

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION).

WRIT PETITION NO. 10080 OF 2018.

IN THE MATTER OF:

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

AND

IN THE MATTER OF:

Human Rights and Peace for Bangladesh (HRPB), represented by its Secretary-in-Charge, Advocate Md. Sarwar Ahad Chowdhury.

.....Petitioner.

-VERSUS-

Bangladesh, represented by its Secretary, Ministry of Health Services Division, Ministry of Health and Family Welfare, Bangladesh Secretariat, Dhaka, and others.

..... Respondents.

Mr. Manzill Murshid, Senior Advocate with

Mr. Sanjoy Mandal, Advocates.

..... For the Petitioner.

Mr. Sk. Md. Morshed, Senior Advocate with

Mr. Helal Uddin, Advocate.

.....For the respondent No. 6.

Mr. Syed Ejaz Kabir, DAG with

Mr. Waliul Islam Oli, DAG and

Mr. Md. Abdul Jabbar Joel, AAG

Mr. Md. Esa, A.A.G

Mrs. Rafiza Alam Lucky, A.A.G.

Mr. Md. Joynal Hussain, A.A.G.,

Mrs. Mahbuba Tasnim Akhi, AAG

..... For other Respondents.

Heard on: 23.06.2025, 24.08.2025 and

Judgment on: 25.08.2025.

Present:

**Mr. Justice Md. Rezaul Hasan
&
Mr. Justice Biswajit Debnath.**

Md. Rezaul Hasan, J:

This Rule Nisi has been issued calling upon the respondents to show cause as to why the Circular published vide Order No. Public Health-1/Drug-18/93/63 dated 26.02.1994 issued by the Assistant Secretary, Public Health-1 Branch, Ministry of Health and Family Welfare (Annexure-B), shall not be declared illegal and without lawful authority as it is violative of section 22 of the Drug (Control) Ordinance, 1982, as well as section 3 of the Essential Commodities Act, 1957 and/or pass such other order or further order or orders as to this Court may seem fit and proper.

2. The facts, relevant for disposal of this Rule, in brief, are that, sub-section (1) of section 11 of the Drag (Control) Ordinance, 1982, provides that, the Government may, by notification in the official Gazette, fix the price of the medicine to be sold. Accordingly, the Ministry of Health and Family Planning Welfare had published a Gazette Notification dated 18.09.1993, in exercise of the powers vested in it by the manufacturers under section 11(1) of the Ordinance (Annexure-A) and has enclosed a list of 739 numbers of medicines, fixing their maximum retail price per unit, without VAT. However, subsequently the Assistant Secretary of the Health Division, under the said Ministry has published a notification dated 26.02.1994,

under reference No. Public Health-1/Drug-18/93/63, dated 26-02-1994, addressed to the Directorate of Drug Administration, 105/106 Motijheel, Dhaka, with instruction to circulate to all concerned, by annexing a price list of 117 items of medicines. Hence, this writ petitioner had issued a notice demanding justice on 25.07.2018 (Annexure-C), mainly contending that, after the enactment of the Ordinance 1982, the Government had been used to fix the price of all kinds of medicines, as authorized by section 11 of the Ordinance 1982, until the impugned notification dated 26.02.1994 has come into the force. But, now it has fixed the price only of 117 listed items of medicine and it has, thus, shifted its responsibilities upon the manufacturers; as a result the manufacturers do manipulate the market of essential and vital medicines. Eventually, the common people, having limited income, means, have becomes unable to purchase life-saving drugs and medicines, even during emergency and, thus, the impugned circular ultimately affects the right to life and the emergency health care of the people, which is violative of the fundamental right to life guaranteed by Article 32 of the Constitution. Hence, the impugned notification dated 26.02.1994 (Annexure-B) is liable to be declared to have been issued illegal and without any lawful authority and is liable to be quashed. The petitioner has demanded, in the said notice that, the notice receivers shall recall the impugned notification dated 26.02.1994 (Annexure-B) within 48 hours, but the same was of no avail. Hence, the petitioner has filed this writ petition under Article 102 of the Constitution of the Peoples Republic of Bangladesh and obtained the Rule.

