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In the Supreme Court of Bangladesh
High Court Division
(Special Original Jurisdiction)

WRIT PETITION NO. 4495 of 2009.

In the matter of

An application under Article 102 of the
Constitution.

And

In the matter of

Advocate Md. Salahuddin Dolon

.....the petitioner

Versus

Government of Bangladesh and others

.....the respondents

Mr. Md. Salahuddin Dolon

.....petitioner in person

Ms. Sara Hossain

....co-petitioner No.2

Mr. Syed Mamun Mahbub

....for respondent No.3

Present:

Mr. Justice Syed Mahmud Hossain

And

Mr. Justice Syeda Afsar Jahan

Heard on 7.4.2010
Judgment on 8.4.2010.

Syed Mahmud Hossain, J:

On 28.6.2009, the learned Attorney General Mr. Mahbubey Alam produced 'The Daily Samakal' in which at page 9 a news item was published under the caption Bangla...(uncivilized)

Having gone through the news report, we found that very derogatory remarks were made by Mr. Arif Ahmed, Upazila Education Officer, Sadar Upazila, Kurigram to the Headmistress of Attaram Bishawar Government Primary School.

Mr. Md. Salahuddin Dolon, learned Advocate of this Court, who was present at the relevant time in the Court filed an application for taking appropriate action against the Upazila Education Officer. The learned Advocate became the petitioner in public interest. Consequently, the swearing of affidavit on the application was dispensed with and the office was directed to register the application as a Writ Petition. After that, we issued a Rule Nisi calling upon the respondents to show cause as to why respondent No.1 should not be directed to take appropriate action against respondent No.3 for uttering highly derogatory remarks against the Headmistress of the School as stated in the news item.

The news item published in 'The Daily Samakal' on 26.6.2009 at page 9 is transcribed from Bangla to English as under:

In an open meeting, the Upazila Primary Education Officer scolded the Headmistress of a Primary School by uttering the word, 'prostitute. She could not sustain the dishonor and became senseless whereupon the District Primary Education Officer himself took her to Sadar Hospital. In protest, all the teachers boycotted that meeting. It was learnt that last Friday while a meeting was in progress at noon, the Upazila Education Officer directed all female teachers to attend school wearing henceforth a scarf. When fifty female teachers present there protested, the Education Officer, Arif Ahmed, pointing at the Headmistress, Mr. Sultana Arjuman Banu of Athmaram Bisheswas Government Primary School, declared her uncultured Bangla.... He further said, "If a prostitute is called a prostitute, she looks at the sky, on the other hand, when a lady is called a prostitute, she looks down upon the ground. In protest of the objectionable remarks, all the teachers left the meeting. While speaking to the newspaper correspondent, the Headmistress said in choked voice that she received prizes as the best teacher of the district 4 (four) times but she did never hear such objectionable remarks in nineteen years of her career as a teacher. The teachers present stated that the Upazila Education Officer was addicted to drugs. They further alleged the Upazila Education Officer indulged

in rampant corruption in posting and transfer of teachers through brokers.

When the newspaper correspondent talked about the matter to the Upazila Education Officer he admitted what happened. He further told the newspaper correspondent. "You can write whatever you like." The District Education Officer when heard about the occurrence stated that action was being taken against the Upazila Education Officer.

After service of notice, an enquiry was conducted by the Deputy Director of the Department of Primary Education. The Deputy Director submitted a report on 27.9.2009 stating that the news item as stated in The Daily Samakal on 26.6.2009 was genuine. The Deputy Director, however, found that the action of the Upazila Education Officer was not intentional and that the action was a mistake. As soon as the report came to our notice we directed the Deputy Director to appear in person before this Court to explain away his position regarding his report dated 28.2.2010.

