

IN THE SUPREME COURT OF BANGLADESH

HIGH COURT DIVISION

(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 2060 OF 2001.

IN THE MATTER OF

An application under Article 102 of the Constitution of the
People's Republic of Bangladesh;

And

IN THE MATTER OF

Bangladesh Legal Aid and Services Trust (Blast)

.....Petitioner

-Versus-

Bangladesh, represented by the Secretary, Ministry of Post and
Telecommunications, Government of the People's Republic of
Bangladesh, Bangladesh Secretariat, Police Station, Ramna,
Dhaka and 4 others.....Respondents

Dr. Shahdeen Malik with

Ms. Sara Hossain,

Mr. Tanjib-ul Alam,

Mr. A. Mannan Khan and

Mr. Syed Ziaul Hasan, Advocates

.....For the Petitioner

Mr. Raisuddin Ahmed, Advocate

.....For the Respondent nos. 3, 4 and 5.

Heard on: The 15th May, 2005, 25th and 26th July, 2005.

Judgment on: The 27th April, 2006.

PRESENT

Mr. Justice A.B.M. Khairul Haque.

And

Mr. Justice A.T.M. Fazle Kabir.

A.B.M. KHAIRUL HAQUE, J:

This petition is in respect of non-payment of arrear telephone bills against the Members of Fifth and Seventh Parliaments of Bangladesh.

The petition has been filed on behalf of Bangladesh Legal Aid and Services Trust (in short 'BLAST'). It is registered under the Companies Act, 1913, as a non-profit making entity. BLAST is also registered with the NGO Affairs Bureau of the Government of Bangladesh. Since its inception, BLAST provides legal aid to the needy and the poor in various Courts, up and down the country including in the Supreme Court, to vindicate their rights.

Referring to various reports in the news-papers published from time to time, it is stated in the petition that 226 members of the Fifth Parliament, as subscribers of telephones, defaulted in paying their telephones, defaulted in paying their telephone bills amounting to Tk. 3,85,88,898.00 to B.T.T.B (Annexure-A). It is also stated that another 216 members of the Seventh Parliament have not paid arrears of their telephone bills to the tune of Tk. 1,37,34,855.00 (Annexure-B). It is further stated that another 108 MPs of the Seventh Parliament have not yet paid their arrear telephone bills to the tune of Tk. 1,41,20,505.00 (Annexure-C). The petition also referred to another news item published in the Daily Star on 29.4.2001 stating that the M. Ps of 3rd and 4th Parliament owed Tk. 3.51 Crore towards their unpaid telephone bills and till December, 2000, an amount of 3.21 Crore, is outstanding against the MPs of the Seventh Parliament (Annexure-D).

It is further stated in the petition that all the concerned members of the Parliament drew their allowances in accordance with the provisions of the Members of the Parliament (Salaries and Allowances) (Amendment), Act, 1992.

It appears that the petitioner, referring to the various reports on the unpaid telephone bills, addressed repeated letters and reminders to the concerned officials of the BTTB, regarding measures or actions taken by them for realizing the aforesaid arrear telephone bills but without any response (Annexure-E series, F, G, H and I), as such, the petitioner issued a notice demanding justice on 15.4.2001, through its learned advocate upon the respondents, requesting necessary steps and measures for realizing arrears of telephone bills to the tune of Tk. 3,85,88,898.00 from the members of the 5th Parliament (between 1991 to 1996) and Tk. 1,37,34,855.00 and other arrear bills from the members of the Parliament (Annexure-J) but without any response, as such, on the application of the petitioner, this Court under Article 102 of the Constitution of the People's Republic of Bangladesh, issued the following Rule on 27.5.2001 upon the respondents:

“Let a Rule Nisi be issued calling upon the respondents to show cause as to why they should not be directed to take proper steps and measures for recovering the arrears of telephone bills from the Members of the Parliament of the 5th Parliament and 7th Parliament in accordance with the provisions of the Telegraph Act, 1985 and to ensure that the Government receives the revenue from the defaulting Members mentioned above and/or such other or further order or orders passed as to this Court may seem fit and proper.

Respondent Nos. 3, 4 and 5 are directed to certify and transmit the list of defaulter Members of the Parliament of the 5th Parliament and 7th Parliament mentioning the year wise

arrear amount due from each of the defaulter Members within 4 (four) weeks from the date of receipt of this notice.

The Rule is made returnable within 6(six) weeks from date.”