3. The respondent No. 3 (DG), Directorate of Drug Administration, has submitted affidavit-in-opposition and has denied all material allegations made against them and has also stated that, the government has issued a circular vide order No. Public Health-1/Drug-18/93/63, dated 26-02-1994, to control the price of medicines, whereby it has fixed the price of primary healthcare listed 117 medicines, while the price of the non-listed medicines will be fixed by the respective manufacturers and they will print the price on their packets. Price to be fixed by the Government shall be the Maximum Retail Price (MRP) and the price to be fixed by the manufacturers will be Indicative Price (IP). No medicine will be allowed to be sold beyond the Maximum Retail Price and the indicative price, as the case may be. It has

also been stated that, section 11 of the Drug (Control) Ordinance, 1982, has given liberty to government to control the price of medicines in different ways and by various means.

4. The respondent No. 6, the Secretary General, Bangladesh Association of Pharmaceutical Industries (BAPI), has also appeared in this matter and submitted an affidavit-in-opposition in which, having denied the contention of the writ petitioner, it has stated that, the Government was not legally obligated to fix the prices of all drugs under section 11 of the repealed Ordinance, 1982, or the section 6 read with section 3 of the ECA, 1957. Neither it is obligated under the section 30 of the existing Drug Control Act, 2023. It has further been stated that, section 11 of the repealed Ordinance 1982 and section 30 of Drug Control Act, 2023, grants a discretionary power in the government to fix the maximum price of the drugs, and this discretion has been lawfully exercised by the government, vide several notifications. As such, the Respondents have complied with the relevant provisions of the applicable laws, and no failure or negligence or violation of any laws on their part could have been shown. It has also been stated that, the pharmaceutical companies of Bangladesh currently manufacture and market 117 'listed drugs', at the prices fixed by the Government. As these 'listed' drug-products are essential for the well-being of health of Bangladeshi people and their prices have a 'ceiling' above which the Marketing Authorization Holder (MAH) cannot market/sell these products. Apart from those 'listed' drugs, prices of all other medicines are regulated by DGDA. The pharmaceutical companies do manufacture generic drugs, for which most of the Active Pharmaceutical Ingredients (API) are imported from foreign countries. The import cost of these APIs depend on a number of factors, such as, price-hike in international market, change in dollar rate, sudden supply-crisis etc. Hence, the local pharmaceutical companies have to submit applications to DGDA for fixing the price of those 'non-listed drugs' by keeping into consideration all these material factors.
5. The respondent No. 1 also appeared in this case and has submitted an affidavit-in-opposition mainly stating that, the price fixation of medicines depends on a number of causes, viz the increase in the price of the raw materials and packaging materials, salaries and wages of employees, increase in price of electricity, oil and gas,

increase in cost of transportation and other operating costs etc. It has also stated that, the per capita consumption cost of medicine in Bangladeshi people is one of the lowest in the world. However, the industry has been a key contributor to the Bangladesh economy since its independence. Pharmaceutical Industries are growing at an expected pace commensurate to the development of healthcare infrastructure and the purchasing capacity of people. Healthy growth is likely to encourage the pharmaceutical companies to introduce newer drugs and newer research products.

6. Learned Senior Advocate Mr. Manzill Murshid and learned Advocate Mr. Sanjoy Mandal appeared on behalf of the petitioner. Having placed the petition and drawn our attention to the provisions of sub-section (1) of section 11 of the Drug (Control) Ordinance, 1982 (the Ordinance), Mr. Manzill Murshid, first of all submits that, the government has been authorized to fix and re-fix the price of medicines to be sold in Bangladesh and this provisions of law is intended to secure the public benefits, in other words, to support the 'fundamental right to life' guaranteed under Article 32 of the Constitution. He has referred to a Gazette Notification dated 18.09.1993 (Annexure-A) of the Ministry of Health and Family Welfare and points out that, by this notification, issued under section 11(1) of the Ordinance, the Government has fixed the maximum price of 739 items of medicine, mentioned in the list enclosed therewith, to be effective from 28.05.1992. He next submits that, by the impugned notification under reference No. জনস্বাস্থ্য-১/ঔষধ-১৮/৯৩/৬৩, তারিখ: ২৬-০২-৯৪ (Annexure-B), signed by the Assistant Secretary of the Ministry of Health and Family Welfare and addressed to the Director Aushad Administration Directorate, the price of 117 items of medicine has been fixed, which is a clear deviation from the statutory duty imposed by section 11(1) of the Ordinance. The extent of violation of law is so much so that, the Director, Aushad Administration Directorate, was directed to circulate the price amongst all manufacturer of medicines. He also submits that, by the said notification, the Government has abdicated its authority to fix the price of 622 items of medicines in favour of the manufacturers. Moreover, he argues that, the impugned circular dated 26.02.1994 was not issued by the Government under section 11(1), nor it has been published in the official Gazette, as required by law.

