

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

WRIT PETITION NO. 7786 OF 2012

IN THE MATTER OF :

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

A N D

IN THE MATTER OF :

**Human Rights and Peace for Bangladesh
(HRPB)** represented by it's Director
Aklasuddin Bhuiyan, Hall No.2, Supreme Court
Bar Association Bhaban, Dhaka, Bangladesh .

.... Petitioner.

= Versus =

Bangladesh, represented by the Secretary,
Ministry of Health and Family Welfare,
Bangladesh Secretariat, P.S. Shahbag, Dhaka
Bangladesh and others

.... Respondents.

Mr. Manzill Murshid, Advocate

... for the petitioner.

Mr. Nabil Ahsan, Advocate.

... for the Respondent No.7.

Heard on 19.11.2017 and

Judgment on 20.11.2017

Present :

**Mr. Justice Syed Muhammad Dastagir
Husain**

and

Mr. Justice Md. Ataur Rahman Khan

Syed Muhammad Dastagir Husain, J:

Rule Nisi was issued calling upon the respondents to show cause as to why refusal to handover the dead body of a newborn child to his parents due to inability to pay hospital bill and failure to perform their duties under the provisions of Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982 should not be declared to have been made without lawful authority and is of no legal effect and why a direction should not be given upon the respondent No.7 to compensate the parents of the newborn child in City Hospital Mohammadpur.

This is public interest litigation. The organization Human Rights and Peace for Bangladesh (HRPB) is a non profitable registered organization and the objects of the organization is to uphold the human rights of the citizen and to work for the poor people, to give legal support to the helpless people and to build up awareness amongst the people about their rights etc. The organization is engaged in promoting and defending human rights supporting the victims of human rights violations. It also works to protect environment and to protect health of the citizen and to establish rule of law. The petitioner challenged the refusal to handover the dead body of the newborn child to his parents due to inability to pay hospital bill. The petitioner seek to bring this application by invoking Article 102 of the Constitution as public interest litigation in order to take necessary steps by the concern authority to stop such kinds of refusal to handover the dead body of a newborn child to his parents due to inability to pay hospital bill. It is not only unexpected but also inhuman. The matter involved is of public importance. But by way of Refusal to handover the dead body of a newborn child to his parents due to inability to pay hospital bill, the right of the citizen is violated. It is the duty of the government to ensure and control all the private hospitals so that no one can violate natural rights of the citizen. Any steps to refuse or return of dead body to the parents for not paying bill is illegal and without lawful

authority. The affected people are unable to come to enforce their fundamental rights, hence the petitioner has moved this Public Interest Litigation (PIL) before this Court. The reports as was published in daily national newspaper at Jugantor on 10.6.2012 with the heading of “*ehSja-Ll m;n q;pf;aj-m @l-M Q-m @N-me h;h;ji*” it was reported that the new born child was taken to hospital but she died and was refused to be handed over due to non payment of dues. The hospital demanded taka about 42 thousand take as treatment cost but parents were only able to pay Tk. 15,000/- as they are poor. Due to non payment of the bill the hospital authority refused to hand over the dead body of a newborn child to his parent, which is not only illegal but also violation of human rights. The duty of the Respondent Nos. 1-5 is to ensure the quality of the service provided by doctors, nurses and any private medical service provider. The medical profession is really very highly respected profession which demands having high moral and ethical value by them who are practicing it. The emergency services in these hospitals are immensely expensive but they do not provide quality service as they used to charge. The respondents are the experienced public servant and very much aware of the rules and instructions of the government and in the instant case they have failed to do their duty because they have failed to take steps to ensure the better and prompt treatment of the citizen of the country by the private hospital and failure to take steps in case of refusal to handover the dead body of newborn child to her parents due to non payment of the hospital bill, the petitioner having no efficacious remedy available as such moved this application and obtained the present Rule.

Mr. Manzill Murshid, the learned advocate appearing on behalf of the petitioner represented the Director of HRPB submits that the Respondents are the experienced public servant and they were very much aware of the Rules and instructions of the government. But they have failed to take steps against the hospital authority. The Respondents are duty bound at all time to serve the people and to perform the public duties. But they have failed to do their duty because they have failed to take steps in case of Refusal to handover the dead body of a newborn child to this parents and it is due to non payment of hospital bill. Further by referring Section 11 of the Medical Practice and Private Clinics and Laboratories (Regulation) Ordinance, 1982 that the Director General has failed to perform his duties to inspect and to take steps in not performing the duty. Thereby it is violative of the public duties and thereby failed to

perform the duties and responsibility. The poor people of our country is unable to get medical treatment from the private hospital & clinics due their excessive rates. Most of the poor people are rushing to the government hospitals for their medical treatment. Due to short capacity of Government hospital inspite of their inability they come to the private medical for treatment but the hospitals are such negligent to ern cause death of the patient. The right to life is under question and doubted and strong steps are required to be taken to stop such violation of law which affect the life of the citizen.