In obedience to the Court's order the Deputy Director appeared in person on 11.2.2010 and stated that he did not do any wrong intentionally. We were not satisfied with the explanation. Therefore, on 11.2.2010 we directed the Deputy Director to submit a written explanation about his report. On that date we also directed

the victim to appear in person before this Court on 28.2.2010. On that date the Deputy Director, the victim Sultana Arjuma Haque and the Upazila Education Officer appeared in person. The Deputy Director also submitted a written explanation tendering unqualified apology for the recommendation made in his report. The victim stated before this Court that she became senseless on hearing the derogatory remarks made to her by respondent No.3. She was admitted to the hospital and had to stay there for seven days. She then stated that the occurrence took place on 25.6.2009 as reported in "The Daily Samakol" on 26.6.2009. The victim started crying in the Court Room when we asked her about the occurrence of 25.6.2009. In open Court, respondent No.3 tendered unqualified apology with folded hands to the victim who stated that she had accepted the apology and that she had forgiven respondent No.3.

On 4.3.2010, the Bangladesh Legal Aid and Services Trust (BLAST) through its Deputy Director (Legal Aid) Ms. Farida Yeasmin filed an application for addition of party. The application was allowed and the Bangladesh Legal Aid and Services Trust was added as co-petitioner No.2.

Mr. Md. Salahuddin Dolon, learned Advocate appearing in person, submits that the derogatory remarks made by respondent No.3 is highly objectionable and that appropriate punitive action

should be taken against him. He further submits that the Court should frame guidelines so that the women working in different Government organizations are not harassed.

Ms. Sara Hossain, learned Advocate appearing on behalf of the co-petitioner No.2, submits that the impugned action is a form of sexual harassment and clear instance of gender based discrimination perpetrated by a state official. She further submits that the impugned action is an example of attempts to impose dress codes on women and such attempts amount to violation of fundamental rights of women as enshrined in the Constitution. She then submits that attempts to impose dress code constitutes a violation of women's right to personal liberty to freedom of expression and to movement and also to freedom of religion as guaranteed by the Constitution. He lastly submits that specific measures should to be undertaken by the state to implement its obligations to enforce the constitutionally guaranteed rights to prohibit gender discrimination and ensure equality of opportunity in public employment, as well as freedom of expression.

We have perused the application, the affidavit filed by respondent No.3 tendering unqualified apology and written explanation submitted by the Deputy Director, Primary Education, Respondent No.3, Upazila Education Officer, stated that the

occurrence as alleged in the news item published in ‘The Daily Samakal’ was true. Consequently, when the victim appeared before this Court, respondent No.3 tendered unqualified apology to her with folded hands. The victim, however, accepted the unqualified apology and stated that she had forgiven respondent No.3. How an educated man of the status of a Thana Education officer could utter the word “Bangla” (prostitute) to a Headmistress of a Government Primary School is not comprehensible. It is the personal choice of a woman to wear veil or to cover her head. Any such attempt to control a woman’s movement and expression and further in this case threatening the teacher concerned for her failure to do so is clearly a violation of her right to personal liberty.

In Bangladesh there has been no uniform practice of veiling or head covering among women. However, in recent years, there have seen such attempts to forcibly impose dress codes not only by private persons and extremist political organizations, claiming to act on the basis of religion, but also by persons in authority, including those in public office.

In the absence of any legal sanction, attempts to coerce or impose a dress code on women clearly amounts to a form of sexual harassment. To the extent the derogatory term used against the teacher was sexually coloured and it also targeted her as a woman by

requiring her to cover her head, a requirement which was not made to any other male teacher in the school and such action also amounts to sexual harassment and to a form of gender discrimination.

As Article 29 occurring in chapter III of Constitution states, amongst others, that there shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic and that no citizen shall, on the grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against, in respect of any employment or office in the service of the Republic, Sub-article (2) of Article 28 specifically provides that women should have equal rights with men in all spheres of the State and of public life. Sub-article (4) of Article 28 provides that nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.