Therefore, he asserts that, the Secretary of the Ministry of Health and Family Welfare had no authority to re-fix the price of 117 items of medicines, which was earlier controlled by the Government as per the provisions of sub-section (1) of section 11 of the Ordinance. Moreover, abdication of power, to fix or re-fix the price of 622 items of medicines, in favour of the manufacturers was absolutely unauthorized, illegal and contrary to the public interest. Next, referring to the documents annexed to the supplementary affidavit, he further submits that, based on the said unauthorized notification (Annexure-B), the Government has allowed the manufacturers to fix and to sell that 622 items until 2016. However, in 2016, the Government has done away with this irregularity, committed earlier by the impugned circular (Annexure-B), by issuing a Gazette Notification dated 10.11.2016 under Memo No. DGDA/42-3/2016/17707 dated 10.11.2016 (Annexure 1B) and had ratified the price of 117 medicines with reference to the provisions of section 11(1) of the Ordinance and that, it was done pursuant to an order of the Writ Bench, then presided over by the now Presiding Judge. He continues that, the Government has, thereafter, from time to time, revised the price of the medicines, as per the provisions of sub-section (1) of section 11, vide the circular dated 20.07.2022 under Memo No. 45.00. 0000. 182. 06.002.21.141-Aushad dated 20.07.2022 and then lastly on 03.02.2025 under Memo No. 45.00. 0000. 182. 06. 002.21.235-Aushad, marked as Annexure- 1D. He, therefore, submits that, the Government has thus exercised its power under section 11(1) of the Ordinance, in fixing the price of some items of medicine. But, evidently this power has been abdicated by the impugned notification (Annexure-B), which is absolutely unauthorized and unlawful, since the very beginning and is against the public interest. He concludes that, this Rule has merit and the same may kindly be made absolute.

7. Learned Deputy Attorney Generals Mr. Syed Ejaz Kabir and Mr. Waliul Islam Oli, learned Assistant Attorney Generals Mr. Md. Abdul Jabbar Joel, Mr. Md. Esa, Mrs. Rafiza Alam Lucky, Mr. Md. Joynal Hussain, Mrs. Mahbuba Tasnim Akhi appeared on behalf of the Respondent No. 1 and 3. Mr. Kabir, on the other hand, submits that, the Government has fixed the price of the medicines as per sub-section (1) of section 11 of the Ordinance, vide the notification dated 10.11.2016, and

these were done in the public interest. He maintains that, this Rule has no merit and prays for discharging the Rule.

