and he succumbed to his injury when he was taken to hospital.

73. In cross-examination he stated that he heard the sound of explosion of bombs at 5/5.15 P.M. Police recorded his statement under section 161 of the Code of Criminal Procedure on 18-2-2007.

74. The State Defence Lawyer adopted the above cross-examination.

75. PW 23 is Md Altaf Uddin Prang. He stated that on 10-11-2006 at 4-30 PM, police seized one silver colour utensil in his presence and prepared the seizure list. He put his signature in the seizure list. He proved the seizure list as Exhibit 19 and his signature therein as Exhibit 19/1. He proved the utensil as Material Exhibit XXX-1.

76. In his cross-examination he stated that he cannot remember the date of occurrence. He also stated that such kind of utensil is available in every house. He stated that in the seized utensil rice could be cooked for 6/7 persons in the seized utensil. He stated that police seized the utensil before he went there.

77. The State Defence Lawyer adopted the above cross-examination.

78. PW 24 is Md A Baki Mondal. He stated that he was going home and at that time police called him and took him to the house of Rahela (PW 2). Other persons were present there. He saw that one person, named, Roghunath Borman was present there and he was handcuffed. Police recovered one utensil from the house of Rahela (PW 2). Officer-in-Charge stated to him that meat was cooked in that utensil. Police seized the utensil and took his signature in the seizure list. He proved the seizure list as Exhibit 18 and his signature therein as Exhibit 18/2.

79. In his cross-examination, he stated that he saw the utensil in the varandah of Rahela. He also stated that police went inside the house of Rahela before he went there. He again stated that there is no identification mark in the seized utensil.

80. The State Defence Lawyer adopted the above cross-examination.

81. PW 25 is Md Chimon Ali. He has been tendered by the prosecution.

82. In his cross-examination by the accused he stated that there is a tower of Grameen Phone half a kilometer west of Chowbariahat.

83. The State Defence Lawyer adopted the above cross-examination.

84. PW 26 is Md Shafiqul Islam. At present he is the Upazilla Nirbahi Officer (UNO) of Bhanga, Faridpur. He stated that on 7-9-2006, he was serving as Magistrate, First Class, in Naogaon Collectorate. On 25-8-2006, Police brought accused Nurul Islam @ Shine before him for recording his statement under section 164 of the Code of Criminal Procedure. He kept the accused under the care of Ashraful Islam, MLSS for 3 (three) hours and gave him reflection time for 3 (three) hours. He cautioned the accused that he was not bound to confess and if he would confess it might be used against him as evidence. There was no police personnel with him or in his room. He did not find any sign of injury on the person of the accused. After 3 (three) hours, the accused gave consent to give his statement. Thereafter, he recorded the statement of accused Nurul Islam @ Shine after compliance with all the provisions of sections 164 and 364 of the Code of Criminal Procedure. He put his 7 (seven) signatures in the statement of accused Nurul Islam @ Shine. He stated that the statement of Nurul Islam @ Shine was voluntary. He proved the statement as Exhibit 20 and his signature therein as Exhibit 20 series.

85. On the same date police also brought accused Tohurul Islam for recording his statement under section 164 of the Code of Criminal procedure. He also cautioned him and told him that he was not bound to confess and if he would confess it might be used against him as evidence. He was given 3(three) hours reflection time. Thereafter, he gave consent for recording his statement under section 164 of the Code of Criminal Procedure. The confessional statement of accused Tohurul Islam was voluntary. At the time of recording of his statement under section 164 of the Code of Criminal Procedure, the appearence of the accused looked normal and he was in good health. He proved the statement as Exhibit No. 21 and his signature therein as Exhibit 21 series.

86. He also stated that police brought accused Abdul Karim before him for recording his confessional statement. He cautioned the accused that if he would confess it might be used against him as evidence and that he was not bound to confess. He also gave him 3 (three) hours time for reflection. The accused was kept under the care of Babor Ali, nightguard. Thereafter, he recorded the statement of accused Abdul Karim under section 164 of the Code of Criminal Procedure. The statement was read over to him and he put his signature therein. He proved the statement as Exhibit-22 and his signature therein as Exhibit 22 series. According to him (PW 26) the confession was voluntary.

87. On 3-10-2006, police brought accused Shafiqul Islam son of Mobarok Hossain before him. He also gave him 3 (three) hours time for reflection and he was kept under the care of Ashraful Islam, MLSS/Peon. He recorded the statement of accused Shafiqul Islam son of Mobarok Hossain under section 164 of the Code of Criminal Procedure. He proved the statement as Exhibit- 23 and his 5 (five) signatures therein as Exhibit 23 series.

88. On 12-11-2006, police brought accused Sree Roghunath Borman before him for recording his statement under section 164 of the Code of Criminal Procedure. He was kept under the care of Ashraful, peon. He also gave the accused 3 (three) hours time for reflection. Thereafter, he recorded the statement of the accused after compliance with all the provisions of section 164 and 364 of the Code of Criminal Procedure. He proved the confessional statement of accused Roghunath Borman as Exhibit-24 and his 5 (five) signatures therein as Exhibit-24 series.

89. He recorded the statement of witness Suresh Chandra Das (PW 3) under section 164 of the Code of Criminal Procedure. He proved the statement of witness Suresh Chandra Das (PW 3) as Exhibit-8 and his signature therein as Exhibit 8/2.

90. On 12-11-2006, he also recorded the statement of witness Rahela Begum (PW 2). He proved the statement of witness Rahela Begum as Exhibit-7 and his signature therein as Exhibit 7/2.

91. In cross-examination by accused Nurul Islam @ Shine he stated that police arrested accused Nurul Islam @ Shine following the night of 1-9-2006 at 1-00 AM. He was forwarded to Court on 3-9-2006. Before forwarding to Court the accused was under police custody for 32 (thirty two) hours. Inspector Shahidar Rahman recorded the case and he himself took the charge of investigation. On 3-9-2006, SI Tofazzal Hossain prayed for remand. In the order sheet dated 4-10-2006, it has been mentioned that the accused Nurul Islam @ Shine complained of inhuman police torture. It has also been mentioned in the order sheet that the Court directed the Jail Super, Naogaon to provide with necessary treatment to accused Nurul Islam @ Shine. It has also been stated by the Superintendent of Jail that a report relating to the health condition of accused Nurul Islam @ Shine was submitted before the Court. In the order sheet dated 21-11-2006, it has been mentioned that there was injury in the right leg of the

accused, 9-00 matatarsul bone and there was swelling on the body of the accused. Swelling was present over the ear and front of knee to hip and over the arms of both sides. There was also painful swelling over the chest including right shoulder rigion. It has also been stated that he was provided with treatment in prison hospital. His condition improved little but the doctor advised to transfer him to Naogaon Sadar Orthopedic Hospital. The consultant of Naogaon Sadar Orthopedic Hospital gave prescription and his ticket number was 27685/23 dated 4-11-2006. In his X-ray report it was found that he had left clavicle fracture, GOT triangular slant (rt) side and left foot. Hematoma was also found. He was under the treatment of Assistant Surgeon. He (PW 26) put his signature on the medical report relating to his (accused) health. On 04-10-2006, accused Nurul Islam @ Shine prayed for retraction of his confession which was kept with the record. In the forwarding letter dated 3-9-2006 at page 2, it has been mentioned relatively with small letter that there was swelling in the body of accused Nurul Islam @ Shine because of scuffle. He cannot remember when accused Nurul Islam @ Shine was exactly sent to prison. He denied a suggestion that the confessional statement of accused Nurul Islam @ Shine was not true and voluntary.

92. This PW (PW 26) stated that in the forwarding dated 7-9-2006, it has been mentioned that accused A. Karim was suspected accused. On 7-9-2006, 6(six) day remand was granted for accused Abdul Karim. Police arrested accused A. Karim on 5-2-2006 at 3-00/4-00 AM. He does not know whether accused A. Karim was produced before him 31 hours after his arrest. He did not enquire whether police tortured accused Abdul Karim or not or whether he (Abdul Karim) got himself admitted into the Hospital. He was under the care of Babar Ali, nightguard. He does not know if accused Karim was assaulted by police and he got himself admitted into the Hospital. He denied the suggestion that the statement of accused Karim was a product of police torture.

93. In his cross-examination by accused Tohurul and Roghunath Borman, he stated that accused Tohurul was arrested on 1-9-2006 at 11-00 PM and he was forwarded to the Court on 3-9-2006. Accused Tohurul was brought before the Court within 34 hours. On 7-9-2006, Tohurul was brought before him for recording his statement under section 164 of the Code of Criminal Procedure. He was kept under the care of Ashraful, peon in his chamber from 13-25 to 16-25 hours. He recorded the statement of accused Tohurul from 4-35 to 5-25 PM. He does not know how many days the accused were under police custody. He did not find any mark of injury in the body of the accused. He denied the suggestion that the health condition of accused Shine and Tohurul were very bad when they were brought before him (PW 26). He denied the suggestion that the confession of Tohurul was extracted by way of police torture.

94. This PW 26 also stated that accused Roghunath was brought before him on 12-11-2006. It has not been mentioned when police arrested Roghunath. Roghunath put his LTI in his statement. There is no mention who took his LTI PW 26 denied the suggestion that he recorded the statement of Roghunath according to police desire.

95. In cross-examination by accused Shafiqul Islam, son of Mobarak he (PW 26) stated that police of Manda Police Station brought accused Shafiqul, son of Mobarak before him. Police arrested accused Shafiqul from Sunahat. Accused Shafiqul is a service holder. Police arrested him on 28-9-2006 at 5-00 PM. This accused was brought before the Court on 30-9-2006 and on 30-9-2006, police took him on remand. After arrest, police took him to Manda Police Station from Prosha Police Station. PW 26 does not know if the accused was under police custody for 30 hours before he was brought before him. This accused

was brought before him on 3-9-2006 at 12.15 hours. Police took him on remand for 04 days. He started recording the statement at15.20 and finished the same at 16 hours. He does not know if accused Shafiqul Islam son of Mobarak retracted his confession.

96. In cross-examination by accused Ahmed Shah Nurul and Sana Ullah, he stated that Shafiqul Islam son of Mobarak did not state in his confessional statement dated 25-8-2006 that on 25-8-2006 there was a meeting in Chowbariahat. But accused Abdul Karim stated in his confessional statement that on 25-8-2006, there was a meeting in CARB office. Accused Nurul Islam @ Shine also did not state that on 25-8-2006, there was a meeting in Chowbaria CARB office. Accused Ragugnath also did not state in his statement under section 164 of the Code of Criminal Procedure that on 25-8-2006, there was a meeting at Chowbaria CARB office. Roghunath in his confessional statement of did not mention the name of father of accused Sana Ullah. Accused Roghunath did not mention the name of accused Ahmed Shah Nurul. Accused Roghunath mentioned the name of accused Sana Ullah but he did not mention the name of father of Sana Ullah. He denied the suggestion that he recorded the confessional statement in presence of police personnel of Manda Police Station.

97. Accused Nurul Islam mentioned the name of Khairul, Majed, Pintu, Tomal and Rabiul, but did not mention the name of their father. Accused Tohurul mentioned the name of Dilip, Tomal, Pintu, Sonjoy and Khairul, but did not mention the name of their father. Accused Shafiqul Islam son of Mobarak also mentioned the name of Robiul, Khairul but did not mention the name of their father. The name of village of Sonjoy has been mentioned as Godagari and the name of village of Robiul has been mentioned as Khakonhat. Accused Roghunath mentioned the name of Pintu but did not mention the name of the father of Pintu. He also mentioned the name of Sonjoy but did not mention the name of his (Sonjoy) father and his (Sonjoy) address. Accused Abdul Karim did not mention the name of Dilip, Sonjoy, Khairul, Majed Ali, Pintu, Tomal, Rabiul, Abdul Awal and Abdul Mannan.

98. PW 27 is Md Shamim Chowdhury. He stated that the occurrence took place one year two months ago. Mahbub Ali (PW 5), Asaduzzaman (PW 4), Md Abul Kalam Azad (PW 6), Nojer Ali (since dead) and 2/4 persons were present at the hat. He heard that bomb was exploded. Upon hearing this news, they came to Delduar Bari Bazar with 10/15 motor cycle. He talked to Mahbub Ali (PW 5) over mobile phone and Mahbub requested him to take him to the hat. He went to near the hat and saw there some police van, motor cycle and microbus. Police prepared the inquest report. He put his signature in the inquest report of deceased, ASI AT Feroz. He proved the inquest report as Exhibit 6 and his signature therein as Exhibit 6/4. He also proved his signature in the inquest report of Constable No. 285 as Exhibit 2/4. He also proved his signature in the inquest report of Constable Askan Ali which has been proved as Exhibit 9/4. He proved his signature in the inquest report of Constable Babul Mia as Exhibit 10/4. Police also seized some Kathi of net (জালের কাঠি), cycle ball, blood stained earth.

99. In his cross-examination he stated that there were 15/20 tea stall in Chowbaria cattle market. The distance between his house and Chowbariahat is 12/13 kilometre. His house is situated near Proshadpur Bazar. From there he got the information about the occurrence of Chowbariahat over cell phone. The inquest report of police personnel was prepared in his presence. He put his signature in the seizure list at 8-00 PM but the seizure list was not read over to him. One Sagor died during police custody.

100. The State Defence Lawyer adopted the above cross-examination.

101. PW 28 is Babul Ahmed. He stated that on 10-10-2006, police prepared seizure list in his presence. He put his signature in the seizure list and he proved the seizure list as Exhibit 25 and his signature therein as Exhibit 25/1. Police seized two papers which are proved as meterial Exhibit XXXIII.

102. In cross-examination by the accused, he stated that he cannot say the month when the seizure list was prepared. He also stated that the distance between Manda Police Station and his house is 06 kilometre. The paper in which he put his signature were not read over to him. He does not know what were written in those papers. He does not know also if the papers were photocopy or original copy.

103. The State Defence Lawyer adopted the above cross-examination.

104. PW 29, Md Abdus Salam. He was tendered by the prosecution.

105. In his cross-examination he stated that he did not go to Chwobariahat on the date of occurrence.

106. The State Defence Lawyer adopted the above cross-examination.

PW 30, Sree Khitendra Nath. He stated that he had a tea stall in the cattle market of Chowbariahat. When he was in tea stall it was about dusk. He heard the sound of explosion of bomb. He started running hither and thither. He was also trying to flee away. After one hour, he came back to his tea stall and found that two utensils from his tea stall were missing. He also saw that 04 police personnel were lying down dead. Thereafter, he left the place out of fear.

107. In his cross-examination, he stated that he had been running the tea stall for 8/9 years. He did not see the miscreants.

108. The State Defence Lawyer adopted the above cross-examination.

PW 31 is Dr. Istiaque Chowdhury. He stated that on 26-8-2006 he was serving as Medical Officer at Naogaon General Hospital. On that day the dead body of Constable No. 486 Askan Ali was brought before him for post-mortem examination. He found the following injuries on the person of the dead body;

"1. One cut throat wound on anterolateral sides of the lower part of neck with cutting of muscles, blood vessels, trachea, oesophagus, Size-about 05"× 02"× $2^1/_2$".

2. Haemotoma on right Occipital region of head (back), size-about 02" in diameter.

3. Cut injury on Lt. auricle (ear), size-about 01" × $^1/_4$" × $^1/_4$"

On dissection of the above injuries congestion of underlying soft tissues, Muscles, nerves, blood vessels with cutting of muscles, blood vessels, trachea, oesophagus & antemortem clotted blood was found.

In their opinion the cause of death of the deceased was due to the above described injuries which were antemortem & homicidal in nature."

He proved the post mortem report as Exhibit 26 and his signature therein as Exhibit 26/1. The other members of the Board also put their signatures in the post mortem report. On the same day, the dead body of Constable No. 545 Babul Mia was also brought before the Board for post mortem examination.

109. At the time of autopsy, he found the following injuries on the person of the dead body;

"1. Lacerated injury over occipital region of the skull of size $2^1/_2$" × $^1/_2$" × Bony depth. Fracture of occipital bone.

2. Incised injury over anterior aspect of the throat at the level of upper part of the neck. Size 5 $^{1}/_{2}$" × 1 $^{1}/_{2}$" × 3".

   One dissection of the injuries described above showed congestion of underlying soft tissues, muscle, nerve, blood vesicles, brain matter, and antemortem clotted blood was present.

   In their opinion the cause of death of the deceased was due to shock & haemorrhage as a result of the injuries described above, which were ante-mortem & homicidal in nature."

110. He proved the post mortem report of Constable Babul Mia as Exhibit 27 and his signature therein in Exhibit 27/1.

111. On the same day the dead body of Constable No. 258 Faridul was brought before him for post-mortem examniation. He held the post-mortem examination and found the following injuries on the person of the dead body:

"1. One cut throat wound on anterolateral aspect of lower part of the neck, measuring about 5$^{1}/_{2}$" × 2" × 3" with cutting of neck, muscles, vessels, nerve, esophagus and trachea.

   One dissection injury No. (1) showed highly congestion of underlying soft tissues, muscles and nerves of neck, cutting of esophagus and trachea and antemortem clotted blood was found. Injury No. (II) showed highly congestion of underlying soft tissue, antemortem clotted blood was found."

2. One Haemotoma on Lt. occipital region-Size 1$^{1}/_{2}$" × 1"

112. In their opinion the cause of death of the deceased was due to haemorrhage and shock as a result of the injury No. (1) which was ante mortem and homicidal in nature.

113. He proved the post-mortem report as Exhibit 28 and he also proved the signature of Dr. Mafuzur Rahman as Exhibit 28/1.

On the same day the dead body of Feroz Ahmed was also brought before him by Constable No. 695 Ferdous Ali for post-mortem examination. He examined the dead body and found the following injuries on the person of the dead body;

1. "One cut throat wound over the anterolateral aspect of the neck. Cutting the trachea, Oesophagus, vessels, muscles, nerves, completely, measuring 5" × 2" in length.
2. One lacerated injury over the rt. parietal region measuring 3" × 2" in length.
3. One dissection the above injuries showed marked congestion of underlying soft tissues, vessels, muscles, nerves, oesophagus, trachea and ante mortem clotted blood was present."

In their opinion "the cause of death of the deceased was due to shock and haemorrhage as a result of above mentioned injuries which were ante-mortem and homicidal in nature."

He proved the post mortem report as Exhibit 29 and his signature therein as Exhibit 29/1.

114. On the same day the dead body of Nojer Ali was also brought before him by Constable No. 400 Manik Hossian for post mortem examination. He examined the dead body and found the following injuries on the person of the dead body.

"One perforating wound on the anterolateral aspect of the neck caused lacerated injury to the trachea, aesophagus, vessels, muscles, nerves measuring 5"× 2" in length.

The above injuries showed marked congestion of underlying soft tissues, vessels, musceles, nerves antemortem clotted blood was present.

In their opinion the cause of death of the deceased was due to shock and haemorrhage as a result of above stated injuries which was antemortem and homicidal in nature."

115. He proved the post mortem report which was marked as Exhibit 30 and his signature there in as Exhibit 30/1.

116. In cross-examination, he stated that he did not prepare any post mortem report of accused Sagor. His (Sagor) post-mortem report was prepared by Dr Zahid Nazrul Chwodhury on 8-9-2006. He provided treatment to accused Karim in the hospital. He submitted a report in respect of the health condition of Nurul Islam @ Shine to the Magistrate, 1st Class, Cognizance Court, Naogaon, vide Memo No. 614 dated 22-10-2006. It was written in the report that there was "Metatarsal bone injury, swelling in the right leg of the accused and there was ecyomisis swelling present over thigh from knee to hip and over the arms on both sides." There was also painful swelling over the chest including rt. shoulder region. They arranged to send him to Orthopedic Consultant in Naogaon hospital and X-Ray was done and in his X-Ray it was found that there was left Clevicle fractures. There was sign of haemotoma. He proved the report as Exhibit-Ka and his signature therein as Exhibit-Ka/1. There is no mention about the age of injury. He stated that most of the accused received injuries in the back of their head. He did not put his signature on the post-mortem report of Faridul.

117. The State Defence Lawyer adopted the above cross-examination.

118. PW 32 is Md Anwar Hossain. He was Upazilla Nirbahi Officer of Manda Police Station. On 25-8-2006, he came to know that there was a quarrel in Chowbariahat and that the miscreants blasted bomb and police died. After hearing this, he went to the place of occurrence and saw the Officer-in-Charge of Manda Police Station and other police personnel there. He saw 04 (four) police personnel with cut of their throat. The Deputy Commissioner and Police Super of Noagoan were present there. Police took the dead body by police van and thereafter he (PW 32) came back to his office. He also saw the dead body of Nojer Ali at Proshadpur Bazar at 9/10 PM

119. In his cross-examination, he stated that he saw the alamat at the place of occurrence. He cannot remember whether police recovered any alamat in his presence. He saw the dead body. From there he went to his own work place. Police took away the dead body in his presence. At that time 15/20 police personnel were there. The distance between his work place and Chowbariahat is 12/13 Kilometer. His staff Prodip and Driver Bablu were with him. He also stated that the Assistant Commissioner (Land) was also with him.

120. The State Defence Lawyer adopted the above cross-examination.

121. PW 33 is Md Anisur Rahman. He stated that he went to Chowbaria cattle market with SI Tofazzal Hossain and saw the dead body of ASI. AT Feroz lying there. He also saw that the dead body of Constables, namely, Askan, Babul Miah, Farid were lying near the tea stall. They were also wearing police uniform and all of them had throat cut and injury on their head. 20/25 unknown persons told him that the miscreants slaughtered the police personnel and took away their arms. He seized the motor cycle from accused Abdul Karim (motor cycle No. Raj Metro Ha 11-0863) in presence of the witnesses. He handed over the seized motor cycle to the Investigating Officer. He proved the seizure list as Exhibit 17 and his signature therein as Exhibit 17/2. He seized the motor cycle from Tanur Police Station and he transmitted wireless message to Tanur Police Station. He seized the motor cycle in connection with Manda PS Case No. 23 dated 25-8-2006

under sections 353/396 of the Penal Code. The Investigating Officer did not record his statement.

122. The State Defence Lawyer adopted the above cross-examination.

123. PW 34 is Md Nur Alam. He stated that on 15-3-2007, he was serving in Manda Police Station as ASI and at that time Officer-in-Charge Md Ilias Fakir seized 21 pictures by preparing seizure list. He put his signature in the seizure list. He proved the seizure list as Exhibit 31 and his signature therein as Exhibit 31/1. He proved the pictures as material Ext. XXXIV series. On 18-3-2007 at 23.55, Officer-in-Charge Md Ilias Fakir seized 2(two) CD. He put his signature in the seizure list. He proved the seizure list as Exhibit 32 and his signature therein as Exhibit 32/1.

124. In his cross-examination, he stated that he did not know who snapped the photograph. He has no personal knowledge about the photograph and the CD. He does not know what the CD. contains about. There is no signature on the cover of the CD. But there is signature of Officer-in-Charge in the cover of the CD. He just put signature in the seizure list on the request of the Investigating Officer. He never visited Chowbaria cattle market before 15-3-2007. The CD was not placed before him.

125. The State Defence Lawyer adopted the above mentioned cross-examination.

126. PW 35 is Md Shahadat Hossain. He stated that on 15-3-2007, Daroga S. I. Anisur Rahman deposited 21 pictures in Manda Police Station. He put his signature in the seizure list. He proved his signature which has been marked as Exhibit 31/2.

127. In his cross-examination, he stated that he never visited the house of Karim. He does not know who snapped 21 (twenty one) photographs of 21 persons. He also stated that no camera was seized.

128. The State Defence Lawyer adopted the above cross-examination.

129. PW 36 is Md Afsar Ali Mondal. He stated that on 18-3-2007 at 12-00, Officer-in-Charge of Manda Police Station seized two CD. He put his signature in the seizure list. He proved his signature therein as Exhibit 32/2.

130. In cross-examination, he stated that he did not know what the CD. contains about. Police took his signature in the seizure list. He did not put his signature on the cover of the CD.

131. The State Defence Lawyer adopted the above cross-examination.

132. PW 37 is Md Shahider Rahman. He stated that on 25-8-2006, he was serving as Officer-in-Charge of Manda Police Station. On 25-8-2006 at about 18-30 hours, some unknown 20/25 miscreants attacked Chowbaria cattle market and created havoc and also slaughtered 4(four) police personnel and one Izradar, namely, Nojer Ali. Nojer Ali was taken to Rajshahi Medical College Hospital for treatment but in the meantime when they reached at Mohanpur, Nojer Ali succumbed to his injury. The miscreants dealt iron rod blow on the head of the deceased. The miscreants also exploded bombs and created panic. SI Tofazzal Hossain lodged the FIR and he filled up the FIR form. He proved the FIR form as Exhibit 33 and his signature therein as Exhibit 33/2. He himself took the charge of investigation and during investigation he visited the place of occurrence, prepared the sketch map with separate index thereof and seized the alamats. The inquest report of the deceased was prepared before the FIR was lodged. He arrested 15 accused. He examined 17 witnesses and recorded their statements under section 161 of the Code of Criminal Procedure. Accused Tohurul and Shine made confessional statements. Statement of one witness was also recorded by the Magistrate. One accused, namely, Sagor died out of heart failure. Thereafter on 09-

9-2006, he handed over the case docket to Inspector Kosim Uddin new Investigating Officer. He (PW 37) proved the sketch map with index as Exhibit 34, 35 and 36 and his signature therein as Exhibit 34/1, 35/1, 36/1. He also put his signature in the margin of the FIR form and he proved his signature therein as 1/2.

133. In cross-examination, he stated that he did not treat the information given by the brother of Nojer Ali as FIR. They received the FIR of the brother of Nojer Ali at 1-00 PM and entered the information in the GD entry No. 1139 dated 25-8-2006. He passed order to SI Tofazzal Hossain (PW 1) to go to the place of occurrence. He does not remember when he went to the place of occurrence. He went to the place of occurrence first on 25-8-2006. On 28-5-2006, the occurrence took place at 19-05 hours. He did not prepare any inquest report. He was in the place of occurrence on 26-8-2006 at 12-05. He issued direction upon S. I. Tofazzal Hossain (PW 1) to arrest Tohurul and Shine. He was present when accused Sagor was arrested. Sagor had chest pain at 10-45 minutes at night and at that time Sagor was in their Van. He forwarded a report to the Superintendent of Police, Naogaon stating that 8/10 persons were injured, one Abdur Rahim was also injured when he came to the cattle market. SI Tofazzal Hossain arrested accused Tohurul and Shine. They were forwarded to the Court on 3-9-2006. He denied the suggestion that Tohurul and Shine were kept under police custody for more than 48 hours. He received information on 25-8-2006 that a meeting held in CARB office. During his investigation he recorded the statement of 17 witnesses. He did not get any documentary evidence to show that on 25-8-2006, a meeting held in CARB office. He denied the suggestion that he did not seize any blood stained earth from the place where 4 (four) dead police personnel were lying. He did not send blood stained earth for chemical examination. He continued the investigation till 9-9-2006. He prayed for remand for 08 accused. SI Tofazzal Hossain prayed for remand for 3 accused, namely, accused Firoj, Nurul Islam @ Shine and Tohurul Islam. Accused Sana Ullah was not taken on remand. He prayed for 10(ten) days remand for Ahamed Shah Nurul. Accused Sagor died under police custody during investigation. There was commotion outside the Thana and the hospital over the death of accused Sagor. He could not recover any rifle, ammunition and other arms. He could not recover any leaflet or hand bill from any of the accused.

134. He arrested accused Abdul Karim on 6-9-2006 at 2.05. Accused Karim was forwarded to Court on 7-9-2006. He was given remand for 06 days. He denied the suggestion that accused Abdul Karim was mercilessly beaten by police during remand period. He did not arrange for holding any Test Identification Parade (TI Parade). It has been stated in the FIR that 15/20 bombs were blasted in front of toll house. It has also been stated in the FIR that when police came to help Nojer Ali, police received severe injuries. Haji Azim Uddin had enmical relationship with other people of the hat. The witnesses did not state to him (this PW 37) that the assailants used musk at the time of killing. The distance between Rajshahi and Chowbariahat is 45 kilometer. He cannot say the exact distance between Godagari and Chowbariahat. He heard that the head office of CARB is in Godagari. He received an information that a meeting held in CARB office at Godagari on 25-8-2006. He does not know if the meeting continued from 9-00 AM to 5-00 PM. He denied the suggestion that he did not properly investigate the case.

135. PW 38 Md Ismail Mia is the Office-in-Charge of Atrai Police Station. He stated that on 27-11-2006, he joined Manda Police Station as Officer-in-Charge. On the verbal instruction of Police Super, Naogaon he took up the charge of investigation of the case. He perused the case docket and found that previously 3 persons investigated the case. He also perused the sketch map

and index and found that the sketch map and the index were correctly prepared. He also perused the statements of the witnesses recorded under section 161 of the Code of Criminal Procedure by the previous Investigating Officers. He took remand of accused Khokan and Abu Bakkar and he interrogated them. He also recorded the statement of 4 witnesses under section 161 of the Code of Criminal Procedure. He tried to arrest the accused, recover the arms and other looted properties. He arrested accused Sanaul and thereafter he was transferred to other place. He then handed over the case docket to next Investigating Officer, namely, Elias.

136. In his cross-examination, he stated that on 3-1-2007, he examined Chima Ali, Abul Hossain, the owners of the tea stall, Ataur Rahman, businessman and recorded their statements under section 161 of the Code of Criminal Procedure. He also recorded the statement of Khithen Chandra. He stated that Chima Ali stated in his statement under section 161 of the Code of Criminal Procedure that the age of miscreants was 20-30 years. He submitted a report before the higher authority on 3-12-2006 and in that report he mentioned that Haji Azim Uddin had bad blood with other Izaradars of the hat. He stated that he arrested accused Sanaullah on 25-1-2007. There was quarrel between Haji Azim Uddin and other Izaradars. He did not arrest accused Ahmed Shah Nurul. He visited some of the office of CARB in Manda Police Station. He visited 3-4 CARB Offices. He did not take any step for holding TI Parade of the accused. He visited CARB office and he did not know the distance between Godagari to Chowbariahat CARB Office. He does not know if on 25-8-2006 any meeting held in the CARB office of Chowbaria from 9-00 AM to 5-00 PM. He denied the suggestion that he did not investigate the case properly.

137. The State Defence Lawyer adopted the above cross-examination.

138. PW 39 is Md Elias Fakir. He was the Officer-in-Charge of Manda Police Station at the relevant time. He stated that he had been serving in Manda Police Station as Officer-in-Charge since 27-9-2006 to 26-11-2006. Thereafter, he was transferred to other place. Again, he was posted to Manda Police Station as Officer-in-Charge on 9-2-2007 and since then he has been serving in Manda Police Station till date. He received the case docket from previous Investigating Officer Kosim Uddin. Therafter, he again visited the place of occurrence, perused the case docket and also saw the alamat. He again interrogated the witnesses who were examined by previous Investigating Officer. He also perused the statements of the witnesseses under section 164 of the Code of Criminal Procedure. He tried to arrest the absconding accused and he also seized some of the alamats and thereafter he was transferred from Manda Police Station. Again on 9-2-2007, he was posted in Manda Police Station as Officer-in-Charge and took up the charge of investigation of the case from Ismail Hossain Mia (PW 38). He consulted the higher authority and submitted charge-sheet No. 71 dated 16-4-2007 against 21 accused under sections 120B/400/402/353/396 of the Penal Code as a *prima-facie* case was made out aginst them. He arranged recording the statement of the accused under section 164 of the Code of Criminal Procedure and he also recorded the statement of the accused in video. He submitted those video in the Court. He also prepared another sketch map with index. DB Inspector Kosim Uddin investigated the case from 10-9-2006 to 27-10-2006. Kosim Uddin is now in abroad.

139. In his cross-examination he stated that he sent an information slip to Gumastapur Police Station to know about the PCPR of accused Shafiqul Islam, son of Mobarak. Gumastapur Police Station mentioned that the PCPR of Shafiqul Islam, son of Mobarak was nill. The PCPR of accused Shah Nurul was also nill. The PCPR of accused Sanaul was also nill. He did not

arrest accused Shafiqul Islam, son of Mobarak. From CD he understands that accused Shafiqul Islam, son of Mobarak was arrested on 30-9-2006 and he was taken on remand for 4 days. Accused Shafiqul Islam, son of Mobarok made the confessional statement on 3-10-2006. He denied a suggestion that the confession of accused Shafiqul Islam, son of Mobarak was the product of police torture and intimidation. The confessing accused in their statement mentioned the name of other accused. Except 4 accused, all other accused used to serve in the CARB Office. He himself did not visit CARB office. He sent PSI Md Alauddin to visit the CARB office. He denied the suggestion that on 25-8-2006, accused Abdul Karim along with other accused were present in the CARB office. In the sketch map he has shown one room and the accused held meeting in that room. He came to know from the confessional statement of the accused that the accused held a meeting in the CARB Office. The miscreants did not use musk. He did not arrange for holding any TI parade. Other Investigating Officer also did not arrange for holding any TI parade. In connection with this case one GD was lodged in Manda Police Station. As per the direction of police head quarter, a 11-member monitoring team was formed for supervision of the investigation of the case. Accused Sagor was arrested by Porsha Police Station. He stated that it has been mentioned in the CD that Officer-in-Charge of Manda of Police Station received accused Sagor on 7-9-2006. He has not sent up 15 accused including Akbor, Mofizul, Mojid, Ishaque Ali etc. in the charge-sheet. He did not find any *prima-facie* case against Mojid, Akbor Ali, Mofijul Islam and Ishaque Ali. He did not visit the house of accused Haji Azim Uddin. He seized the leaflet of Sorbahara Party. He got the information that Izaradar of Chowbariahat used to realize excessive toll from the people of Manda and Neamotpur Police Station. He did not cite Abdul Jalil, brother of Nojer Ali as witness to this case. Inspector Kosim brought accused Karim before the Magistrate for recording his statement under section 164 of the Code of Criminal Procedure. Accused Abdul Karim stated in his statement under section 164 of the Code of Criminal Procedure that on the date of occurrence he was present at Godagari CARB office from 9-00 AM. to 4-45 PM. He sent information slip to Tanur Police Station for giving the antecedent of accused Abdul Karim but Tanur Police Station did not reply. He seized the TV, utensils, motor cycle. The seized utensils were used for cooking beef and accused Roghunath being a Hindu did not eat beef. He himself arrested accused Roghunath on 5-10-2006 under section 54 of the Code of Criminal Procedure. He denied the suggestion that accused Roghunath made the confession out of police torture. The PCPR of accused Tomal @ Ferdous, Sonjoy, Abdul Mannan, Robiul and Dilip and Majed Ali is nill. There are 07 cases pending against accused Nurul Islam @ Shine. Among 05 confessing accused, 4 were serving in CARB office. The total accused is 21 and out of 21 accused, accused Sonjoy, Awal, Robiul, Joynal, Khairul, Mannan, Tohurul, Karim, Shafiqul Islam, son of Mobarak, Nurul Islam @ Shine total 12 persons used to serve in the CARB office. Accused Shafiqul Islam, son of Habibur, Abu Bakkar, Nurun Nabi, Haji Azim Uddin, Dilip, Mannan would not serve in the CARB office. He cannot say the distance between Godagari and Chowbaria. He denied the suggestion that on 25-8-2006, a seminar of farmers/cultivators held in the CARB office. He did not verify whether on 25-8-2006, a seminar held in the CARB Office at Godagari. He stated that he prepared total 5(five) seizure list. He also seized a leaflet relating to telefilm. He prepared the seizure list relating to utensil on 10-11-2006. He proved his signature in the seizure list as Exhibit 19/3. On 15-3-2006, he seized total 10 items including pictures. He seized CD casette. He proved his signature in the seizure list of CD casette as Exhibit 32/3. He stated that there is no signature of any witness on the seized

alamat.