The Rule was contested on behalf of the respondent nos. 3, 4 and 5 by filing an affidavit in opposition, sworn on 23.7.2005. It is admitted therein that in spite of taking different steps by the respondents to recover the dues of about Tk. 6 (six) crore, then outstanding against the defaulting members of the 5th and 7th Parliament but ‘harsh’ and ‘drastic’ measures for recovery of the said dues could not be taken against the existing Members of Parliament, though a few cases were filed against the former members.

Besides, an affidavit in reply and another supplementary affidavit in opposition sworn on 26.7.2005 were also filed in Court.

Dr. Shahdeen Malik, Advocate, appears with Ms. Sara Hossain, Mr. Tanjib-ul Alam, Mr. A. Mannan Khan and Mr. Syed Ziaul Hasan, Advocates, for the petitioner, while Mr. Raisuddin Ahmed, Advocate, appears on behalf of the respondent nos. 3, 4 and 5.

Dr. Shahdeen Malik, the learned Advocate for the petitioner submitted that the reports published in various news papers from time to time, show that a huge amount of dues is outstanding against the members of Parliament in respect of their telephone bills. He further submitted that the affidavit in opposition filed on behalf of the respondent nos. 3, 4 and 5 sworn on 23.7.2005 also confirmed that more than Tk. 6 crore is still outstanding against the members of 5 and 7 Parliament. The learned Advocate referring to the Members of Parliament (Salaries and Allowances) Order, 1973, (President’s Order No. 28 of 1973), as amended up to date, submitted that the provisions for, salaries and allowances for the members of Parliament have been provided for in the above Order and they are entitled to such privileges as spelt out therein. He further submitted that if there is any violation of any provision stated therein, the members of Parliament are liable like any other subscribers of the BTTB under the existing and prevalent provisions of law.

On the other hand, Mr. Raisuddin Ahmed, the learned Advocate appearing on behalf of the respondent nos. 3, 4 and 5 submitted that the salaries and other allowances including that of a telephone is governed by the provisions of P0 28 of 1973 (as amended) and accordingly one telephone is installed at the residence of each of the members of the Parliament and they are also entitled to an allowance of fixed amount per month towards their telephone bills but he admitted that regrettably a good number of MPs, although realized their said monthly allowances but failed to repay their dues, consequently, more than taka 6 crore became outstanding against a number of the MPs of 5th and 7th Parliament. He further admitted that although a few cases have been filed against the former MPs but practically no action, as such, was taken against the existing MPs save and except writing letters and reminders to them but again regrettably without much response. He, however, admitted that no ‘drastic’ or ‘harsh’ action could be taken against them according to the existing laws since they are the representatives of the people of Bangladesh being the Hon’ble members of Parliament.

When asked as to whether they are above the law or beyond the ambit of the law, the learned Advocate hastened to add that they are not, but the laws could not be applied or implemented so far the MPs are concerned although are readily and rigorously applied towards any other ordinary citizens who are also customers of BTTB.

It appears that the contesting respondents also admitted in their affidavit in opposition sworn on 23.7.2005 at para-8 in this manner:

“.....that the procedure as described in this paragraph are similar to those followed by the respondents as to arrear bill, but drastic action like disconnection of telephones of Honourable Members of Parliament could not be taken against the existing Honuorable Members of Parliament.....”

The inability to take action against the MPs of the existing Parliament was frankly admitted in Para 10, Para 17 and in other places of the said affidavit. As such, it is apparent that in this country the provisions of law, regrettably could not be made applicable to the MPs.

Part V of the Constitution of the People’s Republic of Bangladesh, provides for Legislature of Bangladesh, the most important edifice of the Republic. Article 65 of the Constitution establishes the Parliament. Article 65(1) reads as follows:

“65(1) There shall be a Parliament for Bangladesh (to be known as the House of the Nation) in which, subject to the provisions of this Constitution, shall be vested the legislative powers of the Republic:

.....”

But to achieve the Idea enshrined in the above few lines, struggle of thousands of years were necessary. This is a struggle for civilization. This is a struggle to establish a representative government. Let us browse in brief the history of struggle of mankind to understand how the most distinguished and dignified position of the members of Parliament is achieved.

The process during the ancient time of Romulus (753-716BC), the first King of Rome. He established the Comitia Curiata and Senate. The Comitia Curiata was the most ancient legislative assembly in Rome. No change affecting any public or private law could be made without its consent. The Senate was the inner body of the Comitia Curiata. It was composed originally of 100 and afterwards extended to 300 members. Its main function, among others, was to examine carefully every law or resolution passed in the public assembly, but they were not the representatives of the Roman people. They were nominated by the King for life.