8. Learned Senior Advocate Mr. Sk. Md. Morshed appeared on behalf of the respondent No. 6. His first submission is that, the impugned notification dated 26.02.1994 (Annexure-B) was issued by the Ministry in the public interest and it has already been acted upon. However, he points out that, the Government has published a notification dated 10.11.2016, by enclosing a list of that 117 items of medicines and thereby it has regularized the same. He next, referring to the circulars dated 20.07.2022, 04.12.2022 and 03.02.2025 respectively, submits that all these have been issued pursuant to the provisions of sub-section (1) of section 11 of the Ordinance. Then, referring to sub-section (1) of section 11 of the Ordinance, he further submits that, this provisions contemplates fixing of price in two manners i.e. one is fixed by the Government, in respect of the items selected by it and to be published in the Gazette and, in respect of other items, the fixation of price by the manufacture is permitted, subject, however, to supervision of the D.G. He proceeds on that, similar provisions have been made in sub-section (1) and (2) of section 30 of the new Act, that has come into force on 18.09.2023. However, he asserts that, the Government has not been compelled by this Act, to fix price of each item of the medicines and the power is vested in the Government to identify and select the medicines for fixing the maximum price. In reply to the query made from the Bench, as to what is the method for exercising this power vested in the Government under section 30 of the new Act, the learned Advocate submits that, a taskforce has been formed by the interim Government, vide the minutes dated 07.09.2024 of the meeting of the Counsel of Advisors and a committee has also been formed, with reference of section 12 of the Act 2023, vide the Memo No. 45.00. 0000. 182. 06. 002. 21.164 dated 17.08.2025 (a photocopy of the same has been furnished before us, with leave of this Court). He next submits that, in view of the subsequent development, this Rule has become infructuous and the same is liable to be discharged because of repealing the Ordinance of 1982, as well.
9. We have heard the learned Advocates for the petitioner, the learned Advocates for the respondents, the Deputy Attornies General and Assistant Attornies General,

perused the petition, the supplementary affidavits, affidavit-in-oppositions and other materials on record and have consulted the relevant laws.

10. The facts stated hereinabove are not disputed.
11. In view of the facts, it is relevant to quote the provisions of section 11(1) and (2) of the Ordinance, 1982, that reads as follows:-

“11(1). The Government **may**, by notification in the *official Gazette*, fix the maximum price at which any medicine may be sold.

(2). The Government may by notification in the *official Gazette*, fix the maximum price at which any pharmaceutical raw material may be imported or sold. [Emphasis added].
12. Sub-section (2) of section 11, quoted above, is not relevant in this case. We, however, find that, the Government has issued a Gazette notification dated 18.09.1993 (Annexure-A), published with reference to sub-section (1) of section 11 of the Ordinance and has fixed maximum price of 739 items of medicines, vide the list annexed therewith.
13. But, the impugned notification dated 26.02.1994, Memo No. জনস্বাস্থ্য-১/ঔষধ-১৮/৯৩/৬৩, তারিখ: ২৬-০২-৯৪ (Annexure-B,) has been issued by the said Ministry, by annexing therewith a list of 117 items of medicines. But, apparently, this has not been done by the Ministry in exercise of the powers vested under section 11(1) of the Ordinance, nor it has been published in any official Gazette, as required by law.
14. Therefore, the impugned notification dated 26.02.1994 (Annexure-B), has been issued without any lawful authority and the act of fixing price of 117 items of medicines in the list annexed therewith is also not lawful, from the very inception, and is liable to be quashed.
15. ***We also find that, by the said impugned notification (Annexure-B), the Government has, abdicated its power, granted to it under section 11(1), of the Ordinance, 1982 in respect of 622 items of medicines, out of 739 items listed in Annexure-A, in favour of the manufacturers of medicines.***

16. However, the learned Advocate for the petitioner submits that, earlier this petition has come for hearing and this lacuna was pointed out and the Ministry has published a notification dated 10.11.2016, in exercise of its power vested under sub-section (1) of section 11, and has included these 117 items of the medicines earlier mentioned in the impugned notification, Annexure-B. As such, the illegality committed has been admitted and also done away with done regularized subsequently, by the notification dated 10.11.2016 issued in compliance with the provisions of section 11(1) of the Ordinance.
17. Hence, we find and hold that, during this period, between 26.02.1994 to 10.11.2016, the price of medicines fixed by the list annexed to the impugned notification dated 26.02.1994 to (Annexure-B) and selling the same at that price were not authorized by law.
18. However, the manufacturer had produced and sold the medicines on the basis of price fixed by them, as per the impugned notification dated 26.09.1994, Annexure-B. In other words, we the impugned notification dated 28.09.1994 has been relied upon and acted upon by the manufacturers, who have manufactured price and sold their medicines, accordingly, between 26.02.1994 to 10.11.2016. Hence, this shall be condoned. We also find clear logic and substance as regards the basis of fixing and re-fixing the indicative price (IP) by them and the factors affecting the price, vide the clarification given in the affidavit-in-opposition of the respondents. But, all these could very well have been considered by the government, as clearly authorized by law, and these should not have been left alone with manufacturers, so far as the drugs and indicatives are concerned.
19. We have also noticed that, subsequent to the Gazette notification dated 10.11.2016, the Government has consistently published other notifications dated 20.07.2022 and 04.12.2022 (published on 03.02.2025), all with reference to sub-section (1) of section 11 of the Ordinance, 1982, in fixing the price of the drugs and medicines.
20. However, for further deliberation, we find it relevant to quote the corresponding provisions of section 30 of the Drug and Cosmetics Act, 2023, the fixing price of the medicines. That reads as follows:-