Article 39 of the Constitution guarantees freedom of thought, conscience and expression. Freedom of expression ranges from the articulation of words and images to actions and lifestyle choices, including choices around one's manner of dress and behavior. Subjecting a woman to harassment due on account of her failure to cover her head, is a discriminatory act, which is a violation of equality clause of the Constitution and inconsistent with international standards.

Arbitrary and intrusive gender-based codes for acceptable demeanour and dress also violate the rights to privacy and to free expression protected under international law, as well as the right of women to protection from violence. These obligations of the state have been set out in reports of the United Nations Special Rapporteur on Violence against Women, which are summarized below:

As a party to the International Covenant on Civil and Political Rights (ICCPR), Bangladesh has agreed to bar interference with the right to privacy (Article 17) and protects freedom of expression (Article 19). Bangladesh has the obligation to respect and ensure these rights, and to do so in a non-discriminatory manner, as set forth in Article 2 of the treaty.

Many international legal instruments dealing with human rights include the protection of women from violence in their provisions. The Universal Declaration of Human Rights, in article 1, states that “all human beings are born free and equal in dignity and rights”. Article 2 provides that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. Article 3 provides that “everyone has the right to life, liberty and security of person.” Article 5 provides that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The nondiscrimination clause in Article 2, taken together with Articles 3 and 5, means that any form of violence against women which can be construed as a threat to her life, liberty or dignity or security of person or which constitutes torture or cruel,

inhuman or degrading treatment is not in keeping with the Universal Declaration and is therefore a violation of the international obligations of Member States.

Article 3 of the International Covenant on Economic, Social and Cultural Rights guarantees the equal right of men and women to the enjoyment of all rights set forth in that Covenant and many of the substantive rights set out in the Covenant cannot be enjoyed by women if gender-based violence is widespread. For example, article 7 of the International Covenant on Economic and Social Rights ensures the right of everyone to the enjoyment of just and favourable conditions of work. This, by implication, entails that women must be free of violence and harassment at the workplace.

General recommendation No.19, of the United Nations Committee on the Elimination of Violence against Women, Eleventh session, General recommendation 19 (CEDAW/C/1992/L.1/Add.15./formulated in 1992, deals entirely with violence against women and explicitly states that gender-based violence is a form of discrimination which seriously inhibits a woman's ability to enjoy right and freedom on a basis of equality with men and asks that State parties have regard to this when reviewing their laws and policies. The recommendation further states that when reporting under the Convention States parties should take this into consideration. It also argues that the definition of "discrimination" in article 1 of the Convention includes gender-based violence, which is in turn defined in recommendation 19 as "violence directed against a woman because she is a woman or which effects women disproportionately. It includes physical,

mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

General recommendation 19 also deals with specific articles of the Convention and how they relate to violence against women. The specific areas discussed include traditional attitudes, customs and practices (arts.2(f) 5 and 10(c), violence and equality in employment (art.11), and rural women (art.14).

General recommendation 19 argues that *traditions and customs* and practices whereby women are regarded as subordinate or as having stereotyped roles perpetuate various practices, including violence and coercion, and that such prejudices and beliefs may be used to justify gender-based violence as a form of protection or control of women, as a result of which women are deprived of the equal enjoyment of their human rights and fundamental freedoms.

On the question of *employment*, General recommendation 19 states that gender specific violence such as sexual harassment in the workplace can seriously impair equality in employment. The General recommendation also recognizes that rural women are at special risk of violence because of the persistence of traditional attitudes in many rural communities and it imposes an obligation on States to ensure that services for victims of violence are accessible to rural women. Where necessary, special services should be provided for isolated communities. (emphasis is ours)

Our courts will not enforce those Covenants as treaties and conventions, even if ratified by the State, are not part of the *corpus juris* of the State unless those are incorporated in the municipal legislation. However, the court can look into these conventions and

covenants as an aid to interpretation of the provisions of Part III, particularly to determine the rights implicit in the rights like the right to life and the right to liberty, but not enumerated in the Constitution. *In the case of H.M. Ershad v. Bangladesh, 2001 BLD(AD) 69*, it is held: “The national courts should notstraightway ignore the international obligations which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national courts should draw upon the principles incorporated in the international instruments.” In the case of *Apparel Export Promotion Council v. Chopra. AIR 1999 SC 625* it is held, “In cases involving violation of human rights, the courts must for ever remain alive to the international instruments and conventions and apply the same to a given case when there is no inconsistency between the international norms and the domestic law occupying the field.”