In the dawn of civilization, the Kings were revered as gods. They used to depend not on the people they rule but on their own might. With the advent of civilization, slowly the concept of divine right to rule a country as a representative of God was developing as a means of legitimizing their rule upon the common men.

Even during the time of early Kings, there was a crude form of Parliament. The word ‘Parliament’ or ‘Parlement’ is derived from the verb parler or to speak. It originally meant speech or dialogue. In France, it was the sovereign or superior Court of judicature under the ‘ancien regime’. It started as a tradition for the ancient monarchy in France that the King should consult with his council for purpose of government, known as curia regis. During the reign of Louis IX (1226-70AD) those sessions were being described as curia regis in parlamento or palement. In due course of time, the peers of France finally became ex officio

members of the parlement, entitled to deliberate and to vote on any matter. It was held in a special chamber aux plaids, a palace which was the fixed seat of Parliament.

In England, it dates back to nearly one thousand years. Long before the Norman conquest in 1066, there used to be the meetings of the 'wise'. These meetings performed the functions of the Teutonic national assembly known as Witenagemot. After the Norman conquest from France, the meeting of the wise was replaced by the Curia Regis. Edward I (1239-1307) summoned his first general Parliament at Westminster in April, 1275. He again summoned it in November, 1295. This was for the first time a national Parliament was convened. At that time, the number of representatives of the commons varied considerably. The term 'member of Parliament' was originally a loose expression for a knight or a burgess elected to parliaments.

History records that even in those early days, the knights of the shire and the burgess in England who sat in the Parliaments of the thirteenth and fourteenth centuries, really did represent the wishes of the great majority of the free inhabitants of the counties and boroughs by whom they were elected. In those early days they were entitled to receive wages or payment for expenses from their constituents, however, with the passage of time it grew obsolete. However, in late 19 century payment of salary was again introduced for the members of Parliament in the United Kingdom.

The members used to enjoy a number of other privileges, specially the freedom from arrest and since the time of Tudors, they claim the freedom of speech. Even in those early days, the members as well as their speakers were very conscious of their rights. Once in 1642, Charles I asked Speaker Lenthall to point out the five members he sought to arrest, the Speaker replied:

“May it please your majesty, I have neither eyes to see nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here.” (Quoted from Encyclopaedia Britannica, vol. 17, page-378, 1973)

This incident reflects how even four hundred years ago, the Speaker of the House of Commons, upheld the dignity and the rights of a member in the face of a despotic King and did not waver and yield to his command. The history of the Seventeenth century England showed a relentless struggle for the supremacy of the Parliament which reached its high water mark in enactment of the Bill of Rights in 1689.

In those days, Kings used the members to secure assent to his measures but still there were others who would disagree and would try to reject those measures but the formal 'his Majesty's Opposition' did not come into existence till the early 19 Century.

This is so far the brief history of the growth of the Parliament and its members. But this is not without a purpose, because, it is always true that 'a page of history is worth a volume of logic (Justice Holmes). We only endeavour to impress and highlight the glimpse of a long history of a costly struggle as to how the parliamentary supremacy and the distinguished position of its members were achieved. This precious dignity must be maintained by all, more so by the members themselves, even at the cost of their lives, if necessary. The real modern form of representative government was given by the French Revolution in 1789 which recognized the sovereignty of the people, the ordinary people. With this realization and recognition, came the concept of rule by consent. In short, it envisages that all powers belong to the people. Since it is impractical for all the people to rule

the country at a time, of necessity, their representatives, for and on their behalf, as a repository of their powers, rule the country. As such, in a modern welfare state the rulers must be the representative character, of the people they serve, besides, the rulers do no longer rule, they serve the very people who by their popular votes choose their representatives for their service.

There comes an elected member of Parliament. He is elected from his constituency. He represents all persons in his area irrespective of whatever political party he belongs.

By and large, a Parliament is a legislative body and its members are lawmakers, for the whole country including for themselves. In theory, the Parliament controls a Government but in reality the Government, enjoying the majority, usually controls the Parliament. The members ventilate the grievance of the people of their locality. They debate the various measures proposed by the Government, exposing the defects therein.

The end of the two great world wars saw emergence of a number of new independent countries, many of those, if not all, are republic in character.