140. The State Defence Lawyer adopted the above cross-examination.

141. The defence examined 1 witness namely, Abdur Rahman as DW. He is the operating director of the CARB office of Godagari. He stated that he had been serving in the CARB office, Godagari since 1-12-2001. The CARB is a non-governmental organisation (NGO). The purpose and function of the CARB is to distribute the necessary tools among the farmers for cultivation. He stated that on 25-8-2006, there was a meeting among the cultivators in the CARB office at Godagari. The meeting started at 11-00 AM and ended at Asar prayer. Again after Asar prayer it started and continued till dusk. In that meeting 30 cultivators were present. All the cultivators were given travel expenses. The Branch Manager of each CARB office identified the cultivators of his office. He proved the paper by which the cultivators were identified. He proved the paper as Exhibit Ka and his signature therein as Exhibit Ka-1, Ka-2, Ka-3 and Ka-4. Some photographs were taken on that day and he submitted 4(four) photographs. He proved the photographs which were proved as Exhibit Kha, Kha-1, Kha-2 and Kha-3. The photograph of accused Abdul Karim is seen in the photograph. The photo of Ahmed Shah Nurul, Robiul Haque (Area Manager) are also seen in the photographs. He knew that 12 persons of CARB office were made accused in this case. They are Ahmed Shah Nurul, (Branch Manager), Abdul Karim, Abdul Mannan, Sonjoy, Nurul, Robiul, Sanaul, Khairul, Tohurul, Shafiqul Islam. During meeting the participants exchanged views and shared their experiences. Many officers of the CARB office were present. He did not find any Branch Manager, Firm Manager, Area Manager to get involved in politics.

142. In his cross-examination, he stated that he is the operating director of the CARB at Godagari. He is still in service. There are many other NGOs in Naogaon like BRAC, ASA, TMSS etc. All the papers he submitted were photocopy, and the papers were not attested by proper authority. He does not know who snapped the photographs. Among 12 accused, accused Abdul Karim, Nurul Islam, Sana Ullah and Shafiqul Islam were present in the Court. The 12 accused who were serving in CARB office do not go to office now-a-days. He denied the suggestion that he deposed falsely to save the employees of the CARB.

143. These are all the evidence adduced by the prosecution and the defence. In order to ascertain whether the prosecution has been able to prove the charge against the accused, let us carefully examine and analyze the evidence of the witnesses, adduced by the prosecution.

144. Out of 39 PWs, we find that PW 1 is the informant, PW 2 is Rahela Begum. She has been declared hostile. She is the wife of late Habibur Rahman. Accused Shafiqul Islam is her son. PW 3 is a private witness. PW 4 is also a private witness and he has been declared hostile, PW 5 is also a private witness. PW 6 is also a private witness and he has also been declared hostile. PW Nos. 7, 8 are private witness, PW 9 is the Chairman of Prasadpur Union Parishad. He is the witness to the inquest report of ASI AT .Firoj, Farid, Askan and Nojer Ali. PW 10 Ashraful Alam. He has a medicine shop at Chowbariahat. He is the seizure list witness of TV which was seized from the house of Rahela Begum (PW 2). PW 11 is Md Nazmul Haq and he has also a VCD repairing shop in Chowbariahat. He is also the seizure list witness of TV which was seized from the house of Rahela Begum (PW 2). PW 12 Mohammad Farhad Hossain is the witness of inquest report of ASI A.T. Firoj Askan, Babul Hossain and Nojer Ali. Blood stained earth was also seized in his presence. These alamats were seized from the place of occurrence. PW 13 is Md Monwarul Iqbal. He put his signature in the inquest report of Constable Faridul and Babul. PW 14 is the Principal of the

college. He came to the place of occurrence after the occurrence was over. PW 15 is a private witness. He heard about the occurrence and he has no personal knowledge about the occurrence. PW 16 is the Chowkidar who was on duty on the date of occurrence. He stated that he did not know who killed the police personnel. PW 17 is Police Inspector. He prepared the inquest report of Constable Askan, Babul and also Nojer Ali. He brought 5 dead bodies to Prasadpur by police pick up van. PW 18 is the witness to the inquest report of Constable Farid. He is also the witness of the seizure list of the uniform of the deceased police personnel. PW 19 also brought the dead body of Constables, namely, Askan, Babul and Izaradar Nojer Ali to Naogaon Sadar Hospital for post mortem examination. He brought the dead body by a chalan and he handed over the dead body of Nojer Ali to his relatives. PW 20 is a private witness and he is the witness to the seizure list. PW 21 is a police Constable. He carried a letter from the Officer-in-Charge of Manda Police Station to CARB office. PW 22 and 23 are private witnesses. They are seizure list witnesses of the utensils which were seized from the house of Rahela Begum (PW 2). These utensils were used for cooking beef. PWs 24 and 25 have been tendered. PW 26 is the Magistrate. He recorded the statements of 5 accused under section 164 of the Code of Criminal Procedure. He also recorded the statement of the witnesses, namely, Suresh Chandra Das (PW 3) and Rahela Begum (PW 2) under section 164 of the Code of Criminal Procedure. PW 27 is a private witness. He is also the witness to the inquest report of Firoj, Askan, Babul and Faridul. He also put his signature in the seizure list. PW 28 is a private witness. He is the seizure list witness of two papers. PW 29 has been tendered. PW 30 is a private witness. He is the owner of a tea-stall situated at Chowbariahat. PW 31 is the Doctor. He held the post mortem examination of 5 deceased. PW 32 is a public witness. PW 33 seized the motor cycle from accused Abdul Karim. PW 34 is Md Nur Alam. PW 35 put his signature in the seizure list of the seized photographs. PW 36 put his signature in the seizure list of the seized 2 CD PW Nos. 37, 38 and 39 are the Investigation Officers.

145. Out of 39 witnesses PW Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 20, 22, 23, 24, 25, 27, 28 and 30 are private witness.

146. PW Nos. 2, 4, 5 and 6 have been declared hostile. Two witnesses that is, PW Nos. 25 and 29 have been tendered.

147. Admittedly in this case there is no eye-witness. None of the witnesses saw the accused killing the deceased. Therefore, we have to rely upon the circumstantial evidence and also on the confessional statements given by 5 accused, namely, Nurul Islam, Tohurul Islam, Roghunath, Abdul Karim and Shafiqul Islam. Now let us analyse the confession of 5 accused one by one.

148. The occurrence took place on 25-8-2006 at 18.30 hours;

149. The FIR was lodged on 25-8-2006 at 23-25 hours;

150. Police arrested Nurul Islam @ Shine on 2-9-2006 and he was forwarded to the Court on 3-9-2006;

Police took him on remand for 10 days;

151. He was brought before the Magistrate on 7-9-2006 and his confession under section 164 of the Code of Criminal Procedure was recorded on 7-9-2006.

152. Now, let us re-produce the confession of accused Nurul Islam @ Shine which runs as under:

নূরুল ইসলাম @ শাহিন-এর জবানবন্দি আমি দেলুয়ার বাড়ী CARB অফিসে ব্র্যাঞ্চ ম্যানেজার হিসাবে চাকুরী করি। ১০-৮-২০০৫ খ্রিঃ তারিখ থেকে আমি ২০০৩ সালে দিলীপ, পিতা নাছির সাং মাচনা, নিয়মাত এর মাধ্যমে পূর্ব বাংলা কমিউনিস্ট পার্টি (লাল পতাকা) এর সদস্য হই। ২১-৮-২০০৬

খ্রিঃ সোমবার বিকাল ৫-৩০ রাত ৮-০০টা পর্যন্ত চৌবাড়িয়া CARB অফিসে মিটিং করি। তহুরুল ঐ CARB অফিসের ফার্ম ম্যানেজার এবং লাল পতাকার কমান্ডার। দিলীপ ঐ মিটিং এ নেতৃত্ব দেয় মিটিং ১) আমি ২) দিলীপ ৩) তহুরুল ৪) আতাউর পিতা অজ্ঞাত ৫) শফিকুল পিতা অজ্ঞাত সাং আনারপুর গোমস্তাপুর, চাঁপাইনবাবগঞ্জ ৭) আঃ করিম, পিতা অজ্ঞাত সাং অমৃতপুর, তানোর, রাজশাহী ৮) সাগর, পিতা অজ্ঞাত সাং কালী গ্রাম, মান্দা, নওগাঁ ৯) মাজেদ আলী, পিতা অজ্ঞাত সাং নাকইল, নিয়ামতপুর, নওগাঁ ১০) পিন্টু, পিতা অজ্ঞাত সাং বোয়াল ডাঙ্গা, নিয়ামতপুর, নওগাঁ ১১) খোকন, পিতা অজ্ঞাত সাং শিবপুর, নিয়ামতপুর, নওগাঁ ১২) আহমেদ শাহ নূরুল, পিতা অজ্ঞাত সাং বজেরাটেক, ভোলাহাট, চাঁপাইনবাবগঞ্জ ১৩) শফিকুল ইসলাম, পিতা হাবিবুর রহমান, চৌবাড়িয়া, মান্দা ১৪) তমাল, পিতা অজ্ঞাত সাং অজ্ঞাত, রানী নগর, নওগা ১৫) সিদ্দিক, পিতা অজ্ঞাত, সাতক্ষিরা ১৬) হাসান, পিতা অজ্ঞাত ১৭) রবিউল, পিতা অজ্ঞাত সহ মোট ২০ জন মিটিং করি। মিটিং এ সিদ্ধান্ত হয়। হাটের ইজারাদার লুৎফর, কাদের এবং আফজালকে খুন করতে হবে। পুলিশ বাধা দিবে বলে তাদের খুন করে অস্ত্র লুট করে নিতে হবে। হাজী আজিমুদ্দিন দিলীপের সাথে তার তহুরুলের সাথে কন্ট্রাক্ট করে ইজারাদারদের খুন করলে সে পার্টিকে মোটা অংকের চাঁদা দিবে। পুলিশের অস্ত্রগুলো পার্টিকে দিবে। হাজী আজিমউদ্দিনের সাথে মাস দুয়েক আগে হাটের ইজারাদারের গন্ডগোল হয়। মিটিং শেষ করে যে, যার বাড়ী চলে যাই। মিটিং এ আরো বলে শুক্রবার বিকাল ৩-০০টার মধ্যে তহুরুলের বাসায় সবাই চলে আসবে।

২৫-৮-২০০৬ শুক্রবার আমি, সাগর, করিম, সঞ্জয় অনুমান ৩.৪৫ মিঃ সময় তহুরুলের বাসায় চৌবাড়িয়া আসি। বাকীরা আমাদের আগে আসে। অনুমান ৪-১৫ টার দিকে আমার ২০ জন প্রতি গ্রুপে ৪ জন করে ৫টি গ্রুপে ভাগ হয়ে চৌবাড়িয়া গরুর হাটে যাই। আমার গ্রুপে আমার এবং করিমের কাছে ১টি করে পিস্তল, সাগরের কাছে বোমা, মঞ্জুরুলের কাছে বোমা ছিল। বাকী গ্রুপগুলোর কাছে ছুরি, লোহার রড, বোমা ছিল। আমাদের গ্রুপের প্রটেকশনের দায়িত্ব ছিল। সময় অনুমান ৪-৩০ টার দিকে হাটে পৌছাই। আমরা ৪ জন মোবাইল টাওয়ারের পার্শ্বে দাড়িয়ে থাকি। বাকীরা নিজ গ্রুপে বিভক্ত হয়ে চা স্টলের আশে পাশে ঘোরাফেরা করে। অনুমান ৬-০০ টার দিকে আমি হাটে ইশারা দিয়ে মুখে হুক দেই। তখন সবাই রেডি হয়। বকুল গাছের নীচে এ, এস, আই,, ফিরোজ ছিল। তিনজন পুলিশ চা স্টলে বসেছিল। হাত দেখানোর সাথে সাথে যাদের কাছে বোমা ছিল তারা বোমায় ফাটায় এবং একযোগে পুলিশকে রড দিয়ে বারি মেরে মাটিতে ফেলে দিয়ে ছুরি দিয়ে জবাই করে। তহুরুল ছুরি দিয়ে দারোগা ফিরোজকে জবাই করে। দিলীপ, আতাউর, তমাল ও অপর তিনজন পুলিশকে জবাই করে ছুরি দিয়ে। এ সময় হাটের টোল ঘর থেকে একজন লোক বের হয়ে এল তহুরুলে গ্রুপ তাকে ছুরি দিয়ে গলায় আঘাত করে। সে পরে মারা যায়। তারপর আমরা সবাই পূর্ব বাংলা কমিউনিস্ট পার্টি (এম, এল, লাল পতাকা) জিন্দাবাদ শ্লোগান দিতে দিতে পশ্চিম দিক দিয়ে বের হয়ে যাই। হাট পার হয়ে অনুমান ১ কি.মি. দূরে সব অস্ত্রগুলো দিলীপের হাতে জমা দিয়ে আমি সঞ্জয়, করিম, সাগর, CARB অফিসের চৌবাড়িয়া ফিরে আসি। মটর সাইকেল নেয়ার জন্য বাকীরা সবাই অস্ত্র নিয়ে খড়িবাড়ী নিয়ামতপুরের দিকে রওয়ানা দেয়। আমি করিম ও সাগর মটর সাইকেল দিয়ে করিমের লাল বাজাজ ১০০ সিসি এবং সাগরের কাল রং এর বাজাজ ১২০ সিসি খরিবাড়ী মাঠের মধ্যে তাদের সাথে দেখা করি। আমাদের ২টি পিস্তল পুলিশের একটি পিস্তল (করিমের হাতে ছিল) সাগরকে এবং করিমকে একটি করে দেয়। আমার মটর সাইকেল দিয়ে রাত্রে করিমের বাড়ী চলে যাই করিম আমাদের মাটির দোতলায় নিয়ে গিয়ে খাটে বসতে দেয়। তার অস্ত্রগুলো এক সাথে কাপড় দিয়ে জড়িয়ে জুতার বাক্সের মধ্যে ভর খাটের নীচে রেখে দেয়। তারপর করিম আমাদের নীচে এনে তার বৈঠক খানায় বসতে দেয়। রাতে খাওয়া দাওয়া করে ঘুমিয়ে পড়ি। সকাল বেলা উঠে গোসল করে নাস্তা খাওয়ায়। করিম তার মটর সাইকেল নিয়ে আমাদের মটর সাইকেলের সাথে চৌবাড়িয়া পর্যন্ত এগিয়ে দেয়। অস্ত্রগুলো করিমের বাড়ীতে থেকে যায়। এরপর থেকে আর করিমের সাথে দেখা হয়নি। বা কথা হয়নি। গত শুক্রবার দিবাগত রাত ১-০০ টার সময় পুলিশ আমাকে CARB অফিস দেলুয়াবাড়ী হাট ব্রাঞ্চ থেকে গ্রেপ্তার করে। আমি আপনার কাছে এবং রাষ্ট্রের কাছে ক্ষমা চাই। আমি বলি ভাল হয়ে স্বাভাবিক জীবনে ফিরে যেতে চাই। এই আমার জবানবন্দী।

153. From the above confessional statement, we find that on 21-8-2006, a meeting was held at Chowbaria CARB office. In that meeting Nurul Islam @ Shine, Ataur, Shafiqul, Abdul Karim,

Sagor (since dead), Majed Ali, Pintu, Khokon, Ahmed Shah Nurul, Shafiqul Islam, son of Habibur Rahman, Tohurul, Siddique, Hossain, Rabiul and others total 20 persons were present there. In that meeting it was decided that they would kill Izaradar Lutfor, Quader and Afzal. It was further decided that if police resists, they would also kill police personnel and snatch away their arms. Haji Azimuddin made a contract with accused, namely, Dilip and Tohurul. According to the contract Haji Azimuddin would give them handsome cash and also would give them looted arms. Haji Azimuddin had a quarrel with other Izaradar 2(two) months prior to the occurrence. On 25-8-2006 at 3.45 hours, 20 accused were divided into 5 groups. He and Abdul Karim were carrying pistol. Sagor (since dead) was carrying bomb. Other groups were carrying chora, iron rod etc. They arrived at Chowbariahat at 4-30 PM. He gave signal at 6-00 PM and on getting the signal the other accused exploded bombs and inflicted iron rod blows on the head of police personnel and slaughtered them. Accused Tahrul slaughtered the daroga. Accused Dilip, Ataur and Tomal killed 3(three) police personnel. At that time one person came out from toll house and the accused dealt chora blow in his neck and subsequently he died. Thereafter they left the place chanting slogan "Purbabangla Communist Party Zindabad."

154. This is the confessional statement given by accused Nurul Islam @ Shine. If we carefully analyse the above confessional statement of Nurul Islam @ Shine we find that according to the decision taken in the meeting held on 21-8-2006, they all came to the place of occurrence and as soon as he gave signal, other accused blasted bomb, inflicted iron rod blows on the head of the police personnel and slaughtered them. From the confessional statement of this accused, we find vivid description of the occurrence. PW 26 is the Magistrate who recorded the statement of this accused. He (PW 26) stated that he alerted the accused by saying that he was not bound to confess and if he would confess it might be used against him as evidence. The learned Magistrate also stated that he gave three hours reflection time to the accused. He complied with all the provisions of law provided under sections 164 and 364 of the Code of Criminal Procedure before recording the confessional statement of accused Nurul Islam @ Shine. The accused also did not complain of police torture at the time of recording his statement.

155. This condemned prisoner was not examined under section 342 of the Code of Criminal Procedure as he absconded during trial. He absconded since 2-12-2007. So there was no occasion to examine him under section 342 of the Code of Criminal Procedure. In his confessional statement, accused Nurul Islam @ Shine stated that they slaughtered the police personnel. PW 31 held the autopsy. He corroborated with the statement of the accused as he found that all the dead bodies of police personnel had throat cut. The evidence of PW 31 fully corroborates the prosecution case. The Tribunal rightly held that the time, place and manner of the occurrence have been corroborated by the evidence of all the witnesses. His confession fully corroborates with the prosecution case. Therefore, we hold the view that the Tribunal rightly held that the confession of accused Nurul Islam @ Shine was voluntury and true. Accused Nurul Islam @ Shine filed an application for retraction of the confession. The trial court did not pass any order on the application for retraction. In fact, once a confession is taken to be voluntary and true, the application of retraction has no value. We shall discuss the value of retraction of confession later in the body of the judgment.

156. Confession of accused Tohurul Islam, aged 24:-

157. Now, let us, scrutinize and analyze the confessional statement of accsued Tohurul Islam.

Police arrested accused Tohurul Islam on 1-9-

2006 at 11-00 PM and forwarded him to the Court on 3-9-2006. Police took him on remand for 10 (ten) days. On 7-9-2006, he made confessional statement under section 164 of the Code of Criminal Procedure. He filed an application for retraction of his confession but his application for retraction was rejected. He was enlarged on bail on 26-7-2007 and thereafter he absconded and did not face trial. His bail was cancelled on 2-1-2008.

158. As he absconded during trial, he could not be examined under section 342 of the Code of Criminal Procedure. The confessionnal statement given by accused Tohurual Islam is reproduced here which runs as under:

"তহুরুল ইসলাম @ আজিজুল হক আমি CARB অফিসে চৌবাড়িয়া ২৩নং ব্রাঞ্চে ফার্ম ম্যানেজার হিসাবে ৬/৭ মাস কাল কাজ করছি। আমি বর্তমানে বিনোদপুর ডিগ্রী কলেজে পাশ কোর্সে ডিগ্রীতে পড়ছি। গত ২১-৮-২০০৬ খ্রিঃ সোমবার CARB অফিস চৌবাড়িয়া ব্রাঞ্চের মিটিং করি। মিটিং-এ ১) আমি ২) নয়রুল ইসলাম @ শাহীন ৩) দিলীপ, পিতা অজ্ঞাত সাং মাচনা, নওগা ৪) কাশেম, পিতা অজ্ঞাত সাং বলদারহার নিয়ামতপুর ৫) খোকন, পিতা ময়েজ সাং শিবপুর নিয়ামতপুর ৬) হাসান, পিতা অজ্ঞাত সাং ভোলা হাট,, চাঁপাইনবাবগঞ্জ ৭) তমাল, পিতা অজ্ঞাত সাং সমাজপাড়ার, আত্রাই ৪) আতাউর, পিতা অজ্ঞাত সাং সমাজপাড়া, আত্রাই ৯) পিন্টু, পিতা অজ্ঞাত সাং বলদাহার, নিয়ামতপুর, ১০) সাগর, পিতা অজ্ঞাত সাং দেলয়াবাড়ী, মান্দা ১১) সঞ্জয়, পিতা অজ্ঞাত সাং গোদাগাড়ী ১২) খায়রুল, পিতা অজ্ঞাত, নাচোল চাঁপাইনবাবগঞ্জ ১৩) করিম, পিতা অজ্ঞাত তানোর, রাজশাহী ১৪) সিদ্দিক, পিতা অজ্ঞাত জেলা সাতক্ষীরা সহ আরো কয়েকজন ছিল। সন্ধ্যা অনুমান ৬-০০ টার দিকে মিটিং হয়। মিটিং শাহীন ও দিলীপ নেতৃত্ব দেয়। মিটিং সিদ্ধান্ত হয় চৌবাড়িয়া গরুর হাটে অপারেশন চালিয়ে হাটের ইজারাদার আফজাল, ফজেরকে মেরে ফেলতে হবে। হাজী আজিমুদ্দিন তাদেরকে মেরে ফেললে আমাদের পার্টিকে ১২/১৩ লক্ষ টাকা দিবে শাহীন ও দিলীপ জানায়। হাজী আজিমুদ্দিন এর সাথে ঘটনার মাস দেড়েক আগে হাট ইজারাদারদের গন্ডগোল হয়।

ঘটনার দিন ২৫-৮-২০০৬ শুক্রবার এর বিকাল অনুমান ৫টার দিকে আমরা ২০ জনের একটি দল বিভিন্ন ভাবে ভাগ হয়ে চৌবাড়িয়া গরুর হাটে যাই। আমি বাজারের পার্শ্বে পর পর ৫টি বোমা ফাটাই। তার ভয়ে লোকজন দৌড়াতে থাকে তখন আমরা পুলিশদের লোহার রড দিয়ে আঘাত করি। ৪ জনকে আঘাত করি। আমি দারোগাকে ছুরি দিয়ে জবাই করি। পুলিশের অস্ত্র আমরা কেড়ে নেই। অন্য তিন জনকেও জবাই করে হত্যা করা হয়। কে জবাই করে বলতে পারব না। ইজারাদার নজের কে টোল ঘর থেকে বেরিয়ে যাওয়ার সময় তাকেও জবাই করে হত্যা করা হয়। কে জবাই করে বলতে পারব না। দারোগা ফিরোজকে সিদ্দিক, খোকন, তমাল ধরে রাখে। প্রথমে তমাল ছুরি দিয়ে জবাই করে। তারপর আমরা পূর্ব বাংলা কমিউনিস্ট পার্টি লাল পতাকা জিন্দাবাদ বলে শ্লোগান দিতে দিতে খড়ি বাড়ী ও সাদা পুরের মধ্যস্থলে চলে যাই। সেখানে দিলীপ ও শাহীনকে ছুরি, রড, পিস্তল ২টি, বন্দুক ৩টি জমা দিয়ে নিয়ে বাড়ী চলে যাই। অস্ত্রগুলো দিলীপ, শাহীন, করিমের কাছে আছে। আমি এক বৎসর আগে সর্বহারা দলের সদস্য হই। মারার জন্য এখনো কোন টাকা পয়সা পাই নাই। শাহীন ও দিলীপ জানে টাকা পয়সা দিয়েছে কিনা আমাকে গত শুক্রবার দিবাগত রাত অনুমান ১১টার সময় চাকলা নিয়ামতপুর থেকে পুলিশ ধৃত করেন।"

159. From the above confessional statement, it is clear that on 21-8-2006, a meeting was held at the CARB office. In that meeting the accused and other persons were present. It was decided in the meeting that they would kill Izaradar and if they could kill Izaradars, namely, Afzal and Fazlu, accused Azimuddin would give them Taka 12/13 lakh. Haji Azimuddin had a quarrel with other Izarader, one and half months prior to the occurrence. In pursuance of the decision and agreement taken in the meeting held on 21-8-2006, the accused along with others went to the cattle market in 5 groups. He himself blasted the bombs and people started running hither and thither. The accused dealt iron rod blow on the head of 4 police personnel. He himself slaughtered the Daroga. They also snatched away the arms from police personnel. The other 3 police personnel were also slaughtered. He took the knife from accused Tomal and slaughtered Daroga Firoj. Thereafter, they left the place chanting slogan "Purba Bangla, Lal Potaka, Zindabad."

160. Upon a careful scrutiny of the confessional statement of accused Tohurul, we find that this confessional statement is inculpatory in nature. The accused himself stated that he himself blasted the bomb and he himself slaughtered the Daroga taking knife from Tomal. It is true that on 4-10-2006 accused Tohurul filed an application for retraction. But his application for retraction was rejected. Accused Tohurul absconded after he was granted bail. As a result, he could not be examined under section 342 of the Code of Criminal Procedure. The learned Magistrate who recorded the confession of accused Tohurul stated in no uncertain terms that he cautioned accused Tohurul that he was not bound to confess and if he would confess, it might be used against him as evidence. He also gave the accused 3 hours time for reflection. The learned Magistrate stated that when he recoreded the confessional statement of accused Tohurul, he (accused Tohurul) looked normal and his health condition was good. The accused also did not complain of police torture before the Magistrate. The learned Magistrate complied with all the provisions of sections 164 and 364 of the Code of Criminal Procedure before recording the confession of accused Tohurul. Therefore, we find that the confession given by accused Tohurul was voluntary. Moreover, the confession given by accused Tohurul is consistent with the prosecution case. He has stated in his confession that a meeting was held on 21-8-2006 in the CARB office. In that meeting it was decided that they would kill Izaradar and they would also kill the police personnel and take away their arms. In his confession accused Tohurul gave vivid description about the occurrence. As the confession of accused Tohurul is consistent with the prosecution case, we also hold the view that the confession of accused Tohurul is true as well.

161. Another accused, namely, Shafiqul, son of Mobarak made a confession. In his confession he stated as under:

আমি CARB অফিস চৌবাড়িয়া ব্রাঞ্চে গত ২১-৫-২০০৬ খ্রিঃ তারিখ থেকে চাকুরী করছি। CARB অফিসের মান্দা ও তানোর থানা এলাকার এরিয়া ম্যানেজার মোঃ রবিউল ইসলাম, পিতা অজ্ঞাত সাং কাকন হাট থানা-তানোর, রাজশাহী আমাকে পূর্ব বাংলা কমিউনিস্ট পার্টি এম, এল, লাল পতাকা দল করার জন্য বলে অনুমান ২ মাস আগে বলে। আমি তার কথা মতো। ঐ দলে যোগ দেই। গত ২১-৮-২০০৬ খ্রিঃ তারিখ অনুমান সন্ধ্যা ৬-০০ টার দিকে CARB অফিসে চৌবাড়িয়া ব্রাঞ্চে একটি মিটিং হয়। ঐ মিটিং এ ১) হাজী আজিম উদ্দীন পিতা অজ্ঞাত সাং খড়িবাড়ী নিয়ামতপুর, ২) আমি ৩) নূরুল ইসলাম ওরফে তাপস ওরফে শাহীন পিতা হাবিবুল মাস্টার সাং নিমদিঘী নিয়ামতপুর, ৪) সানাউল পিতা অজ্ঞাত দেলুয়াবাড়ী CARB ব্রাঞ্চের ফার্ম ম্যানেজার ৫) রঘুনাথ পিতা অজ্ঞাত দেলুয়াবাড়ী CARB অফিসের বাবুর্চি ৬) সাগর কৃষক প্রতিনিধি সাং বলিগ্রাম, মান্দা ৭) খায়রুল পিতা অজ্ঞাত ফার্ম ম্যানেজার CARB ব্রাঞ্চ চৌবাড়িয়া ৮) তহুরুল ইসলাম পিতা অজ্ঞাত ফার্ম ম্যানেজার চৌবাড়িয়া CARB ব্রাঞ্চ ৯) আঃ করিম কামারপুর ব্রাঞ্চের ফার্ম ম্যানেজার ১০) সঞ্জয়, পিতা ধীরেন সাহা সাং গোদাগাড়ী, রাজশাহী ১১) খোকন সিনজেনটা গ্রুপের মাঠ কর্মী ১২) ছিদ্দিক সিনজেনটা গ্রুপের মাঠ কর্মী ১৩) মোঃ শফিকুল ইসলাম ১৪) মোঃ পিন্টু উভয় পিতা মৃত হাবিবুর রহমান ১৫) আঃ মান্নান CARB আগের ব্রাঞ্চের ফার্ম ম্যানেজার ১৬) আঃ আউয়াল আগের ব্রাঞ্চের ফার্ম ম্যানেজার উপস্থিত ছিল। মিটিং এ সিদ্ধান্ত হয় ২৫-৮-২০০৬ তাং বেলা ১২-০০ টায় শুক্রবারে চৌবাড়ীয়া গরুর হাটে অস্ত্র লুট (পুলিশের) আর ইজারাদারদের খুন করা হবে, হাজী আজিমুদ্দিন, নুরুল ইসলাম @ তাপস সহ আরো অনেকে বক্তব্য রাখে। ২৫-৮-২০০৬ তাং বেলা ১২-০০ টায় রাহেলা বেগমের বাড়ীতে তহুরুল ঐ বাড়ীতে ভাড়া থাকত। আমরা হাজী আজিমুদ্দিন ব্যতিত উপরে বর্ণিত ১৫ জন এবং বহিরাগত ৫ জন মোট ২০ জন উপস্থিত হই। দুপুরের খাবার দাবার রাহেলা বেগম পাক করে দেয়। খাবার শেষে আমরা ভিসিপি দেখি। বিকাল ৫-৩০ মিঃ আমরা ২০ জন ৫ গ্রুপে এক এক গ্রুপে ৪ জন করে বিভক্ত হয়ে হাটের অপারেশনে বের হই। ১ম গ্রুপে ১) নুরুল ইসলাম @ শাহীন ২) সানাউল ৩) রধুনাথ ৪) সাগর ২য় গ্রুপে ১) তহুরুল, রবিউল, করিম, জয়নাল ৩য় গ্রুপে খায়রুল ২) সঞ্জয় ৩) আমি, শফিকুল ৪) খোকন ৪র্থ গ্রুপে ১) মান্নান ২) আওয়াল ৩) মোঃ শফিকুল ইসলাম ৪)

পিন্টু ৫ম গ্রুপে ১) সিদ্দিক ২) দিলীপ এবং অপরিচিত ২ জন ছিল। নুরুল ইসলাম এবং রবিউলের কাছে ১টি করে পিস্তল ছিল। সঞ্জয়, তহুরুল, সিদ্দিক, মান্নান সহ অপরিচিত ২ জনের হাতে ১টি করে বোমা ও ৬টি ছোরা ছিল। সানাউল ও সাগরের হাতে বোমা ছিল। করিম, আনার, খায়রুল, জয়নাল, শফিকুল, আউয়ালের এবং পিন্টুর হাতে ও বোমা ছিল। বাকীদের হাতে লোহার রড ছিল। অস্ত্র লুট করার দায়িত্ব ছিল। ১) তহুরুল ২) নুরুল ইসলাম ৩) দিলীপ ৪) করিম এবং অজ্ঞাতনামা ২ জন। ঘটনাস্থলে গেছে খায়রুল এবং আউয়াল বোমা ফাটায় লোকজন ভয়ে পালিয়ে যায়। কয়েকজন লোহার রড দিয়ে পুলিশের ৩ জন কনস্ট্যাবল এবং এ, এস, আই ফিরোজকে এবং একজন কনস্ট্যাবলকে আঃ মান্নান ছোরা দিয়ে জবাই করে। বাকী দুজনকে জবাই করতে দেখি নাই। হাটের ইজারাদারকে হত্যা করা হয়। কে করে জানি না। পুলিশের ১টি পিস্তল ও ৩টি বন্দুক আমরা লুট করে পূর্ব বাংলা কমিউনিস্ট পার্টি এম, এল লাল পতাকা জিন্দাবাদ শ্লোগান দিতে দিতে মান্নান মোড়ের দিকে চলে যাই। মাস্তানের মোড় থেকে ২টি সাদা রংয়ের মাইক্রোবাসযোগে আমরা নিয়ামত থানার রামনগর মোড়ে যাই। আমি, সানাউল ও সিদ্দিক রামনগর নেমে যাই। অস্ত্র ও বোমা গাড়ীতে থেকে যায়। বাকীতে মাইক্রো নিয়ে পশ্চিম দিকে চলে যায়। পরে সিদ্দিক চৌবাড়িয়ার চলে আসে। আমিও সানাউল রামনগর থেকে ছুটাছুটি করে বাড়ী চলে যাই। ২৮-৯-২০০৬ তারিখ দিবাগত রাত ৫-০০ টার সময় আমাকে নোনাহার আমার শ্বশুর বাড়ী থেকে পুলিশ গ্রেপ্তার করে। অস্ত্রগুলো এখন কার কাছে জানি না। এই আমার জবানবন্দী।

162. From the above confessional statement, it is clear that this condemned prisoner was present at the conspiracy held on 21-8-2006 in the CARB office at Chowbaria, that is, he actively took part in the conspiracy for taking away the arms from police personnel and also for killing the police personnel and the Izaradar. He was in group No. 3 with other accused, namely, Khairul, Sonjoy and Khokan. He stated that Khairul (a man of his group) and Awal blasted bomb. He also stated that they looted away one pistol and 3 guns from police personnel and thereafter went away, chanting slogan, "Purba Bangla Communist Party Lal Potaka Zindabad." From the above confessional statement, it is clear that this accused Shafiqul Islam son of Mobarak took active part at the conspiracy held on 21-8-2006 in the CARB Office, Chowbaria and he was also in one of 5 groups who are responsible for killing the police personnel and Nojer Ali. According to agreement and conspiracy dated 21-8-2006 they killed police personnel and Nojer Ali and stnatched away the arms from police personnel.

163. Police arrested accused Shafiqul Islam son of Mobarak on 29-9-2006 at 5-00 PM and he was forwarded to the Court on 30-9-2006. Police took him on remand for 4 days. He did not file any application for retraction. However, he was examined under 342 of the Code of Criminal Procedure. At the time of recording of his confession, the learned Magistrate compiled with all the provisions of sections 164 and 364 of the Code of Criminal Procedure. He cautioned him that he was not bound to confess and if he would confess it would be used against him as evidence. He also gave him 3 hours time for reflection. He did not complain of police torture before the learned Magistrate when his confessional statement was recorded. PW 26 (the learned Magistrate) was thoroughly cross-examined by the learned Lawyer appearing on behalf of the accused. From the evidence of PW 26 nothing came out to believe that police tortured him during his custody under police. He was examined under section 342 of the Code of Criminal Procedure on 6-1-2008, i. e, he was examined under section 342 of the Code of Criminal Procedure 1 (one) year 04 (four) months after his arrest and this time he complained of police torture before the Tribunal. He could not produce any documentary and circumstantial evidence in support of his complain of police torture. We have already stated that once a confessional statement is taken to be voluntary and true, belated retraction has no value [45 DLR 306].