On the other hand Mr. Nabil Ahsan, the learned advocate on behalf of the Respondent No.7 by filing affidavit in opposition the hospital authority represented by Managing Director of the hospital submits that the infant patient was admitted to the hospital in a critical condition and despite best effort on duty Doctors and consultant, the infant baby died on 9.6.2012 and as such the Rule is to be discharged. Further he submits that though there is claim for compensation to be provided to the deceased infant's parents without specifying the pecuniary loss and damage suffered and the quantum of the same and the dispute at all material times was contractual in nature. The bill was revised at Tk. 41,540/- and the father of the infant patient paid only Tk. 15,000/- the balance remained Tk. 26,540/- which is unpaid. The respondent No.7 having waived his right to entitlement as that was unpaid bills. Further Respondent No.7 tried to contact the father of the deceased infant to take custody of the dead body without making any further payment. Therefore the petitioner is not an aggrieved person and the instant writ petition as such is not tenable and they are not entitled to get any relief. He has also by supplementary affidavit placed before us the license, trade license as was renewed up to 2018 and the annexed certain documents which became essential to the subject matter of this writ petition. The Licenses for running different departments of the hospital were obtained from time to time at different dates. The petitioner did not make any specific allegation of negligent medical treatment. Therefore the instant Rule of the writ Petition is liable to be discharged.

Mr. Manzill Murshid the learned advocate further appearing on behalf of the petitioner Human Rights and Peace for Bangladesh has given emphasis that due to the keeping of the dead body in the hospital for unpaid dues, the father could not afford such amount of money and for

that matter the hospital authority has to contact with the police on 8.6.2012 at 2 p.m. and the hospital authority has to hand over the dead body at 6 P.M. and that it gives message that hospital authority on humanitarian grounds though dues of the hospital unpaid ultimately handed over the body.

On this context the learned advocate for the respondent No.7 submits that the hospital did not want to keep the dead body and the father of the child since not available, they were trying to contact with the police and to hand over the child to his father and ultimately the dead body was handed over to Anjuman for burial.

Heard the learned Advocates and it appears that there is no specific allegation of negligent treatment against the Respondent No. 7 Hospital. It appears that the infant was admitted to the hospital and every efforts were taken to save the child, but the child expired on 08.06.2012. The Respondent- Hospital has tried its level best to save the child but ultimately the child expired. The respondent hospital never stopped or refused to deliver the dead body and waited for long time and subsequently police was contacted to find out the father of the deceased child to take the custody of the dead body without paying any further bill but the father was hesitant to take the custody of the dead body of the child and finally the dead body was taken up by the Anjuman Mofidul Islam and the dead body was buried as per Muslim Law. Further, it appears that, out of Taka 41,540/- , the father of the deceased body paid taka 15,000/- and thereby only tk 26,540/- was due from the deceased infant. The father of the deceased did not return to the hospital being unable to make payment of the dues. It is the duty of the Respondents to take care of each and every patient, be it rich and poor. It is pertinent to note that, in every hospital either public or private, each patient , each patient is to given treatment with utmost sincerity from the hospital. Patient is liable to pay the bill submitted by the hospital/ clinic and the Hospital authority has the right to claim or waive the bill and the patient is also supposed to make payment accordingly. But, the bill must not be exorbitant. Sometimes the bill submitted by the Hospital/Clinic may rise up to such level which the poor people may not afford. The Hospital Authority can waive the bill and it absolutely depends on humanitarian ground. In this regard, our considered view is that , if the Government alongwith DG Health can create a fund by approaching the well to do

persons of the society for donating a considerable amount of money to help the poor patients, in that case, unfortunate events like this particular case may be avoided. The fund created as mentioned above can be used to give relief to the poor patients who are taking medical treatments in the hospitals and clinics and cannot afford to pay the bills and these unpaid bills may be adjusted from the fund created by the hospitals/clinics. In this case, the Hospital Authority has already extended their considered view in helping the victim and it can help even more with the help of this kind of fund. In this particular case, it appears that due to nonpayment of dues of the hospital, the hospital kept the dead body and the police was contacted and since the father did not return, the hospital authority delivered the dead body to the Anjuman Mafidul Islam for burial. A dead body of a human being deserves a respected burial and it must not be held as a mere product for recovering the outstanding dues of a dead patient. It seems in the instant case, the humanitarian activates was actually done by Anjuman Mafidul Islam and as such the hospital authority is directed to donate Taka 5,000/- to the Anjuman Mafidul Islam as Anjuman Mafidul Islam has done the burial of the dead body absolutely on humanitarian ground.

We are also of the view that , the Government should issue a Circular to all the Hospital and Clinics to keep a fund for the poor people to help them in their moment of financial crisis and on this view and upon the abovementioned terms of direction, the Rule is disposed off.