Bangladesh won its independence through liberation war in 1971 after a sacrifice of millions of its martyrs in the hands of Pakistani army and its murderous local vassals. Its Constitution was framed and adopted on 16.12.1971. Article 7 of the Constitution reads as follows:

“7.(1) All power is the Republic being to the people, and their exercise on behalf of the people shall be effected only under, and by the authority of, this Constitution.

(2) This Constitution is, as the solemn [sic] expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void.”

Under the Constitution various high functionaries of the State are created, such as, the President, the Prime Minister, the Speaker of the Parliament, the Chief Justice, the members of the Parliament and various other services.

The high functionaries as well as the members of different services are entitled to very many privileges, created either under the law or under the rules and regulations made thereunder. The philosophy and logic to allow such privileges in favour of the functionaries and members of the services, is in order to enhance their efficiency, so that they can serve the people better.

Those high functionaries and the services are created not for staying in ivory towers, they are created so that they would serve their ultimate master, the people of Bangladesh. The people of Bangladesh are not slaves of any body, however high or mighty he may be, rather, they are the master and the Constitution created all the functionaries, not for any other purpose but for the sole object that they would serve the people and enhance their interest. It should be engraved in the minds of all that the people creates the nation, the people builds the nation, it is the people for whom the nation with all its high functionaries and services do exist.

The high functionaries are not clothed with any divinity like the Kings of the by gone days, rather, those offices are created in the interest of the people, for their services and

purposes and not for any other purpose. They exist because the people wants them to exist but as their representatives.

Of necessity, the high functionaries including the members of Parliament are allowed very many privileges. The privileges are attached to their offices. The privileges are not allowed because they are supermen, or any of that kind, rather, are allowed so that by using the privileges, they can serve the people better. The fundamental aim is to render services to the people whom they represent for a limited period fixed by law. As such, they have got no right or authority to abuse any such privilege for any other purpose, which has no nexus to the interest or service to the people for whom the privilege was allowed by law as a grace. If the privilege is abused for a collateral purpose, then the concerned functionary would be guilty of breach of trust to those people who reposed confidence on them by electing them in the Parliament.

The members of Parliament are law makers for the country but they are not above the law, they are also bound by the same law as any other person. On a broader perspective, they are also part of the Government of Bangladesh.

The whole purpose of the exercise made in the above few lines is to depict the picture of an ideal person who would be within the reach of his people, to respond to their grievances and ably voice their hopes and aspirations in the House of the Nation instead of moving around for his own errands.

We endeavour to place them in their rightful just and honoured position as the representatives of the people but this petition unfortunately brought some disturbing allegations against many of them.

It appears that many of the national news papers brought out reports about non-payment of telephone bills which reached crores of taka. The relevant news-report clippings are annexed with the petition. Those reports and the statements made in the petition were not denied in the affidavits in opposition filed on behalf of the Government or the Bangladesh Telegraph and Telephone Board, rather, they not only admitted such default but stated that they could not take 'drastic' and 'harsh' measures against the defaulting members of Parliament. It also appears that although a few cases were filed against the former members but no step was taken either against the present defaulting members or immediate past members, belong to both the Treasury or of the opposition, for realization of its dues outstanding against them. It appears however, that the contesting respondents, at least maintained a kind of equality in non-application of law towards the defaulting members of Parliament, whether they belong to the ruling party or the opposition.

The Secretary, Parliament Secretariat, the respondent no. 2, did not contest the allegations made in the petition by filing any affidavit in opposition.

In this connection, it should be noted that all the functionaries of the State including the members of Parliament take oath before entering their respective offices. A member of Parliament takes oath or affirm that he will faithfully discharge his duties according to law. Besides, Article 21 (1) casts a duty upon every citizen to observe the Constitution and the laws of the land. This oath or affirmation is a promise (wada) to his creator and to each and every inhabitants of Bangladesh that he would obey the Constitution and the laws of the land.

In such a situation, it is crystal clear that a member of Parliament is bound to observe and abide by all the laws of the land, not only according to its letters but also according to its real spirit.

If any of the functionaries of the State ‘fails to abide by the law, he must be visited by the consequences of such failures. The purpose of the law becomes meaningless if it is not allowed to be applied and implemented evenly and equally to all. A bad law may be effective if it is applied in a proper manner but even a good law may become an engine of oppression if it is applied discriminatorily and improperly. In the end, it always depends on the man who implements it.

In Bangladesh, we have a Constitution, the supreme law of the country. This country is not to be governed by any person but by the law and law alone. The people owe their loyalty not to any person or any group of persons, however high or mighty he may be, but to the law alone. The failure of a person or persons in the State is not the failure of the Constitution or the laws of the land. The failure of the people in power to uphold the law must not be equated with the failure of the Constitution or the laws made thereunder, rather, it may be the failure of the persons concerned who are oath-bound to implement it. There must be others in the State who would again uphold the law. The checks and balances inherent in the Constitution and the conventions grown and groomed therein with the honesty and integrity of the people in the system, keep the State in its rightful place. If there is none to uphold the law in its real spirit, that will be unfortunate and disastrous for all and for the nation as a whole. Because, it may lead the country to the catastrophe of a failed State. But for such an eventuality it would be foolhardy to blame the Constitution or the other laws, rather, the concerned persons who failed to uphold the Constitution in its real spirit, should be identified, paralysed and be thrown in the gutter, so that the others may learn their lessons from the reckless excesses of their unconscientious and debase predecessors.

In this case, the contesting respondents openly admit they did not invoke the necessary provisions of law in respect of the members of Parliament, knowing full well that they are defaulters in payment of their telephone dues outstanding against them which ran from months to years, but the concerned authorities remained aloof, unmoved and idle, thereby failed in the performance of their duties for which they were employed and paid salaries from the public exchequer. The defaulting members of Parliament, no doubt, failed in their obligations to make payments of their dues but the concerned authorities are also equally guilty of dereliction of their public duties.

The contesting respondents now stated in their affidavit in opposition that they could not take drastic or harsh steps against the defaulting members. This admitted lapse on their part is deprecated. They ought to have implemented the letters of law evenly and blindly without either being harsh or even uncourteous. This is their job. For this purpose they are employed but the concerned authorities miserably failed to live up to the expectation of their duties fixed by law.

Be that as it may, the members of Parliament who defaulted in payment of their telephone bills outstanding against them over the years, are obliged to make payments and the concerned authorities are duly bound to realize the said amounts promptly and immediately.

In this connection, it should also be remembered that it is not the purpose of law that one should unnecessarily be harassed or penalized but the purpose is to realize the outstanding dues in time.

But in any case, the authorities must start taking steps to realize the dues outstanding against the members of Parliament towards their telephone bills, within a period of 6(six) months from date, failing which, they will be liable for dereliction of their duties as public servants.

To summarise, we hold:

1. Bangladesh is a Sovereign Democratic Republic, governed by the Government of laws and not of men.
2. The people of Bangladesh are the owners of this country and all functionaries and the members of all services must serve them, their cause and their interest, in justification of their existence.
3. The members of Parliament as a body, represent the entire body of the people of Bangladesh, as such, should held their head high, in defending the rights of their electorates in the House of the Nation, otherwise, they will be failing in their onerous duties and functions.
4. The law is not the respecter of the people. Law does not discriminate between an ordinary citizen and the functionaries of the State however high they may consider themselves to be, because the law is always above them.
5. The privileges to the functionaries of the State are allowed not because they occupy such an exalted and high position in the State but only to enable them to perform their functions, even better, in the overall interest of the people of Bangladesh.
6. The members of Parliament are the representatives of the people of their respective constituencies, as such, are agents and trustees for and on their behalf.
7. The members of Parliament are debarred from holding any office of profit under the Government in any form so that they can be mentally unimpeded and free to speak generously in the Parliament on behalf of the people they represent, without any apprehension, fear or pressure from the Government or any body else because they owe their absolute loyalty to the people and to the people alone.
8. The members of Parliament are equally bound by the laws enacted by themselves just like any other common and ordinary man of this country.

9. Telephone bills owed to the BTTB is a debt to the country and the concerned authorities are obliged to realize the said dues from the defaulting members of Parliament, past or present, just like any of its other defaulting subscribers, otherwise, the concerned authorities themselves will be liable for dereliction of their official and legal duties.

10. If the members of Parliament, in spite of issuance of notices fail to repay their outstanding bills, within a reasonable period of time, the concerned authorities are obliged to take action against them in accordance with the relevant provisions of law as in force in Bangladesh.

AND

We direct the respondents to take necessary steps in accordance with law to realize the arrear telephone bills from all the members of Parliament.

In the result, the Rule is made absolute but without any orders as to cost.

A.B.M. Khairul Haque.

A.T.M. FAZLE KABIR, J:

I agree.

A.T.M. Fazle Kabir.