164. The learned Magistrate stated that he complied with all the provisions of sections 164

and 364 of the Code of Criminal Procedure before recording the confession. The learned Magistrate also did not find any sign of torture on the person of accused Shafiqul son of Mobarok. The accused did not also show any sign of police torture on his person. The Magistrate gave certificate that the confession was voluntary. This confession is also consistent with the prosecution case. Since the confessional statement of this accused is consistent with the prosecution case, we are also of the opinion that the confession of accused Shafiqul Islam, son of Mobarak was voluntary and true as well.

165. Now, let us turn to the confessional statement of accused-appellant Roghunath Barmon.

The confession of accused-appellant Roghunath Barmon:

Police arrested Roghunath Barmon on 2-9-2006 in connection with other case. He was shown arrested on 5-10-2006 in this case. On 5-10-2006, he was given 4 days police remand and on 9-11-2006 he was given another 5 days police remand. He made confessional statement on 12-11-2006.

166. The confessional statement of Roghunath Borman is as under:

"আমি দেলুয়াবাড়ী CARB অফিসে ভাত রান্না করার কাজ করতাম ২/৩ মাস যাবত। ২৫-৮-২০০৬ শুক্রবার সন্ধ্যা ৬-০০ টার সময় চৌবাড়িয়া গরুর হাটে ঘটনা। আমি সকালে ভাত রান্না করি। খাওয়া দাওয়া করে শাহীন ও সাগর গোদা গাড়ী যায়। মিটিং অংশগ্রহণের জন্য। নুরুল ইসলাম @ শাহীনের পিতা-অজ্ঞাত, সাং নিম দীঘি, থানা-নিয়ামতপুর এবং সাগরের পিতার নাম জানি না, সাং কালিগ্রাম, মান্দা, নওগা। তারা খাওয়ার সময় আমাকে বিকাল ৩টা ৩-৩০ টার সময় চৌবাড়িয়া হাটে যেতে বলে। আমি বিকাল ৩-৩০টা দিকে চৌবাড়িয়া CARB অফিসের কাছে নুরুল ইসলাম @ শাহীনকে দাড়িয়ে থাকতে দেখি। শাহীন আমাকে CARB অফিসের পাশে পিন্টু পিতা অজ্ঞাত সাং চৌবাড়িয়া মান্দা এর বাড়ীতে নিয়ে যায়। যেয়ে দেখি ১৬/১৭ জন লোক টিভি দেখছে। তাদের মধ্যে শাহীন, সাগর, তহুরুল পিতা অজ্ঞাত সাং নিমদীঘি নিয়ামতপুর, সানাউল্লাহ, সঞ্জয়, পিন্টু, পিন্টুর ভাই শফিকুল অপর শফিকুল পিতা ও ঠিকানা অজ্ঞাতদেরকে চিনতে পারি। বাকীদের চিনতে পারি নাই। ওখানে কিছুক্ষণ থাকার পর শাহীন ও সঞ্জয় বোমার ব্যাগ ও পিস্তল (৩টি) বের করে। শাহীনের হাতে বোমা ও ১টি পিস্তল, সাগরের হাতে ১টি বোমা ও ১টি পিস্তল, সঞ্জয়ের হাতে ১টি পিস্তল, শফিকুল (CARB অফিসের এর হাতে বোমার ব্যাগ ছিল, তহুরুলের কাছে ১টি ছোরা ও ১টি বোমা ছিল। শফিকুল আমাকে বোমা দেয়। আমারা সবাই ৪ জন করে ৫টি গ্রুপের বিভক্ত হয়ে সন্ধ্যা ৬-০০ টার দিকে হাটে যাই। আমি এবং সানাউল্লাহ হাটের পূর্ব দিকে দাড়িয়ে ছিলাম। শাহীন ও তহুরুল ইসলাম ইশার দিকে শফিকুল বোমা ফাটায়। লোকজন পালাতে লাগল। আমি ও সানাউল্লাহ ঘটনাস্থলের কাছে গিয়ে দেখি ৪ জন পুলিশ জবাই করা অবস্থায় আছে। আমি কাউকে জবাই করতে দেখি নাই। শুনেছি তহুরুল ২ জনকে শাহীন ১ জনকে জবাই করেছে। হাটের ইজারাদার হাসপাতালে মারা যায়। তাকে কে মেরেছে জানি না। ঘটনার পর গিয়ে দেখি শাহীন সহ বাকীরা পাকা রাস্তার উপর দাড়িয়ে আছে। আমি আমার কাছে থাকা বোমাটি শফিকুলের হাতে দেই। সানাউল্লাহ সহ আমাকে রেখে বাকীরা দক্ষিণপশ্চিম কর্নারের দিকে চলে যায়। আমি বাসে করে দেলুয়াবাড়ী বাস স্ট্যান্ডে নেমে যাই। অফিসে গিয়ে রাত্রে থাকি। শাহীন ও সাগর পরের দিন সকাল ৯/১০ টার দিকে মটর সাইকেল যোগে আসে। শাহীন আমাকে বলে সঞ্জয় পুলিশের ২টি অস্ত্র নিয়ে গেছে। ২টি পিস্তল ও ১টি পুলিশের অস্ত্র তানোর করিমের বাড়ীতে রেখে এসেছে। পরের দিন সাগরের অস্ত্র গুলো নিয়ে আসার কথা ছিল। নিয়ে এসেছে কিনা জানি না। ঘটনার ৬/৭ দিন পর পুলিশ আমাকে কালী গ্রাম CARB অফিস থেকে ধরে। এই আমার জবানবন্দী।"

167. If we scan the confessional statement of Roghunath, we find that accused Roghunath was in killing mission and he was included in one of the 5 groups. The learned Magistrate stated that before recording the confession of Roghunath, he complied with all the provisions of sections 164 and 364 of the Code of Criminal Procedure. He also stated that he duly cautioned accused

Roghunath that he was not bound to confess and if he would confess it might be used against him as evidence. He also gave 3 hours reflection time to the accused before recording his confession. He did not complain of police torture before the learned Magistrate. He did not even say anything about police torture in his statement under section 342 of the Code of Criminal Procedure. Therefore, we find that the confessional statement of Roghunath was voluntary.

168. Accused Roghunath has given the vivid description of the occurrence. He corroborated with other confessing accused and stated that there were 5 groups in the killing mission and he belonged to one of the groups. We find that the confessional statement of Roghunath is consistent with the prosecution case and, as such, we hold the view that the confession is also true.

169. Now, let us turn to the confessional statement of accused Abdul Karim.

170. The Tribunal has sentenced him to suffer rigorous imprisonment for life.

Police arrested him on 5-9-2006 at 2-00 AM. On 7-9-2006, he was taken on police remand for 6 days and he made confessional statement on 10-9-2006. He was examined under section 342 of the Code of Criminal Procedure. He was also granted bail but he could not avail of the privilege of bail because he was in the jail in another case.

171. The confessional statement of accused Abdul Karim is quoted below which runs as under:

"মোঃ আঃ করিম

আমি ২০০৪ সালের ১লা জানুয়ারী থেকে CARB অফিস কামার গা, তানোর, রাজশাহী ব্রাঞ্চে ম্যানেজার হিসাবে কর্মরত আছি। গত ২৫-৮-২০০৬ খ্রিঃ শুক্রবার সকাল ১০টা থেকে গোদাগাড়ী CARB অফিসে স্টাফদের সমন্বয়ে একটি মতবিনিময় সভা হয়। ঐ সভায় CARB এর চেয়ারম্যান ডঃ আসাদুজ্জামান CARBএর প্রধান নির্বাহী কর্মকর্তা মোঃ মোজাহার আলী উপস্থিত ছিলেন সকাল ১০টা থেকে দুপুর-এ নামাজ ও খাওয়ার জন্য ২ ঘঃ বিরতি দিয়ে অনুমান ৪.৪৫ মিঃ পর্যন্ত সভা চলে। আমি ঐ সভার শুরু থেকে শেষ পর্যন্ত ছিলাম। নূরুল ইসলাম ওরফে শাহীন ওরফে তাপস দুপুর পর্যন্ত ছিল। দুপুরের পর ছিল কিনা খেয়াল নাই। মিটিং শেষে অনুমান সন্ধ্যা ৭টার দিকে তালনন্দ বাজারে পৌছাই আমার নিজস্ব মটর সাইকেল দিয়ে কৃষক মোঃ শরিফ উদ্দীনকে সঙ্গে নিয়ে বাজারে চা খেয়ে বাড়ী যাওয়ার পথে আজিজার এর গ্রামে পৌছানো মাত্র অনুমান সন্ধ্যা ৭-০০ টার সময় নূরুল ইসলাম ওরফে শাহীন আমার মোবাইল সেট নং ০১৭১৩০০৪৪০৩ এ রিং বলে আমি দেলুয়াবাড়ী যেতে পারছি না। চৌবাড়িয়াতে মারামারি হচ্ছে। আমি আপনার এখানে চলে আসব এবং থাকব। আমি তাকে কামার গা দিয়ে দেলুয়াবাড়ীয়া যাওয়ার জন্য বলি। সে ৫/৭ মিঃ পর তালন্দ বাজার থেকে টুনু পিতা আঃ রহিম, তালনন্দ বাজার এর মোবাইলের দোকান থেকে পুনরায় মোবাইল করে বলে ভাই আমার খুব ভয় লাগছে। আমি যেতে পারছি না আপনার ওখানে চলে আসছি। অনুমান সন্ধ্যা ৭.৩০ টার সময় নুরুল ইসরাম @ শাহীন, শরীফ সাগর, পিতা অজ্ঞাত সাং কালী গ্রাম, মান্দা, নওগা কে সঙ্গে নিয়ে তার (শাহীনের) মটর সাইকেল যোগে আমার বাড়িতে যায়। রাতে ২জন আমার বাড়ীতে নীচের ঘরে থাকে। সকাল বেলা নাস্তা খেয়ে আলনান্দ বাজার পর্যন্ত আমরা এক সাথে আসি। অনুমান ৮.৩০ টার দিকে শাহীন ও সাগর দেলুয়াবাড়ীর উদ্দেশ্যে চলে আসে। আমি আমার অফিসে চলে যাই। সাগর ও শাহীন ঘটনা সম্পর্কে আমাকে কিছু বলে নাই। পরের দিন তালনন্দ বাজারে ৪ জন পুলিশ এবং একজন পাবলিক মারা যাওয়ার কথা শুনি। এই আমার জবানবন্দী।"

172. If we scan the above confession, we find that accused Nurul @ Shine, Sagor (since dead) son of unknown came to his house with motor cycle and they stayed in his house at night and on the following morning at 8-30 AM. Shine and Sagor (since dead) left for Deluabari. This statement of Abdul Karim is consistent with the statement of co-accused Nurul Islam @ Shine who made inculpatory statement under section 164 of the Code of Criminal Procedure. The confession of Nurul Islam is inculpatory in nature and he categorically stated that Abdul Karim was with them in the meeting and in killing mission. This

accused Abdul Karim also stated that Nurul Islam @ Shine made him a phone call by his mobile phone being No. 017-1300-4403 and requested him to take him (accused Abdul Karim) to Deluabari as there was fight in Chowbariahat. Accused Tohurul Islam also stated that Abdul Karim was present at the meeting held on 21-8-2006 and he was also present in the killing mission. The confession of Tohurul Islam is inculpatory in nature. Accused Shafiqul Islam also stated that accused Abdul Karim was present at the meeting held on 21-8-2006 and he was in the killing mission in group No. 2. Abdul Karim admitted that accused Nurul Islam @ Shine and Sagor came to his house by motor cycle and stayed there at night. PW 33 seized the motor cycle from Abdul Karim, PW 20 is the seizure list witness of motor cycle. All these circumstances go to show that accused Abdul Karim was present at the conspiracy held on 21-8-2006 and he was also present in the killing mission on the date of occurrence and took part in the killing of 4(four) police personnel and Nojer Ali.

173. Police arrested accused Abu Bakkar Siddique on 14-9-2006. He was taken on police remand for 5 days and bail was granted to him on 14-5-2007. Thereafter, his bail was cancelled on 2-1-2007 and since then he has been absconding. Co-accused Nurul Islam, Tohurul Islam and Shafiqul Islam in their statements under section 164 of the Code of Criminal Procedure mentioned the name of Abu Bakkar Siddique and stated that he was present both at the meeting held on 21-8-2006 and in the killing mission. Though police took him on remand for 05 days, this condemned prisoner did not make any confession. Though accused Abu Bakkar Siddique did not make confession, the other confessing accused mentioned his name. Accused Tohurul made inculpatory statement under section 164 of the Code of Criminal Procedure and he specifically mentioned the name of accused Abu Bakkar Siddique. Since the confession of accused Tohurul is inculpatory in nature and since we have found his confession voluntary and true we have reason to believe that accused Abu Bakkar Siddique was present both at the compiracy held on 21-8-2006 and also in the killing mission. From the voluntary and true confession of accused Tohurul and also from other confessing accused, we find that accused Abu Bakkar Siddique was present both at the compiracy any and in the killing mission. He was also one of the members of 5th group with accused Dilip and 2 others. Therefore, we find from the inculpatory confession of accused Tohurul and from other evidence that the accused Abu Bakkar Siddique was present at the time of commssion of offence of killing of 4 police personnel and Izaradar Nojer Ali. There are long lines of decisions which have firmly settled that confession of co-accused can be used against other accused, if the confession is inculpatory in nature and other corraborative evidence is available. Our this view is getting support from the decision in the following cases.

174. In case of *State vs Mir Hossain @ Mira* reported in *56 DLR 124,* it has been held in paragraph 34:

> "34. Under Section 30 of the Evidence Act, confession of a co-accused can be taken into consideration and on the strength of that confession, another co-accused can be convicted provided the said confession is corroborated by any other evidence, either direct and circumstantial."

In the case of *State vs Abul Khair and others* reported in *44 DLR 284,* it has been held, *inter alia*, in paragraph 9 that it is clear from the terms of sections 30 of the Evidence Act that where more persons than one are being tried jointly for the same offence, a confession made by any one of them affecting himself and any one of the co-accused can be taken into consideration by the Court not only against the maker of the confession, but also against the co-accused. Strictly speaking, it

may not be a piece of evidence within the meaning of the term, but it lends assurance to the other evidence on record

175. In the case of *Moqbul Hossain vs State 12 DLR (SC) 217,* the statement of a confessional nature were made by the co-accused affecting themselves and the appellant, the question arose as to whether section 30 of the Evidence Act could not be called in aid of the prosecution in support of the appellant's conviction, SA Rahman J, held:

> "..... Section 30 of the Evidence Act merely provides that the Court "may take into consideration" such confessions as against the appellant, as well as against their makers. The language of the section is very guarded and lends no warrant to the inference that such a statment made by a co-acccused could be treated as substantive evidence against the other person, sufficient to sustain his conviction. It is well settled that there ought to be other evidence, whether direct or circumstantial, linking such a person with the crime, before a confession made by the co-accused could be adverted to, in adjudging the guilt of that person."

176. In the case of *State vs Nalini (1999) 5 SCC 253* it has been held as under:

> "A plain reading of section 30 of the Evidence Act discloses that when the following conditions exist, namely, (1) more persons than one are being tried jointly; (ii) the joint trial of the persons is for the same offence; (iii) a confession is made by one of such persons (who are being tried jointly for the same offence); (iv) such a confession affects the maker as well as such persons (who are being tried jointly for the same offence); (v) such a confession if proved in court, the court may take into consideration such confession against the maker thereof as well as against such persons (who are being jointly tried for the same offence)."

177. In the instant case we find that accused Nurul Islam @ Shine, accused Tohurul Islam have made inculpatory confession and in their confessions they have given vivid descriptions of the occurrence and they have confessed that they were present at the conspiracy and they themselves killed the police personnel and Izaradar Nojer Ali. We have already held that their confessions are voluntary and true.

178. About accused Abdul Karim, we find that accused Nurul Islam @ Shine, Tohurul Islam and Shafiqul Islam have mentioned in their confessional statements the name of accused A. Karim. He was present both at the conspiracy and the killing mission. The motor cycly of accused A. Karim was used by confessing accused Nurul Islam @ Shine and Sagor (since died). Police also seized the motor cycle from accused A. Karim. PW 20 Mamnur Rashid is the seizure list witness of the motor cycle belonged to Abdul Karim. PW 33 stated that he seized the alamat i.e. motor cycle from the house of A Karim. So, from the inculpatory confessional statements of accused Nurul Islam @ Shine and Tohurul Islam and from the confessional statement of Shafiqul Islam son of Mobarak couple with the evidence of PW 20 and PW 33, we find accused A. Karim was present both at the conspiracy and the killing mission.

179. Accused Nurul Islam @ Shine, Tohurul Islam and Roghunath mentioned the name of accused Shafiqul Islam son of Mobarok. In their sttements under section 164 of the Code of Criminal Procedure, they mentioned that accused Shafiqul Islam son of Mobarok was present both at the conspiracy held on 21-8-2006 and in the killing mission. Accused Shafiqul Islam son of Mobarok has given vivid description about the conspiracy held on 21-8-2006 and the occurrence took place on 25-8-2006. Accused Shafiqul Islam son of Mobarok categorically stated in his confessional statement that he was present both at the meeting held on 21-8-2006 and in the killing mis-

sion and he was one of the members of group No. 3. He also stated that they looted one pistol and 3 guns and left the place chanting slogan, "Purba Bangla Communist Party, ML Lal Potaka Zindabad." Therefore, from the inculpatory confessional statements of Nurul Islam @ Shine, Tohurul Islam and from the confession of accused Shafiqul Islam son of Mobarok himself, we find that accused Shafiqul Islam son of Mobarok was present both at the conspiracy and in the killing mission.

180. Accused Roghunath Borman also stated that he was in the killing mission. He also gave vivid description about the conspiracy held on 21-8-2006 and the occurrence took place on 25-8-2006. He stated that accused Nurul Islam @ Shine and Tuhrul Islam gave the signal and Shafiqul blasted the bomb and he (Roghunath) and Sanaullah saw 4 (four) police personnel were slaughtered. So, from his own confessional statement and from the inculpatory confessional statement of Nurul Islam @ Shine, Tohurul Islam and from the confession of Shafiqul Islam son of Mobarak, we find that accused Roghunath was also very much present at the killing mission, that is, he participated in the killing of 4(four) police personnel and Izaradar Nojer Ali. There is also corraborative evidence against rest accused, that is, Abu Bakkar Siddique, Nurun Nabi Hossain @ Khoka, Shafiqul son of Habibur Rahman, Sonjoy and Pintu. We find that co-accused mentioned their name in their statement under section 164 of the Code of Criminal Procedure and we also find other circumstantial evidence agsinst them. PW 2 Rahela Begum stated in her cross-examination by the prosecution (she was declared hostile) that Tohurul took rent of her house and he (Tohurul) used to live there. She also stated that Shafiqul used to live in her house as tenant. She used to cook for her tenants. She also stated that all the accused took launch from her house and watched TV and, thereafter, all went to Chowbariahat. Daroga seized the TV from the house of Rahela Begum by preparing a seizure list. She rented her house to four persons who used to serve in CARB office. PW 2 corraborated with other PW s about time, place of occurrence and manner of occurrence. She admitted that 04 persons including Tohurul used to live in her house as tenants.

181. Accused Tohurul Islam made inculpatory confession and he also mentioned the name of Siddique and Khokan (accused Nurun Nabi Hossain) and 14 others who were present at the conspiracy held on 21-8-2006 at the CARB office at Chowbaria. He (accused Tohurul) also stated that on 21-8-2006 about 5-00 PM, they (20 persons) were divided into 5 groups and went to Chowbaria cattle market to execute their agreement and he himself slaughtered Daroga. He stated that accused Siddique and Khokan caught hold of Daroga, ASI AT Firoj and he himself slaughtered Daroga. Similarly co-accused Nurul Islam @ Shine also mentioned that Khokan (accused Nurun Nabi Hossain) and Siddique were involved in the occurrence.

182. PW 10, Ashraful Islam stated that the occurrence took place on 25-8-2006 at 6/6.15 hours. He has a medicine shop in Chowbariahat. He heard that the miscreants created panic and killed 04 police personnel. Police seized 14" Black and White TV from the house of Rahela and prepared seizure list wherein he put his signature. PW 11 Nazrul Haque stated that on 30-9-2006, police officer brought accused Roghunath Borman to the house of Rahela. This PW 11 went to the house of Rahela alongwith other and put his signature in the seizure list when police seized 14" Black and White TV PW 11 stated that accused Roghunath Borman disclosed that he and others were watching TV in the house of Rahela before committing the occurrence. Rahela also stated that she cooked food for 15/20 persons and after they took their food, they all went out. PW 11 stated that he heard that Haji Azim Uddin had a quarrel with other Izaradar of Chowbariahat.

PW 4 stated in his cross-examination by the prosecution (he was declared hostile) that there was a quarrel over the collection of toll and he fully corroborated PW 11. He further stated that on 2-6-2006, there was a quarrel regarding collection of toll of Chowbariahat and the brother of Haji Azim Uddin was confined and as a result Haji Azim Uddin threatened to other Izaradars. PW 23 Altaf Uddin stated that on 10-11-2006, police seized utensils from the house of Rahela (PW 2) in his presence and police prepared the seizure list wherein he put his signature. He proved his signature which was marked as Exhibit 19 and he also proved the utensils which were proved as material Exhibit-XXX. PW 24 Baki Mondal, stated that when he was going back home, police took him to the house of Rahela Begum. He also saw there Roghunath Borman under police custody. Police seized utensils from the house of Rahela Begum (PW 2). The Officer-in-Charge disclosed that meat was cooked in the said utensils. Rahela Begum (PW 2) also stated that meat was cocked in the said utensil. Roghunath in his statement under section 164 of the Code of Criminal Procedure also stated that on the date of occurrence dated 25-8-2006, Nurul Islam @ Shine told him to go to Chowbariahat and accordingly he went to Chowhbariahat. He went to the house of Pintu and saw that 16/17 persons were watching TV there. He mentioned the name of Shine, Sagor (since dead) Tohurul, Sanaullah, Sonjoy, Shafiqul brother of Pintu, Shafiqul Islam son of Mobarak and stated that they were present there. He accompanied Shine and Tohurul Islam to the house of Rahela Begum as per the decision of the meeting held on 21-8-2006. The occurrence took place in Chowbariahat on 25-8-2006. Similarly co-convict Shafiqul Islam, son of Mobarak mentioned in details about the conspiracy held on 21-8-2006. He also mentioned the name of Haji Azim Uddin, Roghunath, Sonjoy, Shafiqul Islam and Pintu who were present in the conspiracy held on 21-8-2006.

183. Accused Roghunath also corroborated other accused and stated in his confession that PW 2 Rahela Begum cooked meat and after launch all the accused watched TV. Though accused Azim Uddin, Sanaul, Siddique, Khokan (accused Nurun Nabi Hossain) did not make any confession but their names have been disclosed by Nurul Islam, Tohurul, Shafiqul son of Mobarak and Roghunath and we also find corraborativ evidence against them.

184. We have considered the evidence of prosecution witnesses and we find that there was an enmity between accused Haji Azim Uddin and Izaradars of Chowbariahat and Haji Azim Uddin openly gave threat to other Izaradar and this matter of threat was disclosed at the meeting of conspiracy held on 21-8-2006. The time, place and manner of occurrence have been proved beyond doubt. It has also been proved that the house of Rahela Begum was used as shelter place before the occurrence took place.

185. Considering the evidence of prosecution witnesses we have reason to believe that accused Hazi Azimuddin, Siddique, Khokon (accused Nurun Nabi Hossain), Sanaul and Shafiqul son of Habibur Rahman along with 5 confessing accused, namely, Nurul Islam @ Shine, Tohurul, Roghunath, A. Karim and Shafiqul Islam son of Mobarok took active part at the conspiracy and in order to execute the decision taken at the conspiracy they actively took part in the killing of 4 police personnel and Izaradar Nojer Ali. In fact, we do not find any corraborative evidence against accused, namely, 1. Dilip, 2. Tomal, 3. Ahmed Shah Nuru, 4. Khairul, 5. Abdul Mannan, 6. Rabiul Islam, 7. Majed Ali, except mentioning their names by co-accused in their confessional statement.

186. There are long lines of decision which have firmly settled that confession of a co-accused is not evidence, it can only lend assurance

to other evidence. Let us have a glimpse over some of the decisions of our apex Court to ascertain the evidentiary value of confessional statement of co-accused.

187. In the case of *Amir Hossain Howlader and other vs State, 37 DLR (AD) 139,* the Appellate Division has held as follows:

> "The statement of a co-accused does not fall within the definition of evidence as given in section 3 of the Evidence Act. This is for the simple reason that it is not made on oath, that it is not made in presence of other person affected and that its veracity not tested by cross-examination. It is therefore a very weak evidence against a co-accused, if it is regarded as evidence under section 30. It may be pointed out that the confessional statement of a co-accused is much weaker than the evidence of an approver which fulfils all the three ingredients of 'evidence.'
>
> In on such case namely, *Bhuboni Sahu vs The King, 76 Indian Appeals, 147,* the Privy Council observed:- " But a confession of a co-accused is obviously evidence of a very weak type, It does not indeed come within the definition of 'evidence' contained in section 3 of the Evidence Act, It is not required to be given on oath, nor in the presence of the accused and it cannot be tested by cross-examination. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of the facts proved in the case; it can be put into the scale and weighed wth the other evidence."

188. In the case of *Joygun Bibi vs State, 12 DLR (SC) 156* it has been held as follows:—

> It is true that if there were no other evidence against Joygun Bibi except the confession of Abdul Majid, then, the confession by itself being merely a matter to be taken into consideration, and not having the quality of evidence against Joygun Bibi, it could rightly be held in law that her conviction could not be sustained on the confession alone.

189. In the case of the *State vs Lalu Mia and another, 39 DLR (AD) 117,* the Appellate Division has held:—

> "It is unnecessary to go into long line of decisions which has firmly settled that such confessional statement can be taken into consideration in a limited manner. But it cannot be made the foundation of a conviction if there is no other reliable evidence tending to prove the guilt of the accused. The confession made by them can be used only in support of other evidence that is to corroborate the other evidence."

In the case of *Lutfon Nahar Begum vs State, 27 DLR (AD) 29* it was held that confession of a co-accused could not be treated as substantive evidence against another accused but that it could only be used to lend assurance to other evidence.

190. In a recent case of *Babar Ali Mollah and others vs State, 44 DLR (AD) 10,* the Appellate Division has held as follows:—

> "Section 30 of the Evidence Act contemplates that a confession made by a co-accused in a joint trial for the same offence affecting himself and others may be taken into consideration. In other words, the confession of a co-oaccused may lend assurance to the other evidence on record. In the present case the evidence of P.Ws 1 and 5 being unreliable and insufficient to independently support the conviction of the appellants, the confession of the co-accused cannot lend any additional assurance to the substantive evidence. Since, we

have earlier held that the substantive evidence is unreliable and there being no other evidence the confession cannot be considered against the appellants in the present case."

191. From the various pronouncements of the apex courts, we find that the apex Courts consistently held that confession of a co-accused is not substantive evidence and such confession cannot be the sole basis of conviction of a co-accused in the absence of independent and corroborative evidence.

192. It is true that accused Dilip, Tomal, Khairul, Abdul Awal and Rabiul Islam (surrendered after the judgment) absconded since begining and they did not face the trial. But abscondence itself is not the conclusive prove of guilt of the accused in absence of legal evidence. Only because of abscondence these accused could not held responsible for committing the offence.

193. There are long line of decisions which have firmly settled that abscondance by itself is not the conclusive proof of guilt of the accused. Our this view is getting support from a number of decisions. In the case of the *State vs Lalu Miah and another, 39 DLR (AD)117,* it was held that abscondance by itself is not an incriminating matter, even an innocent person if implicated in the ejahar for a serious crime some times absconds to avoid harassment during investigation by the police. In the case of *State vs Shafiqul Islam 1991 BLD (AD) 121 = 43 DLR (AD) 92,* it has been held that abscondance of the accused since the date of occurrence itself is not conclusive proof of his guilt or guilty conscience, but it lends weight to the circumstantial evidenc against him. Similar view has been taken in the cases of *Ashraf Ali Munshi vs State 48 DLR 590, Shahjahan vs State 46 DLR 575, State vs Balai Chandra Sarker, 47 DLR 467, State vs Sree Ranjit Kumar Pramanik, 45 DLR 660, Abdul Khaleque vs State, 45 DLR 75, State vs Badsha Mollah 41 DLR 11.*

194. Therefore, in view of the above settled principle of law, we are inclined to hold that accused Dilip, Tomal, Khairul, Abdul Awal and Rabiul Islam cannot be held responsible for alleged conspiracy and murder of 4(four) police personnel and Izaradar Nojer Ali only because they absconded after the occurrence in the absence of any other legal evidence against them.

195. The learned Judge of the Tribunal found accused,

1. Md Tohurul Islam @ Azizul Hoque 2. Md Nurul Islam @ Shine @ Tonmoy 3. Md Shafiqul Islam son of Mobarok 4. Abu Bakkar Siddique 5. Nurun Nabi Hossain @ Khokon 6. Shafiqul Islam son of Habibur Rahman 7. Sonjoy Kumar Saha 8. Pintu 9. Dilip @ Mama @ Shibu and 10. Tomal

guilty of charge under sections 120B/396 of the Penal Code and convicted and sentenced them thereunder to death. However, besides inculpatory confessions of accused Nurul Islam @ Shine and Tohurul Islam and the confessional statements of accused Md Abdul Karim, Md Shafiqul Islam and Roghunath, some other circumstantial evidences are available as we have discussed hereinbefore, against the following accused, namely,

1. Md Nurul Islam @ Shine 2. Md Tohurul Islam @ Azizul Haque 3. Md Shafiqul Islam son of Mobarak 4. Abu Bakkar Siddique 5. Nurun Nabi Hossain @ Khokon 6. Shafiqul Islam son of Habibur Rahman 7. Sonjoy Kumar Saha and 8. Pintu

196. Infact, we do not find any corraborative evidence except confession by co-accused against accused Dilip and Tomal.

Further, we find that evidence is available against the following accused, namely,

1. Shafiqul Islam son of Mobarak 2. Abu Bakkar Siddique 3. Nurun Nabi Hossain @ Khokon 4. Shafiqul Islam son of Habibur Rahman

5. Sonjoy Kumar Saha and 6. Pintu

197. The Tribuanl found accused,

1. Roghunath Barmon @ Hiro 2. Md Abdul Karim 3. Ahmed Shah Nurul 4. Sanaul Islam 5. Haji Azimuddin 6. Khairul Islam

guilty of the charge under sections 120B/396 of the Penal Code and convicted and sentenced them thereunder to suffer imprisonment for life with a fine of Taka 3,000 (three thousand) each, in default, to suffer rigoruous imprisonment for 6 (six) months more. However, we also find that evidence is available against the following accused, namely,

1. Roghunath Barmon 2. Abdul Karim 3. Sanaul Islam 4. Haji Azimuddin

198. There is also no corroborative evidence on record against accused, namely, 1. Ahmed Shah Nurul and 2. Khairul Islam except mentioning their names by co-accused.

199. It is true that accused Md Tohurul Islam @ Azizul Haque filed applciation for retraction of his confession and the learned trial court rejected his application for retraction.

200. Accused Nurul Islam @ Shine @ Toma @ Tanmay had also filed application for retraction on 4-10-2006. But once the confession is taken to be true and voluntary, the application for retraction of confession has no value. In this regard reliance may be placed on the case of *Ayesha Khatun and others vs The State, 19 DLR (1967) 818.* In the case referred to above it has been held as under:

> "If a court believes a confession whether judicial or extra judicial retracted or not retracted to be voluntary and true, it can convict the accused on its sole basis. This view has been expressed by a Division Bench of the High Court of West Pakistan in the case of Nawabuddin vs Crown. The Supreme Court of Pakistan in the case of *State vs Minhun @ Gul* observed as under:
>
> Retracted confession whether judicial or extra judicial could legally be taken into consideration against the maker of those confessions himself and if his confessions were found to be true and voluntary then there was no need at all to look for further corraboration. It is now well settled that as against the maker himself his confession, judicial and extra judicial whether retracted or not retracted can in law validly form the sole basis of his conviction, if the court is satisfied and believes that it was true and was not obtained by torture, coercion or inducement.

201. In the case of the *State vs Minhun @ Gul Hassan PLD 1964,* Supreme Court of Pakistan at page 813, has held as under:

> "Retracted confession, whether judicial or extra-judicial, could legally be taken into consideration against the maker of those confessions himself, and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. As against the maker himself his confesison, judicial or extra-judicial, whether retracted or not retracted, can in law validly form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture or coercion or inducement. The question, however, as to whether in the facts and circumstances of a given case the Court should act upon such a confession alone is an entirely different question, which relates to the weight and evidentiary value of the confession and not to its admissibility in law."

202. In the case of the *State vs Fazu Kazi @ Fazlur Rahman and others 29 DLR (SC)(1977) 271,* it has been held as under:

> "A conviction of the confessing accused

based on a retracted confession even if uncorroborated is not illegal, if the Court believes that it is voluntary and true"

203. In the case of *State vs Nurul Hoque, 45 DLR (1993) 306* the High Court Division has held as under:

"In the instant case the confessional statement of Semona Khatun had been retracted in her 342 statement only but not before. A confession can be taken into evidence though retracted, if found by the court to be true and voluntary and a belated retraction by a confessing accused at the end of the trial under section 342 would be of no value *(Ref : PLD 1964 (SC) 813; 31 DLR 312, 16 DLR 598)"*

204. In the case of *Hafizuddin vs The State 42 DLR 397,* it has been held as under:

"The law on this point is that a confessional statement, whether retracted or not if found to be true and voluntary, can form the basis of conviction of the maker"

205. In the case of *Bakul Chandra Sarker vs State 45 DLR 260* the High Court Division has held as under:

Ahsanuddin Choudhury, J relying upon the decision in the case of *Joygun Bibi vs State 12 DLR (SC) 151* and the case of *Moqbul Hossain vs State 12 DLR (SC) 217* observed:

The retraction of a confession was a circumstance which had no bearing whatsoever upon the question whether in the first instance it was voluntarily made, and whether it was true. The fact that the maker of the confession later does not adhere to it cannot by itself have any effect upon the findings reached as to whether the confession was voluntary, and if so, whether it was true. The retraction of the confession was wholly immeterial once it was found that it was voluntary as well as true."

206. There are other decisions too. But it will not, perhaps, be helpful to place more decisions on the same point. From all the decisions mentioned above we find that it has been firmly settled by judicial pronouncements that once a confession is found to be true and voluntary, the retraction of confession will be of no help to the confessing accused.

207. As per the above pronouncements, there is no diffically in law to convict accused Md Tohurul Islam @ Azizul Hoque and accused Nurul Islam @ Shine though they retracted their confession. We have already found that their confessions are voluntary and true.

208. In respect of imposition of quantum of sentence, the learned Lawyer appearing for the condemned prisoners refers to the case of *Lal Singh vs Emperor 40 CrLJ Allahabad 132* and submits that Court has the power to give lesser sentence under section 396 of the Penal Code, though under section 302 of the Penal Code the rule is that a sentence of death should follow unless reasons are shown for giving lesser sentences, but no such rule applies to section 396 of the Indian Penal Code. Let us have a quick glimpse of the decision of the above case, that is, *Lal Singh vs Emperor 40 CrLJ Allahabad 132* which runs as under:

"There remains the question of sentence. It is true that a man was wounded in the dacoity and eventually died. It is also true that the accused carried a gun in this dacoity. But it is stated that there were several guns carried in this dacoity and none of the witnesses say that the accused was the man who fired the shot which had fatal effects. We do not consider that as a general rule a sentence of death should necessarily follow a conviction under section 396, Indian Penal Code, and this section differs from section 302, Indian Penal

Code in that respect. The rule is under section 302 that a sentence of death should follow unless reasons are shown for giving a lesser sentence, no such rule applies to section 396, Indian Penal Code. Accordingly, we find no reason in this case why the sentence of death should be imposed. We, therefore, maintain the conviction of Lal Singh under section 396, Indian Penal Code, and we reduce the sentence from a sentence of death to a sentence of transportation for life."

Therefore, according to the decision cited above there is scope in law to give lesser sentence in section 396 of the Penal Code.

209. In fact, it is said that the most difficult task of a Judge is to decide what would be the quantum of sentene to be awarded upon an accused for committing an offence. It is not possible to lay down any cut and dry formula for imposition of sentence upon the accused. In the case of the *State vs Rokeya Begum @ Rokeya Begum (condemned-prisoner)* reported in *13 BLT 377 = 10 BLC 687*, it has been held as under:

"Sentencing discretion on the part of a Judge is the most difficult task to perform. It is, also, not possible to lay down any cut and dry formula for imposition of sentence, but the object of sentence should be to see that crime does not go unpunished and the victim of crime as, also, the society has the satisfaction that justice has been done. It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and cruel act perpetrated by the offenders. To give lesser punishment to the condemned-prisoners who stand convicted in a shocking and revolting crime would render the Justicing System of the country suspect. Sympathy to impose inadequate sentence would do more harm to Justice System to undermine public confidence in the efficacy of law."

210. In the case of *Madan Gopal Kakkad vs Naval Dubey* reported in *3 SCC (1992) 204,* it has been observed as under:

"We feel that Judges who bear the Sword of Justice should not hesitate to use that Sword with the utmost severity, to the full and to the end, if the gravity of the offfence so demands."

211. We consider that both the above desicions are very good guideline for the Judges to decide the quantum of sentence to be imposed upon the accused who have committed the offence.

Considering the decisions cited above, the evidence on record and the circumstances, we are of the opinion that justice will be met if the impugned order of conviction and sentence of death of accused, namely,

1. Md Nurul Islam @ Shine @ Tapash @ Tonmoy, son of Habibur Rahman @ Habib master; and
2. Md Tohurul Islam @ Azizul Haque son of Monirul Islam is maintained;

and the order of conviction and sentence so far as it relates to condemned prisoners, namely,

3. Md Shafiqul Islam son of late Mobarok Khan;
4. Abu Bakkar Siddique;
5. Nurun Nabi Hasan @ Khokon;
6. Shafiqul Islam son of late Habibur Rahman;
7. Sanjay Kumar Saha;
8. Pintu

is altered to imprisonment for life instead of death.

We also hold the view that justice will be met if the order of conviction and sentence of accused-appellants, namely,

9. Roghunath Bormon @ Hiro;

10. Md Abdul Karim;
11. Sanaul Islam;
12. Haji Azimuddin

is altered and they are convicted and sentenced to suffer rigorous imprisonment for 10 years instead of imprisonment for life.

212. The prosecution has not been able to prove the charge against condemned prisoners, namely,

1. Dilip @ Mamu @ Manik, and
2. Tomal @ Ferdous.

Therefore, they are entitled to be aquitted of the charge brought against them.

We further hold the view that the prosecution has not been able to prove the charge against accused, namely,

3. Ahmed Shah Nurul (faced the trial and filed Criminal Appeal No. 913 of 2008);
4. Khairul Islam (absconding since begining);
5. Joynal Abedin (surrendered after judgment and filed Criminal Appeal No. 944 of 2008);
6. Rabiul Islam (surrendered after judgment and filed Criminal Appeal No. 944/2008);
7. Abdul Mannan (surrendered after judgment and filed Criminal Appeal No. 900 of 2008);
8. Majed Ali (absconding since begining); and
9. Abdul Awal (absconding since begining)

and, as such, they are entitled to be acquitted of the charge brought against them.

213. In the result, the Reference No. 7 of 2008 is accepted in part so far as it relates to condemned prisoners, namely,

1. Md Tohurul Islam @ Azizul Haque son of Monirul Islam, vill: Nimdighi, PS: Niamatpur, Dist- Naogaon, and
2. Md Nurul Islam @ Shine @ Taposh @ Tonmoy son of Habibur Rahman @ Habib Master, vill: Nimdighi, PS: Niamatpur, Dist- Naogaon

and the order of conviction and sentence of death passed against them by the learned Judge of Druto Bichar Tribunal, Rajshahi is hereby confirmed.

214. The reference is rejected so far as it relates to condemned prisoners, namely,

3. Md Shafiqul Islam, son of late Mobarok Khan, vill: Anarpur, PS: Gomostapur, Dist-Chapainawabganj;
4. Abu Bakkar Siddique, son of Abul Hossain Gazi, village and PS: Dhormoghat, Shamnagar, Dist-Satkhira;
5. Nur Nabi Hasan @ Khokon, son of late-Aniser Rahman, Vill-Shibpur Bazar, PS-Niamotpur, District- Naogaon;
6. Shafiqul Islam, son of late Habibur Rahman, vill- Chowbaria, PS- Manda, Dist-Naogaon;
7. Shanjay kumar Saha, son of Dhirendronath Saha, vill- Bhagabantapur, PS- Godagari, Dist-Rajshahi and
8. Pintu, son of late Habibur Rahman, vill-Chowbaria, PS- Manda, Dist-Naogaon

and the order of conviction and sentence passed against them is altered and they are convicted and sentenced to suffer rigorous imprisonment for life instead of death, with a fine of Taka 2,000 (Two thousand) each, in default, to suffer rigorous imprisonment for 3 (Three) months more.

215. The reference is rejected so far as it relates to condemned prisoners, namely,

1. Dilip @ Mamu @ Shibu @ Manik, son of Nasir Sarder, Vill-Golmaghna, PS-Niyamotpur,

Dist- Naogaon, and 2. Tomal @ Ferdous.

216. The impugned judgment and order of conviction and sentence dated 24-1-2008 passed by the learned Judge of the Druto Bichar Tribunal, Rajshahi in Druto Bichar Tribunal Case No. 21 of 2007 is set-aside so far as it relates to condemned prisoners, namely,

1. Dilip @ Mamu @ Shibu @ Manik, son of Nasir Sarder, Vill-Golmaghna, PS-Niyamotpur, Dist- Naogaon, and 2. Tomal @ Ferdous

and they are acquitted of the charge brought against them.

217. The learned Judge of the Tribunal is directed to recall the warrent of arrest in respect of accused Dilip and Tomal.

218. The order of conviction and sentence passed in respect of

1. Roghunath Barmon; 2. Abdul Karim; 3. Sanaul; 4. Haji Azimuddin

is altered and they are convicted and sentenced to suffer rigorous imprisonment for 10 years instead of imprisonment for life, with a fine of Taka 2000 (two thousand) each, in default, to suffer rigorous imprisonment for 3 months more.

219. The impugned judgement and order dated 24-1-2008 passed by the learned Judge of Druto Bichar Tribunal, Rajshai is set-aside so far as it relates to accused-appellant, namely,

1. Ahmed Shah Nurul; 2. Khairul; 3. Abdul Mannan; 4. Abdul Awal; 5. Rabiul; 6. Joynal Abedin and 7. Majed Ali

and they are acquitted of the charge brought against them.

220. Accused-appellant Ahmed Shah Nurul (in custody), Abdul Mannan (in custody), Rabiul (in custody) and Joynal Abedin (in custody) be set at liberty forthwith if they are not wanted in connection with any other case.

221. The Tribunal is directed to recall the warrant of arrest against

1. accused Khairul, 2. Abdul Awal and 3. Majed Ali.

222. Criminal Appeal No. 983 of 2008 and the Jail Appeal No. 148 of 2008 filed by accused Md Shafiqul Islam, son of Mobarok are dismissed with the modification of sentence as mentioned above.

223. The Criminal Appeal No. 1020 of 2008 and the Jail Appeal No. 147 of 2008 filed by Shafiqul Islam, son of late Habibur Rahman are dismissed with the modification of sentence as mentioned above.

224. The Criminal Appeal No. 989 of 2008 filed by accused-appellant Roghunath is dismissed with the modification of sentence as mentioned above.

225. The Criminal Appeal No. 913 of 2008 so far as it relates to accused-appellant Abdul Karim and Sanaul is dismissed with the modification of sentence as mentioned above.

226. The Criminal Appeal No. 944 of 2008 filed by accused Rabiul Islam (surrendered after judgment) and Joynal Abedin (surrendered after judgment) is allowed.

227. The Criminal Appeal No. 900 of 2008 filed by accused Md Abdul Mannan @ Abdul Mannan is also allowed.

228. The Criminal Appeal No. 913 of 2008 so far as it relates to accused-appellant Ahmed Shah Nurul is allowed.

229. The Criminal Appeal No. 973 of 2008 filed by accused-appellant Haji Azimuddin is dismissed with modification of sentence as mentioned above.

230. Accused Haji Azimuddin is directed to surrender before the Tribunal within 30 days from the date of receipt of a copy of this judgment by the Tribunal to serve rest of his sentence imposed upon him, failing which the Tribunal shall secure the arrest of accused Haji Azimuddin. However, accused Haji Azimuddin will get the benefit of section 35A of the Code of Criminal Procedure.

Before parting with the judgment, we like to record our some observations in respect of certain points of criminal justice.

231. We, as the part of the judiciary, strongly believe that time has come to do something for the condemned prisoners. We find that the condemned prisoners are supposed to walk to the gallows but unfortunately they are not getting opportunity to defend themselves properly. Against this background of inadequate opportunity for the condemned prisoners to defend themselve, we are inclined to record some of our observationsons on certain points of criminal justice. The observations are:

A. In a death reference case almost all the condemned prisoners who are destined to walk to the gallows cannot afford to engage Lawyer to defend their case. According to the provisions of the Legal Remembrancer's Manual, the condemned prisoners are provided with State Defence Lawyer. It is better, less we say, about the competence of the State Defence Lawyers. The State Defence Lawyers are appointed by the learned Solicitor of the Ministry of Law, Justice and Parliamentary Affairs. This Court notes with utter dismay that the Solicitor wing of the Ministry of Law, Justice and Parliamentary Affairs appoints the State Defence Lawyers who have very minimum knowledge about criminal cases of grave nature, like sections, 302, 396 of the Penal Code etc. We could not just allow the condemned prisoners to walk to the gallows without giving them an opportunity of being defended by a competent Lawyer. Obviously, the responsibility is upon the State. Our Human Rights Organisations sometimes are doing laudable jobs and, we believe that they may also do something for the condemned prisoners who are destined to walk to the gallows without any opportunity of being defended by the competent Lawyers. We would appreciate if our Human Rights Organisations also look into the matter and take proper steps in this regard. In fact, walking to the gallows without an opportunity of being defeded by a competent Lawyer is the worst form of violation of human rights. We would, therefore, expect that the Human Rights Organisations would take steps to include the matter of defending the condemned prisoners in their agenda. The minimum that they can do, they can appoint a pannel of competent lawyers to defend the condemned prisoners who could not appoint lawyer of their own choice because of poverty and other reason.

B. All State Defence Lawyers have a common grievance that they are given very minimum amount as 'fees' for attending the court to defend the condemned prisoners. We expect that the Solicitor wing of the Ministry of Law, Justice and Parliamentary Affairs shall take proper steps to enhance the 'fees' of the State Defence Lawyers so that they get the reasonable fees.

The Ministry of Law, Justice and Parliamentary Affairs last revised the fees of the State Defence Lawyer on 16-11-2006. Already 8(eight) years have passed since then and the State Defence Lawyers are given the same amount of fees which was fixed in 2006. This is simply denying justice to the learned State Defence Lawyer. Let us quote the last GO dated 16-11-2006 issued by the Ministry of Law, Justice and Parliamentary Affairs which runs as under:

সংশোধিত জি,ও
একই নম্বর ও তারিখের স্থলাভিষিক্ত হইবে।

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়
সলিসিটর উইং, হিসাব শাখা
অ্যাটর্নি জেনারেল ও সলিসিটর কার্যালয় ভবন,
বাংলাদেশ সুপ্রীম কোর্ট প্রাঙ্গণ, ঢাকা।

নং-সল-হিসাব-৯৭/২০০৬-১৫৪৫ তারিখঃ ১৬-১১-২০০৬ইং।

প্রেরক ঃ শিরীন কবিতা আখতার,
উপ-সলিসিটর।

প্রাপক ঃ প্রধান হিসাব রক্ষন কর্মকর্তা,
আইন বিচার ও সংসদ বিষয়ক মন্ত্রণালয়,
এ,জি, বি ভবন, সেগুন বাগিচা, ঢাকা।

বিষয় ঃ রাষ্ট্রপক্ষে নিযুক্ত স্টেট ডিফেন্স ল'ইয়ারগনের দৈনিক শুনানী ফি/সম্মানী ভাতা বৃদ্ধিকরণ প্রসঙ্গে।

উপরোক্ত বিষয়ে নির্দেশিত হইয়া জানানো যাইতেছে যে, সরকার বাংলাদেশ সুপ্রীমকোর্টে রাষ্ট্রপক্ষে নিযুক্ত স্টেট ডিফেন্স ল'ইয়ারগনের দৈনিক শুনানী ফি/সম্মানী ভাতা পূর্ববর্তী সকল সরকারী আদেশসমূহ বাতিলক্রমে ১২০ (একশত বিশ) টাকার স্থলে ৩০০ (তিনশত) টাকা নির্ধারণ করিলেন এবং প্রতি মামলায় সর্বোচ্চ অনধিক ২,০০০ (দুই হাজার) টাকা ফি/সম্মানী ভাতা পাইবেন।

এই সিদ্ধান্তে অর্থ মন্ত্রণালয়ের সম্মতি রহিয়াছে। অর্থ মন্ত্রণালয়ের নথি নং-অম/অবি/প্রবি--------/সম্মানী ৪/২০০৬ এর নোটানুচ্ছেদ ৫৬-৬০ দ্রষ্টব্য।

এই আদেশ ১-১১-২০০৬ ইং তারিখ হইতে কার্যক্রম হইবে।

স্বাক্ষরিত
(শিরীন কবিতা আখতার)
উপ-সলিসিটর
ফোন-৯৫৫৬১১৯ (অঃ)

নং-সল-হিসাব-৯৭/২০০৬-১৫৪৫ তারিখঃ১৬-১১-২০০৬ ইং।

অনুলিপি ও প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য প্রেরণ করা হইলঃ

১। অ্যাটর্নি জেনারেল অব বাংলাদেশ, ঢাকা।
২। সিনিয়র সহকারী সচিব দেওয়ানী/রীট/ফৌজদারী/এ, টি ও এ,এ, টি শাখা, আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়, সলিসিটর উইং, অ্যাটর্নি জেনারেল ও সলিসিটর কার্যালয় ভবন, ঢাকা।

স্বাক্ষরিত
৩-৫-০৭
(মোঃ মাইনুল হক)
সিনিয়র সহকারী সচিব
ফোন-৭১১০৯৫৫ (অঃ)

(emphasis supplied)

232. We consider that the above fee is too meagre for a State Defence Lawyer. It is not even befitting for a practicising Lawyer of the High Court Division of the Supreme Court. We find that already 8(eight) years have passed since the last GO was issued. Therefore, we consider that it is high time to revise the GO fixing the fees of the State Defence Lawyer without further delay. We strongly believe that the Ministry of Law, Justice and Parliamantary Affairs shall issue the new GO within short possible time superceeding all earlier GOs and fix the fees of the learned State Defence Lawyers commensurate to their services and status. The State Defence Lawyers are doing the sacred job of saving the neck of a human being. So, there is no scope to take the matter lightly, rather it should be taken into consideration with utmost seriousness.

233. With these observations we like to conclude our judgment.

234. At the end we wish to express our sincere appreciation to Dr Md Bashir Ullah, the learned Deputy Attorney-General and his team for their lucid expression of law and for the invaluable assistance to this court.

235. Let a copy of this judgment and order be sent to the Tribunal for information and taking necessary action.

236. Send down the lower court records with a copy of this judgment to the Tribunal at once.

Let a copy of this judgment be sent to:

1. Secretary, Ministry of Law, Justice and Parliamentary Affairs (Attention: learned Solicitor) for taking necessary action as per the observasation made in the body of the judgment at para 'A' and 'B'.

2. Chairman, Human Rights Organisations to take necessary action as per the observation made in the body of the judgment at para 'A'.

Ed.

HIGH COURT DIVISION
(Civil Revisional Jurisdiction

Sheikh Abdul Awal J

Judgment
May 8th, 2014

Bangladesh, represented by the Deputy Commissioner, Comilla.....
.....Petitioner

vs

Abdul Mazid and others.....Opposite Parties*

Limitation Act (IX of 1908)
Section 5

Government having knowledge of the limitation and without sufficient cause slept over the matter years together and allowed the period of limitation to run out. If this sort of negligence is condoned by the Court then the litigant public will be at the mercy of the state functionary since in this application the Government has utterly failed to explain the inordinate delay. Court will not help a party who is always sleep over the matter. .....(17)

Government of Bangladesh, represented by the Deputy Commissioner, Sylhet vs Md Makhan, 14 MLR 408; ADC (Rev.) vs Abdul Majid, 2 BLC (AD) 11; RAJUK vs Rokeya Begum, 6 MLR (AD) 295; Secretary, Ministry of Housing and Works, Government of Bangladesh vs Chairman, Court of Settlement Bangladesh Abandoned Buildings, 1 MLR 294 = 1 BLC 587 ref.

Md Abdul Hai, DAG Arobinda Kumar Roy, AAG—For the Petitioner.

Moudud Ahmed with Md Shameem Khaled, Advocates—For the Opposite Parties.

*Civil Rule No. 160 (con) of 2008.

Judgment

This rule was issued calling upon the opposite parties to show cause as to why the delay of 3640 days in filing the Revision application should not be condoned and/or such other or further order or orders passed as to this Court may seem fit and proper.

2. The facts of the case, in brief, are that the Government of Bangladesh, represented by the Deputy Commissioner, Comilla being aggrieved and dissatisfied with the judgment and decree dated 11-6-1996 (decree signed on 18-6-1996) passed by the learned Additional District Judge, 2nd Court, Comilla in Title Appeal No.135 of 1990 preferred a revision application under section 115(1) of the Code of Civil Procedure before this court, which was out of time by 3640 days, hence the Rule.

3. It is contended in the application under section 5 of the Limitation Act that the impugned judgment and decree was passed on 11-6-1996 (decree signed on 18-6-1996) and the application for certified copy of the said judgment and decree was filed on 5-7-2005 and the same was made ready on 21-7-2005 and the Government pleader took its delivery on 21-9-2005 and the Government pleader after collecting all the relevant papers sent the case record to the Deputy

Commissioner, Comilla on 25-9-2005, who sent the file to the Solicitor office on 2-10-2005 which was received on 4-10-2005 and thereafter, the office assistant forwarded the file to the Senior Assistant Secretary on 9-10-2005 and the Senior Assistant Secretary gave his opinion to prefer civil revision on 26-10-2005 and thereafter, the Deputy Solicitor signed the same on 26-10-2005 and then the Solicitor approved the said opinion on 9-11-2005 and thereafter, the file was sent to the office of the Attorney-General on 16-11-2005 which was sent to the learned Deputy Attorney-General, Mr Anamul Haq for drafting revision application on 20-11-2005 and on perusal of the file the learned Deputy Attorney-General found that there has been no explanation of delay from 11-6-1996 to 5-7-2005 and thus, he returned the case file for giving explanation to the Solicitor Wing on 23-1-2006 and thereafter, Solicitor Wing issued a letter on 13-2-2006 to the Deputy Commissioner, Comilla with regard to delay from 11-6-1996 to 5-7-2005, who after collecting explanation from the Government pleader, Comilla sent the same to the Solicitor Wing on 4-4-2006 and thereafter, Solicitor Wing forwarded the file to the Attorney-General office on 16-4-2006 and the learned Deputy Attorney-General drafted the same on 23-7-2006 which was typed on 23-7-2006 and filed the case on 4-9-2006 and in the aforesaid manner there has been delay of 3640 days in filing the revision application which may kindly be condoned. It is further contended that with regard to the delay from 11-6-1996 to 5-7-2005 the Government pleader, Comilla gave explanation stating that before passing the impugned judgment and decree the case diary and papers were stolen from the iron locker of the Government pleader's office and he informed the matter to the Deputy Commissioner, Comilla. Later on, the Deputy Commissioner, Comilla issued a letter on 26-5-2005 to Government Pleader, Comilla to know about the result of the case and accordingly, he took steps for collecting certified copy of the judgment and decree dated 11-6-1996. It is further contended that there is no gross negligence on the part of the Government-petitioner and the delay has been caused due to the circumstances beyond the control of petitioner, which may kindly be condoned.

4. Mr Md Abdul Hai, the learned Deputy Attorney-General appearing for the petitioner has taken me through the application and submits that the delay has been caused in filing the revisional application due to government pleader of Comilla though on a query he gave explanation that before passing the impugned judgment and decree the case diary and papers were stolen from the iron locker of the government pleader's office and thus the government pleader was in dark about the judgment and decree dated 11-6-1996 (decree signed on 18-6-1996), who after receiving a letter issued by the Deputy Commissioner, Comilla on 26-5-2005 came to know about the impugned judgment and decree dated 11-6-1996 and soon thereafter, he filed an application for certified copy of the impugned judgment and decree on 5-7-2005. He next submits that in the instant case right after getting the letter issued by the Deputy Commissioner, Comilla on 26-5-2005 Government Pleader took prompt action for getting certified copy of the judgment and on getting the same it was also properly forwarded to the Solicitor Wing by the Deputy Commissioner, Comilla and after obtaining approval from the Solicitor Wing the same was forwarded to the learned Attorney-General's Office to prepare the revisional application and to move it before the Court and then the learned Additional Attorney-General concerned endorsed the same to Mr Anamul Haq, Deputy Attorney-General to prepare the case but due to some difficulties he could not prepare the draft and in the meantime there has been a massive change in the set up of the office of the learned Attorney-General and in this way unintentional delay of 3640 days took place in filing the revisional application which may kindly be condoned

otherwise, the Government petitioner will suffer irreparable loss. The learned Deputy Attorney-General then relying on two decisions reported in *11 MLR (AD) 42, 10 BLT (AD) 79* submits that it has been laid down by our Supreme Court consistently that for the delay in case of Government agencies it had to be somehow reasonable. No doubt delay of each day has to be explained but each hour's delay need not be meticulously explained unless the Government is found guilty of utter negligence or in action and in the facts and circumstances of the case it is apparent and obvious that the delay did not occur due to gross negligence on the part of the State functionary.

5. Finally, the learned Deputy Attorney-General submits that the instant revision application filed against the judgment of reversal and the petitioner has a good chance of success in the revision application, if the same is heard and disposed of on merit.

6. Mr Moudud Ahmed, the learned Advocate appearing for the opposite parties, on the other hand, by filing counter affidavit opposes the Rule. Mr Moudud Ahmed in the course of his argument upon placing the application under section 5 of the Limitation Act submits that the proposition of law is by now well settled that in order to get benefit of section 5 of the Limitation Act each day's delay has to be explained by the applicant, be it a private person or the Government and in the instant case the petitioner has miserably failed to explain each day's delay. The learned Advocate drew my attention to the statement of facts made by the petitioner in the petition and submits that judgment and decree passed on 11-6-1996 (decree signed on 18-6-1996) and the application for certified copy of the said judgment and decree dated 11-6-1995 was filed on 5-7-2005 without any sort of explanation from 11-6-1995 to 5-7-2005 and the approval was accorded by the Solicitor on 26-10-2005 and the necessary record was received by the learned Attorney-General's Office on 16-4-2006 and immediately it was endorsed to the Deputy Attorney-General to do the needful but admittedly it appears from their statement that till 3-9-2006 no such revisional application could be prepared by them even though they had knowledge that the Revisional application was barred by limitation more than 10 years.

7. Mr Moudud further submits that no doubt they have stated that the learned Deputy Attorney-General could not prepare the draft due to some difficulty but what stood in the way of the learned Deputy Attorney-General to prepare the revisional application has not been explained.

8. The learned Advocate then submits that admittedly the application was ready for moving before this Court on 4-9-2006 but thereafter also a delay of more than 16 months occurred to file the application for condonation of delay before this Court and no explanation whatsoever has been offered by the petitioner which shows that the petitioner is guilty of inaction or gross negligence in filing the revisional application and the application for condonation of delay before this Court and therefore, this gross negligence on the part of the State functionary cannot be condoned. The learned Advocate relying on the decisions reported in *11 MLR 394, 14 MLR 408, 2 BLC 334 and 6 MLR (AD) 295, 47 DLR 244* and *11 BLD 194* submits that in view of the statement of facts made by the petitioner in the application under section 5 of the Limitation Act, it is clearly established that they have failed to explain the delay and they are guilty of gross negligence and inaction in preparing and moving the revisional application before this Court.

9. I have perused the application and considered the submissions made by the learned Advocates for the respective parties. It is true that the Government works through various departments but law is well settled by a number of authorities that the delay must be reasonably

explained and the Government stands at par with any other litigant. It has also been laid down in the decisions of our Apex Court as referred to by Mr Moudud Ahmed that Government cannot claim any extra privilege in making an application for condonation of delay and the delay must be explained in a reasonable way though not meticulously. In the instant case even if all the latches are brushed aside the petitioner has failed to explain the delay of more than 3313 days from 11-6-1996 to 5-7-2005 and the delay of more than 16 months which took place for filing an application for condonation of delay which clearly indicates that in dealing with this case the applicant acted in a gross negligent way which cannot be leniently dealt with. The endorsed Deputy Attorney-General well known that the Revisional application was already barred by limitation but for the reasons best known to him as to why he took more than 16 months for preparing the application for condonation of delay which clearly suggests that the Government officials dealt with the matter in gross negligent and callous manner.

10. Now I like to quote hereunder few lines of the cited decisions for having a better view in the dispute in question.

11. In the case of *RAJUK vs Rokeya Begum* reported in *6 MLR (AD) 295,* it has been held as follows:—

> "Aggrieved thereby, the petitioner moved the High Court Division with an application under section 115(1) of the Code of Civil Procedure. It was out of time by 1345 days. The inordinate delay was not at all explained. The High Court Division, therefore, by Civil Order No.5551 of 1998 dated 22 November, 1992, summarily rejected it as barred by limitation. The petitioner has now presented this petition for leave to appeal therefrom. Any indulgence regardless of settled principles of law and practice will only give premium to negligence or want of due diligence in public office which is not desirable"

12. In the case of *ADC (Rev.) vs Abdul Majid reported in 2 BLC (AD) 11*, it has been held as follows:—

> The question raised by Mr Chowdhury has already been answered by this Division in the case of *Deputy Commissioner vs Kobad Ali, 39 DLR (AD) 205* in the following terms:- "There is a long practice being followed since the days of Dhaka High Court that a revisional application is to be filed within the period of ninety days prescribed by law for an appeal, and that the High Court Division may in its discretion entertain an application beyond that period in a suitable case where there is no negligence or laches on the part of the petitioner. This is a long standing practice otherwise sound and reasonable, and it does not call for any departure.
>
> So far as the instant case is concerned the learned Judge of the High Court Division upon assigning cogent reasons has passed the impugned order in exercise of his discretion holding that the petitioner could not give satisfactory explanation for the inordinate delay of 83 days in moving the application in question."

13. In the case of *Govt. of Bangladesh, represented by the Deputy Commissioner, Sylhet vs Md Makhan* reported in *14 MLR 408;* it has been held as follows:—

> "Thus, the above explanation which is not an explanation of delay day to day basis as such, it is not enough and sufficient explanation within the meaning as contemplated in section 5 of the Limitation Act. The petition filed under section 5 of the Limitation Act itself highlights that the delay took place specially in the office of the Solicitor, Ministry of Law and also in the office of the Attorney General, who are well aware of the consequence of the delay. In this view, it will tanta-

mount to give a premium to such gross latches and reckless conduct, on the part of the concerned officials of the Government if condonation of delay is allowed in such circumstances. The proposition of law is well settled that a litigant whether a Government agency or a private party stands on equal footing in the eye of law.

On consideration of the application under section 5 of the Limitation Act, it appears to me that the Government officials did not act bonafide in pursuing its case and there has been gross negligence on the part of the Government and therefore, I am constrained to hold that the way of file has been handled by the office of the Solicitor, Ministry of Law and office of the Attorney General does not create any special circumstances for which some consideration can be extended to consider the causes of delay in filing the revision application."

14. In the case of the People's Republic of Bangladesh, represented by the *Secretary, Ministry of Housing and Works, Govt. of Bangladesh vs Chairman, Court of Settlement Bangladesh Abandoned buildings, Dhaka and another* reported in *1 MLR 294 = 1 BLC 587*, it has been held as follows:—

"The learned Assistant Attorney-General drawing our attention to the above quoted paragraph made an attempt to explain the delay. Mere steps are to be taken at different stages of the different agencies or different department of the Government to move this petition at a such inordinate delay does not inspire in us any confidence to condone such delay in absence of any cogent reason not to speak of explaining the delay of each day as held in the pronouncements of a number of cases by the Supreme court. Therefore, neither the submission of Mr Mashuque Hossain Ahmed, Assistant Attorney-General nor the statement explaining the delay as quoted above seems to us to be sufficient cause for not filing this writ petition in time."

15. From a reading of the above quoted decisions, I find a clear view of law as it stands today that a revisional application is to be filed within the period of ninety days prescribed by law for an appeal, and that the High Court Division may in its discretion entertain an application beyond that period in a suitable case where there is no negligence or laches on the part of the petitioner.

16. It is true that concerned authorities of the Government require longer time in making the decision to file Appeal or Revision and then in processing the matter for acting on it and if reasonable explanation of delay in the relevant matter is given, there is no reason why such reasonable explanation of delay should not be accepted.

17. In this case it appears that the Government petitioner having knowledge of the limitation and without sufficient cause slept over the matter years together and allowed the period of limitation to run out. If this sort of negligence is condoned by the Court then the litigant public will be at the mercy of the state functionary since in this application the Government-petitioner has utterly failed to explain the inordinate delay. Court will not help a party who is always sleep over the matter.

18. By the way, it may be observed that having realized the difficulty at the end of the day Mr Arobinda Kumar Roy, the learned Assistant Attorney-General submits that the suit itself is not maintainable inasmuch as admittedly the suit land is a tank and the plaintiff cannot claim any right and title over the tank and under the facts and circumstances of the case the Government petitioner has every chance of success in the instant Revision application if the same is heard and disposed of on merit and, as such, the delay of 3640

days in filing the revision application may kindly be condoned otherwise, the petitioner will suffer irreparable loss resulting in the loss of public.

19. Drawing support for his submissions, the learned Assistant Attorney-General referred to a decision reported in *57 DLR (AD) 120.*

20. To this, Mr Moudud Ahmed upon referring the findings of the Court of appeal below submits that the plaintiff to prove his case himself was examined as PW-1, who exhibited his registered deed as Exhibit.2 and the trial Court found long possession of the plaintiff in the suit land though the trial Court dismissed the suit mainly on the ground for non-payment of rent and the court of appeal below rightly reversed the same on the clear finding that non-payment of rent by the tenant is not a ground to draw conclusion that thereby he had lost title, interest and possession of the land. He also submits that the Court of Appeal below as last court of fact on the facts of the case and on consideration of the legal position has also found the plaintiff has been possessing the suit land on the basis of registered kabala deed and inheritance as well and in that view of the matter it can be safely said that there is, in fact, no merit in the revisional application.

21. However, in disposing the Rule on an application under section 5 of the Limitation Act, I need not embark upon discussion of the Revisional application on merit.

22. In view of the discussions above, I find no difficulty whatever in holding that the petitioner had acted in a gross negligent way and, as such, there is no scope whatsoever to condone the unexplained delay and if this unexplained inordinate delay of 3640 days is condoned that will only encourage the Government officials to be irresponsible and negligent in their official duties. Thus, I do not find any substance in this Rule.

The rule is, therefore, discharged without any order as to cost. Since the delay of 3640 days is not condoned, the connected Revision application is rejected summarily.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Md Ashfaqul Islam J
Md Ashraful Kamal J

Judgment

May 29th, 2014

Jasmine Rahman.....
.....Petitioner

vs

Shanta Properties Ltd and others.....Respondents*

Constitution of Bangladesh, 1972
Article 108

Article 108 gives a power to the Supreme Court to inflict punish for any contempt which is exercisable by any bench of this Division irrespective of any designated Bench for so doing. Many contempt applications which are being filed against the *ad-interim* order passed by this Division even when that Division is in *seisin* of the case with the same jurisdiction having authority to apply Article 108 of the Constitution,—this propensity we deprecate.

When Article 108 of the Constitution is available to all the benches of this Division, a particular case involving the question of contempt against an ad-interim order should also be decided by the bench that issued the ad interim order. The reason being that if any contempt petition which has arisen out of an ad-interim order passed in any writ petition or any other case and the disposal of which requires analysis and appraisal of the entire writ petition or any other case it may have an adverse effect on the main case in that under the circumstances if the contempt petition is decided either in favour of the contempt petitioner or the contemner-respondent that would certainly tell upon the main writ petition or any other case.

*Contempt Petition No. 375 of 2013.

Notably, we also hold that the principle shall apply in its restricted implication only in case of a particular *ad- interim order* in a contempt proceeding upon which the said principle would apply. .....(13 & 17)

Daulat Ahmed vs Shafiqul Islam Chowdhury and others, 58 DLR (AD) 43; Shukh Dev Sing vs Teja Sing, AIR 1954 (SC) 186 and Marsu Ltd. vs Waliullah FCA 65 DLR 237 ref.

Aminul Hoque, Senior Advocate with Syed Jawad Quader, Advocate—For the Petitioner.

BM Elias, Advocate—For the Respondent-Condemners.

Judgment

Md Ashfaqul Islam J: At the instance of the petitioner Mrs. Jasmine Rahman the Rule Nisi was issued in the following terms:

> "Let a Rule Nisi be issued calling upon the respondent contemnor Nos.9-11 to show cause as to why a proceeding for contempt of Court should not be drawn up against them for not abiding by the order of injunction dated 22-7-2013 passed by the High Court Division and why they will not be punished for committing contempt of court and/or such other or further order or orders passed as to this court may seem fit and proper."

2. The background leading to the petition, in short, is that the contempt-petitioner filed writ petition No.7049 of 2013 challenging the Memo bearing স্মারক নং রাজউক/নঅঅ-২বি/Rতসি-২বি-৮৬৭/১০/১০৭৯(৪)৪ স্থা dated 17-5-2012 issued by writ respondent No. 2 Rajdhani Unnayan Kortipakkha (RAJUK) under the signature of writ respondent No. 7 Authorized Officer, RAJUK according permission afresh to the Respondent Nos.9-11 (Respondent Contemners) to resume construction on Plot No.42, UN Road, Baridhara Diplomatic Zone, Dhaka. At the time of issuing the said Rule this Division passed an *ad-interim* order which is as under:- "Pending hearing of the Rule the respondent Nos.8-11 are restrained by an order of injunction from carrying out further construction work on Plot No.42, UN Road, Baridhara Diplomatic Zone, Dhaka for a period of 3 (three) months from date."

3. Challenging the said order of injunction present contemner-respondents (respondent Nos. 9-11) as petitioners filed Civil Petition for Leave to Appeal No. 2093 of 2013 before the Appellate Division and in that petition an application for stay was filed by contemner-respondents which was heard by the Judge in Chamber on 27-8-2013 and upon hearing the Hon'ble Judge in Chamber was pleased to pass the following order:

> "Parties are directed to maintain *status quo* in respect of possession and position of the suit land for a period of 1 (one) week. In the meantime the petitioners are directed to file regular Leave Petition in default the order of status quo shall stand vacated."

4. Subsequent to that an application for vacating the said order of *status quo* was moved before the Judge in Chamber by the writ petitioners, herein the contempt petitioner and upon hearing on 11-9-2013 the Hon'ble Judge in Chamber without vacating the order of *status quo* disposed of the Civil Miscellaneous Petition directing the parties to dispose of the writ petition on merit before the High Court Division. The order of the Judge in Chamber is as under (Annexure H):

"Heard the learned Advocate of both the sides, perused the application, the impugned order of the High Court Division and other materials on record. In the facts and circumstances of the case, I am of the view that ends of justice would be best served, if the writ petition itself is disposed of on merit by the High Court Division expeditiously. Let the writ petition be heard and disposed of by the Division Bench presided over by Farid Ahmed, J by 10th October, 2013. This Civil Peti tion for leave to appeal is disposed of accordingly".

5. On 8-10-2013 on the prayer of the petitioners this Division extended the order of injunction passed in the writ petition at the time of issuing Rule. Present contemner-respondents subsequent thereto on an application containing the modified order of the Appellate Division (Annexure-H) prayed for recalling and modifying the order of this Division dated 8-10-2013. Upon hearing the same on 18-11-2013 the order was recalled. The Division Bench presided over by Mr Justice Farid Ahmed while allowing the said application as envisaged in Annexure-'S' of the supplementary affidavit filed by the petitioner dated 14-5-2014 observed as under:—

> "It has been stated in the application for modification that the writ petitioner filed an application before the Judge in Chamber for vacating the order of *status-quo* but the learned Judge in chamber without vacating the order of *status-quo*, directed this Bench for disposal of the writ petition expeditiously and also disposed of the Civil Miscellaneous Petition with the above observation.
>
> Since the writ petitioner filed application before the Judge in Chamber for vacating the order of *status-quo*, it was very much within the knowledge of the writ petitioners that the Appellate Division modified the order of injunction and converted the same into an order of *status-quo*. But the writ petitioner on 8-10-2013 extended the order of injunction suppressing that the Judge in Chamber directed the parties to maintain *status-quo*.
>
> For the reason, the order dated 8-10-2013 extending the order of injunction is recalled and keeping inconformity with the direction of the Appellate Division, the said injunction order is modified and the parties are directed to maintain *status-quo* in respect of possession and position of the suit land."

6. It is evident that in the presence of the petitioner the said order was passed by this Division. Right thereafter on 19-11-2013 ie the next day this petition for contempt of Court was moved by the contempt-petitioners upon which this Rule was issued.

7. Mr Aminul Hoque, the learned Senior Advocate appearing with Mr Syed Jawad Quader, the learned Advocate for the petitioners after taking us with the petition and the materials on record contends that the contemner-respondents having full knowledge of everything in utter disregard to the order of this Division carried out and still have been continuing with the construction work on the property in question. His positive assertion is that the *ad-interim* order dated 22-7-2013 passed by this Division in Writ Petition No.7049 of 2013 has been violated by the act so done by the contemners. Mr Hoque has also brought to our notice the Annexures-1 to 6 of the petition which are some photographs of the plot taken by the petitioner showing how the construction work has been continuing therein. He further submits that the contemner respondents Nos.9-11 had intentionally and willfully violated the order of injunction dated 22-7-2013 by not stopping the construction work on the plot in question and without paying any heed to the said order of injunction. Mr Hoque placed reliance on the decision of *Daulat Ahmed vs Shafiqul Islam Chowdhury* reported in *58 DLR (AD) 43* and submits that the Appellate Division has settled that the order of *status-quo* is an order of injunction whereby the parties in the suit are restrained from doing the Act which may change the position of the property or the nature and character of the property which is the subject matter of the suit.

8. On the other hand, Mr BM Elias, the learned counsel appearing on behalf of the contemner-respondents by filing affidavit-in-opposition vehemently opposes the Rule and contends as what has been already stated by us above only adding further that challenging the order dated 18-11-2013 (Annexure-'S') the petitioner filed another Civil Petition before the Appellate Division being Civil Petition for Leave to Appeal

No.3048 of 2013 and prayed for stay and the Judge in Chamber upon hearing without passing any order of stay was pleased to post the matter for hearing before the Court on 9-1-2014 at top and on 18-1-2014 the said Civil Petition for Leave to Appeal was dismissed as being not pressed (Annexure-'P' to the counter affidavit filed by the contempt-petitioners). Further by another supplementary affidavit dated 3-3-2014 he brought to our notice that the original writ petition on several occasions came up for hearing before this Division and on 30-1-2013 the Rule was discharged for default and subsequently the same was restored in the month of April, 2013.

9. On the divergent facts pressed into service by both the sides we are to address a very vital question whether under the facts and circumstances of the present contempt petition which has arisen out of an *interim* order of a Writ Petition pending for disposal before this Division, the petition of contempt itself is a misconceived one.

10. The learned counsel for the contemner-respondents has already made submissions and tried to impress upon us that this Division though at the time of issuing Rule by an *ad-interim* order passed an order of injunction but the same was subsequently modified by the Appellate Division into an order of *status-quo*.

11. Mr Hoque the learned Senior Advocate, on the other hand, placing reliance on the decision of the Appellate Division as referred to above submits that since the order of *status-quo* is an order of injunction the contemner-respondents squarely come within the mischief of the contempt of Court Act and this Division can safely hold that they have committed contempt of Court by willfully and deliberately violating the order of this Division.

12. We have heard the learned counsel of both sides and considered their submissions. We have given our anxious thought on the matter. We want to view this petition of contempt and the issue involved therein totally from a different angle. We know that at the instance of the Appellate Division the order of injunction was modified into an order of *status quo* and by the same order the case was referred to this Division for final disposal of the writ petition itself. If we sense with optimism then probably it will be safe to hold since the writ petition has been pending before this Division for final disposal as per the direction of the Appellate Division, the entire writ Petition together with the issue of contempt of Court, if any, can be disposed of by the said Bench itself. By stretching and twisting an *ad-interim* order which went up to the Appellate Division and in terms of the direction of the said Division which is now pending for disposal before this Division we do not think it wise to dwell upon the issue and consider whether contempt of Court has been committed or not by the contemner-respondents under the given situation.

13. Article 108 of the Constitution gives a power to the Supreme Court to inflict punish for any contempt which is exercisable by any bench of this Division irrespective of any designated Bench for so doing. Often we find many contempt applications those are being filed against the *ad-interim* order passed by this Division even when that Division is in *seisin* of the case with the same jurisdiction having authority to apply Article 108 of the constitution. This propensity we deprecate.

14. Article 108 of the Constitution envisage:—

> The Supreme Court shall be a court of record and shall have all the powers of such a court including the power subject to law to make an order for the investigation of or punish ment for any contempt of itself.

15. In the case of *Shukh Dev Sing vs Teja Sing, AIR 1954 (SC) 186* it was held that power to institute proceedings for contempt and to punish,

when found justified, is a special jurisdiction which is inherent in all courts of Record.

16. Reflection of the said decision in the context of Article 108 or our Constitution could also be found in *Marsu Ltd. vs Waliullah FCA 65 DLR 237.*

17. We are of the view and hold that in all fairness when Article 108 of the Constitution is available to all the benches of this Division, a particular case involving the question of contempt against an *ad-interim* order should also be decided by the bench that issued the ad interim order. The reason being that if any contempt petition which has arisen out of an *ad-interim* order passed in any writ petition or any other case and the disposal of which requires analysis and appraisal of the entire writ petition or any other case it may have an adverse effect on the main case in that under the circumstances if the contempt petition is decided either in favour of the contempt petitioner or the contemner-respondent that would certainly tell upon the main writ petition or any other case. Notably, we also hold that the principle shall apply in its restricted implication only in case of a particular ad interim order in a contempt proceeding upon which the said principle would apply. The case in hand is one of that kind. And on that score we hold that this contempt petition is a misconceived one. The allegation of contempt of court in respect of the *interim order* of the case in hand, if so advised, can be dealt with to the hilt before the bench where the original Writ Petition is pending for disposal.

(All the underlinings are mine to add emphasis)

18. In the result, the Rule is disposed of with observation as made above. The contemners are found not guilty of contempt of Court and exonerated from the charge of contempt of court.

Communicate this order at once.

Ed.

HIGH COURT DIVISION
(Special Original Jurisdiction)

Farah Mahbub J
AKM Zahirul Hoque J

Judgment
May 2nd, 2013.

Shahidullah Miah (Md) .....Petitioners
vs
Government of Bangladesh and others .....Respondents*

Anti-Corruption Commission Act (V of 2004)
Section 19

Anti-Corruption Commission Rules, 2007
Rules 8 and 20

On the allegation of corruption on any subject matter as well as on the allegation of commission of schedule offences the Commissioner or the officers of the Commission entrusted with the power to enquire is empowered under section 19 of the Ain, 2004 read with rules 8 and 20 of the Rules, 2007 to direct the person, against whom a complaint is made, to appear before the Commission to give explanation either orally or in writing, with a view to find out the correctness of the allegation. Issuance of the order directing the petitioner and 4 (four) others to appear before the Commission to record their statements does not suffer from any illegality requiring interference by this court. .....(32 & 33)

Md Habibur Rahman vs State, 58 DLR (AD) 12; Begum Tahmina vs Government of Bangladesh, 52 DLR 503; Knights Bridge Estates Trust Ltd. vs Byrne, (1940) AC 613: (1940) 2 All ER 401; Andhra Pradesh vs LVA Dikshitula, AIR 1979 SC 193 and Special Officer and Competent Authority Urban Land Ceilings Hyderabad vs PS Rao, AIR 2000 SC 843 ref.

*Writ Petition No. 9408 of 2011.

Momtaj Uddin Ahmed Mehedi with MMA Siddique, Advocates—For the Petitioner.

Md Abdul Halim, Advocate—For the Respondent No.3.

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 office order dated 4-10-2011 (Annexure K) issued by the respondent No. 3 directing the petitioner to appear before the officer concern of the Anti-Corruption Commission should not be declared to have been issued without lawful authority and is of no legal effect.

2. Facts, in brief, are that the petitioner joined as Upazilla Accounts Officer at Dupchachia Upazilla, Bogra vide order dated 22-7-2002 wherefrom subsequently he was transferred to the said post to another station vide order dated 2-4-2007 (Annexure-A). In compliance thereof though the petitioner duly joined in the respective post, however, later he was again transferred to the office of the Comptroller General of Accounts. In due compliance thereof he joined in the respective post on 5-9-2012.

3. Considering his date of birth as on 17-6-1957 the petitioner was to go on LPR (Leave Preparatory to Retirement) on 15-6-2013. It has been stated that immediately before his retirement all on a sudden the respondent No. 2, the Comptroller and Auditor General of Bangladesh submitted charge-sheet on 9-3-2011 (Annexure-B) in connection with a departmental proceeding against the petitioner without any inquiry and thereby he had been directed to give reply as to why he should not be dismissed from his respective post.

4. Consequent to initiation of a departmental proceeding the petitioner was suspended vide office Memo No. সিএজি/শৃঃ ও আঃ/১৭৫৮/০৪ dated 10-3-2011 (Annexure-C) issued by the respondent No. 2 from the office of the Accounts Office, Kahalu, Bogra challenging which he filed Writ Petition No. 2697 of 2011 before the High Court Division whereupon a Rule Nisi was issued vide order dated 24-5-2011 staying operation of the said impugned order of suspension dated 10-3-2012 (Annexure-D).

5. However, on 28-4-2011 upon submitting an application before the authority concern (respondent No. 2) the petitioner made a prayer to supply necessary documents in connection with the allegations so had been brought against him with a view to give proper reply to controvert the allegations as contained in the said charge-sheet dated 9-3-2011 (Annexure-E).

6. Subsequently, the respondent No. 2 vide Memo No. CAG/Sri:OAA:/1758/59 dated 24-5-2011 (Annexure-F) had directed him to collect all relevant documents from his previous place of posting in respect of the allegations so brought against him.

7. Later, the petitioner submitted another application on 15-6-2011 (Annexure-G) to the respondent No. 6 with a prayer to supply relevant documents as well as the allegations so had been brought against him.

8. Having receipt no response thereof, the petitioner filed Writ Petition No. 6375 of 2011 whereupon this Court vide order dated 20-7-2011 (Annexure-H) had directed the Comptroller General of Accounts, to supply copy of the relevant documents to the petitioner within 7 (seven) days and until the documents were not supplied, the respondents were restrained to proceed further with the departmental proceedings.

9. Later, challenging the appointment of the respondent No. 7 as the Inquiry Officer dated 4-9-2011 to inquire into the allegations so brought

against the petitioner he filed Writ Petition No. 8028 of 2011 before this Court whereupon vide order dated 20-9-2011 a Rule Nisi had been issued staying operation of the office order dated 4-9-2011 for a prescribed period of time (Annexure-J).

10. It has been contended that in order to frustrate the order dated 20-7-2011 passed in Writ Petition No. 6375 of 2011 and order dated 20-9-2011 passed in Writ Petition No. 8029 of 2011 the Anti-Corruption Commission (in short, the Commission) with *malafide* intention had issued the impugned office letter dated 4-10-2011 (Annexure-K) purportedly under section 19 of the Anti-Corruption Commission Ain, 2004 (in short, the Ain) directing him to appear along with 4 (four) other officers before it to give statement on the allegations of "ভুয়া পেনশনের টাকা আত্মসাতের....." so brought against them.

11. Being aggrieved by and dissatisfied with the petitioner has preferred the instant application and obtained the present Rule.

12. Mr Momtaj Uddin Ahmed Mehedi, the learned Advocate appearing with Mr MMA Siddique, the learned Advocate on behalf of the petitioner submits that the impugned order dated 4-10-2011 has been issued by the Commission with the sole reason, to frustrate the order dated 20-7-2011 passed in Writ Petition No. 6375 of 2011 and the order dated 20-9-2011 passed in Writ Petition No. 8028 of 2011. He further goes to contend that the subject matter of the inquiry as contained in the impugned order is under challenge in connection with Writ Petition No. 8028 of 2011 as such, on that count the impugned order is liable to be struck down for having been issued without any lawful authority and is of no legal effect.

13. In this regard he further goes to argue that without any approval of the Anti-Corruption Commission the said impugned order has been issued by the respondent No. 3 violating section 19 (2) of the Ain, 2004. Accordingly, he submits that the impugned order being devoid of any substance and having been issued without any back up support of law, rather issued with *malafide* intention hence, this Rule should be made absolute upon striking down the impugned order declaring it to have been passed without any lawful authority and is of no legal effect.

14. Mr Md Abdul Halim, learned Advocate appearing on behalf of the respondent No. 3 by filing affidavit-in-opposition submits that the respondent No. 4 has submitted charge-sheet along with a show cause notice in connection with a departmental proceeding so initiated by the office concern under which the petitioner is rendering his service, not the respondent No. 3, the Commission. He further submits that the petitioner while serving as Upazilla Accounts Officers, Kahalu, Bogra in between July, 2005 to March, 2007 he allegedly had misappropriated Taka 1,75,43,350 out of the pensioners fund showing this amount as had been paid to the respective pensioners. The said conduct of the petitioner being allegedly a misconduct under rule 3(B) of the Government Servant (Discipline and Appeals) Rules, 1985 as such, he was given a show cause notice for dismissal from service under rule 4(3)(D) by way of charge-sheet in connection with a departmental proceeding. Accordingly, the learned Advocate submits that since the departmental proceeding has no nexus with the inquiry to be conducted by the Commission into the schedule offence of the Ain, 2004 in order to find out the correctness of the allegations so brought forth against the petitioner and since section 19 of the Ain, 2004 has provided the said authority to the Commission; as such, issuance of the impugned office letter by the Commission directing the petitioner to assist in the process of inquiry (which is a fact finding inquiry) cannot be termed as unlawful.

15. In support of the contention Mr Halim has referred the decisions in the case of *Md Habibur Rahman vs State* reported *58 DLR (AD) page 12* and in the case of *Begum Tahmina vs Government of Bangladesh and others* reported in *52 DLR page 503.*

16. Heard the learned Advocates of both the contending parties, perused the application along with the annexures so have been annexed thereto and the affidavit-in-opposition filed by the respondent No. 3, the Anti-Corruption Commission.

17. Admittedly, prior to issuance of the impugned order dated 4-10-2011 the petitioner had been directed to appear before the Anti-Corruption Commission (in short, the Commission) to give statement in connection with an "inquiry" on the allegation of "ভুয়া পেনশনের টাকা আত্মসাতের....." so brought against the petitioner along with 4 (four) others purportedly under section 19 of the Ain, 2004. However, pursuant to the said allegation a departmental proceeding had earlier been initiated against the petitioner by the authority concern under the Government Servant (Discipline and Appeal) Rules, 1985. Challenging the said process, as to issuance of suspension order pending departmental proceeding and appointing an Inquiry Officer 2(two) respective writ petitions were filed by the petitioner; whereupon Rules Nisi were issued and that those Rules are still pending for adjudication and disposal.

18. So far initiation of criminal proceeding is concerned on the self same allegation it is the settled principle of law that it has no nexus with the departmental proceeding and that both the proceedings may proceed independently, following the respective procedures as provided under the relevant statute and the Rules so made thereunder.

19. However, authority of the Commission to direct any person to appear before it with regard to giving statement in connection with "inquiry" or "investigation" has been embaded in the Anti Corruption Commission Ain, 2004 (Act No. V of 2004). To that effect the relevant provisions of law and the rules so made thereunder may be looked into.

20. Section 17 of the said Ain, in general, prescribes the functions of the Commission so constituted under section 3 of the Ain, 2004 where clause (ka) (kha) and (ga) stated, *inter alia,*

> "১৭। কমিশনের কার্যাবলি।—কমিশন নিচবর্ণিত সকল বা যে কোন কার্য সম্পাদন করিতে পারিবে যথাঃ–
>
> (ক) তফসিলে উল্লিখিত অপরাধসমূহের অনুসন্ধান ও তদন্ত পরিচালনা।
>
> (খ) অনুচ্ছেদ (ক) এর অধীন অনুসন্ধানও তদন্ত পরিচালনার ভিত্তিতে এই আইনের অধীন মামলা দায়ের ও পরিচালনা।
>
> (গ) দুর্নীতি সম্পর্কিত কোন অভিযোগ স্বউদ্যোগে বা ক্ষতিগ্রস্ত ব্যক্তি বা তাহার পক্ষে অন্য কোন ব্যক্তি কর্তৃক দাখিলকৃত আবেদনের ভিত্তিতে অনুসন্ধান।"

21. Under Clause (ka) the Commission is authorized to investigate or inquire into the "schedule offence"; clause (kha) prescribes that pursuant to inquiry or investigation so conducted under clause (ka) the Commission may lodge a criminal case and also conduct the investigation of the same. Under clause (ga) the Commission may inquire on the complaint of corruption either on its own motion or on the complaint so made by the aggrieved person or any other person on his behalf.

22. On a plain reading of the above provisions of law it is apparent that the Commission is authorized to inquire both into the allegation of corruption (clause ga) and or commission of its schedule offence (clause ka). However, it is further pertinent to note that the legislature having used the words "নিম্নবর্ণিত সকল বা যে কোন কার্য সম্পাদন করিতে পারিবে....." in section 17 gives each clauses, as prescribed therein, both conjunctive as well as

disjunctive effect.

23. In this regard section 19 of the Ain, 2004 is relevant to be looked into, which provides, *inter alia,*

"অনুসন্ধান বা তদন্তকার্যে কমিশনের বিশেষক্ষমতা।

(১) দুর্নীতি সম্পর্কিত কোন অভিযোগের অনুসন্ধান বা তদন্তের ক্ষেত্রে, কমিশনের নিম্নরূপ ক্ষমতা থাকিবে, যথাঃ

(ক) সাক্ষীর সমন জারি ও উপস্থিতি নিশ্চিতকরণ এবং শপথের মাধ্যমে সাক্ষীকে জিজ্ঞাসাবাদ করা।

(খ) কোন দলিল উদঘাটন এবং উপস্থাপন করা।

(গ) শপথের মাধ্যমে সাক্ষ্য গ্রহন।

(ঘ) কোন আদালত বা অফিস হইতে পাবলিক রেকর্ড বা উহার অনুলিপি তলব করা।

(ঙ) স্বাক্ষীর জিজ্ঞাসাবাদ এবং দলিল পরীক্ষা করার জন্য পরোয়ানা জারি করা এবং

(চ) এই আইনের উদ্দেশ্যে পূরণকল্পে, নির্ধারিত অন্য যে কোন বিষয়।

(২) কমিশন, যে কোন ব্যক্তিকে অনুসন্ধান বা তদন্ত সংশ্লিষ্ট বিষয়ে কোন তথ্য সরবরাহ করিবার জন্য নির্দেশ দিতে পারিবে এবং অনুরূপভাবে নির্দেশিত ব্যক্তি তাহার হেফাজতে রক্ষিত উক্ত তথ্য সরবরাহ করিতে বাধ্য থাকিবেন।

(৩) কোন কমিশনার বা কমিশন হইতে বৈধ ক্ষমতাপ্রাপ্ত কোন কর্মকর্তাকে উপ-ধারা (১) এর অধীন ক্ষমতা প্রয়োগে কোন ব্যক্তি বাধা প্রদান করিলে বা উক্ত উপ-ধারার অধীন প্রদত্ত কোন নির্দেশ ইচ্ছাকৃতভাবে কোন ব্যক্তি অমান্য করিলে উহা দন্ডনীয় অপরাধ হইবে এবং উক্ত অপরাধের জন্য সংশ্লিষ্ট ব্যক্তি অনূর্ধ ৩(তিন) বৎসর পর্যন্ত যে কোন মেয়াদের কারাদন্ডে বা অর্থদন্ডে বা উভয় প্রকার দন্ডে দন্ডনীয় হইবেন।"

24. The said provision provides special power "বিশেষ ক্ষমতা" to the Commission for inquiry or investigation on the complaint relating to corruption. However, the combined effect of the words ".....দুর্নীতি সম্পর্কিত কোন অভিযোগের অনুসন্ধান....." as stated in section 19(1) and the words ".....যে কোন ব্যক্তিকে অনুসন্ধান বা তদন্ত সম্পর্কিত বিষয়ে....." as incorporated in section 19(2) after the words "কমিশন" go to construe that on the complaint of corruption the Commission is authorized to direct any person "যে কোন ব্যক্তি" to provide information and or record his statement to that effect; conversely, on a plain reading of section 20(1) of the Ain it appears that the offence as prescribed in the schedule of the Ain, 2004 can only be investigated by the Commission.

25. The word "inquiry" (অনুসন্ধান) has been defined in rule 2(ka) of the "দুর্নীতি দমন কমিশন বিধিমালা, ২০০৪" (in short, the Rules), which runs as under:

"২(ক) "অনুসন্ধান" অর্থ আইনের তফসিলভুক্ত কোন অপরাধ সংক্রান্ত অভিযোগ প্রাপ্ত বা জ্ঞাত হইবার পর উহা কমিশন কর্তৃক তদন্ত অনুষ্ঠানের জন্য গৃহীত ও লিপিবদ্ধ হইবার পূর্বে উক্ত অভিযোগের প্রাথমিক সত্যতা উদ্‌ঘাটনের লক্ষ্যে কমিশন বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন ব্যক্তি কর্তৃক পরিচালিত কার্যক্রম।"

26. However, in the definition clause of "inquiry" the framers of the Rules of 2007 appears to have restricted the arena of complaint "আইনের তফসিলভুক্ত কোন অপরাধ সংক্রান্ত অভিযোগ....." within which the inquiry is to be confined, as claimed by the petitioner, and thus, makes it contrary to the context of the statute i.e., section 17 (1)(ga) of the Ain, 2004 "দুর্নীতি সম্পর্কিত কোন অভিযোগ" . In *Knights Bridge Estates Trust Ltd. vs Byrne, (1940) AC 613: (1940) 2 All ER 401* it has been observed, *inter-alia,* "....where the context makes the definition given in the interpretation clause inapplicable, a defined word when issued in the body of the statute may have to he given a meaning different from that contained in the interpretation clause; all definitions given in an interpretation clause are therefore normally enacted subject to the qualification- "unless there is anything repugnant in the subject or context; or "unless the context otherwise requires". It is to be remembered that a statute is an edict of the legislature and the conventional way of interpreting or construing a statute is to seek the 'intention' of its maker, as has been observed in Chief Justice,

পদমর্যাদার একজন কর্মকর্তা;

(জ) শিল্প মন্ত্রণালয় কর্তৃক মনোনীত অন্যূন যুগ্ম-সচিব পদমর্যাদার একজন কর্মকর্তা;

(ঝ) মহাপরিচালক, বাংলাদেশ রেশম উন্নয়ন বোর্ড, যিনি উহার সদস্য-সচিব ও হইবেন;

(ঞ) রাজশাহী বিশ্ববিদ্যালয় কর্তৃক মনোনীত প্রাণীবিদ্যা ও উদ্ভিদবিদ্যা বিভাগ হইতে যথাক্রমে একজন করিয়া মোট দুইজন অধ্যাপক যাহার মধ্যে একজন মহিলা হইবেন;

(ট) সরকার কর্তৃক মনোনীত রেশম পোকা পালনকারী, রেশম সুতা উৎপাদনকারী ও রেশম পণ্যের ব্যবসায়ীগণের মধ্য হইতে সর্বমোট তিনজন প্রতিনিধি যাহার মধ্যে অন্যূন একজন মহিলা প্রতিনিধি থাকিবেন, তবে গ্রুপ হইতে একাধিক সদস্য মনোনয়ন দেওয়া যাইবে না।

(২) উপ-ধারা (১) এর দফা(ঞ) ও (ট) এর অধীন মনোনীত সদস্যগণ নিয়োগ অথবা, ক্ষেত্রমত, মনোনয়নের তারিখ হইতে তিন বৎসর মেয়াদে স্বীয় পদে বহাল থাকিবেন;

তবে শর্ত থাকে যে, সরকার যে কোন সময় কোন কারণ দর্শানো ব্যতিরেকে তাহার সদস্য পদ বাতিল করিতে পারিবে।

(৩) উপ-ধারা (১) এ উল্লিখিত মনোনীত কোন সদস্য চেয়ারম্যান এর নিকট লিখিত স্বাক্ষরযুক্ত পত্রযোগে স্বীয় পদ ত্যাগ করিতে পারিবেন;

তবে শর্ত থাকে যে, চেয়ারম্যান কর্তৃক গৃহীত না হওয়া পর্যন্ত কোন পদত্যাগ কার্যকর হইবে না।

৭। **সদস্যগণের অযোগ্যতা ও অপসারণ**।—(১) কোন ব্যক্তি পরিচালনা পর্ষদের সদস্য হইবার যোগ্য হইবেন না বা সদস্য থাকিতে পারিবেন না যদি তিনি—

(ক) কোন সময় সরকারি চাকুরীর জন্য অযোগ্য বা সরকারি চাকুরী হইতে বরখাস্ত হন;

(খ) নৈতিক স্খলন জনিত অপরাধে দোষী সাব্যস্ত হন;

(গ) কোন উপযুক্ত আদালত কর্তৃক দেউলিয়া ঘোষিত হন;

(ঘ) কোন উপযুক্ত আদালত কর্তৃক অপ্রকৃতিস্থ ঘোষিত হন; অথবা

(ঙ) পরিচালনা পর্ষদের অনুমতি ব্যতীত কোন সদস্য যদি পরপর তিনটি সভায় যোগদানে বিরত থাকেন;

তবে শর্ত থাকে যে, পদাধিকারবলে নিয়োগপ্রাপ্ত সদস্যের ক্ষেত্রে এই বিধান প্রযোজ্য হইবে না।

(২) ধারা-৬ এর উপ-ধারা (২) এর বিধান সত্ত্বেও সরকার পরিচালনা পর্ষদের যে কোন মনোনীত সদস্যকে লিখিত আদেশের মাধ্যমে যে কোন সময় অপসারণ করিতে পারিবে, যদি তিনি—

(ক) এই আইনের অধীন তাহার উপর অর্পিত দায়িত্ব সম্পাদনে ব্যর্থ হন বা অস্বীকার করেন বা সরকারের বিবেচনায় দায়িত্ব সম্পাদনে অক্ষম হন; বা

(খ) সরকারের বিবেচনায় সদস্য হিসাবে তাহার পদের অপব্যবহার করেন; বা

(গ) পরিচালনা পর্ষদের লিখিত অনুমতি ব্যতীত প্রত্যক্ষ বা পরোক্ষভাবে নিজে বা কোন অংশীদারের মাধ্যমে জ্ঞাতসারে বোর্ডের পক্ষে সম্পাদিত কোন চুক্তি বা চাকুরী সংক্রান্ত বিষয়ে কোন শেয়ার বা স্বার্থ অর্জন করেন বা অধিকারে রাখেন।

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

(২) পরিচালনা পর্ষদের সভা উহার চেয়ারম্যান কর্তৃক নির্ধারিত স্থানে ও সময়ে অনুষ্ঠিত হইবে।

(৩) প্রতি তিন মাসে পরিচালনা পর্ষদের অন্যূন একটি সভা অনুষ্ঠিত হইবে, তবে জরুরী প্রয়োজনে স্বল্পতম সময়ের নোটিশে সভা আহ্বান করা যাইবে।

(৪) পরিচালনা পর্ষদের সভায় কোরাম গঠনের জন্য উহার মোট সদস্য সংখ্যার অন্যূন এক-তৃতীয়াংশ সদস্যের উপস্থিতির প্রয়োজন হইবে, তবে মুলতবী সভার ক্ষেত্রে কোন কোরামের প্রয়োজন হইবে না।

(৫) চেয়ারম্যান বোর্ডের পরিচালনা পর্ষদের সকল সভায় সভাপতিত্ব করিবেন এবং তাহার অনুপস্থিতিতে জ্যেষ্ঠ ভাইস-চেয়ারম্যান এবং তাহাদের উভয়ের অনুপস্থিতিতে ভাইস-চেয়ারম্যান সভায় সভাপতিত্ব করিবেন।

(৬) পরিচালনা পর্ষদের প্রত্যেক সদস্যের একটি করিয়া ভোট থাকিবে এবং সংখ্যাগরিষ্ঠ ভোটে সভায় সিদ্ধান্ত গৃহীত হইবে, তবে প্রদত্ত ভোটের সমতার ক্ষেত্রে সভায় সভাপতিত্বকারী ব্যক্তির দ্বিতীয় বা নির্ণায়ক ভোট প্রদানের ক্ষমতা থাকিবে।

(৭) শুধুমাত্র কোন সদস্য পদের শূন্যতা বা পরিচালনা পর্ষদ গঠনে ত্রুটি থাকিবার কারণে পরিচালনা পর্ষদের কোন কার্য বা কার্যধারা অবৈধ হইবে না বা তৎসম্পর্কে কোন আদালতে বা অন্য কোথাও কোন প্রশ্নও উত্থাপন করা যাইবে না।

৯। **বোর্ডের কার্যাবলী**।—বাংলাদেশ রেশম উন্নয়ন বোর্ডের কাযাবলী নিম্নরূপ হইবে, যথা:—

(ক) রেশম চাষ ও রেশম শিল্পের পরিকল্পনা ও উন্নয়ন;

(খ) রেশম বিষয়ক বৈজ্ঞানিক, কারিগরি ও আর্থিক গবেষণা ও প্রশিক্ষণের জন্য উদ্যোগ গ্রহণ, সহায়তা এবং উৎসাহ প্রদান;

(গ) গবেষণা ও প্রশিক্ষণের মাধ্যমে প্রাপ্ত ফলাফলসমূহ মাঠ পর্যায়ে সম্প্রসারণ ও উহার সুষ্ঠু বাস্তবায়ন নিশ্চিতকরণ এবং বর্তমানে সংরক্ষিত ও ভবিষ্যতে সংগৃহিতব্য সকল প্রকার রেশম পোকার জাত সংরক্ষণ নিশ্চিতকরণ;

(ঘ) তুঁত, ভেরেন্ডা ও সংশ্লিষ্ট অন্যান্য উদ্ভিদের উন্নতজাতের চাষাবাদের পদ্ধতি উদ্ভাবন;

(ঙ) উন্নতজাতের সুস্থ পলুপোকার ডিম পলিন, উদ্ভাবন ও বিতরণ;

(চ) রেশম গুটি হইতে সুতা আহরণ এবং কাঁচা রেশমের মান উন্নত ও উৎপাদন বৃদ্ধি করা; প্রয়োজনে সকল কাঁচা রেশম যথাযথভাবে যন্ত্রপাতি সজ্জিত স্বয়ংসম্পূর্ণ সিল্ক কন্ডিশনিং হাউস এর মাধ্যমে পরীক্ষা ও গ্রেডিং করার পর বাজারজাতকরণের বাধ্যবাধকতার ব্যবস্থা গ্রহণ;

(ছ) চরকা রিলিং ও ফিলেচারে নিয়োজিত ব্যক্তিদিগকে কারিগরি পরামর্শ প্রদান;

(জ) কাঁচা রেশম ও রেশম পণ্যের মান উন্নয়ন;

(ঝ) রেশম চাষ ও রেশম শিল্পের উপর বিভিন্ন উপাত্ত সংগ্রহ ও গ্রন্থনা;

(ঞ) রেশম চাষ ও রেশম শিল্পের সহিত সংশ্লিষ্টদের ঋণদানের সুবিধাদি সৃষ্টি;

(ট) ন্যায্যমূল্যে রেশম শিল্পের প্রয়োজনীয় কাঁচামালসহ রং, রাসায়নিক দ্রব্যাদি, খুচরা যন্ত্রাংশ ও আনুষঙ্গিক দ্রব্যাদি সিল্ক রিলার, উইভার ও প্রিন্টারদেরকে সরবরাহের ব্যবস্থা;

(ঠ) দেশে-বিদেশে রেশম ও রেশম সামগ্রী জনপ্রিয় ও বাজারজাতকরণের জন্য প্রচারের ব্যবস্থা;

(ড) রেশম সামগ্রী রপ্তানী করিবার জন্য রেশম সামগ্রীর মানোন্নয়নের সুযোগ-সুবিধা সৃষ্টি এবং সিল্ক রিলার, রিয়ারার, স্পীনার, উইভার এবং প্রিন্টারদেরকে প্রশিক্ষণদানের সুবিধা সৃজন;

(ঢ) রেশম চাষ ও রেশম শিল্পে নিয়োজিত ব্যক্তিদের সাধারণ সুবিধার জন্য প্রকল্প প্রণয়ন, পরিচালনা ও বাস্তবায়ন;

(ণ) কাঁচা রেশম,স্পান সিল্ক ও রেশম পণ্য উৎপাদনের জন্য মিল স্থাপনের ব্যবস্থা গ্রহণ;

(ত) সেস (Cess) আদায়;

(থ) উপরি-উক্ত কার্যাদি সম্পাদনের ক্ষেত্রে যেইরূপ প্রয়োজনীয় বা সুবিধাজনক হয় সেইরূপ আনুষঙ্গিক বা সহায়ক সকল বিষয়ে ব্যবস্থা গ্রহণ; এবং

(দ) সরকার কর্তৃক আরোপিত রেশম উন্নয়ন সংশ্লিষ্ট অন্য যে কোন দায়িত্ব পালন।

১০। **বোর্ডের মহাপরিচালক**।—(১) বোর্ডের একজন মহাপরিচালক থাকিবেন, যিনি সরকারের যুগ্ন-সচিব বা তদুর্ধ্ব পদমর্যাদা সম্পন্ন কর্মকর্তা হইবেন এবং তিনি সরকার কর্তৃক নির্দিষ্ট শর্তে নিযুক্ত হইবেন।

(২) মহাপরিচালক বোর্ডের একজন সার্বক্ষণিক কর্মকর্তা হইবেন এবং তিনি প্রধান নির্বাহী হিসাবে দায়িত্ব পালন করিবেন।

(৩) মহাপরিচালক পরিচালনা পর্ষদ কর্তৃক, সময় সময় তাহার উহার অর্পিত দায়িত্বসহ নির্ধারিত কার্যাবলী সম্পাদন করিবেন।

(৪) মহাপরিচালকের পদ শূন্য হইলে, কিংবা অসুস্থতা বা অন্য কোন কারণে তিনি তাহার দায়িত্ব পালনে অসমর্থ হইলে, শূন্য পদে নবনিযুক্ত মহাপরিচালক কার্যভার গ্রহণ না করা পর্যন্ত, কিংবা মহাপরিচালক পুনরায় স্বীয় দায়িত্ব পালনে সমর্থ না হওয়া পর্যন্ত, সরকার, মহাপরিচালকের দায়িত্ব পালনের লক্ষ্যে তদবিবেচনায় যথাযথ ব্যবস্থা গ্রহণ করিবে।

১১। **বোর্ডের তহবিল, ইত্যাদি**।—(১)বোর্ডের একটি তহবিল থাকিবে এবং উহাতে নিম্নবর্ণিত অর্থ জমা হইবে, যথাঃ—

(ক) সরকার কর্তৃক প্রদত্ত ঋণ ও অনুদান;

(খ) সরকারের পূর্বানুমোদনক্রমে কোন বিদেশী সরকার, সংস্থা বা আন্তর্জাতিক সংস্থা হইতে প্রাপ্ত অনুদান;

(গ) বোর্ডের সম্পত্তি বিনিয়োগ হইতে আহরিত আয়;

(ঘ) এই আইনবলে সংগৃহীত সেস; এবং

(ঙ) সরকার কর্তৃক অনুমোদিত অন্য কোন উৎস হইতে প্রাপ্ত অর্থ।

(২) বোর্ডের তহবিল হইতে বোর্ডের প্রয়োজনীয় ব্যয় নির্বাহ করা হইবে।

(৩) পরিচালনা পর্ষদ কর্তৃক অনুমোদিত কোন তফসিলি ব্যাংকে তহবিলের অর্থ জমা রাখা যাইবে।

(৪) তহবিলের অর্থ সরকার কর্তৃক অনুমোদিত খাতে বিনিয়োগ করা যাইবে।

(৫) মহাপরিচালক এবং প্রধান হিসাব রক্ষণ কর্মকর্তার যৌথ স্বাক্ষরে তহবিলের হিসাব পরিচালিত হইবে।

১২। সেস (Cess) আরোপ।—(১) বোর্ড, এই আইনের উদ্দেশ্য পূরণকল্পে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, ইহার কার্যকরতা আরম্ভের তারিখ হইতে সকল ফিলেচারের কাঁচা রেশম ও চরকায় তৈরী পাকানো রেশম সুতার উপর বিভিন্ন সময়ে, সরকার কর্তৃক নির্ধারিত হারে, সেস (Cess) আরোপ ও আদায় করিবে।

(২) রিলারগণ নোটিশ প্রাপ্তির এক মাসের মধ্যে বোর্ডের চাহিদা মোতাবেক ফিলেচারে উৎপাদিত কাঁচা রেশম ও চরকায় উৎপাদিত পাকানো রেশম সুতার উপর আরোপিত সেস (Cess) বোর্ডের নিকট প্রেরণ করিবে।

(৩) উপ-ধারা (১) এর অধীন আরোপিত সেস ভূমি রাজস্বের বকেয়ার ন্যায় আদায়যোগ্য হইবে।

(৪) এই ধারার অধীন পরিশোধযোগ্য সেস হইবে নিম্নরূপ, যথা:—

(ক) সেস নির্ধারণের সময় উল্লেখ করিয়া বোর্ড প্রজ্ঞাপন জারি করিবে, এবং

(খ) সেস প্রদানে বাধ্য প্রত্যেক ব্যক্তি প্রবিধানে নির্ধারিত সময়ের মধ্যে উৎপাদিত কাঁচা রেশম অথবা চরকায় উৎপাদিত পাকানো রেশম সুতা হইতে আহরিত মোট সিল্কের পরিমাণ উল্লেখপূর্বক বোর্ডের নিকট একটি রিটার্ন দাখিল করিবেন।

(৫) কোন সেস প্রদানকারী উপ-ধারা (৪) এর দফা (খ) তে বর্ণিত নির্ধারিত সময়ের মধ্যে বোর্ডের নিকট রিটার্ন দাখিল করিতে ব্যর্থ হইলে বা, বোর্ডের নিকট যদি প্রতীয়মান হয় যে, যদি দাখিলকৃত রিটার্ন ত্রুটিযুক্ত বা ত্রুটিপূর্ণ তাহা হইলে বোর্ড প্রবিধান অনুযায়ী যেইভাবে যত টাকা সেস প্রদানযোগ্য মনে করিবে তত টাকা সেস ধার্য করিতে পারিবে।

(৬) এই ধারার অধীন সেস নির্ধারণের প্রেক্ষিতে সংক্ষুব্ধ কোন সেস প্রদানকারী উপ-ধারা (২) অনুযায়ী নোটিশ প্রাপ্তির তিন মাসের মধ্যে উক্তরূপে নির্ধারিত সেস বাতিল বা সংশোধনের জন্য পরিচালনা পর্ষদের নিকট আবেদন করিতে পারিবে এবং পরিচালনা পর্ষদ , বোর্ড ও সেস প্রদানকারীর শুনানী গ্রহণপূর্বক, যেইরূপ উপযুক্ত মনে করিবে সেইরূপ আদেশ জারী করিবে এবং উহা চূড়ান্ত বলিয়া গণ্য হইবে।

(৭) আহরিত সেস হইতে সেস আদায়ের খরচ বাদ দিয়া, যদি থাকে, অবশিষ্ট অর্থ বোর্ডের তহবিলে জমা হইবে।

১৩। বাজেট।—বোর্ড প্রতিবৎসর সরকার কর্তৃক নির্ধারিত সময়ের মধ্যে পরবর্তী অর্থ বৎসরের বার্ষিক উন্নয়ন বাজেট এবং রাজস্ব বাজেট বিবরণী সরকারের নিকট পেশ করিবে এবং উহাতে উক্ত অর্থ বৎসরে সরকারের নিকট হইতে কি পরিমাণ অর্থ প্রয়োজন হইবে উহার উল্লেখ করিবে।

১৪। হিসাব রক্ষণ ও নিরীক্ষা।—(১) সরকার কর্তৃক নির্দেশিত পদ্ধতিতে বোর্ড অর্থ ব্যয়ের যথাযথ হিসাব রক্ষণ করিবে এবং হিসাবের বার্ষিক বিবরণী প্রস্তুত করিবে।

(২) বাংলাদেশের মহাহিসাব নিরীক্ষক ও নিয়ন্ত্রক, অতঃপর মহাহিসাব নিরীক্ষক নামে অভিহিত, প্রতি বৎসর বোর্ডের হিসাব নিরীক্ষা করিবেন এবং নিরীক্ষা প্রতিবেদনের একটি করিয়া অনুলিপি সরকার ও বোর্ডের নিকট প্রেরণ করিবেন।

(৩) উপ-ধারা (২) অনুযায়ী হিসাব নিরীক্ষার উদ্দেশ্যে মহাহিসাব নিরীক্ষক কিংবা তাহার নিকট হইতে এতদুদ্দেশ্যে ক্ষমতাপ্রাপ্ত কোন ব্যক্তি বোর্ডের সকল রেকর্ড, দলিল-দস্তাবেজ, নগদ বা ব্যাংকে গচ্ছিত অর্থ,জামানত, ভান্ডার এবং অন্যবিধ সম্পত্তি পরীক্ষা করিয়া দেখিতে পারিবেন এবং বোর্ডের যে কোন সদস্য, কর্মকর্তা ও কর্মচারীকে জিজ্ঞাসাবাদ করিতে পারিবেন।

(৪) উপ-ধারা (২) এ উল্লিখিত নিরীক্ষা ছাড়াও বোর্ড কর্তৃক প্রত্যেক বৎসরে একবার The Bangladesh Chartered Accountants order, 1973 (P.O. No 2 of 1973) এর Articale 2(1)(b) তে সংজ্ঞায়িত চাটার্ড একাউনটেন্ট দ্বারা বোর্ডের হিসাব পরীক্ষিত ও নিরীক্ষিত হইবে।

(৫) প্রত্যেক অর্থ বৎসর সমাপ্তির ছয় মাসের মধ্যে বোর্ডের হিসাব নিরীক্ষা প্রতিবেদন অনুমোদিত হইতে হইবে।

১৫। বার্ষিক প্রতিবেদন।—(১) বোর্ড প্রতি অর্থ বৎসরে উহার সম্পাদিত কার্যাবলীর বিবরণ সম্বলিত একটি বার্ষিক প্রতিবেদন পরবর্তী অর্থ বৎসরের ৩১ শে জানুয়ারী এর মধ্যে সরকারের নিকট দাখিল করিবে।

(২) সরকার প্রয়োজনমত বোর্ডের নিকট হইতে যে কোন সময় উহার যে কোন বিষয়ের উপর বিবরণী, রিটার্ন ও প্রতিবেদন আহবান করিতে পারিবে এবং বোর্ড উহা সরকারের নিকট সরবরাহ করিতে বাধ্য থাকিবে।

১৬। কর্মকর্তা কর্মচারী নিয়োগ, ইত্যাদি।—সরকার কর্তৃক অনুমোদিত সাংগঠনিক কাঠামো অনুযায়ী বোর্ড উহার কার্যাবলী সুষ্ঠুভাবে সম্পাদনের উদ্দেশ্যে, প্রয়োজনীয় সংখ্যক কর্মকর্তা ও কর্মচারী নিয়োগ করিতে পারিবে এবং তাঁহাদের চাকুরীর শর্তাবলী প্রবিধানমালা দ্বারা নির্ধারিত হইবে।

১৭। ক্ষমতা অর্পণ।—(১) পরিচালনা পর্ষদ, এই আইন বা ইহার অধীন প্রণীত বিধি বা প্রবিধানে নির্ধারিত শর্তাধীনে, মহাপরিচালক বা কোন পরিচালক বা কোন পরিচালক বা কোন কর্মকর্তাকে ইহার যে কোন ক্ষমতা অর্পণ করিতে পারিবেন।

(২) মহাপরিচালক এই আইন বা ইহার অধীন প্রণীত বিধি বা

প্রবিধান অনুযায়ী তাহার উপর অর্পিত, উপ-ধারা (১) এর অধীন মহাপরিচালককে প্রদত্ত ক্ষমতা ব্যতীত, যে কোন ক্ষমতা বোর্ডের যে কোন পরিচালক বা কর্মকর্তাকে অর্পণ করিতে পারিবেন।

১৮। বিধি প্রণয়নের ক্ষমতা।—এই আইনের উদ্দেশ্য পূরণকল্পে সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

১৯। প্রবিধান প্রণয়নের ক্ষমতা।—এই আইনের উদ্দেশ্য পূরণকল্পে বোর্ড সরকারের পূর্বানুমোদনক্রমে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইন বা বিধির সহিত অসামঞ্জস্যপূর্ণ নহে এইরূপ প্রবিধানমালা প্রণয়ন করিতে পারিবে।

২০। রহিতকরণ ও হেফাজত।—(১) বাংলাদেশ রেশম বোর্ড অধ্যাদেশ, ১৯৯৭ (১৯৯৭ সালের ৬২ নং অধ্যাদেশ) এবং বাংলাদেশ রেশম গবেষনা ও প্রশিক্ষণ ইনস্টিটিউট আইন, ২০০৩(২০০৩ সনের ২৫ নং আইন) এতদ্দ্বারা রহিত করা হইল।

(২) কোম্পানী আইন-১৯৯৪ এর অধীন প্রতিষ্ঠিত বাংলাদেশ সিল্ক ফাউন্ডেশনকে বোর্ডে একীভূত করিবার লক্ষ্যে উক্ত ফাউন্ডেশনের সংঘ স্মারকের ৮১ নং আর্টিক্যাল অনুযায়ী বিলুপ্ত বা গুটানোর (Winding up) সিদ্ধান্ত গ্রহণ করিতে হইবে।

(৩) বাংলাদেশ রেশম বোর্ড, বাংলাদেশ রেশম গবেষণা ও প্রশিক্ষণ ইনস্টিটিউট এবং বাংলাদেশ সিল্ক ফাউন্ডেশন, অতঃপর বিলুপ্ত প্রতিষ্ঠান বলিয়া উল্লিখিত, এর সকল সম্পদ, অধিকার, ক্ষমতা, কর্তৃত্ব সুবিধাদি, তহবিল, নগদ ও ব্যাংকে গচ্ছিত অর্থ এবং ঐ সকল সম্পত্তিতে বিলুপ্ত প্রতিষ্ঠানের যাবতীয় অধিকার ও স্বার্থ এবং ইহার সহিত সংশ্লিষ্ট সকল হিসাবের বহি, রেজিস্টার, রেকর্ডস এবং অন্যান্য দলিলাদি বোর্ডে স্থানান্তরিত ও ন্যস্ত হইয়াছে বলিয়া গণ্য হইবে।

(৪) বিলুপ্ত প্রতিষ্ঠানের সকল প্রকারের ঋণ, দায় ও আইনগত বাধ্যবাধকতা বোর্ডের ঋণ, দায় ও আইনগত বাধ্যবাধকতা হিসাবে গণ্য হইবে।

(৫) বিলুপ্ত প্রতিষ্ঠানের সকল কর্মকর্তা ও কর্মচারী চাকুরী, কোন চুক্তি, দলিল বা চাকুরীর শর্তাবলীতে যাহা কিছু থাকুক না কেন, বোর্ডে ন্যস্ত হইবে এবং তাহারা পূর্বে প্রযোজ্য চাকুরীর শর্তে, যদি না ঐ সময়ের চাকুরীর শর্তাবলীর কোন পরিবর্তন করা হইয়া থাকে, যাহা তাহাদের অসুবিধা সৃষ্টি করিতে পারে, বোর্ডের নিয়োগপ্রাপ্ত কর্মকর্তা এবং কর্মচারী বলিয়া গণ্য হইবে।

(৬) বিলুপ্ত প্রতিষ্ঠান কর্তৃক বা উহাদের বিরুদ্ধে দায়েরকৃত সকল মামলা বা আইনী ব্যবস্থা বোর্ডের পক্ষে বা বিরুদ্ধে দায়েরকৃত মামলা বা আইনী ব্যবস্থা বলিয়া গণ্য হইবে।

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পানি সম্পদের সমন্বিত উন্নয়ন, ব্যবস্থাপনা, আহরণ, বিতরণ, ব্যবহার, সুরক্ষা ও সংরক্ষণের লক্ষ্যে বিধান প্রণয়নের উদ্দেশ্যে প্রণীত আইন

যেহেতু পানি সম্পদের সমন্বিত উন্নয়ন, ব্যবস্থাপনা, আহরণ, বিতরণ, ব্যবহার, সুরক্ষা ও সংরক্ষণ সম্পর্কিত বিষয়ে বিধান করা সমীচীন এবং প্রয়োজনীয়;

সেহেতু এতদ্দ্বারা নিম্নরূপ আইন করা হইল:—

প্রথম অধ্যায়

সাধারণ

১। সংক্ষিপ্ত শিরোনাম, প্রবর্তন ও প্রয়োগ।—(১) এই আইন বাংলাদেশ পানি আইন, ২০১৩ নামে অভিহিত হইবে।

(২) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যে তারিখ নির্ধারণ করিবে সেই তারিখে এই আইন কার্যকর হইবে এবং আইনের বিভিন্ন ধারার জন্য ভিন্ন ভিন্ন তারিখ নির্ধারণ করা যাইবে।

(৩) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যে এলাকা নির্ধারণ করিবে সেই এলাকায় এই আইন প্রযোজ্য হইবে এবং এই আইনের বিভিন্ন ধারার জন্য ভিন্ন ভিন্ন এলাকা নির্ধারণ করা যাইবে।

২। সংজ্ঞা।—বিষয় বা প্রসংঙ্গের পরিপন্থি কোন কিছু না থাকিলে, এই আইনে—

(১) **"উপযুক্ত কর্তৃপক্ষ"** অর্থ পানি আহরণকারী, পানি বিতরণকারী, পানি সরবরাহকারী, পানি সেবা প্রদানকারী বা পানি সম্পদের সুরক্ষা ও সংরক্ষণের দায়িত্বে নিয়োজিত কোন সংস্থা বা কর্তৃপক্ষ যাহা কোন আইন বা আইনের ক্ষমতাসম্পন্ন কোন দলিলের অধীন প্রতিষ্ঠিত বা গঠিত;

(২) **"খাল"** অর্থ পানির অন্তঃপ্রবাহ বা বহিঃপ্রবাহের কোন পথ;

(৩) **"ছাড়পত্র"** অর্থ ধারা ১৬ এর অধীন নির্বাহী কমিটি কর্তৃক ইস্যুকৃত কোন ছাড়পত্র;

(৪) **"জলস্রোত"** অর্থ জলাধার হইতে প্রবাহিত কোন পানি;

(৫) **"জলাধার"** অর্থ প্রাকৃতিকভাবে সৃষ্ট বা কৃত্রিমভাবে খননকৃত কোন নদ-নদী, খাল, বিল, হাওর, বাওড়, দীঘি, পুকুর,হ্রদ, ঝর্ণা বা অনুরূপ কোন ধারক;

(৬) **"জলাভূমি"** অর্থ এমন কোন ভূমি যেখানে পানির উপরিতল ভূমিতলের সমান বা কাছাকাছি থাকে বা যাহা, সময়ে সময়ে, স্বল্প গভীরতায় নিমজ্জিত থাকে এবং যেখানে সাধারণত ভিজা মাটিতে জন্মায় এবং টিকিয়া থাকে এমন উদ্ভিদাদি জন্মায়;

(৭) **"জাতীয় পানি নীতি"** অর্থ সরকার কর্তৃক, সময় সময়, প্রণীত জাতীয় পানি নীতি;

(৮) **"জাতীয় পানি সম্পদ পরিকল্পনা"** অর্থ ধারা ১৫ এর অধীন পরিষদ কর্তৃক অনুমোদিত জাতীয় পানি সম্পদ পরিকল্পনা;

(৯) **"নির্বাহী কমিটি"** অর্থ ধারা ৯ এর অধীন গঠিত কমিটি;

(১০) **"নিয়ন্ত্রণ"** অর্থে নিষিদ্ধকরণ এবং শর্তারোপও অন্তর্ভুক্ত হইবে;

(১১) **"পরিদর্শক"** অর্থ ধারা ১৪ এর অধীন পরিদর্শক হিসাবে ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বা কর্মচারী;

(১২) **"পরিষদ"** অর্থ ধারা ৮ এর অধীন গঠিত জাতীয় পানি সম্পদ পরিষদ;

(১৩) **"পানি"** অর্থ ধারা ৩ এর উপ-ধারা (১) এ উল্লিখিত কোন পানি;

(১৪) **"পানি সম্পদ"** অর্থ ভূপরিস্থ পানি, ভূগর্ভস্থ পানি ও বৃষ্টির পানি তথা বায়ুমন্ডলের পানি; এবং মোহনা, পানিধারক স্তর, প্লাবন ভূমি, জলাভূমি, জলাধার, ফোরশোর, উপকূল ও অনুরূপ কোন আধার বা স্থানের পানি ও উহার অন্তর্ভুক্ত হইবে;

(১৫) **"পানি সম্পদ উন্নয়ন প্রকল্প"** অর্থ পানি সম্পদ উন্নয়নের জন্য গৃহীত কোন কার্যক্রম, কর্মসূচি বা উদ্যোগ, যেমন সেচ, বন্যা নিয়ন্ত্রণ ব্যবস্থাপনা ও পানি নিষ্কাশনের জন্য নির্মিত যেকোন ধরনের হাইড্রোলিক অবকাঠামো নির্মাণ, নদীর তীর সংরক্ষণ, ড্রেজিং বা অনুরূপ কোন কার্যক্রম, কর্মসূচি বা উদ্যোগ;

(১৬) **"পানি সম্পদ পরিকল্পনা সংস্থা"** অর্থ পানি সম্পদ পরিকল্পনা আইন, ১৯৯২ (১৯৯২ সনের ১২ নং আইন) এর অধীন প্রতিষ্ঠিত পানি সম্পদ পরিকল্পনা সংস্থা;

(১৭) **"পানি সংকটাপন্ন এলাকা"** অর্থ ধারা ১৭ এর অধীন ঘোষিত কোন এলাকা;

(১৮) **"পানিধারক স্তর"** (Aquifer) অর্থ ভূগর্ভস্থ শিলা বা মৃত্তিকা স্তরের এমন কোন স্তর যাহা পানি ধারণ এবং পরিবহণ করিতে পারে এবং যাহা হইতে পানি উত্তোলন করা যায়;

(১৯) **"প্রতিপালন আদেশ"** অর্থ ধারা ১২ এর অধীন ইস্যুকৃত কোন আদেশ;

(২০) **"ফোরশোর"** অর্থ বৎসরের যে কোন সময় ভরাকটাল (ordinary spring tide) এর সময় নদীর সর্বনিম্ন পানি স্তর (low water mark) হইতে সর্বোচ্চ পানি স্তর (high water mark) এর মধ্যবর্তী অংশ; এবং Ports Act, 1908 (Act. No. XV of 1908) অনুযায়ী ঘোষিত নদী বন্দর ও সমুদ্র বন্দর এলাকায় সর্বোচ্চ পানি স্তর হইতে নদীর তীর ৫০ (পঞ্চাশ) মিটার এবং অন্যান্য এলাকায় সর্বোচ্চ পানি স্তর হইতে ১০ (দশ) মিটার পর্যন্ত বিস্তৃত এলাকা;

(২১) **"ফৌজদারী কার্যবিধি"** অর্থ Code of Criminal Procedure, 1898 (Act V of 1898);

(২২) **"বাওড়"** অর্থ খুরাকৃতির এমন কোন হ্রদ যাহার জনস্রোত সময়ের বিবর্তনে ধীরে ধীরে স্তিমিত হইয়া পড়িয়াছে;

(২৩) **"বাঁধ"** অর্থ মাটি বা অনুরূপ উপাদান দ্বারা নির্মিত কোন ড্যাম, ওয়াল (Wall), ডাইক, বেড়িবাঁধ বা অনুরূপ কোন বাঁধ;

(২৪) **"বিল"** অর্থ প্রাকৃতিক নীচু জায়গা বা বৃত্তাকার এলাকা যাহা বৃষ্টিপাত বা নদীর পানির দ্বারা প্লাবিত হয় এবং যাহা সমগ্র বৎসর পানিতে নিমজ্জিত থাকে বা বৎসরের আংশিক সময় আংশিক বা পূর্ণ শুষ্ক থাকে;

(২৫) **"ব্যক্তি"** অর্থ কোন ব্যক্তি এবং কোন প্রতিষ্ঠান, কোম্পানী, সমিতি, অংশীদারি কারবার, ফার্ম বা সংবিধিবদ্ধ বা অন্য কোন সংস্থাও উহার অন্তর্ভূক্ত হইবে;

(২৬) **"ভূগর্ভস্থ পানি"** অর্থ ভূপৃষ্ঠের নীচের কোন পানি যাহা কোন জলাধারের মধ্য দিয়া প্রবাহিত হয় বা ভূপৃষ্ঠের উপর প্রাকৃতিক বা কৃত্রিম উপায়ে উত্তোলন করা যায়;

(২৭) **"ভূপরিস্থ পানি"** অর্থ ভূমির উপরিভাগের জলাধারের কোন পানি;

(২৮) **"ভূমি"** অর্থ State Acquisition and Tenancy Act, 1950 (EB Act No. XXVIII of 1950) এর section 2(16) এ সংজ্ঞায়িত কোন land;

(২৯) **"মহাপরিচালক"** অর্থ পানি সম্পদ পরিকল্পনা সংস্থার মহাপরিচালক;

(৩০) **"মোহনা"** অর্থ এমন কোন জলস্রোত যাহা স্থায়ীভাবে অথবা পর্যায়ক্রমে সমুদ্রমুখী যেখানে সমুদ্রের জলরাশি, যাহার বিস্তৃতি পরিমাপযোগ্য, ভূমি হইতে প্রবাহিত

পানির সহিত মিশ্রিত হয়;

(৩১) **"সরকার"** অর্থ এই আইনের উদ্দেশ্য পূরণকল্পে পানি সম্পদ মন্ত্রণালয়;

(৩২) **"সংরক্ষণ"** অর্থ পানি সম্পদের উপযোগিতা বৃদ্ধি, অপচয় ও ক্ষয় হ্রাসকরণ, পরিরক্ষণ ও সুরক্ষাও অন্তর্ভুক্ত হইবে;

(৩৩) **"সুরক্ষা"** অর্থ পানি সম্পদ সংরক্ষণের জন্য বিধি-নিষেধ বা শর্তারোপ;

(৩৪) **"সুরক্ষা আদেশ"** অর্থ ধারা ২৭ এর অধীন ইস্যুকৃত কোন আদেশ; এবং

(৩৫) **"হাওর"** অর্থ দুইটি ভিন্ন নদীর মধ্যস্থলে প্রাকৃতিকভাবে সৃষ্ট কড়াই আকৃতির বৃহদাকার কোন নিম্নভূমি।

৩। **পানির অধিকার ও উহার ব্যবহার**।—(১) আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, রাষ্ট্রের সীমানাভুক্ত নিম্নবর্ণিত পানির সকল অধিকার জনগণের পক্ষে রাষ্ট্রের উপর অর্পিত থাকিবে, যথা:

(ক) ভূপরিস্থ পানি;

(খ) ভূগর্ভস্থ পানি;

(গ) সামুদ্রিক পানি;

(ঘ) বৃষ্টির পানি; এবং

(ঙ) বায়ুমন্ডলের পানি।

(২) এই আইনের বিধানাবলী সাপেক্ষে, সুপেয় পানি এবং পরিচ্ছন্নতা ও পয়ঃনিষ্কাশনের জন্য ব্যবহার্য পানির অধিকার সর্বাধিকার বিবেচিত হইবে।

(৩) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, ব্যক্তি মালিকানাধীন ভূমির ভূপরিস্থ পানির সকল অধিকার উক্ত ভূমির মালিকের থাকিবে এবং তিনি এই আইনের বিধানাবলী সাপেক্ষে উহা ব্যবহার করিতে পারিবেন:

তবে শর্ত থাকে যে, উক্ত পানির অপচয় ও অপব্যবহার রোধকল্পে এবং উহার সুরক্ষা ও সংরক্ষণের প্রয়োজনে নির্বাহী কমিটি বৈষম্যহীনভাবে যে কোন ভূমির মালিকের প্রতি সুরক্ষা আদেশ ইস্যু করিতে পারিবে।

(৪) এই আইন কার্যকর হইবার অব্যবহিত পূর্বে বলবৎ কোন আইন, বিধি, প্রবিধি, আইনের ক্ষমতাসম্পন্ন কোন প্রথা বা রীতি, চুক্তি, লাইসেন্স বা পারমিটের অধীন পানি ব্যবহারের ক্ষেত্রে উপ-ধারা (১) এর কোন কিছুই কোন ব্যক্তিকে বারিত করিবে না এবং এই আইন দ্বারা সীমিত, বারিত, নিয়ন্ত্রিত বা বাতিল করা না হইলে পানির উক্তরূপ ব্যবহার চলমান ও অব্যাহত থাকিবে:

তবে শর্ত থাকে যে, পানির উক্তরূপ ব্যবহারের অধিকার উপযুক্ত কর্তৃপক্ষের অনুমতি ব্যতীত হস্তান্তরযোগ্য হইবে না।

(৫) উপ-ধারা (৩) এর অধীন পানি ব্যবহারের সুবিধার্থে প্রত্যেক ব্যক্তির ব্যক্তিমালিকানাধীন বা রাষ্ট্রীয় ভূমিতে বর্তস্বত্ত্ব **(easement)** থাকিবে;

তবে শর্ত থাকে যে, জলাধারের তীরবর্তী কোন ভূমি মালিকের উহার তলদেশ এবং ফোরশোরের উপর কোন প্রকার অধিকার থাকিবে না।

দ্বিতীয় অধ্যায়

জাতীয় পানি সম্পদ পরিষদ এবং উহার কার্যাবলী ও ক্ষমতা

৪। **জাতীয় পানি সম্পদ পরিষদ**।—(১) এই আইনের উদ্দেশ্য পূরণকল্পে, জাতীয় পানি সম্পদ পরিষদ নামে একটি পরিষদ থাকিবে এবং এই আইন কার্যকর হইবার পর সরকার, যথাশীঘ্র সম্ভব, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, নিম্নবর্ণিত সদস্য সমন্বয়ে উক্ত পরিষদ গঠন করিবে, যথা:

(ক) প্রধানমন্ত্রী, যিনি উহার চেয়ারপারসনও হইবেন;

(খ) অর্থ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(গ) কৃষি মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ঘ) পরিকল্পনা মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ঙ) স্থানীয় সরকার, পল্লী উন্নয়ন ও সমবায় মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(চ) আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ছ) ভূমি মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(জ) পানি সম্পদ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ঝ) পররাষ্ট্র মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ঞ) মৎস্য ও প্রাণিসম্পদ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ট) নৌ পরিবহন মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ঠ) পরিবেশ ও বন মন্ত্রণালয়ের দয়িত্বে নিয়োজিত মন্ত্রী;

(ড) পানি সম্পদ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত প্রতিমন্ত্রী (যদি থাকে);

(ঢ) জাতীয় সংসদের পানি সম্পদ মন্ত্রণালয় সম্পর্কিত স্থায়ী কমিটির সভপিতি;

(ণ) মন্ত্রীপরিষদ সচিব;

(ত) প্রধানমন্ত্রীর কার্যালয়ের মুখ্য সচিব;

(থ) প্রধানমন্ত্রী কর্তৃক মনোনীত প্রশাসনিক বিভাগসমূহ হইতে একজন করিয়া সংসদ সদস্য;

(দ) ভূমি মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(ধ) অর্থনৈতিক সম্পর্ক বিভাগের সিনিয়র সচিব বা সচিব;

(ন) মৎস্য ও প্রাণিসম্পদ মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(প) কৃষি মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(ফ) পরিবেশ ও বন মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(ব) স্থানীয় সরকার বিভাগের সিনিয়র সচিব বা সচিব;

(ভ) পররাষ্ট্র মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(ম) লেজিসলেটিভ ও সংসদ বিষয়ক বিভাগের সিনিয়র সচিব বা সচিব;

(য) পরিকল্পনা কমিশনের কৃষি, পানি সম্পদ ও পল্লী প্রতিষ্ঠান বিভাগের সদস্য;

(র) বাংলাদেশ পানি উন্নয়ন বোর্ডের মহাপরিচালক;

(ল) পানি সম্পদ পরিকল্পনা সংস্থার মহাপরিচালক;

(শ) যৌথ নদী কমিশনের সদস্য;

(ষ) ইনস্টিটিউট অব ইঞ্জিনিয়ার্স, বাংলাদেশ এর প্রেসিডেন্ট;

(স) ইনস্টিটিউট অব ডিপ্লোমা ইঞ্জিনিয়ার্স, বাংলাদেশ এর প্রেসিডেন্ট;

(হ) প্রধানমন্ত্রী কর্তৃক মনোনীত ৩(তিন) জন পানি বিশেষজ্ঞ;

(ড়) প্রধানমন্ত্রী কর্তৃক মনোনীত বেসরকারি স্বেচ্ছাসেবী সংস্থার (এনজিও) ১ (এক) জন প্রতিনিধি;

(ঢ়) পানি সম্পদ মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব, যিনি উহার সদস্য-সচিবও হইবেন।

(২) পরিষদের মনোনীত সদস্যগণের মেয়াদ হইবে ২ (দুই) বৎসর,তবে মনোনীত কোন সদস্য, মেয়াদ শেষ হইবার পূর্বে যে কোন সময়, প্রধানমন্ত্রীর উদ্দেশ্যে স্বাক্ষরযুক্ত পত্রযোগে স্বীয় পদ ত্যাগ করিতে পারিবেন এবং তদ্‌কর্তৃক পদত্যাগপত্র গৃহীত হইবার তারিখ হইতে সংশ্লিষ্ট পদটি শূন্য হইয়াছে বলিয়া গণ্য হইবে।

(৩) সরকার, প্রয়োজনে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা; পরিষদের সদস্য সংখ্যা হ্রাস বা বৃদ্ধি করিতে পারিবে।

৫। পরিষদের কার্যাবলী।—এই আইনের উদ্দেশ্য পূরণকল্পে এবং উহার বিধানাবলী সাপেক্ষে, পরিষদ হইবে সর্বোচ্চ নীতি নির্ধারণী কর্তৃপক্ষ এবং তদুদ্দেশ্যে পরিষদের কার্যাবলী হইবে নিম্নরূপ, যথা:

(ক) পানি সম্পদের সমন্বিত উন্নয়ন, সুষ্ঠু ব্যবহার, নিরাপদ আহরণ, সুষম বন্টন, সুরক্ষা ও সংরক্ষণ বিষয়ে নীতি নির্ধারণ ও দিক-নির্দেশনা প্রদান;

(খ) পানি সম্পদের সমন্বিত উন্নয়ন নিশ্চিতকল্পে জাতীয় পানি সম্পদ পরিকল্পনা সংক্রান্ত দিক-নির্দেশনা প্রদান;

(গ) জাতীয় পানি সম্পদ পরিকল্পনা অনুমোদন ও উহার বাস্তবায়ন নিশ্চিতকরণ; এবং

(ঘ) পরিষদ কর্তৃক নির্দিষ্টকৃত অন্য যে কোন কার্যাবলী সম্পাদন করা।

৬। পরিষদের সভা।—(১) উপ-ধারা (২) এর বিধান সাপেক্ষে, পরিষদ উহার সভার কার্যপদ্ধতি নির্ধারণ করিতে পারিবে।

(২) পরিষদের সকল সভা চেয়ারপারসন কর্তৃক নির্দিষ্টকৃত স্থান ও সময়ে পরিষদের সদস্য-সচিব কর্তৃক আহূত হইবে।

(৩) পরিষদের সভায় সভাপতিত্ব করিবেন উহার চেয়ারপারসন, বা তাহার অনুপস্থিতিতে পরিষদের জ্যেষ্ঠ সদস্য।

(৪) পরিষদের কোন সদস্যপদ শূন্য থাকিবার অথবা পরিষদ গঠনে কোন ত্রুটি থাকিবার কারণে পরিষদের কোন ধার্য বা কার্যধারা অবৈধ হইবে না বা তৎসম্পর্কে কোন প্রশ্ন উত্থাপন করা যাইবে না।

৭। আন্তর্জাতিক ও আঞ্চলিক সহযোগিতা আদান-প্রদান।—(১) এই আইন ও আপাততঃ বলবৎ অন্যান্য আইনের বিধানাবলী সাপেক্ষে, পরিষদ, উপ-ধারা (২) এ উল্লিখিত সহযোগিতা কার্যকর করিবার লক্ষ্যে, যে কোন বিদেশী রাষ্ট্র, সরকার বা আন্তর্জাতিক বা আঞ্চলিক সংস্থার সহিত প্রয়োজনীয় সমঝোতা স্মারক, চুক্তি, কনভেনশন, ট্রিটি বা অনুরূপ কোন ইন্সট্রুমেন্ট (instrument) সম্পাদন করিতে সরকারকে পরামর্শ প্রদান করিতে পারিবে।

(২) সরকার, পরিষদের পরামর্শক্রমে, নিম্নবর্ণিত বিষয়ে যে কোন বিদেশী রাষ্ট্র, সরকার বা আন্তর্জাতিক ও আঞ্চলিক সংস্থার সহযোগিতা আদান-প্রদান করিতে পারিবে, যথাঃ—

(ক) অভিন্ন পানি সম্পদ সম্পর্কিত বিভিন্ন তথ্য-উপাত্ত বিনিময় ও বিশ্লেষণ;

(খ) আন্তর্জাতিক নদীর উপর যৌথ জরিপ, সমীক্ষা ও গবেষণা এবং উহার রাসায়নিক এবং জৈব দূষণ প্রতিরোধে যৌথ কার্যক্রম;

(গ) আন্তর্জাতিক নদীসমূহ পানি সম্পদের উন্নয়ন, আহরণ ও বন্টন কার্যক্রম; এবং

(ঘ) পানি সম্পদ সংশ্লিষ্ট শিক্ষা ও প্রশিক্ষণ কার্যক্রম।

৮। **জাতীয় পানি নীতি প্রণয়নের ক্ষমতা**।—(১) সরকার, উপ-ধারা (২) এর বিধানাবলী সাপেক্ষে, সময় সময়, সরকারি গেজেটে প্রজ্ঞাপন দ্বার, পানি সম্পদ সংক্রান্ত জাতীয় পানি নীতি প্রণয়ন করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন জাতীয় পানি নীতি প্রণয়নের ক্ষেত্রে সরকার পানি সম্পদের সহিত সংশ্লিষ্ট জনগোষ্ঠী ও সংগঠনের মতামত গ্রহণের জন্য বিধি দ্বারা নির্ধারিত পদ্ধতিতে গণশুনানির আয়োজন করিবে এবং শুনানিতে প্রাপ্ত মতামত বিবেচনায় আনিয়া জাতীয় পানি নীতি চূড়ান্ত করিতে হইবে।

(৩) সরকার জাতীয় পানি নীতিতে উপযুক্ত কর্তৃপক্ষ কর্তৃক পানির মূল্য নির্ধারণের নীতিমালা অন্তর্ভুক্ত করিতে পারিবে এবং উহা অন্তর্ভুক্তির ক্ষেত্রে সরকার নিম্নবর্ণিত বিষয়সহ প্রাসঙ্গিক অন্যান্য বিষয় বিবেচনা করিবে, যথাঃ—

(ক) পানি ব্যবহারের উদ্দেশ্য বা ক্ষেত্র;

(খ) পানি সেবাভোগীয় সামর্থ্য;

(গ) পানি আহরণ ও সরবরাহের প্রকৃত খরচ;

(ঘ) সেবাভোগী বা উহার শ্রেণী বিশেষের আর্থিক ক্ষমতা ও অনগ্রসরতা;

(ঙ) পানির চাহিদা ও সরবরাহ; এবং

(চ) সরকার কর্তৃক বিবেচিত অন্য কোন প্রাসঙ্গিক বিষয়।

(৪) উপ-ধারা (১) এর অধীন জাতীয় পানি নীতি প্রণীত না হওয়া পর্যন্ত এই আইন কার্যকর হইবার অব্যবহিত পূর্বে সরকার কর্তৃক প্রণীত জাতীয় পানি নীতি, এই আইনের বিধানাবলীর সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, বলবৎ থাকিবে।

তৃতীয় অধ্যায়

নির্বাহী কমিটি এবং উহার দায়িত্ব, কর্তব্য ও ক্ষমতা

৯। **নির্বাহী কমিটি**।—পরিষদের কার্যাবলী সুষ্ঠুভাবে পরিচালনার জন্য উহার একটি নির্বাহী কমিটি থাকিবে এবং নির্বাহী কমিটি নিম্নবর্ণিত সদস্যগণের সমন্বয়ে গঠিত হইবে, যথাঃ—

(ক) পানি সম্পদ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রি, যিনি উহার সভাপতিও হইবেন;

(খ) স্থানীয় সরকার, পল্লী উন্নয়ন ও সমবায় মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(গ) কৃষি মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ঘ) পরিবেশ ও বন মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ঙ) মৎস্য ও প্রাণিসম্পদ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(চ) ভূমি মন্ত্রণালয়ের দায়িত্বে নিয়োজিত মন্ত্রী;

(ছ) পানি সম্পদ মন্ত্রণালয়ের দায়িত্বে নিয়োজিত প্রতিমন্ত্রী (যদি থাকে);

(জ) পরিকল্পনা কমিশনের কৃষি, পানি সম্পদ ও পল্লী প্রতিষ্ঠান বিভাগের সদস্য;

(ঝ) কৃষি মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(ঞ) স্থানীয় সরকার বিভাগের সিনিয়র সচিব বা সচিব;

(ট) লেজিসলেটিভ ও সংসদ বিষয়ক বিভাগের সিনিয়র সচিব বা সচিব;

(ঠ) পানি সম্পদ মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(ড) মৎস্য ও প্রাণিসম্পদ মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(ঢ) পরিবেশ ও বন মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(ণ) ভূমি মন্ত্রণালয়ের সিনিয়র সচিব বা সচিব;

(ত) পরিবেশ অধিদপ্তরের মহাপরিচালক;

(থ) বাংলাদেশ পানি উন্নয়ন বোর্ডের মহাপরিচালক;

(দ) স্থানীয় সরকার প্রকৌশল অধিদপ্তরের প্রধান প্রকৌশলী;

(ধ) জনস্বাস্থ্য প্রকৌশল অধিদপ্তরের প্রধান প্রকৌশলী;

(ন) যৌথ নদী কমিশনের সদস্য;

(প) সরকার কর্তৃক মনোনীত ২(দুই) জন পানি বিশেষজ্ঞ;

(ফ) সরকার কর্তৃক মনোনীত বেসরকারি স্বেচ্ছাসেবী সংস্থার (এনজিও) ১ (এক) জন প্রতিনিধি; এবং

(ব) পানি সম্পদ পরিকল্পনা সংস্থার মহাপরিচালক, যিনি উহার সদস্য-সচিবও হইবেন।

১০। **নির্বাহী কমিটির দায়িত্ব ও কর্তব্য**।—নির্বাহী কমিটির দায়িত্ব ও কর্তব্য হইবে নিম্নরূপ, যথাঃ—

(ক) পানি সম্পদ বিষয়ে পরিষদ কর্তৃক প্রদত্ত নির্দেশনা, সুপারিশ, ইত্যাদি প্রকাশ, প্রচার, পরিবীক্ষণ ও মূল্যায়ন;

(খ) জাতীয় পানি নীতি ও জাতীয় পানি সম্পদ পরিকল্পনা প্রচার, পরিবীক্ষণ ও মূল্যায়ন;

(গ) পানি সম্পদের সহিত সংশ্লিষ্ট পরিকল্পনা, ব্যবস্থাপনা ও আন্তঃখাত সমন্বয় সংক্রান্ত সকল বিষয়ে কার্যক্রম গ্রহণ;

(ঘ) পানি সম্পদ ব্যবস্থাপনা সংক্রান্ত বিষয়ের উপর পর্যাবৃত্তে পরিষদকে অবহিতকরণ ও পরামর্শ প্রদান;

(ঙ) উপযুক্ত কর্তৃপক্ষের মধ্যে সমন্বয় সাধন ও আন্তঃসংস্থা

বিরোধ নিষ্পত্তি সংক্রান্ত নীতি নির্ধারণ ও প্রয়োজনীয় নির্দেশনা প্রদান এবং প্রয়োজনে উহা নিষ্পত্তিকরণ; এবং

(চ) পরিষদ কর্তৃক অর্পিত অন্য যে কোন কার্যাবলী সম্পাদন।

১১। **নির্বাহী কমিটির সভা**।—(১) এই ধারার বিধানাবলী সাপেক্ষে, নির্বাহী কমিটি উহার সভার কার্যপদ্ধতি নির্ধারণ করিতে পারিবে।

(২) নির্বাহী কমিটির সকল সভা, সভাপতির সম্মতিক্রমে, উহার সদস্য-সচিব কর্তৃক আহূত হইবে এবং সভাপতি কর্তৃক নির্দিষ্টকৃত স্থান ও সময়ে উক্ত সভা অনুষ্ঠিত হইবে।

(৩) নির্বাহী কমিটির সভায় উহার সভাপতি সভাপতিত্ব করিবেন।

(৪) নির্বাহী কমিটির কোন সদস্যপদ শূন্য থাকিবার অথবা নির্বাহী কমিটি গঠনে কোন ত্রুটি থাকিবার কারণে নির্বাহী কমিটির কোন কার্য বা কার্যধারা অবৈধ হইবে না তৎসম্পর্কে কোন প্রশ্ন উত্থাপন করা যাইবে না।

১২। **প্রতিপালন আদেশ** (compliance order) **ইস্যু করিবার ক্ষমতা**।—(১) যথাযথ অনুসন্ধান,পরীক্ষা-নিরীক্ষা বা জরিপের ফলাফলের ভিত্তিতে যদি নির্বাহী কমিটির নিকট প্রতীয়মান হয় যে, কোন ব্যক্তি বা উপযুক্ত কর্তৃপক্ষ ধারা ১৮, ১৯, ২০, ২১, ২২, ২৪ ও ২৬ এর কোন বিধান বা ছাড়পত্রের কোন শর্ত বা সুরক্ষা আদেশের কোন বিধি-নিষেধ বা শর্ত প্রতিপালন বা পরিপালন করিতেছে না বা লংঘন বা লংঘনের চেষ্টা করিতেছে তাহা হইলে আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, নির্বাহী কমিটি বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা, উক্ত ব্যক্তি বা উপযুক্ত কর্তৃপক্ষকে আদেশে উল্লিখিত নির্দিষ্ট সময়ের মধ্যে এই আইন বা সুরক্ষা আদেশের কোন বিধি-নিষেধ বা শর্ত বা ছাড়পত্রের শর্ত প্রতিপালন করিবার জন্য প্রতিপালন আদেশ ইস্যু করিতে পারিবে।

(২) নির্বাহী কমিটি বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তা উপ-ধারা (১) এ উল্লিখিত প্রতিপালন আদেশ, ধারা ৪২ এর বিধান সাপেক্ষে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে জারি করিবে।

(৩) প্রতিপালন আদেশের মর্মানুযায়ী যদি কোন উপযুক্ত কর্তৃপক্ষ(ব্যক্তি ব্যতীত) এই আইন বা সুরক্ষা আদেশের কোন বিধি-নিষেধ বা শর্ত বা ছাড়পত্রের শর্ত প্রতিপালন না করে, তাহা হইলে নির্বাহী কমিটি, উক্ত কর্তৃপক্ষকে ধারা ২৯ এর অধীন বিচার বিভাগীয় কার্যধারা গ্রহণ বা জরিমানা আরোপ না করিয়া উহার প্রধানকে উক্তরূপ বিধি-বিধান বা শর্ত প্রতিপালন না করিবার কারণ ব্যাখ্যা করিবার জন্য, এই আইনের অন্যান্য বিধানে ভিন্নতর যাহা কিছুই থাকুক না কেন, কমিটির সভায় তলব করিতে পারিবে এবং উক্ত কারণ সন্তোষজনক না হইলে দায়ী ব্যক্তিকে চিহ্নিত করিয়া তাহার বিরুদ্ধে প্রয়োজনীয় ব্যবস্থা গ্রহণের জন্য পরিষদের নিকট সুপারিশ প্রদান করিতে পারিবে।

(৪) প্রতিপালন আদেশ অন্যান্য বিষয়ের সহিত নিম্নবর্ণিত বিষয়াদির উল্লেখ থাকিবে, যথা:

(ক) বিধি-বিধান বা শর্ত লংঘনকারীর নাম ও ঠিকানাসহ পূর্ণাঙ্গ বিবরণ;

(খ) লংঘিত বিধি-বিধান বা শর্তাবলীর বিবরণ;

(গ) প্রতিপালনের সময়সীমা; এবং

(ঘ) নির্বাহী কমিটি কর্তৃক নির্দিষ্টকৃত অন্য কোন প্রয়োজনীয় বিষয়।

(৫) প্রতিপালন আদেশে আরও উল্লেখ থাকিবে যে, উপযুক্ত কারণ ব্যতীত উক্ত আদেশ প্রতিপালন করা বাধ্যতামূলক এবং উহা প্রতিপালন না করা জরিমানাযোগ্য এবং দণ্ডনীয় একটি অপরাধ।

(৬) প্রতিপালন আদেশ ইস্যুর পূর্বে নির্বাহী কমিটি বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বিধি দ্বারা নির্ধারিত পদ্ধতিতে সংশ্লিষ্ট ব্যক্তি বা কর্তৃপক্ষকে শুনানির যুক্তিসঙ্গত সুযোগ প্রদান করিবে এবং সিদ্ধান্ত গ্রহণের ক্ষেত্রে তৎকর্তৃক উপস্থাপিত বক্তব্য বিবেচনা করিবে।

(৭) প্রতিপালন আদেশ জারির বিষয়টি, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, প্রিন্ট ও ইলেক্ট্রনিক মাধ্যমে গণবিজ্ঞপ্তি দ্বারা বহুল প্রকাশ ও সাধারণ্যে প্রচারের ব্যবস্থা করা যাইবে।

১৩। **অপসারণ আদেশ** (removal order) **ইস্যু করিবার ক্ষমতা**।—(১) এই আইন বা সুরক্ষা আদেশের কোন বিধি-নিষেধ বা ছাড়পত্রের কোন শর্ত লংঘন করিয়া যদি কোন ব্যক্তি বা উপযুক্ত কর্তৃপক্ষ পানি সম্পদের উপর এমন কোন স্থাপনা বা ভরাট কার্যক্রম গ্রহণ করেন যাহা জলস্রোতের স্বাভাবিক প্রবাহে বাধা সৃষ্টি বা উহার গতিপথ পরিবর্তন করে, তাহা হইলে আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, নির্বাহী কমিটি বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা উক্ত জলস্রোতের স্বাভাবিক প্রবাহ নিশ্চিতকল্পে আদেশে উল্লিখিত নির্দিষ্ট সময়ের মধ্যে উক্ত স্থাপনা অপসারণ বা ভরাট কার্যক্রমে ব্যবহৃত উপকরণ বা উপাদান অপসারণ করিবার জন্য উক্ত ব্যক্তি বা উপযুক্ত কর্তৃপক্ষের উপর অপসারণ আদেশ ইস্যু করিতে পারিবে।

(২) নির্বাহী কমিটি বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কর্মকর্তা উপ-ধারা (১) এ উল্লিখিত অপসারণ আদেশ, ধারা ৪২ এর বিধান সাপেক্ষে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে জারি করিবে।

(৩) অপসারণ আদেশ ইস্যুর পূর্বে নির্বাহী কমিটি বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বিধি দ্বারা নির্ধারিত পদ্ধতিতে সংশ্লিষ্ট ব্যক্তি বা কর্তৃপক্ষকে শুনানির যুক্তিসঙ্গত সুযোগ প্রদান করিবে এবং সিদ্ধান্ত গ্রহণের ক্ষেত্রে তৎকর্তৃক উপস্থাপিত বক্তব্য বিবেচনা করিবে।

(৪) অপসারণ আদেশে উল্লিখিত নির্দিষ্ট সময়ের মধ্যে কোন উপযুক্ত কারণ ব্যতীত স্থাপনা অপসারণ বা ভরাট কার্যক্রম বন্ধ করা না হইলে আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক

না কেন, নির্বাহী কমিটি, জলস্রোতের স্বাভাবিক প্রবাহ নিশ্চিতকল্পে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে নোটিশ প্রদান করিয়া উক্তরূপ স্থাপনা বা ভরাট কার্যক্রমে ব্যবহৃত উপকরণ জলাধার হইতে অপসারণ করিতে পারিবে এবং উক্তরূপ স্থাপনা অপসারণ বা ভরাট কার্যক্রমের প্রকৃত খরচ উক্ত ব্যক্তির নিকট হইতে ধারা ৪৩ এর বিধান সাপেক্ষে বিধি দ্বারা নির্ধারিত পদ্ধতিতে আদায় করিতে পারিবে।

(৫) অপসারণ আদেশে অন্যান্য বিষয়ের সহিত নিম্নবর্ণিত বিষয়াদির উল্লেখ থাকিবে, যথা:—

(ক) স্থপনা নির্মাণকারী বা ভরাট কার্যক্রম গ্রহণকারীর নাম ও ঠিকানাসহ পূর্ণাঙ্গ বিবরণ;

(খ) অবৈধ স্থাপনা বা ভরাট কার্যক্রমের বিবরণ;

(গ) অপসারণের সময়সীমা; এবং

(ঘ) নির্বাহী কমিটি কর্তৃক নির্দিষ্টকৃত অন্য কোন বিষয়।

(৬) স্থাপনা অপসারণ বা ভরাট কার্যক্রমে ব্যবহৃত উপকরণ বা উপাদান অপসারণের প্রকৃত খরচ অপসারণ কার্যক্রম গ্রহণের পূর্বে সংশ্লিষ্ট ব্যক্তির বক্তব্য বিবেচনা করিয়া নির্ধারণ করিতে হইবে।

(৭) অপসারণ আদেশ জারির বিষয়টি, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, প্রিন্ট ও ইলেক্ট্রনিক মাধ্যমে গণবিজ্ঞপ্তি দ্বারা বহুল প্রকাশ ও সাধারণ্যে প্রচারের ব্যবস্থা করা যাইবে।

১৪। মহাপরিচালক কর্তৃক সাচিবিক সহায়তা প্রদান ও পরিদর্শকের ক্ষমতা অর্পণ।—(১) মহাপরিচালক নির্বাহী কমিটির কার্যাবলী সুষ্ঠুভাবে সম্পাদনের লক্ষ্যে উহাকে সকল প্রকার প্রশাসনিক ও সাচিবিক সহায়তা প্রদান করিবে।

(২) এই আইনের উদ্দেশ্য পূরণকল্পে, মহাপরিচালকের দায়িত্ব হইবে নিম্নরূপ, যথা:—

(ক) পরিষদ ও নির্বাহী কমিটি কর্তৃক গৃহীত নীতি ও কর্মপন্থা বাস্তবায়ন ও প্রয়োগ করা;

(খ) পরিষদ ও নির্বাহী কমিটির নির্দেশনার আলোকে উহার সভায় উপস্থাপনের নিমিত্ত সকল প্রকার প্রস্তাব প্রস্তুত করা;

(গ) যে কোন স্থান বা প্রকল্প এলাকা পরিদর্শন করা;

(ঘ) এই আইন সম্পর্কিত বিষয়ে জনসচেতনতা সৃষ্টির লক্ষ্যে প্রয়োজনীয় পদক্ষেপ গ্রহণ করা;

(ঙ) পরিষদ ও নির্বাহী কমিটি কর্তৃক, সময় সময়, অর্পিত অন্যান্য দায়িত্ব পালন করা।

(৩) মহাপরিচালক, পানি সম্পদ পরিকল্পনা সংস্থা বা অন্য কোন সংস্থার কোন কর্মকর্তা বা কর্মচারীকে এই আইনের উদ্দেশ্য পূরণকল্পে তাহার উপর উপ-ধারা (২) এর দফা (গ) এ বর্ণিত দায়িত্ব অর্পণ করিতে পারিবেন এবং উক্তরূপ দায়িত্বপ্রাপ্ত কর্মকর্তা বা কর্মচারী এই আইনের উদ্দেশ্য পূরণকল্পে পরিদর্শক নামে অভিহিত হইবেন।

(৪) পরিদর্শক উপ-ধারা (৩) এর অধীন পরিদর্শনকালে পরিলক্ষিত যে কোন অনিয়ম বা ত্রুটি বা আদেশ লংঘন সম্পর্কে মহাপরিচালক বা তৎকর্তৃক নির্ধারিত কোন কর্মকর্তার নিকট প্রতিবেদন পেশ করিবেন।

চতুর্থ অধ্যায়

পানি সম্পদের উন্নয়ন ও ব্যবস্থাপনা কর্মকাণ্ড নিয়ন্ত্রণ

১৫। জাতীয় পানি সম্পদ পরিকল্পনা অনুমোদন।—(১) এই আইন কার্যকর হইবার পর পানি সম্পদ পরিকল্পনা সংস্থা, যথাশীঘ্র সম্ভব, পানি সম্পদ পরিকল্পনা আইন, ১৯৯২(১৯৯২ সনের ১২ নং আইন) এর অধীন তদকর্তৃক প্রণীতব্য জাতীয় পানি সম্পদ পরিকল্পনা অনুমোদনের জন্য নির্বাহী কমিটির মাধ্যমে পরিষদের নিকট উপস্থাপন করিবে।

(২) পানি সম্পদ পরিকল্পনা আইন, ১৯৯২(১৯৯২ সনের ১২ নং আইন) এ উল্লিখিত বিষয়াদিসহ উক্ত পরিকল্পনায় নিম্নবর্ণিত বিষয়ও অন্তর্ভুক্ত থাকিবে, যথা:—

(ক) পানি সম্পদের বর্তমান ভৌগোলিক অবস্থান ও মৌজা ম্যাপসহ উহার বিবরণ;

(খ) পানি সম্পদের অর্থনৈতিক, প্রাকৃতিক, সামাজিক, রাজনৈতিক, পরিবেশ ও প্রতিবেশগত এবং প্রাতিষ্ঠানিক উপাদান, বৈশিষ্ট্য ও প্রভাব বিশ্লেষণ;

(গ) পানি সম্পদের সকল তথ্য ও উপাত্তের বিজ্ঞানভিত্তিক বিশ্লেষণ;

(ঘ) পানি সম্পদের আহরণ, বিতরণ, ব্যবহার, সুরক্ষা ও সংরক্ষণ সংক্রান্ত সার্বিক পরিকল্পনা, কাঠামো প্রণয়ন ও এতদসংশ্লিষ্ট বিষয়ে স্বল্প, মধ্য ও দীর্ঘ/মেয়াদি দিক নির্দেশনা;

(ঙ) পানি সম্পদের ব্যবস্থাপনা সংক্রান্ত বিষয়ে সংশ্লিষ্ট মন্ত্রণালয়, বিভাগ ও সংস্থাসমূহের মধ্যে সমন্বয়;

(চ) পানি সম্পদের বর্তমান ও ভবিষ্যৎ ব্যবহার;

(ছ) বৃষ্টির পানির সর্বাত্মক ব্যবহারসহ ভূপরিস্থ এবং ভূগর্ভস্থ পানির সমন্বিত ব্যবহার;

(জ) পানির লভ্যতা নিরূপণ;

(ঝ) পানির গুণগত মান নির্ধারণ;

(ঞ) অববাহিকাভিত্তিক উন্নয়ন পরিকল্পনা; এবং

(ট) পানি ব্যবহারের অগ্রাধিকার নিরূপণ।

(৩) জাতীয় পানি সম্পদ পরিকল্পনা, উপ-ধারা (১) এর অধীন,

পরিষদের নিকট অনুমোদনের জন্য উপস্থাপনের পূর্বে নির্বাহী কমিটি আন্তঃমন্ত্রণালয় আলোচনা বা মতবিনিময়ের মাধ্যমে নিশ্চিত করিবে যে, উহা এই আইন ও জাতীয় পানি নীতির সহিত সামঞ্জস্যপূর্ণ এবং যথার্থ।

(৪) উপ-ধারা (৩) এর অধীন প্রয়োজনীয় ব্যবস্থা গ্রহণের পর নির্বাহী কমিটি উক্ত পরিকল্পনার একটি খসড়া সর্বসাধারণের অভিমত গ্রহণের জন্য সরকারি গেজেটে প্রাক-প্রকাশ করিবে এবং ডিজিটাল, ইলেকট্রনিক বা প্রিন্ট মিডিয়ায় উহার বহুল প্রচারের প্রয়োজনীয় ব্যবস্থা গ্রহণ করিবে।

(৫) জাতীয় পানি সম্পদ পরিকল্পনার কোন ব্যক্তির কোন মন্তব্য বা সুপারিশ থাকিলে উপ-ধারা (৪) এর অধীন গেজেট প্রকাশের তারিখ হইতে ৯০ (নব্বই) দিনের মধ্যে নির্বাহী কমিটি বা তৎকর্তৃক নির্দিষ্টকৃত কর্মকর্তা বা কার্যালয়ের নিকট উক্ত মন্তব্য বা সুপারিশ ডিজিটাল, লিখিতভাবে বা অন্য কোন উপায়ে দাখিল বা প্রেরণ করিতে পারিবে।

(৬) উপ-ধারা (৫) এর অধীন প্রাপ্ত মন্তব্য বা সুপারিশ, যদি থাকে, বিশ্লেষণপূর্বক উহা বিবেচনায় লইয়া নির্বাহী কমিটি জাতীয় পানি সম্পদ পরিকল্পনাটি পুনঃপ্রস্তুত করিবে এবং উহা পরিষদের অনুমোদনের জন্য উপস্থাপন করিবে।

(৭) পরিষদ উহার সভায় জাতীয় পানি সম্পদ পরিকল্পনার উপর যথাযথ আলোচনা করিয়া উহার যথার্থতার বিষয়ে নিশ্চিত হইয়া উহা অনুমোদন করিতে পারিবে বা উহাতে প্রয়োজনীয় সংশোধন আনয়ন করিতে পারিবে বা প্রয়োজনীয় সংশোধন করিবার জন্য নির্বাহী কমিটিকে নির্দেশ প্রদান করিতে পারিবে।

(৮) পরিষদ কর্তৃক অনুমোদনের পর নির্বাহী কমিটি জাতীয় পানি সম্পদ পরিকল্পনাটি সরকারি গেজেটে প্রকাশ করিবে এবং পানি সম্পদ মন্ত্রণালয়ের ওয়েব সাইটে প্রচার করিবে।

(৯) উপ-ধারা (৭) এর অধীন জাতীয় পানি সম্পদ পরিকল্পনা চূড়ান্ত না হওয়া পর্যন্ত, এই আইন কার্যকর হইবার অব্যবহিত পূর্বে পানি সম্পদ পরিকল্পনা সংস্থা কর্তৃক প্রণীত National Water Managemant Plan এই আইন ও জাতীয় পানি নীতির বিধানাবলীর সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে, প্রয়োজনীয় অভিযোজনসহ বলবৎ থাকিবে।

(১০) নির্বাহী কমিটি চূড়ান্তকৃত জাতীয় পানি সম্পদ পরিকল্পনার একটি কপি পানি সম্পদ উন্নয়ন প্রকল্প গ্রহণকারী বা প্রণয়নকারী বা বাস্তবায়নকারী সকল সংস্থা বা উপযুক্ত কর্তৃপক্ষ বা স্থানীয় সরকার প্রতিষ্ঠানের নিকট প্রেরণ করিবে এবং এই আইন ও জাতীয় পানি নীতির বিধানাবলী অনুসরণ এবং জাতীয় পানি সম্পদ পরিকল্পনার পরিসীমার মধ্যে থাকিয়া পানি সম্পদ উন্নয়ন প্রকল্প গ্রহণ ও বাস্তবায়নের জন্য অনুরোধ করিবে।

(১১) উপ-ধারা (১০) এর অধীন প্রদত্ত অনুরোধ পত্রে অন্যান্য বিষয়ের সহিত আরও উল্লেখ থাকিবে যে, এই আইন বা ছাড়পত্রের কোন শর্ত বা সুরক্ষা আদেশের কোন বিধি-নিষেধ বা শর্ত প্রতিপালন করা বাধ্যতামূলক এবং উপযুক্ত কারণ ব্যতীত উহা প্রতিপালন না করা জরিমানাযোগ্য এবং একটি দন্ডনীয় অপরাধ।

(১২) এই আইনের অধীন জাতীয় পানি সম্পদ পরিকল্পনা চূড়ান্ত হইবার পর পানি সম্পদ উন্নয়ন প্রকল্প গ্রহণকারী বা প্রণয়নকারী বা বাস্তবায়নকারী প্রত্যেক সংস্থা বা উপযুক্ত কর্তৃপক্ষ বা স্থানীয় সরকার প্রতিষ্ঠান জাতীয় পানি সম্পদ পরিকল্পনার সহিত সামঞ্জস্য রাখিয়া উক্ত প্রকল্প গ্রহণ বা প্রণয়ন বা বাস্তবায়ন করিতে বাধ্য থাকিবে।

ব্যাখ্যাঃ এই ধারায়, "অববাহিকায়" অর্থ বৃষ্টি, বরফ, তুষারপাত, ইত্যাদি হইতে সৃষ্ট প্রবাহ যে অঞ্চল বা অঞ্চলসমূহের উপর দিয়া প্রবাহিত হইয়া জলাধারে পতিত হয়।

১৬। পানি সম্পদ উন্নয়ন প্রকল্পের ছাড়পত্র ইস্যুকরণ।—(১) আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, পানি সম্পদ উন্নয়ন প্রকল্প জাতীয় পানি সম্পদ পরিকল্পনার সহিত সামঞ্জস্যপূর্ণ কিনা উহা নিশ্চিত করিবার জন্য পানি সম্পদ উন্নয়ন প্রকল্প গ্রহণকারী, প্রণয়নকারী বা বাস্তবায়নকারী সংস্থা, উপযুক্ত কর্তৃপক্ষ বা স্থানীয় সরকার প্রতিষ্ঠান প্রকল্পের কার্যক্রম শুরু করিবার পূর্বেই, বিধি দ্বারা নির্ধারিত পদ্ধতি ও শর্তে, নির্বাহী কমিটির নিকট আবেদন করিবে।

(২) উপ-ধারা (১) এর অধীন আবেদন প্রাপ্তির পর নির্বাহী কমিটি উক্ত আবেদন এবং সংশ্লিষ্ট প্রকল্পের কাগজাদি পর্যালোচনান্তে জাতীয় পানি সম্পদ পরিকল্পনার সহিত আবেদনকৃত প্রকল্পটি সামঞ্জস্যপূর্ণ কিনা উহা নিশ্চিত করিবে এবং বিধি দ্বারা নির্ধারিত পদ্ধতি ও শর্তে উক্ত আবেদন মঞ্জুর করিয়া ছাড়পত্র ইস্যু করিবে অথবা নামঞ্জুর করিয়া কারণ অবহিত করিবে।

(৩) যদি কোন পানি সম্পদ উন্নয়ন প্রকল্প গ্রহণকারী, প্রণয়নকারী বা বাস্তবায়নকারী কোন সংস্থা, উপযুক্ত কর্তৃপক্ষ বা স্থানীয় সরকার প্রতিষ্ঠান ছাড়পত্রের কোন শর্ত লংঘন করে বা এই আইনের কোন বিধানাবলী লংঘন করে, তাহা হইলে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, প্রয়োজনীয় অনুসন্ধান করিয়া নির্বাহী কমিটি নিশ্চিত হইয়া উক্ত সংস্থা, কর্তৃপক্ষ বা প্রতিষ্ঠানকে বিধি দ্বারা নির্ধারিত পদ্ধতিতে শুনানির যুক্তিসঙ্গত সুযোগ প্রদান করিয়া উক্ত প্রকল্পের অনুকূলে প্রদত্ত ছাড়পত্র প্রত্যাহার করিতে পারিবে এবং উক্তরূপ প্রত্যাহারের বিষয়টি প্রিন্ট ও ইলেক্ট্রনিক মাধ্যমে বহুল প্রকাশ ও প্রচার করিতে পারিবে।

পঞ্চম অধ্যায়

পানির ব্যবহার নিয়ন্ত্রণ

এবং

পানি সম্পদের সুরক্ষা ও সংরক্ষণ

১৭। পানি সংকটাপন্ন এলাকা ঘোষণা ও উহার ব্যবস্থাপনা।—(১) সরকার নির্বাহী কমিটির সুপারিশের ভিত্তিতে জলাধার বা পানিধারক স্তরের সুরক্ষার জন্য, যথাযথ অনুসন্ধান, পরীক্ষা নিরীক্ষা বা জরিপের

ফলাফলের ভিত্তিতে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যে কোন এলাকা বা উহার অংশবিশেষ বা পানি সম্পদ সংশ্লিষ্ট যে কোন ভূমিকে নির্দিষ্ট সময়ের জন্য পানি সংকটাপন্ন এলাকা হিসাবে ঘোষণা করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন জারিকৃত প্রজ্ঞাপনে মৌজা ম্যাপ ও দাগ নম্বর উল্লেখ করিয়া পানি সংকটাপন্ন এলাকার সীমানা নির্দিষ্ট করিতে হইবে।

(৩) নির্বাহী কমিটি পানি সংকটাপন্ন এলাকার সুষ্ঠু ব্যবস্থাপনা নিশ্চিত করিবার লক্ষ্যে, এই আইনের বিধানাবলী সাপেক্ষে, সুরক্ষা আদেশ দ্বারা যে কোন বিধি-নিষেধ আরোপ করিতে পারিবে।

১৮। পানি সংকটাপন্ন এলাকায় পানি সম্পদের অগ্রাধিকার ভিত্তিক ব্যবহার ও অব্যাহতি।—(১) আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, জাতীয় ও স্থানীয় জনগোষ্ঠীর স্বার্থে, পানি সংকটাপন্ন এলাকার পানির প্রাপ্যতা সাপেক্ষে, নিম্ন ক্রমানুযায়ী পানির আহরণ বা ব্যবহার করিতে হইবে, যথাঃ—

(ক) খাবার পানি;

(খ) গৃহস্থালী কাজ;

(গ) কৃষি কাজ;

(ঘ) মৎস্য চাষ;

(ঙ) পরিবেশের ভারসাম্য;

(চ) বন্য প্রাণী;

(ছ) নদীতে পানি প্রবাহ অক্ষুণ্ন রাখা;

(জ) শিল্প খাত;

(ঝ) লবণাক্ততা নিয়ন্ত্রণ;

(ঞ) বিদ্যুৎ উৎপাদন;

(ট) বিনোদন; এবং

(ঠ) অন্যান্য।

(২) নির্বাহী কমিটি, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, সংশ্লিষ্ট এলাকার আর্থ-সামাজিক অবস্থা ও জনগণের মতামতের ভিত্তিতে উপ-ধারা (১) এ উল্লিখিত ক্রম পরিবর্তন করিতে পারিবে।

(৩) এই ধারার উদ্দেশ্য পূরণকল্পে কোন পানি সংকটাপন্ন এলাকার পানির প্রাপ্যতার বিষয়ে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, ডিজিটাল, ইলেক্ট্রনিক বা প্রিন্ট মিডিয়ায় গণবিজ্ঞপ্তি দ্বারা বহুল প্রকাশ ও সাধারণ্যে প্রচার করিতে হইবে।

১৯। ভূগর্ভস্থ পানিধারক স্তরের সর্বনিম্ন সীমা নির্ধারণ ও ভূগর্ভস্থ পানি আহরণে বিধি-নিষেধ।—(১) আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, নির্বাহী কমিটি, যথাযথ অনুসন্ধান,পরীক্ষা-নিরীক্ষা বা জরিপের ফলাফলের ভিত্তিতে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যে কোন এলাকার ভূগর্ভস্থ পানিধারক স্তরের সর্বনিম্ন নিরাপদ আহরণ সীমা (safe yield) নির্ধারণ করিতে পারিবে।

(২) ভূগর্ভস্থ পানিধারক স্তরের সর্বনিম্ন আহরণ সীমা যে এলাকার জন্য প্রযোজ্য হইবে সেই এলাকার মৌজা ম্যাপ ও দাগ নম্বর উল্লেখ করিয়া উহার সীমানা উপ-ধারা (১) এর অধীন জারিকৃত প্রজ্ঞাপনে নির্দিষ্ট করিতে পারিবে।

(৩) কোন ব্যক্তি বা উপযুক্ত কর্তৃপক্ষ, ভূগর্ভস্থ পানিধারক স্তরের সর্বনিম্ন নিরাপদ আহরণ সীমা ও বিদ্যমান অন্যান্য আইনের বিধানাবলী সাপেক্ষে, ভূগর্ভস্থ পানি আহরণের জন্য বিধি দ্বারা নির্ধারিত পদ্ধতিতে, গভীর বা অগভীর নলকূপ স্থাপন করিতে পারিবে।

(৪) ভূগর্ভস্থ পানিধারক স্তর হইতে পানির নিরাপদ আহরণ নিশ্চিত করিবার লক্ষ্যে নির্বাহী কমিটি, এই আইনের বিধানাবলী সাপেক্ষে, সুরক্ষা আদেশ দ্বারা যে কোন বিধি-নিষেধ আরোপ করিতে পারিবে।

ব্যাখ্যাঃ এই ধারায় "নিরাপদ আহরণ সীমা" অর্থ পানিধারক স্তর হইতে পানির এমন কোন পরিমাণ উত্তোলন যাহার ফলে পানিধারক স্তর নিরাপদ ও সুরক্ষিত থাকে।

২০। জলস্রোতের স্বাভাবিক প্রবাহ নিশ্চিতকরণ।—(১) উপযুক্ত কর্তৃপক্ষের অনুমতি ব্যতীত কোন ব্যক্তি বা সংস্থা, কোন জলাধারে, তীরবর্তী হউক বা না হউক, স্থাপনা নির্মাণ করিয়া বা জলাধার ভরাট করিয়া বা জলাধার হইতে মাটি বা বালু উত্তোলন করিয়া জলস্রোতের স্বাভাবিক প্রবাহ বন্ধ বা উহার প্রবাহে বাধা সৃষ্টি বা উহার গতিপথ পরিবর্তন বা পরিবর্তনের চেষ্টা করিতে পারিবে নাঃ

তবে শর্ত থাকে যে, জলাধারের উন্নয়নের স্বার্থে বা উহার তীরের ভাঙ্গন রোধকল্পে যথাযথ সমীক্ষার ভিত্তিতে এবং উপযুক্ত কর্তৃপক্ষের অনুমোদনক্রমে, জলাধারে যে কোন স্থাপনা নির্মাণ বা জলাধার সম্পূর্ণ বা উহার অংশবিশেষ ভরাট করা যাইবে ঃ

আরও শর্ত থাকে যে, প্রাকৃতিক বন্যার কবল হইতে জনসাধারণ ও তাহার সম্পদ রক্ষার্থে উপযুক্ত কর্তৃপক্ষের অনুমোদনক্রমে, ধারা ২১ এর সামগ্রিকতাকে ক্ষুণ্ন না করিয়া জলাধারে বন্যা নিয়ন্ত্রণ বাঁধ নির্মাণ করা যাইবে।

(২) জলস্রোতের স্বাভাবিক প্রবাহ নিশ্চিত করিবার লক্ষ্যে নির্বাহী কমিটি, এই আইনের বিধানাবলী সাপেক্ষে, সুরক্ষা আদেশ দ্বারা যে কোন বিধি-নিষেধ আরোপ করিতে পারিবে।

২১। বন্যা নিয়ন্ত্রণ বাঁধের সুরক্ষা।—(১) বন্যা নিয়ন্ত্রণ বাঁধের স্থায়িত্ব রক্ষার স্বার্থে উহার উপর বা উহার পার্শ্বঢালে কোন ব্যক্তি, উপযুক্ত কর্তৃপক্ষের অনুমোদন ব্যতীত, কোন প্রকার ঘরবাড়ি, স্থাপনা বা অবকাঠামো নির্মাণ করিতে পারিবেন না।

(২) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, বাঁধ

মজবুতকরণ এবং সরকারের বনায়ন কর্মসূচি বাস্তবায়নের জন্য, প্রচলিত নীতিমালা অনুসরণপূর্বক, বাঁধের পার্শ্বে সুসংগঠিত ও পরিকল্পিত উপায়ে উপযুক্ত বৃক্ষ রোপণ করা যাইবে।

(৩) উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, বাঁধের সুরক্ষার জন্য ব্যবহৃত ভূমির সর্বোত্তম ব্যবহার নিশ্চিতকল্পে বন্যা নিয়ন্ত্রণ বাঁধ, উপযুক্ত কর্তৃপক্ষের অনুমোদনক্রমে, সড়ক বা রাস্তা হিসাবে ব্যবহার করা যাইবে।

(৪) যদি কোন ব্যক্তি, উপযুক্ত কর্তৃপক্ষের অনুমতি ব্যতীত, উপ-ধারা (১) এর বিধান লংঘন করিয়া বন্যা নিয়ন্ত্রণ বাঁধের উপর কোন প্রকার ঘর-বাড়ি, স্থাপনা বা অবকাঠামো নির্মাণ করেন, তাহা হইলে নির্বাহী কমিটি বিদ্যমান অন্যান্য আইনে যাহা থাকুক না কেন, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, অপসারণ আদেশ প্রদান করিতে পারিবে।

(৫) বন্যা নিয়ন্ত্রণ বাঁধের স্থায়িত্ব নিশ্চিত করিবার জন্য নির্বাহী কমিটি, এই আইনের বিধানাবলী সাপেক্ষে, সুরক্ষা আদেশ দ্বারা যে কোন বিধি-নিষেধ আরোপ করিতে পারিবে।

২২। জলাধার সংরক্ষণ ও ব্যবস্থাপনা।—(১) আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, যথাযথ অনুসন্ধান, পরীক্ষা-নিরীক্ষা বা জরিপের ফলাফলের ভিত্তিতে, নির্বাহী কমিটির নিকট যদি এই মর্মে প্রতীয়মান হয় যে,—

(ক) কোন প্রাকৃতিক বা অন্য কোন কারণে সুপেয় পানির তীব্র সংকট থাকায় সুপেয় পানির উৎস হিসাবে কোন দীঘি, পুকুর বা অনুরূপ কোন জলাধার সংরক্ষণ করা আশু প্রয়োজন; বা

(খ) অতিথি পাখির নিরাপদ অবস্থান, অবাধ বিচরণ এবং অভয়াশ্রম নিশ্চিত করিবার জন্য কোন হাওর, বাওর বা অনুরূপ কোন জলাধার সংরক্ষণ করা আশু প্রয়োজন,—

তাহা হইলে নির্বাহী কমিটি, সীমানা নির্ধারণ করিয়া, সুপেয় পানির উৎস হিসাবে সংশ্লিষ্ট জলাধার সংরক্ষণের জন্য উহার মালিক বা উপযুক্ত কর্তৃপক্ষকে সুরক্ষা আদেশ প্রদান করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন প্রদত্ত আদেশ জলাধারের মৌজা ম্যাপ ও দাগ নম্বর উল্লেখ করিয়া উহার সীমানা নির্দিষ্ট করিতে হইবে।

(৩) জলাধারের সুষ্ঠু ব্যবস্থাপনা নিশ্চিত করিবার লক্ষ্যে নির্বাহী কমিটি, এই আইনের বিধানাবলী সাপেক্ষে, সুরক্ষা আদেশ দ্বারা যে কোন বিধি-নিষেধ আরোপ করিতে পারিবে।

২৩। পানি অঞ্চলে বিভক্তিকরণ ও উহার ব্যবস্থাপনা।—(১) পানির কার্যকর এবং সুষ্ঠু ব্যবহারের উদ্দেশ্যে সংশ্লিষ্ট অন্যান্য মন্ত্রণালয়, বিভাগ বা সংস্থার সহিত আলোচনা ও সমন্বয়পূর্বক নির্বাহী কমিটি, যথাযথ অনুসন্ধানের ভিত্তিতে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যে কোন এলাকাকে নিম্নরূপ অঞ্চলে বিভক্ত করিতে পারিবে, যথা:—

(ক) শিল্প পানি অঞ্চল;

(খ) কৃষি পানি অঞ্চল;

(গ) ঈষৎ লোনা পানিতে মৎস্য চাষ(ব্রাকিশ একুয়াকালচার) পানি অঞ্চল;

(ঘ) হ্যাচারি পানি অঞ্চল।

(২) উপ-ধারা (১) এ উল্লিখিত পানি অঞ্চলের সুষ্ঠু ব্যবস্থাপনা নিশ্চিত করিবার লক্ষ্যে নির্বাহী কমিটি, এই আইনের বিধানাবলী সাপেক্ষে, সুরক্ষা আদেশ দ্বারা যে কোন বিধি-নিষেধ আরোপ করিতে পারিবে।

২৪। পানি মজুদকরণে বিধি-নিষেধ।—(১) উপযুক্ত কর্তৃপক্ষের অনুমতি এবং এই আইন অনুসরণ ব্যতিরেকে কোন ব্যক্তি কোন জলস্রোতের পানি প্রাকৃতিক বা কৃত্রিম ধারকে মজুদ করিতে পারিবেন না।

(২) পানি মজুতকরণ কর্মকাণ্ড নিয়ন্ত্রণ করিবার জন্য নির্বাহী কমিটি, এই আইনের বিধানাবলী সাপেক্ষে, সুরক্ষা আদেশ দ্বারা যে কোন বিধি-নিষেধ আরোপ করিতে পারিবে।

২৫। বন্যা নিয়ন্ত্রণ অঞ্চল ঘোষণা ও উহার ব্যবস্থাপনা।—(১) বন্যার জলস্রোতের প্রবাহ নির্বিঘ্ন করিবার লক্ষ্যে যথাযথ অনুসন্ধান ও জরিপের ফলাফলের ভিত্তিতে নির্বাহী কমিটি, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, যে কোন জলাভূমিকে, জাতীয় ও স্থানীয় জনগোষ্ঠীর স্বার্থে, বন্যা নিয়ন্ত্রণ অঞ্চল হিসাবে ঘোষণা করিতে পারিবে।

(২) উপ-ধারা (১) এর অধীন জারিকৃত প্রজ্ঞাপনে বন্যা নিয়ন্ত্রণ অঞ্চলের মৌজা ম্যাপ ও দাগ নম্বর উল্লেখ করিয়া উহার সীমানা নির্দিষ্ট করিতে হইবে।

(৩) উপ-ধারা (১) এর অধীন ঘোষিত বন্যা নিয়ন্ত্রণ অঞ্চলের সুরক্ষার জন্য নির্বাহী কমিটি, সাধারণ ক্ষেত্রে বিধি দ্বারা এবং বিশেষ ক্ষেত্রে আদেশ দ্বারা, উক্ত অঞ্চলের মধ্য দিয়া বন্যার পানির প্রবাহে বাঁধা বা জলাধারের পানির প্রবাহ পরিবর্তনকারী যে কোন কর্মকাণ্ড নিষিদ্ধকরণ বা উহার উপর শর্তারোপ করিতে পারিবে।

২৬। জলাধারের সমগ্র পানি আহরণে বিধি-নিষেধ।—আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, কোন জলাধারের সমগ্র পানি আহরণ করিয়া সম্পূর্ণ নিঃশেষ করা যাইবে না ঃ

তবে শর্ত থাকে যে, এই আইনের বিধানাবলী সাপেক্ষে, ব্যক্তিমালিকানাধীন জলাধারের পানি আহরণের ক্ষেত্রে এই ধারার বিধানাবলী প্রযোজ্য হইবে না।

২৭। সুরক্ষা আদেশ ইস্যু ও উহার দ্বারা বিধি-নিষেধ বা শর্তারোপের ক্ষমতা।—(১) আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, নির্বাহী কমিটি, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, ধারা ৪২ এর বিধান সাপেক্ষে, সুরক্ষা আদেশ ইস্যু করিতে পারিবে ও জারি করিবে।

(২) সুরক্ষা আদেশ প্রদানের পূর্বে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, সংশ্লিষ্ট এলাকার জনগণকে শুনানির সুযোগ প্রদান করিয়া তাহাদের বক্তব্য বিবেচনা করিতে হইবে।

(৩) সুরক্ষা আদেশে অন্যান্য বিষয়ের সহিত আরও উল্লেখ থাকিবে যে, উপযুক্ত কারণ ব্যতীত উক্ত আদেশ প্রতিপালন করা বাধ্যতামূলক এবং উহা প্রতিপালন না করা জরিমানাযোগ্য এবং একটি দণ্ডনীয় অপরাধ।

(৪) এই ধারার উদ্দেশ্য পূরণকল্পে সুরক্ষা আদেশ জারির বিষয়টি, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, ডিজিটাল, ইলেক্ট্রনিক ও প্রিন্ট মিডিয়ায় গণবিজ্ঞপ্তি দ্বারা বহুল প্রকাশ ও সাধারণ্যে প্রচার করিতে হইবে।

২৮। পানি দূষণ নিয়ন্ত্রণ।—পানি দূষণ নিয়ন্ত্রণের ক্ষেত্রে বাংলাদেশ পরিবেশ সংরক্ষণ আইন, ১৯৯৫(১৯৯৫ সনের ১ নং আইন) এর বিধানাবলী প্রযোজ্য হইবে।

ব্যাখ্যাঃ "পানি দূষণ" অর্থ প্রত্যক্ষ ও পরোক্ষভাবে পানির ভৌত, রাসায়নিক গুণাবলীর ক্ষতিকর কোন পরিবর্তন।

ষষ্ঠ অধ্যায়

অপরাধ, দণ্ড ও বিচার

২৯। প্রতিপালন বা সুরক্ষা আদেশ লংঘন করিবার দণ্ড, অর্থদণ্ড ও জরিমানা।—(১) যদি কোন ব্যক্তি ইচ্ছাকৃতভাবে এই আইনের অধীন জারিকৃত কোন প্রতিপালন বা সুরক্ষা আদেশ লংঘন করেন বা অবজ্ঞা করেন, তাহা হইলে তিনি, উপ-ধারা(২) এর বিধান সাপেক্ষে, অনধিক ৫ (পাঁচ) বৎসর কারাদণ্ড অথবা অনধিক ১০(দশ) হাজার টাকা অর্থদণ্ড বা উভয় দণ্ডে দণ্ডিত হইবেন।

(২) যদি কোন ব্যক্তি ইচ্ছাকৃতভাবে কোন প্রতিপালন বা সুরক্ষা আদেশ প্রথমবার লংঘন করেন বা অবজ্ঞা করেন, তাহা হইলে উপ-ধারা (১) এ যাহা কিছুই থাকুক না কেন, নির্বাহী কমিটি বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা বিধি দ্বারা নির্ধারিত ক্ষেত্র, পদ্ধতি ও সীমা অনুযায়ী জরিমানা আরোপ করিয়া প্রথমবার অপরাধের দায় অবলোপন করিতে পারিবে এবং দ্বিতীয়বার বা তৎপরবর্তীতে উক্ত আদেশ ভংগ বা অবজ্ঞার ক্ষেত্রে উহা উপ-ধারা (১) এর অধীন অপরাধ হিসাবে গণ্য হইবে।

(৩) নির্বাহী কমিটি বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তা উপ-ধারা (২) এর অধীন জরিমানা আরোপের পূর্বে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, সংশ্লিষ্ট ব্যক্তিকে নোটিশের মাধ্যমে শুনানির যুক্তিসংগত সুযোগ প্রদান করিবেন।

ব্যাখ্যাঃ এই ধারায়, "জরিমানা" অর্থে আদালত কর্তৃক প্রদত্ত অর্থদণ্ড অর্ন্তভুক্ত হইবে না।

৩০। বাধা প্রদানের দণ্ড।—(১) যদি কোন ব্যক্তি এই আইনের অধীন দায়িত্ব পালনরত কোন কর্মকর্তা বা কর্মচারীকে তাহার দায়িত্ব বা কর্তব্য পালনে ইচ্ছাকৃতভাবে বাধা প্রদান করেন অথবা উক্তরূপ কোন ব্যক্তিকে কোন প্রতিষ্ঠান, ভূমি বা প্রকল্প এলাকা পরিদর্শন করিবার জন্য যুক্তিসঙ্গত সুযোগ প্রদান করিতে ইচ্ছাকৃতভাবে অস্বীকার করেন বা অবহেলা করেন, তাহা হইলে তিনি অনধিক ৫ (পাঁচ) বৎসর কারাদণ্ড অথবা অনধিক ১০ (দশ) হাজার টাকা অর্থদণ্ড বা উভয় দণ্ডে দন্ডিত হইবেন।

(২) কোন ব্যক্তি উপ-ধারা (১) এ উল্লিখিত দায়িত্ব পালনরত কোন কর্মকর্তার তলব অনুযায়ী তাহার সম্মুখে কোন রেজিস্টার, নথি বা দলিল-দস্তাবেজ উপস্থাপন করিতে ইচ্ছাকৃতভাবে অস্বীকার করিলে বা ব্যর্থ হইলে অথবা উক্তরূপ দায়িত্ব পালনরত কোন কর্মকর্তার সম্মুখে কোন ব্যক্তিকে হাজির হইতে বা তাহার জবানবন্দী গ্রহণ করিতে ইচ্ছাকৃতভাবে বাধা প্রদান করিলে বা বাধা প্রদানের চেষ্টা করিলে, তিনি অনধিক ৩(তিন) মাস কারাদণ্ড অথবা অনধিক ২ (দুই) হাজার টাকা অর্থদণ্ড বা উভয় দণ্ডে দণ্ডিত হইবেন।

ব্যাখ্যাঃ এই ধারায়, "বাধা" অর্থে হুমকিও অর্ন্তভুক্ত হইবে।

৩১। মিথ্যা তথ্য প্রদানের দণ্ড।—যদি কোন ব্যক্তি উদ্দেশ্য প্রণোদিতভাবে বা জ্ঞাতসারে কোন মিথ্যা বা বিকৃত তথ্য প্রদান বা তথ্য গোপন করেন, তাহা হইলে তিনি অনধিক ১ (এক) বৎসর কারাদণ্ড অথবা অনধিক ৩ (তিন) হাজার টাকা অর্থদণ্ড বা উভয় দণ্ডে দণ্ডিত হইবেন।

৩২। অপরাধের বিচার, আমলযোগ্যতা, ইত্যাদি।—(১) আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, এই আইনের অধীন সংঘটিত অপরাধসমূহ প্রথম শ্রেণীর জুডিশিয়াল ম্যাজিস্ট্রেট বা মেট্রোপলিটন ম্যাজিস্ট্রেট কর্তৃক বিচার্য হইবে।

(২) এই আইনের অধীন সংঘটিত অপরাধসমূহ জামিনযোগ্য (bailable) ও অ-আমলযোগ্য (non-cognizable) হইবে।

(৩) এই আইনের অধীন সংঘটিত কোন অপরাধের বিচার সংক্ষিপ্ত পদ্ধতিতে অনুষ্ঠিত হইবে।

৩৩। ফৌজদারী কার্যবিধির প্রয়োগ।—এই আইনের বিধানাবলী সাপেক্ষে, এই আইনে বর্ণিত যে কোন অপরাধের তদন্ত, বিচার, আপীল এবং আনুষঙ্গিক সকল বিষয়ে ফৌজদারী কার্যবিধি প্রযোজ্য হইবে।

৩৪। কোম্পানী বা প্রতিষ্ঠান কর্তৃক অপরাধ সংঘঠন।—কোন কোম্পানী বা প্রতিষ্ঠান কর্তৃক এই আইনের অধীন কোন অপরাধ সংঘটিত হইলে বা কোন বিধান লঙ্ঘিত হইলে উক্ত অপরাধ বা লঙ্ঘনের সহিত প্রত্যক্ষ সংশ্লিষ্টতা রহিয়াছে উক্ত কোম্পানী বা প্রতিষ্ঠানের এইরূপ প্রত্যেক পরিচালক, নির্বাহী, ম্যানেজার, সচিব বা অন্য কোন কর্মকর্তা বা কর্মচারী বা প্রতিনিধি উক্ত অপরাধ বা লংঘন করিয়াছেন বলিয়া গণ্য হইবে, যদি না তিনি প্রমাণ করিতে পারেন যে, উক্ত অপরাধ বা লংঘন তাহার অজ্ঞাতসারে সংঘটিত হইয়াছে অথবা উক্ত অপরাধ বা লংঘন রোধ করিবার জন্য তিনি যথাসাধ্য চেষ্টা করিয়া অকৃতকার্য হইয়াছেন।

ব্যাখ্যাঃ এই ধারায়ঃ—

(ক) "কোম্পানী বা প্রতিষ্ঠান" অর্থে নির্গমিত বা নিবন্ধিত হউক বা না হউক, যে কোন কোম্পানী, সংস্থা, প্রতিষ্ঠান, অংশীদারী কারবার, সমিতি বা একাধিক ব্যক্তি সমন্বয়ে গঠিত সংগঠন বা সংস্থা অর্ন্তভুক্ত হইবে; এবং

(খ) "পরিচালক" অর্থে অংশীদার বা পরিচালনা বোর্ডের সদস্য অন্তর্ভুক্ত হইবে।

৩৫। অপরাধের সহায়তাকারী।—যদি কোন ব্যক্তি কোন অপরাধ সংঘটনে সহায়তা বা সহযোগিতা করেন বা প্ররোচিত বা প্রলুব্ধ করেন, তাহা হইলে তিনি অপরাধ সংঘটনকারীর ন্যায় একই অপরাধে অপরাধী বলিয়া গণ্য হইবেন এবং উক্ত অপরাধীর ন্যায় একইভাবে দায়ী হইবেন।

৩৬। অপরাধ বিচারার্থে গ্রহণ।—মহাপরিচালক বা তৎকর্তৃক ক্ষমতাপ্রাপ্ত কোন কর্মকর্তার লিখিত অভিযোগ ব্যতীত কোন আদালত এই আইনের অধীন কোন মামলা বিচারার্থে আমলে গ্রহণ করিবে না।

সপ্তম অধ্যায়

বিবিধ

৩৭। পানির মূল্য অব্যাহতির ক্ষমতা।—আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, সরকার, উপযুক্ত কর্তৃপক্ষের সহিত পরামর্শক্রমে, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, জাতীয় বা স্থানীয় স্বার্থে পানি সেবাভোগী যে কোন ব্যক্তি শ্রেণীকে কোন নির্দিষ্ট সময় বা এলাকার ক্ষেত্রে গৃহস্থালী ও সাধারণ কৃষি কাজে ব্যবহৃত পানির মূল্য প্রদানের দায় হইতে বৈষম্য ব্যতিরেকে অব্যাহতি প্রদান করিতে পারিবে।

৩৮। তথ্য প্রযুক্তির ব্যবহার।—এই আইনের অধীন কোন কার্য সম্পাদন, ক্ষমতা প্রয়োগ ও দায়িত্ব পালনের ক্ষেত্রে, এই আইনে বিধৃত পদ্ধতির অতিরিক্ত তথ্য ও যোগাযোগ প্রযুক্তি আইন, ২০০৬ (২০০৬ সনের ৩৯ নং আইন) এর বিধান সাপেক্ষে এবং উক্ত আইনে সংজ্ঞায়িত অর্থে তথ্য প্রযুক্তি ব্যবহার করা যাইবে।

৩৯। ক্ষমতা অর্পণ।—পরিষদ, সাধারণ বা বিশেষ আদেশ দ্বারা, এই আইনের অধীন উহার যে কোন ক্ষমতা বা কার্যাবলী প্রয়োজনবোধে এবং তৎনির্দিষ্টকৃত শর্ত সাপেক্ষে, নির্বাহী কমিটি, নির্বাহী কমিটির সভাপতি, মহাপরিচালক, পরিদর্শক বা অন্য কোন কর্মকর্তাকে অর্পণ করিতে পারিবে।

৪০। প্রবেশ, রেকর্ডপত্র যাচনা, জিজ্ঞাসাবাদ, ইত্যাদির ক্ষমতা।—এই আইনের উদ্দেশ্য পূরণকল্পে, পরিষদ বা নির্বাহী কমিটি বা এতদুদ্দেশ্যে সাধারণ বা বিশেষভাবে ক্ষমতাপ্রাপ্ত প্রত্যেক কর্মকর্তা বা পরিদর্শক নিম্ন বর্ণিত ক্ষমতা প্রয়োগ করিতে পারিবে, যথাঃ

(ক) যে কোন সরকারি বা বেসরকারি ভূমিতে বা প্রকল্প এলাকায় প্রবেশ এবং যে কোন ব্যক্তিকে জিজ্ঞাসাবাদ বা রেকর্ডপত্র বা তথ্য উপাত্ত যাচনা ও পর্যালোচনা করা;

(খ) উক্ত ভূমি বা এলাকা বা উহাতে অবস্থিত যে কোন কিছু পরিদর্শন করা;

(গ) উক্ত ভূমি বা এলাকায় যে কোন অনুসন্ধান বা নমুনা সংগ্রহ বা জরিপ পরিচালনা করা।

৪১। পানি সম্পদ পরিকল্পনা সংস্থাকে সহায়তার ক্ষেত্রে বাধ্যবাধকতা।—এই আইনের অধীন ক্ষমতা প্রয়োগ বা কার্যসম্পাদনের উদ্দেশ্যে পানি সম্পদ পরিকল্পনা সংস্থা বা উহার নিকট হইতে ক্ষমতাপ্রাপ্ত ব্যক্তি যে কোন সরকারি-বেসরকারি বা সংবিধিবদ্ধ কর্তৃপক্ষকে, বা উহাদের কর্মকর্তা ও কর্মচারীকে, প্রয়োজনীয় সহায়তা প্রদানের জন্য অনুরোধ করিতে পারিবে এবং এইরূপে অনুরোধ করা হইলে, উক্ত কর্মকর্তা ও কর্মচারী, কর্তৃপক্ষ বা সংস্থা উক্তরূপ সহায়তা প্রদান করিবে।

৪২। আদেশ জারি।—এই আইনের অধীন ইস্যুকৃত কোন নোটিশ বা আদেশ, কোন ব্যক্তির উপর জারি করা প্রয়োজন হইলে, উহা উক্ত ব্যক্তির উপরে যথাযথভাবে জারি করা হইয়াছে বলিয়া গণ্য হইবে, যদি উহা—

(ক) উক্ত ব্যক্তি বা তাহার প্রতিনিধি কর্তৃক ব্যক্তিগতভাবে গ্রহণ করা হয়;

(খ) উক্ত ব্যক্তির সর্বশেষ জ্ঞাত বাংলাদেশের বাসস্থানে বা ব্যবসায়ের স্থানে রেজিস্ট্রিকৃত ডাকযোগে প্রেরণ করা হয়;

(গ) ইলেকট্রনিক পদ্ধতিতে প্রেরণ বা প্রচার করা হয়; বা

(ঘ) বহুল প্রকাশিত জাতীয় দৈনিক পত্রিকায় প্রকাশ ও প্রচার করা হয়।

৪৩। অর্থ আদায়ের পদ্ধতি।—(১) এই আইনের অধীন কোন ব্যক্তির নিকট জরিমানার টাকা বা কোন পাওনা অনাদায়ী থাকিলে নির্বাহী কমিটি উপ-ধারা (২) এর বিধান সাপেক্ষে, বিধি দ্বারা নির্ধারিত পদ্ধতিতে, উহা আদায় করিতে পারিবে।

(২) কোন ব্যক্তির নিকট হইতে এই আইনের অধীন কোন পাওনা আদায়ের উদ্দেশ্যে, নির্বাহী কমিটি, আপাততঃ বলবৎ অন্য কোন আইনে ভিন্নতর যাহা কিছুই থাকুক না কেন, উক্ত ব্যক্তির ব্যাংক এ্যাকাউন্ট ফ্রিজ করিবার জন্য যে কোন ব্যাংক কর্তৃপক্ষকে অনুরোধ করিতে পারিবে।

৪৪। তথ্য প্রাপ্তি অধিকার।—প্রত্যেক ব্যক্তি তথ্য অধিকার আইন, ২০০৯ (২০০৯ সনের ২০ নং আইন) এ সংজ্ঞায়িত অর্থে এবং উক্ত আইনের বিধানাবলি সাপেক্ষে, পরিষদ বা নির্বাহী কমিটি বা এই আইনের অধীন ক্ষমতাপ্রাপ্ত যেকোন কর্মকর্তা কর্তৃক সম্পাদিত কার্য, প্রয়োগকৃত ক্ষমতা, পালনকৃত দায়িত্ব, গৃহীত ব্যবস্থা বা প্রদত্ত আদেশ সম্পর্কে তথ্য প্রাপ্তির অধিকারী হইবেন।

৪৫। বিধি প্রণয়নের ক্ষমতা।—এই আইনের উদ্দেশ্য পূরণকল্পে এবং উহার বিধানাবলী সাপেক্ষে, সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, বিধি প্রণয়ন করিতে পারিবে।

৪৬। ইংরেজিতে অনূদিত পাঠ প্রকাশ।—(১) এই আইন কার্যকর হইবার পর সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, এই আইনের বাংলা পাঠের ইংরেজিতে অনূদিত একটি নির্ভরযোগ্য পাঠ (Authentic English Text) প্রকাশ করিতে পারিবে।

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

৪৭। রহিতকরণ ও হেফাজত।—(১) ধারা ৪ এবং ধারা ৯ এর অধীন যথাক্রমে জাতীয় পানি সম্পদ পরিষদ এবং নির্বাহী কমিটি গঠিত হইবার সংগে সংগে জাতীয় পানি সম্পদ পরিষদ এবং নির্বাহী কমিটি গঠিত সংক্রান্ত ইতোপূর্বে জারীকৃত সকল প্রজ্ঞাপন রহিত হইবে এবং উক্ত প্রজ্ঞাপনসমূহের দ্বারা গঠিত জাতীয় পানি সম্পদ পরিষদ ও নির্বাহী কমিটি বিলুপ্ত হইবে।

(২) উপ-ধারা (১) এর অধীন বিলুপ্ত হওয়া সত্ত্বেও, বিলুপ্ত জাতীয় পানি সম্পদ পরিষদ, ক্ষেত্রমত, নির্বাহী কমিটি কর্তৃক কৃত কার্যক্রম বা গৃহীত ব্যবস্থা এই আইনের অধীন কৃত বা গৃহীত হইয়াছে বলিয়া গণ্য হইবে এবং এই আইনের সহিত সামঞ্জস্যপূর্ণ হওয়া সাপেক্ষে অব্যাহত থাকিবে।

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বাংলাদেশের পুঁজিবাজারের উন্নয়ন ও নিয়ন্ত্রণ, এক্সচেঞ্জসমূহে কার্যকর প্রাতিষ্ঠানিক সু-শাসন প্রতিষ্ঠা, সিকিউরিটিজ এ বিনিয়োগকারীদের স্বার্থ সংরক্ষণ এবং এতদ্‌সংক্রান্ত বিষয়াবলী নিশ্চিত করিবার জন্য বিধান প্রণয়নের লক্ষ্যে প্রণীত আইন

যেহেতু, বাংলাদেশের পুঁজিবাজারের উন্নয়ন ও নিয়ন্ত্রণ, এক্সচেঞ্জসমূহে কার্যকর প্রতিষ্ঠানকে সু-শাসন প্রতিষ্ঠা, সিকিউরিটিজ এ বিনিয়োগকারীদের স্বার্থ সংরক্ষণ এবং এতদ্‌সংক্রান্ত বিষয়াবলী নিশ্চিতকরণ সমীচীন ও প্রয়োজন;

সেহেতু এতদ্বারা নিম্নরূপ আইন করা হইলঃ—

প্রথম অধ্যায়

প্রারম্ভিক

১। সংক্ষিপ্ত শিরোনাম ও প্রবর্তন।—(১) এই আইন এক্সচেঞ্জেস ডিমিউচ্যুয়ালাইজেশন আইন, ২০১৩ নামে অভিহিত হইবে।

(২) ইহা অবিলম্বে কার্যকর হইবে।

২। সংজ্ঞা।—(১) বিষয় বা প্রসঙ্গের পরিপন্থী কোন কিছু না থাকিলে, এই আইনে—

(১) "অর্ডিন্যান্স" অর্থ (Securities and Exchange Ordinance, 1969 (Ordinance No. XVII of 1969);

(২) "অনুমোদিত স্কীম" অর্থ কমিশন কর্তৃক অনুমোদিত কোন ডিমিউচ্যুয়ালাইজেশন স্কীম;

(৩) "এক্সচেঞ্জ" অর্থ কোম্পানী আইন, ১৯৯৪(১৯৯৪সনের ১৮ নং আইন) এর অধীনে নিগমিত একটি শেয়ার দ্বারা সীমিত দায় পাবলিক লিমিটেড কোম্পানী যাহা সিকিউরিটিজ ক্রয়-বিক্রয়ের জন্য একটি বাজার অথবা সিকিউরিটিজ এর ক্রেতা-বিক্রেতাদের কার্যক্রম পরিচালনায় সুবিধা প্রদান করে অথবা প্রয়োজনীয় সুবিধাদিসহ এমন একটি প্রতিষ্ঠান যাহা সাধারণভাবে একটি এক্সচেঞ্জ এর সর্বপ্রকার কার্যক্রম পরিচালনা করে;

(৪) "কমিটি" অর্থ এক্সচেঞ্জ কর্তৃক গঠিত কোন কমিটি;

(৫) "কমিশন" অর্থ বাংলাদেশ সিকিউরিটিজ অ্যান্ড এক্সচেঞ্জ কমিশন আইন, ১৯৯৩(১৯৯৩ সনের ১৫ নং