“৩০। ঔষধ ও ঔষধের কাঁচামালের মূল্য নির্ধারণ:-

(১) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, উপধারা (২) এর অধীন তালিকাভুক্ত এবং আমদানিকৃত ঔষধের সর্বোচ্চ খুচরা মূল্য নির্ধারণ করিতে পারিবে।

(২) সরকার, উপধারা (১) এর উদ্দেশ্য পূরণকল্পে, যে সকল ঔষধের সর্বোচ্চ খুচরা মূল্য নির্ধারণ করা হইবে, উহাদের একটি তালিকা প্রস্তুত করিয়া সরকারি গেজেটে প্রজ্ঞাপন দ্বারা প্রকাশ করিবে।

(৩) সরকার, সরকারি গেজেটে প্রজ্ঞাপন দ্বারা, ঔষধ উৎপাদনে ব্যবহার্য যে কোনো দেশীয় ঔষধের কাঁচামালের সর্বোচ্চ বিক্রয় মূল্য নির্ধারণ করিতে পারিবে।

(৪) কোনো ব্যক্তি বা প্রতিষ্ঠান এই ধারার অধীন নির্ধারিত মূল্য অপেক্ষা অধিক মূল্যে ঔষধ বা ঔষধ তৈরির কাঁচামাল বিক্রয় করিতে পারিবেন না।”

21. From a comparative reading of section 11(1) of the Ordinance, 1982 and the provisions of sub-section (1) and (2) of section 30 of the Act, 2023, we find that, the law has kept a discretion in the Government to chose the item of drugs or medicine of which it shall fix the maximum retail price for by the manufacturers. We also find that, the Government has fixed price of some items of medicines, consistently and from time to time, since 18.09.1993 to 04.12.2022 (published on 03.02.2025), all under section 11(1) of the Ordinance, i.e. before the Act has come into force.
22. **As such, evidently, the discretion conferred in section 11 (1) of the Ordinance and in the corresponding sub-section (1) and (2) of section 30 of the new Act of 2023, is coupled with duty to fix the price of the life saving and other essentials drugs and medicines. The relevant provisions of law leaves no room for any inaction, nor for any arbitrary exercise of such discretion on the part of the government.**
23. However, the discretion left with the Government in selecting the medicines for the purpose of fixing their maximum retail price, as contemplated in sub-sections (1) and (2) of section 30, is unfettered and unguided. This situation leaves scope for misuse of such discretion and may be exploited by the Syndicates, if there is any, formed to manipulate the price of medicines, as apprehended by the writ petitioner.
24. Therefore, the concerned authority must frame a clear guidelines to be followed in preparing the list and fixing the price of the life saving and other essential drugs, including those prescribed as the lifetime medicines.
25. That besides, fixing the price of the medicine is not a privilege of the manufacturers in as much as the

medicines are not fancy items or like other commodities the use of which may not be essential or the purchase of which can be deferred or avoided or otherwise managed or minimized, according to the means and need of the consumers.

