

HIGH COURT’S SUO MOTU CASE ON ALLEGED ‘EXTRA-JUDICIAL KILLINGS’

(STATE V MAJOR KAZI WAHEDUZZAMAN AND OTHERS)

15 DECEMBER 2009

The High Court Division of the Supreme Court of Bangladesh today briefly heard the state and two human rights groups acting as interveners in a Suo Motu petition regarding recent reported ‘extra-judicial killings’ by the Rapid Action Battalion (RAB), a paramilitary force. On the Attorney General’s request, the matter was adjourned for hearing until 9 January 2010. The Court expressed its concern that as many as 11 incidents of “extra-judicial killings” had taken place in the country in the twenty-six days since it issued the Suo Moto rule, and requested the AG to take an initiative to ensure that no such killings take place till the next hearing. The AG assured the Court that he would communicate this request to the Director General RAB .

In the meantime, BLAST appeared as an Intervenor, and filed an affidavit.

BACKGROUND:

On 17 November, 2009, the High Court Division Bench of Justice AFM Abdur Rahman and Justice Md Emdadul Haque Azad, relying on news paper reports¹ regarding two persons allegedly killed by RAB personnel, directed Major Kazi Wahiduzzaman, Lt. Hasan respectively RAB-3 and RAB-10, Director General of Rapid Action Battalion and the Secretary, Ministry of Home Affairs to show cause why appropriate actions would not be taken against the concerned RAB officials.

The news reports had stated that two men, Lutfor Rahman and his younger brother, Khairul Haque, were arrested by the RAB on 13 November, 2009 and killed in a 'shootout' with RAB in Shirkhara village under Sadar upazila, Madaripur District, on 16 November, 2009. Lutfor's wife, Jharna Begum, and son, Bablu Khalasi, had earlier, at a press conference held on 15 November, 2009, claimed that the 2 arrestees had not been handed over to the police after their arrest and the authorities did not give them any information in this regard; they had also stated their apprehension that the arrestees may be taken to Madaripur on the false plea of recovering the illegal arms and become victims of “encounter killing”.

Two human rights organizations, ASK, and BLAST are appearing as Intervenor in this matter.

DOCUMENTS FILED IN COURT

Government’s Affidavit: In a counter-affidavit dated 17 November, 2009 on behalf of Lt. Hasan, DG RAB and the Secretary the Ministry of Home Affairs, submitted by Md. Abdus Sattar Miah, Law Officer, RAB Forces Headquarters, it was stated that there is no one by name of Major Kazi Wahiduzzaman serving in RAB-3 and RAB 8; that the two newspaper

¹ The news reports were published in the Daily Nayadiganta on 16.11.2009 and The Daily Prothom Alo on 17.11.2009. Taking into consideration these reports and the submissions made by the learned Deputy Attorney General Mr. Kazi Ezharul Hoque and the learned advocate Mr. A. F. M. Mesbahuddin the Court decided to take cognizance of the matter and pass appropriate order against those who are “liable for the killing of those two arrestees while they were under their custody in order to stop such heinous activity of some over enthusiastic members of the law enforcing agency, specially the Rapid Action Battalion (RAB)”

report on the basis of which the rule was issued are baseless, false and motivated; that no operation as alleged was conducted in the territorial jurisdiction of RAB 3 and RAB 8. It was submitted that the High Court's Rule may frustrate the investigation process of the criminal case and the Rule is also not maintainable.

BLAST's Affidavit: In this affidavit dated 14 December 2009, BLAST submitted that the Court may consider whether the counter affidavit should be rejected outright as the deponent is not eligible to affirm the affidavit on behalf of the Secretary, Ministry of Home Affairs as he had not disclosed the source of the official information referred to there. BLAST's affidavit further set out information regarding the repeated and persistent reports of 'extra-judicial killings' by such special forces, citing press reports and reflecting civil society and human rights organizations concern over the matter.

It submitted that such reported incidents of extra-judicial killing in the name of 'cross-fire', 'gunfight' or 'encounters' constitute a gross violation of right to life, equal protection of law, safeguards on arrest and fair trial as guaranteed under Articles 31, 32, 33 and 35 of the Constitution of the Peoples' Republic of Bangladesh. It also noted the state's obligations to hold prompt, impartial and effective investigations, pursuant to its constitutional and international human rights treaty obligations, in particular those under the International Covenant on Civil and Political Rights and the International Convention against Cruel, Inhuman and Degrading Treatment or Punishment, both ratified by Bangladesh.

BLAST prayed for the following directions to be issued by the Court:

1. To direct the holding of prompt, adequate and impartial investigation into any allegation of extra judicial killings by law enforcing agencies and to prosecute the responsible person and provide reparations to victims.
2. To direct the opposite parties to submit their affidavit by affirming an affidavit in person.
3. To direct the learned Sessions Judge, Madaripur, the Superintendent of Police, Madaripur and the Officer in Charge, Madaripur Police Station to submit a report to the High Court Division regarding the case, in pursuance of a fair and impartial inquiry into the matter.