Article 25 occurring in Part II (Fundamental Principles of State Policy) of the Constitution states, amongst others, that the State shall base its international relations on the principles of respect for international law and the principles enunciated in the United Nations Charter.

As the instant case demonstrates, harassment of women and girls is endemic in public and private sectors. On 14.5.2009 this Court in the case of *Bangladesh National Women Lawyers Association (BNWLA) Vs. Government of Bangladesh and Others, reported in (2009) 14 BLC 694=(209) 29 BLD (HCD) 415* issued guidelines for the prevention of sexual harassment directing the Government to enact legislation to address this issue immediately pending which the guidelines would have the force of law. In

accordance with the guidelines on sexual harassment laid down by this Court in its Judgment dated 14.5.2009 in *Bangladesh National Women Lawyers Association (BNWLA) Vs. Government of Bangladesh and Others*, sexual harassment includes:

4(i)c Sexually coloured verbal representation;

4(i)f Sexually coloured remark or gesture.

Rule 2 of the Government Servants (Discipline and Appeals) Rules 1985 defines 'misconduct' as conduct prejudicial to good order or service discipline or contrary to any provision of the Government Servants (Conduct) Rules, 1979 or unbecoming of an officer or gentleman.

Rule 27A. Conduct towards female colleagues-No Government servant shall use any language or behave with his female colleagues in any manner which is improper and goes against the official decorum and dignity of female colleagues. This Rule 27 is to be read with the definition of sexual harassment given in Guideline 4 of the Guidelines formulated by this Court in the case of *Bangladesh Jatiya Mahila Ainjibi Samity Vs. Government of Bangladesh reported in (2009) 14 BLC 694=2009) 29 BLD (HCD) 415* in case of Government servants.

In general, the educational institutions both in public and private sectors shall follow the guidelines formulated in the case of *Bangladesh Jatiya Mahila Ainjibi Samity Vs Government of Bangladesh* until a legislation is made by the parliament in this regard.

Since respondent no. 3 has tendered unqualified apology and since the victim accepted that apology, we have decided not to impose any prescribed punishment on respondent No.3 but respondent No.3 should be immediately withdrawn/transferred so that the victim could not be subjected to any further harassment by this respondent.

In the light of the finding made above, the Rule is disposed of with the following direction:

- (1) The Ministry of Education, respondent No.1 is directed to ensure that the women working in different education institutions under it both in public and private sectors are not subjected to similar harassment by their superior and others.
- (2) The Ministry of Education shall ensure that the women working in educational institutions under it both in public and private sectors are not subjected to wearing veil or covering their head against their will and that it is their choice to do or not to do so.
- (3) The Ministry of Education is also directed to implement guidelines formulated in the case of *Bangladesh Jatiya Mahila Ainjibi Samity Vs. Government of Bangladesh* in all educational institutions under it both in private and public sectors and to report through the Registrar of the Supreme Court about the action taken on those guidelines.

There is no order as to costs.

We would like to record our note of appreciation for the learned Advocates Mr. Md. Salahuddin Dolon and Ms Sara Hossain for their able assistance.

Let a copy of this judgment be communicated to respondent No.1, the Ministry of Education by a special messenger of this Court at the cost of the office.

Syed Mahmud Hossain.

Syeda Afsar Jahan, J:

I agree.

Syeda Afsar Jahan.

Mahfuz: 02.02.11.

Read by:

Exam. By: