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

Present:
Mr. Justice A.H.M. Shamsuddin Choudhury
and
Mr. Justice Jahangir Hossain.

Writ Petition No.10803 of 2011.

In the Matter of:
An application under Article 102 of the Constitution of the People's Republic of Bangladesh.
And
In the Matter of:
Advocate Manzill Murshid,
..... Petitioner.
Versus
Bangladesh represented by the Cabinet Secretary, Cabinet Division, Bangladesh Secretariat, P.S.-Shahbag, District-Dhaka and others
..... Respondents.
Mr. Manzill Murshid, Advocate
.... For the petitioner.
Mr. A.B.M. Altaf Hossain, D.A.G. with
Ms. Yehida Zaman, A.A.G.
..... For the Respondents.

Heard and Judgment on 16th of January, 2012.

A.H.M.Shamsuddin Choudhury,J.-

The Rule under adjudication, issued on 12th December, 2011, was in following terms:
"Let a Rule Nisi be issued, calling upon the respondents to show cause as to why allegedly illegal, unreasonable and discriminatory impugned letter, dated 05.09.11 and 26.09.11, issued by the Respondent no.8, intimating the refusal to pay the Hon'ble Judges of the Supreme Court of Bangladesh their medical bills for treatment (as of Annexure-D and D-1), should not be declared illegal and without lawful authority and why a direction should not be given upon the respondents to pay-sanction the medical bills of the Hon'ble Judges of the Supreme Court of Bangladesh as paid earlier and/or why such other or further order or orders as to this Court may deem fit and proper, should not be passed."
Averments figured in the petition, are summarized below:
The petitioner is the president of an organization named "Human Rights And Peace For Bangladesh (HRPB), which organization is engaged in promoting and defending human rights, working to establish rule of law and supporting the victims of human rights violations. The petitioner is a regular practitioner of this Hon'ble Court. The petitioner is a human rights activist and conscious citizen. The petitioner realized that the remuneration and privileges of the Judges of The Supreme Court of Bangladesh (henceforth the SC Judges) are appallingly inadequate given the nature of responsibility they are vested with. Their poor remuneration and allowances are posing insurmountable stumbling block on the way to achieve an infallible and durable independence of the judiciary. When the S.C judges are already inundated with various predicaments, a new threat is looming over their already clouded sky as the respondents have resolved to axe overseas medical bills the earlier have till recently been receiving.
It is beyond qualm that there are certain diseases which can not be properly and adequately attended to in Bangladesh. Truth has it that many state functionaries, even

those who are inferior to SC judges in the warrant of precedence, are being allowed to receive overseas medical treatments in appropriate cases. There has been occasions when Secretaries to the government have been flown to overseas medical centres through state paid medical ambulances, yet denial of similar privilege to the SC judges, are on the card, notwithstanding their superior status against civil servants, as being Constitutional office holders. The SC judges also need treatment abroad in certain complicated ailments to save their lives.

The petitioner is seeking direction requiring the respondent to continue to foot overseas medical bills of the Hon'ble S.C Judges. The petitioner seeks to bring this application by invoking Article 102 of the Constitution as a public interest litigation in order to protect the right to life, which is the duty of the petitioner as a court officer. The petitioner came with the application because the Hon'ble S.C Judges who are hard hit by the impugned letter, is unable to come to this court to enforce their own fundamental rights as a citizens.

The Hon'ble President of the Peoples Republic of Bangladesh promulgated an Ordinance under the title, "The Supreme Court Judges (Remuneration and Privileges) Ordinance, 1978. Provisions figured therein, witnessed amendment from time to time, in order to increase the Remuneration and Privileges of the Hon'ble Judges of the Supreme Court of Bangladesh, to keep the same at pace with the usual hikes in the cost of living.

Like the superior Court judges in other parts of the world, S.C Judges of Bangladesh also hold offices under the Constitution. Their remuneration and other privileges are not fixed. They have never been, as they ought not be, and they can not be, equated with the civil servants. Their privilege can only be compared with those of other Constitutional office holders. Remuneration and other privileges of the Judges of the Superior Courts of India, Pakistan and Srilanka are much higher than those of the S.C Judges of Bangladesh. In the backdrop the present day cost of living, the remuneration and other privileges of our S.C Judges are so pitiably **meager**, that it would go without saying that they can not tax their salaries for medical attention particularly, if such attention requires treatment abroad. So, refusal to pay/sanction medical bill is totally unreasonable and unjustified and is hence, without lawful authority.

On 24.01.2011 Mr. Justice Mohammad Mashuque Hosain Ahmed submitted his overseas medical bill to the Hon'ble Chief Justice of Bangladesh requesting the latter to take necessary steps to procure sanction for the same. On 14.02.11 the Registrar of the Supreme Court of Bangladesh directed a letter to the Secretary, Ministry of Law, Justice and Parliamentary Affairs with a positive recommendation.

On 05.04.2011, a Senior Assistant Secretary of the aforementioned, Ministry approved the said medical bill and then relayed the same to the Chief Accounts Officer, CGA Bhaban, Segunbagicha, Dhaka.

Same cycle was followed when his Lordship Mr. Justice Syed A.B.Mahmudul Haque and Mr. Justice Faruq Ahmed submitted similar bills.

Despite the Ministry of Law, Justice and Parliamentary Affair's, nod, the impugned letter was issued on 05.09.11, refusing to pay/sanction justice syed A B M Mahmudul Haque's medical bill. On 26.09.11 another impugned letter was issued under Memo No.10,00.0000.128.002.013.2011-1081 by the Ministry of Law, Justice and Parliamentary Affairs, through which the respondents refused to pay/sanction medical bills of Mr. Justice Faruq Ahmed.

For a long time the respondents have been paying medical bill of the Hon'ble S.C Judges, yet suddenly, without assigning any reason, the respondents have decide to display a somersault in this respect, which is discriminatory and not tenable in the eye of law.

The duty and responsibility vested upon the respondents is to serve the people and initiate lawful steps and the respondents are duty bound to obey the provisions of law. Yet, they have failed to perform those duties and responsibilities by failing to take steps to pay/sanction the medical bills of the Hon'ble S.C Judges. Their slip shod decision is ludicrous by all yardsticks.

Impugned letters are discriminatory because previously the respondents paid/sanctioned medical bills to many S.C judges. Such payments are made to other state functionaries of even lesser importance.

None filed any affidavit in opposition.

As the Rule matured to hearing, affable, Mr. Manzill Murshid dispassionately proffered with his characteristic persuasion, that given the shockingly impoverished wages the judges receive, it is inconceivable that they could shoulder the burden of overseas medical expenses, although, understandably at times, it becomes necessary on many peoples' part to go abroad for specialized medical attention when the ailment turns out to be complicated ones.

He was of the view that while other functionaries of Republic are generously allowed to undertake treatment abroad at the cost of the exchequer, denying to accord same facilities, to the S.C judges is tantamount to breaching the equality provisions in Article 27 and 29 of our Constitution.

He also engaged the doctrine of legitimate expectation. He stickled with visible inexpugnability that the authorities can not remain be-nighted on plights the impugned decision would entail.

For us the decisive question is whether placing a sudden proscription on the perennially pursued policy of footing S.C judges bills for medical treatment undertaken abroad in apposite cases, go hands in gloves with lawful authority.

There can not be any qualm on the stentorian assertion that the sombre and humiliatingly poor state of S.C judges salary, is too squalid to allow them to receive overseas medical treatment when such moves become imperative. It is also irrefutable that the very nature of the jobs the judges perform, which involve stressful and grueling work, extending over long hours, in total reclusion, involving mental faculties, are such, which invite various types of complicated ailments, as statistics would **undistortedly** reveal.

One can not be insouciance with the shouldering fact that the S.C Judges can not avail medical treatment abroad if they are to rely on their impecunious salaries for that pursuit.

There is little doubt that there are certain types of disorders for which medical attention aboard is highly desirable, if not, inevitable, to which judges are susceptible. The state can not absolve liability in this respect, as it is in performance of the state duties that they make themselves vulnerable to such misfortune. The state must act as a good Samaritan to protect the health of the functionaries who are performing distinctively pivotal functions for the state with relentless proliferation. In fact, this concept has remained long recognised and the State has been paying the bills from time immemorial. Hence, putting a bridle on this long standing practice is, undoubtedly a breach of the S.C Judges legitimate expectation, bearing in mind that the House of Lords, in its imbued decision in the case of Council of Civil Service Union-v-Minister for Civil Service, best Known as the GCHQ case, (1984 3ALL ER 935) expressed with no equivocation that past practices are capable of triggering substantive, as well as, procedural legitimate expectation.

It is true, equally well, that by singling out Judges, for this nihility, the respondents have acted in derogation to the mandates as figured in Articles 27 and 29 of the Constitution.

It is axiomatic that the state demonstrated no paucity of benediction in generously footing bills for overseas medical treatment undertaken by some exalted civil servants, even to the extent of traveling far enough to ensure their passage to those countries through helicopter ambulances, notwithstanding that the Judges are, being Constitutional office holders, certainly entitled to superior accommodation as against civil servants. Article 27 and 29 would certainly be flouted if the respondents continue harbouring their flippant attitude by providing special medical care to some and denying the same to other state functionaries.

The S.C Judges play sentient, frazzling, jobs from **thorny** condition, and are **saddled** with the sacrosanct obligation to act as the guardians of the Constitution.

They are the bastions of the Rule of law, Rights of the people and, of course, of Constitutional governance. It would be melancholic, least said, if they are left in dire misery and ignoble state with respect to medical treatment, at times when such can only be best available abroad. In our, view, the respondents' stance will also ensue national tragedy.

The state has a bounden duty to continue to accord medical facilities to the S.C Judges in order to keep afloat the theme of independent judiciary and ensure a World Class Justice delivery system.

In addition to the reasons elaborated above, the impugned decision also suffers from the excruciating malady in that the **uncontemplated** decision to part company with the age old practice, fails the reasonableness test in the Wednesbury sense, in that the slip shod decision is so unreasonable in all the attendant circumstances that no reasonable authority, having directed its mind properly, could have arrived at the same. (Associated Provincial Picture Houses Ltd-v-Wednesbury Corporation 1948 1 KB).

To import Lord Diplock's language, as he propounded in the GCHQ case, supra, this decision, taking all the pertinent circumstances catalogued above, is so outrageous in defiance of logic that no authority could have arrived at it if the it applied its mind with rational perspective. We are of the view that rationality would be compromised if one fails to come out of the cloud cuckoo land in this regard. We, for ourselves, being inclined to echo Lord Diplocks view, are swayed to lend our full weight to what the petitioner has put on the slade. The Rule is hence entitled to be steered through the conduit of success, wherefore the same is made absolute, there being no order on cost though.

The respondents are directed to honour the bills their Lordships Mashuk H Ahmed, Syed A B M Mahmudul Haque and Faruq Ahmed JJ have submitted and to honour in future, overseas medical bills for overseas medical treatment that shall have been received by the SC judges in circumstances where specialized overseas medical attention would be warranted because of the nature of the illness. A fortiori, the impugned orders and decisions, being destined to fall apart, are set aside.

The respondents are directed to revoke the impugned orders forthwith and restore the previous practice without further ado.