26. In the background of what have been noted hereinbefore, we find that the Council of Advisors of the Interim Government has, in their meeting dated 07.11.2024, resolved to form a Taskforce, vide the Circular No. 04.00. 0000. 311. 06.112.24.597(2) dated 10.11.2024 (Annexure-9), for the purpose of preparing the list of the essential and the life saving drugs and also to fix/determine their reasonable price, and to place the same before the Council of Advisors. The relevant portion of which has been quoted below:-

“গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
মন্ত্রিপরিষদ বিভাগ
০৭ নভেম্বর ২০২৪/২২ কার্তিক ১৪৩১ তারিখে অনতিষ্ঠিত
উপদেষ্টা পরিষদ বৈঠকের কার্যবিবরণীর উদ্ধৃতি।

বিবিধ বিষয়-১: অত্যাৱশ্যকীয় ঔষধের তালিকা অনুমোদন।

সিদ্ধান্ত:

২০.১। স্বাস্থ্য সেৱা বিভাগ কর্তৃক ‘অত্যাৱশ্যকীয় ঔষধের তালিকা’ প্রণয়ন সমযোপযোগী; তবে উক্ত তালিকা সকল অংশীজন সমন্বয়ে উচ্চ পর্যায়ের টাঙ্কফোর্স পুনঃপর্যালোচনা করিবে।

২০.২। অত্যাৱশ্যকীয় ঔষধের সহজলভ্যতা ও প্রাপ্যতা নিশ্চিতকল্পে স্বাস্থ্য সেৱা বিভাগ সকল অংশীজন সমন্বয়ে একটি টাঙ্কফোর্স গঠন করিবে। উক্ত টাঙ্কফোর্স কর্তৃক অত্যাৱশ্যকীয় ও জীবনরক্ষাকারী ঔষধের তালিকা প্রণয়ন এবং ঔষধের যৌক্তিক মূল্য নির্ধারণ সংক্রান্ত সতামত/সুপারিশ সংবলিত প্রতিবেদন স্বাস্থ্য সেৱা বিভাগ উপদেষ্টা পরিষদ-বৈঠক উপস্থাপন করিবে।

স্বাক্ষর/-

(ড. মুহাম্মদ ইউনূস)

প্রধান উপদেষ্টা

নম্বর:০৪.০০.০০০০.৩১১.০৬.১১২.২৪.৫৯৭(২)

তারিখ: ২৫ কার্তিক ১৪৩১

১০ নভেম্বর ২০২৪”

(emphasis added)

27. We also find that, the Government has, pursuant to the aforesaid decision dated 07.11.2024 of the Council of Advisors, accordingly formed a Taskforce Committee, vide the Notification No. 45.00. 0000. 182. 06.002.21.149 dated 24.07.2025 (Annexure-10) and has also fixed their terms of reference, which are relevant and have been reproduced hereinafter, namely-

কর্মপরিধি

(ক) দেশের রোগের ধরণ, প্রকৃতি ও প্রবণতার উপর নির্ভর করে বিশ্ব স্বাস্থ্য সংস্থার এতদসংক্রান্ত সুপারিশের আলোকে কার্যকারিতা, নিরাপত্তা ও প্রয়োজনীয়তা বিবেচনা করে জাতীয় অত্যাৱশ্যকীয় ঔষধের তালিকা প্রণয়ন করা;

(খ) অত্যাৱশ্যকীয় ঔষধের প্রাপ্যতা ও সহজলভ্যতা নিশ্চিতকরণের লক্ষ্যে এধরণের ঔষধের মূল্য যৌক্তিকভাবে নিরূপণ ও নির্ধারণের জন্য **Regulated Mark-Up Pricing** অথবা **Cost-Plus Pricing** এর মতো স্বীকৃত নীতিমালার আলোকে অত্যাৱশ্যকীয় ঔষধসমূহের বিভিন্ন ফরমুলেশনের জন্য সহজে প্রয়োগযোগ্য বিশদ কর্মপদ্ধতি বা ফর্মুলা প্রণয়ন করা;

(গ) অন্যান্য ঔষধের মূল্য নিরূপণ ও নির্ধারণের জন্য **Reference Pricing (External and Internal)** অথবা অন্য কোন স্বীকৃত ও প্রচলিত পদ্ধতিতে বাংলাদেশের জনগণের সামর্থ্য বিবেচনা করে এবং ঔষধ শিল্পের জন্যে যৌক্তিক ও ন্যায্যসঙ্গত মুনাফার সুযোগ রেখে এক বা একাধিক বিজ্ঞানসম্মত পদ্ধতি নির্বাচন ও সেগুলোর কার্যকরভাবে প্রয়োগের লক্ষ্যে বিশদ কর্মপদ্ধতি বা ফর্মুলা প্রণয়ন করা; এবং

(ঘ) টাঙ্কফোর্স প্রয়োজনে উপযুক্ত বিশেষজ্ঞ প্রতিনিধি কো-অপ্ট করতে পারবে।

সময়সীমা: টাঙ্কফোর্স আগামী ২০ আগস্ট ২০২৫ খ্রি. এর মধ্যে এ সংক্রান্ত প্রতিবেদন মন্ত্রণালয়ে দাখিল করবেন।

০২। যথাযথ কর্তৃপক্ষের অনুমোদনক্রমে জনস্বার্থে জারিকৃত এ আদেশ অবিলম্বে কার্যকর হবে।

রাষ্ট্রপতির আদেশক্রমে,

২৪.০৭.২০২৫

মোহাম্মদ মোস্তাফিজুর রহমান

সিনিয়র সহকারী সচিব

ফোন: ৫৫১০০৪৪২ (অফিস)

E-mail:

drugad1@hsd.gov.bd

(emphasis added.)

28. The learned Advocate for the Respondent No. 6 has placed a photocopy of the Gazette Notification No. 45.00.0000.182.06.002.21.164 dated 17.08.2025, whereby a twelve member price fixing committee (i.e. ঔষধের মূল্য নির্ধারণ কমিটি) has been formed, as per section 12 of the Act, to attain the objectives of subsection (1) and (2) of section 30 of the Drugs and Cosmetic Act, 2023. More importantly it has also required disclosure of the conflict of interest and stipulates that,

“স্বার্থের সংঘাত সম্পর্কিত ঘোষণাঃ

ঔষধের মূল্য নির্ধারণ কমিটির সকল সদস্যকে মনোনীত হওয়ার পর দায়িত্ব গ্রহণের সম্মতি প্রদানের সময়েই মনোনয়নকারী কর্তৃপক্ষের অগ্রায়নসহ নির্ধারিত ফরমে এই কমিটির কার্যপরিধির সাথে সংশ্লিষ্ট কোন প্রতিষ্ঠান বা ব্যক্তির সাথে তাঁর কোন ধরনের স্বার্থ জড়িত নেই মর্মে একটি ঘোষণাপত্রে স্বাক্ষর করতে হবে। কোন বিকল্প সদস্যের সভায় অংশগ্রহণের ক্ষেত্রেও একই শর্ত প্রযোজ্য হবে।

কার্যপরিধি

ঔষধ ও কসমেটিক্স আইন ২০২৩ এর ৩০ ধারা অনুযায়ী কার্যক্রম পরিচালনা করবে”

29. Thus, a very effective, transparent and timely step has been taken by the Government to bring as well as to maintain the price of the essential drugs and life saving medicines within the means of the people as well to monitor and control their price.
30. Evidently, the Notification No. 45.00. 0000. 182. 06. 002. 21. 149 dated 24.07.2025 (Annexure-10) provides clear guidelines for preparing a national list of the essential medicines and for determining their price, while the Notification No. 45.00. 0000. 182. 06. 002. 21.164 dated 17.08.2025 provides the guidelines for appointing the members of the price fixation committee (ঔষধের মূল্য নির্ধারণ কমিটি).
31. We, however, dismiss the contention of the respondent No. 1 that the price of the medicines in Bangladesh is one of the lowest in the world. Because, the *per capita* income, the volume of sale in a densely populated country like Bangladesh, the lowest cost of production and other relevant factors should be taken into consideration by this respondent in highlighting their contention.
32. As regards the submission that, the Rule has become infructuous because of the repeal of the 1982 Ordinance by the new Act of 2023, we find no merit in it, since the Rule has been issued on the allegation of doing an unlawful act and the legality of the impugned notification is an issue that still survives the repeal of 1982 Ordinance. Besides, the law should be settled and be declared by this Court due to its relevance in respect of the corresponding provisions kept in section 30 of the new Act of 2023, as well.
33. Before parting of, let it be noted that, in the affidavit-in-opposition filed by the Respondent No. 6, it has raised a question of maintainability of the instant writ petition alleging that the petitioner is a busy-body and that it has failed to establish its bonafide and the *locus-standi*.
34. The petitioner HRPB has filed a reply dated 21.08.2025, stating that the matter involves an obvious public interest. The petitioner also maintains that, it has filed the instant case as per the guidelines provided in the

case of National Board of Revenue Vs. Abu Sayed Khan and others, reported in 18 BLC (AD) 116, about filing the Public Interest Litigation (PIL), particularly 14(g).

35. Having regard to the contentions of the Respondent No. 6 vis-a-vis the reply of the HRPB and the result of this Rule, we hold and declare that, portraying the petitioner HRPB as a 'busy-body and interloper' is devoid of any substance and is absolutely unjust and unfair. We are of the clear view that, the instant writ petition has been filed bonafide, to secure an obvious public interest, and the petitioner HRPB has *locus-standi* to file this case.
36. Such a comment, made on the part of the Respondent No. 6, is an attempt to deter and discourage the public spirited persons to act *pro bono publico i.e* in the public interest, as we have found in this case and in many other public interest litigations filed by the HRPB, vide the PIL cases filed and conducted by them and the judgments published by them in 2 volumes titled "Judgments on Public Interest Litigations". Mentionably, their writ petition, successfully filed challenging the 16th Amendment of the Constitution, whereby the Supreme Judicial Council was abolished, is a milestone case that has protected the independence of judiciary, upheld the balance of power amongst the three branches of the Government and the independence of other vital constitutional institutions like the Election Commission, the Public Service Commission and the Auditor General, all of which are the basic pillars for maintaining a democratic polity to be governed by the Rules of Law, not by the Rule of Man.
37. **We are constrained to make it clear that, any comment made in the pleadings or any other act or conduct that is calculated to deter or has the effect of deterring a lawyer from performing his duty to the court amounts to contempt of Court, in as much as lawyer, while performing his duty to the Court is as an officer of the Court.**
38. However, in view of the deliberation, recorded above, this Rule should be disposed of with the appropriate directions.

ORDER-

In the result, the Rule is disposed of with necessary directions.

The impugned notification being Circular published vide Order No. Public Health-1/Drug-18/93/63 dated 26.02.1994 issued by the Assistant Secretary, Public Health-1 Branch, Ministry of Health and Family Welfare (Annexure-B) dated 26.02.1994 (Annexure- B) is hereby declared to have been issued without lawful authority and is of no legal effect. However, the acts done thereunder, being the past and closed transactions, are hereby condoned.

The Government itself, for that reason, the Price Fixing Committee formed by the Gazette Notification No. 45.00. 0000. 182. 06. 002. 21.164 dated 17.08.2025 as per provision of section 12 of the Act and as may be formed from time to time shall, henceforth, fix the maximum retail price of all essential and life saving medicines as per section 30(1) & (2), without delegating or abdicating such power or duty to the private manufacturers, and shall follow the guidelines provided in the Notification No. 45.00. 0000. 182. 06.002.21.149 dated 24.07.2025 (Annexure- 10) and/ or such other or further guidelines as the competent authority may, from time to time, provide for the purpose of section 30(1) & (2) of the Act.

We also direct that, the Members of the Price Fixation Committee (ঔষধের মূল্য নির্ধারণ কমিটি), to be formed as required by section 12(1), shall be appointed, henceforth, as per the guidelines and the criteria provided in the Notification 45.00.0000.182.06.002.21.164 dated 17.08.2025 and/or such other or further instructions or guidelines as the competent authority may give or provide to that end, subject, however, to the duty to disclosure of the conflict of interest, so that any person having a conflict of interest should be treated as disqualified to be a member of any such committee.

The order of stay granted earlier by this Court is hereby vacated.

Office is directed to communicate this judgment and order to the Respondent Nos. 1-3 at once.
